Human Rights Watch Submission regarding the Kenya National HIV/AIDS Strategic Plan, 2009-2014

February 2009

Human Rights Watch welcomes the opportunity to provide input into the drafting of the next Kenya National HIV/AIDS Strategic Plan (KNASP), 2009/10-2013/14. Our organization carries out worldwide research and advocacy on the linkages between human rights and health issues, including HIV/AIDS. We document human rights abuses that contribute to the spread of HIV/AIDS and human rights abuses against those living with HIV or affected by the epidemic. We also analyze prevention, testing, and treatment policies from a human rights angle.

While the link between HIV/AIDS and human rights violations is now widely acknowledged, HIV/AIDS strategies and implementation programs are still sometimes focused on technical advances or vertical interventions that fail to specifically address human rights abuses and the critical obstacles to prevention and treatment that stem from them. It is vital that the new Strategic Plan adopts a rights-based approach that permeates all aspects of strategy, policy, and programming.

This contribution concentrates on children's rights, a policy area that we believe needs to be strengthened. Human Rights Watch has carried out research on HIV and children's rights in Kenya since 2001, most recently on access to HIV treatment.[1]

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[1] Human Rights Watch, *In the Shadow of Death: HIV/AIDS and Children's Rights in Kenya*, vol. 13, no. 5(A), June 2001, http://www.hrw.org/reports/2001/kenya/; Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya*, vol. 15, no 5 (A), March 2003, http://www.hrw.org/reports/2003/kenya0303/kenya0303.pdf; Human Rights Watch, *Letting Them Fail: Government Neglect and the Rights to Education for Children Affected by AIDS,* vol. 17, no. 13(A), October 2005, http://hrw.org/reports/2005/africa1005/index.htm; Human Rights Watch, *A Question of Life or Death: Treatment Access for Children Living With HIV in Kenya*, ISBN 1-56432-412-5, December 2008, http://www.hrw.org/sites/default/files/reports/kenya1208webwcover.pdf.

Building child rights into the new HIV/AIDS strategy

International law provides for the basic right to the highest attainable standard of health and strictly prohibits discrimination. The right to health implies a right to access a core minimum set of health care services, including, in the case of Kenya, anti-retroviral treatment (ART), without discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Convention on the Rights of the Child, to which Kenya is a party, also requires Kenya to ensure a wide range of protections for children, including protections against abuse and violence.

Despite these protections, children continue to suffer human rights abuses in Kenya today. The new Strategic Plan should define levels of vulnerability to abuse among children and design appropriate strategies for protecting different vulnerable groups, such as orphans, children living with HIV, street children, child sex workers, child drug users, child-headed households, migrant children, disabled children, children living in slums, and children in pastoralist communities, among others. The current KNASP (2005/06-2009/10) does identify orphans and vulnerable children (OVCs) as a vulnerable target group but fails to define this group in detail and develop adequate protection and health strategies for them.

Improving pediatric HIV testing

The new Kenya National HIV/AIDS Strategic Plan should seek to expand testing and counseling for children while ensuring continued respect for the principle of consent, confidentiality and counseling.

We welcome the government's policy of routinely offering HIV testing of infants, which has the potential of significantly reducing child mortality. The policy is not yet implemented country-wide, and this urgently needs to happen in the coming period. When implementing the policy, it is vital that the mother or other caregiver make a free, informed choice whether to have the infant tested, in accordance with medical ethics and international human rights standards. Health workers must explain the choice to them clearly and refrain from exerting pressure. In addition, confidentiality must be assured and mechanisms put in place to report incidents of breaches in confidentiality, coercion or the failure to provide consent, and stigmatizing or discriminatory care by health care providers. Health care providers should be held accountable for breaches in these rights and patients should be informed about opportunities to formally complain about stigmatizing treatment or breaches.

The current testing guidelines provide insufficient guidance for testing children over the age of 18 months. As a result, many of these children fall through the cracks and are not being offered testing. Health facilities should be instructed to offer testing for all children under the age of five who have not yet been tested, for children of any age whose mothers are HIV-positive or have died, and for children of any age who have HIV-related symptoms.

Under the current testing guidelines, children may only be tested with the consent of a parent or guardian. When parents or caregivers are unable or unwilling to physically accompany a child to a health setting for the test, this rule constitutes an obstacle to testing children. Human Rights Watch recommends that testing guidelines be changed so that third parties, such as community health workers, should also be permitted to take children under 15 for testing if the parents or caregivers give their informed consent.

The current testing guidelines also permit children over age 15 to be tested without parental consent if they are symptomatic, pregnant, married, a parent themselves, or engaged in "risky behavior". This rule is vague and may be an obstacle for testing if health care providers are uncertain how to assess the older child's situation. Children should be able to seek testing without parental consent at least from age 15 onwards, and possibly earlier (from age 12), depending on their cognitive and emotional maturity.[2] Health care providers should be given specific guidelines and training to ensure that they are able to make this determination systematically and without discrimination. Children ages 12 and above should also be allowed to refuse a test. Additional resources for counseling children should be ensured, with counselors appropriately trained.

When children test positive, they are often not told about their status, even when they are over the age of 12. This constitutes a violation of a child's right to information, and, ultimately, to health and life. A new policy on disclosure to children should be developed as part of Kenya's HIV/AIDS strategy.

Improving children's access to anti-retroviral treatment (ART)

The new Strategic Plan should seek to expand HIV treatment and care for children, and explicitly address the challenges that have limited access. Tens of thousands of children living with HIV still do not have access to treatment. Treatment coverage is lower for children than for adults. HIV/AIDS policies have focused on adults; the current KNASP does not

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[2] The ability to understand medical treatment and consent to it has sometimes been defined as "Gillick competence." Gillick competence is a term originating in an English legal case which has been used in several countries to decide whether a child is able to consent to his or her own medical treatment, without the need for parental permission or knowledge, based primarily on the child's ability to understand the proposed treatment.

address the particular challenges of reaching children, including orphans and vulnerable children, for testing and treatment.

The roll-out of anti-retroviral treatment for children must reach lower-level health facilities such as health centers and dispensaries, which are the most accessible facilities for children. HIV treatment should be integrated into regular child health care—such as Maternal and Child Health clinics—and be offered at ART sites for adults. At present, transport costs prevent many parents or caregivers from reaching distant district hospitals or other higher-level health facilities that offer pediatric treatment. Training on pediatric HIV has started and needs to be intensified. Many health workers at the local level are not yet fully trained on HIV in children and are not comfortable treating children. A strategy to scale up pediatric treatment should also include providing patients with information on where free pediatric ART is available, and treatment literacy courses for adults caring for children.

Treatment of older children is compromised by the lack of availability of fixed-dose combination pills; the roll-out of these formulations should be a priority.

Improving food security

The right to health embraces a wide range of socioeconomic factors that promote conditions in which people can lead healthy lives, including food and nutrition. Antiretroviral drugs are more efficacious when taken with the right types of food; without enough food, or without food with sufficient nutritional value, a patient may suffer from severe side effects such as nausea, vomiting, diarrhea, or liver or kidney damage. This could also mean that the drugs will ultimately not work. Lack of food is an access barrier for children in need of antiretroviral treatment, and a cause for lack of adherence to the treatment programs. Many caregivers of child patients find it impossible to get the food they need. Sometimes caregivers start children on ART, but when they have no food, leave out one dose, or several. The new Strategic Plan should recognize the importance of the right to food for people living with HIV, and propose strategies of increasing food security for vulnerable communities.

Reaching children through community health workers

Community health workers play a key role in informing patients about testing, treatment, and their rights, and in supporting patients in situations of conflict and abuse. They also do essential outreach work with parents or caregivers, and convince them to test and treat the children in their care. The existing network of community health workers should be strengthened and expanded. Community health workers should receive training on HIV-related issues and on child psychology, and should be compensated for their work.

Special attention needs to be given to the situation of orphans and vulnerable children who have difficulty in accessing HIV testing and treatment. Many suffer human rights abuses, such as violations of property rights, labor exploitation, sexual harassment and abuse, and violence, and are living in circumstances that compromise their access to health care. In addition, health structures are often ill-prepared to deal with children without a home or adult supervision, and may withhold ART because adherence is hard to ensure. The new Strategic Plan should propose targeted measures for HIV testing and treatment adapted for different vulnerable groups.

Strengthening child protection systems

Although the government and donors are involved in a multitude of protection activities, child protection systems are weak in Kenya, and children who experience neglect or abuse are often left with no one to turn to; they are also at heightened risk of HIV infection as a result. The current KNASP does not give any details on how to implement the concept of child protection.

At present, there are 85 children officers working across Kenya charged with implementing legal protections in the Children's Act. Children officers have the legal authority to take a child in need of care and protection to a place of safety, or to take the child to a registered health institution and seek treatment. However, in practice, the number of children officers is far too small, leaving them overstretched and unable to carry out these activities.
The next Strategic Plan needs to address the current gaps in child protection for children infected or affected by HIV. In particular, the government should significantly increase the number of children officers throughout the country. Current programs for orphans and vulnerable children should include measures to improve access to health care, which is not always the case. It is also vital that cases of child disinheritance, child neglect, and child abuse are investigated and prosecuted in accordance with international legal standards. In order to achieve this, access to justice for children suffering abuse or disinheritance must be improved. For example, free legal aid could be provided for vulnerable children and legal professionals and law enforcement personnel trained on children's rights.

Orphans are often not able to get an education because guardians cannot or do not want to spend money on school fees or related costs, or want the child to work. Children whose parents are terminally ill drop out of school to act as caregivers to their parents and younger siblings. Children who are themselves HIV-positive experience prolonged absences from school due to ill-health, poor access to essential medicines, and AIDS-related stigma and discrimination. Strategies for the protection of orphans and vulnerable children need to seek to improve access to education by lifting financial barriers to primary education, ensuring that schools recognize the particular problems of AIDS-affected children, and by enforcing non-discrimination laws and other protections.

Addressing abuses against women and girls living with HIV

The new Strategic Plan should mainstream gender issues, and include strategies for the protection of women's rights. The current KNASP defines women as a vulnerable target group but lacks a consistent, strong gender component. Strengthening the position of women would also improve the situation of their children.

Women and girls continue to be victims of sexual violence, sexual exploitation, and gender-based discrimination. They are often unable to negotiate safer sex. Widows are sometimes coerced into the customary practices of "wife inheritance" or ritual "cleansing", which usually involve unprotected sex. Many HIV-positive women suffer abuse or abandonment by their husbands or family-in-law. Some suffer stigmatization, violent assault, and separation when their husbands find out about their status. When the husband dies, in-laws often seize the property. In the context of these human rights violations, access to treatment for women is often compromised; as a result, their children might also not get tested or treated.

The new Strategic Plan should include a strategy to improve protection of women's rights, including through complaint mechanisms, improved access to justice, and better judicial investigations and prosecutions. Women who face abuse and violence if their and their infant's HIV status become known to the family should be offered support in addressing these challenges through social workers, community health workers, or legal services.

It should also propose strategies to include fathers and other men into child health care, with a view to reducing intra-family conflicts over HIV testing and treatment.