Why the human rights approach to HIV/AIDS makes all the difference

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Millennium Development Goals (MDGs)

Goal 1: Eradicate extreme poverty and hunger
- Target 1 – Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day;
- Target 2 – Halve, between 1990 and 2015, the proportion of people who suffer from hunger.

Goal 6: Combat HIV/AIDS, malaria and other diseases
- Target 7 – Have halted by 2015 and begun to reverse the spread of HIV/AIDS.
Vulnerable groups:

- Women;
- Refugees and internally displaced persons;
- Children and adolescents;
- Persons with disabilities;
- People living in poverty;
- Sex workers;
- Minorities;
- Men who have sex with men;
- Indigenous people;
- Injecting drug users;
- Migrants;
- Prisoners.

Source: An Advocates Guide to the International Guidelines on HIV/AIDS and Human Rights, ICASO
Common factor:

...they are all discriminated against in their access to quality preventive and treatment services ...
Human rights treaties:

... are all concerned with the elimination of unfair discrimination ...

Commat in its work

... is concerned primarily with discrimination that adversely affects their health status, of which failure to protect them from exposure to HIV/AIDS is currently the most serious ...
How health institutions can deal with poverty and health within a framework of equity, ie non-discrimination and human rights concerns

- Institutionalising the systematic and routine application of equity and human rights perspectives to all health sector actions;
- Strengthening and extending the public health functions, other than health care, that create the conditions necessary for health;
- Implementing equitable health care financing, which should help reduce poverty while increasing access for the poor;
- Ensuring that health services respond effectively to the major causes of preventable ill-health among the poor and disadvantaged;
- Monitoring, advocating and taking action to address the potential health equity and human rights implications of policies in all sectors affecting health, not only the health sector.

Source: Braveman P & Gruskin S
Poverty, equity, human rights and health.
WHO Bulletin 2003, 81
International Human Rights Instruments:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of All Forms of Discrimination Against Women (Women’s Convention);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention or CAT);
- Convention on the Rights of the Child (CRC);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).
What do human rights offer?

• They guarantee specific rights to individuals;
• They establish state obligations corresponding to those rights;
• They create mechanisms to monitor states’ compliance with their obligations and allow individuals to see redress for violations of their rights.
Basic characteristics of human rights

Human rights:

- focus on the dignity and integrity of the human being;
- are guaranteed by international standards;
- are legally protected and define legal obligations;
- protect individuals and groups;
- apply to all individuals on the basis of equality and non-discrimination;
- place obligations on states and state actors;
- specify individual entitlements;
- cannot be arbitrarily waived or taken away;
- are universal, interdependent, indivisible and interrelated; and can and should be claimed.
The three types of governmental obligations

To respect human rights

duty of the state not to violate rights by its actions. How?

By refraining from interfering directly or indirectly with the enjoyment of human rights;
The three types of governmental obligations

To protect human rights

duty of the state to prevent human rights violations by others. How?
By preventing third parties from interfering with or violating human rights. This means taking the necessary measures to prevent individuals or groups from violating the rights of others;
The three types of governmental obligations

To fulfil human rights

* duty of the state to act in order to ensure that rights can be enjoyed. How?

By adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures to facilitate the full realization of human rights.

This means taking the necessary measures to ensure that each person has the opportunity to satisfy their entitlements, as guaranteed in human rights instruments.

The obligation to fulfil is often broken down to include the obligations to facilitate; to provide; and to promote.
As outlined in CESCR General Comment No 14, the basic components of government obligations arising from the right to health can be reduced to:

• *obligations regarding health care*, including health facilities, and those goods and services that are necessary for the treatment of illness and rehabilitation. This means ensuring timely and appropriate health care together with essential elements such as hospitals; clinics and other health-related facilities; and essential medicines;

• *obligations regarding the underlying determinants of health*, including safe and potable water; adequate sanitation; an adequate supply of safe food; adequate nutrition; adequate housing; healthy occupational and environmental conditions; and education and information about health, including sexual and reproductive health.
The two key principles that underline all health-related rights involve:

- **obligations to ensure non-discrimination** in access to health care and to the underlying determinants of health, as well as to the means and entitlements for their procurement;

- **obligations to ensure participation in decision making** – ensuring that people can participate in decision-making processes, including the design and implementation of policies that affect their health, at community, national and international levels.
Basic consequences of a human rights approach to health

• Increased accountability of governments for health;
• Increased attention to the health needs of the poor and otherwise vulnerable and disadvantaged groups, and to the correction of unacceptable imbalances between the health status of different population groups. (Governments are required to prevent, avoid and halt discrimination);
• More participatory approaches to the provision of health services and the determinants of health;
• Governments cease imposing retrogressive measures (*take-backs*) in health-related legislation and budgetary and administrative practices;
• Governments honour concrete obligations to provide immediately for the minimum standards that are essential to enjoyment of the right to health;
• Governments must accept that they have obligations to take progressive steps towards realizing fully the right to health and must immediately take steps to set the stage for progress. This includes the setting of goals and targets that will demonstrate progress.
Some examples of successful interventions:

- Lawyers Collective, HIV/AIDS Unit, India
- Supreme Court of Venezuela
- Philippines National AIDS Prevention and Control Act
- Caribbean Community
- MEXSIDA, Mexico
- AIDS Law Project/AIDS Legal Network, South Africa
- Via Libre, Peru
- AIDS Law Unit (Legal Assistance Centre) Namibia