

Focus:

AIDS and human rights

3 In a world of AIDS, the lack of human rights protection can become a matter of life and death. Conversely, safeguarding those rights can enable people to avoid infection or, if already infected, to cope more successfully with the effects of HIV/AIDS.

HIV/AIDS has burrowed deeper into the social and economic fault lines of communities and societies, and it is widening those fissures further. Around the world, those most affected by HIV/AIDS are people and communities who have unequal access to fundamental social and economic rights. The denial of basic rights limits people's options to defend their autonomy, develop viable livelihoods and protect themselves, leaving them more vulnerable to both HIV infection and the impact of the epidemic on their lives.

It is therefore necessary to assess the epidemic in the context of human rights. Viewing the epidemic in this way also brings into sharper relief some of the prerequisites for an effective response: integrating principles, norms and standards as established in existing inter-

national human rights instruments, and using national and international rights institutions to realize these rights. Ghana's HIV/AIDS National Strategic Framework, for example, now has a chapter on creating an enabling environment, which identifies strategies for addressing human rights, as well as legal and ethical issues. Principles of non-discrimination are integrated into the strategy, which also prohibits mandatory testing.

Human rights that relate critically to reducing vulnerability to HIV/AIDS and mitigating the impact of the epidemic are found in existing human rights instruments, such as the Universal Declaration on Human Rights, the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination against Women, and the Convention on the Rights of the Child.

Principles of non-discrimination, equality and participation are central to an effective HIV/AIDS strategy that integrates human

Declaration of Commitment

By 2003, enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against, and to ensure the full enjoyment of all human rights and fundamental freedoms by, people living with HIV/AIDS and members of vulnerable groups (paragraph 58).

United Nations General Assembly Special Session on HIV/AIDS, June 2001, New York

Table 2

Some key human rights principles	HIV/AIDS-related action	Relevant human rights instruments
The right to the highest attainable standard of physical and mental health	Ensure that HIV-prevention tools and services (such as treatment for sexually transmitted infections, provision of male and female condoms, and voluntary counselling and testing) are available, together with drugs for opportunistic infections, pain and suffering, and antiretrovirals. Ensure provision of the necessary health infrastructure and personnel.	<ul style="list-style-type: none"> • Article 25 of the Universal Declaration on Human Rights • Article 12 of the International Covenant on Economic, Social and Cultural Rights • Article 12 of the Convention on Elimination of all Forms of Discrimination against Women • Articles 24 and 25 of the Convention on the Rights of the Child
The right to information and education	Provide information and education relating to sexual health and HIV prevention.	<ul style="list-style-type: none"> • Article 19 of the Universal Declaration on Human Rights • Article 17 of the International Covenant on Civil and Political Rights • Article 37 of the Convention on the Rights of the Child
The right to privacy	Ensure that counselling and testing are voluntary, and that HIV test results are confidential; guarantee the right of non-disclosure to third parties.	<ul style="list-style-type: none"> • Article 12 of the Universal Declaration on Human Rights • Article 17 of the International Covenant on Civil and Political Rights • Article 37 of the Convention on the Rights of the Child
The right to share in scientific advances and their benefits	Ensure wider access to basic pain prophylaxis and antibiotics for the treatment of sexually transmitted infections and HIV-related conditions, as well as to HIV/AIDS-related treatment and therapies.	<ul style="list-style-type: none"> • Article 27 of the Universal Declaration of Human Rights • Article 15 of the International Covenant on Economic, Social and Cultural Rights

rights. More specifically, the most relevant human rights principles for protecting the dignity of people infected and affected by HIV/AIDS, as well as preventing the spread of infection, include: non-discrimination; the right to health; the right to equality between men and women; the rights of children; the right to privacy; the right to education and information; the right to work; the right to marry and found a family; the right to social security, assistance and welfare; the right to liberty; and the right to freedom of movement.

In the context of HIV/AIDS, governments have the obligation to respect, protect and fulfil human rights. A framework of accountability exists through the series of international instruments established over the past 50 years. Indeed, the past two years have seen wider recognition of HIV/AIDS-related interpretations of human rights frameworks:

- *General comment 14 on the right to Health* (May 2000), adopted by the Committee on Economic, Social and Cultural Rights, situates several key features of the right to health within the context of HIV/AIDS. These include the

availability and acceptability of, and access to, functioning public health-care facilities, goods and services, and programmes.

- *The UN Commission on Human Rights Resolution 2001/33 on 'Access to medication in the context of pandemics such as HIV/AIDS'* recognizes that access to medication in the context of epidemics such as HIV/AIDS is fundamental to achieving the full realization of the right to the highest attainable standard of physical and mental health. The resolution calls upon States to pursue policies that promote the availability of HIV/AIDS-related medications in sufficient quantities and in ways that make them accessible to all.

Furthermore, the integral link between HIV/AIDS and human rights was recognized at the United Nations General Assembly Special Session on HIV/AIDS in 2001.

The international human rights framework provides a solid basis for individuals and organizations to drive home their demands for change and action, to claim and exercise their rights, to resist exclusion and marginalization, and to struggle for social justice.

Realizing rights

Unequal access to life-saving HIV treatments is a glaring human rights issue. It also affects the degree of stigma that persists, since HIV-related stigma and discrimination are largely due to the fact that HIV/AIDS is seen as incurable. Increasing access to medications therefore not only helps to realize the right to health and overcome inequities due to poverty it also changes attitudes.

Deploying rights principles, norms and standards, activists have won ground-breaking victories on this front.

In Costa Rica, local nongovernmental organizations helped a HIV-positive college student file a petition with the Supreme Court demanding combination therapy, which he could not afford. The court ruled in his favour,

triggering a dozen similar petitions. Within weeks, the national social security system was ordered to develop a plan for the provision of antiretroviral treatment to all citizens living with HIV/AIDS.

In Venezuela, Acción Ciudadana Contra el SIDA, together with health professionals, lawyers and AIDS activists, filed a suit in 1997 on behalf of a group of people living with HIV/AIDS who were covered by the Social Security

System. The lawsuit alleged that the claimants were not receiving proper medical attention, as guaranteed by the National Constitution, the American Convention on Human Rights, and other conventions signed and ratified by Venezuela. The court upheld the lawsuit and ordered the Social Security System to provide free treatment to the plaintiffs. Countries in other regions are beginning to follow these examples as they move to realize the rights of people living with HIV/AIDS.

Protecting people at risk and those who are vulnerable

Groups affected by societal discrimination include women and children and, in many places, racial and ethnic groups, migrants and refugees. Other groups suffer discrimination because the activities they engage in are subject to criminal sanctions or social disapproval. Such people include those with different sexual orientations, as well as sex workers, drug users and prisoners (see 'Focus: AIDS and mobile populations' and the 'Prevention' chapter). For example, globally, a significant share of HIV infection occurs in male-to-male sex. Yet, dozens of countries still maintain laws that explicitly prohibit or regulate same-sex sexual relations. The effect is often that of stripping men who have sex with men of vital rights (including the right to access information and services that can protect them from the virus), leaving them highly vulnerable.

Around the world, women's enhanced physiological risk of HIV infection is compounded by economic deprivation, lack of employment opportunities, poor access to education, training and information, and sociocultural norms and practices. In sub-Saharan Africa,

for example, prevalence among teenage girls in some countries is five times higher than that for teenage boys. Most of these infections occur as a result of unprotected heterosexual intercourse. Women's low economic and social status limits their power to negotiate the use of a condom, discuss fidelity with their partners, or leave risky relationships. Such disempowerment increases their vulnerability to HIV; the socioeconomic and sexual discrimination thus experienced by women can ultimately become life-threatening.

Research underscores these realities. In a study in Viet Nam, only 35% of women felt able to refuse their husbands sex, while a UNIFEM study on the impact of HIV/AIDS on communities in Zimbabwe revealed that, even if women were educated about HIV/AIDS, their economic dependence on men left them feeling 'helpless' to negotiate safe sex.

Sexual coercion and violence in all its forms, inside and outside marriage, in peacetime and in conflict, increase the threat of HIV infection for women and girls. In population-based

studies worldwide, 10–50% of women report physical assault by an intimate partner, and between one-third and one-half of physically abused women also report sexual coercion.

Indigenous women, refugees and displaced women, women of certain religious groups, women in migration and trafficked women are also among those most vulnerable, with the attendant HIV/AIDS risks. The impact of war on women and young girls can be particularly severe, with the relatively recent

experiences of Bosnia, Croatia and Rwanda revealing again how rape and other forms of sexual abuse are frequently used as weapons of war.

Policies that reduce people's vulnerability and make it easier for them to choose safer behaviour are vital for an effective AIDS response. Income-generation schemes, improving women's employment opportunities and microfinance schemes are among the potential options for boosting women's economic

Fighting AIDS discrimination

The protection of human rights is critical to reducing the impact of the epidemic on people living with HIV/AIDS. Historically, AIDS discrimination was first witnessed in the victimization of seropositive individuals and in the intolerance and social ostracism inflicted on them. While these abuses regrettably still occur in all countries, responses based both on humanitarian and pragmatic considerations have been developed, and the list of successful HIV/AIDS-related human rights activism efforts has grown impressively.

In Mumbai, India, for example, the Lawyers Collective has successfully defended workers who lost their jobs on account of their HIV status. The Collective also raises public awareness about HIV/AIDS through public rallies, and mobilizes public opinion against stigma and discrimination. One of its significant achievements has been the upholding of a clause that allows people with HIV/AIDS to file their cases under a pseudonym. In New Delhi, meanwhile, the Population Council is helping set up HIV-Patient-Friendly Hospitals. The goal is to make hospitals more attuned to the needs of people with HIV/AIDS.

And in South Africa, the Centre for the Study of AIDS at the University of Pretoria is working to foster a climate for a sustained and effective response to HIV/AIDS on the campus and in society in general. By placing the epidemic in a human rights context, and by challenging stigma, discrimination, racism and prejudices, the University hopes to enable staff and students to freely disclose their HIV status, should they wish to do so. Students receive training in all aspects of HIV/AIDS and are actively supported in their efforts to counter HIV/AIDS-related stigma and discrimination in their communities.

National human rights institutions in Ghana, India and South Africa have launched activities that promote and protect HIV/AIDS-related human rights in their countries. Legislators are also advancing HIV/AIDS-related human rights. The United Kingdom Westminster All-Party Parliamentary Group on HIV/AIDS, for example, held public hearings in 2001 to identify legal and policy reforms to be introduced in the next five years. At a regional level, the Southern African Development Community (SADC) Parliamentary Forum has set up a Standing Committee on HIV/AIDS, which is developing strategic work plans to address HIV/AIDS-related issues.

independence. Among many such initiatives are those of ILO, which is strengthening microfinance and entrepreneurial skills among women in Malawi, Mozambique, the United Republic of Tanzania and Zimbabwe (and integrating AIDS education into the programme).

Evidence in relation to condom negotiation, voluntary counselling and testing, and the uptake of interventions to prevent HIV transmission from mother to child points in the same direc-

tion: women's empowerment and safety depend also on changes in the attitudes and deeds of men and boys. The 2000–2001 World AIDS Campaign was aimed at involving men (particularly young men) more fully in the fight against AIDS. The Campaign, with its slogans, 'Men Make a Difference' and 'I Care... Do You?' highlighted how harmful gender roles make men and women more vulnerable to HIV, and how men could make positive contributions to the fight against the epidemic.

Beyond stigma and discrimination

Widespread HIV/AIDS-related stigma and discrimination persist (see Figure 14), despite the fact that they increase people's vulnerability and, by isolating people and depriving them of care and support, worsen the impact of infection. Indeed, they impede every step in an effective response, from prevention, to treatment, care and support, and even extend into the next generation, placing an emotional burden on children who may also be trying to cope with the death of their parents, due to AIDS.

But stigma and discrimination do not arise in a vacuum. They emerge from, and reinforce, other stereotypes, prejudices and social inequalities, including those relating to gender, nation-

ality, ethnicity and sexuality, as well as activities that are criminalized (such as sex work, drug use or male-male sex). Stigma, discrimination and human rights violations form a vicious circle, legitimizing and spurring each other.

With its focus on stigma and discrimination, the 2002–2003 World AIDS Campaign aims to spur action against stigma and discrimination, as part of worldwide efforts that include:

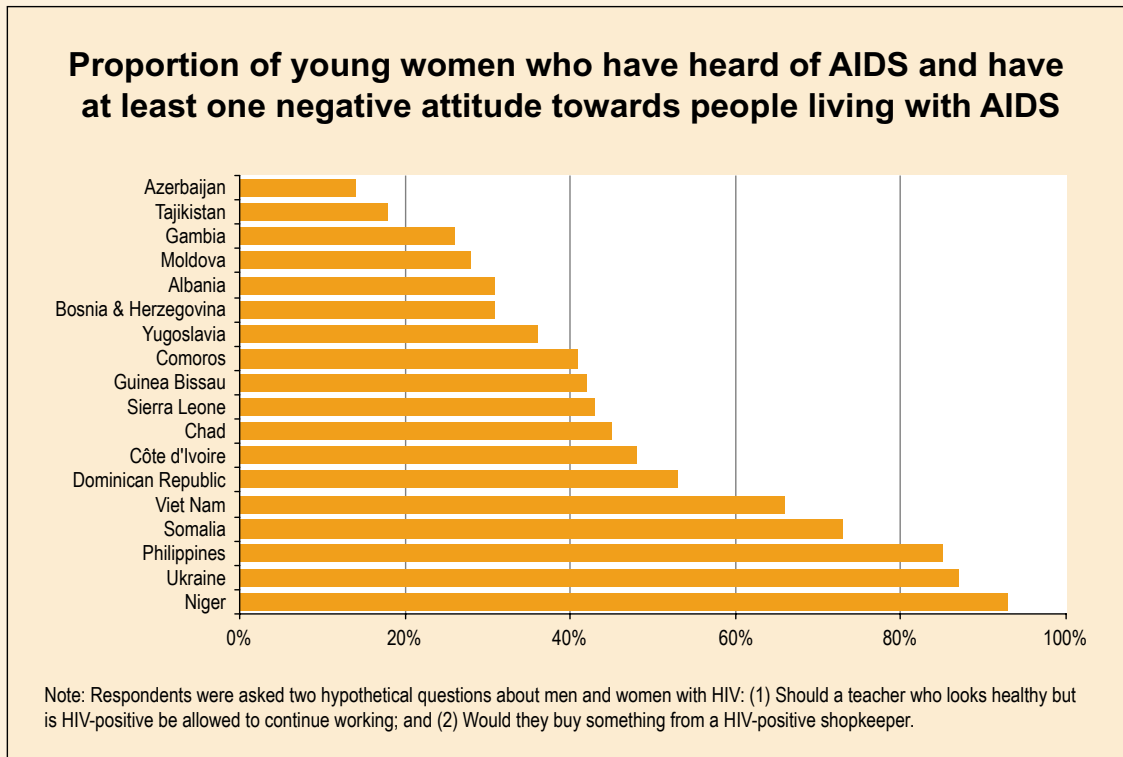
- encouraging leaders at all levels, and in all walks of life, to visibly challenge HIV-related discrimination, spearhead public action and act against the many other forms of discrimination that people face in relation to HIV/AIDS;

Declaration of Commitment

By 2005, ensure development and accelerated implementation of national strategies for women's empowerment, promotion and protection of women's full enjoyment of all human rights and reduction of their vulnerability to HIV/AIDS through the elimination of all forms of discrimination, as well as all forms of violence against women and girls (paragraph 61).

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Figure 14



Source: UNICEF (1999-2001) Multi-Indicator Cluster Surveys

- actively involving people living with HIV/AIDS in the response to the epidemic;
- monitoring violations of human rights, and ensuring that people are able to challenge discrimination and receive redress through national administrative, judicial and human rights institutions designed to safeguard rights;
- creating an enabling legal environment for fighting discrimination; and
- ensuring that prevention and treatment, care and support services are accessible to all.

An effective, long-term response to the epidemic hinges on the recognition and protection of people's rights. Individuals and communities who are able to realize their

rights to information, education, health and health care, and who are protected against discrimination and violence, are less vulnerable to the epidemic.

In 2000–2001, UNAIDS, in collaboration with the International Council of AIDS Service Organizations and its regional structures, concentrated on strengthening civil society capacity to realize and protect HIV/AIDS-related human rights. Working with the Asia Pacific Council of AIDS Service Organizations, UNAIDS developed a training module on human rights and HIV/AIDS for that region, and conducted training in Cambodia. The Latin American Council of AIDS Service Organizations, meanwhile, held a regional workshop to identify the human rights implications of National AIDS strategic plans in the region, and devised strategies to integrate human rights activities into those plans.

Crossing the line

Alongside the growing recognition of the importance to act against HIV/AIDS-related stigma and discrimination is mounting evidence that such challenges do yield success.

In South Africa, the AIDS Law Project at the University of Witwatersrand has steered HIV discrimination cases through the courts, winning precedent-setting judgements on unfair dismissal of HIV-positive persons, and on discrimination against HIV-positive persons in prisons. Members of Uganda's national network of traditional healers have been trained to become community AIDS educators. After years of concerted mobilization and consistent effort in Uganda, people with HIV are becoming more accepted as a normal part of society, and stigma and discrimination appear to be ebbing. In addition, more religious organizations are stepping into the breach, especially in Asia and Africa (see 'National responses' chapter).

And the African Council of AIDS Service Organizations is supporting community-based activities aimed at integrating human rights into prevention and care efforts in Burkina Faso and the United Republic of Tanzania.

Some of the most successful responses to the epidemic have occurred when people, ranging from gay communities in high-income countries, starting in the 1980s, to urban and rural communities in Uganda, and sex workers in Bangladesh and India, have seized the right to speak out, mobilize resources and organize.

In Bangladesh, sex workers have joined in a collective called Durjoy, which combats the trafficking of girls and young women in the sex industry. Along with nongovernmental organizations, Durjoy in 2001 won a court judgement that legally recognized the rights of sex workers to practise their trade and support their families. In Kolkata, India, meanwhile, sex workers have gone a step further

and now build skills among local police to combat violence against them. In addition, they have created a board that brings together sex workers, local sex industry operators and government labour and health authorities to tackle violence in the industry.

The activism of civil society around rights issues remains one of the sterling features of effective responses everywhere, especially when it involves people living with and affected by HIV/AIDS, and young people.

In a range of African and Asian countries, the UNAIDS Secretariat (along with its Cosponsors, the Office of the High Commissioner for Human Rights, and other partners) is supporting training for national partners on HIV/AIDS-related human rights for community AIDS organizations, human rights nongovernmental organizations, political leaders, National AIDS Programme managers, people living with HIV/AIDS, and legislators. 