



Issue Paper:
What Constitutes a Rights-based Approach?
Determining Rationale, Objectives and Areas of Focus for
Our Work

Defining the Issue

Human rights have been recognized as central to the response to HIV/AIDS since the creation of the WHO Global Programme on AIDS.¹ The establishment of this Reference Group on HIV/AIDS and Human Rights by UNAIDS, in 2002, is one manifestation of this recognition. At a rhetorical level, the need to pay attention to rights remains largely undisputed, and there have been increasing efforts by UNAIDS, its partners and other organizations to define, implement and monitor rights based approaches in the context of HIV/AIDS. There is, however, a pressing need not only to provide tools and approaches for ensuring the integration of human rights into HIV/AIDS policies and programmes but also to demonstrate the value and effectiveness of human rights based approaches within the response to AIDS.

Increasingly, “unnecessary attention to human rights” is being blamed for the inadequate success of HIV/AIDS strategies. This backlash against human rights approaches threatens the gains and benefits that the integration of human rights into HIV/AIDS programmes and policies has brought. This call to move away from rights and to get back to “more traditional public health” strategies is vague and unfocused but nonetheless highlights the need to better document the value of attention to human rights for effective action. Even for those of us who believe that the success of HIV strategies has to some degree been thwarted by the failure of governments to fully integrate human rights into their efforts, rather than because they have paid too much attention to rights, it is clear that we need better evidence of the positive difference that promoting and protecting human rights can make for HIV/AIDS work. The UNAIDS secretariat is increasingly engaged in efforts to monitor the value of human rights in the context of HIV/AIDS, and has stressed the importance of this effort for their work.

Background

There is abundant documented and undocumented evidence to show that rights based approaches in HIV/AIDS efforts are effective. This knowledge is not yet widely accessible and understandable to policy makers, program managers or the general public. There is also, unfortunately, a lack of clarity as to what “rights based approaches” in HIV/AIDS work actually means. There is no obvious consensus on what constitutes a human rights approach, and organizations that implement a rights based approach, in HIV/AIDS and more generally, use a broad range of definitions and do a variety of different things under the same heading. A rights based approach is interpreted differently by people whose work is in advocacy and the legal accountability of governments, by governments as they develop and implement national policies and programmes, by NGOs who have taken on a rights based approach in their programme of work, and by international agencies who support these efforts. In fact, there are more differences than similarities in the interpretations of rights based approaches amongst these stakeholders. Some actors have determined that a grounding in legal interpretation of rights is key to rights-

based programming efforts, others that participation of affected communities is central to this concept, while others that attention to discrimination, or transparency and accountability, or conscious attention to all these criteria or to a range of criteria not mentioned here should play this role.

The moral and legal arguments supporting the need and obligations of governments to pay attention to human rights in their HIV/AIDS efforts need to be repeated at every opportunity. These principles should continue to be understood as valid justifications in and of themselves for human rights to remain central to the response to the epidemic. Yet, pressure is mounting on human rights and public health practitioners to show why and how attention to human rights can actually result in improved effectiveness of HIV and AIDS work.

It is also necessary and timely to clarify human rights-related concepts and approaches, and once agreement is reached as to priorities, help to provide tools and approaches for ensuring compliance with human rights concerns and principles in HIV/AIDS programming efforts.

Questions that are raised include:

- What do we understand to be a rights based approach in HIV/AIDS efforts?
- How has a rights based approach been defined and implemented by intergovernmental agencies, bilateral donors, private donors, governments, and civil society in the context of HIV/AIDS and in other areas?
- How are HIV/AIDS programmes generally assessed? And to what extent and in what ways are human rights generally considered in these assessments?
- How have human rights approaches had a positive impact on HIV/AIDS prevention, treatment and care, and impact mitigation efforts?
- How do the process and the outcomes of using human rights approaches compare with other approaches in different types of HIV programmes and in different settings?
- How can the effects of using rights based approaches in the response to HIV/AIDS best be measured and what tools can be developed?

This issue paper was prepared by the Reference Group Secretariat to facilitate discussion at the Reference Group's August 2004 meeting.

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¹ UNAIDS Global Reference Group on HIV/AIDS and Human Rights, UNAIDS global report