

Campaign briefing 5 (July 2010)

Protecting human rights at the core of the Alliance response to HIV

This briefing describes how the protection of human rights is at the core of the International HIV/AIDS Alliance (the Alliance) response to HIV. This is one of a number of briefings which have been produced in support of an Alliance campaign which is asking 'what's preventing prevention?'. These briefings are available to download from the Alliance website www.aidsalliance.org

1. Introduction

While HIV is foremost a health issue, affecting all populations in a society, it has long been recognised that poverty, culture and the ability of people to participate equally in the democratic processes of their country, have a great impact on the nature and progress of national HIV epidemics.

Respect for, and promotion of, a human rights based approach as part of any response to HIV has been widely recognised as a core ingredient for successfully achieving universal access to HIV treatment and the prevention of HIV transmission.¹

Still, two decades into the epidemic the human rights of people living with HIV or who are particularly vulnerable to HIV such as sex workers, drug users or men who have sex with men (MSM) are frequently breached causing them to suffer both the burden of disease and the consequential loss of other rights such as employment, privacy or freedom from discrimination.

A human rights based approach recognises the right to information, the right to non-discrimination, the right to the highest attainable standard of health, the right to privacy and the right to freedom of association to be respected, protected and promoted, in order for all members of society to meaningfully participate in HIV programmes.

The International HIV/AIDS Alliance's (the Alliance) recently adopted S, 'HIV and Healthy Communities', clearly articulates the need to protect human rights as necessary to make a sustainable change in the HIV response at national and international levels.

2. Vulnerability

The Alliance is working with communities through our linking organisations to address HIV prevention, treatment and care to reduce the spread of HIV and contribute to healthy communities.

Notes:

¹ UNAIDS: Human Rights and HIV in: <http://www.unaids.org/en/PolicyAndPractice/HumanRights/default.asp>

We counter the vulnerability to violence, coercion, stigma, discrimination and abuse of vulnerable and most-at-risk groups by empowering them, supporting and advocating for their place at the centre of the design and implementation of prevention responses, and removing barriers to prevention programmes and services.

A range of experience of working on human rights and HIV exists within the Alliance partnership. In a recent internal survey² of 28 Alliance linking organisations, most recognised a human rights based approach as essential to achieving universal access targets.

'A human rights based approach provides a common framework for translating international and national human rights (...) into practical programming at national level, improving the universal access to health and HIV specific programmes. Reducing stigma and discrimination of sexual minorities and people living with HIV is the most important aspect in reducing HIV/AIDS and its socio-economic impact to individuals and the public'. Alliance partner in Mongolia.

While many organisations may recognise the importance of a human rights based approach, only 20 per cent of Alliance partner organisations engage in some form of human rights education that builds capacity among civil society organisations and state institutions to better understand the linkages between human rights and HIV.

This highlights the urgent need to increase the capacity of mainstream HIV/AIDS organisations to develop their human rights work, without which there is a failure to translate the rhetoric into reality on the ground.

Much of the Alliance's current human rights capacity building work results in advocacy with service providers and policy makers, for example bringing the voices of most at risk populations into policy discussions with the Ministry of Health in Mongolia or using a human rights approach when addressing the Ministry of Justice on HIV legislation in Ukraine.

African partners in Morocco, Kenya, Uganda and Ivory Coast are engaged in advocacy, based on a human rights framework, international policy formulation and law review discussions.

3. Successful human rights advocacy in the Ukraine

The **Alliance Ukraine**, in partnership with the Network of People Living with HIV, has established a joint committee to coordinate human rights activities in the country. It aims to protect the rights of people living with HIV and other vulnerable groups. The committee has generated discussions and actions to change state policy on stigma and discrimination and national drugs policy. Activities have included round table discussions around substitution therapy, engaging the media and drafting two laws on changing HIV/AIDS legislation and the Criminal Code of Ukraine, to try to harmonise them with European standards.

In addition, Alliance Ukraine has begun discussions in the Ukrainian parliament on its repressive drug policy, resulting in members of parliament approving a parliamentary decree that declared the work of the Government addressing illegal drugs use to be unsatisfactory and making recommendations to improve the situation. After a long advocacy campaign the Ministry of Health of the Ukraine in February 2009 issued an order approving a list of specific pharmaceutical institutions to participate in a pilot project on syringe exchange. By the end of 2009, 108 pharmacies were working in cooperation with 25 NGOs in this field.

Notes:

² 28 of 30 linking organisations responded. Breakdown = Africa (7), Asia and Eastern Europe (17), Latin America and Caribbean(4)

In addition, responding to a call by policy makers to allow medical staff to disclose patients' HIV positive status to people living with them (families, partners etc) without their consent, Alliance Ukraine, with the national network of People Living with HIV, prepared a concept paper explaining the human rights ramifications of such an approach. The concept note was considered by parliament and the Human Rights ombudsman which led to a non-consideration of the draft law.

Alliance Ukraine has also developed publications to target legislation and government at the national level, including a document on harm reduction for law enforcement bodies. After five years of implementing the National Targeted Program for the Prevention of HIV infection, treatment, care and support for PLHIV and AIDS Patients 2009-2013, the Alliance Ukraine's role has in 2009 been recognised by the Government – 'as a chain reaction, this helps Alliance Ukraine in its current advocacy efforts, as now governmental bodies consider the AU not just as a regular NGO, but as an equal to them implementing the state program'.

4. Human rights barriers experienced

Legislation

Over 20 per cent of respondents in the Alliance research are engaged in some form of legal aid provision. There is a sense among Alliance partners that a general lack of a supportive legislative and policy frameworks, protecting the rights of key populations and of people living with HIV in particular, negatively impacts on the success of national health and HIV programmes.

Over 61 per cent identified legal issues as a challenge. Our Kenyan partners highlighted the lack of political will to enact and implement HIV specific legislation and to domesticate accepted international human rights law and principles at national level.

Unsurprisingly, many Alliance linking organisations perceive legal aid as a crucial component of the national response to HIV to ensure that people can claim their rights and contribute to case law that will ultimately inform national legal reform on HIV.

Legal aid support in Nigeria

Having heard many stories about the infringement of the human rights of people living with HIV in Nigeria **the Civil Society for HIV/AIDS in Nigeria** (CiSHAN), an Alliance Linking Organisation, implemented a project which aimed to improve the legal support provided to people living with HIV. This included a three day training for paralegals, working in collaboration with the International Federation of Female Lawyers and the Nigerian Bar Association.

Through this partnership, sensitization workshops were held with 110 lawyers. CiSHAN also developed a Gender and Human Rights Training Module, for use by civil society. At one workshop in Lokoja, following the testimony of someone living with HIV whose employment was terminated by the Kogi State Polytechnic, the State Chairmen of the National Bar Association made various commitments to supporting the legal rights of people living with HIV, including a promise to offer free legal services to any person living with HIV/AIDS nationwide who had his/her rights breached as a result of his/her HIV status.

Mikang Longjan, Programme Officer at CiSHAN says: 'Within the legal profession, much impact has been made in stimulating debate as to the roles and responsibilities of legal institutions and their personnel in ensuring the rights and dignity of people living with HIV. An important aspect of this work is the decision of the lawyers and their association the NBA, to provide pro bono services for those whose rights have been infringed upon based on their HIV/AIDS status.'

Discrimination

All partners responding to the survey expressed concerns regarding human rights violations at the national level such as compulsory HIV testing and disclosure for employment purposes, violations of property rights and state sponsored or condoned violence against sex workers and MSM.

In Haiti our partners cited the intense homophobia as a particular challenge when HIV programming. In Mongolia almost 80 per cent of people who have tested positive to HIV are male and 82 per cent of these are MSM.

It is particularly disheartening to see that two decades into the epidemic and with increasing treatment access, people living with HIV are still facing stigma and discrimination at their work places, often leading to the loss of a career and family income.

As noted by some of our African partners, a human rights based approach crucially needs to be part of any comprehensive HIV prevention strategy, addressing structural issues such as poverty and gender inequality as much as the participation of all sections of society in HIV prevention and treatment.

Criminalisation

Most organisations within the Alliance family perceive criminalisation of key populations³ and the increasing calls for criminalisation of HIV transmission to be having a detrimental impact on the ability of communities to access health services, including HIV prevention and treatment.

For example, our partners in Malaysia point out how the criminalisation of sex workers and MSM prevents these groups from accessing prevention services, while in Mongolia the criminalisation of sex workers leads to police harassment and the criminalisation of drug users in many countries results in people not accessing services and life prolonging treatment.

Lack of political will

International human rights commitments on HIV are rarely translated into national HIV policies and protective and conducive legal frameworks. We recognise this is partly due to a lack of state capacity but also a lack of capacity by civil society organisations to put human rights priorities into practice and hold governments to account.

Many partners cited that there was lack of political will to provide financial resources to support human rights programming in general and in particular programmes targeting most at risk groups.

Some African partners noted the gap in adequate implementation of the Abuja Declaration that was signed by the African Union, committing governments to providing 15% of their national budget for health spending.

Who is most at risk?

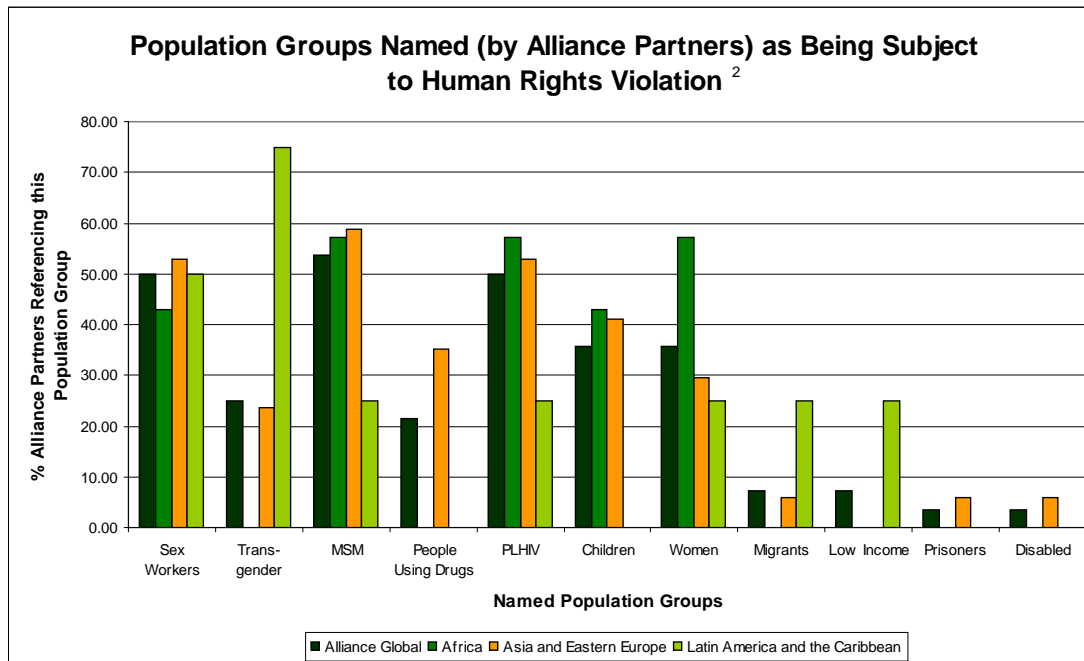
From the survey results (see graph) Alliance partners show that globally it is men who have sex with men who experience the most human rights violations (cited by 59% of Asian respondents and 57% of those in Africa), followed closely by both sex workers and people living with HIV.

A second set of key groups are children, women, transgender and people using drugs. In Latin America, the transgender community (cited by 75% of Latin America & Caribbean respondents) is the population that suffers the most violations of human rights.

Notes:

³ Groups that are at a higher risk of being infected or affected by HI, who play a key role in how HIV spreads and whose involvement is vital for an effective and sustainable response to HIV.

What we know, but is less evident from these responses, is that often people who are living with HIV are included in these groups and can therefore face multiple forms of discrimination.



In addition, the number of survey respondents reporting human rights abuses against drug users is somewhat conditioned by the focus of our partners work - it is only in Asia where our partners run significant programmes with this group.

We also know from our experience, that the importance of bringing HIV/AIDS policies and programmes in line with international human rights commitments is generally acknowledged but it is rarely carried out in reality.

Recommendations

- National governments must respect, promote and protect the human rights of vulnerable and at-risk populations and eliminate the political, cultural, social and legal barriers that affect effective HIV prevention measures.
- Protecting and promoting human rights should be an essential part of any comprehensive HIV prevention strategy.
- Build the capacity of civil society organisations to mainstream human rights into HIV programming in order to claim human rights protection at a national level.
- Governments establish effective mechanisms to make existing legislation work; improving current legislation, removing contradictions and applying international human rights standards is necessary.
- Increasing the participation of HIV positive people and affected groups in the planning and implementation of national programmes is vital for success.
- Recognising human rights in the design, implementation and evaluation of health policies and programmes can help shape more effective action and build the capacity of state actors to translate human rights commitments into national laws.
- Donors and governments need to allocate financial and technical resources into human rights programming in HIV/AIDS programmes.

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