A CRITIQUE

HIV/AIDS AND THE LEGAL AND POLICY FRAMEWORK IN SRI LANKA

AUGUST 2013

CENTRE FOR POLICY ALTERNATIVES

POLICY BRIEF

A CRITIQUE:
HIV/AIDS AND THE LEGAL AND POLICY FRAMEWORK IN SRI LANKA

Centre for Policy Alternatives

August 2013

The Centre for Policy Alternatives (CPA) is an independent, non-partisan organization that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

Address : 24/2 28th Lane, off Flower Road, Colombo 7, Sri Lanka
Telephone : +94 (11) 2565304/5/6
Fax : +94 (11) 4714460

Web : www.cpalanka.org, facebook.com/cpasl, twitter.com/cpasl
Email : info@cpalanka.org

Acknowledgements

Bhavani Fonseka and Nicole Kakantoussis, the authors of the policy brief acknowledge the support provided by Gareesha Wirithamulla on initial drafts and the field research carried out by Luwie Ganeshathasan and Subhashini Samaraarachchi. They also acknowledge the editorial comments made by Dr. P. Saravanamuttu.

Table of contents

Acronyms

AIDS	Acquired Immunodeficiency Syndrome
ART	Antiretroviral Treatment
CPA	Centre for Policy Alternatives
CSW	Commercial Sex Workers
HIV	Human Immunodeficiency Virus
IDP	Internally Displaced Person
ILO	International Labour Organisation
I/NGO	International/Non-Government Organisation
IPC	Indian Penal Code
IOM	International Organisation for Migration
LGBT/I	Lesbian, Gay, Bisexual, Transgender/Intersex
MDG	Millennium Development Goals
MSM	Men who have Sex with Men
NSACP	National STD/AIDS Control Programme
PLWHA	People Living With HIV/AIDS
STD	Sexually Transmitted Disease
TB	Tuberculosis
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
WHO	World Health Organisation

Section 1

Introduction

Official figures indicate Sri Lanka to be a low prevalence country but numerous factors could contribute towards the possibility of an outbreak of HIV / AIDS. These factors include poverty, lack of awareness, low condom use and the presence of numerous vulnerable groups. This coupled with the high levels of stigma and discrimination prevents many from coming forward to obtain assistance including necessary health care. It is compounded by a legal and policy framework that criminalises and subjects vulnerable communities to further harassment. This paper discusses and comments on the legal and policy dimension and the obstacles it poses to a sustainable and effective response to HIV/AIDS as many do not come forward to obtain medical services for fear of violence, stigma and discrimination. The paper highlights that low prevalence levels are underestimated due to the existing legal and policy framework that is out-dated and in need of reform and recommends specific steps to be taken to address the situation.

The post war period has witnessed escalated development and rehabilitation across Sri Lanka. Most of the conflict affected areas in the north and east of Sri Lanka have been demined with thousands of internally displaced persons (IDPs) returning to their lands and rebuilding their lives and livelihoods. While there continue to be IDPs and affected communities, there has been development in the areas with much needed infrastructure rehabilitated or built new including hospitals in the areas.[1] Although development in Sri Lanka has been rapid, poverty still persists.[2] Sri Lanka prides itself on a high literacy rate and attributes this number to free education. Yet, conservative values are interwoven into the fabric of society alongside still impoverished rural areas of the country – a key reason for children dropping out of school. The lack of resources is an on-going battle for those living below the poverty line[3], as they require basic services such as health, education, water and sanitation. This has further marginalised vulnerable groups such as women and children.

Health care provided by the Government is free and accessible to all. There is also health care financed and managed by the private sector. Due to various factors including poverty, many are unable to afford private health care, and rely on public health care. Although public health care is meant to be accessible to all, there are issues such as lack of resources, staff and training. This has led to those who are able to afford it to seek private health care. The present Government's shift towards economic development, while having some

[1] Central Bank of Sri Lanka –Annual Report 2009, page 70, available at, http://www.cbsl.gov.lk/pics_n_docs/10_pub/_docs/efr/annual_report/ar2009e/PDF/7_chapter_03.pdf last accessed on 23 May 2013
Central Bank of Sri Lanka –Annual Report 2012, page 86 , available at, http://www.cbsl.gov.lk/pics_n_docs/10_pub/_docs/efr/annual_report/AR2012/English/7_Chapter_03.pdf , last accessed on 23 May 2013
[2] Wimal Nanayakkara, "Eradicating Poverty in Sri Lanka: Strong progress But much remains to be done" available at http://www.scribd.com/doc/96488153/TE-Special-Report-MPI-WN-Jun2012, last accessed on 23May 2013
[3] Palitha Abeykoon , "Case Study Sri Lanka" available at, http://www.who.int/chp/knowledge/publications/case_study_srilanka.pdf, last accessed on 23 May 2013

benefits for poverty alleviation and the provision of infrastructural development, is not sufficient in addressing basic health care needs. It is therefore important to examine Government policy towards key sectors including health to understand how the present economic development model will contribute towards better services. This includes People Living With HIV/AIDS (PLWHA) being able to access and enjoy basic services such as health care.

1.1 HIV/ AIDS situation in Sri Lanka and the need for reform

Although the official number of cases of Sri Lankans living with HIV was at 4,200 in 2011[4], the actual number is thought to be much higher as many do not come forward for testing as a result of the stigma and discrimination related to HIV/AIDS. Many others may not come forward for testing as they are unaware of being infected. Thus, according to UNAIDS, the number of people actually living with HIV/AIDS is estimated to be somewhere around 11,000. Regardless, Sri Lanka has been classified as a low HIV prevalence country in the South Asian region.[5]

Within Sri Lanka, the Western Province which is the most densely populated area, accounts for 60% of HIV infection.[6] This could be interconnected with the fact that most cases are reported and tested within the Western Province, which is able to offer better testing centres along with having better infrastructure thus resulting in a higher percentage of infections being detected.[7] The majority of people who have HIV/AIDS are heterosexual couples that practice unprotected sex amounting to 59.30% and Homosexuals and Bisexuals which constitute 10.73%. Mother to child transmission amounts to 3.51% and transmission through blood and blood products and transmission through injecting drug use amounts to 0.24 % and 0.30 % respectively.[8]

Despite the low prevalence rate, Sri Lanka still has multiple factors which put the country at risk in terms of the increase in HIV/AIDS. There is an increase in the number of vulnerable groups such as a flourishing sex industry, a large number of Men who have Sex with Men (MSM), Internally Displaced Persons (IDPs) and migrant workers. Such risk factors may hamper efforts at rebuilding and rehabilitation and slow down sustainable development. Therefore, there needs to be change including reform in the legal and policy framework and

[4] UNAIDS reports that as of 2011. the official number of cases of Sri Lankans living with HIV/AIDS is 4200, available at , http://www.unaids.org/en/regionscountries/countries/srilanka/ , The National STD/AIDS control programme reports it as of 31st March 2013 as 1693, available at , http://www.aidscontrol.gov.lk/web/Web%20uploads/Surveillance/HIV%20Case%20Reporting/HIVquarterlydata20131stQ.pdf

[5] Journal of Global Infectious Diseases – Current status of HIV/AIDS in South Asia ,available at , http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2840955/, last accessed on 23 May 2013

[6] The National STD/AIDS control programme 'Cumulative HIV cases by province of residence by end 2012' available at http://www.aidscontrol.gov.lk/web/index.php?option=com_content&view=article&id=63&Itemid=85&lang=en, last accessed on 30 May 2013

[7] Although the Western Province had high numbers, interviews conducted by CPA did not indicate higher levels of discrimination in the area. Interviews conducted by CPA indicated that stigma and discrimination was prevalent across Sri Lanka.

[8] The National STD/AIDS control programme 'Probable mode of transmission by end 2012' available at, http://www.aidscontrol.gov.lk/web/index.php?option=com_content&view=article&id=63&Itemid=85&lang=en, last accessed on 30 May 2013

greater awareness raising. Such measures will reduce stigma and discrimination and create an environment for people to seek health care services and not be penalised and discriminated on the basis of their gender, economic background, class or ethnicity. This includes PLWHA being able to access health care without the threat of physical harm or harassment. Sri Lankan policies should be reformed in order to meet appropriate health care standards and protect the human rights of people. With programs such as the *Tackling HIV and AIDS Stigma and Discrimination, the South Asia Region Development Marketplace (SARDM)*[9], being supported by the World Bank and partners in 2008-2009, this provides a framework for change and steps need to be taken towards reform. This document highlights areas that require urgent attention in the legal and policy sphere to ensure reform meets with both national and international standards.

This policy brief highlights the limited progress in Sri Lanka regarding the legal and policy framework in relation to the Right to Health, especially for PLWHA and the urgent need for reform. The policy brief highlights key laws and policies that are in need of urgent attention, highlighting specific instances, which are documented where PLWHA and other vulnerable groups have been targeted. It draws a comparative analysis of other countries in the region which have implemented legislation and policies specifically addressing the needs of vulnerable groups living with HIV / AIDS. These have been used in this policy brief to provide modalities for consideration in the reform process, specific examples that are successful in other countries and can be adopted in the Sri Lankan context. The policy brief also uses cases from across Sri Lanka, which highlights the everyday difficulties, threats, harassment, violence and other obstacles faced by PLWHA and vulnerable communities with limited recourse available due to fear of further stigma, discrimination and violence.

1.2 Methodology

The production of this policy brief entailed both field and desk research. Interviews were conducted across Sri Lanka among a cross section of actors including Government officials, health care professionals, UN, I/NGOs, community groups, PLWHA and other groups. Due to security concerns, names of individuals have been left out but the policy brief captures the key issues raised by PLWHA, vulnerable groups, community groups and service providers. Interviews raised a range of issues related to HIV/AIDS. Although the interviews were rich in content and require more attention, this policy brief merely captures issues pertaining to the legal and policy debate. This by no means discounts other issues raised during the research period and CPA will continue to advocate for reform as done in the past through a rights framework. The present policy brief is the most recent research conducted by CPA, which highlights the urgent need for reform in the legal and policy sphere, which in turn, can address many other issues including stigma and discrimination.

[9] UNAIDS, ' 26th Meeting of UNAIDS Programme coordinating Board, Geneva, 22-24 June 2010, page 18, available at, http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/20100526_non_discrimination_in_hiv_en.pdf, last accessed on 30 May 2013

Section 2

Legislation and Policies relevant to Health Care and HIV / AIDS

2.1 The Constitution and Public Health

The Constitution of Sri Lanka does not provide any specific laws dealing with HIV/AIDS. According to Article 15(7) of the Constitution of Sri Lanka several fundamental rights guaranteed by the Constitution can be restricted in the interests of public health.[10] Hence public health is viewed as a key element in the rights framework in Sri Lanka. The Directive Principles of State policy provided by Section 27 of the Constitution does not directly provide objectives in this regard. It includes the realisation by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities.

The rationale behind the rights based response to HIV / AIDS is that public health interests do not conflict with human rights. Further, it has been observed that when human rights are protected fewer people become infected and PLWHA and their families can better cope with the HIV/AIDS and its social consequences. This provides a strong justification for the State to review its legal and human rights responses to HIV / AIDS and ensure a national framework that conforms to international norms and standards.[11]

2.2 National Health Laws and HIV/AIDS in Sri Lanka

Public health laws of a State stipulate rules and procedures to control and prevent diseases and to provide guidance on public health issues that may arise from time to time with the appointment of a competent authority to manage these issues. Within the Sri Lankan context, there are many public health laws. The research documented that issues related to HIV / AIDS are addressed through the existing framework as discussed below. A notable feature of these laws is that they have been enacted over a century ago, way before the HIV / AIDS discourse commenced. As highlighted in this policy brief, the present legal framework is out-dated and in need of reform in conformity with national and international commitments.

Two laws relevant to public health need attention. They are:

- Contagious Diseases Ordinance No.08 of 1866
- Quarantine and Prevention of Diseases Ordinance No.03 of 1897

[10] Constitution of Sri Lanka 1978 ,
Articles 12, 13(1), 13(2) and 14 which include: right to equality, freedom from arbitrary arrest, freedom of speech, expression, religion and assembly.

[11] Guidelines were adopted at the second International Consultation on HIV / AIDS and Human Rights in Geneva in 1996

The Contagious Diseases Ordinance provides that every case of smallpox, cholera or other disease, which may from time to time be named by the Minister, should be notified to a Police officer or Grama Niladari by the householders,[12] who shall report the same to the Superintendent of Police or the Magistrate in the respective districts. The same responsibility is vested with the medical attendants who handle cases of such contagious diseases.[13] Accordingly, neglecting to report such a disease makes the householders or the medical attendants liable to a fine.

Further, the Ordinance empowers the Superintendent of Police or the Magistrate to order the removal of persons with such diseases.[14]

It is important to note that although HIV / AIDS has not yet been gazetted,[15] the Minister concerned has wide powers to gazette HIV / AIDS under the ordinance (under the 'other disease' category) which could make the strict provisions discussed applicable to HIV / AIDS.

Quarantine and Prevention of Diseases Ordinance spells out the powers and responsibilities of the health authorities in preventing, identifying, managing and controlling contagious diseases.

Section 2 of the Ordinance empowers the Minister of Health to make regulations for; isolating of all cases of diseases and diseased persons, prescribing modes of burial or cremation of the diseased, regulating the removal of diseased persons until they can be discharged with safety to the public, remove the infected person or person suspected of being infected to a public hospital or other place and for prescribing the reporting to such officer / officers as may be named in the regulations by medical practitioners of cases of diseases treated by them.

According to the regulations[16] made under the ordinance every medical practitioner who attends to any person suffering from AIDS should notify the proper authority with the name, race, sex, age and place of residence within twelve hours from the time the patient was first treated. The regulations further provide for the medical practitioner to take action based on a doubtful diagnosis, (rather than a positive diagnosis) and gives time to confirm his doubts to the authorities.[17]

According to Section 5 of the Ordinance if a person is guilty of an offence against the Ordinance, he / she will be punished either by imprisonment for a period less than six months or a fine of one thousand rupees or both.

---

[12] Contagious Diseases Ordinance No. 08 of 1866, Section 3
[13] Contagious Diseases Ordinance No. 08 of 1866 , Section 5
[14] Contagious Diseases Ordinance No. 08 of 1866 , Section 6
[15] According to the Director General of National STD/AIDS Control Programme, Dr.S.Liyanage, HIV/AIDS has not yet been gazetted in Sri Lanka as a Sexually Transmitted Disease.
[16] "Surveillance Case Definitions for Notifiable Diseases in Sri Lanka'' Epidemiology Unit – Ministry of Health- page 1, 2, 42 available at http://archive.dgroups.org/?s9t05pzc , last accessed on 30 May 2013
[17] Indunil Abeysekera, The Legal Framework for HIV / AIDS in Sri Lanka, Law, Ethics and HIV, Proceedings of the UNDP Inter-country Consultation, 1993

Need for Reform

These laws were enacted over a century ago and predate the discourse on HIV/AIDS and the right to health. They fail to grasp changes in spheres of personal autonomy and privacy and the unique nature of HIV / AIDS transmission vis-à-vis other contagious diseases such as smallpox and cholera. Such distinctions are important in addressing the misconceptions surrounding HIV/AIDS and thereby reducing the fear and stigma associated with it.

Furthermore, these laws provide public health authorities wide powers that can discriminate PLWHA -for instance power to isolate PLWHA or to report cases without being subject to any confidentiality clause. On the other hand, given the stigma and discrimination associated with HIV/AIDS, the laws significantly fail to prevent discrimination of those affected. This harmfully impacts not only PLWHA and their families but also makes it difficult for the health authorities to manage the issue as those who are infected fear coming forward.

A key problems associated with the health laws in relation to HIV / AIDS in Sri Lanka is the provision which runs counter to the principles of **confidentiality**. There are no requirements of confidentiality of information in the present framework and research indicates the blatant abuse of confidentiality. This provides ample space for stigmatisation and discrimination of not only the patients but also their families.[18] Research indicates that many cases of discrimination have occurred in the health sector, ranging from disclosure of a person's HIV status by health facilities, non -provision of basic facilities to the patients at hospitals and unprofessional and unkind treatment by the staff at the hospitals.[19]

Secondly, there is no framework that provides for mandatory **pre and post counselling** which is another universally accepted principle but absent in the Sri Lankan framework. Whilst, commending several Ministry of Health circulars, which require pre and post test counselling[20], this needs further strengthening to ensure actual implementation and should therefore be brought within the legal framework.

Another significant lacuna in the health laws is that they have not been amended to conform to international standards and current debates around HIV/AIDS. The lack of change means there is no official recognition of the established fact that HIV/AIDS cannot be transmitted through casual contact between individuals, which is the case of contagious diseases. This has directly resulted not only in misconception and fear surrounding HIV/AIDS but exacerbated the stigma and discrimination faced by PLWHA.

---

[18] Centre for Policy Alternatives (CPA) for The Asia Pacific Leadership Forum (APLF), A Profile of the Stigma and Discrimination faced by People Living with HIV/AIDS, 2005, Page 4-10

[19] *ibid*

[20] Internal Circular- Circular issued by the National STD/AIDS Control Programme for its guidance and management, 'Protocol for HIV testing for Central STD Clinic patients without a clinic file but only a OPD number (People who come for an voluntary test)' available at ,http://www.aidscontrol.gov.lk/web/index.php?option=com_content&view=article&id=72&Itemid=90&lang=en, last accessed on 30 May 2013

2.3 Care, Treatment and Management of HIV/AIDS

Care and treatment of PLWHA is an important aspect in the response to HIV/AIDS. In the absence of legislation related to HIV/AIDS, attention has been placed on the administrative and policy framework in terms of Sri Lanka's position regarding care and treatment of PLWHA. According to Article 3.8 of the National HIV/ AIDS Policy (discussed in greater detail in Section four), the Government accepts the rights of PLWHA to have access to treatment without stigma and discrimination. It further provides that antiretroviral treatment will be provided for PLWHA by the State sector in line with national guidelines and prevailing national health policy. Further, Article 3.9 of the National HIV / AIDS Policy provides that post exposure prophylaxis should be provided in situations of accidental exposures according to the national guidelines. All above areas are managed through Ministry of Health Circulars, Memos and the National HIV/AIDS Policy. Some of the important Health Ministry Circulars on HIV / AIDS are discussed below:

2.3.1 Health Ministry Circulars

The Ministry of Health Circular of Management of Persons Infected with HIV[21] directs government hospitals to manage all HIV patients in the general hospital wards and only people with infections or complications be transferred to the Infectious Diseases Hospital. It further provides that whenever facilities are available, such patients should be managed in the general wards and provides that chronically ill HIV patients should be encouraged to be managed at home in the community.

Further, the Internal Circular which provides instructions on how to inform the HIV antibody test results to hospital wards / clinics[22], provides that screening tests should be performed as early as possible and that strict **confidentiality** should be maintained. With regard to screening tests the medical officer or the consultant in the ward, or the consultant Venereologist or MO/STD has to do the pre-test counselling.[23]

Although there are salient points, these do not have legal force. Usually the policies are passed on to the heads of the institutions and its administration and implementation is not monitored.[24] Further, no disciplinary measures are taken against the health workers if the circulars are not followed.[25] Therefore, it is important that steps are taken to explore ways of enforcing circulars and hold to account those who are in breach of basic standards. It is also important that salient points of such circulars feed into formulation of legislation in the future.

---

[21] General Circular Letter No. 02/125/98, Ministry of Health- 'Management of patients infected with HIV' , available at,http://www.aidscontrol.gov.lk/web/index.php?option=com_content&view=article&id=72&Itemid=90&lang=en , last accessed on 30 May 2013

[22] Director NSACP, Internal Circular dated 26 August 2009, 'Instructions on how to inform the HIV antibody test results to hospital wards/clinics ' available at, http://www.aidscontrol.gov.lk/web/index.php?option=com_content&view=article&id=72&Itemid=90&lang=en, last accessed on 30 May 2013

[23] *ibid*

[24] Interview with UNAIDS, Colombo, 17 July 2012

[25] *ibid*

Article 3.6 of the National HIV/AIDS Policy provides that the Government of Sri Lanka promotes voluntary confidential testing, recognising that mandatory testing would drive those at high risk of HIV infection beyond reach and prevent their access to public health preventive activities and other health services. Despite the importance of including these provisions in the legal framework, the laws have been silent on the issue.

There are no express laws in Sri Lanka that recognise the principle of **informed consent** for HIV testing. The law on consent to medical treatment is interpreted based on the Roman Dutch law. Accordingly, it is established, that valid consent must be obtained by a legally competent person who consents voluntarily through expressed or implied consent.[26] However, in Sri Lanka, the practice has been that compulsory HIV/AIDS testing can be justified on grounds of public health.[27]

There have been many instances in Sri Lanka where compulsory HIV/AIDS testing has been ordered by court. For example, in May 2012, Additional Magistrate for Colombo P. Ranasinghe ordered compulsory HIV testing of 212 male inmates at the Welikada prison in Colombo subsequent to the death of a prisoner resulting from AIDS, housed in the same prison ward.[28] In many instances including recruitment for employment, many public and private sector organisations require individuals to test for HIV without obtaining voluntary consent. In some of the cases the blood samples are sent for HIV/AIDS testing without the knowledge of the persons being subjected to the tests.[29] Further, no action has been taken by the health authorities against organisations or individuals who conduct involuntary HIV/AIDS testing in Sri Lanka. CPA has documented cases where involuntary testing has resulted in stigma and discrimination of PLWHA including the loss of employment and livelihoods.[30] Therefore it is important that steps are taken to address this issue including providing for a stronger framework that recognises the importance of confidentiality. Without the implementation of legal provisions in this and related areas, the stigmatisation of PLWHA will continue. This should be coupled with provisions that protect a patient from compulsory testing.

Best Practices

In order to fully understand the gaps in the legal system in Sri Lanka for the protection of PLWHA, it is important to look at countries, which have implemented successful policies and therefore can inform reform.

---

[26] Udapadie S. Liyanage, ' Applicability of the defence of informed consent against medical negligence in the scope of a patient's autonomy: A Sri Lankan Perspective' available at, http://webcache.googleusercontent.com/search?q=cache:ZyFdeDMCwfgJ:archive.cmb.ac.lk/research/bitstream/70130/248/1/article%25202-1st%2520edit-%2520informed%2520consent%255B1%255D.doc+&cd=1&hl=en&ct=clnk&gl=lk&client=firefox-a, last accessed on 30 May 2013

[27] *ibid*

[28] 'Sri Lankan court orders checking prison inmates for HIV/AIDS' available at, http://www.colombopage.com/archive_12/May29_1338298372JR.php, last accessed on 31 May 2013

[29] The launch of the State of Health 2007 Report in the ICAAP, available at, http://wwwcaramasia.org/enews/2007/Sept/SOHlaunch%20ICAAP.pdf, last accessed on 23 May 2013

[30] The Centre For Policy Alternatives (CPA), 'A Profile of the Stigma and Discrimination faced by the People Living with HIV/AIDS'

Cambodia

- Article 20 of The *Law on the Prevention and Control of HIV/AIDS* specifically prohibits HIV/AIDS testing for the purposes of employment, education, travel, healthcare and 'freedom of abode' (the right to choose where to live).[31] This clear prohibition of compulsory HIV/AIDS testing except in limited defined circumstances sends a clear message to employers, health care workers, and others, regarding the importance of voluntary testing.

- Article 21 of the same law specifies that compulsory testing is only permissible where it is authorised by a court and provides that sealed medical records relating to the HIV/AIDS status should be provided to courts.[32]

These sections demonstrate the importance given to voluntary consent and confidentiality of information including test results. Sri Lanka should examine these provisions and introduce a framework that respects the rights of those getting tested including their privacy. While the existence of a legal framework is a start, attention should also be paid to the enforcement of such legislation including through the awareness campaigns and the education of service providers on the importance of such issues.

Article 3.7 of the National HIV/AIDS Policy provides that **counselling** be recognised as an integral part of all programs related to HIV/AIDS prevention, care and treatment and highlights the importance of these services being provided by persons who are adequately trained in HIV/AIDS counselling. Compulsory counselling is an important aspect, which, should be included in legislation related to HIV/AIDS. At present this aspect is covered in the Health Ministry circulars. (i.e. Protocol for HIV testing for Central STD Clinic Patients provides that in-depth pre and post test counselling be carried out in every case.) Counselling has become a universally accepted norm and should be made available for PLWHA to ensure they are able to better cope with their condition and handle obstacles as a result of stigma and discrimination. In the Sri Lankan context, the need is greater due to the high levels of stigma and discrimination.

2.4 Blood, Tissue and Organ Supply

Transmission of HIV/AIDS due to blood and blood products has been extremely low in Sri Lanka (0.4%) with only 4 cases of transfusion related HIV/AIDS infections reported.[33] Government sector blood banks carry out HIV/AIDS tests as per standard operational procedures on all donated blood prior to transfusion.[34]

[31] http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_113128.pdf
[32] Article 34(c)
[33] UNAIDS, Country Progress Report Sri Lanka 2010-2011, page 7, available at,http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_LK_Narrative_Report%5B1%5D.pdf ,last accessed on 19 June 2013
[34] *Ibid*

The National Blood Policy of Sri Lanka[35] recognises the importance of regular voluntary and non-remunerative blood donations, with pre-donation information and counselling, and testing of all donated blood to ensure a safe blood supply.[36] The National Blood Policy provides a framework on how to manage an infected donor. It provides that they should be informed in a confidential manner to refrain from further blood donations, counselled with information provided for treatment, care and support services.

The National Blood Policy is a good starting point by which to provide for a rights framework in blood testing and related issues. This though, as already highlighted, is merely a policy and steps should be taken to fully enforce it.

2.5 Stigma and Discrimination of PLWHA

A key objective of the National HIV/ AIDS Policy is stated to be to improve the quality of life of PLWHA through minimising stigma and discrimination and providing quality care and support.[37] Article 3.11 of the policy stipulates that the Government will ensure that the human rights of PLWHA are promoted, protected and respected and measures taken to eliminate discrimination and combat stigma which in turn will provide an enabling environment to seek relevant services. Unfortunately the existing legal framework is far from the standard provided in the policy. Public Health laws in Sri Lanka (discussed previously) provide discriminatory and out-dated quarantine rules for PLWHA as for any infectious disease and hence require substantial amendments. One of the main problems encountered by the individuals interviewed with regard to the current legislation relevant to HIV/AIDS in Sri Lanka, is the lack of clarity and understanding by a cross section of people including medical providers, police officers and others regarding the real status and nature of HIV/AIDS, how its transmitted and its impact. All interviewed by CPA indicated that the current laws do not recognise the rights of PLWHA and do not protect against stigma and discrimination. A community leader interviewed by CPA stated the following: *"In this area there are 32 PLWHA. Three committed suicide and this was because their identity had been compromised and the wider society found out they were HIV positive. People said they should be locked into a room because they do not know how HIV is contracted."*[38] Similar sentiments were shared by other community groups and service providers, the information shared with CPA capturing the practical difficulties and vulnerabilities faced by PLWHA and vulnerable groups. Interviews conducted by CPA and existing studies demonstrate the misconceptions among sections of society that result in stigma and discrimination. There

[35] As per the information received from National Blood Transfusion Service, Sri Lanka, The National Blood Policy was passed in Parliament. The National Blood Transfusion Service Bill which was gazetted on 21 September 2007 , as a bill to provide for the regulation and monitoring of blood transfusion services ; to ensure an effective safe blood supply throughout the country in order to give effect to the National Blood Policy has been revert back to Ministry of Health for amendments. For More information is available at http://203.94.76.60/Act/NBTS-Bill-English.pdf

[36] Under the National Blood Transfusion Policy, Sri Lanka committed itself to the promotion of voluntary non-remunerative blood donation by diligently recruiting selecting and retaining blood donors at the what is supposed to be the safest, most advanced manner. This policy was introduced in 2005. For more information available at, http://209.61.208.233/LinkFiles/Public_Information_&_Events_vol3-2_sri-lanka.pdf

[37] Article 2.2

[38] Interview with community groups, 11 April 2013

should be immediate efforts to examine the present framework, taking note of salient points in the existing policy which, can be incorporated into legislation.

2.6 Management of Information

Management and dissemination of information related to any health condition needs to be underpinned by the principle of confidentiality and an individual's right to privacy. Information related to the HIV/AIDS status of an individual must be protected from unauthorised collection, use or disclosure in the healthcare and other settings and the use of sensitive information including those relevant to HIV/AIDS status requires informed consent. Sri Lankan laws and policies are silent on the issue of information disclosure pertaining to HIV status of an individual. There is also silence on this issue in circulars publicly available.[39]

There is an urgent need for a strong legal and policy framework to be introduced in this regard, which is underpinned by the rights framework including the right to privacy. Such a framework must be strictly implemented with disciplinary action taken against those who undermine its basis. CPA has documented several cases of breach of confidentiality which has resulted in serious repercussions including threats and intimidation.[40]

Best practices[41]

Some of the best practices regarding the protection of PLWHA, in terms of legal frameworks can be found in Philippines and Cambodia. The following policies should provide a framework for Sri Lanka.

Philippines

Philippine AIDS Prevention and Control Act, 1998:

- Provides formal legal recognition that all people with HIV are entitled to full protection of their human rights and civil liberties
- Places a positive obligation on the government to promote HIV education and awareness
- Requires basic health services to be available to people with HIV in all government hospitals

[39] National STD/AIDS Control Programme, Circular No. 02 - 125. 1998 'Management of patients infected with HIV' available at http://www.aidscontrol.gov.lk/web/index.php?option=com_content&view=article&id=72&Itemid=90&lang=en, last accessed on 31 May 2013

[40] The Centre For Policy Alternatives (CPA), 'A Profile of the Stigma and Discrimination faced by the People Living with HIV/AIDS', page 4,5.

[41] UNDP, Law, Policies and Regulations Concerning HIV/AIDS Prevention and Containment: An Assessment and Recommendations, August 2003

- Outlaws discrimination against people with HIV in the workplace, in schools, in health care, and in the provision of credit and loan services
- Requires medical confidentiality to be respected
- States that the government must seek to eradicate conditions that aggravate the spread of HIV, including poverty, gender inequality, marginalisation and ignorance

Cambodia[42]

Law on Prevention and Combat against the spread of HIV/AIDS 2002:

- Prohibits discrimination against people with HIV, and establishes legal confidentiality protection in relation to a person's HIV status
- Prohibits HIV testing without consent in the absence of a court order
- Provides PLWHA freedom of movement and residence
- Prohibits the refusal of health care on the basis of HIV infection
- Requires the government to encourage the involvement of people with HIV in public HIV awareness campaigns

[42] *ibid*

Section 3

Vulnerability Factors and Vulnerable Groups

According to the available statistics the main mode of HIV/AIDS transmission is through unprotected sex between men and women (82.8%) and secondly through men who have sex with men (MSM) (12.3%).[43] The same data indicate that mother to child transmission amounts to 4.4%, transmission through blood and blood products amounts to 0.4% and transmission through injecting drug use amounts to 0.5%. Whilst the main mode of HIV transmission is unprotected sex between men and women, another significant portion of the infected are men who engage in sexual intercourse with men indicating the vulnerability of these two groups.

Despite the fact that soliciting sex is illegal in Sri Lanka[44], it is reported that the sex industry is flourishing in Sri Lanka and a mapping exercise has estimated that there are 35,000-47,000 sex workers in the country.[45] Further, it has been estimated that the number of MSM in Sri Lanka are between 24,000 - 37,000[46] thus indicating that a significant portion of the population are among the vulnerable groups which necessitates the engagement and involvement of these groups in the HIV/AIDS response.

The National HIV/AIDS Policy provides that preventive interventions will focus on highly vulnerable groups.[47] Further, Article 3.6 provides that the 'Government of Sri Lanka promotes voluntary confidential counselling and testing, recognising that mandatory testing would drive those at high risk of HIV/AIDS infection beyond reach and prevent their access to public health preventive activities and other health services'. Hence it is paramount that a conducive environment is created for those at high risk, to approach the health authorities for services without being subjected to stigma and discrimination but also without the fear of arrest or detention for engaging in illegal activity. Moreover, it is crucial that laws to protect the most vulnerable communities are implemented in order to prevent the further transmission of the HIV/AIDS.

Article 3.11 of the policy further states that the Government of Sri Lanka will ensure that the human rights of PLWHA are promoted, protected and respected, and that measures will be taken to eliminate discrimination and combat stigma which will provide an enabling

---

[43] National STD/AIDS Control Programme, 'Laws Concerning Commercial Sex and HIV/AIDS Prevention', available at http://www.aidsdatahub.org/dmdocuments/Laws_Concerning_Commercial_Sex_and_HIV_AIDS_Prevention.pdf, last accessed on 31 May 2013

[44] Brothels Ordinance No.43 of 1981, Section 2

[45] UNAIDS, 'Country Progress Report Sri Lanka 2010- 2011' Page 7, available at: http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_LK_Narrative_Report%5B1%5D.pdf

[46] *ibid*

[47] National HIV/AIDS Policy in Sri Lanka, Article 3.1, available at http://www.aidscontrol.gov.lk/web/Web%20uploads/Policy%20or%20Law/National%20HIVAIDS%20policy%20final%20English.pdf, last accessed on 31 May 2013

environment to seek relevant services [48] thereby requiring State action including introducing amendments to legislation deemed discriminatory.

Discussed below are some legislation that are discriminatory and run counter to the National HIV/AIDS Policy.

3.1 Commercial Sex Workers

The official data provided in the previous section indicate the high vulnerability of women and men engaging in unprotected sex in transmitting HIV, thus requiring special responses targeting this group. Commercial sex workers and their partners are a key vulnerable category. Issues of the commercial sex workers in Sri Lanka are manifold which makes it difficult to involve them effectively in the HIV/AIDS response. In Sri Lanka sex work is unlawful and the sex workers often suffer harassment, stigma and discrimination, which is a barrier for them in approaching healthcare and awareness raising measures to reduce their vulnerability to infection.[49] Interviews conducted by CPA with civil society and community groups who work with sex workers highlighted that the increased stigma and discrimination stems mainly from those who have lower education levels including low ranking police officials. This leads to violence and unlawful arrests.

"*The sex workers are ostracised from their families thus forcing them to live on the minimal payments they earn. They are forced into sexual activities, they are mentally tortured and ridiculed in society".*[50]

The hostile social and legal environment prevents sex workers from taking measures to protect themselves and others from infection.[51] Some of the laws which deal with commercial sex workers are discussed below from an HIV / AIDS perspective.

Vagrants Ordinance No. 04 of 1841

Vagrants Ordinance is commonly used by police to arrest sex workers in Sri Lanka. While there is no law against sex work in private in Sri Lanka, under the Vagrants Ordinance, street based sex work and the operation of brothels are illegal. According to Section 3(1) (b) of the Ordinance, every common prostitute wandering in the street, highway or a public place and behaving in a riotous or indecent manner, shall be deemed an idle or indecent

[48] The rights stipulated include the rights of everyone to life, liberty and security of person, freedom from inhuman or degrading treatment or punishment, equality before law, absence of discrimination, freedom from arbitrary interference with privacy or family life, freedom of movement, the right to work (rights of the people living with HIV in the work places) and to a standard of living adequate for health and well being including housing, food and clothing, the right to the highest attainable standard of physical and mental health, the right to education, the right to information which includes the right to knowledge about HIV/AIDS/STI related issues and safer sexual practices, the right to capacity building of the individual in dealing with this condition, the right to participate in the cultural life of the community and to share in scientific advancement and it's benefit.

[49] UNDP, "Law, Ethics and HIV / AIDS in South Asia – A study of the legal and social environment of the epidemic in Bangladesh, India, Nepal and Sri Lanka" page 19, available at http://www.hivpolicy.org/Library/HPP000261.pdf, last accessed on 19 June 2013

[50] Interview with community groups, 11 April 2013

[51] *Ibid.*

person and on conviction liable to an imprisonment of fourteen days or to a fine. Further, Section 3(2) the Ordinance permits arrest of such persons without a warrant. Hence, the Ordinance deems common prostitutes wandering in the public streets or highway and behaving in a riotous or indecent manner 'idle and disorderly', and enables arrest of such persons without a warrant and on conviction imprisonment of fourteen days with or without a fine. Further, according to Section 4(a) of the Ordinance an individual convicted a second time of the offence of 'idle and disorderly' person is deemed to be a 'rogue and vagabond' punishable with imprisonment of one month.

It is important to note that the law not only uses language that stigmatises, but also makes it possible to arrest any person who is suspected of prostitution thus resulting in stigma which makes it difficult to reach out to them in the HIV response. Further, it is argued that the Vagrants Ordinance makes explicit the unjustifiable equation of sex work with begging and vagrancy and that sex workers are automatically included in the categories of 'vagrant' and 'rogue' and liable to punishment despite sex work having nothing in common with begging or vagrancy.

In ***Saibo v. Chellam et al***[52] the Court in interpreting the phrase 'living on the earnings of prostitution' under Section 9(1) (a) of the Vagrants Ordinance, in the context of sex workers / prostitutes being charged held that both according to the intention of the Ordinance and the words used Section 9(1)(a), it has no application to prostitutes who live on their 'own' earnings or prostitution. The judgment clearly lays down that sex work/prostitution is not an offence under the law and that a woman earning a living from sex work/prostitution cannot be convicted for any offence under the Ordinance.

It is noteworthy that despite the above judicial pronouncement CPA was informed that media reports the arrest of sex workers in a derogatory manner that leads to stigma and discrimination. Research conducted by CPA concluded that the Vagrants Ordinance has caused numerous unlawful and unnecessary arrests by law enforcement officials and it is often times abused as a means to promote personal benefits.

"The Vagrants Ordinance creates a major barrier in society for the mere fact that if police undertake a certain number of cases they receive a promotion thus the cases involving sex workers are easy ones to take on".[53]

This necessitates reviewing the issue of not only of legalising sex work but also awareness raising and sensitising key stakeholders. This includes training law enforcement and judicial officials on sex work and their vulnerability of HIV/AIDS transmission.

Brothels Ordinance No. 5 of 1859

According to Section 2 of the Brothels Ordinance, any person who keeps, manages, acts or assists in the management of a brothel, a tenant, occupier or owner of any premises who knowingly permits such premises to be used as a brothel or for habitual prostitution, the

[52] *(1923) 25 NLR 251 (27 July 1923)*
[53] Anonymous Interview, Support Group, 11 April 2013

lessor, landlord or an agent who knowingly lets premises to be used as a brothel or for habitual prostitution is guilty under the ordinance and on conviction liable to a penalty or in the discretion of the court to simple or rigorous imprisonment not exceeding six months. Further, according to Section 3 of the Ordinance, any person who is the keeper, manager, master or mistress of such premises could also be held liable under the ordinance.

It is notable that although the law enables owners, manages or occupiers to be charged for managing a brothel, the act of prostitution itself or the commercial sex workers cannot be charged under the Ordinance. In light of the barriers that have been placed on sex workers through these laws which results not only in stigma and discrimination but also legal action, imprisonment and imposition of fines, the rights and freedoms such as the freedom to choose ones' own work or profession and the right to equality is hampered.

It is often argued that sex workers have the right to choose the work they do.[54] Further, from the point of view of managing HIV/AIDS, it is submitted that stigma, discrimination and fear of violence and arrest, prevent many sex workers from accessing health services (i.e. voluntary testing, treatment) as well as awareness programmes.

It is important to note that in Sri Lanka the court has never considered the rights of sex workers in the light of the fundamental rights guaranteed under the Constitution. Progress made in this regard, in comparative contexts, are discussed below to provide a glimpse of the situation in other countries and possible lessons for Sri Lanka. Further, as judicial review of legislation is non-existent in Sri Lanka, this makes it difficult for the court to declare the discriminatory provisions of the laws null and void. Thus, reform in this area is urgently needed, ensuring that new legislation is formulated with the involvement of civil society, community groups and communities.

Nepal

In Nepal No. 7 of the Chapter on Rape of the Country Code provide that in cases where a sex worker is raped, the maximum penalty for the rapist on conviction would be a fine of up to Rs. 500.[55] It was argued that the punishment imposed was highly discriminatory against the sex workers as the penalty imposed in a case where the woman is not a sex worker was ten years imprisonment and a half share of the culprit's property to the raped woman. The provision was challenged in the Supreme Court in the case of Sapana P. Malla for FWLD v. HMG/Nepal demanding that the existing provision be declared discriminatory and unconstitutional.[56] In a remarkable decision the Supreme Court held that sex work is also like any other profession and no discrimination could be made on the basis of sex work. The Court took the opinion that prostitution is legalised in some countries and held that it is a profession or occupation irrespective of its legality and hence the existing provision is null and void.

---

[54] South Asia Roundtable Dialogue , ' Legal and Policy Barriers to the HIV Kathmandu, Nepal, 8-10 November 2011

[55] UNDP, Law Ethics and HIV / AIDS in South Asia, 2002, *Writ No. 56/2058, Date of decision: 2059.1.19 B.S. (May 2, 2002)*, Publication of Judgments relating to Human Rights (Special issue) Supreme Court 2059(2002)

[56] Supreme Court of Nepal in Sapana P. Malla for FWLD v. HMG/Nepal, Publication of Judgments relating to Human Rights: Special Issue (Kathmandu: Supreme Court, 2002) at 144-151.

By legalising prostitution, the government is automatically removing the fear of discrimination, stigmatisation and arrest from the sex workers mind. Furthermore, they are allowing them to access health care services thus preventing the spread of HIV/AIDS.

New Zealand[57]

Prostitution Reform Act 2003:

- Permits and regulates sex work, but prohibits sex work among those who are under 18 years of age.
- The Act requires that all reasonable steps be taken to use an appropriate barrier (condom) if the act engaged in is likely to transmit infection.
- Mandates that sex workers be represented in national-level policy decision-making related to sex work
- Department of Labour published information useful to protecting the health of sex workers: i.e. A Guide to Occupational Health and Safety in the New Zealand Sex Industry.[58]

3.2 Men who have Sex with Men

Sexual intercourse between those who belong to the same sex is a punishable offence under the Penal Code of Sri Lanka including MSM. This has not only resulted in creating stigma and discrimination of those engage in sexual intercourse with those belonging to the same sex but also creates a barrier in engaging this group in HIV/AIDS preventive measures due to the stigma attached.[59]

Article 12 of the Constitution of Sri Lanka provides that 'no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, birth or any one of such grounds.' The Penal Code provision (as discussed fully below) remains in force due to the absence of not only post enactment judicial review of legislation in Sri Lanka but also the limited judicial activism on the issue and inability and lack of interest in progressive reform. The relevant legal provisions will be considered below:

Penal Code No. 02 of 1883 as amended

According to Section 365 of the Penal Code, '*whoever who has voluntary sexual intercourse against the order of the nature with any man, woman or an animal shall be punished with imprisonment up to ten years and a fine….*'

Further, Section 365A of the Penal Code provides that any person, who in public or private, commits, or is party to the commission of, or procures or attempts to procure the

---

[57] UNDP, Law, Policies and Regulations concerning HIV/AIDS Prevention and Containment: an Assessment and Recommendations, August 2003

[58] To find information about the protection of sex workers from the Department of Labor in the New Zealand Sex Industry, available at, http://www.osh.govt.nz/order/catalogue/pdf/sexindustry.pdf, last accessed on31 May 2013

[59] Interview with UNAIDS, 17 July 2012

commission by any person of, any act of gross indecency with another person, shall be guilty of an offence, and shall be punished with imprisonment up to two years or a fine, or both. It further stipulates that if such offence is committed against a person under sixteen years of age, the offender shall be punished with rigorous imprisonment for a term of ten to twenty years, to a fine and compensation payable to the person against whom such offence is committed for the injuries caused.

Accordingly the Penal Code Sections 365 and 365A imposes grave punishments for sexual conduct occurring between those who belong to the same sex notwithstanding the fact that such conduct is between consenting adults.

Until 1995, (before Section 365 was amended to include Section 365A) the offence was limited to sexual acts between male persons. Thus, Section 365 stated that *'any male person, who in public or private, commits, or is party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of an offence, and shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both, and shall also be liable to be punished with whipping.'*

The 1995 amendment to the Penal Code has increased the penalty to rigorous imprisonment if the offence was committed by a person over eighteen years on someone under sixteen years of age (Section 365) and Section 365 A, extended the offence from 'any male person' to a 'person', thus penalising homosexual conduct not just between men but also between women. With the amendment of 1995, Sri Lanka became the only country in the region to criminalise sexual acts between females.[60]

Criminalisation of homosexual conduct involves a number of human rights challenges as well as challenges to the HIV/AIDS response. From the human rights perspective, the legal provision questions the equality before the law guaranteed by the Constitution of Sri Lanka, by imposing an artificial heterosexuality norm among all persons irrespective of their biological difference as well as sexual preference. From the HIV/AIDS prevention perspective, the stigma and discrimination resulting from the legal provisions creates a barrier to approach the homosexual community in the HIV/AIDS response.

Although the Penal Code criminalises homosexual behaviour, at the time of writing there have not been any prosecutions under this provision. Regardless of the absence of indictments and prosecutions, CPA reiterates that the mere existence of the law in the statute book itself leaves ample room for stigmatisation and human rights violations based on sexual orientation and gender identity of a person. It also leaves scope to target individuals based on this archaic piece of legislation. It is reported that the LGBT community in Sri Lanka suffer harassments in all forms on a daily basis.[61] On the other hand the stigma and discrimination prevents these vulnerable groups from taking part of awareness programmes and approaching the health systems in HIV/AIDS prevention response thereby leaving much wider scope for HIV/AIDS transmission due to their lack of awareness.

[60] Naz Foundation, ' Political and Legal Framework regarding MSM in South Asia' , available at , http://test.aidsportal.org/atomicDocuments/AIDSPortalDocuments/ResearchPapers_ArvindNarrain.pdf , last accessed on 31 May 2013

[61] 'Celebrating Pride in Sri Lanka', available at, http://groundviews.org/2010/07/09/celebrating-pride-in-sri-lanka/, last accessed on 31 May 2013

Further, although the Government has given an undertaking in the National HIV/AIDS Policy to work with highly vulnerable groups such as MSM, this is proven to be difficult due to the stigma and discrimination resulting from the social norms that have been backed by legislation.[62] Without the on-going engagement with these vulnerable groups, such as MSM, the transmitting of HIV/AIDS can bring Sri Lanka to higher risk due to their high risk behaviour (i.e. lack of condom usage).

Best Practices

India

India has been a leader in terms of providing for the protection of PLWHA and the other vulnerable groups, recognising their rights within the Constitutional and legal framework. This has also been possible due to the progressive judicial pronouncements by the Indian judiciary, activism by civil society and other interest groups to push for a rights framework in the response to HIV/AIDS and reform in the policy sphere. The policy brief briefly discusses a recent challenge and judicial order regarding the law criminalising sodomy. In the recent case of ***Naz Foundation v Government of NCT of Delhi and Others***[63] in June 2009, Delhi High Court declared Section 377 of the Indian Penal code (IPC) (similar to Section 365 of the Sri Lankan Penal Code) to be unconstitutional. The boxes discusses key aspects of this very important case.

Naz Foundation v Government of NCT of Delhi and Others

In this case, Naz Foundation, an NGO working with PLWHA, filed a petition claiming that Section 377 of the Indian Penal Code (IPC) that criminalised consensual sexual acts between same-sex persons was unconstitutional. In a landmark decision, the High Court of Delhi held that the application of certain parts of Section 377 was to unfairly discriminate on the grounds of sexual orientation and was therefore unconstitutional.

The Naz Foundation argued that Section 377 affected the rights of the gay and transgender community and violated rights guaranteed under the Indian Constitution, including the right to equality, the right to non-discrimination, the right to privacy (guaranteed under the right to life and liberty), and the right to health.

Naz Foundation argued that the application of Section 377 was to unfairly discriminate on the basis of sexual orientation, in contravention of Article 15 of the Constitution. It was argued that the right to non-discrimination on the ground of "sex" in Article 15 of the Constitution should be interpreted widely so as to include sexual orientation.

In particular, in relation to the right to health, it was argued that affected individuals were reluctant to reveal same-sex conduct due to fear of law enforcement crackdown, thereby pushing cases of HIV infection underground, and making it difficult for public health workers to access them and crippling HIV prevention and management efforts. High vulnerability of the MSM group was shown in a comparison of National Sentinel Surveillance Data (2005), which showed an 8% HIV infection rate among the MSM population versus 1% in the general population.

[62] Interview with UNAIDS, 17 July 2012
[63] Writ Petition No.7455/2001, 2 July 2009

The High Court of Delhi held that "Section 377 IPC, insofar as it criminalises consensual sexual acts of adults in private, violates Articles 21, 14 and 15 of the Constitution". The Court held that the criminalisation of same-sex acts in the absence of harm was both arbitrary and unreasonable. The court noted that Section 377 makes no distinction between the consensual and non-consensual nature of acts between adults (as consensual sexual acts between adults in private does not cause harm to others) and further, that Section 377 does not take into account relevant factors such as consent, age and the nature of the act.

In confirming the need to include sexual orientation among protected grounds of discrimination, and build indirect discrimination and harassment into any consideration of the right to equality, the Court considered Canadian, South African and United States jurisprudence as well as the international position contained in the Equal Rights Trust's Declaration of Principles on Equality.

The Court held that even though Section 377 appeared neutral on the face of it, the operation of the section unfairly targeted the MSM community. In determining that the reference to "sex" in Article 15 of the Constitution should be interpreted as including sexual orientation, the Court referred to international jurisprudence, and in particular the Human Rights Committee's decision in *Toonen v. Australia*,[64] in which "sex" was similarly found to include sexual orientation, and the criminalisation of same-sex acts was held to be violation of Article 2 of the International Covenant on Civil and Political Rights.

The crucial theme of non-discrimination is evident in the Courts conclusion:

"If there is one constitutional tenet that can be said to be underlying theme of the Indian Constitution, it is that of 'inclusiveness'. This Court believes that Indian Constitution reflects this value deeply ingrained in Indian society, nurtured over several generations. The inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognising a role in society for everyone. Those perceived by the majority as 'deviants' or 'different' are not on that score excluded or ostracised."[65]

Nepal

Pant v. Nepal[66]

In December 2007, the Supreme Court of Nepal ruled that transgender people and men who have sex with men are equal under the Constitution. In this case the petitioners argued for the issuance of an order of mandamus in order to provide the gender identity on the basis of their gender feelings and to recognise their cohabitation as per their sexual orientation.
The court further held that gender identity and sexual orientation of the third gender and homosexuals, cannot be ignored by treating the sexual intercourse among them as unnatural.

[64] (No.488/1992, CCPR/C/50/D/488/1992, March 31, 1994).
[65] *Naz Foundation v Government of NCT of Delhi and Others* (No.488/1992, CCPR/C/50/D/488/1992, March 31, 1994), at 130, per Ajit Prakash Shah CJ.
[66] Writ No. 917 of the year 2064 BS (2007 AD), *NJA Law Journal 2008*

The Supreme Court of Nepal called upon the State to create appropriate environment and make legal provisions to enable the LGBT people enjoy fundamental rights. This was to include inserting provisions in the Constitution, guaranteeing non-discrimination on the ground of 'gender identity' and the 'sexual orientation' besides 'sex' in line with the Bill of Rights of the Constitution of South Africa.

The Court issued a directive order to the Government of Nepal to form a committee in order to undertake the study on overall issues in this regard and make the legal provisions after considering recommendations made by the said Committee.

The Supreme Court of Nepal also noted based on evidence given by the World Health Organisation (WHO), that the existence and birth of LGBT is a natural phenomenon and not a disease. It put forward that despite the fact that the LGBT persons are born naturally, the existing society mistrusts their existence in the name of unnatural phenomenon.

It further noted that many countries including in Europe, have made remarkable legal provisions to protect the rights of the people in regard to the sexual orientation and gender identity. The latest is South Africa, which has made constitutional provision to ensure non-discrimination on the basis of sexual orientation. The Court noted that in India, there is a group known as *Hijaras* and there is the provision specifying their own sexual identity as *Hijara* in their passport and other identity cards.

South African Constitution

The South African Constitution of 1996 was adopted to be the foundation of the new democratic society. The Constitution expressly commits all state and private institutions to human dignity, the achievement of equality and the advancement of human rights and freedoms.[67]

Article 9 (3) of the Constitution provides that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Article 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected. The state is required to respect and promote this right.

[67] Open Society Foundation for South Africa, ' A best practice guide to HIV disclosure', Page 12, available at , http://osf.org.za/wp/wp-content/uploads/2012/09/A-best-pracrtice-guide-to-HIV-disclosure1.pdf , last accessed on 31 May 2013

3.3 Prison Inmates

In most countries prisoners are regarded as having a higher HIV infection prevalence than the general population as rates of HIV infection in prison settings tend to be higher than in the community outside prisons.[68] The high risk groups are including sex workers, injecting drug users, the poor and the marginalised are highly represented among the prisoners which increases the risk of HIV transmission in prisons. Further, CPA was informed of instances of drug use and unsafe sexual behaviour (forced or consensual) among prisoners or prison staff with reduced access to the prevention measures (such as condoms and sterile injecting equipment) and health education, although limited, that are available to people outside prison.

The prisoners have little or no access to voluntary HIV testing or treatment, HIV prevention information and tools, condoms and sterile needles and syringes despite strong evidence of their effectiveness in preventing HIV.[69] The prisoners living with HIV / AIDS on the other hand have several of their rights violated, often segregated from society and denied vital medical care.

Hence it is paramount that the State authorities carry out programmes for preventing HIV transmission in prisons. Further, necessary legislation, prison policies and prison rules need to promote the aforementioned effective responses to HIV in prisons.

Practical issues

A clear illustration which proves that HIV responses are required in prisons in Sri Lanka is the recent death of an AIDS infected individual in the prisons and subsequent order issued by a Magistrate to carry out HIV testing of 220 inmates who shared the same ward with the deceased prisoner.[70] The cause of death of the 34 year old prison inmate in March 2012 was not known to the prison officials till the post-mortem examination reports were released. It was further reported that the deceased prisoner was diagnosed as HIV positive in 2006, and was undergoing treatment at the National STD/AIDS Control Programme (NSACP) until his imprisonment in May 2011. Upon his imprisonment he had failed to receive the required treatment as he had not informed his status to the prison officials. This case highlights that due to the stigma and the discriminatory laws in place, the inmate was unable to reveal his HIV positive status which would have potentially saved his life.

The incident is a wake-up call to introduce HIV / AIDS responses including awareness, counselling, and safe sex education in the prisons system in Sri Lanka. Despite this need neither the legislation nor policies in Sri Lanka acknowledge the need for any measures to prevent HIV transmission in the prison system. Existing policy documents including the National HIV / AIDS Policy do not identify prisoners as a vulnerable group in the national response to HIV/ AIDS and do not undertake any special preventive measures in the prisons

[68] IPU, UNAIDS, UNDP, Taking action against HIV: A Handbook for Parliamentarians, N°15 - 2007
[69] *ibid*
[70] '220 prison inmates test positive for HIV', Tuesday, 12 June 2012, available at, http://www.hirunews.lk/36430, last accessed on 31 May 2013
See also: Hans Billimoria, 'A man, a magistrate and 220 intimates: A reflection of the HIV response in Sri Lanka', 12 June 2012, available at http://groundviews.org/2012/06/15/a-man-a-magistrate-and-220-intimates-a-reflection-of-the-hiv-response-in-sri-lanka/, last accessed on 30 May 2013

system in Sri Lanka. Further the Prisons Ordinance of Sri Lanka does not undertake any positive measures on the issue of HIV / AIDS control as highlighted below:

Prisons Ordinance No 16 of 1877

The Prisons Ordinance contains many provisions about the medical treatment of prisoners which include the appointment of a medical officer.[71] Accordingly it is the responsibility of the Minister in charge of Health to make rules as to how often the medical officer should visit the prisons, on maintenance of records on sick prisoners and other related issues.[72]

Further according to section 19 and 20, it is the duty of the medical officer to report to the superintendent of prisons about the medical status of the prisoners. Section 66 of the Ordinance makes provision for the reporting of sick prisoners to the medical officer.

Section 69 (1) of the Ordinance provides that where a prisoner is found to be suffering from any disease which cannot be adequately treated in a prison, he shall be transferred to a public hospital.

The recent death of a prisoner (discussed above) is a clear illustration for the inadequacy of the medical officer to report cases of HIV. Hence it is important that special HIV prevention programmes are introduced within the prison system and that legal and policy interventions are made to that effect.

Best Practices

HIV/AIDS Policy in Malawi

The government of Malawi has committed its efforts to providing HIV treatment and substantial progress has been made in recent years. The number of people receiving antiretroviral therapy has risen dramatically over the last few years and this has had a positive impact on thousands of PLWHA.[73] The HIV/AIDS Policy in Malawi provides that the government undertakes the following:

- Ensure that prisoners are not subjected to mandatory testing, quarantine, segregation or isolation on the basis of HIV or AIDS status.
- Ensure that prisoners (and prison staff) have access to HIV-related prevention, information, education, voluntary counselling and testing, the means of prevention (including condoms), treatment (including ART), care and support.
- Ensure that prison authorities take all necessary measures, including adequate staffing, effective surveillance, and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion by fellow prisoners and by wardens. Juveniles shall be segregated from adult prisoners to protect them from abuse.
- Ensure that prisoners who have been victims of rape or sexual violence have access to post-exposure prophylaxis, as well as effective complaint mechanisms and procedures, and the option to request separation from other prisoners for their own protection.

[71] Prisons Ordinance No 16 of 1877, Section 8
[72] Prisons Ordinance No 16 of 1877, Section 18(1)
[73] "Averting HIV and AIDS in Malawi", 2012, http://www.avert.org/aids-malawi.htm

3.4 Employment

HIV/AIDS affects largely men and women in the reproductive age group most of who belong to the country's workforce.[74] The impacts of HIV / AIDS include absenteeism at work, poor work performance due to physical and psychological morbidity and a reduced, productive labour force, due to premature deaths, which has adversely affected enterprise performance and threatened national economies.[75] At an individual level workers have experienced increasing health care costs, termination of employment, slashed incomes, social isolation and unwarranted stigma and discrimination.[76] It has been highlighted that 11.1% of the working population in Sri Lanka are dismissed for contracting HIV/AIDS.[77]

Further, research indicates that the majority of PLWHA are unemployed, whilst a few are self-employed. It was reported that those who were employed and whose HIV/AIDS status was made known to their employers and co-workers were subject to discrimination and had to face the lack of regard for confidentiality pertaining to their HIV/AIDS status.[78] With regards to PLWHA, when interviewed, it was found that people who have tested positive are reluctant to apply for jobs where they meet the qualifications. The reasoning behind this was the mandatory blood test that they are forced to take which will reveal their HIV status thus creating an even greater stigma. This illustrates the need for laws that prohibit discrimination against people with HIV and the urgent need for legal establishment of confidentiality protection of one's HIV status.

Constitutional and legal provisions related to employment issues

Neither the Constitution nor any employment related laws in Sri Lanka expressly recognise HIV / AIDS related workplace issues. However, some of the Constitutional provisions are important in the light of managing HIV / AIDS in the workplace.

According to Article 14(1)(g) of the Constitution every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise. Further, the limitations to this provision are imposed in Article 15 (5) of the Constitution which states that the exercise and operation of this right is subject to the restrictions in the interests, of national economy or obtaining the professional, technical, academic, financial and other qualifications necessary for practicing any profession or carrying on any occupation, trade, business or enterprise, and the licensing and disciplinary control. Accordingly, it is possible for an organisation / professional body to impose discriminatory policies / standards on employment, recruitment and termination of employees. (i.e. compulsory HIV testing etc.)

---

[74] National Policy on HIV/AIDS in the World of Work, Prepared by International Labour Organisation, Sri Lanka in Consultation with National stakeholders, June 2010

[75] National Policy on HIV/AIDS in the World of Work, Prepared by International Labour Organisation, Sri Lanka in Consultation with National stakeholders, June 2010

[76] *ibid*

[77] Statement made by ILO East and South-East Asia and the Pacific Senior Specialist on HIV and AIDS Richard Howard, Sunimalee Dias, 'Sri Lanka committed to job security for HIV/AIDS victims', available at, http://sundaytimes.lk/110724/BusinessTimes/bt36.html, last accessed on 31 May 2013

[78] The Centre For Policy Alternatives (CPA), 'A Profile of the Stigma and Discrimination faced by the People Living with HIV/AIDS', 2005

Further, Article 15(7) of the Constitution restricts the rights guaranteed under Article 14, in the interests of public health. Hence, public health concerns could be relied upon to seek to justify discrimination / unjustified termination and similar issues in the workplace due to HIV/ AIDS.

Major employment related laws in Sri Lanka (i.e. Industrial Disputes Act, Shop and Office Act, Factories Ordinance and the Termination of Employment of Workmen (Special Provisions) Act) do not contain any provision on managing HIV / AIDS or infectious diseases in the workplace. Unless it is argued otherwise it is possible for employers to make rules on compulsory HIV testing for employees as well as subsequent termination / discrimination on being found positive.

In addition, some discriminatory provisions can be observed in certain laws which although have limited applicability in the modern context can however run counter to the accepted norms recognised in the national policies on HIV / AIDS.

For instance Section 13 of the Suburban Dairies and Laundries Ordinance No.38 of 1908 provides that 'no dairyman, cow-keeper, or purveyor of milk shall knowingly allow any person suffering from any infectious disease, or having recently been exposed to infection from a person so suffering, to milk cows or to handle vessels used for containing milk, or to assist in the conduct of the business of the dairyman, until he has satisfied the health officer that all danger of communication of infection to the milk or of its contamination has ceased'.

When interviewed, it was demonstrated that the discrimination in the workplace is extremely prevalent and the lack of enforceable laws constitutes a major issue. *"The workplace policy and the National policy have not reached the people and the language is not simple and should thus be simplified. The law is too broad and the people cannot understand".*[79]Reform in this area is urgently needed to avoid stigma and discrimination and protect the rights of PLWHA.

[79] Anonymous Interview, Support Group, 8 April 2013.

Section 4

National Policies

The policy brief has discussed specific policies in relation to HIV/AIDS in Sri Lanka. This section briefly maps these out for greater clarity, demonstrating the areas that need urgent reform.

4.1 National HIV/AIDS Policy of Sri Lanka

National HIV/AIDS Policy of Sri Lanka provides in Article 3.12 that as a majority of the reported HIV infections are in the most productive 15-49 age group. In addition to other reasons, this aspect needs to be given attention with reform and when attempting to strengthen HIV/AIDS prevention efforts in the world of work.

The National HIV/AIDS Policy undertakes to mobilise the Government of Sri Lanka, Employers' and Workers' organisations and the private sector to play a key role in this effort and endorses adoption of the guidelines of the ILO Code of Practice on HIV/AIDS in World of Work for development of workplace policies and programs.

4.2 National Policy on HIV/AIDS in the World of Work

National Policy on HIV/AIDS in the World of Work supported by the International Labour Organisation was adopted by the government of Sri Lanka in 2010 with the objective of preventing HIV infection among the workers and their families, to ensure a supportive working environment without stigma and discrimination for workers and their families, to promote access to treatment, care and support and to protect the rights of those infected and affected.[80] The policy incorporates the 10 key principles of the ILO Code of Practice on HIV/AIDS and the world of work.[81]

- Recognition of HIV / AIDS as a workplace issue
- Non discrimination
- Gender equality
- Healthy and safe work environment
- Social dialogue
- No screening for purposes of employment
- Confidentiality
- Continuation of employment relationship
- Prevention

[80] *ibid*
[81] *ibid*

- Treatment, care and support

Best Practices

South Africa

The Labour Relations Act of 1995[82]

- Stipulates that employees have a right to privacy with regard to their personal and private information, including any personal medical information

- Employers are not required to disclose information that is confidential and which, if disclosed, may cause substantial harm to an employee or that is private, personal information relating to an employee, unless that employee consents to the disclosure of that information

The Employment Equity Act of 1998[83]

- The Act provides that no employer may ask an employee to take an HIV test to find out their HIV status. This also applies to applicants for jobs. If an employer feels that an HIV negative status is an 'inherent requirement' of a job, they would have to prove this to the Labour Court in an application for permission to require an employee to test for HIV. Without this application, confidentiality is absolutely protected

- An employee is under no obligation to disclose his or her HIV status to an employer, any other employee or anyone associated with the organisation

- The Act makes provision for every workplace over 50 people to have workplace policies and programmes relating to employment equity, and to report on progress to the Department of Labour at regular intervals

India

MX of Bombay, Indian inhabitant vs. M/s ZY **(AIR 1997 Bombay 406)**

The Bombay High Court considered the question of whether an employer can lawfully terminate the employment of a person with HIV.

Facts of the case involved the termination of a worker's services by an insurance company upon being found HIV positive. The company argued that his medical condition had led to a problem in the workplace, as other workers had refused to work with him.

[82] Open Society Foundation for South Africa: A best practice guide to HIV disclosure, 2009
[83] *ibid*

Court took the position that where a worker has a contagious disease that could be transmitted by the normal activities of the workplace, his or her employment could reasonably be terminated. However, because the worker in this case was still able to perform his normal job functions and did not pose any risk to fellow employees, it would be 'arbitrary and unreasonable' to terminate his employment, and in breach of the equality clause in the Indian Constitution.

***X v State Bank of India* (2002)[84]**

Facts of the case involved denial of employment on grounds of his HIV positive status, despite medical experts declaring individual concerned to be fit to perform the job.

The court relying on the decision in MX v. ZY (AIR 1997 Bombay 406) held that X could not be denied the opportunity of employment. The Court directed the respondent bank to employ the petitioner on first available vacancy and observed that '*protection and dignity of the HIV infected persons is essential to the prevention and control of HIV/AIDS. Workers with HIV related illness should be treated the same as any other worker with an illness.*'[85]

4.3 Migrant workers

Although remittances made by the migrant workers significantly contribute to the national economy, there is limited safeguards for those who go in search of employment overseas with regular reports in the media documenting the violence and harassment faced by them. A particular problem is also the lack of health care and support provided to migrant workers. Reports have documented external migrant workers returning with HIV/AIDS to Sri Lanka and steps must be taken to minimise their vulnerabilities.[86]

A key issue faced by the migrant workers is the mandatory testing for HIV/AIDS without obtaining consent of the migrant worker. The mandatory testing for HIV/AIDS is compulsory by all countries, which receive migrant workers from Sri Lanka. Some countries[87] require compulsory HIV/AIDS testing prior to departure while a few countries such as UAE and Bahrain require medical tests each time migrant workers renew their visa.[88]

---

[84] Lawyers Collective India website, URL: http://www.lawyerscollective.org/hiv-and-law/judgements-a-orders.html

[85] *X of Mumbai Indian Inhabitant v State Bank of India*, Writ Petition No. 1856 of 2002, per A.P. Shah J, at 8. English translation available at http://www.globalhealthrights.org/wp-content/uploads/2012/12/HC-2004-X-v.-State-Bank-of-India.pdf

[86] Sri Lanka National HIV / AIDS Country Progress Report 2010 / 2011

[87] 'Mandatory HIV testing for employment of migrant workers in eight countries of South-East Asia: From discrimination to social dialogue'', available at, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_112972.pdf, last accessed on 31 May 2013

[88] UNDP Bangladesh 'HIV Vulnerabilities faced by women migrants, "From Bangladesh to the Arab States", 2009, available at, http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/report/2009/200911_undp_bangladesh_en.pdf,last accessed on 31 May 2013

Mandatory HIV / AIDS testing for HIV are discriminatory and stigmatising which violates a person's right to privacy. Further, the International Labour Organisation (ILO) code of practice on HIV / AIDS also states mandatory testing is not required for migrant workers 'Migrants workers are often required to sign papers agreeing to the HIV / AIDS screening tests without being told what it is about or what it is for'.[89] Further, it has been reported that the tests are conducted by 16 private medical institutions without any government regulation or control.[90] It has been reported that the test results are sent to recruitment agencies and not to the person who was tested, violating the principle of confidentiality.
The law which regulates labour migration in Sri Lanka is the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 which is silent about medical testing and issues of confidentiality. National Labour Migration Policy adopted by the Government of Sri Lanka in 2009 recognises the importance of regulating medical testing.[91] A study conducted by the Ministry of Health and International Organisation for Migration (IOM) in 2012, concluded that the recommendations made under the National Labour Migration Policy concerning confidentiality have yet to be translated into action.[92]

National Labour Migration Policy

- The policy objectives include: minimising negative impacts of migration and to work towards the fulfilment and protection of all human and labour rights of migrant workers.

- Recognises that HIV vulnerability faced by migrants is an important issue despite Sri Lanka being listed among countries of low HIV prevalence.

- It notes that while migration is not a direct risk factor for HIV infection, there are economic, socio-cultural and political factors in the migration process that make migrant workers particularly vulnerable.

- Undertakes to regulate health testing in order to ensure dignity, privacy and confidentiality of the migrant worker

- It proposes to monitor health impacts of migration and creates awareness among migrants about possible health risks, including HIV infection

[89] CARAM Asia, Dilshani Samaraweera, Sri Lanka's irresponsible Ministers and Migrants rights, Sunday Times, 26 August 2007, available at,http://sundaytimes.lk/070826/FinancialTimes/ft310.html, last accessed on 31 May 2013
[90] *Ibid*
[91] Technical Report 'Sri Lanka Migration Health Study- 2012' Page 9, available at, http://www.migrationhealth.lk/pdf/625044129.pdf, last accessed on 31 May 2013
[92] Technical Report, Sri Lanka Migration Health Study, Study on Outbound Migration, 2012, p. 33 http://migrationhealth.lk/pdf/625044129.pdf, last accessed on 31 May 2013

Section 7

Conclusion

There has been an increase in awareness of HIV/AIDS in Sri Lanka over the last few years. In turn this has led towards an influx of resources targeting the needs of PLWHA. Although there is greater awareness and interest, in this policy brief CPA highlights the on-going problems faced by PLWHA including violence, stigma and discrimination. However, awareness, interest and resources alone, will not address the problem. As illustrated in this policy brief, legal and policy reform is necessary to prevent the spread of HIV/AIDS and protect the rights of PLWHA and vulnerable communities.

At the national level, there must be more attention and initiative from the political leadership on HIV/AIDS and related issues. This should be public statements and other initiatives to raise awareness of HIV/AIDS. Steps should also be taken at the national level to provide support for PLWHA, vulnerable communities and their families.

It is paramount reform in the legal and policy framework is undertaken immediately. Legal and policy reform should be inclusive and transparent. It is important that PLWHA, vulnerable communities, their families, service providers, community groups and I/NGOs are involved in the formulation of legislation and policies. Furthermore, it is not merely a matter of legislation alone but moreover of ensuring that such a legal framework is fully implemented. This requires training and educating administrators, medical staff and others. Finally, the legal and policy framework should be underpinned by human rights principles and accordingly take note of the principles of confidentiality and informed consent.

Section 8

Recommendations

The following set of recommendations have been compiled on the basis of the findings of the research conducted by CPA including specific recommendations made by PLWHA and community groups. CPA notes that some of these recommendations have been made previously but reiterates their importance in the present context and urges stakeholders to take necessary steps to fully implement what has been listed below. The recommendations are listed in accordance with specific thematic fields.

National HIV/AIDS Policy

The Government should strengthen the existing policy framework by introducing one that is based in a rights framework and formulated in an inclusive and transparent manner, which includes all relevant stakeholders including PLWHA. The policy should recognise the rights of PLWHA raise specific issues such as the importance of confidentiality, the implications of mandatory testing, the importance of counselling and address care and support for PLHWA.

HIV/AIDS Legislation

CPA recognises the importance of legislation based on a rights framework, which can provide protection, if implemented, to PLWHA and vulnerable communities. In this regard, the following are important:

Urgently reform legislation including introducing amendments to laws that are discriminatory as highlighted in this policy brief. This includes changes that are proposed to the Penal Code and Vagrants Ordinance.

Introduce legislation that provides for protection and prevents discrimination at the workplace and medical institutions.

HIV/AIDS Sensitisation Programme

There is an urgent need for greater awareness of HIV/AIDS and related issues, which can directly impact reducing stigma and discrimination and provide for better protection to PLWHA and vulnerable communities. Thus, it is paramount that sensitisation programmes are conducted among a cross section of actors including medical staff, government officials, private sector actors and others. These programmes can be at the national level with the involvement of all stakeholders.

There should also be awareness raising among the media to ensure reporting that does not lead to further stigma and discrimination. The Government should work with state and private media institutions to provide awareness on HIV/AIDS and train media actors in sensitised reporting.

Leadership & Coordination

The Government must take the lead in addressing HIV/AIDS and related issues in Sri Lanka. The NSACP with the support of the relevant ministries should take the lead and bring in others including PLWHA, professional groups, religious actors, private sector, UN, I/NGOs and community groups in the response towards HIV/AIDS. The following are some steps that can be taken immediately:

Initiate prevention efforts with the involvement of Government officials, I/NGOs, media, religious leaders and the private sectors.

Provide support and allocate funds for drop-in centres. These centres can provide a safe space for vulnerable groups to visit during the day and include resources for counselling and information on reproductive health.

Treatment and Care

The Government must ensure that resources such as medication and support groups are available and accessible to all. This also includes the availability of ARTs. It is also important that medical staff are provided with necessary training to provide treatment, care and support for PLWHA.

Prior to being tested for HIV, individuals should be informed of the available treatment. Pre and post counselling should be mandatory.

Treatment for STDs should be widely available in all medical institutions.