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THE HUMAN RIGHTS BIMONTHLY

# COMBAT LAW

SPECIAL ISSUE

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# SHIV D I S AND THE LAW

COMBATING DEPRIVATION, DISCRIMINATION, PREJUDICE

recognise



# Displaced and Infected

The global response to HIV/AIDS must recognise the rights of refugees, writes **Ann Burton**

**I**n today's conflict-affected world, this situation is made worse by the fact that the number of individuals of concern to UNHCR is constantly increasing. At the same time, in 2004, the total number of people worldwide living with HIV reached its highest level ever, approximately 39.4 million people. Providing health-care services to all of these groups is a daunting task—a task that becomes even more difficult in relation to providing HIV-related care and services.

## Deprived of Health Services

MANY countries are already overburdened by the impact of HIV/AIDS, and are often unable or unwilling to provide these populations with the HIV-related services they require. This places many refugees in a unique situation. They are no longer guaranteed the protection of their country of origin, they often do not have the assistance of the country of asylum, and they go without the HIV-related services that they need and to which they are entitled under international human rights instruments. This failure to provide HIV prevention and care to refugees not only undermines effective HIV prevention and care efforts, it also hinders effective HIV prevention and care for host country populations. Since refugee populations now remain on average in their host country for 17 years, the implications for both refugee and host populations are very serious.

New epidemiologic data has shed light on the complex relationship between HIV, conflict and displacement. It is a misperception that the HIV prevalence among refugees is always higher than that among their surrounding local host country populations; in fact, evidence suggests that the opposite is more likely. The well-documented factors that increase the vulnerability to HIV among conflict-affected and forcibly displaced populations must be considered alongside other key factors, such as reduced mobility and accessibility of the population that may work to decrease HIV transmission. HIV prevalence levels among the refugees and host communities also influence HIV transmission, as do the levels of interaction between the two communities and their exposure to violence. Therefore, it is

essential to combat the stereotypical and incorrect belief that 'refugees bring AIDS with them to local communities', which may lead to discriminatory practices. The context-specific circumstances in which refugees and other persons of concern to UNHCR live must be better understood and used to guide HIV programmes.

## Rights Based Approach

HUMAN rights promotion and protection are central to the response to HIV/AIDS. Denying the rights of people living with HIV, and those affected by the epidemic, imperils their well-being and life. The United Nations General Assembly Special Session (UNGASS) on HIV/AIDS adopted its Declaration of Commitment in June 2001, which states, *inter alia*, that 'populations destabilised by armed conflict...including refugees, internally displaced persons, and in particular, women and children, are at increased risk of exposure to HIV infection'. Mitigation, prevention, care and treatment of HIV among refugees and other persons of concern to UNHCR are essential components of UNHCR's protection mandate. The UNGASS Declaration of Commitment recognizes that the global response to HIV/AIDS must be grounded in respect of human rights. It reflects global commitment to ensure that all measures are in place to eliminate all forms of HIV/AIDS-related discrimination, ensure the full enjoyment of all human rights of peoples living with, or made vulnerable by, HIV/AIDS, and advance the rights and social statuses of women. In accordance with UNGASS and the international guidelines on HIV/AIDS and Human Rights, UNHCR adopts a rights-based approach in HIV policies and programmes based upon fundamental principles of human rights law and international obligations. UNHCR's policy is further informed by the expertise of UN specialised agencies.

The linkage between the protection of refugee and human rights and effective HIV programmes is apparent as people will not seek HIV-related counselling, testing, treatment and care if lack of confidentiality, discrimination, risk of refoulement, restrictions on freedom of movement or other negative consequences exist. In addition, combating stigma or discrimination of any

nature against refugees and others of concern is fundamental to UNHCR's protection mandate. UNHCR, its partners, and host governments must therefore work together to ensure that refugees are not subject to any discriminatory practices based on real or perceived HIV status, and that both refugees and host communities have access to quality confidential services.

### Rethinking Required Policy

ADDRESSING HIV-related needs in the context of refugee situations requires change in the thinking of the authorities in many countries of asylum. It is impossible to determine the actual length of time that refugees will remain in the host country. However, it is critical that during this time both refugees and surrounding host populations receive all necessary HIV-related services, including those that require long-term funding and planning. Failure to provide these interventions could be very harmful to both refugees and the surrounding host populations. In order to meet the HIV-related needs in the context of refugee situations, UNHCR and the Joint United Nations Program on HIV/AIDS (UNAIDS) advocate the inclusion of refugees into national health and HIV programmes and to ensure that HIV policies and interventions for refugees are coordinated, mainstreamed and integrated with those at the international, regional, sub-regional, country and organisational levels. This can provide benefits to both refugee and host country populations. Through integration, funds that would have normally gone into creating new health and HIV services can be used to improve the local public health system. This will generate more effective, equitable and sustainable frameworks to help countries better address both the needs of refugees and their own citizens, whether they are displaced themselves or hosting refugees in their communities.



### India on Right Track

IN India the National HIV/AIDS Strategic Plan is currently being revised. UNHCR has actively participated in this process and has been advocating for an inclusive policy encompassing all residents in India regardless of citizenship (including refugees). This is in line with the best practices outlined above. Despite the current absence of a written inclusive policy, refugees in India have been able to access HIV/AIDS services, including life saving antiretrovirals through government facilities. The Government of India is to be commended for this approach.

In summary, UNHCR requests and encourages donors, countries, NGOs and other partners to:

- 1 Respect basic HIV and human rights principles. These include:
  - No mandatory testing for asylum seekers, refugees, those who wish to resettle in third countries, and other persons of concern to UNHCR.
  - No refoulement, isolation or restriction of movement for asylum seekers, refugees and other persons of concern to UNHCR.
- 2 Include refugees and other potentially vulnerable groups in the efforts to combat and treat HIV/AIDS; this includes strategic plans, proposals as well as access to ART.

### IN 2005

THE GLOBAL NUMBER OF REFUGEES AND DISPLACED PEOPLE ROSE BY 13% TO 19.2 MILLION PEOPLE. THESE GROUPS ARE CALLED "PEOPLE OF CONCERN" TO THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). THE GROUPS CAN INCLUDE REFUGEES, CIVILIANS WHO HAVE RETURNED HOME BUT STILL NEED HELP, PERSONS DISPLACED INTERNALLY WITHIN THEIR OWN COUNTRIES, ASYLUM SEEKERS AND STATELESS PEOPLE. THESE GROUPS ARE USUALLY TORN FROM THEIR LIVES AND FAMILIES; THEIR COMMUNITY SOCIAL STRUCTURES DESTROYED, AND THEIR ABILITY TO COPE SEVERELY COMPROMISED. A VARIETY OF COMPLEX FACTORS WITHIN REFUGEE CAMPS OR DISPLACEMENT SETTLEMENTS MAKE THE PEOPLE LIVING THERE ENORMOUSLY VULNERABLE TO HIV INFECTION.

- Particular emphasis on programs that address the needs of women and children should be made.
- 3 Integrate HIV/AIDS programs for refugees and surrounding host populations.

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