

## CHAPTER VI: HIV/AIDS

In the roughly two decades since the identification of the HIV virus, HIV/AIDS has grown into a pandemic that has claimed the lives of more than 20 million people.<sup>1</sup> In 1997, women represented 41% of all people living with HIV; by 2002, this proportion had risen to almost 50%.<sup>2</sup>

The fact that an increasing proportion of HIV/AIDS cases are among women can be attributed to several factors. In addition to women's and girls' physiological susceptibility to HIV infection, gender-based violence—including harmful traditional practices, abuse, sexual assault, sexual exploitation, and domestic violence—exacerbates women's vulnerability to infection.<sup>3</sup> These factors impede the ability of women and girls to negotiate safe sex or make informed decisions about their sexual and reproductive choices. Early onset of sexual activity and early marriage tend to compound the problem for young women.<sup>4</sup> In some African countries, adolescent brides are being infected with HIV at a higher rate than their sexually active unmarried counterparts.<sup>5</sup>

An effective response to HIV/AIDS must be grounded in human rights. Human rights violations contribute to the spread of HIV and hinder life-saving care and treatment among people living with HIV/AIDS. This chapter addresses the duty of governments to adopt measures to stem the epidemic, as well as their duty to protect the human rights of people living with HIV/AIDS. It reviews the international legal foundations of this duty and identifies three principal components: 1) guaranteeing access to treatment and care, 2) protecting people living with HIV/AIDS from violations of their human rights, and 3) adopting measures to stem the spread of HIV infection. The chapter provides examples of recent national developments reflecting each of these governmental responsibilities.

### Facts about HIV/AIDS

- UNAIDS estimates that over 17 million women are living with HIV/AIDS globally.<sup>6</sup>
- While women comprise about half of all people living with HIV/AIDS globally, in sub-Saharan Africa, the region most affected by the epidemic, 57% of people living with HIV are women. Of all young people in the region living with HIV, three quarters are young women aged 15-24.<sup>7</sup>
- In 2005, an estimated 38.6 million people worldwide were living with HIV.<sup>8</sup> That year, an estimated 4.1 million people became infected with HIV and approximately 2.8 million people died from AIDS-related illnesses.<sup>9</sup>

## HUMAN RIGHTS FRAMEWORK

The **right to health** requires that every person have access to quality health care. In the context of HIV/AIDS, this includes access to treatment and care for people living with HIV/AIDS. Furthermore, testing and treatment for HIV/AIDS must be voluntary and carried out in a manner that respects individuals' dignity and autonomy, in compliance with the principle of patient confidentiality. The right to health—as well the rights to information and education—also guarantees access to information about measures to prevent HIV infection.

*For international legal foundations of the rights marked in bold, see Appendix B*

HIV/AIDS implicates other rights such as the **right to freedom from discrimination**. People living with HIV/AIDS are often at risk of being ostracized by their families and communities, fired from their jobs, excluded from the protection of the law, and targeted for violence. Stigma and discrimination prevent people living with HIV/AIDS from enjoying many of their basic human rights. At the same time, broad discrimination against women—resulting in fewer educational and economic opportunities—denies women the power to protect themselves from HIV infection.

These legal guarantees require governments to:

- **Ensure access to treatment and care.** Ensuring access to treatment and care includes offering education about HIV/AIDS, voluntary and confidential counseling and testing, and removal of economic barriers to needed medications.
- **Protect the human rights of people living with HIV/AIDS.** Governments must make clear in their national laws and policies that discrimination against people living with HIV/AIDS will not be tolerated. Legislation should clearly outline the right to be protected from discrimination based on one's HIV status; put measures in place to prevent HIV-related rights violations; and provide redress where violations occur.
- **Employ measures to stem the spread of HIV/AIDS.** To stem the spread of HIV/AIDS it is necessary to educate both women and men about means of transmission, provide access to condoms, and, in the case of pregnant women living with HIV/AIDS, provide information and care to prevent mother-to-child transmission.

### 1. RECOGNITION OF THE RIGHT TO TREATMENT FOR HIV/AIDS

For women, the problem of access to health care is compounded by social, economic, and political inequalities. Some women may decide not to be tested for HIV because a positive diagnosis can lead to gender violence, societal stigma, the loss of property and business, and the loss of access to their children.<sup>10</sup> In many countries, discrimination against women reduces their knowledge of and access to health care to prevent and treat HIV.<sup>11</sup>

Though a lack of resources does pose a problem in the fight against HIV/AIDS in low- and middle-income countries, it is possible for governments in these countries to ensure access to treatment. **Brazil**, for, example, adopted legislation guaranteeing access to drugs for the treatment of HIV/AIDS.

## A. Brazil Guarantees Access to HIV/AIDS Medication

*The National STD/AIDS Program was created in 1986.<sup>12</sup> In 1996, a new class of drugs (protease inhibitors), was introduced as was a new therapeutic approach involving the simultaneous use of multiple drugs. In the same year, Brazil approved legislation that guaranteed citizens' access to the drugs.*

Law 9.313, adopted in November 1996, guarantees all persons living with HIV/AIDS access to “all medication necessary for their treatment,” free of charge through the National Unified Health System.<sup>13</sup> The government commits the Ministry of Health to determine standard medication regimes for each evolving stage of infection and illness, so that these medications can be acquired by the Health System.<sup>14</sup> These regimes are to be reviewed and republished annually, or whenever necessary, so that they conform to new scientific progress and to the availability of new medications in the market.<sup>15</sup>

The law is financed with resources from the *Seguridade Social de Uniao*, the States, the Federal District and local authorities, as per the regulations.<sup>16</sup>

## 2. MEASURES TO PROTECT THE RIGHTS OF PEOPLE LIVING WITH HIV/AIDS

AIDS-related stigma remains one of the greatest obstacles preventing people living with HIV/AIDS from enjoying their human rights.<sup>17</sup> For example, women living with HIV/AIDS may be discouraged or even prohibited from marrying, and are often coerced into undergoing an abortion or sterilization.<sup>18</sup> When confidentiality is not assured, people living with HIV/AIDS risk having their right to privacy breached by the unauthorized disclosure of their health status to employers, partners, and others. The resulting stigma and discrimination often results in an inability to access education or enter the workforce, forcing people living with HIV/AIDS to live in extreme poverty and isolation.<sup>19</sup>

People living with HIV/AIDS must be guaranteed respect for their dignity and equality. Governments must therefore make clear in their national laws and policies that discrimination against people living with HIV/AIDS will not be tolerated. Legislation should clearly outline the right to be protected from discrimination based on one's HIV status and it should put measures in place to prevent HIV-related discrimination and provide redress when needed. The **Philippines** and **Namibia**, for example, have adopted sweeping legislation prohibiting discrimination in every sector of society against people living with HIV/AIDS.

### A. Philippines Prohibits Discrimination against People Living with HIV/AIDS

*The Philippine government responded early to the threat of HIV/AIDS by adopting the following law, which takes a comprehensive approach to the rights of people living with HIV/AIDS, bans discrimination against them, and prohibits compulsory HIV testing.*

In 1998, the government of the Philippines introduced the AIDS Prevention and Control Act.<sup>20</sup>

*Rights of people living with HIV/AIDS*

The act guarantees that the government will “extend to every person suspected or known to be infected with HIV/AIDS full protection of his/her human rights and civil liberties...”<sup>21</sup>, and

prohibits discrimination “in all its forms and subtleties, against individuals with HIV or persons perceived or suspected of having HIV.”<sup>22</sup> The act also guarantees the right to privacy of individuals with HIV and the provision of basic health and social services for individuals with HIV.<sup>23</sup>

#### *Compulsory testing prohibited*

Section 15 of the act stipulates that no compulsory testing is allowed. The act instructs that written, informed consent must be obtained prior to testing.<sup>24</sup> It also provides that “[c]ompulsory HIV testing as a pre-condition to employment, admission to educational institutions, the exercise of freedom of abode, entry or continued stay in the country, or the right to travel, the provision of medical service or any other kind of service of the continued enjoyment of said undertakings shall be deemed unlawful.”<sup>25</sup>

#### *Many types of discrimination are prohibited*

The law prohibits discrimination against people living with HIV/AIDS in the workplace and in schools.<sup>26</sup> The law also prohibits discriminatory practices such as restrictions on travel and housing, exclusion from credit and insurance services, discrimination in hospitals and health institutions, and denial of burial services.<sup>27</sup> All discriminatory acts and policies referred to in the law are punishable with imprisonment from six months to four years, and a fine not exceeding 10,000 pesos.<sup>28</sup> Also, the licenses and permits of schools, hospitals, and other institutions found guilty of discrimination will be revoked.<sup>29</sup>

## **B. Namibia Creates an HIV/AIDS Charter of Rights**

*Recognizing that the protection and fulfillment of human rights is essential in combating HIV/AIDS, the Namibian government developed a policy and legal framework in partnership with civil society that promotes a rights-based approach to HIV/AIDS and outlaws discrimination based on HIV status.<sup>30</sup> The Namibian HIV/AIDS Charter of Rights was developed through a broad consultative process involving government and civil society, and was adopted in December 2000.<sup>31</sup>*

The Namibian HIV/AIDS Charter of Rights recognizes that people living with HIV/AIDS contend with stigma and discrimination, and that discrimination precludes them from accessing services and benefits.<sup>32</sup> The charter promotes a rights-based response to the epidemic, and outlaws discrimination based on HIV status.<sup>33</sup>

#### *Discrimination prohibited*

The charter provides that HIV status cannot be considered a basis for depriving any person of his or her basic human rights. Respect for the inherent dignity of all persons and the right to equal protection of the law requires that persons living with HIV/AIDS have equal access to public and private services, benefits, and opportunities. HIV testing should not be required as a precondition for such access. The charter calls for public measures to be adopted to protect persons living with HIV/AIDS, including children and adolescents, from discrimination in employment, housing, education, child care and custody, and the provision of medical, social, and welfare services.<sup>34</sup> There are also provisions prohibiting discrimination against prisoners and other vulnerable groups.<sup>35</sup>

#### *Right to confidentiality*

The charter explains that confidentiality in the context of HIV/AIDS means that health-care workers are ethically and legally required to keep all patient information private, and can only reveal information to a third person with the patient's consent.<sup>36</sup> The charter specifies that testing should be voluntary and confidential.<sup>37</sup>

#### *Women's empowerment*

The charter notes that the subordination of women and girls makes them vulnerable to HIV infection. In light of that fact, the charter instructs that women's empowerment be promoted through "appropriate programmes aimed at raising the status of women and eliminating adverse social, economic and cultural factors that put women at risk of infection, as well as at strengthening men's sense of responsibility in relation to the prevention of transmission."<sup>38</sup> Also, the charter requires that women have access to information to enable them to make informed decisions about their reproductive health.<sup>39</sup>

#### *Rights to prevention and treatment*

There are provisions asserting the right to education and information about HIV for all, and the right to health care and treatment for all.<sup>40</sup>

#### *Minors' rights*

The charter specifically provides that children and adolescents enjoy the same rights as adults regarding access to information, privacy, confidentiality, respect, informed consent, and means of prevention.<sup>41</sup>

### **3. MEASURES TO PROTECT AGAINST HIV INFECTION**

The lack of education and training on HIV/AIDS prevention, as well as the lack of access to means of prevention, are significant factors contributing to the growing incidence of HIV/AIDS among women. In addition, cultural norms that dictate a passive role for women in sexual interactions and strong social pressures for women and girls to remain ignorant about sexual matters lead to a reluctance on the part of authorities to provide education about these issues and a hesitance on the part of girls and women to seek it out.<sup>42</sup>

Where sex-related and reproductive health information is available, it is usually provided in schools. However, the existing gender gap in education in many countries means that girls have less access than boys to this knowledge.<sup>43</sup> Moreover, in many places, sexuality education is confined to teaching only about abstaining from sexual activity to avoid pregnancy and HIV/AIDS, an approach referred to as "abstinence-only" education. The spread of abstinence-only programs around the world is being encouraged by the United States, which has earmarked approximately one-third of its spending on HIV/AIDS prevention abroad to abstinence-only programs.<sup>44</sup> Reviews of sexuality education programs in the United States have been unable to demonstrate that abstinence-only programs have a positive effect on the reduction of high-risk sexual behaviors, whereas comprehensive sexuality education, which also includes information about contraceptive use to prevent infection and pregnancy, has been shown to delay the onset of sexual activity and increase condom use among adolescents once they become sexually active.<sup>45</sup>

Many countries that have recognized the need to stem the growth of the HIV/AIDS epidemic have developed broad policies aimed at assigning prevention tasks to various government agencies.

Most policies of this type, including the one adopted in **India**, emphasize education as a key means of prevention.

### **A. India Adopts National AIDS Prevention Policy**

*As of the end of 2003, an estimated 5,100,000 adults and children were living with HIV/AIDS in India.<sup>46</sup> Unlike many other national approaches to HIV/AIDS in South Asia—which focus primarily on gender-neutral disease prevention and control—India’s National AIDS Prevention and Control Policy recognizes that women’s low legal status, their limited economic opportunities, and their lack of access to health information and education make them particularly vulnerable to infection.<sup>47</sup> The policy recommends steps to address these root causes of the epidemic.*

In 2002, the government of India announced the National AIDS Prevention and Control Policy and the National Blood Policy. The general objective of the policies is to contain the transmission of HIV/AIDS and reduce its impact on individuals and on the health and socioeconomic well-being of the general population.<sup>48</sup> One specific target is to achieve a zero growth rate of new HIV infections by 2007.<sup>49</sup>

#### *Other prevention objectives*

The Indian policy aims to limit the epidemic’s potential for damage by committing to the following goals:

- creating a socioeconomic environment that helps prevent HIV/AIDS;
- mobilizing the support of nongovernmental and community-based organizations in initiatives for the prevention and treatment of HIV/AIDS;
- decentralizing the National AIDS Control Program to the field level, with adequate financial and administrative delegation of responsibilities;
- preventing women, children, and other socially marginalized groups from becoming vulnerable to HIV infection by improving their health education, legal status, and economic prospects;
- maintaining constant interaction with international and bilateral agencies for support and cooperation in research on vaccines, drugs, and emerging systems of health care;
- ensuring the availability of safe blood and blood products and their adequate supply for the general population through promotion of voluntary blood donation; and
- promoting a better understanding of HIV/AIDS among young people, especially students, youth, and other sexually active groups.<sup>50</sup>

## **CONCLUSION**

Government responses to HIV/AIDS have been crucial to efforts to slow the growth of the pandemic. Because HIV/AIDS attacks society’s most vulnerable members—including low-income women and adolescents—governments’ duty to improve prevention measures and ensure access to treatment is a matter of social justice and human rights. Similarly, because people living with HIV/AIDS continue to face stigma, discrimination, and violence, the legal measures ensuring the rights of these individuals must be strong and unequivocal. Existing legislation reflects the commitment of governments around the world to address the full dimensions of the pandemic.

## Endnotes

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