

# NAMIBIAN HIV/AIDS CHARTER OF RIGHTS

## Preamble

Recognising that people living with HIV/AIDS continue to face discrimination and prejudice which preclude them from access to services and benefits

And further recognising that a rights-based approach to HIV/AIDS which outlaws discrimination on the basis of HIV status is central to an effective public health response to HIV/AIDS

And further recognising that people living with HIV/AIDS should be involved at all levels of decision-making regarding the design and implementation of HIV/AIDS programmes and policies

And further recognising that people living with HIV/AIDS should be empowered and empower themselves to effectively participate in decision-making processes

And further recognising that the responsibility to effectively prevent the transmission of HIV is not limited to people living with HIV/AIDS but rests on Namibian society as a whole, and that all persons should empower themselves through education and information to gain knowledge about sexually transmitted diseases including HIV/AIDS, that will protect others and minimise the risk of HIV infection and reinfection

And further recognising that an effective response to the AIDS epidemic requires commitment at a political level to implement an effective HIV/AIDS prevention strategy; prevent discrimination and stigmatisation on the basis of HIV status; promote openness and transparency regarding the disease; and provide adequate information that will enable every person to make informed choices and to take responsibility for his or her own choices

NOW THEREFORE this Charter sets out those basic rights which all people enjoy or should enjoy and which should not be denied to persons affected by HIV or AIDS, as well as certain duties.

## 1. Equal protection of the law and equal access to public and private facilities and benefits

- HIV status cannot be considered as a ground on which to deprive any person of his or her basic human rights.
- Respect for the inherent dignity of all persons and the right to equal protection of the law requires that persons living with HIV/AIDS should have equal access to public and private services, benefits and opportunities. HIV testing should not be required as a precondition for such access.
- Public measures should be adopted to protect persons living with HIV/AIDS, including children and adolescents, from discrimination in employment, housing, education, childcare and custody and the provision of medical, social and welfare services.

## 2. Liberty, autonomy, security of the person and freedom of movement

- All persons, including persons living with HIV/AIDS, have the same rights to liberty, autonomy, security of the person and freedom of movement in Namibia and should have the same rights between countries.

- Segregation, isolation or quarantine of persons in prisons, schools, hospitals or elsewhere merely on the grounds of HIV/AIDS is unjustified and should therefore not be permitted.
- Persons living with HIV/AIDS are entitled to autonomy in decisions regarding marriage and reproductive health. Adequate counselling, information and education in this regard should be made available to all persons to enable them to make informed decisions.

### **3. Privacy and confidentiality**

Confidentiality in the context of the AIDS pandemic is a concept that is widely misunderstood and is often quite incorrectly labelled as a veil of secrecy that undermines efforts to control the spread of HIV. In the context of HIV/AIDS, confidentiality means that health-care workers are ethically and legally required to keep all patient information to themselves. This means that any information about the patient's illness or treatment can only be given to another person with the patient's consent.

It is crucial to distinguish between the promotion of open discussion about HIV/AIDS and non-discrimination at a community and society level on the one hand, and the need for confidentiality on the other. Both of these contribute positively to the public health interest in reducing transmission and in providing care and support. Therefore:

- Persons living with HIV/AIDS have the right to confidentiality and privacy regarding their health and HIV status. This right endures after death. Information about HIV status may not be disclosed to a third party without the consent of the person with HIV/AIDS, unless legally required.
- The sharing of information regarding HIV status by the person living with HIV with others remains a matter of individual choice. However, this practice should be encouraged through appropriate counselling, education and the creation of a supportive environment and appropriate services to those affected by this disclosure.
- It should be explained to patients that in order to optimise treatment and care it may be necessary to disclose personal health information to other health-care workers, but that this will only be done with the prior consent of the patient.

### **4. Counselling and testing**

- Voluntary and confidential counselling and testing for HIV should be encouraged.
- The establishment of affordable and accessible voluntary confidential counselling and testing facilities is essential. These facilities should provide quality pre- and post-test and ongoing counselling by qualified and competent counsellors.
- Testing should be done only with informed consent.

### **5. Partner notification and reporting**

- Health-care workers and counsellors are obliged to maintain confidentiality regarding a person's HIV status.
- Disclosure by a health-care worker of a person's HIV status without that person's consent should only take place to an identifiable sexual partner at risk in accordance with the following criteria:

- The HIV-positive person in question has been thoroughly counselled as to the need for partner notification.
  - The HIV-positive person has refused to notify or consent to the notification of his/her partner(s).
  - A real risk of transmission to the partner(s) exists.
  - The HIV-positive person is given reasonable advance notice of the intention to notify.
  - Follow-up is provided to ensure support to those involved, as necessary.
- Reporting of HIV-positive results to any health information system should take place on an anonymous basis.
  - Reporting of HIV-positive results should be undertaken for the sole purpose of gathering epidemiological data to facilitate the management of the HIV/AIDS epidemic.

## 6. Gender

All females and males are potentially at risk of HIV infection and are affected by HIV/AIDS. Disproportionate numbers of women and girl children are infected with HIV. The predominantly subordinate position of women and girl children in society makes them especially vulnerable to the risk of HIV infection. This is exacerbated by the high prevalence of domestic violence against and sexual abuse of women and girl children. Therefore:

- The empowerment of women should be promoted through appropriate programmes aimed at raising the status of women and eliminating adverse social, economic and cultural factors that put women at risk of infection, as well as at strengthening men's sense of responsibility in relation to the prevention of transmission.
- Women and men should be equal partners in decision-making and matters of family planning and reproductive health. This includes the right to demand and to take appropriate precautionary measures to prevent transmission of HIV.
- Appropriate counselling and information regarding transmission of HIV should be made available to persons living with HIV/AIDS who wish to exercise the right to marry and/or found a family.
- Women with HIV should have access to adequate information to enable them to make informed decisions regarding their reproductive health.

## 7. Children, adolescents and HIV/AIDS

- Children and adolescents enjoy the same rights as adults in respect of access to information, privacy, confidentiality, respect, informed consent and means of prevention.
- Quality health care, information and education should be made available to all children and adolescents, including those living with HIV/AIDS. This should include information relating to HIV/AIDS and STD prevention and care, inside and outside school, which is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality and rights.
- Children and adolescents should be ensured adequate access to user-friendly, confidential sexual and reproductive health services. These services should include information on HIV/AIDS and STDs, sexual health advice, counselling, HIV testing and prevention measures including free access to condoms and social support services. The provision of these services to children/adolescents should reflect an appropriate balance between the rights of the child or adolescent to be involved in decision-making according to his or her evolving capabilities and the rights and duties of parents or guardians for the health and well-being of the child.

## **8. Supportive and enabling environment for vulnerable groups infected and affected by HIV/AIDS**

- A supportive and enabling environment for vulnerable groups should be promoted by identifying and addressing underlying prejudices and inequalities through advocacy, community dialogue, policy formulation and implementation, specially designed social and health services and support to community groups.
- Associations comprising members of different vulnerable groups should be established and supported for purposes of peer education, empowerment, positive behavioural change and social support.
- The development of adequate accessible and effective HIV/AIDS-related prevention and care, education, information and services by and for vulnerable groups should be supported. Such groups should actively be involved in the design and implementation of these services.

## **9. Children orphaned by AIDS**

- Children orphaned by AIDS, regardless of their HIV status, who have lost one or both of their parents due to HIV/AIDS, are entitled to love and care, and a nurturing environment that would enable them to realise their full potential.
- The rights of the child should be respected, therefore children orphaned by AIDS should not be discriminated against. It is recognised that children orphaned by AIDS should be cared for and supported within their communities and that all decisions should be made in their best interests.
- Information on services, grants and benefits for children orphaned by AIDS should be made freely available.
- People employed in childcare agencies as well as informal and formal adoptive and foster care parents and persons providing services to children should receive training in order to deal effectively with the special needs of HIV-affected children, including psycho-social support and protection from mandatory testing, discrimination, abuse and abandonment.

## **10. Prisoners**

- Prisoners should not be discriminated against on the basis of their HIV status. No compulsory HIV testing of prisoners should be carried out. Prisoners living with HIV/AIDS should not be isolated or quarantined.
- Prisoners living with HIV/AIDS are entitled to special care equal to that afforded to other prisoners with serious illnesses.
- Prisoners should be provided with information on HIV/AIDS and preventative measures, such as condoms, as well as with adequate counselling facilities.
- Information regarding the HIV status of a prisoner in the possession of the prison authorities should not be disclosed to any third party without the informed consent of the prisoner.

## **11. Adequate standard of living**

All persons, including those living with HIV/AIDS, have the same right to a standard of living adequate for the health and well-being of themselves and their families, including food, clothing, housing and medical care and necessary social services.

## **12. Access to education**

Persons living with HIV/AIDS should have equal access on a non-discriminatory basis to institutions of primary, secondary and tertiary education, as well as to scholarship schemes.

## **13. Access to appropriate information and sex education**

- Culturally appropriate formal and non-formal education programmes and information on HIV/AIDS should be accessible on a continuous basis to all, to enable people to make informed decisions about their life and sexual practices. Education should also promote respect, tolerance and non-discrimination in relation to persons living with HIV/AIDS.
- Appropriate information regarding parent to child transmission, breastfeeding, treatment, nutrition, change of lifestyle and safer sex should be freely available.

## **14. Access to health care and appropriate treatment**

- HIV status should not be considered as a ground for depriving any person of their right to the highest attainable standard of physical and mental health. To this end, persons living with HIV/AIDS should have access on a non-discriminatory basis to adequate health care and appropriate and affordable treatment and drugs so that persons living with HIV/AIDS can live as long and as successfully as possible.
- Ethical guidelines and codes of conduct for health-care workers and counsellors should be implemented and reinforced to guarantee the rights to privacy, confidentiality and dignity of persons living with HIV/AIDS. These guidelines and codes of conduct should require health-care workers and counsellors to treat any person living with HIV/AIDS without discrimination.
- Community efforts to provide home-based care to people who are living with HIV/AIDS should be supported. Caregivers should be properly trained to render effective care and counselling.
- Women with HIV who are pregnant should have access to adequate information regarding mother to child transmission and to affordable treatment to reduce the risk of mother to child transmission.
- Rape survivors should have access to adequate information about HIV/AIDS and to affordable and timely prophylactic treatment.

## **15. Research and clinical trials**

- Persons living with HIV/AIDS should have access to clinical trials conducted only in terms of acceptable research protocols, which adequately protect the rights of research subjects prior to, during and after the trials.
- The results should be made available to the community for timely and appropriate action.

## **16. Employment**

Discrimination on the basis of HIV status in access to and continued employment, conditions of employment and employment benefits is contrary to the provisions of the Labour Act. Therefore:

- People living with HIV/AIDS have the right to work, and should not be excluded from employment solely on the basis of their HIV status.
- Both employers and employees have a mutual responsibility to prevent discrimination on the basis of HIV status in the workplace.
- There should be no compulsory testing for HIV in the workplace. Voluntary testing for HIV on the request of the employee should be done by a suitably qualified person in a health facility with the informed consent of the employee in accordance with normal medical ethical rules and with pre- and post-test counselling.
- Persons living with HIV/AIDS have the legal right to confidentiality regarding their HIV status in any aspect of their employment. An employee is under no obligation to inform his or her employer of his or her HIV status.
- Employees living with HIV/AIDS should continue to work under normal conditions in their current employment for as long as they are medically fit to do so. When on medical grounds they are unable to continue with normal employment, the normal rules regarding incapacity should apply.
- Employers, in consultation with employees, should develop and implement appropriate workplace policies on HIV/AIDS.
- Employers should provide a safe and healthy working environment for employees, including the provision of the necessary equipment and information, as well as the implementation of universal precautions to prevent transmission of HIV in the workplace.
- Where an employee accidentally contracts HIV in the course and scope of his or her employment, he or she shall be entitled to employee's compensation.

## **17. Insurance and medical aid**

- Persons living with HIV/AIDS and those suspected of being at risk of having HIV or AIDS should be protected from arbitrary discrimination in insurance and medical aid. Insurers and medical aid administrators should explain to the insured or medical aid member what influence HIV/AIDS would have on the validity and effect of the contract of insurance or medical aid.
- If HIV testing is required for life insurance or medical aid, the insurer or medical aid administrator should provide access to adequate pre and post-test counselling. The insurer or medical aid administrator requiring the test should ensure that the results are treated with confidentiality.
- Insurers and medical aid administrators should continue to explore, in consultation with people living with HIV/AIDS, the development of new products that would provide appropriate cover for people living with HIV/AIDS.
- Insurers and medical aid administrators should be encouraged to play an effective role in HIV/AIDS prevention and education campaigns.

## **18. Media**

- Media programmes should be designed to challenge attitudes of discrimination and stigmatisation associated with HIV/AIDS.
- The media and the advertising industry should be sensitive to HIV/AIDS and human rights issues and should reduce sensationalism in reporting and the inappropriate use of language and stereotypes, especially in relation to disadvantaged and vulnerable groups.

- The public has the right to balanced and informed coverage, information and education on HIV/AIDS, STDs and related issues.
- HIV/AIDS media programmes should be designed to be accessible to all people, including those with audio-visual disabilities.

## **19. Cultural and traditional practices**

- It is recognised that some cultural and traditional practices militate against effective preventive action and place people, especially women and young people, at risk of HIV infection. These practices and traditions should be identified and steps should be taken to address them by way of formal and non-formal education and/or legislation.
- Traditional Authorities should play an important role in HIV/AIDS prevention strategies.
- Traditional healers and traditional birth attendants should be provided with appropriate education and information about HIV/AIDS and its transmission.
- Dialogue and collaboration between traditional and non-traditional health providers on the care and management of HIV/AIDS should be promoted.