Handbook for Legislators on HIV/AIDS, Law and Human Rights:

Action to Combat HIV/AIDS in View of its Devastating Human, Economic and Social Impact

EXECUTIVE SUMMARY

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The Introduction to this report sets out the shocking statistics of the epidemic – 33.4 million people are currently living with HIV/AIDS. An effective response is required to avert the devastation wreaked on communities around the world by the epidemic. This impact is disproportionately felt in developing countries and vulnerable populations (those whose human rights are already not fully respected).

The Background highlights important features of the Inter-Parliamentary Union (IPU) Windhoek Resolution (1998). It gives examples of political leaders who have made supportive public statements, and regional/national initiatives by parliamentarians who have made the HIV/AIDS and human rights connection.

A brief outline is given of the international law basis of the *International Guidelines on HIV/AIDS and Human Rights*. These Guidelines require States Parties to human rights treaties to review, and if necessary amend, their laws, policies and practices to ensure compliance with defined norms. Certain rights, including health, nondiscrimination, privacy, education, information, autonomy, liberty, freedom of expression and association, and freedom from inhuman, degrading treatment or punishment are then examined specifically in the context of HIV/AIDS.

The Handbook analyses each of the 12 International Guidelines on HIV/AIDS and Human Rights and gives best practice examples of their implementation, in terms of content and/or process, at national and sometimes local and regional levels.

(A) Institutional Responsibilities and Processes

Guideline 1 – National framework (pages 30-34)
The Handbook identifies several ways in which policies and programmes can be integrated in all relevant branches and levels of government.

(1) Interministerial committees

Relevant portfolios (health, education, justice, welfare, housing, transport, tourism etc.) should be included in such bodies and Cabinet subcommittees to ensure coordination at high level of HIV/AIDS strategies. Examples are given of such bodies in several countries, including one chaired by the Thai Prime Minister.

(2) Parliamentary committees on HIV/AIDS

Special legislative committees were recommended in the Namibian resolution to provide a nonpartisan forum for parliamentarians to deepen their understanding of HIV/AIDS issues and promote consensus. The UK All-Party Parliamentary Group on AIDS is a good example of such a committee.

(3) Multisectoral advisory bodies

Professional and community representation is essential on bodies advising the government on general issues (e.g. the Malaysian AIDS Council), and especially those addressing legal and ethical issues (e.g. committees in South Africa and Canada).

Guideline 2 – Supporting community partnership (pages 34-36)

The partnership approach in all stages of policy design, programme implementation and evaluation was explicitly endorsed by the Windhoek Resolution. Representation on advisory committees is one mechanism to implement this Guideline. The Handbook gives the example of several successful NGOs, such as TASO in Uganda.

(B) Law Review, Reform and Support Services

This section is the most weighty and technical part of the Handbook. Legislative checklists are included in the text in ten areas to assist with implementation. The actual process of law reform on HIV/AIDS and human rights is very important. The Handbook gives best practice examples of how this has been achieved in several countries, including the Philippines *AIDS Prevention and Control Act 1998*.

Guideline 3 – Public health legislation (pages 36-49)

The Handbook highlights the recognition of public health as a government responsibility, and its reflection in laws mandating the provision of prevention, treatment and care services. Unfortunately some old infectious diseases laws were automatically extended to HIV/AIDS with absurdly inappropriate results, such as prohibiting persons living with HIV/AIDS from using public transport or working in certain industries.

(1) Testing

The need for specific informed consent with counselling before and after testing is analysed. Mechanisms that are consistent with this objective are discussed – such as laboratory request forms being given legislative force by inclusion in public health regulations. Public policy reasons for not obliging testing of targeted populations are also set out.

(2) Notification/Partner notification

The need to collect data for public health reasons is acknowledged, but privacy protections are suggested, such as the use of coded data for notifying health authorities of new cases of HIV infection. Protocols for notifying sexual partners of HIV-infected persons without their consent in special circumstances are also discussed.

(3) Detention
The lack of public health justification for isolating people solely on the basis of their HIV status is emphasized. Where liberty is restricted it should be on the basis of behaviour in exceptional cases and with due process protections.

(4) Blood safety
The Handbook highlights the urgency of ensuring a safe blood supply run by an accountable national service, with voluntary donors and HIV screening. Successful case studies are given of Uganda and Zimbabwe.

(5) Universal precautions
The need for infection control in health care and other settings involving exposure to blood and body fluids is essential. Detailed requirements are codified under public health legislation in some jurisdictions, such as in the USA.

Guideline 4 – Criminal law and correctional systems (pages 50-63)
This is an area of the law where repressive legislation can impede prevention programmes by making HIV/AIDS educators liable for aiding or abetting criminal offences.

(1) Transmission/exposure offences
Such laws are common (part of being seen as being "tough" on crime), but they are not recommended and should only be used as a last resort. If enacted they should be generic rather than HIV-specific, and have appropriate defences such as for consent and use of protective measures (e.g. condoms). Protocols between law enforcement and public health authorities are essential, so that inappropriate cases are not brought before the courts without scientific information.

(2) Needle and syringe exchanges
Needle and syringe exchange programmes are part of a harm-reduction approach and have been very successful in limiting the spread of the virus in injecting drug users. Several case studies are given, including that of an NGO in St Petersburg.

(3) Sexual acts
Private sexual acts such as adultery, sodomy and fornication are prohibited in some countries in order to attempt to protect public morality. Public health requires that these laws be repealed, otherwise risk behaviour is driven underground.

(4) Sex work (prostitution)
Public health objectives are much more likely to be achieved by regulating sex work as a personal service industry, focusing on management by mandating universal precautions (e.g. condoms). Many case studies have been documented, including Sonagachi in Calcutta.

(5) Prisons

HIV prevalence is soaring in prisons because of unsafe behaviour. Education and information interventions, such as those in Brazil, have been successful, unlike crude repression. Lack of such programmes condemn prisoners, and the communities they later return to to HIV infection.

Guideline 5 - Antidiscrimination and protective laws (pages 64-78)

(1) Antidiscrimination legislation

The Handbook refers to the chilling case of an NGO volunteer killed by a mob in South Africa just after she made a personal testimony about her HIV status on World AIDS Day. Antidiscrimination laws are common in many countries, such as Canada, France, South Africa, and the United Kingdom. Administrative agencies, like human rights commissions, usually investigate and conciliate complaints of discrimination on many grounds, with HIV/AIDS often being included as a disability.

(2) Discriminatory impact on vulnerable populations

Laws can be the source of systematic discrimination against women, young people and gay men by not protecting them against sexual violence, unfair property laws, and failing to recognize domestic relationships (e.g. de facto relationships, irrespective of sexuality).

(3) Privacy

The sensitivity of HIV-related information exists because of the stigma surrounding the epidemic. Laws protecting privacy are common in Western Europe and Canada, with medical data often being given special protection. Administrative agencies, such as privacy commissioners, usually operate like human rights commissions.

(4) Employment law

Protection is needed in respect of coerced testing and unfair discrimination in the workplace. The impact is magnified where people are infected in their prime productive ages, but are dismissed, despite their ability to work for a long time (particularly with the availability of antiretroviral treatments). The Worksafe Australia Code of Practice for Health Care Workers is cited as a best practice case study of occupation health and safety standards.

Guideline 6 – Regulation of goods, services and information (pages 79-87)

(1) Therapeutic goods legislation

Such laws safeguard the standard and availability of items such as testing kits, condoms and medicines. The Handbook refers to the success in France in 1987 of lifting barriers to the distribution of condoms.

(2) Ethical research
The need for the protection of human participants in HIV-related research is vital. The Handbook outlines the operation of ethical review committees, and gives case studies on vaccine development in Brazil, Thailand and Uganda. Initiatives for improving access to treatment in several countries are described.

(3) Education and information
Explicit material is essential, but broadcasting standards can be a barrier to general media and targeted campaigns unless there are exemptions for educational materials.

(4) Expression and association
NGOS, especially those representing vulnerable populations, such as gay men, sex workers and injecting drug users, can be hampered by laws restricting their association – the reasons given by governments for refusing registration can either be their illegal behaviour, or the fact that they are critical of government inaction.

Guideline 7 – Legal support services (pages 88-89)
Best practice case studies of services that go beyond law reform, by helping people actually enforce their rights are described. Examples are given from countries including Venezuela.

(C) ENABLING ENVIRONMENT

Guideline 8 – Women, children and other vulnerable populations (pages 90-97)
Improving the social and legal status of populations whose human rights are not fully respected is a huge, but necessary, undertaking. Vulnerability depends on the legal, social and economic conditions, as well as the nature of the epidemic in each country. The groups most commonly affected are women, children, religious or ethnic minorities, indigenous people, migrants, refugees, internally displaced persons, people with disabilities, economically disadvantaged groups, itinerant workers, gay men, injecting drug users and sex workers. Targeted programmes in three main areas are considered.

(1) Gender
Projects that improve the literacy, education and financial situation of women exist in many countries, such as Nepal. Important reforms have occurred in many countries at the institutional level, e.g. Offices or Ministries of Women's Affairs, and through legislation, e.g. prohibiting female genital mutilation. The need to include men in projects wishing to influence gender relations is emphasized.

(2) Young people
More than half of people living with HIV/AIDS (PLWHA) were infected before they were 25 years of age. By 2010 UNAIDS expects that there will be 40 million children orphaned by AIDS. Factors increasing vulnerability of young people include poverty,

violence, lack of skills, and harmful social norms relating to sexual relationships. Projects working with young people to equip them with necessary knowledge, life skills and services are explored in various settings e.g. peer education in Zambia, and street children in Brazil.

(3) Religious minorities

A best practice case study is given of a prevention and education project with the minority Muslim population in Uganda.

Guideline 9 – Changing discriminatory attitudes through education, training and the media (pages 98-100)

Changing discriminatory attitudes requires more than legislation. The public activities of people like the late Princess Diana of Wales went a long way in trying to achieve this. Public statements by parliamentarians are also a powerful force to address prejudice. Funded media campaigns by governments, such as the one from Australia, which is described, are also influential.

Guideline 10 – Development of public and private sector standards and mechanisms for implementing these standards (pages 100-101)

The Handbook gives examples of innovative public-private sector partnerships to respond effectively to the epidemic. The HIV/AIDS Employment Code of Conduct of the Southern African Development Community is a best practice example. Other relevant areas include health care and the media.

Guideline 11 – State monitoring and enforcement of human rights (pages 101-103)

The Handbook outlines the Paris Principles on national human rights institutions that emphasize the need for human rights commissions to be independent, accessible and accountable. Examples of human rights commissions in Uganda and India are given.

Guideline 12 – International cooperation (pages 103-107)

(1) Compliance mechanisms

UNAIDS activities impacting on organizations, such as the UN bodies set up under human rights treaties, are set out.

(2) NGO mobilization

Integrating HIV/AIDS in the work of human rights NGOs and sensitizing AIDS service organizations to human rights are essential activities.

(3) Religious leaders

Strengthening links with religious bodies that have been involved in treatment and care from the beginning of the epidemic is a vital activity for many reasons. The example of Caritas Internationalis is described.

ANNEXES

The first annex sets out medical facts about HIV/AIDS and recent initiatives in vaccine development and improving access to treatment, especially in developing countries. The second and third annexes include the IPU Windhoek Resolution and the International Guidelines on HIV/AIDS for reference purposes. The fourth and fifth annexes provide brief descriptions of the partners responsible for the development of this Handbook: UNAIDS and the IPU.