

HUMAN RIGHTS AND HIV/AIDS CONFERENCE RECOMMENDATIONS

The protection and guarantee of the human rights, and especially those of minorities, have been recognised as the prerequisite for an effective and sustainable HIV/AIDS response and have been mandated for drastic improvement as well as operationalisation by the various UN agencies in many high level conferences and consultations, dating back to 1989 when the first International Consultation on AIDS and Human Rights took place, organised by the United National Centre for Human Rights in cooperation with the World Health Organisation. In the fifty-first session (E/CN.4/1995/45, para.135), the United Nations Secretary-General stated that Governments would benefit from guidelines that outline clearly how human rights standards apply in the area of HIV/AIDS and indicate concrete and specific measures, both in terms of legislation and practice, that should be undertaken. The second International HIV/AIDS and Human Rights Consultation convened in 1996 facilitated the development of a set of guidelines on human rights and HIV/AIDS.

Having examined the laws and legal instruments applying to the HIV/AIDS in Mongolia, the national HIV-related programmes and their implementation, as well as the practices of forced/mandatory testing (done according to the existing provisions of the Health Law and HIV/AIDS Law), widespread discrimination and victimisation as well as overt gender-based violence the vulnerable communities are subject to, the civil society organisations and community-based organisations working in the area of HIV/AIDS have arrived at the conclusion that even the developments of such guidelines on the international level did not positively affect the human rights implementation in Mongolia in regard to HIV/AIDS. To provide the first public forum on these vulnerable communities, the human rights violations taking place against these communities, the National Human Rights Commission of Mongolia, National AIDS Foundation, Youth for Health, Positive Life, Moninfo and LGBT Rights Advocates organised the Human Rights and HIV/AIDS Conference on January 19, 2007 with the funding provided by the Leadership for MDGs Results UNDP Programme with the purpose of facilitating the Government's duty to make the HIV prevention, access to care and support universal by 2010, in line with meeting the country-specific Millennium Development Goals by 2015 (MDG 6 of combating sexually transmitted infections (STIs), HIV/AIDS, tuberculosis and other diseases, MDG 3 of promoting gender equality and empowerment of women, and MDG 9 of strengthening human rights and fostering democratic governance), and with the view of stopping the State-sanctioned violence against vulnerable communities and improving the public information and awareness on the HIV/AIDS related human rights and their implementation. As an outcome, the Human Rights and HIV/AIDS Conference convened on January 19, 2007 in Ulaanbaatar **RECOMMENDS THE FOLLOWING** to the relevant stakeholders:

TO THE PARLIAMENT AND POLICYMAKERS

The State must undertake concerted efforts toward guarantee, protection and implementation of the human rights in accordance with the Article 10 (2) of the Constitution of Mongolia, "Mongolia shall fulfil in good faith its obligations under international treaties to which it is a party", the Article 10 (3) of the Constitution of Mongolia, "the international treaties to which Mongolia is a party shall become effective as domestic legislation upon the entry into force of the laws or on their ratification or accession". To achieve the implementation of the human rights, the following issues are to be resolved:

- In accordance with the State's duty to implement the international conventions, to revise the Constitution of Mongolia, the Health Law of Mongolia and the HIV/AIDS Law of Mongolia as to include non-discrimination on the basis of sexual orientation and sero-status in order to provide the basis for non-discrimination and mainstreaming the human rights in the HIV/AIDS-related programmes, activities and

national mechanisms, to specifically enact new amendments in the relevant legislations specifying the recourse mechanisms if and when related abuses take place. This recommendation is consistent with the Guidelines 3, 5, 7, 8 and 9 of the International Guidelines of HIV/AIDS and Human Rights, the Article 8 of the Universal Declaration on Human Rights, and the Article 16 (14) of the Constitution of Mongolia.

- To revise the Health Law as well as the HIV/AIDS Law to enact new amendments making the HIV testing voluntary with no over and covert pressure from any individual and/or entity as well as making the provision of pre- and post-test psychological counselling mandatory for all medical entities which provide HIV/AIDS testing facilities.
- In view of the fact that the social and sexuality minorities' rights and liberties are constantly encroached upon, that bodily and emotional violations of criminal nature are widespread against these minorities, to enact a new legislation on Hate Crimes and Hate Speech in order to prevent and stop such crimes on the basis of US laws on hate crimes and European Union's laws on hate crimes, and to enact an amendment to the Criminal Code so as to bring in the concept of a hate crime and hate speech.
- To undertake measures of reviewing the criminal provisions pertaining to the injecting drug users (IDUs) to reflect the drug problem not only in its criminal aspect, but in its health and social problems-related aspects and to review the activities undertaken against IDUs in consistency with the international health standards and human rights standards. This recommendation is consistent with the Guideline 4 of the International Guidelines on HIV/AIDS and Human Rights.
- In accordance with the Article 14 (2) of the Constitution of Mongolia, that no person shall be discriminated against on the basis of occupation, and in accordance with the Article 16 (4) of the Constitution of Mongolia, that the citizens of Mongolia are guaranteed the privilege to enjoy the right to free choice of employment and favourable conditions of work, to audit the Law on Pornography and Prostitution and the Criminal Code and to enact necessary amendments in these laws as to decriminalise sex work. This recommendation is consistent with the Guideline 4 of the International Guidelines.
- In order to improve the provision of healthcare services to the internal migrants, to create a conducive legal environment with a considerable component on health information provision.
- In order to increase the human rights and HIV/AIDS-related knowledge among the physically challenged population, to promote establishment of such programmes and activities through policy and financial support.

TO HEALTHCARE SECTOR

- In view of upholding the principle of voluntary testing, to enact healthcare sector regulations indicating that HIV testing must be voluntary and confidential for all persons, with an emphasis that healthcare personnel's duty to only advise undergoing testing.

- To ensure the utmost implementation of medical personnel ethics and responsibility in all healthcare establishments, including the private healthcare establishments.
- To create harm reduction programmes such as syringe exchange in all levels of healthcare establishments.
- To provide medical services to migrants irrespective of the health insurance, to improve the existing services for migrants.
- To conduct a review and audit on all healthcare sector internal regulations, resolutions and guidelines to identify the presence of discriminatory provisions against the vulnerable communities and to repeal those discriminatory provisions.

TO LEGAL INSTITUTIONS AND LAW ENFORCEMENT SECTOR

- To conduct trainings and seminars on the international human rights standards for the court and magistrate officials and practising lawyers in view of implementing the right to seek recourse through judicial structures if the minorities' rights and liberties guaranteed by the international law are infringed upon either by individuals or by the State itself.
- To study the developed countries' precedents on the vulnerable communities' rights (LGBT; sex workers; IDUs), to deliver court decisions based on those precedents.
- In view of the fact that the lesbian, gay, bisexual and transgendered (LGBT) community in Mongolia is being persecuted, that many homosexual people are threatened with arrest, are arrested, detained and even tortured in the police premises without any legal grounds, affirming that these acts constitute grave human and civil rights violations, to undertake measures to stop once and for all these illegal activities by the relevant authorities.
- In view of the fact that there are some violations taking place against the IDUs and sex workers who are threatened with arrest, and once arrested or detained, are demanded sexual relations, are imposed unwanted sexual and physical abuse, affirming that these acts constitute grave human rights abuses, that any violence against the sex workers is to be deemed gender-based violence, to undertake measures to stop these acts by the relevant authorities.
- To regularly conduct human rights and civil rights trainings for the police on the LGBT rights, HIV/AIDS and drugs.

TO INTERNATIONAL ORGANISATIONS OPERATING IN MONGOLIA

- The UN agencies and programmes should provide a strong leadership for implementation of the HIV/AIDS and human rights international guidelines through reflection of these guidelines in their programmes and activity framework, and through cooperation with the Government and relevant institutions on practical and legal implementation of these guidelines.
- To examine and study the vulnerable social and sexuality minorities' conditions and experiences through participatory method, and to reflect these findings in their HIV/AIDS-related and human rights-related programmes' design.

- To unify the UN agencies and the Government implemented Aid Harmonisation Project's two separate mandates (improving human rights education and combating HIV/AIDS) in one holistic framework so as to promote and implement the international guidelines on HIV/AIDS and human rights.

TO RESEARCH AND ACADEMIC (HIGHER EDUCATION) INSTITUTIONS

- In view of the international practice of academic and research institutions providing policy-related feedbacks to the State in order to shape the policymaking, to undertake academic and policy studies on the state of minority rights in Mongolia from ethical and juristic aspects providing for upholding of the non-discrimination principle, and provide their findings to the Parliament of Mongolia and other relevant authorities.
- To reflect the minority human rights' legal and social issues in the education and research curricula based on the domestic and international developments and literature and studies.
- To create an inter-agency research team consisting of academics, civil society representation, Government and international organisations with a view of conducting professional studies covering all aspects of HIV and vulnerable communities.

TO THE CIVIL SOCIETY

- In view of the fact that the civil society organisations working in the human rights area have projected a narrow definition of human rights and gender-based violence, to affect conscious redefining of the human rights as to include the minorities' human rights.
- In view of the fact that the community-based organisations working in the HIV/AIDS area do not possess human rights and legal expertise, to strengthen the actual cooperation, exchange of information and expertise between the human rights organisations, women's rights organisations and the community-based organisations working with the vulnerable communities.

TO MEDIA

- In view of the fact that the media is an influential force in society, since how the media reports on issues will essentially define how the public views those issues, the coverage of the LGBT community and other minorities' poor reporting or malicious reporting can be extremely dire, therefore journalists should uphold fairness (for instance, fair representations in the media treat LGBT people and issues with the same respect due to any community or minority), accuracy (accurate representations acknowledge every aspect of minority communities, not merely the most sensational or controversial) and inclusiveness (for instance, inclusive representations acknowledge the presence of LGBT people, communities and issues in every facet of life and culture).
- Media, especially journalists, should strive to reflect their communities and practice "civic journalism", in which civil society's values of equality and non-discrimination are upheld.