



Protecting HIV-positive women's human rights: recommendations for the United States National HIV/AIDS Strategy

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Abstract: *To bring the United States in line with prevailing human rights standards, its National HIV/AIDS Strategy will need to explicitly commit to a human rights framework when developing programmes and policies that serve the unaddressed needs of women. This paper focuses on two aspects of the institutionalized mistreatment of people with HIV: 1) the criminalization of their consensual sexual conduct; and 2) the elimination of informed and documented consensual participation in their diagnosis through reliance on mandatory and opt-out testing policies. More than half of US states have HIV-specific laws criminalizing the consensual sexual activity of people with HIV, regardless of whether transmission occurs. Many of these laws hinge prosecution on the failure of HIV-positive people to disclose their HIV status to a sexual partner. The Obama Administration should explore administrative and legislative incentives to eliminate these laws and prosecutions, and target a portion of prevention funding for anti-stigma training. Testing policies should be reconsidered to remove opt-out and/or mandatory HIV testing as a condition for receipt of federal funding; incentives should encourage states to adopt local policies mandating counseling; and voluntary HIV testing should be offered regardless of the provider's undocumented perception of an individual's risk.* ©2009 Reproductive Health Matters. All rights reserved.

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AT this writing the United States has no National HIV/AIDS Policy. President Barack Obama has stated that he is committed to developing a National HIV/AIDS Strategy during his presidential term and has tasked the Office of National AIDS Policy with creating a National HIV/AIDS Strategy that reduces stigma, reduces HIV incidence, increases access to care and optimizes health outcomes, and reduces HIV-related health disparities.*

*See www.whitehouse.gov/administration/eop/onap/; www.whitehouse.gov/the_press_office/President-Obama-Selects-Health-Policy-Expert-to-Head-Office-of-National-AIDS-Polic/ and www.windycitymediagroup.com/gay/lesbian/news/ARTICLE.php?AID=21327.

In April 2009, the Ford Foundation held a Women and HIV Strategic Advocacy Convening for funded organizations working on issues related to human rights, women, and HIV/AIDS. Representatives of these organizations agreed on a series of policy recommendation priorities to guide the new Office of National AIDS Policy (ONAP) and related agencies in their efforts to achieve better outcomes for women affected by HIV.

The recommendations in the resulting publication focus on reducing stigma and discrimination, and improving the recognition of HIV-affected women's human rights. They were developed to inform both the broader health care reform agenda in the United States (US),

and the development of a US National HIV/AIDS Strategy.

Through our work in the HIV/AIDS community, as HIV-positive women and their allies, we believe that respecting the human rights of HIV-positive people is key to alleviating stigma and improving HIV/AIDS prevention and care. At direct odds with this principle are the significant number of states that have adopted laws that criminalize HIV exposure, and the recent explosion of cases in which HIV-positive people are being prosecuted and imprisoned for consensual sex, in most cases without having transmitted HIV to their partners. Not only do these policies and practices perpetuate HIV stigma and place the onus of HIV prevention exclusively on one partner, they also dangerously shift attention away from the key to HIV prevention – comprehensive sex education, access to information, frank discussion about ways to sexual health and prevention, and recognition of the responsibility of all adult consensual sexual partners for their own sexual health, demonstrated by safer sex practices, regardless of what is known or believed about any individual partner's status.

The women we work with face numerous structural and societal challenges in their lives that affect the health care and services available to them. We hope that these recommendations open the way to a broader dialogue about improving the lives of women living with and affected by HIV by eliminating all forms of discrimination, and by prioritizing human rights in all policy and legal decisions.

Introduction

International conventions recognize eight basic human rights: civil, political, economic, social, cultural, environmental, developmental, and sexual. All of these rights play a role in the just and humane treatment of people who, as a consequence of their vulnerability to HIV, typically are both marginalized and in need of unique services and accommodation. Laws and policies developed to deal with those affected by HIV/AIDS must incorporate this human rights framework if they intend to address the larger issues that drive and perpetuate the HIV/AIDS epidemic in the United States. Incorporating a human rights framework into national AIDS policy,

and specifically the National HIV/AIDS Strategy currently under development, is a critical part of ending the HIV/AIDS epidemic. Addressing government-sanctioned stigma and discrimination that implicitly endorses the isolation and mistreatment of people living with HIV effectively closes doors to their employment, housing, health care and access to other needed services. Fulfilling the government's human rights obligations to its citizens is, therefore, not only a legal obligation but also a public health necessity and long overdue.

To bring the United States in line with prevailing human rights standards, a National HIV/AIDS Strategy will need to make an explicit commitment to a human rights framework for programs, policies, and projects intended to serve the needs of women and others living with HIV and AIDS, starting with their right to access the highest standard of care and to autonomy in decisions related to their diagnosis and treatment. Structural and individual racism and sexism that occurs in the way health care is provided must be addressed, starting with mandated health care provider education and training, in order to bridge the persistent disparities in diagnosis, treatment, and outcomes for minorities of all economic levels and for low-income people. Health care must be provided in an ethical and culturally-appropriate manner that treats patients as partners in their care and recognizes their fundamental right to choose or refuse recommended health care.

In this context, we focus here on two important aspects of the institutionalized mistreatment of people with HIV: the criminalization of their consensual sexual conduct, and the elimination of informed and documented consensual participation in their diagnosis through reliance on mandatory and opt-out testing policies. While there is much work to do before people affected by HIV in this country are treated as equal citizens worthy of the highest standard of ethical medical care, we choose these issues and offer recommendations to address them below because they have been relegated to the margins of most US HIV/AIDS policy advocacy.

Federal, state and local laws and policies that exclude, marginalize and even criminalize people living with HIV/AIDS must be rejected at all levels. In order for our country to meet its basic obligations to its people, it is necessary that people living with HIV/AIDS be treated with dignity,

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