

# HIV/AIDS



**Addressing the HIV epidemic is an integral part of addressing sexual and reproductive health and rights. 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.**

The SRHR-related challenges of HIV are immense. 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 infections among young people living with HIV.<sup>1</sup> Gender based violence, including rape, and early 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 family planning decisions; they do not receive adequate information on family planning and can be subject to involuntary sterilization based on their HIV status.<sup>2</sup>

Certain population groups face higher risks of contracting HIV due to factors related to discrimination and exclusion. Gay men and other men who have sex with men, as well as transgender persons, face marginalization in many places and this has an impact on HIV status. Men who have sex with men are 19 times more likely to be living with HIV, while transgender women are 49 times more likely to acquire HIV than all adults of reproductive age.<sup>3</sup> HIV prevalence among sex workers is 12 times greater than in the general population. Criminalization of sex work, as well as stigmatizing social environments, increases this vulnerability.<sup>4</sup> Thus, HIV-related stigma and discrimination, as well as gender based inequalities, drive vulnerable communities away from HIV prevention, treatment and care.

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"<sup>5</sup> as well as "the creation of conditions which would assure to all medical service and medical attention in the event of sickness."<sup>6</sup> The right to health has been interpreted to include "the availability and accessibility of HIV prevention, treatment, care and support for children and adults."<sup>7</sup> International human rights bodies have also explicitly recognized HIV status as a prohibited ground of discrimination.<sup>8</sup>

International standards also protect the right to privacy,<sup>9</sup> 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."<sup>10</sup>

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.<sup>11</sup>

In 2011, the United Nations General Assembly adopted a new Political Declaration on HIV and AIDS which emphasizes Member States'

*"commitment to fulfil obligations to promote universal respect for and the observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter, the Universal Declaration of Human Rights and other instruments relating to human rights and international law."<sup>12</sup>*

Member States also 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 and promote access to HIV prevention, treatment, care and support and non-discriminatory access to education, health care, employment and social services, provide legal protections for people affected by HIV, including inheritance rights and respect for privacy and confidentiality, and promote and protect all human rights and fundamental freedoms, with particular attention to all people vulnerable to and affected by HIV."<sup>13</sup>

IN 2013,  
THERE WERE 35 MILLION  
PEOPLE LIVING WITH HIV



SINCE THE START OF THE  
EPIDEMIC AROUND 78  
MILLION HAVE BECOME  
INFECTED WITH HIV AND  
39 MILLION PEOPLE HAVE DIED  
OF AIDS-RELATED ILLNESSES



AIDS-RELATED DEATHS HAVE  
FALLEN BY 35% SINCE THE  
PEAK IN 2005



AS OF JUNE 2014, 13.6  
MILLION PEOPLE LIVING  
WITH HIV HAD ACCESS TO  
ANTIRETROVIRAL THERAPY.  
IN 2013, THE NUMBER WAS  
12.9 MILLION OR 37% OF ALL  
PEOPLE LIVING WITH HIV



38% OF ALL ADULTS LIVING  
WITH HIV ARE RECEIVING  
TREATMENT. HOWEVER, JUST  
24% OF ALL CHILDREN LIVING  
WITH HIV ARE RECEIVING  
LIFESAVING MEDICINES

Source: UNAIDS



## 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.*<sup>14</sup>

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.<sup>15</sup> 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."<sup>16</sup>

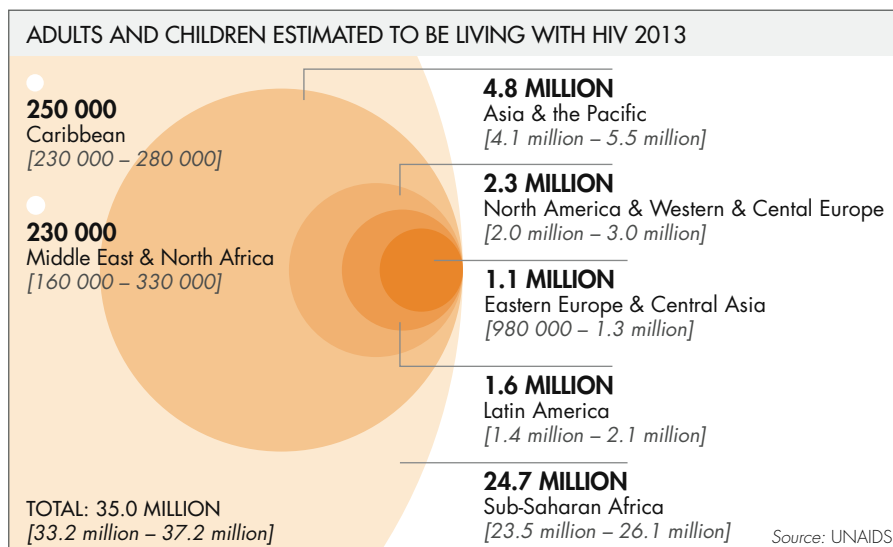


### 2 HIV-RELATED STIGMA AND DISCRIMINATION ARE KEY OBSTACLES TO THE ENJOYMENT OF SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

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

For instance, "when HIV status is used as the basis for differential treatment with regard to access to [inter alia] health care."<sup>21</sup>

People living with HIV/AIDS often face mistreatment by health care providers. According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, "they are reportedly turned away from hospitals, summarily discharged, denied access to medical services unless they consent to sterilization, and provided poor quality care that is both dehumanizing and damaging to



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

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."<sup>17</sup> The Committee

has also requested States to remove barriers that obstruct adolescents' access to information and preventive measures such as condoms.<sup>18</sup> The Committee has further requested States to "consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services."<sup>19</sup> 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.<sup>20</sup>

their already fragile health status."<sup>22</sup>

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.<sup>23</sup> 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."<sup>24</sup>

Women living with HIV are equally affected by laws and practices that discriminate against women, and inhibit their ability to make decisions about their

own health care. These include laws which require women to obtain spousal, parental or guardian consent for certain sexual and reproductive health services. "Spouses or parents [of HIV positive women] have also given consent for sterilization on behalf of women without their knowledge, and often on the basis of being misinformed themselves."<sup>25</sup>



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

"People will not seek HIV-related counselling, testing, treatment and support if this would mean facing discrimination, lack of confidentiality and other negative consequences."<sup>26</sup> 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"<sup>27</sup>

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."<sup>28</sup> States also need to ensure the rights of adolescents "to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality."<sup>29</sup>

### ***Groups that are marginalized because of their legal status or lack human rights protection are more vulnerable to contracting HIV.***

These groups include "women, children, those living in poverty, minorities, indigenous people, migrants, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, men having sex with men and injecting drug users."<sup>30</sup> The involvement of all these marginalized groups in all aspects of the HIV response is critical to prevent and combat the spread of HIV.<sup>31</sup>

### ***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. Though there is ample evidence of the effectiveness of interventions to reduce the risk of mother to child transmission, cases have been documented of HIV positive women being coerced to undergo sterilizations, or agreeing to be sterilized without adequate information and knowledge about their options. "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)."<sup>32</sup>



## **3 CRIMINALIZING RISK BEHAVIOURS HAS A NEGATIVE IMPACT ON THE ENJOYMENT OF THE RIGHT TO HEALTH, INCLUDING SEXUAL AND REPRODUCTIVE HEALTH**

### ***The criminalization of same-sex sexual conduct, sex work, and overly broad HIV transmission impedes the realization of the right to health.***

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."<sup>33</sup> The Special Rapporteur on the right to health has said that "any laws that discourage testing and diagnosis have the potential to increase the prevalence of risky sexual practices and HIV transmission."<sup>34</sup>

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.<sup>35</sup> 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."<sup>36</sup>

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."<sup>37</sup>

Several human rights bodies have stressed the negative impact of criminalization on the prevention and treatment of HIV. 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."<sup>38</sup> The Special Rapporteur on the right to health has pointed out that criminalizing consensual sexual conduct between adults or HIV transmission not only infringes on the right to health but also on other rights, including the rights to privacy, equality and non-discrimination.<sup>39</sup>



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



**RESPECT** States should refrain from employing punitive measures criminalizing same-sex conduct, sex work, and HIV transmission. 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.”<sup>40</sup>

## NOTES

- 1 Joint United Nations Programme on HIV/AIDS, The GAP Report (2014), p. 135.
- 2 Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement (2014), pp. 3-4.
- 3 The GAP Report, pp. 203, 217.
- 4 *Ibid.*, p. 189.
- 5 International Covenant on Economic, Social and Cultural Rights, Article 12(2)(c).
- 6 *Ibid.*, Article 12(2)(d).
- 7 Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, International Guidelines on HIV/AIDS and Human Rights (2006), 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.
- 8 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.
- 9 International Covenant on Civil and Political Rights, Article 17.
- 10 International Guidelines on HIV/AIDS and Human Rights, para. 119.
- 11 *Ibid.*, para. 118.
- 12 Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS, A/RES/65/277 (2011), para. 38.
- 13 *Ibid.*, para. 77.
- 14 Committee on the Elimination of Discrimination Against Women, General Recommendation 24 (1999) on women and health, para. 18.
- 15 General Recommendation 15 (1990) on women and AIDS.
- 16 General Recommendation 24, para. 18.
- 17 General Comment 4 (2003) on adolescent health, para. 30(b).
- 18 *Ibid.*, para. 30(c).
- 19 General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 31.
- 20 Unite for Children, Unite against AIDS, Towards an AIDS Free Generation: Children and AIDS, Sixth Stocktaking Report (2013), p. 32.
- 21 Committee on Economic, Social and Cultural Rights, General Comment 20 (2009) on non-discrimination in economic, social and cultural rights, para. 33.
- 22 A/HRC/22/53 (2013), para. 71.
- 23 International Guidelines on HIV/AIDS and Human Rights, para. 109.
- 24 General Recommendation 24, para. 18.
- 25 Interagency Statement on involuntary sterilization, p. 4.
- 26 International Guidelines on HIV/AIDS and Human Rights, para. 96.
- 27 A/HRC/22/53, para. 71.
- 28 International Guidelines on HIV/AIDS and Human Rights, para. 121.
- 29 Committee on the Elimination of Discrimination Against Women, General Recommendation 24, para. 18.
- 30 International Guidelines on HIV/AIDS and Human Rights, para. 97.
- 31 A/HRC/19/37 (2011), para. 6(d).
- 32 Interagency Statement on involuntary sterilization, pp. 3-4.
- 33 Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/14/20 (2010), para. 63.
- 34 *Ibid.*
- 35 *Ibid.*, para. 36.
- 36 *Ibid.*, Summary.
- 37 *Ibid.*, para. 71.
- 38 Human Rights Committee, *Toonan v. Australia*, CCPR/C/50/D/488/1992, para. 8.5.
- 39 A/HRC/14/20, paras. 2, 51.
- 40 International Guidelines on HIV/AIDS and Human Rights, para. 23.