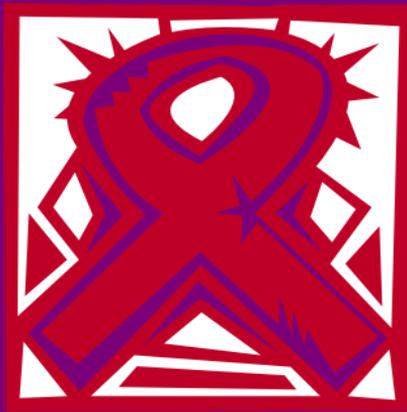


# HIV/AIDS

Current Law + Policy



## Women, HIV and AIDS



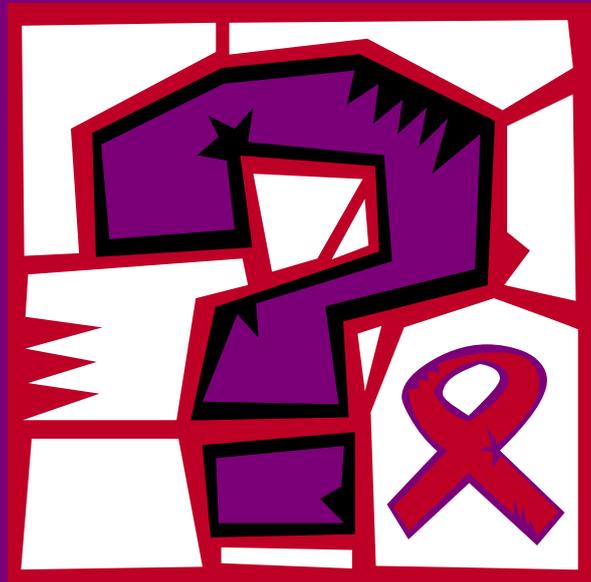
equality for all

**aidslaw  
project**

**Centre for Applied Legal Studies**  
University of the Witwatersrand

Revised April 2004

# What are HIV and AIDS?



**HIV** is the “**H**uman **I**mmunodeficiency **V**irus”. It is the virus that eventually leads to AIDS.

**AIDS** is “**A**cquired **I**mmune **D**eficiency **S**yndrome”. Many 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).

*It is **very important** to note that if you have HIV, it does **not** necessarily mean that you are sick. It can take years for someone who has HIV to develop AIDS. During this time, people who have HIV **can** lead normal and productive lives.*

**Today people with AIDS can also get treatment that can improve and prolong their lives.**

# Women, HIV and AIDS



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# 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.
- ⦿ 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 myths are:

 **Having sex with a virgin is a cure**

This is a tragic myth because it leads to the rape of young women and children who then have a high risk of being infected with HIV.

 **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.**

# 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** (how our bodies are built) 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 battle against HIV/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. They are discussed later in this booklet.

# How do you get infected with HIV?

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



# 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 infections (STIs) this also makes it easier for HIV infection to take place. Some STIs 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 STI, 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 financially dependent on men to survive – especially if they are mothers and have to look after children. 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 to survive.

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

Because of poverty many people have to leave their homes to find work. They may become infected with HIV when they are away from home and infect their sexual partner when they come back home.

Although women have a large number of rights in South Africa, many women are affected by poverty and don't have access to information or access to justice and cannot enjoy the protection of their 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 safer sex.

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

*If you don't consent to sex, your partner can be charged with rape.*

*If you ask your partner to practice safer 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

Everybody is entitled to sexual and reproductive rights and control over their bodies. 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.

# Law



Since 1994, many laws have been passed to empower and to protect women from discrimination, violence and abuse.

## These laws include:

- ⌘ The Constitution and the Bill of Rights
- ⌘ Promotion of Equality and Prevention of Unfair Discrimination Act
- ⌘ Choice of Termination of Pregnancy Act
- ⌘ Domestic Violence Act
- ⌘ Maintenance Act
- ⌘ Recognition of Customary Marriages Act

## 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" can include 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, children under six and people with disabilities have the right to free basic health care.

## ***Reproductive Rights***

**These are the rights to:**

- ✓ Decide if you want to have children.
- ✓ 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.**

## 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.

## 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 perform abortions. So even though all women have this right, many women find it difficult to enforce it.

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.

## 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 the relationship 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**

phone 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:***

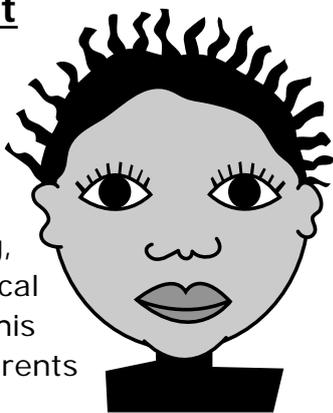
- Convicted and punished for whatever they have done.
- And**, they can be fined or sent to jail for up to five years for not obeying the order.



## 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.

## 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 legal minors no matter what their age was taken away.** Black women now became majors at the age of 21, the same as everybody else. The Recognition of Customary Marriages Act supports this position. Traditional patriarchal attitudes often mean that many women find it difficult to exercise their rights. These attitudes should be challenged and changed.



# Some issues women face

 **Safer Sex – a right and a responsibility**



It is the responsibility of everyone who is sexually active, whether they have HIV or not, to practice 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 breast milk, blood, semen and the fluid inside the vagina. HIV infection happens most often during unprotected 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 infections**, if not treated early, put you at greater risk of HIV infection because the sores on your private parts make it easy for HIV to get inside your body.

## 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 and without the use of a condom.

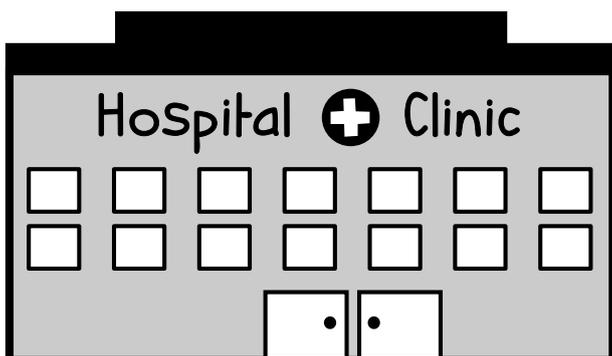
If you are in a violent or abusive relationship it is very difficult to insist on safer sex. Some men think they have the right to beat their wives and force them to have sex. They often get away with it because some people think that if a woman is beaten or raped she must have done something to deserve it, or that it is the man's right to beat or rape her. This way of thinking is wrong and has to be challenged.

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 anti-retroviral medicines called **post exposure prophylaxis (PEP)** that can help your body prevent HIV infection if you have been recently exposed to the virus.

It is government policy that PEP should be available at public and private hospitals. *Remember to ask your hospital or clinic for PEP after you have been raped.* 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 PEP reduces the chances of infection, it does not always stop it.



## **Criminal Law amendments:**

### ***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.

### ***The rights of survivors of rape and sexual assault***



According to South African law and the draft policy on HIV testing of the Department of Health, no-one can be tested for HIV without their informed consent. There is a new draft law that is not yet in operation that will allow alleged rapists and perpetrators of sexual assault to be tested for HIV at the request of the survivor of the rape or sexual assault. When this law comes into effect, a survivor will be able to ask that the suspect be tested and even if he does not agree to have the test, he can be forced to do so.

The results of the HIV test will only be made known to the survivor, and also to the suspect if he wants to see his HIV test result. It will be an offence for the survivor to disclose the HIV status of the suspect to any other person and the results of the HIV test cannot be used in the criminal case against the suspect.

### ***Disclosure to a sexual partner***

The law, at the moment, does not require you to disclose your HIV status to your sexual partner, although if you infect your partner with HIV and you knew your HIV status at the time that you had sex, you may be charged with murder, attempted murder or assault under common law. A new draft law dealing with sexual offences states that it is a criminal offence not to disclose your HIV status to your sexual partner. This law has not yet come into effect, but if it does, it will mean that if you know that you have HIV, you will have to tell your partner about your HIV status before you have sex with them. If you do not, you may be charged with an offence even if your partner does not contract HIV.

If this provision becomes a new law, it will create many problems, especially for women, who are often not able to disclose their HIV status because they are afraid of violence or abandonment.

## 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 have HIV, no matter how they were infected. An open and honest relationship with a partner is often 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.

## 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 become 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. This is called PMTCT (prevention of mother-to-child transmission of HIV).

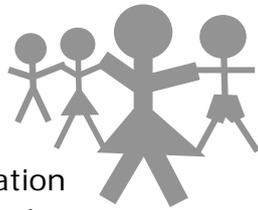
### **When giving birth**

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).

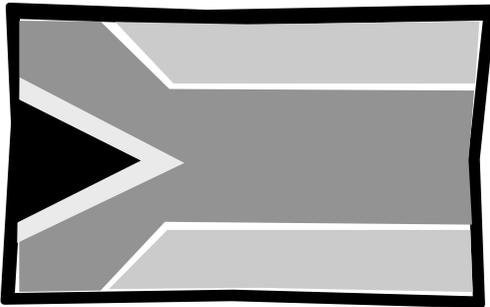
### **During breastfeeding**

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 or don't have access to clean water. Your health care worker should give you information on all the feeding options available and you will have to decide what is best for your circumstances.



Women with HIV/AIDS often experience discrimination when the courts decide 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.

## 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**. There are also non governmental organisations (NGOs) who will help you.



## Contact details

### AIDS Law Project (ALP)

Centre for Applied Legal Studies  
University of the Witwatersrand  
CALS, DJ du Plessis building,  
Wits University, West Campus  
Private Bag 3, Wits 2050

TEL: 011 717 8600

FAX: 011 403 2341

[www.alp.org.za](http://www.alp.org.za)

### Centre for the Study of Violence and Reconciliation (CSVr)

TEL: 011 403 5650

FAX: 011 339 6785

[www.csvr.org.za](http://www.csvr.org.za)

### Commission for Gender Equality

PO Box 32175

Braamfontein 2017

TEL: 011 403 7182

FAX: 011 403 7188

[www.cge.org.za](http://www.cge.org.za)

### Life Line 24-hour Counselling

TEL: 0861 322 322

[www.lifeline.org.za](http://www.lifeline.org.za)

### People Opposing Woman Abuse (POWA)

PO Box 93416

Yeoville 2143

TEL: 011 642 4345

FAX: 011 484 3195

[www.powa.co.za](http://www.powa.co.za)

### Rape Crisis

PO Box 46

Observatory 7935

TEL: 021 447 1467

FAX: 021 447 5458

[www.rapecrisis.org.za](http://www.rapecrisis.org.za)



TAC is an activist NGO. Its main objective is to campaign for greater access to treatment for all South Africans, by raising public awareness and understanding about issues surrounding the availability, affordability and use of HIV treatments.

### **TAC national office**

34 Main Road, Muizenberg 7945  
TEL: 021 788 3507  
FAX: 021 788 3726  
E-MAIL: info@tac.org.za

### **TAC provincial offices**

#### **Eastern Cape**

PO Box 1103, East London 5200  
TEL: 043 722 2645/6  
FAX: 043 722 2642

#### **Gauteng**

3rd floor, Auckland House, West Wing,  
corner Smit and Biccard Streets  
Braamfontein, Johannesburg  
PO Box 31160, Braamfontein 2017  
TEL: 011 339 8421  
FAX: 011 403 1932

#### **KwaZulu Natal**

Unit A, 3rd floor, Doone House,  
379 Smith Street, Durban 4001  
TEL: 031 304 3673  
FAX: 031 361 7051

#### **Limpopo**

TEL: 015 556 3145  
FAX: 015 556 3145  
E-MAIL: buyicare@worldonline.co.za

#### **Mpumalanga**

TEL: 013 755 2298  
FAX: 013 755 2298

#### **Western Cape**

One Properties, Sulami Drive, Site B,  
Khayelitsha Cape Town  
TEL: 021 364 5489  
FAX: 021 361 7051

**www.tac.org.za**

# Glossary

*The following terms are often used when people talk about HIV and AIDS:*

## **HIV**

**Human Immunodeficiency Virus.** The virus that causes AIDS.

## **AIDS**

**Acquired Immune Deficiency Syndrome.** This means the body cannot fight infections because the immune system is weakened.

## **Antibodies**

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

## **Anti-retroviral drugs**

Drugs that reduce the rate that HIV spreads through the body. Use of these drugs is known as anti-retroviral therapy.

## **Disclosure**

Make information known to others.

## **Immune system**

The body's way of fighting infection and disease.

## **Opportunistic infections**

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

## **Post exposure prophylaxis (PEP)**

These anti-retroviral medicines reduce the risk of HIV infection after an incidence of rape or a needle-stick injury.

## **Sero-conversion**

When your body makes antibodies to fight HIV, this is called "sero-conversion". After this, an HIV test will give a positive result. Sometimes people get sick when this happens (sero-conversion illness). Many people don't notice and, because there are no signs, they do not know they have HIV unless they have a test.

## **Window period**

This is the period of up to 3 months between HIV infection and when the body makes antibodies to fight it (when sero-conversion takes place). During this time, an HIV test can give a negative result even if you are infected with HIV.

What rights do women have in the AIDS epidemic? This booklet looks at ways in which women are affected by HIV/AIDS and explains why women are more vulnerable. It describes the laws and policies that affect women's rights and suggests strategies when your rights are abused.

This booklet forms part of the following series:

- Ⓡ Your rights in prison
- Ⓡ Women, HIV and AIDS
- Ⓡ Your rights to health care
- Ⓡ Your rights in the workplace
- Ⓡ Testing for HIV—Know your rights
- Ⓡ Privacy and confidentiality

These booklets are available from the ALP:

## AIDS Law Project (ALP)

Centre for Applied Legal Studies  
University of the Witwatersrand  
Private Bag 3, Wits 2050 South Africa

phone: +27 11 717 8600

fax: +27 11 403 2341

email: [alpadm@law.wits.ac.za](mailto:alpadm@law.wits.ac.za)

[www.alp.org.za](http://www.alp.org.za)

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**Centre for Applied Legal Studies**  
University of the Witwatersrand

**aids law project**