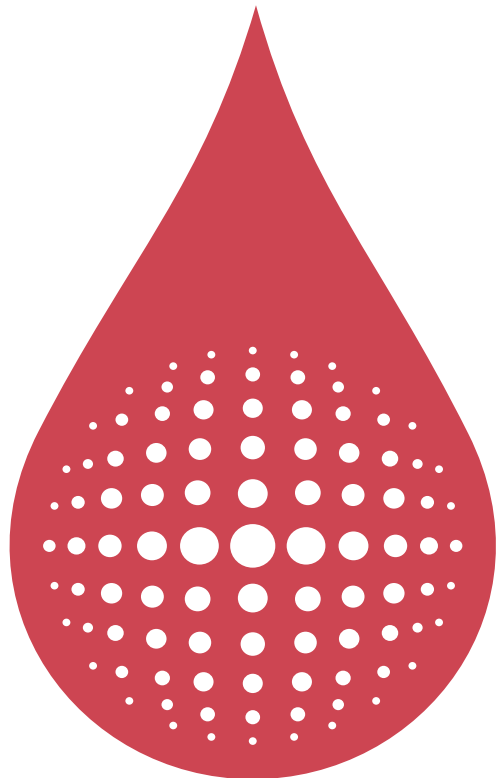




# MANDATORY PREMARITAL HIV TESTING

## AN OVERVIEW

Over the past decade, a growing number of religious communities, national governments, and state, city, and village governments have adopted mandatory premarital HIV testing policies. This trend infringes upon the human rights of people living with HIV and threatens the three key principles of HIV testing: that individuals freely **CONSENT** to testing; that **COUNSELING** is provided before and after testing; and that results are kept **CONFIDENTIAL**.



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## Trends in Mandatory Premarital HIV Testing

THE COUNTRIES OF BAHRAIN, GUINEA, UNITED ARAB EMIRATES, AND SAUDI ARABIA HAVE ENACTED NATIONAL LAWS AND POLICIES MANDATING PREMARITAL TESTING. Local governments and legislatures in five Indian states, districts in the Yunnan province of China, Ethiopia, and the Democratic Republic of the Congo have introduced or passed similar laws or regulations. Uzbekistan requires a premarital consultation with a medical practitioner, who has the discretion to mandate an HIV test. In Cambodia, Senegal, and Zimbabwe, some women's and mothers' groups have called on the government to enact mandatory HIV testing policies in the hope that it will reduce the spread of HIV to young women who are often powerless in choosing a husband.

Although in most countries national health guidelines call for **voluntary** HIV testing, churches in the African nations of Burundi, Democratic Republic of the Congo, Ghana, Kenya, Nigeria, Tanzania, and Uganda have adopted mandatory premarital HIV testing practices. Only in Ghana has the national government successfully worked with local churches to make premarital testing voluntary, but reports from Ghana suggest that testing remains **de facto** mandatory. In Asia and the Middle East, many mosques require Muslim couples to submit to premarital HIV tests. Churches and mosques will often forbid or discourage a marriage between an HIV positive person and an HIV negative partner.

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## A Human Rights Concern

MANDATORY PREMARITAL HIV TESTING, ESPECIALLY WHEN ACCOMPANIED BY A REQUIREMENT THAT PEOPLE BE HIV NEGATIVE IN ORDER TO MARRY, INFRINGES UPON INTERNATIONALLY GUARANTEED HUMAN RIGHTS, especially the right to marry and found a family. In addition, the way in which mandatory premarital HIV testing is typically carried out—without regard for informed consent, confidentiality, and access to HIV counseling and information—infringes upon basic human rights to bodily integrity, privacy, and information. The “International Guidelines on HIV/AIDS and Human Rights,” issued in 2006 by the Joint United Nations Programme on HIV/AIDS and the United Nations Office of the High Commissioner for Human Rights, state:

*The right to marry and to found a family [in Article 16 of the Universal Declaration of Human Rights] encompasses the right of “men and women of full age, without any limitation due to race, nationality or religion...to marry and to found a family,” to be “entitled to equal rights as to marriage, during marriage and at its dissolution” and to protection by society and the State of the family*

as “the natural and fundamental group unit of society.” Therefore, it is clear that the right of people living with HIV is infringed by mandatory premarital testing and/or the requirement of “AIDS-free certificates” as a precondition for the grant of marriage licences under State laws. (para. 118)

The right to privacy encompasses obligations to respect physical privacy, including the obligation to seek informed consent to HIV testing and privacy of information, including the need to respect confidentiality of all information relating to a person’s HIV status. (para. 119)

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## Lack of Confidentiality

**CONFIDENTIALITY OF MANDATORY PREMARITAL HIV TEST RESULTS IS EXTREMELY CHALLENGING TO MAINTAIN.** In some cases, medical professionals disclose premarital test results directly to church marriage committees or traditional leaders. In other cases, couples are themselves required to disclose their results to the religious or state authorities who perform the marriage ceremony or issue the marriage license. For instance, in Malaysia, Muslim couples submit a certificate disclosing their HIV status to state religious departments when applying for a marriage license.

Even when such disclosure is not required, confidentiality can be compromised, especially in cases where serodiscordant marriages—in which one partner tests HIV positive and the other HIV negative—are disallowed or discouraged. The cancellation of marriage plans can lead to suspicions that one of the prospective partners has tested positive.

The manner in which marriages are arranged in many communities—as a contract between large families—makes it difficult, if not impossible, for premarital HIV test results to remain confidential. When parents or other family members arrange marriages or are the primary decision makers in the selection of a marriage partner, they may be the first to find out a test result even before the person who has been tested.

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## Judgmental Counseling

**INFORMATION ON COUNSELING SERVICES FOR COUPLES WHO ARE REQUIRED TO TAKE THE PREMARITAL HIV TEST IS LIMITED,** but the available information suggests that counseling is inadequate, particularly for people who test HIV positive. In most cases, counseling focuses primarily on encouraging discordant couples to call off their wedding.

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## Proponents of Mandatory Premarital HIV Testing

DESPITE THESE SHORTCOMINGS, A NUMBER OF ARGUMENTS HAVE BEEN PUT FORWARD BY PROPONENTS OF MANDATORY PREMARITAL HIV TESTING.

The majority of proponents appear to favor mandatory testing as a way to identify serodiscordant couples in order to prohibit them from marrying. They argue that premarital testing will reduce HIV infection rates by “containing” infection within the population of people living with HIV. Some also argue that the requirement of a premarital HIV test will encourage couples to practice “moral behavior”—abstinence before marriage and fidelity after marriage—and that this too will slow the spread of HIV infection. A number of supporters, including women’s and mothers’ groups, believe that mandatory premarital HIV testing and a ban on discordant marriages will protect women from becoming infected with HIV upon marriage. These arguments emphasize a woman’s powerlessness in many societies to select her spouse or object to a marriage.”

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## Arguments against Mandatory Premarital HIV Testing

MANDATORY PREMARITAL HIV TESTING INFRINGES UPON INTERNATIONALLY GUARANTEED HUMAN RIGHTS INCLUDING THE RIGHTS TO BODILY INTEGRITY, PRIVACY, INFORMATION, AND THE RIGHT TO MARRY AND FOUND A FAMILY.

In addition, mandatory premarital HIV testing may have negative public health consequences by lulling couples into a false sense of security if they both test negative before marrying. A number of reports suggest that if a couple tests negative, it could make it more difficult for the woman to enforce safer sex with her husband, thus increasing her vulnerability to HIV infection. While women have a legitimate interest in knowing the HIV status of their partners before they marry, many argue that mandating premarital testing actually disempowers women because it takes decision-making power out of their hands. Focusing on HIV education and awareness-raising efforts, empowerment for women, and ensuring couples have access to voluntary HIV counseling and testing would be a better use of scarce resources.

Premarital testing also increases stigmatization of people living with HIV. AIDS activists say that organizations requiring premarital testing tend to portray people who test positive in a stigmatizing manner. People who test positive for HIV face increased discrimination in nearly every aspect of life, including employment and societal and family life. Fear of stigma may lead people who are at risk of infection to avoid the test by obtaining a fake marriage certificate, by marrying in an unregistered ceremony, or by opting out of marriage altogether. This defeats the purported public health goals of mandatory premarital HIV testing.

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## Recommendations

GIVEN THE NEGATIVE HUMAN RIGHTS AND PUBLIC HEALTH CONSEQUENCES OF MANDATORY PREMARITAL HIV TESTING, GOVERNMENTS AND HIV PROGRAM IMPLEMENTERS SHOULD TAKE IMMEDIATE STEPS to identify and stop the practice and ensure that it is prohibited in law and policy. Laws, policies, and practices that support mandatory HIV testing should be replaced by efforts to expand access to voluntary HIV counseling and testing combined with linkages to HIV prevention and/or treatment for couples intending to marry. The growing number of communities and countries practicing premarital testing points to a number of needed interventions in the development of: 1) laws and policies, 2) programs, and 3) research.

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### Improving Laws and Policies

- **Enact laws and policies that prohibit mandatory premarital HIV testing** and any requirement of negative HIV status as a condition of marriage, and that guarantee universal access to voluntary HIV counseling and testing services for all couples intending to marry.
- **Develop international guidelines** to help programs and decision makers in creating voluntary premarital testing programs that protect human rights and produce beneficial public health outcomes. Such guidelines should not exclusively focus on health facilities, which do not encompass the range of organizations involved in premarital HIV testing.
- **Guidelines are needed on the following premarital testing issues:**
  - Creating an enabling environment for voluntary premarital testing, which includes programs to address violence against women, ensure women's property and employment rights, and empower women to select a spouse.
  - Obtaining informed consent that takes into account the limited decision-making power some individuals, especially women, may have in selecting a spouse. In cases where marriages are arranged, it may be helpful to consider offering family members information about HIV transmission, safe practices, and treatment options.
  - Providing pre-test counseling to couples, as well as specialized post-test counseling based on test results. All couples should be educated on safe practices, and HIV-positive and serodiscordant couples should be offered a range of options, including access to treatment and child conception options.
  - Safeguarding confidentiality and supporting safe and voluntary partner notification.

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## Improving Programs

- **Disseminate best practices.** There are a number of models of voluntary premarital HIV testing, and research is needed to identify programs that are successful at encouraging voluntary testing, preserving confidentiality, supporting beneficial partner disclosure, and facilitating access to care, support, and treatment for those who need it. One such model is the Gokula Metropolis Health Center in Bangalore, India, which offers voluntary HIV testing as part of a thorough premarital health package. To protect privacy, blood samples are collected at home. There are many successful models of voluntary counseling and testing programs from diverse countries such as Egypt, France, Thailand, and Zimbabwe.
- **Build capacity and skills in pre- and post-test counseling services,** particularly for non-medical personnel counseling couples who have taken the test. Programs should be developed to offer discordant couples a range of options, and post-test counseling should be provided for both HIV-negative and HIV-positive couples. Churches and faith-based organizations are closely connected to the community and are well-positioned to provide pre- and post-test counseling with proper training and support. For example, the International Network of Religious Leaders Living with or Personally Affected by HIV has developed a number of materials tailored to religious communities, and in Burundi, World Relief has developed a Bible-based curriculum to support pastors to talk to couples about HIV.
- **All testing should be linked to support services** to provide HIV prevention information and tools, HIV treatment for those who test positive, and support services to address adverse consequences of disclosure of HIV status and barriers to HIV services.

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## Improving Research

- **Build on this review to collect field data** on where mandatory premarital HIV testing is taking place, how it is being carried out, and its impact on those tested.
- **Collect data on the effect of national HIV testing guidelines** on local mandatory premarital testing practices (particularly on the issue of consent).
- **Investigate confidentiality guidelines** in relation to mandatory testing practices, including requirements for test administrators and others who review test results when couples apply for a marriage license, confidentiality protections in practice, training for counselors, and the content of pre- and post-test counseling.
- **Learn the outcomes of mandatory premarital testing**—how HIV status impacts couples' decisions about marriage, risk behavior, and vulnerability to HIV infection. Particular attention is needed to the ways in which mandatory premarital testing may adversely affect women.

## Research Findings on Premarital HIV Testing in Select Countries

LOCATION	Implementer	Type of Testing and Goal	Confidentiality and Disclosure	Services	Marital Consequences of Postive Test Result
<b>BAHRAIN</b>	National government	HIV testing is part of mandatory premarital counseling, which became law in 2004	Unclear	None reported	Unclear
<b>BURUNDI</b>	Catholic Church	Mandatory testing began in southern province of Bururi in 1989; became official church policy in March 2006	Couples required to attend testing together and to disclose to each other. No disclosure requirement to the church	None reported	Marriage allowed
<b>CAMBODIA</b>	Under the Implementing Guidelines of the 2003 HIV/AIDS Law, parents have the right to insist on mandatory premarital testing	Officially voluntary; in practice widely mandated by parents of prospective spouses in arranged marriage negotiations	Parents permitted to attend premarital testing session	None reported	Unclear
<b>CHINA—HEILONGJIANG PROVINCE</b>	Provincial People's Congress approved re-instatement of mandatory premarital health check-ups, which include HIV tests	Testing has been mandatory since 2005, but it is unclear whether the requirement is enforced	Results must be presented by both parties to the marriage registration office in order to obtain a marriage license	None reported	Unclear
<b>CHINA—YUNNAN PROVINCE</b>	Provincial government policy implemented in "hot spots"	Mandatory, started in 2007	Local Disease Prevention Authority required to inform prospective spouse	None reported	Unclear
<b>DEMOCRATIC REPUBLIC OF THE CONGO</b>	Pilot premarital testing program implemented by two NGOs	Voluntary	Unclear	Unclear	Unclear
<b>DEMOCRATIC REPUBLIC OF THE CONGO—GOMA</b>	Baptist Church: Communauté des Eglises Baptistes au Centre de l'Afrique	Mandatory since 1997; test is a means to promote premarital abstinence	Results sent to pastor and disclosed to a church committee prior to informing the couple	Unclear	Marriage forbidden
<b>DEMOCRATIC REPUBLIC OF THE CONGO—GOMA</b>	Commune Mayor's office	Mandatory since 2004	Certificate of completed test required, no disclosure requirement	Unclear	Marriage allowed
<b>ETHIOPIA—AFAR REGION</b>	Government of the State of Afar (southern zone)	Voluntary, limited information available. Appears to have started in 2006	Unclear	None reported	Unclear

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LOCATION	Implementer	Type of Testing and Goal	Confidentiality and Disclosure	Services	Marital Consequences of Postive Test Result
<b>ETHIOPIA—GHURAGE ZONE</b>	Customary law known as “Kuchi Law”	Mandatory	Disclosure mandatory	Reported improved uptake and adherence to ARVs	Marriage forbidden for discordant couples
<b>FRANCE</b>	Government decree no. 92-143 of 14 February 1992	Provider-initiated opt-in (routinely recommended)	Considerable confusion among couples	Unclear	Marriage allowed
<b>GHANA</b>	Protestant, Pentecostal, and Evangelical Churches	Mandatory at first, later (2002) voluntary due to government pressure	If testing is initiated at request of church, results are given directly to the church marriage counselor	None reported; testing sometimes requires payment	Couple counseled not to marry in case of discordance
<b>INDIA—ANDRA PRADESH</b>	Andra Pradesh State Government	Proposed law mandating premarital testing in 2002. Announced implementation as of March 2007. The bill did not pass. Again proposed twice in 2008 by the state legislators’ committee.	Unclear	None reported	Proposed law would prohibit discordant marriages
<b>INDIA—BANGALORE</b>	Private corporation Metropolis Health Services	Voluntary	Blood samples collected at home	None reported	Unclear
<b>INDIA—GOA</b>	Goa State Government	Proposed mandatory testing in 2002; changed to voluntary testing proposal in 2006	Unclear	None specifically mentioned, although Goa has one of the best health care systems in the country	State government reports marriage allowed, the <i>Lancet</i> and the Lawyers Collective report marriage not allowed for people who are HIV-positive
<b>INDIA—HIMACHAL</b>	State of Himachal Pradesh	Mandatory testing proposed in 2008	Proposal to integrate HIV testing into arranged marriage preparations, granting parent of prospective spouses the right to demand HIV test results	None reported	Unclear
<b>INDIA—KARNATAKA</b>	Budni Village Panchayat	Mandatory testing deliberated at state level; implemented in by village <i>panchayat</i> since early 2007	Unclear	None reported, no primary health care available	Marriage forbidden



## Research Findings on Premarital HIV Testing in Select Countries

LOCATION	Implementer	Type of Testing and Goal	Confidentiality and Disclosure	Services	Marital Consequences of Postive Test Result
<b>INDIA—KARNATAKA</b>	State of Karnataka	Proposed mandatory premarital testing in 2004	Couples would be required to produce a certificate for marriage registration authorities showing that they had taken the HIV test	Unclear	Marriage allowed
<b>INDIA—MAHARASHTRA</b>	State of Maharashtra	Mandatory premarital testing law proposed in 2007 and again in 2008	As discordant couples would be forbidden to marry, disclosure must also be mandatory	None reported	Marriage forbidden for discordant couples
<b>KENYA</b>	Churches	Mandatory in some churches	Unclear	None reported	In some churches, marriage is not allowed between discordant couples
<b>KUWAIT</b>	Ministry of Health proposed mandatory premarital health screenings in 2008	Proposed mandatory	Unclear	None reported	Unclear
<b>LIBYA</b>	Government	Reportedly mandatory	Unclear	None reported	Unclear
<b>MALAYSIA</b>	Religious Department of State Government in 9 states, beginning in November 2001 in Johor, followed by Perak, Perlis, Kelantan, Terengganu, Kedah, Pahang, Selangor, and possibly Melaka. As of January 2009, Muslim couples in the entire country are required to submit to premarital HIV testing	Mandatory for Muslim couples. Men who take second and third wives must take the test each time	Results disclosed jointly to the couple	Counseling from the State Religious Department and the State Health Department; in Perlis, counseling is provided to those who test positive and wish to proceed with marriage	Marriage allowed, but discordant couples counseled by the State Religious Department not to marry
<b>MEXICO</b>	State governments, implemented in seven states by 1994	Mandatory, as part of a larger premarital screening process; the practice was discontinued in 1995	Unclear	None reported	Marriage was forbidden

## Research Findings on Premarital HIV Testing in Select Countries

LOCATION	Implementer	Type of Testing and Goal	Confidentiality and Disclosure	Services	Marital Consequences of Positive Test Result
<b>MOROCCO</b>	In 1999, the Ministry of Public Health launched an effort to include counseling on STIs and HIV in the mandatory premarital medical examination	Unclear if HIV testing has to be incorporated into the mandatory premarital medical examination	Unclear	None reported	Unclear
<b>NIGERIA</b>	Catholic, Orthodox, Pentecostal, and Anglican churches	Voluntary in Anglican and Catholic churches, but implemented in all Anglican churches as of 2007. Mandatory in Orthodox and Pentecostal Churches since the late 1990s.	Certificate of completed test required for Anglican church marriage. In Orthodox and Pentecostal churches the results are sent to the church before the couple is notified. Information on disclosure in Catholic churches not available.	None reported	Marriage allowed in Anglican and Catholic churches; marriage forbidden in Orthodox and Pentecostal churches
<b>QATAR</b>	Government	Mandatory as part of a proposed mandatory premarital check-up	Appears to require disclosure in order to obtain marriage license	None reported	Serodiscordant couples will be allowed to marry but they will have to sign a legal document agreeing to "protect the affected partner"
<b>SAUDI ARABIA</b>	Ministry of Health	Mandatory by Royal Decree, as part of a mandatory premarital health screening	Unclear	None reported	Ministry of Justice to review marriage requests by HIV-positive people
<b>SENEGAL</b>	Women's groups urging parliament to pass mandatory premarital testing law	Not yet implemented	Unclear	None reported	Policy not implemented
<b>SINGAPORE</b>	Under discussion since 2004	Under discussion	Unclear	None reported	Unclear
<b>TANZANIA</b>	Religious organizations in Zanzibar	Not formally mandatory, but widely expected	Unclear	None reported	Unclear
<b>THAILAND</b>	State government in northern State of Phayao	Unclear	Unclear	None reported	Unclear

## Research Findings on Premarital HIV Testing in Select Countries

LOCATION	Implementer	Type of Testing and Goal	Confidentiality and Disclosure	Services	Marital Consequences of Postive Test Result
<b>UGANDA</b>	Government, HIV Control and Prevention Bill	Proposed mandatory premarital testing, mandatory disclosure, and criminalization of willful transmission	Disclosure would be mandatory	No mention of services attached to mandatory testing	Unclear
<b>UGANDA</b>	Church of Uganda	Mandatory, apparently since 2004	Unclear, but appears to require disclosure between the couple and to the church	None reported	Appears to forbid marriage
<b>UNITED ARAB EMIRATES</b>	Ministry of Health	Mandatory as part of a mandatory premarital medical examination	Unclear	None reported	Unclear
<b>UZBEKISTAN</b>	Government	Mandatory	Formally confidential, in practice difficult to enforce confidentiality	None reported	Marriage allowed
<b>ZIMBABWE</b>	Under discussion among parliamentarians and religious leaders	Voluntary, religious leaders urged to "be persuasive"	Partner disclosure under discussion	None reported	Unclear

This pamphlet is based on a report by Katya Burns, Ph. D. For a copy of the full report, please contact [lawandhealth@sorosny.org](mailto:lawandhealth@sorosny.org). Additional fact sheets and a bibliography of sources on premarital HIV testing can be found at: [www.soros.org/health/hiv-testing](http://www.soros.org/health/hiv-testing).



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