

THE TEN COMMANDMENTS FOR AIDS LAW

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EDITORIAL

Despite impressive scientific and technological advances in almost every sphere of human endeavour, we still have no miracle drug or vaccine to effectively deal with HIV and AIDS. But we do know, however, that we could minimize the possibility of HIV transmission through appropriate behavioural modifications.

While there are encouraging signs almost everywhere of AIDS education programmes being recognized as an important preventive measure, the time has nevertheless come to consider whether enough is being done to develop, implement and evaluate such programmes. Certainly time is not on our side. Projections by WHO and other sources on the magnitude and impact of HIV and AIDS are staggering by any standard. Even the most sobering and moderate estimates leave no room for complacency.

The introduction of a new subject-area such as AIDS education is certainly not the easiest of issues in curriculum development. Some education and social systems will encounter more difficulties than others, particularly because of the sensitivity in dealing with certain aspects of human sexuality. Notwithstanding these difficulties, action will have to be taken to develop and implement a nation-wide AIDS education programme. It is a task for which the entire education sector will have to be mobilized. Without the active involvement of the relevant education authorities, it may be difficult to accord AIDS education the priority it deserves.



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THE TEN COMMANDMENTS FOR AIDS LAW

by Michael Kirby *

I. Respect the cultural and legal diversity of every jurisdiction

Unlike the human body, the law of the body politic is not universal. It differs from one jurisdiction to another. Even in any one country, e.g. a federation, laws will be different from one state or province to another. Moreover, different jurisdictions follow the common law system, the civil law system or a hybrid, or even a quite different system. Although in fundamental human rights or in inter-jurisdictional concerns (e.g. customs, international travel) legal systems share common features, for the most part they have peculiarities which must be respected. Laws on HIV/AIDS, as on any other subject, must respect these differences. That is why universal rules must be at a high level of generality. Each legal jurisdiction must deal with the issue in accordance with its own traditions, institutions and already established laws.

II. Ensure that the guiding criterion is containment of the spread of the virus

There will be political and other pressures to make laws to deal with the issues of HIV/AIDS. Past epidemics teach that out of fear and panic can come unjust and ineffective laws. That is why a guiding principle must be accepted. Each proposal for law and policy must be tested by reference to it. It is: will the proposal contribute to the prevention of the spread of the HIV virus or not. If it does not, or if it makes the task of containment of the virus more difficult, the proposal (however sincerely intended) must be discarded.

III. Ensure that the law is based on sound scientific data

It is essential that laws and policies be based on sound understanding of the nature of the virus and its modes of transmission. In the past, unwise and ineffective laws and policies to combat epidemics have been based on ignorance or mistake about the modes of transmission (and hence the targets for legal attention). An example is the United States Naval Regulation in the First World War designed to prevent the spread of syphilis by ordering the removal of door knobs on US vessels. With HIV/AIDS we know the modes of transmission. So laws and policies can be based on that knowledge; not on ignorance or fear.

IV. Review old laws on public health and reform them

Many old laws on public health were developed long before the advent of HIV/AIDS. They deal with very different conditions for which there are cures. HIV/AIDS has special features because there is at present no simple cure nor an available vaccine. There is also a great deal of fear, stigma and the risk of discrimination against infected persons. It is, therefore, necessary to review old laws sensitively to ensure that they are suitable for dealing with the new problem of HIV/AIDS which has many different features.

V. Face up to making unpalatable and unpopular decisions

So urgent is the challenge posed by HIV/AIDS to society, public health and, indeed, global health, that law- and, policy-makers must be willing to take bold action and to make unpopular decisions directed to the containment of the virus. Examples include the

adoption of rigorous policies for sex education even in primary schools; the facilitation of the availability of condoms, including to young persons; consideration of review of drug laws and policy, including the provision of sterile needle exchanges and of cleaning bleach to cut down the spread of the virus amongst intravenous drug users — who may otherwise become vectors of the virus for the general community.

VI. Respect the human rights of all persons

International and local laws are designed to protect human rights. Respect for universal rights is most needed when they are most at risk of being forgotten, as in the middle of an epidemic. Human rights are universal because they inhere in the very fact that we are human beings entitled to dignity and respect as such. Relevant rights include those to privacy, to international and national movement, to found a family, etc. There is no blanket exemption for public health measures. To be lawful, these must be compatible with the needs of a democratic society and strictly proportional to the benefits to be gained thereby.

VII. Resist simplistic solutions

There will be calls for "law and order" and a "war on AIDS". Beware of those who cry out for simple solutions, for in combating HIV/AIDS there are none. In particular, do not put faith in the enlargement of criminal law. In changing people's personal behaviour, the risk of punishment is a relatively ineffective influence. Similarly proposals for mandatory testing are generally expensive, and because of the existence of a "window period" and the need for constant repetition of the test, these are not an effective response to the problem.

VIII. Ensure that coercive measures are proportional to the need for action

There will be a need for some coercive measures to protect the community from the willful or reckless spread of the HIV/AIDS virus. However, these will be the exception to the general strategy directed to achieve behavioural modifications. Examples of universal quarantine of HIV seropositive persons (Cuba) or of universal mandatory testing of the whole population (Romania, under its former régime) demonstrate the gross disproportionality of such measures to the benefits to society gained thereby. The target of action must be risky behaviour and not individuals as such.

IX. Do not put too much faith in law

Laws and public policies on HIV/AIDS will have only a minor role to play in the reduction of the spread of the virus. Do not put too much faith in coercive laws as a means of stopping the spread. Law and the risk of punishment are usually the last things on the minds of people in the critical moment of pleasure (whether in sexual gratification or gratification from drug use). Yet it is that moment which must be influenced in any serious campaign to stem the spread of HIV/AIDS. Public education, regularly reinforced, is much more likely to be successful than the enactment of new legislation. Laws should be reserved for sorting out the problems between individuals, and for the extreme case.

X. Acknowledge the paradox of AIDS law

Paradoxically, at this stage of the HIV/AIDS global epidemic, the most effective laws on the subject will include those which reduce the alienation of people whose behaviour may put them at risk from the spread of the HIV virus. To the extent that the most important target audiences for behavioural changes (including intravenous drug users, homosexual and bisexual men, prostitutes and young

AIDS in wider Perspective

people entering sexual activity) are alienated from educational messages, the less effective will those messages be in promoting behavioural modifications. At present the only vaccine we have against HIV/AIDS is knowledge, leading to consistent behavioural modification. Therefore, our societies must abandon old attitudes if we are serious about preventing the spread of this life-threatening, incurable virus. That is the paradox of AIDS. The most effective laws to stop the spread will include laws which help win the confidence and attention of people at risk. If we can change their behaviour — and keep it changed — we will reduce

the risk of the spread of HIV/AIDS. By winning their confidence we protect them — and by protecting them, we protect ourselves and our world, made more vulnerable, suddenly, by the advent of HIV.

(The Hon. Justice M.D. Kirby AC CMG is President of the Court of Appeal, Supreme Court of New South Wales, Australia; Commissioner of the World Health Organization, Global Commission on AIDS; and, Commissioner of the International Commission of Jurists. This is the text of a paper delivered at the International Congress on AIDS organized by the Chulabhorn Research Institute in Bangkok in December 1990. The views expressed are personal to the writer).

FAMILY PLANNING WORKERS AND AIDS PREVENTION

by Nancy Williamson and Malcolm Potts *

The AIDS epidemic has already had an impact on family planning programmes^[1]. How much change is going to take place in the future? What kind of alternations are those who work in family planning going to be called upon to make? What contribution can family planners make to AIDS prevention?

Most individuals infected with HIV are in the childbearing ages and became infected through sexual transmission. AIDS prevention and family planning both focus on couples of reproductive age. Unintended pregnancy, like AIDS, is "sexually transmitted". Both problems will be solved only to the extent people assume responsibility for their own sexual behaviour.

Family planning involves technological and human skills that are highly

relevant to controlling the spread of AIDS. Furthermore, leaders in the family planning movement are well-versed in dealing with controversial issues related to human sexuality which can help them in dealing with AIDS.

Yet, up to now, most family planning programmes have focused on married couples and not on young men or prostitutes who have many sexual partners and may be at greatest risk of AIDS. Nor have they been very active in promoting condoms.

HIV Infection and Contraception

Barrier methods of contraception are currently the only "vaccine" against the spread of AIDS. Condoms are increasingly promoted as a way of reducing the risk of acquiring the virus. Traditionally, however, family planning programmes have considered condoms to have a relatively high failure rate and have not aggressively promoted them. Condoms are also more

[1] See further, WHO, AIDS Prevention: Guidelines for MCH/FP Programme Managers, I. AIDS and Family Planning, World Health Organization, Geneva, May 1990.