

UPDATES: African Human Rights System

HIV, the law and human rights in the African human rights system: A Report by the African Commission on Human and Peoples' Rights

On 27 January 2018, during the 30th Session of the African Union in Addis Abba, Ethiopia, the African Commission on Human and Peoples' Rights (the African Commission) launched a ground-breaking report, HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses.

The report addresses key human rights challenges in the response to HIV, including inequality and discrimination against people living with HIV; access to treatment and restrictive intellectual property regimes; conflict and migration; coercive HIV testing and counselling; restrictions on civil society; and the criminalisation of people living with HIV. The report was mandated by the African Commission with the adoption of Resolution 290 on 'the Need to Conduct a Study on HIV, the Law and Human Rights'. About five public consultations were held, and opportunities were given to other stakeholders to comment on the draft report via online submissions.

As the first-ever comprehensive report on HIV and human rights on the continent, it examines various aspects of the human rights challenges relating to the epidemic. While commending the progress made so far in addressing HIV in the region, the report raises concerns about the difficulties facing key populations such as young women and girls, prisoners, sex workers, men who have sex with men, transgender people, and people who use drugs. It makes radical recommendations, and highlights good practices from across the continent in responding to challenges, including law and policy reform, progressive court decisions, and programmes to advance human rights protection and access to HIV and health services.

The development of the report is the result of three years of work that involved inputs from stakeholders such as people living with and affected by HIV, civil society, and members of key populations.

A launch event of the African Union was attended by the First Lady of Ethiopia in her capacity as Chairperson of the Organisation of African First Ladies against HIV/AIDS. Also in attendance were the Vice-President of Botswana, the Chairperson and Vice-Chairperson of the African Commission, and the Executive Director of UNAIDS. Participants welcomed the report and pledged their commitment to supporting the implementation of its recommendations for advancing human rights and social justice in the response to HIV in Africa.

The report is available at www.achpr.org/files/news/2017/12/d317/africancommission_hiv_report_full_eng.pdf.

UPDATES: United Nations

The impact of civil and political rights violations on the poor: Report of the United Nations Special Rapporteur on extreme poverty and human rights

According to a report submitted to the United Nations in October 2017 by the Special Rapporteur on extreme poverty and human rights, Philip Alston, when human rights frameworks are developed and implemented, the civil and political rights of people living in poverty are either completely ignored and explicitly excluded from the analysis, or mentioned only in passing.

The report highlights the disproportionate and distinctive impact of civil and political rights violations on the poor, maintaining that the fundamental principle of the indivisibility of all human rights is undermined by those who neglect civil and political rights in the context of poverty. Noting that states have gathered little data on the socio-economic status of victims of civil and political rights violations, the report outlines some of the ways in which the civil and political rights of those living in poverty are denied, restricted or deprived of real significance; the violations include torture, abuse of police power, and violence against women and children.

Referring to the way that the poor are criminalised, the Special Rapporteur observes that 'poverty and the death penalty are almost always inextricably bound together'.

The report draws attention to *The State v T. Makwanyane and M. Mchunu*, (Case No. CCT/3/94, Judgment of 6 June 1995), in which the Constitutional Court of South Africa noted that 'poverty, race and chance play roles in the outcome of capital cases'. The Court went on to say that whether or not the death penalty is imposed depended not on the predictable application of objective criteria but on a vast network of variable factors. These factors include 'the poverty or affluence of the accused and his ability to afford experienced and skilful counsel and expert testimony' and 'his resources in pursuing potential avenues of investigation, tracing and procuring witnesses'.

The report emphasises that, in terms of enjoying their right of access to justice, the poor face multiple barriers to the realisation of their right to legal assistance. In lower- and middle-income countries, poorer people are less likely to be able to afford bail and so are more likely to be in pre-trial detention; because they lack the resources for an adequate defence, they are also more likely than others to end up on death row. Formal court process not only tend to be expensive but are often alienating for the poor. The report refers a study in 2016 by Muntingh and Redpath in which some African countries, the detention of poor migrant workers in urban centres cuts off financial flows to family members in rural areas, driving families deeper into poverty

by forcing them to sell off assets or borrow money.

In terms of the right of the poor to political participation, the report highlights that those living in poverty are disproportionately and differentially affected by practical and legal obstacles to the exercise of their right to political participation.

The poor, for instance, face barriers to voting in that they are often in precarious employment (making it harder to secure time to vote), have lower access to transportation (making it harder to reach polling stations), tend to be less educated (increasing the likelihood that they run into administrative issues in the voting process) and are often affected by health problems (making it less likely that they can show up to vote). A 2014 study by Leighley and Nagler found that 'the relationships among income, education, and voter turnout are quite strong: the probability of a highly educated or wealthy individual casting a ballot is much, much higher than the probability of a less-educated or poorer individual casting a ballot'.

With regard to the right to housing, the criminalisation of homelessness is increasingly well documented. The shortages of affordable housing and emergency shelter beds force people onto the streets, where they are then fined and imprisoned. As if being unable to afford shelter, decent food, a warm bath or even the use of a private toilet were not humiliating enough, homeless people can be, and often are, also stripped of their freedom of movement.

The report notes in conclusion that at a juncture when poverty and extreme poverty were being placed at the heart of the international agenda, there was widespread resistance among governments to references to the civil and political rights specifically of the poor and to the central concept of accountability. As a result, persons living in poverty are ignored as a vulnerable group, with the focus on discrimination and equality overlooking this 'protected group' and discrimination cases never relating to socioeconomic class.