



**CSW ORAL SUBMISSION  
53<sup>rd</sup> Session – March 2 ~ 13, 2009**

***Human Rights Violations at the Intersection of HIV/AIDS and Reproductive Health***

**Jointly submitted by:** The Center for Reproductive Rights and the ATHENA Network

Distinguished Commission Members, thank you for allowing the Center for Reproductive Rights and the ATHENA Network to present an oral submission on human rights violations at the intersection of HIV/AIDS and sexual and reproductive health. Paradoxically, while women bear the burden of caregiving within the HIV/AIDS pandemic, they are often unable to protect their own sexual and reproductive health and rights. This submission will focus on violations of women's human rights in health care settings, including involuntary HIV testing and disclosure and discriminatory practices by health care providers, as well as dangerous legislative trends that further threaten women's rights in the context of HIV.

**Involuntary HIV Testing and Disclosure**

International human rights standards and medical ethics require medical providers to obtain informed consent for HIV testing and to ensure strict confidentiality of HIV status. Unfortunately, all too often health care providers completely disregard these obligations by testing women and exposing their HIV status to partners, family members and sometimes even employers without their consent. For instance, only half of Kenya's public health facilities and only 15% of its maternity wards comply with the country's informed consent regulations. Non-consensual HIV testing, especially in the context of pre-natal care, violates women's rights to autonomy, dignity, health, equality, non-discrimination and equal protection before the law. Moreover, non-consensual disclosure of HIV status places women at risk of physical, sexual and psychological abuse, including abandonment, neglect, separation from their children and even ostracism by their husbands, partners or community. Research has also shown that violations of consent and confidentiality discourage pregnant women—regardless of their HIV status—from obtaining health care services, including HIV testing, drug treatment, pre- and post-natal care and means to prevent mother-to-child transmission.

**Discrimination and Violence against HIV-Positive Women in Health Care Settings**

HIV-positive women also face discrimination and violence in health care settings, such as coercive sterilization and delays in and denial of reproductive health care services (including abortion care). Such discrimination can be lethal as in the case of Gita Bai, an Indian woman from Madhya Pradesh. Despite experiencing alarming pregnancy-related complications, Gita was discharged after hospital staff learned of her HIV status and forced to give birth on the sidewalk outside of the hospital, ultimately leading to her death.

Women living with HIV also encounter discriminatory attitudes from health care providers regarding their childbearing decisions. This occurs in spite of women's right to make sexual and reproductive choices, irrespective of their HIV status, and the fact that with the appropriate interventions, the risk of viral transmission to newborns can be reduced to less than 2%. These attitudes can manifest

themselves in a range of discriminatory conduct including conditioning receipt of anti-retrovirals on contraceptive use and coercive sterilization. A petition was recently submitted by the Center for Reproductive Rights and Vivo Positivo to the Inter-American Commission on Human Rights, on behalf of a twenty-two year old Chilean woman with HIV who was sterilized without her informed consent just moments after delivering her first child in 2002. At no point had she requested sterilization, and although she learned that she was HIV-positive shortly after becoming pregnant, she did not receive counseling on preventing mother-to-child transmission. Sadly, these kinds of violations are not uncommon in Chile or other parts of the world, including South Africa, Namibia and the Dominican Republic.

### **Disturbing Legislative Trends**

Exacerbating human rights violations faced by women in health care settings are disturbing legislative trends of criminalizing HIV exposure and transmission. Such criminalization further compromises women's rights and impact women's ability to care for themselves and others – without taking into account women's realities and vulnerabilities, including their vulnerability to violence, abuse and further stigmatization. These laws, often overly broad and poorly drafted, could penalize individuals who practice safer sex and/or disclose their HIV status to their sexual partners, or mothers who transmit HIV to their children, either *in utero* or during labour and delivery. Pregnant women may face the most severe consequences of these laws—especially considering simultaneous trends of routine and mandatory HIV testing of pregnant women.

### **Call to Action**

In light of such grave threats to women's human rights, we hope that the Commission in its outcome document for this session will call upon governments to protect the sexual and reproductive health and rights of women living with HIV. Specifically:

- To ensure that the protection of women's rights, especially the rights to autonomy, sexual and reproductive choice, equality and non-discrimination, are at the center of the response to HIV and AIDS – so as to guarantee that women's risks and vulnerabilities are not perpetuated, but rather addressed and minimized;
- To take pro-active steps to reduce discrimination against HIV-positive women in health care settings, with a particular emphasis on stopping non-consensual HIV testing and disclosure of HIV status, reducing stigma that leads to denial of necessary reproductive health services, and eradicating the reprehensible practice of coercive sterilization of HIV-positive women.
- To pass legislation and policies that require medical providers to obtain informed consent prior to HIV testing and disclosure of HIV status and impose strict confidentiality standards in the context of HIV, and create effective enforcement mechanisms to guarantee these protections.
- Finally, to ensure that HIV legislation and policies focus on protecting the human rights of those living with HIV and the development of comprehensive and evidence-based prevention methods, rather than introducing provisions such as criminalization of transmission which increase women's risks and vulnerabilities.

Thank you.