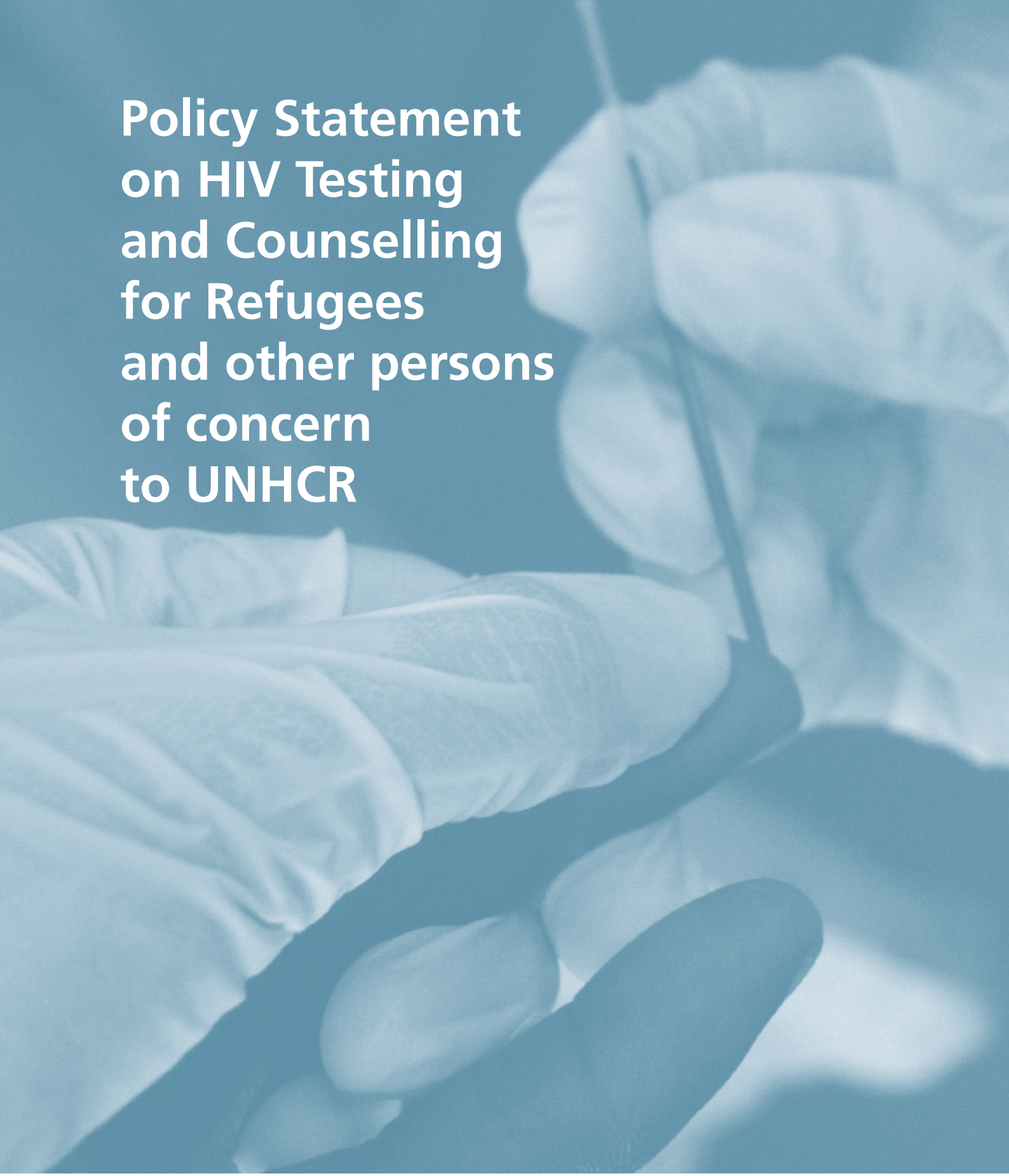

Policy Statement on HIV Testing and Counselling for Refugees and other persons of concern to UNHCR

UNHCR The UN Refugee Agency

World Health Organization

UNAIDS

Policy Statement on HIV Testing and Counselling for Refugees and other persons of concern to UNHCR

Division of Programme Support and Management
United Nations High Commissioner for Refugees
Case Postale 2500
1211 Geneva 2, Switzerland
www.unhcr.org

Cover photo: Kenya / Kakuma refugee camp / Blood is taken for an HIV test. Kenya / UNHCR / A. Webster / December 2006

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I. Background

This Policy Statement examines the role of HIV testing and counselling (HTC) in health facilities in increasing access to HIV prevention, treatment, care and support services for refugees, asylum-seekers, internally displaced persons (IDPs) and stateless persons (see Glossary for definitions). It also identifies specific issues regarding HTC amongst these populations and issues recommendations for future action. This policy statement complements and should be used in conjunction with existing World Health Organization guidance, specifically *Guidance on Provider-Initiated HIV Testing and Counselling in Health Facilities* (1) and *Service delivery approaches to HIV testing and counselling (HTC): A strategic policy framework* (2). Information on an enabling environment and training of workers in health care facilities are all found in the above mentioned World Health Organization & Joint United Nations Programme on HIV/AIDS (UNAIDS) guidance. Guidance provides descriptions of HTC service delivery approaches, and HIV testing strategies and algorithms. Recommendations in this document are anticipated to be valid until 2018. At that time UNHCR will review this document and issue its recommendations.

HTC represents the gateway to HIV prevention, care and treatment. Expanded access to voluntary HIV testing and counselling provides important opportunities for:

- ❒ Ensuring universal access to knowledge of HIV serostatus;

- ❒ Enhancing access to HIV prevention services, including:
  - o prevention of mother-to-child transmission (PMTCT),
  - o condoms,
  - o voluntary medical male circumcision (VMMC) for HIV negative men,
  - o management of sexually transmitted infections (STIs),
  - o behavioural interventions

- ❒ Improving early diagnosis of HIV and linkage to appropriate care, support and timely initiation of antiretroviral treatment (ART), in order to improve health of people living with HIV, prevent onward transmission to HIV negative partners, including vertical transmission;

- ❒ Increasing access to ART and simplified delivery of ART through a wide range of settings.

In 2012, WHO issued Service delivery approaches to *HIV testing and counselling: A strategic HIV testing and counselling programme framework* to present a range of options for the provision of HTC (2). This framework is intended to assist countries with strategically selecting HTC delivery models, including facility-based or community-based models and couples/ partners testing, based on the nature of the HIV epidemic, cost-effectiveness, equity of access, and available resources.

Facility-based approaches to HTC include stand-alone clinics that provide voluntary HTC and the provision of HTC in health facilities (e.g., antenatal clinics, tuberculosis services, STI clinics and harm reduction programmes for injecting drug users). HTC in health facilities is voluntary, as all HTC services ought to be. It is generally distinguished from other forms of HTC, where it is often the client who seeks out HIV testing. Since HTC in health facilities is usually initiated by the health care provider, this is referred to also as provider-initiated testing and counselling (PITC). With the advent of rapid diagnostic tests for HIV, HIV testing is increasingly available in community-based settings (e.g. home, workplace, schools/colleges, outreach centres, religious institutions, and sports or entertainment events). Community-based HTC is generally aimed at increasing uptake of HIV testing and reaching populations that may be less likely to access health services or less likely to return for their test results. In June 2013, as part of the revised WHO guidance on the use of antiretroviral drugs for treating and preventing HIV, WHO recommends the adoption of community-based HTC with linkage to care and treatment for generalized epidemics and for key populations in all epidemics (3).

In April 2012, WHO issued guidance to increase the offering of HTC to couples and partners, with support for mutual disclosure (4). WHO also recommends the offering of ART to people living with HIV within serodiscordant couples, irrespective of CD4 count, to prevent transmission to a HIV negative partner. Also in 2013, WHO addressed the needs of adolescents, ages 10-19, by recommending HTC with linkages to prevention, treatment and care services for all adolescents in generalized epidemics and for adolescent key populations[1] in all settings, including low and concentrated epidemics (5).

These guidelines and the UNAIDS/WHO *Policy statement on HIV testing* (6) only briefly address issues related to HTC services for refugees, but does not cover other conflict-affected displaced populations. Therefore, this policy statement addresses the gaps that exists in ensuring appropriate access to voluntary HTC in a manner that mitigates stigma and discrimination related to HIV and AIDS, and protects the human rights of refugees, asylum-seekers, internally displaced persons (IDPs), and stateless persons. This includes upholding the standards of informed consent, confidentiality and non-discrimination (7).

1 Key populations were defined as populations at higher risk of contracting HIV: those populations disproportionately affected in all regions and epidemic types, specifically people who inject drugs (PWID), men who have sex with men (MSM), transgender people (TG), people in prisons and closed settings, and sex workers (SW).

All HIV testing services should always adhere to the "Five Cs": informed Consent, Confidentiality, Counselling, Correct test results, and Connection or linkage to prevention, care and treatment (8). It should also include sufficient and appropriate information and access to prevention services for individuals who test HIV negative or HIV positive. HTC services should also include referrals to medical and psychosocial support services for people diagnosed as HIV positive. Testing for HIV without informed consent is unethical and violates human rights.[2]

UNHCR, WHO and UNAIDS do not support compulsory or mandatory HIV testing of individuals on public health grounds or for any other purpose.

2 Mandatory testing of blood and blood products or organs for transplants is ethical and necessary.

II. Implications of the Guidance

The WHO *Service delivery approaches to HIV testing and counselling (HTC): A strategic policy framework* (2), UNAIDS/WHO *Policy statement on HIV testing* (6) and the *Guidance on Provider-Initiated HIV Testing and Counselling in Health Facilities* (1) provide useful frameworks and contain important principles and recommendations that should guide approaches to expanding access to HTC for all refugees, asylum-seekers, IDPs and stateless persons.

In particular, these documents:

- ❒ Strongly support efforts to scale-up HTC services, including community-based and facility-based testing and counselling in the context of universal access to HIV prevention, treatment, care and support services;

- ❒ Emphasise that, regardless of how HTC is delivered, it should always be voluntary. People need to receive sufficient and appropriate information that will enable them to give informed consent, receive a correct result, have confidentiality regarding their test results, and receive counselling;

- ❒ Mandatory testing is never sanctioned and is opposed by WHO, UNAIDS, and UNHCR;

- ❒ Recognise that emergency-affected populations may be more susceptible to compulsory or mandatory testing and additional means must be taken to ensure informed consent;

- ❒ Recognise that emergency-affected populations may be susceptible to discrimination, violence and abandonment, and other negative consequences upon disclosing their HIV positive status; particular efforts may be needed to protect their privacy and safety;

- ❒ Acknowledge that scaling-up of HTC services must be accompanied by:
  - o Informed consent
  - o Accurate test results
  - o Access to HIV prevention, care, treatment and support services;
  - o Referrals and support for effective linkage to services;
  - o Supportive social, policy and legal environment for people living with HIV and those most at risk of acquiring HIV infection.

Additional issues related to specific populations and circumstances are described below.

REFUGEES AND ASYLUM SEEKERS

The HIV status of an asylum-seeker should not constitute a bar to admission to the territory of the country of asylum or to accessing asylum procedures. The right to be protected against *refoulement* is the cornerstone of international refugee law. HIV status is not grounds for any exception to this principle (7). Moreover, an asylum claim should not be denied on the basis of HIV positive serostatus, nor should family reunification be denied.

There is no legal basis for imposing mandatory HIV testing of refugees and asylum seekers in international human rights law. Such testing violates the right to privacy, liberty and security of the person and may lead to a violation of the right to non-discrimination. For example, mandatory testing may be combined with unjust measures restricting the freedom of movement for people living with HIV. However, any restriction on the personal right to liberty, security or freedom of movement based, on the basis of a real or suspected HIV positive serostatus, is discriminatory and cannot be justified by public health concerns.

Examples of mandatory HIV testing amongst refugees and asylum seekers have been identified in a number of countries. This includes mandatory HIV testing, HIV testing without pre- or post-test counselling, nor protection of privacy for refugees who test for HIV. In some countries, this occurs even where national legislation clearly state that all HIV testing should be voluntary, conducted with informed consent, and provided with counselling and privacy. Furthermore, in some situations, refugees and asylum seekers do not have access to affordable HIV prevention and treatment services, (i.e., in some countries, refugees must pay for services that are free to citizens) or only have access to emergency or basic primary health care. It is unacceptable to provide HTC without providing information and access to prevention, care and treatment services.

UNHCR reiterates that a HIV positive serostatus should not adversely affect a person's right to seek asylum, to access protection or to avail oneself of durable solutions.

RESETTLEMENT

There are refugees living with HIV who are in need of resettlement to a third country, based on core protection grounds unrelated to their HIV status. Others might be in need of protection and resettlement due to human rights violations related to their HIV status. In both situations, UNHCR believes that HIV status should not adversely affect their right to access social protection and durable solutions. Resettlement countries generally require a medical examination including screening for communicable diseases, including hepatitis B, syphilis and tuberculosis. Additionally, some countries also require a HIV test as part of the medical examination (7).

Any HIV testing in the context of asylum or resettlement should be conducted under the conditions of the "Five Cs": *informed Consent, Confidentiality, Counselling, Correct test results, and Connection or linkage to prevention, care and treatment*, as stated above. UNHCR urges all resettlement countries to have HTC guidelines that call for international standards to be applied and to ensure these standards are monitored and enforced at the country-level.

UNHCR clearly states that HIV status should not adversely affect resettlement opportunities. Whereas States may exclude people, including those living with HIV, who are not self-supporting, if those people also have a legitimate need for asylum, UNHCR stresses that the need for asylum override any concerns about potential costs associated with treatment and care.

In order to address these issues, a Joint UNHCR/IOM/UNAIDS statement on *HIV Testing in the Context of Resettlement* (9) was produced in 2007 which:

- Notes the obligation of all parties concerned to meet international HTC standards.
- Calls resettlement countries to ensure resources and quality assurance systems are provided as part of HIV programmes, including prevention, care and treatment services.
- Calls for activities, including HIV testing and pre- and post- test counselling, for resettlement applicants to follow UNAIDS/ WHO HTC guidelines and UNHCR and IOM resettlement guidelines.

INTERNALLY DISPLACED PERSONS

IDPs should be able to access the same HIV testing and counselling and HIV prevention, treatment, care and support services as other citizens of the country. However, in the emergency phase of a disaster, there is often considerable disruption to services and ensuring continued access ART to avoid potential treatment interruptions is of critical importance.