

Human rights and HIV



KEY POINTS:

- International human rights laws and treaties entitle every person with the right to health and to access HIV and other healthcare services.
- Human rights violations in the context of HIV include the criminalisation and enactment of punitive laws which target key populations and people living with HIV, stigma and discrimination in the workplace and in healthcare services, gender inequality, and the denial of access to HIV services.
- Human rights-based HIV programmes should be implemented to avoid inequalities or discrimination, and when countries fail to meet the human rights requirements for people living with HIV they should be held legally accountable.

Explore this page to find out more about [human rights violations in the context of HIV](#), [the framework of a human rights-based response to HIV](#), [human rights and HIV programmes](#) and [the human rights funding crisis](#).

The relationship between HIV and human rights

It is now widely recognised that HIV and human rights are inextricably linked. A lack of respect for human rights drives the HIV epidemic and increases its impact, while at the same time, HIV undermines progress in the realisation of human rights.

Under international human rights laws and treaties, every person has a right to health and to access HIV and other healthcare services. However, many people continue to face human rights-related barriers to these essential and often life-saving services.

The people facing these barriers are often the most marginalised, stigmatised and vulnerable to HIV. This makes protecting, promoting, respecting and fulfilling people's human rights essential to ensure that they are able to access these services and enable an effective response to HIV and

AIDS.

The protection of human rights is essential to safeguard human dignity in the context of HIV/AIDS and to ensure an effective, rights-based response. [...] When human rights are protected, fewer people become infected and those living with HIV/AIDS and their families can better cope with HIV/AIDS.

- UNAIDS (1996, 2006) 'International Guidelines on HIV/AIDS and Human Rights' 1

Human rights violations in the context of HIV

Human rights violations in the context of HIV can take many forms. They can worsen the impact of HIV, increase vulnerability to HIV and more broadly, undermine responses to the epidemic.

HIV criminalisation

HIV criminalisation refers to laws that criminalise people living with HIV based on their HIV status. This can be via HIV-specific laws or general criminal laws that prosecute:

- unintentional HIV transmission
- potential or perceived exposure to HIV where HIV was not transmitted
- non-disclosure of known HIV-positive status.²

According to the HIV Justice Network, 72 countries have adopted laws that specifically allow for HIV criminalisation. These laws are either HIV-specific or name HIV as one of the diseases covered.³

The rationale behind these laws is to deter perceived morally unacceptable behaviour through fear of punishment. However, a wealth of evidence shows how HIV criminalisation is a poor public health strategy and actually undermines the response to HIV.^{4 5 6}

For example, HIV criminalisation has been shown to deter people from testing for HIV and as a result, limit access to treatment and care. Moreover, laws that require people living with HIV to disclose their status have actually been found to make disclosure more difficult by creating public expectation that they will do.⁷

In some instances, these laws have been found to actually lead to an increase in risk-taking behaviour, and therefore vulnerability to HIV. One study in the [United States of America](#) found that in states that criminalised HIV, [men who have sex with men \(MSM\)](#) were more likely to have sex without a condom. It was suggested that this was due to a false sense of security, as they expected partners to disclose their status or protection from the law.⁸

Punitive laws targeting key populations

Many countries continue to implement discriminatory laws and policies such as the criminalisation of sex work, drug use and sexual orientation that push [key affected populations](#) away from vital HIV and health services and restrict their ability to demand their rights.⁹

Criminalisation of men who have sex with men

In 2016, 75 countries around the world criminalised same-sex conduct.¹⁰ Criminalisation of homosexuality and same-sex conduct pushes men who have sex with men underground making it difficult for them to access, condoms, lubricant, counselling and other HIV services. In parts of [the Caribbean](#), it is well documented that HIV prevalence rates are high among MSM in countries with such laws.¹¹

These laws also make it extremely difficult for organisations offering sexual health and HIV services to reach men who have sex with men as their work brings them into conflict with laws banning same-sex behaviour.

Even in countries where same-sex activity is not illegal, fear of the authorities pushes many MSM who are not aware of their legal rights underground and away from vital HIV and health services.¹²

Criminalisation of people who inject drugs

The criminalisation of drugs and the people who use them increases the risk of HIV and other health problems. Fear of arrest or police abuse drives [people who inject drugs](#) away from vital HIV and health services, while increasing risky practices.¹³

In some countries, many people who inject drugs do not carry sterile syringes or other injecting equipment even though it is legal to do so because possession of such equipment can mark out an individual as a drug user, and expose them to punishment on other grounds.¹⁴

Even at government sanctioned [harm reduction programmes](#) (such as [needle and syringe programmes](#)), the presence of police drives people away from these services out of fear of arrest or other punishment.^{15 16}

Criminalisation of sex workers

Criminal laws specific to sex work are used to criminalise [sex workers](#), clients as well as families, partners and friends of sex workers. As well as sex work specific laws, there are a number of other laws that create the conditions for criminalisation.¹⁷

Sex workers subjected to these laws and practices fuel stigma, discrimination and violence towards them. Anti-prostitution laws and policies that criminalise or legally oppress sex workers allow widespread human rights abuses by state authorities.^{18 19 20}

This includes verbal, physical and sexual abuse; mandatory HIV testing; the public 'naming and shaming' of sex workers in the media; forced evictions; and extortion. The risk of violence is heightened for sex workers living with HIV who are also subject to HIV laws around non-disclosure, exposure, and transmission laws.²¹

Stigma and discrimination

People living with HIV can experience [stigma and discrimination](#). As well as people living with HIV and their families, this includes already stigmatised populations such as [women](#), sex workers, men who have sex with men, [transgender people](#) and people who use drugs.

In addition to being a violation of human rights in itself, discrimination directed at people living with HIV or those believed to be infected, leads to the violation of other human rights such as access to healthcare and the right to employment.²²

Discrimination by healthcare workers

In many parts of the world, healthcare is not confidential, contains judgement about a person's HIV status, behaviour, sexual orientation or gender identity. These views are fuelled by a variety of factors, including ignorance about HIV transmission routes.

This prevents many people from being honest to healthcare workers when they seek medical help and deters others from seeking, using and adhering to HIV prevention and treatment services.²³

Discrimination in the workplace

In some places, people living with HIV can be refused the right to work, while in the workplace, they can suffer from discriminatory practices such as termination or refusal of employment because of their HIV status.

This prevents people living with HIV from earning a living and as a result they may be unable to afford to pay for antiretroviral drugs and other HIV services, or more generally, suffer from financial instability.²⁴

Gender inequality

Gender-based violence, including rape, and early marriage also prevent women and adolescent girls from being able to adequately protect themselves from HIV.

HIV criminalisation can also exacerbate [gender inequalities](#). Women and adolescent girls face unequal access to their rights in many contexts and lack the freedom to make informed choices. For example, in parts of [sub-Saharan Africa](#), a woman may be prosecuted for exposing or transmitting HIV to her baby despite her partner ignoring her request to practice safer sex.²⁵

Women living with HIV also face challenges to being able to make autonomous and informed family planning decisions. They do not receive adequate information on family planning and can be subject to involuntary sterilisation based on their HIV status.²⁶

The vulnerability of women and girls to HIV is heightened where access to education and healthcare is limited. In sub-Saharan Africa, HIV prevalence is more than twice as high among young women as among young men.²⁷

Lack of access to HIV and related health services

Under Article 12 of the International Covenant on Economic, Social and Cultural Rights, the human right to health includes access to "facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health."

The latest World Health Organization treatment guidelines make everyone living with HIV eligible for treatment. Some argue that providing access to early treatment is now a core obligation for countries and that restricting access or failing to provide accurate information about it, is a violation of human rights.²⁸ In 2015, just 46% of all people living with HIV were on antiretroviral treatment.²⁹

In many places, those belonging to key populations are unable to access HIV and other health services tailored to their needs. In [Eastern and Central Asia](#), 80% of new HIV infections are from sharing used needles yet just 10% of people who injects drugs access needle and syringe programmes.^{30 31}

What is a human rights-based response to HIV?

A human rights-based response to HIV is an intervention framework that aims to address the impact that HIV and human rights have on each other and form the basis of human rights-based HIV programming.

A human rights-based response to HIV is split broadly into three main areas; human rights laws and treaties, political declarations and human rights principles in HIV programming.

Human rights are essential to reducing vulnerability to HIV. A human rights approach provides a common framework for translating international and national human rights documentation into practical programming at national level, improving the universal access to health and HIV-specific programmes.

- *National AIDS Foundation, Mongolia* [32](#)

Human rights laws and treaties

Human rights norms are outlined in international and regional treaties covenants, convention and laws. When countries sign these documents, they legally commit to enforcing these rights. They are also required to report to monitoring bodies on how these rights are being implemented.

For example, the International Covenant on Civil and Political Rights provides for rights such as equality, privacy and dignity. These rights apply to all individuals, including people affected by HIV and AIDS.³³ Others deal with specific issues or the rights of certain populations. One treaty, the Convention on the Elimination of All Forms of Discrimination Against Women, contains guidance on women's rights and gender equality.³⁴

Political declarations and commitments

Along with human rights treaties, there are political declarations signed by governments that are not legally binding but represent strong political commitment.

For example, the 2016 Political Declaration on Ending AIDS contains essential commitments by all governments to protect and promote the human rights of people living with, at risk of, and affected by HIV.³⁵

There are also commitments that deal specifically with health and HIV. This includes the UNAIDS International Guidelines on HIV/AIDS and Human Rights, a tool that provides 12 guidelines for what countries must do to fulfil their human rights commitments.³⁶

Human rights principles in HIV programming

Incorporating human rights principles into HIV programmes is crucial in order to create an environment where those who are most vulnerable to HIV are able to realise their rights and access the services they need.

The International HIV/AIDS Alliance and the AIDS and Rights Alliance for Southern Africa (ARASA) provide one set of guidelines which highlight a number of key principles that form good practice.³⁷

Equality and non-discrimination

HIV programmes should respect, protect, promote and fulfil the right to equality and to non-discrimination.

Equal and full participation of all stakeholders

All relevant stakeholders (such as key populations) should be involved in HIV programmes as full and equal participants, giving them the power to bring about positive change in their own lives. This ensures that HIV programmes address their specific needs.

Putting communities at the centre of programmes

Communities should be put at the centre of HIV programmes to ensure a rights-based response and encourage ownership of the programmes. It also increases access to services that communities need, including key populations.

Capacity-building of rights holders and decision makers

Capacity-building helps decision makers to implement programmes and rights holders to access programmes. It also helps to promote accountability by educating decision makers about their obligations. Telling rights holders about their rights means that they can take action when these are violated or unfulfilled.

Accountability

When states fail to uphold human rights in line with international treaties and laws, they should be held accountable. Individuals, communities and civil society should be able to take action when governments violate human rights.

Human rights and HIV programmes

Human rights-based HIV programmes should be implemented according to the local context and address the specific underlying social, cultural, political and economic issues that increase vulnerability to HIV and cause other related health problems.

Examples of human rights-related HIV programmes include:

- stigma and discrimination reduction
- legal services
- monitoring and reforming laws, regulations and policies relating to HIV
- rights education for people living with HIV and key populations
- sensitisation of lawmakers and law enforcement officials
- human rights training for healthcare workers
- reducing gender-related discrimination
- community responses to HIV and human rights.³⁸

Some examples of successful human rights-based HIV programmes are outlined below.

Training the peers of people who use drugs as paralegals - Jakarta, Indonesia

Indonesia applies the death penalty for drug-related offences driving people who use drugs

away from HIV and other vital services like harm reduction programmes. Jakarta is one of the most affected areas.

The Lembaga Bantuan Hukum Masyarakat (Community Legal Aid Institute) trains people who use drugs to provide legal education to their peers and support lawyers who represent this group.

When someone is arrested for a drug-related offence, the Institute's paralegals follow the arresting officers and detainees to the police station where they help negotiate access to HIV treatment or drug use treatment as well as release conditions.[39](#)

They are also trained to document individual cases, which helps the release of detainees and supports the consultations with lawyers who represent them in court. The paralegals also run workshops to help people who use drugs overcome stigma and better understand their legal rights.[40](#)

Sex workers stand up for their rights - Asuncion, Paraguay

In 2013, the local government in Asuncion, Paraguay passed legislation that required sex workers to have mandatory HIV testing and carry a health card detailing their health status.[41](#)

This was challenged by Unidas en la Esperanza - a female sex worker organisation with the support of UNAIDS, the Pan American Health Organisation and other civil society groups who proposed removing articles violating the rights of sex workers that hindered the HIV response in the city.[42](#)

After an intense period of advocacy and debate, the local government approved the proposed changes including the participation of sex workers in the implementation of the legislation. In addition, they were able to raise awareness and reduce discriminatory attitudes among local decision makers.[43](#)

Strengthening HIV law in Mauritius

In 2006, Mauritius introduced a draft law to respond to their HIV epidemic. Initially, there was limited protection for people living with HIV experiencing discrimination on a daily basis.

In response to this, a local human rights-based organisation called PILS advocated for an HIV law that protected and promoted national, regional and international human rights commitments.[44](#)

While developing the law, PILS held meetings with the attorney general, government and other civil society organisations to sensitise stakeholders to HIV and human rights. Their main aim was to protect rights and remove criminal laws that blocked effective responses to HIV, including:

- *laws criminalising the possession or distribution of equipment relating to drug use drafted
- *laws that proposed criminalising the wilful transmission of HIV.[45](#)

As a result of advocacy, the Mauritius HIV and AIDS Act 2006 became a human rights-based law that protects the rights of people in line with human rights commitments and international recommendations.[46](#)

The human rights funding crisis

Despite the fact that there are a number of international commitments that put human rights at the heart of an effective HIV response, just US\$137 million is spent annually on the global human rights response to HIV⁴⁷ This represents a tiny fraction of the \$19 billion spent on the global HIV response in 2015.⁴⁸

Data from Global AIDS Response Progress Reporting (GARPR) confirms that only 0.13% of all HIV spending reported by low- and middle- income countries is allocated for human rights-related programming.⁴⁹ Civil society organisations surveyed by UNAIDS also reported reductions in funding for human rights and legal reform programmes, even in countries where human rights violations are fuelling the epidemic.^{50 51}

However, there are some donors that are changing their funding strategies to reflect the need to implement human rights-based HIV programming.⁵² For example, in 2016, the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) created a \$100 million Key Populations Investment Fund to expand HIV prevention and treatment access for key populations.⁵³

In addition, many are using the UNAIDS Strategic Investment framework, which highlights addressing the human rights of key populations as a key indicator of the progress of programmes worldwide.⁵⁴ The Elton John AIDS Foundation has reported that this approach has seen an increase in funding for key populations, particularly men who have sex with men.⁵⁵

Responding to human rights should be a core component of funding for HIV programmes in order to end the AIDS epidemic by 2030. Without adequate consideration of human rights in HIV programming, the most vulnerable will continue to be marginalised, undermining the HIV response as a whole.

Photo credit: Flickr/UNAMID

Tools and resources:

UNAIDS (2017) '[Fast-Track and human rights](#)'

- 1. UNAIDS (2006) '[International Guidelines on HIV/AIDS and Human Rights](#)'
- 2. HIV Justice Network and GNP+ (2016) '[Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalisation](#)'
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- 6. Krusi, A. et al (2014) '[Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study](#)' *BMJ Open* 4:e005191
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- 21. STOPAIDS (2015) 'Factsheet: Sex work, HIV and human rights'
- 22. UNAIDS (2005) 'HIV - Related Stigma, Discrimination and Human Rights Violations: Case studies of successful programmes'
- 23. UNAIDS (2016) 'Prevention Gap Report'
- 24. UNAIDS (2000) 'HIV and AIDS-related stigmatization, discrimination and denial: Forms, contexts and determinants'
- 25. Program on Global Health and Human Rights, Institute for Global Health, University of Southern California 'Mid-term Evaluation: Strengthening Regional and National Legislative Environments to Support the Human Rights of LGBT People and Women and Girls affected by HIV and AIDS in Sub-Saharan Africa'
- 26. UN Women (2014) 'Eliminating forced, coercive and otherwise involuntary sterilization'
- 27. UNICEF (2013) 'Gender Equality, Human Rights and Equity'
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- 29. UNAIDS (2016) 'Prevention Gap Report'
- 30. UNAIDS (2013) 'Global Report: UNAIDS Report on the Global AIDS Epidemic 2013'
- 31. Eurasian Harm Reduction Network (2013) 'Quitting While Not Ahead: The Global Fund's retrenchment and the looming crisis for harm reduction in Eastern Europe and Central Asia'
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- 37. International HIV/AIDS Alliance and the AIDS and Rights Alliance for Southern Africa (ARASA) 'The Good Practice Guide: HIV and Human Rights'
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