



**Save the Children**  
South Africa Programme



# The Rights of Children and Youth Infected and Affected by HIV/AIDS



**TRAINERS'  
HANDBOOK**



**THE RIGHTS OF CHILDREN  
AND YOUTH INFECTED  
AND AFFECTED  
BY  
HIV/AIDS**

**TRAINERS' HANDBOOK**

**A project of**

The National AIDS and Children Task Team (NACTT)

**Commissioned by**

Save the Children (UK)  
South Africa Programme

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The NACTT is a representative, national body with a mandate to advocate for, plan, guide, oversee and monitor activities for children and youth affected by HIV/AIDS.

The rights of children and youth infected  
and affected by HIV/AIDS - Trainers' handbook

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Whilst every effort has been made to ensure the accuracy of the information contained in the handbook, Save the Children (UK) does not accept responsibility for any errors.

# Foreword

**S**ave the Children (UK) has been promoting children's rights around the world for more than 80 years. At present it is active in more than 100 countries, working in partnership with governments, NGOs communities, families and children to improve health, education and welfare services. Its experience throughout Africa indicates that, today, the greatest threat to children's rights and welfare is undoubtedly HIV/AIDS. In South Africa alone, the pandemic is likely to deprive at least 1 million children of parental care by the year 2005 and will impact negatively on every area of life, eroding the significant gains made by South African society over the last few years. It is unlikely that any family or community will remain untouched as HIV/AIDS depletes the natural pool of workers and carers and strains family and community support systems to breaking point. Its adverse effects threaten not just the health and welfare of AIDS orphans but the rights of all South African children to education, care, health, shelter, play, family support and love.

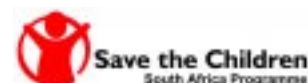
HIV/AIDS's social effects are as dangerous and debilitating as its physical effects. Until the stigma and discrimination suffered by people living with AIDS and their families is addressed, the pandemic will continue to grow. Prejudice and fear prevents people seeking proper care. For those infected with HIV/AIDS, there is little incentive to be open about their condition if it results in isolation and hostility. Ignorance, prejudice and fear help HIV/AIDS to spread. Openness, acceptance and support are essential for its containment.

This publication clearly illustrates the importance of children's rights. Addressing the HIV/AIDS pandemic requires a strong and coordinated response from all sectors of society - government, NGOs, churches, communities and children, as well as the international community. But this response has to be a rights-based response if it is to protect our children and youth.

I would like to thank the researchers for their work in this area and for demonstrating so clearly the importance of protecting the rights of children and youth. I hope that this publication will assist trainers to conduct training on the rights of children and youth infected and affected by HIV/AIDS in South Africa.

Kevin Byrne

Director  
Save the Children (UK)  
South Africa Programme





# INTRODUCTION

## THE RIGHTS OF CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS



### **Why were the training modules developed?**

Millions of children and youth are presently infected and affected by HIV/AIDS, particularly in Sub-Saharan Africa, and research estimates that the numbers of children who will be infected with HIV or orphaned as a result of the disease in the near future will reach catastrophic proportions. However, to date in South Africa, the law has not responded adequately to protect the rights of children and youth infected or affected by HIV/AIDS, nor is there a legal environment which can adequately respond to the new and emerging social demands created by the HIV/AIDS epidemic. Furthermore, frequently children, youth, their care givers and service providers are not aware of the rights of children and youth and how to enforce them.

In 2001, a survey conducted by Save the Children (UK) amongst key stakeholders working with children and youth infected and affected by HIV/AIDS, highlighted the lack of information and training on children's rights as a key concern. The survey prioritised 4 areas where increased information and awareness was urgently required:

- Human rights, discrimination and HIV/AIDS;
- The health rights of children and youth;
- The education rights of children and youth; and
- The welfare rights of children and youth.

In response Save the Children (UK) commissioned the development of 4 training modules dealing with these prioritised areas.

### **What is the purpose of the training modules?**

The 4 training modules aim to:

- Raise awareness of the rights of children and youth, particularly as they relate to HIV/AIDS
- Develop an understanding of the ways in which children's and youth's rights are abused in the context of HIV and AIDS
- Enhance the capacity of children and youth, their care givers and service providers to recognise and realise these rights and to respond to the HIV/AIDS epidemic in a rights based manner

### **Who will use the training modules?**

The trainers' handbook is designed for trainers who conduct training (pre-service and in-service) for service providers working with children and youth infected and affected by HIV/AIDS. The handbook is intended for use by trainers from all sectors, such as health, welfare and education, and from both Government and Non-Governmental Organisations.

## How should trainers use the training modules?

The 4 training modules have been designed to be used either together, or alternatively as “stand-alone” training sessions.







For example, a child rights organisation may wish to include training on all 4 modules, as a 2-day training workshop. Trainers within the education sector, on the other hand, may simply wish to include a 3 ½-hour session on the education rights of children and youth infected and affected by HIV/AIDS, in their existing life skills and HIV/AIDS training programme.

## How are the training modules designed?

Each module is divided into sections, broadly dealing with awareness and education on rights, discrimination and abuse of rights, and strategies to access and enforce rights. In each module this is summarised in the Module Map.



The modules contain practical step-by-step instructions, participatory exercises and workshop materials, as well as background information and recommended additional reading for the trainer.

Each section is organised as follows:

-  A statement of the purpose of the section
-  The preparations that the trainer needs to make
-  Additional readings
-  Materials and resources required
-  Time needed
-  The step by step procedure to follow

Where appropriate:

Trainers' Notes in shaded boxes are inserted.

-  Comments to trainers are provided
-  Participant exercises and worksheets are included in the relevant sections.

In the Appendix at the end of each module are detailed notes about the particular content area.

These notes are followed by a set of sheets that can be made into overhead transparencies.

# MODULE 1



## A HUMAN RIGHTS RESPONSE TO DISCRIMINATION AND STIGMA FACED BY CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS

### THE AIM OF THE MODULE

This stand alone 4<sup>3</sup>/<sub>4</sub> - hour workshop looks at discrimination and stigma faced by children infected and affected by HIV/AIDS and the strategies that can be used to reduce such discrimination. It is divided into 4 sections:

- **Section One:** Raising awareness around discrimination
- **Section Two:** Identifying aspects of stigma and discrimination
- **Section Three:** Strategies for dealing with stigma and discrimination
- **Section Four:** Summing up and reinforcing lessons learned

This module is one of a series developed by Save the Children (UK) for use in South Africa. The other three modules focus on health, education and welfare.

### OUTCOMES

**At the end of Module 1 participants will be able to:**

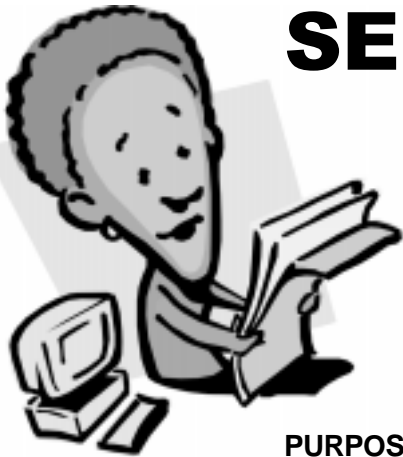
- Describe the nature of stigma and discrimination faced by children and youth infected and affected by HIV/AIDS;
- Explain ways in which they and others might act in discriminatory ways towards children and youth infected and affected by HIV/AIDS; and
- Describe mechanisms for dealing with stigma and discrimination towards children and youth infected and affected by HIV/AIDS.

An overall map or framework for how the workshop could be run follows. It briefly indicates the sections and the activities that would need to be conducted in each section as well as some idea of the amount of time that each activity requires. This module map allows you to plan and decide ahead, depending on the needs of your participants and the amount of time that you have available with them. Depending on these factors, you could decide to run the whole 4-hour workshop, or just a combination of certain sections.

## MODULE MAP

SECTION	ACTIVITY	TIME ALLOCATION
<b>One</b>	Step One: Nature and extent of discrimination: exercise and input	40 minutes
<b>Two</b>	Step One: Brainstorming definitions	30 minutes
	Step Two: Personal reflections on practices of stigma and discrimination	15 minutes
	Step Three: Legal definitions of discrimination	30 minutes
	Step Four: Discrimination Cards exercise	45 minutes
<b>Three</b>	Step One: Participants exercise on human rights	30 minutes
	Step Two: Lecture input: Constitutional and other legal routes for dealing with discrimination	45 minutes
	Step Three: Worksheet on unfair discrimination	30 minutes
<b>Four</b>	Step One: Summing up and reinforcing lessons learned	20 minutes





# SECTION ONE

## RAISING AWARENESS ON DISCRIMINATION AND STIGMA FACED BY CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS

### PURPOSE

The purpose of this section is to assist participants to develop an understanding of the nature and extent of discrimination against children and youth infected and affected by HIV/AIDS.

### PREPARATIONS



Barrett Grant, Strode and Clacherty (2001). *The Role of Stigma and Discrimination in increasing the vulnerability of children and youth affected by HIV/AIDS*, Save the Children (UK).

Consult Appendix for additional readings on: key definitions and concepts, the link between stigma and discrimination and understanding stigma and discrimination.

### MATERIALS REQUIRED



- Flipchart paper and pens
- Worksheet 1
- OHTs 1 and 2

### TIME NEEDED



Step One:	Participants exercise on stigma and discrimination	25 minutes
Step Two:	Plenary discussion and wrap up	15 minutes
	<b>Total time required:</b>	<b>40 minutes</b>

### PROCEDURE



**Step One:** (25 minutes)

**Instructions to the group:** Hand out worksheet one and ask the participants to discuss their answers to the questions with the person sitting next to them.

**Step Two:** (15 minutes)

Ask participants to report back on their group discussions. Invite general discussion on the points raised.



# Worksheet 1

## Nature and extent of discrimination

1. Describe and discuss examples of stigma and discrimination against children and youth infected and affected with HIV/AIDS. Draw on stories you have heard in your work, community and home environments.

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2. How was this stigma manifested (i.e. how do people demonstrate their stigmatising behaviour?)

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3. What happened as a result of this behaviour (i.e. how did the child or youth in the scenario react? How do you think they felt?)

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4. How was this situation addressed (i.e. what did people do about it?)

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**Comment to trainer:** Summarise the nature and extent of discrimination and stigma against children and youth infected and affected by HIV/AIDS using OHT 1 and 2 and the inputs received from participants in the plenary discussion that followed the exercise.



#### Trainer's Notes:

- We do not know the full extent of discrimination and stigma faced by children and youth as only limited research has been undertaken on this subject.
- Recently some in-depth research has been undertaken with small focus groups that has shown that stigma and discrimination are part of most children's and youth's experiences of HIV/AIDS.
- Children and youth are doubly burdened by discrimination as they are stigmatised if they are infected as well as if their parents or care givers are infected.
- Children and youth are at the centre of stigma. They carry the burden of stigma even after their parents' death, which is very traumatising.
- It is argued that discrimination and stigma against children and youth falls into 2 categories; general stigmatisation by communities and discrimination by service providers leading to a discriminatory denial of rights and services.
- An example of general stigmatisation by communities is a 'gogo' in Mpopomeni outside Howick in KwaZulu-Natal who was isolated and shunned by the community when she spoke to the local newspaper telling them of her struggle to maintain 18 orphans. There are also reports of neighbours, teachers, and fellow children stigmatising children living in HIV/ AIDS affected families both in and out of school to the extent of refusing to share food or play with them and teasing them. The situation is worsened if the child or youth is HIV infected. As a result a number of children and youth have refused to go to school whilst other request to change schools because of the way they are treated by their fellow learners.
- An example of discrimination by service providers is hospitals refusing to treat babies with AIDS.
- An example of the discriminatory denial of rights and services is one where a social worker removed the children of an HIV positive woman simply because of her status.



# SECTION TWO

## IDENTIFYING ASPECTS OF STIGMA AND DISCRIMINATION

### PURPOSE

The purpose of this section is to assist participants to identify:

- Their own internal prejudices;
- Discrimination and stigma in the community; and
- The legal definition of unfair discrimination.

### PREPARATIONS



Barrett Grant, Strode and Clacherty, (2001).

*The Role of Stigma and Discrimination in increasing the vulnerability of children and youth affected by HIV/AIDS*, Save the Children (UK).

Consult Appendix for additional readings on: key definitions and concepts, the link between stigma and discrimination and understanding stigma and discrimination.

### ADDITIONAL READING



De Waal, Currie & Erasmus, (2000).

*The Bill of Rights Handbook*, Juta.

Westbrook & Bauman (1996).

*Perceived Stigma of HIV/AIDS: Personal View*.

Westbrook & Bauman (1996).

*Perceived Stigma of HIV/AIDS: Public View*.

### MATERIALS REQUIRED



- Flipchart paper and pens
- Worksheets 2 and 3
- OHTs 3 to 9

### TIME NEEDED



Step One:	Brainstorming definitions	30 minutes
Step Two:	Personal reflections on stigma and discrimination	15 minutes
Step Three:	Legal definitions of discrimination	30 minutes
Step Four:	Discrimination Cards exercise	45 minutes
	<b>Total time required:</b>	<b>120 minutes</b>



## PROCEDURE

### Step One:

(30 minutes)

**Comment to trainer:** Conduct a group brainstorming session. Ask the group to define what they understand by the terms “STIGMA” and “DISCRIMINATION”.

Based on participants’ responses and using OHT 3, emphasise the following points regarding stigma and discrimination.



### Trainer’s Notes:

- HIV/AIDS stigmatisation starts as soon as information (accurate or not) regarding a person’s HIV status is out. It is the process whereby the person is looked at in many different ways, all of them negative and judgmental, soon after he/she is known or suspected to be HIV positive.
- As long as stigma remains at the level of negative thought, no harm is done to others.
- However, once a person’s prejudiced thought/s lead them to doing something, or omit to do something, that then harms or denies services or entitlements to another person. The act that harms is a discriminatory act.
- Stigma is defined as the imposition of a special, discrediting and unwanted mark on a person or a specific category of persons in such a way that they are looked at as fundamentally and “shamefully different” . For example labeling a person as promiscuous is a form of stigma.
- Discrimination occurs when a distinction is made against a person that results in their being treated unfairly and unjustly on the basis of their belonging, or being perceived to belong, to a particular group. For example excluding a ‘promiscuous person’ from school because she is a ‘bad influence’ on others is when stigmatisation becomes a discriminatory act.

End off this section by consolidating understandings of stigma and discrimination. Use OHTs 4 and 5 to do this.

### Step Two:

(15 minutes)

**Instructions to the group:** In the previous section, we had started to identify the nature and extent of stigma and discrimination that children and youth infected and affected by HIV/AIDS experience. We talked more generally about other forms of stigma and discrimination that you may have witnessed. Now, we want you to reflect on your own feelings and practices in this regard. You do not need to share your responses with the group.



# Worksheet 2

## Personal reflections on stigma and discrimination

Take a couple of minutes to jot down your responses to the following prompts:

- Have you ever experienced any form of discrimination e.g. racial or gender based discrimination? If yes, describe what happened.

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- What motivated that person/s to behave in that way?

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- What impact did their behaviour have on you?

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- If you think about it, how could this situation be dealt with differently?

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- Now try and relate your experience to the discrimination that HIV positive people sometimes experience: what feelings drive people to discriminate against those with HIV, what impact does this have on the HIV positive person, how could we deal with these situations differently?

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**Comment to trainer:** Building on the participants' experiences of discrimination and their application of this to children and youth infected and affected by HIV/AIDS, you may like to emphasise the following points. Use OHT 6.



### Trainer's Notes:

- Personal and social fear, insecurity, denial, feelings of superiority (us "who don't have HIV" versus "those who have HIV or are at risk for infection"), blame, stereotyping attitudes, ignorance, anger, myths and misconceptions about the epidemic and many others, may be some of the feelings and thoughts that inform discriminatory behaviour against people with HIV/AIDS.
- These negative thoughts and feelings can be communicated intentionally or unintentionally to an HIV positive person in a number of ways:
  - ◆ Through the negative or derogatory words or images we use when thinking and talking about people infected with HIV/AIDS.
  - ◆ Through feelings of prejudice, avoidance, ostracism, hostility, and violence shown towards people with HIV/AIDS.
- For PLWHA, stigma means to be subjected to negative attitudes and perceptions of people.
- It means having to stand in front of judging eyes. It means losing a job, being shunned by friends and family, "staying alone with the virus". This may mean death as well because in some settings social death is even worse than death itself.
- The individuals infected by HIV directly feel stigma. The persons affected by the virus, i.e. those who are living with or have lived with infected persons and cared for them, also indirectly feel it.
- The effects of stigma are felt at various levels: individual, family and community.

### Step Three:

**(30 minutes)**

Do a brief input on the legal definitions of discrimination using OHTs 7, 8 and 9.



### Trainer's Notes:

- We all have the right to equality in terms of s 9 of the Constitution. This means that if we are treated unequally in certain circumstances this will be regarded as unfair discrimination.
- The courts regard not all differential treatment as unfair, in the next section we will look at how our courts determine whether a particular action or a law is a form of unfair discrimination.
- The first important point is that there must be different treatment due to a personal characteristic such as a person's race, gender or their HIV status and this must have a negative effect on the person.
- In South Africa, our courts have stressed that our right to be treated equally is based on our right to dignity i.e. our right to be treated with respect. In other words every person is entitled to be treated with respect regardless of the fact that they may be different from others e.g. they may be disabled or from a different culture.
- An example of formal equality is all children should equally be entitled to attend mainstream schools.
- An example of substantive equality is that children with special needs e.g. blind children should attend schools that are specially adapted to suit their needs.
- The South African Constitution is firmly based on the notion that formal equality is insufficient and that we must aim at achieving substantive equality.
- The Constitution placed a duty on the state to pass 'equality legislation' hence the promotion of Equality and the Prevention of Unfair Discrimination Act, 4 of 2000.
- The Act details the forms of conduct that are discriminatory and provides a mechanism for determining when something is a form of unfair discrimination.
- HIV status is not listed as a form of unfair discrimination.
- The Equality Courts will use a two-stage analysis for determining whether something is a form of unfair discrimination:
  - (a) Is there discrimination? Look at the nature of the conduct.
  - (b) Is the discrimination unfair? Look at the context, impact and justification for the discrimination.
- Equality Courts will enforce the legislation.
- A wide variety of creative remedies are available to them.

**Step Four:****(45 minutes)**

**Instructions to the group:** Ask the participants to work in groups of 2 or 3. Hand out the Discrimination Cards (Worksheet 3). Ask each group to read through the cards and then make 3 piles:

One pile of all the cards where there was UNFAIR DISCRIMINATION;  
One pile of all the cards where there was FAIR DISCRIMINATION; and  
One pile of all the cards where they were uncertain whether it was a case of fair or unfair discrimination.

Ask the groups to read out which cards they had in each pile.  
Facilitate a discussion on fair and unfair discrimination in the context of HIV/AIDS and children/youth.

**Trainer's Notes:**

- Not all the examples are HIV related.
- Cards 1, 2, 4, 5 and 7 are forms of unfair discrimination
- Cards 6, 8, 10, 11 and 12 are forms of fair discrimination
- Cards 3 and 9 could be either but we don't have sufficient information
- Ensure that participants always ask – what was the discrimination made in the individual case and is it fair or unfair?
- In summary, discrimination is making a distinction this is not always unfair, in the next section we look at how the courts determine if something is unfair.

# Worksheet 3

## Discrimination Cards



1. Thandi is an 18-month-old child living in a children's home. She is HIV positive. The child minders always wear rubber gloves when changing Thandi's nappy. They do not wear the gloves when changing the nappies of other children.

2. Philani lives with his mother in an informal settlement outside Bloemfontein. His mother is too sick to carry on working as a domestic worker so they live off food from neighbors and money his mother's sister sends from Durban. When Philani's teacher notices that he has a rash on his hand she sends him to the office where they spray insecticide on it and tell him to stay at home until it has gone away.

3. A very busy hospital has a policy of not allowing HIV positive babies to have access to its ventilators. They explain to parents that they simply do not have sufficient resources to treat all children who need access to the ventilators and therefore have to excluded babies who have a "low life expectancy".

4. All the child care worker's at a street children's shelter in Khayelitsha are asked to undergo routine Hepatitis B testing to protect the children they care for from being infected with this disease. A nursing sister at the home decides to send three of the workers' blood samples for HIV testing at the same time as a "precaution" to ensure that they are not HIV positive.

5. A private pre-school refuses to allow a 3-year-old child to be enrolled in the school after the parents disclose that the child is HIV positive.

6. A rural home-based care programme is looking for new fieldworkers. They decide to make physical fitness a requirement for the job as often families needing care cannot be reached by road so the fieldworkers have to walk long distances to provide care and support. John applies for the job; he had polio as a child and has a severe limp. He is told that he does not meet the job requirements and therefore cannot be considered for the post.

7. The Mkhize family have 5 children under the age of 15 and two 'orphans' of 8 and 9 years. Ma Mkhize is the only person working in the family. She is a cashier at a fast food outlet and earns R 1200.00 a month. On her salary she can only afford to send 4 children to school. The two orphans and her 3-year-old stay at home.

8. Thandeka is openly HIV positive and has appeared on many TV shows discussing her experiences as a woman living with HIV. She applies for a job as a teacher but does not get it, as she has not completed her teaching diploma.

9. The Department of Health makes a policy decision to put more resources into eradicating malaria instead of supporting HIV/AIDS programmes.

10. A youth with active TB is removed from the athletics team and told that he cannot participate in the team until his treatment has taken effect.

11. A rural hospital starts a home-based care training programme. It advertises for volunteers who will be trained to provide care and support to community members. Only women apply to be trained in the programme. Four months later a man complains that the programme is sidelining men.

12. An HIV positive physical education teacher is moved to administrative work when he becomes AIDS ill.



# SECTION THREE

## STRATEGIES FOR DEALING WITH DISCRIMINATION AND STIGMA



### PURPOSE

The purpose of this section is to assist participants to identify strategies for dealing with discrimination and stigma.

### PREPARATIONS

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Barrett Grant, Strode and Clacherty, (2001).  
*The Role of Stigma and Discrimination in increasing the vulnerability of children and youth affected by HIV/AIDS*, Save the Children (UK).

Consult Appendix for additional readings on: responses to stigma and discrimination.

### ADDITIONAL READING

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De Waal, Currie & Erasmus ( 2000).  
*The Bill of Rights Handbook*, Juta.  
Westbrook & Bauman (1996).  
*Perceived Stigma of HIV/AIDS: Personal View*.  
Westbrook & Bauman (1996).  
*Perceived Stigma of HIV/AIDS: Public View*.

### MATERIALS REQUIRED

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- Flipchart paper and pens
- Worksheet 4
- OHTs 10,11 and 12

### TIME NEEDED

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Step One:	Participants' exercise on human rights	30 minutes
Step Two:	Lecture input on constitutional and other legal routes for dealing with discrimination	45 minutes
Step Three:	Worksheet on unfair discrimination	30 minutes
	<b>Total time required:</b>	<b>1 hour 45 minutes</b>

## PROCEDURE



**Comment to trainer:** In the previous section we reflected on our personal experiences of stigma and discrimination and linked this to how people with HIV/AIDS might feel when discriminated against. It might be useful here, to use OHTs 5 and 6 to remind people of ways in which they can recognise that they are acting in a discriminatory way towards people with HIV/AIDS as well as strategies for overcoming this type of behaviour.

### Step One:

**(30 minutes)**

Break the participants into small groups and ask them to discuss the three questions on Worksheet 4:

- What are human rights?
- What are the human rights of children and youth infected and affected by HIV/AIDS?
- Does the law in South Africa protect human rights?

Ask the groups to briefly report back and summarise the discussion with the help of OHT 10.



### Trainer's Notes:

- Use OHT 10 for a definition of human rights.
- Examples of the human rights for children infected and affected by HIV/AIDS are: the right to health care, right to family or alternative care, right to an education, to welfare services if the family cannot provide for their needs, the right to be protected from abuse and neglect and the right to be treated with respect.
- In South Africa, the Constitution protects most of our human rights. However, some important rights are not enshrined in the Constitution. For example, the rights of children to medical treatment are limited by the Constitution, which says all children are only entitled to "basic health care services".
- Where the Constitution protects human rights then the courts can be used to enforce these rights.
- Thinking of all persons as bearers of human rights is a tool which can help people to be more accepting of differences and can be used to help people recognise that we are all entitled to be treated with respect for our inherent dignity.

### Step Two:

**(45 minutes)**

**Comment to trainer:** There are a number of legal strategies for dealing with discrimination and human rights abuses. Do a brief input on how the Constitutional Court decides whether an action or a law is a form of unfair discrimination. Use OHT 11 and 12 for this input.





# Worksheet 4

In groups discuss the following three questions: Human rights of children and youth infected and affected by HIV/ AIDS.

1. What are human rights?

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2. What are the human rights of children infected and affected by HIV/AIDS?

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3. Does the law in South Africa protect human rights?

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### Trainer's Notes:

- An example of determining whether a distinction is being made is - creating separate schools for disabled children which is a form of differentiation so one must ask why this is done. Is it to ensure that disabled children are provided with an education that meets their special needs?
- An example of the final question regarding justification is, if a physically disabled child is excluded from mainstream education and this is found to be a form of unfair discrimination then you still need to ask if this is justified due to, for example, the costs of accommodating such a child within a mainstream school.

**Comment to trainer:** Follow this with a discussion on other legal routes that could be used to promote non-discrimination.



### Trainer's Notes:

- It is not always easy or appropriate to use the courts to enforce human rights, particularly as using the courts is expensive, requires the assistance of lawyers and many take many months or even years to finalise.
- Not all human rights are legally enforceable. In the light of this other options have to be explored such as:
  - ◆ Approaching the South African Human Rights Commission or the Commission on Gender Equality. These bodies have been set up to assist individuals to promote their Constitutional rights.
  - ◆ Networking and lobbying with other NGOs and members of civil society to ensure that the public is aware of human rights abuses and that action is taken to eradicate them.

### Step Three:

**(30 minutes)**

**Comment to trainer:** Hand out Worksheet 5 and ask the participants to complete it in pairs. Go through the worksheet with participants.

**Instructions to the group:** Read the enclosed newspaper article and then answer the questions on Worksheet 5.





## HIV positive child cannot go to Sunday School

A SEVEN-year-old child is unable to attend her local church's Sunday School because she is HIV positive.

According to the parents, they had enrolled the child in the Sunday School at the beginning of the year. The child had been placed in a class with other seven-year-olds and had settled in well but the parents then revealed her HIV status to one of the church leaders.

The leader had told the minister, who told his wife, and so it went on until the whole church knew.

None of the children in the Sunday School would play with the child and she was made to have her own "special" cup and plate during the orange juice and biscuits break.

In desperation the parents telephoned the local AIDS Centre, which is a church based HIV/AIDS Centre.

A spokesperson for the centre said it had taken lots of courage on the part of the family to get in touch with them, as they had experienced similar discrimination in the past. By the time they contacted the centre, the family was in desperate need of emotional help, the spokesperson said.

However through the love and support of the members of the HIV/AIDS Centre, the girl has made new friends and regained her self-esteem.

– *Morning Herald Reporter*

# Worksheet 5



## Unfair discrimination – the Court’s Approach

**STAGE ONE** 1. Was the girl treated differently from other children wishing to enroll in the Sunday School?

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2. Is there a rational reason why the Sunday School should exclude HIV positive children? What are the advantages and disadvantages of having HIV positive children in Sunday Schools?

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**STAGE TWO** 3. Is the distinction that was made between this little girl and other children fair? Give reasons.

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**STAGE THREE** 4. If the discrimination is unfair, is this justified? Explain.

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5. Are there any circumstances when excluding an HIV positive child from a Sunday School would be justified? Describe.

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**GENERAL** 6. What would you advise this family in these circumstances in terms of legal remedies.

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7. What non-legal remedies would you suggest?

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# SECTION FOUR

## SUMMING UP AND REINFORCING LESSONS LEARNED



### PURPOSE

The purpose of this section is to assist participants to consolidate the lessons they have learned regarding discrimination and stigma.

### PREPARATIONS

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Consult Appendix for additional readings on: key definitions and concepts, the link between stigma and discrimination, understanding stigma and discrimination and responses to stigma and discrimination.

### MATERIALS REQUIRED

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- Flipchart paper and pens
- OHT 14

### TIME NEEDED

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Step One:	Brainstorm key lessons learned in small groups	10 minutes
Step Two:	Facilitate concluding discussion on key lessons learned	10 minutes
	<b>Total time required:</b>	<b>20 minutes</b>

### PROCEDURE

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**Step One:** (10 minutes)

Break the participants into small groups and ask them to brainstorm five key lessons learned and to write these up on flipchart paper.

**Step Two:** (10 minutes)

Sum up the inputs using the OHT 14.

# APPENDIX

## TRAINERS' NOTES ON STIGMA AND DISCRIMINATION

(can be used as a hand-out for participants)

### 1. INTRODUCTION

Stigma and discrimination against children and youth infected and affected by HIV/AIDS is a characteristic of the HIV/AIDS epidemic in most countries and there are many examples of traumatic stigmatisation and discrimination in a wide range of sectors, including in the health care, education and welfare sector, and more disturbingly, from communities and extended families.

Research shows that unlike adults who face a wide range of discriminatory treatment children and youth experience two main forms of stigma and discrimination:

- General stigmatisation and isolation by communities; and
- Discrimination (different treatment) by service providers which results in them being denied access to rights and services.

### 2. KEY DEFINITIONS AND CONCEPTS

#### 2.1 Defining stigma

Theoretically,<sup>1</sup> stigma can be defined as the imposition of a special, discrediting and unwanted mark on a person or a specific category of persons in such a way that they are looked at as fundamentally and “shamefully different”. The mark is imposed on people who have or are believed to have a distinctive status or a “deviance”.

The mark is usually non-material but in certain instances, the differentiation intention and process have gone as far as translating into material things (e.g. mutilations to the human body, tattoos, brands etc). In these cases, stigmatised persons are not only looked at as different, they appear unmistakably different, i.e. their difference shows.

For example under the Nazi regime Jews were required to wear yellow stars on their clothes. Sometimes, confinement in specially designated areas is also used as a material way to visualise the difference and to draw a boundary that separates the person from other human beings. A good example here is quarantining.

#### 2.2 Defining discrimination

Discrimination **occurs** when a prejudicial thought or attitude results in a distinction being made against a person that results in their being treated unfairly and unjustly on the basis of their belonging, or being perceived to belong, to a particular group. This action is in certain instances unlawful as our law provides that every person has the right to be treated equally.





### 3. THE LINK BETWEEN STIGMA AND DISCRIMINATION<sup>2</sup>

As long as stigma remains at the level of negative thought, it is possible that no harm is done to others. However, once a person's prejudiced thought/s lead them to doing something, or omit to do something, that then harms or denies services or entitlements to another person, the act that harms is a discriminatory act. For example, a person may hate persons with HIV/AIDS, may perceive them as inferior, and for this reason may be extremely indifferent to their needs. These thoughts and perceptions constitute stigma. If this same individual then decides to physically abuse or threaten a person that he knows or perceives to be living with HIV/AIDS, then that act is discriminatory.

Freedom from unfair discrimination is a fundamental human right and since the 27 April 1994 a legal right in South Africa.

### 4. UNDERSTANDING STIGMA

#### 4.1 Stigma: A mental reaction

The essence of stigma is a mental reaction closely related to many factors, including culture, personal and social fears, denial, misconceptions and myths about the epidemic. Stigma is first and foremost a perceptual phenomenon.

#### 4.2 The language of stigma

In many settings, sex is taboo, i.e. issues of sexual nature are not supposed to be openly and publicly discussed. Being HIV positive is a form of communicating to the outside world the consequences of a person's sexual behavior. That's where stereotypes come in. According to research (Gilmore & Somerville, 1994) many language metaphors used in HIV/AIDS give clear indications about the stigma associated with it:

- AIDS is death (both biological and social);
- AIDS is punishment (for immoral and sinful behaviour like homosexuality, promiscuity and commercial sex);
- AIDS is a crime (HIV infected people are "criminals", guilty of harming their "innocent" victims);
- AIDS happens only to others ("them"), not to me/us ("us");
- Dichotomisation of the world among the "infected" and the "not infected" (the "dying" and "the living");
- AIDS is a horror; the infection is seen as an abject, terrorising invader or demon. Those infected are demonised accordingly.

These metaphors appear to be the expression of various perceptions of the epidemic. They lie at the heart of stigma because they provide ideas and things to associate with AIDS. So, if AIDS is associated with death, crime, punishment, horror, etc, it is quite easy for the general, particularly the uninformed public (which makes up the majority) to look at infected people as those who carry death, the dangerous criminals, the sinners and ultimately the incarnation of moral decay in society.



### 4.3 Self-stigma

Self-stigma is internal; it begins with an individual looking at him/herself as unfortunate and contemplating what other people are going to think about him/her.

Self-stigma is associated with fear of how other people will relate to you and to your HIV status.

### 4.4 Experience of stigma: direct and indirect

For PLWHA, stigma means to be subjected to negative attitudes and perceptions of people. It means having to stand in front of judging eyes. It means loosing a job, being shunned by friends and family, “staying alone with the virus”. This may mean death as well because in some settings social death is even worse than death itself.

### 4.5 Manifestation of stigma

Stigma manifests itself in ways that vary in levels and range. Following are just a few areas:

- Communications: words, images;
- Social relations (including within institutions and within families and communities);
- Prejudice, avoidance, ostracism, hostility, violence, etc;
- We may think and feel in the ways described above i.e. perceived (subjective) stigma or we may act in ways that are in keeping with our thoughts and feelings - this is referred to as enacted or objective stigma or discrimination;
- Self-inflicted stigma (PLWHA being hypersensitive and paranoid).

Stigma has been identified as the main obstacle to HIV/AIDS work in general because:

- It frightens people and encourages seclusion;
- It deters care givers from performing for fear of being associated with AIDS;
- It adds to AIDS suffering because the pain it generates starts before the actual illness and stays all the way up until death.

## 5. STIGMA IN CHILDREN

Children are at the center of stigma as they can be stigmatised as a result of both their own infection and the infection of their parents or family members. They often carry the burden of stigma long after the death of their parents, which is very traumatising. Frequently the loss of income which follows the death of a parent and breadwinner creates a secondary stigma as children are treated differently due to poverty.

For examples refer to the workshop report by Clacherty & Associates.



## 6. UNDERSTANDING DISCRIMINATION

Discrimination against people living with HIV/AIDS, or those presumed to be infected, is a clear violation of their human and legal rights. Discrimination and its inter-relationship to stigma has practical significance in at least two ways:

1. Freedom from discrimination and stigma is a human right, there is an existing framework for responsibility and accountability of action.
2. Human rights provide access to existing procedural, institutional and other monitoring mechanisms for enforcing the rights of people living with HIV/AIDS, countering and for redressing discriminatory action.

Since discrimination may lead to legal offences being committed, persons who discriminate can be made accountable by law and redress can be provided, where appropriate.

Given the symbiosis between stigma and discrimination, it is important that we bear in mind two kinds of alleviation strategies, namely:

- Strategies that prevent stigma or prejudicial thoughts being formed
- Strategies that address or redress the situation when stigma persists and is acted on through discriminatory action that leads to negative consequences or denial of entitlements or services for others.

## 7. RESPONSES TO STIGMA AND DISCRIMINATION - A LEGAL AND HUMAN RIGHTS PERSPECTIVE

### 7.1 Legal definition of discrimination

The legal response to discrimination is based on the right to equality. In other words our law recognises that every person is entitled to be treated equally in terms of s 9 of the Constitution and therefore any unequal treatment may be a form of unfair discrimination.

The law recognises both formal and substantive equality with formal equality being that everyone must be treated in the same way and substantive equality is ensuring that there is an equal outcome from all treatment. For example formal equality means that all children must have access to the education system whilst substantive equality means that we recognise that some children such as disabled children may have special needs and will therefore require a special form of education if there is to be an equal outcome.<sup>3</sup>

Our courts have followed the Canadian law where they have defined discrimination as:

“a distinction whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individuals or groups which are not imposed on others, or which withholds or limits access to opportunities and benefits available to other members of society.”<sup>4</sup>



In the *President of the Republic of South Africa v Hugo* our Constitutional Court added to the above definition by speaking of the need to recognize each person's fundamental dignity:

“At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and worth regardless of their membership of a particular group.”<sup>5</sup>

In simple terms our courts ask a number of questions in a 3-staged manner to determine if a law or conduct is discriminatory.<sup>6</sup>

- (a) Does the law or conduct treat individuals or groups differently and if it does why does it do this? For example to create separate schools for disabled children is a form of differentiation so one must ask why this is done. For example is it to ensure that disabled children are provided with an education that meets their special needs.
- (b) Is this differentiation fair? Here the court would look at factors such as:
  - Have the persons affected been victims of past patterns of discrimination;
  - What is the nature of the discrimination and its purpose; and
  - To what extent have the persons affected had their rights infringed and their fundamental dignity impaired.
- (c) Finally, if the discrimination is unfair then is this justified in an open and democratic society based on human dignity, equality and freedom. For example if a physically disabled child is excluded from mainstream education and this is found to be a form of unfair discrimination then you still need to ask if this is justified due for example to the costs of accommodating such a child within a mainstream school.

## 7.2 Equality legislation

The Constitution places a duty on the state to enact legislation preventing and prohibiting unfair discrimination. As a result, the Promotion of Equality and Prevention of Unfair Discrimination Act (“Equality Act”) was passed in February 2000.<sup>7</sup> The Act aims amongst other things at:

- Giving effect to the letter and spirit of the Constitutional principles relating to equality;
- Providing measures for determining unfair discrimination; and
- Setting out remedies for the victims of unfair discrimination.

Chapter Two of the Equality Act states that neither the state nor any person may unfairly discriminate against another person<sup>8</sup>. It goes on to detail what types of conduct are forms of unfair discrimination, on the basis of race, gender and disability. Like the Constitution, the Act lists seventeen grounds on which unfair discrimination is prohibited. The Act adds that there may also be discrimination on a ground not listed.



'HIV status' is not listed as a prohibited ground of discrimination. However, as seen from the broad definition of unfair discrimination, this does not preclude a court from finding that a person can be unfairly discriminated against on the basis of HIV status.

Furthermore, s34 of the Equality Act states that in light of the overwhelming evidence of discrimination based on HIV status, special consideration should be given to including 'HIV status' within the definition of 'prohibited grounds' in the future. To date the Equality Review Committee have not met and so it is still uncertain as to whether HIV status will be included as a separate ground within the Act.

In making the determination as to whether conduct is fair or unfair discrimination the Equality Act sets out a two-stage process which is slightly different from the one currently used by the Constitutional Court. It is unclear at this stage exactly how these two different approaches will affect our equality jurisprudence. The Equality Act's test is as follows.

*(a) Is there discrimination?*

Sections 7 to 12 identify a number of forms of unfair discrimination. These include for example:

- The system of preventing women from inheriting family property;
- Failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities; and
- Publishing information with the intention of discriminating against a person.

This is not a closed list of the forms of discrimination, as there is a general prohibition on unfair discrimination in s6. Therefore s7 –12 simply form a guide to assist the court in determining whether the conduct complained of is discriminatory.

*(b) Is the discrimination unfair?*

S14 sets out the criteria that the court must take into account when determining whether the discrimination complained of is unfair. This is done in three stages:

- (1) Identifying the context. This stage requires a judicial officer to determine what surrounding circumstances are relevant to the inquiry;
- (2) An examination of nine relevant factors including the nature and extent of the discrimination; whether it impairs a person's dignity; whether it has a legitimate purpose and whether there are other means of achieving the same end result. These criteria require the adjudicator to look at both the impact the discrimination has, and to assess why the discrimination occurred, so as to determine whether it was legitimate; and
- (3) Whether, when weighing up the nature and extent of the discrimination against the justification given for it, the discrimination is reasonable and justifiable. For example if the reason



given for barring physically disabled children from a sports school is that they do not have the capacity to play sport the court will have to interrogate this and make a finding as to whether it is justifiable to deny children who may be able to participate in sport in a different way, from attending such a school.

The primary mechanism for enforcing the rights set out in the Act is through the Equality Courts. These are courts that are to be set up within the magistrates' courts to inquire into whether unfair discrimination has taken place. On making a finding of unfair discrimination they have a number of innovative remedies available to them including:

- The payment of damages, including damages for emotional suffering as a result of unfair discrimination;
- An order prohibiting the unfair discrimination;
- An order requiring the implementation of special measures to address the unfair discrimination;
- An order that an 'unconditional apology be made';
- An order requiring the perpetrator of the unfair discrimination to be subject to an audit of their policies and practices relating to the discrimination; and
- Recommendation to the appropriate authority to suspend or revoke the license of such a person.

### **7.3 Using a human rights based approach to dealing with discrimination and stigma**

Human rights are rights that belong to people simply because they are human. They are often called "natural rights" as they are rights that each individual is entitled to by birth regardless of whether such rights are protected by law. They have also been described as being "universal moral rights" or "generally accepted principles of fairness and justice". Examples of human rights are the right to life, the right to human dignity and the right to equality. Every person is equally entitled to human rights regardless of their sex, race, colour, language, nationality, age, class, religion or geographical locality.

Human rights are a useful way of responding to discrimination as they give us a way of thinking about human beings as being equally entitled to dignity and respect. Human rights are a universal standard that we can apply in any situation regardless of whether they are enshrined in law. A human rights based approach also goes beyond a simply legal approach to a problem, as although we can use legal strategies for dealing with discrimination they do not always help in changing people's actions or attitudes.

### **7.4 Human rights in South African law**

In South Africa the Bill of Rights in the Constitution protects many of our fundamental rights.

The key rights we need to consider are:

#### **Equality (s 9)**

Described above.





### **Human dignity (s 10)**

The Constitution provides that every person is entitled to have his or her dignity protected. That is, they must be treated with respect.

### **7.5 Children's rights (s 28)**

The Constitution provides that all persons under the age of 18 are entitled to:

- Family, parental or alternative care;
- Basic nutrition, shelter, basic health care and social services;
- Be protected from abuse, maltreatment, neglect or degradation;
- Protection from exploitative labour practices; and
- Have their best interests taken into account when any decisions are made about them.

### **7.6 The limitation clause (s 36)**

No rights are absolute. The Constitution provides a specific mechanism for determining whether or not a limitation on a right is justifiable. S 36 states that rights may be limited by a law of general application, if this is reasonable and justifiable, in an open and democratic society based on human dignity, equality and freedom.

### **7.7 Enforcing human rights**

Traditionally the rights contained within a Bill of Rights only protected the individual from action taken by the State (Government). This is called the vertical application of a constitution. There has been, however, an increasing move to ensure that the constitution also applies horizontally, that is, between individuals. The South African Constitution provides that some rights can be applied both vertically (against the State) and horizontally (against other individuals). How does this relate to the protection of the rights of children? It means that the human rights contained in the constitution can not only be used against the State, but also against other persons e.g. day care centres.

## **8. ENFORCING THE RIGHT TO NON-DISCRIMINATION**

There are two ways in which to protect rights to equality:

- Using the rights and remedies as detailed within legislation such as the Employment Equity Act or the Equality Act; and
- Using section 9 of the Constitution.

The Equality Act, when it becomes operational is going to be the primary mechanism for dealing with unfair discrimination and the Constitutional Court will deal with cases involving not simply discriminatory conduct but legislation that infringes a constitutional right. For example if children were excluded from a children's home on the basis of their HIV status they would use the remedies set out in the Equality legislation to enforce their rights to equality. If however the government passed a law stating that HIV positive youth would not be entitled to financial aid to study at a tertiary level, then this law could be challenged in the Constitutional Court on the basis that it is unconstitutional.

Applying this to children and youth infected and affected by HIV/AIDS, if a child living with HIV or AIDS was, for example, refused access to medical treatment at a local hospital, this could be challenged on the basis of unfair discrimination.



The following process is set out for using the Equality Courts:

- (1) Approach the clerk of the Equality Court and complete the necessary claim form;
- (2) Inform the other party (that is, the discriminator) of the claim;
- (3) The magistrate will refer the matter to the appropriate forum for adjudication (for example, to the Constitutional Court or the Human Rights Commission or the Equality Court itself);
- (4) A hearing will be held;
- (5) The presiding officer will make a finding and grant a remedy.

If a complainant used section 9 of the Constitution to enforce their rights, they would have to:

- (1) Consult an attorney for advice on whether the discrimination was a 'constitutional matter' and accordingly whether section 9 of the Constitution could be used;
- (2) If advised that it was a constitutional matter, draft papers would be prepared setting out that a differentiation occurred based on 'HIV status' or 'disability' and this was unfair and not justified in an open and democratic society;
- (3) Lodge such papers either with the Constitutional Court or the High Court; and
- (4) Attend the hearing and ask for an appropriate order regarding the discrimination eg a declaration that the law is unconstitutional.

## 9. STIGMA AND SERVICE PROVIDERS <sup>9</sup>

### 9.1 Possible sources of stress that exacerbate stigma in HIV/AIDS service providers

1. **FEAR OF CONTAGION:** Service providers' fear of contagion when caring for people with HIV/AIDS remains high despite increased levels of knowledge, especially in countries with a weak health care infrastructure (poor provisions for universal precautions etc).

Generally, doctors and nurses, even sanitary staff, who are involved in giving more close, physical care to patients or who handle patient waste and fluids (blood and other spillages), expressed lesser degrees of fear of contagion than the ward staff who were involved in more distant care such as, wheeling the patient to different departments, carrying food and medicines etc.

In addition, the fear of contagion although evident generally, seems to be exacerbated when people are working with members of marginalised groups such as sex workers, prisoners and homosexuals.



2. **SOCIAL STIGMATISATION:** Images of AIDS invoke fears of contagion and formidable death. Public responses to these images have profound implications for individuals whose lives have been touched by the disease, both the person living with HIV and caregivers.
3. **WORK OVERLOAD:** This is particularly true in hospitals and other service industries in most countries where there is a concentration of large numbers of patients and a comparatively small number of staff and in Centres for people with HIV/AIDS. This can lead to severely overtaxed staff.
4. **RELATIONSHIP WITH PATIENT OR SERVICE USER AND PHASES OF ILLNESSES:** This is especially critical for home-based care givers. Pressure can be generated by the intimacy of contact with people who are ill and dying. In AIDS care work, anger, stigma and frustration can be generated by the recognition that effort will only be futile.

Care givers are confronted with their powerlessness to save lives, and with their responsibility to give adequate medical and emotional care. Continual concerns about taking precautions (e.g. avoiding blood contact with affected patients) can impede the caregivers' ability to effectively engage in the nursing process as well as generating perennial stress.

### Strategies for reducing stigma amongst service providers

- a) By naming our fears we can move beyond them. It is of utmost importance that we identify the occupational fears and stress involved in caring for clients with HIV/AIDS as the first step to addressing the issue of stigma.
- b) Education and training should be made available to all service providers so that they can address their misconceptions and fears and concerns about the disease, as this may be what fuels their discriminatory practices against people with HIV/AIDS.

### 9.3 Important questions for consideration if training a group of service providers:

- 1 What is the nature of this fear of contagion from working with PLWHAs?
- 2 How realistic is the fear of contagion among service providers?
- 3 How is this fear expressed and how does this fear impact on PLWHAs?

<sup>1</sup> Source: Comments of Scovia Kasolo Nabagala from Uganda a participant in the stigma and discrimination listserv.

<sup>2</sup> Comments taken from Miriam Maluwa, Malawi participating on the stigma and discrimination listserv.

<sup>3</sup> De Waal J, Currie I and Erasmus G The Bill of Rights Handbook (3<sup>rd</sup> ed) Juta 2000 at p.184

<sup>4</sup> R v Turpin (1989) 1 SCR 1296 at 1332

<sup>5</sup> 1997 (4) SA 1 (CC)

<sup>6</sup> Harksen v Lane 1998 (1) SA 300 (CC)

<sup>7</sup> Although the Act has been promulgated it has not yet come into operation

<sup>8</sup> s6

<sup>9</sup> Source: Comments made by Masimba Briwasha from Zimbabwe, taken from a current listserv on stigma and discrimination.

## **The Nature and Extent of Discrimination**

### **Children face stigma due to:**

- Own infection; and
- Infection or perceived infection of parents or care givers

### **Main forms of stigma and discrimination facing children and youth:**

- General stigmatisation and isolation by communities; and
- Discrimination by service providers resulting in denial of rights and services

**Family/immediate community**

- Isolation of both the infected and affected due to fears of casual contact
- Restrictions on participation in local communal events
- Refusal to allow infected and affected children in local schools
- Lack of support for affected bereaved family members, including orphans

**Workplace**

- Mandatory testing before hiring/refusal to employ HIV positive people
- Involuntary periodic testing/dismissal on grounds of HIV status
- Violations of confidentiality
- Refusal to work with infected colleagues out of fear of contagion
- Refusal to go to school with infected schoolmates for fear of contagion

**Health**

- Refusal to treat
- Violations of confidentiality
- Provision of care in specific establishments (such as STI clinics) that further stigmatise the client
- Behaviour with clients that clearly identifies their HIV status, instead of using universal precautions
- Advice given or pressure applied for HIV+ person to undergo treatment that would not be emphasised for others (e.g. abortion, sterilization)

**Religion**

- Denial of traditional rituals (e.g. funeral practices); restricted access to marriage
- Restrictions on participation in religious activities

**Media**

- Demonisation by public health campaigns of specified “transmitters” such as sex workers, reinforcing the division between “guilty” and “innocent” HIV positive people
- Depiction of HIV as death, perpetuating fear and anxiety rather than normalisation
- Reinforcement of stereotypical gender roles that perpetuate women’s vulnerability to sexual coercion and HIV infection

<sup>1</sup> Source: Malcolm, Aggleton, Bronfman, Galvao, Mane, and Verrall. 1998. “HIV-related stigmatization and discrimination: Its forms and contexts,” *Critical Public Health* 8(4): 347–370.

## DEFINITIONS

### STIGMA

This is referred to as the imposition of a special, discrediting and unwanted mark on a person or a specific category of persons in such a way that they are looked at as fundamentally and “shamefully different”.

### SELF-STIGMA

Self-stigma begins with an HIV positive individual looking at him/herself as unfortunate and his/her concerns and fears about what other people are going to think about him/her.

### DISCRIMINATION

Discrimination occurs when a distinction is made against a person that results in their being treated unfairly and unjustly on the basis of their belonging, or being perceived to belong, to a particular group.



## **UNDERSTANDING STIGMA AND DISCRIMINATION**

### **STIGMA: A MENTAL REACTION**

#### **The essence of stigma:**

- Mental reaction;
- Related to:
  - ◆ Personal and social fears;
  - ◆ Denial;
  - ◆ Misconceptions and myths about the epidemic.

#### **Stigma is a perceptual phenomenon**

### **MANIFESTATIONS OF STIGMA**

#### **Stigma manifests itself in a number of ways and at different levels.**

#### **For example:**

- Communications: words, images
- Social relations (including within institutions and within families and communities): prejudice, avoidance, ostracism, hostility, violence, etc
- We may think and feel in the ways described above i.e. perceived (subjective) stigma or we may act in ways that are in keeping with our thoughts and feelings - this is referred to as enacted or objective stigma or discrimination;
- Self-stigma: that HIV positive people may impose on themselves i.e. fears of exclusion, loss of property, employment, educational opportunities, eviction from a house and abandonment by friends, families and communities.

## THE LANGUAGE OF STIGMA

**Many language metaphors used in HIV/AIDS give clear indications about the stigma associated with it:**

- AIDS is death (both biological and social)
- AIDS is punishment (for immoral and sinful behaviour like homosexuality, promiscuity and commercial sex)
- AIDS is a crime (HIV infected people are “criminals”, guilty of harming their “innocent” victims)
- AIDS happens only to others (“them”), not to me/us (“us”)
- Dichotomisation of the world among the “infected” and the “not infected” (the “dying” and “the living”)

**These metaphors appear to be the expression of various perceptions of the epidemic. They lie at the heart of stigma because they provide ideas and things to associate with AIDS.**

## **PERSONAL STRATEGIES FOR DEALING WITH STIGMA AND DISCRIMINATION**

- Be aware of what your thoughts and feelings are towards people who you suspect may be HIV positive, or are infected.
  
- Do these feelings and thoughts stay at a subjective level, or do you tend to act in a discriminatory way towards people with HIV/AIDS?
  
- Try and understand why you behave in this way
  - ◆ identify what you are feeling and why?
  
- Are these thoughts and feelings appropriate or inappropriate in the context?
  
- Acknowledge these thoughts and feeling and try to ensure that they do not impact in a negative way in your interactions with people with HIV/AIDS.

## LEGAL DEFINITIONS OF DISCRIMINATION

- **Right to equality s 9 of the Constitution**
- **Violations of the right to equality may be a form of unfair discrimination**
- **Formal equality and substantive equality**
- **Canadian definition of discrimination:**

“A distinction whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individuals or groups which are not imposed on others, or which withholds or limits access to opportunities and benefits available to other members of society.” (R v Turpin)

- ***President of the Republic of South Africa v Hugo:***

“At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and worth regardless of their membership of a particular group.”

- **To prove unfair discrimination:**
  - ◆ differential treatment;
  - ◆ which is irrational, illegitimate and unfair; and
  - ◆ not justified in an open and democratic society simply because they are HIV positive or have AIDS, are perceived to be HIV positive or have AIDS; or are associated with others infected or perceived to be infected with HIV.

## EQUALITY LEGISLATION

### Promotion of Equality and the Prevention of Discrimination Act, 4 of 2000

#### **Aims:**

- Giving effect to the Constitution
- Process for identifying unfair discrimination
- Remedies

Prohibits unfair discrimination on listed and  
unlisted grounds

**HIV status not listed**

## EQUALITY COURTS

### Magistrates Court

#### Informal Process

#### Remedies:

- Payment of damages;
- An order prohibiting the unfair discrimination;
- An order requiring the implementation of special measures to address the unfair discrimination;
- An 'unconditional apology be made';
- To be subject to an audit of their policies and practices relating to the discrimination; and
- Recommendation to the appropriate authority to suspend or revoke the license of such a person.

## HUMAN RIGHTS

**Human rights are rights that belong to people simply because they are human.**

They have also been described as being “universal moral rights” or “generally accepted principles of fairness and justice”.

They are often called “natural rights” as they are rights that each individual is entitled to by birth regardless of whether such rights are protected by law.

### **Examples of human rights are:**

- The right to life;
- The right to human dignity;
- The right to equality.

In South Africa the Constitution protects most of our human rights.

Some important rights are not enshrined in the Constitution for example the rights of children to medical treatment is limited by the Constitution, which says all children are only entitled to “basic health care services”.

Where human rights are protected by the Constitution then the courts can be used to enforce these rights.

## HOW THE COURTS IDENTIFY UNFAIR DISCRIMINATION

- (a) Does the law or conduct treat individuals or groups differently and if it does, why does it do this?
- (b) Is this differentiation fair? Here the court would look at factors such as:
  - Have the persons affected been victims of past patterns of discrimination;
  - What is the nature of the discrimination and its purpose; and
  - To what extent have the persons affected had their rights infringed and their fundamental dignity impaired.
- (c) Finally, if the discrimination is unfair then is this justified in an open and democratic society based on human dignity, equality and freedom.



## **EQUALITY ACT PROCESS FOR IDENTIFYING UNFAIR DISCRIMINATION**

### **Two stage process:**

- Is there discrimination?
- Is the discrimination unfair?
  - ◆ Context
  - ◆ Relevant factors  
(impact and justification)
  - ◆ Is it justifiable?

## KEY LESSONS LEARNED

- Children and youth face discrimination/stigma due to their own infection and the infection of parents or care-givers
- Stigma and discrimination is widespread in communities, amongst service providers and it results in children/youth being denied rights and services
- Stigma is a mark on a person indicating that they are “shamefully different”
- Discrimination is when a stigmatizing belief leads to an unfair act or distinction being made
- We all harbour stigma and prejudice but we need to learn to deal with such views to prevent unfair discrimination. There are tools for assisting with this process
- Not all distinctions made will be forms of unfair discrimination in law
- The courts have a 3 staged approach for determining whether an act or law is a form of unfair discrimination
- Equality Act introduces a two stage process
- Legal and non-legal strategies exist for dealing with discrimination
- Using a human rights framework provides a basis for seeing each person as entitled to be treated with dignity and respect regardless of any differences they may possess eg being of a different race group, being of a different culture or being HIV positive

# MODULE 2



## THE HEALTH RIGHTS OF CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS

### THE AIM OF THE MODULE

This stand alone 3½ - hour workshop looks at key health rights of children and youth infected and affected by HIV/AIDS, and strategies that can be used to protect those rights. It is divided into 3 sections:

- **Section One:** Raising awareness around children's and youth's health rights;
- **Section Two:** Identifying problems and abuses of rights; and
- **Section Three:** Strategies to assist children and youth to access health rights.

This module is one of a series developed by Save the Children (UK) for use in South Africa. The other three modules focus on education, welfare and discrimination.

### OUTCOMES

#### At the end of Module 2 participants will be able to:

- Identify laws and policies that protect and promote the health rights of children and youth;
- Explain how these laws and policies relate to the issues faced by children and youth infected and affected by HIV/AIDS;
- Identify potential problems children and youth experience in accessing these rights; and
- Describe strategies to assist children and youth infected and affected by HIV/AIDS in protecting and promoting their rights to health.

An overall map or framework for how the workshop could be run follows. It briefly indicates the sections and the activities that would need to be conducted in each section as well as some idea of the amount of time that each require. This module map allows you to plan and decide ahead, depending on the needs of your participants and the amount of time that you have available with them. Depending on these factors, you could decide to run the whole 3½ - hour workshop, or just a combination of certain sections.

## MODULE MAP

SECTION	ACTIVITY	TIME ALLOCATION
<b>One</b>	Step One: Patients rights and where we find them: input	20 minutes
	Step Two: Informed consent, confidentiality and basic health care services: Game	30 minutes
	Step Three: Group work report back and input	30 minutes
<b>Two</b>	Step One: Role-play on abuses of health rights	25 minutes
	Step Two: Plenary discussion regarding abuses of health rights	15 minutes
<b>Three</b>	Step One: Brainstorm and input on strategies to monitor and enforce children's and youth's health rights	30 minutes
	Step Two: Plenary discussion on strategies to monitor and enforce children's and youth's health rights	30 minutes
	Step Three: Exercise: Letter to SALC	30 minutes



# SECTION ONE

## RAISING AWARENESS AROUND THE HEALTH RIGHTS OF CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS



### PURPOSE

The purpose of this section is to assist participants to develop an understanding of the health rights of children and youth infected and affected by HIV/AIDS.

### PREPARATIONS

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In order to prepare for this section, you need to consult the trainers' notes for this section, in the Appendix.

### ADDITIONAL READINGS

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AIDS Law Project & AIDS Legal Network, (2001). *HIV/AIDS and the Law*.

Barrett Grant, Dube, Malunga and Strode, (2001). *Children living with HIV/AIDS in South Africa: A Legal Resource*, Save the Children (UK).

Skelton, A (editor), (1998). *Children and the Law*, Lawyers for Human Rights.

### MATERIALS REQUIRED

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- Flipchart paper and pens
- OHTs 1 - 10
- Post-It Pad papers

### TIME NEEDED

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Step One :	Patients rights: input	20 minutes
Step Two:	Informed consent, confidentiality and basic health care services: game	30 minutes
Step Three:	Group work	30 minutes
	<b>Total time required:</b>	<b>80 minutes</b>

## PROCEDURE



### Step One:

(20 minutes)

**Comment to trainer:** Give a brief background introduction to participants on the concept of, and source of patients' rights, emphasising the fact that patient's rights also extend to children and youth. Use OHTs 1, 2 and 3.



### Trainer's Notes:

- Patients' rights are the rights every person has in respect of their health, medical status and medical treatment.
- Some patients' rights exist between the patient and the health care provider (eg a patient has a right to be treated with dignity by a health care provider).
- Some patients' rights exist between the patient and the health care facility (eg a patient has a right to complain about poor health services).
- Some patients' rights exist between the patient and the State (eg every person has a right to access to basic health care services, which the State is obliged to provide).
- Children and youth are also entitled to patients' rights, although as we explain in more detail in this section, in certain cases these rights are exercised on their behalf by a parent or guardian.
- Use OHT 2 to explain in which laws, policies and guidelines we find the principles of patients' rights. Patients' rights are based on principles found in many laws, including in our Constitution and Bill of Rights.
- Use OHT 3 to give a brief overview of patients' rights, as set out in the Department of Health's National Patients' Rights Charter.

### Step Two:

(30 minutes)

**Comment to trainer:** Tell the participants that in this workshop, we are going to focus on 3 basic health rights in detail. Take 3 Post-It Pad papers, and write on one 'The Right to Medical Confidentiality', on another 'The Right to Informed Consent', and on the last 'The Right of Access to Basic Health Care'. Do not let the participants see what you have written.

**Instructions to the group:** Divide the participants into 3 groups, and ask them to sit together in a circle. Paste a Post-It Pad paper onto the forehead of 1 person in each of the 3 groups. The group member with the paper on his/her forehead must guess 'Who Am I?' – which right he or she is – with the help of group members. They can guide the person to guess the right by giving explanations, but may not use the actual words that are written on the paper.





Once the group member has guessed 'Who Am I?', the group as a whole should discuss 'What Am I?' – that is, they should discuss what they think the right means.

**Comment to trainer:** Move around the groups to assist them in their discussions of what the 3 rights mean. Try to ensure that they relate their discussion to the context of children and youth infected and affected by HIV/AIDS.



#### Trainer's Notes:

- **INFORMED CONSENT:** Guide the group to discuss what is meant by the words 'informed consent', what it means in terms of medical treatment, and how it relates to HIV and AIDS. For instance, what does the right to informed consent mean in terms of HIV testing? Also, guide this group to discuss things such as a child's right to give informed consent – at what age may a child give consent for medical treatment, and who may consent on behalf of a child?
- **CONFIDENTIALITY:** Guide the group to discuss what is meant by confidentiality, and why they think this right is important. Also ask them to discuss what confidentiality means in terms of a person's HIV status – who may be told of a person's HIV status? Guide the group to discuss whether a child or youth has a right to confidentiality about his or her medical status and treatment. What about the parents or guardians of the child? Perhaps the group may also want to discuss whether there should be any 'limit' to the right to confidentiality.
- **BASIC HEALTH CARE SERVICES:** Guide the group to discuss what this right actually means, in practical terms. Who has this right, and who is obliged to provide for this right? What is the State obliged to provide? How do we define basic health care services? What is the impact of resource constraints on the State's obligation to provide basic health care services? What does this right mean for children and youth infected with HIV/AIDS?

#### Step Three:

**(30 minutes)**

**Instructions to the group:** Ask each group to report back on their right, and what they think it means in the context of children, youth and HIV/AIDS.

**Comment to trainer:** As each group finishes reporting back, add to their report back with an input on the right in question. Use OHTs 4-10.



### Trainer's Notes:

- Use OHTs 4-6 to explain informed consent.
- A person can only give informed consent to medical treatment, such as an HIV test, if they have been given sufficient information, if they understand this information, and if they agree on the basis of this information and understanding.
- Children and youth also have the right to be treated only with informed consent. They can exercise this right on their own, if they are old enough, or their parents and guardians can exercise it on their behalf.
- Difficulties arise in the situation of a child where there is no parent or guardian. The laws are quite confusing and complicated regarding who can consent in the case of a child where there is no parent or guardian. They may also be unrealistic – for instance, requiring the consent of the Minister of Welfare may not be possible in reality.
- Use OHTs 7-8 to explain the right to confidentiality.
- The case of Jansen Van Vuuren is useful to highlight the importance of confidentiality, particularly where participants criticise confidentiality. The court pointed out that confidentiality serves a useful public health interest – it encourages people to come forward for counselling and treatment.
- Children and youth have the same right to confidentiality as any patient. Where a child or youth is old enough to consent to medical treatment (eg 14 years or older), he or she has the right to medical confidentiality with regard to the treatment. In the case of younger children, the parent or guardian exercises this right on behalf of the child. A child's medical information may not be disclosed without the consent of the child, or the parent or guardian in the case of younger children.
- The right to confidentiality, like any right, may be limited in certain circumstances and participants may ask questions about when this right may be limited. There are no hard and fast rules, and the Constitution tells us that a right may be limited if it is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'. Also, the Constitution tells us that the best interests of the child are paramount in all matters concerning the child.
- Use OHTs 9-10 to explain the right to basic health care services.
- Every child has a right to basic health care services, and no child may be denied access to those basic health care services that a Government health care facility provides.
- We can determine what the Government's 'basic health care services' are by referring to health policies and guidelines on treatment and services – for example, the Department of Health's policy guidelines on treatment for children with HIV/AIDS gives us an indication of the basic health care services which all children living with HIV/AIDS should receive in a Government hospital.





- But participants may disagree with Government's interpretation of 'basic health care services'. The right to basic health care services is difficult to quantify, since 'basic health care services' is not something which is defined in the Constitution. Participants may want to discuss what they think basic health care services should include for children and youth infected with HIV/AIDS.
- The Medicines and Related Substances Control Amendment Act contains provisions which allow the Government to access cheaper medicines. Participants may wish to discuss to what extent the Government should be obliged to use these provisions, in order to improve basic health care services.

# SECTION TWO

## IDENTIFYING ABUSES OF HEALTH RIGHTS



### PURPOSE

The purpose of this section is to assist participants to identify common problems in accessing children's and youth's health rights, either because these rights are:

- Not understood;
- Not provided for; or
- Abused.

### PREPARATIONS

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In order to prepare for this section, you need to consult the trainers' notes for this section, in the Appendix.

### ADDITIONAL READINGS

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AIDS Law Project & AIDS Legal Network, (2001). *HIV/AIDS and the Law*.

Barrett Grant, Clacherty and Strode, (2001). *The role of stigma and discrimination in increasing the vulnerability of children and youth affected by HIV/AIDS*, Save the Children (UK).

### MATERIALS REQUIRED

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- 'Tata Ma Problem' Cards
- 'Tata Ma Chance' Cards
- Flipchart paper and pens

### TIME NEEDED

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Step One:	Role play	25 minutes
Step Two:	Plenary discussion	15 minutes
	<b>Total time required:</b>	<b>40 minutes</b>



## PROCEDURE

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### Step One:

(25 minutes)

**Instructions to the group:** Divide the participants into groups of 3. Give each small group a 'Tata Ma Problem' Card which details a common problem experienced by children and youth infected and affected by HIV/AIDS, where they are not accessing their health rights. Ask the groups to prepare a short (2 minute) role play on the problem. When they are ready, return to plenary and ask each group to act out the problem. The large group should then verify what the problem is and what right is being abused.

**Comment to trainer:** Move among the groups to assist them to interpret their 'Tata Ma Problem' Card. When the groups act out their problem, assist the larger group to interpret the way in which health rights were not protected in the scenario. When each role play has finished and the groups have successfully acted out their problem, give the small group a 'Tata Ma Chance' Card, which they will refer to in Section Three.

# Worksheet 1



## 'Tata Ma Problem' Cards

**1.**

Laverne is 15 years old. Her mother takes her to the hospital when she discovers that Laverne is pregnant. The doctor speaks to Laverne's mother about the importance of HIV testing in the case of pregnancy, and Laverne's mother decides it would be best for her to have the HIV test. The doctor then tests Laverne for HIV.

**5.**

Annie takes her baby boy to the hospital for treatment when he develops an ear infection. The admissions staff at the hospital look at the file, and remind her that the baby is HIV positive, and that the provincial policy is that they will no longer give antibiotic treatment to babies with HIV/AIDS, who will not get well anyway. They tell her to take the baby home, as there is nothing more they can do for him.

**2.**

Sipho is 16 years old. His father takes him to the clinic because he notices that Sipho is showing symptoms of a sexually transmitted disease. The clinic sister treats Sipho, and calls his father in to tell him that Sipho has gonorrhoea.

**6.**

An abandoned baby is found at the entrance of a hospital one morning. The hospital is concerned about the baby's health, and wants to test the baby for HIV. However, they are not sure who should give consent for the HIV test, since there is no parent or guardian. They are not sure what to do, and the medical superintendent is reluctant to give consent, as he says it is not an 'emergency situation'.

**3.**

Oskar is 14 years old. He notices that he has symptoms of a sexually transmitted disease. When he goes to the local clinic, they make him feel embarrassed and tell him that he should not be having sex at his age, and threaten to tell his parents. When he gets another STD 3 months later, he does not go back to the clinic.

**7.**

Lindiwe is 12 years old, and is ill. She goes to the clinic with her aunt. The clinic tests her for HIV without her knowledge, and tells her that she is HIV positive. Lindiwe is distraught. She has nightmares every night and can no longer concentrate at school.

**4.**

Fatima's daughter is raped. Fatima has heard that a course of anti-retroviral treatment given immediately after a rape can reduce the risk of HIV transmission. She goes to her local Government hospital and asks for a course of anti-retroviral treatment for her daughter. The medical superintendent tells her that Government policy does not allow for providing anti-retroviral treatment after a rape, as it is unaffordable.

**8.**

Brendon is 18 years old and is becoming very ill with AIDS. He is hospitalised at a local Government hospital. The nurses refuse to bath him because of his constant diarrhoea and so he is not washed for 3 days, until his mother comes to help.



# Worksheet 1



## Tata Ma Chance' Cards

**1.**

If you would like to lay a complaint against an individual professional (eg a nurse, doctor or psychologist), you can report them to their professional body. For example, if a doctor breaches a child's right to informed consent by doing an HIV test without getting informed consent, you can write a letter of complaint to the Health Professions Council of South Africa. The Council will investigate the matter and may call you to attend an enquiry. If the doctor is found to be at fault, the Council can take disciplinary action against the doctor.

**2.**

If you would like to lay a complaint against an individual professional (eg a nurse, doctor or psychologist), you can report them to their professional body. For example, if a nurse breaches a child's right to confidentiality by informing another person of his or her medical status and treatment without consent, you can write a letter of complaint to the South African Nursing Council. The Council will investigate the matter and may call you to attend an enquiry. If the nurse is found to be at fault, the Council can take disciplinary action against the nurse.

**3.**

Every person has a right to receive 'just administrative action' – that is, fair treatment from Government Departments and officials. If a child's health rights are abused by a Government health care facility, you can lay a complaint with the Department of Health. For example, if a child or youth feels unable to access health care services because the health care facility is not 'child friendly' you can report this matter to the Department of Health.

**4.**

If you believe that a Government law or policy goes against your or your child's constitutional rights, you can take the matter to the Constitutional Court. For example, if you believe that the Government should be providing anti-retroviral therapy to child rape survivors, as part of their right to basic health care, you could bring a case to the court. The Constitutional Court can decide whether a law, policy or action violates the Constitution.

**5.**

If the laws, policies or practices of a Government body (such as a local clinic or hospital) abuse a child's rights, then this can be reported to a statutory body such as the Human Rights Commission. For example, mothers often report that some Government hospitals refuse to treat their children living with HIV/AIDS, although the Department of Health policy is that children with AIDS should receive treatment for opportunistic infections. If this happens, you can complain to a statutory body like the South African Human Rights Commission. The SAHRC is tasked with monitoring, investigating and reporting on human rights abuses.

**6.**

If a child's right to health is being compromised because the laws relating to children infected and affected by HIV/AIDS are unclear, then these laws need to be reviewed or reformed. The South African Law Commission is in the process of reviewing and reforming all laws relating to children. You can participate in this process by contacting the SALC and finding out about their recommendations. You can make submissions to the SALC on problems, and recommendations.

**7.**

If someone violates a child's rights in any way, and causes harm and suffering to a child, you can bring a civil claim for damages against the person, to the courts. For example, if a health care worker tests a child for HIV without informed consent, and without pre- and post-test counselling, this can lead to a harmful psychological impact on a child, or on the parents and guardians of the child. You can claim damages (in the form of money as compensation) for the harm that has been caused.

**8.**

If the staff of a health care facility act in a way that violates a child's rights (for example, by violating the child's right to be treated with dignity and respect), you can lay a complaint with the health care facility. Each health care facility should have a complaints mechanism in terms of which you can lay the complaint. If this is not taken further, you can take the matter up with the provincial Department of Health.



### Trainer's Notes:

- Some of the cards are not HIV related. However, the same principles apply with regard to treatment only with informed consent, and confidentiality.
- In Card 1, the youth's right to treatment with informed consent is breached. The child is old enough to consent to treatment on her own.
- In Card 2, the youth's right to confidentiality is breached. He is old enough to consent to his own medical treatment, and to receive the results of his medical diagnosis. His parent should only be informed with the youth's consent.
- In Card 3, the child's right to access basic health care is compromised, because of the failure of the health care facility to provide a 'child and youth-friendly service'. His right to dignity is also impaired.
- In Card 4, some may argue that this is a situation where the child's and youth's right to receive basic health care services is denied. Others may argue that the provision of anti-retroviral treatment for rape survivors is not 'basic health care services'. In any event, a constitutional challenge to this policy decision could be made, and the courts would decide whether the Department of Health was carrying out its obligation in a reasonable manner.
- In Card 5 the child's right to basic health care services is denied. The provincial health policy goes against the policy guidelines developed by the National Department of Health, which provide for basic treatment for opportunistic infectious, and basic antibiotic treatment for children with HIV/AIDS.
- Card 6 is a good example of where the laws relating to consent for medical treatment, in the case of children who do not have a parent or guardian, are confusing and lead to breaches of the rights of the child, or alternatively delays in treatment.
- In Card 7, the child's right to be treated only with informed consent has been breached. The consent of the parent or guardian should have been sought for the HIV test, and the results of the test disclosed to the parent or guardian. HIV testing should also only take place with pre- and post-test counselling.
- Card 8 is an example of discriminatory and stigmatising treatment that impairs the youth's right to dignity.

### Step Two:

(15 minutes)

**Comment to trainer:** After all the role plays have been completed, give participants an opportunity to give inputs on their own experiences of other common problems with legal and human rights of children and youth infected and affected by HIV/AIDS. Ask them to consider what rights have been abused, or whether this is a problem where the laws relating to children and youth in the context of HIV and AIDS are inadequate, and possibly need review and reform.





# SECTION THREE

## STRATEGIES FOR PROTECTING CHILDREN'S AND YOUTH'S HEALTH RIGHTS

### PURPOSE

The purpose of this section is to identify strategies to deal with the various abuses of the health rights of children and youth infected and affected by HIV and AIDS.

### PREPARATIONS



In order to prepare for this section, you would need to consult the trainers' notes section at the end of this module, in the Appendix.

### ADDITIONAL READING



AIDS Law Project & AIDS Legal Network, (2001). *HIV/AIDS and the Law*.

### MATERIALS REQUIRED



- Flipchart pen and paper
- 'Tata Ma Problem' Cards
- 'Tata Ma Chance' Cards

### TIME NEEDED



Step One:	Brainstorm	30 minutes
Step Two:	Plenary discussion	30 minutes
Step Three:	Exercise	30 minutes
	<b>Total time required:</b>	<b>90 minutes</b>

### PROCEDURE

**Step One:** (30 minutes)



**Comment to Trainer:** Ask participants to brainstorm different strategies that they can think of that could be used to deal with the abuses of rights experienced by infected and affected children and youth. Give an input on the various strategies available, using OHTs 11-15.



### Trainer's Notes:

- Present OHTs 11 – 15.
- The courts can be used for various remedies.
- A civil action is an action that one person/organisation brings against another person or organisation, usually to claim compensation (in the form of money) for some harm that has been caused. For example, a person could bring a civil action against another person who assaulted them, to claim compensation for medical treatment, pain and suffering, loss of earnings etc.
- A criminal action is brought when a person's wrongdoing is also an act that our State considers to be a crime. The State brings an action against the wrongdoer, and punishes the wrongdoer either by sentencing them to prison or imposing a fine in most cases.
- A constitutional action can be brought when the wrongdoing is something which goes against our constitutional rights. A person or organisation can bring an action to the Constitutional Court, who can then declare the action, or policy, or law, to be unconstitutional.
- The South African Law Commission is set up to investigate aspects of the law and make recommendations for law reform. The SALC usually sets up a Project Committee to investigate an issue when it is asked to do so by a Government Department, or by Parliament. However, it also acts on the advices and submissions of individuals and organisations.
- The SALC first develops an Issue Paper, setting out the legal issues at stake. In the case of the Project Committee on the Review of the Child Care Act, an Issue Paper was brought out in 1999.
- Once comments have been received on the Issue Paper, the SALC brings out a Discussion Document, often with new draft legislation included for consideration. The SALC Project Committee on the Review of the Child Care Act is due to bring out a Discussion Paper in late 2001.
- After comments have been received on the Discussion Paper, the SALC finalises its Final Report and law reform recommendations / draft legislation. This is then presented to Parliament for approval, and subsequent implementation by the relevant Government Department.

### Step Two:

(30 minutes)

#### Instructions to the group:

Tell the group that their 'Tata Ma Chance' card is an example of one strategy they could use to deal with the abuse of the child's health rights in their scenario.





The participants need not go back into their small groups. However, one person from each group should refer to the group's 'Tata Ma Chance' card, and explain to the larger group the strategy identified on the card to deal with the abuse of rights.

**Comment to trainer:** Give the group an opportunity to comment on the strategy, and whether they think it is useful to deal with their problem. Let the group discuss advantages and disadvantages of the strategy, and consider alternative strategies if they wish.



#### Trainer's Notes:

- In most cases, it may be best to deal with the problem by means of the closest complaints or enforcement mechanism. For example, if a nurse at a hospital abuses a child's rights, the best first approach is to complain directly to the hospital. This could be followed up with other strategies, such as referring to the provincial or national Department of Health, or referring to the professional's professional council.
- For some people in small communities, however, there may be a reluctance to complain directly to the health care facility involved, for fear that health care services will be denied in the future.
- The South African Human Rights Commission is overburdened with cases, and it may be better only to refer those cases to them that involve abuse of rights at a provincial or national level, rather than individual cases.
- With regard to the courts, for most people a court case is not an efficient strategy. The courts are costly, time-consuming and require the technical expertise of attorneys and advocates. A civil claim for damages, for instance, would cost a child or organisation a large amount in legal fees. A Constitutional case would be very complex. Organisations would probably only be able to use these mechanisms where they have the assistance of a legal/ paralegal NGO such as the AIDS Law Project.
- Most complaints mechanisms such as the courts, statutory bodies and professional bodies are slow to respond and organisations / individuals should not expect an immediate remedy. However, accessing these mechanisms could be important for all children and youth infected and affected by HIV/AIDS, if they lead to policy changes.

### Step Three:

(30 minutes)

**Instructions to the group:** Ask participants to go back into their original groups. They must draft a letter to the South African Law Commission, for the attention of the Project Committee on HIV/AIDS. Their letter should set out:

- An general description of an abuse of the health rights of children and youth infected and affected by HIV/AIDS, as set out in their 'Tata Ma Problem' Card;
- A concrete example of the problem, as set out in the card;
- Any problems with the existing law, or existing strategies to deal with the problem; and
- Recommendations for law review or reform to prevent or manage the problem.



# APPENDIX

## TRAINERS NOTES ON THE HEALTH RIGHTS OF CHILDREN AND YOUTH

(can be used as a hand-out for participants)

### 1. INTRODUCTION

All patients have a number of rights, set out in different laws, policies and guidelines, like:

- The Constitution, which has a Bill of Rights for all people;
- Principles of our common law;
- Statute laws (like the Health Act);
- Health policies, charters and guidelines (like the Department of Health's Draft National Policy on Testing for HIV); and
- Ethical guidelines that bind professionals (like SAMA's Guidelines on HIV/AIDS).

These rights also apply to children and youth. However, children and youth are also recognised as a vulnerable group who need some protection in our law. For this reason, children and youth fall under the guardianship of an adult, who exercises some of the rights on behalf of the child or youth. As we will see later, this affects how a child's or youth's health rights are exercised – for instance, below a certain age, a parent or guardian must give consent for medical treatment on behalf of a child.

A good starting point to consider a patient's rights is the National Patient's Rights Charter. During November 1999, the Department of Health launched this Charter.

The Charter is not a law - but it is based on rights and duties in our Constitution and other laws and policies. It is an important and useful document because it creates an easily accessible guideline of all the health rights and duties of a patient, which health care workers and patients are expected to follow. For example: it explains the constitutional right of access to health care services, so that patients know what they have the right to expect from State health care services.

The Charter says that all health care workers, like nurses and doctors, must treat all patients with human dignity, respect, courtesy, patience and tolerance.

Patients' rights include the right to:

- Have a healthy and safe environment.
- Take part in making decisions about your treatment.
- Get basic health care at Government health facilities (eg emergency care, counselling, information).
- Have information about medical aid schemes.
- Make a proper choice about health services.
- Know the name of the doctor or nurse treating you.
- Confidentiality and privacy about your medical treatment.



- Give informed consent to medical treatment.
- Refuse medical treatment.
- Get a second opinion from another doctor.
- Have ongoing medical care.
- Complain about poor health services by health care workers.

Patients have a duty to:

- Take care of yourself.
- Respect other patients and health care workers.
- Use our health services, but not to abuse these services.
- Advise the doctor or nurse with correct information about your health.
- Follow treatment procedures.
- Pay for any costs of health services.
- Look after your personal medical records.

This workshop focuses on 3 key health rights of children and youth infected and affected by HIV/AIDS:

- The right to HIV testing and treatment only with **informed consent**;
- The right to **confidentiality**; and
- The right to **basic health care services**.

## 2. THE RIGHT TO GIVE INFORMED CONSENT TO MEDICAL TREATMENT

Our Constitution and our common law gives every person the right to privacy, dignity, autonomy (to make your own decisions) and bodily integrity (protection of your body from harm by others).

In other words, every person has the right to be treated with respect as an individual, and to be allowed to make their own decisions about their body and about what they wish to keep private. Relating these rights to medical treatment, this means a patient may make their own decisions and must consent to all forms of medical treatment. Patients also have a right to refuse medical treatment or an operation.

Our law requires that patients must give **informed consent** to medical treatment or an operation. Informed consent means that a patient must be given adequate information, must understand that information, and must make a decision and agree to the treatment or operation based on the understanding of that information.

In the case of HIV testing, this means that a child or youth must make the decision to have an HIV test only after they have been given enough information. The Department of Health's Draft National Policy on Testing for HIV describes informed consent in the case of HIV testing. It says that a person should:

- Understand and be aware of the test;
- Know the benefits, risks, alternatives and social implications of the test result; and
- Be given this information in a language they understand.



In the case of children and youth, our law protects children from below a certain age, by requiring that their parents or guardians give informed consent for medical procedures or treatment on their behalf. However, in the case of children above a certain age, the law considers that they are capable of understanding and consenting on their own. The Child Care Act No 74 of 1983, s39 says that:

“ any person over the age of 18 years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any operation upon himself; and any person over the age of 14 years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any medical treatment of himself or his child”.

This means that children and youth over the age of 14 years can consent on their own to HIV testing, and treatment. In the case of children under the age of 14 years, this consent must be given by a parent or guardian.

In the case of children and youth below the age of 14 years where there is no parent or guardian, or the parent or guardian cannot be found, the following rules apply in terms of the Child Care Act:

- If the medical treatment required is not serious or risky, then a person with parental power (such as a teacher) or custody (such as a foster parent) over the child can consent. If there's no person with parental power or custody, the Minister of Welfare must give consent.
- If there is an emergency situation where the child's health or life is in serious danger, then the medical superintendent of the hospital can consent.

### 3. THE RIGHT TO CONFIDENTIALITY

Our Constitution and common law gives all patients the right to privacy. This means that patients have the right to confidentiality regarding their medical treatment and medical status. Health care workers may not disclose any details regarding a patient's medical information without the patient's consent.

In the case of children and youth, this means that children and youth also have a right to medical confidentiality. If the child/youth is able to consent him or herself to the medical treatment or operation, then that child/youth should be given the information and may choose to whom to disclose the information.

For example, a child of 14 years can consent to an HIV test. This means that the results of the HIV test should be given to that child, and not to his or her parent or guardian. The child has the right to keep that information confidential, and to choose whether to disclose the information to anyone. A health care worker may not disclose that child's HIV status without his or her consent.



In the case of *Jansen van Vuuren and Another v Kruger* (1993) (the ‘McGeary case’), a doctor disclosed his patient’s HIV status to other doctors without the consent of the patient, Mr McGeary. The Supreme Court of Appeal said that a doctor cannot disclose (give) the HIV status of a patient to other doctors or persons without the consent of the patient *unless* there is a clear legal duty to do this. The court said:

“There are in the case of HIV and AIDS special circumstances justifying the protection of confidentiality. By the very nature of the disease, it is essential that persons who are at risk should seek medical advice or treatment. Disclosure of the condition has serious personal and social consequences for the patient”

#### 4. RIGHT TO BASIC HEALTH CARE SERVICES

The Constitution guarantees every child or youth the right of access to health care services. Section 28 (1)(c) of the Constitution says that:

“every child has the right ... to basic health care services”

The United Nations Convention on the Rights of the Child (CRC), which was signed and ratified by South Africa in 1997, states that:

- Every child has a basic right to life, and to survival and development.
- States must ensure to the maximum extent possible, the survival and development of the child.
- This includes an obligation on States to ensure that a child has the highest attainable standard of health.
- States must take steps to:
  - ◆ Lower infant and child mortality.
  - ◆ Ensure that all children receive necessary medical assistance and health care, with the emphasis on primary health care (basic health care).
  - ◆ Ensure suitable pre-natal and post-natal health care for mothers.

This means that our Government has a duty to ensure that every child, including children and youth infected and affected by HIV/AIDS, has a right to basic health care services. The South African Government has a duty to ensure that the child’s right to basic health care services is fulfilled.

The Constitution also provides every person with the right of access to information. Section 32(1) says that:

“Everyone has the right of access to –  
a) Any information held by the state; and  
b) Any information that is held by another person and that is required for the exercise or protection of any rights”

Children and youth infected and affected by HIV/AIDS therefore have the right to receive adequate information about health care services and how they can protect their health. They also have the right to receive basic health care services from the Government.





The difficulty lies in defining 'basic health care', and what this should comprise. At present, Government policy is to provide free primary health care to pregnant women and children below the age of 6 years. The new draft National Health Bill (not yet law), when enacted, will enshrine this policy in law. Section 5 of the Bill states that free services must be provided at primary health care level to all children under 6 years of age, and to all girl children in terms of the Choice on Termination of Pregnancy Act.

This goes some way towards ensuring a child's/youth's right to basic health care. Another useful guideline for measuring the level of health care that children and youth are entitled to is the policy guideline of the Department of Health. In October 2000 the Department of Health brought out a series of HIV/AIDS Policy Guidelines, including a Guideline on *Managing HIV in Children*. This is a useful guideline of the basic health care services that all children infected and affected by HIV/AIDS are entitled to receive at state health care facilities. For example, the guidelines recommend antibiotic therapy for infectious diseases in children with HIV, stating that:

“Children with HIV infection should receive the same medical care for common conditions as is standard practice for uninfected children. Common infectious diseases are the most frequent cause of illness in these children and often occur with increased severity and frequency, as compared with uninfected children”.

However, the level of medical treatment and care that is made available at state health care facilities is still something that is left to the discretion of Government, and organisations often have no clear sense of what treatment infected children and youth are entitled to receive, and what Government can reasonably say is 'beyond available resources'.

The Medicines and Related Substances Control Amendment Act No 90 of 1997 provides measures to allow Government to obtain cheaper medicines. It does this by:

- Providing for pharmacists to prescribe available generics of expensive drugs, where these are available (this is called 'generic substitution'); and
- Allowing our Government to import expensive patented medicines from other countries where they are available much cheaper (this is called 'parallel importation').

Where organisations believe that the level of care available to infected children and youth living is insufficient, they could consider placing pressure on the State to use the mechanisms available in the Medicines Act to obtain cheaper drugs.

## 5. ABUSE OF RIGHTS

Research has shown that the rights of children and youth infected and affected by HIV/AIDS are frequently abused in the health care setting. Discriminatory, stigmatising treatment and abuses of rights can take a number of different forms including:



- Children and youth being tested for HIV without informed consent;
- The right to confidentiality being breached, in that other people are informed of the child's or youth's HIV status without the proper consent;
- Children and youth being denied access to health care services on the basis of their HIV status;
- Children and youth being treated in a discriminatory manner, and having their right to dignity violated at health care services on the basis of their HIV status;
- Children and youth being unable to access health care services, due to a lack of information, and a lack of 'child-friendly' and 'youth-friendly' services.

This continues to happen in health care services throughout the country, despite the fact that all patients, including children and youth, have various rights to protect them from these sorts of abuses, and various mechanisms they can use to enforce their right of access to non-discriminatory health care services.

## 6. STRATEGIES TO ENFORCE A CHILD'S OR YOUTH'S HEALTH RIGHTS

### 6.1 The Courts

If an organisation believes that a child's or youth's rights have been violated, the organisation can approach the courts to assist in enforcing the child's or youth's rights. There are various options available:

#### **Civil claim for damages:**

An action which violates a child's or youth's civil rights (for example, such as forcing a child or youth to test for HIV without getting the required consent, or breaching a child's or youth's right to confidentiality) can be brought before our courts. The courts will order the person who violated the child's or youth's rights to pay an amount of money to compensate for the damage suffered.

#### **Criminal charge of assault:**

Where a child's/youth's right to privacy is infringed (for example, where a child or youth has been tested for HIV or given medical treatment without giving informed consent) a criminal charge of assault can also be laid against the health care worker concerned.

#### **Constitutional case:**

An action can also be brought before the Constitutional court, if the complaint violates the child's/youth's basic constitutional rights. The Constitutional Court can decide whether a law, policy or action by someone violates the Constitution, and declare such law, policy or action to be unconstitutional. (For example, if a child or youth is refused access to health care services on the basis of his or her HIV status, this action can be declared unconstitutional).

Going to court to enforce your rights may be difficult for some organisations, as it is expensive, time consuming, and organisations may need the assistance of an organisation such as the AIDS Law Project which has specific experience and expertise in dealing with litigation around HIV/AIDS and human rights.





## 6.2 Other Statutory Bodies

Other statutory bodies have been set up by the Constitution to support constitutional democracy, and organisations can use these bodies to report cases of abuses of the rights of children and youth infected and affected by HIV/AIDS.

Relevant statutory bodies include:

- The South African Human Rights Commission;
- The Commission for Gender Equality; and
- The Public Protector.

For example, s182 of the Constitution establishes the Public Protector, and gives this body the power:

- a) To investigate any conduct in State affairs, or in the public administration in any sphere of Government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- b) To report on that conduct; and
- c) To take appropriate remedial action”

The South African Human Rights Commission, in terms of s184 of the Constitution, is tasked with promoting and monitoring respect for human rights, and has the power to investigate and take appropriate remedial action in cases of human rights abuses.

The Commission for Gender Equality, in terms of s187 of the Constitution, is tasked with promoting gender equality, and also has the power to monitor and investigate on issues concerning gender equality.

So, for example, if a Government hospital developed a policy stating that they were no longer going to provide basic antibiotics to children living with HIV/AIDS, this would be an unconstitutional act. Organisations can call or write to the nearest office of either of the 3 statutory bodies mentioned above, detail their complaint, and can ask the body to investigate the matter.

## 6.3 The Department of Health

Section 33 of the Constitution gives every person the right to “just administrative action”. It says that every person has the right to receive treatment from Government Departments and officials that:

- Is lawful;
- Is reasonable;
- Follows fair procedures.

For example, if a Government hospital or clinic refused to treat children orphaned by HIV/AIDS, this would be unlawful and unreasonable. Your organisation can take action by:

- Writing to the Government Department or body and asking for written reasons for the decision that was made;
- Using the Department’s or body’s own complaints procedure to make a complaint; and finally
- If there is no response, you can go directly to the Public Protector.



#### **6.4 Professional Bodies**

If the person who has abused a child's or youth's rights is a professional (eg a nurse, doctor or psychologist breaches a child's right to confidentiality), they will belong to a professional body. The professional body is responsible for setting standards of conduct for the professionals, monitoring their conduct, and investigating any complaints against members.

Examples of professional bodies include:

- The Health Professions Council of South Africa
- The South African Medical Association
- The Psychologists' Society of South Africa
- The South African Nursing Council

Your organisation can draft a letter to the relevant body, setting out the nature of the complaint and any documentation you have to support your complaint. The body will investigate the matter, and may call you to attend an enquiry to hear on the matter. Most professional bodies have wide disciplinary powers, including the power to suspend the professional from practicing further.

#### **6.5 The South African Law Commission**

The South African Law Commission is a body set up under the Department of Justice. The SALC is tasked with conducting research and investigation into aspects of the law, with a view to providing recommendations for possible law review and reform.

At present, the SALC has a Project Committee which is tasked with the Review of the Child Care Act. This Project Committee is presently reviewing all the laws relating to children and youth, and will be bringing out a Discussion Document and new draft Children's Bill in late 2001.

Your organisation can get involved in this process by contacting the SALC and asking to receive a copy of the Discussion Document. You can make submissions to the SALC on the document, and air your views about laws relating to children and youth infected and affected by HIV and AIDS, and recommendations for law reform.

### **7. CONCLUSION**

The right to basic health care is a fundamental right contributing to the survival and development of the child. When children and youth are denied this right, or are treated in a stigmatising and discriminatory way, the impact of HIV/AIDS upon a child's and youth's life is magnified and exacerbated. By knowing the health rights of children, and how these rights relate to children and youth infected and affected by HIV/AIDS, your organisation can begin to take steps to guarantee these rights. You can also ensure that your own policies and practices protect and promote the best interests of children and youth infected and affected by HIV/AIDS, so that we may provide each and every child and youth with the highest attainable standard of health.

## WHAT ARE PATIENTS' RIGHTS?

Patients' rights are the various rights a person has in respect of their health, medical status and medical treatment.

These rights govern the relationship between the patient and the health care provider/ health care facility. Some of the patients' rights are also rights held between the patient and the State.

Children and youth also have patients' rights. In some cases they can exercise these rights on their own. In other cases their parent or guardian can exercise these rights on their behalf.

## SOURCES OF PATIENTS' RIGHTS

- Constitution and Bill of Rights
- Principles of our common law
- Statute laws (eg Health Act)
- Health policies, charters and guidelines (eg Dept of Health Draft National Policy on Testing for HIV)
- Professional Ethical Guidelines (eg SAMA's Guidelines on HIV/AIDS)



## NATIONAL PATIENTS' RIGHTS CHARTER

### **Patients have the right to:**

- A Healthy and safe environment
- To Take part in making decisions about treatment
- To Basic health care
- To Information about medical aid schemes
- To Make a proper choice about health services
- To Know the name of their health care provider
- To Confidentiality and privacy about medical treatment
- To Give informed consent to medical treatment
- To Get a second opinion from another doctor
- To Have ongoing medical care
- To Complain about poor health care services

### **Patients have a duty to:**

- Take care of self
- Respect other patients and health care workers
- Use but not abuse health care services
- Provide correct information about health
- Follow treatment
- Pay for any costs of health care services
- Look after personal medical records

## RIGHT TO TREATMENT ONLY WITH INFORMED CONSENT

The Constitution gives every person the rights to:

- Privacy
- Dignity
- Autonomy
- Bodily integrity

Every person has the right to be treated with respect as an individual, and to be allowed to make their own decisions about their body.

A patient must give informed consent to all forms of medical treatment, and may also refuse consent.

## INFORMED CONSENT

Informed consent is made up of

- Information
- Understanding
- Agreement

## INFORMED CONSENT IN THE CASE OF CHILDREN AND YOUTH

- A child of 14 years or older can give informed consent to medical treatment, including an HIV test.
- The parent or guardian of a child under 14 years of age must consent to the child's medical treatment on their behalf.
- If there's no parent or guardian, then a person with parental power (like a teacher) or custody (like a foster parent) can consent, as long as the medical treatment is not serious or risky to the child.
- If there's no person with parental power or custody, then the Minister of Welfare can consent.
- If there is an emergency, life-threatening situation, then the medical superintendent of the hospital can consent.



## **RIGHT TO CONFIDENTIALITY**

The Constitution gives every person the right to privacy.

This means that every person, including a child, has the right to confidentiality with regard to his or her medical information.

**JANSEN VAN VUUREN V KRUGER**

“There are in the case of HIV and AIDS special circumstances justifying the protection of confidentiality. By the very nature of the disease, it is essential that persons who are at risk should seek medical advice or treatment. Disclosure of the condition has serious personal and social consequences for the patient”.



## RIGHT TO BASIC HEALTH CARE SERVICES

The Constitution gives a child the right to basic health care services

The United Nations Convention on the rights of the child states that:

- Every child has the basic right to life, and to survival and development;
- States must ensure to the maximum extent possible the survival and development of the child;
- This includes an obligation on the State to ensure that a child has the highest attainable standard of health;

The Constitution also provides every person with the right of access to information.

## WHAT ARE BASIC HEALTH CARE SERVICES?

### Guidelines:

- Free primary health care for pregnant mothers and children below the age of 6 years;
- Policies and guidelines regarding treatment standards (eg Department of Health Guidelines on Managing HIV in Children);
- Laws and provisions that enable government to access medical treatments and medicines (eg Medicines and Related Substances Control Amendment Act).

## THE COURTS

- Civil claim for damages
- Criminal charge of assault
- Constitutional case

## **STATUTORY BODIES**

Set up by the Constitution to support constitutional democracy.

- South African Human Rights Commission
- Commission for Gender Equality
- Public Protector



**DEPARTMENT OF HEALTH**

Section 33 of the Constitution gives every person the right to 'just administrative action'

An action by a Government Department must be:

- Lawful
- Reasonable
- Procedurally fair

## PROFESSIONAL BODIES

Professional bodies monitor the standards of behaviour of the professionals registered with the bodies.

- Health Professions Council of South Africa
- South African Medical Association
- Psychologists' Society of South Africa
- South African Nursing Council



**SOUTH AFRICAN LAW COMMISSION**

SALC is set up to research and investigate aspects of the law, and make recommendations for law review and reform.

- SALC is asked to investigate an issue (e.g. by a Government Department, Parliament, or NGOs and individuals)
- Project Committee is set up
- Issue Paper is brought out, and distributed for comment
- Discussion Document is brought out, and distributed for comment
- Final report is brought out



# MODULE 3



## THE EDUCATION RIGHTS OF CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS

### THE AIM OF THE MODULE

This stand alone, 3½ - hour workshop looks at the rights of children and youth to a basic education, in the context of HIV and AIDS. It is divided into 3 sections:

- **Section One:** Raising awareness around children's youth's education rights;
- **Section Two:** The National Education Policy on HIV/AIDS in Schools
- **Section Three:** Strategies for supporting children's and youth's education rights.

This module is one of a series developed by Save the Children (UK) for use in South Africa. The other three modules focus on health, welfare and discrimination.

### OUTCOMES

**At the end of Module 3 participants will be able to:**

- Demonstrate an understanding of the rights of children and youth to a basic education;
- Explain the key principles outlined in the National Education Policy on HIV/AIDS in Schools; and
- Support children, youth, parents and educators to develop policies and procedures that protect the rights of children and youth in the context of HIV/AIDS in schools.

An overall map or framework for how the workshop could be run follows. It briefly indicates the sections and the activities that would need to be conducted in each section as well as some idea of the amount of time that each require. This module map allows you to plan and decide ahead, depending on the needs of your participants and the amount of time that you have available with them. Depending on these factors, you could decide to run the whole 3 ½ - hour workshop, or just a combination of certain sections.

## MODULE MAP

SECTION	ACTIVITY	TIME ALLOCATION
<b>One</b>	Step One: Discrimination and rights: plenary discussion	45 minutes
	Step Two: Input on rights in the education setting	45 minutes
<b>Two</b>	Step One: Input on National policy on HIV/AIDS for learners and educators	15 minutes
	Step Two: School HIV/AIDS policy poster	45 minutes
<b>Three</b>	Step One: Group work on concerns of an HIV/AIDS Committee for schools	30 minutes
	Step Two: Report Back	20 minutes
	Step Three: Input on strategies to protect a child's and youth's education rights	10 minutes



# SECTION ONE

## RAISING AWARENESS ON CHILDREN'S AND YOUTH'S EDUCATION RIGHTS



### PURPOSE

The purpose of this section is to assist participants to develop an understanding of the rights of all children and youth infected and affected by HIV/AIDS to a basic education.

### PREPARATIONS



In order to prepare for this section, you need to consult the trainers' notes for this section, in the Appendix.

### ADDITIONAL READINGS



Barrett Grant, Clacherty and Strode, (2001). *The role of Stigma and Discrimination in increasing the vulnerability of children and youth affected by HIV/AIDS*, Save the Children (UK).

### MATERIALS REQUIRED



- Flipchart paper and pens
- Worksheet 1: Discrimination Cards
- Cards 1-5: Rights Cards
- Prestik

### TIME NEEDED



Step One:	Discrimination and rights: plenary discussion	45 minutes
Step Two:	Rights in the education setting: input	45 minutes
	<b>Total time required:</b>	<b>90 minutes</b>



## PROCEDURE

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### Step One:

(45 minutes)

**Comment to trainer:** Explain to the group that this session will deal with discrimination against children and youth infected and affected by HIV/AIDS in the school setting, and the various rights that may assist them. Brainstorm with participants some of the ways in which children and youth infected and affected by HIV/AIDS are discriminated against in schools.

Stick the Rights Cards up on the wall. Read out (or ask a participant to read out) each Discrimination Card, one at a time, and ask the group to decide which of the various rights may assist the child or youth in this circumstance. The Discrimination Cards are based on real life instances, and research conducted by Save the Children (UK) amongst infected and affected children and youth and their parents and guardians, amongst others.

**Instructions to the group:** Ask the group to consider each scenario read out, and to give input on which right they think will assist the child in that case.

**Comment to trainer:** Once a Discrimination Card has been allocated to a 'right', place the card on the wall alongside the relevant right.



# Worksheet 1

## Discrimination Cards



**1.**

“Even in school they treated me badly. My skin was bad-looking, it had funny things on it. They told themselves that I’ve got AIDS and they ran away from me. Even my friend told me she won’t eat with me again. One told me right to my face that I’ve got AIDS and I should stop going to school and stay at home. I would feel terrible. Cry deep down. I would sit alone and cry alone. People would be staring at you saying nothing, even those who used to be happy when they see you were not anymore” (Teenager living with HIV/AIDS, Ingwavuma).

**2.**

When Nkosi Johnson applied to go to primary school in 1996, his mother wrote on the application form that he had AIDS. The school were not sure what to do about it, and were reluctant to admit Nkosi to the school. They held a meeting with parents of children at the school, and the parents were divided on the issue on whether Nkosi should be admitted to the school.

**3.**

“Teachers can tell others at the assembly and other children will laugh and others will start playing cruelly with you and tease you that your mother has got AIDS” (Girl, 10, whose mother is living with HIV/AIDS, East Rand).

**4.**

“If a child from such a family gets cut they would just say to the child ‘Go home, you will pass the virus on to other children’. They won’t even try to help her”. (Boy, 14, Ingwavuma).

**5.**

“If a person who has got AIDS wants to greet me with his hand I’ll pretend to be greeting him too but when our hands are about to touch I’ll pretend something flew into my eye to avoid touching him” (Girl, Ingwavuma).

**1.  
RIGHT  
TO  
EQUALITY**

**2.  
RIGHT TO  
ACCESS TO  
A BASIC  
EDUCATION**

**3.  
RIGHT  
TO  
PRIVACY**

**4.  
RIGHTS TO LIFE,  
TO BODILY  
INTEGRITY AND  
TO A HEALTHY  
ENVIRONMENT**

**5.  
RIGHT OF  
ACCESS TO  
INFORMATION**





### Trainer's Notes:

- Many of the Discrimination Cards can be related to various rights. Encourage participants to make the connection with the most important right. The most important 'right' in relation to each card is listed below:
- Card 1: The child has a right to equality and to be protected from unfair discrimination. The child is being discriminated against and stigmatised on the basis of HIV status.
- Card 2: All children have a right to a basic education. Children may not be denied the right to a basic education on the basis of unfair discrimination.
- Card 3: All people, including children, have the right to privacy which includes the right to medical confidentiality. If the child's right to privacy is protected in this situation, there would be no fear of disclosure of HIV status.
- Card 4: All people have the right to life, bodily integrity and an environment that promotes their health and wellbeing. In the context of HIV and AIDS, this means that schools need to protect the health and welfare of all children. However, this right can be protected by ensuring that schools have procedures for universal infection control to deal with blood spills, rather than by excluding a child living with HIV/AIDS.
- Card 5: All people, including children, have a right of access to information that is important for protecting their rights. Children need to receive adequate information about HIV/AIDS, how it is transmitted and how they can protect themselves, to do away with the misconceptions and fears surrounding HIV/AIDS and to prevent the spread of the disease.

### Step Two:

(45 minutes)

**Comments to trainer:** Give an input on rights relevant to children and youth in the context of HIV/AIDS and Education. Use OHTs 1-6.



### Trainer's Notes:

- All children and youth have the right to equality and to be protected from unfair discrimination on the basis of HIV status. The Equality Clause in the Constitution specifically says that neither the State, nor any person may unfairly discriminate against another person. This is why we say that the right to equality applies vertically (that is, between the State and the individual) and horizontally (that is, between individuals). Not all rights apply horizontally – the right of access to health care services, for instance, does not place an obligation on private hospitals to provide health care to everyone. It only applies to the State.
- Because the right to equality applies both horizontally and vertically, we say that not only Government schools, but also private schools (including pre-schools and crèches) may not unfairly discriminate on the basis of a child's/youth's HIV status.
- The Schools Act confirms the right of every child to a basic education, and forbids Government schools from applying admission tests and denying admission to children. Private schools are not covered by this prohibition in the Schools Act. However, as we discussed in terms of the right to equality, they are prohibited from unfairly discriminating against a child or youth. So, private schools could also not deny admission to a child or youth living with HIV/AIDS in a way that would amount to unfair discrimination.
- The right to privacy gives us the right to medical confidentiality. This right, like all rights, may be limited in certain circumstances. If a child or youth, or in the case of children under 14 years of age, the child's parent or guardian, consented to the disclosure of the child's/youth's HIV status, this would be an acceptable limitation of the right to privacy. In the case of legislation, there is no relevant legislation that requires a child or youth to disclose his or her HIV status to a school authority. Nor is there an overriding public interest to do so, since other children and youth are not at risk of HIV infection if universal infection control measures are applied.
- The best interests of the child is the standard of most importance in determining what action to take in relation to a child. For instance, it may be that in some circumstances, it is in the best interests of the child that perhaps one relevant school authority knows the child's HIV status.
- The best interests of the child principle gives no hard and fast rules. It is a flexible standard that depends on the circumstances of each case, taking into account all relevant factors and all the rights of the child.



# SECTION TWO

## NATIONAL POLICY ON HIV/AIDS FOR LEARNERS AND EDUCATORS



### PURPOSE

The purpose of this section is to assist participants to develop an understanding of the basic provisions of the National policy on HIV/AIDS for learners and educators.

### PREPARATIONS

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In order to prepare for this section, you need to consult the trainers' notes at the end of this section in the Appendix.

### ADDITIONAL READING

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Department of Education.  
*National Policy on HIV/AIDS for Learners and Educators.*

### MATERIALS REQUIRED

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- Copies of Department of Education *National Policy on HIV/AIDS for Learners and Educators* for each participant
- Flipchart paper
- Kokis and crayons
- Glue
- Old magazines

### TIME NEEDED

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Step One:	DOE policy	15 minutes
Step Two:	Poster	45 minutes
	<b>Total time required:</b>	<b>60 minutes</b>

## PROCEDURE

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### Step One:

(15 minutes)

**Comment to trainer:** Give a brief input on the development of the Department of Education's National policy on HIV/AIDS for learners and educators, and the basic principles of this policy, using OHT 7.



### Trainer's Notes:

- As a result of the case of Nkosi Johnson, the Department of Education realised that it did not have a policy on HIV/AIDS for schools.
- They referred the matter to the South African Law Commission for investigation. The SALC investigated the various rights of children and youth, and went through a process of 'balancing rights', based on medical information about HIV/AIDS and HIV transmission, the rights of all children and youth, and the particularly vulnerable situation of children and youth infected with HIV and AIDS.
- The SALC drafted a recommended Schools Policy, which the Department of Education later adopted, with some minor changes, as its official policy. The Department of Education also made the policy apply to educators.

### Step Two:

(45 minutes)

**Instructions to the group:** Break the group up into 3 large groups. Ask them to develop a poster of a school's HIV/AIDS policy. Tell them that they should concentrate on putting a few of the most important points across. They can refer to the Department of Education's policy for guidance, and the Summary of the Policy (Worksheet 2). They may use any of the materials at their disposal.

**Comment to trainer:** Move around the various groups assisting them to identify key points relating to HIV/AIDS in schools. After the groups have finished, encourage them to visit each other's posters during the break.



# Worksheet 2



## Summary of National Policy on HIV/AIDS for learners and Educators

- 1. Non-discrimination and equality with regard to HIV/AIDS**  
Section 3 prohibits unfair discrimination against a learner, student or educator with HIV/AIDS. It provides that people living with HIV/AIDS should be treated in a just, humane and life-affirming way.
- 2. HIV/AIDS testing and admission**  
Section 4 states that no learner or student may be denied admission to a school or an institution on account of his or her HIV status. HIV testing for admission purposes or continued attendance at school, is also prohibited.
- 3. Attendance by people living with HIV/AIDS**  
Section 5 of the policy gives learners and students with HIV/AIDS the right to attend any school, and provides that schools and institutions must accommodate the needs of learners and students with HIV/AIDS, as far as is reasonably practicable. This section of the policy also details steps that schools and institutions can take to assist students and learners to continue with their studies even when they become ill.
- 4. Disclosure of HIV/AIDS-related information**  
Section 6 of the policy gives every learner or student the right to confidentiality with regard to his or her HIV status, and provides that no person is obliged to disclose his or her HIV status. The policy, however, recognises the value of voluntary disclosure and sets out steps that schools and institutions can take to create an enabling environment which encourages voluntary disclosure of HIV status.
- 5. Safety and prevention of HIV transmission**  
Sections 7 and 8 of the policy detail steps that schools and institutions should implement in order to eliminate the risk of HIV transmission. The policy details universal precautions that must be used in the handling of all blood, body fluids, open wounds, biting or scratching incidents etc. The policy also details the training that learners and students should receive on universal precautions, as well as the equipment that should be available in first-aid kits.  
Section 8 deals with precautions and measures necessary to ensure that HIV transmission does not occur during contact play and contact sport.
- 6. Education on HIV/AIDS**  
Section 9 provides for life-skills and HIV/AIDS education for all learners and students, including (a) information on HIV/AIDS and life skills; (b) basic first aid principles; (c) the role of drugs, sexual abuse and violence and sexually transmitted diseases in HIV transmission; (d) encouraging the use of health care and social support services; (e) encouraging non-discrimination towards people living with HIV/AIDS; (f) cultivating an enabling, non-discriminatory environment and (g) information on prevention and avoidance measures.

# SECTION THREE

## STRATEGIES FOR SUPPORTING THE RIGHTS OF CHILDREN AND YOUTH TO A BASIC EDUCATION



### PURPOSE

The purpose of this section is to assist participants to identify strategies for dealing with discrimination and stigma against children and youth infected and affected by HIV/AIDS in the education setting.

### PREPARATION

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In order to prepare for this section, you need to consult the trainers' notes section in the Appendix.

### ADDITIONAL READING

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AIDS Law Project & AIDS Legal Network, (2001). *HIV/AIDS and the Law*.

### MATERIALS REQUIRED

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- Flipchart paper and pens

### TIME NEEDED

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Step One:	HIV/AIDS Committee: group work	30 minutes
Step Two:	Report back	20 minutes
Step Three:	Protecting education rights: input	10 minutes
	<b>Total time required:</b>	<b>60 minutes</b>



## PROCEDURE

### Step One:

(30 minutes)

**Comment to trainer:** Break the participants into groups of 4. They will be an HIV/AIDS Committee for a school. Give each person in the group a role – one is a parent, one an educator, one a learner, and the last the principal.

**Instructions to the group:** Each group is an HIV/AIDS Committee for a school, who have been tasked with developing an HIV/AIDS policy for their school. The members of the group must remember their role, and talk about the concerns they would feel as a parent, educator, learner, or principal. Each person must talk about the kind of information they would like to have, in order to properly develop a good HIV/AIDS policy for their school.

**Comment to trainer:** The exercise should assist the groups in identifying the normal concerns parents, educators, learners and a school authority would have about HIV and AIDS, and the kind of information they would like to have to help them to allay their fears and concerns. From this, participants will be able to start identifying the kind of assistance they can give to schools in developing an HIV/AIDS policy. Remind group members that as a learner, they may be infected or affected by HIV/AIDS (eg orphaned by AIDS). They may be uninfected. Likewise, as a parent, they may have a child who is living with HIV/AIDS, or they may be a parent with concerns about the safety of their own children.

### Step Two:

(20 minutes)

**Comments to trainer:** Ask the principal in one group to report back. Ask the principals in other groups to add any further concerns they had, and information they required. Do this with all the role players until the concerns of all role players in all groups have been heard.



#### Trainer's Notes:

- Principals' concerns may include complying with laws, ensuring that they are not held liable for any risk of HIV transmission in the school, keeping parents happy, ensuring children and youth have a healthy and safe environment, etc
- Principals may want information such as national guidelines / policies on HIV/AIDS in schools, laws, children's rights, universal infection control measures, etc
- Parents concerns may include ensuring the safety of their children, ensuring that children and youth infected and affected by HIV/AIDS are not discriminated against, ensuring that their children are able to stay in school as long as possible if ill with AIDS, ensuring that children and youth receive information about HIV prevention (or perhaps not!), and ensuring that a child's/youth's HIV status will remain confidential.

- Parents may want information about HIV/AIDS, transmission, the course of the disease in children, and prevention. Parents may want information about life skills education and what it includes. They may want to hear the experiences of an affected parent or child.
- Learners will have concerns about being discriminated against and being treated differently on the basis of HIV and AIDS. They may have fears about confidentiality, if they are living with HIV and AIDS. They may have fears about transmission of HIV. They may have concerns about ensuring that their views will be considered in the development of an HIV/AIDS policy.
- Learners may want information about children's rights, medical information about HIV and AIDS, and information about transmission and prevention of HIV and AIDS.
- Educators may have concerns about their role in protecting the rights of children and youth and promoting non-discrimination. They may have concerns about accidents in the school setting and what to do. They may have concerns about teaching life skills education.
- Educators may therefore want information about children's rights, programmes to support and develop a non-discriminatory environment, life skills education programmes, and universal infection control measures.

### Step Three:

(10 minutes)

**Comments to trainer:** Give an input on strategies to assist in protecting the rights of children and youth in the context of HIV/AIDS in schools, using OHTs 8-9.



### Trainer's Notes:

- Focus foremost on the fact that one of the most useful strategies to protect the rights of children and youth in the context of HIV and AIDS in schools, is by helping schools to develop appropriate HIV/AIDS policies.
- The exercise participants have completed will give them an indication of the kinds of concerns and information that schools may need, in order to assist them to develop a good HIV/AIDS School Policy.
- Briefly discuss other strategies that can be used to protect and promote the rights of children and youth.

# APPENDIX

## TRAINER'S NOTES ON THE EDUCATION RIGHTS OF CHILDREN AND YOUTH

(can be used as a hand-out for participants)

### 1. INTRODUCTION

Children and youth infected and affected by HIV/AIDS face numerous instances of stigmatisation, discrimination and abuses of basic rights in the education setting. In 1996 when Nkosi Johnson applied to go to primary school, the school and parents did not want to admit a child known to be living with HIV at the school. As a result of the uproar following from this incident, the Department of Education have since developed a national, non-discriminatory policy on HIV/AIDS in schools that protects the rights of infected and affected children and youth. However, children and youth infected and affected by HIV/AIDS continue to experience discrimination in the school setting. For example, research has shown that:

- Children living with HIV/AIDS are frequently denied access to pre-schools and crèches;
- Children and youth infected and affected by HIV/AIDS receive discriminatory treatment from educators; and
- Children infected and affected by HIV/AIDS are stigmatised and isolated by their peers.

### 2. RIGHT TO EQUALITY

The Constitution provides every person with the right to equality, and to be protected from unfair discrimination. The Equality Clause in the Constitution applies vertically (that is, between the state and individuals) and also horizontally (that is, between private individuals). This means that the State may not unfairly discriminate against any person, but it also means that one individual or private organisation may not unfairly discriminate against another.

In terms of schools, this means that not only Government schools, but also private schools may not unfairly discriminate against a child or youth on the basis of his or her HIV status.

The Schools Act No 84 of 1996, which applies to all school education in South Africa from Grades 0-12, confirms the prohibition on unfair discrimination.



### 3. RIGHT TO A BASIC EDUCATION

Section 29(1)(a) of the Constitution states that:

“everyone has the right to a basic education”

The Schools Act confirms every child’s right to a basic education, and provides that a Government school may not refuse admission to a learner on the ground that he or she cannot afford to pay school fees. In terms of this Act, the governing body of a public school may also not administer any test for admission to a Government school. Although private schools are not covered by this prohibition against admission tests, they are nevertheless still obliged, in terms of the Constitution, not to unfairly discriminate against a learner.

This means that children and youth infected and affected by HIV/AIDS have a right to a basic education, and may not be tested for HIV on admission, and refused admission to a public (and probably also private) school on the basis of their HIV status. Children and youth orphaned by HIV/AIDS may not be excluded from a Government school on the grounds that they are unable to afford school fees.

The Schools Act does, however, contain provisions relating to the exclusion of learners from schools when it is in ‘the best interests’ of the learner. The Schools Act provides that if it’s in the best interests of the learner, a learner may be excluded from compulsory school attendance. Learners may also receive education at home, if this is in their best interests’. This means that if children and youth infected and affected by HIV/AIDS are unable, due to their circumstances, to attend school (for example, where they are so ill that school attendance may be detrimental to their health), they may be excluded.

### 4. RIGHT TO PRIVACY

All children and youth have a constitutional and common law right to privacy, which includes privacy with regard to their medical status. This means that children and youth infected and affected by HIV/AIDS are under no obligation to disclose their HIV status, or that of their family members, to a school.

Both our Constitution and our common law recognise that there are circumstances in which the right to privacy may be breached. Some possible situations where a breach would be justifiable include:

#### 4.1 Consent

Confidential information such as a child’s/youth’s HIV status may be disclosed with consent. In the case of children over the age of 14 years, the Child Care Act gives children the right to consent to medical treatment. This means that children and youth of 14 years or older also have the right to consent to disclosure of the medical information they receive. In the case of children below the age of 14 years, a parent or guardian may consent to disclosure.



#### **4.2 Legislation**

If legislation requires disclosure of confidential information, then this is another lawful instance where disclosure is justified. At present, there is no law in force requiring disclosure of a child's/youth's HIV status to a school.

The 1987 Regulations relating to Communicable Diseases and Notifiable Medical Conditions place AIDS on the list of scheduled communicable diseases. Very restrictive conditions apply to scheduled communicable diseases, including the provision that a parent is required to disclose to a school if a child is suffering from a scheduled communicable disease. However, it has been recognised that AIDS should not be on the list of scheduled communicable diseases (mainly since it is not a disease that is easily spread through casual contact), and these Regulations have never been enforced in relation to AIDS.

#### **4.3 Overriding Public Interest**

The right to privacy may be breached where there is an overriding public interest to do so. For example, an overriding public interest may be the health of the other learners at a school. However, in the case of HIV and AIDS, it is considered that since the disease is not easily transmissible, it is not necessary to disclose a child's or youth's HIV status in order to protect an overriding public interest.

### **5. RIGHT TO LIFE, BODILY INTEGRITY, HEALTHY ENVIRONMENT**

All children have the right to life, bodily integrity, and an environment that is not harmful to one's health or well being.

Schools must therefore ensure a safe and healthy environment for all children and youth, including children and youth infected with HIV, children and youth affected by HIV/AIDS, and children and youth who are not affected. This right obliges schools to take measures to deal with HIV and AIDS, to ensure the protection of the children and youth in their care.

### **6. RIGHT OF ACCESS TO INFORMATION**

Section 32 of the Constitution provides all people with the right of access to information that is required for the exercise or protection of any rights.

Learners therefore have a right to access to State information on HIV/AIDS, how they may protect themselves against the risk of HIV transmission, and how they may access health care services.



## 7. THE BEST INTERESTS OF THE CHILD

Both the United Nations Convention on the Rights of the Child (CRC) and the Constitution provide for the 'best interests of the child'. The Constitution says, in s28(2) that:

“A child’s best interests are of paramount importance in every matter concerning the child”.

Although the Constitution does not define the 'best interests of the child' standard, this means that all laws, policies and actions concerning the child have to take the child’s best interests as the primary consideration.

## 8. BALANCING RIGHTS

In developing the *National HIV/AIDS Policy for Learners and Educators*, the Department of Education took into account the balancing of various factors, including:

- The rights of all children and youth;
- The rights of children and youth infected and affected by HIV/AIDS (eg their right to a basic education, their right to be protected from unfair discrimination);
- The rights of 'uninfected' children and youth (eg the right to a safe environment);
- The prevalence of discrimination against children and youth on the basis of HIV status; and
- The nature of HIV and AIDS, the transmission of the disease and the prevention mechanisms available.

## 9. NATIONAL POLICY ON HIV/AIDS FOR LEARNERS AND EDUCATORS

The Department of Education’s National Policy on HIV/AIDS for Learners and Educators applies to all Government schools. It is based on the following key principles:

### 9.1 Non-discrimination and equality with regard to HIV/AIDS

The Policy prohibits unfair discrimination against a learner on the basis of HIV and AIDS, and requires that any special measures taken with regard to learners living with HIV/AIDS must be justifiable in the light of:

- Medical facts;
- Established legal rules;
- The best interests of the learner; and
- The best interests of other learners.





### **9.2 No mandatory HIV/AIDS testing**

According to the policy, HIV testing for admission to, or continued attendance at a school is prohibited, and no learner may be denied admission to a school on the basis of his or her HIV status.

### **9.3 Right to attend school**

The policy provides that all children and youth infected with HIV have a right to attend school, and that schools should make 'reasonable accommodation' for the needs of children and youth living with HIV. This includes:

- Making work available for children and youth to study at home when they become incapacitated through illness;
- Allowing for home education for children and youth who become too ill to attend school; and
- Relocating children and youth to special schools should the need arise.

### **9.4 Right to privacy with regard to HIV/AIDS related information**

No learner may be compelled to disclose his or her HIV status to a school. The policy does recognise that there are situations where it may be in a learner's best interest for a member of staff or school authority to have knowledge of a learner's HIV status. It therefore encourages schools to cultivate an 'enabling environment' in which a learner will feel confident that confidentiality and non-discrimination were ensured.

### **9.5 A safe environment**

The policy recognises that, although the risk of HIV transmission in the school setting is minimal, there are measures that can be taken to eliminate this risk. It therefore sets out detailed guidelines on the use of 'universal precautions' (such as dealing with blood spills and open wounds) in schools.

### **9.6 Information on HIV/AIDS**

Finally, the policy recommends that each and every school adopt life skills and HIV/AIDS education programmes, to:

- Provide information on HIV/AIDS and life skills;
- Teach basic first aid principles from an early age;
- Emphasise the role of drugs, sexual abuse, violence, and sexually transmitted diseases in the transmission of HIV;
- Encourage learners to access health care services;
- Teach learners about HIV/AIDS and discrimination;
- Cultivate an 'enabling environment'; and
- Provide information on prevention.

## **10. STRATEGIES TO ENFORCE A CHILD'S/YOUTH'S RIGHTS**

### **10.1 The Courts**

If an organisation believes that a child's or youth's rights have been violated, the organisation can approach the courts to assist in enforcing the child's/youth's rights. There are various options available:



#### Civil claim for damages:

An action which violates a child's/youth's civil rights (for example, such as disclosing a his or hers HIV status to his or her class) can be brought before our courts. The courts will order the person who violated the child's or youth's rights to pay an amount of money to compensate the damage suffered.

#### Criminal charge of assault:

Where a child's/youth's right to privacy is infringed (for example, where a child or youth has been forced to take an HIV test by the school nurse) a criminal charge of assault can be laid against the school.

#### Constitutional case:

An action can also be brought before the Constitutional Court, if the complaint violates the child's/youth's basic constitutional rights. The Constitutional Court can decide whether a law, policy or action by someone violates the Constitution, and declare such law, policy or action to be unconstitutional.

For example, if a pre-school denies a child or youth admission on the basis of his or her HIV status, this action can be declared unconstitutional.

Going to court to enforce your rights may be difficult for some organisations, as it is expensive, time consuming, and organisations may need the assistance of an organisation such as the AIDS Law Project which has specific experience and expertise in dealing with litigation around HIV/AIDS and human rights.

### 10.2 Other statutory bodies

Other statutory bodies have been set up by the Constitution to support constitutional democracy, and organisations can use these bodies to report cases of abuses of the rights of children and youth infected and affected by HIV/AIDS.

Relevant statutory bodies include:

- The South African Human Rights Commission;
- the Commission for Gender Equality; and
- The Public Protector.

For example, s182 of the Constitution establishes the Public Protector, and gives this body the power:

- a) To investigate any conduct in state affairs, or in the public administration in any sphere of Government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- b) To report on that conduct; and
- a) To take appropriate remedial action.

The South African Human Rights Commission, in terms of s184 of the Constitution, is tasked with promoting and monitoring respect for human rights, and has the power to investigate and take appropriate remedial action in cases of human rights abuses.





The Commission for Gender Equality, in terms of s187 of the Constitution, is tasked with promoting gender equality, and also has the power to monitor and investigate issues concerning gender equality.

So, for example, if a Government school develops an admission policy that requires all learners to take an HIV test on admission to the school, this would be an unconstitutional act. Organisations can call or write to the nearest office of either of the 3 statutory bodies mentioned above, detail their complaint, and can ask the body to investigate the matter.

### 10.3 The Department of Education

Section 33 of the Constitution gives every person the right to “just administrative action”. It says that every person has the right to receive treatment from Government Departments and officials that:

- Is lawful;
- Is reasonable;
- Follows fair procedures.

For example, if Government schools in the Eastern Cape developed a policy of refusing to allow children and youth infected with HIV to take part in school sports, this could be an example of unfair administrative action. Your organisation can take action by:

- Writing to the Government Department or body and asking for written reasons for the decision that was made;
- Using the Department’s or body’s own complaints procedure to make a complaint; and finally
- If there is no response, you can go directly to the Public Protector.

## 11. CONCLUSION: HIV/AIDS POLICIES FOR SCHOOLS

An extremely useful way that organisations can assist to support the rights of children and youth infected and affected by HIV/AIDS is to assist schools to develop their own HIV/AIDS policies, based on the *National Policy on HIV/AIDS for Learners and Educators*. A good way to start this is to:

- Provide information and education to learners, educators, school authorities and parents on HIV/AIDS and the rights of children and youth;
- Develop an HIV/AIDS Committee, made up of representatives of learners, educators, school authorities and parents;
- Draft a consultative HIV/AIDS policy based on the principles contained in the national HIV/AIDS policy for schools; and
- Popularise the HIV/AIDS policy amongst the school stakeholders.

In this way, you can assist to create a supportive and enabling environment in your neighbouring schools, and can avoid discrimination, stigmatisation and abuse of rights.

## RIGHT TO EQUALITY

Section 9 of the Constitution gives every person the right to equality, and to be protected from unfair discrimination

The Equality clause applies:

- Vertically between the State and the individual
- Horizontally between private individuals

So, neither a Government school nor a private school may unfairly discriminate against a child or youth on the basis of his or her HIV status.



## RIGHT TO A BASIC EDUCATION

Section 29 of the Constitution gives every person the right to a basic education.

The Schools Act confirms every child's right to a basic education. The governing body of a Government school may not have an admission test, and deny admission to a learner on the basis of such a test.

Private schools are not covered by the prohibition on admissions tests in the Schools Act. But they are still prohibited from unfair discrimination, in terms of the Constitution.

So, neither Government schools nor private schools may deny a child or youth access to education on the basis of his or her HIV status.

## **RIGHT TO PRIVACY**

Section 14 of the Constitution gives every person the right to privacy

The right to privacy can be limited in certain instances:

- By consent
- Legislation that requires disclosure of information
- Overriding Public Interest

This means that every child or youth has a right to privacy with regard to his or her HIV status, and may not be forced to disclose this information to a school.

## **RIGHT TO LIFE, BODILY INTEGRITY AND A HEALTHY ENVIRONMENT**

The Constitution gives every person the right to:

- Life
- Bodily integrity
- Healthy environment

This means that children and youth have a right to be protected from the risk of HIV transmission in the school environment.

## RIGHT OF ACCESS TO INFORMATION

Section 32 of the Constitution gives every person the right of access to information that is required for the exercise or protection of their rights

This means that children and youth have the right of access to information about HIV/AIDS, including:

- The incidence and prevalence of HIV and AIDS in the country;
- How HIV and AIDS is transmitted; and
- Skills and preventive measures that assist in protecting children and youth from becoming infected with HIV.



## THE BEST INTERESTS OF THE CHILD

Section 28 of the Constitution provides for the best interests of the child.

It says in s28(2):

“A child’s best interests are of paramount importance in every matter concerning the child”.

## **NATIONAL POLICY ON HIV/AIDS FOR LEARNERS AND EDUCATORS**

### Key Principles:

- Non-discrimination and equality
- No mandatory HIV/AIDS testing
- Right to attend school
- Right to privacy regarding HIV/AIDS information
- A safe environment
- Information on HIV/AIDS



## **ASSISTING SCHOOLS TO DEVELOP AN HIV/AIDS POLICY**

- Provide information
- Form a representative HIV/AIDS Committee
- Draft policy based on National policy
- Consult
- Finalise policy
- Popularise policy

## **OTHER STRATEGIES**

- The Courts
- Statutory bodies such as the Youth Commission and South African Human Rights Commission
- Department of Education



**1.  
RIGHT  
TO  
EQUALITY**

**2.**  
**RIGHT TO  
ACCESS TO  
A BASIC  
EDUCATION**



**3.**  
**RIGHT**  
**TO**  
**PRIVACY**

**4.**  
**RIGHTS TO LIFE,  
TO BODILY  
INTEGRITY AND  
TO A HEALTHY  
ENVIRONMENT**



**5.**  
**RIGHT OF**  
**ACCESS TO**  
**INFORMATION**



# MODULE 4



## THE WELFARE RIGHTS OF CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS

### THE AIM OF THE MODULE

This stand alone, 3½ - hour workshop looks at the rights of children and youth to certain welfare rights, in the context of HIV and AIDS. It is divided into 3 sections:

- **Section One:** Raising awareness around children's and youth's welfare rights;
- **Section Two:** Developing knowledge around the key welfare rights of children and youth; and
- **Section Three:** Strategies for supporting children's and youth's welfare rights.

This module is one of a series developed by Save the Children (UK) for use in South Africa. The other three modules focus on health, education and discrimination.

### OUTCOMES

**At the end of Module 4 participants will be able to:**

- Describe the key welfare issues raised by the impact of the HIV/AIDS epidemic on children and youth;
- Explain the welfare rights of children and youth; and
- Support children, youth and service providers in accessing their welfare rights.

An overall map or framework for how the workshop could be run follows. It briefly indicates the sections and the activities that would need to be conducted in each section as well as some idea of the amount of time that each require. This module map allows you to plan and decide ahead, depending on the needs of your participants and the amount of time that you have available with them. Depending on these factors, you could decide to run the whole 3 ½ - hour workshop, or just a combination of certain sections.

## MODULE MAP

SECTION	ACTIVITY	TIME ALLOCATION
<b>One</b>	Step One: Brainstorm key issues in groups	10 minutes
	Step Two: Plenary discussion of key welfare issues	15 minutes
	Step Three: Exercise on linking welfare issues to legal and human rights	10 minutes
	Step Four: Input and sum up	10 minutes
<b>Two</b>	Step One: Input	45 minutes
	Step Two: Exercise on law reform	25 minutes
	Step Three: Plenary discussion on law reform	25 minutes
<b>Three</b>	Step One: Exercise on legal remedies	30 minutes
	Step Two: Report back and summing up input	30 minutes
	Step Three: Brainstorm lessons learned in pairs and sum up with input	10 minutes



# SECTION ONE



## RAISING AWARENESS ON THE KEY WELFARE ISSUES FACING CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS

### PURPOSE

The purpose of this section is to assist participants to develop an understanding of the key welfare issues facing children and youth infected and affected by HIV/AIDS and what rights these issues affect.

### PREPARATIONS



In order to prepare for this section, you need to consult the trainer's notes for this section, in the Appendix.

### MATERIALS REQUIRED



- Flipchart
- Koki's
- Copies of worksheets 1 and 2 for half the number of participants
- OHT 1 and 2

### TIME NEEDED



Step One:	Brainstorm issues	10 minutes
Step Two:	Plenary discussion	15 minutes
Step Three:	Welfare issues: exercise	10 minutes
Step Four:	Input and sum up	10 minutes
	<b>Total time required:</b>	<b>45 minutes</b>

### PROCEDURE



#### Step One: (10 minutes)

Ask the participants to brainstorm the key welfare issues raised by HIV/AIDS with the person sitting next to them and jot down their thoughts on to worksheet 1.

#### Step Two: (15 minutes)

Ask participants to report back on their brainstorming and facilitate a general discussion on the key welfare issues facing children and youth infected and affected by HIV/AIDS. Use OHT 1 to sum up the discussion.

**Step Three:****(10 minutes)**

**Instructions to the group:** Ask the participants to work in pairs again. They must look at the welfare issues they have identified on Worksheet 1 and fill in what welfare rights children, youth and their caregivers have on the picture marked Worksheet 2. Write the rights across the picture e.g. the right to nutrition across the fields of crops. After each right note in brackets whether the right is a human right (HR) or a legal right (LR).

**Comment to trainer:** The basket is for any additional rights. Participants may also add images to the picture if they feel that they have some rights that are not depicted.

**Step Four:****(10 minutes)**

**Comment to trainer:** Get groups to report back on the rights they identified. Divide a sheet of flip chart paper in half. Write on the left hand side LEGAL RIGHTS and on the right hand side HUMAN RIGHTS. As the participants report back fill in all the human rights and legal rights that have been identified. Explain that we will give content to these rights in the next section.

Explain the difference between a human and a legal right.  
Use OHT 2.

**Trainer's Notes:**

- The picture shows fields of crops, this depicts the right to nutrition;
- A house, this depicts the right to shelter or housing;
- The family group shows the right to a family or alternative care;
- The clinic nurse shows the right to health care; and
- The pensioner reflects the right to social grants.
- A human right is a right that belong to people simply because they are human. They are often called “natural rights” as they are rights that each individual is entitled to by birth regardless of whether such rights are protected by law. They have also been described as being “universal moral rights” or “generally accepted principles of fairness and justice”. Examples of human rights are the right to life, the right to human dignity and the right to equality. Every person is equally entitled to human rights regardless of their sex, race, colour, language, nationality, age, class, religion or geographical locality.
- A legal right is a right which is found in our common law or in a statute. Not all legal systems recognise people’s human rights e.g. the right to life is a human right but many countries still have the death penalty which violates this right.



# Worksheet 1

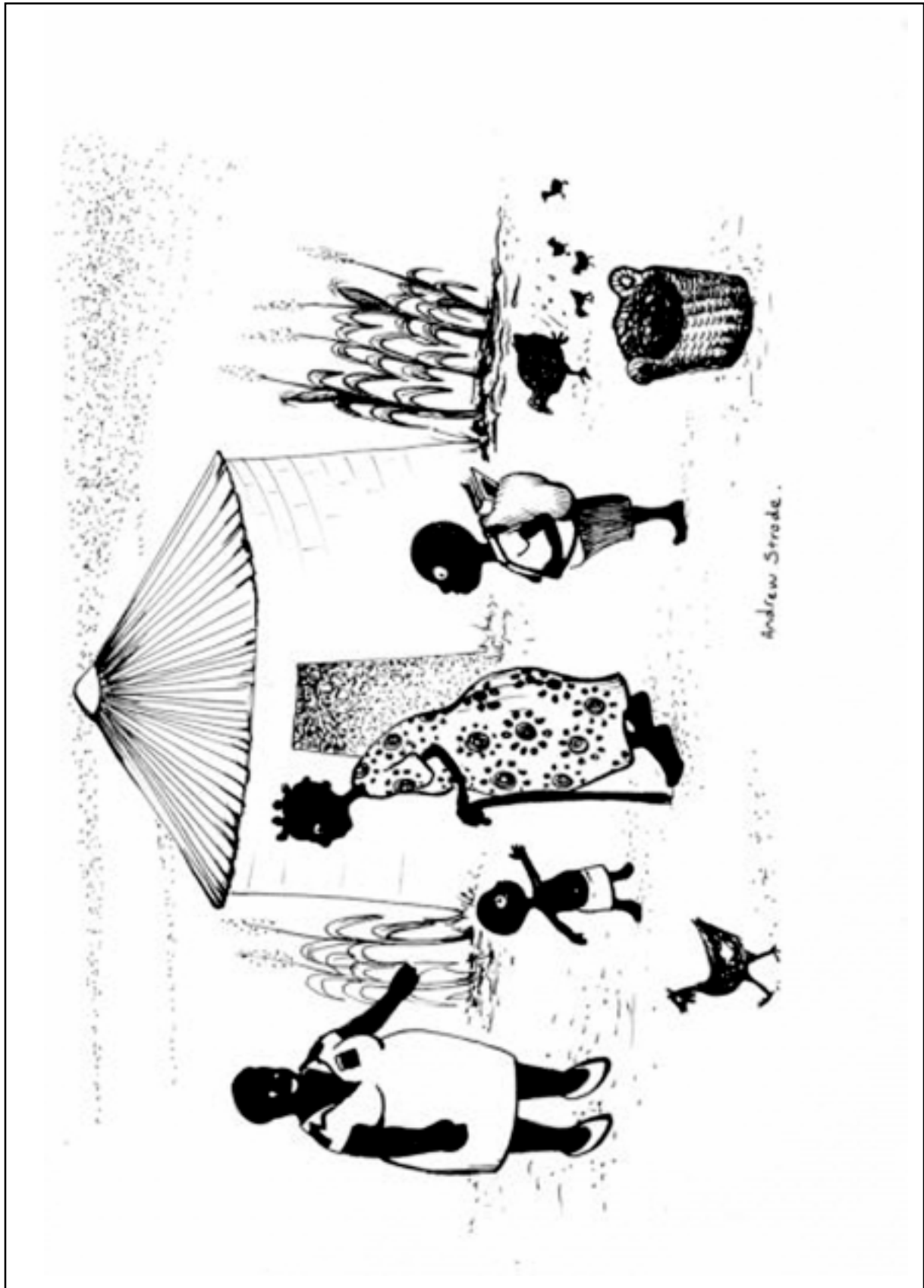


Brainstorm the key welfare issues raised by HIV/AIDS with the person sitting next to you and jot down your thoughts in the chart below.

KEY WELFARE ISSUES



# Worksheet 2



# SECTION TWO

## DEVELOPING AN UNDERSTANDING OF THE KEY WELFARE RIGHTS OF CHILDREN AND YOUTH



### PURPOSE

The purpose of this section is to assist participants to develop an understanding of the welfare rights of children and youth within international law, the Constitution, legislation and policies.

### PREPARATION

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In order to prepare for this section, you need to consult the trainers' notes in the Appendix.

### ADDITIONAL READING

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De Waal, Currie and Erasmus, (2000).  
*The Bill of Rights Handbook*, Juta.  
*The Women's Handbook*, (1999).  
Midlands Women's Group, Commission on Gender Equality and the Centre for Adult Education, ( 1999).  
*The Women's Handbook*.  
Barrett, McKerrow and Strode, (1999).  
*Consultative Paper on Children Infected and Affected by HIV/AIDS*.  
Skelton A, (1998). *Children and the Law*,  
Lawyers for Human Rights.

### MATERIALS REQUIRED

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- Flipchart paper and pens
- OHTs 3, 4, and 5
- Copies of Worksheet 3a and 3b for the groups

### TIME NEEDED

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Step One:	Input	45 minutes
Step Two:	Law reform exercise	25 minutes
Step Three:	Plenary discussion	25 minutes
	<b>Total time required:</b>	<b>90 minutes</b>



## PROCEDURE

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### Step One: (45 minutes)

Do an input that gives an overview of welfare rights as they affect children and youth. Follow this with a more detailed input on the rights of children and youth to family or alternative care and their rights to nutrition, shelter and health care services.

**Comment to trainer:** Use overheads 3, 4 and 5 to assist you with the presentation.

### Step Two: (25 minutes)

**Instructions to the group:** In 2 groups look at the problems with the current law regarding the models of alternative care, and grants and then draft a letter to the Chairperson of the National Assembly's Welfare Portfolio Committee asking them to consider your proposals. Elect a reporter who can read your letter to the group.  
Use Worksheet 3A or 3B to help you plan your letter.

### Step Three: (25 minutes)

**Comment to trainer:** Get groups to report back on their discussions. Use the notes below to help generate ideas around law reform.



#### Trainer's Notes:

##### ALTERNATIVE MODELS OF CARE

- **Current Law:** See Appendix.
- **Problems with current law include:** process for identifying children and youth in need of care is limited and does not include community members, thus many children needing care go unnoticed. This process is also very formal (it involves the Children's Court) and does not necessarily take into account a child's best interests.
- Placement options are currently limited to institutional care, adoption, fostering or parental care; the process for putting children and youth in alternative care is too cumbersome and legalistic and may not be culturally relevant.
- HIV testing occurs without consent and illegally in many instances. It is not clear whether HIV status should be disclosed to foster parents and whether HIV testing should take place during an adoption.
- **Possible law reform:** Extend the definition of 'authorised officer' within the Child Care Act to include community members, set out the structure and composition of Community Child Care Committees in law.



- Additional models of care should be created and the processes for obtaining guardianship of a child should be simplified.
- Develop national policy on HIV testing within the welfare sector.

### **SOCIAL GRANTS**

- **Current law:** See Appendix.
- **Problems with current law:** it is difficult to access grants especially as many children do not have birth certificates.
- The child support grant stops at 7 years of age.
- The care dependency grant is very difficult to obtain as the child must be 'severely' disabled.
- The payment of school fees is a real problem and many families cannot afford to buy school books and uniforms.
- Very few children are formally fostered so are unable to access the foster grant.
- **Possible law reforms:** extend the eligibility criteria for the care dependency grant.
- Investigate options regarding school fees, uniforms and books.
- Extend the child support grant beyond 7 years of age.
- Improve efficiency of payment system.

Sum up the discussion and use OHT 6 to encourage participants to get involved in the proposed law reform on this issue.

# Worksheet 3a



LAW REFORM TO PROTECT THE WELFARE NEEDS OF CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS

CURRENT LAW ON THE RIGHT TO FAMILY/ALTERNATIVE CARE

PROBLEMS/GAPS WITHIN THE CURRENT LAW

POSSIBLE LAW REFORM PROPOSALS





# SECTION THREE

## STRATEGIES FOR SUPPORTING THE RIGHTS OF CHILDREN AND YOUTH TO SOCIAL SECURITY AND SOCIAL ASSISTANCE



### PURPOSE

The purpose of this section is to assist participants to identify strategies for dealing with problems regarding accessing social welfare rights for children and youth infected and affected by HIV/AIDS.

### PREPARATIONS

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In order to prepare for this section, you need to consult the Appendix at the end of this Module.

### ADDITIONAL READING

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De Waal, Currie and Erasmus, (2000).  
*The Bill of Rights Handbook*, Juta.  
Barrett, McKerrow and Strode, (1999).  
*Consultative Paper on Children Infected and Affected  
by HIV/AIDS*.  
Skelton A, (1998). *Children and the Law*,  
Lawyers for Human Rights

### MATERIALS REQUIRED

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- Flipchart and pens
- Worksheet 4 and 5
- OHT 7

### TIME NEEDED

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Step One:	Legal remedies: exercise	30 minutes
Step Two:	Report back	30 minutes
Step Three:	Brainstorm lesson and sum up	10 minutes
	<b>Total time required:</b>	<b>70 minutes</b>



## PROCEDURE

### Step One:

(30 minutes)

**Instructions to the group:** In groups discuss all the problems in Worksheet 4. Each group must elect a rapporteur to undertake the report back.



### Trainer's Notes:

#### Answers:

- 1(a) right to family care or alternative care, to basic nutrition, shelter, health care services and social services.
- 1(b) The primary duty is on Thami's parents to support him. The only parent he has is his father so he could try and apply for maintenance from him if they could get his father's work address. Failing this a duty falls to the State to support Thami.
- 1(c) Use the Maintenance Court remedies and apply for a grant. If this fails the approach a human rights organisation.
- 2(a) Right to equality, rights in terms of the Social Assistance Act for a child care grant.
- 2(b) Approach a human rights organisation to make an application to the High Court to declare the official's actions unconstitutional, or approach the Department of Welfare to intervene and discipline the clerk.
- 2(c) The SA Human Rights Commission.
- 3(a) Siphon's mother can't claim a care dependency grant unless she stops work and if Siphon is found to be 'severely disabled'.
- 3(b) Report it to the Director of Welfare in her region, or to a human rights organisation or to the Public Protector.

### Step Two:

(30 minutes)

Get the groups to report back on their discussions. Facilitate a general discussion on legal and non-legal strategies to resolve welfare problems. Use OHT 7 to assist with the summing up of this discussion.



## Worksheet 4

1. Thami was orphaned by HIV two years ago. He is 15 years old and lives with his 'gogo' in Msinga. Two of his three brothers live with him and his sister in their family home. His elder brother (18 years) has gone to Durban to look for work. None of the children attend school and they survive on their grandmother's pension. He has not seen his father for more than 5 years. The last he heard his father was employed by a Shell garage in Pietermaritzburg as a cashier. The family do not get any money from any other family members. Thami does not know what he will do if his grandmother dies and they lose her pension. He is the second eldest in the family so will have to provide for their needs. There is no employment in the area.

1. (a) What welfare rights does Thami have in terms of the Constitution and other legislation?
1. (b) Who should be responsible for Thami and his siblings support? i.e. the father, grandmother, other family or the State? Motivate and suggest how such support could be obtained.
1. (c) What legal remedies exist to help Thami and his family?

2. Judy is the mother of an HIV positive 18 month old baby. She lives in an informal settlement outside of Alexandra, Johannesburg. Judy wants to apply for a child support grant for her but has been told that she does not qualify because of her baby's HIV status. The welfare clerk's words were "I am not doing all this paper work to get a grant for a child who will die before she gets her first payment"

2. (a) What are Judy's legal rights?
2. (b) Could Judy claim the child support grant if this was the 4th child she had applied for (assuming they were all her natural children)?
2. (c) What legal remedies exist to help Judy?
2. (d) What other institutions (besides courts) could assist Judy?

3. Siphon Ngwenya lives in the suburb of Rondebosch in Cape Town. His mother is a domestic worker for a family. Four-year-old Siphon is disabled due to AIDS and needs his mother's constant attention as a result she has asked her sister to come and stay with them to look after Siphon. When the family went to apply for a care dependency grant they were told that Siphon did not qualify but if they paid R 300.00 to the official his medical report could be reconsidered.

3. (a) Is Siphon's mother entitled to a care dependency grant?
3. (b) What should Siphon's mother have done regarding the official's request that she bribe him in order to get the grant?
3. (c) What other grants could Siphon's mother apply for?





# Worksheet 5

List 5 key lessons learned during the workshop.

## LESSONS LEARNED

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### Trainer's Notes:

- An example of a civil action is where a social worker discloses a child's/youth's HIV status to all her friends.
- An example of a criminal action is where a child's or youth's right to privacy is infringed by being forced to take an HIV test by a children's home before being admitted into its care then a criminal charge of assault can also be laid against the children's home.
- An example of a constitutional case is where a provincial Department of Welfare Office decides that it will only give child support grants to children who are HIV negative, then an application can be made to the Constitutional Court to declare this action to be unconstitutional on the basis that it violates the child's right to equality and to social services.
- An example of the type of complaint the Public Protector could investigate is one where a child or a child's parent is asked to pay an official in order to receive a grant.
- An example of the type of complaints the SAHRC could investigate are ones such as social workers who undermine the right of all children and youth to dignity by refusing to allow HIV positive children and youth to use the toilets, due to fear of contamination while they are waiting for assistance with applying for a grant.



# APPENDIX

## TRAINER'S NOTES ON THE WELFARE RIGHTS OF CHILDREN AND YOUTH

(can be used as a hand-out for participants)

### 1. INTRODUCTION

The HIV/AIDS epidemic poses special welfare challenges for our communities. As the epidemic develops so we will increasingly see children and youth:

- Being orphaned by AIDS and thus requiring care and support;
- Heading up households;
- Having to leave school to support their families;
- Nursing parents and other siblings; and
- Experiencing a general increase in poverty as families lose income when earners become sick or die, and they have to divert family resources towards funeral and medical expenses.

Welfare rights are essentially about ensuring a child's right to survival and development. They have two key aspects to them:

- Rights to have family, parental care or alternative care; and
- Rights of basic nutrition, shelter and health care services.

The primary duty to care for a child or youth (i.e. provide them with a family), to ensure they have access to appropriate nutrition, shelter and health care falls on the child's/youth's parents. It is only if the parent cannot meet these needs that the duty then moves to the State to provide such support. Therefore legally the state is only required to provide welfare services and assistance if the parents are not in a position to undertake this themselves.

The key welfare issues facing us appear to be:

- The high number of children and youth who will be orphaned by AIDS;
- The high number of children and youth who will be unable to attend school due to their care givers not having funds to pay for school fees or uniforms;
- Large numbers of children and youth requiring care at home due to HIV infection;
- Where to place children and youth requiring care and support outside of the family i.e. should they be placed in institutions, in foster care etc;
- Increased poverty due to the social and economic costs of HIV/AIDS;
- How to provide social services and support to households affected by HIV/AIDS including child headed households;



- Ensuring access to social grants to assist families cope with the social burdens of HIV; and
- Developing appropriate social grants to support children and youth and families in need.

These notes therefore look at:

1. What are the welfare rights of children and youth?
2. What rights do children and youth have to family, parental or alternative care?
3. What social grants and other forms of social assistance exist to support children and youth infected and affected by HIV/AIDS whose rights to nutrition, shelter and health care are being compromised?

## 2. WHAT ARE THE WELFARE RIGHTS OF CHILDREN AND YOUTH?

### *International Law Rights*

The Convention on the Rights of the Child (CRC) states in Article 27:

Art.27(1) “State parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”

Art.27(3) “State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes with regard to nutrition, clothing and housing.”

The CRC therefore recognises the right of every child to survival and development and places a duty on the State when the parents or care givers cannot adequately support or maintain the child.

### **The Constitution and National Law**

The Constitution provides children and youth with a number of welfare rights within the children’s rights clause in s 28. These rights are detailed in various other pieces of legislation.

#### **2.1 Right to family care**

Section 28(1)(b) states that every child has the right to “family care or parental care, or to appropriate alternative care when removed from the family environment.”

This provides that every child is entitled to grow up with the care and protection of a family and that when this is not possible alternative forms of care should be provided.

The Child Care Act, 74 of 1983 details the alternatives for children who cannot be brought up within their family. See below for more details.





## 2.2 Right to basic nutrition

Section 28(1)(c) of the Constitution says that:

“everyone has the right to basic nutrition”

The Government has initiated a limited number of school feeding schemes and poverty reduction programmes in furtherance of this duty.

## 2.3 Right to shelter

Section 28(1)(c) of the Constitution says that:

“everyone has the right to shelter”

This right is more specific than the general right of all persons to have access to housing in s 26 of the Constitution. In the most recent case on this issue *Government of the Republic of South Africa v Grootboom and Others* (CCT 11/00) the Constitutional Court held that socio-economic rights are justiciable (i.e. courts do have the power to make decisions of such issues) and that there was a duty on the State to fulfil certain core obligations regarding housing. This included taking reasonable legislative steps and progressive implementation steps towards fulfilling such policy or legislation.

This means where children and youth do not have shelter and the State is not assisting them an application may be made to a court to compel the State to provide access to shelter.

## 2.4 Right to basic health care services

This is dealt within the module on health rights.

## 2.5 Right to social services

Section 28(1)(c) of the Constitution says that every child has the right to “social services”.

This means that the State is under a duty to provide social services, in the form of programmes and grants, to children and youth when their parents cannot provide for their basic needs. Details of the grants available are set out in the Social Assistance Act, 59 of 1992. See below for more detail.

## 2.6 The best interests of the child

Both the United Nations Convention on the Rights of the Child (CRC) and the Constitution provide for the ‘best interests of the child’. The Constitution says, in s28(2) that:

“A child’s best interests are of paramount importance in every matter concerning the child”.

Although the Constitution does not define the ‘best interests of the child’ standard, this means that all laws, policies and actions concerning the child have to take the child’s best interests as the primary consideration.



### 3. THE RIGHT TO ALL CHILDREN AND YOUTH TO FAMILY, PARENTAL OR ALTERNATIVE CARE

The family is obviously the ideal place for a child to grow up; however some children will need alternative care as their family life is abusive, neglectful or harmful to their health. Furthermore many children and youth will lose key family members due to HIV and AIDS and will thus have to be placed in alternative care. The Child Care Act No.74 of 1983, and the Child Care Amendment Act No. 96 of 1996 set out a process whereby children in need of care and protection are identified. This includes short-term emergency care, temporary care and permanent care. They outline the following processes and persons for finding children in need of care:

- a) A child may be identified as being in need of short-term emergency care (place of safety) by:
  - (i) A court of law during proceedings;
  - (ii) A commissioner of child welfare on information on oath given by any person;
  - (iii) A policeman, social worker or authorised officer.
- b) A child who has been removed to a place of safety may be brought before the Children's Court, in order to determine whether that child is in need of care, by a policeman, social worker or authorised officer.
- c) A child whom the Children's Court assistant believes to be a child in need of care may be brought before the Children's Court by a policeman, social worker or authorised officer.
- d) A Children's Court enquiry makes a final determination regarding whether a child is in need of care.

In other words the primary responsibility is placed on police officers, social workers and authorised officers to identify children in need. Very little responsibility is given to community members to assist in this regard.

The Child Care Act No 74 of 1983 also sets out the placement options for children determined to be in need of care and protection. The options available to children in need of care are the following:

- a) The Children's Court enquiry may return the child to a parent or guardian, subject to supervision by a social worker and any other conditions imposed by the court;
- b) The Court may order that the child be placed in foster care;
- c) The Court may order that the child be placed in residential care, such as a children's home; and
- d) The Child may be adopted.

Currently the options for children needing care and support are very limited. The South African Law Commission (SALC) is however considering a number of other alternatives in its draft Children's Statute, which will be published, in the form of a Final Report in August 2001. See [www.law.wits.ac.za/salc/salc.html](http://www.law.wits.ac.za/salc/salc.html) and the work of the Project Committee on the Review of the Child Care Act for more details.



## 4. THE RIGHT TO NUTRITION, SHELTER, HEALTH CARE AND SOCIAL SERVICES

As stated above the duty to provide a child with health care, shelter, nutrition, education etc lies with the parents; however when they are unable to fulfil this responsibility a duty is placed on the State to intervene. In this regard our Government had developed three grants to assist the families of children and youth with providing for their basic needs.

### 4.1 Child Support Grant

This is a grant provided to the caregivers of children under the age of 7. In other words it is paid to the person who is looking after the child regardless of whether they are a grandmother or an aunt or a non-blood relative. It is currently worth R 110.00 per month. There is no limit on the number of biological children a person can apply for but you may only apply for six grants if the children are not your own.

The grant is only paid if:

- The child is under the age of 7 years;
- The person looking after the child is alive (it stops if they die); and
- The child is being looked after by the person getting the grant.

To apply for the grant the applicant must be over 18 years, they must be a South African citizen living in the Republic and they must have a total monthly income of less than R 800.00 per month.<sup>1</sup> This person must take the following documents with them to their closest Department of Welfare Office:

- Their ID document (this must be a 13 digit bar coded ID);
- Birth certificate reflecting their 13 digit ID number;
- Proof of income (e.g. payslips etc);
- Marriage certificate, if applicable;
- Divorce order, if applicable; and
- If the applicant is not the child's parent then proof that they are the child's legal guardian and they have permission to look after the child (e.g. a letter setting this out). They must also show why the parent can't support the child.

The grant can be paid into a bank account or collected from a Welfare Office. It takes about 3 months to process an application for a child support grant and you do get back pay.

### 4.2 Foster Care Grant

This is a grant paid to the foster parents of a child. You only qualify for a foster grant if:

- You have officially fostered a child through the child welfare system i.e. you must have been appointed as the foster parent by a court;
- The child must be living with the foster parent;
- The home provided for the child must be suitable and they must have sufficient food, clothes and medical care; and
- The child must go to school if they are of school going age.



To apply for the foster grant, approach a social worker and get them to assist you with the fostering process. The grant can then be applied for at any Welfare Office. In order to apply you need:

- Your 13 digit bar coded ID;
- The child's 13 digit bar coded ID;
- Proof of income of the child;
- Proof that the child is going to school; and
- A copy of the court order stating that you are the foster parent.

There is no means test for this grant i.e. a person who is working can still qualify for a foster grant. It currently pays out R 350.00 a month. (July 2001) But a child's income is means tested and it must not be twice the annual amount of the grant.

#### **4.3 Care Dependency Grant**

This is a grant for a child who is between the ages of 1 and 18 years and who requires permanent home care because they have a severe mental or physical disability. It can be applied for by parents or foster parents.

To qualify:

- The applicant must be unemployed because they are staying at home to care for the child;
- The child must be in their care;
- It must be a suitable place for a child to stay and the child must have sufficient food, clothes and medical care;
- The child must take a test at 6 years old to see if they need to go to a special school.

To apply:

- Go to the District Pension's Office at the Department of Welfare
- Take with you:
  - ◆ Your 13 digit bar coded ID;
  - ◆ Proof of both parent's income;
  - ◆ Marriage certificate;
  - ◆ Husband's death certificate (if applicable);
  - ◆ Medical certificate showing the child is disabled;
  - ◆ Child's birth certificate or ID.
- You will get a special medical form to take to the District Surgeon who will certify that the child is disabled;
- If the child is found to be disabled and in need of full-time or special care by the District Surgeon go back to the Pension's Office where they will help you apply for the grant.

It takes about 3 months to be paid the R 510.00 a month grant.

The grant will be stopped when:

- The child reaches 18;
- The child dies; or
- If the child is placed in a Government institution.





#### **4.4 Social Relief**

The Department of Welfare also has a social relief fund for families who are desperately in need of immediate assistance, if they do not have any money or food. In such cases the family can approach social workers at the Department of Welfare and apply for food parcels. These can then be provided on a short term basis while the family wait for a grant to be paid etc. Money will be deducted from their grant (when it arrives) to cover the cost of these food parcels.

### **5. STRATEGIES TO ENFORCE A CHILD'S OR YOUTH'S RIGHTS**

#### **5.1 The Courts**

If an organisation believes that a child's/youth's rights have been violated, the organisation can approach the courts to assist in enforcing the child's/youth's rights. There are various options available:

##### **Civil claim for damages**

An action which violates a child's or youth's civil rights (for example, if a social worker discloses a child's or youth's HIV status to all her friends) an action can be brought before our courts. The courts will order the person who violated the child's or youth's rights to pay an amount of money to compensate the damage suffered.

##### **Criminal charge of assault**

Where a child's/youth's right to privacy is infringed (for example, where a child or youth has been forced to take an HIV test by a children's home before being admitted into its care) a criminal charge of assault can be laid against the children's home.

##### **Constitutional case**

An action can also be brought before the Constitutional Court, if the complaint violates the child's/youth's basic constitutional rights. The Constitutional Court can decide whether a law, policy or action by someone violates the Constitution, and declare such law, policy or action to be unconstitutional.

For example, if a provincial Department of Welfare Office decides that it will only give child support grants to children who are HIV negative, an application can be made to the Constitutional Court to declare this action to be unconstitutional on the basis that it violates the child's right to equality and to social services.

Going to court to enforce your rights may be difficult for some organisations, as it is expensive, time consuming, and organisations may need the assistance of an organisation such as the AIDS Law Project which has specific experience and expertise in dealing with litigation around HIV/AIDS and human rights.

#### **5.2 Other statutory bodies**

Other statutory bodies have been set up by the Constitution to support constitutional democracy, and organisations can use these bodies to report cases of abuses of the rights of children and youth infected and affected by HIV/AIDS.



Relevant statutory bodies include:

- The South African Human Rights Commission;
- The Commission for Gender Equality; and
- The Public Protector.

For example, s182 of the Constitution establishes the Public Protector, and gives this body the power:

- a) To investigate any conduct in State affairs, or in the public administration in any sphere of Government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- b) To report on that conduct; and
- a) To take appropriate remedial action”

This means that the Public Protector has the power to investigate complaints of corruption in Welfare Offices therefore if a child or a child’s parent is asked to pay an official in order to receive a grant this could be reported to the Public Protector.

The South African Human Rights Commission, in terms of s184 of the Constitution, is tasked with promoting and monitoring respect for human rights, and has the power to investigate and take appropriate remedial action in cases of human rights abuses.

This means the SAHRC could be asked to investigate complaints such as social workers who undermine the right of all children and youth to dignity by refusing to allow HIV positive children or youth to use their toilets while they are waiting for assistance with applying for a grant.

The Commission for Gender Equality, in terms of s187 of the Constitution, is tasked with promoting gender equality, and also has the power to monitor and investigate issues concerning gender equality.

### **5.3 The Department of Social Development (Welfare)**

Section 33 of the Constitution gives every person the right to “just administrative action”. It says that every person has the right to receive treatment from Government departments and officials that:

- Is lawful;
- Is reasonable;
- Follows fair procedures.

For example, if the Department of Social Development stops paying out a child support grant for no apparent reason then your organisation can take action by:

- Writing to the Government Department or body and asking for written reasons for the decision that was made;
- Using the Department’s or body’s own complaints procedure to make a complaint; and finally
- If there is no response, you can go directly to the Public Protector or go to an NGO and get assistance in taking the Minister of Welfare to court requesting that:
  - ◆ The grant be paid; or
  - ◆ Reasons be given for the non-payment of the grant.





#### 5.4 Professional bodies

Most professionals belong to a professional body that is responsible for setting standards of conduct for the professionals, monitoring their conduct, and investigating any complaints against members. So, if a social worker breaches a child's rights (for example, where a social worker infringes a child's right to privacy) a complaint can be laid with the professional body.

Your organisation can draft a letter to the relevant body, setting out the nature of the complaint and any documentation you have to support your complaint. The body will investigate the matter, and may call you to attend an enquiry to hear on the matter. Most professional bodies have wide disciplinary powers, including the power to suspend the professional from practising further.

## 6. CONCLUSION

Parents of children are in the first instance responsible for the maintenance of their children and are responsible for ensuring that they are adequately fed, clothed and educated. However as our communities are increasingly feeling the burden of HIV/AIDS many families will not be able to cope with such responsibilities and will have to rely on the social welfare system. There is therefore a duty on the State to ensure that our social welfare system is adequate and on children's and youth organisations to ensure that children and youth and their caregivers are aware of:

- Their welfare rights;
- How the law can protect children and youth by identifying those in need and placing them in alternative care; and
- What grants exist to assist support children, youth and families.

The welfare system is not however always going to be able to cope with all of those who need care and social workers and organisations must also attempt to explore other avenues to support such as eg children and youth applying for maintenance from father etc.

Finally, in order to ensure that children and youth are provided with support from the social welfare system they need to be in possession of certain documents. Every family should there be encouraged to:

- Apply for birth certificates for their children;
- Apply for ID documents for youth over the age of 16; and
- Draft wills setting out who the guardian of the children is to be if the parent or care-giver dies.

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<sup>1</sup> If they live in a rural area or do not live in a brick house then they must have a monthly income of less than R 1 100.00 per month.

## **KEY WELFARE ISSUES FACING CHILDREN AND YOUTH INFECTED AND AFFECTED BY HIV/AIDS**

- Orphans;
- Children heading up households;
- Children having to leave school to support their families;
- Children nursing parents and other siblings;
- increase in poverty;
- Children requiring medical care at home due to HIV infection;
- Placement of children needing care;
- Increased demand for social services and grants.



## **HUMAN RIGHTS & LEGAL RIGHTS**

### **HUMAN RIGHTS**

A human right is a right that belong to people simply because they are human.

They are often called “natural rights” as they are rights that each individual is entitled to by birth regardless of whether such rights are protected by law.

Every person is equally entitled to human rights regardless of their sex, race, colour, language, nationality, age, class, religion or geographical locality.

E.g the right to life, the right to human dignity and the right to equality.

### **LEGAL RIGHTS**

A legal right is a right established in our common law or in a statute.

Not all legal systems recognise people’s human rights.

E.g. the right to life is a human right but many countries still have the death penalty which violates this right.

## THE WELFARE RIGHTS OF CHILDREN AND YOUTH

### International Law Rights

#### Convention on the Rights of the Child (CRC) states:

Art.27(1) “State parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”

Art.27(3) “State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes with regard to nutrition, clothing and housing.”

### Constitution and National Law

#### Right to family care

Section 28(1)(b) every child has the right to “family care or parental care, or to appropriate alternative care when removed from the family environment.”

Child Care Act, 74 of 1983 details the alternative models of care.



## **THE WELFARE RIGHTS OF CHILDREN AND YOUTH**

### **Right to basic nutrition**

Section 28(1)(c) of the Constitution says that: “everyone has the right to basic nutrition”.

### **Right to shelter**

Section 28(1)(c) of the Constitution says that “every child has the right to shelter”.

Section 26(1) everyone has the right to have access to adequate housing.

### **Right to basic health care services**

#### **Section 28(1)(c)**

### **Right to social services**

Section 28(1)(c) every child has the right to “social services”.

Rights to grants are set out in the Social Assistance Act, 59 of 1992.

### **The best interests of the child**

CRC and the Constitution provide for the ‘best interests of the child’. The Constitution says, in s28(2) that:

“A child’s best interests are of paramount importance in every matter concerning the child”.

## **RIGHT TO PARENTAL, FAMILY OR ALTERNATIVE CARE - I**

### **Constitution**

Section 28(1)(b) every child has the right to “family care or parental care, or to appropriate alternative care when removed from the family environment.”

### **Child Care Act (1983) and Child Care Amendment Act (1996)**

- set out a process whereby children in need of care and protection are identified and whose responsibility it is to report such.

### **Types of care**

This includes:

- Short-term emergency care;
- Temporary care;
- and permanent care.



## RIGHT TO PARENTAL, FAMILY OR ALTERNATIVE CARE - II

### Who identifies children in need of care?

- a) A child may be identified as being in need of short-term emergency care (place of safety) by:
  - (i) A *court of law* during proceedings
  - (ii) A *commissioner of child welfare on information on oath given by any person*
  - (iii) A *policeman, social worker or authorised officer*
- b) A child who has been removed to a place of safety may be brought before the Children's Court, in order to determine whether that child is in need of care, by a *policeman, social worker or authorised officer*
- c) A child whom the Children's Court assistant believes to be a child in need of care may be brought before the Children's Court by a *policeman, social worker or authorised officer*
- d) A Children's Court enquiry makes a final determination regarding whether a child is in need of care

## RIGHT TO PARENTAL, FAMILY OR ALTERNATIVE CARE - III

### SUMMARY

Welfare rights have two key aspects:

- Rights to have family, parental care or alternative care; and
- Rights of basic nutrition, shelter and health care services.

The primary duty to care and provide for a child is on the PARENTS; only if they CANNOT provide does the duty fall on the STATE.



## **MODELS OF CARE FOR CHILDREN AND YOUTH IN NEED**

### **Child Care Act, 1983**

- a) The Children's Court enquiry may return the child to a parent or guardian, subject to supervision by a social worker and any other conditions imposed by the court;
- b) The Court may order that the child be placed in foster care;
- c) The Court may order that the child be placed in residential care, such as a children's home; and
- d) The child may be adopted.

## THE RIGHT TO STATE SUPPORT TO FULFIL THE RIGHT TO NUTRITION, SHELTER AND HEALTH CARE - I

### ***Child Support Grant***

- For the caregivers of children under the age of 7;
- No limit on grant for natural children;
- Only 6 grants if not your own children;
- R 110.00 per month.

### **The grant is only paid if:**

- The child is under the age of 7 years;
- The person looking after the child is alive (it stops if they die); and
- The child is being looked after by the person getting the grant.

### **To apply:**

- The applicant must be over 18 years;
- A South African citizen living in the Republic;
- A total monthly income of less than R 800.00 or R 1100.00 per month.



## **THE RIGHT TO STATE SUPPORT TO FULFIL THE RIGHT TO NUTRITION, SHELTER AND HEALTH CARE - II**

### **They must take with them to their Welfare Office**

- Their 13 digit bar coded ID document;
- Child's birth certificate reflecting their 13 digit ID number;
- Proof of income (e.g. payslips etc);
- Marriage certificate, if applicable;
- Divorce order, if applicable; and
- If the applicant is not the child's parent then proof that they are the child's legal guardian and they have permission to look after the child

### **The grant can be paid**

- Into a bank account;
- Collected from a Welfare Office.

It takes about 3 months to process an application for a child support grant and you do get back pay.

## THE RIGHT TO STATE SUPPORT TO FULFIL THE RIGHT TO NUTRITION, SHELTER AND HEALTH CARE - III

### ***Foster Care Grant***

Grant of R 350.00 per month paid to the foster parents of a child.

### **You qualify if:**

- You have officially fostered a child through the child welfare system i.e. you must have been appointed as the foster parent by a court;
- The child must be living with the foster parent;
- The home provided for the child must be suitable and they must have sufficient food, clothes and medical care; and
- The child must go to school if they are of school going age.

### **To apply:**

- Go to a social worker and get them to assist you with the fostering process
- Then apply for the grant at any Welfare Office
- You will need:
  - Your 13 digit bar coded ID;
  - The child's 13 digit bar coded ID;
  - Proof of income of the child;
  - Proof that the child is going to school; and
  - A copy of the court order stating that you are the foster parent.

There is no means test for parent i.e. a person who is working can still qualify but the child is means tested.



## THE RIGHT TO STATE SUPPORT TO FULFIL THE RIGHT TO NUTRITION, SHELTER AND HEALTH CARE - IV

### ***Care Dependency Grant***

Grant for a child who is between the ages of 1 and 18 years and who requires permanent home care because they have a severe mental or physical disability.

Parents and foster parents can apply for this grant.

### **To qualify:**

- The applicant must be unemployed because they are staying at home to care for the child.
- The child must be in their care
- It must be a suitable place for a child to stay and the child must have sufficient food, clothes and medical care
- The child must take a test at 6 years old to see if they need to go to a special school

### **To apply:**

- Go to the District Pension's Office at the Department of Welfare
- Take with you:
  - Your 13 digit bar coded ID;
  - Proof of both parent's income;
  - Marriage certificate;
  - Husbands death certificate (if applicable)
  - Medical certificate showing the child is disabled;
  - Child's birth certificate or ID.
- Take the medical form to the District Surgeon;
- Go back to the Pension's Office with the form and apply for the grant.

## THE RIGHT TO STATE SUPPORT TO FULFIL THE RIGHT TO NUTRITION, SHELTER AND HEALTH CARE - V

Processing takes about 3 months

Amount paid - R 510.00 a month

The grant will be stopped when:

- The child reaches 18;
- The child dies;
- If they are put into a Government institution.

### ***Social Relief***

The Department of Welfare also has a social relief fund for families who are desperately in need of immediate assistance if they do not have any money or food.

Money – deducted from grant.

### **To apply:**

- Approach social workers at the Department of Welfare and apply for food parcels;
- Only available for a short term.



**LAW REFORM ON THE RIGHT  
TO FAMILY OR ALTERNATIVE  
CARE**

**South African Law Commission Project Committee  
on the Review of the Child Care Act: Final Report  
(August 2001)**

[www.law.wits.ac.za/salc/salc.html](http://www.law.wits.ac.za/salc/salc.html)

**Welfare Portfolio Committee (National Assembly)**

**Forms of Participation**

- Written submissions
- Public hearings
- Presentations to the Committee
- Lobbying MPs
- Working with parliamentary lobbyists e.g. Black Sash, IDASA, NACOSA etc
- Letters to the press
- Media campaigns

## STRATEGIES TO ENFORCE A CHILD'S OR YOUTH'S RIGHTS - I

### The Courts

***Civil claim for damages:***

An action which violates a child's/youth's civil rights (for example, if a social worker discloses a child's HIV status to all her friends) an action can be brought before our courts.

***Criminal charge of assault:***

Where a child's or youth's right to privacy is infringed (for example, where a child or youth has been forced to take an HIV test by a children's home before being admitted into its care) a criminal charge of assault can also be laid against the children's home.

***Constitutional case:***

An action can also be brought before the Constitutional Court, if the complaint violates the child's/youth's basic constitutional rights. The Constitutional Court can decide whether a law, policy or action by someone violates the Constitution, and declare such law, policy or action to be unconstitutional.

## STRATEGIES TO ENFORCE A CHILD'S OR YOUTH'S RIGHTS - II

### Other statutory bodies

- South African Human Rights Commission;
- Commission for Gender Equality; and
- The Public Protector.

s182 of the Constitution establishes the Public Protector, and gives this body the power:

- a) To investigate any conduct in State affairs, or in the public administration in any sphere of Government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- b) To report on that conduct; and
- c) To take appropriate remedial action”

The South African Human Rights Commission, in terms of s184 of the Constitution, is tasked with promoting and monitoring respect for human rights, and has the power to investigate and take appropriate remedial action in cases of human rights abuses.

The Commission for Gender Equality, in terms of s187 of the Constitution, is tasked with promoting gender equality, and also has the power to monitor and investigate issues concerning gender equality.

## **STRATEGIES TO ENFORCE A CHILD'S OR YOUTH'S RIGHTS - III**

### **The Department of Social Development (Welfare)**

Section 33 of the Constitution gives every person the right to “just administrative action”. It says that every person has the right to receive treatment from Government Departments and officials that:

- Is lawful
- Is reasonable
- Follows fair procedures.

### **Professional bodies**

- Social workers



## **KEY LESSONS LEARNED**

1. There is a duty on all parents to assist with survival and development of their children.
2. If the parents cannot meet this obligation the State must assist.
3. Every child has the right to family, parental or alternative care. Current alternatives are:
  - Adoption
  - Fostering
  - Institutional care
4. Every child has rights to basic nutrition, shelter, health care and social services. Current State grants to fulfill this right are:
  - Child support grant
  - Foster care grant
  - Care dependency grant
  - Social relief
5. In all decisions affecting children and youth the best interest's principle must be applied
6. Several mechanisms exist to enforce rights including:
  - Courts
  - SAHRC/CGE/Public Protector
  - Department of Social Development
  - Professional bodies