

# Action for Universal Access 2010:

## Myths

## Realities



### HIV and Human Rights

#### Issue Statement

An effective response to HIV and AIDS must include ensuring the respect and protection of human rights, in keeping with international conventions and commitments.

#### Key Messages

- At the United Nations High Level Meeting on HIV/AIDS in 2006, world leaders reaffirmed that “the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV/AIDS pandemic.”
- Human rights violations make individuals more vulnerable to HIV transmission, by driving behaviour that places people at risk, underground; discrimination and human rights abuses against people living with HIV (PLHIV) and most at risk populations drive people away from prevention, treatment and support services.
- Health and human rights are inextricably linked; upholding human rights is imperative for good public health. Evidence demonstrates that violations of human rights result in adverse health outcomes.
- The global response to HIV must take into account all of the socio-economic, cultural, legal and political factors that contribute to human rights violations, and how these violations contribute to HIV transmission, and to reducing access to HIV prevention, treatment and care interventions.
- To respond effectively to HIV, we need to incorporate human rights elements and programmes, such as “know your rights” campaigns and legal audits into national plans and strategies that will help us evaluate progress on what we all agree is an “essential element in the global response to the AIDS pandemic.”

#### Background: Myths vs. Realities – The Road to Universal Access

This year is the 60th anniversary of the Universal Declaration of Human Rights, and it is also our final opportunity to review progress on HIV commitments made by the international community before the 2010 deadline. Now – more than ever – it is time to challenge the

myths and acknowledge the current realities of human rights in the response to HIV and AIDS.

- The 2001 and 2006 declarations make promoting and protecting human rights a priority in the response to HIV and AIDS; the 2006 declaration committed member states to intensifying “efforts to enact, strengthen or enforce ... legislation, regulations and other measure to eliminate **all** forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms **by PLHIV and members of vulnerable groups.**”
- The 2006 political declaration recognized that universal access cannot be achieved without meeting human rights commitments, because HIV continues to disproportionately affect vulnerable groups, which face pre-existing discrimination, legal persecution and other human rights violations; these groups include women and girls, people who use drugs, men who have sex with men (MSM), migrants, prisoners, sex workers and transgender people.
- Human rights abuses and discrimination – sometimes supported by government legislation or policies – facilitate the spread of HIV; abuses also “follow” the epidemic and exploit vulnerability, which is why gender inequality continues to make women and girls so vulnerable to HIV transmission.
- There is **no** evidence that laws, which criminalize HIV transmission or behaviour that place people at risk of HIV transmission, are effective at reducing HIV transmission; rather, these coercive measures increase the stigma associated with HIV, provide the public with a false sense of security and drive such behaviour underground.
- AIDS activists sometimes face beatings, imprisonment, or other coercive, state-sanctioned measures, when they demand that governments provide greater access to HIV services for PLHIV and other vulnerable groups. This violates both the spirit and letter of the 2001 and 2006 commitments, to which all member states are bound.
- Public health officials have repeatedly stated that there is no public health rationale for travel restrictions related to a person’s HIV status, yet many

countries retain such restrictions on travel and immigration, and a few countries, including the United States, ban entry of PLHIV.

- Despite the **rhetoric** on human rights in the 2001 and 2006 declarations, the **reality** is that current human rights issues are rarely integrated into HIV programmes; human rights protections are currently insufficient to achieve universal access goals.
- Quantitative indicators are important, but they must be supplemented by qualitative measures that address the socio-economic, legal and political environment for people living with HIV and most at risk populations:
  - The National Composite Policy Index and 2007 survey of UNAIDS Country Coordinators indicate that most countries have HIV policies or strategies that promote and protect human rights and almost all report a stable or improving environment in terms of the availability of HIV legal services (48 percent of respondent countries) and programmes designed to improve awareness of PLHIV and their rights (77 percent of respondent countries.)
  - Over 66 percent of countries still report existing legislation or policies as barriers to providing prevention, treatment and care to most at risk populations. Laws criminalizing sex work, homosexuality and drug use must be eliminated to achieve universal access targets, and law reforms aimed at increasing gender equity (such as those according women property rights) must be implemented.
- Many countries are unwilling to adopt effective, evidence-based interventions and programmes, be-

cause of ideological or moral opposition to particular behaviours or populations; the reality is that unless scientific evidence and best practices in public health triumph over personal morality and political expediency, we will never achieve universal access goals, and AIDS will ultimately win this battle.

- There is a lack of commitment to seeing human rights extended to all, as evidenced by the resistance to naming vulnerable groups in the text of the 2006 political declaration and the lack of effort at the national level to cost, budget, and implement national programs that would secure legal and human rights protections for people living with, affected by, or vulnerable to HIV and AIDS.

## **The Role of Civil Society**

Civil society has been the champion of human rights in the response to AIDS since the beginning of this epidemic. Because so many of us are either living with HIV or are from communities or populations, which have been disproportionately affected by this pandemic, we have a unique understanding of the importance of human rights in the global response to HIV, and we also believe that governments must be held accountable for their commitments.

Civil society has the expertise, understanding and commitment to work with government officials, legislators and other stakeholders to ensure that human rights violations related to HIV are addressed promptly, that policies and legislation that violate human rights are eliminated, and that HIV policies and programmes are developed that address human rights issues in a tangible and practical way.

## **Recommendations**

- HIV policies and programmes must be developed and implemented, consistent with existing commitments and legal obligations related to international human rights standards and law, including the 2001 Declaration of Commitment on HIV/AIDS, the 2006 Political Declaration on HIV/AIDS and Universal Declaration of Human Rights.
- HIV legislation, policies and programmes must be implemented to prohibit discrimination against people living with HIV, as well as discrimination on the basis of gender, sexual orientation/identity, occupation (including sex trade), location or drug use.
- HIV-related travel restrictions are a discriminatory practice with no public health rationale and must be abolished.
- Legislation that criminalizes HIV transmission or behaviour, which places people at risk, must be abolished.
- Government and UN agencies must monitor and regularly report on human rights violations related to HIV, as well as progress made in fulfilling existing commitments, to protect the human rights of PLHIV and other vulnerable groups.
- Member states must seek out civil society groups with relevant expertise to provide them with advice on the legislation, policies and practices that need to be eliminated, revised or established to meet their human rights obligations.

This paper was prepared under the auspices of the Civil Society Task Force for the 2008 UN High Level Meeting on AIDS.

### **For more information, contact:**

Kieran Daly: +1 416 275 8413 • kieranand@icaso.org

### **Media contact:**

Callie Long: +1 647 267 9813 • calliel@icaso.org