CHAPTER : 9
Conclusions and Suggestions

9.0 Conclusions

(1) To assist States in translating international human rights norms into practical observance in the context of HW. To this end, the Guidelines consist of three parts: first, Guidelines for State action comprising action-oriented measures to be employed by Governments in the areas of law, administrative policy and practice that will protect human rights and achieve HIV-related public health goals; second, recommendations for dissemination and implementation of the Guidelines; and third, international human rights obligations and HIV, which describes the human rights principles underlying a positive response to HIV.

(2) States bring to the HIV epidemic different economic, social and cultural values, traditions and practices - a diversity which should be celebrated as a rich resource for an effective response to HIV and AIDS.

(3) It is intended that States, in the persons of legislators and Government policymakers, including officials involved in national AIDS programmes and relevant departments and ministries, such as health, foreign affairs, justice, interior, employment, welfare and education. Other users who will benefit from intergovernmental organizations (IGOs), non-governmental organizations (NGOs), networks of persons living with HIV (PLHIV), community-based organizations (CBOs), networks on ethics, law, human rights and HIV and AIDS service organizations (ASOs).
(4) Many difficult and complex issues, some of which may or may not be relevant to the situation in a particular country. It is essential that the Guidelines be taken by critical actors at the national and community level and considered in a process of dialogue involving a broad spectrum of those most directly affected by the issues. Consultative process will enable Governments and communities to consider specifically relevant in their country, assess priority issues presented by the devise effective ways to implement the Guidelines in their respective contexts.

(5) It should be borne in mind that achieving international cooperation in solving problems of an economic, social, cultural or humanitarian character and promoting and encouraging respect for human rights and for fundamental freedoms for all is one of the principal objectives of the United Nations. In this sense, international cooperation, including financial and technical support, is a duty of States in the context of the HIV epidemic and industrialized countries are encouraged to act in a spirit of solidarity in assisting developing countries to meet the challenges

(6) HIV continues to spread throughout the world at an alarming rate. The widespread abuse of human rights and fundamental freedoms associated with HIV has emerged in all parts of the world in the wake of the epidemic.

(7) The protection of human rights is essential to safeguard human dignity in the context of HIV and to ensure an effective, rights-based response to HIV and AIDS. An effective response requires the implementation of all human rights, civil and political, economic, social and cultural, and, fundamental freedoms of all people, in accordance with existing international human rights standards.
(8) Public health interests (to not conflict with Human rights. On the contrary, it has been recognized that when human rights are protected, fewer people become infected and those living with HIV and their families can better cope HIV and AIDS.

(9) A rights-based, effective response to the HfV epidemic involves establishing appropriate governmental institutional responsibilities, implementing law reform and support services and promoting a supportive environment for groups vulnerable to HIV and for those living with HIV.

(10) In the context of HIV, international human rights norms and pragmatic public health goals require States to consider measures that may be considered controversial, particularly regarding the status of women and children, sex workers, injecting drug users and men having sex with men. It is, however, the responsibility of all States to identify how they can best meet their human rights obligations and protect public health within their specific political, cultural and religious contexts.

(11) Although States have primary responsibility for implementing strategies that protect human rights and public health, United Nations bodies, agencies and programmes, regional intergovernmental bodies and nongovernmental organizations, including networks of people living with HIV, play critical roles in this regards.

(12) States should establish an effective national framework for their response to HIV which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV policy and programme responsibilities across all branches of government.
(13) States should ensure, through political and financial support, that community consultation occurs in all phases of HIV policy design, programme implementation and evaluation and that community organizations are enabled to carry out their activities, including in the field of ethics, law and human rights, effectively.

(14) States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV and that they are consistent with international human rights obligations.

(15) States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV or targeted against vulnerable groups.

(16) States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV and profile with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.

(17) States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.

(18) States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and
information for HIV prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic infections and conditions.

(19) States should take such measures at both the domestic and international levels, with particular attention to vulnerable individuals and populations.

(20) States should implement and support legal support services that will educate people affected by HIV about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.

(21) States, in collaboration with and through the community, should promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

(22) States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV to understanding and acceptance.

(23) States should ensure that Government and the private sector develop codes of conduct regarding HIV issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.
(24) States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV their families and communities.

(25) States should cooperate through all relevant programmes and agencies of the United Nations system, including UNAIDS, to share knowledge and experience concerning HIV-related human rights issues and should ensure effective mechanisms to protect human rights in the context of HIV at international level.

9.1 Suggestions

(1) Criminal and/or public health legislation should not include specific offences against the deliberate and intentional transmission of HIV but rather should apply general criminal offences to these exceptional cases. Such application should ensure that the elements of foreseeability, intent, causality and consent are clearly and legally established to support a guilty verdict and/or harsher penalties.

(2) Criminal law prohibiting sexual acts (including adultery) sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal. In any event, they should not be allowed to impede provision of HIV prevention and care services.

(3) With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their s clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients. Criminal law should ensure that children and adult sex workers who have been trafficked
or otherwise coerced into sex work are protected from participation in the sex industry and are not prosecuted for such participation but rather are removed from sex work and provided with medical and psycho-social support services, including those related to HIV

(4) Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider:

(5) The authorization or legalization and promotion of needle and syringe exchange programmes;

(6) The repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes.

(7) Prison authorities should take all necessary measures, including adequate staffing, effective surveillance and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion. Prison authorities should also provide prisoners (and prison staff, as appropriate), with access to HIV-related prevention information, education, voluntary testing and counselling, means of prevention (condoms, bleach and clean injection equipment), treatment and care and voluntary participation in HIV-related clinical trials, as well as ensure confidentiality, and should prohibit mandatory testing, segregation and denial of access to prison facilities, privileges and release programmes for HIV-positive prisoners. Compassionate early release of prisoners living with AIDS should be considered.
(8) States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV and people with disabilities from discrimination in both the public and private sectors, that will ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation and provide for speedy and effective administrative and civil remedies.

(9) General anti-discrimination laws should be enacted or revised to cover people living with asymptomatic HIV infection, people living with AIDS and those merely suspected of HIV or AIDS. Such laws should also protect groups made more vulnerable to HIV/AIDS due to the discrimination they face.

(10) The areas covered should be as broad as possible, including health care, social security, welfare benefits, employment, education, sport, accommodation, clubs, trades unions, qualifying bodies, access to transport and other services.

(11) Direct and indirect discrimination should be covered, as should cases where HIV is only one of several reasons for a discriminatory act, and prohibiting HIV vilification should also be considered.

(12) Independent, speedy and effective legal and/or administrative procedures for seeking redress, including such features as fast-tracking for cases where the complainant is terminally ill, investigatory powers to address systemic cases of discrimination in policies and procedures, ability to bring cases under pseudonym and representative complaints, including the possibility of public interest organizations bringing cases on behalf of people living with HIV.
(13) Exemptions for superannuation and life insurance should only relate to reasonable actuarial data, so that HIV is not treated differently from analogous medical conditions.

(14) Traditional and customary laws which affect the status and treatment of various groups of society should be reviewed in the light of anti-discrimination laws. If necessary, legal remedies should be made available, if such laws are misused and information, education and community mobilization campaigns should be conducted to change these laws and attitudes associated with them.

(15) General confidentiality and privacy laws should be enacted. HIV-related information on individuals should be included within definitions of personal/medical data subject to protection and should prohibit the unauthorized use and/or publication of HIV-related information on individuals. Privacy legislation should enable an individual to see his or her own records and to request amendments to ensure that such information is accurate, relevant, complete and up to date. An independent agency should be established to redress breaches of confidentiality. Provision should be made for professional bodies to discipline cases of breaches of confidentiality as professional misconduct under codes of conduct discussed below.

(16) Unreasonable invasion of privacy by the media could also be included as a component of professional codes governing journalists. People living with HIV should be authorized to demand that their identity and privacy be protected in legal proceedings in which information on these matters will be raised.

(17) Laws, regulations and collective agreements should be enacted or reached so as to guarantee the following workplace rights:
(a) A national policy on HIV and the workplace agreed upon in a tripartite body;
(b) Freedom from HIV screening for employment, promotion, training or benefits;
(c) Confidentiality regarding all medical information, including HIV status;
(d) Employment security for workers living with HIV until they are no longer able to work, including reasonable alternative working arrangements;
(e) Defined safe practices for first aid and adequately equipped first-aid kits;

(18) Protective laws governing the legal and ethical protection of human participation in research, including HIV-related research, should be enacted or strengthened in relation to non-discriminatory efficacious pharmaceuticals, vaccines and medical devices.

(19) Anti-discrimination and protective laws should be enacted to reduce human rights violations against women in the context of HIV, so as to reduce vulnerability of women to infection by HIV and to the impact of HIV and AIDS. More particularly, laws should be reviewed and reformed to ensure equality of women regarding property and marital relations and access to employment and economic opportunity, discriminatory limitations are removed on rights to own and inherit property, enter into contracts and marriage, obtain credit and finance, initiate separation or divorce, equitably share assets upon divorce or separation, and retain custody of children. Laws should also be enacted to ensure women's reproductive and sexual rights, including the right of independent access to reproductive and STD health information and services and means of contraception, including safe and legal abortion and the freedom to choose among these, the right to determine number and spacing of children, the right to demand safer sex practices and the right to legal protection
from sexual violence, outside and inside marriage, including legal provisions for marital rape. The age of consent to sex and marriage should be consistent for males and females and the right of women and girls to refuse marriage and sexual relations should be protected by law. The HIV status of a parent or child should not be treated any differently from any other analogous medical condition in making decisions regarding custody, fostering or adoption.

(20) Anti-discrimination and protective laws should be enacted to reduce human rights violations against children in the context of HIV, so as to reduce the vulnerability of children to infection by HIV and to the impact of HIV and AIDS. Such laws should provide for children's access to HIV-related information, education and means of prevention inside and outside school, govern children's access to voluntary testing with consent by the child, in line with the evolving capacities of the child, or by the parent or appointed guardian, as appropriate, should protect children against mandatory testing, particularly if orphaned by AIDS, and provide for other forms of protection in the context of orphans, including inheritance and/or support. Such legislation should also protect children against sexual abuse, provide for their rehabilitation if abused and ensure that they are considered victims of wrongful behaviour, not subject to penalties themselves. Protection in the context of disability laws should also be ensured for children.

(21) Anti-discrimination and protective laws should be enacted to reduce human rights violations against men having sex with men, including in the context of HIV, in order, inter alia, to reduce the vulnerability of men who have sex with men to infection by HIV and to the impact of HIV and AIDS. These measures should include providing penalties for vilification of people who engage in same-sex relationships, giving legal recognition to same-sex marriages and/or relationships
and governing such relationships with consistent property, divorce and inheritance provisions. The age of consent to sex and marriage should be consistent for heterosexual and homosexual relationships. Laws and police practices relating to assaults against men who have sex with men should be reviewed to ensure that adequate legal protection is given in these situations.

(22) Laws and regulations that provide for restrictions on the movement or association of members of vulnerable groups in the context of HIV should be removed in both law (decriminalized) and law enforcement.

(23) Public health, criminal and anti-discrimination legislation should prohibit mandatory HIV-testing of targeted groups, including vulnerable groups.

(24) States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price. States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic.

(25) States should take such measures domestic and international levels, with particular attention to vulnerable individuals and populations.