

# Prisoners' health and human rights in the HIV/AIDS epidemic

Prisoners exist on the margins of society, often without access to HIV prevention, care, treatment, or support. Depriving prisoners of the means to protect themselves from HIV infection, and failing to provide prisoners living with HIV with care, treatment, and support equivalent to that available in the community, offend international human rights norms. This article by Glenn Betteridge provides a summary of a draft paper prepared for Human Rights at the Margins: HIV/AIDS, Prisoners, Drug Users and the Law, a satellite meeting held in Bangkok on 9 July 2004, and organized by the Canadian HIV/AIDS Legal Network and the Lawyers Collective HIV/AIDS Unit (India). The full text of the final paper, including references, is available on the Legal Network's website.<sup>1</sup> The article reviews some of the international laws and instruments that protect the rights of prisoners and that set out minimum standards for treatment of prisoners; outlines activities in the prison setting that place prisoners at risk for HIV; describes some of the policies and societal factors that fuel the HIV/AIDS epidemic in prisons; and proposes a series of specific actions that should be taken now to respond to this epidemic.

## HIV/AIDS in prisons

Worldwide, levels of HIV prevalence within inmate populations tend to be much higher than in the general population. Several countries have reported HIV prevalence rates ranging from 10 to 25 percent. Many of the data regarding HIV/AIDS in prisons are from high-income countries; relatively little information is available for developing countries and countries in transition.

Violence, sexual activity, and injection drug use in prison all carry the potential for HIV transmission. Forced sexual intercourse (rape) is common in prisons, and often involves a high risk of HIV transmission because of the unavailability of condoms and the violent nature of forced sex. Unprotected coerced and consensual sexual intercourse also occur in prisons. In countries other than those with large heterosexual HIV epidemics, the areas with the highest HIV prevalence in prisons are those where HIV infection is epidemic among IV drug users in the general population. Incarceration is a common event among injection drug

users, and injection of illicit drugs is common within prisons. While users typically inject less frequently in prisons, studies have demonstrated that the injections that occur tend to be carried out in a more "high-risk" fashion than injections in community settings. For example, a single syringe will often be shared among a large group of prisoners.

Other communicable diseases disproportionately affect prisoners. Of particular concern are the elevated prevalence rates of hepatitis B and C, and tuberculosis.

## International human rights law and related norms

Under international norms, prisoners enjoy all human rights except those they are necessarily deprived of as a fact of incarceration. There are two general categories of instruments that protect human rights. Each poses different obligations on governments. International human rights *law* is binding on governments. International *rules, standards, and guidelines* are not law, and are therefore not binding on governments.

## International human rights laws

International human rights laws (for example, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and the European Social Charter), while general in nature, are relevant to the rights of prisoners in the context of the HIV/AIDS epidemic.<sup>2</sup> States that have ratified or acceded to these international laws are legally bound to respect, protect, and fulfill the right of prisoners to equality and non-discrimination, life, security of the person, the enjoyment of the highest attainable standard of physical and mental health, privacy, and an effective remedy for violations of human rights; and the right not be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

## International rules, standards, and guidelines

Specific rules, standards, and guidelines apply to the situation of prisoners, and impose both negative and positive obligations on states regard-

ing prison conditions and the treatment of prisoners. The most important of these instruments are:

- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Standard Minimum Rules for the Treatment of Prisoners
- Recommendation No R (98)7 of the Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison

Two additional international instruments that are relevant to the situation of prisoners in the context of HIV/AIDS are the World Health Organization (WHO) Guidelines on HIV Infection and AIDS in Prisons (1993), and the International Guidelines on HIV/AIDS and Human Rights.

The WHO Guidelines “provide standards – from a public health perspective – which prison authorities should strive to achieve in their efforts to prevent HIV transmission in prisons and to provide care to those affected by HIV/AIDS.” The WHO Guidelines outline general principles and cover areas such as HIV testing; prevention measures; management of HIV-infected prisoners; confidentiality; care and support of HIV-infected prisoners; women prisoners; juvenile detention; semi-liberty, release, and early release; community contacts; resources; and evaluation and research.

The International Guidelines identify the following specific action in relation to prisons:

Prison authorities should take all necessary measures, including adequate

staffing, effective surveillance and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion. Prison authorities should also provide prisoners (and prison staff, as appropriate), with access to HIV-related prevention information, education, voluntary testing and counselling, means of prevention (condoms, bleach and clean injection equipment), treatment and care and voluntary participation in HIV-related clinical trials, as well as ensure confidentiality, and should prohibit mandatory testing, segregation and denial of access to prison facilities, privileges and release programmes for HIV-positive prisoners. Compassionate early release of prisoners living with AIDS should be considered.<sup>3</sup>

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In the context of the HIV/AIDS epidemic, when governments fulfill their human rights obligations to prisoners they also promote positive public health outcomes. Measures undertaken to prevent the spread of HIV and other infections will benefit prisoners, staff, and the public. Prisoners should not, by reason of their imprisonment, be exposed to the risk of a deadly condition. Lowering the prevalence of infections in prisons means that the risk of exposure to these infections among staff will also be lowered. Most inmates are in prison only for short periods of time and are then released into their communities. In order to protect the general population, pre-

vention measures need to be available in prisons, as they are outside.

## **Factors that fuel HIV/AIDS in prisons**

Prohibitionist policies have proven ineffective at stopping or even decreasing drug use, and have resulted in widespread human rights abuses and incarceration of drug users. Domestic laws and international conventions that render drugs illegal are used by governments as a rationale to justify the failure to provide the full range of harm-reduction measures to people who inject drugs, including prisoners.

Homophobia and the stigmatization of same-sex sexual relations present a significant barrier to the introduction of condoms and lubricant (and dental dams) in prisons. Prison authorities often justify the refusal to provide condoms and lubricant by claiming that same-sex sexual relations and intercourse do not take place in prison. Or they argue that because sexual relations among prisoners are illegal, providing condoms to prisoners would be seen as condoning illegal behaviour.

In many countries prisons operate under military or security forces, or are part of the ministries or departments responsible for these areas. Even in countries where prisons are not associated with military or security forces, an unquestioning, rule-bound inflexibility is the normal stance of decision-makers responsible for prisons. This discourages openness to change, innovation, and links with the community within which the prison operates. Paradoxically, within prisons, the premium placed on respect for rules often means respect for unwritten rules and shared codes of conduct that violate domestic laws and poli-

cies applicable to prisons, to say nothing of international human rights norms and standards.

In many countries, the predominant purpose underlying imprisonment is punishment, if not in law then in popular and political discourse. In this context substandard, deplorable prison conditions are deemed to be acceptable. For those people living with HIV at the time of incarceration, a prison sentence may shorten their lifespan or even result in death, due to the lack of adequate health care, overcrowding and inadequate nutrition, and the presence of infections, in particular tuberculosis.

In the vast majority of prison systems in the world, health care is provided by the same ministry or department responsible for prison administration, not by the ministry or department responsible for health care in the community. Prisons were not designed, and are generally not equipped, to deal with prisoners infected with chronic, potentially fatal diseases such as HIV/AIDS, hepatitis, and tuberculosis. They do not have adequate staffing levels, staff training, or equipment to meet the health needs of prisoners suffering from these diseases. When health services for prisoners are “captured” within, or subservient to, the prison administration, it is unlikely that prisoners will trust or have confidence in the health-care providers. This lack of trust contributes to substandard health care for prisoners.

The public, and by extension politicians, are generally not supportive of prisoners or of the rights of prisoners. There is a lack of information and understanding of the realities of prison life and prison conditions. Furthermore, there is a lack of knowledge among the public about the international human rights

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and other norms that apply to prisons and prisoners. Prisoners and former prisoners rarely coalesce into a constituency capable of influencing public opinion or public policy, or of effecting political change. This is likely because of the marginalization of prisoners and former prisoners, as well as the underlying marginalization of the groups of people who have high rates of incarceration.

With few exceptions, elected and other decision-makers have been slow to respond to the HIV/AIDS epidemic in prisons, or have failed to address the epidemic within prisons at all. For the majority of developing countries and countries in transition, there are no reliable estimates of HIV prevalence in prisons. This lack of information allows decision-makers in these countries to persist in their inaction. In other countries, even in the face of HIV prevalence rates that are many times higher than in the general population, and of evidence of HIV transmission in prisons, often decision-makers have failed to take action. With very few exceptions, there have been no consequences for inaction on the part of elected officials or decision-makers responsible for prisons.

### **Priority initiatives for 2004-2006**

In addition to longer-term advocacy (such as law reform and legal

action), immediate action is needed to address the HIV/AIDS epidemic in prisons. Non-governmental organizations, international organizations (such as the WHO and UNAIDS), and other funders should consider prioritizing the following initiatives leading up to the International AIDS Conference in Toronto, Canada, in 2006 (AIDS 2006):

***Building a movement based on human rights, prisoners’ rights, and HIV/AIDS.*** There are numerous, long-standing organizations that advocate for human rights, and organizations that advocate for prisoners’ rights. In the last 20 years, many organizations that advocate on behalf of people living with or vulnerable to HIV/AIDS have been created at national, regional, and international levels. At all these levels, human rights, prisoners’ rights, and HIV/AIDS organizations should explore alliances and find ways to work together.

#### ***Review of the WHO Guidelines.***

The WHO Guidelines have not been adequately promoted and are in need of an update. The WHO, working in partnership with UNAIDS, the United Nations Office on Drugs and Crime, and NGOs, should revise the guidelines and develop and implement a promotion plan.

#### ***The WHO “3 by 5” initiative and other access-to-treatment initiatives.***

To ensure that prisoners with HIV/AIDS who need treatment benefit from access to treatment initiatives, the initiatives need to include a prison-specific component.

#### ***High-level policy dialogues on***

***HIV/AIDS in prisons.*** High-level dialogues involving NGOs, domestic

and international governments can play a role in advancing public policy. Consideration should be given to organizing a dialogue on HIV/AIDS in prisons.

***AIDS 2006 and regional AIDS conferences.*** An effort should be made to work with the organizers of AIDS 2006 and the regional AIDS conferences to ensure greater attention to HIV/AIDS in prisons.

***Report cards and human rights audits.*** Report cards and human rights audits of prison systems can form the basis of cooperation among all stakeholders to bring about positive changes. Where violations and their root causes are identified, solutions can be formulated, and resources can be more easily obtained to implement these solutions.

***Prison study tours and technical assistance.*** Experiences of successful responses to HIV/AIDS, including successful implementation of harm-reduction programs, need to be shared. International funders as well as governments in high-income countries have an obligation to facilitate the sharing of expertise and experiences by funding and facilitating prison study tours and the provision of technical assistance.

***NGO declarations.*** Declarations can provide an NGO platform for the reforms and programs required to respect, protect, and fulfill the human rights of prisoners in the context of the HIV/AIDS epidemic. Consideration should be given to working with the drafters of existing declarations, such as the Dublin Declaration, to expand its scope to

include the other regions of the world, and to promote the Declaration worldwide.

– Glenn Betteridge

Glenn Betteridge is a Senior Policy Analyst with the Canadian HIV/AIDS Legal Network. He can be reached at gbetteridge@aidslaw.ca. The paper on which this article is based was written by Glenn Betteridge, with assistance from Ralf Jürgens. Research assistance for the paper was provided by Hari Subramaniam and Joanna Wells. The paper is available on the Legal Network website (see note 1 below).

<sup>1</sup> The paper is entitled "Prisoners' Health and Human Rights in the HIV/AIDS Epidemic." It is available via [www.aidslaw.ca/Maincontent/issues/prisons.htm](http://www.aidslaw.ca/Maincontent/issues/prisons.htm)

<sup>2</sup> Note also that there is strong agreement that the Universal Declaration of Human Rights – UN GA res 217A (III), UN Doc A/810 at 71 (1948) – is legally binding on all United Nations member states on the grounds that it is customary international law.

<sup>3</sup> International Guidelines on HIV/AIDS and Human Rights. UNCHR res 1997/33, UN Doc E/CN.4/1997/150 (1997) at para 29(e).

## Current issues and concerns in HIV testing: a health and human rights approach

In the rush to scale up HIV testing, partially justified by the fact that treatment is becoming more widely available, the long-held view that testing must be voluntary, and that it must be accompanied by pre- and post-test counselling, is being increasingly questioned. However, as long as stigma, discrimination, and unequal access to care and treatment continue, the individual informed decision to take an HIV test must remain an integral step in medical practice. In this article, based on her presentation at an oral abstract session of the XV International AIDS Conference in Bangkok on 14 July 2004, Sofia Gruskin describes the developments that have led some people to question voluntary testing and counselling (VTC); outlines the factors that need to be considered in analyzing whether a proposed HIV testing strategy is effective in both health and human rights terms; calls for clarity in the use of terms such as "routine testing," "opting in," and "opting out"; and provides a list of considerations that must be addressed for any scaling up of HIV testing to be successful.

### Introduction

From the perspectives of both public health and human rights, concerns

exist as to how and why HIV testing is carried out, and whether people understand the behavioural, service,

and other implications of a positive test result. In the early years of HIV, members of affected communities and