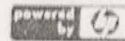


# CHARTER FOR SOCIAL JUSTICE FOR NISM

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Dear Colleagues

At the Naz Foundation International 3<sup>rd</sup> Partners Consultation Meeting held in New Delhi between 5<sup>th</sup> – 7<sup>th</sup> April 2003, a Satellite Session was held on developing charter for Justice for MSM.

With the assistance of Miriam Maluwa, Human Rights advisor to UNAIDS and Aditya Bondyapathyay, NFI Legal Consultant, the Charter has now been developed and has been signed to by all the Partner agencies attending the Delhi Meeting.

We would like as many organizations and individuals working in the field of HIV/AIDS: Human Rights to signed up for this Charter which will be sent to a range of Government Donors, NGOs, and prominent individuals. To sign up for the Charter just send us

Your name  
Organisation  
Position in the organization  
Organisation address  
Contact details (including email)

If you wish a pdf version of this document please contact [kaushik@nfi.net](mailto:kaushik@nfi.net)

Signatories to this Charter so far are:

Bandhu Social Welfare Society, Bangladesh  
Blue Diamond Society, Nepal  
Vision, Pakistan  
Pelangi Community Foundation, Malaysia  
Dennis Altman, President, AIDS Society of Asia and the Pacific, Australia  
Center for AIDS Prevention Studies (CAPS), University of California, San Francisco  
Centro de Derechos Humanos "Miguel Agustín Pro Juárez A.C.", Mexico.  
Nguyen Quynh Trang, Independent Health promotion and social research consultant  
Vietnam  
USAID Vietnam, Hanoi, Vietnam

AASRA, Patna, India  
Bharosa, Lucknow, India  
Gelaya Trust, Bangalore/Mysore, India  
Jyothi Welfare Society, Vijaywada, India  
Lifeline Foundation, Imphal, India  
Mithrudu, Hyderabad/Secundrabad, India  
Praajak Development Society, Kolkata, India  
Prantik, Bongaon, India  
Pratyay, Kolkata, India  
Sahara Welfare Trust, Vishakhapatnam, India  
Udaan Trust, Mumbai/Pune, India  
Arvind Das, Senior consultant, Freelance, India  
Amitie, Chandannagar, West Bengal, India  
Vasavya Mahila Mandali, Vijaywada, India

With warm regards

Shivananda Khan  
Executive Director  
Naz Foundation International

3<sup>rd</sup> Naz Foundation International Partners Regional Consultation Meet  
5<sup>th</sup> – 7<sup>th</sup> April 2003  
New Delhi, India

Living with Dignity and Respect  
Social Justice for All

## A Charter for Social Justice[1]

### PREAMBLE

We, the representatives from a broad range of males who have sex with males (MSM) and reproductive health projects and agencies across Asia, assembled here at WelcomHotel, Saket, New Delhi, India, for the 3<sup>rd</sup> NFI Partners Regional Consultation from 4<sup>th</sup> – 7<sup>th</sup> April 2003 to review and address the problem of HIV/AIDS in all its forms that affects MSM in our countries irrespective of their gender or sexual identity, as well as our national and international commitment to enhance coordination and intensification of regional and international efforts to combat it in a comprehensive manner:

- Deeply concerned about the appalling lack of prevention, treatment and care appropriate to the needs of MSM in a region of 2.5 billion people where HIV/AIDS is increasing;
- Deeply concerned with the lack of respect for human rights and social justice, high levels of HIV/AIDS related stigma, discrimination, and human rights violations and abuse directed against MSM, particularly those of us who are feminised;
- Concerned that MSM will continue to be marginalised, if not become invisible, due to the rhetoric of "heterosexual AIDS", and thus continue to die in hidden numbers as HIV/AIDS continues to rise in the Asia region,
- Recalling the many commitments made by States to abide by a range of human Rights Instruments, and other United Nations Declarations, Policies and programmes addressing those affected, infected and vulnerable to HIV/AIDS, including MSM
- Convinced of the urgent need for a coordinated and sustained response to this epidemic in the Asia region as it affects MSM who too often have been marginalised, criminalised or made invisible;

We do hereby demand the respect and dignity of all MSM, irrespective of their specific and/or sexual identity, or the lack thereof and also the creation of a supportive social and legal environment to enable MSM to more effectively respond to the HIV/AIDS epidemic in their countries and to be seen as equal partners in the struggle against the spread of AIDS.

Such an enabling environment should include the realization by all, irrespective of their gender and sexual choices, the following rights:

- ◆ The right to equality before the law and non-discrimination.
- ◆ The right to life, liberty and security of person
- ◆ The right not to be subjected to torture or to cruel, inhuman or degrading punishment
- ◆ The right to work, with free choice of employment, to just and favourable conditions
- ◆ The right to freedom of opinion and expression, including freedom to hold opinions and to seek, receive and impart information and ideas [2]
- ◆ The right not to be subjected to arbitrary interference with our privacy, family

correspondence, nor to attacks upon our honour and reputation

- ◆ The right not to be subjected to arbitrary arrest, detention or exile, or the circumstances that force one to adopt exile.

We recognise that different institutions, peoples, groups, and agencies have responsibilities for building such an enabling environment. These are:

- ◆ Governments for changing and implementing laws and policies to ensure equity and social justice.
- ◆ Donors for supporting sexual health initiatives led and owned by MSM thereby actively supporting advocacy for enjoyment of human rights by all.
- ◆ Non-Government Organisations, Voluntary Organisations, and other Civil Society institutions and the private sector for working in partnership with such MSM in supporting social justice for all.
- ◆ MSM institutions, organizations, and groups themselves for taking on the onus for themselves for prevention work against the spread of HIV/AIDS, care for those MSM affected and infected with HIV, and for securing for all MSM equality and social justice.

**THE FRAMEWORK**

International human rights law protects all persons equally, without distinction or discrimination. The broad range of human rights- civil, political, economic, social and cultural- should be enjoyed by all groups of individuals. The protection of the basic human rights of men who have sex with men is therefore grounded in a human rights framework that all people are entitled to equal respect and dignity whatever their situation.

The core international human rights Treaties and Conventions adopted by the United Nations General Assembly, *inter-alia*, the Universal Declaration on Human Rights,<sup>[i]</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>[ii]</sup> the International Covenant on Civil and Political Rights,<sup>[iii]</sup> the International Covenant on Economic, Social and Cultural Rights<sup>[iv]</sup>, the Convention on Elimination of All Forms of Discrimination Against Women<sup>[v]</sup> and the Convention on the Rights of the Child<sup>[vi]</sup> guarantee all human beings freedom from discrimination on many grounds, including sex, colour, language, religion, political or other opinion, national or social origin, property, civil, political and social or other status.

The principle of non-discrimination has also been adopted in regional human rights instruments such as the African Charter on Human and People's Rights,<sup>[vii]</sup> the American Declaration of the Rights and Duties of Man,<sup>[viii]</sup> the American Declaration of the Rights and Duties of Man,<sup>[viii]</sup> and the European Convention on Human Rights.<sup>9</sup>

Further, the Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, has addressed the issue of the right to privacy and has stated that Article 17 of the International Covenant on Civil and Political Rights is violated by laws which criminalise private homosexual acts between consenting adults.<sup>11</sup>

The Committee has also resolved that the term "sex" in article 26 of the Covenant includes sexual orientation, which prohibits discrimination on various grounds,<sup>12</sup> including sexual orientation.<sup>13</sup> Furthermore, the Human Rights Committee has also confirmed that the prohibition against discrimination requires States to review and, if necessary, repeal their laws, policies and practices to proscribe differential treatment that is based on sexual orientation.<sup>14</sup>

Discrimination against men who have sex with men and other disadvantaged groups increases such person's vulnerability to the risk of HIV infection, as well as the likelihood that they will be targeted for coercive measures, such as mandatory testing, arbitrary segregation, detention and deportation.<sup>16</sup>

Such discrimination also compromises the health of the general population.

those affected, actively avoid detection and contact with health services. The result is that those most needing information and, education, counselling are driven underground. Here, specifically in the context of HIV/AIDS, the Committee has found that the "criminalisation of homosexual practices cannot be considered a reasonable means or proportionate to achieve the aim of preventing the spread of HIV/AIDS ... [it] would appear to counter to the implementation of effective education programmes in the HIV/AIDS prevention." <sup>17</sup>

Safeguarding human rights in the context of HIV/AIDS is, therefore, not only a principle, but it is also pragmatic. Its aim is to encourage those who are infected to work with the authorities so as to slow down the epidemic. This can be achieved only if States give assurances that their rights will be respected.

#### ACCOUNTABILITY OF STATES

As members of the United Nations and as States Parties to the said international human rights instruments, States have obligations to *respect protect and fulfill* human rights.<sup>18</sup>

The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of human rights.<sup>19</sup> The obligation to *protect* requires States to take measures to prevent third parties from interfering with human rights<sup>20</sup> and the obligation to *fulfill* requires States to adopt appropriate legislative, budgetary, judicial, promotional and other measures to ensure the full realisation of human rights.<sup>21</sup>

States have also willingly made political commitment to implementing human rights in the context of HIV/AIDS.<sup>22</sup> States must be held accountable for these legal commitments.

Bearing in mind the legal obligation and commitments that States have entered into, we urge that:

1. **States**
  - 1.1 States recognise the rights of ALL its citizens, irrespective of their gender and sexual identity or practice, and enact laws that protect the right to privacy, and prevent the criminalisation of sexual expression.
  - 1.2 Enact laws and policies that protect human rights and provide an enabling and empowering environment of men who have sex with men and other sexual minorities.
  - 1.3 Enact, repeal or amend laws, regulations and policies to ensure MSM have access to sexual health services and are not discriminated against through intimate partner harassment, violence, sexual abuse, denial and the risk of imprisonment.
  - 1.4 Address harassment, violence and sexual abuse by both of the State as well as non-State actors through the establishment of appropriate accountability mechanisms at local and national levels that ensures the ability of victims of such acts to challenge and seek redress.
  - 1.5 Provide adequate investment and support for the development of peer-led and community-based MSM sexual health service providers in order for their constituents to have access to appropriate services that promote their well-being.
  - 1.6 Ensure that all State and national level agencies, including the police and other law enforcement agencies, are appropriately trained and sensitised to treat all equally before the law.

MSM and to respect human rights of MSM, including their reproductive and sexual

In addition,

- 1.7 Enact laws and adopt policies that promote and protect the health and well persons infected with, affected by and vulnerable to HIV/AIDS by assu appropriate prevention, care, support, and access to HIV/AIDS related treat
- 1.7 Enact laws that promote and protect all HIV positive persons from discrir that ensure the full enjoyment of their civil, political and economic, social rights and allow them full participation in every sphere of their lives.
2. **Donors**
  - 2.1 Donors support HIV/AIDS prevention, care and treatment by and for MSM a
  - 2.2 Donors invest in the significant development of many more MSM comm HIV/AIDS service providers across Asia and provide appropriate technical a
  - 2.3 Donors support legislative, policy development and advocacy work on M\$ local, national, regional and international evils.
3. **Non-Government Organisations and other civil society institutions**
  - 3.1 Local, national, regional and international organisations working in the fie and reproductive health take on board issues relating to MSM and ad concerns within their own organisations and in their service delivery anc with and work in partnership with MSM sexual health Community based c towards promoting an enabling environment for all.
  - 3.2 Recognise the sexual health concerns of MSM need to be incorporated into NGOs.
4. **MSM Institutions, Organisations, and Groups**
  - 4.1 MSM institutions, Organisations, and Groups should accept and t responsibility of working for the health and other rights of all MSM so as t them their basic dignity, social justice, equity, and equality, and enable the themselves from HIV/AIDS and other sexually transmitted infections.

We, participants of the 3<sup>rd</sup> NFI Partners Regional Consultation Meeting express our to those who have made this Meeting possible and who have raised the awarene the vulnerability and marginalisation of MSM in the global fight against AIDS.

We look forward to strong leadership and support from UNAIDS, other programmes and agencies, Governments, donors, national, regional and internatio help us be a key part of the HIV/AIDS response through working in partnership with

We finally call upon all countries and donors in the Asia region to take the necessan implement this Charter for Social Justice in strengthened partnership and cooperati are a part of civil society.

[1] Technical elements of this Charter are drawn/extracted from a paper prepared by Miriam I (Attorney at Law, LL.B (Hons.) (Bachelor of Laws) and LL.M (Masters of Laws) University of L UNAIDS Law and Human Rights Adviser. The paper was presented at an Inter-Agency meeti "Working with men who have sex with men for HIV Prevention and Care", convened by UNAI

on November 2002, in Geneva Switzerland.

[2] In the context of HIV/AIDS, such right includes access to appropriate HIV/AIDS related a health information regarding prevention, treatment, care and support

[i] Adopted by the General Assembly on 10<sup>th</sup> December 1948 under Resolution 217 A (III)

[ii] Adopted by the General Assembly on 10<sup>th</sup> December 1984 under Resolution 39/46 of Dec Entered into force on the 26<sup>th</sup> June 1987.

[iii] Adopted by the General Assembly under G.A resolution 2200 (XXI), UN GAOR, 21<sup>st</sup> sessi Supplement No. 16, UN Doc. A/6316 (1966). Entered into force 23 March 1976.

[iv] Adopted by the General Assembly on 16 December 1966 under G.A. Res. 2200 (XXI); UN Session, Supplement No. 16 at 49, UN Doc. A/6316 (1966).

[v] Adopted by the General Assembly under GA Resolution 34/180 of 18 December 1979. En force 3<sup>rd</sup> September 1981

[vi] Adopted by the General assembly under GA res. 4/25 of 20<sup>th</sup> November 1989. Entered in September 1990

[vii] Adopted on 26<sup>th</sup> June 1981. Entered into force 21<sup>st</sup> October 1986

[viii] Adopted 22<sup>nd</sup> November 1969. Entered into force 18<sup>th</sup> July 1978

9 Adopted 4<sup>th</sup> November 1950. Entered into force 3<sup>rd</sup> September 1953

10 Article 17 states (i) " No one shall be subjected to arbitrary or unlawful interference with h family, home or correspondence, nor to unlawful attacks on his honour and reputation. And (ii has the right to the protection of the law against such interference or attacks.

11 Communication No. 488/1992, *Nicholas Toonen V Australia*, (Views adopted on 31<sup>st</sup> Marc fiftieth session). See Report of the Human Rights Committee Volume II General Assembly Of Forty-ninth session (Geneva, 18<sup>th</sup> October to 5<sup>th</sup> November 1993); Fiftieth session (United Na Headquarters, 21<sup>st</sup> March to 8<sup>th</sup> April 1994) Fifty-first session (Geneva, 4<sup>th</sup> to 29<sup>th</sup> July 1994), <http://www.unhcr.ch/tbs/doc.nsf> Pages 226-237, paragraph 8.2

12 "race, colour, sex, language, religion, political or other opinion, national or social origin, prc other status"

13 *ibid*, paragraph 8.7

14 *ibid*, paragraph 11

15 Such groups may also include women, children, minorities and indigenous populations, the poverty, migrants and other aliens and injecting drug users.

16 See examples of HIV/AIDS related litigation <http://www.tac.org.za/>; Carrasco E (2000); an Treatment as a Right to Life and Health. Canadian HIV and AIDS Policy Law Review; 5:4. Av. <http://www.aidslaw.ca/maincontent/otherdocs/Newsletter/vol5no42000/carrascodurban.htm>

17 Communication No. 488/1992, *Nicholas Toonen V Australia*, (Views adopted on 31<sup>st</sup> Marc fiftieth session). See Report of the Human Rights Committee Volume II General Assembly Of Forty-ninth session (Geneva, 18<sup>th</sup> October to 5<sup>th</sup> November 1993); Fiftieth session (United Na Headquarters, 21<sup>st</sup> March to 8<sup>th</sup> April 1994) Fifty-first session (Geneva, 4<sup>th</sup> to 29<sup>th</sup> July 1994), <http://www.unhcr.ch/tbs/doc.nsf> Pages 226-237, paragraph 8.5

18 See Committee on Economic Social and Cultural Rights *General comment 14. The right t attainable standard of health adopted* 11<sup>th</sup> August 2000.. E/C.12/2000/4, paragraphs 34-37

See also <http://www.unhcr.ch/html/menu2/6/cescr.htm>

19 For example, refraining from identifying or limiting equal access of all persons, including m sex with men, preventive and curative HIV/AIDS heath services and care or abstaining from discriminatory practices as State policy.

20 For example, adopting of legislation to ensure the equal access to health care and health r services provided by third parties; to control the marketing of medicines and medical equipme ensure that medical practitioners and other health professionals meet appropriate standards c skill and ethical codes of conduct.

21 For example, adoption of a national health policy with a detailed plan; promotion of HIV/AIDS as well as information campaigns and vaccine research.

22 For example, recent relevant political commitments have been made in the United Nations Declaration (2001), the UN General Assembly Special Session Declaration on HIV/AIDS (200 Declaration and Program of Action of the World Conference Against Racism, Racial Discrimin: Xenophobia and Related Intolerance (2001) and The Declaration from the World Summit for Development (2002).