Discussion Paper

The Role of Human Rights in Responses to HIV, Tuberculosis and Malaria

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Authors
Leah Utyasheva and Emilie Pradichit

Reviewers
Mandeep Dhaliwal, Tenu Avafia, Brianna Harrison, Tracey Burton, Edmund Settle, Boyan Konstantinov and Nadia Rasheed

Contact Information
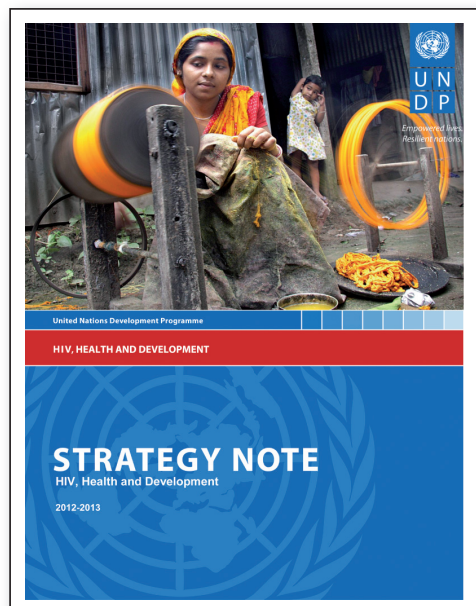Tenu Avafia, tenu.avafia@undp.org

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UNDP's HIV, Health and Development Strategy 2012–13 calls for action in three areas[1]:

- Building synergies between action on HIV and health and broader development plans and processes, including attention to gender inequality;

- Strengthening governance of HIV and health action, with particular attention to human rights and vulnerable groups; and

- Providing implementation and capacity development support for major HIV and health initiatives such as the Global Fund to Fight AIDS, Tuberculosis and Malaria.

This discussion paper elaborates on the crucial role that human rights play in improving the effectiveness, efficiency and sustainability of responses to HIV, Tuberculosis (TB) and malaria. It is intended for United Nations practitioners, including UNDP staff, experts, advisors and project teams, UN Country Teams as well as development partners.

Introduction

The right of every human being to access the highest attainable standards of health is now fully recognized by numerous national constitutions and legally binding international human rights treaties.[2] The links between development and health are also reflected in the fact that, of the eight Millennium Development Goals (MDGs), three are related to health directly, with several others dealing with underlying determinants of health.[3]

The realization of human rights, including the right to health, is a central aspect of development.

Respect for and the protection of human rights are paramount to the successful implementation of public health programmes and by consequence, human development.[4] As the 2010 United Nations outcome document on the MDGs states, "[T]he respect for and promotion and protection of human rights is an integral part of effective work towards achieving the Millennium Development Goals".[5] More recently, the outcome document of the United Nations Conference on Sustainable Development in 2012 (Rio+ 20) highlighted the role of health as a precondition for and an outcome and indicator of all three dimensions of sustainable development (economic, social, environmental).[6] UNDP's Corporate Strategy on HIV, Health and Development 2012–13 similarly emphasizes the strong and reciprocal relationship between health outcomes and other measures of social and economic progress, in stating that "just as health shapes development, development shapes health".[7]

Box 1. How do human rights relate to public health?

Human rights are universal, inalienable, indivisible, interdependent and interrelated.[8] Public health is an organized effort by society, to improve, promote, protect and restore the health of the population through collective action.[9] Public health goals are centred on improving the health of the population, rather than treating the diseases of individual patients.

Evidence indicates that public health interventions that do not feature a rights-based response do more harm than good.[10] An example of this is the so-called AIDS paradox, whereby "one of the most effective laws we can offer to combat the spread of HIV is the protection of persons living with HIV, and those about them, from discrimination. This is a paradox because typically the community might expect laws to protect the uninfected from the infected – at the same time, the human rights of those living with HIV and those most affected must also be protected."[11]

The right to health

The right to the enjoyment of the highest attainable standard of physical and mental health is an important part of the human rights framework.[12] The right to health encompasses medical care and the underlying social determinants of health, defined as a wide range of socio-economic factors that promote conditions in which people can lead a healthy life (i.e., access to clean water and food, sanitation, nutrition, housing, freedom from poverty and discrimination, healthy occupational and environmental conditions, education, information, etc.). The centrality of health to all aspects of development makes it essential that a right-to-health approach be used in all development programmes and policies that seek to address health.[13]

According to the UN Committee on Economic, Social and Cultural Rights, the right to health comprises of four elements:

Availability, or that there be functioning public health and health care facilities, goods and services, as well as programmes in sufficient quantity.

Accessibility, or health facilities, goods and services be accessible to everyone, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:
a)   non-discrimination;
b)   physical accessibility;
c)   economical accessibility (affordability); and
d)   information accessibility.

Acceptability, or that all health facilities, goods and services be respectful of medical ethics and culturally appropriate as well as sensitive to gender and life-cycle requirements.
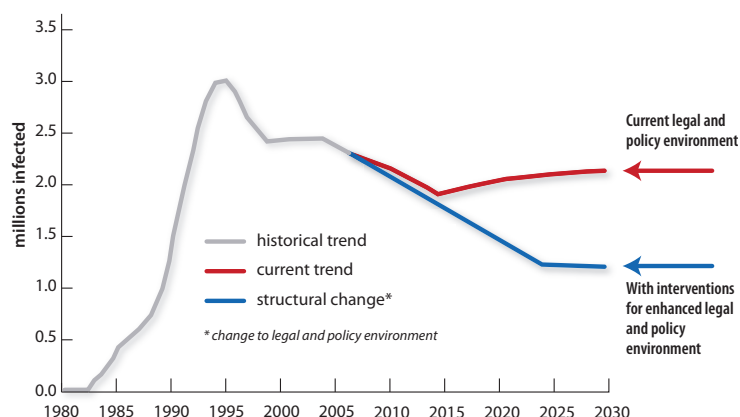
Quality, or that health facilities, goods and services be scientifically and medically appropriate and of good quality.[14]

Human Rights and Law: Social Determinants of Health

The law, when based on public health evidence and promoting a rights-based response, plays an important role in creating and maintaining social relationships of equality. Public health laws that do not place human rights considerations front and centre, as well as laws that are not based on evidence can create or exacerbate social inequalities.   It is important to consider the effect of sex and gender norms, inequalities amongst racial and ethnic groups, the marginalized status of communities, and other social, political, and economic factors when assessing how the law's application can negatively impact certain populations.[16]

On the other hand, evidence indicates that an enabling legal environment could significantly contribute to positive public health outcomes. According to the findings of the Global Commission on HIV and the Law:

- Changes in the legal and policy environment, along with other interventions, could lower new adult HIV infections to an estimated 1.2 million by 2031, instead of to a projected 2.1 million infections per year in 2031 if the current legal and policy environment remains unchanged.
- Public resources are wasted on enforcing laws that criminalize HIV transmission and dehumanize at-risk populations.
- In contrast, laws that protect at-risk populations are powerful low-cost tools to reinforce financial and scientific investments for HIV.
- Enacting laws based on sound public health and human rights will ensure that new prevention and treatment tools – such as PrEP, male circumcision and microbicides – reach those who need them.[17]

millions infected

— historical trend
— current trend
— structural change*

* change to legal and policy environment

Current legal and policy environment

With interventions for enhanced legal and policy environment

Box 2. The Global Commission on HIV and the law

The Global Commission on HIV and the Law, an independent body convened by UNDP on behalf of the UNAIDS family, examined the impact of laws, policies and practices on HIV. The Commission's Final Report (2012) found that human-rights-based legal environments can play a powerful role in the well-being of people living with HIV and those vulnerable to HIV. The Commission concluded that legislation grounded in human rights can widen access to prevention and care services; improve the quality of treatment; enhance social support for people affected by the epidemic; protect human rights that are vital to survival; and save public resources. The Commission also found that, unfortunately, many legal environments and practices are hindering rather than helping national HIV responses: often, public health programmes are undermined by laws that criminalize the very practices the public health efforts promote – such as distributing sterile needles and providing opioid substitution therapy to people who inject drugs; providing condoms and harm-reduction measures to prisoners; or supporting the free association of sex workers for the purposes of mutual support and education. Laws, policies and practices can perpetrate discrimination and isolate the people most vulnerable to HIV from the programmes that would help them to avoid or manage the virus. Therefore, creating legal environments supportive of human-rights- and evidence-based interventions is of critical importance to effective national responses to HIV.[18]

(Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', July 2012)

More information can be found at **www.hivlawcommission.org**

There is great value in adopting a rights-based response for multilateral funding initiatives around HIV, tuberculosis and malaria. The 'Global Fund Strategy 2012–2016: Investing for Impact' includes a specific strategic objective on human rights: Strategic Objective 4 – Promote and Protect Human Rights. The objective calls for specific attention to the following:

4.1   Integration of human rights considerations throughout the Global Fund grant cycle;

4.2   Increase of investments in programmes that address human-rightsrelated barriers to access; and

4.3   Verification that the Global Fund does not support programmes that infringe human rights.[19]

Human Rights Programmes in Global Fund-Supported HIV Programmes
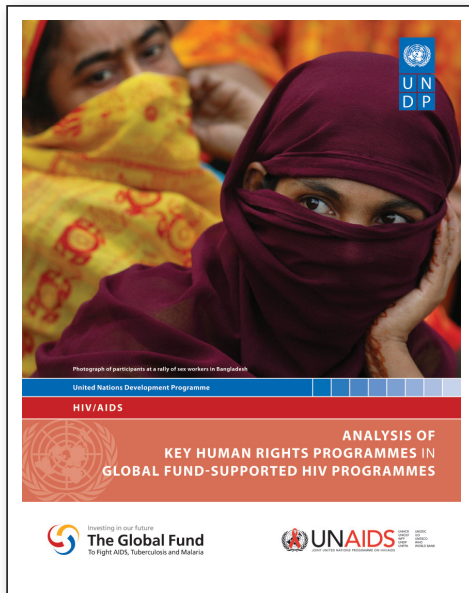
A 2011 UNDP, UNAIDS and Global Fund study analysing key human rights programmes in Global Fund-supported HIV programmes found that the Global Fund plays a vital role in supporting key human rights programmes – an essential part of effective, rights-based national HIV responses.[20] The study also revealed further opportunities to support the planning and implementation of key human rights programmes through Global Fund proposals and grants. The study found that, in settings where marginalized populations are criminalized (e.g., men who have sex with men, transgender people, sex workers, people who use drugs, and prisoners), Country Coordinating Mechanisms did not include key human rights programmes that benefit these populations who are most vulnerable to HIV. The study concluded that a human rights analysis of national HIV responses, including the implementation of key human rights programmes, is crucial to Global Fund proposals and grants. The study made key recommendations so that if a human rights analysis of the national HIV response is undertaken, as it would not only provide essential information for the Global Fund to improve the efficiency and effectiveness of its investments, but would also provide valuable information for other key stakeholders at the country level.[21]

Human Rights in HIV, Tuberculosis and Malaria Responses

There are four important reasons for promoting and protecting human rights in HIV, TB and malaria responses:

1. **Enhancing disease prevention:** Stigma, discrimination, a lack of empowerment and human rights abuses against people living with HIV, women, children, young people and other key populations (such as people who use drugs, sex workers, men who have sex with men, transgender people, prisoners, migrants, people living in poverty increase vulnerability to all three diseases. Discrimination marginalizes people, pushes them away from prevention services, and contributes to an increase in risky behaviour. Similarly, punitive laws have been shown to negatively impact the ability of populations at higher risk to access HIV services. Evidence suggests, on the other hand, that a respect for human rights, equal treatment and protection from discrimination have a positive effect on the well-being of people affected by the three diseases. Countries that enforce protective laws ensuring non-discrimination for key populations have achieved greater coverage of HIV prevention services.[23]

2. **Increasing accessibility of health services – Ensuring effectiveness of programming and that resources reach the right people:** Promoting and protecting human rights can help overcome barriers to accessing HIV, TB and malaria health services by addressing stigma, discrimination, violence and social marginalization. A rights based response can also contribute to improvements in other social and structural determinants of health such as economic assets, education, water and food security. Effective programming can also sensitize and educate health care providers to needs and problems faced by their clients, and heighten such providers' understanding of how to avoid discriminating. Importantly, protection of human rights and educational campaigns can significantly reduce stigma and discrimination not only on the part of health care providers, but also among government officials, employers, judges, police and other law enforcement officers, decision makers, and society in general.

3. **Service uptake – Increasing efficiency of programming by improving service quality and the demand for services:** Promoting and protecting human rights creates more conducive l conditions for the uptake of essential HIV, TB and malaria prevention, treatment and care services. People will be more likely to seek access to HIV and TB services if they are confident that they will not face discrimination, that their confidentiality will be respected, that they will have access to appropriate information and counselling, that they will not be coerced into accepting services and that any such services will only occur once informed consent has taken place.

4. **Promoting individual agency – Ensuring sustainability of programmes by empowering individuals to be proactive in taking care of their health needs:** A rights-based response can help minimize the impact of harmful social norms and human rights violations. It can ensure stakeholders' participation in the design and implementation of programmes and help increase the accessibility of services by offering better design and taking into account opinions of the community. A focus on human rights can empower individuals and communities to ensure that national responses address their specific HIV, TB or malaria needs and can lead to improved access to HIV, TB and malaria prevention and treatment through: (1) addressing the social and structural determinants of health; and (2) supporting effective community interventions that improve access for the most vulnerable and marginalized populations.

Enhancing disease prevention	• HIV service organizations report that the threat of prosecution for HIV transmission, exposure or non-disclosure neither empowers people living with HIV to avoid transmission nor does it motivate behavioural change. The fear of prosecution discourages people from getting tested, from participating in prevention or treatment programmes and from disclosing their status to partners and to health care providers.[24] • In Asia and the Pacific, punitive legal environments relating to men who have sex with men and transgender people have been associated with restricted condom distribution, condom confiscation by police as evidence of illegal conduct, censoring of HIV and STI prevention education materials and harassment or detention of outreach workers.[25]
	• In Burkina Faso, the Ministry of Labour and Social Security and the International Labour Organization, along with employers' and workers' organizations, are creating a legal and policy framework conducive to HIV prevention and protective of workers' rights in connection with HIV.[26] • Sustainable financing of political commitments, education and effective tools for malaria prevention, such as insecticide-treated mosquito nets (ITNs), indoor residual spraying (IRS), and intermittent preventive treatment for pregnant women (IPTp), are necessary in order to achieve and maintain universal coverage of malaria interventions. Between 2001 and 2010, nearly three quarters of a million children (736,700) are estimated to have been saved from malaria-related deaths, almost entirely due to intervention coverage. In 2010, the lives of an estimated 485 children were saved every day.[27]

Increasing accessibility of health services *Ensuring effectiveness of programming and that resources reach the right people*	• Stigma and discrimination undermines efforts to increase access to essential HIV treatment, care and support services. In Nigeria, 21 percent of people living with HIV say they have been denied health services as a result of their HIV status.[28] • Many countries prohibit harm reduction services[29] and criminalize proven interventions such as syringe access and medication-assisted treatment for opioid dependence. In China, Russia and Thailand, people who enrol in public drug treatment programmes are added to registries, which discourages them from seeking treatment.[30] • Isoniazid preventive therapy (IPT) is effective at reducing the risk of TB in people living with HIV by over 60 percent,[31] yet only 12 percent of all people reported to be newly enrolled in HIV care in 2010 received it.[32] Such failures to ensure access to IPT for those who need it can reduce the effectiveness of both HIV and TB responses.
	• Countries that treat injecting drug users as patients instead of criminals – including Australia, Germany, New Zealand, Portugal and Switzerland – have seen increased access to HIV services and reduced HIV transmission rates among injecting drug users.[33] • Tailoring malaria programmes in Kenya to meet the needs of the poorest quintile has resulted in improved access to treated bed nets across the population as well as increased access for those most in need.[34]
Service uptake *Increasing efficiency of programming by improving service quality and demand for services*	• Information on sexual and reproductive health is lacking in many countries.[35] Sexually active young people lack appropriate prevention information and reproductive and sexual health services as many States deny youth health services without parental consent. In South Africa, for example, health care workers providing such services to minors are legally required to report consensual underage sex.[36] • Discrimination against families living with HIV is common: for example in Eastern Europe and Central Asia, some agencies prohibit HIV-positive children from living with their parents in state-sponsored housing; adults living with HIV cannot become adoptive parents; and school and child-care administrators shut their doors to HIV-positive students.[37] • Inadequate detention conditions including lengthy pre-trial detention periods combined with high rates of incarceration have been linked to higher TB prevalence.[38] A recent study in Zambia noted that protection against cruel, inhumane or degrading treatment, and increasing access to the justice system, are essential to curbing the spread of HIV and TB in prisons and in the general community.[39]
	• A recent model estimates that effective stigma and discrimination programmes could result in more mothers using HIV services and adhering to treatment, potentially reducing mother-to-child transmission by as much as one third in settings where stigma is prevalent.[40]