



UNAIDS Global Reference Group on HIV/AIDS and Human Rights

Second Meeting, Geneva, 25-27 August 2003

Issue Paper

Status: final

How Should Guidance for National Policies Be Framed?

Defining the Issue

A review of national policies on HIV testing shows great variation in what testing strategies are promoted as well as the level of generality or specificity within the policies reviewed. The policy guidance given to States on HIV testing does not yet fully take into account the growing challenges of HIV testing and counseling in different settings. Human rights protections in the design and implementation of HIV testing strategies may be increasingly eroded within national level policy and practice without systematic attention and guidance. In addition to the structural and other barriers discussed earlier, including in particular the resources available and whether care and treatment is available to a person with a positive test result, any discussion or analysis of national level HIV testing policies must also consider the general legal and policy framework within the country, other relevant policy directives, and whether there is a system of redress that people know about and can access if their rights are violated.

It is unclear whether general policy guidance in support of voluntary counseling and testing is the best approach for national HIV testing policies, or whether national level HIV testing policies should be very specific in relation to the issues raised in earlier sessions. Any consideration of the utility of generality or specificity in relation to the content of national level HIV testing policies, should also take into account the level of detailed guidance that can then be offered to national level programmatic work concerning HIV testing .

Background

The UNAIDS documents which address HIV testing emphasize the importance of maintaining a voluntary approach to HIV testing.ⁱ, ⁱⁱ. They demonstrate attention to appropriate public health legislation with respect to testing specifically, including developing mechanisms to ensure informed consent and maintain a voluntary nature to testing.

The national HIV/AIDS policies of 13 countries in Africa, Europe, Asia, and the Americas were reviewed in order to characterize some common themes regarding HIV testing and counseling.ⁱⁱⁱ The majority of policies accessed stress the importance of informed consent, confidentiality, and non-discrimination based on HIV status. The most significant differences between existing policies appears to be with respect to whether voluntary or routine testing is promoted, informed consent and confidentiality are ensured, and how testing of adolescents is handled.

Many high prevalence countries (e.g., **Lesotho, Malawi, Mozambique, South Africa, Tanzania, Uganda, and Zimbabwe**) continue to promote voluntary counseling and testing (VCT) with an emphasis on informed consent and confidentiality as the preferred policy approach to HIV testing. Some notable differences among these policies do exist, however. **Lesotho's** policy specifically

states that testing should not be a routine part of medical exams. The Lesotho policy also states that counseling should be extended to spouses and family members. **South Africa** has produced policy guidelines for HIV testing which give an explicit definition for informed consent and also include a list of the specific issues that should be included in pre-test counseling.

Botswana's HIV/AIDS policy explicitly states that routine testing should not be carried out. It states that testing should be voluntary and that counseling to ensure informed consent is critical.^{iv} Recently, however, as it searches for different approaches to respond to the epidemic, Botswana appears to be considering implementing routine testing within all health care settings and beyond. Recent discussions have also referred to the burden that counseling can create on an already under-resourced health care system and suggest that it may be “out-of-proportion and unrealistic in African settings.” At the same time, however, a policy change currently under consideration is that “short and precise counseling should be done by *doctors only* and replace the hour long sessions by lay people.”

China's Action Plan for Reducing and Preventing the Spread of HIV/AIDS (2001-2005) says almost nothing about whether or not testing should be implemented on a voluntary, routine or mandatory basis and how informed consent and confidentiality might be maintained.^v The focus of the *Action Plan* is instead on increasing knowledge about transmission of HIV, training health care providers about HIV, increasing access to treatment, and ensuring the safety of the nation's blood supply.

The *National AIDS Policy of India* states that HIV testing should be carried out on a voluntary basis with appropriate pre-test and post-test counseling.^{vi} Although mandatory testing has been implemented in the past in parts of India (for example, in the Goa State), the policy now states that “No individual should be made to undergo a mandatory test for HIV.” The policy also states that “[d]isclosure of the HIV status to the spouse of the person will entirely depend on the person's willingness to share the information. However, the person should encouraged to share this information with the spouse and family as it helps the person in getting proper home-based care when he is afflicted with AIDS.”^{vii}

Many lower prevalence countries maintain a VCT policy for testing. *France's* operational framework for HIV testing, for example, states that “Screening policy must be based on a voluntary choice by individuals, with anonymity and/or strict confidentiality being an absolute imperative.”^{viii} The 1993 *Riga Statement on HIV/AIDS in the Countries of Central and Eastern Europe* emphasizes the importance of maintaining confidentiality, informed consent and voluntariness in HIV testing.^{ix}

Although **Norway** emphasizes a VCT approach to testing overall, people diagnosed and treated for sexually transmitted infections, refugees and asylum seekers are routinely offered an HIV test.^x Routine HIV testing of pregnant women has been carried out in the country since 1987.

Brazil's National Programme for Combating Sexually Transmitted Diseases and AIDS has been widely cited as a leader in confronting the HIV/AIDS epidemic. An important aspect of the Brazilian program has been promotion and implementation of VCT in VCT centers serving men who have sex with men, intravenous drug users and commercial sex workers, antenatal care services and maternity hospitals, and other hospital/ambulatory services. Of important note is Brazil's policy of universal free of charge access to antiretroviral therapy in the mid-1990s as well as the 1996 Presidential decree that guaranteed all HIV infected citizens free access to essential

medication to combat HIV, including protease inhibitors.

The **United States** has recently enacted a new policy to make HIV testing a routine part of medical care.^{xi} The Centers for Disease Control (CDC) now recommends that HIV tests should be offered to all patients in all high HIV-prevalence clinical settings and to those with risks for HIV (for example, sexually transmitted infections) in low HIV-prevalence clinical settings. Further, the CDC recommends routine HIV testing of all pregnant women, and, as a safety net, the routine screening of any infant whose mother was not screened. The policy also states that “Because prevention counseling, although recommended for all persons at risk for HIV, should not be a barrier to testing, CDC will promote adoption of simplified HIV-testing procedures in medical settings that do not require prevention counseling before testing.”^{xii}

In **Zimbabwe**, sexually transmitted diseases are currently a notifiable disease by name under the Public Health Act (Chapter 15:09). As a result, the personal details of people found to be HIV-positive are systematically recorded. The policy states that the government will look into the question of notification and confidentiality in the future.^{xiii}

The **Tanzania** HIV/AIDS policy states that “all HIV testing shall be confidential” and that “physicians and other health workers are not allowed to notify or inform any person other than the individual tested of the test results without his or her consent.” However, the policy also states that “public health legislation shall be made to authorize health care professionals to decide on the basis of each individual case and ethical considerations, to inform their patients or sexual partners of the HIV status of their patients.” Criteria that would enable a health provider to make this decision include that: i) the HIV-positive person in question has been thoroughly counseled; ii) counseling of the HIV-positive person has failed to achieve appropriate behavioural changes; iii) the HIV-positive person has refused to notify, or consent to the notification of his/her partner; iv) a real risk of HIV transmission to the partner(s) exists; v) the HIV-positive person is given reasonable advance notice; and vi) follow-up is provided to ensure support to those involved, as necessary.” The policy also refers to the need to obtain guardian consent for the testing of minors.

Supporting Documents

1. Examples of Excerpts from Policy Statements and National Policies on HIV Testing and Counseling.

This Issue Paper was prepared by the Reference Group Secretariat to facilitate discussion at the Reference Group’s August 2003 meeting.

Please do not redistribute, reproduce, or cite without permission from UNAIDS Secretariat.

ⁱ UNAIDS. (1997). *UNAIDS Policy on HIV Testing and Counselling*. UNAIDS: Geneva.

ⁱⁱ UNAIDS/IPU. (1999). *Handbook for Legislators on HIV/AIDS, Law and Human Rights: Action to Combat HIV/AIDS in View of its Devastating Human, Economic and Social Impact*. UNAIDS: Geneva.

ⁱⁱⁱ These countries are Botswana, Brazil, China, France, India, Lesotho, Malawi, Mozambique, South Africa, Tanzania, Uganda, the United States, and Zimbabwe. The *Riga Statement on HIV/AIDS in the Countries of Central and Eastern Europe* (1993) was also reviewed. It is important to note that these policies were found through internet searches during July 2003 and therefore may not be current.

^{iv} The Policy Project. (September 2002). *National and Sector HIV/AIDS Policies in the Member States of the Southern Africa Development Community*.

^v [http://www.ncstdlc.org/english/Details/English-detail%20\(publications\)/key%20documents/action.htm](http://www.ncstdlc.org/english/Details/English-detail%20(publications)/key%20documents/action.htm).

- ^{vi} http://www.indianembassy.org/policy/AIDS/HIV_Testing.html.
- ^{vii} http://www.indianembassy.org/policy/AIDS/HIV_Testing.html.
- ^{viii} http://www.france.diplomatie.fr/cooperation/dgcid/publications/reperes/sida_gb/page_08.html.
- ^{ix} <http://209.27.118.7/>.
- ^x *Plan of Action for Combating the HIV/AIDS Epidemic 1996-2000.*
<http://odin.dep.no/archive/shdvedlegg/01/04/HIVAI068.pdf>.
- ^{xi} *Advancing HIV Prevention: New Strategies for a Changing Epidemic.* (April 2003.)
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5215a1.htm>.
- ^{xii} *Advancing HIV Prevention: New Strategies for a Changing Epidemic.* (April 2003.)
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5215a1.htm>.
- ^{xiii} The Policy Project (September 2002). *National and Sector HIV/AIDS Policies in the Member States of the Southern Africa Development Community.* USAID: Washington, DC.