

**Report on the Round table discussion on legal issues facing
people living with HIV/AIDS (PLHIV) and other vulnerable
groups**

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Introduction:

UNAIDS in collaboration with the AIDS Foundation of Lanka (AFL), conducted a Round Table discussion on 21st November 2012, at Taj Samudra from 3.00 – 5.30 pm on “Legal issues for People living with HIV/AIDS (PLHIV) and other vulnerable groups”.

This roundtable discussion was a part of an initiative being carried out by AFL with the support of UNAIDS, to review the current legal environment pertaining to PLHIV and other vulnerable groups and to seek a collaborated and multi sectoral solution to support the same. The purpose of the Round Table discussion was to bring together the key decision makers that influence the legal environment in Sri Lanka, to share knowledge and experiences surrounding the issue and to decide what courses of action should be taken to deal with the issue.

Background:

Various reports in the past such as the PLHIV Sigma Index Sri Lanka and the CPA report on policy and practices surround HIV¹ have highlighted the rights violations PLHIV and vulnerable groups face and how difficult it is for them to access legal services and recourse for rights violations due to the stigma and discrimination they face. This aspect is often referred to by organizations working with these groups. While stigma has been faced in the areas of access to health services, employment opportunities and family rights women from these groups face greater rights violations such as gender based violence (GBV), Intimate Partner Violence (IPV) sexual reproductive health rights and inheritance rights.

Due to the reasons cited above the need for PLHIV and vulnerable groups to have improved access to human rights was by the National Policy on HIV/AIDS drafted by the National STD/AIDS control programme and the Ministry of Health.

AFL was interested in exploring supporting this issue further in order to facilitate the process of creating an enabling legal environment for PLHIV and other vulnerable groups.

Roundtable meeting:

The roundtable meeting was held at Taj Samudra where selected legal luminaries, representatives from the state legal departments, Human Rights Commission, Law College and other Human rights activists were invited to obtain their views on the issue under discussion and to identify next steps.

The session was moderated by Executive Director , ICES, Dr Mario Gomes. Speakers included Hon. Justice Shiranee Tilakawardane, Steve Krauss, Director of the UNAIDS Regional Support Team for Asia and the Pacific, Princey Mangalika, Executive Director, Positive Women’s Network,

¹ People Living with HIV Stigma Index Sri Lanka, published by the National STI/AIDS Control Programme, Family Planning Association of Sri Lanka with support from UNAIDS – 2010, HIV / AIDS in Sri Lanka: A Profile on Policy and Practice conducted by the Centre for Policy Alternatives in 2007

Prashantha Lal de Alwis, President's Counsel, Dr Palitha Abeykoon-Chairman AIDS Foundation Lanka and Kamani Jinadasa, Attorney at law.

Highlights (refer "Annexure 1" for the agenda):

- ✓ Prashantha Lal de Alwis, President's Counsel provided an introduction to the facts surrounding the issue of PLHIV and vulnerable groups facing stigma and discrimination. He referred to the increasing rates of HIV transmission among MSMs and vulnerabilities of TGs and CSWs and how the provision of a proper enabling legal environment for these groups would help reduce the transmission of the virus. Mr De Alwis also referred to the manner in which homosexuality is criminalized under Sri Lankan law.

- ✓ Kamani Jinadasa, Attorney at law presented examples of human rights/legal right violations experienced in Sri Lanka based on 3 case studies which were extracted from reports and experiences .(Annexure 2) The case studies centered around the experiences of a PLHIV who's right to access health services had been violated, MSM's issue of harassment and violence meted against them by law enforcement personnel and the unlawful detention of CSWs under the Vagrants Ordinance at Methsevana.

- ✓ Steve Krauss, Director of the UNAIDS Regional Support Team for Asia and the Pacific provided examples of work that has been carried out in other countries from Asia and the Pacific to create an enabling legal and social environment (Annexure 3). Mr Krauss referred to the importance of the findings of the Global Commission on HIV and Law, where it's key outputs were to have the following:
 - Consolidated, coherent and compelling evidence base
 - Greater awareness among key stakeholders
 - Leadership of law and policy makers to create a positive legal environment
 - Public dialogue on social attitudes, human rights and legal issues relating to HIV
 - Civil society engagement

He referred to the findings of the latest UNAIDS report on the status of HIV and highlighted that Sri Lanka was one of the 4 countries that had shown an increase of HIV prevalence vis- a- vis other countries.

He also drew the plenary's attention to how countries with enhanced legal and policy environments for PLHIV and vulnerable groups led to significant reduction of new HIV infections.

Mr Krauss cited examples where countries had removed discriminatory laws against vulnerable groups such as India, Fiji and Nepal. He provided the following examples of steps that could be taken through National Strategic Plans to improve the enabling legal environment in various countries:

- Legal literacy (know your rights and laws)
- Legal services
- Stigma reduction
- Police training on non-discrimination, non-harassment, etc.

- Health care worker training on non-discrimination, informed consent, confidentiality, duty to treat, infection control
- ✓ Princey Mangalika, Executive Director, Positive Women's Network shared of experiences of discrimination faced by members of PWN+. She referred to instances where they had been deprived of access to health services and the specific issues of stigma and discrimination women living with HIV had to face, such as loss of inheritance rights, vulnerabilities to GBV and violation of SRH rights such as right to marriage and having children. She referred to the frustrations she had experienced when trying to assist members as there was very little discourse and support towards which they could turn to when their rights were violated and she urged those present to take steps to safeguard their access to legal services.
 - ✓ Hon. Justice Shiranee Tilakawardane provided a background to the current legal environment surrounding PLHIV and vulnerable groups in Sri Lanka. She highlighted the following discriminatory laws and practices which PLHIV and vulnerable groups face:
 - the Penal Code of Sri Lanka criminalises homosexuality, including consensual sex between two adults and has categorized MSM behavior as an “unnatural offence” under Sections 365 and 365A of the Penal Code
 - While sex work in private is not considered an offence, street work and brothels are considered illegal under the provisions of the Vagrants Ordinance and maintaining a brothel under the Brothels Ordinance

J. Tilakwardane later went on to explain the principles surrounding access to justice and how it is important to further equal access of rights for all. She referred to the following legal framework in Sri Lanka provides for equal access to justice:

- Constitution of Sri Lanka: Article 12 (1) ensures that all people are equal before the law and are entitled to the equal protection of the law. Article 12 (3) states that no person shall be subject to any disability, liability, restriction or condition on the grounds of race, religion, language, caste or sex.
- The International Covenant on Civil and Political Rights (ICCPR) Act states in section 2: “Every person shall have the right to recognition as a person before the law.”

Moderated discussion and next steps:

After the presentations the session was opened up to the plenary to discuss what could be identified as next steps. This session was moderated by Dr Mario Gomez, Executive Director, International Centre for Ethnic Studies.

Most who participated in the discussion recognized the seriousness of the issue and arrived at a consensus that steps needed to be taken to provide improved access to legal services as these human rights violations had been taking place for quite some time.

The following action points were proposed:

- To develop para legals at the organizations working with PLHIV and vulnerable groups to identify and refer cases of rights violations and to provide necessary legal support. To work with Legal Aid to start be a partner in implanting this action point.

- Take steps to provide ensure insurance schemes are accessible for PLHIV
- Include access to justice for these groups in Law College Syllabi – the Principal of Law College stated that he would take this up with the Council of Legal Education to include this so students would be versed with the issues.
- The Human Rights Commission sought support to gather stakeholders to address the issue of illegal detention at Methsevana and to take proper legal steps
- Not to stop with this meeting but to have a consultation and develop a clear action plan on how to take things forward.
- Ways should be explored to educate young people on these surrounding issues
- Pursue these legal issues under the LLRC action plan
- To lobby for a quick amendment to the Social Disabilities Act to include PLHIV
- To file fundamental rights cases for HIV+ women/widows who have lost their access to pensions with the help of LHRD
- To work towards amending registration of births to accommodate TG registration as a third gender.

Proposed steps:

The discussion and the focused propositions made by those present at the round table meeting indicates the importance of pursuing this matter further in detail and with clarity.

I would like to propose that a small task force of about 3-4 people from this group is formed to identify a few areas with short term and long term wins that could be explored and enacted. A larger consultation with greater participation of lawyers, judges and legal luminaries should then be held to strengthen this plan of action and to delegate responsibility and ownership of this initiative. It is imperative that the Official and Un Official Bar take on a large part of the responsibility of enacting the action plan in order to ensure continuity. I would also like to propose that AFL invite a senior lawyer who would be interested in this work to be on the board in order to garner support as necessary.

Annexures:

Annexure I:

Agenda:

Time	Item	Speaker
3.00-3.05	Welcome	Dr Palitha Abeykoon-Chairman AIDS Foundation Lanka
3.05-3.15	Introduction to the issue	Prashantha Lal de Alwis, President's Counsel
3.15-3.25	Examples of human rights/legal right violations experienced in Sri Lanka	Kamani Jinadasa – Attorney at Law
3.25-3.35	Examples of work that has been carried out in other countries to create an enabling environment	Steve Krauss, Director of the UNAIDS Regional Support Team for Asia and the Pacific
3.35- 3.45	Sharing of experiences of discrimination	Princey Mangalika, Executive Director, Positive Women's Network
3.45-4.00	Current legal environment surrounding PLHIV and vulnerable groups in Sri Lanka	Hon. Justice Shiranee Tilakawardane
4.00 – 5.00	Facilitated discussion	Moderator - Dr Mario Gomez, Executive Director, International Centre for Ethnic Studies
5.00-5.05	Close/Vote of Thanks	Dr Palitha Abeykoon
5.05 onwards	Refreshments	

Annexure II:

CASE STUDIES ON HUMAN RIGHTS VIOLATIONS:

CASE 1: People living with HIV and AIDS (PLHIV)

Background

A young lady of 24 years of age who was diagnosed as being HIV positive was admitted to the Infectious Diseases Hospital (IDH) in April 2010 for opportunistic infections and debilitating mental condition. While she was warded, upon medical advice she was transferred to Ward No 3 of Castle Hospital, Borella, in an ambulance and was accompanied by hospital staff.

From the moment she was brought into the hospital she was subject to words of ridicule and insults based on her HIV status. The hospital staff refused to examine her on a bed, and she was instead made to sit on some newspapers on the floor and was refused access to the toilets.

She was later on questioned on her personal details and the hospital staff passed judgment on her stating that she had contracted the virus through sexually promiscuous behaviour and hurled further insults towards her.

The hospital staff even went on to state that she need not avail herself of medical treatment as she was going to die anyway due to her medical status. The patient kept on pleading for medical attention and finally a doctor arrived who gave her a cursory examination and forced her to sign her discharge sheet. With no other medical relief in sight, the patient returned to IDH for treatment.

Violation of human and legal rights:

The patient's rights were violated on the following grounds:

1. The patient was treated differently from other patients and was discriminated due to her HIV positive status.
 - This is firstly in violation of Article 12 of the Constitution of the Democratic Socialist Republic of Sri Lanka which states:
 - a. Article 12 (1) ensures that all people are equal before the law and are entitled to the equal protection of the law.
 - b. Article 12 (3) states that no person shall be subject to any disability, liability, restriction or condition on the grounds of race, religion, language, caste or sex.
 - This is also a violation of human rights principles relevant to HIV/AIDS
2. The patient was not allowed to access medical care that the State is bound to provide.
 - This is a violation of the Health Services Act of 1953, the Provincial Councils Act of 1987 and the Provincial Councils (Consequential Provisions) Act of 1989
 - This is also a violation of human rights principles relevant to HIV/AIDS, namely "the right to the highest attainable standard of physical and mental health"

3. The patient's status was revealed to the hospital staff that were not involved in treating her. As a result she was treated with very high levels of degrading treatment from the moment she entered the hospital premises till she was discharged, purely on her HIV status.
 - This is a violation of her right to privacy and confidentiality
 - This is also a violation of human rights principles relevant to HIV/AIDS, namely "the right to be free from torture and cruel, inhuman or degrading treatment or punishment."

The above actions by the hospital staff also violate the following conventions that Sri Lanka is a signatory to:

1. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
2. The International Covenant on Civil and Political Rights (Civil and Political Rights Covenant) and the Optional Protocol to the Civil and Political Rights Covenant;

CASE 2: Men having sex with Men (MSM)

Topologies of MSMs in Sri Lanka

Male sex workers (MSWs) operate through various pick-up points and work in a similar fashion as female sex workers. Nachchis are effeminate MSM. They may operate as MSWs, and pick up clients from various cruising points. According to a study carried out by in March 2010², Gay men comprised the highest number reported among this most at risk population. Self-identified gay men were usually insertive clients or non-paying partners of MSWs and Nachchis.

Beach boys form a sub-typology of MSM in Sri Lanka. They are generally young males who associate with tourists as guides or animators, and provide entertainment, including sexual services.

Background:

(Excerpts from a study conducted in 2010 using 24 in-depth interviews and 3 focus groups with male-to-female transgender sex workers in Sri Lanka)

Page 13:

"Forced Bribes and Theft

A majority of respondents described police extorting bribes in exchange for avoiding arrest. The nachchi also stated that money was routinely stolen from them on police rounds. Police were described as opportunists, extortionists, and thieves. Respondents stated that they are vulnerable to theft and forced bribes by police not only because of the illegality of their sex work and

² National STD/AIDS Control Programme, Ministry of Health, (March 2010) *Mapping Key Populations for HIV prevention in Sri Lanka*

homosexuality but also because it is known that the nachchi are carrying cash received from clients. Susil* suggested that police see the nachchi as an opportunity to make easy money. "They try to get money from us. That is to take money. They expect that." Nachchi have few alternatives; if they refuse to give a bribe, they will be arrested and have to pay a fine for engaging in sex work.

Failure to Protect

Some nachchi described being denied the same quality of service or any service at all because of their transgender identity. The majority of respondents who went to the police to report some form of victimization described having police services refused.

Jayantha* described situations in which s/he had to hide from groups of men who were chasing hir. When asked if s/he had ever gone to the police for help, s/he responded, "The police do not accept our entries, no...If we run to the police, they will say 'get out ponnaya'."

A few respondents who reported to the police described that the police blamed them for their victimization. For example, when asked about experiencing harassment, Suranjith* stated, Yes, you get in the road . . . people with no proper manners. They are the kind of people who mostly come like that and harass. So sometimes, they take you and get what they want fulfilled [rape] and then beat you. They beat you and snatch what you have in your hand or pull what you are wearing, so there are a lot of criminals like that . . . so that is why we are scared a lot also no. Now to go in the road in the night also, we are very scared, we are scared because you face problems like that. So even if you go to the police, you don't get any help from the police . . . "What were you doing in the road? Why were you all in the road?" Like that they ask.

In addition, reporting victimization to police can put the nachchi at risk for further victimization and exploitation. Raju* described going in to report a crime and being forced to have sex with two of the officers.

It's like this, something was stolen from my brother's house, and when I went to the police for that, two officers who were in the jeep called me. "If you don't stay [have sex] we will lock you up," they said.

Inequality in the police response to the nachchi's victimization exemplifies a system that does not serve the interests of nachchi nor offers them protection, instead they describe a system that serves to exploit and victimize them. As the above quote delineates, the nachchi experience this discrimination not only because they are sex workers but also for complaints outside of their work in the sex industry.

When asked if s/he was ever harassed, Indrajith* described being beaten by men in the community, raped multiple times, and having his/her eyes wounded to the point that s/he had to have an operation."

Violation of human and legal rights:

The rights are violated on the following grounds:

Lack of equal protection before the law: Nacchis are discriminated on their sexual orientation:

- This is firstly in violation of Article 12 of the Constitution of the Democratic Socialist Republic of Sri Lanka which states:
 - a. Article 12 (1) ensures that all people are equal before the law and are entitled to the equal protection of the law.
 - b. Article 11 : Freedom from torture or to cruel, inhuman or degrading treatment or punishment.

And

- The International Covenant on Civil and Political Rights (Civil and Political Rights Covenant) and the Optional Protocol to the Civil and Political Rights Covenant;

Failure of law enforcement personnel to uphold duties and responsibilities under the Police Ordinance

*names of respondents

CASE 3: Commercial Sex Workers (CSWs)

Issues surrounding detention of CSWs

There is one House of Detention for women in Sri Lanka (Methsevena) where sex workers arrested under the *Vagrants Ordinance* may be legally detained as an alternative to prison.

The managers of Methsevena have been criticized by the Human Rights Commission of Sri Lanka for violating the human rights of women³. In 2004, the Methsevena House of Detention included a rehabilitation centre, a vocational training school, a spice packing industry and a garment factory.

The Human Rights Commission's 2004 review found that many women at Methsevena were serving time in detention that was longer than the specified sentences or in some cases without a release date. The law requires adult women detainees to be released with the permission of a guardian.

Methsevena houses approximately 300 women.

The Human Rights Commission review recommended that magistrates be required to specify a release date upon sentencing, and that houses of detention be prohibited from detaining adult women simply because they have no guardian.

As at April 2011, these recommendations had not been implemented.

³ Monitoring and Review Division, Human Rights Commission of Sri Lanka (2004) *Human Rights Report: Methsevena State House of Detention, Gangodawila*. Colombo: Human Rights Commission.

Annexure III- UNAIDS Presentation (attached to email)