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Legal Redress for HIV-related Discrimination in Tanzania: Barriers and Recommendations

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Introduction

People affected by HIV and AIDS often face stigma and discrimination at school, at work, in the community, and in seeking healthcare. The negative attitudes and harmful actions they experience adversely affect their health and ability to lead a productive life. Further, stigma and discrimination help drive the spread of HIV by fueling fear of testing and sero-status disclosure. Recognizing the gravity of these issues, the Government of Tanzania passed the National HIV and AIDS (Prevention and Control) Act (the AIDS Law) in 2008, which includes a provision prohibiting stigma and discrimination of any type on the grounds of a person's actual or suspected HIV status. To date, however, no cases of HIV-related discrimination have been brought to court under this law.

With a favourable law in place, a key question is why people who have experienced HIV-related discrimination still lack legal recourse. To investigate this issue, the National Council of People Living with HIV and AIDS and the Health Policy Initiative in Tanzania (HPI/Tanzania) organised an expert consultation in February 2013, which brought together people with HIV-related discrimination complaints and legal experts from the Women's Legal Aid Centre, Tanganyika Law Society, Tanzania Women Lawyers Association, and the Legal and Human Rights Centre. Additionally, a lawyer attended from the Ministry of Health and Social Welfare (MOHSW), the host ministry for the 2008 AIDS Law.

Lack of Regulations Is the Primary Barrier to HIV Discrimination Cases

During the consultation, the participants reviewed and discussed seven HIV-related discrimination complaints. Although the legal experts determined that many of the cases could be viable under the 2008 AIDS Law, none could be filed and pursued in court.

The primary barrier is a lack of regulations about how to lodge and handle HIV discrimination cases. The needed regulations, for example, would provide guidance on matters such as determining whether a case should be treated as criminal or civil, and identifying the appropriate jurisdiction of the court to hear a case.

The law stipulates that the minister responsible creates these regulations. As Section 51(3) of the AIDS Law states "*the Minister may make Regulations describing the mode of lodging and handling of Complaints under this Act.*" Since enactment of the law in 2008, the MOHSW has developed regulations for some sections, including *Part IV (Testing and Counseling)* and *Part VI (Health and Support Services)*. However, the ministry has not yet developed regulations for *Part VII (Stigma and Discrimination)*. Without these regulations, it is impossible to pursue legal redress for HIV discrimination under this law.

Major Recommendation: Develop Regulations for HIV Discrimination Cases

The consultation participants recommended that the MOHSW develop regulations for the anti-discrimination provision and other remaining sections of the 2008 AIDS Law. These would prescribe the mode of lodging and handling for complaints under this AIDS Law, allowing cases to go forward in court.

Other Recommendations for Improved Implementation

The HIV-related discrimination complaints raised at the consultation covered a range of experiences, including physical violence from a teacher and local government officer, a death threat from a neighbour, loss of business, spousal and child abandonment, spousal battering, child abduction, inheritance rights, and a child maintenance claim. Based on these

discussions, the consultation participants advanced other recommendations for addressing barriers to the anti-discrimination law, including the following:

- **Sensitise health service providers** about the 2008 AIDS Law. Accounts by some members of the National Council of People Living with HIV and AIDS at the consultation indicated that service providers violate the law. Participants discussed such matters as breaches in confidentiality of HIV status and HIV testing of minors without consent, both of which are prohibited.
- **Strengthen knowledge of the police force** regarding the AIDS Law. For effective implementation, knowledge and capacity need to be strengthened among the police force. Presently, there is no process to familiarise police with the laws, especially newer enactments. The police play an important role in bringing cases to the attention of prosecutors. If members of the police force do not consider an issue to be an offense, such as cases of people living with HIV experiencing discrimination, the complaints will not be taken seriously and thus will not reach prosecutors.
- **Improve community awareness** about the 2008 AIDS Law. The consultation participants suggested that the AIDS Law is not well known to the general public. As a result, people commonly break the law, often unknowingly. Community education, including dissemination of simplified Kiswahili copies of the AIDS Law, would help achieve more effective implementation of the law.

Resources in Tanzania:

National Council of People Living with HIV and AIDS

P.O. Box 55811
Dar es Salaam
nacopha.or.tz

Legal and Human Rights Centre
Justice Lugakingira House Kijitonyama
P.O. Box 75254
Dar es Salaam
www.humanrights.or.tz

Tanganyika Law Society
Plot 299, Ruhinde Street, Ada Estate
P.O. Box 2148
Dar es Salaam
www.tls.or.tz

Tanzania Women Lawyers Association
Ilala Shariff Shamba
Plot 33, P.O. Box 9460
Dar es Salaam
www.tawla.or.tz

Women's Legal Aid Centre
WLAC Building, Kinondoni
Hananasif area, Kisutu Street, Near Lang'ata Inn
Block No. 40, House No. 184, P.O. Box 79212
Dar es Salaam
www.wlac.or.tz

For more information, please contact

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