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TOPIC: HUMAN RIGHTS FOR HIV/AIDS VICTIMS IN TANZANIA.

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# ***HUMAN RIGHTS, FOR HIV/AIDS VICTIMS IN TANZANIA***

## **ABSTRACT**

*This paper examines the role of human rights for HIV/AIDS victims in Tanzania pointing out the guidelines which deals with the promotion of a supportive and enabling environment for HIV/AIDS victims.*

*The paper challenges the discriminatory laws and ethics for the HIV/AIDS victims and calls for human right activists to consolidate the rule of law and medical ethics for HIV/AIDS victims in Tanzania. Consequently, the author recommends for positive measures to be taken in order to reduce discriminatory attitudes towards HIV/AIDS victims in Tanzania.*

*The author has used various methodologies which include library research, seminar reports, discussion and observations. However, most of the facts have been drawn from International conventions and municipal laws.*

## 1. INTRODUCTION

The United Nations Universal Declaration of Human Rights manifestly carries on hand an imprint of the HIV/AIDS victims. The Declaration was adopted by the General Assembly on 10<sup>th</sup> December 1948 has altogether 30 articles covering both civil and political rights and economic, social and cultural rights. Articles 1 and 2 of the Declaration are general articles, stating that all human beings are born free and equal in dignity and rights.

The civil and political rights which are set out and recognized in articles 3 to 21 provide inter alia for the right to life, liberty and security of person; freedom from slavery and servitude; freedom from torture or cruel, inhuman or degrading treatment or punishment; and the right to recognition as a person before the law.

African Governments accepted the United Nations Universal Declaration of Human Rights. In article 3 to 19 of chapter 1 part 1 the African convention on Human and peoples' Rights in

Africa reiterates the same rights and freedoms as are recognised and protected under the United Nations Declaration of Human Rights. Article 30 of chapter I part II provides for the establishment of an African Commission on Human and peoples' Rights within the O.A.U whose function shall be to promote human and people's rights including the rights of the HIV/AIDS victims. Tanzania is a signatory to the UN Declaration of Human Rights. It is also one of the countries which has already signed the African convention on Human and people's Rights. It is for this reason that the rights of HIV/AIDS victims must be supported.

The constitution of the United Republic of Tanzania provides for the right of privacy<sup>1</sup>. It prohibits an abusive interference with his private life. The article gives a right to the protection of the law against interference. It is now internationally accepted that the application of relevant human rights freedoms reduces both vulnerability to infection by HIV and the impact on those already infected and affected. Thus, the protection and promotion of human rights must be integral components of all responses to the HIV/AIDS epidemic.

In Tanzania, the HIV/AIDS epidemic is still escalating with about one, million people out of the estimated population of thirty million already infected. Since the major mode of infection is through sexual

intercourse,<sup>2</sup> HIV/AIDS has become one of the most stigmatized diseases with resultant denial, discrimination and human rights abuses.

## **2. HUMAN RIGHTS AND HIV/AIDS**

The recognition of the importance of human rights in the context of HIV/AIDS started way back in 1988, when the world Health organization (WHO) in Oslo held an international Consultation on Health Legislation, Ethics and HIV/AIDS. This meeting advocated for the bringing down barriers between people who were infected and those who were not infected and placing actual barriers e.g. (condoms) between individuals and the virus. In 13<sup>th</sup> May 1988 WHO passed a resolution on "avoidance of discrimination in relation to HIV infected people and people with AIDS." On 26-28th July, 1989 in Geneva, the United Nations Commission on Human Rights held its first international consultation on AIDS and human rights. In November 1991 in Prague, WHO and the International Association of Rights and Humanity held a Pan-European Consultation on HIV/AIDS in the context of Public Health and Human Rights.

In May 1993, UNDP Intercountry Consultation on Ethics, Law and HIV in Cebu (Philippines) - The Cebu statement of belief; The United Nations General Assembly through resolutions 45/187 (1990) and 46/203 (1991) emphasized the need to counter discrimination and to respect human rights and recognized that discriminatory measures drove HIV/AIDS underground, making it more difficult to combat, rather than stopping its spread. The meeting which was held between 23-25 September 1996 in Geneva, the United Nations Commission on Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS) held the second international consultation on HIV/AIDS and Human Rights. The consultation adopted Guidelines on HIV/AIDS and Human Rights, the purpose of which is to translate international human rights norm into practical observance in the context of HIV/AIDS.

The guidelines which have been developed by the United Nations Commission on Human Rights and UNAIDS in collaboration with other partners have been drawn from the existing international instruments and are seen as essential to effective state responses to HIV/AIDS. For example, they emphasize the human rights and public health to share the common objective to promote and to protect the rights and well being of all individuals; and that the promotion and protection of human rights is essential component in preventing transmission of HIV and reducing the impact of HIV/AIDS.

The guidelines on human Rights and AIDS have been divided into three main groups. The first group of guidelines deals with institutional responsibilities particularly the National framework and the supporting

community partnerships<sup>3</sup>. The second group of guidelines deals with the law review, reform and support services in Public Health Legislation, clinical laws and correctional systems, regulation of goods, services, information and legal support services.<sup>4</sup> The third group of guidelines<sup>5</sup> (8-12) deals with the promotion of a supportive and enabling environment for HIV/AIDS affected people such as Women, Children and other Vulnerable groups; changing discriminatory attitudes through education, training and the media; Development of Public and Private Sector Standards and Mechanisms for implementing these standards; state monitoring and enforcement of human rights; and international cooperation. These guidelines are intended for use by the broadest possible audience at the national and community level and they involve a broad spectrum of those affected by HIV/AIDS.

## **2.1 Right to Privacy and Confidentiality**

The American convention on Human Rights provides for the Right to Privacy<sup>6</sup>. Everyone has the right to have his honour respected and his dignity recognised. It prohibits an abusive interference with his private life, his family, his home, his correspondence, or of unlawful attacks on his honour or reputation. The article gives a right to the protection of the law against such interference or attacks. Article 12 of the International Bill of Human Rights adopted and proclaimed by General Assembly resolution 217 A (111) of 10 December 1948 similarly advocates the same. However our constitution is silent on this point. Thus, every person directly affected by the epidemic has a right to confidentiality and privacy. The doctors, health workers and carers have no right to divulge one's HIV sero status to other parties. It can only be breached in exceptional circumstances like when demanded by the court of law or in the case of terminal illness or death to the next of kin. The ethical aspect of this is the exposure of spouses who may then be infected by their husband/wife/sex partner who may or may not know their HIV sero status, or while knowing it might not want to tell their spouses or sex partners. The basic question however is if a person's confidentiality may be broken for the sake of others who may have a right to know, like spouses or, carers in the home? Here there is a call for shared confidentiality.

## **2.2 Informed Consent to HIV/AIDS Testing**

HIV testing without consent is prohibited by both international and national AIDS Control Programmes. It means that no person should be tested for HIV/AIDS without his prior informed consent. And that this informed consent must be accompanied by Pre- and post test counselling. It goes without question that the information must be given in the language which is understood by the person to be tested. Besides ethical violation, HIV testing without consent may amount to trespass to the victim.

## **2.3 Ethics in Research and Drug Trial**

For research purposes and drug/vaccine trials, a person must give his consent. In this respect the interest of the research subjects or community should be paramount. Research should be based on free and informed consent; be non-obtrusive and non coercive and the results should be made available to the community for timely (See Dakar Declaration) and appropriate action.<sup>7</sup> The non-observance of this principle amounts to the use of human beings like guinea pigs. Which is de-humanising. The implication is binding on both modern and traditional medicines

## **2.4 Freedom from all Forms of Discrimination**

The United Nations Declaration of Human Rights<sup>8</sup> prohibits discrimination on any ground such as sex, race, colour language, religion, political or other opinion, national or social origin, association with a national minority property, birth or other status.

Article 2 of the African Charter on Human and Peoples' Rights provides categorically that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed without distinction of any kind such as race ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. Ignorance and fear of the disease and how HIV is transmitted has unleashed unfounded reactions towards people having HIV infections or suffering from AIDS and also their families which leads to discrimination and stigmatization. The rights to freedom from all forms of discrimination is a fundamental right of every individual. However the victims have suffered from discrimination even when it is known that HIV cannot be casually transmitted to others. The Human Rights prohibits such discrimination at workplaces, in hospitals, in education institutions, travel, etc. It may also happen at family level leading to lack of adequate care, social stress and untimely death of the affected. In order to reduce discrimination the United Nations Commission on Human Rights has suggested for state action to ensure changing discriminatory attitudes through education, training and media programmes.<sup>10</sup>

## **8. Euthanasia and HIV/AIDS**

Euthanasia is a concept which seeks to provide permission to medical doctors to cut short the life of a patient with an incurable and agonizing or invalidating disease in order to spare such a person from suffering. However, the Universal Declaration of Human Rights recognizes the right to life, liberty and security of a person (Article 3). Article 4 of the African Charter on Human Rights and People's Rights Stipulates categorically that "Every human being shall be entitled to respect for his life and the integrity of his person. The constitution of United Republic of Tanzania has provided clearly that, "every person has

a right to live and subject to law, to protection of his life by the society".<sup>11</sup>

Since, currently HIV/AIDS has no cure and in its terminal stage it can be extremely expensive to take care of patient. Some medical practitioners in the certain countries do advocate for euthanasia. However, our constitution recognises the right to life and physical integrity of all persons. Hence, euthanasia is not allowed to be practiced in Tanzania.

The position of most health professionals is that the doctors must draw solutions from medical ethics, which is based on the principle of charity, justice, respect for human life and dignity. Doctors should be capable of bringing appropriate solace to their patients, even those who are in the terminal phase of illness. Palliative care with pain killers, counselling and simple gestures like flowers arrangements, bed side talk, loving attention to patient's needs and support help patients to value life and to later die in dignity.

## **2.6 Pre-Marital HIV Testing**

Some religious bodies demand from couples intending to get married to produce certificates of their HIV status before the marriage can be blessed. While, it may seem to be normal if the couple is given prior information and counselling and then gives its consent to the HIV test, usually this raises ethical concerns. Every capable individual has a right to marry and find a family. HIV testing of a person should not be coercive, and should only be done with prior informed consent. The reality is that when a couple seeks religious blessing for the marriage at that stage is already common knowledge to the community of those intending to get married.

If it then happens that the church/mosque refuses to bless the marriage after the HIV-test results, then the confidentiality and privacy of the couple would have been breached. This would cause unnecessary trauma to the concerned.

It is submitted that the best response would be to invest in the AIDS education programme on prevention of HIV infection and behaviour change. The public and especially youths should be encouraged on voluntary HIV testing and counselling before considering to get married.

## **2.7 Pre-Employment HIV-Testing**

Most of the employers, especially in private sector, require prospective employees to submit themselves to an HIV test during the application process for employment. The employer in this case aims at safeguarding the industry or business. This is a clear abuse of individual human rights to employment and it is uncalled for. Article 23 of the Universal Declaration of Human Rights provides that, everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.<sup>12</sup>

This article has been adopted by article 15 of the African Charter on Human and People's Rights which provides inter-alia that; Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

Furthermore, the constitution of the United Republic of Tanzania states categorically that, "every person has the right to work".<sup>13</sup>

It is known that people who are HIV infected have still long years of active productive life. Already in South Africa where the pre-employment HIV-testing is practised a draft bill to outlaw this practice titled, "The prohibition of Pre-employment Testing for the HIV" has been prepared to prohibit both HIV-testing and the use of health questionnaires designed to obtain information on an application's HIV status in all workplaces (Ann Strode, 1996).

## **2.8 Right to Information to HIV/AIDS Prevention**

It is now common in Tanzania that vital information on HIV prevention is denied to some population groups, especially to Children and youth on the ground that such educative information will make children sexually active. On the other hand punitive and coercive measures are employed against those perceived as transmitters of the AIDS virus. We have witnessed police round-ups of street sex workers in Dar es Salaam and forced repatriation to rural areas upcountry. Some parents, and religion leaders still oppose the AIDS education programme in schools to include condoms and other vital safe sex skills. At the same time health service delivery points for adolescents for sexual health and family planning are grossly lacking is also crucial for freedom of choice and economic opportunities. The breadth and importance of this right were recognised by the European court in the Handyside case. There the court held that:

*"Freedom of expression constitutes one of the essential foundations of a ....(democratic*



*society), one of the basic conditions for its progress and for the development of every man.*”<sup>14</sup>

However, the right to freedom of expression includes all types of expression which will impart or convey opinions, ideas, or information, irrespective of content or mode of communication.<sup>15</sup> Article 10 of the European Convention on Human Rights guarantees the freedom of information, however it carries with it duties and responsibilities. The right to receive information basically prohibits a Government from restricting a person from receiving information that others with or may be willing to impart to him.

## **2.9 Public Health and HIV/AIDS Prevention**

The infectious Disease Ordinance was amended in 1986 to include AIDS as a notifiable disease in Tanzania. This amendment made HIV/AIDS to be regarded the same as cholera, plague and other such infections which are contagious and hence of public health concern.

Public Health issues are seldomly challenged on the basis of human rights or civil liberties.

It is true that actually legal instruments allow for the limitation of certain human rights on the basis of public health. The right to health is explicitly stated in Article 12 of the International Covenant on Economic, social and cultural rights that calls for the “rights of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

In the context of HIV/AIDS it is now clear that in order to serve the interest of public health and to be able to achieve behaviour change of every sexually active person which is vital for HIV/AIDS prevention it is necessary to ensure the right of access to information, education and health services. It is also acknowledged that the protection of human rights of HIV – infected individuals and enabling them to be open about their status is a practical way of breaking through the conspiracy that keeps communities unaware that HIV is in their midst, that also allows opinion leaders and politicians to close their eyes to the urgency of action.

Thus, the United Nations Commission on Human Rights requests national states to review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS and that they are consistent with international human right obligations.

## **2.10 Criminalization of “Wilful” HIV Infection**

There has been an upsurge of the need for criminalization of what is regarded as “wilful” or intentional

HIV infection as it has been reported from Zimbabwe as proposed under the criminal law Amendment Bill of 1996 and from Kenya by a proposal to amend the Penal Code to provide for life sentences for HIV sero positive rapists. In both cases it is argued inaccurately that it is justifiable to restrict the rights of infected individuals in order to ensure that the spread of HIV is prevented. Policy makers argue that the uninfected population should be protected from “wilful” transmission of the virus by infected people, through imposing punitive measures against the “perpetrators.”

However, such a position ignores the fact that it is not the sole responsibility of people living with HIV to stop the virus’s spread, but that each individual has a role to play. Those infected must keep the virus to themselves, whereas the uninfected must take measures to protect themselves against HIV infection. Again, it would seem that people with known HIV infection are invariably and purposely dehumanised and discriminated upon while a considerable number of unknown HIV carriers within the community are left free to continue to spread the infection.

It is good knowledge that people with HIV infection are an important resource for AIDS education programmes and vivid advocates of behaviour change in the community. Criminalization against them would make them appear more as vectors of HIV and only further eliminate them from the public and vivid advocates of behaviour change in the community. Criminalization of HIV infection while addressing only the tip of the iceberg it ignores the mountain of ice under the water. For example, how will the preposition of the law consider infection in the context of consensual sex? What if the complainant is informed by the accused and he/she still consents? Does the consent negate the wrong in “wilful” infection? What of negligent infection by the medical staff in hospital? And transmission of contaminated blood? Can we legitimately legislate on “Wilful” infection, within the context of rape which is already punishable by a term of up to life imprisonment, and leave out the above instances. I think we need to provide a practical responses to this challenge which may guide the law reform in relation to HIV/AIDS.

## **2.11 HIV/AIDS in prisons**

Prison settings have been shown to have higher rates of HIV infection than in the general population. Also it is largely believed that risky behaviour especially unprotected men to men anal sex is practised, although it is denied by heads of prison departments. Sodomy is a punishable offence. So the officials think this would be enough deterrent to inmate not to practice it in fear of being caught and punished. It is also known that an isolation policy is practised, under which inmates with positive HIV infection are

kept separately from the rest. In this way it is reported that they can be provided with some special care like bedding and good nutrition. Health education on AIDS prevention and safe sex behaviour is said to be provided to inmates. However, condoms use is prohibited in prison.

However, the UNAIDS advocates for equal rights to prisoners in the framework of the HIV epidemic as or the members of the free society. Emphasis is given for non-judgemental delivery of HIV education and distribution of condoms taking into account the reality of sexual intercourse in prisons. The compulsory segregation of HIV - positive prisoners is discouraged, while early clemency for prisoners who develops AIDS, is recommended. UNAIDS, also recommends that confidentiality of Prisoners known to be HIV - positive should be maintained in the same manner as for free society.

### **3. Conclusion and Policy Implications**

Discrimination, stigmatization and related abuses of human rights increase vulnerability to HIV infection. Discrimination, human rights abuses and stigmatization can originate from governments, private organizations and institutions, and from communities, families and individuals. Therefore, it is recommended that condoms should be a right of every person including prisoners. It would be wrong to deny them the right to use condoms. Rights carry responsibilities. Therefore, it is clear that everyone has the responsibility to protect him or herself by avoiding behaviour that carries a risk of infection, and to protect others by avoiding behaviour that might put others at risk of infection. We need to empower every person particularly women, the poor, the uneducated and children of their rights to information, knowledge and technology which is vital for self protection from the risk of HIV infection and appropriate behaviour change.

Criminalization of "wilful" HIV infection should be discouraged because it dehumanizes and discriminates the HIV/AIDS infected victims. The infectious Disease Legislation should be amended by striking off AIDS as a notifiable disease in Tanzania. This disease is very distinct and should not be regarded as cholera or plague which a person may openly and publicly report to another person. Pre-marital HIV/AIDS testing should be discouraged. Religious bodies which demand certificate of HIV/AIDS should be prohibited because it violates the right to privacy and confidentiality. Pre-employment HIV/AIDS should be discouraged because it violates not only the right to work but also the choice of employment which an affected person would like to engage to.

Religious leaders should encourage AIDS education programmes in schools and the use of condoms particularly to young people. These young people have the right to information irrespective to the content or mode of communication. Research, drug trials and blood testing should only be conducted with the victims consent. It is dehumanising to use human beings like guinea pigs. Isolation policy of HIV/AIDS victims in prisons should be abolished for its discriminatory and dehumanizing tendencies and therefore an early clemency for HIV/AIDS be recommended.

It would be irrational to conduct discrimination against the HIV/AIDS victims at work places, hospitals, education institutions etc. Such discrimination may lead to lack of adequate care, social stress and untimely death of the affected. This tendency violates the United Nations commissions on Human Rights Guidelines on HIV/AIDS. I therefore, call upon public and private institutions to adopt formal policies with regard to HIV/AIDS and other contagious diseases.

### **FOOTNOTES**

1. Article 16 of the constitution of United Republic of Tanzania.
2. Ross Kinemo, (1998) The Impact of AIDS on Agriculture; A paper presented at the Re-Regional Work on held at HOTEL JAMESON, HARARE ZIMBABWE (unpublished).
3. This provided under section 1 and 2 of the Guidelines.
4. This provided under Section 3-7 of Human Rights Guidelines for HIV/AIDS, Victims.
5. This is provided under sections 8-12 of the Human Rights Guidelines for HIV/AIDS victims.
6. Article 11 of the American Convention on Human Rights.
7. The Dakar Declaration.
8. The African Charter on Human Rights was adopted by the eighteenth Assembly of Heads of State and Government - June 1981, Nairobi, Kenya. Article 2. This Declaration was adopted and proclaimed by General Assembly resolution 217A (111) of 10 Dec., 1948.
9. See United Nations Commissions on Human Rights Guidelines on HIV/AIDS.
10. See Art. 3 of United Nations Declaration of Human Rights 1948.
11. Article 14 of the Constitution of United Republic of Tanzania 1977.
12. Adopted and proclaimed by General Assembly resolution 217 (111) of 10 December, 1948.
13. Article 22 (1) of the Constitution of the United Republic of Tanzania of 1977.
14. See also Article 19 of the International Covenant on Civil and Political Rights Article 10 of the European

Convention on Human Rights. Article 13 of American Convention on Human Rights. Article 9 of the African Charter on Human Rights. Article 18 of the Constitution of the United Republic of Tanzania 1977.

15. See also the Dakar Declaration which was endorsed in 1994 by the UNDP inter country consultation on Ethics, Law and HIV which met in Dakar, Senegal.