

HIV/AIDS CURRENT LAW & POLICY



Women, HIV and AIDS

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Illustration & Design by Ellen Papciak-Rose

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aidslaw
project

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Glossary

🦏 What are HIV and AIDS?

HIV is the "Human Immunodeficiency Virus". It is the virus that eventually leads to AIDS.

AIDS is "Acquired Immune Deficiency Syndrome". People who have HIV eventually develop AIDS because the virus makes it difficult for their bodies to fight off diseases. It is not one sickness, but is a name given to many different illnesses, which people at this stage of the disease may get (such as TB and pneumonia).

🦏 Women and HIV

- ✓ Almost half the people in the world who are infected with HIV and AIDS are women.
- ✓ More than half the people in Africa with HIV or AIDS are women.
- ✓ In South Africa, the biggest increase in HIV infection in 1998 was among women under 20.
- ✓ Women between the ages of 20 and 29 have the most HIV infections in the country.

🦏 Women and myths about AIDS

There are many myths (**untrue beliefs**) about AIDS and HIV infection that affect women.

The two most common are:

1 "Having sex with a virgin is a cure"

This is a tragic myth because it lead to the rape of young women and children who are at very high risk of being infected with HIV.

2 "Women spread AIDS"

Women are often wrongly blamed for the spread of HIV. In fact, men are more likely to seek sex outside of established relationships than women. It is the responsibility of all people, not just women, to prevent HIV infection.

1 Introduction

AIDS affects everyone, but some people are at more risk of infection with HIV than others. Women are at risk because we do not have as much social and economic power as men, so it is harder for us to protect ourselves from being exposed to HIV. If we are exposed, our **physiology** makes it easier for us to get infected with HIV.

Because women have an unequal position in society and are seen as inferior to men, many women do not have much control over their lives and bodies. Young women are especially at risk of being infected with HIV. Women also normally carry the burden of looking after those who are sick and dying.

At the end of the 5th international conference on women, held in Beijing, China, a document was drawn up. It endorses women's ***"right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence"***.

The fight against HIV and AIDS can only be successful if women's rights are respected and the position of women in our society is made stronger.

There are laws and policies in South Africa to protect women from abuse and they are discussed later in this pamphlet.

2 How do you get infected with HIV?

- ✓ For women, the biggest threat of infection is from unprotected sex.
- ✓ Pregnant women infected with HIV may pass the virus to their child during childbirth and breastfeeding. If a mother is infected with HIV there is a 30% chance that the baby will be born with HIV.

3 Why are women at risk?

Physical reasons

It is easier for women to be infected with HIV during unprotected sex than men, because the vagina exposes more skin to infection. The skin of the vagina is also soft and during sex (and especially during rape) the vagina can be torn quite easily. This makes it very easy for the virus to get inside your body. Having dry sex increases the chance of tearing.

Women are the "**receptive**" partners in sex. This means that semen is left inside the vagina, which also increases the risk of HIV infection.

If women have sexually transmitted diseases (STDs) this also makes it easier for HIV infection to take place. Some STDs cause sores inside the vagina and you might not even know that there is anything wrong. If the skin of the vagina or cervix is "**inflamed**" (swollen, red or broken), which happens when you have an STD, then infection with HIV is much easier.

During, just before and just after menstruation (when you have your period), there is also a higher risk of HIV infection.

Economic reasons

Generally, women make less money than men and have fewer opportunities to work. They are often dependent on men to survive – especially if they are mothers. Because poverty affects women more, women often find themselves in relationships where they don't have much power. Some women have to give sex in return for food, shelter or money.

Women who work in the sex industry are also at risk. Because prostitution is illegal, sex workers find it difficult to protect their rights.

Because of poverty many people have to leave their homes to find work. They may become infected with HIV and pass this infection to all their sexual partners.

Although many women have many rights in South Africa, many women are affected by poverty and don't have access to information, so they do not enjoy the protection of these rights.



Social reasons

Women face widespread discrimination and have less power in society. Many people think women are inferior to men and so women have little say in their communities.

In most relationships, men are in control. If they don't want to use condoms, it is very difficult for women to insist. Women are often blamed for "spreading" HIV and AIDS. This makes it very difficult for women to be open about having HIV or to insist on safe sex.

Many women experience violence and abuse in their relationships. If they have HIV and tell their partners, they are blamed or punished. Violence affects all women. It makes women more dependent on men (for protection) and less able to insist of safe sex. Many women are not aware that they can refuse to have sex with their husbands.

If you don't consent to sex, your partner can be charged with rape. If you ask your partner to practice safe sex and he forces you to have unprotected sex, then he can also be charged with rape.

Even though there are laws to protect women from violence and abuse, many women do not use them because they experience discrimination from the police and the courts. There are laws to protect women from such discrimination.

Sexual rights

If you have control over your body, you can protect yourself from HIV by deciding:

- **Who** you have sex with;
- **When** you have sex; and
- **How** you have sex.

4 Law

Since 1994, many laws have been passed to protect women from discrimination, violence and abuse, and to set out the rights that all people, male or female, infected with HIV or not, have.

These laws include:

- a The Constitution and the Bill of Rights
- b Promotion of Equality and Prevention of Unfair Discrimination Act
- c Choice of Termination of Pregnancy Act
- d Domestic Violence Act
- e Maintenance Act
- f Recognition of Customary Marriages Act
- g Criminal Law Amendment Act

a

The Constitution and the Bill of Rights

The Constitution (which also contains the Bill of Rights) is the highest law. This means everyone has to follow it and no laws are allowed to go against it.



The most important rights with regard to women and HIV are:

Equality

Everyone is equal and must be treated equally. You may not be **unfairly discriminated** against for any reason including sex, gender, marital status (whether you are married or not) and pregnancy. "Any reason" includes whether or not you are infected with HIV or have AIDS.

Freedom and Security of the Person

You have the right of **control over your body** and to make **decisions about reproduction**. You can choose to have an abortion and you cannot be forced to have an HIV test or be sterilized. You have the right to be free from all kinds of violence, including **domestic violence**. You cannot be forced to take part in **medical experiments** (like the testing of new medicines) without your informed consent. This means you must know exactly what the experiment is and what the consequences will be for you and you must agree to take part.

Privacy

You have the right to privacy. Only you can decide who knows the result of your HIV test.

Access to Health Care

While some people can afford medical aid, many others cannot. This right says government must try to provide health care to people who cannot afford it. Pregnant women and children under 6 have the right to free basic health care.

Reproductive Rights

These are the rights to:

- ✓ Decide how many children you will have and when.
- ✓ Information about contraception so you can decide what is best for you.
- ✓ The best possible health care during pregnancy.
- ✓ Make decisions about reproduction without discrimination or force.

You cannot be forced to take certain medicines or to have an HIV test. If you have HIV, you cannot be forced to have an abortion.

b

Promotion of Equality and Prevention of Unfair Discrimination Act

(No 4 of 2000)

Like the Constitution, this law says everyone is equal and you cannot be unfairly discriminated against because of your sex, gender, marital status, pregnancy or for any other reason. You cannot be unfairly discriminated against because you have HIV or AIDS either.

This law sets up **Equality Courts** to make it easier, cheaper and quicker for complaints of unfair discrimination to be sorted out.

c

Choice on Termination of Pregnancy Act

(No 92 of 1996)

- ✓ **This law says that women can have an abortion:**
 - On request (by asking for it) in the first 12 weeks of pregnancy.
- ✓ **Between the 12th and 20th week of pregnancy if:**
 - Your doctor says there is a risk to your health or that of the foetus. Infection with HIV may be a reason to ask for an abortion.
 - Your social or economic conditions will be affected by the pregnancy.
 - The pregnancy is a result of rape or incest.
- ✓ **After the 20th week if the pregnancy could be dangerous for you or could result in a severely deformed baby.**



NOTE

- ▶ Not all clinics and hospitals do abortions. So even though all women have this right, many women find it difficult to enforce.

It is your choice whether or not you want to have children and your partner or family cannot make these decisions for you. If you are under 18, you do **not** need your parents' permission for an abortion. You will need to sign an informed consent form and the health workers should advise you to talk to your parents. But only **you** can decide who knows.

d

Domestic Violence Act

(No 116 of 1998)

This Act says that people who experience domestic violence can get a **protection order** from court. It also allows other people to get a protection order for you if you give them permission to do so.

What is domestic violence?

- ▶ Physical, sexual, emotional, verbal, psychological or economic abuse.
- ▶ Intimidation, harassment, stalking, damage to property, entry into a women's property without her consent (where she is not staying with the abuser).
- ▶ Any other controlling behaviour against the women that can cause harm to her safety, health or well-being.



✓ A protection order can be obtained by:

- Anyone who experiences domestic violence.
- A child under 16, who will not need the help of an adult.
- A counsellor, health services worker, police officer, social worker, teacher or any person who has an interest in the well-being of the person experiencing violence.

✓ Who can you get a protection order against?

- Your husband or partner if you live (or have lived) together, including same-sex partners.
- The parents of a child or anyone who looks after the child.
- Any family member (including family by marriage).
- Anyone who is in a "relationship" with you. This relationship includes dating, an engagement or a customary relationship, and it doesn't matter how long you have been together or how serious it is.

✓ Where can you make an application?

- At any Magistrate's or High Court near you. Once an order has been granted, it works all over the country.

✓ When you report domestic violence to the police, they must:

- Explain your rights to you in a language you understand.
- Give you a copy of your rights under the Act.
- Help you find a place to stay (like a shelter) and make sure you get health care if you need it.

If the police do not do this, you can report them to the **Independent Complaints Directorate (ICD)**, which deals with complaints against members of the police. The police must also report all complaints of domestic violence to the ICD, which has to report to Parliament every six months. Contact the ICD Head Office on 012 320 0431 or write to Private Bag X941, Pretoria, 0001.

✓ What if the abuser does not obey the order?

Abusers who do not obey the order may be:

- Convicted and punished for whatever they have done.
- **And**, they can be fined or sent to jail for up to 5 years for not obeying the order.

e

Maintenance Act

(No 99 of 1998)

Children have a right to be supported by **both** parents, which includes food, clothing, accommodation, medical care and education. This is true whether the parents are married or not. Because children are often left to one person (usually the mother) to look after, this Act makes sure **both** parents contribute to the costs of bringing up the child.



Every Magistrate's Court **is** a Maintenance Court. If you believe the other parent of your child is not giving enough support, you can report this to the Maintenance Court. An enquiry will be held to see how much money the other parent has and the Court will make an order about how much that person must pay. The person against whom the order is made **has** to pay – if they don't they can be fined or sent to prison for up to one year.

f

Recognition of Customary Marriages Act

This Act gives women in customary marriages **equal status** and **equal control over property**. Both parties must consent to the marriage and be over a minimum age.

In 1998 the law making black women minors was taken away and black women became majors at the age of 21. The Recognition of Customary Marriages supports this position. Traditional attitudes will mean that many women find it difficult to exercise these rights.

g

Criminal Law Amendment Act

(No 105 of 1997)

This law says someone convicted of rape, who knew he had HIV at the time, must be sentenced to life imprisonment. A further amendment to this law may soon be made that will allow a women who has been raped to request that the accused be tested for HIV. If the accused refuses, a court will be able to order that he be tested.

5 Some issues women face

a Safer Sex – a right and a responsibility

It is the responsibility of everyone who is sexually active, whether they have HIV or not, to have safer sex (**using a condom**). For most women, it is difficult to insist on safer sex. Many of us have to rely on our partners being faithful, which is something we have no control over. Being faithful to your partner is no protection against HIV if your partner is not faithful too.



A simple guide to safer sex

Safer sex is the responsibility of **everyone** who is sexually active. Because it can take many years before a person with HIV actually feels sick, and because people are scared to have an HIV test, many people with HIV do not know they are infected. To avoid getting infected, we all need to take care to reduce the risks to ourselves and to others.

Unprotected sex where the vagina or anus is penetrated by a penis is **very high risk**. HIV is carried in body fluids, like blood, semen and the fluid inside the vagina. HIV infection happens most often during sex, when the semen of an infected person comes into contact with the inside of the vagina or anus, or when the fluids or blood inside the vagina or anus of an infected person enter openings on the penis. Blood, semen and the fluids inside the vagina contain more HIV than other body fluids (like saliva and urine).

Oral sex is **low risk**.

There is **no risk** in kissing, hugging, touching or talking to someone with HIV.

An **open sore** on your fingers, private parts or in your mouth, makes it easier for HIV infection to take place.

Sexually transmitted diseases, if not treated early, put you at risk of HIV infection because the sores on your private parts make it easy for HIV to get inside your body.

b

Violence against women

If a woman or girl is forced to have sex (rape) there is a greater risk of infection with HIV. This is because the sex will normally be violent (resulting in tears in the vagina) and unprotected.

If you are in a violent or abusive relationship it is very difficult to insist on safer sex. Some men still think they have the right to beat their wives and force them to have sex. They get away with it because some people think that if a woman is beaten or raped she must have done something to deserve it.

Even with all the laws that protect women, the way they are enforced by the police, magistrates and judges does not always respect women's rights.

If I am raped, what can I do to protect myself against HIV infection?

There are medicines (**post exposure prophylaxis**) that can help your body prevent HIV infection if you have been recently exposed to the virus. At the moment these are **not** available to all women who have been raped. The government policy is that they should be available at public and private hospitals, but you have to ask for them. You must start the treatment within three days of being raped and take the medicine for 28 days. This treatment is most effective if started as soon as possible after the rape. Although it reduces the chances of infection, it does not always stop it.

Rape and the law

A draft Sexual Offences Act says the crime of "rape" must be changed so that both men and women can be victims or perpetrators. At the moment, rape means the penetration of a vagina by a penis, so only women can be raped and only men can be rapists.

c

If I am tested for HIV, do I have to tell my partner the result?

Only **you** can decide who knows your HIV status. A health care worker may advise you to tell your partner and if they have a good reason to think that you may be putting someone at risk they might tell them, but only in special circumstances.

Many women face violence and discrimination if they are infected with HIV, no matter how they were infected. An open and honest relationship with a partner is the best way to deal with the issue. AIDS is a very personal disease. At the same time, infection brings certain responsibilities. If you are in a loving relationship, telling the person you love may help because you could get the care and support you need. Your partner could get tested and both of you could get treatment and support.

d Motherhood

Many women find out that they have HIV when they get pregnant. Health workers at clinics are advised to offer voluntary counselling and HIV testing to all pregnant women.



Remember

- ▶ You cannot be tested without your **informed consent**.
- ▶ Only you can decide who else should know the result of your test.
- ▶ You cannot be forced to have an abortion, but you do have the right to choose whether to continue with the pregnancy.

Proper pre- and post-test counselling is your right:

A woman who finds out she has HIV when she is pregnant has to deal with the pregnancy, her HIV infection and the fact her baby may be infected with HIV. She also has to deal with telling her partner. He may also be infected and he may react very badly to the news.

Reducing the risk of mother-to-child HIV infection

There is a 30% risk that the baby of a woman infected with HIV will become infected. Infection takes place during childbirth or breastfeeding.

There are ways to reduce the risk of this happening:

While pregnant

- Practice safer sex – to prevent infection with sexually transmitted diseases, including HIV.
- Prevent and treat sexually transmitted diseases.
- Take good care of your health.
- **Anti-retroviral drug therapy:** If you take anti-retrovirals (which are drugs like AZT and Nevirapine) during the last month of pregnancy, and for a short time after the birth of your child, the risk of infection can be reduced by up to half.

When giving birth

This is a time when the baby can be infected because there is sometimes bleeding during labour and small cuts on the mother and child can make it easier for infection to take place.

The chances of this can be reduced by:

- Using anti-retroviral drugs.
- Cleaning the vagina with antiseptics.
- Having the baby by **caesarean section** (a cut is made in the mother's stomach and womb so the baby doesn't come out of the vagina).

 **NOTE**

Women using public health care facilities do not always have access to these ways of preventing infection. Talk to your health care worker about what you can do. At the moment the government only provides Nevirapine at a small number of hospitals and clinics. But the Cabinet has said that after December 2002 they will make the drug available all over the country.

During breastfeeding

There is HIV in the breast milk of mothers with HIV, so infection can happen during feeding. Many mother-to-child infections happen this way. Using milk formula is the best way to stop this happening, but some women can't afford the formula. Your health care worker should advise you on what is best for you.

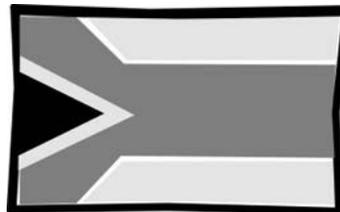
e
Custody

Women with HIV or AIDS can be discriminated against when it comes to who has custody over children. **This is unfair discrimination and is not allowed.** Just because you have HIV does not mean you cannot have custody over your children.



8 6 Protecting your rights

If you have been discriminated against for any reason connected to the fact that you are a woman, you can make a complaint to the Commission for Gender Equality.



Commission for Gender Equality

Tel: 011 403 7182 Fax: 011 403 7188
P O Box 32175, Braamfontein 2017

There are also NGOs who will help you, such as:

People Opposing Woman Abuse (POWA)

Tel: 011 642 4345 Fax: 011 484 3195
P O Box 93416, Yeoville 2143

Rape Crisis

Tel: 021 447 1467 Fax: 021 447 5458
P O Box 46, Observatory 7935

AIDS Law Project (ALP)

Tel: 011 717 8600 Fax: 011 403 2341
Private Bag 3, Wits 2050
www.alp.org.za

Treatment Action Campaign (TAC)

Johannesburg
Tel: 011 339 8421 Fax: 011 403 1932
P O Box 31104, Braamfontein 2017
Durban
Tel: 031 304 3673 Fax: 031 304 9743
Cape Town
Tel: 021 364 5489 Fax: 021 361 7051

Centre for the Study of Violence and Reconciliation (CSV)

Tel: 011 403 5650 Fax: 011 339 6785

Life Line 24-hour Counselling

Tel: 011 728 1347

Glossary

Antibodies

These are produced by the immune system to fight against cause of disease.

Anti-retrovirals

These are drugs that stop or reduce the rate that HIV spreads through the body. Use of these drugs is often called anti-retroviral therapy.

Immune system

The body's way of fighting infection and disease.

Opportunistic Infections

Infections that people with HIV or AIDS get because their immune system is weak.

Sero-conversion

The body makes anti-bodies in response to infection. When the body makes anti-bodies to fight HIV then an HIV test will be positive. Sometimes people get sick when this happens (sero-conversion illness). Many people don't notice and this stage may show no symptoms of HIV infection.

Window period

This is the time between HIV infection and when the body makes anti-bodies to fight it. During this time an HIV test can give a negative result even if you are infected with HIV.