

***THE NAGALAND HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (OMBUDSMAN AND LEGAL PROCEEDING) RULE 2019***

In exercise of powers conferred by Section 49 read with Sections 23, 24 and 25 of the Human Immunodeficiency Virus And Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017 (16 of 2017), to provide for the appointment, terms and conditions, qualifications and manner of inquiry by Ombudsman, the Government of Nagaland hereby makes the following rules, namely:-

**Chapter – I**

**Preliminary**

**1. Short title, extent and commencement**

(1) These Rules shall be called the Nagaland Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2018.

(2) The Rules shall extend to the whole state of Nagaland

(3) These Rules shall come into force on date of their publication in the Nagaland Gazette.

**2. Definitions**

In these rules unless the context otherwise requires,

(1) "Act" means the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (No. 16 of 2017);

(2) "Appropriate authority" means, unless otherwise notified, the National AIDS Control Organisation in the case of the Central Government and the Nagaland State AIDS Control Society in the case of the State Government;

(3) "High burden districts" means districts notified as such by the appropriate authority under the Central Government of India from time to time;

(4) "Ombudsman" means an Officer appointed or designated by the State Government, as the case may be, under section 23 of the Act;

(5) State Government means the Government of Nagaland.

**Chapter – II**

**3. Appointment & Jurisdiction of Ombudsman**

The State government shall appoint one Ombudsmen within one hundred and eighty days of the date of commencement of the Act.

**4. Qualification and experience of Ombudsman**

Any person who is a retired district or sessions judge, or who has minimum ten years working experience or extensive knowledge in matters relating to public health or health delivery systems, or

is a qualified healthcare provider who is a physician with a minimum of ten years work experience, or is a person working in an non-governmental organization with similar experience and knowledge:

Provided that where a person other than a retired district or session's judge is appointed as an Ombudsman, the State Government shall provide him with assistance from the Department of Justice and Law on legal issues that may arise in the course of his work, if so requested.

(2) Capacity Building and sensitisation: within thirty days of appointing the Ombudsman.

## **5. Terms and conditions of services of Ombudsman**

(1) A person appointed as Ombudsman shall be conferred the rank of Director, Health Services.

(2) The Ombudsman shall carry out his functions as an officer of the Department of Justice and Law, and stationed at the Directorate of Health and Family Welfare.

(3) The Ombudsman shall be eligible for salary and allowances at such rates as the rank he holds in the State Government or according to the applicable Civil Service Rules.

(4) The Ombudsman shall hold office for a term of three years, and shall be eligible for reappointment for another three years:

Provided that no Ombudsman shall hold office as such after he has attained the age of seventy years.

(5) The Ombudsman may relinquish office by giving written notice of not less than three months to the State Government.

(7) The State Government shall remove an Ombudsman from office who:

- a) is, or at any time has been, adjudged insolvent;
- b) has become physically or mentally incapable of acting as Ombudsman;
- c) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the State Government likely to prejudicially affect such person's functions as the Ombudsman; or
- d) has so abused the position as to render continuation in office detrimental to the public interest:
- e) Provided that an Ombudsman shall not be removed from office without getting a reasonable opportunity of being heard in the matter.

## **6. Manner of inquiring into complaints by Ombudsman**

- a) The Ombudsman shall act in an objective and independent manner when inquiring into complaints made under the Act
- b) While inquiring into complaints under the Act, the Ombudsman shall not be bound by any rules of evidence and may follow such procedure as he considers just and proper.
- c) A due opportunity shall be given to the accused before any Order is passed by the Ombudsman.
- d) The Ombudsman may, in the interests of justice, take the assistance of experts, including protected persons and persons vulnerable to HIV, and persons working in the fields of HIV and AIDS, public health or health delivery systems.
- e) The Ombudsman shall have the power to pass interim orders in cases of medical emergency without hearing the parties.
- f) The Ombudsman shall have the power to pass orders, including to, withdrawal and rectification of the violation, counselling, social service etc.
- g) The Ombudsman shall inform the complainant of the action taken.
- h) The Ombudsman shall inform the parties to the complaint of their right to seek judicial review from the Ombudsman's order.
- i) Any complaint made and before passing of interim order, such complaint shall be accompanied with material evidence.

## **7. Manner of maintaining records by Ombudsman**

*[Under Section 24(3)]*

(1) The Ombudsman shall -

(a) immediately on receipt of a complaint, record it by assigning a sequential unique complaint number in a register maintained solely for that purpose in physical or computerized form;

(b) on receipt of the complaint, acknowledge it including by sending the unique complaint number by SMS or e-mail to the complainant where available;

(c) record the time of the complaint and the action taken on the complaint in the register; and

(d) maintain the register of complaints in a manner that ensures confidentiality of data as specified in the proviso to rule 6(10).

(2) The Ombudsman shall comply with data protection measures in accordance with section 11 of the Act.

## **8. Manner of making complaints to Ombudsman**

*[Under Section 25]*

(1) Any person may make a complaint to the Ombudsman within whose jurisdiction the alleged violation took place, within three months from the date that the person making the complaint became aware of the alleged violation of the Act.

Provided that the Ombudsman may, for reasons to be recorded in writing, extend the time limit to make the complaint by a further period of three months, if he is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period.

(2) All complaints shall be made to the Ombudsman in writing in accordance with the form set out in the Appendix to the Rules:

*Provided* that where a complaint cannot be made in writing the Ombudsman shall render all reasonable assistance to the complainant to reduce the complaint in writing.

(3) In cases of medical emergency, the Ombudsman or his assistant may visit the complainant at the location of the alleged violation or any other convenient place to enable written documentation of the complaint.

(4) The Ombudsman may receive complaints made in person, via post, telephonically, or through electronic form through the Ombudsman's website:

Provided that the State Government shall within seven days of the appointment of the Ombudsman establish a website of the Ombudsman.

## **9. State Government to disseminate information on Ombudsman**

(1) Within thirty days of the appointment of the Ombudsman, the appropriate authority under the State Government shall disseminate information about the office of the Ombudsman, including the

Ombudsman's jurisdiction, role, functioning and procedures, and the manner in which complaints can be made to the Ombudsman.

(2) Such dissemination shall be undertaken to advance the understanding, in particular, of protected persons, healthcare workers, legal aid service authorities and civil authorities.

**10. Manner of recording pseudonym and providing suppression of identity in legal proceedings**  
*[Under Section 34(1)(a)]*

(1) In any legal proceeding where a court, pursuant to section 34(1)(a) of the Act directs, on an application made by a protected person or any other person, that in the interests of justice the proceeding or any part thereof be conducted by suppressing the identity of such protected person, the Registrar of the court shall direct all parties involved to:-

- (i) File one copy of the documents bearing the full name, identity and identifying details of the parties concerned before the court, which shall be kept in a sealed cover and in safe custody with the Registrar and
- (ii) Serve one copy of documents bearing the full name, identity and identifying details of the parties concerned upon other parties in the proceeding with a requirement to ensure that the full name and identity of the parties concerned are kept confidential.

(2) The Registrar shall provide pseudonyms to protected persons involved in the legal proceedings in the documents filed before the court in such manner that the identity and identifying details of the protected person involved in the legal proceeding are kept confidential.

(3) The Registrar shall place the sealed covered documents before the court on the first date the legal proceeding is listed for hearing before the court, if so required by the court.

(4) The identities of the protected person involved in the legal proceeding and their identifying details shall be displayed in pseudonym in all documentation generated by the court in relation to the legal proceeding, including listing of the case on the court Board, interim orders and final judgments.

(5) The identity and identifying details of the protected person involved in the legal proceeding shall not be revealed by any person or their representatives including assistants and staff.

*Exception:* Where in the interest of justice the name and identity of the protected person needs to be revealed to a third party, it shall only be allowed by an order of the court.

(6) Printing or publishing any matter in relation to the aforementioned legal proceedings in electronic or any other form, shall be lawful only if the same is done by ensuring the suppression of identities of the parties in the legal proceeding.

(7) In any legal proceeding before it under the Act, the court shall comply with data protection measures in accordance with section 11 of the Act.

**11. Prevention of transmission of HIV**

An HIV infected person shall take every precaution by disclosing his or her HIV status to his or her sexual partner so as to prevent transmission of HIV.

**APPENDIX**

**Form for making Complaint to Ombudsman under Rule 8**

1. Date of Incident \_\_\_\_\_
  
2. Place of Incident \_\_\_\_\_
  
3. Description of incident \_\_\_\_\_
  
4. Person/ Institution responsible for the incident \_\_\_\_\_

Signature/ Thumb Impression of Complainant\*

Name:

Date:

Mobile No./email/Fax/Address:

*For Official Use only:*

Unique Complaint Number: \_\_\_\_\_

*\*Where the complaint is received telephonically and reduced to writing by the Ombudsman, the Ombudsman shall sign the Form*