



## Chapter 15

### HIV and Human Rights

*When South Africa's first democratic government came to power in 1994, a new constitution was written for the country and its people. This means that every person who lives in South Africa has rights, regardless of their race, age, religion or anything else. The Constitution is an important legal document that protects our rights. We are all equal before the law. There are also laws that protect HIV positive people from discrimination.*

#### **Key points:**

- 1. Every person in South Africa has rights.*
- 2. The Constitution is an important document that protects our rights.*
- 3. HIV-positive people are protected by the law.*



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### Tips for TLPPs

It is unlikely that you will use this chapter in a clinic or school. This chapter talks about the rights of people living with HIV and AIDS. This information is important to know because many people do not know their rights and are unfairly discriminated against. Knowing your rights will make sure that you are not unfairly treated. Use this chapter to answer people's questions about real life situations. You don't have to go through the whole chapter from beginning to end. You might choose some topics and skip others. The main topics are:

- Rights at work
- Medical schemes and the law
- Financial planning and the law
- Gender based violence and women's rights
- Children's rights
- Prisoner's rights
- Refugee rights

#### Time check:

If you are talking about Human Rights in a clinic or a school, you will probably do just one or two chapters of the DVD, which can take you about 20 minutes including showing the DVD.



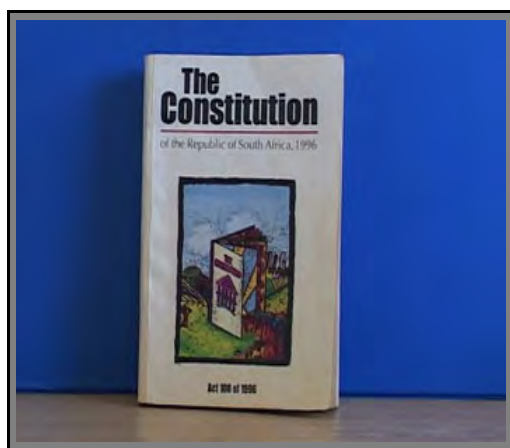
My name is Fatima Hassan. Welcome to the Siyayinqoba Beat It! Treatment Literacy Series on Human Rights. In this chapter we are going to talk about human rights and the rights of people living with HIV and AIDS. In South Africa we have a legal framework which protects our rights as workers, as consumers and as patients. These laws protect us from unfair discrimination.

## What is the Constitution and the Bill of Rights



### (Episode 21, Chapter 1)

The Constitution is built on the principle that in South Africa we live in a system of democracy and a system of non-racism and non-sexism. Everyone who lives in this country has equal protection of the law, equal access to the law and to our courts. It is important for people living with HIV and AIDS that the Constitution gives us the right to dignity and equality, and protection against unfair discrimination, whether by others, or by the government itself.



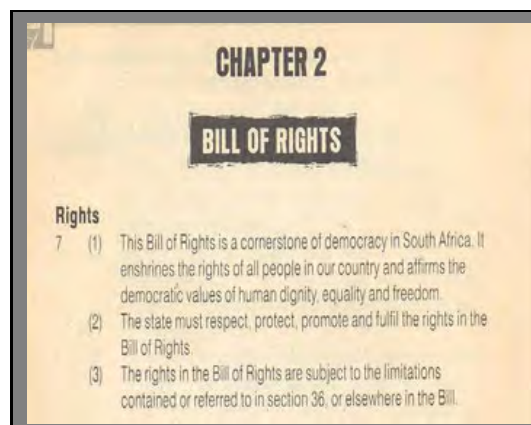
*Here is a booklet of the Constitution.*

The Bill of Rights is the heart of the constitution and it guarantees certain rights to people living in this country including asylum seekers and refugees. Our most fundamental or basic rights are defined in the Bill of Rights. The Constitution is the supreme or highest law of the land. The state must respect, protect, promote and uphold the Bill of Rights.

Our other Constitutional rights are:

- Right to privacy.
- Right to fair labour practices
- Right to education.
- Right to housing.
- Right to freedom from all forms of violence.
- Right to a healthy environment.
- Right to bodily and physical integrity which means that no one can perform a medical test or procedure on you without the appropriate informed consent.
- Right to health care and to emergency medical services.
- Right to food, water and social security.

Every person in this country has these rights. It does not matter what race or religion we are, or whether we are rich or poor, a man or a woman, a child or adult, gay or lesbian, HIV-negative or HIV-positive. We all have rights to protect us. For poor people, the constitution is probably one of the most important documents in this country because it provides a framework for how our government structures should work and how democracy must work to protect us.



*The Bill of Rights is at the heart of the Constitution.*



### Tips for TLPPs

If you are in a clinic, ask the group to tell you everything they know about human rights. Ask the group if they have heard of the Constitution or the Bill of Rights. Show the DVD and discuss the Bill of Rights (15 minutes).

If you are in a school, divide the group into smaller group of three to four people. Write down the Rights (as listed above) on small pieces of paper and give each group one or two Rights to discuss in their groups. After five minutes each group has to describe in their own words what they think their rights mean for them. For example, if someone is explaining the 'Right to freedom from all forms of violence', then they can say that this means that they must be safe from any kind of violence in their homes, at work and when they are out in public spaces etc (20 minutes).



### Discussion Points

In a group talk about the following questions and see if you can answer them.

**1. What is the highest law of the land?**

The Constitution is the supreme or highest law of the land.

**2. What does the Bill of Rights do for people living in South Africa?**

The Bill of Rights protects the rights of all people living in South Africa.

**3. What democratic values are the Constitution and the Bill of Rights based on?**

The Constitution and the Bill of rights are based on the democratic values of human dignity, equality and freedom.

## Rights for people living with HIV and AIDS

The Constitution protects the rights of all South Africans. In the last few years, some new laws have been passed that are specifically for the protection of people living with HIV and AIDS. These laws were necessary because of stigma and widespread discrimination against people living with HIV and AIDS. The most important rights that you should know about are:

1. No pre-employment or other form of employment related HIV testing unless the labour court gives specific permission.
2. No employer can unfairly discriminate against you at work because of your HIV status.
3. Children have the right to education and non-discrimination regardless of their HIV status.
4. You have the right to access medicines that prevent HIV transmission if you have been raped.
5. You have the right to proper treatment for HIV and AIDS, including ARVs.

We will now talk about these laws in more detail. We will also talk about how particular court cases have changed the law and made sure that it protects the rights of people living with HIV and AIDS.



## (Episode 21, Chapter 2)

### Rights at work

Your rights at work is a very interesting topic because we have a Constitution which says that 'everyone has the right to fair labour practices'. Then we have different laws that have been passed to ensure that your right to fair labour practices is actually protected. Besides the Constitution, there are eight other laws which shape your rights as HIV-positive people and workers. These are:

- The Employment Equity Act
- The Labour Relations Act
- The Occupational Health and Safety Act
- The Mine Health and Safety Act
- The Compensation for Occupational Injuries and Diseases Act
- The Basic Conditions of Employment Act
- The Medical Schemes Act
- The Promotion of Equality and Prevention of Unfair Discrimination Act



*Make sure you know your rights at work.*

#### Employment Equity Act

The Employment Equity Act prohibits pre-employment HIV testing without authorisation. So if you are a job applicant, or if you are a worker already in a particular factory or a bank and you want a promotion, you cannot be forced to take an HIV test. You cannot be asked to take an HIV test in order to get a job, be promoted or in order to get employee benefits.

The case of Hoffman versus South African Airways in the Constitutional Court was a very important case because it showed that unfair discrimination against people living with HIV and AIDS is unconstitutional.

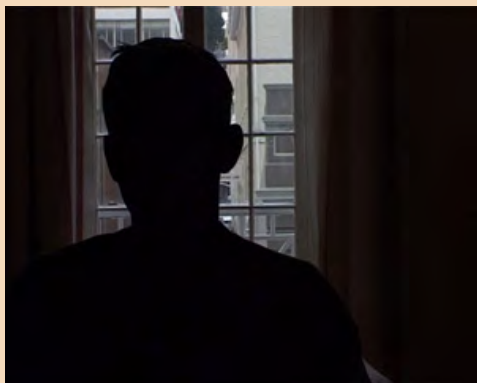
In this court case a man called Hoffman took South African Airways to court for refusing him a job as a cabin attendant because he was HIV-positive. SAA argued that the reason they could not employ HIV-positive cabin attendants was because all cabin attendants needed to get a yellow fever vaccination so that when they travel to countries with yellow fever they would be able to enter. SAA wrongly argued that all people living with HIV irrespective of their CD4 count cannot receive a yellow fever vaccination. This is incorrect as PLWHAs with a healthy CD4 count can be inoculated against yellow fever. The AIDS Law Project (ALP) challenged SAA's assumptions about medicine and science and got several experts together to show that based on the medical evidence available, a person whose CD4 count was healthy was able to receive a yellow fever vaccination. Many people did not know that before the case of Hoffmann v SAA.

Therefore, SAAs policy of excluding all people with HIV from the position of cabin attendant was actually unfair and discriminatory. The Constitutional Court said that the policy of South African Airways was unreasonable and that it was a violation of the constitution. The Constitutional Court also said that in order to be tested for HIV, a person had to give their informed consent.



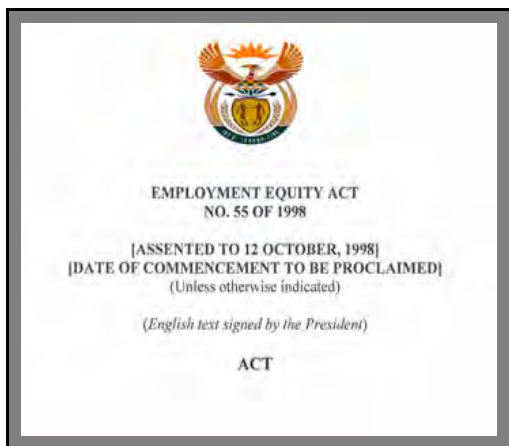
**Hoffman versus SAA was a landmark case that changed the law.**

**Personal Story**



*“ Mr Hoffman: It had been a dream of mine for many years to be a flight attendant for SAA. Only 8 out of 176 applicants made it through to the medical tests in Johannesburg. We were asked if we would sign a form and consent to an HIV test but we were given no pre- test counselling should we test positive or negative. We all signed the forms and were tested. We all passed the other tests but weren’t told our HIV test results. In those days it was the ELISA tests that took seven days. We had to go to SAA at Cape Town*

*International Airport to get our results. When I arrived I had to go to the training manager’s office where I meet a Doctor Peters. He asked me if I knew I was HIV positive and I told him no, I did not. This was the first time I was told my HIV test results. He then spent a maximum of five minutes with me and then told me there was no way I could have the job and could not allow me to continue and work for the SAA.”*



*Here we can see some of the documentation of the Employment Equity Act*

It was only after the decision in the Hoffman case that the Employment Equity Act came into effect. So as we have seen, this act protects your right not to be unfairly discriminated against on the basis of your HIV status. The Employment Equity Act ensures that all employees are treated equally and that there is no discrimination in the workplace.

The Employment Equity Act also protects your right not to be tested for HIV unless your employer has applied to the Labour Court for authorisation. A person who is HIV-positive does not have a duty to give this information to his or her employer because of their right to privacy. If you tell your employer

about your HIV status, the employer cannot tell anyone else without your consent. If the employer tells anyone else, this is breaking your privacy and right to confidentiality, and it is possibly an unfair labour practice. A doctor or health care worker who tells an employer about an employee's HIV status without their consent is acting against the law. This is breaking the employee's right to confidentiality.

### Discussion Points

In a group talk about the following questions and see if you can answer them.

**1. How does the Employment Equity Act protect the rights of people living with HIV?**

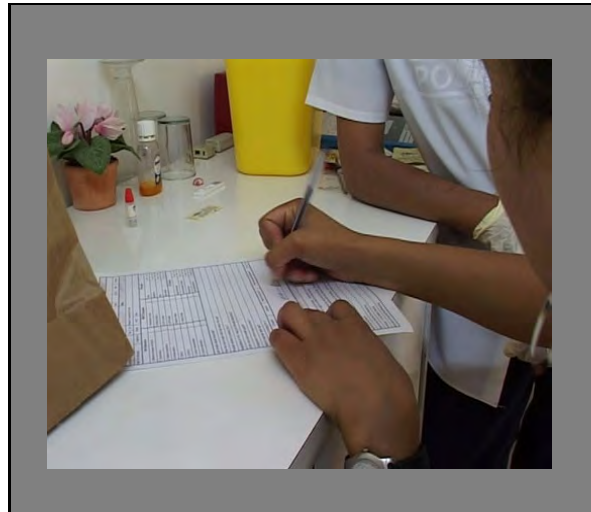
The Employment Equity Act prevents pre-employment HIV testing.

**2. Can an employer ask you to have an HIV test in order to promote or train you?**

No. No one can force me to have an HIV test so that I can get trained or promoted.

### Informed consent

Before somebody can provide you with medical treatment or care, they have to ask you for your permission. Your permission is not just about your signature on a page, which you may or may not be able to read or understand. Permission means that you have to give your informed consent. You have to be given information and you have to understand what you are being told in a language that you know. You should be able to ask questions. If you want to continue with the medical treatment then you can say yes. And if you don't want to have the medical treatment and you have made an informed decision you can say no. But no doctor, no nurse, no health care worker can simply come up to you and start giving you any kind of medical test, care or treatment without asking you for your informed consent first.



*Someone signing a consent form for VCT.*

When it comes to HIV and AIDS and informed consent it is important to know that only you can give permission to have someone disclose your HIV test results to your family, employer or insurance company. When you go for Voluntary Counselling and Testing, you have the right to respectful, non-judgmental and confidential counselling. If you are over 14 years of age, you do not need your parents consent to go for an HIV test.

### Discussion Points

In a group talk about the following questions and see if you can answer them.

#### 1. What is informed consent?

Informed consent is when you give permission for a medical treatment after it has been explained to you in a language you understand and after you have made a decision to say yes. You can say no after being given the information.

#### 2. Can a doctor or nurse give you medical care without asking you?

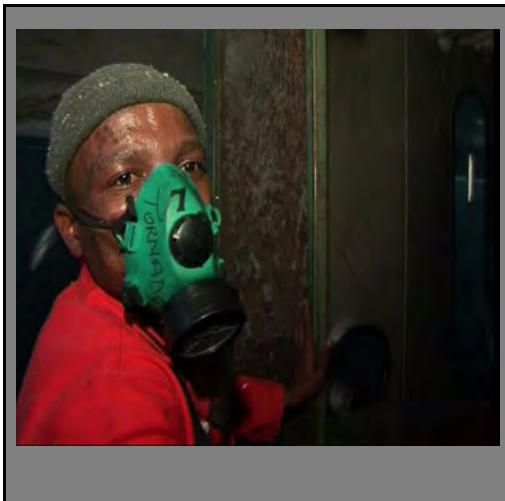
No medical worker can give you any medication, test or treatment without your informed consent.

### Tips for TLPPs

It is important that people understand what informed consent means. If you are in a clinic, show the DVD and then discuss informed consent as a group. Ask people questions to make sure that they have understood everything (15 minutes).

If you are in a school, break the group into small groups of three to four people and ask them to discuss times in their life when they have signed papers or forms without properly understanding them. Do they think some of those times they might have been giving their consent? Do they think it was informed consent? Ask each group to develop a short play where they act out a situation where someone has to give their informed consent. Make sure that each play explains and shows what informed consent is (30 minutes).

## The Labour Relations Act



*If the kind of work you do is not good for your health, you can ask for 'reasonable accommodation'.*

The Labour Relations Act makes sure that the working relationship between an employer and an employee is fair. There are specific ways of doing things so that both the employer and employee's rights are protected. For example, there are specific steps an employer has to take before they can dismiss someone.

There is also something called 'reasonable accommodation'. If you are HIV-positive and working and get sick, you can use your sick leave to take time to go to the clinic and to get better. You are allowed 6 weeks of paid sick leave over a 3-year period. If you finish your sick leave and still can't do your job properly because you get tired too quickly or have to go to the hospital/clinic often, then you can sit down with your employer and say that you need what is called 'reasonable accommodation'.

'Reasonable accommodation' means that the employer has to try and find you another job you can do in the company or organisation where you don't work such long hours or where the type of work is different so that your medical condition doesn't become worse. There is a duty in the Labour Relations Act on an employer to reasonably

accommodate a worker who can't do the job. It means that an employer cannot simply fire somebody because they are too sick or because they can't do the job that they were hired to do. There are certain steps to follow before an employer can dismiss somebody.



### Tips for TLPPs

If you are in a clinic or school, show everyone the DVD and the story of Derick Khati who works in a cotton wool factory. As a group discuss what happened when he got sick with TB. Do you think 'reasonable accommodation' could have helped Derick Khati if he had asked for it? Do you think 'reasonable accommodation' could have been a good solution to his health problems (20 minutes)?

### The Basic Conditions of Employment Act

The Basic Conditions of Employment Act gives people the right to certain basic standards of employment, including 6 weeks of paid sick leave over a 3-year period. All employees have a right to sick leave and an employer cannot ask if the cause of an illness is HIV infection.

An employer cannot dismiss you because you have HIV. We have already talked about reasonable accommodation and how an employer has to try and find a different job for you if you can no longer do the job you were hired to do. But if you are still unable to do your job, or if it is not possible for the employer to find you another job, your employer can dismiss you on grounds of incapacity, but not because of your HIV-positive status. You can still be dismissed even if you have not used all your sick leave. This means, if an employee is unable to do their job properly because of their illness then the employer will eventually be able to dismiss them. But there are very clear guidelines for employers to follow when they want to dismiss an employee for incapacity. For example, the employer must see whether the incapacity is going to be permanent and must also investigate alternative employment for the employee.



### Discussion Points

In a group talk about the following questions and see if you can answer them.

#### 1. How much sick leave are you allowed?

The Basic Conditions of Employment Act gives you the right to 6 weeks paid sick leave over a 3 year period.

#### 2. Can an employer dismiss you because you are HIV-positive?

No. An employer cannot dismiss someone because they are HIV-positive. But an employer can dismiss someone for 'incapacity' which means they cannot do their job because they are too sick. But before an employer can dismiss someone there are steps that they have to go through first, such as reasonable accommodation.

### The Occupational Health and Safety Act

The Occupational Health and Safety Act ensures your right to a safe working environment. The purpose of the Act is to make sure that the health and safety of people at work are looked after, especially in connection with the use of heavy machinery. The Act also protects people who are not at work, but might be put in a dangerous situation because of the activities of people at work.

For example, sometimes an accident at work can cause a bleeding injury. If the injured person is HIV positive and someone who tries to help him or her also has an open wound, there is a small chance of the helper becoming infected if his or her wound comes into contact with the injured person's blood. The employer has a responsibility to make sure that the workplace is safe and that employees are not at risk of HIV infection at work. An employer is obliged to ensure that the risk of work-related exposure to HIV is minimized as far as is possible. There are new regulations issued by the Department of Labour which say employers must keep rubber gloves in the first aid box and all staff must be trained so that they know what to do if an accident happens and how to protect themselves from possible HIV infection.

#### Discussion Points

In a group talk about the following questions and see if you can answer them.

##### **1. What does the Occupational Health and Safety Act do?**

The Occupational Health and Safety Act make sure that you work in a safe environment that does not endanger your health and well being. It also protects other people who may be endangered by helping someone injured in a work related accident.

##### **2. What must all employers do to make sure that people are protected from possible work related HIV-infection?**

All employers must have rubber safety gloves in the first aid box and they must train all staff so that they know how to protect themselves from HIV infection if an accident happens.

### The Mine Health and Safety Act

The Mine Health and Safety Act upholds the right to a safe working environment that does not risk the health of people working in mines. The mine also has to find any health hazards and risks and make sure that these are reduced or that the problem is fixed so that the hazard or risk is no longer there.

The mining community has a very high prevalence of lung diseases. The number of people with TB is very high partly because of the working conditions where miners are exposed to silica dust. High HIV prevalence among miners increases the chances of miners getting TB because their immune systems are weak and unable to fight infection. Small, humid and poorly aired working and living spaces also increase the chances of getting TB. This means

that the mines need to do more to improve the working and living conditions of miners in order to reduce their risk of getting TB and also HIV and AIDS.

The Mine Health and Safety Act also says the mine has to protect the health and safety of people who are not employed by the mine, but who might be directly affected by the activities at the mine. For example, this means that the mine has to make sure that miners do not return to their families and pass on diseases or illnesses that they may have got while working on the mines. But studies have shown that many miners return home to their families and communities and pass on TB. This means that the mining community has to take steps to protect the families and communities of the miners.

Many miners are migrant labourers who come from other parts of South Africa and also other countries like Lesotho and Swaziland. This means that there is an urgent need for cross-border management of TB to stop the spread of TB in mines to the communities where the miners come from. It is very important that there are better ways of preventing, diagnosing and treating TB and HIV for miners, ex-miners and their families.



*Miners are increased risk of getting TB because of their working and living conditions.*

### Discussion Points

In a group talk about the following questions and see if you can answer them.

#### 1. What is the Mine Health and Safety Act supposed to do?

The Mine Health and Safety Act is supposed to protect the health and safety of miners and their families.

#### 2. Why do many miners get TB?

Many miners get TB because of the working conditions where there is a lot of silica dust. The working and living conditions are small and there is not a lot of fresh air which means the TB germ is kept inside. Also many miners are also HIV-positive which means their immune systems are weak so they are more likely to develop TB.

### Tips for TLPPs

You can use the Discussion Points questions to get people to talk about the Mine Health and Safety Act. You can also ask the group to discuss and write down possible solutions to the health problems experienced by miners and their families. Talk about ways that HIV and TB can be prevented and also better treated in mining communities and the home communities of the miners (15 minutes).

If you are in a school, have the discussion and then as a group, write a letter to the government where you give suggestions on how to improve the health of miners and their families (20 minutes).

## The Compensation for Occupational Injuries and Diseases Act



*The Compensation for Occupational Injuries and Diseases Act provides compensation for death resulting from work related activities.*

The Compensation for Occupational Injuries and Diseases Act is outdated and we need to lobby so that changes can be made. The purpose of this Act is to provide compensation for disablement caused by occupational injuries or diseases that someone gets while they are working for a company or organisation. For example, if a nurse is exposed to infected blood or body fluids as a result of a workplace accident and is infected with HIV, he or she may apply for benefits. It also provides compensation for death resulting from work related activities.

## The Promotion of Equality and Prevention of Unfair Discrimination Act

We have already talked about a number of laws which we use to protect the rights of people living with HIV and AIDS. Some of these laws talk specifically about

HIV and AIDS, such as The Employment Equity Act. When a law does not include HIV and AIDS, we usually build a legal case by arguing that because all South Africans have the rights to equality, dignity and health care, we need to prevent unfair discrimination of people who are living with HIV and AIDS.

The Promotion of Equality and Prevention of Unfair Discrimination Act ensures that people who are living with HIV and AIDS are not unfairly discriminated against. The Act has created structures which are called Equality Courts. So when people feel they are being unfairly discriminated against just because of their HIV-positive status they can go to the Equality Court and seek help. For example, if a hairdresser refuses to cut your hair because of your HIV-positive status, you can challenge that refusal in the Equality Court.

## Medical schemes and the law



**(Episode 21, Chapter 3)**

### The Medical Schemes Act

This act stops medical schemes from discriminating against people based on their 'state of health'. This means that a medical scheme cannot refuse to cover people living with HIV and AIDS, heart conditions or any other illness. In the past medical schemes were like insurance and you could be excluded from a medical scheme if you had an existing illness. This has now changed and you cannot be excluded from a medical scheme if you are HIV-positive or have any other condition or illness, such as cancer or heart disease.



*If you apply for a medical aid, you will have to have a medical check-up.*

The Medical Schemes Act guarantees beneficiaries access to a minimum standard of care through a list of Prescribed Minimum Benefits (PMB's). The scheme must be registered with the Council for Medical Schemes so that you are able to enforce your rights. Unlike before, medical schemes have to provide minimum benefits for people living with HIV which include:

- Treatment of all opportunistic infections
- Access to PEP
- Access to PMTCT
- Access to VCT
- Access to ARVS
- Access to ongoing monitoring
- Your dependants will also be able to access the same benefits.
- You have the right to confidentiality of medical information.
- You have the right to complain if any of these rights are not respected or if the service is deficient in some other way.



*The Medical Schemes Act.*

So if you are HIV-positive and you would like to take out a medical scheme, such as medical aid, you can approach a company and ask about what they have to offer. You will have to have a comprehensive medical check-up and they will test you for all kinds of things, including HIV. If you know you are HIV-positive, you have to disclose your HIV-positive status to a medical scheme if you want to join them. If you do not disclose your status and they find out that you knew your status, you could be charged with fraud, which means that you lied to them.

A medical scheme cannot discriminate against you if you have HIV and AIDS, but they do need to know your status. If you had cancer, heart disease or epilepsy, they would need to know you had these illnesses and conditions. They may give you a waiting period which means that for six months or a year you cannot make claims, but after that you can. The longest waiting period a medical scheme can give you is a year. Like any other person on a medical scheme, you have benefits and a limit to how much you can use. You must be aware that you can use up all your benefits before the end of the year. If you want to join a medical scheme it is best that you discuss all of this with a consultant and you can also seek legal advice from a number of organisations and groups.

### Discussion Points

In a group talk about the following questions and see if you can answer them.

#### **1. What do the Medical Schemes Act do for people living with HIV and AIDS?**

The Medical Schemes Act stops medical schemes from discriminating against people based on their HIV status.

#### **2. Can a medical scheme refuse to cover people living with HIV and AIDS?**

No, but a medical scheme can give you a waiting period for a maximum of a year before you can start making claims.

### Financial planning and the law

In this section we will talk about financial planning and the laws that protect people living with HIV and AIDS from unfair discrimination. Many people in South Africa take out funeral plans and life insurance. It is important to know more about how these work, before you sign up for them. There are two types of insurance products - long term insurance such as life insurance and short term insurance products such as funeral policies.

When taking out a policy make sure you read the conditions about pre-existing illnesses such as HIV and AIDS, otherwise the insurance company may refuse to pay out when a claim is submitted. They will argue that because you did not disclose your HIV status they will not pay out based on 'an AIDS exclusion clause.' Many short term insurance products, such as funeral policies, still have AIDS exclusion clauses.

When it comes to long term policies, such as life insurance, it is a little bit different. After much lobbying and pressure from AIDS activists, the insurance industry finally agreed that older long term policies taken out in the 1980's up until 2007 will not have the AIDS exclusion clause. This means that if you took out a policy before 2007 and you were HIV-negative at the time, but even if you are now HIV-positive, when you die the insurance company will now pay out.

Today if you are living with HIV there are probably only four or five different insurance companies that will offer you life cover, but at a very high premium. If you are HIV-negative, you will get life cover and if at the time you die, you are HIV-positive the company will still pay out. This is a partial victory for the rights of people living with HIV, but there is still a lot of work to be done to make sure that people who are HIV-positive are able to get affordable life cover in the next few years.

#### Discussion Points

In a group talk about the following questions and see if you can answer them.

##### **1. When taking out a funeral policy, what must you check?**

You must ask if there is an 'AIDS exclusion clause'. This means that if you are HIV-positive and you die of an AIDS related illness, the policy will not pay out.

##### **2. If you have a life insurance policy that you took out before 2007 what does this mean?**

If you have a life insurance policy taken out before 2007, it means that it will not have an 'AIDS exclusion clause'.

### Women's Rights



(Episode 21, Chapter 4)

#### Gender based violence and the law

In this section we will look at laws that protect the rights of women and protect them from rape and other kinds of gender based violence. Some of this is also covered in the chapter on 'Women and HIV' but it's important to talk about some of this information again and this time to look at how the law works to protect women.

### Domestic Violence Act

The Domestic Violence Act includes all kinds of physical, economic and emotional abuse. There are four things you can do if you are being abused.

1. Ask the police to come to the scene of violence. When they arrive it is their job to ensure that you will be safe and that they make the necessary arrests.

2. Lay a charge of assault against the person who is abusing you. You will be asked to give a statement to the police and maybe give evidence in a court of law.

3. Get a protection order. This is an order from the court to stop the person from abusing you. It can order them to stay away from you. You get a protection order from a Magistrate's Court or High Court. This court must be close to where you live, or where the abuser lives or works. You can get a protection order from a Magistrate's Court at any time of day or night. After getting a protection order, the police must arrest an abuser who has disobeyed a protection order, without needing a warrant of arrest.

In rural areas where courts are far away, it will be possible for a Justice of the Peace (Commissioner of Oaths), such as a priest or police officer, to issue a temporary protection order until the matter gets to court.

4. If you live with the person who is abusing you, you can ask for an eviction order which means that they can no longer live there with you. You can get the person who is abusing you evicted, even if you are not the owner of the house or the house is not rented in your name.

Also remember that if your husband or wife is abusing you, you can divorce him/her. Abuse is grounds for divorce.



*Here we can see TAC activists lobbying for women's rights.*

### Discussion Points

In a group talk about the following questions and see if you can answer them.

**1. Name the three different kinds of violence that the Domestic Violence Act protects people against.**

The Domestic Violence Act protects you from physical, economic and emotional abuse.

**2. Name the four things you can do if you are being abused.**

Call the police to come and make an arrest. Lay a charge of assault against the person who is abusing you.

Get a protection order to stop the person from abusing you. Get an eviction order to remove the person from the house if you live together.

**3. Can you divorce your husband or wife if he/she is abusing you?**

Yes. Abuse is grounds for divorce.



### Tips for TLPPs

If you are in a clinic, show the DVD and then discuss the Domestic Violence Act. (15 minutes)

If you are in a school, divide the group into smaller groups of three to four people. Ask each group to discuss the Domestic Violence Act. You might also want each group to make a song that tells people what to do if they are being abused. Each group can then perform their song (15 minutes).

### Sexual Offences Act

According to the new Sexual Offences Act, rape is the forced penetration of the vagina, anus or mouth, irrespective of the gender of either the victim or the perpetrator. This definition includes marital rape and the sexual violation of men and boys.

Each person has the right to own, control and protect their body and to make decisions about their reproductive health. You have the right to be treated with respect and dignity at all times by doctors, nurses, police officers, prosecutors and social workers who help you if you have been raped. You have the right to be given full and accurate information about your health. Health workers must give you medicines that could prevent the risk of you contracting HIV, an STI or falling pregnant. For example, the morning after pill, PEP and antibiotics. Information about your health is confidential. No health care worker can tell others about your HIV status without your permission.



*If you have been raped you have the right to health care and legal action.*

If you have been raped, the state has to help you and provide you with the necessary medical treatment including anti-retroviral medicines that could reduce the risk of getting HIV. These medicines are called "post-exposure prophylaxis" or PEP. You must start taking the medicine as soon as possible. If more than 72 hours (3 days) have passed since you were raped, you should speak to a doctor about your options.

PEP and what to do if you have been raped is discussed in detail in the chapter on 'Women and HIV'. Here we have focused on the legal side and the laws that are there to protect you if you have been raped. Your rights are:

- Right to full and accurate information about what to do after being raped.
- Right to dignity.
- Right to medical treatment, including ARVs, the morning after pill to prevent pregnancy and other medication to prevent other infections and STIs.
- Right to privacy. No health care worker can tell others about your HIV status without your permission.
- Right to make decisions about your reproductive health.

### **Choice on Termination of Pregnancy Act**

The Choice on Termination of Pregnancy Act gives women the right to have safe and legal terminations, which are most often called abortions. Forced abortion or sterilization is not allowed. A woman cannot be forced to have an abortion because she is HIV-positive. Girls younger than 18 years old can give informed consent to have a termination without the knowledge or consent of their parents.

There are some important things that women should know about when they can terminate a pregnancy. Some service providers may try to discourage you from terminating a pregnancy because of cultural or religious reasons. No health care worker has the right to refuse to refer you to termination of pregnancy services. Here is a guide about how the length of the pregnancy can impact on the right to have an abortion.

#### **12 weeks**

If a woman has been pregnant for less than or up to 3 months (12 weeks) she does not have to give a reason for wanting the termination. She can make this decision without a medical practitioner.

#### **13-20 weeks**

A pregnancy can be terminated from 13th up to the 20th week if a medical doctor, after consultation with the pregnant women, thinks that the continued pregnancy would significantly affect the social and economic circumstances of the woman.

#### **After 20th week**

A woman can only have a termination after the 20th week of her pregnancy if a doctor, after discussing it with another doctor or a registered midwife, believes that the pregnancy could be dangerous for the woman or could result in a deformed baby.

### **Prevention of Mother to Child Transmission (PMTCT)**

When talking about PMTCT, it is important to know how the law was used to fight for access to antiretroviral treatment that prevents the transmission of HIV from mother to child during pregnancy, birth and breast feeding. As many of you may know, in 2001 the TAC won a court case that forced the South African government to provide Nevirapine to pregnant women and their

new-born babies to reduce the risk of mother-to-child transmission. But today there is still a lot of work to be done to improve the PMTCT program in South Africa. We have learnt that dual therapy (Nevirapine and AZT) is much better than Nevirapine on its own. We need to continue to lobby for change and to ensure that all provinces provide dual therapy to pregnant mothers who are HIV-positive.



*The TAC was successful in lobbying for access to Nevirapine to help prevent the transmission of HIV from mother to child.*

The successful Nevirapine court case set a precedent and gave the TAC and other groups the confidence to campaign for universal access to antiretroviral treatment. An argument developed that it was unfair to prevent the transmission of HIV to babies if the mothers were then denied access to treatment. What this would mean is that while the babies were HIV-negative and promised a life, they would be left without a mother and caregiver if their mothers were not given ARVs. This was one of the arguments that fuelled the case for the universal provision of ARVs in the public health care sector.

The details of how PMTCT works and how to access it are discussed in the chapter on 'Women and HIV'. In this section we have only focused on the how the law was used to fight for access to PMTCT in South Africa.

## Children's Rights



### (Episode 21, Chapter 5)

In this section we will talk about the rights of children and in particular we will see how the law protects the rights of children living with HIV. In Section 28 of the Bill of Rights, the rights of children are specially protected.

Children have the right to proper care and security, basic nutrition, shelter, basic health care and social services. They cannot be exploited in the work place or be allowed to do dangerous or unhealthy work.

They have the right to be protected from neglect, abuse and degradation. Section 27 of the Bill of Rights says that you have the right to health care, food, water and social security. People who are unable to support themselves have the right to social security.

All people have the right to health care, including reproductive health care. Nobody can be refused emergency medical treatment. Apart from the Constitution and the Bill of Rights, another important part of law that protects children is the Child Care Act.



*Section 28 of the Bill of Rights protects the rights of Children.*

### Child Care Act

The Child Care Act took a long time to be made. It is a very important act because it provides children with protection from exploitation and abuse. The Act defines a child as a person under the age of 18 years.

**However, the Child Care Act distinguishes two ages:**

- 14 years of age for medical treatment consent
- 18 years as the age of majority, which means you can make decisions without the consent of a parent or guardian.

Children also have a right of access to health care. Children who are 14 or older can consent to medical treatment on their own, including having an HIV test. Young people under the age of 18 need the consent of their parents or guardian for an operation. If the child is younger than 14, the child cannot consent to an HIV test without the consent of the parent or guardian. The test results must be given to the parents or guardian.

If a child consents to an HIV test, they have same rights to confidentiality as an adult. So, they have the right to keep their HIV test results private. Nobody can disclose the HIV status of someone who is 14 or older without the consent of that person. This means that health care workers cannot disclose the child's status to anyone without consent, including parents and guardians. Since children can consent to medical treatment if they are 14 or above, this makes it easier for them to access ARVs and other medical assistance related to HIV and AIDS.

Children have a right to live with their family, if it is in their best interests. If not, the government has a duty to give them alternative care. Currently children's rights to alternative care (e.g. fostering, adoption and institutional care) are set out in the Child Care Act. Children have a right to a standard of living adequate for their physical, mental, spiritual, moral and social development. All children have the right to be protected from various forms of abuse - physical, emotional, sexual.

### Discussion Points

In a group talk about the following questions and see if you can answer them.

#### **1 What do children have the right to?**

Children have the right to proper care and security, basic nutrition, shelter, basic health care and social services. They cannot be exploited in the work place or be allowed to do dangerous or unhealthy work. They have the right to be protected from neglect, abuse and degradation.

#### **2. How old does a child have to be in order to consent to an HIV test without their parent or guardian?**

If a child is 14 or older they can consent to having an HIV test without permission from parent or guardian.

#### **3. If it is not safe for a child to live with their family, what other options are there?**

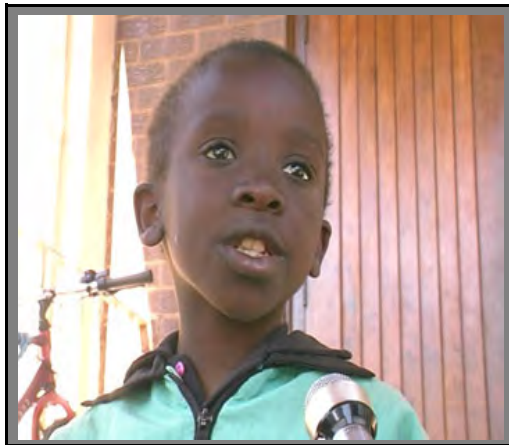
If it is not good for a child to live with their families, fostering, adoption and institutional care are other ways that they can be cared for.

#### **4. If you think you know of a child who is being abused, who can you contact?**

Social Services and Child Welfare both work help children who are being abused.

### Right to education

Parents do not have to tell the school authorities if their child is HIV-positive, even if the school asks them to fill this in on the application form. Schools are also not allowed to test learners for HIV before they are admitted to the school or while they are at school. A learner cannot be tested for HIV without his or her consent if he or she is older than 14 years and the parents or guardian's consent if younger than 14 years.



*Nkosi Johnson won the right to go to school and set a precedent for other children living with HIV.*

You might know about Nkosi Johnson. Nkosi Johnson was a brave young boy who wanted to go to school, but he was not allowed to go to school because he was HIV-positive. At that time there was no policy about HIV-positive children and their right to education. Because of lobbying by AIDS activists and the hard work of people like his mother and others who supported him, Nkosi Johnson won the right to attend school and so now there is policy in place that says that no child can be denied access to school because he or she is HIV-positive, or because he or she has an HIV-positive parent. There is no risk to other children, their parents or the teachers at a school if a child is HIV-positive.

With crèches it is a little bit different. Most crèches have a minimum age requirement before they will look after a child who is HIV-positive because of the increased demands of looking after a young child who is HIV-positive and because of the risk of a child biting other children.



#### Tips for TLPPs

If you are in a clinic, show the DVD and then discuss Children's Rights.

If you are in a school, divide the group into smaller groups of three to four people. Give each group a piece of flip chart paper or another big piece of paper and ask them to make a poster on Child Rights. They can choose to talk about all the rights or if they want to they can focus on just one or two. Encourage people to draw, use different colours and different kinds of writing to make the poster as exciting as possible. When they are finished, hang all the posters up so everyone can see them (20 minutes).



### Prisoner's Rights

**(Episode 21, Chapter 6)**

According to the Constitution, prisoners have rights. The Correctional Services Act regulates what happens inside prisons. The Department of Correctional Services has a duty to provide all prisoners with adequate medical care. The primary health care made available to prisoners must be the same as the care provided outside of prison. In 2003 the South African government made a policy that said ARVs would be made available to prisoners. But in 2005, HIV-positive prisoners

in Westville Correctional Centre in KwaZulu-Natal brought to the public attention that they did not have access to HIV and AIDS treatment. Many prisoners had untreated opportunistic infections such as TB and thrush.



*Photograph of the Supreme Court.*

In early 2006, fifteen prisoners and TAC represented by the AIDS Law Project took government, including the Departments of Health and Correctional Services, to court. In the Westville prison's case, the first time the AIDS Law Project went to court they said they wanted the government to provide ARV's to all their clients who were the prisoners, as well as similarly situated prisoners, and the court agreed with them. The judgement was a comprehensive victory for the rights of prisoners to access antiretroviral treatment.

Then government decided to appeal that judgement and the AIDS Law Project (ALP) knew that when they appeal a judgement it can take a long time. It then meant that in that time while they are appealing, the ALP clients and other prisoners were not getting access to the ARV's. So the AIDS Law Project went to court for the second time and told the judge that while they are busy appealing, the government must provide ARV's.

The court agreed. The court set a date the government had to have provided ARVs to the prisoners by. The government failed to do this because they said they were appealing to a higher court. So the ALP went to court the third time and asked a different judge, Judge Nickelson, to listen to the matter and to order the South African government to provide ARVs to the prisoners as written in the interim execution order until such time as the appeal process was completed. The judge ordered the government to provide ARVs immediately. Here we can see how the Law and how our Rights can be used to bring about positive change for people living with HIV and AIDS.



### **Refugee rights (Episode 21, Chapter 7)**

South Africa's constitution says that everyone in South Africa has the right to health care and this is important for refugees, asylum seekers and undocumented people. Many people from other African countries leave their countries of birth because of persecution, political violence, wars and economic problems. South Africa has become a home to thousands of refugees and asylum seekers. Many of these people do not have passports or other forms of identification.

An asylum seeker is a person who is seeking refugee status. A refugee is someone who is granted refugee status because they face persecution or death in their home country because of their race, religion, nationality and belonging to a particular group or political party. A person also qualifies for refugee status if they have fled their country because of war or other political violence.



Our Constitution says that all refugees and asylum seekers have the right to health care services and other services provided in South Africa. The government has informed all hospitals and health facilities that they cannot turn people away if they are not South African citizens. This is important because it means that the government is upholding the Constitution. No health facility can deny treatment and care to someone because they are not South African, or because they are a refugee or asylum seeker.



### Tips for TLPPs

If you have time, you can ask the group for any examples or real life stories that they know where someone has been unfairly discriminated against because of their HIV-positive status. Then ask the group to say which laws or Acts or Rights could be used to help these people. Ask the group to make suggestions and to think of solutions or 'plans of action' for each example or story. For example, if they know someone who is being abused, perhaps the group will recommend going with them to a Magistrate's Court to lay a claim and to get an eviction order (20 minutes).

Make sure that everyone understands the key points:

1. Every person in South Africa has rights.
2. The Constitution is an important document that protects our rights.
3. HIV-positive people are protected by the law.

### MULTIPLE CHOICE QUESTIONS

Name:

Circle the correct answer for each question. You can only choose one answer for each question.

#### 1. Which statement is true?

- a) In South Africa only people over 18 years have rights.
- b) In South Africa only men have rights.
- c) In South Africa everyone has rights.
- d) In South Africa only people who can read have rights.

#### 2. Which thing is the Constitution and the Bill of Rights not based on?

- a) Human dignity
- b) Equality
- c) Freedom
- d) Control

#### 3. Which of the following statements is not true?

- a) You cannot be tested for HIV without your permission.
- b) You cannot be fired because you are HIV-positive.
- c) You have to be tested for HIV before you can get a job.
- d) You cannot be tested for HIV so that you can be promoted.

#### 4. If you have been raped you have the right to all these things except one. Circle that one.

- a) Post exposure prophylactic
- b) Morning after pill
- c) Two weeks off work
- d) Antibiotics to prevent other infections

#### 5. 'Informed consent' means

- a) You have to sign a piece of paper
- b) You make a decision to do something after it has been explained to you and you understand it
- c) You cannot say 'no'
- d) You must always say 'yes'

**6.If you are being abused and you want the law to stop the person who is abusing you, you can get a:**

- a)Court date
- b)Protection order
- c)Neighbour to protect you
- d)Policeman to stay with you

**7.Which statement is true?**

- a)A refugee is someone without a job.
- b)A refugee cannot live in South Africa.
- c)A refugee can get health care in South Africa.
- d)A refugee cannot get health care in South Africa.

**8.Which statement is true?**

- a)Prisoners cannot have ARVs.
- b)Prisoners don't need ARVs.
- c)Prisoners have a right to ARVs.
- d)Prisoners have to share their ARVs.

**9.Which statement is true?**

- a)HIV positive mothers can be forced to have abortions because they are HIV positive.
- b)A woman has the right to choose to have an abortion up until the 20th week of her pregnancy.
- c)If you are younger than 18 years you cannot have an abortion.
- d)Forced abortion and sterilisation are allowed in South Africa.

**10.Which statement is not true?**

- a)Parents do not have to tell schools if their child is HIV-positive.
- b)HIV-positive children have the right to education.
- c)HIV-positive children have to go to special schools for HIV positive children.
- d)HIV-positive children are not a threat to the other children at school.

**MULTIPLE CHOICE ANSWERS**

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