

# The Global Commission on HIV and the Law: Women Living with HIV

*HIV and the Law: Risks, Rights and Health* is a July 2012 report by the Global Commission on HIV and the Law. The Commission was an independent body of experts and respected statespersons established by United Nations Development Programme to address the ways in which human rights abuses, stigma, and discrimination fuel the global HIV epidemic. The Commission set out to examine where and how these abuses were occurring and to consider how legal reforms—through new legislation, better enforcement of existing law, and court decisions—could slow the spread of HIV and reduce its impact.

The Commission conducted an eighteen month process of research, consultation, analysis, discussion, and decision-making. They held regional dialogues in seven global regions and collected **written and oral submissions from over 1000 individuals and organizations**, more than 700 of whom included people living with, or directly affected by HIV and AIDS.

*The report is an important tool for civil society groups, particularly those working with populations at high risk of HIV. This briefing paper highlights the report's findings about people living with HIV. It offers information and language that may be useful for advocacy, campaigning, and lobbying.*

## Key Report Findings Regarding Women Living with and Affected by HIV

Half of those living with HIV in the world are female. In Africa the proportion is higher at 60 percent (page 62).

- ▶ HIV rates among younger women and girls in the Caribbean and sub-Saharan Africa is double that of their male peers (page 62). “Almost all (98 percent) of HIV-positive women live in developing countries and of the remaining 2 percent, who live in developed countries, the majority are poor” (page 62). Globally, HIV is the leading cause of death among women between 15 and 44. Maternal mortality (death during pregnancy and childbirth) is the second leading cause and these overlap significantly, with 20 percent of maternal deaths “attributable to HIV” (page 62).

Profound gender inequality and gender-based violence “undermine women’s and girls’ ability to protect themselves from HIV infection and cope with its consequences” (page 8).

- ▶ Along with violence, economic dependency is a key dimension of this inequality. Women’s economic dependence gives husbands control over their lives, and women are not in a position to enforce either contraception or marital fidelity (page 67).

Economic dependence is maintained by various practices. This includes the denial of both education to girls and also paid employment to women (page 63, 71); discrimination in women’s access to and control over land, housing, and property (page 66); “property grabbing,” or the taking of a widow’s house and belongings by her husband’s relative; “widow inheritance,” where a widow herself is “inherited” by her husband’s family (page 67); and the lack of contraception, which denies a woman control over the number and spacing in age of her children (page 65).

Because of fear, the risk of abandonment, and violence, women endure loss of autonomy, and avoid both disclosing of their HIV status and seeking treatment (pages 23, 65). Additionally, as access to property for many women comes from the men in their lives, divorce and widowhood can result in a loss of economic autonomy and greater possibility of poverty. This makes women particularly vulnerable to HIV (pages 66, 69).

Women’s HIV risk is also affected by plural legal systems inherited from the colonial era, in which customary or religious laws govern family and private life (page 63). While these laws must generally comply with constitutional protections, “clawback clauses” in many African countries allow customary or religious laws to supersede. This encourages practices like “sexual cleansing” of widows (or forced intercourse with a “cleanser”), female genital mutilation (page 68), and highly discriminatory and sexist regulations around divorce, rape, assault, child custody, and more (pages 67–68).

Still other practices that increase female HIV risk are prevalent across many societies. These include inter-generational sex between younger female and older male partners, child sexual abuse that leads to behavior among adult survivors, such as unprotected sex and having multiple sexual partners, that increases HIV risk (page 65), and women globally learning not to insist on male condom use for fear of “violence, abuse or abandonment by their husbands or partners” (pages 23, 67).

“Violence against women and girls increases their vulnerability to HIV” (page 65) and although “almost every nation criminalizes it, the rape of women continues at alarming levels” (page 64).

- ▶ Research shows that men who engage in violence (including sexual violence) and infidelity tend to have partners with increased HIV risk (pages 64–65). Marital rape is not prosecuted in many countries (page 64) and reports of rape by police of-

ficers or other officials are often dismissed (page 65). Rape as a weapon of military conflict is also prevalent (page 65). “Even where many forms of sexual violence are interdicted, the laws may be casually enforced or not enforced at all” (page 64).

Laws that appear to protect women can actually increase their vulnerability by criminalizing or discriminating against them.

- ▶ Laws criminalizing HIV exposure are often enacted in the belief that they will protect women (especially monogamous wives) from being infected by an HIV positive partner. But these laws in turn criminalize women living with HIV should they become pregnant or breastfeed a baby (pages 23, 66). They also **decrease people’s incentive** to be tested for HIV. Laws allowing discrimination against migrants—such as restrictions on entry, residence, and stay—punish women who migrate, or who await the return of a migrant partner traveling to support the family (page 59). In addition, the “war on drugs” and other policies that increase incarceration rates also raise HIV risk for women because prisoner’s global HIV rates “are estimated to be twice to 50 times those of general adult populations” (page 55). This also endangers those women awaiting the release of an incarcerated partner. Finally, sex workers (most of whom are women) are “approximately eight times more likely to be infected with HIV than other adults” (page 38).

Access to integrated (co-located or otherwise linked) HIV and reproductive health services can help reduce both HIV risk and maternal mortality, while **improving care to women living with HIV, and their families.**

- ▶ Despite this, “the reproductive medical clinic is not a welcoming place for many HIV-positive women” (page 65). Documentation shows that clinics have performed forced sterilizations, abortions, and involuntary HIV testing; have denied sexual and reproductive healthcare; and breached patient confidentiality (page 65). As stated above,

laws that criminalize HIV exposure and transmission scare women away from prenatal care and HIV testing because they can be prosecuted for becoming pregnant while HIV positive.

## Actions the Report Recommends (page 69)

To respect human rights and create effective, sustainable national HIV responses, countries must:

- ▶ Pass and enforce laws against all forms of rape, assault, abuse, and other domestic and gender-based violence.
- ▶ Take judicial and legislative action to remove immunity from prosecution of perpetrators of domestic and gender-based violence (including immunity due to marital status) and prosecute them fully.
- ▶ Create and fund comprehensive strategies to eliminate violence through prevention, investigation, and timely punishment. Guarantee survivors access to legal, social, and health services including post-exposure prophylaxis, protective orders, and more.
- ▶ Take measures to stop forced and coerced abortion and sterilization, as well other acts of violence in health care settings. Remove barriers to sexual and reproductive health care services. Ensure women’s access to contraception and the information and support they need to make informed decisions about when, whether, and how they have children.
- ▶ Require thorough training of health care workers to end stigmatizing attitudes, ensure compliance with informed consent and confidentiality requirements, and enable patients to use complaint and redress mechanisms.
- ▶ Reform property and inheritance laws to ensure women’s access to economic resources including property and credit. Create and enforce legal monitoring of property division during separa-

tion and divorce, and following death, to establish and uphold spousal co-ownership of all family property.

- ▶ Enact and enforce laws prohibiting child marriage.
- ▶ Prohibit religious and customary legal systems from discriminating against women and girls, and ensure equal property and inheritance rights. Ban religious and customary practices that involve violence against women and children and exacerbate HIV risk—such as widow inheritance, “widow cleansing,” female genital mutilation, and child marriage.
- ▶ Provide social protection—like labor laws, and social and health services—to women living with HIV, those widowed by HIV, and those who are primary caregivers in HIV-affected households. Ensure that labor laws, social services, and health services both acknowledge and support these caregivers.

## How You Can Use the Report

This report provides concrete precedents and examples you can use as evidence when advocating to government and other influential organizations, the media, civil society organizations, and the general public. Because of the report’s legitimacy as an official UN document, these case studies and the statements made about them are important tools to support your advocacy, campaigning, and lobbying.

1. **Use the evidence that links violence against women with heightened HIV risk to demand the incorporation of strong anti-violence measures into your National HIV/AIDS Plan.**

The 2005 WHO study showed that men who are violent are more likely to put their partners at risk of HIV than those who are not (page 64). Thus, strong domestic violence laws and education about violence prevention and treatment are essential parts of HIV prevention. The laws help to deter violent behavior, and the services help

women to avoid, leave, and recover from violent partnerships. Both reduce HIV risk.

2. **Educate policy-makers, the media, and the public about the harm of laws criminalizing HIV exposure and transmission.**

The **Maputo Plan for Action** (page 66) is a pan-African plan for funding services to promote maternal health and reduce vertical HIV transmission. You can use this and other plans to show policy-makers that criminalization laws waste the country’s investment in maternal health and HIV prevention by scaring women away from testing and services. At the same time, since testing is mandatory during maternity, criminalization makes women more likely to stay away from clinics that are essential to protecting their own lives and their children’s.

3. **Educate policymakers, the media, and the public about how discriminatory laws relating to property and inheritance rights harm women.**

Advocates working on women’s property rights and HIV have called for laws that recognize women’s joint ownership of marital property and automatic possession of the marital home upon the death of a spouse and indirect contributions to the acquisition of property, provide for equal inheritance rights for girls and boys, criminalize property disinheritance from widows and surviving children, and prohibit harmful cultural practices.

4. **In partnership with like-minded NGOs and medical, legal, and education associations, develop strategies for “adapting the traditional legal system to promote equality for women and their children” (page 68).**

The **Kenya Legal and Ethical Issues Network (KELIN)** works to advance the evolution of customary law toward greater gender equality by providing human rights trainings to law enforcement, elders, community leaders, and women impacted by traditional law. This process may yield more durable results by persuading people to modify existing customs and traditions, adopting alternative approaches that protect women’s

rights. KELIN also provides pro bono legal services, since law enforcement remains a vital tool for stopping and preventing human rights abuses

#### 5. Advocate for health services that integrate HIV, and sexual and reproductive health for women.

The report shows that this integration is effective at reducing both vertical transmission of HIV and maternal mortality. Where sexual and reproductive health services are being provided, the report can highlight the need for training of health workers on the full range of sexual and reproductive health options, the essential need for informed consent, and the importance of confidentiality and non-discrimination.

#### “Sound Bite” Quotes

One benefit of this report is that it simply and eloquently frames key arguments we make as we advocate for change in existing policies. These are listed below as sound bites that organizations can use in their own documents or when talking to the media. Citing the Global Commission on HIV and the Law may add credibility for audiences who are less receptive to such arguments.

- ▶ “Abolish all mandatory HIV-related registration, testing, and forced treatment regimens. Facilitate access to sexual and reproductive health services and stop forced abortion and coerced sterilization of HIV-positive women and girls” (page 10).
- ▶ “Laws prohibiting—or interpreted by the police or courts as prohibiting—gender nonconformity, defined vaguely or broadly, are often cruelly enforced” (page 8).

- ▶ “It is gender inequality and discrimination that is enshrined in custom and law, and sexual and domestic violence, which may be condoned by custom and law, that rob[s] women of power” (page 62).
- ▶ “Gender inequality leaves women and girls undefended from HIV infection and diminishes their ability to cope with the consequences of illness and to care for themselves and their families” (page 63).
- ▶ “Without equal rights to acquire and secure property, a woman is effectively the captive of her husband and his family” (page 66).
- ▶ “Without economic security and independence, women can never control their own destinies. And if they cannot, HIV transmission will never be brought to heel” (page 68).
- ▶ “Marriage is neither an irrevocable consent to sex nor a prophylactic against HIV infection” (page 68).
- ▶ “To break the women and girls is to destroy what holds a people together—from water-carrying to community building. The spread of HIV through rape is all too effective a way of exhausting people’s resilience for generations” (page 65).
- ▶ “Perhaps the most promising route to change is adaptation of traditional legal systems to promote equality for women and their children and recruitment of respected community members to mediate inheritance disputes between widows and their in-laws” (page 68).
- ▶ “Countries must prohibit and governments must take measures to stop the practice of forced abortion and coerced sterilization of HIV-positive women and girls, as well as all other forms of violence against women and girls in health care settings” (page 69).

#### Open Society Public Health Program

The Public Health Program of the Open Society Foundations aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices reflect these values and are based on evidence. The program works to advance the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice.

For more information, see: [www.opensocietyfoundations.org](http://www.opensocietyfoundations.org).