

and practice by the United Kingdom; and child recruitment by government forces and armed groups in the Democratic Republic of Congo and neighboring countries that are party to the conflict.

HIV/AIDS AND HUMAN RIGHTS

In July, Human Rights Watch established its own program dedicated to addressing the problem of HIV/AIDS and human rights. The program will document violations related to HIV/AIDS and advocate for legal and policy protections. The program will work in partnership with NGOs around the world to produce original research on AIDS-related human rights abuses, including in the areas of women's rights, children's rights, rights of migrants and refugees, discrimination on the basis of HIV status, and rights of prisoners.

The prominence of the human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) pandemic on the global policy and aid agendas reached a peak in 2001, but the world's appreciation of AIDS as a human rights crisis still had a long way to go. Human rights abuses that aggravate the HIV/AIDS epidemic were highly prevalent across the globe in 2001, as they have been since the early days of the disease. Addressing AIDS-related human rights abuses remained an undersupported part of national HIV/AIDS programs, compromising the overall effectiveness of national programs. By December 2000, HIV/AIDS had claimed 22 million lives globally, and 36 million persons were infected with the disease, over 70 percent of them in sub-Saharan Africa.

HIV/AIDS is fueled by discrimination and repression in many ways. The subordinate status of women and girls in many settings makes them unable to refuse unsafe or coercive sex. They frequently have less access than their male counterparts to appropriate and accurate information about HIV transmission and the care of persons with AIDS. They also face a variety of legal and cultural impediments to treatment of sexually transmitted disease other than AIDS, which in turn increases their biological vulnerability to HIV transmission. The United Nations Fund for Women (UNIFEM) concluded in a 2001 statement that the HIV/AIDS epidemic would never have attained its catastrophic proportions, especially in Africa, without discrimination against and subordination of women.

Discrimination against gay men, injecting drug users, and sex workers in many countries has marginalized these groups from the preventive services (condoms, clean syringes for drug users, HIV testing and counseling, for example) and treatment they need. Laws and policies favoring obligatory HIV testing and identification of sex partners among some socially marginalized groups have served to drive underground those who most need services. Drug users attempting to reduce their risk of acquiring HIV by participating in needle exchange programs have faced repression and violence in some countries. Prisoners in many parts of the world are subject to sexual violence and are denied services that would help protect them from HIV transmission through drug use.

HIV/AIDS has had particular impact in depriving children of their rights. AIDS preferentially claims the lives of sexually active adults in the prime of their productive lives, many of whom are parents. In Africa alone, over 13 million children under age fifteen have lost a mother or both parents to AIDS, according to the United Nations. This social crisis also has severe human rights consequences as children orphaned by AIDS and those with ill parents are often forced to leave school and become breadwinners, sometimes in hazardous jobs, and frequently face abandonment, disinheritance and abuse as AIDS also ravages the extended family members who would otherwise support them.

The course of the AIDS epidemic continues to be determined by people's ability to realize their right to treatment and preventive services. AIDS is no longer a leading cause of death for young adults in North America and Western Europe, largely because of access to costly antiretroviral drugs in these regions. The same treatment remains largely out of reach in developing countries.

KEY GLOBAL DEVELOPMENTS

Following the historic U.N. Security Council session in January 2000 on HIV/AIDS as a security threat, the General Assembly committed itself to holding a special session on HIV/AIDS in 2001. The special session in June 2001 was an occasion for highlighting the human rights dimension of the AIDS crisis, to which the conference's final declaration referred in general terms. The process of composing the declaration, however, graphically illustrated human rights challenges that remain. In the deliberations over the wording of the declaration, a number of countries, principally Middle Eastern countries and the United States, objected to the naming of men who have sex with men, injecting drug users, and sex workers as high-risk groups with respect to HIV/AIDS. In spite of support from many other countries for explicit inclusion of these groups to highlight the need for programs to reach them, in the end they were not named in the final document. The declaration, therefore, became an unwitting example of the stigmatization that persons in these groups face every day and that impedes their access to services and support.

The year 2001 saw a dramatic strengthening of the global civil society movement in favor of the right to treatment for HIV/AIDS. Pressure from non-governmental organizations (NGOs) across the world was credited with contributing to the withdrawal in April of a lawsuit brought against the government of South Africa by thirty-nine multinational pharmaceutical companies. The drug companies had challenged the implementation of a 1997 South African law that would have facilitated the country's production and importation of cheaper generic antiretroviral drugs. While the dropping of the suit did not stir the government of South Africa to increase AIDS drug access, legislative action followed quickly in Kenya and was pending in several other countries, to enable a greater flow of cheaper drugs to persons with AIDS.

The government of Brazil was in the global spotlight in 2001 as its national program on AIDS continued to make locally produced antiretroviral drugs widely available in the country. AIDS activists in Brazil pointed out that flaws remained in the program, but the dramatic reduction in deaths from AIDS in the country and

the more widespread use of preventive services because people knew that treatment was available were testimony to the effectiveness of the government's approach. The legal foundation of Brazil's AIDS program is a national law by which patents are not honored in the country if the holder of the patent does not begin manufacturing the product in Brazil within three years of the awarding of the patent. In May 2000, the United States initiated an action against Brazil in the World Trade Organization (WTO), asking the WTO to review Brazil's patent laws. Under considerable public pressure, just two months after the withdrawal of the pharmaceutical industry's law suit in South Africa, the office of the U.S. Trade Representative announced in June 2001 that it would drop its action against Brazil if Brazil agreed to notify U.S.-based patent holders when it planned to manufacture generic versions of their drugs.

Brazil presented a resolution to the U.N. Commission on Human Rights in March, asserting the human right of all persons with HIV/AIDS to treatment that includes antiretroviral drugs. The resolution passed unanimously over the abstention of the U.S. The WTO ministerial meeting in Qatar in November resulted in a consensus of member states that the WTO agreement on global patent rules "does not and should not prevent members from taking measures to protect public health." Although developing countries had sought a statement of even stronger support for putting public health before patents, treatment access advocates praised the Qatar consensus as a step forward and said they would work in 2002 for more concrete language on patents and public health emergencies.

In April and May, United Nations Secretary-General Kofi Annan spearheaded an effort to establish a global fund to which public and private donors could contribute as part of a strengthened multilateral response to HIV/AIDS. Some treatment access advocates had been pushing for an international funding mechanism to draw in new resources to improve AIDS drug access for the poor. It was unclear whether the new global fund would serve this purpose as its mandate will include HIV/AIDS, tuberculosis and malaria, and the United States, among others, has expressed its preference that the AIDS focus of the fund be mainly prevention. Many questions remained about how the fund would be administered, how the interests of persons with AIDS would be represented in its decision-making, and especially whether the fund would ever have the U.S. \$7 to \$10 billion per year in resources envisioned by Kofi Annan. The Bush Administration's pledge of U.S. \$200 million to the fund was widely criticized as inadequate. Pledges to the fund totaled about U.S. \$1.4 billion in October 2001.

CHALLENGES BY REGION

Africa

Sub-Saharan Africa is the epicenter of HIV/AIDS. The disease constitutes a humanitarian emergency, having killed about 18 million persons since the mid-1980s, more than all of Africa's wars over that period. With historically unimaginable numbers of deaths of adults in their productive years, health and education services and economic productivity overall have deteriorated as a result of AIDS,

along with the erosion of the extended family and community-based institutions. Silence and denial have characterized the response of many African leaders to this catastrophe. Although more African leaders are beginning to speak out about HIV/AIDS, including those who gathered for an African summit on AIDS in Abuja, Nigeria in April 2001, programs, policies and resources remain inadequate to the task of stemming the crisis.

Africa is the only region where women and girls outnumber men and boys among persons living with AIDS. In nearly all of the heavily affected countries of eastern and southern Africa, the rate of HIV infection among girls aged fifteen to nineteen years is four to seven times higher than that of boys. In most countries, girls are also more likely than boys to be pulled out of school when a parent becomes ill, and they frequently have to become the breadwinners of the family. AIDS-affected children, including large numbers of girls, continued to swell the numbers of street children in certain countries, with NGOs reporting that girls orphaned by AIDS increasingly find themselves having to engage in prostitution to survive, putting them at high risk of HIV transmission. The subordinate status of women and girls in the region had clearly facilitated the epidemic's rapid spread and destructive impact.

Lack of access to treatment has been a defining feature of the African AIDS crisis. In August, Nigeria and Cameroon both contracted with Cipla, an India-based generic drug manufacturer, to supply large-scale treatment programs for persons with AIDS. The humanitarian NGO Médecins Sans Frontières (MSF) also launched large pilot treatment programs in seven African countries. These initiatives will be examined closely for lessons on good practices to ensure wider-scale treatment access on the continent.

Eastern Europe

The fastest growing AIDS epidemic in the last few years has been in eastern Europe and the former Soviet states. It is fueled largely by the widespread use of injected drugs, a phenomenon that has grown with poverty, high unemployment and other aspects of the economic transition in the region as well as the easy availability of narcotic drugs. Access to services such as needle exchange and treatment for opportunistic infections remains very limited in many parts of the region. According to the Open Society Institute, which has been a leader in establishing AIDS-related services in the region, injecting drug use is highly prevalent among sex workers, homeless youth, and prisoners—groups likely to face stigmatization, marginalization and even abuse by the authorities in some settings.

Asia

It is feared that the numbers of persons infected and living with AIDS in Asia will surpass even the huge totals in Africa in the coming years. The epidemic in India, already well established in some states, is facilitated by subordination of women and discrimination against gay men and sex workers. Extremely high rates of infection among injecting drug users and sex workers in parts of Southeast Asia are driv-

ing a rapidly accelerating epidemic. Steep rises in infection rates in some parts of China, in some cases apparently fueled by the use of unsterilized needles in health facilities or blood sales centers, came to light in 2001. Public alarm over local media accounts of AIDS “outbreaks” reportedly led to incarceration of HIV-positive persons by local authorities and other drastic measures.

Caribbean and Latin America

The Caribbean basin contains several countries that have the highest rates of HIV infection outside sub-Saharan Africa. Policies and legal protections against AIDS-related discrimination have not caught up with the pace of the epidemic in a number of Latin American countries. Discrimination against HIV-positive gay men and sex workers and many instances of forced HIV testing of these groups and others have been reported in the media. In addition, with a fairly well developed capacity for generic drug production in some countries, the right to AIDS drugs has become a focus of civil society action. The national AIDS program in Brazil set a high standard in making locally produced generic drugs widely available to persons with AIDS. The proposed Free Trade Agreement for the Americas discussed at the regional summit in Quebec, Canada in May would afford even greater protection to patent-holding drug companies than they already enjoy under the terms of the WTO’s intellectual property rules.

WIDENING RANGE OF ABUSES

Even as some aspects of the fight against AIDS have become better established, the range of human rights abuses linked to all stages of HIV/AIDS epidemics around the world has widened. In eastern and southern Africa, where HIV infection is so prevalent that it is no longer meaningful to stigmatize minority or “high-risk” groups, stigmatization of persons seeking AIDS-related care, especially women and girls, continues to drive the epidemic. Women have reported to health workers in several countries that they are aware of the risk of transmitting HIV to their infants through breastfeeding, but feel they have to take that risk because not breastfeeding will highlight their HIV-positive status and subject them to hostile and even violent reprisals from their husbands or partners. Denial of AIDS as a cause of death remains the rule rather than the exception even in the highest-prevalence countries, contributing to the stigmatization of those courageous enough to speak openly about their illness.

Children have a right to, and a life-and-death need for, access to good information on HIV transmission and care for persons with AIDS. Formal education, especially at the primary level, is an ideal vehicle for meeting this need. In many countries, however, AIDS education in school has been strongly opposed by religious groups and others who have alleged that sex education in schools encourages promiscuity. In Africa, this denial of children’s and young people’s right to information is compounded by the inability of many AIDS-affected children to stay in school. When a parent or other adult in the household is ill with AIDS, children are

withdrawn from school to provide care, to earn income for the family, or because a family encumbered by the cost of treating a sick person can no longer afford to keep a child in school. A Human Rights Watch investigation in Kenya in February and March showed that children are further disadvantaged and entrenched in poverty by a lack of protection of their inheritance rights. Kenya is not the only country in Africa in which the state authorities have failed to institute legal to protect the rights of the hundreds of thousands of children who now find themselves without relatives to help protect their property.

Human rights protections continue to be the weakest part of generally feeble responses to AIDS on the part of many African governments. Kenya again illustrates an alarming pattern. The head of state did not even mention HIV/AIDS in public until late 1999, by which time about 14 percent of the adult population was already infected. In July 2001 he announced that he would urge parliament to institute capital punishment for persons who transmit HIV intentionally and portrayed this measure as an effective means of protecting women from AIDS. While intentional transmission of HIV, where it can be demonstrated, should be punishable by law, Kenya is one of many countries where an estimated 90 to 95 percent of HIV-positive persons do not even know their HIV status. It is unlikely, therefore, that focusing on "intentional" transmission would do much to curtail the epidemic. Meanwhile, policies and programs that could go a long way to improving access of women and girls to information and services remain non-existent or grossly underfunded.

HIV/AIDS in war was the object of international attention during the year. Soldiers in many armed conflicts were thought or in some cases known to have very high rates of HIV infection. To the extent that sexual coercion and sexual violence directed toward the civilian population are instruments of war, HIV/AIDS renders them more lethal. In January, as part of a Security Council session on HIV/AIDS, the United Nations Joint Programme on HIV/AIDS (UNAIDS) and the U.N.'s Department of Peacekeeping Operations undertook a joint project to reduce the likelihood that U.N. peacekeepers would contract or transmit HIV as part of their operations. The declaration of the U.N. special session on HIV/AIDS called on governments to improve HIV/AIDS awareness and prevention activities targeted at their armed forces.

Relevant Human Rights Watch Reports:

In the Shadow of Death: HIV/AIDS and Children's Rights in Kenya, 6/01

No Escape: Male Rape in U.S. Prisons, 4/01

Scared at School: Sexual Violence Against Girls in South African Schools, 3/01