KNOW YOUR RIGHTS

HUMAN RIGHTS AND HIV / AIDS

NHRC

National Human Rights Commission

Know Your Rights Series

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National Human Rights Commission
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Know Your Rights Series:

Human Rights and HIV / AIDS

This publication is intended to assist a wide audience to achieve a better understanding of the basic human rights.

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Human Rights and HIV / AIDS

> "Let us resolve to replace stigma with support, fear with hope, silence with solidarity. Let us act on the understanding that this work begins with each and every one of us."
>
> Kofi Annan, UN Secretary General,
> World AIDS ay, 1 December 2002

1 Introduction

HIV/AIDS is spreading throughout the world at an alarming rate and it has emerged as a serious public health challenge. The stigma, prejudice, fear and silence which surround AIDS make it a difficult problem to address. The widespread abuse of human rights and of fundamental freedoms associated with HIV/AIDS has become a concern in all parts of the world.

What is AIDS?

- **Acquired** - to contract something (in this case a disease)
- **Immuno** - ability to fight off infectious agents (comes from the word Immunity)
- **Deficiency** - lack of
- **Syndrome** - group of indications characteristic of a disease

What is HIV?

- **Human** - isolated to human beings
- **Immuno-Deficiency** - medical condition of being vulnerable to a disease lacking the ability to fight off infectious agents
- **Virus** - a disease causing agent

Important Features:

a. **AIDS** (**A**cquired **I**mmuno-**D**eficiency **S**yndrome) is the last stage of infection with **HIV** (**H**uman **I**mmuno-deficiency **V**irus)

b. AIDS can take around 7-10 years to develop after infection with HIV.

c. HIV is transmitted through semen and vaginal fluids, infected blood and blood products; and from an infected mother to her baby-before birth, during birth or through breast milk.

d. A person who is **HIV positive** has HIV, the virus that causes AIDS.HIV damages the immune system, the part of the body that fights infection. Over the time, the immune system becomes very weak. This stage of HIV is called **AIDS**. No one knows for sure when a person with HIV will get AIDS. HIV acts differently in different people. It can take a long time for HIV to make a person sick and many people with HIV stay healthy for years. Understanding what it means to be an HIV positive person helps people with HIV take the best care of themselves and helps others give people with HIV the support they need and deserve.

How does the Infection Spread?

- Infected blood
- Infected needle
- Multiple partners
- From an infected mother to her baby before birth.
- Injectable drug abuse

Statistics

- Unprotected sexual intercourse with a person having the virus accounts for almost 80% of worldwide transmission.
- Injection with contaminated blood and use of non-sterilized equipments account for 3-5% of infections and 5-10% of global infections are due to the reuse of contaminated needles by intravenous drug users.

How is HIV *NOT* Transmitted?

- Through air — sneezing, coughing or breathing.
- Through casual physical contact, such as touching, hugging or kissing.
- Through water — through use of common swimming pools etc.
- Through toilets
- Through mosquitoes
- Through sharing the same utensils, phones etc.

How can HIV Transmissions be Prevented?

- ✓ By practising safer sex — keeping to a single partner, use of condoms etc.
- ✓ By using clean, sterilized needles and avoiding unnecessary skin
- ✓ piercing By never sharing injecting drug equipment
- ✓ By receiving blood transfusions only when necessary and only with properly screened blood.

2. Magnitude of the Problem

Internationally:

The NACO, the National Institute of Health and Family Welfare and the National Institute of Medical Statistics (a body under ICMR) bring out estimates of India's population living with HIV and AIDS. The 2006 estimates suggest national adult HIV prevalence in India is approximately 0.36 percent, amounting to between 2 and 3.1 million people. If an average figure is taken, this comes to 2.5 million people living with HIV and AIDS; almost 50 percent of the previous estimate of 5.2 million.

More men are HIV positive than women. Nationally, the prevalence rate for adult females is 0.29 percent, while for males it is 0.43 percent. This means that for every 100 people living with HIV and AIDS (PLHAs), 61 are men and 39 women. Prevalence is also high in the 15-49 age

group (88.7 percent of all infections), indicating that AIDS still threatens the cream of society, those in the prime of their working life.

While adult HIV prevalence among the general population is 0.36 percent, high-risk groups, inevitably, show higher numbers. Among Injecting Drug Users (IDUs), it is as high as 8.71 percent, while it is 5.69 percent and 5.38 percent among Men who have Sex with Men (MSM) and Female Sex Workers (FSWs), respectively. [1]

The HIV epidemic in India is concentrated in nature. The HIV prevalence among the High Risk Groups i.e. Female Sex Workers, Injecting Drug Users, Men who have Sex with Men and Transgenders is about 20 times higher than the general population. In 2008, according to NACO, it is estimated that approximately 2.27 million people are infected with HIV in India, of which, 39% are female and 3.5% are children. Unprotected sex (87.1% heterosexual and 1.5% homosexual) is the major route of HIV transmission, followed by transmission from Parent to Child which is 5.4% and use of infected blood and blood products is 1.1%. While Injecting Drug Use is the predominant route of transmission in the north-eastern states, it accounts for 1.7% of HIV infections nationally. The estimated adult HIV prevalence in India has declined from 0.45% in 2002 to 0.29% in 2008. The estimated number of People Living with HIV (PLHIV) has also declined from 2.73 million to 2.27 million over the same period. However, there is significant regional variation in the trends of the HIV epidemic. The epidemic has been stabilized in the four high prevalence states of Maharashtra, Tamil Nadu, Karnataka and Andhra Pradesh. However, there are trends indicating the rising HIV epidemic in other moderate to low prevalence states.

3. Human Rights Issues

A. Human Rights Relevant to HIV/AIDS

- The right to non-discrimination, equal protection and equality before the law
- The right to life

[1] http://www.nacoonline.org/Quick_Links/HIV_Data/

- The right to the highest attainable standard of physical and mental health
- The right to liberty and security of person
- The right to freedom of movement
- The right to seek and enjoy asylum
- The right to privacy
- The right to freedom of opinion and expression and the right to freely receive and impart information
- The right to freedom of association
- The right to work
- The right to equal access to education
- The right to an adequate standard of living
- The right to social security, assistance and welfare
- The right to share in scientific advancement and its benefits
- The right to participate in public and cultural life
- The right to be free from torture and cruel, inhuman or degrading treatment

B. Violations of Human Rights of PLWHA (People Living with HIV/AIDS)

- Denial of health care and treatment
- Denial of and/or removal from employment
- Lack of access to and availability of drugs
- Denial of various services including insurance, medical benefits etc.
- Lack of access to information
- Lack of access to legal remedies
- Lack of strong support system including family, spouses, friends and relatives
- Discrimination against children of HIV positive parents including in admission of these children to schools

- Ostracisation of PLWHA from community and family
- Prevention of children from playing, interacting or eating with PLWHA

C. Ethical Issues Related to HIV/AIDS

- Screening and testing policies, including screening of pregnant women
- Confidentiality and privacy
- Discrimination at the workplace
- Blood safety and related issues
- Access to and delivery of health care
- Bio-medical research (e.g. development of vaccine and drugs and trials; implementation of public health policies in prevention and control)

D. Statutory Protection

Very few nations in the world—and none in South Asia—have specific statutory laws governing HIV/AIDS or ensuring protections to PLWHA.

Fundamental rights guaranteed by national constitutions are, therefore, the prime source of law in South Asia. However, there are also customary and personal laws, particularly in South Asia, that determine the rights of individuals, especially women. Apart from constitutional guarantees, policies and guidelines on HIV/AIDS drawn up by national governments often become the prime basis on which the rights of PLWHA are defined. However, in India, governmental policies/guidelines cannot be enforced by the courts, though many rights of PLWHA are defined through court judgments as India is governed by the system of English common law.

E. HIV/AIDS related Litigation

- A landmark anti-discrimination case in the Bombay High Court that affirmed the rights of PLHAs in the workplace was ***MX* v. *ZY*** [AIR 1997 Bom 406] where MX, a casual labourer, was tested for HIV

by his employer, ZY, a public sector corporation, prior to being regularised into a permanent position. MX tested positive for HIV, and though otherwise fit, was rejected from being regularised, and his contract was terminated. MX filed a writ petition in the Bombay High Court, arguing that the company's rules (mandatory HIV testing and denial of employment to positive people) and actions violated Articles 14 (Equality before the law), 16 (Equality of opportunity) and 21 (Right to life and personal liberty) of the Indian Constitution. The court ruled that:

- A government/ public sector employer cannot deny employment or terminate the service of an HIV-positive employee solely because of his/her HIV-positive status, and any act of discrimination towards an employee on the basis of his/her HIV-positive status is a violation of Fundamental Rights.
- The services of HIV-positive employees can only be terminated if they pose a substantial risk of transmission to their co-employees or are unfit or unable to perform the essential functions of their job. Determining whether a person is unfit or incapable of performing their job must be made on the facts of each specific case by conducting an individual enquiry (beyond a mere diagnostic test).
- The court also held that an HIV-positive person can suppress their identity and use a pseudonym in the course of court proceedings in order to protect themselves from further discrimination.
- This issue has been especially contentious in employment settings that require a high level of physical fitness such as the police, the armed forces and paramilitary. In ***RR* v. *Superintendent of Police & others*** (Unreported [2005] Karnataka Administrative Tribunal), RR, was tested for HIV as a requirement for entry into the police force. On being found to be HIV-positive his job application was rejected. RR approached the Karnataka Administrative Tribunal challenging the constitutionality of a circular issued by the director general and inspector general of police mandating that applicants testing HIV-positive would not be inducted into the Karnataka Police.

- The Tribunal declared that a person who was fit, otherwise qualified, and posed no substantial risk to others cannot be denied employment in a public sector entity. It also found that the policy circular that denied employment on grounds of an HIV-positive diagnosis alone was a violation of Articles 14 and 16 of the Constitution of India, those prohibit the government from denying employment on these grounds . It directed that RR be given employment as a police constable from the date he qualified for the post and that his service benefits should also be assessed from that date.

There are several other cases of discrimination in the workplace that have been adjudicated, including:

- ***Mr. Badan Singh* v. *Union of India & Anr.*** (2002) — Delhi High Court
- ***X* v. *State Bank of India*** (2002) - Bombay High Court
- ***G* v*. New India Assurance Co. Ltd***. (2004) Bombay High Court
- ***X* v *The Chairman, State Level Police Recruitment Board & Ors,*** 2006 ALT 82
- ***S. Indian Inhabitant of Mumbai* v. *Director General of Police, CISF and others*** (Unreported [2004] High Court at Bombay in WP No. 202 of 1999)
- ***A* v *Union of India*** (Unreported [28 November 2000] In the High Court at Bombay, WP No 1623 of 2000 and Review Petition No 3 of 2000)
- ***Chhotulal Shambahi Salve (CSS)* v *State Of Gujarat (2001) (Unreported Special Civil Application No. 11766 of 2000*** [Gujarat High Court] 17 February 2001)

F. International Human Rights Framework

The Universal Declaration of Human Rights has been recognised as the Magna Carta of human rights all over the world. The basic tenets of this declaration are the right to liberty, security and freedom of movement, the right to work, the right to education, the right to social security and

services, the right to equality — equal protection before the law, the right to marriage and family and the right to health.

International human rights have been further codified in a number of legally binding international covenants and declarations such as the following:·

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD-1965)
- International Covenant on Civil and Political Rights (ICCPR-1966)
- International Covenant on Economic, Social and Cultural Rights (ICESCR-1966)
- Convention on the Elimination of All forms of Discrimination Against Women (CEDAW-1979)
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT – 1984)
- Convention on the Rights of the Child (CRC-1989)

International human rights instruments play an important role in respect of HIV/AIDS and human rights, since their norms may guide the establishment of procedural, institutional and social mechanisms to counter the HIV/AIDS epidemic.

Two prominent HIV/AIDS-specific international agreements are the Declaration of Commitment passed at the United Nations General Assembly Special Session on HIV/AIDS (UNGASS), June 2001 and the International Guidelines of HIV/AIDS, 1996.

G. International Guidelines on HIV/AIDS and Human Rights

In September 1996, the Second International Consultation on HIV/AIDS and Human Rights, convened by UNAIDS and the Office of the UN High Commissioner for Human Rights, led to the formulation of the *International Guidelines on HIV/AIDS and Human Rights.* The Guidelines address multi-sectoral responsibilities and accountability, including improving the roles of the government and private sector. In addition, they stress the duty of the States to engage in law reform and identify legal obstacles so as to form an effective strategy of HIV/AIDS prevention and care.

Guideline 1: States should establish an effective national framework for their response to HIV/AIDS which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities across all branches of Government.

Guideline 2: States should ensure, through political and financial support that community consultation occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation and that community organisations are enabled to carry out their activities.

Guideline 3: States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations.

Guideline 4: States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

Guideline 5: States should enact or strengthen anti-discrimination and other protective laws that protect people living with HIV/AIDS from discrimination in both the public and private sectors, ensure privacy, confidentiality and ethics in research involving human subjects, emphasise education and conciliation, and provide for speedy and effective administrative and civil remedies.

Guideline 6: States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread, sustained and equal availability of qualitative prevention measures and services, adequate HIV prevention, care and information, and safe and effective medication at an affordable price. States should take such measures at both domestic and international levels, with particular attention to vulnerable individuals and populations.

Guideline 7: States should implement and support legal support services those will educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilise means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.

Guideline 8: States should, in collaboration with and through the community, promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

Guideline 9: States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigma associated with HIV/AIDS.

Guideline 10: States should ensure that government and private sectors develop codes of conduct regarding HIV/AIDS those translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.

Guideline 11: States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV/AIDS, their families and communities.

Guideline 12: States should cooperate through all relevant programmes and agencies of the United Nations system, including UNAIDS, to share knowledge and experience concerning HIV-related human rights issues. They should ensure effective mechanisms to protect human rights in the context of HIV/AIDS at the international level.

4. United Nations Declaration of Commitment

In June 2001, Heads of State and Representatives of Governments

of 189 nations met at the United Nations General Assembly Special Session on HIV/AIDS (UNGASS) and a Declaration of Commitment was adopted by the delegates. The UNGASS Declaration of Commitment provides a framework for an expanded response to the global HIV/AIDS epidemic. The emphasis of Declaration of Commitment is on a multi-sectoral approach.

Within the Declaration, specific commitments are made in the areas of

- enhanced leadership
- prevention, care, support and treatment
- protecting human rights, particularly those of PLWHA
- reducing vulnerability, especially of women
- assisting children who have been orphaned and made vulnerable by HIV/AIDS
- alleviating the social and economic impact of HIV/AIDS
- further research and development
- addressing HIV/AIDS in conflict zones and disaster-affected regions
- ensuring new and sustained resources
- and maintaining the momentum and monitoring the progress of responses.

5. Initiatives by *National Human Rights Commission*

- The Commission has taken up a number of individual cases relating to discrimination faced by persons affected / infected by HIV/AIDS with regard to access to medical treatment facilities and education.
- The Commission's intervention has secured proper medical treatment to an AIDS patient at a Government Hospital in Delhi. The unemployed HIV positive patient had complained to the Commission on 18 September 2003 that he had been denied proper treatment by Government and non-Government hospitals in Delhi.
- The Commission pursued the case with the hospitals concerned;

consequently, the patient is now being given proper medical treatment. In the light of this case, the Commission has directed that in medical cases dealing with HIV positive patients, hospitals should offer proper treatment without the poor patients having to approach the Commission.

- In addition to individual complaints, the Commission in partnership with other key agencies organized the National Conference on Human Rights and HIV/AIDS in New Delhi in November 2000. Based on the deliberations of the National Conference, systemic recommendations on various aspects of 'Human Rights & HIV/AIDS' were sent to the concerned authorities in the Central Government and in various States.

- The Commission has mounted a multi-media campaign to disseminate information on the Human rights and HIV/AIDS to various target groups. The Report on the National Conference on Human Rights and HIV/AIDS was sent to the concerned authorities in all States and in the Centre, NGOs and other key stake-holders. It has also been placed on the Commission's website. This booklet is yet another attempt in this direction. Efforts are on to produce short duration film entitled 'HIV/AIDS- Myth and Reality' from a Human Rights perspective in partnership with Doordarshan.

Recommendations

(National Conference on Human Rights and HIV/AIDS)

This Conference was organized by the National Human Rights Commission in Partnership with the National AIDS Control Organisation, the *Lawyers Collective*, the UN Children's Fund and the UN Joint Programme on HIV/AIDS in New Delhi on 24-25 November 2000.

The recommendations emerging from the group discussions are presented below as a series of ***action points*** that seek to feed into the response to HIV/AIDS both on national and State levels, and in reference to all partners, including the international and domestic non-governmental organisations, foreign governments and multilateral agencies, credit institutions, the business community/ private sector, employers' and workers' associations, religious associations and communities.

Another purpose of the ***action points*** is to ***complement the International Guidelines on HIV/AIDS and Human Rights*** with practical solutions in the Indian context.

1. Consent and Testing

- All staff of testing centres and hospitals, both in public and private sector should be trained and sensitised, on the added value of the right of any person or patient to make an informed decision about consenting to test for HIV. Further the staff should be sensitised on universal precautions and provided with an appropriate infrastructure and a conducive environment which can enable them to respect the right of any person or patient to decide whether to test for HIV or not.
- This right to self-autonomy must be combined with the provision of the best possible services of pre-test and post-test counselling.
- Persons detected at routine HIV screening at blood banks, should be referred to counselling centres at nearby health care facilities, for further evaluation and advice.
- The physical environment in which counselling and testing is carried out needs to be conducive to prepare HIV positive people physically, mentally and with accurate information on how to 'live positively'. An important component of the enabling environment is sufficient time to internalise and consider the counselling and information provided and to make an informed decision on consent to testing.
- Official ethical guidelines and a comprehensive protocol should be developed on how to counsel and best protect the rights of the people who according to current legislation or the practice of diminished authority may not have legal or social autonomy to provide or withhold their consent. This would include children, mentally disadvantaged persons, prisoners, refugees, and special ethnic groups.
- A comprehensive protocol on informed consent and counselling should be developed and be applicable in all medical interventions including HIV/AIDS. It needs to include testing facilities and processes in normal hospital setting, emergency setting and

voluntary testing that take into consideration the window period. Although the counselling offered aims to advise testing for those who might feel that they have been engaging in unsafe practices, yet the right to refuse testing must be respected.

- The availability of and/or access to voluntary testing and counselling facilities needs to be increased throughout India, including rural/ remote areas, in an immediate or phased manner within previously defined and agreed timelines.
- Guidelines for the written consent procedures in the case of HIV/ AIDS research need to be explored and developed.

2. Confidentiality

- Train and sensitise all staff in testing settings, blood banks, and care and support settings, both in public and private sector; on the right of any person or patient to enjoy privacy and decide with whom medical records are to be shared
- Explore innovative and practical ways to implement respect for confidentiality in different settings: location for disclosure of diagnosis, specific procedures for the handling of medical journals and correspondence, reporting procedures, and confidential disclosure of status without the presence and pressure of family members, which is particularly relevant to infected women.
- The legal framework, administrative procedures, and professional norms should be revised to ensure enabling environments, which foster and respect confidentiality.
- Develop guidelines/regulations for beneficial disclosure of testing results. Disclosure without consent should only be permitted in exceptional circumstances defined by law.

3. Discrimination in Health Care

- Train and sensitise care providers and patients on their respective rights in the context of HIV/AIDS, and combine it with training on universal precautions and with the supply of means of protection including Post Exposure Prophylaxis (PEP) and essential drugs for all health care settings. Include to a greater extent trained and

sensitised health care workers as trainers and role models to other health care workers. Information on HIV/AIDS should be available at all health care institutions for the public as well as for the staff, and should be most user-friendly.

- Implement stigma reduction programmes and campaigns among health care professionals that prohibit isolation of HIV positive patients, provide appropriately prescribed treatment of opportunistic infections, and offer standard procedure for the protection of confidentiality. Include to a greater extent people living with HIV/ AIDS in the design of stigma reducing campaigns, awareness programmes and care and support services.
- Develop anti-discrimination legislation that practically enables protection of the rights of health care workers and patients, and that makes both the public and the private sectors accountable.
- Establish a multi-sectoral consultative body on HIV/AIDS to provide advice and dissemination of information to health care workers.

4. Discrimination in Employment

- Adoption of national and State anti-discrimination legislation that should apply equally to both the public and private sectors and should prohibit discrimination in relation to work. This should include prohibition of pre-employment HIV testing, routine health checkups with mandatory HIV testing, reasonable accommodation, HIV friendly sickness schemes, entitlements, regulation on subsidised treatment costs, and compassionate employment.
- Train and sensitise law enforcement authorities and other authorities/ sections of the community those might be closely connected with the workplace, employers/corporate leaders and employees/workers at formal and informal work places, and expand the awareness programmes to the surrounding communities on the issues of HIV/ AIDS, stigma and discrimination, leading to adoption of private and public corporate regulations on HIV/AIDS.
- Raise awareness about the existing CII policy on HIV/AIDS and training in legal literacy related to both HIV/AIDS in the workplace as well as other work place regulations in force. Media could be of great use to such a campaign.

- Commission an investigation on the anticipated costs for large and small Indian companies in the context of HIV, to prepare employers and workers in dealing with the consequences of HIV/AIDS.
- Introduce affirmative action/positive discrimination in the form of insurance and health care benefits and introduce medical insurance schemes to cover HIV positive employees.
- Increase focus on workplaces with special vulnerabilities.
- Introduce interventions training and sensitisation programmes within the armed forces, and design training and sensitisation programmes that are child- youth- and women friendly to be used in the workplaces where they are represented.

5. Women in Vulnerable Environments

- Effectively share accurate information on HIV (including transmission modes, sexually transmitted diseases (STD), preventive and curable aspects, treatment, drugs and counselling) with different categories of women in varied innovative, culturally adapted ways all over India.
- Adopt legal changes to empower women for equality in areas such as property rights, domestic violence and marital rape, and protect the right to association for any groups of women working for collective interests.
- The rights of women to provide or withhold informed consent, for HIV testing, must be protected. Social barriers that limit the free exercise of such a right by women must be overcome through appropriate educational and administrative measures.
- All pregnant women should be provided an opportunity to have an HIV test, since vertical transmission of HIV can be effectively stopped by the use of low cost drugs in pregnant women who test positive.Women, who test positive for HIV, during pregnancy, should be offered such treatment.
- Start alternate media communication programmes to reach out to as many groups of women as possible on the issue of empowerment of girls and women and elimination of misconceptions, myths and stereotyping related to male and female sexuality. Remove silence about sexuality in the development of

policies, guidelines, project management and programming as well as within prevention messages.

- Increase programmes directed at informing and involving men in the response to HIV/AIDS by opening up discussion on sexuality and gender differences and challenging cultures of shame and blame.

6. Children and Young People

- Ensure that the response to children and young people is shaped and driven by their rights guaranteed under the Child Rights Convention, their overall health needs as well as health education requirements.
- Train government officials, policy-makers, and healthcare providers to fully familiarise them with the contents of the CRC.
- Create innovative mechanisms to inform children and youth on safe sex and other sexual health issues and ensure that such information is related to their cultural context and age groups.
- Extensively use mass media and the education system to disseminate relevant information. The information and advocacy campaign should be subsidised by the Government.
- Redesign the health care services, including contact points/ counselling services, to become more child and youth friendly, and accessible.
- The limitations of the legislation related to children and young people need to be addressed. For instance, the *Juvenile Justice Act* (JJA) should be revised to facilitate the shift to alternate methods of providing non-custodial care. A law covering sexual abuse of boys and girls should be adopted. Legal remedies need to be made accessible to children and youth.
- Develop a clear policy on how young people wishing to go through an HIV test can do so voluntarily and without breach of confidentiality vis-à-vis legal guardians or others.

7. People Living with or Affected by HIV/AIDS (PLWHA)

- Formulate institutional guidelines with standards placing the issues of PLWHA in a larger framework.

- Commission a study on the WTO regime post 2004. Lobby with the UN agencies, including the OHCHR to work for affordable drugs, and lobby towards Indian capacity building and opportunities for domestic drug manufacturing. Organise a workshop on WTO and TRIPS with reference to the issue of future access to drugs and anti-retrovirals.
- Increase legal literacy among the PLWHA and communities by community training programmes and integration of legal literacy messages in prevention messages. Ensure access to legal remedy in case of violations of the rights guaranteed.
- Review information, education and communication (IEC) strategies with the aim of reducing stigma while preventing HIV/AIDS. For this purpose, explore the role of public broadcasting companies, and introduce tax relief for private broadcasting channels to allow public broadcasting on issues related to HIV/AIDS. Train and sensitise the media through workshops. Lobby for the inclusion of HIV/AIDS issues in the Right to Information Bill.
- Immediately review legislation that impedes interventions (such as Section 377 of the *Indian Penal Code*), as well as feasible antidiscrimination legislation, health legislation and disability legislation to be more supportive to people living with HIV/AIDS, prevention, care and support initiatives. Include HIV/AIDS issues in the Right to Information Bill. Introduce affirmative action for HIV positive people in the employment sector.

8. Marginalised Populations

- Revise and reformulate laws and processes (such as Section 377 of the *Indian Penal Code* and the *NDPS Act*) to enable the empowerment of marginalised populations and reach them with HIV/AIDS prevention messages as well as care and support mechanisms.
- The revision of the legislation must seek to mitigate the socioeconomic factors that cause people's marginalisation as well as unsafe practices.
- Legalise any sexual activities undertaken with consent between adults, and in connection with this adopt a clearly defined age for sexual consent.

- Legitimise and expand innovative harm reduction programmes to reduce harmful practices including needle exchange and unsafe sexual activities, and expand condom distribution among all marginalised populations.

9. General

- A comprehensive strategy to prevent and control HIV-AIDS should combine a population based approach of education and awareness enhancement with strategies for early detection and effective protection of persons at high risk.
- An Action Plan for implementation of these recommendations should be developed with focus on specific areas of action and prioritised sequencing of recommendations for early implementation within each of them. This may be done through a working group comprising representatives from the NHRC, Ministry of Health and Family Welfare, Government of India and UNAIDS who will identify the pathways of action and the agencies for implementation.

10. Recommendations Sent by NHRC to all States / UTs

1. Public health action should focus on preventing mother to child transmission of the virus and measures to achieve this objective should receive prioritized attention from health policy makers at both central and state levels
2. A wider programme for the prevention of HIV/AIDS should conform to the recommendations made by NHRC as a follow-up of the National Consultation jointly organized by the NHRC and UNAIDS in November 2000.
3. Enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from attending schools
4. Address school fees and related costs that keep children, especially girls, from going to school
5. Provide all children, both in and out of school, with comprehensive, accurate and age-appropriate information about HIV/AIDS

6. Provide care and protection to HIV/AIDS inflicted children whose parents are unable to care for them . Institutional arrangements must be made for extending medical aid to such children. [Hospitals and medical professionals should not be allowed to turn away people who are HIV +ve from being treated.]

6. Conclusion

The experts who gathered at the Second International Consultation on HIV/AIDS and Human Rights, 1996 recognized the following:

(i) The protection of human rights is essential to safeguard human dignity in the context of HIV/AIDS and to ensure an effective, rights-based response to HIV/AIDS. An effective response requires the implementation of all human rights in accordance with existing international human rights standards.

(ii) A rights-based, effective response to the HIV/AIDS epidemic involves establishing appropriate governmental institutional responsibilities, implementing law reform and support services and promoting a supportive environment for groups vulnerable to HIV/AIDS and those living with HIV/AIDS.

For further information:

National Aids Control Organizations website www.naco.nic.in
National Aids Prevention and Control Policy, NACO, Ministry of Health and Family Welfare, Government of India
HIV/AIDS and Human Rights - International Guidelines — United Nations, 1998
Regional Human Development Report- HIV/AIDS and Development in South Asia, 2003
Report on National Conference on Human Rights and HIV/AIDS, 24-25 November 2000, New Delhi

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