Factsheet: Human Rights & the Three Diseases

What are human rights and how do they relate to public health?

Human rights "derive from the dignity and worth inherent in the human person"[i]. Human rights are guaranteed by international standards, including legally-binding treaties; are legally protected; focus on the dignity of the human being; oblige states and state actors; cannot be waived or taken away; and are interdependent, interrelated, and universal[ii].

Human rights and public health share the goals of promoting the overall health and well-being of individuals. Human rights that are particularly important for public health responses include the right to life; right to the highest attainable standard of health; the right to non-discrimination and equality; the right to liberty and security of the person; the right to privacy; the right to seek, receive and impart information; the right to be free from torture and cruel, inhumane or degrading treatment, and the right to self-determination, among many others.

Why is it important to promote human rights in responses to the three diseases?

Because protecting and promoting human rights strengthens HIV, TB and malaria responses in the following ways:

Service Access: Ensuring ***effectiveness*** of programming and that resources reach the right people

Promoting and protecting human rights can help overcome barriers to HIV, TB and malaria service access such as stigma, discrimination, criminalization, violence and social marginalization, as well as contribute to improvements in other social and structural determinants of health that can preclude health service access such as economic assets, education, water and food security. For example:

- Countries that enforce protective laws ensuring non-discrimination for key populations have achieved greater coverage of HIV prevention services[iii]. Conversely, punitive laws have been shown to have negative effects on access to HIV services[iv]. In Asia and the Pacific, punitive legal environments relating to men who have sex with men and transgender people have been associated with restricted condom distribution, condom confiscation by police as evidence of illegal conduct, censoring of HIV and STI prevention education materials and harassment or detention of outreach workers[v]. The criminalization of sex work in Botswana, Namibia and South Africa has been found to leave sex workers vulnerable to sexual and physical abuse as well as extortion from law enforcement officers – rendering sex workers particularly vulnerable to HIV[vi]. Common forms of police harassment of drug users in Russia have been shown to increase direct HIV risks - through increased unsafe needle-syringe practices and increased unsafe sex[vii].
- In addressing multidrug-resistant and extensively drug-resistant tuberculosis (MDR- and XDR-TB), programmes in Lesotho and other countries have demonstrated that community-based treatment models that respect rights can provide clinically effective and cost-effective care. In contrast, compulsory isolation fails to protect the rights of individuals, fuels stigma and discrimination, potentially worsens patients' health status, and is deemed unnecessary from a public health standpoint[viii].
- Isoniazid preventive therapy (IPT) is effective at reducing the risk of TB in people living with HIV by over 60%[ix], yet less than 1% of all people living with HIV received IPT in 2009[x]. Such failures to ensure access to IPT for those who need it can reduce the effectiveness of both HIV and TB responses.
- In India, a study found that the use of bed nets to prevent malaria use was 16 times more likely when a woman in the house had adequate decision-making power[xi].
- Tailoring malaria programmes to meet the needs of the poorest quintile has resulted in improved access to treated bed nets across the population as well as increased access for those most in need[xii]. Research has also shown that a variety of social and structural factors, such as gender inequality and systemic food shortage, contribute to increased vulnerability to malaria infection and negative impact. Responses that recognize and address these factors are more effective in reducing the total health burden of malaria[xiii].

Service Uptake: Increasing ***efficiency*** of programming by improving service quality and demand for services

Promoting and protecting human rights creates optimal conditions for the uptake of essential HIV, TB and malaria prevention, treatment and care services. For HIV and TB services, people will be more likely to use services if they are confident that they will not face discrimination, their confidentiality and informed consent will be respected, they will have access to appropriate information and counseling and will not be coerced into accepting services. For example:

- Inadequate detention conditions including lengthy pre-trial detention periods combined with high rates of incarceration have been linked to higher TB prevalence at the population level[xiv]. A study in Zambia highlighted that human rights protections against torture and cruel, inhumane or degrading treatment, and access to justice system, are essential to curbing the spread of HIV and TB in prisons and in the general community[xv].
- A recent model estimates that up to 55% of cases of mother to child transmission in settings where prevention of mother to child transmission services are readily available may be caused by stigma and discrimination. The same model estimates that effective stigma and discrimination programmes could result in more mothers using HIV services and adhering to treatment, potentially reducing mother to child transmission by as much as one-third is settings where stigma is prevalent[xvi].
- The potential impact of policies that promote the health and recognise the rights of people who use drugs on HIV epidemics is illustrated by mathematical modeling which shows that during 2010-15, HIV prevalence could be reduced by 41% in Odessa (Ukraine), 43% in Karachi (Pakistan), and 30% in Nairobi (Kenya) through a 60% reduction of the unmet need of opioid substitution, needle exchange, and antiretroviral therapy[xvii].
- Compulsory drug treatment centres violate a range of rights including the right to privacy (consent to medical treatment), non-discrimination, to be free from torture, cruel, inhuman and degrading treatment, and the right to the highest attainable standard of health. With reported relapse rates of over 90%, these centres represent an inefficient response to drug dependence, as well as to the heightened risk of HIV infection amongst people who use drugs and those in closed settings[xviii].

Individual Agency: Ensuring ***sustainability*** of programmes by empowering individuals to be proactive in taking care of their health needs

Applying human rights based approaches can help minimize the impact of harmful social norms and human rights violations. A focus on human rights can empower individuals and communities to ensure that national responses address their specific HIV, TB or malaria needs and can lead to improved access to HIV, TB and malaria prevention and treatment through: (1) addressing the social and structural determinants of health and (2) supporting effective community interventions which improve access for the most vulnerable and marginalized populations. For example:

- In Uganda, a policy of decentralization in the health sector since 2005 has created Village Health Teams as part of the national administration for delivery of health services. These Health Teams effectively ensure that local needs are identified and addressed, and are providing the crucial grass-roots delivery mechanisms for community interventions in relation to malaria and overall health promotion[xix]. Other studies have also highlighted the benefits of rights and community-based interventions to addressing malaria[xx].
- Protecting the rights of women living with and affected by HIV—to freedom from violence, to equal access to property and inheritance, to equality in marriage and divorce, and to access to information and education—can empower them to avoid HIV risks, safely disclose their HIV status, adhere to treatment, and discuss HIV with their children[xxi]. Several studies highlight the role of gender inequality and gender-based violence in increasing vulnerability to HIV infection and other conditions and limiting access to health care services and information[xxii]. There is also evidence that respecting the right of HIV-positive women to inherit equally mitigates negative economic consequences and reduces risky behavior such as unsafe sex.[xxiii]
- Community-based treatment programmes including treatment literacy have been shown to be critical to ensure the full realization of the benefits of HIV and TB treatment, to decreasing stigma, and to the success of HIV and TB prevention and treatment programmes generally[xxiv,xxv].
- A survey in Malawi showed that by realizing socio-economic rights, for example through improved housing, the risk of malaria, respiratory infection or gastrointestinal illness was reduced by 44% in children under 5[xxvi].
- Key population participation on CCMs has been credited with improved funding flows to marginalized populations and improved government attitudes. However, criminalization of sex work and homosexuality and the denial of the human rights of transgender people remains a barrier to participation of MSM, transgender people and sex workers in CCM processes[xxvii].

The Global Fund is already actively promoting human rights in the context of the three diseases through its programmes, processes and advocacy[xxviii].

The Global Fund can strengthen these efforts by:

1. Increasing investment in **programmes** that protect and fulfill human rights, including programmes such as legal aid and empowerment, law reform and human rights training that address underlying vulnerabilities and non-medical dimensions of HIV/AIDS, TB and malaria;
2. Ensuring that CCMs, the TRP and other governing **processes** actively support human rights-based approaches and ensure that Global Fund resources are directed towards those who need them most; and
3. Increasing **advocacy** in countries where human rights violations threaten to undermine the Global Fund's investments and progress in other areas of health and development. This includes ensuring a favorable human-rights environment for Global Fund investments, monitoring the risks that Global Fund-supported programmes might undermine human rights, and, where appropriate, taking steps where such risks may jeopardize the Global Fund's programming or reputation.

Key questions the Global Fund and partners should consider

Human rights and the Global Fund's business model

1. How should minimum standards for protection of human rights in Global Fund grants be integrated into its funding model? What are the minimum standards?
2. At what stages in the grant cycle (proposal development, TRP criteria and review, grant negotiation, implementation, periodic/Phase 2 review) should the Global Fund prioritize human rights principles and how?

Programming to address human rights-related barriers to services

3. What are the obstacles to including programmes that address human rights-related barriers to services in proposals to address HIV, TB and Malaria?
4. How can the Global Fund encourage countries to include human rights programmes in proposals?

Avoiding potential human rights violations

5. What mechanisms should be used to effectively identify the risk of potential human rights violations?
6. How should the Global Fund respond to the risk of potential human rights violations in Global Fund-supported programmes? (Suggestions include: conditions precedent, additional safeguards, management actions, partial disbursements, investigations, private and public advocacy, suspension of funding).
7. If the Global Fund were to consider ceasing support of programmes that violate human rights, what system/s could be put in place to protect the individuals in those settings from further discrimination and reduced access to services?

Participation of key populations

8. What mechanisms can be put in place to ensure that the new CCM Guidelines' requirements, standards and recommendations are implemented vis-à-vis the role of key populations?
9. What mechanisms should be put in place to ensure safe and meaningful participation of marginalized and criminalized populations across the Global Fund grant life cycle?

Accountability and oversight

10. How can the Global Fund ensure that the equity analysis required from CCMs from Round 11 onwards captures and addresses the needs of key populations?

Partnerships

11. What role should Global Fund partners play in identifying potential human rights violations within Global Fund-supported programmes?

[i] Vienna Declaration on Human Rights, paragraph 2.
ii World Health Organization. *25 Questions and Answers on Health and Human Right*s. Geneva: 2002.
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[iv] A recent review of HIV in Central Asia concluded that urgently-needed improvement in 'coverage of injecting drug users, female sex workers and clients, and migrants with prevention services… is impeded by legislative barriers to access, the stigma around behaviours linked with HIV, and by a lack of strong political commitment towards serving the needs of these populations'. Thorne, C., Ferencic, N., Malyuta, R., Mimica, J., Niemiec, T., "Central Asia: Hotspot in the Worldwide HIV Epidemic", *The Lancet*, Vol 10, July 2010, P486.
v UNDP and APCOM (2010), *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for action.* Thailand: UNDP.
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xvi UNAIDS (2010), Ensuring Non-discrimination on Responses to HIV.
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xx http://www.unicef.org/rightsresults/index_23693.html
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