

**SOUTHERN AFRICA HUMAN RIGHTS
NON-GOVERNMENTAL ORGANIZATIONS
NETWORK - TANZANIA CHAPTER**

HUMAN RIGHTS AND HIV/AIDS



FUNDED BY: **ARASA**

HUMAN RIGHTS AND HIV/AIDS

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FOREWORD

The enjoyment of everyone rights is very crucial to SAHRiNGON (T) Chapter and that is why one of its main objective is to create an environment for observing, protecting and promoting human rights in Tanzania. Therefore making sure that People Living with HIV/AIDS (PLWAs) are enjoying their fundamental human rights is the centre of the SAHRiNGON {T} Chapter objectives.

The human rights discourse provides us with an inspirational framework as well as a useful guide for analysis and action. The government of Tanzania human rights mechanisms as well as civil societies and private sectors provides important avenues towards increasing accountability for human rights and HIV/AIDS.

Attention to human rights is growing very fast in Tanzania and SAHRiNGON (T) Chapter is actively engaged in increasing understanding of human rights in relation to HIV/AIDS. We are learning from other Institutions, Organizations, Governments, International community and other stakeholders.

It is in this context that SAHRiNGON (T) Chapter has launched the HIV/AIDS and Human Rights Basic Text. We have chosen simple aspect of HIV/AIDS and Human Rights which can explore the linkages between human rights and HIV/AIDS .

We hope this basic text will provide guidance to a broad audience interested on the subject matter.

CHAPTER ONE

1. Introduction

The Southern Africa Human Rights Non Governmental Organization (SAHRiNGON) -Tanzania chapter is a private, voluntary, non governmental, non- partisan and non-profit making organization which strives to coordinate and empower its members for collectively promotion, safeguarding and reinforcing respect of human rights and good governance in Tanzania and across Southern African countries.

The Vision

SAHRiNGON-Tanzania Chapter envisages presence of sustainable active national and regional movement of human rights organizations for effectively promoting, safeguarding and reinforcing respect of human rights and good governance across countries of Southern Africa.

Mission Statement

SAHRiNGON- Tanzania Chapter strives to coordinate and empower its members for collectively promoting and safeguarding and reinforcing respect of human rights and good governance in Tanzania and across countries of southern Africa.

In order to accomplish its mission and vision, SAHRiNGON (T) Chapter has different programs that function under a single mission and vision. These programs include:

- ❖ Information gathering and sharing of experience on issues related to Human Rights and HIV/AIDS.
- ❖ Monitoring of human rights violations through information gathering and disseminations and use the same for the

advocating for changes in policies, legislations and administrative practices.

- ❖ Conduct country and regional leadership training on Human rights and HIV/AIDS.

The main **objective** of the SAHRiNGON Tanzania Chapter as per article 3 of its Constitution is to create an environment for observing, protecting and promoting human rights in Tanzania and other Countries in Africa.

CHAPTER TWO

2. Understand HIV/AIDS

What is HIV?

HIV stands for “**Human Immunodeficiency Virus**” It is the virus that eventually leads to AIDS. This virus slowly damages a person immune system. The immune system protects the body against infections and diseases. The easier way to think about immune system is to see it as a body army. The main duty of the immune system is to defend and protect the body from attack by germs and other dangerous organisms.

HIV slowly destroys the body’s defences, leaving it open to diseases and infections. These kinds of infections developed when a person is weak are called “opportunistic infections” because they take the opportunity to attack the body when its defence is weak. To mention the few opportunistic infections includes thrush, tuberculosis {TB}, skin rashes and shingles.

People living with HIV usually do not get sick immediately. They may stay healthy for many years, and one can not tell that they are living with HIV just by looking at them.

It is very important to note that if you have HIV, it does not necessarily mean that you are sick. It sometimes takes years for someone who has HIV to develop AIDS. During this particular period people infected can lead normal and successfully life.

What is AIDS?

AIDS stands for “**Acquired Immune Deficiency Syndrome**”
HIV causes AIDS. When a persons immune system has become so weakened by HIV that it can not fight off infections anymore and he/she develops serious illnesses called AIDS.

1 University of the Witwatersrand, October 2004, Know you status Know you’re your Rights, aids Lwa project, centre for Applied legal studies, pg 2
2 Ibid

There is no cure for HIV, but medicines called antiretrovirals can help to control HIV, and stop people from developing AIDS. Note that people with AIDS can also get treatment that can improve and prolong their lives.

3. How do you get infected with HIV?

There are so many ways a person can be infected with HIV/AIDS but the common one includes:-

- ❖ Having unprotected sex (with an infected person without use of a condom)
- ❖ Pregnant women with HIV/AIDS may pass the virus to their child during childbirth and breast-feeding. If a mother has HIV there are 30% chance that the baby will be born with HIV
- ❖ Blood transmission from infected person to uninfected person
- ❖ Intra vascular through piercing and cutting objects that can lead to contamination of blood.

4. The Rules for HIV testing

The HIV test is a medical procedure which requires a person to give an informed consent to have a test. Informed consent means you must fully understand what test is and what the consequences will be for you if you test positive or negative. To make sure that a person knows this, he/she must be given counseling before test. This is called **“pre-test counseling”**. Pre test counseling should give someone enough information to properly decide whether or not she/he wants to have test.

Once someone has had counseling, must be given enough time to decide whether or not to have HIV test. If the decision is not to have test, no one can force anybody to have it.

If you decide to have test, you must be given counseling when the results are given to you. This is called **“post-test counseling”**

The decision on whether to have an HIV test, and when to do so, is a personal decision. Except in rare circumstances, someone can not be forced to take a test. Any one who force some else to have a test will be violating his/her rights and may breaking the law. Remember it is possible to have HIV without knowing this is because HIV can live in the human body for many years before it causes any illnesses. The only way to find out is to have an HIV test. This test is performed in many hospitals and clinics. The benefits of knowing one status outweigh the risks. It is very important that all people should think about going for an HIV test.

5. The benefits of knowing your HIV status

Knowing your HIV status is very important, if you test HIV negative, you can make sure that you take more care not to contract HIV in the future. If, however, you test HIV positive, knowledge of your HIV status allows you to take better care of your life.

6. Living with HIV

Some steps that can help you deal with having HIV include:

- ❖ Living more healthy life by eating a balanced diet and getting lots of exercise.
- ❖ Planning properly for your future
- ❖ Finding out about your rights to treatment and non-discrimination
- ❖ Finding out what treatment is available and what you may need
- ❖ Seeking counseling and support groups or service organizations that help people living with HIV/AIDS.

Having HIV does not mean you are about to die. You can have HIV and still be healthy and able to function as well as people who do not have virus. This is one of the reasons why it is wrong to require people to test before employment.

While there is no cure for HIV, better medicines have made it possible for people to live longer and cope with the disease. Some treatments,

such as ant-retroviral medication, can delay or prevent HIV leading to AIDS. It is now government policy to provide people with HIV or AIDS with most of the medicines they need.

7. The risks of knowing your HIV status

There are risks involved in knowing you have HIV. Some people have been denied employment, fired and even been physically attacked and discriminated by other people once others have found out that they have HIV. Discrimination is a result of prejudice, fear and ignorance and makes it hard for people to disclose that they have HIV.

There is no shame in having HIV/AIDS and your HIV status says nothing about who you are or what you are worth.

CHAPTER THREE

HUMAN RIGHTS AND HIV/AIDS

8. What are Human Rights?

Human Rights are rights that all human being posses by virtue of being a human being. These rights are inborn and inalienable rights. Examples of human rights are right to life, right to own property, right to vote, right to health, free from all forms of discrimination, freedom of expression, right to education, right to form and join associations etc.³

Human rights are natural and non discriminatory focusing on respecting every human being virtue and dignity.

Despite the fact that human rights are inborn and inalienable, it is very important for the society to have laws to protect, defend and promote human rights.

9. HIV/AIDS and human rights

Every human being is entitled to enjoy her/his human rights effectively, however because of the prejudice⁴ about HIV/AIDS and ignorance of the laws and human rights knowledge, people living with AIDS {PLWAs} often find that they are victims of different human rights violations.

Prejudice such as HIV/AIDS is death and there is no cure for HIV/AIDS is the basis of all types of human rights violations of the PLWAs. PLWAs are seen as no longer human beings and the society starts to stigmatize and discriminate them. This happen even if the infected person are still very health and productive in the society.

³ Legal and human Rights Centre, Mwongozo wa Haki za Binadamu kwa Mwezeshaji wa Tanzania, 2004.Pg 14

⁴ Due to the fact that HIV/AIDS has no cure, people tend to view those infected as people who are going to die soon and hence they have no hopes on them. This is the basis of stigma and discrimination and denial of other rights of the people lived with HIV/AIDS

As these happen, the PLWAs can no longer enjoy their human rights as other uninfected people do. Therefore there is a close relationship between HIV/AIDS and human rights.

Few and common human rights violations towards {PLWAs} includes stigma and discrimination, property and inheritance dispossession, battered, abandoned, segregation- children are not allowed to play with others, denial of the promotion, privacy, terminated from work, finger points and estrangements from friends.

10. Stigma and discrimination as a fuel to all violations of Human Rights for PLWAs.

Stigma and discrimination is the basis of the violations of all human rights of the PLWAs.

What is Stigma?

Stigma is a situation that significantly discredits an individual in the eyes of others, or a feeling by an individual that others dislike or loathe them⁵

Discrimination occurs when a distinction is made against a person, that results in him or her being treated unfairly and unjustly on the basis of their belonging, or being perceived to belong to a particular group.⁶

What is AIDS Discrimination?

AIDS discrimination happens when PLWAs rights are violated and they are treated unfairly just because of their HIV status. Example of AIDS discrimination includes one being fired by employer because is living with HIV or denied access to health and life insurance and sometimes treatment for the same reason.

5 Susan Ngugi, (Kenya Network of Women with AIDS) paper presented in the Equal status and Human Rights of Women in Eastern Africa Training ,8th September. 2005.

6 Ibid

Why stigma and discrimination against people infected with HIV/AIDS

People experience a lot of fear about AIDS – a fear of becoming infected or “contaminated” by PLWAs, losing friends, relatives or family members to AIDS or having to deal with death. These fears are often turned into prejudice against PLWAs and lead to active discrimination against them. Some people falsely believe that PLWAs cannot live useful or meaningful lives and should be stopped from joining normal activities. Large section of the society perceived HIV/AIDS as:-

- ❖ A disease for ‘low class people’ poor people
- ❖ A disease for immoral people-prostitutes, drugs users etc.
- ❖ Infected people perceived as liability {added burden to scarce resources}
- ❖ Misconceptions/myths surrounding HIV and AIDS- A whip for sinners.

Effects of Stigma and Discrimination

- ❖ More poverty-vicious cycle of poverty
- ❖ More transmission of HIV
- ❖ Resistance of patients to treatment- more resources spent on repeated treatment.
- ❖ Disintegration of the families-mostly women kicked out of homes
- ❖ Depression/no self esteem/self stigma
- ❖ Denial of rights.

What is fuelling stigma and discrimination?

- ❖ Conspiracy of the silence
- ❖ Media
- ❖ Religious perspectives/perceptions
- ❖ No legislation to protect the infected
- ❖ In accurate information especially amongst leaders at grass roots levels
- ❖ Lack of human rights awareness to the community

How to deal with stigma and discrimination

- ❖ Break the silence about HIV and AIDS
- ❖ Greater and more meaningful involvements of PLWAs in decision making
- ❖ Deliberately effort to equip every one especially leaders with accurate information on HIV/AIDS.
- ❖ Use laws and policy to enforce rights to health and freedom from discrimination.
- ❖ Support families to provide comprehensive care and support for infected members (To curb perception of liability)
- ❖ Media to portray hope for PLWAs
- ❖ Stigma must be replaced with **support**, fear with **hope** and shame with **solidarity**.

Why are Stigma and Discrimination wrong?

The Constitution of the United Republic Tanzania says that all people have the right to freedom, equality and human dignity. Article 13 (4) of the same states that **“no person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions or business of any state office”**, therefore by discriminating PLWAs, the society does not only denying their human rights, they are also committing an offence and undermining the democratic culture. PLWAs have an equal right to respect and dignity and must be given an equal opportunity to contribute to the society. However, the Tanzania Constitution only prohibits discrimination on the basis of nationality, ethnicity, place of origin, political opinion, colour, religion, and gender and life situation⁷. It does not specifically prohibit discrimination against people suffering from HIV/AIDS, other diseases and conditions.

Even though the Constitution of the United Republic of Tanzania was formed before the outbreak of HIV/AIDS, human rights of the PLWAs are protected the same way as other human rights. For

⁷ Article 13{5} of the Tanzania Constitution

instance article 12 and 13 states that: **“All human being are born free, and are all equal” “Every person is entitled to recognition and respect for his dignity”** Article 13 states that: **“All persons are equal before the law and rare entitled, without any discrimination, to protection and equality before the law” “No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or its effect”**.

The Constitution of the United Republic of Tanzania does not allow any forms of discrimination and stigmatization towards PLWAs. PLWAs have the rights to life and protection from the society. Article 14 states **that “Every person has the right to live and to the protection of his life by the society in accordance with the law”** Article 15 adds **“Every person has the right to and to freedom live as a free person”**

Discrimination and stigmatization are also deeply rooted in working places. The Constitution of the United Republic of Tanzania Article 22 states that: **“Every person has the right to work” “Every citizen is entitled to equal opportunity and right on equal terms to hold any office or discharge any function under the state authority”** Article 23 **“ Every person, without discrimination of any kind, is entitled to remuneration commensurate with his work, and all person working according to their ability shall be remunerated according to the measure and nature of the work done”**

In general every individual in the United Republic of Tanzania has the right to enjoy the basic human rights regardless the HIV/AIDS status whether positive or negative.

In Tanzania PLWAs have also other rights such as movement, freedom of expression and believes, participation, associations, property ownership etc.

It is very important to create conducive environment to PLWAs to enjoy their rights to life and protection from the society in accordance to the law. Availability of counseling centers, voluntary counseling and test and antiretrovirals are crucial for PLWAs to enjoy their rights to life

Awareness rising concerning HIV/AIDS to the society is also very important so as reduce stigmatization and discrimination. This will reduce the death of people who died for losing hope.

Confidentiality of HIV/AIDS Status as human rights

Confidentiality means that an individual's HIV status is something private and should not be told to others without her/his consent. The Constitution of the United Republic of Tanzania gives everyone a right to privacy, dignity and protection of the person. This right means that an individual is entitled to have her/his HIV status kept confidential as per Article 16 and 17 the Constitution of the United Republic of Tanzania.

This is to say that once one has been tested and diagnosed with HIV the constitution protects his/her right to privacy and no one has a right to breach/violate this right save for when there is a due process of law.

If the rights of PLWAs are protected, it makes it easier for them to receive voluntary counseling and testing, and get the information and medical treatment they need to live healthy lives.

In Tanzania there is no specific legislation providing for HIV/AIDS matters however, Part III of the Tanzania Constitution provides for the rights to equality (article 12), the right to life {article 14), the right to privacy (article 16) and the right to work (article 22).

CHAPTER FOUR

11 The Government commitment

The government has shown some commitments to contain the spread of HIV/AIDS and to prohibit discrimination against persons living with HIV/AIDS. For example, it launched the National HIV/AIDS Policy of 2001 and established the Tanzania Commission for AIDS (TACAIDS). There are also National AIDS Control Programme (NACP) and Tanzania Parliamentarian AIDS Coalition.

12. The National Policy on HIV/AIDS

The government of Tanzania formulated the National Policy on HIV/AIDS and clearly stated that HIV/AIDS is a developmental issue with devastating social and economic consequences. The control of HIV/AIDS is complex, difficult and costly, therefore strong political and government leadership is necessary in spearheading the fight against epidemic⁸. The government has continued to support different programs related to HIV/AIDS through the Tanzania Commission for AIDS (TACAIDS)

The National HIV/AIDS Policy also provides that HIV infection shall not be grounds for discrimination in relation to education, employment, health, other social services and emphasized that pre-employment HIV screening shall not be required⁹. Further, the same states that: PLWAs deserve all primary needs and basic civil, legal and human rights regardless their gender and conditions.

The policy further shows a political will and commitment to put in place a legal framework to facilitate the process of enacting HIV/AIDS law. The law will provide for a multsectoral response to HIV/AIDS, address legal and ethical issues in HIV/AIDS, revise the legal situation of families affected by HIV/AIDS in order to give them access to family property after death of their spouses and parents

⁸ The National Policy on HIV/AIDS, 2001

⁹ Article 4.1 {c} of the National HIV/AIDS Policy of 2001

as well as to provide for the rights of persons living with HIV/AIDS so as to improve the quality of their lives and minimize stigma¹⁰. However, the process of enacting this law is taking long time, therefore we are calling upon government to speed the process and enact HIV/AIDS law in Tanzania.

Some of the laws are contrary to this policy, for example, section 47 of the old Employment Ordinance¹¹ allows employees to ask employment seekers to produce a medical certificate before employing them. It is common now, instead of asking for medical certificate, most employers require a new employee to produce a HIV/AIDS test certificate, which is not supported by ILO and WHO. However this law has been replaced by the labour relations act of 2003 that is to work in conjunction with the labour institutions¹², these new laws have not yet come to force.

13. Conclusion

PLWAs must recognize that the constitution of the United Republic of Tanzania, 1977 together with all international human rights instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic Social and Cultural rights (ICESCRs) the International Covenant on Civil and Political Rights, (ICCPR), The African Charter on Human and Peoples rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the 1995 Copenhagen 10 Commitments on Social Development to mention the few are all for the promotion and protection of human dignity regardless whether are infected by virus or not.

This is to say posing a psychological burden to People Living with HIV/AIDS by segregating, disrespecting, stigmatizing is a social made disaster which can be avoided by observing the fundamental human rights principles.

10 The National Policy on HIV/AIDS, 2001, pages 12-14

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