

Using the right to enjoy the benefits of scientific progress to address the needs of adolescent mothers living with HIV

M Brotherton, LLB, LLM, PhD

Centre for Leadership Ethics in Africa, Faculty of Humanities, University of Fort Hare, Alice, South Africa

Corresponding author: M Brotherton (mishbrotherton@gmail.com)

Various human rights issues arise from the intersection of adolescent motherhood and HIV. While health rights may be the most obvious means by which to address such issues through policy development and legislative means, the right to health is not the only human right that may provide recourse or relief in this regard. This article considers an unexplored avenue of approaching such issues through reliance on the right to enjoy the benefits of scientific progress. The International Covenant on Economic, Social and Cultural Rights provides for the 'right to science' in article 15(1)(b) and more recently, as elaborated on in General Comment no. 25 of 2020. This article considers how this right can be relied upon to address issues pertaining to adolescent motherhood and HIV. Precedent from a Venezuelan Supreme Court decision is considered, as well as the normative content of the right to enjoy the benefits of scientific progress. This may be another legal means by which to hold states accountable for the health of young mothers and their children, especially as new practices, medicines and treatments emerge regarding HIV.

S Afr J Bioethics Law 2023;16(2):e942. <https://doi.org/10.7196/SAJBL.2023.v16i2.942>

A number of human rights issues arise from the intersection between adolescent motherhood and HIV. As recognised by the World Health Organization (WHO), 'adolescent and young mothers living with HIV are at the intersection of two overlapping vulnerabilities – HIV infection and motherhood.'^[1] This is not an intersection that has received much attention in the discourse or in practice. Maternal care is primarily adult-oriented, as is treatment for mother-to-child-transmission of HIV. Adolescent and young mothers need targeted interventions to prevent disease and illness, and secure overall wellbeing of both mother and child. The Global Strategy for Women's, Children's and Adolescents' Health^[2] aims for 'a world in which every woman, child and adolescent realises their rights to physical and mental health and well-being, has social and economic opportunities, and is able to participate in fully shaping prosperous and sustainable societies.'^[2]

While health rights may be at the forefront of the legal means by which to address issues pertaining to adolescent motherhood and HIV, through policy development and legislative means, the right to health is not the only human right that may provide relief or recourse to issues in this regard. The discourse tends to focus on health rights, and then the determinants of health, including other rights such as the right to social security, the right to education and the right to life, *inter alia*. However, an unexplored avenue of approaching such issues may be found in the right to enjoy the benefits of scientific progress. The International Covenant on Economic, Social and Cultural Rights (ICESCR)^[3] provides for the 'right to science' in article 15(1)(b). The United Nations Committee on Economic, Social and Cultural Rights has recently elaborated on the right to enjoy the benefits of scientific progress in General Comment no. 25 of 2020.^[4]

The inter-related and interdependent nature of socioeconomic rights is well established. It follows then that the right to enjoy the

benefits of scientific progress is inter-related and interdependent with other socioeconomic rights, such as, for example, the right to health and healthcare services. The Special Rapporteur in the field of cultural rights, Farida Shaheed, explains: 'the right to science is sometimes considered a prerequisite for the realisation of a number of other human rights.'^[5] This article examines the potential for the right to enjoy the benefits of scientific progress as a means by which to ensure access to necessary treatments for adolescent mothers living with HIV. Precedent from the Venezuelan Supreme Court will be considered, in conjunction with the normative content of the right and the possible instrumental value it may have in this regard.

Adolescent motherhood and HIV

Before exploring legal means by which to fully realise the healthcare needs of adolescent mothers living with HIV, it serves to consider some of the issues that arise out of this intersection of adolescent motherhood and HIV.

Adolescent girls and young women account for one in five adults contracting HIV globally.^[4] Despite this statistic, research and targeted services seem to neglect the issue of adolescent motherhood and HIV. There is therefore a risk that, according to the WHO, adolescent girls and young women living with HIV may fall into a gap between primarily adult-focused maternal care, adolescent HIV prevention and adult-focused prevention of mother-to-child-transmission of HIV.^[1] There is a need for targeted services catering to the needs of adolescent girls and young women living with HIV during pregnancy and motherhood.^[1]

'In addition to integrated health services, adolescent and young mothers need childcare, further education and livelihood opportunities. This requires active client management along a continuum of health and other social services, including optimizing

multiple entry points, strengthening facility-community linkages and referral pathways, and addressing social determinants and structural barriers, such as gender inequity and poverty.^[6]

Both adolescent motherhood and a person's HIV status have effects that impact the lives of individuals differently. Combined, some of these effects may contribute to perpetuating poverty cycles, unemployment and lack of access to education.

Beyond the broader impacts that adolescent motherhood can have, there are clear health implications too. Adolescent pregnancy can result in poorer maternal and child health outcomes, including preterm delivery, eclampsia, stillbirth, low birthweight, neonatal complications, unsafe terminations of pregnancy and maternal mortality.^[7] Furthermore, the risks of adolescent pregnancy are amplified for those living with HIV. Then there are other socioeconomic implications such as adolescent mothers missing school or even dropping out of school, subsequent reduction in economic opportunities and the potential for negative effects on the child's health and development.

These issues implicate a range of social, economic and cultural rights, most obviously the right to health. However, in addition to the considerations to be given to health rights pertaining to adolescent motherhood and HIV, other rights are also implicated and affected. Access to information is necessary to achieve access to appropriate healthcare services. Additionally, the right to education, right to food, right to sanitation and other socioeconomic rights that are determinants of the pertinent health rights need to be considered.

The idea that adolescent mothers living with HIV may be subject to overlapping vulnerabilities should raise concern over the rights that may be implicated – both because it may be that certain rights could be used as a means by which to pursue the needs of this unique group. Rights may provide recourse to accessing resources necessary to address some of the issues that arise from the intersection of adolescent motherhood and HIV. The next section considers the various socioeconomic rights that may be relevant to addressing such issues, in particular, how the right to enjoy the benefits of scientific progress can be utilised to gain access to necessary HIV treatments and care.

The right to enjoy the benefits of scientific progress

This section considers the utility of the right to enjoy the benefits of scientific progress as found in the ICESCR. Before hypothesising on how this right may be used in this context, it is necessary to examine the nature of the right and its normative content.

The International Covenant on Economic, Social and Cultural Rights

The most relevant international document pertaining to socioeconomic rights is the ICESCR. With regard to the issues concerning adolescent motherhood and HIV, the right to health is explicitly recognised in article 12(1): 'The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' Article 12(2) provides for steps to be taken by states to realise the right to health. These include, *inter alia*, the 'creation of conditions which would assure to all medical service and medical attention in the event of

sickness'. The phrasing of the 'highest attainable standard of health' contemplates both individual preconditions (such as biology and socioeconomic circumstances) and the state's available resources. Academic discourse has interpreted article 12 of the ICESCR as seeking two goals: the recognition of a right to health and an obligation on states to ensure a certain standard of healthcare.

The United Nations Committee on Economic, Social and Cultural Rights ('the committee') issues General Comments to provide clarity and interpretive guidance on the rights provided for in the ICESCR. General Comments provides for the committee's understanding of the rights and also further elaborates on the nature of the obligations imposed by the ICESCR. General Comments are not legally binding *per se*, but have persuasive value as authoritative interpretations by the treaty supervisory body concerning the obligations imposed by the ICESCR on state parties. The elaboration on the normative content of rights in General Comments thus provides a foundation for what policy and legislative measures should be taken to realise the rights provided for in the ICESCR.

The right to health, however, is not the only right relevant to the issue at hand. The next section examines the right to enjoy the benefits of scientific progress and explores how this may be beneficial in addressing the issues arising from the intersection of adolescent motherhood and HIV.

The right to enjoy the benefits of scientific progress

The 'right to science' is recognised in the Universal Declaration of Human Rights (UDHR). Article 2^[8] recognises that everyone 'has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits', and also that everyone 'has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'. The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (1975)^[9] recognises the right to be two-fold. Firstly, as provided for under article 27 of the UDHR, everyone has the right to share in the benefits of science, and secondly, everyone has the right to have their intellectual property protected.

The right to enjoy the benefits of scientific progress was further examined at an experts' meeting in 2009 in Venice, Italy. From this meeting came what is known as the 'Venice Statement'.^[10] The Venice Statement recognises how the right to enjoy the benefits of scientific progress is inter-related with other human rights. In this regard, Muller suggests 'that in addition to its value as a human right in itself, the right to enjoy the benefits of scientific progress and its application as a cross-cutting principle which is relevant for the implementation of other economic, social and cultural rights as well as civil and political rights'.^[11]

In 2012 the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed, considered the right to science as provided for in the ICESCR. She explicitly recognised that the 'right to science' may be a prerequisite for the realisation of other socio-economic rights.^[3]

In General Comment No. 25 the Committee defines science as both 'a process following a certain methodology ('doing science') and to the results of this process (knowledge and applications)'. Article 15(1)(b) of the ICESCR provides for the right to enjoy the benefits of scientific progress. The inter-relatedness of this right

with other socioeconomic rights, such as the right to health, is explicitly recognised in General Comment no. 25: 'the right to participate in and to enjoy the benefits of scientific progress and its applications is a human right with intrinsic value, but it also has an instrumental value, as it constitutes an essential tool for the realisation of other economic, social and cultural rights, particularly the right to food and the right to health.' The General Comment also provides for the committee's understanding of core obligations imposed on state parties, and holds that state parties are to ensure 'access to those applications of scientific progress that are critical to the enjoyment of the right to health and other economic, social and cultural rights.' This speaks explicitly to the relationship between the right to health and the right to science, and how the latter can be used to achieve the former. The committee explicitly notes that state parties have 'a duty to make available and accessible to all persons, without discrimination, especially the most vulnerable, all the best available applications of scientific progress necessary to enjoy the highest attainable standard of health.'

The explicit recognition of the link between the right to enjoy the benefits of scientific progress and the realisation of the right to health, especially as it relates to vulnerable groups, is significant for how the right to enjoy the benefits of scientific progress may be utilised. The next section considers the instrumental value of this right, especially as it relates to issues arising from the intersection of adolescent motherhood and HIV.

The instrumental value of the right to enjoy the benefits of scientific progress

The instrumental value of the right to enjoy the benefits of scientific progress is illustrated in a Venezuelan Supreme Court decision from 2001. The case of *López, Glenda, et al. v Instituto Venezolano de Los Seguros Sociales* was heard by the Venezuelan Supreme Court in 2001. A group of people living with HIV petitioned the court in an Amparo action. An Amparo action can be described as 'an extraordinary judicial remedy specifically conceived for the protection of constitutional rights against harm or threats inflicted by authorities or individuals.'^[12] As Brewer-Carias^[12] explains, 'it is a Latin American procedural means for constitutional litigation that normally concludes with a judicial order or writ of protection'. An Amparo action amounts to a specific remedy for the protection of fundamental rights. The Venezuelan Constitution of 1961 provides for the *Accion de Amparo* in article 17. This protection covers both civil and political and socio-economic rights, whether provided for in the constitution or in international treaties.

The issue before the court concerned the Venezuelan Institute of Social Security (IVSS), which was allegedly failing to provide a regular and consistent supply of HIV antiretrovirals and other medicines necessary to treat any opportunistic infections. Additionally, the IVSS was not covering the expense of the necessary medical tests required by the petitioners. Given the nature of the *Accion de Amparo*, the Supreme Court held that relief would be granted to all persons registered with the IVSS who are living with HIV, and who meet the relevant criteria to receive benefits from the social security system and have requested necessary medicine. Therefore, the relief to be granted by the court extended beyond the petitioner's but to others similarly affected.

The Supreme Court held that various rights, recognised both in the Venezuelan Constitution and international treaties, were being violated by the failure of the IVSS. Firstly, the right to life under article 58 of the Venezuelan Constitution was being violated in that the lack of supply of the necessary antiretrovirals made the immune systems of persons living with HIV more vulnerable to infections and subsequent death (with the Supreme Court also recognising that this right is provided for in article 3 of the UDHR, article 6 of the International Covenant on Civil and Political Rights (ICCPR) and article 11 of the ICESCR). Secondly, the Supreme Court held that the right to health, as provided for in article 76 of the Venezuelan Constitution had effectively been 'suspended' by the continuous neglect and omission of supplying the necessary drugs.

The petitioners also argued that the right to personal liberty and security (under article 60 of the Venezuelan Constitution) was being violated as the lack of treatment 'produced a state of anguish and anxiety that can be equated to the torture used against prisoners of war in the worst periods in the history of humanity'. The right to non-discrimination was also being violated, and it is of note that persons living with HIV could be considered a vulnerable group.

Furthermore, the right to social security under article 94 of the Venezuelan Constitution was held to be in violation by the social security system through the failure of the Division of Pharmacotherapy and the Center of Medical Specialties of the IVSS. Lastly, and most relevant to the issue of adolescent motherhood and HIV, is the Supreme Court's recognition that the petitioner's right to enjoy the benefits of scientific progress had been violated. Although this right is not explicitly recognised in the Venezuelan Constitution, Venezuela is a signatory to the ICESCR, which does provide for this right as discussed in above sections. The petitioners argued that they were entitled to enjoy the benefits of scientific progress in terms of treatments available for HIV.

The manner in which the Supreme Court dealt with the various rights at issue demonstrates the interdependent nature of rights. The recognition by the court that the right to enjoy the benefits of scientific progress could improve the lives of persons living with HIV is pertinent to further application of the right to enjoy the benefits of scientific progress, as this illustrates how this right can be used as a means to secure other rights, such as the right to health and the right to social security, as in this case.

In the case before the Venezuelan Supreme Court, the instrumental value of the right to enjoy the benefits of scientific progress is illustrated in how it was used in relation to the realisation of the right to health, the right to life and the right to social security. In an instance such as this where the issue amounted to a denial of necessary medication, it in turn amounted to a denial of enjoying the benefits of scientific progress in relation to the available medical treatment. The link between the right to enjoy the benefits of scientific progress and the right to health is evident. In a case such as the one before the Venezuelan Supreme Court, the right to health can arguably not be realised without also realising the right to enjoy the benefits of scientific progress. It follows that if steps are taken to ensure the fulfilment of the right to enjoy the benefits of scientific progress, through the provision of necessary medication (as it advances in terms of treatment of HIV), then the right to health will also be fulfilled.

Discussion

It needs to be noted that the case before the Venezuelan Supreme Court concerned persons living with HIV. It was not specific in terms of sex or age. At issue before the court was the denial of necessary medication for persons entitled to such medication under the Venezuelan social security system. The focal issue of this article is the rights issues that arise from the intersection of adolescent motherhood and HIV. In other words, at issue are the rights that may be violated when considering issues faced by young mothers who are living with HIV. The issues as discussed above include the right to healthcare services, the right to non-discrimination and the right to social security, *inter alia*.

The rights-based issues arising from the intersection of adolescent motherhood and HIV could arguably be addressed, at least in part, by reliance on the right to enjoy the benefits of scientific progress. Utilisation of this right could fulfil other rights. Recognising the needs of adolescent mothers living with HIV from a medical or pharmaceutical perspective lends itself to reliance on the right to enjoy the benefits of scientific progress to ensure that there is access to the best available treatment. The 'overlapping vulnerabilities' of this group in particular further makes a case for ensuring that appropriate treatment and healthcare services are available and accessible. The vulnerability of both adolescents and persons living with HIV requires prioritisation for the realisation of rights. To do so, with regard to these circumstances, the right to health is crucial in terms of ensuring that the right medical treatment is available, and similarly the right to social security in terms of ensuring that adolescent mothers have the necessary support. Arguably, by focusing on the right to enjoy the benefits of scientific progress, the right to health may be realised through ensuring that adolescent mothers living with HIV receive the benefits of scientific progress with regard to treatments for HIV and targeted healthcare services that address the health risks of adolescent pregnancy and motherhood.

Conclusion

This article has sought to demonstrate how the right to enjoy the benefits of scientific progress could be utilised as a tool by which to address the rights-based issues that arise from the intersection of adolescent motherhood and HIV. The issues that arise from this intersection are currently somewhat neglected in the discourse, and in healthcare services. Reliance on the right to enjoy the benefits of scientific progress, in conjunction with the right to health and the right to social security, could result in a more focused, needs-based approach to addressing the issues and risks faced by adolescent mothers living with HIV. The Venezuelan Supreme Court decision demonstrates the utility of this right to achieve the realisation of other rights.

As scientific advances are made in the field of HIV treatment, as well as pertaining to health issues arising from adolescent pregnancy and motherhood, the right to enjoy the benefits of scientific progress may be a means by which to ensure that adolescent mothers living with HIV have access to targeted healthcare services and treatments,

thereby addressing the current gap recognised in the provision of healthcare in this regard.

Further research is necessary to explore the instrumental value of the right to enjoy the benefit of scientific progress, and how it may be utilised to address specific health needs, such as in this case. Additionally, such research needs to be complemented by advanced research on what health needs adolescent mothers living with HIV have, and how they can be addressed. A general approach to both the issues of adolescent motherhood and HIV treatments may fail to address the specific issues arising from the intersection of adolescent motherhood and HIV. Specific remedies may be necessary to address the rights-based issues, and the right to enjoy the benefits of scientific progress could be the means by which to address the specific rights-based issues affecting adolescent mothers living with HIV.

Declaration. None.

Acknowledgements. None.

Author contributions. Sole author.

Funding. University of Fort Hare Centre for Leadership and Ethics in Africa.

Conflicts of interest. None.

1. World Health Organization, United Nations Children's Fund. Safeguarding the future: Giving priority to the needs of adolescent and young mothers living with HIV. Geneva: WHO, 2021.
2. World Health Organization. The Global Strategy for Women's, Children's and Adolescents' Health (2016-2030): Survive, thrive, transform. New York: Every Woman, Every Child, 2015 (https://www.who.int/pmnch/media/events/2015/gs_2016_30.pdf (accessed 29 October 2021)).
3. United Nations. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
4. United Nations Committee on Economic, Social and Cultural Rights General Comment No. 25: Science and Economic, Social and Cultural Rights (article 15(1) (b), (2), (3) and (4) of the Covenant) UN Doc E/C.12/GC/25.
5. Shaheed F. Statement by Special Rapporteur in the Field of Cultural Rights. Geneva: Office of the United Nations High Commissioner for Human Rights, 2012. <https://www.ohchr.org/en/statements/2012/07/statement-ms-farida-shaheed-special-rapporteur-field-cultural-rights-human> (accessed 28 July 2023).
6. Toska E, Laurenzi CA, Roberts KJ, Cluver C, Sherr L. Adolescent mothers affected by HIV and their children: A scoping review of evidence and experiences from sub-Saharan Africa. *Glob Pub Health* 2020;15(11):1655-1673. <https://doi.org/10.1080/17441692.2020.1775867>
7. United Nations Children's Fund. Addressing the needs of adolescent and young mothers affected by HIV in Eastern and Southern Africa. New York: UNICEF, 2020.
8. United Nations. Universal Declaration of Human Rights. Paris: UN, 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 31 July 2023).
9. United Nations. Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind. UN, 1975. <https://digitallibrary.un.org/record/189603?ln=en> (accessed 31 July 2023).
10. Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications, 2009. https://www.aas.org/sites/default/files/VeniceStatement_July2009.pdf (accessed 28 July 2023).
11. Müller A. Remarks on the Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications. *Hum Rights Law Rev* 2010;10(4):765-784.
12. Brewer-Carias AR. The Amparo proceeding in Venezuela: Constitutional litigation and procedural protection of constitutional rights and guarantees' *Duquesne Law Rev* 2011;49(2):161. <https://dsc.duq.edu/dlr/vol49/iss2/6> (accessed 28 July 2023).

Accepted 17 July 2023.