



Mapping the Future of HIV/AIDS, Security and Conflict in Africa  
Joint NGO/Academic Seminar  
King's College London  
**December 6, 2005**

## **Law and HIV/AIDS**

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Often there is a gap between what law says and what happens on the ground. There is international law and quite specific issues such as how this affects the training of soldiers, but a central question is how to get international law from 'up there' to down with the people.

Here, the link between AIDS and political instability is taken as a given, linking huge numbers of people living with HIV/AIDS to poverty and the exacerbation of political problems. HIV/AIDS breaks the continuity between generations and threatens the stability within societies.

Law has often been misunderstood and misused, especially with regards to Human Rights. Furthermore, there has been a sloppy use of Human Rights language within HIV/AIDS. Human Rights has been used to talk about people living with HIV/AIDS, however to a lawyer, Human Rights means much more. Actual legal human rights are much bigger and broader, yet clearly defined, as for example the right to life, right to freedom from torture, rights for women and children, rights to health and to marry. With regards to people living with HIV/AIDS, however, Human Rights is mostly used to talk about issues such as confidentiality and access to treatment.

Human Rights treaties are important as frameworks for understanding and machinery for implementation, which, if successful, can lead to the national implementation of international standards of human rights law. In Uganda, treaties have been ratified and the country has a good Human Rights constitution, providing a climate where issues can be discussed. Though there are differences between levels of implementation and awareness between rural and urban areas, notions of Human Rights are put into practice even in remote places.

Human Rights law is both flexible and limited, performing a balancing act between the rights of the individual and rights of society as a whole. There is an implicit acknowledgement that states must accept Human Rights, yet these must be culturally receptive. Furthermore, you can have a public health exception to human rights law, which is an important yet not always recognised provision. The example of Cuba's segregation of people living with HIV/AIDS can be seen as a strategy taken in favour of the majority population.

Thus, one can argue for rights for people living with HIV/AIDS, but with exceptions. For example, one may be obliged to disclose one's HIV/AIDS status to partners. This would often not contravene legal rights, but would perhaps not be recognised in wider interpretations of Human Rights.

HIV is not just a virus, but requires changes in sexual behaviour and the regulation of that human conduct which lies within the realm of law and Human Rights law. It concerns the

regulation of human relationships. One needs to consider HIV/AIDS on a much wider spectrum, moving it away from public health legislation, and look at how it affects behaviour.

There is no global international treaty on HIV/AIDS, but there are elements of other treaties that lay down the rights to life, health, medical treatment and non-discrimination. However, on an international level this is mainly policy, which is not legally binding.

On a national level, most countries have laws focused on HIV/AIDS. South Africa and its pharmaceuticals decided to go against WTO TRIPS agreements with regard to the production of ARV drugs, which subsequently has had effects on other countries.

A key issue is to identify the relevant international framework and knowledge about how to use it, and here the work of NGOs is particularly useful. There are two main Human Rights documents, The International Covenant on Civil and Political Rights and The International Covenant on Economic and Social Rights. NGOs can use these. When a country reports to the Human Rights Committee, you can submit a counter-report that the country then must answer before the committee. By establishing legal aid centres, you can help individuals bring their cases to one of these committees, including cases women and children, should they find their way there.

The African Union has recently developed a Protocol Charter on Human Rights, in which it makes several references to HIV/AIDS, and importantly the right of women to know the HIV-status of their partners. However, this is a very recent development and its implementation and impact cannot yet be evaluated.

### Questions and Discussion

*What is good public health in relation to Human Rights and what are good Human Rights in relation to public health?*

A Code of Good Practice has been developed and signed up to by 150 INGOs, looking at both prevention and mitigation strategies. Thus a list of which rights are deemed to be relevant to HIV/AIDS in advocacy and so on, has been elaborated.

*In the African Protocol Charter for Human Rights, you mentioned there are a number of references to HIV/AIDS and particularly the right for a woman to know the status of her partner, where did you find this information?*

The specific references for these documents will be provided. A problem of is that a Human Right not to be exposed to HIV is remote from it being enforced. What matters is often traditional courts rather than international instruments and agreements. Sometimes, traditional law may be advocated, but it is often extremely hierarchical and without provisions for protecting women.

*Ros Higgins once defined law as 'when rules coincide with power centres' – i.e. rules mean nothing without power, which is a very important point. Further, lobbying around Human Rights by NGOs etc has focused on the rights of PLWHA above those who are HIV negative, and this thereby ignores the public health context. Is public health too difficult to bring up? It seems it cannot be disembodied from local and national political agendas at work. Thus there is a need for contextualising. This is not only about infection, but about social change.*

*We need to consider what putting HIV/AIDS in that legal language actually means. Calling something a Human Rights issue hooks it into a larger framework and gives it an automatic profile. Public health doctors recognise that public health means limiting people's freedom. What can you and can you not do for prevention? What does it mean if we call it a security*

*issue? Why is it being called a security issue? Security is the hot topic of the day, it draws funding and interest. Armed services is the rubric of this administration, even though we know migrant labour is a more important vector. Thus, where we hook HIV is important – whether it is a medical, development, security issue etc – it has clear implications for policy and intervention strategies.*

Having HIV/AIDS in Uganda actually gives one a position of privilege with regards to treatment and concessions, thus there is a clear need for balance against other public health priorities. Further, vulnerable populations are key to treating a population with HIV/AIDS.

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