HIV/AIDS

Addressing the HIV epidemic is an integral part of addressing sexual and reproductive health and rights (SRHR). Not only are sexual relations one of the primary modes of HIV transmission, but the central tenants of sexual and reproductive health and rights, including the right to information, autonomy and non-discrimination, are critical to successful AIDS responses.

Globally, HIV is among the top 10 causes of death among adolescents (aged 10–19 years), despite the availability of effective treatment.[1] Gender inequalities often limit young women's access to health care and education, resulting in young women accounting for a disproportionate number (60%) of new HIV infections among young people and among young people living with HIV.[2]

Gender-based violence, including intimate partner violence, rape, and child, early and forced marriage also prevent women and adolescent girls from being able to adequately protect themselves from HIV. Women living with HIV also face challenges to being able to make autonomous and informed decisions about their bodies and lives; they do not receive adequate information on contraception and can be subject to involuntary sterilization based on their HIV status.[3]

Certain population groups face higher risks of contracting HIV due to factors related to discrimination and exclusion. This includes those living in poverty, minorities, indigenous people, migrants, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, and injecting drug users.[4] They also include women living in rural areas and in the context of disasters.[5] The risk of acquiring HIV is 28 times higher among men who have sex with men than it was among heterosexual men, 13 times higher among transgender women than the general population of reproductive age (15-49 years), and 13 times more among female sex workers than the broader population of women of reproductive age (15-49).[6] Laws criminalizing consensual sexual activity between adults and transgender gender identity and expression, as well as stigmatizing social environments, increase this vulnerability and "impede the exercise of the right to sexual and reproductive health."[7]

HIV-related rights are well recognized under international human rights standards protecting the rights to life, health, privacy and non-discrimination. The right to health includes "the prevention, treatment and control of epidemic...diseases"[8] as well as "the creation of conditions which would assure to all medical service and medical attention in the event of sickness."[9] The right to health has been interpreted to include "the availability and accessibility of HIV prevention, treatment, care and support for children and adults."[10] International human rights bodies have also explicitly recognized HIV status as a prohibited ground of discrimination.[11]

International standards also protect the right to privacy,[12] which "encompasses obligations to respect physical privacy, including the obligation to seek informed consent to HIV testing and privacy of information, including the need to respect confidentiality of all information relating to a person's HIV status."[13] The right to physical integrity and the right to choose the number and spacing of one's children are also relevant as HIV positive women face heightened risks of being subjected to forced abortion or sterilization.[14] Barriers to the right to access to justice for people living with HIV must also be addressed.[15] Furthermore, the involvement of marginalized groups in all aspects of the HIV response is critical to prevent and combat the spread of HIV.[16]

Under the 2030 Agenda for Sustainable Development, States have committed to ending the AIDS epidemic by 2030, a commitment reinforced by the United Nations General Assembly in the 2016 Political Declaration on the Fast-Track to End AIDS, where States committed:

"to intensifying national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV, including by […] providing legal protections for people living with, at risk of and affected by HIV, including in relation to inheritance rights and respect for privacy and confidentiality, and promoting and protecting all human rights and fundamental freedoms"[17]

IN 2017, THERE WERE **36.9 MILLION PEOPLE LIVING WITH HIV**, 21.7 MILLION OF WHOM WERE ACCESSING ANTIRETROVIRAL THERAPY

SINCE THE START OF THE EPIDEMIC AROUND 77.3 MILLION HAVE BECOME INFECTED WITH HIV AND **35.4 MILLION PEOPLE HAVE DIED OF AIDS-RELATED ILLNESSES**

AIDS-RELATED DEATHS HAVE REDUCED BY MORE THAN 51% SINCE THE PEAK IN 2004

59% OF ALL ADULTS LIVING WITH HIV ARE RECEIVING TREATMENT

EVERY WEEK, AROUND **7000 YOUNG WOMEN AGED 15–24 YEARS BECOME INFECTED WITH HIV**

AIDS RELATED ILLNESSES ARE THE LEADING CAUSE OF DEATH AMONG WOMEN AND ADOLESCENT GIRLS OF REPRODUCTIVE AGE (15-49)

Source: Joint United Nations Programme on HIV/AIDS, Ending AIDS: progress towards the 90-90-90 targets (2017).

KEY ISSUES

1 WOMEN'S AND ADOLESCENTS' SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS ARE SEVERELY IMPACTED BY HIV

Protecting the sexual and reproductive health and rights of women in the context of HIV is crucial.[18]

The Committee on the Elimination of Discrimination against Women has highlighted the relationship between women's reproductive role, their subordinate social position and their increased vulnerability to HIV infection.[19] According to the Committee, "as a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices. Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases."[20] Women and girls living with HIV are also more vulnerable to violence, including violations of sexual and reproductive health and rights.[21]

Adolescents face specific challenges in ensuring their sexual and reproductive health and rights in the context of HIV.

Human rights bodies have called for the removal of barriers for adolescents to obtain HIV-related health services and information. The Committee on the Rights of the Child has explained that adolescents face multiple barriers in gaining access to antiretroviral treatment and remaining in treatment including "the need to gain the consent of guardians in order to access HIV-related services, disclosure and stigma".[22] Age of consent laws have been identified as a barrier to access to HIV-testing and other interventions, which results in delayed diagnosis and access to appropriate care.[23]

Human rights bodies have urged States to ensure that adolescents receive sexual and reproductive health education and have access to confidential HIV testing and counseling services and to evidence-based HIV prevention and treatment programmes provided by trained personnel who fully respect the rights of adolescents to privacy, confidentiality and non-discrimination.[24]

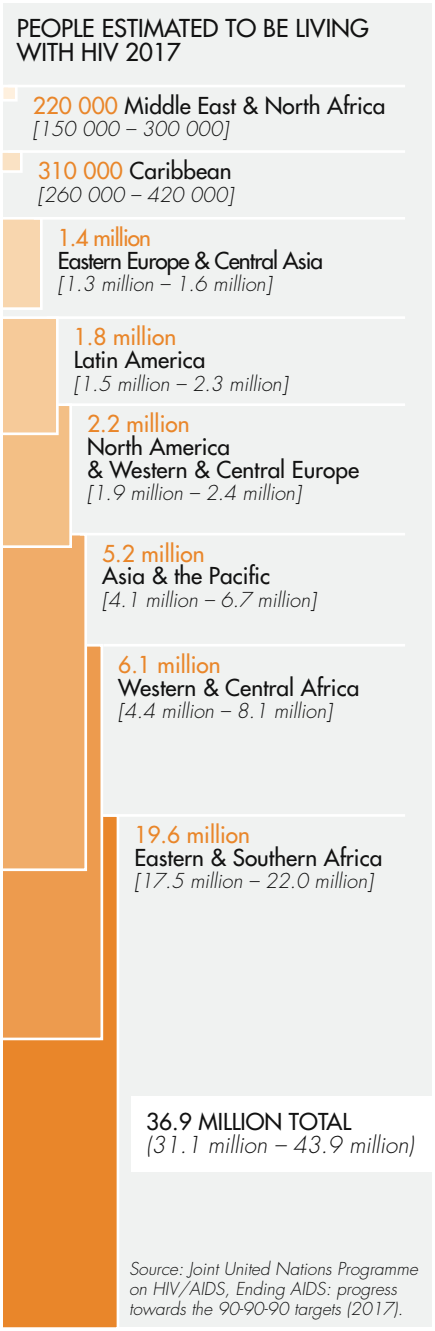
The Committee on the Rights of the Child has also underscored the need for States to develop prevention programmes and "to adopt legislation to combat practices that either increase adolescents' risk of infection or contribute to the marginalization of adolescents who are already infected with STDs, including HIV."[25]

2 HIV-RELATED STIGMA AND DISCRIMINATION ARE KEY OBSTACLES TO THE ENJOYMENT OF SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

Discriminatory laws and practices associated with HIV responses hamper access to sexual health information and services.

According to the Working Group on Discrimination against Women "even when women living with HIV/AIDS are able to access health services, they often face stigma and discrimination on the part of health-care professionals, ranging from abuse to denial of services".[26]

The prohibition against discrimination requires States to review and, if necessary, repeal or amend their laws, policies and practices to proscribe differential treatment which is based on arbitrary HIV-related criteria.[27] Recognizing the integral connection between HIV/AIDS, other sexually transmitted infections and women's sexual health, the Committee on the Elimination of Discrimination against Women has also clarified that "States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country."[28]



In 2017, **12 UN Agencies released a Joint Statement on Ending Discrimination in Health Care Settings** which recognised that discrimination in health care settings takes many forms and called for, among others, review and repeal of laws that have been proven to have negative health outcomes and that counter established public health evidence, including overly broad criminalization of HIV non-disclosure, exposure or transmission.

Mandatory testing and the publication of HIV status violate the right to privacy and reduces participation in HIV prevention and care programs.

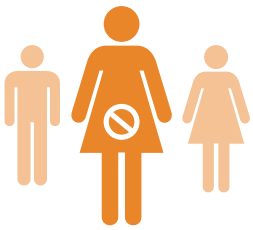
The Committee on the Elimination of Discrimination against Women has expressed concern about compulsory HIV/AIDS testing as a condition of employment, and mandatory HIV testing of pregnant women,[30] and have also called for prohibiting mandatory testing for HIV of sex workers following arrest.[31]

"People will not seek HIV-related counselling, testing, treatment and support if this would mean facing discrimination, lack of confidentiality and other negative consequences."[32] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has established that "forced or compulsory HIV testing is also a common abuse that may constitute degrading treatment if it is done on a discriminatory basis without respecting consent and necessity requirements".[33]

States have an obligation to protect the right to privacy, which "includes the obligation to guarantee that adequate safeguards are in place to ensure that no testing occurs without informed consent, that confidentiality is protected, particularly in health and social welfare settings, and that information on HIV status is not disclosed to third parties without the consent of the individual."[34]

Women living with HIV are particularly at risk of being subject to forced sterilization.

Misinformation and misconceptions about HIV transmission has resulted in forced sterilization of women living with HIV. Despite robust evidence of the effectiveness of interventions to reduce the risk of mother to child transmission, HIV positive women have been coerced to undergo sterilizations, or agree to be sterilized without adequate information and knowledge about their options.



The Committee on the Elimination of Discrimination against Women has expressed concern about the involuntary sterilization of women living with HIV/AIDS,[35] and has urged States to ensure free access for women and girls to antiretrovirals in order to avoid mother-to child transmission.[36] The Committee against Torture has called on States to adopt legislative and policy measures to prevent and criminalize forced sterilization of people with HIV, "particularly by clearly defining the requirement of free, prior and informed consent with regard to sterilization and by raising awareness among medical personnel of that requirement."[37]

"Human rights standards recognize that women living with HIV have a right to contraception and other reproductive health services on the same grounds as all other women. These standards state that safe and affordable means of contraception should be available and that women should have the rights to freely choose or refuse family planning services (including sterilization services)."[38]

3 CRIMINALIZING RISK BEHAVIOURS IMPEDES THE EXERCISE OF SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

Overly broad criminalization of HIV non-disclosure, exposure and transmission, and criminalization of consensual sexual activities between adults, and transgender identity or expression obstruct the realization of the right to health.

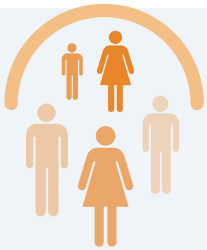
Several human rights bodies have stressed the adverse impact of criminalization on the prevention and treatment of HIV and the need for legal reform.[39] For example, the Human Rights Committee has established that criminalizing same-sex conduct "cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/ HIV."[40] The Special Rapporteur on the right to health has pointed out that criminalizing consensual sexual conduct between adults or HIV transmission not only infringes the right to health but also other rights, including the rights to privacy, equality and non-discrimination.[41] According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, criminalization and stigma can hinder people's access to life saving treatment, including treatment for HIV.[42]

Criminalization can discourage HIV testing, increase mistrust of health professionals and impede the provision of quality care and research, because "people may fear that information regarding their HIV status will be used against them in a criminal case or otherwise."[43] The Special Rapporteur on the right to health has observed that "any laws that discourage testing and diagnosis have the potential to increase the prevalence of risky sexual practices and HIV transmission."[44]

The Rapporteur has also explained that criminalization is a barrier to accessing services, which leads to poorer health conditions for sex workers who may fear legal consequences and harassment.[45] Criminalization of "the sex work sector results in infringements of the right to health, through the failure to provide safe working conditions, and a lack of recourse to legal remedies for occupational health issues."[46]

Criminalization or punitive laws and policies can also reinforce existing prejudices and legitimizes violence by community members or public officials. For instance, "the criminalization of HIV transmission also increases the risk of violence directed towards affected individuals, particularly women. HIV-positive women are 10 times more likely to experience violence and abuse than women who are HIV-negative."[47]

STATES HAVE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL HUMAN RIGHTS IN RELATION TO HIV/AIDS



RESPECT States should repeal laws criminalizing HIV non-disclosure, exposure, and transmission, of consensual sexual activities between adults, and transgender identity or expression. Laws and practices criminalizing such behaviours interfere with the enjoyment of sexual and reproductive health and rights and have an adverse influence in combating HIV.

PROTECT The obligation to protect requires States to prevent violations by third parties. Thus, for instance, States are required to ensure that health care providers do not impose mandatory HIV testing on people and that they respect confidentiality concerning HIV-related status and treatment.

FULFIL The obligation to fulfil requires States to "take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV."[48]

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6 Miles To Go: Closing Gaps, Breaking Barriers, Righting Injustices, p. 14.
7 Committee on Economic, Social and Cultural Rights, General Comment 22 (2016) on the right to sexual and reproductive health, para. 40.
8 International Covenant on Economic, Social and Cultural Rights, Article 12(2)(c).9 Ibid., Article 12(2)(d).
9 Ibid., Article 12(2)(d).
10 International Guidelines on HIV/AIDS and Human Rights, p. 6. See also, Committee on Economic, Social and Cultural Rights, General Comment 14 (2000) on the right to the highest attainable standard of health, para. 16.
11 Committee on Economic, Social and Cultural Rights, General Comment 14, para. 18; Committee on the Rights of the Child, General Comment 3 (2003) on HIV/AIDS and the rights of the child, para. 7.
12 International Covenant on Civil and Political Rights, Article 17.
13 International Guidelines on HIV/AIDS and Human Rights, para. 119; Committee on Economic, Social and Cultural Rights, General Comment 14, para. 16.
14 International Guidelines on HIV/AIDS and Human Rights, para. 118.
15 Committee on the Elimination of Discrimination against Women, General Recommendation 33 (2015) on women's access to justice, para. 9.
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19 General Recommendation 15 (1990) on women and AIDS.
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21 World Health Organization, Consolidated guideline on sexual and reproductive health and rights of women living with HIV (2017).
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26 A/HRC/32/44, para. 48; See also, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53 (2013), para. 71.
27 International Guidelines on HIV/AIDS and Human Rights, para. 109; Committee on Economic, Social and Cultural Rights, General Comment 20 (2009) on non-discrimination in economic, social and cultural rights, para. 33; United Nations Secretary-General, On the fast track to ending the AIDS epidemic, A/70/811 (2016), para. 75 (f).
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29 Committee on the Elimination of Discrimination against Women, Concluding Observations on El Salvador, CEDAW/C/SLV/CO/8-9 (2017), para. 35 (d).
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31 Concluding Observations on Kenya, CEDAW/C/KEN/CO/8 (2017), para. 29 (d).
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34 International Guidelines on HIV/AIDS and Human Rights, para. 121.
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36 Concluding Observations on Honduras, CEDAW/C/HND/CO/7-8 (2016), para. 39. See also A/HRC/32/44, para. 105 (d).
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40 Toonan v. Australia, CCPR/C/50/D/488 (1992), para. 8.5.
41 A/HRC/14/20 (2010), paras. 2, 51.
42 A/73/314, para. 82.
43 A/HRC/14/20, para. 63.
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