CHAPTER - 5

Relationship between HIV/AIDS and Human Rights

5.0 Introduction

The HIV/AIDS epidemic has been with us for three decades now. Today’s teens and young adults have never known a world without it. While research has shown that a large proportion of young people are not concerned about becoming infected with HIV, the proportion of young people (age 13 to 24) who are living with HIV in 2009 comprises about 4 percent of all cases.

Learn the Link campaign continues to raise awareness among this generation of the real risks of drug use for transmitting HIV, and it encourages them to share this information with their peers to prevent the spread of this disease.

Public service announcements depict the devastating consequences of compromised judgment and critical thinking that can result from drug use. Young women are increasingly at risk for HIV infection through risky sexual behaviors. In fact, new data show that in 2010, more than 90 percent of women diagnosed with HIV in the United States became infected through high-risk heterosexual contact, compared with 9 percent through injection drug use.

Researchers have studied and continue to study the links between drug abuse and HIV/AIDS. In the early years of the HIV epidemic, it became clear that injection drug abuse played a significant role in the widespread transmission of the disease. Since the epidemic began, injection drug use has directly and indirectly accounted for about one-third of the AIDS cases in the United States. We now know that the behaviors and practices associated with non-injection drug use also contribute significantly to the spread of this virus.
Although we currently have medical therapies that greatly extend the lives of people infected with HIV, drug use can interfere with an individual’s likelihood of adhering to the treatment regimen and realizing beneficial outcomes. NIDA research has shown this to be true for people on HAART (highly active antiretroviral therapy), for example, who continue to use drugs.\(^1\)

More than twenty five years after the first clinical evidence of acquired immunodeficiency syndrome was reported, AIDS has become one of the most devastating diseases humankind has ever faced. Since the epidemic began, some 58 million people have been infected with the virus. HIV/AIDS has become the sixth-largest cause of death worldwide.

At the end of 2007, an estimated 33 million people globally were living with HIV. In that year alone, there were an estimated 2 million AIDS deaths and 2.7 million new HIV infections. The rate of new HIV infections has fallen in several countries, although globally these favourable trends are at least partially offset by increases in new infections in other countries. In many parts of the developing world, the majority of new infections occur in young adults, with young women especially vulnerable. Young people aged 15-24 years account for 45% of all new infections. Many of them do not know they carry the virus. Many millions more are vulnerable to HIV as they know nothing or too little about the virus, or are otherwise unable to protect themselves against it.\(^2\)

HIV continues to spread throughout the world, shadowed by increasing challenges to human rights, at both national and global levels. The virus continues to be marked by discrimination against population groups: those who live on the fringes of society or who are assumed to be at risk of infection because of behaviors, race, ethnicity, sexual orientation, gender, or social characteristics that are stigmatized in a particular society.
In most of the world, discrimination also jeopardizes equitable distribution of access to HIV-related goods for prevention and care, including drugs necessary for HIV/AIDS care and the development of vaccines to respond to the specific needs of all populations, in both the North and South. As the number of people living with HIV and with AIDS continues to grow in nations with different economies, social structures, and legal systems, HIV/AIDS-related human rights issues are not only becoming more apparent, but also becoming increasingly diverse.

By examining the focus during the 1980s on the human rights of people living with HIV/AIDS, which shaped the initial understanding of the AIDS and human rights relationship. It analyzes how this focus led to recognition of the applicability of international law to HIV/AIDS and from there to increased understanding of the importance of human rights as a factor in determining people's vulnerability to HIV infection. The chapter then outlines a framework for analyzing human rights and HIV/AIDS, centered on the concept of vulnerability. The final section focuses on the specific human rights responsibilities of governments in the context of HIV/AIDS and includes a framework for monitoring government action.[3]

5.1 What do human rights have to do with HIV/AIDS?

Human rights are inextricably linked with the spread and impact of HIV/AIDS on individuals and communities around the world. A lack of respect for human rights fuels the spread and exacerbates the impact of the disease, while at the same time HIV/AIDS undermines progress in the realisation of human rights. This link is apparent in the disproportionate incidence and spread of the disease among certain groups which, depending on the nature of the epidemic and the prevailing social, legal and economic conditions, include women and children, and particularly those living in poverty. It is also apparent in the fact that the overwhelming burden of the epidemic today is borne
by developing countries, where the disease threatens to reverse vital achievements in human development. AIDS and poverty are now mutually reinforcing negative forces in many developing countries. The relationship between HIV/AIDS and human rights is highlighted in three areas:

Increased vulnerability: Certain groups are more vulnerable to contracting the HIV virus because they are unable to realize their civil, political, economic, social and cultural rights. For example, individuals who are denied the right to freedom of association and access to information may be precluded from discussing issues related to HIV/AIDS, participating in AIDS service organizations and self-help groups, and taking other preventive measures to protect themselves from HIV infection. Women, and particularly young women, are more vulnerable to infection if they lack access to information, education and services necessary to ensure sexual and reproductive health and prevention of infection. The unequal status of women in the community also means that their capacity to negotiate in the context of sexual activity is severely undermined. People living in poverty often are unable to access HIV care and treatment, including antiretrovirals and other medications for opportunistic infections.

Discrimination and stigma: The rights of people living with HIV/AIDS often are violated because of their presumed or known HIV status, causing them to suffer both the burden of the disease and the consequential loss of other rights. Stigmatisation and discrimination may obstruct their access to treatment and may affect their employment, housing and other rights. This, in turn, contributes to the vulnerability of others to infection, since HIV-related stigma and discrimination discourages individuals infected with and affected by HIV from contacting health and social services. The result is that those most needing information, education and counselling will not benefit even where such services are available.
Impedes an effective response: Strategies to combat the HIV/AIDS epidemic are hampered in an environment where human rights are not respected. For example, discrimination against and stigmatization of vulnerable groups such as injecting drug users, sex workers, and men who have sex with men drives these communities underground. This inhibits the ability to reach these populations with prevention efforts, and thus increases their vulnerability to HIV/AIDS. Likewise, the failure to provide access to education and information about HIV/AIDS, or treatment, and care and support services further fuels the AIDS epidemic. These elements are essential components of an effective response to HIV/AIDS, which is hampered if these rights are not respected.

5.2 What is a human rights approach to HIV/AIDS?

Where individuals and communities are able to realize their rights - to education, free association, information and, most importantly, non-discrimination - the personal and societal impacts of HIV and AIDS are reduced. Where an open and supportive environment exists for those infected with HIV; where they are protected from discrimination, treated with dignity, and provided with access to treatment, care and support; and where AIDS is de-stigmatized; individuals are more likely to seek testing in order to know their status. In turn, those people who are HIV positive may deal with their status more effectively, by seeking and receiving treatment and psychosocial support, and by taking measures to prevent transmission to others, thus reducing the impact of HIV/AIDS on themselves and on others in society.

The protection and promotion of human rights are therefore essential in preventing the spread of HIV and to mitigating the social and economic impact of the pandemic. The reasons for this are threefold. First the promotion and protection of human rights reduces vulnerability to HIV infection by addressing its root causes. The adverse impact on those infected and affected by HIV is lessened. Third individuals and communities
have greater ability to respond to the pandemic. An effective international response to the pandemic therefore must be grounded in respect for all civil, cultural, economic, political, economic and social rights and the right to development, in accordance with international human rights standards, norms and principles.

States' obligations to promote and protect HIV/AIDS-related human rights are defined in existing international treaties. HIV/AIDS-related human rights include the right to life; the right to liberty and security of the person; the right to the highest attainable standard of mental and physical health; the right to non-discrimination, equal protection and equality before the law; the right to freedom of movement; the right to seek and enjoy asylum; the right to privacy; the right to freedom of expression and opinion and the right to freely receive and impart information; the right to freedom of association; the right to marry and found a family; the right to work; the right to equal access to education; the right to an adequate standard of living; the right to social security, assistance and welfare; the right to share in scientific advancement and its benefits; the right to participate in public and cultural life; and the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.

The United Nations human rights instruments and mechanisms provide the normative legal framework as well as the necessary tools for ensuring the implementation of HIV-related rights. Through their consideration of States reports, concluding observations and recommendations, and general comments, the UN treaty monitoring bodies provide States with direction and assistance in the implementation of HIV-related rights. The Special Procedures of the Human Rights Council, including special representatives, thematic and country rapporteurs, and working groups also are in a position to monitor respect for HIV-related rights. The Human Rights Council also requests the Secretary-General to solicit comments from Governments, United Nations bodies, programmes and specialized
agencies and international and NGOs on steps they have taken to promote and implement, where applicable, programmes to address the urgent HIV-related human rights of women, children and vulnerable groups in the context of prevention, care and access to treatment.\(^4\)

5.3 Recognition of the Relationship Between Human Rights and HIV/AIDS

In the 1980s, the relationship between HIV/AIDS and human rights was only understood as it involved people infected with HIV and with AIDS and the discrimination to which they were subjected.\(^5\) For HIV-infected people and people with AIDS, the concerns included mandatory HIV testing; restrictions on international travel; barriers to employment and housing, access to education, medical care, and/or health insurance; and the many issues raised by names reporting, partner notification, and confidentiality. These issues are grave, and almost 20 years into the epidemic, they have not been resolved. In some ways, the situation has become even more complicated, as old issues appear in new places or present themselves in new or different ways. For example, in certain settings, access to employment has continued to be routinely denied to people infected with HIV. Even in places where this situation has improved, HIV-infected individuals now run the risk of finding themselves excluded from workplace health insurance schemes, with considerable impact on their health and, therefore, on their capacity to work. There are also new issues, with tremendous human rights implications, that have been raised for HIV-infected people, in particular the large and growing disparities and inequities regarding access to antiretroviral therapies and other forms of care.\(^6\)

The 1980s were extremely important in defining some of the connections between HIV/AIDS and human rights. By the end of the decade, the call for human rights and for compassion and solidarity with people living with HIV/AIDS had been explicitly embodied in the first WHO global response to AIDS.\(^7\) This approach was motivated by moral outrage but also by the recognition that protection of human rights was a necessary element of a worldwide public-health response to the emerging epidemic.
The implications of this call were far-reaching. By framing this public health strategy in human rights terms, it became anchored in international law, thereby making governments and intergovernmental organizations publicly accountable for their actions toward people living with HIV/AIDS. The groundbreaking contribution of this era lies in the recognition of the applicability of international law to HIV/AIDS—and therefore to the ultimate responsibility and accountability of the state under international law for issues relating to health and well-being.\[8\]

5.4 Conceptual Framework: Interaction between HIV/AIDS and Human Rights

The strong focus in the 1980s on the human rights of people living with HIV/AIDS also helped lead to increased understanding in the 1990s of the importance of human rights as a factor in determining people’s vulnerability to HIV infection and their consequent risk of acquiring HIV infection as well the probability of their accessing appropriate care and support.\[9\] The interaction between HIV/AIDS and human rights is most often illustrated through the impact on the lives of individuals of neglect, denial, and violation of their rights in the context of the HIV/AIDS epidemic. This applies, albeit in different ways, to women, men, and children infected with, affected by, and vulnerable to HIV.

People infected with HIV may suffer from violations of their rights when, for example, they face government-condoned marginalization and discrimination in relation to access to health, education, and social services.\[10\] In this context, the realization of rights by people living with HIV would require nondiscriminatory access within a supportive social environment.

People are affected by HIV/AIDS when their close or extended families, their communities and, more broadly, the structures and services that exist for their benefit
are strained by the consequences of the pandemic and as a result fail to provide them with the support and services they need. These effects of the HIV epidemic on people’s lives may be compounded by marginalization and stigmatization on the basis of such attributes as race, migrant status, behaviors, or kinship that may be perceived as risk factors for HIV infection. Neglect or violation of the rights of people affected by HIV may include restricted or denied access to health services, education, and social programs. People affected by HIV may progress toward the realization of their rights and better health if the enabling conditions exist to alleviate the impacts of personal, societal, and programmatic issues on their lives. This requires policies and programs designed to extend support and services to affected families and communities. Children orphaned by HIV/AIDS illustrate this need.

Vulnerability to HIV is the lack of power of individuals and communities to minimize or modulate their risk of exposure to HIV infection and, once infected, to receive adequate care and support. Even in populations where HIV has not spread widely, some individuals may be more vulnerable than others with regard to HIV. For example, gender and/or economic inequality may force a monogamous woman to engage in unprotected sex with her spouse, even if he is engaging in sex with others. Adolescent girls and boys may be vulnerable to HIV by being denied access to preventive information, education, and services. A truck driver's vulnerability to HIV may be exacerbated by peer pressure to engage in multiple unprotected sexual encounters. Sex workers may have greater vulnerability to HIV if they cannot access services to prevent, diagnose, and treat sexually transmitted infections, particularly if they are afraid to come forward because of the stigma associated with their occupation. Vulnerability is heightened by the denial of such rights as the rights to information, education, association, or essential care. To reduce vulnerability requires actions that enable individuals and communities to make and effectuate choices in their lives and thereby effectively modulate the health risks to which they may be exposed.
The effects of discrimination--particularly in the forms of racism, gender-based discrimination, and homophobia--continue to exacerbate the impact of the pandemic on the lives of individuals and populations around the world. It is increasingly recognized that realization of human rights is critical to protecting the rights and dignity of those infected and affected by HIV/AIDS, and to decreasing the relative vulnerability of individuals and communities.

With the applicability of international law to HIV/AIDS, governments are publicly accountable for their actions toward people in the context of HIV/AIDS. Given the reality of violations that continue to occur, it is useful to consider the specific human rights responsibilities of governments. Governments are responsible for not violating rights directly, as well as for ensuring the conditions that enable people to realize their rights as fully as possible. It is understood that, for every human right, governments have responsibilities at three levels:

- they must respect the right
- they must protect the right
- they must fulfill the right

As an illustration, consider governmental obligations in the context of HIV, using one right--the right to education:

- Respecting the right means that states cannot violate the right directly. This means that the right to education is violated if children are barred from attending school on the basis of their HIV status.
- Protecting the right means a state has to prevent violations of rights by nonstate actors and offer some sort of redress that people know about and have access to if a violation does occur. A state has to ensure,
for example, that religious groups are not successful when they try to stop adolescents from accessing reproductive health education.

- Fulfilling the right means states have to take all appropriate measures—legislative, administrative, budgetary, judicial, and otherwise—toward fulfilling the right. If a state fails to provide essential HIV/AIDS prevention education in enough languages and media to be accessible to everyone in the population, this in and of itself could be understood to be a violation of the right to education.

In most countries, resource and other constraints can render it impossible for a government to fulfill all rights immediately and completely. The mechanisms responsible for monitoring governmental compliance with human rights obligations recognize that, in practical terms, a commitment to the right to basic education will require more than just passing a law. It will require financial resources, trained personnel, facilities, textbooks, and a sustainable infrastructure. Therefore, realization of rights is generally understood as making steady progress toward a goal. This principle of “progressive realization” is fundamental to the achievement of human rights. It is critical for resource-poor countries, which are responsible for striving toward human rights goals to the maximum extent possible; however, it is also important because it imposes an obligation on wealthier countries to engage in international assistance and cooperation.[13] In addition, as member states of intergovernmental and multilateral institutions, governments can be challenged to account for the impact of the actions of these institutions on health and development.

Despite the importance attached to human rights, there are situations where it is considered legitimate to restrict rights to achieve a broader public good. As described in the International Covenant on Civil and Political Rights, the public good can take precedence to “secure due recognition and respect for the rights and freedoms of others;
meet the just requirements of morality, public order, and the general welfare; and in times of emergency, when there are threats to the vital interests of the nation.\textsuperscript{[14]}

Public health is one such recognized public good.\textsuperscript{[15]} Traditional public health measures have generally focused on curbing the spread of disease by imposing restrictions on the rights of those already infected or considered most vulnerable to becoming infected. Coercion, compulsion, and restriction have historically been significant components of public health measures.\textsuperscript{[16]} Although the restrictions on rights that have occurred in the context of public health have generally had as their first concern protection of the public's health, the measures taken have often been excessive. Interference with freedom of movement when instituting quarantine or isolation for a serious communicable disease--for example, Ebola fever, syphilis, typhoid, or untreated tuberculosis--is an example of a restriction on rights that may in some circumstances be necessary for the public good and therefore could be considered legitimate under international human rights law. However, arbitrary measures taken by public health authorities that fail to consider other valid alternatives may be abusive of both human rights principles and public health "best practice." There are countless examples from around the world of this sort of abuse in the context of HIV/AIDS.\textsuperscript{[17]}

Certain rights are absolute, which means that restrictions may never be placed on them, even if justified as necessary for the public good. These include such rights as the right to be free from torture, slavery, or servitude; the right to a fair trial; and the right to freedom of thought.\textsuperscript{[18]} Interference with most rights can be legitimately justified as necessary under narrowly defined circumstances.\textsuperscript{[19]} Limitations on rights, however, are considered a serious issue under international human rights law, regardless of the apparent importance of the public good involved. When a government limits the exercise or enjoyment of a right, this action must be taken only as a last resort and will only be considered legitimate if the following criteria are met:
The restriction is provided for and carried out in accordance with the law.

The restriction is in the interest of a legitimate objective of general interest.

The restriction is strictly necessary in a democratic society to achieve the objective.

There are no less intrusive and restrictive means available to reach the same goal.

The restriction is not imposed arbitrarily, ie, in an unreasonable or otherwise discriminatory manner.\[^{20}\]

Whereas this approach has long been recognized by those concerned with human rights monitoring and implementation as relevant to analyzing a government’s actions, it has also recently begun to be considered a useful tool in a number of places by those responsible within government for HIV/AIDS-related policies and programs.\[^{21}\]

### 5.5 Why a human rights response to HIV?

- When human rights inform the content of national responses to HIV, vulnerability to HIV infection is reduced and people living with HIV can live with dignity.

- When human rights principles guide the process by which local and national responses are implemented, the results are responses tailored to the needs and realities of those affected. Such principles include non-discrimination, participation, inclusion, transparency and accountability.

- Where States are providing comprehensive HIV prevention, care and impact mitigation programmes to all those in need, supporting vulnerable people to be able to act on the information and services they receive,
and allowing the full participation of all those affected in the design and implementation of HIV programmes, they are fulfilling their HIV-related human rights obligations and mounting an effective response to HIV.

- In contrast, where human rights are not respected, protected, and promoted, the risk of HIV infection is increased, people living with and affected by HIV and AIDS suffer from discrimination, and an effective response to the epidemic is often impeded.

5.6 What are AIDS-related human rights?

In order to ensure an effective response to HIV and AIDS, all people living with, affected by, and vulnerable to HIV and AIDS must have a full range of internationally-recognized human rights respected, protected, and fulfilled:

These include the right to:

- Non-discrimination and equal protection on the basis of actual or perceived HIV status
- Access to effective and evidence-based HIV-prevention services
- Access to anti-retroviral treatment, including treatment to prevent mother-to-child transmission of HIV
- Due process in the criminal justice system, particularly for groups at risk of HIV such as sex workers, people who use drugs, and men who have sex with men
- Choice of one's place of residence and migration
- Seek and enjoy asylum
- Medical treatment without coercion and with guarantees of privacy
Freedom of opinion and expression and the right to freely receive and impart HIV-related information

Freedom to form and participate in HIV and AIDS organizations and associations

A work environment that is respectful of HIV status

Marry and to found a family

Equal access to education, including for children affected by HIV

A standard of living adequate to maintain good health, including social security, assistance and welfare

Freedom from torture and cruel, inhuman or degrading treatment or punishment.

5.7 Human Rights and HIV/AIDS: Now More Than Ever

Ten Reasons why human rights should occupy the center of the global response to HIV/AIDS:

Universal access will never be achieved without human rights.

Gender inequality makes women more vulnerable to HIV, with women and girls now having the highest rates of infection in heavily affected countries.

The rights and needs of children and young people are largely ignored in the response to HIV, even though they are the hardest hit in many places.

The worst affected receive the least attention in national responses to HIV.

Effective HIV-prevention, treatment, and care programs are under attack.

AIDS activists risk their safety by demanding that governments provide greater access to HIV and AIDS services.
The protection of human rights is the way to protect the public’s health.
AIDS poses unique challenges and requires an exceptional response.
Rights-based responses to HIV are practical, and they work.
Despite much rhetoric, real action on HIV/AIDS and human rights remains lacking.\[22\]

5.8 What are Human Rights?

Human rights must be understood as those rights which every individual is entitled to by virtue of being human. Human rights are independent of acts of law. Examples include the right to life, personal liberty, protection from inhuman treatment, protection from discrimination, freedom of expression, assembly and association. Early approaches to HIV/AIDS defined it as a health science problem-paradigm shift- health is more than the absence of disease and infirmity but the complete physical, mental and social wellbeing.\[23\]

5.9 Relationship between HIV/AIDS and Human Rights

Correlation between HIV/AIDS and human rights is found in a number of international and regional instruments which include:

- International covenant on civil and political rights
- International covenant on economic, social and cultural rights
- CEDAW
- Convention on the rights of the child
- Convention against torture
- African charter on human and people’s rights
- Optional protocol to the African charter on human and people’s rights on the rights of women in Africa
Millennium development goals

ICPD

The UN guidelines on HIV/AIDS[24]

5.10 The Human Rights standards and HIV/AIDS

Some of the standards related to human rights and HIV/AIDS include:

- Right to non-discrimination and equal protection before the law- people living with HIV should not face discrimination in all spheres of life
- Liberty and security- so as not to be isolated and put in quarantine or segregated in any form
- Right to life- regardless of one's status everyone has a right to live
- Right to privacy- protection against mandatory testing and confidentiality
- Freedom of association and assembly- no denial of admission to organizations or places because of HIV status
- Right to seek and be given information on HIV/AIDS
- Right to work - right to be recruited and not fired due to one's status
- Right to health- access to treatment, health care and prevention
- Right to education- no denial of access to education because of HIV status[25]

5.11 Why we need a Human Rights based approach to fight HIV/AIDS

HIV/AIDS affects everyone. It is not a matter of affected and infected. Too much discretion has been left to policy makers to set out the needs of the infected and affected. Human rights framework provides a “check list” of all areas one needs to focus on in order to prevent the further spread of HIV, to provide treatment to people suffering from AIDS and to protect their place in society. Human rights standards make law and policy makers accountable for their actions[26]
5.12 HIV and Human Rights: International Standards

Over two decades of experience in addressing the HIV epidemic has confirmed that the promotion and protection of human rights constitute an essential component in preventing the transmission of HIV and reducing the impact of HIV and AIDS. The 2001 Declaration of Commitment on HIV/AIDS (annex I below) and the 2006 Political Declaration on HIV/AIDS (annex II below) both underscore the centrality of human rights and a rights-based approach in national responses to HIV. They evidence both the realization by Governments that human rights must be protected if HIV is to be overcome and their commitment to achieving concrete, time-bound targets.

While there is no international treaty or covenant that specifically addresses HIV, there are a number of provisions from international human rights treaties and declarations that have been interpreted to have significant implications for the effectiveness of the AIDS response. These include:

The right to the highest attainable standard of health. The International Covenant on Economic, Social and Cultural Rights (art. 12) recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. As part of this obligation, States must take steps to prevent, treat and control epidemic diseases. According to general comment No 14 (2000) on the right to the highest attainable standard of health, the prevention, treatment and control of epidemic, endemic, occupational and other diseases "requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as environmental safety, education, economic development and gender equity.
The right to treatment includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations.”

5.13 The right to health includes four interrelated elements

Availability: The State must ensure the availability of functioning public health and health-care facilities, goods and services, which should also include the “underlying determinants of health” such as clean drinking water, adequate sanitation, medical facilities and trained staff;

- Accessibility: Health facilities, goods and services have to be accessible to everyone without discrimination;
- Acceptability: The facilities, goods and services must respect medical ethics and be culturally appropriate; and
- Quality: Health facilities, goods and services must be medically and scientifically appropriate and of good quality.

Non-discrimination and equality before the law: International human rights law guarantees the right to equal protection before the law and freedom from discrimination on many grounds. The Commission on Human Rights has confirmed that “other status” in non-discrimination provisions in international human rights treaties is to be interpreted to include health status, including HIV/AIDS.

Human rights of women: Protecting the rights of women and girls—including sexual and reproductive rights—is crucial in preventing HIV transmission and lessening the impact of the epidemic on women. The Convention on the Elimination of All Forms of Discrimination against Women obliges States...
parties to address all aspects of gender-based discrimination in law, policy and practice. In the most heavily affected countries, women and girls represent the majority of those infected and those with the fastest rates of infection.\textsuperscript{[27]}

- **Human Rights of Children**: According to the Convention on the Rights of the Child and its optional protocols, children have many of the rights of adults in addition to particular rights for children that are relevant in relation to HIV and AIDS. Children have the right to freedom from trafficking, prostitution, sexual exploitation and sexual abuse; the right to seek, receive and impart information on HIV; and the right to special protection and assistance if deprived of their family environment.

- **Right to Marry and Found a Family**: Article 23 of the International Covenant on Civil and Political Rights recognizes the right of men and women to marry and found a family. Mandatory premarital testing as a precondition for marriage, or forced abortions or sterilization of women living with HIV would violate these (and other) rights.\textsuperscript{[28]}

- **Right to Privacy**: This right, as set out in article 17 of the International Covenant on Civil and Political Rights, encompasses obligations to respect physical privacy (for example, the obligation to seek informed consent to HIV testing) and the need to respect the confidentiality of personal information (for example, information relating to a person's HIV status). The 2006 Political Declaration on HIV/AIDS emphasizes that increased access to HIV testing and treatment should be implemented with the full protection of confidentiality and informed consent.\textsuperscript{[29]}
Right to Education: This right, set out in article 26 of the Universal Declaration of Human Rights and article 13 of the International Covenant on Economic, Social and Cultural Rights, guarantees that those living with HIV are not discriminatorily denied access to education on the basis of their HIV status.[30]

Freedom of Expression and Information: Article 19 of the International Covenant on Civil and Political Rights provides for the right to seek, receive and impart information related to HIV prevention treatment, care and support. States are obliged to ensure that appropriate and effective information on methods to prevent HIV transmission is developed and disseminated without obstacles to access.[31]

Freedom of Assembly and Association: The right of peaceful assembly and association, provided by article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights, has frequently been denied to civil society organizations working in human rights and HIV-related matters. Civil society organizations should enjoy the rights and freedoms recognized in human rights instruments and the protection of national law.[32]

Right to Work: This right, enshrined in article 23 of the Universal Declaration of Human Rights and articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, entails the right of every person to access employment without any precondition except the necessary occupational conditions.[33]
The Right to enjoy the benefits of Scientific Progress and its Applications: This right, set forth in article 15 of the International Covenant on Economic, Social and Cultural Rights, is important in relation to HIV in view of the advances made in diagnosis and treatment, as well as in the development of a vaccine and new prevention tools such as microbicides.\[^{34}\]

The Right to an Adequate Standard of Living and Social Security: The enjoyment of this right, found in article 25 of the Universal Declaration of Human Rights and in articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights, is essential to reducing the impact of AIDS on people living with HIV, families impoverished by AIDS and children orphaned or otherwise made vulnerable by HIV.\[^{35}\]

The Right to Participation in Political and Cultural Life: This right, found in article 25 of the International Covenant on Civil and Political Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, is essential for ensuring the participation of the most affected by HIV in the development, implementation and evaluation of HIV-related policies and programmes.\[^{36}\]

The Right to Liberty and Security of Person: This right, found in article 9 of the International Covenant on Civil and Political Rights, means that the right to liberty and security should not be arbitrarily interfered with merely on the basis of a person's HIV status, e.g., placing an HIV-positive individual in quarantine or isolation. Also, compulsory HIV testing can constitute a deprivation of liberty and a violation of the right to security of person.\[^{37}\]
Freedom from cruel, inhuman or degrading treatment or punishment: In relation to HIV, this right, found in article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, provides for the State to ensure that prisoners have access to HIV-related information, education and means of protection, e.g., condoms, bleach and clean injection equipment as well as voluntary counselling and testing and treatment. This right also comprises the duty to combat prison rape and other kinds of sexual victimization in prison.¹³⁸

5.14 Violations of human rights increase vulnerability to HIV

Certain groups are more vulnerable to HIV infection because they are unable to realise their civil, political, economic, social and cultural rights. For example, individuals who are denied the right to freedom of association and access to information may be precluded from discussing issues related to HIV, participating in AIDS service organisations and self-help groups, and taking other preventive measures to protect themselves from HIV infection. Similarly, individuals who are denied services or are marginalized due to their national origin such as refugees or migrants might not be able to access relevant prevention, treatment or care services. Women, and particularly young women, are more vulnerable to infection if they are disempowered or lack access to information, education and services necessary to ensure sexual and reproductive health and prevention of infection.¹³⁹

5.15 Stigma and discrimination lead to human rights violations

The rights of people living with HIV are often violated because of their presumed or known HIV status, causing them to suffer both the burden of the disease and the consequential violation of other rights. Stigmatisation and discrimination may obstruct their access to treatment and may affect their employment, housing and other rights.
5.16 Violations of human rights impede an effective response

Strategies to respond to the AIDS epidemic are hampered in an environment where human rights are not respected. For example, discrimination against and stigmatisation of vulnerable groups such as injecting drug users, sex workers and men who have sex with men drives these communities underground. This inhibits the ability to reach these populations with prevention efforts, and thus increases their vulnerability to HIV. Again, the failure to provide access to education and information about HIV and AIDS, or treatment, care and support services to groups such as asylum seekers, migrants, refugees, internally displaced persons and prisoners may further fuel the AIDS epidemic. The provision of prevention, treatment, care and support services for all is fundamental for an effective response to HIV, which is hampered if human rights are not respected.\[40\]

5.17 HIV/AIDS & Human Rights

Human rights are fundamental to any response to HIV/AIDS. This has been recognized since the first global AIDS strategy was developed in 1987. Human rights and public health share the common goal of promoting and protecting the well-being of all individuals. The promotion and protection of human rights are necessary to empower individuals and communities to respond to HIV/AIDS, to reduce vulnerability to HIV infection and to lessen the adverse impact of HIV/AIDS on those affected.

The incidence and spread of HIV/AIDS are disproportionately high among groups who already suffer from a lack of human rights protection, and experience discrimination. This includes groups that have been marginalized socially, culturally and economically; for example, injecting drug users (IDUs), sex workers and men who have sex with men (MSM). People living with HIV/AIDS (PLWHAs) or those affected by it will not seek counseling, testing, treatment and support if this means facing stigma, discrimination, and lack of confidentiality or other negative consequences. Discriminatory measures and other
coercive actions drive away the people most in need of services. When human rights are protected, civil society organizations working on HIV/AIDS are able to respond to the pandemic more effectively, fewer people become infected, and PLWHA and their communities can better cope with the disease.

Human rights encompass civil, political, economic, social and cultural rights. These are found in international law, through treaties and declarations, such as the Universal Declaration of Human Rights. In addition, there are some other tools which contain useful standards such as the International Guidelines on HIV/AIDS and Human Rights and the Declaration of Commitment on HIV/AIDS, adopted at the UN General Assembly Special Session on HIV/AIDS (2001). We understand human rights and HIV/AIDS to work together in three separate, but related ways. These are:

- **Accountability**: Human rights provide a system for holding governments accountable for their actions.

- **Advocacy**: Governments are responsible for what they do, do not do, and should do for their populations. This enables activists to engage in a wide range of advocacy actions targeted towards securing human rights enjoyment and protection for people living with and affected by HIV/AIDS and all other groups vulnerable to HIV infection.

Governments' obligations towards human rights are understood in three ways: obligations to respect rights, protect rights and fulfill rights.

To respect a right means that a government cannot violate human rights directly in laws, policies, programs or practices. For example, governments cannot arbitrarily deny HIV infected prisoners the same standard of medical care that is offered to other prisoners.

To protect a right means that governments must prevent violations by others and provide affordable and accessible redress. For example, states must ensure that private employers do not discriminate against HIV infected employees, and provide avenues for redress if they are fired because of their HIV status.

To fulfill a right means that governments must take measures that move towards the realization of rights. These measures should be legislative, administrative, budgetary, and could include some other types of action. For example, a state may adopt a policy to provide antiretroviral (ARV) treatment to all individuals in need, yet due to resource constraints, be able to cover only a small percentage of the population. The government should take measures to progressively extend coverage i.e., soliciting support from donors and/or reassessing budget priorities.\[41\]

The relationship between HIV/AIDS and human rights highlights the ways in which people vulnerable to human rights violations and neglect are more vulnerable to HIV/AIDS infection; and if infected, do not have access to appropriate quality care and treatment. Vulnerable groups include women, children, refugees, migrants, men who have sex with men, injecting drug users, sex workers and all other marginalized populations.

To raise awareness about the links between HIV/AIDS and human rights, and to change existing practices, HIV/AIDS and human rights activists turn to advocacy.
This is perhaps the most common use and understanding of human rights in the context of HIV/AIDS. Advocacy often depends on researching, documenting and then denouncing abuses through campaigns and published reports. Human rights groups and HIV/AIDS activists document human rights abuses related to HIV/AIDS and call attention to them. They also work to provide a broader understanding of what human rights mean. In other words, advocacy campaigns can take an acknowledged human right, such as the right to the highest attainable standard of health and build on its accepted understanding to achieve, for instance, increased access to HIV treatment and other essential medications.\[42\]

Advocacy can occur at the national level through concrete cases, for example, by pushing the national courts to determine if under the country’s constitution, there is a right to receive life saving treatment. Advocacy can also be a reminder, for wealthier countries to fulfill their international responsibilities and commitments.

Advocacy efforts have relied on action at the community level, where they can draw on grassroots social movements, and have strong public education components. Community-based efforts that raise awareness about the connections between HIV/AIDS and human rights directly with “stakeholders’ (individuals and groups who “own” the human rights, as well as those with obligations to respect, protect, and fulfill those rights) through workshops, publications, educational programs and other sorts of events can be effective.\[43\]
References

(1) http://hiv.drugabuse.gov/english/about/message.html

(2) The 2008 Global Report on the AIDS Epidemic (UNAIDS)
http://www.unaidsrstesa.org/resources/reports/2008-report-global-aids-epidemic

(3) http://hivinsite.ucsf.edu/InSite?page=kb-08-01-07#S1X

(4) http://www2.ohchr.org/english/issues/hiv/introhiv.htm


(6) See, for example, Statement from the community AIDS movement in Africa, presented at the meeting on the international partnership against HIV/AIDS in Africa, New York, UN Headquarters, December 6-7, 1999.


172


(15) The specific power of the state to restrict right in the state of public health can be understood to be derived from Article 12 (c) of the ICESCR, which gives governments the right to take the steps they deem necessary for the 'prevention, treatment and control of epidemic, endemic, occupational and other diseases.'


(18) See, for example, Article 4 of the International Covenant on Civil and Political Rights, which states in pertinent part that 'No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, 18 may be made under this provision.'

(19) See, for example, Article 4 of the ICCPR, which states in pertinent part, 'In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.'


(23) Sylvia Chirawu, Intersection between HIV/AIDS and Human Rights, p.2
www.wlsazim.co.zw%2FWlsa%2520Docs%2Fhiv6.ppt&ei=gLf8Ut-8I4LWrQekiYHwCQ&usg=AFQjCNFZHTzR6MxrYfYYRQ_5hO6Uq3JG8w

(24) Sylvia Chirawu, Intersection between HIV/AIDS and Human Rights, p.3
www.wlsazim.co.zw%2FWlsa%2520Docs%2Fhiv6.ppt&ei=gLf8Ut-8I4LWrQekiYHwCQ&usg=AFQjCNFZHTzR6MxrYfYYRQ_5hO6Uq3JG8w, p.3

(25) Ibid 23, p.4

(26) Ibid 23, p.12


(29) Ibid. 28, Article 17

(30) Universal Declaration of Human Rights 1948, Article 26

(31) Ibid. 28, Article 19

(32) Ibid. 28, Article 20

(33) Ibid. 30, Article 23, International Covenant on Economic, Social and Cultural Rights, Articles 6, 7

(34) International Covenant on Economic, Social and Cultural Rights, Article 15

(35) Ibid. 30, Article 25, International Covenant on Economic, Social and Cultural Rights, Articles 9, 11
(36) International Covenant on Civil and Political Rights, Article 25
International Covenant on Economic, Social and Cultural Rights, Article 15

(37) International Covenant on Civil and Political Rights, Article 9

(38) International Covenant on Civil and Political Rights, Article 7
Universal Declaration of Human Rights, Article 5

UNHCHR ‘Introduction to HIV/AIDS and Human Rights’.

(40) HIV/AIDS and Human Rights-IN A NUTSHELL, p.13

(41) HIV/AIDS and Human Rights-IN A NUTSHELL, p.1, 2, 3, 5

(42) Ibid. 39, p.10

(43) Ibid. 39, p.12