



10 Key Points on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern

1. **Non-Discrimination:** Persons living with HIV and AIDS are entitled to live their life in dignity, free from discrimination and stigmatization. Refugees, IDPs and other persons of concern to UNHCR who are living with HIV and AIDS should not be subject to discriminatory measures. Misconceptions about refugees, IDPs or other person of concern being associated with an increased prevalence of HIV and AIDS may lead to discriminatory practices and should be dispelled.
2. **Access to HIV and AIDS Health Care:** Refugees, IDPs and other persons of concern to UNHCR benefit as any other individual from the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” This right entails non-discriminatory access to services which are equivalent to those available to surrounding host communities. In terms of HIV and AIDS, in order to respect and fulfil the right to the highest attainable standard of physical and mental health States must take steps towards realizing access for all to HIV and AIDS prevention, treatment, care and support. This would necessarily include antiretroviral therapy (ART).
3. **Access to Asylum Procedures and Protection from Expulsion and Refoulement:** The HIV status of an asylum-seeker does not constitute a bar to accessing asylum procedures. The right to be protected against *refoulement* is the cornerstone of international refugee law and HIV status is not a ground for any exception to this principle. HIV status would also not fall within the permitted grounds for expulsion to a third country.
4. **Protection from Arbitrary Detention and Unlawful Restrictions on Freedom of Movement:** Detention or restrictions on the freedom of movement of persons living with HIV and AIDS would be in violation of the fundamental rights to liberty and security of the person, as well as the right to freedom of movement, if carried out solely on the basis of a person’s actual or suspected HIV status. There is no public health justification for restrictions of these rights due to a person’s HIV status alone. Moreover such restrictions would be discriminatory.
5. **Respect for Confidentiality and Privacy:** In principle, personal data is confidential and should not be shared without the consent of the individual concerned; this includes data on the health status of the person. Those who have access to the health status of persons of concern must take appropriate measures to maintain its confidential nature.
6. **Provision of Voluntary Counselling and Testing (VCT):** VCT programmes play an important role in preventing HIV transmission by providing people with accurate information about the virus. Without proper standards, however, there may be breaches of confidentiality resulting in other protection problems. UNHCR supports the use of VCT programmes as long as international standards are met and promotes equal access for persons of its concern to existing VCT programmes, or the establishment of such programmes in cooperation with governments and partners.
7. **Freedom from Mandatory Testing:** UNHCR strictly opposes mandatory HIV testing of asylum-seekers, refugees, IDPs and other persons of concern as this is at variance with relevant human rights standards. WHO and UNAIDS have asserted that there is no public health justification for mandatory HIV screening as it does not prevent the introduction or spread of HIV. Public health interests are best served by promoting voluntary counselling and testing in an environment where confidentiality and privacy are maintained.
8. **Access to Durable Solutions:** The attainment of a durable solution should not be jeopardized by the HIV-status of a refugee or a family member. Concerning **voluntary repatriation**, the right to return to one's country may not be denied on the basis of HIV status. With respect to **local integration**, ensuring access to local health and HIV- and AIDS-related services on an equitable basis with nationals in the host country is critical to protecting the basic rights of refugees. In the context of **resettlement**, although UNHCR opposes HIV testing as a prerequisite for such, certain resettlement countries require pre-departure health-screening, including HIV testing. Where testing is done, human rights should be respected and voluntary counselling and testing standards should be met. Where States deny entry to individuals who are HIV-positive or AIDS, automatic waivers should be given for resettlement cases.
9. **HIV-related protection needs of women, girls and boys:** Women and girls are disproportionately affected by HIV and AIDS and gender inequality can play a significant role in the protection problems they face, including increased exposure to violence. Appropriate measures need to be taken to ensure their protection against sexual or physical violence and exploitation. Special attention must also be paid to children affected by HIV, including those orphaned or otherwise made vulnerable by HIV.
10. **Access to HIV information and education:** The right to health includes access not only to HIV treatment, but also to HIV-related education. States and UNHCR should ensure the widespread provision of information about HIV and AIDS to refugees, IDPs and other persons of concern, particularly with regard to HIV-related prevention and care information as well as information related to sexual and reproductive health.