

POST CONSULTATION REPORT – CONSULTATION
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Facilitated by Diana Shaw

ADJUSTMENT AND RE-DRAFT OF
NATIONAL AIDS COMMISSION
LEGISLATIVE REVIEW AND PROPOSAL

Compiled by Diana Shaw for

THE NATIONAL AIDS COMMISSION

Under the Project

“Strengthening of Belize’ Multi-sectoral Response to
HIV/AIDS.”

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INTRODUCTION

In 2002, the National AIDS Commission with support from the United Nations Development Program (UNDP) and the Global Fund Project embarked on a consultative process in view of proposing a draft National HIV/AIDS Policy document to be presented to Cabinet for consideration. This effort was guided by the Policy and Legislation subcommittee of the NAC led by Dolores Balderamos Garcia, Chairperson.

During the period 2002 – 2004 a review of HIV related legislation and a survey of perceptions were conducted. Country-wide consultations with major stakeholders were also completed so that the views of many concerned sectors could be included. This broad consultation process culminated in January 2005, with the Draft National Policy on HIV/AIDS, which was presented and approved by Cabinet in December 2005.

The Policy adopts a HUMAN RIGHTS AND RESPONSIBILITIES perspective, which incorporates the fundamental rights enshrined in the Belize Constitution and the commitments set out in the National Poverty Reduction Strategy and Action Plan as well as our international commitments in the Millennium Development Goals, (MDGS) and the United Nation's Special Session on HIV/AIDS, 2001 (UNGASS).

Since then the NAC has facilitated several national workshops to build support and consensus for the passage of the national policy. Over 200 persons and roughly 40 organizations including key businesses, religious and civil society sectors participated and pledged support for the policy. It is with this level of community support, that the policy was then presented and approved by Cabinet in December of 2005.

Now through the Project entitled "Strengthening of Belize's Multi-Sectoral Response to HIV/AIDS sponsored by the Global Fund to Fight AIDS, Tuberculosis and Malaria, the National AIDS Commission has initiated a full review of the legislation in Belize in an effort to identify legislative gaps in the Multi-sectoral Response and to develop draft legislation to address these gaps.

The first draft of this report presented the consultant's findings after reviewing the laws of Belize and also presented the consultant's recommendations for legislative review. That report was presented to the NAC who then organised the consultation workshop for the review of those recommendations. This report is the result of that consultation and presents the final views and recommendations of the stakeholders involved in the fight against HIV/AIDS in Belize. The list of the stakeholders represented at the consultation can be found in the Appendix.

The specific goals of this consultancy are to:

- (a) Review all relevant laws for the purpose of recommending a comprehensive legal/legislative framework to create an enabling environment in which to combat HIV and AIDS.
- (b) Identify laws that respect and promote the rights of Persons living with HIV and AIDS (PLWHA) and make recommendations appropriate to the Belizean context and the National HIV/AIDS Policy.
- (c) Identify gaps in existing legislation and provide recommendations as to how these can be addressed.
- (d) Provide recommendations on existing legislation which needs to be repealed.
- (e) Review disability legislation from other jurisdictions and identify areas which are relevant and adaptable to the Belizean context.
- (f) Compile existing knowledge and practices in the area of public health and recommend whether HIV/AIDS should be a notifiable public health disease.
- (g) Make recommendations on whether the willful transmission of HIV should remain a separate criminal offence and research and document ways in which transmission legislation has been enforced in other jurisdictions.
- (h) Recommend penalties for unethical behavior on the part of health care professionals.
- (i) Outline the social, ethical and economic impact of the recommended legislative changes.
- (j) Suggest the wording of draft provisions for major legislative amendments and new provisions.

EXECUTIVE SUMMARY

The project undertakes a comprehensive review of all legislation in Belize forming the basis of the work done by key HIV Stakeholders. Those key HIV stakeholders have been identified as:

1. The National Aids Commission
2. PLWHA and advocacy groups for PLWHA
3. The Ministry of Health and Health Care Professionals
4. The Ministry of Education
5. The Ministry of Labour
6. Customs and Immigration
7. The Ministry of Defence
8. The Legal and Judicial Sector - The Attorney-General Ministry, the Director of Public Prosecutions and the Magistracy
9. The Social Security Board
10. The Insurance Sector
11. Non-Governmental Organisations and other charitable and unregistered Social Services Organisations in the Community

The review investigated the specific provisions of relevant legislation as they affect the rights of PLWHA and as they impact the work of the key HIV stakeholders. The findings appropriate to each stakeholder is summarised individually to provide an at a glance overview of the work to be done to facilitate the multi-sectoral response to HIV/AIDS. Recommendations are then grouped under the headings of Prevention, Treatment, Care and Discrimination to identify with the technical legal process adopted in the National Aids Policy and International Instruments providing guidance for the regulation of the work of HIV/AIDS stakeholders.

FINDINGS

The major findings were that:

1. With regards to the National Aids Commission, there was an appropriate legislative framework to allow it to fulfill its mandate and supervise the implementation of the National HIV/AIDS policy within the key stakeholder agencies.
2. With regards to the PLWHA, legislation:
 - (a) exists to protect fundamental rights of all individuals, however, specific legislative protection against discrimination on the basis of HIV status is absent.
 - (b) did not adequately protect the fundamental right of PLWHA of the right to work.

- (c) did not adequately protect PLWHA from stigma and discrimination and that there was existing legislation that reinforced such stigma by labeling HIV/AIDS as an infectious disease.
 - (d) did not guarantee PLWHA the right to medical treatment.
 - (e) did not do enough to educate PLWHA on the legal process and the remedies available to them to seek redress where rights have been breached.
3. With regards to the Ministry of Health and other Health Care Professionals, legislation:
- (a) did not protect PLWHA from being denied treatment on the basis of their HIV status and that there are reports where such discrimination has taken place.
 - (b) did not impose a positive duty on health care professionals to protect the confidentiality of medical records and information obtained on PLWHA during the course of treatment.
 - (c) imposing sanctions for professional breach of conduct of health care professionals though adequate to ensure best practice did not ensure that the victim who was injured as a result would be provided with appropriate medical care.
 - (d) did not require medical laboratories and clinics dealing with blood, tissue and organs to be registered and there is no standardization of care in these facilities.
 - (e) does not require persons operating hospices or nursing homes for the care of persons with AIDS and who provide medical treatment for such patients to be licensed or trained. This sector is largely unregulated and the persons involved unknown since it incorporates volunteer community based groups.
 - (f) The NHI program was not standardized throughout the country.

Stakeholders also found a need for continuous sensitisation of medical professionals on the issues affecting PLWHA and a need for the current reform of the medical sector to proceed expeditiously.

4. With regards to the Ministry of Education, legislation:
- (a) did not provide for curriculum of primary and secondary schools to have age and policy appropriate sex education material, even though HIV/AIDS statistics for Belize indicate that the highest prevalence of infections is found in the children of high school age and that children of primary school age are engaged in early sexual activity which is often high risk activity.
 - (b) did not protect children infected or affected by HIV/AIDS from being denied a place in school because of their HIV/AIDS status.

One of the observations of the stakeholder consultation was that reform in this area required sensitivity and attitude change.

5. With regards to the Ministry of Labour, legislation:
 - (a) did not impose a positive duty on employers to adopt and implement the National HIV/AIDS Workplace Policy and there are instances of employers who have received the training but have neglected to implement the policy.
 - (b) did not prohibit employers from requiring mandatory screening of employees for HIV/AIDS.
 - (c) did not protect employees from discrimination in the workplace on the basis of their HIV status. Evidence from PLWHA is that the practice is prevalent as the Labour Act itself allows employers to terminate employment for medical grounds.

Stakeholders identified the proposed review of labour laws which have already begun as an opportunity for collaboration by the NAC.

6. With regards to the Customs Department and the Immigration Department, Legislation:

7. With regards to the Ministry of Defence, legislation:
 - (a) governing the Prison Department though connected to a high risk population makes no provision for prevention, treatment and care of inmates or staff and does not prohibit mandatory testing.
 - (c) governing the Belize Defence Force does not prohibit mandatory testing.
 - (d) governing the Police Department does not prohibit mandatory testing.

The stakeholder consultation found that there were complaints from PLWHA that the Defence Force require testing for HIV/AIDS as a condition of acceptance to the Force and that if a positive HIV/AIDS status was identified after employment, the soldier would be relegated to a desk job which would hurt promotion and further training prospects.

8. With regards to the Legal and Judicial Sector, legislation:
 - (a) does not provide for legal aid to PLWHA to protect rights
 - (b) does not provide for proceedings involving sex crimes to be held in camera.

It was also identified by the stakeholder consultation that there was an urgent need to reform sexual offences laws in Belize.

9. With regards to the Social Security Board, legislation:
 - (a) providing for benefits for occupational diseases did not recognise HIV/AIDS as such as disease in respect of health care professionals.

10. With regards to the Insurance Sector, legislation:
 - (a) did not protect PLWHA from being denied coverage.
 - (b) did not give adequate guidelines for how change in status will affect right to coverage or the extent of coverage.

11. With regards to NGOs and charitable and unregistered social services organisations, legislation:
 - (a) did not require hospices to be registered or for persons operating them to be trained
 - (b) legislation did not guarantee standardized care.NGO's represented at the consultation called out for greater attention to discrimination issues

MAJOR RECOMMENDATIONS

The major recommendations of the stakeholder consultation as decided by the stakeholders are listed below under the titles, prevention, treatment and discrimination

PREVENTION

Education and Awareness

The stakeholders recommended that:

1. The present HFLE curriculum of the MOE presents a sex education curriculum that covers issues on HIV/AIDS was already in primary schools and is to be expanded to secondary schools as part of the required life-skills teaching for those schools.
2. The UNESCO funded MOE project to develop strategies and policies to teach sex education in schools to develop methodologies and strategies for sex education include strategies on teaching on issues relating to HIV/AIDS.
3. MOE education reforms centered on the whole school approach and the quality initiative for schools would require the adoption by school managers and schools, public and private and would include education on reproductive health.
4. MOE's revised education bill will soon be presented to the National Assembly and will then be followed by new education rules that will set out requirements for sex education in schools.
5. Amendments were needed to the Summary Jurisdiction (Offences) Act so that dissemination of material on the prevention and transmission of HIV and other STDs and STIs do not constitute an offence.
6. Amendments were also needed to the Customs and Excise Act to ensure prohibitions against importing pornographic material did not include prohibition of material used in HIV/AIDS awareness education.

7. The NAC advocate for wider classifications of medical supplies.

Voluntary Testing

Stakeholders recommended that:

1. **The Labour laws should positively prohibit mandatory testing for the purpose of employment.**
2. **The Labour laws to protect jobs of PLWHA from termination due to change in HIV/AIDS status.**
3. **The NAC to consult with the BDF to secure the prohibition of mandatory screening for the purpose of joining the army**
4. **The NAC to consult with the BDF to develop policies that protect the promotion, advancement opportunities, confidentiality, counseling and access to medical care for PLWHA.**
5. **The NAC should consult with the Supervisor of Insurance, Trade Unions, the Labour Department and the Insurance Companies to develop protocols and policies on the provision of insurance to PLWHA.**

Parental Consent for Testing

Stakeholders recommended that:

1. There be an amendment to the drafted medical practice bill to include a provision that no one was to be denied access to medical services.
2. The NAC to also work with the MOH to develop policies for medical institutions detailing how adolescents will access medical services such as testing and treatment for HIV/AIDS.

Notification of HIV Status

Stakeholders recommended that:

1. The public health laws and proposed medical reform legislation should prohibit the notification of status to others except pursuant to court order or the consent of the person taking the test.

Prevention of Willful Transmission

Stakeholders recommended that:

1. The criminalization of willful and reckless transmission of HIV/AIDS to be removed.

TREATMENT

Right to medical treatment

Stakeholders recommended that:

1. **Medical laws provide protection against the denial of medical treatment due to HIV/AIDS status.**

2. **Laws to provide that hospital and medical facilities handling remains of persons who have died from HIV/AIDS and AIDS related complications not to discriminate in the treatment and handling of those remains.**
3. **The internal complaint mechanism within the medical sector to receive legislative strengthening that impose a legal mandate and include sanctions and the NAC should consult with the MOH to work out the structure of such a mechanism.**
4. **The NAC to advocate for the national roll out of the urban package of the NHI that includes primary health care services for HIV/AIDS**

Regulation of Laboratories

Stakeholders recommended that:

1. The creation of legislation requiring laboratories to be registered and other provisions pursuant thereto.

Training of Health Care Professionals

Stakeholders recommended that:

1. The MOH act to standardize the training for nurses and midwives by the revision of the Nursing Curriculum for Registered Nurses and a requirement for them to sit a standardized Caribbean Examination.
2. The MOH adopt the Caribbean accreditation body and its standards for qualifications and training of health care professionals in Belize and the NAC to advocate for this.
3. The MOH establishes a body to carry out the mandate of set out in the act that was passed to establish a tertiary accreditation body for medical schools and trainers of health care professionals in Belize.
4. The plans of the MOH to standardize the training of midwives in Belize through training provided by the University of Belize should be expanded countrywide to target midwives in rural areas.

Code of Ethics for Health Care Professionals

Stakeholders recommended that:

1. The NAC advocate for the adoption by the National Assembly of the code of ethics set out in the proposed medical reform legislation.
2. Amendments to the proposed medical reform legislation to include provisions dealing with the treatment of PLWHA.

Confidentiality

Stakeholders recommended that:

1. The proposed Allied Health Care and Pharmacy Bills include provisions requiring the confidential treatment of medical records and prohibiting the

disclosure of information on the status of PLWHA and imposing sanctions for breach of confidentiality.

CARE

Regulation of Hospices

Stakeholders recommended that:

1. The MHD's proposed Nursing Home Act be amended to include a definition of residential facilities for persons with terminal illnesses including PLWHA in the definition of hospices and to set standards for treatment and care.
2. The already drafted Older Persons Bill to also include provisions on home based care for facilities providing care to older persons to include provisions protecting care for PLWHA and to include minimum standards for home based care to PLWHA.
3. The NAC to challenge the MOH to mobilize the health care sector reform already under way but which have been delayed.

DISCRIMINATION

Protection of Rights

Stakeholders recommended that:

1. Laws protect the education of PLWHA and those affected by HIV/AIDS
2. Laws prohibit the termination of leases of persons with HIV/AIDS
3. The Minister responsible of Immigration pass new rules under the Nationality Act to repeal the rules requiring HIV/AIDS testing as part of the nationality/permanent residency application process.
4. The Social Security Act to include HIV/AIDS in the prescribed list of diseases for which you can get occupational injury benefit.
5. Laws to prohibit the termination of employment or denial of advancement due to HIV/AIDS status.
6. The NAC to collaborate with the reform of sex crimes and the new Sexual Offences Act being proposed and that upon the passage of the new Sexual Offences Act, the provisions in the criminal code creating the offence of unnatural crime be repealed.

Chapter

1**CONSULTATION METHODOLOGY**

To better understand the aims and objectives of the terms of reference the consultant consulted available international HIV/AIDS guidelines on the preparation of local legislation in relation to HIV/AIDS.

Further, all reports on the status of HIV/AIDS in Belize have been consulted as well a previous consultancy that sought to recommend legislative review in this area.

In addition, addition investigation of the existing laws, policy and procedure documents governing the work of key stakeholder agencies were reviewed.

One on one interviews as well as group discussions and e-mail exchanges were conducted with PLWHA, as well key officers at stakeholder agencies to provide first hand evidentiary support for findings. Regard was also had to public opinions expressed in local newspapers and on radio and television with regards to the experiences of persons in the community on the work of key stakeholder agencies. A first draft containing with the consultant's recommendations for legislative review was compiled.

Finally, a stakeholder consultation workshop was held involving representatives from key stakeholder agencies to whom the consultant's recommendations were presented. The stakeholders discussed each of the consultant's recommendations and voted on them and came up with their own recommendations for the way forward. This report presents those final recommendations and the draft amendments to enact same.

It is hoped that the resulting analysis will demonstrate the comprehensiveness of the work done and will not only provide guidance on the way forward to strengthen the multi-sectoral response but also provide material from which to prepare the necessary Cabinet Papers to support the new legislation and legislative amendments recommended.

Chapter
2

REVIEW OF LAWS PROTECTING RIGHTS OF PLWHA

THE CONSTITUTION OF BELIZE

Section	Existing Provision	Findings and Analysis	Recommendations
2	Declares the Constitution to be the Supreme law	Allows for legal action to be brought to strike out as unconstitutional any law that contravenes the provisions of the constitution. There has not been any such court action with regards to HIV/AIDS.	This provision should remain as is.

Section	Existing Provision	Findings and Analysis	Recommendation
3 (cont'd)	Protects the individual's right to : <ol style="list-style-type: none"> 1. life, liberty, security of the person and the protection of the law; 2. freedom of conscience, expression and assembly; 3. protection of family life, personal privacy, other property and protection of his human dignity; 4. protection of property; 	I While the government has indicated that it will continue to provide free antiretrovirals, there is a need for a legislative right to appropriate and affordable medical care which would place and enforceable duty on the government to make medication for HIV and/or AIDS and other life threatening diseases available and affordable.	There is a need to promote legislation that gives individuals the right to medical treatment that is affordable and appropriate. Stakeholders recommended that the proposed Medical Practice Bill should give individuals a right to medical treatment and protects them from denial of treatment due to HIV/AIDS status. [query whether testing centers are still located primarily in Dangriga and Belize City] ¹ A draft of such a provision is provided below.

¹ While the Government's free ARV treatment is available to persons who test positive for HIV, and free testing centers have been established in all districts of Belize, the ARV treatment itself is still concentrated in Belize City and Dangriga which means that persons who test positive in other areas do not have easy and immediate access to ARV. The imposition of the constitutional right or other legislative requirement for the availability of affordable and appropriate medical treatment would ensure that the Government budget addresses the need to equip all hospitals with the ability to provide ARV treatment.

Section	Existing Provision	Findings and Analysis	Recommendation
14	Protects the individual from arbitrary or unlawful interference with his privacy, family home, or correspondence nor to unlawful attacks on his honour and reputation and declares that the individual's private life shall be respected.	In as much as this section gives protection of personal privacy, it provides a constitutional basis for persons providing prevention, treatment and care services to be required to treat information obtained about patients and clients with confidentiality.	Legislation is needed to protect confidentiality by making it a criminal offence health care professionals to breach confidentiality. A draft of a provision to be included in the proposed Pharmacy Bill and the Medical Practice Bill and the proposed Allied Health Care Professional Bill is provided below.
15	Protects an individual from being denied the right to gain a living by work that he freely chooses or accepts.	This provision provides constitutional protection from employment policies designed to prevent persons infected with HIV or diagnosed with AIDS from continuing to work. The Ombudsman is also able to investigate cases involving public officers and make recommendations. Not enough is done to utilize the powers of the Ombudsman in this way.	<p>The Labour Act should be amended to</p> <ul style="list-style-type: none"> • specifically prohibit discrimination from acquiring employment on the grounds of HIV and/or AIDS • and to prevent employers from terminating employment on such

			<p>grounds and</p> <ul style="list-style-type: none"> • to make it a mandatory requirement for all employers to implement the Government’s HIV/AIDS Workplace Policy. A proposed draft is provided herein.
Section	Existing Provision	Findings and Analysis	Recommendation
105	Establishment of the Public Service Commission	The Government is the largest employer in Belize, the Public Service constitutes the Government labour force, as yet there are no specific provisions in the Constitution nor in the Public Services Regulations made under the made thereunder to protect the employment of workers within the public service from discriminatory practices because of their HIV and or AIDS status.	The Government’s HIV/AIDS workplace policy automatically applies to the Public Services but should be required to be implemented in law, the easiest to accomplish this is by amendment to the Labour Act. A draft of the proposed amendment is provided herein.

BELIZE NATIONAL AIDS COMMISSION ACT

Section	Existing Provision	Findings and Analysis	Recommendation
	Establishes the Belize National AIDS Commission	The NAC fulfills five main functions: Advocacy , Multi-Sectoral Coordination, Resource Mobilization, Policy and Legislation Development , Monitoring and Evaluation.	The legislative provisions and the mandate of the NAC is sufficient to allow it to effectively serve PLWHA.

Chapter 3 ANALYSIS OF EXISTING LAWS AND STAKEHOLDER RECOMMENDATIONS

This analysis seeks to identify gaps in existing legislation and make specific recommendations as to how these can be addressed.

THE PUBLIC HEALTH ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
Section	Penalties and other	The act contains a number of sections addressing various areas pertaining to public	Section 211 should be amended to include a

211	provisions	<p>health. The act does not regulate laboratories and clinics which perform blood test or the Blood Bank which collects donations of blood for dissemination to hospitals and clinics. At present the Blood Bank operates on directives from the Ministry of Health and does not have a legal mandate to collect blood and its practices have no legal regulation.</p>	<p>new subsection to repeal S.I. 32 of 1987.</p> <p>In addition, the new Pharmacy Bill, Medical Services and Institutions Bill must provide for:</p> <ol style="list-style-type: none"> 1. The requirement for all medical laboratories to be licensed and providing for the qualifications of the director of the pharmacy and or medical laboratory.
Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
		<p>There is no legal requirement for the mandatory screening of blood or regulating the collection of tissue and organs.</p> <p>In addition, there are no provisions for keeping medical records confidential and for protecting the patient's confidentiality. This is required since persons working in labs are not bound by an oath to their clients.</p>	<ol style="list-style-type: none"> 2. Providing for the reporting to the Central Medical Laboratory and penalties for non-compliance 4. Protecting the confidentiality of client information and penalties for breach of confidentiality 6. Providing for rules to be made to regulate the standard of services offered in

		<p>S.I. 32/1987 passed under the Act renders HIV an infections disease and makes the persons infected susceptible to legislation requiring quarantine of persons with infectious diseases.</p>	<p>medical labs</p> <p>7. Providing for penalties for operating without a license. A draft is provided herein.</p> <p>8. Repeal of HIV/AIDS as an infectious disease and reclassification as a chronic disease.</p>
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THE MEDICAL SERVICES AND INSTITUTIONS ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
14	<p>Medical Officers are not mandated to provide staff with sensitization training for HIV and/or AIDS</p>	<p>At present medical officers perform mostly administrative duties as well direct and supervisory medical care to patients assigned to their hospital. However, there is no requirement for the medical officer to training health care professionals on the prevention, treatment and care of PLWHA</p>	<p>2. This section should be amended to require training of staff to be facilitated by the medical officer in charge. Other proposed legislation addressing allied health care workers to also provide for sensitisation training.</p>

		as it relates to their respective duties.	
23	The object of each hospital is to provide medical and surgical aid for sick persons	There is no provision for hospitals whether public or private to prevent them refusing to treat a person on the basis of their HIV/AIDS status ² or to make such treatment or appropriate.	This section should be amended to make it an offence to refuse to treat a patient due to HIV/AIDS status.

MEDICAL PRACTITIONERS REGISTRATION ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
23 (a)	The Minister in consultation with the Medical Council has the right to make rules regulating the profession.	No rules have been made under the act to ensure that medical practitioners do not discriminate against patients on the basis of their HIV status In addition, the penalties that may be	Rules should be made under the act to ensure that the Medical Council regulates minimum fees that can be charged and that medical care is affordable and appropriate treatment to all patients with HIV and/or AIDS and that no patient is denied

² Anecdotal evidence from PLWHA indicate that they have gone to hospitals and told that they cannot get treatment there as there was no ARV treatment facility.

		<p>prescribed by the Medical Council for professional misconduct do not ensure that the victim will receive medical treatment for any injury resulting from the professional misconduct.</p>	<p>treatment because of his HIV status.</p> <p>The medical practitioner found guilty of misconduct should be required to facilitate medical treatment for injury resulting from the misconduct. A draft provision is provided herein.</p>
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NURSES AND MIDWIVES ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
5	<p>Rules may be made regarding the training of nurses and midwives and the conduct of nurses and midwives among other things.</p>	<p>In Belize, it is still the case that persons in rural ethnic communities deliver children by midwives instead of going to the hospitals. In some of these cases, the mother did not receive pre-natal care and</p>	<p>Rules should make provision for continuous sensitization training for nurses and midwives and in how to encourage rural mothers to receive prenatal care at clinics and hospitals and to educate mothers on the availability of free testing and treatment and</p>

		<p>so has not been tested for HIV.</p> <p>Nurses and midwives working in rural communities have no facilities to test for HIV and cannot provide ARV treatment to prevent mother to child transmission. However, nurses and midwives are influential persons in rural ethnic societies.</p>	<p>should require standardized training and accreditation.</p> <p>Nurses and midwives in rural communities should be required to liaison with community based clinics and district hospitals and be mandated to refer clients for prenatal services.</p> <p>Changes to the disciplinary proceedings under the act are needed.. A draft provision is provided herein.</p>
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THE LABOUR ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
6	Provides that information obtained by labour officers in the course of their duties must be kept confidential.	This confidentiality provision should be extended to protect confidentiality of medical information obtained by employers and management on employees.	An amendment to the section to expand the duty of confidentiality to employers and management.

14,16	Employers are required to keep records containing personal information on employees.	Employers have used this section to justify keeping on files medical results of tests and examinations including HIV testing done on employees. This is a direct infringement of the employee's right to privacy.	An amendment to the section to prohibit keeping of records on the HIV status of employees and also imposing a positive duty of confidentiality on employers and labour officers and increasing the fine under section 14 for breach of confidentiality is recommended. A draft is provided herein.
40	This section allows an employer to terminate an oral contract on giving the requisite notice.	Allowing employers to terminate employment solely on the basis of a notice has allowed employers to terminate persons on the basis of their HIV status.	The sections should be amended to add a proviso that no employment can be terminated by notice solely on the basis of the employees HIV status.
Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
53,63	These requires for a medical examination to be done prior to finalization of the employment contract	Employers have often interpreted this section to impose an obligation on an employee to undergo HIV testing prior to employment (testing only by a qualified health care	These should be amended to indicate that a medical examination shall not include a HIV Test and that no employee shall be required to undergo mandatory HIV testing prior to or in the course of employment. In addition, the HIV status of an employee shall not be

		worker)	the basis for terminating employment of an otherwise qualified employee.
57	This section allows for termination of employment on the basis of the employees sickness or accident.	While the sections states that the employer may terminate if by sickness the employee is unable to fulfill his contract, it makes no provision as to how the inability of the worker is to be determined, leaving the employer to determine that an employee who is HIV positive cannot work and then choose to terminate.	The section should be amended to clearly prohibit termination on the grounds of HIV status.
Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
58	This section allows termination for sickness in the case of workers from overseas.	The same discussion as under section 57 pertains	The same recommendation for section 57 is made here.

75	This section requires overseas workers to undergo medical examination	Employers have interpreted this to include HIV test	The same amendment provided above is recommended here.
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THE REGISTRATION OF NURSING HOMES ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
3, 15	Defines nursing home as a place other than medical institution caring for persons with sickness, injury or infirmity, this should include hospices for PLWHA. Minister may make rules.	No registration of hospices for PLWHA act and no person acting as an inspector of such homes as is required by the act. No power to make rules prescribing the standard of care or protecting residents from abuse.	The newly drafted Hospice Act to replace the act and to include residential facilities caring for PLWHA in the definition of hospices and to provide for standardized care and protection from abuse.

THE CRIMINAL CODE

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
46.01,	Creates the criminal offence of	The sections impose an obligation on	Stakeholder recommended that the sections

73.01	recklessly or wilfully transmitting HIV and/or AIDS	persons who are aware that they are infected to take action to prevent the transmission of the disease by criminalizing deliberate transmission. The Stakeholders indicated that the section has deterred persons coming in to get tested for fear of criminal sanctions. The stakeholders further indicated that there have been no prosecutions under the section because of the evidential difficulty in proving these cases under law.	be repealed.
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Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
53	The section criminalizes unnatural crimes.	The section does not specifically state that sodomy is a crime but is used to criminalizes the act of sodomy. The majority of the stakeholders present at the stakeholder consultation indicated that	The Stakeholders recommended that upon the successful passage of the new sexual offences legislation reforming the definition of rape, that the section be repealed.

		<p>they were in favour of repealing the section. The NAC position was that the repeal of the section had nothing to do with morality and was necessary as a matter of public health to ensure that that segment of the population is not discriminated against as this could prevent them seeking treatment. It was pointed out that if the section were to be immediately repealed there would be no protection for boys who are sodomised as incest, carnal knowledge and rape can only be committed against girls.</p>	
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Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
49, 50	Creates the crime of procuring a female to be used as a prostitute	The police at present do not charge persons for being prostitutes as that is not a recognizable crime, however, where procure others to be used as a prostitute	The section in as much as it provides safeguards and criminal penalties for persons trafficking women for use in the sex trade and for persons engaged in the sexual

		that is charged, this section is most commonly activated in relation to persons who traffic women to be used as prostitutes and against persons who engage in the commercial sexual exploitation of minors. ³	exploitation of minors should remain on the books until the legislation and policy changes needed to implement the Trafficking laws and the CSEC laws are passed. At that stage a further review can be done to investigate whether these sections should be repealed.
51	Operating premises as a brothel	This section is also used to bring charges against persons operating premises where there is CSEC and where women are trafficked and used in the sex trade.	The recommendation above is repeated here.

THE SUMMARY JURISDICTION OFFENCES ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
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³ The Prohibition of Trafficking in Persons Act, 2003 prohibits human trafficking and there is also draft legislation prohibiting the commercial sexual exploitation of minors.

4	Loitering as a prostitute	<p>The section is used to prosecute women who are found loitering as CSW.⁴</p> <p>In respect of HIV, persons who are CSW are considered a high risk group for HIV infection and at present, HIV service providers are reporting that the fear of criminal action if they are identified as prostitutes prevents many from utilizing free testing clinics and from receiving treatment for HIV which places other members of the population at risk for contracting the disease.⁵</p>	<p>Efforts should be made to coordinate with the organisation promoting CSEC legislation and stakeholders in the working in the area of trafficking of persons as these are the most effective ways of addressing changes to the legislation as there is very little public support for the legal regulation of CSW because of the strong religious objections to the practice of prostitution. On the other hand, there is much public support for protecting victims of CSEC and victims of trafficking.</p>
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Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
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⁴ San José, C.R., *The Commercial Sexual Exploitation of Children and Adolescents in Belize*, ILO, 2006. This study recommended the repeal of this section on the basis that the majority of persons arrested under the section were teenaged females later found to have been victims of CSEC and recommended that such females be immune from criminal prosecution as they are victims of a crime themselves.

⁵ In one recent publicized incident on *Channel Five News*, HIV service providers set up free testing clinics to test and provide treatment to CSW, the police became aware of the whereabouts of the CSW as a result and conducted a raid arresting the said CSW as soon as the free testing clinic was complete and the HIV service providers lost the opportunity to provide follow up services to these women.

20, 21	Creates the offence of being in possession of indecent material	The police have indicated that they have never charged anyone under this section for being in possession of condoms or educational or instructional material on the prevention of transmission of HIV and only use the section in respect to pornography involving children. However, stakeholders indicated that it is possible that a loose interpretation could lead to the restriction of material used in HIV education campaigns.	The stakeholders proposed the addition of a proviso to the section to state that the section will not apply to materials used in sex education campaigns in the public or in schools. A draft is provided herein.
22, 23	Creates the offence of publishing or advertising indecent material	The stakeholders have the same considerations as listed under the two sections above.	The same recommendation as above for a proviso is also repeated here.

LANDLORD AND TENANT ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
52	This section allows termination	There are no provisions prohibiting the discrimination against a PLWHA or other	The act should include an express prohibition against discrimination. A draft is

	of a lease for failure to pay rent	family member.	provided herein.
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EDUCATION ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
47	Minister may make rules to further the purposes of the act.	Under the Education Rules, schools are required to include in the curriculum taught to children life skills and to provide education on reproductive issues as part of the Health and Family Life Education initiative. This has been expanded by the Ministry of Education to require children in Secondary Schools be taught sex education as part of lifeskills training.	Stakeholders recommended that then NAC embrace reforms already underway in the MOE that will come with the revised Education Act and the Rules to follow. MOE indicated that it was taking a whole school approach that would result in a reform of the education sector to have quality education including teaching on reproductive health in all schools.

PRISION ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
		No provision for educational material on prevention of transmission of STDs and	Regulations must be made legally mandating requiring prevention campaigns to be done

		<p>STIs though the prison population is considered a high risk group for the transmission of STDs and STIs.</p>	<p>in prisons and to make provision for the treatment of persons in prisons who are infected since the Prison is now under private management. A draft is provided herein.</p>
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SOCIAL SECURITY ACT

Section	Existing Provision	Findings and Analysis	Stakeholders' Recommendation
58	<p>Lists the occupational diseases in respect of which benefit is payable if contracted on the job.</p>	<p>HCPs are exposed to STDs and STIs including HIV as an occupational disease in the course of their employment, however, they will not be able to make social security claims to receive benefits under the act to defray costs of treatment.</p>	<p>HCPs are engaged in work that exposes them to HIV as an occupational disease, the disease should be listed as one of the occupational diseases in the schedule to allow HCP to claim benefits under the Act. A draft is provided herein.</p>
	<p>Law of trafficking persons (CSEC)??</p>		
	<p>Carnal law, unnatural crimes law</p>		

Chapter **STAKEHOLDERS' CONSULTATION**
4 **RECOMMENDATIONS ON THE REPEAL OF LAWS**

1. The Statutory Instrument 32 of 1987

This Statutory Instrument rendered HIV an infectious disease and should be repealed as the act was passed at a time when much was not known in Belize about the mode of transmission of HIV. We now know that HIV/AIDS cannot be transmitted by casual bodily contact so HIV/AIDS does not fit within the parameters of other infectious diseases named in the act and the provisions for quarantining individuals and prohibition on working with food if infected do not apply to persons with HIV/AIDS, the act is , therefore redundant and should be repealed. The act is inconsistent with other legislation regulating health.

2. Section 2 of the Quarantine Act

According to section 2 of the Quarantine Act, infectious diseases are defined to include venereal diseases. The inclusion of AIDS as an infectious disease is not in line with the modern medical classification of HIV/AIDS as a chronic disease should be removed as reinforcing stigma and discrimination.

Both legislations contravene the current government policy of the NAC as well as international conventions of which Belize is a signatory. In addition, the National HIV and/or AIDS Policy and the National Workplace Policy both require prohibition of discrimination of individuals on the basis of their HIV status while these provisions reinforces that discrimination and stigma. Stakeholders indicated that the sections should, therefore, be repealed.

3. Section 53 of the Criminal Code

The Section creates the crime of unnatural crimes. Traditionally this section as been referred to as the offence of sodomy. The stakeholders were concerned that the section reinforced stigma and discrimination against the segment of the population at risk for contracting HIV/AIDS and restricts their access to prevention, treatment and care.. The stakeholders recommended the repeal of the section.

4. Section 46.01 and section 73.01 of the Criminal Code

Both sections create offences of willful and reckless transmission of HIV/AIDS. The stakeholders voted to repeal both sections. The stakeholders were concerned that criminalizing transmission of HIV/AIDS would deter persons from getting tested and treated for HIV/AIDS and highlighted the difficulty prosecutors have had with bring prosecution under the section and pointed out that there have been

no successful prosecutions since the enactment of the section and recommended the repeal of the section.

Chapter **5** ANALYSIS OF COMPARABLE INTERNATIONAL LAW

1. Bahamas - The Employment Act, 2001

This Act prohibits an employer from discriminating against an employee on the basis of his HIV status. The act prohibits discrimination on the basis of race, creed, sex, marital status, political opinion, age or HIV/AIDS.

The act defines the acts of prohibited discrimination as refusal to offer employment, not affording access to opportunities for promotion or training or other benefits, dismissal of the employee, subjecting the employee to other detriment.

The act also expressly prohibits the pre-screening of an employee for HIV/AIDS.

The act gives important safeguards to PLWHA from discrimination on the job. Firstly, by grouping with other areas of social disability, the personhood of a PLWHA is protected, the emphasis is placed on the person and not the disease. This perspective ensures a rights based and holistic approach to the treatment of PLWHA.

However, the act in only prohibiting pre-screening, leaves it open for employers to insist on HIV tests after employment is finalized. It would have been better for all mandatory testing to be prohibited.

2. Belarus – The Public Health Act, 1993 and amended in 2003

The 1993 Act required a person who tested positive to be notified in writing of the criminal laws prohibiting the infection of others and the criminal laws for refusing to submit to treatment.

The act treats HIV/AIDS as a public health disease, so the emphasis is on the disease and not the PLWHA. Their right to privacy, their right to chose when and how they will be treated are all made subordinate to the state interest in restricting the spread of the disease.

The 2003 amendments made some headway in recognizing the personhood of the PLWHA by protecting him and his family members from discrimination on their jobs, in schools and in being able to obtain accommodation.

3. South Africa

The law protecting the rights PLWHA in South Africa stem from the provisions in the Constitution of South Africa, section 9 (3) provide for the protection of an individual from discrimination. In a recent case, in **A v X (Pty) Ltd**, an action was brought against an employer for unfair dismissal. In South Africa, the Labour laws do not make specific provision prohibiting discrimination in employment on the basis of a person's HIV status, however, the law prohibits unfair dismissal. In this case, the employee was taken by the manager of the organisation to a clinic after fainting due to exposure to chemical fumes. At the clinic the manager notices that the employee was wearing a shirt called HIV positive. When he returned to work, the manager asked the employee about the shirt that he was wearing accuse him of not disclosing his illness. The employee denied that he was HIV but the manager insisted that he undergo a test, saying that he had notices that the employee has HIV related symptoms. The employee stated he would leave and was threatened with dismissal if he left. He left, when he returned to work, he was requested to sign a resignation letter, which he refused. He left the job again. Attempts by an independent arbitrator to resolve the industrial dispute was unproductive with the manager stating that he did not want the employee to return to work as the employee was HIV positive. There was a lot of media attention on the case. When the matter came up before the Court, the court found that the applicant appeared confused in trial, the employer denied that he had insisted on a HIV test and the court found that the applicant had failed to prove unfair dismissal and had not pleaded constructive dismissal. His application was dismissed.

The case highlight the fact that has been underscored by the AIDS Law Project that though there is some legislation in existence which should protect the rights of PLWHA in practice the interpretation of these laws by the courts did not always yield these results. Judges are seemingly unwilling find discrimination except in very clear cases thus requiring applicants to meet a higher standard of proof that the balance of probabilities normally requires.

This points to the deeper problems relating to stigma and discrimination in the society. In South Africa, the disclosure of one's HIV status could have violent and detrimental economic consequences with one at a risk of losing job, family, housing and in rare cases even one's life.

4. Canada

In Canada, great advances have been made in legislation to protecting PLWHA from discrimination on their jobs, in obtaining accommodations and also extending non-discrimination provisions to homosexual communities.

However, a recent sweep of legislation across the provinces in 2003 declaring HIV to be a notifiable disease has created some concerns. The laws requires testing centers and clinics in all the provinces to report all positive tests to the Center for Infectious Disease Prevention and Control, (CIDPC). This has raised fears among HIV Advocacy Groups that persons may be discouraged from coming in to get testing, since the information required to be reported includes information on the following: demographic data, such as the person's age and gender; risks associated with the transmission of HIV; and laboratory data, such as the date of the person's first positive HIV.

The laws were enacted in all the provinces by the end of 2003. Since then initial reports have indicated an increase in the number of tests being done as the mandatory notification requirements makes allows for more comprehensive statistics to be gathered.

Another positive factor noted by advocacy groups is that most provinces allows the client to chose from one of three tests: nominal name based HIV testing where personal information is colleted for follow up etc., non-nominal, non-identifying testing where a code is used on a health card to represent the client and the client's identity is not known, anonymous testing – where the identity of the client is not known and no health record is created for the client. The client has the option of deciding whether he wants to be included in the database, however, if he tests positive, the fact of a positive test with details of his gender, age, ethnicity and HIV-related risk factors are recorded to be reported to the (CIDPC).

In Belize we have maintained the use of codes to identify clients. However, the small population and the informal nature of much of the social interaction makes it difficult to maintain confidentiality.

Chapter 6 ANALYSIS OF NOTIFICATION OF HIV/AIDS AS A PUBLIC HEALTH DISEASE

Under the law of Belize as currently enacted, there is no general legal requirement for HIV and/or AIDS to be a notifiable, public health disease.

Indeed, section 14 of the Constitution⁶ in as much as it protects a person from any arbitrary intrusion of his privacy would seem to render any legislation requiring the disclosure of the HIV status of a person, on the face of it, to be open to a constitutional challenge. However, s. 14 goes on to state that the right to privacy may be restricted where public interest or public safety requires it or to protect the right of another person.⁷ In addition, since s. 3 of the Constitution⁸ also protects the right to life, if the government does decide to require the mandatory disclosure of a person's HIV status such a legislation is likely to be upheld by the courts as required in the interest of public safety as the virus will lead to a life threatening illness.

Further, in the course of criminal proceedings a person who is accused of a sex crime may be requested to submit to a STD or STI test or HIV test, if he objects, the prosecutor may obtain an order of the court if there is reasonable grounds for the test to be taken compelling the accused to submit to such test.

⁶ Chapter 4, Laws of Belize, 2003.

⁷ Ibid.

⁸ Ibid.

⁹ Chapter 175, Laws of Belize, 2003.

¹⁰ HIV/AIDS Prevention among Youth in Especially Difficult Circumstances in Belize, OPEC Fund, UNFPA, 2000–2006; Prevention of Mother to Child Transmission of HIV/AIDS, TCC Project, Belize–Bahamas 2000–2001, Ministry of Health, Belize, Ministry of Health, Bahamas; Public Service Code of Conduct on HIV/AIDS in the Workplace, Directorate of Public Service, Belize, 2001; Situational Analysis of HIV/AIDS in Belize, National AIDS Task Force, Belize, 1999; Socio-Economic Impact Study of HIV/AIDS, Belize, 1999–2000; Status and Trends, Analysis of the Caribbean HIV/AIDS Epidemic 1982–2002; HIV/AIDS Surveillance in Belize, National Health Information and Surveillance Unit, 4th quarter, 2006

So though there is no law requiring public notification, there can be notification to the Court under a Court Order. In practice, in Belize, all HIV positive tests are reported to the Central Medical Laboratory which is operated by the Ministry of Health⁹.

There is no legal requirement for this and the MOH requests this information so that it can maintain data on the prevalence of HIV/AIDS. The Central Medical Laboratory indicates that its protocols ensure the confidentiality of clients as patients are given numbers, and only supervisors are given access to worksheets showing the correlation of patient numbers with patient information¹⁰.

In other most developed countries in North America and Europe the trend is to pass legislation making HIV/AIDS a notifiable public health disease. The justification for this is that it improves data collection so that the state can have an accurate picture of the prevalence of the disease. In addition, notification requirements can identify trends in the spread of the disease which can assist in making plans for Prevention, Treatment and Care.

In developing and underdeveloped countries, the trend is the opposite. In the Caribbean, this option has not been followed. In these countries, the concern is to protect the rights of individuals from discrimination as there are insufficient guidelines and resources to ensure that results will be confidential. In Belize for instance, the testing centers use a code to protect the identity of the client seeking the test, however, the population in the communities where testing is done is small and health workers often do not treat confidentiality as seriously as health workers in developed countries do since societal relationships are more informal in Belize. Therefore, there is a very real perception amongst PLWHA that the results of the tests are not confidential.

The issue of stigma and discrimination on the basis of HIV status must first be addressed and eliminated before the issue of notification of testing finds support amongst PLWHA even while they admit the advantages of better data collection in terms of improving treatment resources and programs.

The issue of notification is seen by many PLWHA as opening the door to other persons besides the Central Medical Laboratory having access to the results. PLWHA interviewed for this project indicate that there is no justification for a general right to notify spouses or partners or other family members of a person's status and at present that is not done, considerations may be different where a person's behaviour indicates that he is wilfully or recklessly transmitting the infection to others¹¹.

Many are concerned that notification will make their status public and affect marriages and property rights and cause discrimination in the workplace. Indeed, under the Married

⁹ Consultation with the Ministry of Health, January 2008.

¹⁰ Consultation with Central Medical Laboratory, January 2008.

¹¹ Consultations with health care professionals in clinics, January 2008.

Women's Persons Protection Act¹², a wife is entitled to petition for judicial separation where the husband has contracted a venereal disease and has insisted on having sexual intercourse with her. In addition, it can provide evidence to establish adultery and obtain a divorce.

This kind of opposition creates a problem for HIV Stakeholders who want access to better records on the disease since the major studies done on the prevalence of HIV/AIDS in Belize¹³ have indicated that the fear of discrimination and stigma if a person's positive HIV status is made public is the number one reason that persons do not utilize free testing facilities to know their status.

On the other hand, public opinion is in favour of notification to health authorities and also in making the results public in criminal cases. Person of the general public interviewed indicate that public interest factors in having a person who is accused of rape, carnal knowledge, unnatural crime or other sexual assault to be mandatorily tested where the testing of the victim indicates that the victim is infected since conviction for these crimes require corroboration and a positive test can provide corroboration of the victim's evidence, outweighs the accused right to privacy.

Members of the medical sector consulted on this project overwhelmingly indicated that they believe that the public interest concerns embedded in the need for health authorities to have better data to provide better treatment and to know how the disease is spreading so that it can be contained far outweigh the accused's right to have his privacy protected.¹⁴

There are other concerns, however, that have arisen in recent years where employers are mandating employees to undergo HIV tests and requiring the labs that perform such tests to disclose the results of the test to the employers¹⁵. Such notification, it is submitted is not justified by any public interest consideration. One PLWHA has indicated that this practice has prevented him from being employed in a job for which he was qualified.¹⁶ Another PLWHA indicated that when his HIV positive status was indicated to his employer during the course of routine testing at his job, he was terminated under the section in the Labour Act giving an employer the right to terminate for medical reasons though he was still in good health and able to perform his job.¹⁷

In the recently conducted sensitization training to employers and employees in the workplace on the issues connected to HIV and/or AIDS in the workplace done by the Labour Department in tandem with the ILO, the idea that there should be no mandatory testing in HIV and/or AIDS workplace policies was met with objections by several

¹⁴ Consultations with the health care professionals, January 2008

¹⁵ Consultations with the Labour Department, January 2008.

¹⁶ Consultations with PLWHA, January 2008.

¹⁷ Consultation with PLWHA, January, 2008.

prominent businesses as employees maintained that they had a right to know the status of their employees¹⁸. Many organizations have still not implemented workplace policies as a result of their objection to the no mandatory testing requirement¹⁹. One employer indicated that the law requires him to have in place insurance for his employees and the insurance company would not grant the insurance unless the employees submitted to mandatory testing and that the insurance company would only insure those persons who were HIV negative so he had to know the status of his employees as he can not hire a person who is HIV positive as they would be uninsurable and he would be in breach of the law²⁰.

Representations must be made to insurance companies as it appears from observance of the prevailing practice that insurance companies are requiring HIV testing for all factory workers though such business are only seeking liability insurance or workmen's compensation plans²¹. While there may be justification for such testing if it is life insurance that is sought, it is unclear what the justification for the test is in the case of liability insurance. One insurance agent indicated that the HIV positive status of a person make him particularly susceptible to opportunistic infections which are present in the workplace and causing the insurer to take on an unacceptably high risk in insuring him²². On the face of it this appears to be no more than discrimination since the insurance company has the option of increasing the premium, though this may tend to make these plans less marketable.

There are no clear answers and it appears that the stakeholders are equally divided. In addition, trade unions contacted seemed to be in favor of requiring notification to employers and seemed to be more concerned with knowing the status of their fellow employees than protecting the employees' right to privacy²³. In fact, all of the eight trade unions in Belize have participated in the sensitization training of the Labour Department and at least in two known cases, the collective bargaining agreements came up for renegotiation after the training was done yet in neither of the two instances were there any discussions to include in the agreement a requirement to prohibit mandatory testing and reporting to employers and those two agreements are binding for the next 5 years and do not include any provisions to prohibit mandatory testing nor any provisions for the employer to provide care and support services for persons who are infected with HIV and/or AIDS who are employed with the organisations²⁴.

Though the Belize Defence Force has adopted a policy for educating recruits on prevention, treatment and care, the force still requires mandatory testing of all recruits and notification to the Belize Defence Force superiors and has indicated that this practice is necessary in the interest of public safety as the recruits must be in the best possible

¹⁸ Consultation with employers and business owners, January 2008.

¹⁹ Consultation with the Labour Department, January 2008.

²⁰ Consultation with business owner operating a factory.

²¹ Consultations with employers and business owners.

²² Consultation with Insurance Agent, January 2008.

²³ Consultation with representatives from a local trade union, January 2008.

²⁴ Consultation with Labour Department, January 2008.

physical health to adequately perform their jobs²⁵. At the Stakeholders Consultation in November 2009, the stakeholders recommended that the BDF repeals its policy of mandatory testing for entry. It is known, however, that in the past few years there have been a number of members of the Defence Force who have tested positive²⁶. To date the Defence Force maintains that those persons are still in active duty with the Force and treatment has been provided to them²⁷. The consultant was unable to substantiate these claims.

It is recommended that there be a law requiring notification to the Central Medical Laboratories of all positive tests done at clinics and labs. However, the client must be given the option of what kind of test they want to take and provisions must be made to keep client information confidential. In addition, names should not be required and the client's personal information collected should be restricted to his age, gender, ethnicity, and risky behaviour practices.

At present there are no clear guidelines for health care professionals and most are guided by their conscience as to whether to notify partners²⁸. There should be no legal requirement to inform partners but health care professionals can indicate during the counseling process that the spouse may be notified and treatment and counseling provided if the client so desires.

It is recommended that HIV/AIDS should not be otherwise disclosed except by Court Order or the express consent of the person who has been tested.

²⁵ Consultation with representatives from the Belize Defence Force, January 2008.

²⁶ Anecdotal evidence from members of the Belize Defence Force.

²⁷ Consultation with representatives from the Belize Defence Force, January 2008.

²⁸ Ibid.

Chapter 7 ANALYSIS OF THE OFFENCE OF WILFUL TRANSMISSION OF HIV/AIDS

According to the Criminal Code²⁹, section 46.01:

“(2) Every person who deliberately or recklessly transmits or spreads HIV/AIDS shall (a) on summary conviction, be liable to imprisonment for a term not exceeding five years; and (b) on conviction on indictment, be liable to imprisonment for a term not exceeding ten years.”

Further, section 73.01 of the Code³⁰ provides that:

“(1) A person deliberately or recklessly spreads HIV/AIDS if the person does any act specified in subsection (2) or (3).
(2) Subsection (1) applies where the person (a) knows that he is infected with HIV/AIDS; and (b) does a sexual act with another person which involves bodily contact and is capable of transmitting bodily fluids; and (c) does not inform the other person that he is infected with HIV/AIDS.
(3) Subsection (1) applies where the person (a) knows that he is infected with HIV/AIDS; and (b) donates blood or does anything not provided in subsection (2) which is likely to cause another person to be infected with HIV/AIDS.
(4) In this section “Sexual Act” means vaginal, oral, or anal intercourse.”

These sections have allowed for the willful transmission of HIV to be a separate criminal offence. At present there have not yet been any prosecuted cases under the section so the section’s effect in law remains untested³¹.

The section is intended to boost public awareness campaigns for behavioural change by ensuring that persons understand that they have a legal responsibility to ensure the non-transmission of the disease. Members of the legal sector consulted for this report indicated that the sections provide an important deterrent effect against persons who use

²⁹ Chapter 101, Laws of Belize.

³⁰ Ibid.

³¹ Investigation of cases filed and consultation with Police Prosecutors, January 2008.

the disease as a weapon, wilfully infecting others³². In addition, they also indicate that the sections protects rights of innocent persons and gives them redress before the law³³.

HIV/AIDS stakeholders³⁴ on the other hand indicate that the criminalization of persons infected with HIV and/or AIDS reinforces discrimination against persons with the disease thereby undermining prevention and treatment campaigns. In addition, the law cannot have a true deterrent effect since the result of a conviction of the accused person is his incarceration which places him a high risk population with more opportunity to transmit the disease if that is his real intention. Further, they argue, the incarcerated accused will not get appropriate treatment while in prison³⁵. HIV stakeholders opine that efforts must be focused on getting everyone to adopt positive and responsible behavioural change practices³⁶.

Health care professionals indicate that there have been a few instances of persons who though informed of their HIV positive status have not adopted safe sexual practices though educated on these and have placed others at risk of contracting the disease³⁷. However, they indicate that it is up to the individual facility or clinic to determine whether they will notify the partners of those persons but they try to keep close contact with them to track them through the system and to continue to urge behavioural change³⁸. They also indicate that they have seen in a number of instances that there is an initial denial of the HIV positive status and persons do not make changes refusing to accept the result, however, over time with follow up counseling and because of the availability of free ARV treatment, most of these persons begin to adopt behavioural change as part of the treatment of the disease³⁹.

³² Consultation with members of the legal and judicial sector, January 2008.

³³ Ibid.

³⁴ Consultation with HIV stakeholders providing voluntary care in community outreaches, January 2008

³⁵ Ibid

³⁶ Ibid

³⁷ Consultation with HCP, January 2008

³⁸ Ibid.

³⁹ Ibid.

TRANSMISSION LEGISLATION IN OTHER COUNTRIES

BELARUS – PUBLIC HEALTH ACT

The law imposes criminal liability for knowingly exposing another person to a risk of infection or for infecting another person.

In addition, criminal liability is incurred for refusing to undergo treatment.

The law is designed to treat HIV/AIDS a public health matter, therefore, the person who tests positive for HIV is required by law to be informed in writing by the health authority that he must comply with precautions promoting safe sex practices and he is also informed that he can incur criminal liability by exposing someone else to the disease or for refusing to undergo treatment.

Since the law treats HIV/AIDS as an infectious public disease the rights of the patient to confidentiality and his right to choose his own treatment is severely limited. The law is concerned more with protecting the public from the disease and less with protecting the rights of PLWHA.

The law is strictly enforced since it is easy to trace persons with the disease as health authorities are required to keep proper records of persons who have tested positive and the treatment they have received. The patient really has no confidentiality and health authorities will report persons who refuse treatment for prosecution.

If effectiveness of the legislation is determined by the incidence of infection, then the law is relatively effective since national reports indicate that the levels of infection are low.

On the other hand, amendments made in 2003 to the law prohibit any discrimination of an HIV infected person in his employment, in being refused admittance to any school, and prohibits the legitimate interests and rights of families or persons associated with a PLWHA from being prejudiced in regards to accommodation or other matters. This aspect of the legislation goes far to ensure that PLWHA and their families are able to have a normal life.

Chapter

8**STAKEHOLDER'S RECOMMENDATIONS FOR PENALTIES FOR UNETHICAL CONDUCT OF HEALTH CARE PROFESSIONALS**

Several areas of concern arise in regards to the ethical conduct of health care professionals. These include:

1. Refusing to provide services to persons with the disease:
 - a. Though the Medical Services and Institutions Act⁴⁰ indicates that the role of a hospital is to provide care for sick persons who are unable to otherwise receive care, it gives no positive entitlement to sick persons to receive such care, instead those persons must first be sent under the order of a public officer in a clinic or otherwise and the medical officer in charge of the hospital retains the discretion to determine whether they should receive care or not. There is no express prohibition against health care professionals refusing to provide persons infected with the disease with treatment.
 - b. Under the Medical Practitioner's Registration Act⁴¹, there are sanctions for professional misconduct which include abandoning a patient with a life threatening illness without referral to another medical doctor or providing incorrect or in appropriate medical care. However, where there is such misconduct, the remedy for breach is a hearing before the Medical Council who may censure the medical doctor or recommend that his name be removed from the record. No criminal proceedings can be brought against the medical doctor without the written authorization of the Council or the Director of Public Prosecutions. The Medical Council also oversees the conduct of dentists⁴² and opticians⁴³.
 - c. Under the Nurses and Midwives Act⁴⁴, the Nurses and Midwives Council may make rules regulating the conduct of nurses. Breach of ethical rules

⁴⁰ Chapter 39 of the Laws of Belize, 2003

⁴¹ Chapter 318 of the Laws of Belize, 2003

⁴² Dentist Act, Chapter 316, Laws of Belize

⁴³ Opticians Act, Chapter 322 of the Laws of Belize, 2003.

⁴⁴ Chapter 321 of the Laws of Belize, 2003.

requiring the provision of care to patients can result in the removal of the nurse or midwives name from the Register of Nurses and Midwives.

- d. There have been reports of persons turning up to hospitals for treatment and being told that they could not receive treatment, especially in rural district hospitals⁴⁵. Doctors indicate that they have had to turn away such patients as they do not have the resources to provide AVR treatment⁴⁶. This issue is being addressed with the national roll out of NHI. Doctors have indicated, however, that they are not comfortable treating patients with HIV/AIDS and HIV/AIDS related conditions as that is not their area of specialty⁴⁷. The two hospitals providing specialist care in the treatment of HIV/AIDS are the Belize District Hospital and the Southern Regional Hospitals in Dangriga. The stakeholders requested that NAC advocate for more to be done to provide similar options for treatment in out district hospitals.
- e. With regards to private facilities, many of them indicate that they choose not to treat persons with HIV/AIDS and instead refer them to the Belize District Hospital where those persons are unable to pay for services⁴⁸. At present the NHI in urban areas provides HIV/AIDS related care as part of primary health care, however, this has not been rolled out to the rest of the country. The stakeholders indicated that the NAC should advocate for the full countrywide roll out of the services offered in urban areas under the NHI.
- f. Further the current draft Medical Practice Bill and other health reform legislation should be amended to impose a positive duty to provide medical services to all persons without any kind of discrimination due to the nature of their disease.

2. Breach of confidentiality:

- a. At present there are no laws specifically imposing sanctions for breach of confidentiality.
- b. The only two areas of redress for breach of confidentiality is to the Medical Council or the Nurses and Midwives Council for disciplinary action to be taken⁴⁹.
- c. Since there is a right to privacy is protected under the constitution, there is also the option of bring an Administrative Action in the Supreme Court⁵⁰ to recover damages. However, the cost of securing legal counsel for such proceedings places this option outside the reach of most individuals.
- d. The proposed new health care reform legislation should include provisions protecting the confidentiality of medical records by making it an offence to disclose information in medical records without the consent of the patient except as required by order of the court.

⁴⁵ Consultation with PLWHA, January 2008.

⁴⁶ Consultation with Medical Practitioners, January 2008

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Supra.

⁵⁰ Supreme Court of Judicature Rules, Chapter 91 of the Laws of Belize

3. Abuse of the person with the disease in the course of providing care:
 - a. At present there are only informal hospice services being provided by NGOs and church organisations.⁵¹ There is no legislation regulating the registration and operation of such facilities. There has been no studies done on the effectiveness of care or the standard of care provided in these facilities.
 - b. The Stakeholders recommend that the Draft Social Services Regulations from the Ministry of Human Development seeking to regulate the operation of homes for older persons be amended to include hospices in its definition and to include hospices in the minimum standards of care set out therein.
 - d. There are some manuals that have been produced on how to care for PLWHA, however, they do not adequately address the issue of the abuse of adult persons while receiving care⁵². If the client is a child, the provisions of the Families and Children Act provide for mandatory reporting of suspected abuse and for legal action to be taken against the individual perpetuating the abuse. If the victim is an adult the criminal charges can be brought but there are no legal provisions for removal of the victim into emergency care or who will assume responsibility for emergency care. Protocols need to be developed between the Ministry of Human Development and the Ministry of Health to ensure adequate redress and access to treatment for persons in need of care after removal.
 - e. Stakeholders also recommended that the draft Older Persons Act be amended to include provisions on home based care and providing for mandatory reporting of suspected abuse to the Police or Ministry of Human Development.

4. Discrimination in employment of health care professionals with HIV/AIDS:
 - a. As stated above, the Constitution⁵³ prohibits discrimination of individuals, however, this prohibition does not extend to discrimination based on the HIV status of an individual.
 - b. Further, there are provisions in the Labour Act⁵⁴ that facilitate such discrimination.
 - c. Stakeholders recommended reform of labour laws to prevent job related discrimination based on HIV/AIDS status.

⁵¹ Consultation with volunteer community outreach groups, January 2008.

⁵² Cornerstone Foundation has produced a number of well written manuals on caring for children, those on caring for adults do not address abuse of adults and redress available to them.

⁵³ *Supra*.

⁵⁴ Chapter 297 of the Laws of Belize, 2003.

5. Selling defective medical and equipment and disseminating medical propaganda:
 - a. In Belize, there are no regulations pertaining to HIV/AIDS test kits or condoms, but it is submitted that the Sale of Goods Act provide adequate protection by mandating the implication of terms of contract of sale that the goods are of are or merchantable quality and fit for the purpose they were sold. The Consumer Protection Agency is a watchdog body that inspects shops and supermarkets to ensure that products sold are safe for human consumption and they also investigate claims of sale of unsafe items.
 - b. It is recommended that HIV Stakeholders, especially the MOH's health inspectors, should liaison with this body to request that their inspectors inspect condoms and medical or pharmaceutical items sold in shops and supermarkets. This body is very effective in ensure safe goods are sold since they can make recommendations for the withdrawal of shop licence. Regulations are needed to prohibit the dissemination of medical propaganda and medications that have no scientific basis. A proposed draft for such a provision is given below under the proposed HIV/AIDS Prohibition of Discrimination Act, which renders it an offence to provide prescription, administration or application of medications or treatment for AIDS, or to disseminate medical propaganda without scientific base.

Chapter

9**ANALYSIS OF THE SOCIAL, ETHICAL AND ECONOMIC IMPACT OF RECOMMENDED LEGISLATIVE CHANGES****PREVENTION**

- a. The recommendations requiring education and awareness to be incorporated into primary school curriculums may find some opposition in church run schools but if the curriculum is prepared from the perspective of empowering children especially girls to attach worth and value to their bodies and emphasises the risks associated with early sexual activity – STDs, STIs, uterine complications, high risk pregnancies, interruption of education and the problems of family dysfunction associated with single parenthood, it would be acceptable and would address concerns that the HIV stakeholders just want to give condoms to children. The deeper issues associated with early sexual activity will then be addressed.
- b. This approach will also create opportunities for a multi-sectoral response and the involvement of other social partners especially those involved in the protection of children from abuse and exploitation.
- c. In addition, recommendations to provide provisos to sections 20 and 22 of the Summary Offences Act⁵⁵ will ensure that no legal challenge can be brought to the educational and public awareness campaigns facilitated by the NAC.
- d. The recommendations protecting individuals from mandatory testing and promoting voluntary testing instead are important safeguards in protecting the fundamental right to privacy of individuals. This will also ensure that they support the NAC efforts to reduce stigma and discrimination of persons with PLWHA and ensure that their status does not affect employment opportunities available to them.
- e. With regards to notification, the recommendation not to make HIV/AIDS a notifiable disease will also ensure that the rights of PLWHA are

⁵⁵ Chapter 98 of the Laws of Belize, 2008

protected and that they are not exposed to stigma and discrimination, yet the proviso for notification in the event of a refusal to agree to undertake behavioural change protects innocent persons from the capricious or reckless acts of persons who may be infected and preserves the Court's right to regulate legal proceedings. It will also ensure that best practices are followed within the sector and ensure adequate ethical safeguards are adhered in protecting the privacy of clients, thereby encouraging more persons to get tested.

TREATMENT

- a. The NAC must advocate and collaborate with the Ministry of Health for the passage of these draft law bills by the National Assembly.
- b. The Code of Ethics attached to these draft law bills will impose more stringent sanctions for unethical behaviour in relation to treatment for HIV/AIDS ensures that health care professionals will provide services at a higher standard of care and ensures greater professionalism in the sector.
- c. The provisions addressing confidentiality will also bring greater professionalism to the sector which has often suffered from the informal nature of ordinary public relations in Belize.
- d. These recommendations will also ensure compliance with the National AIDS Policy.

CARE

- a. The regulation of hospices will ensure that ethical considerations and the increased professionalism that will come to the health care sector will also be evident in the operation of hospices as clients are protected from abuse and their privacy is protected and they are able to experienced standardize level of care.
- b. In addition, the requirement that denying care is a breach of professional code of ethics will ensure that all persons are able to access treatment and that their rights are protected while they are in care.

DISCRIMINATION

- a. The recommendations for the protection of fundamental rights will ensure that socially PLWHA are allowed to function in the same way as other members of society and are protected from discrimination on the basis of their status.
- b. The provisions of the HIV/AIDS Prohibition of Discrimination Act and the suggested amendments to the Labour Act will protect PLWHA from unfair

dismissal and ensure that they remain contributing members of the labour force as long as they are able to function. This will address one of the major challenges facing Belize as a nation: the fact that majority of the residents are outside the labour force as the population is primarily a youthful population. In addition, these recommendations will reduce the cost to society of providing treatment and care for PLWHA.

Chapter
10

**DRAFTS OF AMENDMENTS TO EXISTING
LAWS**

A. The Public Health (Amendment) Act

1. Section 211 is hereby amended by the addition of the following subsection
 - (3) Statutory Instrument number 32 of 1987 passed under this Act is hereby repealed.

B. Medical Services and Institutions (Amendment) Act

1. Section 14 is hereby amended as follows:
 - (1) The current section shall become subsection (1) and subsection (2) and (3) is added thus
 - (2) The medical officer shall provide sensitization training for staff and facilitate training of interns and doctors in rotation, nurses and other medical personnel on medical issues connected to the prevention, treatment and care of HIV and/or AIDS.
 - (3) The medical officer shall ensure that all staff members are trained in the legal requirements and the Ministries' policies in protecting the confidentiality of medical records and information of persons receiving prevention, treatment or care services for HIV and/or AIDS.
2. Section 23 is amended as follows:
 - (1) The current section shall become subsection (1) and the words "or other medical facility" shall be added after the word hospital
 - (2) subsection (2) and (3) shall be added thus:
 - (2) No hospital or other medical facility shall refuse to treat a patient suffering from any life threatening illness solely on the basis that the patient is not insured or on the basis that the patient cannot pay the cost of such treatment.
 - (3) Where a person is refused medical treatment at any hospital or other medical facility, the person aggrieved may appeal to the Minister, who may give such directive as is appropriate including a directive for the hospital or medical facility to provide the treatment requested or the Minister may refer the patient to another hospital or medical facility.

C. Medical Practitioners Registration (Amendment) Act

1. section 15 (1) is amended by the addition of the following subsection (d) and (e):
 - (d) The Council shall be authorised to require the medical practitioner found guilty of professional misconduct to make restitution to the victim to cover the cost of any medical treatment necessary to alleviate any injury so caused.
 - (e) Any restitution so paid may be deducted from any damages recovered by the victim in an action for damages.

D. Dentist (Amendment) Act

1. Section 12 shall be amended by adding the following subsections (3) and (4):
 - (3) Where the Council makes a finding of infamous or disgraceful conduct under subsection (1), the Council may in addition to other penalties prescribed require the Dentist so adjudged to make restitution to the victim to cover the cost of any medical treatment necessary to alleviate any injury caused by such conduct.
 - (4) Any restitution paid under subsection (3) shall be deducted from any damages recovered by the victim in an action for damages.

E. Nurses and Midwives Regulations (Amendment) Act

1. Regulation 24 (12) is repealed and the following provision substituted therefor:
 - (12) If the Council find the charges against the Respondent to be proved either in whole or in part, it may remove her name from the Register altogether or for such period as it may think fit and the Council may require the Respondent to pay the cost of any medical treatment necessary to alleviate any injury caused to any person as a result of the Respondent's misconduct.

F. Labour Act (Amendment) Act

1. Section 6 (3) is hereby amended by the addition of the words “ and such person shall keep confidential all information, however, acquired by him indicating the HIV/AIDS status of any worker”.
2. Section 6 (5) (b) is amended by the addition of the following words “ and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months, or to both.
3. Section 14 is amended by subsection (b) becoming subsection (c) and the following included as subsection (b):
 - (b) shall not reveal, even after leaving office, any information as to the HIV/AIDS status of any worker or employer which may come to him in the course of his duties; and
4. Section 14 (2) is amended by striking out the words “five hundred” and substituting therefor the words “two thousand”.

5. Section 16 is amended by the addition of the following PROVISIO to subsection (1):
PROVIDED that no records so required to be kept shall contain any information as to the HIV/AIDS status of any worker.
6. Section 30 is amended by the addition of the following subsection (2) and (3):
 - (2) No contract of service shall contain any term requiring any worker to undergo and mandatory HIV/AIDS testing as a prerequisite for acquiring or maintaining employment.
 - (3) Any term in any contract of service that contravenes subsection (1) or subsection (2) shall be void and of no effect.
7. Section 40 is amended by the addition of the following subsection (3):
 - (3) No worker may be terminated by notice or otherwise on the basis of his HIV/AIDS status and no employer shall in any way discriminate against any worker on the basis of his HIV/AIDS status.
8. Section 53 is amended by the addition of the following subsection (5) and (6):
 - (5) No medical examination required under this section shall include any mandatory HIV/AIDS test and no worker shall be required to undergo any mandatory HIV/AIDS test.
 - (6) Any term in any contract of service that contravenes subsection (5) shall be void and of no effect.
9. Section 57 is amended by the addition of the following PROVISIO to subsection (3):
PROVIDED that no contract shall be terminated on the grounds of the HIV/AIDS status of any worker. PROVIDED further that where the employer maintains that the worker who has HIV/AIDS is unable to fulfill a contract by reason of the advance nature of his disability caused by his disease the matter shall be determined on application by a medical board appointed by the Minister under section 187.
10. Section 58 is amended by the addition of the following PROVISIO to subsection (1) (c):
PROVIDED that no contract shall be terminated on the grounds of the HIV/AIDS status of any worker. PROVIDED further that where the employer maintains that the worker who has HIV/AIDS is unable to fulfill a contract by reason of the advance nature of his disability caused by his disease the matter shall be determined on application by a medical board appointed by the Minister under section 187.
11. Section 63 is amended by the addition of the following PROVISIO to subsection (1) (b):

- PROVIDED that the medical examination so required shall include any mandatory HIV/AIDS test and no worker shall be required to undergo any mandatory HIV/AIDS test.
12. Section 75 is amended by the addition of the following subsection (3):
 - (3) No medical examination required under this section shall include any mandatory HIV/AIDS test and no worker shall be required to undergo any mandatory HIV/AIDS test.
 13. Section 76 is amended by the addition of the addition of the following PROVISIO to subsection (1) (b):

PROVIDED that the medical examination so required shall include any mandatory HIV/AIDS test and no worker shall be required to undergo any mandatory HIV/AIDS test.

G. Criminal Code (Amendment) Act

1. Section 46.01 is hereby repealed.
2. Section 73.01 is hereby repealed.

H. Summary Jurisdiction Act (Amendment) Act

1. Section 20 is amended by the addition of the following subsection:
 - (2) No action taken by any educational, religious, charitable or governmental organisation to educate the public on the modes of transmission and to provide information on the prevention, treatment and care of any sexually transmitted disease or sexually transmitted infection shall constitute an offence under this section.
2. Section 22 is amended by the addition of the following subsection:
 - (2) No action taken by any educational, religious, charitable or governmental organisation to educate the public on the modes of transmission and to provide information on the prevention, treatment and care of any sexually transmitted disease or sexually transmitted infection shall constitute an offence under this section.
3. Section 23 is amended by the addition of the following subsection:
 - (2) No action taken by any educational, religious, charitable or governmental organisation to educate the public on the modes of transmission and to provide information on the prevention, treatment and care of any sexually transmitted disease or sexually transmitted infection shall constitute an offence under this section.

I. Nursing Home (Amendment) Act

1. Section 15 is hereby amended by the addition of the following subsections:
 - (c) the qualification of the director a nursing home;
 - (d) the standard and quality of care to be given to residents in any nursing home;
 - (e) the protection from abuse or neglect of residents in any nursing home;
 - (d) penalties for the breach of any rules so prescribed;
 - (f) any matter necessary to give effect to this law.

J. Landlord and Tenant (Amendment) Act

1. Section 52 is amended by the addition of the following new section:
 - 52A. (1) No landlord shall refuse any person any tenancy or the right to renew any tenancy and no tenancy shall be terminated on the basis of the HIV status of any tenant or the HIV status of any member of the tenant's household.
 - (2) No landlord shall discriminate against any tenant by charging unfair rents or imposing onerous conditions in any lease or tenancy or otherwise on the basis of the tenant's HIV status or the status of any member of the tenant's household.

K. Education (Amendment) Act

1. No school or educational institution shall refuse admittance to any person on the basis of their HIV status or on the basis of the HIV status of any member of their family.

L. Education Rules (Amendment) Act

2. Regulation 32 is amended by the addition of the following regulations:
 - (7) Managing Authorities, utilizing official information provided by the Department of Health shall integrate in the national curriculum for primary and secondary education institutions instruction on the causes, modes of transmission and ways of preventing HIV/AIDS and other sexually transmitted diseases in subjects taught in public and private schools at intermediate grades, secondary and tertiary levels, including non-formal and indigenous learning systems.
 - (8) Managing Authorities shall require all teachers and instructors of said HIV/AIDS course shall be required to undergo a seminar or training on HIV/AIDS prevention and control to be supervised by the Department, in coordination with the Department of Health.

M. Prison Act

1. Section 24A is added as follows:
It shall be the duty of the managing authority of any prison or detention facility to provide education and training to all staff and inmates as to the modes of transmission, and information on prevention, treatment and care of HIV/AIDS.
2. Section 24 B is added as follows:
It shall be the duty of the managing authority to provide adequate and appropriate medical treatment to inmates who are PLWHA.
3. section 24 C is added as follows:
No staff member or inmate shall be required to submit to any mandatory HIV/AIDS screening save as required by order of the Court.

N. Landlord and Tenant (Amendment) Act

1. No landlord shall refuse to let, lease or sublet premises to any person on the basis of their HIV status or the HIV status of any family member or associate.

O. Social Security (Benefit) Regulations (Amendment Act)

1. The list of prescribed diseases under Regulation 58 is amended as follows:

Column (1)	Column (2)
20. HIV/AIDS	Any occupation involving close and frequent contact with source or sources of HIV/AIDS by reason of employment - (a) in the medical treatment or nursing of a person or persons suffering from HIV/AIDS or in a service ancillary to such treatment or nursing; (b) as a research worker engaged in research in connection with HIV/AIDS; (c) as a laboratory worker, pathologist or post-mortem worker, where the occupation involves working with material which is a source of HIV/AIDS, or in any occupation ancillary to such employment.

P. Customs and Excise Regulations

1. No actual provision exists in the Customs and Excise Act or the Customs and Excise Regulations giving a list of prohibited items. These have been developed by way of internal policy within the Customs Department. NAC must advocate and collaborate with the Customs Department for the amendment of its internal list of items to ensure that materials or paraphernalia imported to educate the

public on the modes of transmission and to provide information on the prevention, treatment and care of any sexually transmitted disease are not prohibited from importation by Customs Officers.

Q. Belize Nationality Act

1. Please note that contrary the indication from the stakeholders, there is no actual provision in the Belize Nationality Act nor the Rules to that Act that requires a HIV/AIDS test to be done as part of the qualification process for citizenship. That requirement has been imposed by practice and internal practice within the Immigration Department. The NAC must advocate with the Department to change that internal practice and remove the requirement from the form detailing the requirements for citizenship/permanent residency.

Chapter

11

**DRAFTS OF PROPOSED NEW
LEGISLATION**

**PANCAP MODEL ANTI-DISCRIMINATION ACT
SELECTED PROVISIONS**

**PART 3
PREVENTION OF DISCRIMINATION, VICTIMIZATION AND
VILIFICATION**

Division 1

Grounds of discrimination

24. For the purposes of this Law, the grounds of discrimination are HIV status, sexual orientation, lawful sexual activity, status as an orphan, disability and gender.

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Division 2

Discrimination in work

Special positive action

25. Special measures taken by employers of a temporary nature to promote equality of opportunity in employment based on the grounds referred to in section 24 shall not be deemed to be discrimination.

Discrimination in employment

26. (1) An employer, a person purporting to act on behalf of an employer or a co-worker shall not discriminate against a person on the grounds referred to in section 24 -

(a) in the arrangements made for the purpose of determining who should be offered employment;

(b) in determining who should be offered employment; or

(c) in the terms or conditions on which employment is offered.

(2) An employer or a person acting or purporting to act on behalf of an employer shall not discriminate against an employee on the grounds referred to in section 24 -

(a) in the terms or conditions of employment that the employer affords the employee;

(b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;

(c) by dismissing the employee; or

(d) by subjecting the employee to any other detriment.

Discrimination against contract workers

28. A principal shall not discriminate against a contract worker on the grounds referred to in section 24 -

(a) in the terms or conditions on which the principal allows the contract worker to work;

(b) by not allowing the contract worker to work or continue to work;

(c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or

(d) by subjecting the contract worker to any other detriment.

Division 3

Discrimination in other areas

Education

34. (1) An educational authority shall not discriminate against a person or their family member on the grounds referred to in section 24 -

(a) by refusing or failing to accept the person's or their family member's application for admission as a student; or

(b) in the terms or conditions on which it is prepared to admit the

person or their family member as a student.

(2) An educational authority shall not discriminate against a student on the grounds referred to in section 24;

(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;

(b) by expelling the student; or

(c) by subjecting the student to any other detriment.

(3) An education authority shall not discriminate against a person or their family member on the grounds referred to in section 24 -

(a) by developing curricula or training courses having a content that will either exclude the person from participation, or subject the person or their family member to any other detriment; or

(b) by accrediting curricula or training courses having such a content.

(4) This section shall not apply in respect of admission to an educational institution established wholly or primarily for students who have a particular disability where the person or their family member does not have that particular disability.

Access to premises

35. A person shall not discriminate against another person on the grounds referred to in section 24 -

(a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not);

(b) in the terms or conditions on which the first-mentioned person is prepared to allow the other person access to, or the use of, any such premises;

(c) in relation to the provision of means of access to such premises;

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(d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use, whether for payment or not;

(e) in the terms or conditions on which the first-mentioned person is prepared to allow the other person the use of any such facilities;

or

(f) by requiring the other person to leave such premises or cease to use such facilities.

Premises

36. (1) A person, whether as principal or agent, shall not, in relation to transactions for premises discriminate against another person on the grounds referred to in section 24 -

(a) by refusing the other person's application for the premises; or

(b) in the terms or conditions on which the premises is offered to the other person; or

(c) by deferring the other person's application for the premises or according to the other person a lower order of precedence in any list of applicants for that premises.

(2) A person, whether as principal or agent, shall not discriminate against another person on the grounds referred to in section 24; -

(a) by denying the other person access, or limiting the other person's access, to any benefit associated with premises occupied by the other person;

(b) by evicting the other person from premises occupied by the other person;

(c) by subjecting the other person to any other detriment in relation

to premises occupied by the other person;
 (d) by refusing to permit the other person to make reasonable alterations to premises occupied by that person if -
 (i) that person has undertaken to restore the premises to its condition before alteration on leaving the premises;
 (ii) in all the circumstances it is likely that the person will perform the undertaking;
 (iii) in all the circumstances, the action required to restore the premises to its condition before alteration is reasonably practicable;
 (iv) the alteration does not involve alteration of the premises of any other occupier; and
 (v) the alteration is at that other person's own expense.

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(3) This section shall not apply to or in respect of the provision of premises if -

(a) the premises is provided by a charitable or other voluntary body solely for persons who have a particular disability; and
 (b) the person discriminated against does not have that particular disability.

(4) For the purposes of this section "transactions relating to premises" include buying, selling, renting, negotiating, listing, advertising, inspecting, or financing and the terms, conditions, privileges, services or facilities connected to those transactions.

Division 4

Discrimination involving harassment

Harassment

44. A person shall not harass another person on any grounds referred to in section 24.

Interpretation

45. In this Division -

"public act" includes -

(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material;
 (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and
 (c) the distribution or dissemination of any matter to the public.

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Unlawful act not offence unless expressly so provided

46. Except as expressly provided by this Division, nothing in this Law makes it an offence to do an act that is contrary to this Part.

Victimisation

47. (1) A person shall not commit an act of victimization against a person on grounds referred to in section 24.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

(3) A person is taken to commit an act of victimisation against another person for the purposes referred to in subsection (1), if that person subjects, or threatens to subject, the other person to any detriment on the ground that -

(a) the other person -

- (i) has made, or proposes to make, a complaint under this Law against any person;
- (ii) has brought, or proposes to bring, proceedings under this Law against any person;
- (iii) has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Law;
- (iv) has attended, or proposes to attend, a conference held under this Law;
- (v) has appeared, or proposes to appear, as a witness in a proceeding under this Law;
- (vi) has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Law;
- or
- (vii) has made an allegation that a person has done an act which contravenes this Part; or
- (b) on the ground that that person believes that the other person has done, or proposes to do, an act or thing referred to in paragraph (a).

Vilification

48. (1) A person shall not knowingly, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the grounds referred to in section 24.

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(2) Nothing in this section renders the following a contravention of subsection (1) -

- (a) a fair report of a public act referred to in subsection (1);
- (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including taking part in a discussion or debate about and expositions of any act or matter.

(3) A person who contravenes subsection (1) commits an offence of vilification and is liable on summary conviction to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] years, or to both.

Offence of serious vilification

49. (1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the grounds referred to in section 24 by means which include -

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

(2) A person who contravenes subsection (1) commits an offence of serious vilification and is liable on summary conviction to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] years, or to both.

Advertisements

50. (1) A person shall not publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention by that person to do an act that is unlawful under a provision of Division 2, 3, or 4.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] years.

(3) For the purposes of subsection (1) -

“advertisement” includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, show cards or goods, by distribution of *CARICOM MODEL Anti-Discrimination Law*

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samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films or in any other way, and the reference in that subsection to publish or display, in relation to an advertisement, is to be construed accordingly.

Offence to incite doing of unlawful acts or offences

51. (1) A person shall not -

(a) incite; or

(b) assist or promote whether by financial assistance or otherwise the contravention of a provision under this Division, Division 2, 3 or 4.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] year.

Division 5

Exemptions

Special measures

52. (1) Subject to subsection (2), the adoption of temporary special measures designed to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms are declared not to be acts of discrimination on the grounds referred to in section 24.

(2) A temporary special measure referred to in subsection shall (1) -

(a) be appropriate to the situation to be remedied;

(b) be legitimate;

(c) be necessary in a democratic society;

(d) respect the principles of fairness and proportionality;

(e) be temporary; and

(f) be designed and implemented on the basis of need, founded on a realistic appraisal of the current situation of the individuals and communities concerned carried out on the basis of accurate data.

Acts done under statutory authority or order of court

53. (1) This Part shall not apply to -

(a) an order of a court; or

(b) anything done by a person in direct compliance with an enactment in force in [name of Member State].

CARICOM MODEL Anti-Discrimination Law

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PART 4

PREVENTION AND CARE

Division 1

General

Public health

54. This Part shall not apply to discrimination against a person on the grounds referred to in section 24 if the discrimination is reasonably justifiable in the interests of national security, public health and public safety.

Division 2

HIV Testing

HIV testing centres

55. (1) For the purposes of facilitating HIV testing, a public health care

facility and public voluntary counseling and HIV testing centre recognized by the [Chief Medical Officer] in writing shall be an HIV testing centre for the purposes of this Law.

(2) The Minister may, by Order published in the [Official Gazette], accredit any private laboratory or entity to be an HIV testing centre for the purpose of this Law.

(3) A health practitioner performing or otherwise involved in the performance of an HIV test shall take all measures to ensure that -

- (a) the testing process is carried out promptly and efficiently; and
- (b) the result of the HIV test is communicated in accordance with this Law.

Counseling

56. A person who is the owner, manager or in charge of a HIV testing centre shall ensure that there is a trained person to provide pre-HIV test counseling and post-HIV test counseling to a person undergoing an HIV test, and where feasible, to any other person likely to be affected by the results.

Prohibition on compulsory HIV testing

57. (1) Subject to subsection (2), a person residing in [Name of Member State] may on his or her own motion volunteer to undergo HIV testing.

(2) A child or a person with inability to comprehend the result may undergo HIV testing after written consent of his or her parent or [guardian].

(3) No person shall be compelled to undergo HIV testing.

(4) Without prejudice to the generality of subsection (3), no consent shall be required on HIV testing -

- (a) under an order of the court; or
- (b) on the donor of human organs and tissues.

(5) Every pregnant woman and every person attending a health care facility shall be counselled and offered voluntary HIV testing.

(6) Subject to subsection (7), a health practitioner who compels any person to undergo HIV testing or procures HIV testing of another person without the knowledge of that other person commits an offence and is liable to a fine not exceeding ten thousand dollars or imprisonment for a term not less than six months.

(7) Without prejudice to the preceding subsections, a medical practitioner responsible for the treatment of a person may undertake a HIV test in respect of that person without the consent of the person if -

- (a) the person is unconscious and unable to give consent; and
- (b) the medical practitioner reasonably believes that such a test is clinically necessary or desirable in the interest of that person.

(8) Any HIV test administered pursuant to this section shall be by way of anonymous testing.

Test result

58. (1) The results of an HIV test shall be confidential and released confidentially and directly only to the person tested.

(2) Notwithstanding subsection (1), the results of an HIV test may be released confidentially and directly to -

- (a) in the case of a child, his or her parent or [guardian];
- (b) in the case of a person with inability to comprehend the results, his or her spouse or his or her [guardian];
- (c) the court, if applicable; or
- (d) a third party with the consent in writing of the person who has undergone the test.

Medical confidentiality

59. (1) Subject to subsection (2), a, data or test results shall observe confidentiality in the handling of all medical information and documents, particularly the identity and status of a person who is HIV infected.

(2) Confidentiality under subsection (1) shall not be considered breached where a person referred to in subsection (1) -

(a) complies with reportorial requirements in conjunction with the monitoring and evaluation programmes pursuant to a Law;

(b) the person is responding to an order of the Court over legal proceedings where the main issue is the HIV status of a person.

(3) A person who contravenes the provisions of this section commits an offence and upon conviction shall be liable to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] years.

BELIZE:

**PROHIBITION OF DISCRIMINATION AGAINST
PERSONS LIVING WITH HIV/AIDS BILL, 2009**

ARRANGEMENT OF CLAUSES

PART I

Preliminary

1. Short title.
2. Interpretation.

PART II

Offences and Related Provisions

3. Offence of discriminating against persons living with HIV/AIDS.
4. Offence of employment discrimination.
5. Offence of education discrimination.
6. Offence of medical treatment discrimination.
7. Offence of housing discrimination.
8. Offence of transportation discrimination.
9. Offence of burial discrimination.
10. Offence of disseminating medical propaganda.

PART III

Restitution to Victims and Related Provisions

11. Rights of persons living with or affected by HIV/AIDS
12. Restitution to victims.

PART IV

Assistance to Victims and Related Provisions

13. Education on prevention, treatment and care.
14. Workplace Policies.
15. Privacy of victims.
16. Support for victims.
17. Providing information to the victim.

PART V
General Provisions

- 18. Public Health Reporting
- 19. Public awareness campaigns.
- 20. Children living with or affected by HIV/AIDS.
- 21. Regulations.
- 22. Commencement.

BELIZE:

BILL

for

AN ACT to prohibit and punish acts of discrimination against persons living with HIV and AIDS or affected thereby; and to make provisions for the prevention of infection, treatment and care of persons living with HIV and AIDS; and to provide for matters connected therewith or incidental thereto.

(Gazetted, 2009).

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

PART I
Preliminary

Short title.

- 1. This Act may be cited as the

PROHIBITION OF DISCRIMINATION AGAINST PERSONS LIVING WITH HIV AND AIDS ACT, 2009.

Interpretation.

2. In this Act, unless the context otherwise requires

“AIDS” means the abbreviation of the English phrase Acquired Immune Deficiency Syndrome, which is caused by HIV, normally manifested by opportunistic infections and cancers, and may lead to death;

“ARVS” means anti-retroviral drugs;

“Belize National AIDS Commission” means the statutory body incorporated under Act No. 6 of 2004 referred to therein as Belize National AIDS Commission;

“child” means a person below the age of eighteen years;

“court” means Magistrate Court, District Court, Family Court or Supreme Court;

“discrimination” includes the alienation of, the refusal to care for or assist, the isolation of, the maltreatment of or an act of prejudice towards or the restriction of rights of another person because that other person is a person living with or suspected of being a person living with HIV/AIDS or is a person affected by HIV/AIDS;

“HIV” means the abbreviation of the English phrase Human Immunodeficiency Virus, which is the virus that causes the acquired immune deficiency syndrome in human, causing the body to lose the ability to fight disease causing agents;

“HIV/AIDS counseling” means a process of dialogue and provision of necessary knowledge and information about HIV/AIDS prevention and control between the counselor and the counseled, in order to help the counseled make his/her own decisions and resolve problems related to the prevention of HIV/AIDS transmission and the care for and treatment of HIV-infected persons;

“HIV positive” means the result of a test of blood or bio-fluid samples of a human body determined as HIV-infected;

“HIV testing” means the application of professional techniques to determine the status of HIV infection in samples of blood or bio-fluid from a human body;

“Minister” means the Minister with responsibility for Health;

“Opportunistic infections” mean infections that happen to a body due to the deficiency of the body’s immunity caused by HIV infection;

“Person living with HIV/AIDS” means a person who is HIV positive or who has been diagnosed with AIDS;

“Person affected by HIV/AIDS” means a dependent child or parent or spouse or Guardian of or a person living in a house with a person who is HIV positive or who has been diagnosed with AIDS;

“Stigmatization” against an HIV-infected person means an attitude of contempt or disrespect towards another person because of the awareness or suspicion that such person is infected with HIV or has close relationship with an HIV-infected or suspected HIV-infected person;

PART II

Offences and Related Provisions

Offence of discrimination against person with HIV/AIDS

3. (1) Any person who willfully discriminates against or stigmatizes a person solely because that person is suspected to be or is a person living with or affected by HIV/AIDS commits an offence and is liable on summary conviction to imprisonment for up to one year and/or to a fine of up to \$5,000.00.

Offence of harassing person living with

(2) Any person who harasses, besets, intimidates or threatens a person solely because that person is suspected to be or is a person living with or affected by HIV/AIDS or disseminates false information that a person has HIV/AIDS with intent to harass or stigmatise such person commits an offence and is liable on summary conviction to imprisonment for up to one year and/or to a fine of up to \$5,000.00.

(3) In determining the culpability under subsections (1) and (2), the Court shall have regard to any demonstration of malice in the actions of the person accused of the offence.

Offence of employment discrimination

4. Any employer or person acting on their behalf who discriminates against an employee or applicant for employment by:

(a) refusing to offer employment to an applicant for employment or not giving an employee access to opportunities for promotion, training or other benefits, or by dismissing or terminating employment or subjecting an employee to stigmatization or other detriment solely because the applicant for employment or employee is suspected to be or is a person living with or affected by HIV/AIDS; or

(b) offering the applicant for employment or paying the employee at a rate of pay less than the rate offered to another applicant for employment or paid to another employee, for substantially the same kind of work or for work of equal value performed in the same establishment, the performance of which requires substantially the same skill, effort and responsibility and which is performed under similar working conditions except where such payment is made pursuant to seniority, merit, earnings by quantity or quality of production solely because the

applicant for employment or employee is suspected to be or is a person living with or affected by HIV/AIDS; or

- (c) pre-screening for HIV status;

commits an offence and is liable on summary conviction to imprisonment for up to two years and/or to a fine of up to \$10,000.00.

Offence of education discrimination

5. (1) Any educational institution, school, college, vocational institution or training facility or person acting on their behalf who discriminates against a student or prospective student by:

- (a) refusing to offer or allow enrollment of a prospective student or terminating the enrollment of a student solely because the prospective student is suspected to be or is a person living with or affected by HIV/AIDS; or

- (b) restricting the access of a student to educational materials, training opportunities, benefits, or restricting the socialization of a student with other students or participation in school activities or subjecting the prospective student or student to stigmatization or other detriment solely because the prospective student or student is suspected to be or is a person living with or affected by HIV/AIDS;

commits an offence and is liable on summary conviction to imprisonment for up to two year and/or to a fine of up to \$10,000.00.

(2) PROVIDED THAT any restrictions placed on a student as recommended by the relevant public health authority for the purpose of protecting the student from opportunistic infections or other public health recommendation shall not constitute an offence under this section.

Offence of medical treatment discrimination

6. Any hospital, medical clinic, medical laboratory, pharmacy, hospice, counseling center, dental practice or doctor’s office or person acting on their behalf who discriminates against a person seeking access to their services by:

- (a) refusing to provide access to services or medical treatment or medication to a prospective patient or client or terminating services being provided to a patient or client solely because the prospective patient or client is suspected to be or is a person living with or affected by HIV/AIDS; or

- (b) charging the prospective patient or client more for services or medical treatment or medication solely on the basis that the prospective patient or client is suspected to be or is a person living with or affected by HIV/AIDS;

commits an offence and is liable on summary conviction to imprisonment for up to two years and/or to a fine of up to \$10,000.00.

Offence of
housing
discrimination

7. Any person who is the owner, tenant, lessee, landlord of dwelling premises or person acting on their behalf who discriminates against a person seeking to purchase, rent or lease such dwelling premises by:

- (a) refusing to allow such person to purchase, rent or lease such dwelling premises or terminating any agreement for sale to such person or terminating any rental agreement or lease to such person solely because such person is suspected to be or is a person living with or affected by HIV/AIDS; or
- (b) evicting any person occupying any dwelling premises solely because such person is suspected to be or is a person living with or affected by HIV/AIDS; or
- (c) offering the dwelling premises to a person seeking to purchase, rent or lease dwelling premises at a price in excess of what other prospective purchasers or tenants have been offered or increasing the rent of a current tenant or the sale price to a current purchaser solely because such purchaser or tenant is suspected to be or is a person living with or affected by HIV/AIDS;

commits an offence and is liable on summary conviction to imprisonment for up to two years and/or to a fine of up to \$10,000.00.

Offence of
transportation
discrimination

8. Any person who is an owner or operator of any vehicle offering transportation or cargo services for hire to members of the public or person acting on their behalf who discriminates against a person seeking to access such transportation or hire by:

- (a) refusing to allow such person to access transportation or to allow them to hire transportation or cargo services solely because the person seeking to hire transportation or cargo services is suspected to be or is a person living with or affected by HIV/AIDS;
- (b) terminating transportation or cargo services to a person suspected to be or is a person living with or affected by HIV/AIDS;
- (c) offering transportation or cargo services to a person at a higher price than would be charged other customers for the same service solely because such person is suspected to be or is a person living with or affected by HIV/AIDS;

commits an offence and is liable on summary conviction to imprisonment for up to two years and/or to a fine of up to \$10,000.00.

Offence of
burial
discrimination

9. Any person who owns or operates any crematory, cemetery, funeral home or mortuary who refuses to offer funeral or burial services to a person solely on the basis

that the person is suspected to be or is a person living with or affected by HIV/AIDS commits an offence and is liable on summary conviction to imprisonment for up to two years and/or to a fine of up to \$10,000.00

Offence of disseminating medical propaganda

10. Any person who disseminates information on the prevention, treatment or cure of HIV/AIDS knowing such information to be false or who provides medication, prescription or treatment of HIV/AIDS that has not been approved by the relevant public health authority commits an offence and is liable upon summary conviction to imprisonment for up to one year and/or a fine of up to \$5,000.00.

PART III

Restitution to Victims and Related Provisions

11. All persons living with HIV/AIDS or affected by HIV/AIDS shall have the following rights:

Rights of persons living with HIV/AIDS

- (a) to participate in community life in any position appropriate to his or her interests and capabilities;
- (b) to hold public or other office requisite to their talents and qualification and not to be denied access to such office by reason of their HIV/AIDS status;
- (c) to be treated with respect and have their personal dignity protected;
- (d) to equal treatment in the provision of medical treatment and access to medication as provided by public health authorities;
- (e) to participate in any decision making concerning their medical treatment and welfare;
- (f) to have information on their HIV/AIDS status kept confidential except such disclosure as required by law or as they have consented to;
- (g) to receive educational information on the prevention, treatment and care of HIV/AIDS or any opportunistic infections that honours their religious beliefs or convictions;
- (h) to request referrals to counseling.
- (i) to refuse medical examination and treatment except as mandated by the courts.

Restitution to victims

12. (1) The Court may order a person convicted of an offence under this Act to pay restitution to the victim.
- (2) In determining the amount of restitution, the court shall take into account
 - (a) the costs of any medical and psychological treatment the defendant's actions has denied the victim or caused the victim to incur;
 - (b) the costs of any relocation expenses incurred by the victim;
 - (c) the degree of emotional distress, pain and suffering experienced by the victim;
 - (d) the degree of malice demonstrated in the actions of the defendant;

- (e) whether the defendant is a person or institution with special responsibility to care for the public;
- (f) whether the defendant is a person deemed to have special knowledge of the negative effect his/her actions would have on the health or mental well being of the victim;
- (g) whether the offender intended to profit by the offence committed against the victim;
- (h) any other loss suffered by the victim.

(3) Where the court orders payments to the victim in restitution, the court shall set a time limit within which such payment shall be made to ensure that the payments are made to the victim promptly after conviction, and the absence of the victim from Belize shall not prejudice the victim's right to receive such restitution.

(4) Nothing in this act shall restrict the right of the victim to pursue civil or other legal remedies for redress and/or damages and legal costs available at law.

PART IV

Assistance to Victims and Related Provisions

Education on prevention, treatment and care

13. All employers shall provide standardized basic educational information to all employees on prevention, treatment and care of HIV/AIDS.

Adoption of workplace policies

14. All employers shall adopt and institute within the place of work a workplace policy on HIV/AIDS that is approved by the Ministry of Labour and the National Aids Commission and shall provide training to employee representatives on the important provisions of the said policy.

Privacy of victims.

15. (1) In a prosecution for an offence under this Act, the Court shall hold all proceedings *in camera* and where appropriate shall give directions to ensure that the identity of the victim and any information pertaining to the HIV/AIDS status of the victim is kept confidential by ordering that no person shall release the name, address or any identifying information of the victim and/or the victim's family to the press or the public.

(2) In a prosecution for an offence under this Act, the Court shall, by Order, ensure that the identity of the victim and the victim's family is kept confidential by ordering that no person shall release the name, address or any identifying information of the victim and the victim's family to the press or the public.

(3) A person who breaches the order of the court under subsection (2) above commits an offence and is liable on summary conviction to imprisonment for up to six months and/or to a fine not exceeding five thousand dollars.

Support for
victims.

16. In a prosecution for an offence under this Act, the Court, where necessary shall provide an interpreter who speaks a language the victim understands to assist the victim in giving evidence during the course of the trial.

Providing
information
to the victim.

17. The Prosecutor prosecuting the case shall inform a victim of any of the offences under this Act of the civil remedies and the provisions for restitution under this Act.

PART V

General Provisions

Public
Health
Reporting

18. (1) All medical laboratories, clinics, hospitals, doctor's offices, VCT centers or other medical facility that provides HIV testing shall provide pre-test and post test counseling to any person seeking a HIV test.

(2) All medical laboratories, clinics, hospitals, doctor's offices, VCT centers or other medical facility shall report to the Central Medical Laboratory or other place designated by the Minister all HIV positive test results.

(3) All persons who have had a HIV positive result from an HIV test shall be informed in writing, by the health or medical facility conducting the HIV test of the need to comply with precautions designed to prevent the spread of the disease as well as the treatment available including ARVs as well as referrals to support groups, further counseling opportunities and medical precautions against opportunistic infections and other lifestyle changes that would prolong health.

Public
awareness
campaigns

19. (1) The Department responsible for children in collaboration with the Ministry of Health and the other responsible agencies shall undertake and implement public awareness programs designed to erase stigma and sensitise the public on the rights of children living with or affected by HIV/AIDS.

(2) The public awareness programs undertaken under subsection (1) shall utilize leaflets, posters, television, newspapers, radio announcements and other forms of media to disseminate information to the public on:

- (a) the rights of all children;
- (b) the damaging effect on child development of stigma and discrimination;
- (c) the HIV/AIDS infection;
- (d) the need to protect children from exploitation and neglect;
- (e) mandatory reporting requirements and the agencies to report to;
- (f) other such information that shall be deemed appropriate.

(3) The public awareness programs undertaken pursuant to subsection (1) shall be made available at clinics, schools, social security offices and other places where children and families will have access to them, as will be determined by the Department responsible for children in collaboration with the other agencies involved, and shall be periodically evaluated to ensure their effectiveness.

Children living with or affected by HIV/AIDS

20. (1) The Department responsible for children will coordinate efforts to ensure that the welfare of children who are living with or affected by HIV/AIDS is protected and that those children receive timely and appropriate medical intervention and treatment including counseling to promote the child's health.

(2) The Department responsible for children will take appropriate legal intervention where necessary to safeguard the welfare of any child living with or affected by HIV/AIDS especially where children are at risk of are acting as caregivers for adults infected with HIV/AIDS or have been left orphaned by HIV/AIDS.

Regulations

21. The Minister may make Regulations for any purpose which gives effect to the objects of this Act.

Commencement

22. This Act shall come into force on a day to be appointed by the Minister by Order published in the *Gazette*.

Chapter 12 DRAFTS OF AMENDMENTS TO EXISTING DRAFT LAW BILLS

A. The Older Persons Bill

1. Section 2, "care" means physical, psychological, social or material assistance to an older person, and includes services aimed at promoting the quality of life of an Older Person as well as treatment for chronic and terminal illnesses.

B. The Social Services Agencies (Operators of Residential Facilities for Older Persons) (Minimum Operating Requirements) Regulations

1. Renaming the Bill to be “Social Services Agencies (Operators of Residential Facilities for Older Persons and Residential Facilities for Persons with Terminal Illnesses) (Minimum Operating Requirements) Regulations.
2. The expansion of all definitions to include the words “or persons living with a terminal illnesses” next to the words “older persons” throughout the legislation.
3. The addition of a new section viz, Section 10 (g) “the provision of sexual and reproductive health education to all residents.”

C. The Allied Health Professional Bill

1. Section 2 (6) (g) is amended by adding the words “by disclosing medical information or the medical records of a patient without the patient’s consent” after the words “allied health professional and patient”.
2. Section 2 (6) (i) is amended by adding the words “refusing to treat a patient on the basis of his HIV/AIDS status or” in front of the words “abandoning a patient”.
3. Section 10 shall be amended by the addition of the following subsection –
4. “10. (2) Any health delivery and care facility which employs an allied health professional not registered under this act commits an offence commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both.
5. Section 24 is amended to substitute the words “five thousand” for “two thousand” and the words “three thousand” for “one thousand” .

D. The Medical Service and Institutions (Amendment) Bill

1. In the preamble “The minimum mandatory accreditation standards to guarantee the quality of patient care for hospitals” should be amended by the words “and other medical institutions” after the word “hospital”.
2. (at medical institutions and not just hospitals).

E. The Medical Services and Institutions (Medical Laboratory Technologists Code of Ethics and Medical Laboratories Accreditation) Order

1. Section 5 is amended to substitute the words “five thousand” for the words “one thousand”.
2. Code of ethics – 7. A Medical Laboratory Technologist respects a patient’s confidentiality and shall not disclose any information acquired during the course of his or her duties relating to the HIV/AIDS status of any patient.

3. Code of ethics – 9. A Medical Laboratory Technologist respects the right of all patients to medical treatment and shall not deny treatment or services to any person based on their HIV/AIDS status.
3. Section 2 shall be amended to add the words “ and the breach of any of the codes of ethics set out in the act shall constitute an offence under section 5 of this act.” after the words “First Schedule to this Order.

F. The Medical Practice Bill

1. Section 2 (g) (c) is amended by removing the word “optometry”.
2. Section 2 is amended to include the word “Optometrist after the word “Podiatrist”
3. Section 14 (g) is amended by amended by adding the words “by disclosing medical information or the medical records of a patient without the patient’s consent” after the words “medical practitioner and patient”.
4. Section 14 (i) is amended by adding the words ““refusing to treat a patient on the basis of his HIV/AIDS status or” in front of the words “abandoning a patient”.
5. Section 14 (12) to be amended by the removal of the words “the powers of the Supreme Court” and substituting therefor the words “the power”.

G. The Pharmacy Bill

1. The Code of Ethics is amended by removing number 7 and substituting the following therefor:
 7. A Pharmacist respects a patient’s confidentiality and shall not disclose any information acquired during the course of his or her duties relating to the HIV/AIDS status of any patient.
2. The Code of Ethics is amended to add the following number 9.
 9. A Pharmacists respects the right of all patients to medical treatment and shall not deny treatment or services to any person based on their HIV/AIDS status.

H. The Dental Practice Bill

1. Section 16 (g) is amended by amended by adding the words “by disclosing medical information or the medical records of a patient without the patient’s consent” after the words “dentist and patient.”
2. Section 16 (i) is amended by adding the words ““refusing to treat a patient on the basis of his HIV/AIDS status or” in front of the words “abandoning a patient”.
3. Section 27 shall be amended by the addition of the following subsection :
 - (3) The Minister may rules establishing the procedure for the provision of dental services by visiting dentists and dentists practitioners attached to Non-Government and Community Based Organisations.
4. Section 21(4) and (5) are amended by the substitution of the words “five thousand” for the words “one thousand”

5. Section 22(1) is amended by the substitution of the words “five thousand) for the words “one thousand”.

I. Nurses and Midwives Bill

1. Section 29 is amended to include the addition of the following subsection:
 - (3) The Minister may make additional rules including rules for nurses and midwives to recommend that all mothers in need of pre-natal care obtain HIV testing and recommend participation in the mother to child transmission treatment where the results of the test is positive and may make rules prohibiting nurses and midwives from refusing medical care to any patient without adequate referrals to competent medical care.

CONCLUSION

Significant advancement has been made by the Belize National AIDS Commission to advocate for the rights of PLWHA, coordinate a multi-sectoral response and develop policies to strengthen the multi-sectoral response. The Belize National AIDS Policy, itself, a tremendous achievement has placed Belize as a forerunner in the Caribbean and demonstrates the commitment to continue the fight against HIV/AIDS.

After many years of fighting the battle alone, the NAC is beginning to see some fruit from its labour. Recently, the Labour Department seized the initiative with assistance from the ILO to coordinate training of over 4,000 workers and employers countrywide on issues relating to HIV/AIDS in the workplace. These efforts resulted in the creation and implementation of a National HIV/AIDS Workplace Policy. Further, the Belize Chamber of Commerce, made up of employers, themselves taken their stance in the fight by forming a Businessmen’s Coalition to address issues of HIV/AIDS and have pledged

their support to the initiatives of the AIDS Commission and the Labour Department, this advance has not yet been duplicated elsewhere in the Caribbean.

The Labour Department, in collaboration with the ILO, has recently conducted its own study on legal and policy initiatives with a view to recommend legislation to prohibit discrimination in the workplace against PLWHA and to make provisions for treatment and care of workers with HIV/AIDS⁵⁶.

These initiatives now need to be complemented by overall legislative changes to develop legal framework in which the rights of PLWHA are adequately protected in all sectors of society and which will sustain the work of key stakeholders.

The legislative amendments proposed will strengthen the Belize's national response by creating a more enabling environment for the work of the NAC and a society in which PLWHA are treated and respected for who they are, ordinary citizens. Further, the initiative of comprehensive legislative review creates the opportunity to strengthen the multi-sectoral response by allowing each stakeholder to identify their individual role in the fight against HIV/AIDS and recognizing what needs to be done to complement their work while allowing them to see the bigger picture: the necessity for a coordinated fight.

It is hoped that this report will allow these two objectives to be achieved and that Belize will continue to lead the region in this regard. The climate for change is right, the time is right and the tools for the fight are available to us. Let us seize the opportunity.

APPENDIX A

Ministry / Organizations Represented at the Consultation Workshop

1. Attorney General's Ministry
2. Pan American Social Marketing Organization
3. Office of the Director of Public Prosecutions
4. Ministry of Education
5. Belize Chamber of Commerce & Industry
6. The Council of Churches
7. N.C.F.C.
8. U.N.D.P.
9. The U.N.D.P. Representative for the Un inter-agency theme group on HIV
10. BFLA
11. Ministry of Labour

⁵⁶ Shaw, D., 2007 "Study on the Legal and Policy Initiatives to Strengthen the National Response to HIV/AIDS in the World of Work, 2007". ILO

12. National Aids Commission
13. Belmopan Aids Committee
14. Hand in Hand Ministries
15. Ministry of Youth, Sports, Information, & Broadcasting (Youth for the Future)
16. Belize Red Cross
17. YES
18. St. John's College
19. YMCA
20. UNIBAM
21. Belize Legal Support Services
22. Customs And Excise Department -Ministry of Finance
23. Immigration and Nationality Department
24. Salvation Army
25. WIN Belize
26. BEST
27. Pelican Beach Resort
28. Cornerstone Foundation AIDS Link Newsletter
29. Sagcor Capital Life Insurance Company
30. Ministry of Education (QUADS)
31. Citrus Products of Belize
32. Living With Hope
33. Ministry of Human Development
34. Ministry of Health
35. Judiciary - Magistracy
36. Family Court

LIST OF ACRONYMS

AIDS – Acquired Immuno-Deficiency Syndrome

ARV - Anti-Retroviral Treatment

CSEC – Commercial Sexual Exploitation of Children

CSW – Commercial Sexual Worker

HCP - Health Care Professional

HLFE – Health and Family Life Education

HIV - Human Immuno-Deficiency Virus

MOE – Ministry of Education

MOH – Ministry of Health

PLWHA - People Living with HIV/AIDS

STD - Sexually Transmitted Disease

STI – Sexually Transmitted Infections

UNDP – United Nations Development Program

UNGASS – United Nations General Assembly Special Session

VCT – Voluntary Counseling and Testing

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