

CHAPTER FIVE

Gender, human rights and HIV/AIDS

By Liesl Gertholtz

“Human rights are inalienable ... they apply to all human beings, because they ARE human beings. These rights are founded on principles that describe how we want to be treated as human beings and how we believe all human beings should be treated. We understand these rights as minimum standards for the enjoyment of all human life. As societies we create laws to protect and promote these principles ”

(Women's Net, Women and Human Rights Reference Group, 12 August 1999.)



Objectives

- Define human rights with a specific focus on sexual and reproductive rights, and their relevance to gender and HIV/AIDS;
- Show the links between gender inequality, human rights violations and vulnerability to HIV/AIDS;
- Identify how human rights violations of women living with HIV/AIDS cause and reinforce stigma and discrimination; and
- Explain why a human rights perspective is critical to effective reporting on HIV/AIDS and gender.



Introduction

The concept of human rights was first introduced in the aftermath of the Second World War, and it forms part of the system of international law, when the world was shocked by the knowledge of the systematic torture and extermination of millions of men, women and children on the grounds of their religion.

In 1948, the Universal Declaration of Human Rights (UDHR) was signed by a number of countries. The central idea in the UDHR is that all people are equal and must be treated with equal dignity and concern. Although the UDHR is not a legally binding document, it marked the start of an on-going international concern for human rights, that has manifested in numerous binding international human rights treaties ranging from those on torture to gender equality.

Although many of the international treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are enforceable, it is in fact difficult to enforce these treaties, and many countries that have signed these agreements, continue to violate the human rights of their citizens. The enforcement of human rights therefore still remains a challenge.

Unlike the national laws of a country, which are enforced through the courts and other national systems, international human rights can only be enforced when the countries that have entered into the agreements ensure that these provisions are respected at national level. Once the provisions of international agreements have been incorporated into national and domestic laws, then these rights can be enforced through various mechanisms including the judiciary.

Definitions

Signing – when a country signs an agreement, it commits itself to the aim and purpose of the agreement. But by signing the country does not yet bind itself to the agreement.

Ratify – when a country ratifies an agreement after signing it, it becomes a “party” to the agreement. The rights and duties in the agreement are then binding on the country under international law. Ratification is the process by which a legislature confirms a government’s action in signing a treaty; formal procedure by which a state becomes bound to a treaty.

Protocol – a supplementary addition to a treaty; when state parties can still agree to the main treaty without signing on to the protocol, this is known as an Optional Protocol.

State Parties – governments that have ratified a treaty.

Recommendations – documents explaining how a particular treaty should be interpreted and applied. The Committee on the Elimination of All Forms of Discrimination Against Women has issued several influential recommendations.

Treaty – formal agreement between states that defines and modifies their mutual duties and obligations, used synonymously with convention.

(“HIV/AIDS and the Law: A Resource Manual”, 2nd Edition, published by the ALP and the AIDS Legal Network; “Local Action, Global Change”, Mertus, Flowers and Dutt, published by UNIFEM and the Centre for Women’s Global Leadership, 1999.)

Women’s human rights

Although every major human rights treaty contains an anti-discrimination provision that affirms the right of women to be treated equally, the notion that women’s rights are human rights is a relatively recent one. It was first discussed in 1993 at the International Human Rights Conference that took place in Vienna.

Despite the international recognition of the equality of women, women all over the world are still subject to many human rights violations.

Women as a group have less access to the world's resources, including education, land and food; they are disproportionately affected by violence and poverty and many women have yet to realize their rights as citizens of the countries they live in. African women and women living in developing countries are particularly vulnerable to human rights violations. For these reasons, it is critical that women's rights be seen as human rights and be promoted and protected by international human rights laws and by local and national laws.

The most important human rights treaty for women is CEDAW. It is often called the Bill of Rights for Women and the handout below identifies some of the key provisions in CEDAW and how they can be used to protect women's human rights in the context of the HIV/AIDS epidemic.

Exercise one

A 30-year-old Nigerian woman, Amina Lawal was sentenced to death by stoning by a religious court in the province of Katsina, northern Nigeria. Her crime? Having a child out of wedlock. The child's father was acquitted, because in order to convict a man of adultery, he must either confess to the crime or, there must be four eye witnesses, all men.

Ask the participants to answer the following questions:

- Why is this a rights issue?
- Which rights of Amina Lawal's are being violated? Explain your answer.
- Who is at the forefront in violating her rights? What is the justification for this?
- Why is there a difference in the treatment of Amina and the father of the child?
- This case has appeared frequently in the media. What are some of your reflections on the media's handling of the case? What has been positive in the media's coverage? What has been negative?



Tips for trainers: This case study, or any other that is relevant, can be used to illustrate this exercise. Participants, in answering the questions, should begin to examine how Lawal's human rights are being violated. They should begin to discuss how Lawal has been treated differently to the father of her child, even though they have both committed the same "crime". The reasons that participants give for this

will be built on in the discussion about sexual and reproductive rights.

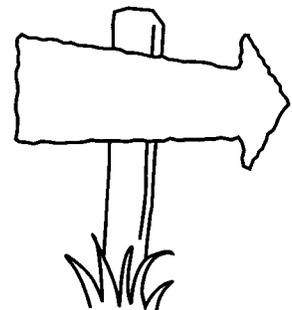
Sexual and reproductive rights

In 1994 at the Cairo Conference on Population and Development, reproductive rights were first identified at an international level as a key human rights issue for women. The Cairo Programme of Action, the document that encapsulated the discussions at the conference and its outcomes, stated that for women to realize their full potential, they "must be guaranteed the exercise of their reproductive rights and must be able to manage their reproductive roles."

This discussion on women's rights as human rights continued during the 1995 Beijing World Conference on Women. The Beijing Platform for Action includes a section on women and health (as a Critical Area of Concern), recognising the limited power and control that women have over their bodies. It also states that this lack of power over their sexual and reproductive lives is a major cause of ill health among women.

Many of the human rights violations committed against women stem from society's desire to control women's bodies and their sexuality. Often religious and cultural institutions emphasize the need for women and especially young women, to be chaste and a high value is placed on virginity in many communities.

see Chapter seven, Gender, culture,
religion and HIV/AIDS.



handout seventeen

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and HIV/AIDS

Access to health care: Women living with HIV/AIDS often receive inferior treatment. They experience many barriers in accessing services, especially in terms of reproductive health care.

- Article 12 requires all states to “take appropriate measures to eliminate discrimination against women in health care”.
- Article 14 ensures that the needs of women living in rural areas receive special attention.

The Committee’s General Recommendation on HIV/AIDS is that programmes developed to combat HIV/AIDS give special attention to the “factors relating to women’s reproductive role and their subordinate social position which makes them especially vulnerable to HIV infection”.

Inequality within the family: Women’s inequality within the family has created an environment in which women are unable to negotiate safer sex practices. If they do, they “may risk impoverishment or assault, may be legally unable to divorce their husbands, or may be certain of losing their children in the process.”

- Article 16 requires states to eliminate discrimination in the context of marriage and the family. Men and women should have the same rights to enter into marriage, to freely choose a spouse, and to enter into marriage with free and full consent; women should have the same rights and responsibilities during marriage and the same rights to property during and after the dissolution of the marriage.
- Article 16.2 refers to young women and early marriage, a factor that increases vulnerability to HIV infection.

Discrimination against women and access to information: In many countries, women do not receive the information and education they need to protect themselves from HIV/AIDS.

- Article 10 provides that states must take measures to eliminate discrimination against women in education, and “specifically in relation to their access to educational information that will ensure the health and well-being of families, including advice on family planning”.

In its General Recommendations on HIV/AIDS, the CEDAW Committee has directed states to increase public awareness of the risk of HIV infection and AIDS, especially in women and children.

Gender-based violence: Women’s exposure to violence can increase their risk of HIV/AIDS. CEDAW does not deal directly with violence against women, but it contains certain provisions that address the underlying issues.

- Article 6 requires all states to take measures to suppress all forms of trafficking in women and the exploitation of women. In its General Recommendation on Violence against Women, the Committee recognised the special vulnerability of sex workers to HIV infection.

(“Turning the Tide: CEDAW and the Gender Dimensions of the HIV/AIDS Pandemic,” UNIFEM 2001.)

Reproductive rights are integral to a woman's health. About half of the world's female population is in the reproductive age (15-49), and the control over reproductive and sexual life is central to women's existence.

Reproductive and sexual rights assume that individuals have the capacity to make decisions about their lives. Yet, women's choices are often imposed or limited by direct or indirect social, economic and cultural factors. Studies however have shown that everyone benefits from equality for women in their reproductive and sexual lives – the conditions of men and children improve as well, and when these human rights are more respected in society, the standard of living is higher, birth rates lower and health care better.

Box two: Reproductive rights

The right to make reproductive decisions includes:

- The right to choose whether or not to have children, which means being able to choose whether or not to have sex, and whether to use contraception;
- How many children to have and the time in between pregnancies;
- Access to information regarding reproduction, including contraceptive methods;
- Access to information about reproductive health issues (impact of multiple births on women's health status)
- Access to information regarding sexually transmitted infections (STIs) and preventative measures.

Women's reproductive health care varies from society to society depending on social, cultural and economic factors. But without education, access to information, health care and financial resources, women and girls cannot fully make their own decisions regarding reproduction and sexuality.

Definitions

Reproductive rights: Include the rights of couples and individuals to decide freely and responsibly on the number, spacing and timing of their children, and to have access to information, education and the means to do so; to attain the highest standard of sexual and reproductive health and to make decisions about reproduction free of discrimination, coercion and violence.

Sexual rights: Include the right of all people to decide freely and responsibly on all aspects of their sexuality, including promoting and protecting their sexual and reproductive health; to be free of discrimination, coercion or violence in their sexual lives and in all sexual decisions and to expect and demand equality, full consent, mutual respect and shared responsibility in sexual relationships. (*"Gender in Media Training: A Southern African Tool Kit, GL and IAJ 2003"*).

Making the links: gender, HIV/AIDS and human rights

Women who are not able to make decisions about sex and reproduction are particularly vulnerable to HIV/AIDS eg. a woman who cannot say no to sex with her husband, when she knows that he is unfaithful to her, and cannot ask him to use a condom, will be at a high risk of HIV infection.

Exercise two

Break the participants into two groups and give each group a different scenario. Ask each group to read and answer the following questions.

Scenario One

A married woman who is pregnant, discovers that she has HIV/AIDS during the course of her ante-natal exams.

- Does she have the right to terminate the pregnancy?
- Does she have the right to terminate the pregnancy without consulting her partner?

- What gender issues are raised by this scenario?
- What are the rights issues at stake here?
- What are the links here between gender and HIV/AIDS?

Scenario Two

A woman, not in formal employment, in an abusive relationship discovers that she has HIV/AIDS. She knows that if she discloses this to her partner, he will assault her and then evict her and her children from their home. She also knows that he will continue to demand unprotected sex. What should she do?

- What are the human rights issues raised by Scenario Two?
- What are the links between gender and HIV/AIDS?
- What have been some of the messages communicated to women in Scenario One and Two through the media and HIV/AIDS information campaigns? How would the group craft new messages?



Tips for trainers: This exercise should illustrate how important reproductive and sexual rights are to women's equality and they form a fundamental part of women's human rights. Participants should discuss what choices the women in the two case studies are faced with and how these relate to sexual and reproductive rights. In the second case study, participants should identify how the woman's

lack of reproductive choice (not to have sex; to have sex with a condom) and her lack of equality (she is unemployed and as a woman, is less likely to find employment) have made her vulnerable to HIV infection, but also increases the spread of the infection (she may not tell her partner that she has HIV/AIDS for fear of violence and will continue to have unprotected sex.)

Stigma and discrimination

The need to protect the human rights of people living with HIV/AIDS has arisen because of the intense stigma and discrimination that disclosure of HIV status can bring about. Women are especially susceptible to victimization as a result of their HIV status, and their unequal position in society will often be reinforced once they are identified as living with HIV/AIDS.

Exercise three

Give out the case study in **Handout eighteen** and ask participants to read it. Divide participants in smaller groups and give them time to discuss the human rights violations described in the case study. Ask them whether they think the situation would have been different if Jabu has discovered his HIV status first.



Tips for trainers: This exercise should firstly help participants to examine issues of stigma and why it is so important to protect human rights – the right to confidentiality is very important in this exercise and participants should identify that the violation of Mary's right to privacy gave rise to other human rights violations against her. The exercise is also useful because it should reinforce the discussion about

sexual and reproductive rights – Mary is unable to negotiate safer sex with her husband, even though she is aware of her own HIV status and she may suspect Jabu of being unfaithful.

Exercise four

Give participants a copy of the article, "HIV man jailed for knowingly infecting lover" in **Handout nineteen**. Break participants in two groups and ask them to read the article and answer the following questions:

- What are the rights issues raised in the article?
- Does the article raise issues about stigma and discrimination? What are they?
- According to the article, both the woman's and the man's rights have been violated? Do you agree? Give your reasons.
- What are several key gender issues raised by the article?
- What do you think of the way that the article has dealt with these issues?



Tips for trainers: The initial response from many participants in this exercise may be to sympathize with the woman in the article. It is however important for you, as the trainer, to make sure that participants also address the stigmatization of the man with HIV/AIDS. Participants must think about the fact that the parties were in a consensual relationship, that the woman could have asked the man to use a condom and that in the context of HIV/AIDS, every person must take responsibility for their own safety.

handout eighteen

Case study: Stigma and discrimination

Mary (a domestic worker and barely literate) and Jabu have been married for five years. Jabu is a mineworker who is at home only four times in a year. Because Jabu does not trust Mary, she and their children have been forced to stay with his parents so that they can “keep an eye on her.” Jabu is very abusive towards Mary and has on occasion during a drunken stupor not only physically and sexually abused Mary, but has also thrown her out of the family home.

Mary is six weeks pregnant. During an antenatal examination, she discovered that she has HIV. At the clinic, a nurse in front of other patients informed her that she would have to terminate her pregnancy, as she will transmit the virus to her baby (if has not done so already). She is also told that she will have to be sterilised to prevent future pregnancies. The doctor also proceeds to telephone Mary’s employer to inform her of Mary’s HIV status. When Mary returns to work the following day, her employer informs her that her services are no longer needed. She is told that her being in the home places the children at risk of infection and that her employer is not comfortable with her employer’s children being looked after by a woman with “loose morals”.

When she gets home, she telephones the mine and leaves a message for her husband to call her urgently. In the evening, her husband calls and she immediately tells him that she has tested positive for HIV and will have to terminate her pregnancy and be sterilised. Her husband immediately hurls abuse at her and accuses her of sleeping around. He also demands that she packs her bags and leave the family home immediately. He demands to speak to his parents and informs them of Mary’s news. They in turn react in the same manner. They accuse her of being a prostitute and wanting to kill their son. They also call her “a baby killer” for wanting to terminate her pregnancy on the advice of the doctor at the clinic. They also demand that she leave the home and take her children with her.

Mary realises that she could have kept her mouth shut but also recognises that if she had, Jabu would have continued to demand unprotected sex. Not knowing his status, she assumed that he would be negative and that she would infect him.

As Mary leaves the house with her bags, she is confronted by a mob consisting mainly of her neighbours. They start calling her names “slut” “whore” “prostitute” “baby killer” and accuse her of bringing shame to the community. She is even assaulted and it is clear that but for the AIDS activists who rescued her, she could have been killed by the mob.

HIV man jailed for knowingly infecting lover

By Kirsty Scott

A man found guilty of infecting his girlfriend with the virus that leads to AIDS was jailed for five years last week in a case that has made British legal history and caused an outcry by HIV and human rights campaigners.

Stephen Kelly, 33, of Provanmill in Glasgow, was found guilty last month of endangering Anne Craig, a mother of three, by repeatedly having sex with her despite knowing he carried the virus. At the high court in Edinburgh he was jailed for five years for culpable and reckless conduct.

It is the first time in Britain that anyone has been convicted of deliberately infecting another person with HIV, and the sentence has been condemned by campaigners who say it will only criminalise the disease and further stigmatise sufferers. There are also concerns that police investigating the case were able to seize evidence of blood samples from a confidential clinical trial to use in the prosecution.

Kelly, who denied the charge, had met Ms Craig in 1994, six months after he had been diagnosed with HIV while serving a prison sentence.

Ms Craig, 34, told the court during Kelly's trial that she had asked him if there was any reason other than the risk of pregnancy why they should not have unprotected sex. He said no. Kelly had argued that he had been honest about his heroin use and HIV infection during their relationship.

Sentencing him, the judge, Lord Mackay of Drumadoon, said Kelly had shown total disregard for Ms Craig, and the jail terms reflected the gravity of the charge and the severe consequences of his actions. The judge said it was for the prison authorities and Scottish ministers to decide whether a deterioration in Kelly's medical condition warranted early release from prison.

In a statement released afterwards, Ms Craig said the sentence itself was irrelevant. All I wanted was for the jury to hold Mr Kelly responsible for what has happened to me and I was delighted by its decision" she said. Her lawyer, Cameron Fyfe, said the sentence reflected the "life of misery" to which Kelly had subjected his former girlfriend. "This case contains a warning that we should be cautious about our sexual health," he said. "It should also be a deterrent to others not to act in the way Mr Kelly has done."

HIV support groups, however, said the sentence could have a devastating effect on efforts to destigmatise the disease. "We don't believe that criminalizing the virus is going to make things any better," said Lisa Power of the Terrence Higgins Trust. "It will discourage people from testing and it will create a false complacency because people may see the trial and think in future people will tell me. It is really going to help restigmatise HIV in a way that is hugely unhelpful. We have been working towards a situation where people with HIV are able to talk about their status and don't feel afraid or feel they need to conceal it".

Lawyers for Kelly had told the judge that he had believed Ms Craig had known of his HIV status. Defence counsel Petra Collins said the couple had embarked on a relationship shortly after Kelly had lost his long-term partner and had been diagnosed with HIV. She said he had not shown any symptoms for some time but had recently started taking combination therapy drugs.

Clare Dyer adds: The Kelly case has alarmed research scientists because police, armed with a warrant, were able to sweep aside guarantees of confidentiality to link blood samples provided separately by Kelly and Craig to two research studies on HIV.

Kelly was serving a sentence at Glenochil prison when he agreed to give a sample as part of a study to find out the extent of an HIV outbreak through needle-sharing among drug addicts. The prisoners were assured that the findings would be held in the strictest confidence.

The virus takes different forms and the samples from the prisoners at Glenochil, who had passed it on to each other, were strikingly similar.

When Craig felt unwell, she gave a blood sample which was sent to a research project funded by the Medical Research Council (MRC) on genetic diversity of HIV in Scotland. Professor Andrew Leigh Brown, head of the center for HIV research at Edinburgh University, who led the study, said: "This transmission was of a virus very similar to the Glenochil cluster and distinct from other viruses we see in Scotland." He was appalled when this confidential information was produced as part of the investigation.

(*"The Guardian Weekly", March 22-28, 2001.*)



Story ideas from this chapter

- Who protects the rights of people with HIV/AIDS? A story that interrogates national laws and policies exposing weaknesses and strengths;
- HIV/AIDS legislation – a story that examines what laws are, or are not, in place in your country.



Key learning points

- Reproductive and sexual rights are fundamental human rights, especially for women.
- The violations of these rights, and other human rights, have resulted in women living with HIV/AIDS being subject to discrimination and prejudice.
- Women are particularly vulnerable to human rights violations as a result of their HIV/AIDS status.
- HIV/AIDS discrimination and fears of being discriminated against have an impact on the spread of the epidemic – people living with HIV are afraid to disclose their status and do not seek counseling, testing and treatment.

