



# HIV/AIDS AND HUMAN RIGHTS





## BACKGROUND

The South African Human Rights Commission (SAHRC) is an independent institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, (the Constitution) to support constitutional democracy. The mandate of the SAHRC is to promote, protect and monitor the observance of human rights in the Republic. In line with its promotional mandate, the SAHRC must educate and raise awareness to promote respect for human rights and a culture of human rights. The SAHRC has developed this pamphlet to provide the general public with basic information on HIV/ AIDS, which information is vital in the fight against HIV/AIDS. The information in this pamphlet is intended to highlight some of the key rights of persons living with or affected by HIV/AIDS to enable people to claim and assert their rights. This information is in addition to a number of materials available from clinics and other sources which provide information to support affected and interested people.

An open and supportive rights-based approach to HIV/AIDS is essential to ensure that everyone enjoys full access to means of prevention, voluntary counseling and testing, long-term sustainable treatment, care and support, and can live free from fear, violence and discrimination. Without such an approach, increasing numbers of people will be deprived of the possibility to live a secure and fulfilling life, consistent with the right to health and other human rights.



### WHAT IS HIV/AIDS?

Human Immunodeficiency Virus (HIV) is a virus that attacks and gradually destroys the immune system which defends the body against infections. This virus is mainly transmitted through sexual intercourse, but can also be passed down from mother to child during pregnancy, child birth or breastfeeding and can also be acquired through the transfusion of infected blood, the sharing of needles, for example, during drug use or through needle stick-injuries, in the course of duty as a health care worker.

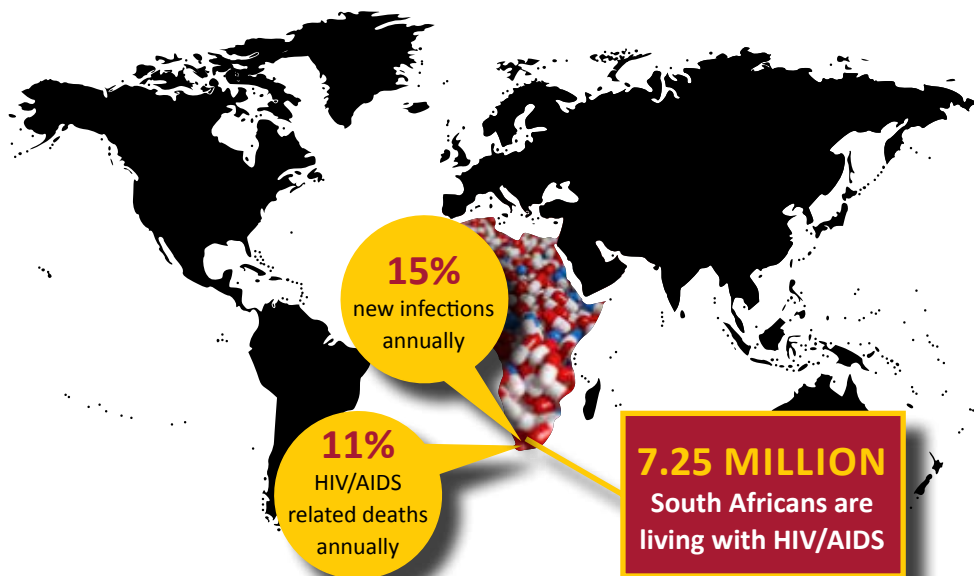
The HIV cannot be cured and remains in the body for life. Although there is currently no cure for HIV, antiretroviral treatment (ARV) helps to keep the virus under control and enables people living with HIV to lead a full and productive life. Acquired Immune Deficiency Syndrome (AIDS) is a chronic, life-threatening disease caused by HIV. The first documented AIDS case was recorded in 1981 and since then, great efforts are being made globally to address the issue.



## STATUS OF HIV/AIDS IN SOUTH AFRICA



Statistics South Africa's **2017 Demographic and Health Survey** estimates that approximately 7.25 million people among the South African population are living with HIV/AIDS, and an estimated 19% of the population of adults aged 15-49 years are HIV positive. The **UNAIDS 2017 Country Report** also notes that South Africa has the largest HIV/AIDS epidemic in the world, with 15% new infections and 11% HIV/AIDS related deaths annually.



Among the key populations most affected in South Africa are sex workers, with an HIV/AIDS prevalence of 57.7% of that population; and men who have sex with men with an HIV/AIDS prevalence of 26.8%. The report further notes that South Africa has the largest treatment program in the world, accounting for a total of 20% of people on antiretroviral therapy (ART) globally. As HIV lowers the ability of the human body to fight off other diseases, and persons living with HIV become vulnerable to opportunistic diseases such as tuberculosis (TB) which accounts for one in three deaths.



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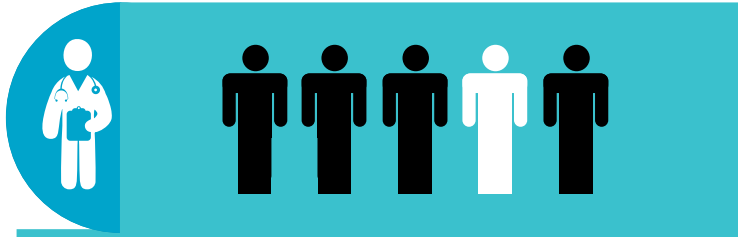
The Constitution of the Republic of South Africa, 1996 is the supreme law of the country and it protects the rights of all people in South Africa. Chapter 2 of the Constitution contains the 27 rights that are collectively called the Bill of Rights and are inherent to all human beings. People living with HIV/AIDS and their families are entitled to full and equal enjoyment of all rights and freedoms in the Bill of Rights. The right to have access to health care services which is guaranteed in Section 27 of the Constitution is but one of the basic human rights to which people living with HIV/AIDS are entitled.

People living with HIV/AIDS are often excluded from full participation in many areas of their lives due to prejudice, stigma and discrimination mainly with regards to:

- Lack of access to information,
- Unequal access to treatment,
- Workplace discrimination and
- Infringement of the right to privacy and dignity.

Discrimination commonly occurs against vulnerable groups in society such as women, children, migrants and prisoners or detainees; and in the areas of accessing services such as medical aid, insurance, housing and education. Children are an especially vulnerable group who may acquire the virus through mother to child transmission or through sexual abuse. Many orphaned children suffer indirectly when they are forced to become sole breadwinners and heads of households in cases where parents, guardians or caregivers have succumbed to HIV/AIDS. Prisoners and detainees are also at risk of contracting HIV/ AIDS due to overcrowding and conditions within prison and therefore require priority attention. Migrants are often excluded from accessing ARVs due to a lack of awareness on the part of some front line health care staff. As migrants move from one place to another, the possibility of their treatment being interrupted is high. Interruption to chronic treatment can have adverse health effects for those already on ARV treatment as the virus is no longer in check and a person's immunity is further compromised.





People living with HIV/ AIDS often find that they are treated differently from other patients and face breaches of confidentiality, being openly shunned, or refused treatment. Some experience rejection or abandonment, being insulted or gossiped about, being ostracised from social activities within the community, school or workplace, lack of care and support and denial of medical services. Affected persons are exposed to such treatment on account of a number of reasons. Some of these relate to fears and myths that the disease is contagious, or to misconceived religious and cultural practises.

Regardless of the source of such treatment, affected persons face the compounded effect of their having to manage the burden of the disease and being ostracised. Such treatment is inconsistent with the values prescribed in our Constitution and violates basic human rights such as equality, human dignity and privacy. Fear of stigma and discrimination by society may also result in fewer people undergoing testing, disclosing their status, practising preventative measures or accessing treatment.

A number of fundamental human rights may be limited. However, our law requires that for basic rights to be limited, they must be limited for a justifiable purpose and the limitation should be to the least extent possible to achieve the intended purpose. Our law also recognises that basic rights are dependent on, and related to each other. A violation to a person's right to equality therefore almost always results in a violation to the related right to dignity; and a violation of the right to access adequate water and sanitation will impact on related rights such as the right health.



## Equality

The right to equality and protection from unfair discrimination are protected in terms of Section 9 of the Constitution and in our law through the Promotion of Equality and Prevention from Unfair Discrimination Act 4 of 2000. The right to equality provides that everyone is equal before the law and has the right to equal protection and benefit of the law. No person, including the State or private companies may unfairly discriminate, directly or indirectly against any person on any ground. In particular no person may be unjustifiably discriminated against because of their HIV status. In the employment sphere potential employees or employees cannot be discriminated against because they are HIV positive.

In the workplace, HIV positive employees are protected from being dismissed or discriminated against on the basis of their HIV status. Prospective employers cannot request evidence of HIV negative status as a condition to an offer of employment and cannot insist on a disclosure of HIV status. The Employment



### discriminate

*verb*

1. recognize a distinction; differentiate.
2. make an unjust or prejudicial distinction in the treatment of different categories of people, especially on the grounds of race, sex, or age.  
"existing employment policies discriminate against women"  
*synonyms*: be biased, show prejudice, be prejudiced; treat differently, treat as inferior, treat unfairly, put at a disadvantage, **disfavour**, be intolerant towards; **victimize**  
"existing employment policies discriminate against women"





Equity Act provides protections against such discrimination in the workplace. In addition, potential employees cannot be tested without consent. In the matter of *Hoffman v SAA*, the Constitutional Court ruled that a prospective employer unfairly discriminated against a job applicant living with HIV/AIDS by refusing him employment on account of his HIV status. The court held that the employer had infringed on his right to equality and ordered that he be employed.

## Dignity

Section 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected. The right to dignity of people living with HIV/AIDS cannot be infringed upon on the basis of their HIV status. Violations to a person's dignity may take place either by action or words, or both forms of conduct. Our courts are increasingly recognising that dignity is not only a basic right that must be protected, but also a value which must guide our actions and interpretations of rights. The duty to respect the dignity of other people applies to natural persons such as institutions as well.



## Privacy

Section 10 of the Constitution provides that everyone has the right to privacy which includes the right not to have the privacy of their communications infringed. No one, including an employer, health professional, family member, partner or friend of a person living with HIV/AIDS is allowed to reveal such a person's HIV status without his/her permission to do so. The personal information of people, including their health information is protected by the Protection of Personal Information Act, 4 of 2013.



People living with HIV/AIDS require access to information to make informed choices about their health and the best available treatment. Adequate information is vital in ensuring the reduction of discrimination and related stigma which in turn assists with prevention. Information must be clear, scientifically valid and non-judgmental. The Promotion of Access to Information Act 2 of 2000 provides that information that is held by a public or private body should be made available to the person either automatically or in terms of a request for information which is made in terms of the Act. Such requests for information could include a request for a hospital record. However information can sometimes be restricted so where access to such information is denied, a person must be provided reasons for the refusal.

### Health care, food, water and social security

Section 27 of the Constitution provides that everyone has the right to have access to health care services and no one may be refused emergency medical treatment; sufficient food, water and social security including, if they are unable to support themselves and their dependants, to appropriate social assistance.

A hospital or doctor cannot force a person to take an HIV/AIDS test or refuse to treat a person living with HIV/AIDS. The right to access health services means that the services should provide information about treatment, counselling, diet and support services. A large number of public health facilities, civil society organisations, and faith based organisations provide information, support and health services specifically designed to assist persons with HIV/AIDS.



Whilst there is no grant specifically earmarked for people living with HIV/AIDS, the South African Social Security Agency (SASSA) provides a disability grant for people who have a chronic illness. SASSA applies specific criteria to determine whether a person living with HIV/AIDS may access this type of grant. The grant is a temporary one for persons who have had the disability for a period of 6 to 12 months. In addition, the assessment takes into account how long a person who has moderate to severe functional impairment would take to recover if they complied with the prescribed treatment. More information on this grant can be obtained through the local SASSA offices.

As HIV/ AIDS affects everyone, families of persons living with HIV are encouraged to receive counseling, advice and information on any other interventions by the health and social welfare agencies.

## **MECHANISMS TO UPHOLD THE RIGHTS OF PEOPLE LIVING WITH HIV**

### **Government**

The responsibility for the provision of health care services, including HIV/AIDS services for all people throughout the country is allocated to the Department of Health in accordance with South Africa's National Strategic Plan for HIV, Tuberculosis and Sexually Transmitted Infections (the national plan). The national plan is implemented at the provincial level through clinics, hospitals and mobile clinics throughout the country. The national plan aims at reducing new infections; improving treatment, care and support; reaching key and vulnerable populations such as sex workers, men who have sex with men, transgender people, people who use drugs, prisoners, detainees and migrants; and addressing social and structural drivers of HIV/AIDS, tuberculosis and sexually transmitted infections.

South Africa has adopted the international framework as advocated for by UNAIDS, which is the United Nations' programme to guide, strengthen and support global efforts by a wide range of actors in addressing the HIV/ AIDS pandemic. This framework focuses on the five Cs approach, which includes **consent, confidentiality, counselling, correct testing and connection to prevention, care and treatment.** To ensure that maximum protection is provided to health care users, Government must integrate HIV testing within related health services such as maternal and child services, tuberculosis and sexually transmitted infections and monitor the viral load of users through regular tests. In this way, people living with HIV/AIDS are able to obtain accurate diagnosis, prevent transmission and the virus remains suppressed to undetectable low levels through antiretroviral therapy for better health.

All government health care facilities must treat everyone and offer counselling, HIV testing and ARVs free of charge. These facilities also provide information on HIV/AIDS and other preventative measures. An HIV/AIDS helpline provides answers to questions and operates 24 hours on a toll- free telephone number:



**0800 012 322**

Medical bodies such as the Health Professional Council of South Africa, the South African Nursing Council, the Office of the Health Standards Compliance and the Office of the Health Ombudsman and each hospital deal with complaints regarding access to health care. More details on these bodies can be obtained from the SAHRC information sheet on Access to Health Care, available on [www.sahrc.org.za](http://www.sahrc.org.za)

### **Non-governmental organisations**

Several non-governmental bodies promote the rights of people living with HIV/ AIDS. Examples of such organisations include, but are not limited to the Treatment Action Campaign, Doctors without Borders, Section 27, Legal Resources Centre and Black Sash. By way of example, the case of ***Treatment Action Campaign v Minister of Health*** resulted in a court order which required government to provide the ARV Nevirapine, freely to HIV positive mothers and their new- born babies to limit the transmission of the virus from the mother to the child.

Some organisations such as LoveLife South Africa, Soul City and other member organisations of the South African National Aids Council carry out awareness campaigns and work to prevent the spread of the disease. A large number of independent foundations and faith or community based organisations also provide direct care and support to people living with HIV/AIDS and their families. Community advice offices, community health workers and law clinics at universities may also assist with advice to members of the community.



### **The South African Human Rights Commission**

The SAHRC engages directly with members of the public, State departments, other Chapter 9 bodies and civil society organisations in order to raise awareness and protect the rights of all people. Public education, outreach interventions, publication of educational material and disseminating information to enable the affected group to assert and enforce their rights, are some of the methods the SAHRC uses to improve awareness levels of human rights.

The SAHRC has the power to conduct investigations into any alleged violation of human rights. A human rights violation is an abuse or violation of any of the rights found in the Constitution. Anyone either acting on their own interest, that of someone else or that of an organisation can lodge a complaint with the SAHRC. A complaint may be lodged at any of the provincial offices of the SAHRC where the alleged violation of a right took place. A complaint can be lodged in person, by telephone, in writing or by completing the online complaint form and the Commission's services are free.

Where the SAHRC is unable to deal with a complaint, it can refer the complaint to an appropriate body. If after preliminary assessment, the SAHRC is of the opinion that there is substance in any complaint, it will in so far as it is able to do so, assist the complainant and other persons adversely affected to secure redress.

The SAHRC has produced and publicised its Complaints Handling Procedures, which detail the procedure to be followed in conducting an investigation of any alleged violation of human rights. Further, the SAHRC has adopted special measures and guidelines to cater for complaints specific to the violation of children's rights, through the Child Friendly Complaints Handling Procedure. Both procedures are available on the SAHRC website.

Equality Courts have been set up to assist members of the public to seek relief if they are subjected to unfair discrimination, hate speech or harassment. These courts are meant to make it easy for anyone to bring their cases to court and for the issue to be resolved and finalised quickly. Court officials are trained to provide assistance to members of the public who wish to use the Equality Court. Legal representatives are not always needed in the Equality Courts as the procedures in these courts have been simplified to support access to justice. The SAHRC assists members of the public to argue matters before the Equality Court. Every Magistrates Court is as an Equality Court, therefore one can contact the SAHRC or the nearest Magistrates Court.

The Commission for Conciliation, Mediation and Arbitration (CCMA) assists employers and employees with workplace related disputes, including those relating to violations of the right to equality in the workplace based on unfair discrimination. The CCMA has offices in all provinces.

More details on other statutory bodies and entities that address specific complaints from the public regarding violation of a particular right can be obtained from the Commission's pamphlet on access to justice, which is available on [www.sahrc.org.za](http://www.sahrc.org.za)

## PROVINCIAL OFFICES

### Eastern Cape

Address: 3-33 Phillip Frame Road, Waverly Park, Phase 4B, Chiselhurst, East London

Tel: 043 722 7828/21/25 | Fax: 043 722 7830

#### **Provincial Manager**

**Mr Abongile Sipondo**

Contact: Yolokazi Mvovo

E-mail: ymvovo@sahrc.org.za

### Gauteng Office

2nd Floor, Braampark Forum 3, 33 Hoofd Street, Braamfontein

Tel: 011 877 3750 | Fax 011 403 0668

#### **Provincial Manager**

**Mr Buang Jones**

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### Free State

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#### **Provincial Manager**

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### Northern Cape

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#### **Provincial Manager**

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### North West

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#### **Acting Provincial Manager**

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#### **Provincial Manager**

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**How to contact the SAHRC:**

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Twitter: @SAHRCommission

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