



Regional Dialogue: Africa

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FACT SHEET: Children

Globally, at the end of 2009 there were 2.5 million children living with HIV. It is estimated that almost 90% of these children live in sub-Saharan Africa. Within the continent, South Africa, Nigeria, Kenya, Malawi, Mozambique, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe have the highest rates of adolescent boys and girls living with HIV. In many parts of the continent, steps have been taken towards reviewing and reforming legal frameworks in order to protect and promote the rights and welfare of children infected and affected by HIV. However, a number of over-arching legal problems such as discriminatory inheritance laws, limited recognition of the evolving capacity of children and inadequate social protection continue to prevent a holistic legal response to the impact of HIV and AIDS on children.

Care, maintenance and protection of children

Ensuring that children without parents are cared for by persons who are recognised in law as being responsible for their care, maintenance and protection remains an issue in Africa, where many legal frameworks have failed to recognise or support new family structures.

Progress:

- In a number of countries including Ghana, Lesotho and South Africa legal reforms have recognised the role of care-givers giving them the legal authority to, for example, consent to medical treatment on behalf of the child. In Lesotho, South Africa and Uganda simpler ways of transferring guardianship have been introduced.
- Some countries have introduced innovative forms of social protection to promote food security and keep orphans and vulnerable children in school.

Challenges:

- *Reforming guardianship and social protection laws.* The social reality of children's lives needs to be recognised. Reforms are required to address the changing nature of the family and to support families economically
- *Developing legal duties to register children at birth.* In many cases, property grabbing and an inability to access social protection occur due to a lack of documentation. Obligations on service providers and parents to register children need to be developed.
- *Reforming customary law.* In many African, countries discriminatory inheritance practices continue to result in land grabbing and the disinheritance of children.

Access to sexual and reproductive health services

The incidence and impact of HIV among children younger than 15 years in Southern Africa has reduced with 32% fewer children newly infected and 26% fewer AIDS-related deaths in 2009. Ensuring that all infected children and those at risk of HIV infection are able to access health services remains an issue.

Progress:

- Some legal reforms in, for example, Lesotho, Mauritius and South Africa have recognised the evolving capacity of children to consent to certain sexual and reproductive health services such as HIV testing during adolescence.

Challenges:

- *Limited legal recognition of the evolving capacity of children.* Very few African countries allow children to consent independently of their guardians to sexual and reproductive health services. For example, in Cote d' Ivoire, Ghana, Kenya, Mozambique, Tanzania and Zimbabwe children may only consent to HIV testing on becoming adults
- *Enhancing the rights of infected children to the highest attainable standard of health care.* Limited recognition of socio-economic rights makes it difficult to enforce a child's right to health.

Discrimination

Stigma and discrimination remain significant characteristics of the HIV epidemic in Africa.

Progress:

- 70.6% of African countries have laws prohibiting unfair discrimination. Many reforms have occurred through new HIV or dedicated children's laws which have been passed in the last 5 years.

Challenges:

- *Ensuring that discrimination laws respond to the special needs of children.* Stigma and discrimination can affect children differently than adults as they are still developing cognitively and emotionally. Discrimination may also flow from a parent or care-givers' HIV status. Laws need to take these factors into account.

Primary Sources

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Contact:

UNDP | Eastern and Southern Africa | Regional HIV/AIDS Practice Leader | Tilly Sellers | +27 11 603 5091 | tilly.sellers@undp.org
UNAIDS | Eastern and Southern Africa | Director, Regional Support Team | Sheila Tlou | +27 11 519 6930 | tlous@unaids.org