

The Framework for Dialogue between religious leaders and networks of people living with HIV

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Stigma and Discrimination in International and Regional Human Rights treaties

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Draft Talking points

- ✚ Highlight the universal principle of non-discrimination, as enshrined in all the UN Human Rights Treaties – however implementation continues to be a challenge
- ✚ Make the link between stigmatization and discrimination as a major obstacle in prevention, treatment, delivery of care and services and support (people are driven underground by fear)
- ✚ Address multiple and intersecting discrimination and need for holistic rights-based approach to HIV/AIDS prevention, testing and treatment and care
- ✚ Provide examples of a wide scale of rights of persons with HIV/AIDS (or presumed to have HIV) affected and exacerbated by stigmatization and discrimination in different contexts
- ✚ Showcase the UN Human Rights Treaty Bodies' concerns related to stigma and discrimination in respect of persons with HIV/AIDS or (those presumed to have HIV)
- ✚ Provide examples of various recommendations to States parties to address stigmatization and discrimination and effective HIV/AIDS prevention, delivery of care services and support at legal, policy and institutional level; make link to civil society organizations and others' role in combating stigma and discrimination against persons with HIV (possibly link to the role of faith based organisations/religious leaders could play)
- ✚ Offer examples of the UN Human Rights Treaty Bodies' response to COVID-19 pandemic (e.g. toolkit of treaty law perspectives and jurisprudence in the context of COVID-19 and CESCR statement on universal and equitable access to vaccines)

BACKGROUND INFORMATION FOR TALKING POINTS

- **UNIVERSAL PRINCIPLE ON NON-DISCRIMINATION**

All international human rights treaties provide for general **prohibition of discrimination of any kind** on grounds such as to race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, disability, or other status (for example CESCR in article 2, CRC in article 2, CCPR in article 2 and 26), or prohibition of discrimination of **specific groups or persons** who can be rendered vulnerable by the specific circumstances of their lives and thus **particularly susceptible to inter-sectional discrimination** (for example CEDAW in article 2, CRPD in article 5, CERD in article 1, etc.)

Stigmatization and discrimination are a major obstacle in prevention, treatment, delivery of care and support, because they are often anchored in legal, policy or institutional frameworks and in cultures and traditions. Such existing stigmatization further heightens the vulnerability of persons with HIV/AIDS, subjects them to multiple and intersection discrimination, which further hinders their access to services and full realization of their rights. In this connection, the rights of people living with HIV/AIDS often are violated because of their presumed or known HIV/AIDS status, causing them to suffer both the burden of the disease and the consequential loss of other rights.¹

- **MULTIPLE AND INTERSECTING DISCRIMINATION AND NEED FOR HOLISTIC RIGHTS-BASED APPROACH TO HIV PREVENTION, TESTING AND TREATMENT AND CARE**

Discrimination on health status

Several human rights treaty bodies have provided authoritative guidance to the non-discrimination principle, including on the ground of **health status**. For example, the general comment No. 20 on non-discrimination in ICESCR (E/C.12/GC/20, §33), highlights that the States parties should ensure that a **person's actual or perceived health status is not a barrier to realizing the rights under the Covenant**. In this regard, **the protection of public health is often cited by States as a basis for restricting human rights in the context of a person's health status**. However, many such **restrictions are discriminatory**, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum. Denial of access to health insurance on the basis of health status will amount to discrimination if no reasonable or objective criteria can justify such differentiation.

Intersecting discrimination

Addressing HIV/AIDS is perceived as mainly a medical or health problem. Of course, the right to **physical and mental health is central** in this context, including the access to appropriate health care, treatment and rehabilitation services, the right to preventive health care, sexual and reproductive health education and services. However, HIV/AIDS impacts so heavily on the lives of persons with presumed or known HIV status and concerns a **wide range of their rights** – ranging from civil and political to economic, social and cultural.

For example, the right to life, the right to privacy, right to access information and material aimed at the prevention, care and promotion of physical and mental health and wellbeing (through formal and informal channels), the right to liberty and security, the right to be protected from violence, including torture or other cruel, inhuman or degrading treatment or

¹ <https://www.ohchr.org/en/issues/hiv/pages/hivindex.aspx>

punishment, the right to an appropriate standard of living, right to social security, including social insurance, the right to education, the right to work, the right to redress, rehabilitation and social reintegration, to name a few.

Not only a wide spectrum of rights is affected. As mentioned above stigmatization and multiple discrimination affects persons with HIV/AIDS who in addition to the health status might be subjected to further discrimination for example due to their, sexual orientation or use of drugs, among other grounds. .

Examples of affected rights of persons with HIV/AIDS (or presumed to have HIV) exacerbated by stigmatization and discrimination in different contexts:

Strategies to address the epidemic are hampered in an environment where human rights are not respected. Stigmatization and discrimination may obstruct access to treatment and may affect persons' access to **employment, housing and other rights**. This, in turn, contributes to the vulnerability of others to infection, since HIV-related stigma and discrimination **discourages individuals infected with and affected by HIV from contacting health and social services**. The result is that those most needing information, education and counselling will not benefit even where such services are available.²

Stigma and discrimination against persons living with HIV/AIDS continue to persist in some countries, particularly in relation to persons in **same-sex relationships and transgender persons**, which not only prevents their **access to essential medicines and treatment** and their enjoyment of other economic, social and cultural rights, but risks undermining efforts to eradicate HIV.

Another example can be portrayed - **a child of a parent living with HIV/AIDS** often victims of stigma and discrimination as they too are **often assumed** to be infected. As a result of discrimination and stigma, they might be denied access to information, education, social services, they are often subject to abandonment by their families or communities, etc. or where living in remote and rural areas, their access to services might be less accessible, which renders them more vulnerable to infection.

For example, discrimination against and stigmatization of **vulnerable groups** such as injecting drug users, sex workers, and same-sex relationships drives these communities underground. This inhibits the ability to reach these populations with prevention efforts, and thus increases their vulnerability to HIV. Likewise, the failure to provide access to education and information about HIV, or treatment, and care and support services further fuels the epidemic.

Another example can be drawn from temporary migrant reception centres in one of a State party, visited by the SPT. The latter in its report found that gay man at the centre faced discrimination and were psychologically fragile and extremely vulnerable. The Subcommittee was particularly concerned about the case of an individual living with HIV who appeared to be suffering a great deal and who had been rejected by his own community.³

- **UN HUMAN RIGHTS TREATY BODIES RESPONSE TO STIGMA AND DISCRIMINATION AND EFFECTIVE HIV/AIDS PREVENTION, DELIVERY OF CARE SERVICES AND SUPPORT:**

² <https://www.ohchr.org/en/issues/hiv/pages/hivindex.aspx>

³ CAT/OP/ESP/1 (SPT 2019)

Guaranteeing a wide spectrum of the rights should be the guiding theme in the consideration of HIV/AIDS at all levels of prevention, treatment, care and support. The effective prevention, delivery of care services and support however might be often hindered by obstacles at structural, policy, institutional and cultural level, as noted by the Human Rights Treaty Bodies.

For example, inadequate legislative frameworks, which define HIV as **socially dangerous disease** and provide in the law for compulsory testing of persons believed to be HIV-infected may further exacerbate stigma and discrimination against persons living with HIV/AIDS.

At institutional level, for example the concerns are raised in respect to reports of stigmatization of and discrimination against persons with HIV/AIDS, including from doctors who have refused to provide treatment due to fear of contracting the disease.

At cultural level, the spotted obstacles often represent a denial of existing stigmatization and discrimination or even active prompting to harmful practices towards persons with HIV/AIDS, persisting negative attitudes, including taboos, patronizing attitudes, etc.

At structural level, poverty or lack of assigned financial, technical or human resources might play a role in hindering effective responses to HIV/AIDS prevention, delivery of care services and support and further deepen stigmatization and discrimination.

Human Rights Treaty Bodies tackle stigmatization and discrimination by making specific and tailor-made recommendations to the States parties. For example,

- *Recommendations at legislative level:*
 - to repeal or amend laws and policies that perpetuate the stigmatization and rejection of persons living with HIV/AIDS and adversely impact on any progress made in combating HIV (CESCR);
 - Repeal legislation, which criminalizes sexual acts between consenting adults of the same sex, with a view to reducing the stigmatization of the persons concerned (CCPR)
 - provide complaints mechanisms and effective and accessible remedies for all forms of discrimination and collect disaggregated data on complaints of discrimination and their outcomes (CCPR);
- *Recommendations at policy level:*
 - **adopt a comprehensive sexual and reproductive health policy for adolescents and introduce sexual and reproductive health education into the mandatory school curriculum**, with a focus on non-discrimination and sexual and reproductive rights, directing special attention to preventing adolescent pregnancy, high-risk sexual behaviour, HIV/AIDS and sexually transmitted infections and to the issues of sexual orientation and gender identity (CRC)
 - **awareness-raising campaigns** to combat stereotypes affecting persons and groups at risk of discrimination, such as persons living with HIV/AIDS and to promote understanding of the modes of transmission of HIV and tolerance towards persons living with HIV/AIDS among medical staff, employers and the population at large and measure the impact thereof (CESCR)
 - awareness-raising programme on the prevention and control of HIV/AIDS to women belonging to disadvantaged groups, particularly transgender women (CEDAW)

- Take concrete measures to **address campaigns of incitement to hatred against people** on the grounds of their sexual orientation and against those defending their rights, including partner organizations engaged in efforts to tackle HIV/AIDS (CCPR)
 - take all necessary measures to **ensure the appropriate access of persons living with HIV/AIDS to health care, employment and education** on an equal basis with others (CESCR)
 - take adequate measures to **prevent the spread of HIV/AIDS**, in particular among groups at risk and **in rural areas** (CESCR);
 - ensure full access to **education and health and social services** for children in disadvantaged or vulnerable situations, including children with disabilities, children in street situations, **children affected by HIV/AIDS** (CRC)
- *Recommendations at institutional level:*
- establishing adequate training programmes for medical personnel at different levels in order to combat stereotyping and stigmatization, and provide them with the knowledge and tools necessary to offer adequate care to persons living with HIV/AIDS, including the protection of their privacy (CESCR)
- **COVID-19 AND THE STATEMENT ON UNIVERSAL AND EQUITABLE ACCESS TO VACCINES**

The challenges unfolding with the COVID-19 pandemic impacted the whole spectrum of human rights. This includes abuse of derogations, protection of people in vulnerable or marginalized circumstances, including persons with HIV, in particular the rights to non-discrimination; right to life, access to appropriate information, the enjoyment of the highest attainable standard of health, etc. In the midst of a sanitary crisis, as the one generated by the spread of COVID-19, it is essential to ensure the enjoyment of all human rights, without discrimination. As the High Commissioner has stated, “an emergency situation is not a blank check to disregard human rights obligations”.⁴ More than ever, States must uphold the obligations that they are legally bound to meet under the treaties they have ratified.

States parties should ensure access to the mentioned rights for all, including those in situations of particular vulnerability, such as persons with disabilities, persons living in poverty, persons with underlying health conditions like HIV/AIDS, and persons deprived of their liberty, to name a few.

To respond to the current situation, the UN HRTB published a toolkit **of treaty law perspectives and jurisprudence in the context of COVID-19**. This toolkit takes treaty law perspectives and jurisprudence and translates them into an operational contribution to strengthen the human rights-based approach to both UN and States’ response to the COVID-19 pandemic.

In addition, on 27 November 2020, **CESCR** adopted a statement on **universal and equitable access to vaccines**, which refers to principle of non-discrimination in access to health services in general terms. Even though, HIV/AIDS is not specifically addressed, the universality principle of non-discrimination extends to all persons, including those affected and infected by HIV.⁵

⁴ Statement by the UN High Commissioner for Human Rights at the informal briefing to the Human Rights Council on 9 April 2020

⁵ https://www.ohchr.org/Documents/HRBodies/CESCR/E_C_12_2020_2_AUV.docx