



*Australian Refugee Rights Alliance*  
*“No Compromise on Human Rights”*

**Draft Discussion Paper**

# HIV/AIDS and Refugee Determination

**2007**

**Comments Invited**

**Contact :**

Robert Knapman [robjaykay@gmail.com](mailto:robjaykay@gmail.com)

Jess Gifkins [j.gifkins@student.unsw.edu.au](mailto:j.gifkins@student.unsw.edu.au)

Refugee Council of Australia [policy@refugeecouncil.org](mailto:policy@refugeecouncil.org)

## Introduction

Decisions to impose rights restrictions on persons living with HIV/AIDS (PLWHA) is a reminder that many countries - rich and poor alike – have much to do to fulfil their domestic obligations under international human rights law. The United Nations General Assembly Special Session on HIV/AIDS adopted a Declaration of Commitment (2001) stating that "populations destabilised by armed conflict, including refugees, internally displaced persons, and in particular women and children, are at risk of exposure to HIV infection"<sup>i</sup>. This increased risk is combined with an obligation on the part of the host country under article 23 of the 1951 Convention on the Status of Refugees which states that host countries "shall accord to refugees lawfully staying in their territories access to the same public relief and assistance as their nationals, including medical care"<sup>ii</sup>. In 2006, Member States reaffirmed these promises in the Political Declaration on HIV/AIDS and committed to set ambitious national targets towards universal access to comprehensive prevention, treatment, care and support by 2010.

## Human Rights and PLWHA

The key human rights relevant to responding to HIV include: the right to health; the right to equality and non-discrimination; the right to privacy; the right to liberty and security of the person; the right to information; the right of participation; the right to work; and the right to education. These rights apply equally to refugees and host countries' own citizens, and are central to informing how host governments address underlying causes of HIV vulnerability.

Human rights violations contribute to HIV/AIDS vulnerability adding to the stigmatisation and marginalisation of those most in need further, increasing discrimination and HIV risk and limiting access to treatment and care. The realisation of human rights is central to reducing vulnerability to HIV infection and addressing the effects of HIV. People may not seek HIV-related counselling, testing, treatment and care if lack of confidentiality, discrimination, refoulement, restrictions on freedom of movement or other negative consequences could follow a positive diagnosis.

Refugees may be at increased risk of HIV exposure however it is important to note that this increased risk does not necessarily translate to a high incidence of HIV within refugee communities. A 2007 study in British medical journal *The Lancet*, found that of 12 refugee camps nine actually had lower prevalence of HIV than their host communities. It is a commonly held misconception that refugees have a higher prevalence of HIV than host communities and this can lead to further discrimination and persecution.

## Best practice in HIV/AIDS treatment and care

National and regional best practice would involve:

1. Integrating refugees into national health and HIV programs, since the costs of setting up separate facilities is higher than the cost of improving existing host country facilities. For example, in Guinea, the overall yearly cost per refugee prior to integration was US \$20, and after integration were US \$4 per year. UNAIDS surveyed 28 African nations policies (2002-2009) to determine if national strategic plans on HIV/AIDS existed, if they mentioned refugees, and if specific refugee initiatives were included. They found 86% of countries had a national strategic plan, 68% mentioned refugees and 44% had specific initiatives for refugees.

2. Creating regional consistency to ensure continuity when people move between countries.
3. Combining short term humanitarian aid funding with longer term development funding can generate greater allocation of financial resources.

Where PLWHA's face persecution in countries of origin, or where they seek to be reunited with family, humanitarian concerns and international law obliges countries to admit them. PLWHA's should not face discriminatory barriers to their freedom of movement or resettlement. The United Nations states "there is no public health rationale for restricting liberty of movement or choice of residence on the grounds of HIV status" <sup>iii</sup>. Challenges in implementing solutions to this include: mandatory testing, denial of entry based on HIV status, consideration of HIV/AIDS as a communicable disease of public health significance, threats to family unity, deportation based on status, burden of cost to host community considerations, implementation of HIV health waiver and maintaining access to health care including antiretroviral therapy (ART).

Important new guidelines have been prepared for managing ART for displaced populations stating that those in need are often denied treatment. The guidelines also address issues of discrimination, special need, vulnerability and the higher HIV infection or prevalence rates in host countries. It notes that providing HIV-related services to displaced populations is rooted in international human rights law and universal principles of medical care and reflects an international push to recognise every individual's right to treatment and to ensure universal access to ART.

The HIV implications for host communities are often not fully understood and hinge on comparative HIV prevalence among refugee and host communities, and the extent or nature of contact between host communities and refugees. Failure to address refugees' HIV-related needs denies refugees their rights and compromises efforts to address HIV in host communities. The post-emergency phase provides vital opportunities for refugees to access education, treatment and care, however refugees are often overlooked in HIV Strategic Plans in host countries.

## Recommendations

- Governments should ensure appropriate access to comprehensive HIV prevention, treatment, care and support, and incorporate refugees in HIV policies, strategic plans and programs for host communities
- Host countries must ensure that laws, policies and programs respect and protect the rights of refugees and that there is no discrimination towards refugees; no discrimination in asylum procedures on the basis of HIV status; and protection from expulsion and forced return and restrictions on freedom of movement on the basis of HIV status
- Governments should ensure the protection of women and children from sexual or physical violence and exploitation since women and girls are often disproportionately affected by displacement
- An emphasis be placed on sub-regional approaches linking countries of asylum and origin and reflecting refugees population's interactions with host communities and human movements impacting provision of services
- National laws and regulations to ensure PLWHA's are not discriminated against in their ability to participate equally to those without HIV in seeking to enter a country not their own and seeking to remain in a country not their own
- The productive lives lived by HIV positive people modifies economic arguments underlying restrictions such as drain on health resources – this must be weighed against PLWHA contributions

- Governments to include refugees in national HIV policies and programs and give them the same access to treatment and services as their own citizens by focusing on steps needed to address the spread of HIV among refugees, as well as the effect the disease has on the population and host countries
- PLWHA's should not face discriminatory or unnecessary barriers to their freedom of movement. Local and international refugee policies and laws, governments and civil society must respect the human rights of people living with HIV/AIDS
- An essential component in refugee protection is the creation of a legal and ethical environment which is protective of the human rights of people with HIV/AIDS (The State of the World's Refugees 2006)
- Funds should be mobilized specifically for HIV/AIDS programmes at refugee camps where infection rates are highest
- Immigration and refugee policies and laws should be amended to make it clear that refugee claimants may not be rejected on grounds of medical inadmissibility or based on risks to public health
- Information on HIV and AIDS to be made available and incorporated into voluntary repatriation operations. Returnees who are well informed about HIV would carry that knowledge back to countries of nationality and pass it on (Shimo K).
- Governments must ensure that their national HIV policies and programmes are designed, implemented monitored and evaluated with the participation of refugees
- Stigma and discrimination need to be tackled as an integral part of responding effectively to HIV among refugees and host communities (UNHCR and UNAIDS Policy Brief on HIV and Refugees)
- Civil society must challenge stigmatisation and discrimination against refugees; increase communication and cooperation between refugees and host societies; and strengthen the capacity of refugee community leaders and groups, including those of people living with HIV, for their rights.
- International partners should lobby governments to meet their legal obligations towards refugees and implement strategies that reflect best practices in responding to the HIV-related needs of refugees and host communities.
- International partners should encourage governments to consider the needs of refugees in preparing funding proposals and provide resources for these to be incorporated into national HIV health policies and programmes.
- Broad involvement in communications strategies for behavioural change, should draw in women's groups, youth groups, religious and traditional leaders and HIV/AIDS clubs in schools, to explore new opportunities to communicate with refugees and the host communities (Shimo K) .
- Host governments must honour their legal obligations to refugees and civil society should help address popular misconceptions about refugees and the spread of HIV.

---

<sup>1</sup> UNHCR strategic plan 2005 to 2007 p.5

<sup>2</sup> UNHCR strategic plan 2005 to 2007 p.8

<sup>3</sup> UNHCHR/UNAIDS, 1998: paragraph 105, *International Guidelines on HIV/AIDS and Human Rights*