

**Committee on the Convention on the Rights of Persons with Disabilities**

**Input into General Comment on Equality and Non-discrimination (article 5)**

**Submission by the International HIV/AIDS Alliance – see: http://www.aidsalliance.org/**

**Topic to be included:**

A broader understanding of "disability" within or under existing legislation offers a key means of addressing discrimination against people living with HIV or those perceived to be living with HIV, as there is there is no binding international law instrument dealing explicitly and directly with HIV and human rights. There is no guarantee that protection against discrimination on the ground of "health status", as articulated in international treaties, will be interpreted broadly, so as to include HIV/AIDS, in national legislation and by national courts or tribunals.

This submission addresses the requirement for adequate protection against discrimination based on disability extending to protection against discrimination on the basis of actual or perceived HIV status. In addition, we urge the Committee to also address discrimination by association of people living with HIV, because of proximity to others perceived to be infected (e.g., family members) or association with groups stereotypically linked with HIV infection, such as members of the LGBTI community, sex workers and injecting drug users

People living with HIV have legal protection in some national anti-discrimination law, for example, the United Kingdom under the Equality Act and in South Africa.

UNAIDS suggests that the inclusion of HIV in national disability laws has been one of the most effective means by which to address discrimination based on HIV status or AIDS[[1]](#footnote-1)

* **Para 4. Add additional sentence**

The Committee notes that disability-based discrimination extends to protection against discrimination on the basis of perceived, or suspected HIV status. This covers those who are discriminated against due to actual HIV-infection or the perception that they are infected because of proximity to others perceived to be infected (e.g., family members) or association with groups stereotypically linked with HIV infection, such as members of the LGBTI community, sex workers and injecting drug users.

* **Para 6**

Globally, 2.1 million young women are living with HIV. Four-fifths live in sub-Saharan Africa and over 25% of all new HIV infections occur in young women aged 15-24.

The criminalisation of sex workers results in their social and economic marginalisation which creates barriers to accessing comprehensive sexual and reproductive health services, including HIV treatment and care. Police harassment of sex workers, women who inject drug and transgender women can be a significant barrier to effective, peer-based HIV responses. The criminalisation of sex work also creates barriers to accessing justice services.

LGBT persons are disproportionately subjected to discrimination by association in relation to perceived HIV status. LGBT persons are often victims of other forms of violence by non-State actors.[[2]](#footnote-2) Allegations of lesbians being attacked, raped, forcibly impregnated and otherwise punished because of sexual orientation come from many regions.[[3]](#footnote-3) This heightens their exposure to contracting HIV. The Committee on the Elimination of Discrimination against Women expressed grave concern about reported sexual offences committed against women on account of their sexual orientation.[[4]](#footnote-4) The Special Rapporteur on violence against women has reported alleged incidents of gang rapes, family violence and murder experienced by lesbian, bisexual and transgender women in El Salvador, Kyrgyzstan and South Africa,[[5]](#footnote-5) where the Rapporteur noted that “lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths”, including “for instance, that lesbian women would change their sexual orientation if they are raped by a man”.[[6]](#footnote-6) In its concluding observations on South Africa, the Committee on the Elimination of Discrimination against Women stated: *[T]he Committee expresses grave concern about reported sexual offences and murder committed against women on account of their sexual orientation. The Committee further expresses serious concern about the practice of so-called “corrective rape” of lesbians.* [[7]](#footnote-7)

* **Para 21**

Add: discrimination by association also extends to people who are perceived to be infected with HIV because of proximity to others perceived to be infected (e.g., family members) or association with groups stereotypically linked with HIV infection, such as members of the LGBTI community, sex workers and injecting drug users.

* **Para 32**

Include: States parties shall modify or abolish existing laws that constitute discrimination on the grounds of actual or perceived HIV status, as well as laws criminalising sexual orientation or gender identity.

* **Para 34**

Last sentence amend to read: ‘Anti-discrimination laws must also ensure that persons with disabilities, including people living with HIV through their representative organisations can effectively….”

* **Para 35**

Last sentence to include “This is essential for populations who are currently criminalised under existing national laws, such as people who are living with HIV or those who are perceived to be infected with HIV such as members of the LGBTI community, sex workers and injecting drug users.

* **Para 37**

Last sentence, for example, populations who are currently criminalised under existing national laws, such as people who are living with HIV or those who are perceived to be infected with HIV such as members of the LGBTI community, sex workers and injecting drug users.

* **Para 40**

Last sentence including persons living with HIV

* **Para 44**

Line 2 add: Including those based on gender and age, “as well as sexual orientation and gender identity”, as well as harmful stereotypes...

Last line, add especially in relation to criminalised populations. Combating misinformation, myths and stereotypes about gender roles, sexual orientation, gender identity and expression and sex characteristics is key to dispelling many of the prejudices faced by LGBT and intersex people.

* **Para 53**

Rationale for inclusion of paragraph below **(**LGBT persons are disproportionately subjected to discrimination by association in relation to perceived HIV status.)

Add: Asylum laws and policies should recognize persecution on account of one’s sexual orientation, gender identity, gender expression or sex characteristics as a valid basis for an asylum claim and LGBT and intersex refugees should be treated with respect. The United Nations High Commissioner for Refugees (UNHCR) has published detailed guidance on the issue, setting out the standards by which States should apply their national refugee status determination procedures to asylum seekers fleeing persecution on such grounds.

Lesbian, gay, bisexual, transgender and intersex asylum seekers face particular difficulties throughout the refugee status determination process. Among the challenges are intrusive, humiliating and inappropriate requirements in establishing credibility of their claim or “proving” sexual orientation, gender identity or sex characteristics, cultural or personal bias on the part of the decision maker, or improper application of principles of refugee law, such as the internal flight alternative, which suggests that an asylum seeker can seek protection in another location within their country of origin. LGBT and intersex asylum seekers also face particular safety risks in refugee camps and centres.

* **Add para 64 for article 16**

Trans women, female sex workers and female drug users are disproportionately affected by HIV due to gender-based violence. Globally sex workers account for 5% of new HIV infections and people who use drugs for 8%, according to UNAIDS (UNAIDS Data 2017). Trans women are estimated to be up to 49 times as likely to contract HIV as cis-gender women.

In the context of HIV, partner violence has emerged as a barrier to use of services and to the uptake and consistent use of various treatment strategies. Partner violence is associated, for example fear of disclosing one’s HIV status, difficulty in attending clinic visits and reduced adherence to lifesaving HIV treatment regimens. Intimate partner violence increases the risk of acquiring HIV by up to 50%; in some settings up to 45% of young women report that their first sexual encounter was forced.

* **Para 70 add**

The right to education includes the right to receive comprehensive, accurate and age-appropriate information regarding human sexuality in order to ensure young people have access to information needed to lead healthy lives, make informed decisions and protect themselves and others from sexually transmitted infections.[[8]](#footnote-8)

* **After paragraph 72 add paragraph on article 25 (Health) – see background information below**

Barriers to realising sexual and reproductive health and rights (SRHR) and to accessing HIV treatment and care share similar and overlapping roots.. HIV acquisition itself also acts as a further barrier to realising SRHR, as do a number of socio-structural factors including stigma, discrimination, and marginalisation on the basis of age, gender, sexual orientation and gender identity, among others.

Discrimination and stigma towards homosexuality puts men who have sex with men and their male *and* female sexual partners at risk for HIV, as they may fear exposure or ill-treatment by health care workers and others.

The negative public health consequences of criminal laws are frequently raised by the special procedures. In a joint letter of allegation concerning the draft anti-homosexuality bill in Uganda, four special procedures wrote: *If the Bill came into force, it would impede access to HIV- and health related information and services for LGBT individuals and could thereby undermine the national HIV response, not only by discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community.*[[9]](#footnote-9)Concerning a proposed law in Burundi, the Special Rapporteur on health wrote that criminalization of homosexuality would have a prejudicial effect on Burundi’s efforts in the battle against HIV/AIDS. He stated: *Public health policies regarding the HIV/AIDS epidemic clearly demonstrate that decriminalization of homosexuality, coupled with efforts to fight against LGBT discrimination, constitute a substantial tool to halt the spread of the virus. Besides, if the draft code in question comes into force, it will impede access to information, care and treatment for HIV- positive homosexuals in Burundi and could consequently jeopardize the national response to the HIV/AIDS epidemic.*[[10]](#footnote-10)

Similar comments were made concerning a law proposed in the Democratic Republic of the Congo.[[11]](#footnote-11) In many countries, transgender persons face particular difficulties in accessing health care. Gender reassignment therapy, where available, is often prohibitively expensive and State funding or insurance coverage is rarely available. Healthcare professionals are often insensitive to the needs of transgender persons and lack the necessary professional training[[12]](#footnote-12). In addition, intersex children, who are born with atypical sex characteristics, are often subjected to discrimination and medically unnecessary surgery, performed without their informed consent, or that of their parents, in an attempt to fix their sex.[[13]](#footnote-13)

* **Para 73 add sub paragraph (j)**

State parties ensure prohibition of employers from refusing to recruit, promote, retain or dismiss employees on the grounds of HIV status or the belief they may become sick in the future or may cause an increase in health care or insurance costs.

* **Para 76 (b)**

Include in disability anti-discrimination law HIV as a prohibited ground for discrimination in order to protect people against discrimination on the basis of actual or perceived HIV status. Punitive laws that undermine HIV responses should be repealed.

* **Para 76 (k)**

Use the National Composite Policy Index (NCPI), developed by UNAIDS to measure progress in the development and implementation of national level HIV and AIDS policies, strategies and laws, is reported routinely by all UN member countries. UNDP and the Global Fund have supported countries to undertake Legal Environment Assessments (LEAs). The LEA is a valuable tool designed to assist governments in identifying human rights barriers and how they affect HIV, including key populations, and provides a gateway to action for strengthened legal and policy environments.

* **Para 76 (l)**

Article 33 focal points take into account the HIV-relevant dimensions of the Convention, such as in gathering data about HIV-related discrimination, and formulating policy to address disability-related discrimination in a way that includes HIV and AIDS as disabilities.

* **Para 76 (m)**

Incorporate LGBT and intersex-sensitive measures into their asylum determination practice, including the provision of sensitivity training for those involved in the decision-making process, and guidelines on assessment procedures to ensure that claims are reviewed in an objective and sensitive manner, unhindered by stereotyping and cultural bias.

For further information please contact:

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1. United Nations Commission on Human Rights. Sub-Commission on Prevention of Discrimination and Protection of Minorities, "HIV/AIDS and Disability" Statement by the UNAIDS. 48 Session, August 1996. [↑](#footnote-ref-1)
2. Report of the Special Rapporteur on violence against women on her mission to Kyrgyzstan, A/HRC/14/22/ Add.2, at para. 37-38 (describing high level of violence against lesbian, bisexual and transgender people, including rapes and family violence). [↑](#footnote-ref-2)
3. See A/HRC/17/26, para. 40. See also A/HRC/14/22/Add.2, para. 23, A/HRC/17/26/Add.1, paras. 204-213, E/CN.4/2002/83, para. 102, A/HRC/4/34/Add.3, para. 34, and the concluding observations of the Committee on the Elimination of Discrimination against Women on the Russian Federation (C/ USR/CO/7), paras. 40-41. [↑](#footnote-ref-3)
4. Concluding observations on South Africa (CEDAW/C/ZAF/CO/4), para. 39-40. [↑](#footnote-ref-4)
5. See A/HRC/14/22/Add.2, paras. 37-38, and A/HRC/17/26/Add.2, paras. 28-29. [↑](#footnote-ref-5)
6. A/HRC/4/34/Add.1, paras. 632-633. Both the Committee on the Elimination of Discrimination against Women and the Special Rapporteur on violence against women have addressed so-called “curative” or “corrective” rape, perpetrated by men who claim their intent is to “cure” women of their lesbianism. See, for example, the concluding observations of the Committee on South Africa (CEDAW/C/ZAF/CO/4), para. 39; and the report of the Special Rapporteur on her mission to Kyrgyzstan (A/HRC/14/22/Add.2), para. 38. [↑](#footnote-ref-6)
7. Concluding observations of the Committee on the Elimination of Discrimination against Women on South Africa (CEDAW/C/ZAF/CO/4), at paras. 39-40. [↑](#footnote-ref-7)
8. See Committee on the Rights of the Child General Comment No. 4 (CRC/GC/2003/4), paras. 26 and 28. See also International Conference on Population and Development, Programme of Action, para. 7.47; Commission on Population and Development resolution 2009/1, para. 7; and UNESCO International Technical Guidance on Sexuality Education, sections. 2.3 and 3.4. [↑](#footnote-ref-8)
9. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/ Add.1), at para. 1141. [↑](#footnote-ref-9)
10. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/14/20/Add.1), at para. 14 (unofficial translation). [↑](#footnote-ref-10)
11. Report of the Special Rapporteur on the right to freedom of opinion and expression (A/HRC/17/27, 27), at para. 675. [↑](#footnote-ref-11)
12. 2 “Human Rights and Gender Identity”, the Council of Europe Commissioner for Human Rights, 2009, para. 3.3; “Prevention and treatment of HIV and other sexually transmitted infections” World Health Organization, pages 30-31. [↑](#footnote-ref-12)
13. Concluding observations of the Committee on the Elimination of Discrimination against Women on Costa Rica (CEDAW/C/CRI/CO/5-6), at para. 40. [↑](#footnote-ref-13)