

This training guide is expected to raise the level of knowledge and understanding of legal, ethical, human rights and HIV/AIDS among CBOs, NGOs FBOs and PLWHA organizations. The manual introduces the human rights (HR) concept, principles and policies and their relevance to HIV/AIDS interventions. It examines how NGOs, CBOs, FBOs and PLWHAs organizations can integrate and mainstream human rights into HIV/AIDS and development programmes. It is notable that HIV/AIDS is already declared a national disaster in Kenya and has widely been recognized as a developmental problem exacerbating poverty, unemployment and lack of quality and affordable social health services.

The guide is designed for Community Service Organisations (CSOs) involved in HIV/AIDS and human rights activities. It is intended to provide knowledge and skills needed to implement a human rights-based approach in HIV/AIDS work. The guide incorporates a range of training techniques including plenary discussions, lectures, and group work, question and answer sessions among other participatory activities. The emphasis is on participation, while formal lectures are kept to a minimum. The training is scheduled to take a minimum of five days but it leaves to discretion of the facilitators to modify the training schedules in accordance with participants level of education and experience in HIV/AIDS.

## Aim

To provide knowledge, skills and understanding of legal, ethical and human rights among NGOs, CBOs, FBOs and PLWHA organizations and encourage them to appreciate and mainstream rights-based approaches in the implementation of HIV/AIDS activities.

## Purpose

The purpose of the training guide is to facilitate the training of a team of TOTs to acquire knowledge, skills and understanding of HIV/AIDS legal, ethical and human rights issues, and to demonstrate that HIV/AIDS and human rights are interrelated; the very problem of HIV/AIDS is indicative of existence of human rights violations.

## Specific objectives

- Understand legal, ethical and human rights issues in the community.
- Understand HIV/AIDS, legal, ethical and human rights.
- Explore relevance of human rights and how human rights violations impact on HIV/AIDS prevention, care and support.
- Mainstream legal, ethical and human rights activities into core programmes of the target organizations.
- Appreciate importance of greater involvement and participation of PLWHAs in championing their rights and those of the affected.
- Discuss the role of TOTs in promoting HIV/AIDS legal and human rights in the community.

# Module One: Human Rights and HIV/AIDS

## 1.1 Introduction

The training module has been designed to introduce human right approach to HIV/AIDS prevention, care and support. The modules are for Community Service Organisations working in the area of HIV/AIDS and seek to integrate human rights in their core activities. The modules are designed to be run in a workshop format.

*The overall aims of the module are:*

- To raise awareness and promote shared understanding of a rights based approach to HIV/AIDS.
- To build capacity to apply a rights based approach.
- To forge strategic alliances to promote mutual learning addressing the needs of AIDS care and HIV prevention.
- Discuss the framework for HIV and AIDS human rights advocacy.

## Session One: What are Human Rights?

### Specific Objectives

- To define the term human rights.
- To identify the principles of human rights and their origin.
- To classify human rights into different categories.
- To explain and outline human rights instruments and what they protect.
- To explain the human rights domestication and enforcement mechanisms and procedures.

## 1.2 Mainstreaming/Integrating Human Rights

### Specific objectives

- To identify the relevance of mainstreaming/integrating human rights into HIV/AIDS program activities.
- To identify the entry point in human rights planning, implementation and evaluation.

## 1.3 The Rights Based Approach

### Specific objectives

- To understand the meaning of the rights based approach.
- To understand the framework for understanding the roots of vulnerability.
- To identify domestic laws which promote and protect human rights.
- To understand the role of civil society in the rights based approach.

### Expected Outputs

- To define the term human beings.
- To define the nature of being human.
- To establish the link between human and human rights.
- To identify the principles of human rights.
- To define the term mainstreaming and to understand its relevance.

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## Session Two: Legal Bases of Human Rights

### Specific Objectives

- To identify the different kinds of human rights emanating from the universal declaration of human rights.
- To identify domestic laws that protects human rights.
- To outline the main human rights instruments and principles.

### 2.1 The State and Human Rights

#### Specific Objective

- To understand the international human rights instruments and ratification process.
- To identify the obligations and duties of government in protecting and promoting human rights
- To discuss an individual as a subject of international protection of human rights.
- To establish the hierarchy of the rights.

#### Expected Outputs

- To identify categories of rights and give examples.
- To understand the state obligations and protection of the rights.
- To have knowledge on the existing human rights instruments.

## Session Three: Human Rights and HIV/AIDS

### Specific Objectives

- To explain the challenges of the HIV/AIDS epidemic.
- To explain the relationship between Human Rights and HIV/AIDS.
- To understand the legal and ethical issues, around HIV/AIDS.
- To identify the human rights violations associated with HIV/AIDS vis a vis the State duty.

#### Expected Outputs

- To explore human rights violations committed against individuals and the State duty to protect, promote and respect of human rights.
- To identify individual responsibility.
- To identify the available remedies.
- To understand the impact of stigma on PLWHA.

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## Session Four: Gender, HIV and Human Rights

### Specific Objectives:

- To understand the meaning of gender and gender relations and roles.
- To explain the difference between gender and sex.
- To identify the gender specific response and human rights.
- To understand the complex dimensions of the challenges being posed by HIV/AIDS within a gender responsible human rights framework.
- To explore suitable responses to challenges adopting a gender sensitive human rights approach with a gender lens.
- To identify gender discrimination due to patriarchal nature of the society.

### Expected Outputs

- To define gender and difference between sex and gender.
- To understand human rights violations that make women vulnerable.
- To identify harmful cultural practices that are gender based.
- To define HIV as a gender issue.

# ***Module Two: Human Rights Enforcement***

## **Session One: HIV/AIDS and Human Rights Advocacy**

### **Specific Objectives:**

- To define the meaning of advocacy.
- To understand the meaning of HIV/AIDS human rights advocacy.
- To discuss strategies of raising awareness about the links between HIV/AIDS and human rights.
- To discuss framework for HIV/AIDS human rights advocacy.

### **Expected Outputs**

- To understanding of HIV/AIDS Human rights advocacy.
- To identify of human rights advocacy strategies.
- To explore HIV/AIDS policy issues for advocacy.
- To learn how to identify the problem/issues to be solved.
- To establish the importance of advocacy in human rights HIV/AIDS work
- To learn how to improve the process of advocacy in the community.

## **Session Two: HIV/AIDS, Human Rights and the Kenyan Response**

### **Specific Objectives**

- To outline the steps taken by the Kenyan government in response to legal ethical issues.
- To discuss the rights based approach to HIV/AIDS programmes in Kenya.
- Identify the national laws, policies and legislative framework.
- To identify the provisions of the HIV and AIDS prevention and Control Bill 2003.

### **Expected Outputs**

- To understand the Kenyan position on rights based programming.
- To explore how to raise concerns in cases of violation.

## **Session Three: Role of TOTs in Promoting Human Rights**

### **Specific Objectives**

- To discuss the roles of TOTs.
- To identify roles and responsibilities of a TOT in promoting HIV/AIDS, human rights and ethical issues.
- To understand in particular the role of monitoring and duty to report violations of human rights.
- To identify the challenges of implementing the rights based approach.

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### Expected Output

- To define who TOTs are.
- To have knowledge on roles & responsibilities of TOTs.
- To identify areas of violations and how to monitor.
- To have improved understanding of the TOTs as community leaders.

## Session Four: Plan of Action

### Specific Objectives

- To understand the process of carrying out survey in communities.
- To formulate plans on how to popularize the human rights approach in HIV/AIDS programmes in the community.
- To form a human rights and HIV/AIDS network.
- To document violations of human rights.

### Expected Output

- List of activities to popularize human-rights approach in HIV/AIDS.
- Initiate steps and processes of formulating an HIV/AIDS network.
- Develop plan of actions to reflect various violations as experienced in the communities.
- Follow up by KANCO.

## Module One: Human Rights and HIV/AIDS

### Session One: Introduction

The session commences with Pre-Workshop Questionnaires to gauge the participants understanding of the human rights issues experienced in their different communities. The Questionnaires will be designed by the facilitators to help them explore and structure the issues designed for the workshop.

#### 1.1 What are Human Rights?

##### Specific Objectives

- To define the term human rights.
- To identify the principles of human rights and their origin.
- Classify human rights into different categories.
- Explain and outline human rights instruments and what they protect.
- Explain the human rights domestication and enforcement mechanisms and procedures.

##### Key Discussion Points

- Human rights are an important part of international law.
- They are also enshrined in regional legal instruments and often in national law.
- They serve as guiding principles for domestic policies and international relations.
- They are supported by monitoring and enforcement mechanisms at the global, regional and national levels.
- They are a powerful tool for advocacy.

##### 1.1.1 Concept of Human Rights (HR)

Human rights as part of international law are rights that every human being possesses, irrespective of race, religious or political beliefs, legal status, language, colour, national origin, gender, ethnicity etc. In other words HR are accorded to every human being by virtue of being human.

Human rights are entitlements that are not dependant on the status of any person and their denial results in injustices. HR protects human dignity and they are held to be Universal, inherent, indivisible, interrelated and inalienable, meaning they cannot be separated.

A fundamental aspect of HR is that they protect human dignity and integrity. HR belong to all and must never be regarded as a favour, gift, or privilege conferred by the State or by any Organization or individual.

##### ***Universal Declaration of Human Rights Article 1***

**“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood”.**

## 1.1.2 Principles of Human Rights

### Discussion Points

- Human Rights are what make men/women human. They represent individual and group demands for the shaping and sharing of power, wealth, enlightenment and other values.
- Human Rights are entitlements or legal claims that individuals by virtue of being human, have against the State. They deal with the relationship between the State and the individual.
- Human Rights are deemed as State obligations.
- Human Rights are universal, inalienable, indivisible inter-related, and inter dependent.

### What does this mean?

It means that each right depends on and connects with each other and each human rights gives added meaning to the others. The right to life for example cannot be conceived without rights to food, shelter, clean water, freedom from torture etc.

All HR are essential to preserving the dignity, security and survival of individuals and to ensure that every person is treated with decency and basic elements of respect.

**Universal** – because all individuals have human rights as they are human beings; male, female, rich, poor, black, religion etc.

**Inalienable** – because everyone is born with the same human rights. They cannot be taken away, lost or surrendered whatever the person does, whoever, and wherever the person is.

## 1.2 Mainstreaming/Integrating Human Rights

### Specific Objectives

- To identify the relevance of mainstreaming/integrating human rights into HIV/AIDS program activities.
- To identify the entry point in human rights planning, implementation and evaluation.

### 1.2.1 What is Mainstreaming?

This means that the HR issues will be dealt with within the work of activities of the respective organization's programs. In other words HR issues will be integrated in line with foregoing programmes at all times and at all levels. Mainstreaming Human Rights refers to the concept of enhancing the human rights program and integrating it in the broad range of daily activities.

This will mean that respective NGOs will have to re-organize their operations to include issues of HR both at planning, implementation and evaluation stages.

**Mainstreaming human rights includes;**

- Accountability.
- Empowerment.
- Participation.
- Non-discrimination with most attention to the vulnerable groups.

**1.3 The Rights Based Approach****Specific objectives**

- To understand the meaning of the rights based approach.
- To understand the framework for understanding the roots of vulnerability.
- To identify domestic laws which promote and protect human rights.
- To understand the role of civil society in the rights based approach.

A rights- based approach is a conceptual Framework that is normatively based on international human rights standards and aimed at protecting human rights. This essentially means integrating norms, standards and principles of international human rights law into plans, policies and process of program.

Human Rights are grounded in real lives and real problems experienced at the community level. They have to do with combating elementary forms of injustice and serve to protect and realize human dignity. Human rights begin with individuals and groups who have entitlements and with governments, which have corresponding obligations. States that ratify human rights treaties freely agree to assume responsibility for guaranteeing that people can enjoy the benefits of those rights e.g. rights to health, education etc. It is the job of CSOs to hold the governments responsible.

Understanding of HR gives CSOs empowerment and participation central to the CSOs work that will enable them to assist other individuals and groups to understand the basic issues of Human rights that are mainly linked to the principles of equity and non-discrimination. It will be up to each CSO to define the aspects of the HR that are important to its work identify possible violations and set its own priorities and chose the best strategies to achieve its goals.

Since human rights are grounded in international and national law and are based on already established government commitments international standards and legal obligations, as well as national legislation it can provide CSOs with a powerful tool to move a wide variety of issues forward. Using these instruments as a framework can add legitimacy and strength to CSO strategies and activities.

Understanding of the State's commitments by the CSOs will provide them with a powerful tool to promote a wide variety of issues.

NGOs working in the area of HIV and AIDS will understand the legal responsibility linked to the notion of entitlement. The CSOs will benefit from using the human rights based approach because it stipulates legally sanctioned guidelines on what individuals and groups are entitled to receive or to be protected from.

The approach will also enhance the understanding of human rights since the work being done by CSOs already contributes to implementing of human rights of whatever nature. This is meant to add new dimensions to the CSOs work and helps to sharpen the focus of the strategies by classifying the relationship between rights – holders (the public) and duty bearers (public authorities).

Finally, a right-based approach if well mainstreamed and integrated will promote advocacy procedures and strategies that can be taken at local, national and international levels.

### 1.3.1 Meaning of Being Human?

Being human entails living with others. Individuals realize their humanity in the context of living collectively with others or as members of the society.

The essence of being human is anchored on the three basic principles namely **life, dignity and development**. Individuals must live as human beings in an environment where they are able to satisfy their basic human needs and are able to live with dignity and respect and are able to develop and maximize their full human potential. This equally applies to the PLWHA and others affected by the HIV/AIDS.

#### *To be human therefore entails;*

- Being able to engage in productive work, which enables one to satisfy or meet his/her, basic human, needs like food, clothing, and shelter.
- Enables one to think and decide for oneself in a condition that is free from coercion, knowledge, and process and reason out by making choices.
- Developing one's talents and potentialities in a free environment.

### 1.3.2 The link between humans and human rights?

Human rights are what make human thus men and women. HR represent individual and group demands for the shaping and sharing of power, wealth and other values. HR rights are therefore entitlements or legal claims of individuals (human) by virtue of being human. These are made against the State and deal with relationship between the state and the individual. HR are deemed as State obligations.

### 1.3.3 Domestic Laws Protecting Human Rights

#### **Chapter V of the Current Kenyan Constitution**

It provides for fundamental rights and freedoms of the individual and entails protection of right to life, right to personal liberty, protection from slavery and forced labour, inhuman treatment, deprivation from property, arbitrary search or entry, secure protection of law, freedom of conscience, freedom of expression, freedom of assembly and movement, and protection from discrimination on the ground of race, colour etc.

#### **Other Statutes**

Kenya has a variety of Statutes that protect rights e.g. the Children's Act and Employment Act etc.

*The rights protected include and not limited to: -*

- The right to life.
- The right to dignity.
- The right to education.
- The right to social security services.
- The right to equality (equal protection) before the court of law.
- The right to marriage and family life.
- The right to health.

In conclusion it is important to observe that the World Conference on Human Rights held in Vienna, Austria in 1993 emphasized that it is the duty of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

The civil society has the potential to influence the enjoyment of all the rights both in positive and negative ways. This can be done through advocacy. Under the UN system, CSOs have been active in submitting shadow reports to the various Committees. The international accepted standards and norms set out in HR instruments should be used in conjunction with existing national laws as a framework of monitoring HR issues.

**Summary of the Session**

- Human rights are what make us human – human rights encompass individual and social needs.
- Human rights are a set of guarantees – human rights constitute a contract between people and governments and this gives a social character to human rights.
- Human rights are entitlements – that is the legal development of the social contract of human rights.

**END THE SESSION WITH A GROUP ACTIVITY/DISCUSSION**  
**Give a case study with tasks to gauge the participants understanding of various Human Rights issues and violations.**

## Session Two: Legal Bases of Human Rights

### Specific objectives

- To understand the concept of human rights and the contents of the Universal declaration of human rights.
- To understand the framework for understanding the roots of vulnerability.
- To understand domestic laws which promote and protect human rights.

### 2.1 Concept of Human Rights

The concept of human rights has been in existence since time immemorial. However, this concept was given proper and official recognition on 10<sup>th</sup> December 1948 when UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) was adopted by the UN after the 2<sup>nd</sup> world war, which saw serious abuse of human rights.

HR is therefore about ensuring inherent dignity and equal inalienable rights of all. Many international treaties/conventions/agreements have incorporated a large component of the universal declaration of human rights (1948).

The international community has developed a number of human rights instruments setting out various principles and norms that constitute the fundamental rights that individual everywhere should be entitled to enjoy. Some are binding while others are none binding.

#### *None binding agreements include;*

- Declarations.
- Principles.
- Guidelines.
- Standard rules.
- Recommendations

#### *Binding agreements are;*

- Covenants.
- Protocols or conventions.

Treaties adopted within the United Nation (UN) system are normally open for signature and ratification by all UN member States. We also have the regional covenants are equally binding to the member States. They include the African Charter on human rights among others.

#### 2.1.1 Universal Declaration of Human Rights (UDHR)

As mentioned, the first international codification of HR took place in the aftermath of World War II, with the adoption of the UDHR on 10<sup>th</sup> December 1948. This document was intended to set a common standard of achievement for all nations. The rights and freedoms contained in the UDHR establish guidelines to which all UN member States should aspire and adhere and which people everywhere should strive to achieve.

## Origin of Human Rights

During the first and second world wars, human rights violations occurred in form of torture, killings and rape and ended in genocide of people who professed the Jewish Religion in Germany. In some cases, the State machinery perpetrated the violations. As much as the rest of the world knew what Germany was doing to her citizens, they could not interfere because of the principle of State Sovereignty.. Between 1942 and 1944, the leaders of the main powers met to shape a new organization for world States, which they called the United Nations. In the years 1946 and 1948, the UN wrote the UDHR, which was passed by the General Assembly on 10<sup>th</sup> December 1948.

The UN has continued ever since to emphasize the importance of the UDHR as a source for human rights among its member nations. Although declarations are not legally binding documents under international law, the UDHR is seen to be exceptional because of its universal acceptance. It therefore remains a valid standard and is widely regarded as carrying the status and authority of international customary law.

### *The UDHR 1948 provides that everyone ...*

1. Is born free and should be treated in the same way.
2. Is equal despite differences in language, sex, colour etc.
3. Has right to life and to live in freedom and safety
4. Has right not to be hurt or tortured
5. Has right to be recognized before law
6. Has a right to be treated as a person
7. Has a right to be treated equally before the law
8. Has a right to ask for legal help when the rights are not respected
9. Has a right not to be imprisoned unjustly
10. Has a right to a fair trial
11. Has a right to be presumed innocent until proved guilty
12. Has a right to privacy
13. Has a right to travel within and outside his country
14. Has a right to asylum
15. Has a right to nationality
16. Has a right to marry and found a family
17. Has the right to own property
18. Has a right to freedom of thought, conscience and religion
19. Has a right to freedom of opinion and expression
20. Has a right to meet with others
21. Has a right to take part in the government and vote
22. Has a right to social security
23. Has a right to work and join a trade union

24. Has a right to leisure
25. Has a right to adequate standard of living and medical assistance
26. Has right to education
27. Has a right to participate in the community's cultural life
28. Is entitled to a social and international order
29. Must respect the rights of others
30. The rights in the declaration cannot be taken away by anybody.

### 2.1.2 International Bill of Rights

This consists of the Universal Declaration of human rights (1948) and two international covenants both adopted in 1966 by the United Nations General Assembly.

#### *These are:*

1. The International Covenant on Civil and Political Rights (ICCPR).
2. The International Covenant on Economic Social and Cultural Rights (ICESCR).

These include two optional protocols to the ICCPR.

The International Bill of Rights has been a source where most of the basic principles have evolved. These are therefore considered to be the most important set of instruments dealing with International Human Rights Law.

#### *The civil and political rights include:*

- The right to life.
- Right to liberty.
- Right to marry and found a family.
- Right to nationality.
- Right to freedom of movement.
- Protection from discrimination.
- Protection from torture and cruel, inhuman or degrading treatment or punishment.
- Right to fair trial.
- Freedom from arbitrary arrest and detention.

#### *The social, Economic and Cultural rights include:*

The right of self determination and self governance

- The right to work and enjoy just working conditions and right to equal pay.
- The right to form and join trade unions and the right to strike.
- The right to social security.
- The right to highest attainable standard of physical and mental health.
- The right to education including free compulsory education.
- The right to take part in cultural life.

**At the end of the session, participants should provide a summary of the:**

- **Rights provided in UDHR, ICCPR and ICESCR; and the two optional protocols.**
- **Facilitator gives an exercise to establish if the rights based approach has been well understood.**

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## 2.2 The State and Human Rights

### Specific Objective

- To understand the international human rights instruments and ratification process.
- To identify the obligations and duties of government in protecting and promoting human rights.
- To discuss an individual as a subject of international protection of human rights.
- To establish the hierarchy of the rights.

### 2.2.1 Definition of Common Terms

#### Declaration

This is an expression of intent that is not legally binding i.e. the UDHR, which is widely accepted internationally as international customary law.

#### Convention/Covenant

This means a binding agreement between the countries that sign it. The documents normally stipulate how the rights are established and protected through local laws. Some of these included the International covenant on civil and political rights and the covenant on economic, social and cultural rights and the convention on the rights of the child.

#### Ratify or Accede

This is the process by which governments are bound by the international covenants/conventions/treaties. First by signing a convention, treaty or convention a county shows its intention to ratify. Before ratification countries examine their national laws to see if any contradictions will arise. Once a country ratifies, it makes a commitment and will be held accountable for its commission or omission.

#### Reporting

Once a country ratifies it has to make reports to the relevant committees established by each treaty for monitoring purposes, mostly after a period of 5 years.

### 2.2.2 Ratification of Instruments by State Parties

Since the International Bill of Rights came into effect, there have been numerous international human rights instruments that clarify and refine the specifics of human rights norms in particular subject areas.

When a State ratifies or accedes to a human rights Convention, it becomes known as a State party to the convention and is thereafter legally bound (subject to any reservations it has entered) to the obligations imposed by the convention.

State party obligations describe what a State must do, and must not do in order to ensure that the population of the country is able to enjoy the rights set out in the

convention. States parties are expected to adopt or to modify domestic legislation and policies so that they conform to the human rights standards set out in the covenants, conventions or protocols.

**When we speak of HR, we must never forget that we are labouring to save the individual man, woman or child from violence, abuse and injustice ...freedom from want and freedom from fear go hand in hand.**

**Kofi Annan  
UN Secretary General**

Besides the obligation to apply treaty provisions, ratification of a treaty requires States parties to accept international supervision of their compliance with its terms. This is why they are required to submit regular reports on the measures they are taking to fulfill their obligations under the treaty concerned.

Included in each UN human right treaty are monitoring mechanisms in form of monitoring committees to which States parties are required to report regularly.

These committees evaluate the information given by governments and relevant other bodies, that is, NGOs and make suggestions and recommendations for future follow up of the implementation of the treaty within the country concerned. There are a number of avenues through which NGOs can participate in the monitoring work that is, by providing shadow reports that are supplementary information about the extent to which their government is complying with its treaty obligations.

The human rights of individuals are likewise promoted and protected in existing domestic/ local laws like the constitution, labour laws, penal codes, law against sex trafficking, child labour, violence against women, discrimination etc.

### 2.2.3 What Human Rights Treaties/Covenants Offer

- They guarantee specific rights to individuals.
- They establish State obligations corresponding with these rights; and
- They create mechanisms to monitor State compliance with their obligation and allow individuals to see redress for violations of rights.

In addition to the ICCPR and ICESCR there are five other, principal international treaties that enshrine and safeguard human rights. These core treaties deal with particular groups of people types of violations.

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965.
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979.
- Conventions against Torture and other cruel, inhuman or degrading treatment or punishment (CAT), adopted in 1984.
- Convention on the rights of Migrant Workers and their families (MWC, adopted in 1990).

The seven principles international human rights treaties are monitored by the following committees.

- ICCPR is monitored by the Human Rights Committee
- ICESCR is monitored by the Committee on Economic, social and cultural rights.
- ICERD is monitored by Committee on the Elimination of racial discrimination.
- CEDAW is monitored by the committee on the elimination of all discrimination against women.
- CAT is monitored by the committee against torture.
- CRC is monitored by the committee on the Rights of the child and
- MWC is monitored by the committee on the protection of the Rights of All Migrant workers and their families.

#### 2.2.4 Human Rights and State Obligations

Human Rights refer mainly to the relationship between the State and the individual or group and are concerned with entitlements, which imply accountability and government responsibility. Under the human rights framework individuals are the holders of civil, political, economic, social and cultural rights, and governments have corresponding obligations to respect, promote, protect and fulfill these rights.

Because they confer both freedoms and entitlements to individuals and groups, HRs places both positive and negative duties on the state. The State can fail to carry out its obligations by either commission or omission. Positive obligations require governments to take certain actions, while negative ones require it to refrain from other actions such as obstructing enjoyment of those rights.

*The governments have to fulfill the obligations below:-*

1. To respect human rights.
2. To refrain from interfering directly or indirectly with the enjoyment of human rights. (Duty not to violate).
3. To protect human rights.
4. By preventing third parties' from interfering with or violating human rights. This means taking necessary measures to prevent individuals or groups from violating the rights of others. (Duty to prevent HRs violations).
5. To fulfill human rights
6. By adopting appropriate legislative, administrative, budgetary, judicial and other measures to facilitate the full realization of human rights. The obligation to fulfill includes that to facilitate provide and to promote.

#### 2.2.5 Hierarchy of Human Rights

There is no right that is more important than others. Respect has to be accorded to all. The different kinds of rights that is civil, political, economic, social and cultural are co-equal. We cannot enjoy civil and political rights unless we enjoy economic, social and cultural rights. However it is important to note that ESCR are subject to progressive realization.

## Session Three: Human Rights and HIV/AIDS

### Specific Objectives

- To explain the challenges of the HIV/AIDS epidemic.
- To explain the relationship between Human Rights and HIV/AIDS.
- To understand the legal and ethical issues, around HIV/AIDS.
- To identify the human rights violations associated with HIV/AIDS vis a vis the State duty.

Focus here is on non-discrimination and vulnerable and otherwise disadvantaged groups.

States have an immediate obligation to prevent any discrimination of whatever kind.

*In practice, ensuring non-discrimination requires governments immediately to;*

- Abolish without delay any discriminatory laws, regulations or policies.
- Refrain from discriminatory practices in implementing laws regulations, policies or programmes.

### 3.1 Legal and Ethical Issues

It is important to note that human rights violations in the context of HIV/AIDS take place because of ignorance about the disease and the people most affected by it. The legal ethical issues below are governed by the UNAIDS international Guidelines on HIV/AIDS and human rights.

*Legal and Ethical issues relating to HIV/AIDS are brought about by man's reaction to the epidemic that is;*

- Fear and stigmatization.
- Breaches of confidentiality.
- Unethical research.
- Criminalization of HIV/AIDS infections.
- Illegal/mandatory testing.
- Abuse of HR i.e. Confinement.
- Right to life, Euthanasia.
- HIV/AIDS at workplace.

#### 3.1.1 The HIV/AIDS HR Issues

##### 1. Testing for HIV/AIDS

- Mandatory or voluntary.
- For marriage.
- On children without consent.
- For employment.
- For insurance purpose.
- Indirect testing.
- Pre-natal testing.

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## 2. Right to privacy and confidentiality

- General legal position.
- Partner notification.
- VCT procedures.
- Exceptions to the rule.
- Doctor/patient confidentiality.
- At workplace, prisons etc.

## 3. Rights of PLWHA

PLWHA are human beings like any other and all the provided rights apply to them too and the State is under obligation to maintain those rights.

## 4. Matrimonial/Family/Women's and Children issues

- Property rights.
- Multiple partners.
- Marital rape.
- Reproductive rights.
- Inheritance laws/Writing wills.
- Marriage, divorce and separation.
- Right to marry and found a family.

## 5. HIV/AIDS and Criminal Law

- Criminal sanctions.
- Legal position on euthanasia.
- Termination of pregnancy against the right to be born.

## 6. HIV and the Rights of the Child

- Orphans.
- Infected children.
- Right to health, education etc.
- Punishment for defilement and rape.
- Privacy and confidentiality.
- Whose consent?

## 7. HIV/AIDS and Biomedical Research

- Guiding principles to research namely respect beneficiaries and justice.
- Maximize benefits and minimize the harms or wrongs.
- Equitable distribution of both burdens and benefits to the participants.

The UN recommends that states should establish effective national framework for their response to HIV/AIDS, which ensures a coordinated participatory transparent and accountable approach, integrating HIV/AIDS policy and program responsibilities across all branches the government HIV/AIDS international guidelines.

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The promotion and protection of human rights constitute an essential component of HIV and reducing the impact of HIV/AIDS.

Adopting a human rights approach ensures people who are most vulnerable to the infection and the same time disadvantaged have access to the necessary information and services to protect themselves.

These include securing correct information, affordable health care, appropriate social support and protection against violence and discrimination.

The protection and promotion of human rights are necessary both to the protection of the inherent dignity of persons affected by HIV/AIDS and the achievement of the public health goals of reducing vulnerability to HIV infection.

Adopting a human rights approach helps to create the supportive atmosphere that is necessary to encourage people to come forward to help them benefit from HIV/AIDS education and services to enable them change behaviour.

***According to the UN guidelines the areas of concern identified are:***

1. Human rights of women
2. Criminal laws and correctional systems
3. Anti-discrimination and protective laws
4. Legal supportive services
5. Right to education
6. Freedom of assembly and association
7. Right to health
8. Right to work
9. The right to freedom from cruel, inhuman or degrading treatment or punishment

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## Session Four: Gender, HIV and Human Rights

### Specific Objectives:

- To understand the meaning of gender and gender relations and roles.
- To explain the difference between gender and sex.
- To identify the gender specific response and human rights.
- To enhance the understanding about gender concerns in HIV/AIDS and development.
- To develop suitable responses to challenges adopting a human rights approach with a gender lens.
- To identify gender discrimination due to patriarchal nature of the society.
- To identify strategies that can address the challenges of HIV/AIDS from a gender perspective.

There is no doubt that the women gender continues to live with the burden of the pandemic and die of the burden of the epidemic unless enabling environments are created and stereotypes related to gender and sexuality are broken down with accurate and appropriate information to people.

### 4.1 Meaning of Gender

Gender is socially construed and it varies from one society to another. The term being a social concept of male and female roles and relationship should not be confused as meaning women issues. The roles are culturally construed and go by the assignments given to both male and female.

The word “gender” differentiates time sociologically attributed aspects of an individual identity from the physiological characteristics of men and women. This is socially constrained defined with the concepts of masculinity and femininity.

This should be contrasted with sex that describes the biological determinants. Sex does not change and is constant. However, gender roles vary.

#### 4.1.1 Gender Roles

These are influenced by mostly race and cultural factors. In gender and development, the women’s roles have been classified in three categories as;

- Reproductive roles-Child bearing.
- Productive roles-Home subsistence production normally undertaken to generate some income.
- Community Management role- refers to activities undertaken by women in the community.

### 4.1.2 Difference Between Gender and Sex

Sex refers to the genetic and physiological characteristics and traits that indicate whether one is male or female. On the other hand as already mentioned, gender refers to socially constructed roles and responsibilities of women and men including behaviors of both men and women and the roles that are learned from childhood.

Gender equality refers to the absence of discrimination on the basis of a person's sex in opportunities, the allocation of resources or benefits in access to services.

The difference is demonstrated as below:

|  |  |
|--|--|
| <p><b>MEN</b></p> <ul style="list-style-type: none"> <li>• Are bread winners</li> <li>• Provide security</li> </ul>                      | <p><b>WOMEN</b></p> <p>Care for the children</p> <p>Cook</p>               |
| <p><b>SEX</b></p> <p><b>MEN</b></p> <ul style="list-style-type: none"> <li>• Have beards</li> <li>• Have different sex organs</li> </ul> | <p><b>WOMEN</b></p> <p>Have larger breasts</p> <p>Different sex organs</p> |

### 4.1.3 Gender and HIV/AIDS

Research has shown that women have less control over the nature of negotiating for safer sex. Cultural beliefs about masculinity and femininity often encourage men to have multiple sex partners and women to be passive and ignorant about matters of sexuality and reproduction.

For women risk-taking and vulnerability to infection is increased by norms that make it inappropriate for women to be knowledgeable about sexuality or to suggest condom use.

For men the risk and vulnerability are heightened by norms that make it hard for men to acknowledge gaps in their knowledge about sexuality; by the link between socializing and alcohol use, by the frequency of drug abuse and the predominantly male occupations e.g. truck driving, sea farcing and military that entail mobility and family disruption.

In cultures where HIV is seen as a sign of sexual promiscuity, gender norms shape the way men and women infected with HIV are perceived. HIV positive women face greater stigmatization and rejection than men. Gender norms also influence the way in which family members experience and cope with HIV and with AIDS death. The burden of care often falls with females, while orphaned girls are more likely to be withdrawn from school than their brothers.

The rapidity of the spread of HIV/AIDS among women can only be slowed only if concrete changes are brought about in the sexual behavior of men. The feminization of poverty is a key characteristic of the socio-economic impact of HIV/AIDS. The burden of care of the infected and sick invariably falls on women in the family.

***In households where women are responsible for subsistence farming this leads to:-***

- Reduction of productive time on farms.
- Threat to the food security of the family.
- Withdrawal of the girl child from school to bridge the demand for additional unpaid labour in household.

Increase in households headed by women, at times by girl children with little access to productive resources, often driving them into sex work for survival.

***It is noted that:***

- Discrimination against women renders them vulnerable to HIV/AIDS.
- Patriarchal nature of the society perpetuates the discrimination suffered by the female gender.
- Women subordination in the family and in public life is one of the root causes of the rapidly increasing rate of infection among women.
- Systematic discrimination based on gender also impairs women's ability to deal with the consequences of their infection/or infection in the family, in social, economic and personal terms.
- The rights of women and girls to health education and to freedom of expression should be applied to inclined equal access HIV related information, education, and means of prevention and health services.

Women and girls should be encouraged to negotiate safer sex or to avoid HIV related consequences of the sexual practices of their husbands, partners as a result of social and sexual subordination, economic dependence on relation-

ship and cultural attitudes:-

- Violence against women in all forms increases their vulnerability to HIV infection. This includes sexual violence, rape including marital rape and other forms of coerced sex.
- Socializing of men involves alcohol consumption, yet excessive levels of consumption contribute to unsafe as well as violent sexual behavior.
- Rural –Urban migration in search of employment contribute to vulnerability to HIV infection. This has forced some people to turn to commercial sex work to support themselves and their families.

#### 4.1.4 Duty of the State

- States are under an obligation to protect women from sexual violence in both public and private life.
- To empower women to leave relationships or employment which threaten their lives with HIV infection? How?
- State should guarantee equality between sexes and resources including credit and standard of living.
- Women should not be victimized.
- Through CEDAW states ought to address all aspects of gender-based discrimination in law, policy and practice.
- The public health legislation has to regulate cases of health and care and protection of human rights.

#### 4.1.5 Laws/Policies Requiring Consideration

- 1) Prevention and suppression of Commercial sex work.
- 2) The laws relating to Homosexuality.
- 3) Reproductive rights that have been ignored.
- 4) Policies on education to maintain the girl child in school.
- 5) Policies regulating sex education in schools.
- 6) The laws that reduce women's access to productive assets like laws on inheritance, marriage and divorce and cultural practices.

Gender inequality is a key variable in the incidence of HIV/AIDS. As gender disparities increase, the epidemic is affecting more and more women who bear the negative consequences of the gender imbalances. And as the epidemic is maturing, it is drawing women who have only one sexual partner.

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#### 4.1.6 Men can make a difference

Men need to be encouraged to adopt positive behaviors that are encouraged by their cultural beliefs. Numerous studies show that world wide men generally participate less than women in caring for the children and the sick.

It is recommended that to better understand the relationship in the communities, a gender analysis be carried out in the Communities. **A gender analysis** is a tool for examining the difference between the roles that women and men play, the different levels of power they hold, their differing needs, constraints and opportunities and the impact of those differences. The gender analysis answers questions like, what do men, women and children do in terms of work. Then you look at who has the access to and control over resources and decision making and finally you establish the reasons behind such differences in gender roles.

**In conclusion participants should come up with a list of harmful cultural practices that are gender based.**

# Module II: Human Rights Monitoring and Enforcement of HIV/AIDS

## Session One: HIV/AIDS and Human Rights Advocacy

### Specific Objective:

- To define the meaning of advocacy.
- To understand the meaning of HIV/AIDS human rights advocacy.
- To discuss strategies of raising awareness about the links between HIV/AIDS and human rights.
- To discuss framework for HIV/AIDS human rights advocacy.

### 1.1 What is advocacy?

It is an organized or planned effort to influence decision/policy-making and program implementation.

Advocacy efforts may be directed to decision/policy making body or the government.

Advocacy is crucial in the conduct of a human rights based response to HIV/AIDS.

#### 1.1.1 Successful advocacy initiative leads to:

- 1) Work in partnerships that include advocacy campaign.
- 2) When dealing with the targets of the advocacy it is very important to be well informed.
- 3) You use the most appropriate strategies and opportunities to strategically pass your message across.

#### 1.1.2 Advocacy helps to:

- Heighten awareness of HIV/AIDS as a national and human rights issue.
- To contribute to prevention care and support programmes.
- To tackle community problem.

**Participants at the end should suggest different strategies to use in human rights advocacy.**

## Session Two: HIV/AIDS Human Rights and Kenyan Response

### Specific Objective

- To outline the steps taken by the Kenyan government in response to legal ethical issues.
- To discuss the rights based approach to HIV/AIDS programs in Kenya.
- Identify the national laws, policies and legislative framework.
- To identify the provisions of the HIV and AIDS prevention and Control Bill 2003.

### 2.1 Kenyans Human Rights Based Approach

Kenyan first legal response was in the amendment of the Public Health Act (Cap 242) of the laws of Kenya that lists HIV/AIDS among the notifiable diseases.

- In the years 1994 to 1996, HIV/AIDS was included in the National Development plan.
- The Sessional Paper No. 4/1997 gave the framework upon which the government established the National AIDS Control Council with specific coordination mandate of all HIV/AIDS activities in the country.
- In November 1999 the former President declared HIV/AIDS a national disaster.
- The Honourable Attorney General set up a task force to look at all legal issues around HIV/AIDS in line with the proposal of the UN through the guidelines.
- The work of the task force culminated into the report and a proposed legislation on prevention and control of HIV/AIDS that is pending before Parliament.
- Various guidelines have been promulgated that is, on Testing, Blood donor services, Nursing, counselling and Home based care among others.

The areas of concern that have been documented in the Bill include areas of: -

- Testing for HIV infection the:
  - The whole nation?
  - Employment purposes?
  - Admission in institutions?
  - Insurance purpose?
  - Marriage purposes?
- Confidentiality:
  - Partner/Spouse notification.
  - For clinical purposes.
- Discrimination and Stigmatization:
  - Dismissal from employment.
  - Travel restrictions.
  - Right to marry.

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- Education on HIV/AIDS
  - Gender concerns:
    - Polygamy
    - Wife inheritance,
    - Marriage and divorce,
    - Inheritance and property rights including writing wills.
  - HIV/AIDS and criminal justice.
  - Research guidelines and procedures:
    - Vaccine trials
    - Research protocols and Ethical issues.

**Give the participants a summary of the proposals made in the HIV/AIDS Prevention and Control Bill 2003 and get their views.**

## Session Three: The Role of TOTS

### Specific Objectives

- To discuss the roles of TOTs.
- To identify roles and responsibilities of a TOT in promoting HIV/AIDS human rights and ethical issues.
- To understand in particular the role of monitoring and duty to report violations of human rights.
- To identify the challenges of implementing the rights based approach.

The training is prepared for NGOs dealing in HIV/AIDS area to mainstream and integrate Human Rights issues in their core function in particular:

- To raise NGOs awareness.
- To emphasize the promotion and protection of rights locally, nationally and internationally.
- To show NGOs how they can hold the government accountable.
- To provide a resource guide.

### *The training in particular provides:*

- Practical advice to undertake advocacy.
- Strategies and tools that can be employed to promote and protect human resource.

### 3.1 The Role of TOTs

The TOT will be expected to facilitate other trainings. The TOT should create a participatory learning atmosphere. The TOT needs to affirm individuals by encouraging them focusing on their positive achievements and at the same time manage the group by providing overall guidance, direction and moderation of every discussion. It is necessary for the TOTs to understand HR is grounded in the real lives and real problems experienced at the community level.

TOTs should choose strategies based on their own areas of expertise and set goals. The training is flexible and can be introduced at any time in the NGOs programme. HR instruments exist for anyone and the internationally accepted standards and homes set out in the instruments should be used by NGOs in confirmation with existing national laws and framework.

#### 3.1.1 The Challenges in Implementation Rights Based Approaches

Discussion will be centered on the area of: -

- Discrimination.
- Public Health Care.
- Voluntary Counselling and Testing (VCT).
- Education/Information and training.
- Women and Children.
- Monitoring and documentation.

A right-based 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 for those living with HIV/AIDS.

Make reference to the UNAIDS 12 International Guidelines adopted in 1996 on HIV/AIDS and Human Rights. States should establish effective national framework for their response to HIV/AIDS, which ensures a coordinated participatory, transparent and acceptable approach integrating HIV/AIDS policing and program responsibilities. States should establish an effective national framework for their response to HIV/AIDS, which ensures a coordinated participatory transparent, and an acceptable approach for integrating HIV/AIDS policies and program across all branches of Government.

**Discuss the difficulties of the program planners at community level as a challenge in operationalization. What of the feed back procedures?**

*How do you document issues of violations?*

- This is basically through interviews conducted either with witnesses or the persons who experienced the violation.
- Must stress the need for confidentiality for PWHAs in the fact finding.

***Discussion points on Good interventions: -***

- ***Interviewer must be able to communicate.***
- ***Must establish a friendly environment.***
- ***Must remain non judgmental.***
- ***Must be prepared to conduct the interview.***
- ***Proper recording is necessary.***

**After getting the information, and report must be made to the respective bodies.**

## Session Four: Plan of Action

### Objective

- To formulate plans on how to popularize the human rights approach in HIV/AIDS programmes in the community.
- To form a human rights and HIV/AIDS network.
- Documentation of violations of human rights.
- Follow up by KANCO.

Begin by helping the participants to appreciate that the framework of HIV/AIDS and human rights is broad and encompasses a range of activities that includes educational and capacity building activities as well as responses to human rights violations.

**Participants should be able to come up with own organizations' plan of actions that integrates human resource issues.**

At the end of the session the participants should be able to understand the sequence of events from the legal case work to documentation and monitoring, organisational capacity –building, human rights education and standard setting followed by the reporting that includes law reform, Policy advocacy and network/alliance-building.

The table below may guide the plan of action.

| Topics | Activities | Strategies | Timeframe | Requirement |
|--------|------------|------------|-----------|-------------|
|        |            |            |           |             |

### ***TOPIC- of Research and interest i.e. FGM***

- Activity-Planned by the NGO.
- Strategy-How the NGO intends to go about it.
- Time Frame- What is the timeline to completion?
- Requirement- what the NGO needs to accomplish the task.

### ***Examples***

Areas affecting PLWHA of human rights based include and are not limited to:

1. Discrimination.
2. Lack of access to essential drugs.
3. Loss of employment.
4. Denial of employment.
5. Lack of policies.

### **Conclusion**

**At the end of these modules the participants should be equipped ready to monitor and document Human Rights Violations, they should also be able to investigate specific cases of human rights violations since they will have understood the basic concept of human rights and in all link by illustration the difference between HIV/AIDS infection and human rights.**

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