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ILOAIDS
Implementing the ILO Code of Practice
on HIV/AIDS and the world of work:
an education and training manual

Introduction: HIV/AIDS - a human rights issue

The ILO approach to HIV/AIDS is a rights-based approach. What does this mean?

HIV/AIDS can be treated as a medical issue, a public health concern, or a socio-economic problem – among other approaches. For many years the focus was on the medical implications of the epidemic, especially the search for a cure and a vaccine. As these proved hard to find, the emphasis shifted to prevention. All these approaches are necessary, but they should be pursued in parallel with the protection of the human rights of all affected by the epidemic. A rights-based approach means applying human rights principles to the problem of HIV and AIDS.

Are human rights really important in the face of life and death? Yes. Rights are a matter of principle, but they have very practical effects. Take the right to non-discrimination. This is a fundamental human right, and it reinforces prevention in very practical ways. If people who are HIV-positive (or think they may be) are frightened of the possibility of discrimination, they will probably conceal the fact. They will not be able to get any treatment. It is very possible that they will pass on the infection to others. All successful prevention initiatives have been part of a wider approach that has included establishing an atmosphere of openness and trust and taking a firm stand against discrimination.

What are human rights?

Human rights are entitlements which come to all individuals because they are human. They are the birthright of every individual person. The purpose of conventions and laws is to recognize and protect these rights for individuals or groups. Some of the most important characteristics of rights are:

- they are founded on respect for the dignity and worth of each person
- they are universal, and apply equally to all people, without any discrimination whatsoever
- they are inalienable - no person can have his or her rights taken away, except in very specific situations: the right to liberty, for example, can be restricted if a person is convicted of a crime, in a proper court
- they are indivisible, interrelated and interdependent - if one right is violated, that may well affect other rights.

All humans possess all these rights, regardless of race, colour, sex, language, religion, political or other beliefs, national or social origin, disability, property, birth, age - or other status, including real or perceived HIV status. Whatever their political, economic or social system, states are under the obligation to protect and promote all fundamental rights.

Some core human rights:

- Everyone has the right NOT to suffer discrimination.
- Everyone has the right to education and information, and to freedom of speech.
- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment.
- Everyone who works has the right to decent wages - “just and favourable remuneration”.
- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.
- Everyone, as a member of society, has the right to health and to social security.
- Everyone has the right to privacy (protection against mandatory testing and confidentiality of personal data).

And there are many others.

The main human rights treaties

Human rights are recognized in several international instruments. There are more than sixty international treaties dealing with different aspects of human rights. The most important ones are:

- the International Bill of Human Rights which consists of:
 - the Universal Declaration of Human Rights;
 - the International Covenant on Economic Social and Cultural Rights; and
 - the International Covenant on Civil and Political Rights;
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- the Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- the Convention on the Rights of the Child (CRC);
- a number of the ILO Conventions, including the core labour standards.

The ILO, HIV/AIDS and human rights

The best way to respond to the human rights implications of HIV/AIDS is to develop policies at national and enterprise levels that protect the rights of those concerned. The ILO Code of Practice establishes fundamental principles for policies at all levels, and practical guidance for workplace programmes.

The ten key principles are as follows (text from the Code is in *italics*):

1. **Recognition of HIV/AIDS as a workplace issue:** *HIV/AIDS is a workplace issue* because it affects workers and enterprises – cutting the workforce (by up to 30 per cent in some countries), increasing labour costs and reducing productivity. It *should be treated like any other serious illness/condition in the workplace* – this statement aims to counter discrimination and also the fears and myths that surround HIV/AIDS. *The workplace has a role to play in the wider struggle to limit the spread and effects of the epidemic* – later sections of the Code, especially those on prevention, training, and care, clearly explain this role.
2. **Non-discrimination:** *There should be no discrimination against workers on the basis of real or perceived HIV status.* Non-discrimination is a fundamental principle of the ILO and is at the heart of the ILO's response to the epidemic. The principle of non-discrimination extends to employment status, recognized dependants, and access to health insurance, pension funds and other staff entitlements. *Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention:* if people are frightened of the possibility of discrimination, they will probably conceal their status and are more likely to pass on the infection to others. Moreover they will not seek treatment and counselling.
3. **Gender equality:** *The gender dimensions of HIV/AIDS should be recognized. Women are more likely to become infected and are more often adversely affected by the HIV/AIDS epidemic than men due to biological, socio-cultural and economic reasons.* One of the main reasons why HIV has spread so quickly is gender inequality. The rate of new infections is increasing among women in most regions, and women tend to become infected at a younger age than men. A number of studies in Africa show that girls aged 15-19 are five to six times more likely to be HIV-positive than boys of the same age group - for biological and cultural reasons. Women are also more likely than men to be involved in caring for those who have the disease, or caring for orphans. It is therefore important that HIV/AIDS programmes respond to the circumstances and needs of men and women separately as well as together – both in terms of prevention and social protection to mitigate the impact of the epidemic.
4. **Healthy work environment:** *The work environment should be healthy and safe, so far as is practicable, for all concerned parties.* This includes the responsibility for employers to provide information and education on HIV transmission, and appropriate first aid provisions in the event of an accident (see reference to *Universal blood and body-fluid precautions* (in Code, Section 7.6 and Appendix II, and Module 6 of this manual). It doesn't, however, give employers

the right to test employees in the interest of public health, because casual contact at the workplace presents no risk of HIV transmission. *A healthy work environment facilitates ... adaptation of work to the capabilities of workers in light of their physical and mental health* - thus mitigating the impact of AIDS on workers and enterprise alike.

5. **Social dialogue:** *The successful implementation of an HIV/AIDS policy and programme requires co-operation and trust between employers, workers and their representatives and government, where appropriate* – this is not only fundamental to the way the ILO works, but is very practical in that any policy is more likely to be implemented effectively if it has been developed with the full participation of all concerned parties. Emphasis is also given to the leadership role of employers' and workers' organizations in breaking the silence around AIDS and promoting action.
6. **No screening for purposes of exclusion from employment or work processes:** *HIV/AIDS screening should not be required of job applicants or persons in employment.* Compulsory HIV testing not only violates the right to confidentiality but is also impractical and unnecessary. At best, an HIV test result is a “snapshot” of someone’s infection status today. It’s no guarantee that he or she will not become infected tomorrow, or next month. It should also be remembered that people with HIV may remain perfectly fit and healthy for many years.
7. **Confidentiality:** *There is no justification for asking job applicants or workers to disclose HIV-related personal information. Nor should co-workers be obliged to reveal such personal information about fellow workers.* The right to confidentiality doesn’t, of course, only apply to HIV/AIDS – rules of confidentiality have been established in the *ILO Code of Practice on the protection of workers' personal data*, 1997.
8. **Continuation of employment relationship:** *HIV infection is not a cause for termination of employment. As with many other conditions, persons with HIV-related illnesses should be encouraged to work for as long as medically fit in available, appropriate work.* This principle is based on the fact that being HIV-positive is not the same as having AIDS and related infections. Workers infected by HIV can, in most cases, carry on at their jobs for a number of years. It benefits the enterprise as well as the worker if she or he can be helped to work for as long as medically fit. Reasonable accommodation to help workers continue in employment can include rearrangement of working time, special equipment, opportunities for rest breaks, time off for medical appointments, flexible sick leave, part-time work and return-to-work arrangements.
9. **Prevention:** *HIV infection is preventable. Prevention of all means of transmission can be achieved through a variety of strategies* - guidelines and examples are given in succeeding sections of the Code, especially Section 6. Prevention is not simply a matter of providing a few posters, leaflets, or talks. A climate for prevention needs to be created, including an open discussion of relevant issues and respect for human rights. Measures for prevention include a combination of information, participatory education, practical support for behaviour change such as condom distribution, treatment for sexually transmitted infections (STIs), and the promotion of voluntary counselling and testing (VCT) where available.

10. **Care and support:** *Solidarity, care and support should guide the response to HIV/AIDS in the world of work.* Prevention, care and treatment should be seen as a continuum rather than separate elements of a workplace programme. The availability of treatment encourages confidential voluntary testing, making it easier to provide care and encouraging prevention. Care and support includes the provision of voluntary testing and counselling, treatment for opportunistic infections – especially TB - and antiretroviral therapy where affordable, workplace accommodation, employee and family assistance programmes, and access to benefits from health insurance and occupational schemes (more details in Section 9 of Code).

ILO standards and HIV/AIDS

While there is no international labour Convention that specifically addresses the issue of HIV/AIDS at the workplace, many instruments exist which cover both protection against discrimination and prevention of infection, and these can be and have been used. The Conventions that are particularly relevant to promoting respect for human rights in the context of HIV/AIDS at work include:

- Discrimination (Employment and Occupation) Convention, 1958 (No.111). This is one of the eight fundamental conventions of the ILO (see below)
- Occupational Safety and Health Convention 1981 (No. 155)
- Occupational Health Services Convention 1985 (No. 161)
- Termination of Employment Convention, 1982 (No.158)
- Vocational Rehabilitation and Employment (Disabled persons) Convention, 1983 (No. 159)
- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Labour Inspection Convention, 1947 (No. 81) and Labour Inspection (Agriculture) Convention, 1969 (No.129)

What are international labour standards?

The term ‘international labour standards’ refers to the ILO Conventions and Recommendations. They are adopted by the International Labour Conference (ILC) held every June in Geneva, where delegates represent governments, employers’ and workers’ organizations from the ILO member States.

Conventions

When the text of a Convention is adopted, countries can choose to ratify it or not. Even if a country voted for the text of a Convention, it is not bound by it: ratification is a separate and voluntary process. Two member States must ratify an ILO Convention before it ‘comes into force’: this is a legal term, which means that the Convention is now a part of international law.

International Labour Conventions are binding on the countries which ratify them. Through ratification, countries voluntarily undertake to apply the provisions of the Conventions in a national context. This means adapting national law and practice and accepting international supervision.

Recommendations

Governments do not ratify Recommendations. Recommendations are linked to Conventions and are a set of non-binding guidelines, which may orient national policy and practice. They give more detailed measures on how the provisions in the Convention can be applied. Sometimes a Recommendation is adopted on its own, without accompanying a Convention.

The right to non-discrimination

Mark is HIV-positive. The textile company for which he is working has just acquired new modern machinery. He has not received training on the new machinery because the boss doesn’t want to invest in someone who’s “going to die soon anyway”.

This is an example of discrimination.

The right NOT to be discriminated against is one of the ten key principles of the Code of Practice. The principle of non-discrimination is fundamental to any policy and strategy to combat HIV/AIDS in the workplace.

4.2 Non-discrimination. In the spirit of decent work and respect for the human rights and dignity of persons infected or affected by HIV/AIDS, there should be no discrimination against workers on the basis of real or perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention..

■ ILO Code of Practice on HIV/AIDS and the world of work

People infected or affected by HIV/AIDS may suffer discrimination at work in several different situations, for example if they are:

- screened for HIV and refused employment;
- dismissed from work because of their HIV status;
- denied training and promotion opportunities;
- subjected to compulsory testing;
- ostracized and isolated by colleagues;
- denied access to medical and sickness benefits;
- denied reasonable accommodation to help manage their illness.

ILO Convention No. 111

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is the key instrument for a policy aimed at addressing discrimination. The Convention prohibits any “distinction, exclusion or preference which has the effect of impairing equality of opportunity or treatment in access to employment, training, promotion processes, security of tenure, remuneration, conditions of work, occupational safety and health measures and social security benefits.” It lists seven grounds of banned discrimination – race, colour, sex, religion, political opinion, national extraction and social origin.

The definition of discrimination contained in Convention No. 111 does not refer to HIV status, since it was adopted well before the epidemic occurred.

However, as is clear from Article 1(b), a government can choose to include other kinds of discrimination in its national policy to eliminate discrimination after consulting representative workers’ and employers’ organizations. So it could include HIV status.

We can also argue that the principle of non-discrimination on the grounds of HIV status may be assumed. The UN Commission on Human Rights has affirmed in Resolution 49/1999 that:

Discrimination on the basis of HIV or AIDS status, actual or presumed, is prohibited by existing international human rights standards and ... the term ‘or other status’ in non-discrimination provisions in international human rights texts should be interpreted to cover health status, including HIV/AIDS.

It should be noted that Convention No. 111 does not mean that all workers always have to be treated equally, or in the same way. Sometimes treating workers differently is allowed - in a positive way. Special measures are permitted when they are designed to meet the particular requirements of someone who needs special assistance. Treating such workers differently is not deemed to be discrimination.

The Convention, and other provisions against discrimination, does not mean that employers are bound to keep HIV-positive employees at work, however sick they may be. If a worker is no longer able to work, even with an adapted work environment and lighter duties, then that is reasonable grounds for dismissal. What is prohibited is the termination of employment on grounds of HIV status when the individual can still carry out his/her work.

ILO Convention No. 111

This Convention, one of the eight which have been designated as core labour Conventions, is a key text on the issue of discrimination at work. As well as defining discrimination, the Convention requires states which ratify it to

declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

The full text of the Convention is given in the reference section, along with more information about all of the core ILO labour standards.

The Convention has been ratified by 154 ILO member States.

The right not to be discriminated against at work due to HIV or health status has been recognized in laws and court decisions in many countries. Non-discriminatory provisions may assume a variety of forms at the national level. Good practices show the adoption of instruments of either 'hard' or 'soft' law.

For further discussion of legislation on HIV/AIDS, and the role of government, please see Module 4.

Action by governments and the social partners

Governments and the workplace partners can undertake action to protect the right to non-discrimination. Governments can:

- adopt legislation which clearly prohibits discrimination - many countries now have done this;
- include a strong message on discrimination in education programmes on HIV/AIDS;
- provide training for labour inspectors, other enforcement agencies and the judiciary on the importance of non-discrimination in relation to HIV/AIDS.

Employers and workers should work together to develop HIV/AIDS policies which prohibit discrimination based on HIV status (see Module 3 on social dialogue). Some companies already have an HIV/AIDS policy against discrimination. Workers' organizations can provide training for activists and members and can represent members who experience discrimination either from employers or from co-workers.

Workplace policies and discrimination

The Ford Motor Company of South Africa HIV/AIDS Policy states:

"3.6 The company has adopted a zero tolerance approach towards any form of harassment and discrimination at the workplace, towards employees with AIDS or HIV infection."

The collective agreement between the National Union of Mineworkers and the Chamber of Mines of South Africa states:

"2.1 Rights of employees who are HIV-positive. HIV-positive employees will be protected against discrimination, victimization or harassment."

The Durban Chamber of Commerce model code states:

"4. Guidelines - Infected Employees"

The Company endeavours not to discriminate against any employee on any unfair or arbitrary ground, including HIV or AIDS status."

Governments can also provide guidelines for workplace policies. A code of practice has been developed by the Government of the Republic of South Africa as a guide to employers, trade unions and employees.

The right to privacy

Miguel is worried that he might test positive for HIV. He asked the personnel department what the company policy is on workers who are HIV-positive. His request has been written down in his personnel file and now people in the factory are going around saying he has AIDS and they refuse to sit near him.

Miguel's right to privacy has been abused.

An important part of the right to privacy concerns a person's health. When people are facing a life-threatening illness they must decide who to tell and when to tell them. They may decide only to tell people close to them. They may tell some people in confidence. They may decide to tell their employer or not.

People who are HIV-positive are not ill. They may remain well for many years. This applies with or without treatment. In many societies and workplaces there is stigma associated with being HIV-positive. This stigma may apply both to groups in society and to individuals.

For this reason confidentiality concerning HIV status is especially important. It follows that confidentiality needs to be the cornerstone of any testing procedure that takes place.

The right to privacy is recognized by several international human rights instruments. The right to privacy includes privacy of information; in the context of HIV/AIDS, this would include the right for information relating to a person's HIV status to be kept confidential.

The ILO Code supports this right to privacy.

4.7. Confidentiality. There is no justification for asking job applicants or workers to disclose HIV-related personal information. Nor should co-workers be obliged to reveal such personal information about fellow workers. Access to personal data relating to a worker's HIV status should be bound by the rules of confidentiality consistent with the ILO's Code of Practice on the Protection of Workers' Personal Data, 1997.

■ ILO Code of Practice on HIV/AIDS and the world of work

Action by governments and the social partners

Legislation can assist by making it unlawful to disclose information regarding HIV status. Zimbabwe's Labour Relations (HIV/AIDS) Regulations of 1998 state:

- 4. (2) No employer shall require any employee, and it shall not be compulsory for any employee, to disclose, in respect of any matter whatsoever in connection with his employment, his HIV status.*
- (3) No person shall, except with the written consent of the employee to whom the information relates, disclose any information relating to the HIV status of any employee acquired by that person in the course of his duties unless information is required to be disclosed in terms of any other law.*

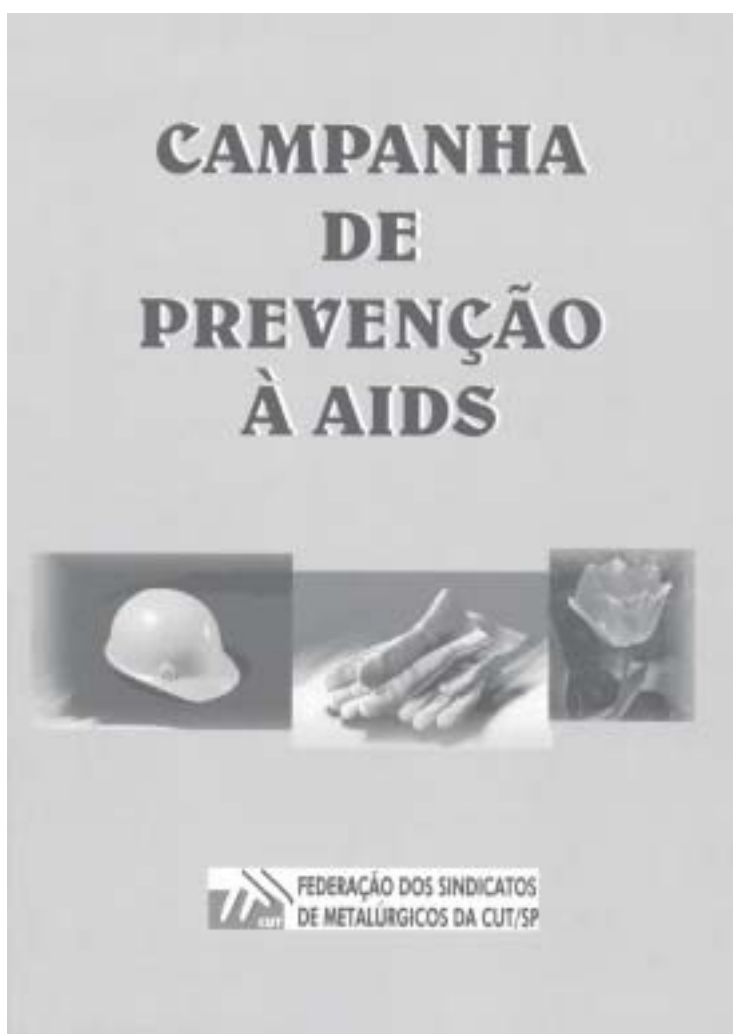
Employers, workers and their organizations have a crucial role in ensuring that the right to privacy of people living with HIV is protected. Some of the social partners have already taken a lead in this regard.

The HIV/AIDS Policy of the Debswana Diamond Company includes the following:

8. Confidentiality.

8.1 All medical information on an employee is personal and will be treated as confidential. Strict precautions will be taken to protect information regarding an employee's health records.

8.2 An employee who is infected with the HIV virus or suffers from AIDS is not obliged to inform the Company. Should an employee who is infected with AIDS decide to inform his peers, supervisors or management, strict precautions will be taken to ensure that such information is maintained in confidence and not disclosed to unauthorized persons.



Testing

Indira has just had an interview for a job with the new company established near her home. She seems to be the perfect candidate for the position. Before giving her a formal offer of employment, the company asks her to take an HIV test. Indira understands the concerns of the company but does not feel comfortable about taking an HIV test for her potential employer.

As discussed in the previous section, workers have the right to privacy. This includes the right to physical privacy which, in the context of HIV/AIDS, includes the right NOT to undergo compulsory testing.

Mandatory testing is testing that is forced on someone, whether they consent or not (sometimes even without their knowledge). It arouses very strong feelings and provokes opposition because it disregards fundamental rights and almost inevitably leads to discrimination. It is also ineffective from a public health point of view. So why do people continue to do it?

It is important to understand that both governments and employers have responsibilities to protect the public health – of their citizens, in one case, and of their employees in the other. And the costs of infection are high.

It is argued that testing – for example, before a person enters a country or takes up employment – prevents a number of problems arising later.

However, there are many drawbacks to testing.

- Firstly, testing is complex and costly, and there are many false positives (the US Immigration Service requires six tests to be taken, for the sake of accuracy).
- Secondly, the incubation period for HIV is several weeks (up to about three months in most cases), so a negative test result is not necessarily accurate.
- Thirdly, an immigrant or new employee may be uninfected today but catch the virus tomorrow.
- Fourthly, in an environment where rights are respected, employees are more likely to undergo voluntary testing and change their behaviour so that they take and cause fewer risks, and indeed become active agents for prevention.

The Code of Practice has a detailed section on testing. The ILO position is as follows:

- Screening is prohibited for exclusion from employment and related situations, such as promotion and access to training.
- Testing is permitted in limited circumstances under certain conditions.
- The confidentiality of HIV-related data must be respected.

4.6 Screening should not be required of job applicants or persons in employment

8. Testing for HIV should not be carried out at the workplace. It is unnecessary and imperils the human rights and dignity of workers: test results may be revealed and misused, and the informed consent of workers may not always be fully free or based on an appreciation of all the facts and implications of testing. Even outside the workplace, confidential testing for HIV should be the consequence of voluntary informed consent and performed by suitably qualified medical personnel only, in conditions of the strictest confidentiality.

8.1 Prohibition in recruitment and employment

HIV testing should not be required at the time of recruitment or as a condition of continued employment. Any routine medical testing, such as testing for fitness carried out prior to the commencement of employment or on a regular basis for workers, should not include mandatory HIV testing.

8.2 Prohibition for insurance purposes

(a) HIV testing should not be required as a condition of eligibility for national social security schemes, general insurance policies, occupational schemes and health and life insurance.

(b) Insurance companies should not require HIV testing before agreeing to provide cover for a given workplace. They may base their cost and revenue estimates and their actuarial calculations on available epidemiological data for the general population.

■ ILO Code of Practice on HIV/AIDS and the world of work

Action by governments and the social partners

This principle is supported in a number of cases by legislation.

Zimbabwe's Labour Relations (HIV/AIDS) Regulations of 1998 state:

4. (1) No employer shall require, whether directly or indirectly, any person to undergo any form of testing for HIV as a precondition to the offer of employment.

(2) Subsection (1) shall not prevent the medical testing of persons for fitness for work as a precondition to the offer of employment.

5. (1) It shall not be compulsory for any employee to undergo, directly or indirectly, any testing for HIV.

It can also be made clear in workplace policies. The HIV/AIDS Policy of the Debswana Diamond Company says the following:

7. Testing

The company does not require applicants for employment to undergo a pre-employment HIV/AIDS test and will not require employees to undergo the test whilst in employment.

Voluntary testing

Voluntary testing is a different matter. People may decide they wish to be tested for a number of different reasons. Where voluntary testing does take place it is essential that it be confidential and accompanied by professional counselling. This usually takes place before the decision to be tested is made and after the test result is known. This form of testing is confidential voluntary counselling and testing, or VCT for short. It is an important component of a comprehensive strategy for beating HIV/AIDS, because once people know their HIV status they can be helped to manage risky behaviour.

8.4 There may be situations where workers wish to be tested. Voluntary testing should normally be carried out by the community health services and not at the workplace. Where adequate medical services exist, voluntary testing may be undertaken at the request and with the informed consent of a worker, with advice from the workers' representative. It should be performed by suitably qualified personnel with adherence to strict confidentiality and to disclosure requirements. Gender-sensitive counselling, which facilitates an understanding of the nature and purpose of the HIV tests, the advantages and disadvantages of the tests and the effect of the result upon the worker, should form an essential part of any testing procedure.

■ ILO Code of Practice on HIV/AIDS and the world of work

Testing for scientific purposes

Policy on HIV/AIDS prevention and care will be more effective if we improve our knowledge of the dynamics of transmission, the impact of the epidemic and the effects of interventions. For this reason it is important to monitor the epidemic, gathering qualitative and quantitative data on the incidence of HIV/AIDS, its patterns and trends. The data can be broken down by sex, economic sectors, regions and so on. Such data needs to be gathered by statistical offices and/or independent researchers, in consultation with the social partners. Care must be taken to ensure that this monitoring process does not threaten workers' rights. This is why the Code of Practice sets out certain conditions for epidemiological surveillance.

8.3 Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with the ethical principles of scientific research, professional ethics and the protection of individual rights and confidentiality.

Where such research is done, workers and employees should be consulted and informed that it is occurring. The information obtained may not be used to discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results

■ ILO Code of Practice on HIV/AIDS and the world of work

Workers who may have been exposed to risks at work

In certain occupations and workplaces workers may be exposed to risk of HIV infection at work, in particular through contaminated blood. This would normally apply to hospital staff or emergency workers, but accidents can happen in almost any workplace. Incidents such as these are rare – even in health care settings – but need to be guarded against. The measures to be taken are known as the *Universal blood and body-fluid precautions* and are described in Appendix II of the Code and Module 6 of this manual.

As with all health and safety issues at work, workers have the right to know of the risks involved and procedures to control the risk need to be in place. These procedures should be reviewed regularly and should be agreed between management and union.

8.5 Tests and treatment after occupational exposure

(a) Where there is a risk of exposure to human blood, body fluids or tissues occurs, the workplace should have procedures in place to manage the risk of such exposure and occupational incidents.

(b) Following risk of exposure to potentially infected material (human blood, body fluids or tissues) at the workplace, the worker should be immediately counselled to cope with the incident, about the medical consequences, the desirability of testing for HIV/AIDS and the availability of post-exposure prophylaxis, and referred to appropriate medical facilities.

Following the conclusion of a risk assessment, further guidance as to the worker's legal rights, including eligibility and required procedures for workers' compensation, should be given.

■ ILO Code of Practice on HIV/AIDS and the world of work

Testimonies of stigma and discrimination

People living with HIV and AIDS in India were asked about their experience of discrimination.¹ This is what they said about the effects of their HIV status on workplace relationships:

“Those staff members who know about me talk about it. They point at me and say look, he is the HIV fellow. They keep their distance from me and remain aloof. I don’t share my tiffin box with them any more. I don’t feel like coming to work. I remain absent for 10/15 days and then lose wages.”
(Tatya, 38-year-old hospital ward worker)

“My colleagues didn’t openly say anything to me, but the environment was no longer the same. They avoided me. If I entered the room they would leave abruptly. Then they asked me to keep a separate glass for water. I decided to quit the job.” (Daljit, 25-year-old factory worker)

In Uganda, despite the fact that legal measures have been taken against companies that discriminate against employees with HIV/AIDS, HIV-positive workers have reported being afraid to reveal their HIV status in the workplace.

Finger-pointing was a frequently cited workplace response to people living with HIV/AIDS who were open about their condition.

“Even if your boss has not shown any sign of dismissing you, the fellow workmates talk behind your back. In this case the boss may sack you and your job is given to a healthier person, judging from what was always talked about you.”

Other testimonies, from France:

“I only have a seasonal job. The doctor who performed the test on me took it upon himself to inform my employer, who immediately told me he would not hire me again for the next season.”

“I work in the paramedical sector and I don’t want to go to a doctor because I’m afraid he will forbid me to work. I live in a town where everybody gets to know everything.”

These cases indicate a wide range of discrimination and unfair treatment of people with HIV/AIDS. They indicate that workers with HIV can both suffer overt discrimination and be pressurized into leaving work. A major task of unions and employers is to work together to create a supportive environment at the workplace, with ‘zero tolerance’ for discrimination.

¹ UNAIDS: *Comparative Analysis: Research studies from India and Uganda: HIV and AIDS-related Discrimination, Stigmatization and Denial* (Geneva, 2001)

Case study: Ravi's story

The Bombay High Court ruled in favour of a person living with HIV/AIDS who was discriminated against at his workplace. Ravi (not his real name) had been working for over ten years as a casual labourer in a public sector corporation controlled by the government of India. According to the policy and practice of the corporation, casual workers were placed on a waiting list and were eventually absorbed as permanent workers if they were medically fit. Ravi was given a range of tests. No medical problems were found except that Ravi was revealed to be HIV-positive.

Significantly, the doctor who administered the tests, who was a leading physician experienced in HIV cases, certified that although Ravi had tested HIV-positive he was fit for duty. Nevertheless, his name was removed from the waiting list. When the Lawyers' Collective - a group of lawyers who act on HIV/AIDS issues - looked into the matter, they discovered that the corporation had issued written circulars making it mandatory for prospective and current employees to undergo an HIV test.

The circulars stated that if employees were found to be HIV-positive, they would not be hired and could even be sacked. On Ravi's behalf, the Lawyers' Collective filed a writ petition in the Bombay High Court challenging the written circulars of the corporation on the grounds that they violated his fundamental rights under the Constitution of India. The petition also challenged Ravi's removal from the waiting list.

The court rejected all of the employer's argument and directed that Ravi be reinstated on the waiting list, that he undergo another round of medical tests (because three years had elapsed since the first tests), that he be given work in the meantime, and that he be taken into regular employment if the tests showed he was fit. Finally, it awarded Ravi the amount of 40,000 Rupees as compensation for the period of his non-employment with the corporation. In its judgement, the court said that *the right to livelihood was guaranteed to all persons and could be overridden only by a procedure established by law that was just, fair and reasonable; and that persons with an ailment who are capable of performing normal job functions and who do not pose any threat to the interests of other persons at the workplace during their normal activities cannot be denied employment or dismissed from employment.*

Many people believe that the positive decision in this case was due in large part to the fact that the presiding judges were sensitive to the issues. It is quite possible that another set of judges would have rendered a decision that was quite different.

ACTIVITY 1

Human rights and the law

AIMS To help you see how human rights related to HIV/AIDS can be protected by the law.

TASK Read through your own national HIV/AIDS legislation, or one of the examples given.

In your group, decide how far the key principles of the ILO Code of Practice are covered in the legislation. Fill in the table to help you record your comments.

Key Principle (Section 4 of the Code of Practice)	Relevant provision in your national law	Comment: does the law meet the standards?
Workplace issue		
Non-discrimination		
Gender equality		
Healthy work environment		
Social dialogue		
No screening		
Confidentiality		
Dismissal		
Prevention		
Care & support		

Note : It is preferable to use your own national law. If unavailable, use a sample from the reference section, or another law which you may have - the closer the better; so if you are in say, Asia, and don't yet have a law in your country, use an example from that region. Does the national HIV/AIDS law, policy or plan include the world of work?

ACTIVITY 2

Rights in ILO conventions

AIMS To help you think about rights which are important for the fight against HIV/AIDS.

TASK Look at the ILO “core standards”. Which of these do you think might be of relevance to the struggle against HIV/AIDS and especially to people living with HIV/AIDS?

Note : A group may need some “prompting” to help them here. For example, a trade union group might consider that if a workplace is not unionized, or the union is not recognized, then workers will receive less protection. In a country with a high level of ‘AIDS orphans’, it might be particularly relevant to consider the Convention dealing with child labour.

ACTIVITY 3

Human rights and HIV/AIDS

AIMS To help you think about the rights in the Universal Declaration of Human Rights (UDHR).

TASK Read through the UDHR, and pick out those rights which you think are of particular relevance to the issue of HIV/AIDS.

Article number	What is the right?	Why is it important for the HIV/AIDS issue?

Note : You will need to obtain texts of key human rights conventions for this activity. The UN office in your country should be able to supply copies of the UDHR and other key documents. The website of the Office of the UN High Commissioner for Human Rights also provides the texts - in numerous languages: <http://www.unhchr.ch>

ACTIVITY 4

Arguments about human rights

AIMS To understand the relevance of human rights.

TASK In your group, examine the statements below. Decide whether you agree or disagree, and be ready to give your reasons.

“You cannot apply the same human rights standards to all countries. They have different cultural and religious traditions.”

“Human rights instruments place duties on governments. It is not the responsibility of employers or trade unions to ensure enforcement of human rights.”

“Human rights, if applied, mean that everyone is treated fairly and equally.”

“Human rights conventions make no difference at all to everyday life at work. They’re all just remote international conference ideas. It all sounds fine, but it’s not practical.”

“Universal rights provide the basis for national laws and local policies.”

ACTIVITY 5

Discrimination and stigmatization

AIMS To help you define and understand discrimination and stigmatization.

TASK Work in small groups.

In your group, draw up a list of the ways in which people living with HIV/AIDS, or suspected of living with HIV/AIDS, have been treated at work. This can be based on your own experience or on what you have observed, or read about, or heard about.

Now put each of the ways of treating people into two lists, one headed discrimination and one headed stigmatization.

Compare your lists with the lists of other groups in the course.

Now try to define stigmatization and discrimination in a few sentences, and the difference between them.

Note : The facilitator may need to help the group. Here are some examples:

- being excluded from the workplace because of their HIV status
- being denied training and promotion opportunities
- being removed from their job and given other work for no sound medical reason
- being ostracized and isolated by the people they work with
- being denied access to medical and sickness benefits, unemployment benefits, survivors' benefits
- being treated less fairly than other employees with other serious health problems.
- being denied reasonable accommodation for their illness, such as access to part-time work
- being dismissed from employment while still fit to work.

ACTIVITY 6
Ravi's story

AIMS To help you look at how discrimination works in one case.

TASK In your group, read through and discuss Ravi's story.

Which of the rights contained in the ILO Code was Ravi denied?

What other rights do you think he was denied?

Give your opinion of the court's judgement.

Note : Any other case study dealing with an individual who has been experiencing discrimination and stigmatization could be used.

ACTIVITY 7

Mary needs help

AIMS To help you think about problems workers may have who are affected by HIV/AIDS.

TASK One participant is asked to play the role of Mary, a worker, and another the shop steward/personnel officer. Other course members observe the interaction and discuss it at the end.

Mary : Your husband recently died of AIDS. He forced you to have unprotected sex, even after he was probably infected.

You are scared that you might be going to die soon yourself. Who will look after your children? You are the only person in your family with a regular job.

You are thinking of having an HIV test; you are not sure.

The other workers, knowing your husband died of AIDS, have started to avoid you. They move away when you go into the canteen, though you all used to share a table.

You have decided to go to the union shop steward/personnel officer. You never really talked to them before. You feel very nervous.

Shop steward/personnel officer : Mary has asked to see you. You know her husband recently died of AIDS. You think she has come to ask about payment of funeral expenses.

Note : This is a potentially difficult exercise, to be handled with care. Nobody should be forced to play the role of Mary if they feel at all uncomfortable in doing so.

With a mixed group of trade unionists and managers, it might be interesting to try getting a trade unionist to play the role of personnel officer, and vice versa. Do not assume that the shop steward is a man. See if there is a difference between the male and female response to Mary's dilemma.

ACTIVITY 8

Spreading the human rights message

AIMS To help you think about ways of spreading the message about the rights of those infected and affected by HIV/AIDS.

TASK In your group, plan a poster, leaflet or short sketch (play) highlighting one or, at most, two principles from Section 4 of the Code.

Note : Use coloured pens and flipcharts for this. Put posters on the wall. Hold a vote to choose the best. Do the same with the sketches.

ACTIVITY 9

Applying the Code at the workplace

AIMS To help you plan the application of the Code of Practice.

TASK In your group, think about this situation:

You have been asked by your Board of Directors to identify whether the company is complying with human rights standards for people with HIV/AIDS. Your company is located in a country with an increasing prevalence of HIV/ AIDS. Look at the principles set out in Section 4 of the Code. Identify:

1. the main areas where you think the company does not comply with the principles;
2. what action the company would need to take in order to comply;
3. how you would seek to involve the workers in bringing about any changes and what other organizations you might call on to assist.

Note : This is for an employers' group, although it might be interesting to ask trade unions to undertake it as well.

ACTIVITY 10

Rights don't stop at the factory gate

AIMS To help you think about the application of the Code of Practice to groups outside your workplace.

TASK Consider this situation in your group:

You are the members of a shop stewards' (or worker representatives') committee in a factory. Your union branch is the best organized in your town. You have won a few struggles in the past and are proud of helping other groups of workers.

You have negotiated a good AIDS policy with the management.

You have been approached by a group of sex workers. They want to form an association for mutual help, so that they can demand that clients use condoms, that the police will not harass them, etc.

Because of your union reputation, they have come to you for your advice and support.

The shop stewards' committee is now meeting to discuss its response.

Most of you are married.

Note : This, of course, is for a trade union group. It is best used with a group which already has some confidence, works together well, and is comfortable with the tutor. This is a sensitive activity. It could be carried out as a case study, or as a role play. Handle it with care. Remember that role plays can produce strong emotional reactions.

- I. ILO core Conventions
- II. The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up
- III. ILO Convention No. 111
- IV. Philippines Law on HIV/AIDS

I. ILO core Conventions

The terms 'core Conventions' or 'core labour standards' refer to a group of eight ILO Conventions which define basic human rights at work. Convention No. 111 is of particular importance in handling the issue of HIV/AIDS.

The eight core Conventions are:

- **Forced Labour Convention, 1930 (No. 29)**
Aims at the immediate suppression of all forms of forced or compulsory labour. There are five exceptions: compulsory military service; certain civic obligations; prison labour resulting from a conviction in court; work needed during emergencies such as war, fires and earthquakes; and minor communal services, for example, Special Youth Schemes.
- **Freedom of Association and Protection of the Right to Organize, 1948 (No. 87)**
Guarantees the removal of acts of discrimination against trade unions as well as the protection of employers' and workers' organizations against interference or restrictions by public authorities.
- **Right to Organize and Collective Bargaining, 1949 (No. 98)**
Protects workers who are exercising the right to organize; upholds the principle of non-interference between workers' and employers' organizations; and promotes voluntary collective bargaining.
- **Equal Remuneration Convention, 1951 (No. 100)**
Underscores the principle of equal pay between men and women for work of equal value. This concerns all payments made by an employer for work by men and women: basic wages and any additional payments whether direct or indirect, cash or kind.
- **Abolition of Forced Labour Convention, 1957 (No. 105)**
Provides for the abolition of all forms of forced or compulsory labour as a means of political punishment or education; as punishment for the expression of certain political and ideological opinions; as workforce mobilization; as labour discipline; as a punishment for taking part in strikes; and as a measure of racial, social, national or religious discrimination.

- **Discrimination (Employment and Occupation) Convention 1958 (No. 111)**
Protects the right to equal opportunity and treatment. Provides for a national policy designed to eliminate, in respect of employment and occupation, all discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.
- **Minimum Age Convention, 1973 (No.138)**
Requires States to pursue national policies which will effectively abolish child labour. It establishes a minimum age for employment so that young people can develop physically and mentally before entering the workforce.
- **Worst Forms of Child Labour Convention, 1999 (No. 182)**
Defines as the worst forms of child labour such practices as child slavery, forced labour, debt bondage, trafficking, serfdom, prostitution, pornography and various forms of hazardous and exploitative work. It calls for immediate and effective measures to secure the prohibition and elimination of these forms of child labour as a matter of urgency.

II. The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up

In 1998, the International Labour Conference adopted the *ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up*. The declaration recognizes that all states, by their membership in the ILO, have an obligation to respect, promote and put into practice in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of the core Conventions. The first three articles of the Declaration read as follows:

The International Labour Conference,

1. Recalls:

(a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

(b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour; and*
- (d) the elimination of discrimination in respect of employment and occupation.*

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed need, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to Article 12 of its Constitution, to support these efforts:

- (a) by offering technical co-operation and advisory services to promote the ratification and implementation of the fundamental Conventions;*
- (b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and*
- (c) by helping the Members in their efforts to create a climate for economic and social development...*

The existing supervisory machinery of the ILO provides the means of ensuring the application of Conventions in the States that have ratified them. For those that have not, the Declaration makes an important new contribution. Each year, the States that have not ratified the core Conventions will be asked to report on progress made in implementing the principles enshrined in them. This is an opportunity for States to re-examine the obstacles to ratification.

In addition, a global report will be prepared each year, focussing on one of the four fundamental rights and this will be submitted to the International Labour Conference.

The first cycle of such reports is:

- 2000: freedom of association
- 2001: the elimination of all forms of forced or compulsory labour
- 2002: child labour
- 2003: the elimination of discrimination.

The cycle will then be repeated.

III. ILO Convention No. 111

Discrimination (Employment and Occupation) Convention, 1958

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office,
and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field
of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of
race, creed or sex, have the right to pursue both their material well-being and their spiritual
development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the
Universal Declaration of Human Rights,

adopts the twenty-fifth day of June of the year one thousand nine hundred and fifty-eight,
the following Convention, which may be cited as the Discrimination (Employment and Occupation)
Convention, 1958:

Article 1

1. For the purpose of this Convention the term discrimination includes –
 - (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice --

- (a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
- (b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
- (c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- (d) to pursue the policy in respect of employment under the direct control of a national authority;
- (e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
- (f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an Act communicated to the Director-General of the International Labour Office for registration. Such denunciation should not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the

International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

IV. Philippines Law on HIV/AIDS

PHILIPPINES OFFICIAL GAZETTE
Republic Act No. 8504

An Act promulgating policies and prescribing measures for the prevention and control of HIV/AIDS in the Philippines. Instituting a nationwide HIV/AIDS information and educational program. Establishing a comprehensive HIV/AIDS monitoring system. Strengthening the Philippine National Aids Council and for other purposes
Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled;

Section 1 – *Title.* - This Act shall be known as the “Philippines AIDS Prevention and Control Act of 1998”.

Section 2 – *Declaration of Policies.* - Acquired Immune Deficiency Syndrome (AIDS) is a disease that recognizes no territorial, social, political and economic boundaries for which there is no known cure. The gravity of the AIDS threat demands strong State action today, thus:

a) The State shall promote public awareness about the causes; modes of prevention and control of HIV/AIDS through a comprehensive nationwide educational and information campaign organized and conducted by the State. Such campaigns shall promote value formation and employ scientifically proven approaches, focus on the family as a basic social unit, and be carried out in all schools and training centres, workplaces, and communities. This program shall involve affected individuals and groups, including people living with HIV/AIDS.

b) The State shall extend to every person suspected or known to be infected with HIV/AIDS full protection of his/her human rights and civil liberties. Towards this end:

- (1) compulsory HIV testing shall be considered unlawful unless otherwise provided in this Act;
- (2) the right to privacy of individuals with HIV shall be guaranteed;
- (3) discrimination, in all its forms and subtleties, against individuals with HIV or person perceived or suspected of having HIV shall be considered inimical to individual and national interest; and
- (4) provision of basic health and social services for individuals with HIV shall be assured.

c) The State shall promote utmost safety and universal precautions in practices and procedures that carry the risk of HIV transmission.

d) The State shall positively address and seek to eradicate conditions that aggravate the spread of HIV infection, including but not limited to, poverty, gender inequality, promotion, marginalization, drug abuse and ignorance.

e) The State shall recognize the potential role of affected individuals in propagating vital information and educational messages about HIV/AIDS and shall utilize their experience to warn the public about the disease.

Section 3 – *Definition of Terms.* - As used in this Act, the following terms are defined as follows:

a) “*Acquired Immune Deficiency Syndrome (AIDS)*” – a condition characterized by a combination of signs and symptoms, caused by HIV contracted from another person and which attacks and weakens the body’s immune system, making the afflicted individual susceptible to other life-threatening infections.”

b) “*Anonymous Testing*” – refers to an HIV testing procedure whereby the individual being tested does not reveal his/her true identity. An identifying number or symbol is used to substitute for the name and allows the laboratory conducting the test and the person on whom the test is conducted to match the test results with the identifying number or symbol.

c) “*Compulsory HIV Testing*” – refers to HIV testing imposed upon a person attended or characterized by the lack of or vitiated consent, use of physical force, intimidation or any form of compulsion.

d) “*Contact Tracing*” – refers to the method of finding and counselling the sexual partner(s) of a person who has been diagnosed as having sexually transmitted disease.

e) “*Human Immunodeficiency Virus (HIV)*” – refers to the virus which causes AIDS.

f) “*HIV/AIDS Monitoring*” – refers to the documentation and analysis of the number of cases of HIV/AIDS infection and the pattern of its spread.

g) “*HIV/AIDS Prevention and Control*” – refers to measures aimed at protecting non-infected persons from contracting HIV and minimizing the impact of the condition of persons living with HIV.

h) “*HIV-positive*” – refers to the presence of HIV infection as documented by the presence of HIV or HIV antibodies in the sample being tested.

i) “*HIV-negative*” – denotes the absence of HIV or HIV antibodies upon HIV testing.

j) “*HIV-testing*” – refers to any laboratory procedure done on an individual to determine the presence or absence of HIV infection.

k) “*HIV Transmission*” – refers to the transfer of HIV from one infected person to an uninfected individual, most commonly thought sexual intercourse, blood transfusion, sharing of intravenous needles and during pregnancy.

l) “*High-risk Behaviour*” – refers to a person’s frequent involvement in certain activities which increase the risk of transmitting or acquiring HIV.

- m) *“Informed Consent”* – refers to the voluntary agreement of a person to undergo or be subjected to a procedure based on full information, whether such permission is written, or expressed indirectly.
- n) *“Medical Confidentiality”* – refers to the relationship of trust and confidence created or existing between a patient or a person with HIV and his attending physician, consulting medical specialist, nurse, medical technologist and all other health workers or personnel involved in any counselling, testing or professional care of the former; it also applies to any person who, in any official capacity, has acquired or may have acquired such confidential information.
- o) *“Person with HIV”* – refers to an individual whose HIV test indicates, directly or indirectly, that he/she is infected with HIV.
- p) *“Pre-test Counselling”* – refers to the process of providing an individual with information on the biomedical aspects of HIV/AIDS and emotional support for any psychological implications of undergoing HIV testing and the test result itself before he/she is subject to the test.
- q) *“Post-test Counselling”* – refers to the process of providing risk-reduction information and emotional support to a person who submitted to HIV testing at the time that the test result is released.
- r) *“Prophylactic”* – refers to any agent or device used to prevent the transmission of a disease.
- s) *“Sexually Transmitted Diseases”* - refers to any disease that may be acquired or passed on through sexual contact.
- t) *“Voluntary HIV Testing”* – refers to HIV testing done on an individual who, after having undergone pre-test counselling, willingly submits himself/herself to such a test.
- u) *“Window Period”* – refers to the period of time, usually lasting from two weeks to six (6) months during which an infected individual will test “negative” upon HIV testing but can actually transmit the infection.

Article I

Education and information

Section 4 – HIV/AIDS Education in Schools. - The Department of Education, Culture and Sports (DECS), and the Technical Education and Skills Development Authority (TESDA), utilizing official information provided by the Department of Health, shall integrate instruction on the causes, modes of transmission and ways of preventing HIV/AIDS and other sexually transmitted diseases in subjects taught in public and private schools at intermediate grades, secondary and tertiary level, including non-formal and indigenous learning systems: provided that if the integration of

HIV/AIDS education is not appropriate or feasible, the DECS and TESDA shall design special modules on HIV/AIDS prevention and control; provided, further, that it shall not be used as an excuse to propagate birth control or the sale or distribution of birth control devices; provided, finally, that it does not utilize sexually explicit materials.

Flexibility in the formulation and adoption of appropriate course content, scope, and methodology in each educational level or group shall be allowed after consultations with Parent-Teachers-Community Associations, Private School Associations, school officials and other interest groups. As such, no instruction shall be offered to minors without adequate prior consultation with parents, who must agree to the thrust and content of the instruction materials.

All teachers and instructors of said HIV/AIDS courses shall be required to undergo a seminar or training on HIV/AIDS prevention and control to be supervised by the DECS, CHED AND TESDA, in co-ordination with the Department of Health (DOH), before they are allowed to teach on the subject.

Section 5 – HIV/AIDS Information as a Health Service. - HIV/AIDS education and information dissemination shall form part of the delivery of health services by health practitioners, workers and personnel. The knowledge and capabilities of all public workers shall be enhanced to include skills for proper information dissemination and education on HIV/AIDS. It shall likewise be considered a civic duty of health providers in the private sector to make available to the public such information necessary to control the spread of HIV/AIDS and to correct common misconceptions about this disease. The training of health workers shall include discussions on HIV-related ethical issues such as confidentiality, informed consent and the duty to provide treatment.

Section 6 – HIV/AIDS Education in the Workplace. - All government and private employees, workers, managers, and supervisors, including members of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), shall be provided with the standardized basic information and instruction on HIV/AIDS which shall include topics on confidentiality in the workplace and attitude towards infected employees and workers. In collaboration with the Department of Health (DOH), the Secretary of the Department of Labour and Employment (DOLE) shall oversee the anti-HIV/AIDS campaign in all private companies, while the Armed Forces Chief of Staff and the Director General of the PNP shall oversee the implementation of this Section.

Section 7 – HIV/AIDS Education for Filipinos Going Abroad. - The State shall ensure that all overseas Filipino workers and diplomatic, military, trade, and labour officials and personnel to be assigned overseas shall undergo or attend a seminar on the causes, prevention and consequences of HIV/AIDS before certification for overseas assignment. The Department of Labour and Employment or the Department of Foreign Affairs, the Department of Tourism and the Department of Justice through the Bureau of Immigration, as the case may be, in collaboration with the Department of Health (DOH), shall oversee the implementation of this Section.

Section 8 – Information Campaign for Tourists and Transients. - Informational aids or materials on the cause, modes of transmission, prevention, and consequences of HIV infection shall be adequately provided at all international ports of entry and exit. The Department of Tourism, the Department of Foreign Affairs, the Department of Justice through the Bureau of Immigration, in collaboration with the Department of Health (DOH) shall oversee the implementation of this Act.

Section 9 – HIV/AIDS Education in communities. - Local government units, in collaboration with the Department of Health (DOH) shall conduct an educational and information campaign on HIV/AIDS. The provincial governor, city or municipal mayor and the barangay captain shall co-ordinate such campaign among concerned government agencies, non-governmental organizations and church-based groups.

Section 10 – Information on Prophylactics. - Appropriate information shall be attached to or provided with every prophylactic offered for sale or given as a donation. Such information shall be legibly printed in English and Filipino and shall contain literature on the proper use of the prophylactic device or agent, its efficacy against HIV and STD infection, as well as the importance of sexual abstinence and mutual fidelity.

Section 11 – Penalties of Misleading Information. - Misinformation on HIV/AIDS prevention and control through false and misleading advertising and claims in any of the three media or the promotional marketing of drugs, devices, agents or procedures without prior approval from the Department of Health and the Bureau of Food and Drugs and the requisite medical and scientific basis, including markings and indications on drugs and devices or agents purporting to be a cure or a fail-safe prophylactic for HIV infection, is publishable with a penalty of imprisonment for two (2) months to two (2) years, without prejudice to the imposition of administrative sanctions such as fines and suspension or revocation of professional or business licence.

Article II

Safe practices and procedures

Section 12 – Requirement on the Donation of Blood, Tissue, or Organ. - No laboratory or institution shall accept a donation of tissue or organ, whether such donation is gratuitous or onerous, unless a sample from the donor has been tested negative for HIV. All donated blood shall also be subjected to HIV testing and HIV(+) blood shall be disposed of properly and immediately. A second testing may be demanded as a matter of right by the blood, tissue or organ recipient or his immediate relatives before transfusion or transplant, except during emergency cases: provided that donations of blood, tissue, or organ testing positive for HIV may be accepted for research purposes only, and subject to strict sanitary disposal requirements.

Section 13 – Guidelines on Surgical and similar Procedures. - The Department of Health (DOH), in consultation and in co-ordination with concerned professional organizations and hospital associations, shall issue guidelines on precautions against HIV transmission during surgical,

dental, embalming, tattooing or similar procedures. The DOH shall likewise issue guidelines on the handling and disposition of cadavers, body fluids or wastes of persons known or believed to be HIV-positive.

The necessary protective equipment such as gloves, goggles and gowns, shall be made available to all physicians and health care providers and similar exposed personnel at all times.

Section 14 – Penalties for Unsafe Practices and Procedures. - Any person who knowingly or negligently causes another to get infected with HIV in the course of the practice of his/her profession through unsafe and unsanitary practice or procedure is liable to suffer a penalty of imprisonment for six (6) years to twelve (12) years, without prejudice to the imposition of administrative sanctions such as, but not limited to, fines and suspension or revocation of the license to practice his/her profession. The permit or license of any business entity and the accreditation of hospitals, laboratory, or clinics may be cancelled or withdrawn if said establishments fail to maintain such safe practices and procedures as may be required by the guidelines to be formulated in compliance with Section 13 of this Act.

Article III

Testing, screening and counselling

Section 15 – Consent as a Requisite for HIV Testing. - No compulsory HIV testing shall be allowed. However, the State shall encourage voluntary testing for individuals with a high risk for contracting HIV: provided that written informed consent must first be obtained. Such consent shall be obtained from the person concerned if she/he is of legal age or from the parents or legal guardian in the case of a minor or a mentally incapacitated individual. Lawful consent to HIV testing of a donated human body, organ, tissue, or blood shall be considered as having been given when:

a) a person volunteers or freely agrees to donate his/her blood, organ, or tissue for transfusion, transplantation or research;

b) a person has executed a legacy in accordance with Section 3 of Republic Act No. 7170, also known as the “Organ Donation Act of 1991”;

c) a donation is executed in accordance with Section 4 of Republic Act No. 7170.

Section 16 – Prohibitions on Compulsory HIV Testing. - Compulsory HIV testing as a precondition to employment, admission to educational institutions, the exercise of freedom of abode, entry or continued stay in the country, or the right to travel, the provision of medical service or any other kind of service or the continued enjoyment of said undertakings shall be deemed unlawful.

Section 17 – Exception to the Prohibition on Compulsory Testing. - Compulsory HIV testing may be allowed only in the following instances:

- a) When a person is charged with any of the crimes punishable under Articles 264 and 266 as amended by Republic Act No. 8353, 335 and 338 of Republic Act No. 3815, otherwise known as the “Revised Penal Code” or under Republic Act no 7659.
- b) When the determination of the HIV status is necessary to resolve the relevant issues under Executive Order no 309, otherwise known as the “Family Code of the Philippines”, and
- c) When complying with the provisions of Republic Act no 7170, otherwise known as the “Organ Donation Act” and Republic Act No. 7719, otherwise known as the “National Blood Services Act”.

Section 18 – Anonymous HIV Testing.- The State shall provide a mechanism for anonymous HIV testing and shall guarantee anonymity and medical confidentiality in the conduct of such tests.

Section 19 – Accreditation of HIV Testing Centers. - All testing centers, hospitals, clinics and laboratories offering HIV testing services are mandated to seek accreditation from the Department of Health, which shall set and maintain reasonable accreditation standards.

Section 20 – Pre-test and Post-test Counselling. - All testing centres, clinics, or laboratories which perform any HIV test shall be required to provide and conduct free pre-test counselling and post-test counselling for persons who avail themselves of their HIV/AIDS testing services. However, such counselling services must be provided only by persons who meet the standards set by the DOH.

Section 21 – Support for HIV Testing Centers. - The Department of Health shall strategically build and enhance the capabilities for HIV testing of hospitals, clinics, laboratories, and other testing centers, primarily by ensuring the training of competent personnel who will provide such services in said testing sites.

Article IV **Health and support services**

Section 22 – Hospital-based Services. - Persons with HIV/AIDS shall be afforded basic health services in all government hospitals, without prejudice to optimum medical care which may be provided by special AIDS wards and hospitals.

Section 23 – Community-based Services. - Local government units, in co-ordination and in co-operation with concerned government agencies, non-governmental organizations, persons with HIV/AIDS and groups most at risk of HIV infection shall provide community-based HIV/AIDS prevention and care services.

Section 24 – Livelihood Programs and Trainings. - Trainings for livelihood, self-help and co-operative programs shall be made accessible and available to all persons with HIV/AIDS. Person infected with HIV/AIDS shall not be deprived of full participation in any livelihood, self-help and co-operative programs for reason of their health conditions.

Section 25 – Control of Sexually Transmitted Diseases. - The Department of Health, in co-ordination and in co-operation with concerned government agencies and non-governmental organizations shall pursue the prevention and control of sexually transmitted diseases to help contain the spread of HIV infection.

Section 26 – Insurance for Persons with HIV. - The Secretary of Health, in co-operation with the commissioner of the Insurance Commission and other public and private insurance agencies, shall conduct a study on the feasibility and viability of setting up, a package of insurance benefits and, should it be warranted, implement an insurance coverage program for persons with HIV. The study shall be guided by the principle that access to health insurance is part of an individual’s right to health and is the responsibility of the State and of society as a whole.

**Article V
Monitoring**

Section 27 – Monitoring Program. - A comprehensive HIV/AIDS monitoring program or “AIDSWATCH” shall be established under the Department of Health to determine and monitor the magnitude and progression of HIV infection in the Philippines and for the purpose of evaluating the adequacy and efficacy of the countermeasures being employed.

Section 28 – Reporting Procedures. - All hospitals, clinics, laboratories, and testing centers for HIV/AIDS shall adopt measures in assuring the reporting and confidentiality of any medical record, personal data, or file, including all data which may be accessed from various data banks or information system. The Department of Health through its AIDSWATCH monitoring program shall receive, collate and evaluate all HIV/AIDS related medical reports. The AIDSWATCH database shall utilize a coding system that promotes client anonymity.

Section 29 – Contact Tracing. - HIV/AIDS contact tracing and all other related health intelligence activities may be pursued by the Department of Health: provided that these do not run counter to the general purpose of this Act; provided, further, that any information gathered shall remain confidential and classified, and can only be used for statistical and monitoring purposes and not as basis or qualification for any employment, school attendance, freedom of abode, or travel.

**Article VI
Confidentiality**

Section 30 – Medical Confidentiality. - All health professionals, medical instructors, workers, employers, recruitment agencies, insurance companies, data encoders, and other custodians of any

medical record, file, data, or test results are directed to strictly observe confidentiality in the handling of all medical information, particularly the identity and status of person with HIV.

Section 31 – Exceptions to the Mandate of Confidentiality. - Medical confidentiality shall not be considered breached in the following cases:

- a) when complying with reportorial requirements in conjunction with the AIDSWATCH programs provided in Section 27 of this Act;
- b) when informing other health workers directly involved or about to be involved in the treatment or care of a person with HIV/AIDS: provided that such treatment or care carry the risk of HIV transmission; provided, further, that such workers shall be obliged to maintain the shared medical confidentiality;
- c) when responding to a subpoena duces tecum and subpoena ad testificandum issued by a Court with jurisdiction over a legal proceeding where the main issue is the HIV status of the individual: provided that the confidential medical record shall be properly sealed by its lawful custodian after being double-checked for accuracy by the head of the office or department, hand-delivered, and personally opened by the judge; provided, further, that the judicial proceedings be held in executive session.

Section 32 – Release of HIV/AIDS Test Results. - All results of HIV/AIDS testing shall be confidential and shall be released only to the following persons:

- a) the person who submitted himself/herself to such test;
- b) either parent of a minor child who has been tested;
- c) a legal guardian in the case of insane persons or orphans;
- d) a person authorized to receive such results in conjunction with the AIDSWATCH program as provided in Section 27 of this Act;
- e) a justice of the Court of Appeals or the Supreme court, as provided under subsection (c) of this Act and in accordance with the provision of Section 16 hereof.

Section 33 – Penalties for Violations of Confidentiality. - Any violation of medical confidentiality as provided in Sections 30 and 32 of this Act shall suffer the penalty of imprisonment for six (6) months to four (4) years, without prejudice to administrative sanctions such as fines and suspension or revocation of the violator's license to practice his/her profession, as well as the cancellation or withdrawal of the license to operate any business entity and the accreditation of hospitals, laboratories or clinics.

Section 34 – Disclosure to Sexual Partners. - Any person with HIV is obliged to disclose his/her HIV status and health condition to his/her spouse or sexual partner at the earliest opportune time.

Article VII

Discriminatory acts and policies

Section 35 – Discrimination in the Workplace. - Discrimination in any form from pre-employment to post-employment, including hiring, promotion, or assignment, based on the actual, perceived or suspected HIV status of an individual is prohibited. Termination of work on the sole basis of actual, perceived or suspected HIV status is deemed unlawful.

Section 36 – Discrimination in schools. - no educational institution shall refuse admission or expel, discipline, segregate, deny participation, benefits or services to a student or prospective student on the basis of his/her actual, perceived or suspected HIV status.

Section 37 – Restrictions on Travel and Habitation. – The freedom of abode, lodging and travel of a person with HIV shall not be abridged. No person shall be quarantined, placed in isolation, or refused lawful entry into or deported from Philippine territory on account of his/her actual, perceived or suspected HIV status.

Section 38 – Inhibition from Public Service. - The right to seek an elective or appointive public office shall not be denied to a person with HIV.

Section 39 – Exclusion from Credit and Insurance Services. – All credit and loan services, including health, accident and life insurance shall not be denied to a person on the basis of his/her actual, perceived or suspected HIV status: provided that the person with HIV has not concealed or misrepresented the fact to the insurance company upon application. Extension and continuation of credit and loan shall likewise not be denied solely on the basis of said health condition.

Section 40 – Discrimination in Hospitals and Health Institutions. – No person shall be denied health care service or be charged with a higher fee on account of actual, perceived or suspected HIV status.

Section 41 – Denial of Burial Services. - A deceased person who had AIDS or who was known, suspected or perceived to be HIV-positive shall not be denied any kind of decent burial services.

Section 42 – Penalties for Discriminatory Acts and Policies. - All discriminatory acts and policies referred to in this Act shall be punishable with a penalty of imprisonment for six (6) months to four (4) years and a fine not exceeding ten thousand pesos (P10,000.00). In addition, the licenses or permits of schools, hospitals and other institutions found guilty of committing discriminatory acts and policies described in this Act shall be revoked.

Article VIII**The Philippine National Aids Council**

Section 43 – Establishment. - The Philippine National AIDS Council (PNAC) created by virtue of Executive Order No. 39 dated 3 December 1992 shall be reconstituted and strengthened to enable the Council to oversee an integrated and comprehensive approach to HIV/AIDS prevention and control in the Philippines. It shall be attached to the Department of Health.

Section 44 – Functions. - The Council shall be the central advisory, planning and policy-making body for the comprehensive and integrated HIV/AIDS prevention and control program in the Philippines. The Council shall perform the following functions:

a) secure from government agencies concerned recommendations on how their respective agencies could operationalize specific provisions of this Act. The Council shall integrate and co-ordinate such recommendations and issue implementing rules and regulations of this Act. The Council shall likewise ensure that there is adequate coverage of the following:

- the institution of a nationwide HIV/AIDS information and education program;
- the establishment of a comprehensive HIV/AIDS monitoring system;
- the issuance of guidelines on medical and other practices and procedures that carry the risk of HIV transmission;
- the provision of accessible and affordable HIV testing and counselling services to those who are in need of it;
- the provision of acceptable health and support services for persons with HIV/AIDS in hospitals and in communities;
- the protection and promotion of the rights of individuals with HIV; and
- the strict observance of medical confidentiality.

b) monitor the implementation of the rules and regulations of this Act, issue or cause the issuance of orders or make recommendations to the implementing agencies as the Council considers appropriate;

c) develop a comprehensive long-term national HIV/AIDS prevention and control program and monitor its implementation;

d) co-ordinate the activities of and strengthen the working relationship between government and non-government agencies involved in the campaign against HIV/AIDS;

e) coordinate and co-operate with foreign and international organizations regarding data collection, research and treatment modalities concerning HIV/AIDS; and

f) evaluate the adequacy of and make recommendations regarding the utilization of national resources for the prevention and control of HIV/AIDS in the Philippines.

Section 45 – Membership and Composition. -

(a) The Council shall be composed of twenty six (26) members as follows;

- 1) the Secretary of the Department of Health,
- 2) the Secretary of the Department of Education, Culture and Sports or his representative,
- 3) the Chairperson of the Commission on Higher Education or his representative,
- 4) the Director-General of the Technical Education and Skills Development Authority or his representative,
- 5) the Secretary of the Department of Labor and Employment or his representative,
- 6) the Secretary of the Department of Social Welfare and Development or his representative,
- 7) the Secretary of the Department of the Interior and Local Government or his representative,
- 8) the Secretary of the Department of Justice or his representative,
- 9) the Director-General of the National Economic and Development Authority or his representative,
- 10) the Secretary of the Department of Tourism or his representative,
- 11) the Secretary of the Department of Budget and Management or his representative,
- 12) the Secretary of the Department of Foreign Affairs or his representative,
- 13) the Head of the Philippine Information Agency or his representative,
- 14) the President of the League of Governors or his representative,
- 15) the President of the League of City Mayors or his representative,
- 16) the Chairperson of the Committee on Health of the Senate of the Philippines or his representative,
- 17) the Chairperson of the Committee on Health of the Senate of the House of Representatives or his representative,
- 18) two (2) representatives from organizations of medical/health professionals,
- 19) six (6) representatives from non-governmental organizations involved in HIV/AIDS prevention and control efforts or activities, and
- 20) a representative of an organization of persons dealing with HIV/AIDS.

b) To the greatest extent possible, appointment to the Council must ensure sufficient and discernible representation from the fields of medicine, education, health care, law, labour, ethics and social services.

c) All members of the Council shall be appointed by the President of the Republic of the Philippines, except for the representatives of the Senate and the House of Representatives, who shall be appointed by the Senate President and the House Speaker, respectively.

d) The members of the Council shall be appointed not later than thirty (30) days after the date of the enactment of this Act.

e) The Secretary of Health shall be the permanent chairperson the Council.

f) For members representing medical/health professional groups and the six (6) non-governmental organizations, they shall serve for a term of two (2) years, renewable upon recommendation of the Council.

Section 46 – Reports. - The Council shall submit to the President and to both Houses of Congress comprehensive annual reports on the activities and accomplishments of the Council. Such annual reports shall contain assessments and evaluation of intervention programs, plans and strategies for the medium and long-term prevention and control program on HIV/AIDS in the Philippines.

Section 47 – Creation of Special HIV/AIDS Prevention and Control Service. - There shall be created in the Department of Health a Special HIV/AIDS Prevention and Control Service staffed by qualified medical specialists and support staff with permanent appointment and supported with an adequate yearly budget. It shall implement programs on HIV/AIDS prevention and control. In addition, it shall also serve as the secretariat of the Council.

Section 48 – Appropriations. - The amount of twenty million pesos (P20,000,000.00) shall be initially appropriated out of the funds of the National Treasury. Subsequent appropriations shall be provided by Congress in the annual budget of the Department of Health under the General Appropriations Act.

Article IX

Miscellaneous provisions

Section 49 – Implementing Rules and Regulations. - Within six (6) months after it is fully reconstituted, the Council shall formulate and issue the appropriate rules and regulations necessary for the implementation of this Act.

Section 50 – Separability Clause. - If any provision of this Act is declared invalid, the remainder of this Act or any provision not affected thereby shall remain in force and effect.

Section 51 – Repealing Clauses. - All laws, presidential decrees, executive orders and their implementing rules inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

Section 52 – Effectivity. - This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

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