

19

HIV AND HUMAN RIGHTS

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.

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.





ABOUT THIS CHAPTER

The aim of this chapter is to show how human rights are there to protect us.

The main topics are:

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



In this chapter we are going to talk about human rights and the rights of people living with HIV/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 are human rights?

Episode 19, Chapter 1



Human rights are basic rights that are held by all people. These basic rights allow humans to live in dignity. These rights are held equally, forever, by everyone.

Human rights are universal. This means that all human beings have these rights. Human rights do not discriminate by:

- Gender
- Age
- Race
- Culture
- Religion
- Sexuality
- Disability
- Health
- Wealth
- Education

Human rights are basic rights that are held by all people

Human rights are inalienable. This means that you have them forever and cannot lose them. Unfortunately, oppressive governments and laws can deny you your rights. This is why the idea of human rights provides the standard against which government can be judged.

Human rights are indivisible and interdependent. This means that all rights are linked together and considered equal. You cannot choose to support certain rights, but deny others their rights. No rights are “less important” than other rights. In the struggle for recognising human rights, it is important that we see all human rights together as a single issue. If we compromise certain rights, then we compromise the very idea of human rights.

First and Second Generation Rights

The rights that we share as human beings start with civil and political participation. These rights are called first-generation rights and deal with protecting individuals from government.

First generation rights include:

- freedom of speech
- ability to vote
- the right to a fair trial
- freedom of movement
- freedom of assembly and protest

These first generation rights provide the foundation for second-generation rights. If first generation rights are limited or denied by government, then it directly stops the progression to second-generation rights. The second layer of human rights deals with equality regarding social, economic and cultural conditions.

Second-generation rights include the right to:

- employment
- education
- housing
- food
- health

Without second-generation rights, having the right to vote is meaningless. Governments have a duty to fulfil these socio-economic rights. First generation rights should make it possible to struggle democratically and non-violently for second generation rights. In the struggle for these rights, everyone needs to be included and stand together. To achieve this unity means that the struggle for human rights must be indivisible.

The interdependence of all human rights is explained in this quote by Pastor Martin Niemoeller:

“In Germany, the Nazis first came for the communists, and I did not speak up, because I was not a Communist. Then they came for the Jews, and I did not speak up, because I was not a Jew. Then they came for the trade unionists, and I did not speak up, because I was not a trade unionist. Then they came for the Catholics, and I did not speak up, because I was not a Catholic. Then they came for me... and by that time, there was no-one to speak up for anyone.”



People marching for gay rights outside the World AIDS Conference, showing that all human rights are linked.

Human rights are indivisible & interdependent



DISCUSSION POINTS

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

1. Can human rights be taken away?

No, human rights are inalienable, which means they are forever. Only those who have committed crimes may have their rights taken away from them in prison, such as those caught stealing or hurting others. Being homosexual or a certain religion is not a crime.

2. Does everyone have human rights?

Yes, human rights are universal, which means they cover everyone. Regardless of their gender, age, race, culture, religion, sexuality, disability, health, wealth, or education, everyone has the same human rights.

3. Why should the rights of minorities that you might disagree with be protected?

Human rights are indivisible, which means that they cannot be separated. If the rights of minorities are lost, then it makes it easier for us to lose our rights as well. By helping protect the rights of minorities, then we are also protecting our rights.

Brief history of human rights

While people have fought for dignity and equal rights since the beginning of time, the concept of human rights has only recently been recognised by the international community.

Early documents such as the Magna Carta (1215), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution (1791) are the written basis for today's modern human rights documents. Unfortunately many of these documents excluded groups such as women, blacks, and homosexuals.

The idea of Human Rights was further highlighted with the Second World War, focusing the world's attention on the evils of racial classifications and discriminations. Hitler had a policy of eliminating Jews, Gypsies, communists and others considered "undesirable". After war, anti-colonial movements arose across the world, with countries previously under European rule fighting for independence and liberation.

With the war ending, a large emphasis was placed on non-discrimination. Governments committed to establishing the United Nations (UN) to promote international peace and prevent conflict. The UN Declaration of Human Rights promotes "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". It states that how a government treats its citizens is an international issue. This has been further defined in follow-up documents such as the Alma-Ata Right to health (1978), which outlines the right to Primary Health Care.

There was a global effort to set human rights standards in protecting all citizens of the world. However these changes did not result in the formation of non-racial states, such as can be seen with Rwanda, Burundi and apartheid South Africa. Xenophobia is a large issue in South Africa, where refugees who fled persecution in their own countries are being discriminated against and forced to leave.

Human rights and governance

Human Rights are controversial as they limit powers of governments. Many countries have dictatorships which gives the governments power over individuals lives with limited freedom of expression and even movement. This has meant that citizens have to become the advocates of human rights instead of relying on governments to do so.

As we can see, the belief that everyone is entitled to human rights is fairly new. These rights have to be secured through constant engagement and struggle, both with governments who may seek to limit and abuse citizens' rights and against cultural practises which limit individual human rights through discrimination and abusive practices.



The concept of human rights has only been recognised in recent years

Human rights abuses

When someone is denied their human rights, then it is called a human rights abuse or violation. This can include:

- Denying a citizen the right to vote because they have a certain skin colour
- Attacking someone because they are from another country
- Not allowing someone to practice a certain religion
- Putting someone in jail because they disagree with the government
- Refusing to hire someone because of their age
- Using children for forced labour
- Forcing a young woman into marriage against her will
- Verbally abusing someone because of their sexual orientation
- Denying women the right to education because of her gender



2 gay men in Malawi were denied their human right to be in a homosexual relationship.

In 2009, 2 gay men, Steven Monjeza and Tiwonge Chimbalanga, were arrested in Malawi for being homosexual, following their recent marriage ceremony. Both men were jailed separately for 5 months and sentenced to 14 years hard labour. Human rights groups from around the world, including Section 27 and Amnesty International, spoke out against the Malawian government calling their action a hate-crime and that it showed discrimination.

Malawi has a population of 14 million people, with over 1 million living with HIV. In 2009, Malawi had 200,000 people on ARVs. Malawi is a very poor country that could never afford such a large ARV treatment programme on its own. This programme is almost entirely paid for by foreign donors. The ability to provide ARVs is a result of a fierce and determined campaign based on the right to life and the right to health which are recognised in human rights documents signed by the governments of the world. Activists were able to use these agreements to mobilise massive campaigns to force the global Pharmaceutical Industry and governments to reduce the price of medicines and commit to universal access to treatment. There are many NGOs providing life-saving treatment to thousands of Malawians. However many organisations, both in Malawi and elsewhere, were silent about the plight of the 2 gay men. In being silent, we don't treat all rights or people equally.

The United Nations secretary general, Ban Ki-moon visited Malawi to appeal to the government to release the jailed men and change their anti-gay laws. After much pressure, the government freed the men, but did not agree to change the country's laws against homosexuality.

By understanding the complexity of the issues surrounding HIV, we see that AIDS activists cannot fight alone, but have to link other social forces. For example, if the gay and lesbian community is persecuted and the AIDS movement keeps quiet, then we are allowing conditions to be created that encourage the spread of HIV. This could result in homosexuality being driven further underground, making treatment access more difficult and driving the spread of HIV. In the same way, the gay and lesbian community played a large part in the fight for access to ARVs.

By not standing up and speaking out when other communities are oppressed, it allows multinational corporations, governments and groups who would deny our human rights to become more powerful. Together, we need to stand up in solidarity against all types of human rights abuses from multinational corporations, governments, radical groups, or anywhere else.

What is the Constitution and Bill of Rights?

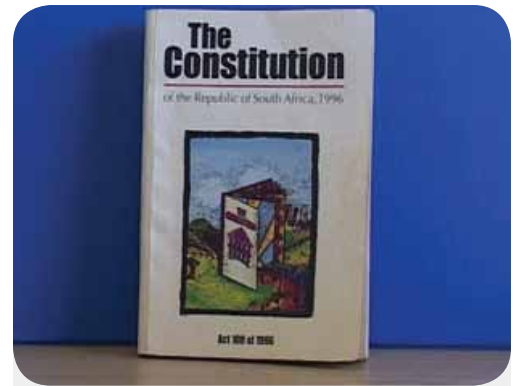
The Constitution is built on the principle that in South Africa we live in a system of democracy and a system of non-racism and non-sexism. Everyone who lives in this country has equal protection of the law, equal access to the law and to our courts. It is important for people living with HIV/AIDS that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

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.

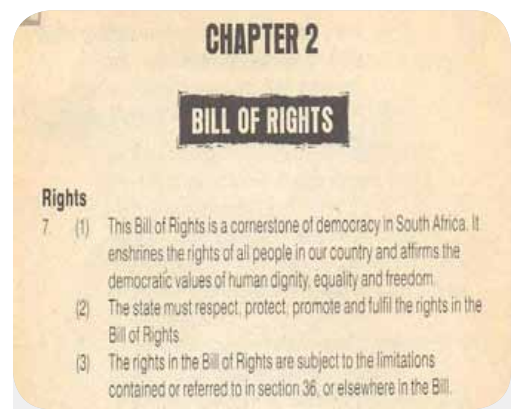
Our other Constitutional rights are:

- Right to privacy
- Right to fair labour practices
- Right to education
- Right to a healthy environment
- Right to housing
- Right to freedom from all forms of violence
- 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, 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 1 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.



Here is a booklet of the Constitution.



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

**In South Africa,
the Constitution is
the highest law
of the land**



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.



WORKBOOK NOTES

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Constitutional State

In a Constitutional State the Constitution defines both first generation and second generation rights. The Constitution is the supreme law of the land. All laws and actions of government, corporations and citizens have to conform to the Constitution. This means that even Parliament and the President are answerable to the Constitution and the Constitutional Court. This gives citizens and groups the power to take the government to court and overturn both unconstitutional laws and administrative actions. Most governments are not Constitutional States which makes it much harder for citizens to hold the government accountable and protect their human rights.

The Treatment Action Campaign (TAC) filed a lawsuit against the South African government to provide Prevention of Mother to Child Transmission services to pregnant mothers living with HIV (See case study).

LINK TO HIV

Gaining access to universal AIDS treatment for all was a classic example of a united struggle across continents, based on fundamental human rights.

This movement was led by people living with HIV and succeeded in getting large, powerful companies to lower the cost of treatment.

In addition, the South African government was forced to recognise that denying life-saving medicine (antiretroviral drugs) was a denial of the right to life and the right to health – 2 fundamental human rights guaranteed by the South Africa Constitution.

Case Study: TAC fighting for PMTCT

In lobbying for access to PMTCT treatment, TAC used a broad human rights approach rather than just focusing on pregnant women with HIV. By including the right to health for all people, TAC was able to include other HIV-related issues. This included informed consent, confidentiality, gender-based violence, availability of formula feed, safe and legal abortion and contraceptives.

TAC realised that the cost of medication was too high and unaffordable to government at its current price. Part of the government's reasoning for not providing ARVs was because of the high cost. In 1997, Parliament approved changes to the Medicines Act which now allowed for the production of generic versions of patented drugs. These generic versions were far cheaper than the original drugs and as effective. This led to 39 pharmaceutical companies suing the South African government for patent infringement.

TAC got involved and helped force the drug companies to drop the lawsuit. TAC then successfully lobbied the drug companies to offer much lower drug prices. With the help of the AIDS Law Project, TAC was able to strategically use the law and took the government to court. This was an effective way to getting the issue of access to treatment out on the street and having it widely debated publically as a political issue.

TAC also used community involvement to build a large membership of supporters. TAC was able to mobilise through marches, posters, t-shirts, and reaching out to national and international groups for support.

As TAC did not want to be seen as trying to overthrow a democratically elected government, it had to be ethical and rational. All through the court case, TAC tried to act in the most moral way, seriously considering the effect that every action would have on the public's opinion.

Government lost the case in the Constitutional Court and was forced to provide Prevention of Mother to Child treatment programmes and to implement a national treatment plan. However, the government delayed the start of the plan so TAC started a civil disobedience campaign. This campaign involved 600 volunteers going into police stations and laying charges of culpable homicide against the Minister of Health and the Minister of Trade and Industry, and demanding their arrest. This resulted in many police stations opening a docket against the Ministers before arresting the protesters for unlawful entry. The health minister was eventually replaced with the introduction of a new cabinet and the government has realised the importance of providing ARVs. TAC has credited this campaign for the successful roll-out of ARV treatment programmes.



WORKBOOK NOTES

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/AIDS is unconstitutional.

In this court case a man called Hoffman took South African Airways (SAA) 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 (PLWHA) 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 versus SAA.

Therefore, SAA's 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.

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 without your consent 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.



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 7 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 5 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.



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 you from being forced to test for HIV before you are employed, or during your employment.

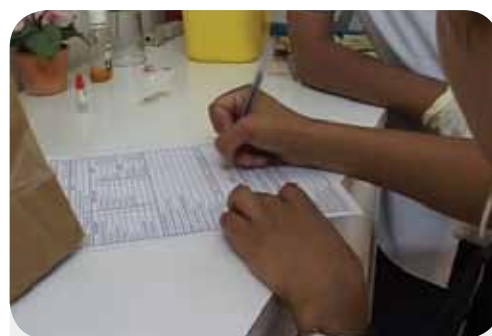
2. Can an employer ask you to have an HIV test in order to promote or train you?

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.

When it comes to HIV/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 HIV 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 a parent's consent to go for an HIV test.



Someone signing a consent form for HCT.

An employer or potential employer cannot force anyone to be tested for HIV



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.



WORKBOOK NOTES

THE LABOUR RELATIONS ACT

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. The Labour Relations Act places a duty 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.



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



WORKBOOK NOTES

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/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.



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.



WORKBOOK NOTES

THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT

The Compensation for Occupational Injuries and Diseases Act is out-dated 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/AIDS. Some of these laws talk specifically about HIV/AIDS, such as The Employment Equity Act. When a law does not include HIV/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/AIDS.

The Promotion of Equality and Prevention of Unfair Discrimination Act ensures that people who are living with HIV/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.



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

Know your rights & responsibilities!

Medical schemes and the law

Episode 19, Chapter 4



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/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.

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 HCT
- Access to ARVs
- Access to on-going 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.

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/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 6 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.



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



MEDICAL SCHEMES ACT
NO. 131 OF 1998

[ASSENTED TO 20 NOVEMBER, 1998]
[DATE OF COMMENCEMENT TO BE PROCLAIMED]

(English text signed by the President)

The Medical Schemes Act.

Medical aids cannot refuse to cover people living with HIV or other chronic diseases



DISCUSSION POINTS

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

1. What does the Medical Schemes Act do for people living with HIV/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/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/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 2 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/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 4 or 5 different insurance companies that will offer 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’.



DISCUSSION POINTS

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

1. Name the 3 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 4 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.



WORKBOOK NOTES

Four sets of horizontal dashed lines for writing notes.

Children's rights

Episode 19, Chapter 6



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 2 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/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.

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.



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

Children have special rights



WORKBOOK NOTES

Prisoner's rights

Episode 19, Chapter 7



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/AIDS treatment. Many prisoners had untreated opportunistic infections such as TB and thrush.



Photograph of the Supreme Court.

In early 2006, 15 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 the 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 the government was busy appealing they must provide ARV's.

The court agreed. The court set a date by when the government had to have provided ARVs for to the prisoners. 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/AIDS.

Refugee Rights

Episode 19, Chapter 8



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.



MULTIPLE CHOICE QUESTIONS

Name :

Circle the correct answer for each question. You can only choose 1 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. What 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 1.

- a) Post exposure prophylaxis
- b) Morning after pill
- c) 2 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 12th 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.



WORKBOOK NOTES

A large rectangular area with a light gray background, containing 25 horizontal dashed orange lines for writing notes.