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Johanna Kehler

# Some inequalities are more acceptable than others<sup>1</sup>...

## The right to equality and its challenges for equal enjoyment

Celebrating 10 years of democracy leads one to ask what democracy provided for people in South Africa and what South Africans have gained from 10 years of democracy. It is the recurring debate as to the meaning of the principles of human dignity, equality and freedom, the reflection of these principles in South Africa's realities and its impact on the lives of South Africans.

It is the question whether or not the principles of human dignity, equality and freedom are the cornerstone of a concept, a social ideal to strive for, or are they principles underlying our realities. It is also the question if equality means equal enjoyment of all rights and freedoms or mere entitlement and whether or not prevailing inequalities and discriminatory attitudes and practices are an indication that equality remains but a concept, a social ideal.

Latest statistics<sup>2</sup> not only indicate high levels of poverty and unemployment, pandemic like numbers of people living with, and affected by, HIV and AIDS, but also reflect persistent inequalities and seemingly ever-growing disparities between the poor and affluent members of society, between women and men, between rural and urban areas. It is in this context of poverty and inequalities that principles of human dignity, equality and freedom seem to exist in a vacuum with no or little impact on the realities of most South Africans.

Acknowledging this apparent gap between the principles of human dignity, equality and freedom and the realities of inequalities and discrimination, as experienced by a vast num-

ber of South Africans, this article will provide an overview of the concept of equality and human dignity and also explore some of the issues determining the gap between the concept and the lived realities. In conclusion, the article looks at remaining challenges to the full and equal enjoyment of the right to equality and to human dignity.

### DEFINING EQUALITY

The concept of equality is one based on social ideals. Underlying this concept is the principled understanding that people, since they are alike should be treated alike<sup>3</sup>. The concept of fundamental human rights to which all people are entitled to by virtue of being human is but one of the concepts culminating from such an understanding. Similarly, the concept of social group rights to which members of these groups are entitled to by virtue of their belonging to a particular social group is also premised on the principle that people, since they are alike should be treated alike. While recognising social group rights, such as women's rights, children's rights, lesbian and gay rights and rights of people living with, and affected by, HIV and AIDS, acknowledges existing differences, it does not justify different treatment that subsequently perpetuates



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# Editorial

It is within the context of celebrating 10 years of democracy that this edition of the ALQ focuses on fundamental principles of human dignity, equality and freedom in order to determine the progress in translating these fundamental human rights principles and values into our lived realities. The various articles in this issue examines the theory, meaning and understanding of equality and human dignity as to their impact on various South African realities, such as prevailing gender, race and class-based inequalities and imbalances, prejudices leading to hate crimes against black lesbians; as well as issues of HIV and AIDS reporting in the media, and the impact of women's autonomy on gender-based violence and HIV. This issue also elaborates on the ALN campaign **'We are all equal...aren't we?'** and includes feedback, as well as responses from networking partners, communities and learners, exploring the extent to which we are all equal, we are all affected and we are all positive.

In this issue, Johanna Kehler explores the theory and meaning of equality and human dignity and raises the question as to the extent to which lived realities are reflective of these fundamental human rights principles and values. Acknowledging the constitutional commitment to not only mere entitlement to the equality, but the equal enjoyment of all rights and freedoms, she argues that as long as prevailing imbalances, inequalities, injustices and discriminatory attitudes and practices are not challenged in their systemic nature, equality and human dignity will remain but a concept for most people.

Acknowledging the intrinsic link between gender-based violence and HIV and AIDS, Elizabeth Doggett looks at the potential of reproductive and sexual health rights to break the cycle. She argues that through the recognition of women's bodily autonomy and subsequent realisation of reproductive and sexual health rights, not only will the link between HIV and gender-based violence be weakened, but also that gender-based violence will eventually cease to exist.

Looking at crimes of hate and prejudice against black lesbians, Wendy Isaack raises the question as to whether or not these crimes are a separate and distinct phenomenon to gender-based violence. Recognising that the reality of lesbians remains to be one of violence, discrimination and crimes of hate and prejudice, due to the prevailing patriarchal order and 'heterosexual norm' and despite progressive lesbian and gay rights and protections, she argues, that to adequately address violence against lesbians it has to be contextualised within the concept of gender-based violence.

The portrayal of HIV and AIDS as it relates to gender-based violence in the media is assessed by Lene Øverland. She looks at various factors determining the way in which HIV and AIDS reporting takes place in the South African media and argues, that as long as HIV and AIDS reporting remains to be sensationalised, highly politicised, events-based and non-gendered in nature, media coverage of HIV and AIDS will not only continue to compromise the rights to privacy and dignity of people living with HIV and AIDS, but also reinforce existing stereotypes.

Timothy Aluta elaborates on the extent to which we, as human beings, as South Africans, as a nation, are and can be all equal, affected and positive. He argues that prejudice, vulnerability and access are as much a cause as a consequence of existing inequalities that directly impact on the extent to which we are affected by, and positive towards HIV and AIDS realities.

The extent to which government fulfils its constitutional obligation to provide access to health care is discussed by Fatima Hassan. Exploring the levels of implementation of the national ARV treatment programme, including issues of accreditation and site selection, development of provincial implementation plans, access to information to particulars of the plan, as well as the rights of users of the programme, she argues that while the Operational Plan has the potential to limit premature suffering and death, it fails thus far to meet the needs of the most desperate.

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inequalities and discriminatory attitudes and practices. It does, however, justify different treatment taking into account specific requirements and conditions of a particular social group in order to facilitate equal access to, and enjoyment of, rights and freedoms.

The ideal that everyone is equal and, therefore, has to be treated equally is not to be interpreted as the desire to negate or even eliminate differences between people and/or social groups, as long as these differences are not portrayed as, or become a means to justify, inequalities and social injustices. The concept of equality does, however, imply that everyone has to have equal access to, and control over, available resources and opportunities, while differences between people and/or social groups are to be acknowledged, tolerated, accepted and respected. Hence, differences, including differences determined by belonging to a particular social group, are not justification for limited access to, and enjoyment of, rights and freedoms, nor are they validating prevailing inequalities.

Achieving equality while acknowledging differences between people and/or social groups also implies the subsequent recognition that these differences may lead to different treatment due to specific requirements under which members of a particular social group are in the position to equally access and enjoy rights and freedoms.

In an attempt to evaluate the achievement of equality, a distinction has to be drawn between formal and substantive equality<sup>4</sup>. Formal equality means that everyone has to be treated the same before the law and be provided with the same rights and protections by the law, irrespective of particular circumstances. Hence, formal equality requires that everyone has the same entitlement to all rights and freedoms. Equal entitlement to rights and freedoms does, however, not take into account existing differences and disparities between people and/or social groups. Furthermore, formal equality does not recognise that existing inequalities and imbalances may impact on the extent to which rights and freedoms can be accessed, enjoyed and realised and thus, if not addressed, potentially perpetuates prevailing inequalities and injustices. In this context, Samuel [2001:21] argues that formal equality is *'blind to underlying structural and material inequalities'* and *'does not acquire to remedy the socio-economic disadvantages and power relations which reinforce and perpetuate inequalities between different groups in society'*.

On the contrary, substantive equality does take different circumstances into account and thus, substantive equality requires equal enjoyment of all rights and freedoms, requires the equality of outcome. This means that in the context of achieving substantive equality, specific needs and requirements of particular social groups are to be addressed in an attempt to facilitate and ensure the equal enjoyment and not only mere entitlement of rights and freedoms.

This seems to indicate, that the concept of equality, even though premised on the understanding, that people, since they are alike should be treated alike, allows for differential treatment provided the differential treatment is not perpetuating or even worsening prevailing inequalities and injustices, but instead facilitating the achievement of equality through recognising specific requirements. The challenge here, however, appears to be the adequate application and interpretation of 'differential treatment', as opposed to 'discrimination'.

Taking into account that the concept of equality implies as much the right not to be discriminated against as the responsibility not to discriminate against, entails the principles of equal treatment, respect and dignity to be further explored. If equality is to be understood as not only mere entitlement to rights and freedoms, but as

equal entitlement and enjoyment of all rights and freedoms, then, as argued by De Waal [2000:189], *'the principle of equality does not require everyone to be treated the same, but simply that people in the same position should be treated the same'*. While this acknowledges differences and potential different needs and requirements of people and/or social groups, it also allows for unequal treatment and the subsequent differentiation between 'fair' and 'unfair' discrimination, as provided for in the South African constitutional and legislative framework.

Recognising 'unequal treatment' as a means to achieve equality, does not and should not include 'unequal treatment' that in any way denies equal benefits and protection of the law or that impairs one's human dignity. The impact of the 'unequal treatment' on people and/or social groups is one of the indicators determining whether or not such treatment constitutes 'differential treatment', as in recognising different needs and requirements, or amounts to 'discrimination', as in impairment of one's inherent dignity.

This, arguably, indicates that it is the sameness/alikeness of people that should be seen as the premise for equality, human dignity and freedom and not the existing differences between people and/or social groups, even though, 'unequal treatment' in accordance with specific needs and requirements of people and/or social groups may be justifiable as a means to facilitate and achieve equality. Or, as acknowledged by the Constitutional Court<sup>5</sup>,

*Equality, as that concept is enshrined as a fundamental human right ... means nothing if it does not represent a commitment to recognising each person's equal worth as a human being, regardless of individual differences.*

Acknowledging equality as a fundamental human right to which everyone is entitled by virtue of being human, also implies that the very same virtue of sameness/alikeness as human beings is and should be the ultimate factor determining the level of 'treatment'. Furthermore, if the right to equality and non-discrimination is to be interpreted as inclusive of the idea that everyone possesses equal human dignity, then discrimination *'on grounds of personal attributes denies recognition of the very attribute that is common and equal to all – namely human dignity'* [de Waal, 2000:210].

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While we are celebrating 10 years of democracy, we are celebrating fundamental principles of human dignity, equality and freedom as the cornerstone of our democracy. And yet, we seem to struggle answering the question as to whether or not we are all equal. The immediate response tends to be yes, of course. We are all human beings. We are all the same. We have a Constitution that gives us the right to be equal and not to be discriminated against. We live in a democracy that is based on the principle of equality, human dignity and respect. We have equal rights. We have the right to equally enjoy our rights. So, yes, of course we are all equal. Aren't we? At second thought, maybe not. Maybe not as equal as we should be, since our lives, our realities don't seem to be a true reflection of concepts such as equality, non-discrimination, human dignity and respect.

We know that we are all equal. We know that we are to treat and to be treated equally. We know that we are not to discriminate against and not to be discriminated against. We know that we are to treat with respect and are to be treated with respect. And yet while we know all that, our lives, our realities seem to be but a reflection of inequalities, imbalances, discrimination, violations, victimisations, and disrespect for one another.

The Constitution guarantees EVERYONE the right not to be discriminated against. And it states a whole list of grounds based on which we are not to discriminate and are not to be discriminated against, including on the ground of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. And yet, reality seems to be persistently marked by discriminatory attitudes and practices on all of these grounds. Reality seems to remain a reflection of value, norm and belief systems that do *not* coincide with concepts of equality, non-discrimination and human dignity.

High levels of unemployment and poverty, ever-growing gaps between the poor and the affluent members of society, between rural and urban areas, between women and men, as well as seemingly unmanageable HIV and AIDS realities and chal-

lenges are but some of the factors describing our reality. The apparent gap between the theory of equality and the practice of inequality that we seem to have become accustomed to also includes daily incidences of women and girl children being violated and abused, people living with, and affected by, HIV and AIDS being discriminated against, lesbian and gays being victimised, the 'other', the one different to us, being excluded and marginalised. And if we are to find an answer to equality, then we have to acknowledge these realities as much as we have to acknowledge and celebrate the reality that EVERYONE has the right to be treated equally and not to be discriminated against.

However, since we, as human beings, seem to manifest and act upon our differences much easier than our sameness, we may want to raise the question as to whether or not equality, non-discrimination and human dignity is but a concept, a dream, something to strive for, but yet unachievable. But while it may appear but a concept, but a dream, we have to concede that it is reality. The reality is that we are all equal as human beings. And as human beings, we are all entitled to fundamental human rights and freedoms. As human beings, we are all entitled to be treated equally and to have our dignity respected and protected. And as human beings, we are all equal irrespective of our differences, but in respect of our sameness.

So, we are all equal and thus, we are all affected. We are all affected by the concept of equality, by the dream of equality, as we are all affected by the realities that challenge our dream of equality. And we are all positive. We are all positive that equality is more but a concept, a dream. We are all positive that we are able to challenge the realities that seem to threaten and discourage our concept of equality, that seem to cloud our vision, our dream of equality. We are all positive that we are all equal. Aren't we?

Unfortunately, while we keep searching for an answer as to whether or not we are all equal, while we keep working on the challenge to become equal, to be equal, the reality, that some of us are more equal than others, will remain unchanged.

JOHANNA KEHLER

## CONSTITUTIONAL PROVISIONS FOR EQUALITY

The Constitution of South Africa, undoubtedly one of the most progressive ones in the world, is based on the principles of human dignity, equality and freedom. Section 9 of the Constitution, also referred to as the Equality Clause, guarantees everyone the right to equality and the right not to be discriminated against on various grounds, including gender, sex, race, colour, sexual orientation and disability.

The Equality Clause declares that *'everyone is equal before the law and has the right to equal protection and benefit of the law'* (Section 9(1)), and that *'equality includes the full and equal enjoyment of all rights and freedoms'* (Section 9(2)). Section 9(2) specifically allows for the protection and advancement of disadvantaged groups by means of affirmative action in an attempt *'to promote and achieve equality'*. Additionally, the Equality Clause provides for the prohibition of unfair discrimination either by the state (Section 9(3)) or a private person (Section 9(4)) and stipulates in Section 9(4) that *'national legislation must be enacted to prevent or prohibit unfair discrimination'*.

Since, as outlined above, formal equality requires that everyone has the same entitlement to all rights and freedoms, has to be treated equally before the law and provided with the same protections and benefits by the law, Section 9(1) of the Constitution indisputable guarantees everyone formal equality. The Equality Clause, arguably, seeks to achieve substantive equality through the inclusion of not only the mere equal entitlement to all rights and freedoms, but also the *'full and equal enjoyment of all rights and freedoms'*.

Taking into account existing social, political and economic inequalities and disparities between people and/or social groups, the constitutional provision further includes that positive measures, such as affirmative action, be taken as a means to promote and achieve the equal enjoyment of all rights and freedoms. It is within this context that the Constitutional Court<sup>7</sup> argues, that considering South Africa's past, where certain social groups *'have suffered considerable unfair discrimination'*, it is insufficient for the Constitution to merely ensure the elimination of *'statutory provisions which have caused such unfair discrimination in the past'*. Recognising not only the ongoing negative consequences of past unfair discrimination, but also the fact that *'unless remedied'* these consequences *'may continue for a substantial time and even indefinitely'*, positive measures are needed to ensure not only the right to equality, but also the right to full and equal enjoyment of all rights and freedoms.

Thus, the Equality Clause does not guarantee the right to non-discrimination per se, but rather guarantees the right not to be unfairly discriminated against on any of the grounds listed in the Constitution, namely race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth, and the analogue grounds to the ones listed. According to the Constitutional Court<sup>8</sup>, an analogue ground is one that is *'based on attributes or characteristics which have the potential to impair the fundamental dignity of persons as human beings, or to affect them seriously in a comparably serious manner'*. In specifically guaranteeing the right not to be unfairly discriminated, the Equality Clause implies that a certain form of discrimination is constitutional and legitimate, provided the discrimination is 'fair' and does not impair on the

fundamental dignity everyone is entitled to by virtue of being human. Recognising the need to protect, promote and respect human dignity and to protect against all forms of 'unfair' discrimination on the listed and analogue grounds, the Equality Clause further provides for the prohibition of both direct and indirect unfair discrimination.

While 'fair' discrimination refers to positive measures, such as affirmative action, 'unfair' discrimination, according to the Constitutional Court<sup>9</sup>, *'principally means treating people differently in a way which impairs their fundamental dignity as human beings, who are inherently equal in dignity'*. Direct unfair discrimination refers to differ-

## They are just ill

Monique Dorfling

We are no different to other people who have HIV. They are just ill. There is no need to treat them different or to lock them away. They were healthy once, but now they are ill and rather than treating them different, help them. Treat them like you would treat a friend or family member, because we are all God's children, the sick and the healthy.

We are all affected in some way when it comes to sickness. We can never be sure if, one day when we have sexual partners, we will be safe. So we have to go for HIV tests. It will change our lives, if we, or our partner, have HIV. What if a family member has HIV? We could lose someone we love. What if we help someone who is bleeding and their blood comes into contact with an open scratch on our body, and then we will be infected by being kind and helpful. But remember, they are just like you and me!

We are all positive and we must stay positive in everything that happens in our lives. We must stay positive for ourselves and for other people who need our support. Being HIV-positive is something that lots of South African's are experiencing and we must believe and stay positive that there will be a cure and that God will save their lives. They are counting on doctors and God to help them, let's let them know that they can also count on us. We can help them by donating things.

**Monique Dorfling (Grade 8, Age 14) is a learner at the Linkside High School in Port Elizabeth.**

Some inequalities are more acceptable than others

ential treatment that is obvious and expressly based on any of the listed or analogue grounds, whereas the emphasis of indirect unfair discrimination lies with the impact and consequences of acts and practices that may appear to be non-discriminatory. Thus, the constitutional understanding provides for expressed, as well as implied unfair discrimination, in that the impact of the differential treatment is as important as the act itself in determining whether or not a

## Society is loath to treat everyone as equal

Dawn Betteridge

In South African society, we experience layered discrimination, based on a range of issues, including our race, our gender, our beliefs, and our sexual orientation. Included in this list is our HIV status, which has a significant effect on how we are treated by the rest of society.

Unfortunately, society is loath to treat everyone as equal and South Africa is no exception to this general rule, even as we strive towards a society that is reflective of a constitutional commitment to equality. Despite this commitment on a national level, society needs to be developed in order to move towards tolerance and acceptance of difference. Such development is as much an ongoing process, as it is dependent on education and constant exposure to correct messaging.

The LGBT community has been a persecuted community in South Africa and the HIV epidemic has broadened such persecution, due to incorrect assumptions and assignment of guilt for the epidemic itself. Triangle Project stands behind the principles of the ALN campaign, promoting fundamental principles of dignity, equality and non-discrimination of all South Africans. It is through campaigns such as this one that we hope to make a positive impact on the levels of understanding and acceptance in society.

**Dawn Betteridge is the Director at the Triangle Project.**

particular differential treatment amounts to unfair discrimination. For example, job requirements that expressly include the willingness to travel extensively nationally and internationally or that demand long working hours are not directly discriminatory. However, the effects of these requirements are, arguably, the exclusion of single parents, especially single parents of young children, since the majority of them will be, due to parenting responsibilities, unable to fulfil these requirements. Thus, as could be argued, since the effects of these requirements are discriminatory against single parents, they constitute indirect unfair discrimination.

The above seems to indicate that, while the concept and constitutional understanding of equality is inclusive of 'differential treatment', it is the effect and impact of this 'differential treatment' on one's human dignity that ultimately determines the extent to which 'differential treatment' constitutes 'discrimination'. It is the acknowledgment that different needs and requirements of people and/or social groups, as well as prevailing inequalities and disparities between people and/or social groups do indeed justify 'differential treatment'. However, this 'differential treatment' is limited in that it excludes the impairment of the 'fundamental dignity of human beings'.

Section 10 of the Constitution acknowledges that 'everyone has inherent dignity' and guarantees everyone 'the right to have their dignity respected and protected'. As discussed above, the right to equality and non-discrimination is intrinsically linked to the right to have one's dignity respected and protected. De Waal [2000:209] argues in this context that

*...human dignity also provides the basis for the right to equality – inasmuch as every person possesses human dignity in equal measure, everyone must be treated as equally worthy of respect.*

Undoubtedly, remarkable progress has been made in providing a constitutional framework that is based on principles of human dignity, equality and freedom, that guarantees not only the mere equal entitlement to rights and freedoms, but the full and equal enjoyment of all rights and freedoms, as well as a legislative and policy framework that aims to promote and protect equality and seeks to eliminate discrimination. To this end, various pieces of legislation have been passed and amended to give effect to the constitutional commitment of achieving equality. These include, amongst others, labour legislation, such as the Employment Equity Act (No 55 of 1998), family and 'gender' legislation, such as the Recognition of African Customary Marriages Act (No 120 of 1998) and the Domestic Violence Act (No 116 of 1998), as well as legislation dealing with issues of administrative justice, such as the Promotion of Access to Information Act (No 2 of 2000) and the Promotion of Administrative Justice Act (No 3 of 2000). In addition, the Promotion of Equality and Prevention of Unfair Discrimination Act (No 4 of 2000) specifically places positive duties on the State to achieve substantive equality.

However, as recognised in the Preamble to this Act, the 'systemic inequalities and unfair discrimination' that 'remain deeply imbedded in social structures, practices and attitudes' are constantly undermining the constitutional values of equality, non-discrimination, human dignity and freedom. Hence, as long as realities are characterised by inequalities, imbalances and injustices, the concept, as well as the constitutional understanding of equality and human dignity, remain but a concept with little or no impact on the lives of most South Africans.

# Equal in their rewards

Shanaaz Coetzee

Islam makes men and women equal in their rewards:

*Allah hath promised to believers, men and women, gardens under which rivers flow to dwell therein, and beautiful mansions in gardens of everlasting bliss, but the greatest bliss is the good pleasure of Allah, that is the supreme felicity.* [Quran 9:72]

Men's and women's rewards are equal, but their rights and obligations are different. A woman in Islam has the right to Mehr (dowry) and that gift belongs to her, her husband has no right over it. Women are not servants in the house, they don't just have to cook, clean and tend to the children. They are regarded as QUEEN'S in their homes. Husbands are indebted to their wives.

Men are the protectors and maintainers of women, because Allah has given the one more strength than the other and because they support them from their means. Therefore, *'righteous women are devoutly obedient and guard in [the husband's] absence what Allah have them guard'* [Quran 4:32].

Men's and women's rights and obligations differ, because in terms of the Islamic Law, the father is the safe supporter of the children. In the Quran [2:233] it states that *'the father shall bear the costs of their food and clothing on just and equitable terms'* and the same applies for the maintenance of the children. These are some of the basic obligators the father has. The mother has to be at home when children are born, she must be there to nurture the children, because the Almighty has given the women special talents and ways to deal with children. After all, the mother is the first teacher of the child.

We are all affected, when a loved one, friend or neighbour contracts or suffers from HIV/AIDS. It affects everybody emotionally and physically, some people even consciously. This is the time that they need you the most and Islam teaches us never to turn our backs on the sickly or elderly. You are their support base and it will be your duah (prayers) that will bring them comfort in

their time of need. The rewards you will receive as the person making the duah are only good ones for you in the years after. When it comes to the sick, we are taught never to shun them irrespective of their race, age, religion, or even their sickness. They should be taken care of as if they were newborn babies and be taken care of until they are able to fend for themselves.

The duah for the sick by the fellow man is powerful and it is stated that the duah is always accepted. The duah is as follows: *'O' Healer, O' self-sustaining one, O' protector, cure him/her, a cure which does not leave a disease or pain'*.

It is important that we should at all times be positive in the face of our milestones, trials and tribulations in our lives. We should remember that Islam teaches us to refrain from adultery/fornication. Your Imaan (faith) leaves you when you are engaged in the above. Stay positive, always in the state of Ibaadaa (piety/pureness) or participate in activities or hobbies that will be of benefit to you and the Muslim community.

Always be in the company of those that can be a great source of help and support in leading a virtuous life. The Prophet Muhammed (SAW, Peace be upon him) said:

*It is better to be alone than in the company of the bad, and it is better to be in the company of the good than to be alone. Good company can be a great source of help and support in leading a virtuous life, while bad company leads to sin and ruin.*

Sahih Muslim, Positivism vs Negativism

Choose your company well. A true friend is a helper, supporter and protector of one's spiritual well-being, as well as encouraging that which is good and discouraging, that which is evil and destructive.

You are the driver of your own bus. You have a choice.

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## REALITY AND INEQUALITY

While there has been remarkable progress in providing a constitutional and legislative framework within which the right to equality and non-discrimination and the right to have one's dignity protected and respected can be claimed and enjoyed, realities appear to be continuously marked by inequalities and imbalances, by disparities that seem to grow rather than diminish, as well as by injustices and discriminatory attitudes and practices society appears to have become accustomed to. Realities are also marked by the prevailing unequal and gendered access to, and control over, available resources and opportunities based on persistent patriarchal structures and male dominance.

Statistics are but one of the indicators reflecting prevailing inequalities and imbalances. According to these statistics<sup>10</sup>, the total unemployment rate is 42%, with higher rates amongst women (48%) than amongst men (36%). In addition to the gender-based disparities, disparities are also manifested between population groups and between provinces. While the total unemployment rate is 42%, the unemployment rate amongst the African population amounts to 49% (55% amongst women,

42% amongst men), as compared to Coloured 29% (33% women and 26% men), Indian/Asian 21% (25% women and 18% men) and White 8% (10% women and 6% men). Unemployment rates also vastly differ between provinces. Limpopo and Eastern Cape experience the highest unemployment rates of 56% (60% women and 50% men) and 50% (53% women and 46% men), respectively, whereas the Western Cape has a comparable low unemployment rate of 26% (29% women and 23% men).

These statistics also indicate vast differences between age

## Dump the stigma

Rajesh Latchman

While there is no doubt about our universal equality before the law and our fortune to live in a country with a benchmark constitution, the real issues of accessing and enjoying that equality for people with HIV and AIDS, are still largely rooted in stigma and prejudice.

Much time, effort and considerable resources are invested in information and awareness around HIV and AIDS and yet, infection rates inexplicably, seem to continue to increase. The increase in infections should, however, not be seen as an indictment on the current information and awareness campaigns, as information is but one small aspect of larger attitudinal and behavioural issues that are complex and deeply related to our socialisation.

Greetings in all languages across the world generally ask 'how are you?' and the most common responses are always 'very well, thank you'. One's health has always been a concern of humanity and being unwell in any form is treated with varying degrees of sympathy, advice and, in the case of any kind of illness that is not fully understood, severe disdain, fear or ostracism. Take, for example, the case of people with leprosy in recent history who were shipped off to secure and secluded areas where they were left to die slow deaths. How many times have we heard of a similar suggestion for people with HIV and AIDS?

Dr Ria Ries, an anthropologist conducting research in Swaziland, discovered that people with epilepsy (another 'not-fully-understood' condition) were more emotionally and socially affected by the stigma they faced, than with the actual seizures and periods of recovery. This research is coherent with other studies indicating better prognosis for people recovering from major surgery or illness, if they have strong support systems such as family. Stigma hurts, affects our equality and disempowers us more, than any virus, neurological or physical disorder can.

The fundamental challenge of accepting people with HIV and AIDS as equals is solely the responsibility of everyone who is NOT HIV-positive. Dump the stigma and get over the prejudice and realise that HIV is merely a virus in a person's body. It is not the sum total of that person.

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groups, in that of all the unemployed, 71% are between the ages of 15 and 34 (35% amongst 15 to 24 years, 55% women and 36% amongst 25 to 34 years, 59% women). Of all the unemployed in this age group, 90% are African (57% women), as compared to less than 1% in all other population groups.

The realities are further marked by high levels of poverty that differ similarly between gender, population groups and provinces. According to statistics<sup>11</sup>, 48.5% (21.9 million) of South Africans live in absolute poverty<sup>12</sup>, the majority of whom are women (54.4%). Of all the poor, 91% are Africans. The poverty rate amongst the African population is 56%, as compared to 36% amongst the Coloured population, 15% amongst the Indian population and 7% amongst the White population. This indicates that the poverty rate amongst Africans is 8 times as much as amongst the White population group. As for the disparity between the provinces, statistics indicate that in 7 out of the 9 provinces the poverty rate is more than 50%. Eastern Cape and Limpopo experience the highest poverty rates of 68% and 61% respectively, whereas 20% of the population in Gauteng and 28% of the population in the Western Cape live below the poverty line.

As for the HIV and AIDS realities, it is estimated that 5.3 million people in South Africa are living with HIV and AIDS, the majority of whom are women and girl children. It is further estimated that the adult prevalence rate in South Africa is 21.5%. In addition, it is young people age 15 to 24 who are most at risk of HIV infection<sup>13</sup>. The prevalence rate amongst people 15 to 24 is 10.2%. Amongst women, the prevalence rate is much higher (15.5%), than amongst men (4.8%)<sup>14</sup>. These HIV and AIDS realities are further exacerbated by the prevailing socio-economic inequalities and imbalances and the gendered context of society in that the access to, control over, and benefit from available resources and opportunities, as well as the extent to which fundamental rights and freedoms can be claimed and enjoyed are limited accordingly. Subsequently, women and girl children are most vulnerable to HIV infections, even more so in light of high incidences of sexual violence and abuse<sup>15</sup>; access to information, prevention, health care, treatment and support for disadvantaged and rural communities remains limited<sup>16</sup>; quality of

# Denial is the privilege of those who don't know

**Samantha Waterhouse**

HIV infection is affected by a number of different factors. True, unprotected sexual intercourse and other high risk behaviours create risk for any person, irrespective of social position. However, certain physiological and social factors increase the risk of certain persons to infection and further impact on access to care, medication and nutrition. Gender, race, class and age powerfully influence exposure to, and the progress of, the virus in different people.

Physiologically, during vaginal penile sexual intercourse women are at higher risk of infection. Anal sexual intercourse further increases the risk to the person being penetrated. Sexual violation of women, boys and men often includes anal rape. Unlubricated sexual intercourse increases friction in the vagina and increases the physical injury (no matter how small) to the vagina, this makes transmission easier. In many cases of rape the penetration is not accompanied by natural lubrication. Tensed muscles also increase the risk of injury and thus, transmission of the virus.

Socially, women are at higher risk due to prevalent unchallenged norms of male ownership of women's bodies and limited ability to negotiate sex and sexuality. For too many women, following ABC messages is not practically possible. In many situations, these decisions are made by their male partners and attempts to challenge this, may result in further harm and isolation of that woman.

An experience of rape is exacerbated by the threat and fear of HIV transmission. We are grateful that anti-retroviral treatment is available to survivors, but mindful that after an experience of rape, taking anti-retroviral medication often compounds the post rape trauma for many survivors.

We are all affected by HIV, but still too many South Africans refuse to know and accept this and thus, fail to understand the devastating impact of AIDS on individuals, families, communities and our society. At times one feels there are parallel realities, one in which HIV exists and another in which it exists only as a concept. This denial is the privilege of those who don't know their status or who are negative, of those who have not seen the struggle of a friend or a family member as this disease progresses, who have not experienced the helplessness.

We must all be positive, take control of our attitude and our behaviour. Being positive is about understanding concepts such as living with HIV, not dying of AIDS, creating an environment in which HIV-positive people are able to live with the virus and access what is needed to make that possible. It is about, taking actions that are healthy, before or after infection with the virus, whenever possible.

**Samantha Waterhouse is the Advocacy Coordinator at Rape Crisis Cape Town Trust.**

life and well-being further decreases, especially for the poor, due to increased cost of HIV and AIDS related treatment and care<sup>17</sup>; women and girl children are increasingly taken out of education and paid employment to care for the sick and dying<sup>18</sup>; and prevailing stigmatisation, marginalisation, violation and discrimination of people living with, and affected by, HIV and AIDS defines the extent to which resources can be accessed and fundamental rights and freedoms be enjoyed.

These various statistics and realities are not only a clear indication of the existing imbalances that remain to be largely race, class and gender-based, but also a strong reflection of gendered imbalances across the population groups, geographical locations and age groups. Subsequently, the access to, control over, and benefit from available resources and opportunities, as well as the extent to which rights and freedoms can be accessed and realised remain limited accordingly.

This seems to indicate that inequality, discrimination, stigmatisation, marginalisation and violation of one's inherent dignity are as much part of our realities, as the fundamental principles of human dignity, equality and freedom we are celebrating. It is within this context that one could raise the question as to the extent to which the achievements made are reflected and manifested in the realities of a vast number of South Africans; the question as to the meaning and understanding, the impact and implications of these fundamental principles, the cornerstone of our democracy, on the realities and lives of the majority of South Africans. The answer seems to be more premised on the reality of persistent socio-economic inequalities, imbalances and injustices, as experienced by a vast number of South Africans, than on the meaning of these fundamental principles. Subsequently, the lived realities are neither a reflection of the principles of human dignity, equality and freedom, nor are they seemingly impacting on the systemic nature of these inequalities or the resilience of discriminatory attitudes and practices.

## CHALLENGES

One of the biggest challenges appears and remains to be recognising the gap between theory and practice, between principles of human dignity, equality and freedom and practices of inequalities and dis-

Some inequalities are more acceptable than others

criminatory attitudes and practices and acknowledging that ultimately the extent to which people are in the position to claim and enjoy fundamental rights and freedoms, as well as the extent to which fundamental human rights principles are impacting on people's lived realities are indeed determined by these very same inequalities, imbalances and injustices and not by fundamental human rights principles. Hence, the challenge, arguably, is a reality that not only calls the theory in its fundamentals into question, but also limits the extent to which the theory can have meaningful impact on the reality.

It seems to be as much the challenge of lived realities that do not coincide with fundamental human rights and freedoms, as it is the challenge of fundamental human rights principles and values that do not manifest themselves in the realities. It is, arguably, the continuous challenge of the largely gender, class and race-based and thus, limited access to, control over and benefit from available resources and opportunities, that needs to be constantly addressed and called into questions to ensure and facilitate a process in which fundamental rights and freedoms do indeed coincide with everyone's lived realities.

As long as prevailing inequalities, imbalances and injustices are not challenged in their systemic nature, as well as at the seemingly societal level of acceptance, fundamental principles of human dignity, equality and freedom will remain a privilege for but a few who are in the position to have access to, control over, and are 'empowered' to benefit from fundamental rights and freedoms. Thus, it is the status quo of seemingly societal accepted inequalities, imbalances and injustices, as well as discriminatory attitudes and practices that need to be constantly challenged to create an environment in which principles of human dignity, equality and freedom are not only a 'privilege' of the few, but a reality for everyone.

#### FOOTNOTES:

- 1 This article is in part based on a paper, entitled *Constitutional Understanding of Equality*, presented at the 'Equality and Justice: Gains and Challenges' Conference, held in 2002 in Cape Town.
- 2 Statistics South Africa Labour Force Survey 2003, UNDP 2003 South Africa Human Development Report and UNAIDS 2004 Report on the Global AIDS Epidemic.
- 3 De Waal et al (2000).
- 4 Samuel (2001) and de Waal et al (2000).
- 5 President of the Republic of South Africa v Hugo 1997 (4) SA 1 (CC), as cited in De Waal 2000.
- 6 The Constitution of South Africa, Act 108 of 1996.
- 7 National Coalition for Gay and Lesbian Equality v Minister of Justice 1999 (1) SA 6 (CC) paras 60-1.
- 8 Harksen v Lane NO 1998 (1) SA 300 (CC) para 46.
- 9 Prinsloo v Van der Linde 1997 (3) SA 1012 (CC) para 31.
- 10 Statistics South Africa Labour Force Survey September 2003.
- 11 UNDP. 2003. South Africa Human Development Report 2003.
- 12 Absolute poverty refers to living below the national poverty line, which is calculated to be R354 per month per adult.
- 13 UNAIDS. 2004 Report on the Global AIDS Epidemic: July 2004.
- 14 RHRU. 2004. HIV and Sexual Behaviour Among Young South African: A national Survey of 15 - 24 Years old.
- 15 Kistner U. 2003. Gender-based violence and HIV/AIDS in South Africa. CADRE. See also Human Rights Watch Report 2004.
- 16 UNDP. 2003. South Africa Human Development Report 2003.
- 17 UNAIDS. 2004 Report on the Global AIDS Epidemic: July 2004. UNDP. 2003. South Africa Human Development Report 2003.
- 18 Kistner U. 2003. Gender-based violence and HIV/AIDS in South Africa. CADRE.

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## Mini Human Rights Assessment Survey...

Premised on its slogan, the AIDS Legal Network developed a 3-item questionnaire designed to gather information as to the extent to which we, as human beings, perceive ourselves to be equal, to be affected and to be positive. Participants were asked to indicate whether or not they perceived the statements to be true or false and to explain their perception.

The mini survey was administered to 454 participants across the country. The majority of the respondents (323, 71%) are women. In addition, most of the people (419, 92%) responding to the survey were between the ages of 15 and 50, with the highest number of responses in the age groups 15 to 20 (191, 42%) and 31 to 40 (95, 21%).

The majority (335, 74%) of the respondents agreed that we are all equal, while 116 (25%) disagreed and only 3 of the respondents perceived the statement 'we are all equal' to be true and false. Regarding the statement 'we are all affected', a vast majority of the participants (84%, 382) agreed, while only 72 respondents (16%) thought that we are not all affected. The responses to the statement 'we are all positive' are more indecisive, in that only 58% (262) of the respondents perceived that statement to be true.

In addition, we invited secondary school learners to respond to the ALN slogan and to write an essay as to their understanding of the slogan. We targeted 180 secondary schools, 20 in each province.

Some of the responses to the survey, as well as a few essays by learners, are included in this edition. More information on the survey can be obtained from the ALN office at +27 21 447 8435 or at [jkain@mweb.co.za](mailto:jkain@mweb.co.za).

# Breaking the cycle

## How reproductive rights can help to break the cycle of HIV and gender-based violence

It's simple enough to observe the link between HIV/AIDS and gender-based violence. Unequal power relations between the sexes combined with socio-cultural constructions of men's physical aggression and women's non-aggression lead to women's vulnerability to violence from male partners, family members, and strangers. Gender-based violence, or the fear thereof, places women at increased risk of contracting HIV. Sexual violence and abuse place women and girls directly at risk. Some women are, due to fear of violence, unable to negotiate whether or not they have sex and whether or not condoms are worn with intimate partners. In addition, women who are HIV-positive are at increased risk of violence from their partners, as they are likely to be accused of unfaithfulness and blamed for bringing HIV into the relationship.

Interventions on both sides of this link are beginning to take note of the growing responsibility to address the fact that gender-based violence increases the spread of HIV and HIV perpetuates gender-based violence. However, women's reproductive rights, as an important third element which works as a confounding variable to the causal relationship between the two, must also be addressed. Without the full realisation of women's reproductive rights and without women being able to be in ownership of, and have control over, their own bodies, it is unlikely that either HIV or gender-based violence will decrease.

According to International Conference Population Development Programme of Action<sup>1</sup>, reproductive rights are defined as

*...the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.*

In South Africa, women's reproductive rights are protected at several levels. The Constitution<sup>2</sup> guarantees the 'right to bodily and psychological integrity', including the right 'to make decisions concerning reproduction' and the right 'to security in and control over the body' [Section 12(2)]. Fully realised, these rights would almost certainly lead to a decrease in the transmission of HIV and a decline in violence against women. However, because of existing inequalities, policy must make explicit provisions to protect the rights and to ensure that they can be realised.

At the policy level, the Choice on Termination of Pregnancy Act (No 92 of 1996) strives to protect women's reproductive rights. Under this law, the government recognises its responsibility to 'provide reproductive health to all and also to provide safe conditions under which the right of choice can be exercised without fear or

harm'<sup>3</sup>. The Act purposes to ensure women's access to a termination of pregnancy, with limitations in the second and third trimesters<sup>4</sup>. Women's ability to choose a termination of pregnancy is also limited by a clause in the Regulations to the Act which allows health care providers to refuse to perform the procedure on religious and/or moral grounds. Health care providers are, however, legally obligated to provide information enabling the woman to obtain a termination of pregnancy elsewhere.

Limiting the extent to which a woman can make healthy decisions about her body is dangerous on several levels; the most apparent one is the physical danger of 'abortions' performed outside a clinical setting. While it is generally recognised that giving women access to 'safe abortions' has limited the number of 'septic abortions'<sup>5</sup>, it can be assumed that even more 'unsafe abortions' can be prevented if women were allowed to choose to terminate a pregnancy in any trimester; if women didn't risk stigma from health care providers who refuse to perform the procedure; and if, upon refusal, women had access to other facilities where they could terminate the pregnancy safely.

More relevant to this discussion, however, is that the implementation of this law limits not only women's access to termination, but also limits the degree to which women are autonomous beings and capable of making decisions about their bodies. Indeed, such limitations are violations of women's reproductive rights, the effects of which have severe implications for women's risk of violence and risk of contracting HIV. Allowing women only limited ownership of their bodies is one way in which policy perpetuates the powerlessness of women. How can we expect women to be empowered, to fully internalise the fact that they can live without being victims of violence? How can women be expected to leave abusive partners and seek help, to raise their daughters and sons differently, to help break the cycle of violence, when the law itself denies

women such a basic authority, the authority to control their bodies?

Of course, there are more concrete ways in which full realisation of women's reproductive rights can break the mutual causality of gender-based violence and HIV. Reproductive education and information are crucial entry points for empowering women to take care of their bodies, to take ownership of their reproductive health, and to *'decide freely and responsibly the number, spacing and timing of their children'* – not to mention that improved access to such education is a necessity for reducing teenage pregnancies, unwanted pregnancies, maternal morbidity, and 'abortions'. It is imperative that HIV/STI/reproductive health education places emphasis on woman-controlled contraceptive methods and safer sex methods, such as contraceptive pills, patches, injections and female condoms; as well as sexual negotiation skills. Information about domestic violence and community resources for recourse should also be included in this education process. Not until women are given the power of knowledge, the ability to value, and be in charge of, their bodily integrity, will women be in the position to stop 'accepting' violence, to negotiate safe sex or no sex without fear of violence, to get help if they experience violence; will their sons and daughters learn that men will not get away with abusing women; will they teach and empower their children to make healthy sexual decisions.

Regular reproductive health care visits – antenatal care visits in particular, as partner violence often increases during pregnancy – are also a prime opportunity for women to be given adequate information about gender-based violence. Providers must be trained to identify physical and psychological warning signs of partner violence, be required to discuss partner violence with women on a regular basis, whether or not they observe evidence of violence, and must be prepared to give referrals to community resources for legal, medical, financial, and emotional support for abused women. However, it should be reiterated that before women can fully utilise such information and services, their authority to make health decisions must be respected and protected.

Access to reproductive health care is particularly important for HIV-positive women. HIV-positive women must have access to adequate reproductive information

## It is endeavoured to treat everyone similarly

**Judge Johannes Fagan**

The relevance of the slogan 'we are all equal, we are all affected, we are all positive' to our prisons is not open to question. The principles that it encapsulates are fully applicable in the 240 correctional centres where offenders are housed.

Equality is aimed for. There has to be separation of awaiting-trial prisoners ( $\pm 48\ 000$ ) and sentenced prisoners ( $\pm 137\ 000$ ); of males ( $\pm 181\ 000$ ) and females ( $\pm 4\ 000$ ); of adults ( $\pm 158\ 000$ ), juveniles ( $\pm 24\ 000$ ) and children under 18 ( $\pm 3\ 000$ ); of sentenced prisoners in various security classifications (non-board  $\pm 17\ 000$ , minimum  $\pm 2\ 000$ , medium  $\pm 80\ 000$  and maximum  $\pm 38\ 000$ ). However, in every category it is endeavoured to treat everyone similarly. Thus, there is no differentiation between prisoners who are HIV-positive and prisoners who are not. There is no compulsory testing. A prisoner's HIV status is in any event a confidential matter not to be disclosed. There is no segregation of prisoners who happen to be HIV-positive, except by agreement. They are treated exactly the same as other prisoners.

Everyone in prison is affected. Just as outside prison, each person must assume that people he deals with might be HIV positive. Universal precautions are taken, including the use of gloves, when appropriate, and the provision of condoms.

Being positive can apply to both, a physical and a mental condition. It is in the latter context that it is so vitally important. To maintain hope and a positive outlook with knowledge of your HIV status cannot be easy. Within the awful conditions in some of our prisons, caused by overcrowding, it must be even more difficult to maintain hope. Yet, it can be done. A few weeks ago on a visit to Drakenstein Correctional Centre, I witnessed a group of prisoners present a play on HIV/AIDS. It was excellently done and with such humour. The human spirit is truly remarkable.

Our greatest contribution to the unfortunate who are imprisoned will be to reduce the inflow. Then those inside will have fresher air, space to move about, a bed of their own, more exercise, better food, better health care, work to do and more rehabilitation. With a third less prisoners, we will be closer to reaching our common goal of humanity in our prisons.

**Judge Johannes Fagan is the Inspecting Judge of Prisons at the Independent Inspectorate of Prisons.**

and services in order to avoid mother-to-child transmission of HIV, including information and access to contraceptives; adequate support if they desire to have children, including information on both effectiveness and risk of, as well as access to, ARVs. HIV-positive women must have access to 'safe abortion' if they become pregnant and wish to terminate. In communicating information on preventing mother-to-child transmission, care must be taken to protect women's authority to make their own decisions, and not to treat them as 'objects of danger' to their children, but as having the power to protect themselves and their children by preserving their own health.

Violence against women will persist as long as it is tolerated. This is not to say that women are responsible for allowing violence to persist, or for ending it, but that crucial community domestic violence services – protection orders, legal assistance, shelters, counselling and support groups, criminal penalties for abuse – will

## We are all positive and equal

**Nquobizitha Dube**

People usually show an expression of surprise or dismay when someone says he or she is HIV-positive. This kind of attitude is not palatable. So, we must get rid of this mental straightjacket that people with AIDS are no longer our friends.

If someone in a family is infected by HIV and AIDS, this can affect the whole family and the community, because they are the ones who will be helping this infected person through this cataclysmic moment of his or her life.

If you are infected with HIV or AIDS, you don't have to think that you are now an object of derision or that you have been befallen by a dreadful catastrophe. When we cannot find contentment in ourselves, it is useless to seek it elsewhere.

He who loves himself best need fear no rival. They know it is the nature of man to rise to greatness if greatness is expected of him. What I mean by this is that, as a person, you don't have to think the worst of yourself. We must try to always be positive about ourselves, no matter if you are positive or negative.

When you are infected by this disease you don't have to think that you are incapable of working. You know what beats disability is mentality. So we must try to throw away that grotesque mentality that if we are HIV-positive, we don't have to work and that we are not equal to other people. We are all positive and equal.

**Nquobizitha Dube (Grade 11, Age 18) is a learner at the Altem High School in Orlando, Johannesburg.**

## We do have a cure

**Mnqayi Nkosinam**

We all understand to be positive as having as to have the disease now, to have HIV/AIDS. How can I be positive, if I do not have the disease?

As a proudly South African and as a nation, nothing can break us apart. Let's all stand together as Africans, black, white, rich, poor educated or not, and operate as the disease operates.

HIV/AIDS is there and it is killing us. Let's be positive minded, because we are all affected by it. Doctors have lost the battle, since there is no cure for AIDS. I believe, we as South Africans, we do have a cure. If we unite, use condoms, abstain and be positive minded, we will win the battle. Injury to one must be an injury to all. If we are positive minded, we will kill the killer.

We are all equal, since we are all human beings. We are all created by God. We are all unique. God created us for what we are and what we will be in the future. God creates us to be equal, either old or young, black or white. The constitution of our country says we are the same, either poor or rich, we all get the same. What we have to understand is that we are all equal, because we are breathing the same air. If we were not equal, God would have given different air for different people to breath.

What is it to be affected? To be affected means to be involved. Now AIDS is our killer, our enemy. Let all South Africans be affected by this AIDS thing. I believe, we did it in the past against Apartheid. Whenever we were affected by it, we did strike together and we did win the war. Now is the time to show the world that this was not the first and last time to do this. Stand up, unite, be one and we will win against this AIDS thing. It is a thing that kills our nation. A sick nation is a nation that has no future.

**Mnqayi Nkosinam (Grade 10, Age 19) is a learner at the Lungiso High School in Humansdorp.**

operate at a handicap, if women are not empowered enough to take advantage of them. Women will not be able to take actions against abuse if they are conditioned to believe that it is inevitable or that they deserve it – and part of this conditioning is perpetuated by policies that take the power to make health decisions away from women.

HIV risk will be high for women as long as they are unable to negotiate their own sex lives. As long as their bodies do not belong to them, women will continue to live in fear, continue to be victims of others' behaviour, continue to be viewed as objects to possess and control, rather than independent beings of value in themselves. Children will continue to be infected by their mothers, as long as women are treated little more than 'vessels' for carrying and delivering babies and have little power to decide how best to protect their families and health.

Once women possess a sense of physical autonomy, a sense of entitlement to health and safety, and sufficient knowledge of all available options, the link between gender-based violence and HIV will weaken. Women will negotiate safe sex or no sex, women will stand up for their reproductive rights, for their safety, and will not let fear of violence interfere with their decision making. Violence will cease to go unpunished, and eventually will cease to exist. Women and men will teach their children, in words and by example, that they must value and actively protect the health and bodies of themselves and their loved ones.

### FOOTNOTES:

1 International Conference on Population Development Programme of Action. Chapter 7, Section A. United Nations Department of Public Information, 1995.

2 The Constitution of South Africa, Act 108 of 1996.

3 The Choice on Termination of Pregnancy Act (No 92 of 1996), Preamble.

4 In the second trimester, terminations are legal if continuation of the pregnancy is of physical or mental health risk to woman or foetus, if the pregnancy results from rape or incest, or if the woman's social or economic circumstances would be greatly affected. In the third trimester, pregnancies can only be terminated if continuation is of significant risk to the woman's life, or of severe malformation or illness of the foetus.

5 2002 Oversight Hearings into the Implementation of the Choice on Termination of Pregnancy Act, Health Portfolio Committee. 7 May 2002.

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# Crimes of hate and prejudice against black lesbians

We need to understand what it means to be heterosexual as well as homosexual, and that our sexualities affect whether we live or die...

Bisi Adeleye-Fayemi

A statement made by a fellow feminist and activist<sup>1</sup> comes to mind.

*The language we use when discussing sexual violence is neither arbitrary nor unimportant. It is key to how we define, relate and identify what counts as sexual violence. Language is particularly important in its creation and mediation of reality. Legal language is a form that is most honest about this function of defining what is and can be.*

It is within this context, that my thoughts turn to 'curative rape against black lesbians' and the currently problematic legal definition of rape. 'Curative rape' is a term used to describe the sexual violence perpetrated against black lesbians for the purpose of 'curing' them of their homosexual sexual orientation. Rape is defined as '*consisting in intentional unlawful sexual intercourse with a woman without her consent*'. We need to problematise this definition for various reasons, including, but not limited to, the following: it limits the crime of rape to non-consensual sex between a man and a woman, that is, a gender specific crime, and it inevitably means that men cannot be raped. Further, very serious forms of sexual assault, such as the penetration of a woman, with a broken bottle, or anal rape, are not classified as rape, but rather as indecent assault.

A hate crime, loosely defined, is a crime committed because of the perpetrator's prejudices. It is a crime in which the perpetrator's conduct is motivated by hatred, bias or prejudice, based on the actual or perceived race, religion, national origin or ethnicity, gender, sexual orientation or gender identity of an individual or group of persons. Hatred causing violence is a social problem of sufficient scope and persistence, requiring special measures by legislators and all role players within the criminal justice system to secure the safety of the groups targeted by hate

crimes. Lesbian, gay, bisexual and transgender people face violence at home, in schools, communities, clubs, and churches. For many, this violence has become a way of life. This systematic and institutionalised violence hurts bodies, minds and families because it is kept invisible. Justice Albie Sachs of the Constitutional Court succinctly stated in *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC):

*The manner in which discrimination is experienced on grounds of race or sex or religion or disability varies considerably – there is difference in difference. The commonality that unites them all is the injury to dignity imposed upon people as a consequence of their belonging to certain groups...in the case of gays, history and experience teach us that the scarring comes not from poverty and powerlessness, but from invisibility. It is the tainting of desire, it is the attribution of perversity and shame to spontaneous bodily affection, it is the prohibition of the expression of love, it is the denial of full moral citizenship in society because you are what you are, that impinges on the dignity and self worth of a group.*

Emphasis here is given to hate crimes against black lesbian women for the simple reason that firstly, my available data is only applicable to this group and secondly, the various forms of identity-based discrimination render this group particularly vulnerable. Hate crimes against black lesbians must not be seen as a separate and distinct phenomenon to the high incidence of gender-based violence in this country. There are differences insofar as sexual orientation is concerned, yet before one is a lesbian, one is a woman. Her sexual orientation may nevertheless pose added difficulties and challenges in respect of her agency, as well as her ability or as the case may be, inability to access resources and services. On a daily basis black lesbians are subjected to violence, mental, physical and sexual, due to the belief that it will cure them of their deviant sexual tendencies. It is very important to note that patriarchal societies, irrespective of race, have always aimed to define and dominate female sexuality and self-determination. Women who live a self-determined sexuality challenge this phallogocentric system. In this respect, violence against lesbians is undoubtedly linked to violence against women in general and to a worldwide patriarchal attitude.

The black woman in this country lives within a culture of violence. Within this culture of violence, the role of the black woman must be viewed historically, in order to gain perspective of her place in South African society. It is argued, that the brutality of apartheid bred brutality in its 'victims'; and, in particular, that apartheid emasculated black men, who tried to re-establish their manhood by making women submissive and beating those who resisted. Irrespective of the reasons, violence against women is a daily occurrence. The historical perspective on black women is a story of economic disenfranchisement, lack of education, institutionalisation, disrespect, racism and destruction of

self-worth. Although, there are significant contexts of female power, the general position of black women is one of subordination from all sources. Taking this into account, it is not surprising that violence is not experienced equally across class, race and gender dimensions. Although, violence touches everyone in South Africa, the most affected are the working class African women and their communities.

## OVERVIEW OF LESBIAN AND GAY RIGHTS AND PROTECTIONS IN SOUTH AFRICA

South Africa has one of the most progressive and inclusive constitutions in the world. It has extended human rights protections across the board, acknowledging the fundamental human rights of all South Africans (citizens and residents), irrespective of race, gender or sexual orientation (amongst other identities and positionalities). The South African government has shown, in the world of law, an unprecedented African commitment to acknowledging and upholding the human rights of lesbian, gay, bisexual, transgender and intersex people. With ten years of freedom and democracy, lesbian and gay people in South Africa have much to celebrate.

The inclusion of sexual orientation as a ground for non-discrimination in our Bill of Rights led to a series of fundamental changes in discriminatory laws and policies. Constitutional challenges on the basis of sexual orientation resulted in the development of impressive equality jurisprudence. I will not discuss in detail the legal achievements and developments, since the decriminalisation of 'sodomy' in the Constitutional Court, suffice it to say, the only outstanding legal issues are the legal recognition of marriage between two people of the same sex and the unequal age of consent.

Nevertheless, the reality is that violence and discrimination against lesbian and gay people, particularly crimes of hate and prejudice against lesbians, persist. In many African communities, women have too little or no agency to say 'no' to unwanted sex or to say 'yes' to sex that is wanted. In South Africa, many women are vulnerable to violent sexual and physical attacks, because they choose to have sex and/or fall in love with other women. At this juncture, it is necessary to refer to an observation made by the then United Nations Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, in a 1997 Report to the Commission on Human Rights:

*...communities 'police' the behaviour of their female members. A woman who is perceived to be acting in a manner deemed to be sexually inappropriate by communal standards is liable to be punished...in most communities, the option available to women for sexual activity is confined to marriage with a man from the same community. Women who choose options which are disapproved of by the community, whether to have a sexual relationship with a man in a non-marital relationship, to have such a relationship outside of ethnic, religious or class communities, or to live out their sexuality in ways other than heterosexuality, are often subjected to violence and degrading treatment...Women, 'unprotected' by a marriage union with a man, are vulnerable members of the community, often marginalised in community social practices and the victims of social ostracism and abuse.*

As noted by the International Gay and Lesbian Human Rights Commission and the Centre for Women's Global Leadership: *'that women are made vulnerable by their sexualities, and that women living non-heterosexual lives are particularly vulnerable, is an obvious fact'.*

In our communities, homosexuality is still seen as a white phenomenon, un-African, against dominant religious beliefs and systems, an attack on culture and tradition. The black lesbian must be viewed

## Let's change our minds

Wongalethu Nqenqa

We are all equal and we have all have equal rights. As we know, South Africa is coming from years of Apartheid and now we are celebrating 10 years of freedom. Yet, we still 'make Apartheid' to our fellow strugglers by discriminating against other people because of their sickness and disease, like HIV/AIDS and others. People let's change our minds. We must all believe that we are equal.

We are all affected, because, as we all know, South Africa has a problem with the economy. Because of this economy, South Africa has a high rate of jobless people causing poverty and poverty is an opportunity for disease. This means, that the small amount of money we have in South Africa is used to fight those diseases, instead of creating job opportunities. And this is affecting all of us. The ignorant one's won't realise this, but the brilliant one's will know that.

We are all positive, because we know that all diseases are the way to death. But we are not really positive, since we still don't know the way of fighting those diseases and that will always affect us. We still need more education and knowledge so that we can be positive. Positive to know that we are all equal, positive to know that we are all affected and positive in mind to know what is wrong and what is right.

**Wongalethu Nqenqa (Grade 10, Age 18) is a learner at the Lungiso High School in Humansdorp.**

within this paradigm. Similar to other countries in the world, many South Africans are homophobic. This homophobia leads to a perpetuation of myths and stereotypes about lesbian and gay people. More importantly, it leads to the creation of an environment in which we, as black lesbian women, feel unsafe. Such an environment has devastating consequences in that many young women are kicked out of their homes and schools and are sexually violated by men in their communities and families, because of their real or perceived sexual orientation. Worse still, the sexual violence inevitably impacts on the livelihood of many survivors in the sense that they further become recipients of HIV/AIDS. In considering access to services and treatment for black lesbians, the socio-economic status,

gender, race and discrimination on the basis of sexual orientation have a far reaching effect and make this group of people particularly vulnerable.

## CONSTITUTIONAL PROTECTION

Section 12(1) of the Constitution<sup>2</sup> provides that *'everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources'*. Subsection 2 makes provision for *'bodily and psychological integrity, which includes the right to security in and control over their body'*. Section 10 states that everyone has the right to inherent dignity and to have that dignity respected and protected. Violence against women and hate crimes against black lesbians are a clear violation of constitutionally protected rights.

*The human rights of women include their 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. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.* [UN Fourth World Conference on Women, Beijing Platform For Action, para 96]

Theoretically there seems to be sufficient protection for all women in respect of sexual rights and freedom from violence. Yet, in reality and within the criminal justice system, women continue to suffer secondary victimisation. At this point, the intersection of socio-economic aspects with race, gender, power and patriarchy become obvious and lead to a need to identify the power structures which disempower people in different, and not always linear, ways. Hierarchies and systems of privilege can position people, for instance, on the basis of race, age, sexual and gender identity and socio-economic status, in sometimes contradictory or multiple ways and so, we additionally need to identify how these various forms of disempowerment intersect with each other.

These power relations are created, recreated and acted out by both the state and civil society. Lesbian and gay people have been seen as threatening the social order; women seeking to exercise autonomy over their bodies; men seen as traitors to masculine privilege, because they are perceived as adopting 'feminine roles'; and transgender people calling into question the traditional assumption that all humankind must fall irrevocably into one of two gender categories. Defiance of the 'heterosexual norm' can provoke moral condemnation, exclusion and violence, including torture inflicted on those who challenge, or fail to conform to, traditionally defined gender roles. Therefore, violence against lesbians and transgender women should be contextualised within the concept of gender-based violence.

HIV/AIDS affects us all – lesbian, gay, bisexual, transgender and heterosexual. However, the law does not treat us equally – discrimination against lesbian and gay people still exists, both in areas of the law and in everyday experiences. This discrimination can have an equal effect on the rights of lesbian and gay people, both at the level of risk of HIV infection and for people living with HIV or AIDS.

### FOOTNOTES:

1 Dr Pumla Dineo Gqola, Opinion Piece on Sexual Offences Bill Awareness Week, published on Equality Project website ([www.equality.org.za](http://www.equality.org.za)) on 3 September 2004.

2 The Constitution of South Africa, Act 108 of 1996.

## They don't deserve to die

### Nomfanelo Tshula

Why am I saying that we are all equal? It is because God created us equal. We all come from God's world. We all live in the same country. So, we should stop discriminating other people. God doesn't discriminate us; God loves us the way we are. We are all God's children. Let's stop discriminating people who have AIDS. Let's love them as our brothers and sisters. They don't deserve to die with AIDS, because AIDS is very painful for them. It affects them. It is so painful to see a person who is dying of AIDS. So please people, don't laugh at people who have AIDS and gossip about them. Please, people of South Africa, let's stop discriminating one another, because in God's eyes we are all equal.

And in God's eyes we are all affected. Why am I saying that? Other people say that they are not affected by AIDS. Even if you are not infected with AIDS, maybe you know a person who is infected and maybe that person is your child or your mother and you too will be affected with that thing. You feel that person's pain and it is so painful to handle such a situation. You see the person you love lying on the bed, not eating, not even talking and this affects you too, emotionally and physically, and this is killing you too. And that is why I am saying we are all affected.

And we are all positive. Why am I saying that we are positive? You cannot say, by looking at a person that this person has AIDS because he/she is thin or has shingles. These things do not tell you if a person is positive. The person should go to the nearest clinic and get tested. The doctors will give you the result and then you will know if you are positive or negative. So do not judge a book by its cover, because in God's eyes we are all equal and positive. And God loves us, no matter if you are black, white or coloured, he still loves us. We are still God's children. We, as South Africans, should fight this disease.

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# Media mirrors the silences in communities

## Portrayal of HIV, AIDS and gender-based violence in the South African media<sup>1</sup>

Several studies have been conducted on how HIV and AIDS are portrayed in the media. However, thus far – no study has been conducted specifically around how the media reports on HIV and AIDS in its relation to gender-based violence.

This paper will provide an overview of how the South African media reports on HIV and AIDS<sup>2</sup> and also explore some of the implications of the current state of media reporting on HIV and AIDS for addressing gender-based violence.

### OVERVIEW OF HIV AND AIDS REPORTING IN THE SOUTH AFRICAN MEDIA

The South African media has thrived on the first wave of HIV and AIDS, but has come close to a point of saturation as the epidemic no longer meets the standard conventions of breaking news.

It has to be acknowledged that a large amount of the information and knowledge people have of HIV and AIDS has come from the media. This includes facts and figures, as well as myths and misconceptions. Unfortunately, what often happens is that the media fuels the epidemic through sensationalism and poor unethical reporting. Another unfortunate, but quite real issue, is that media mirrors the silences in the communities both around HIV and AIDS and gender-based violence. However, some of the reporting does communicate information that promotes awareness and behaviour change.

There are several local, national and international campaigns for access to anti-retroviral drugs and better conditions for 'AIDS Orphans' receiving generous media attention. However, other campaigns, particularly those around a silent issue such as gender-based violence, receive considerably less attention.

So, who is to blame for gender-based violence not getting media coverage? Is it related to women and children being neglected by government policies? Are we not good enough communicating the news worthiness of our work to the media? Or is this related to journalists lacking initiative to conduct critical queries into new terrain?

Before I move into mapping the terrain of the media content as it relates to HIV and AIDS, I would like to draw your attention to the fact that the bulk of media reporting on women's issues is coverage around violence against women and domestic issues.

### Reporting on HIV and AIDS is highly political

HIV and AIDS reporting in South Africa has politicised not only allocations and reallocations in the national budgets, but even the seemingly scientific debate regarding the cause of AIDS, initiated by President

Thabo Mbeki. This debate has highlighted the difficulties inherent in the relationship between the media, civil society and a democratic government.

However, what this debate has neglected is to report on the issues from a gender perspective. Other than a few mentions of mother-to-child-transmission, women are seldom seen as a group needing access to drugs, for example, as a result of rape. This indicates that women are marginalised in such reporting, as well as in government policies.

### The sources of HIV and AIDS reporting

Most reporting in the South African press is derived from one or two sources. Key personalities; often in government positions, are strong indicators of newsworthiness. As a result, they have, to a certain extent, dictated the news agenda. This is also related to the fact that the media agenda is driven to a large extent by press releases, press conferences, events and statements by government officials.

It is mainly the high profile activist organisations that recognise media logic and adapt its tactics. The Treatment Action Campaign (TAC) has, for example, successfully made use of media as a political advocacy platform. It is not bad that TAC receives so much media attention, although it leaves little space for the rest of us. However, what we, as activists, need to do is to learn how to make strategic use of media in order to put our messages across.

A research report<sup>3</sup> that looked at HIV and AIDS reporting in Zimbabwe, Namibia, South Africa and Mozambique over one week in February 2004, identified that in the sample of 58 articles, only 9 HIV-positive people are sourced, out of these more women than men are sourced. Another 93 people were sourced in governmental, organisational, political or institutional capacity. In general, more men than women were sources, especially originating

from research institutions and financial institutions. However, women sources were also underrepresented commenting on gender issues.

#### Who are the journalists writing these reports?

What the regional study revealed, is that most of the HIV and AIDS news reports are written by men. A simple answer as to why is that HIV and AIDS has become so politicised, it is hardly about people anymore and certainly not about gender-based violence, but about costs and political arguments amongst high profile people. Most of the features, which occasionally touch on gender issues, are written by women. Again does this mean that gender-based violence is not a newsworthy issue?

#### Events based reporting

There are close links between HIV and AIDS reporting and events taking place in society. One example is the Constitutional Court challenges to the government's strategy around providing anti-retroviral drugs. Before and during the court case, media coverage tended to be particularly critical of the government and its prior resistance to providing Nevirapine to HIV-positive pregnant women. After the court case, the media reached a point of saturation, and moved on to cover other issues.

'City's rape cases soar. 137 girls raped in January alone' is the headline of a news article published in the Zimbabwean *The Herald* on Thursday, 12 February 2004. This article reveals that, according to figures released by a human rights activist on Wednesday, 11 February 2004, at least 137 young girls were raped in Harare in January 2004 and that more than 90% of the women raped are infected with HIV. This is the only article in *The Herald* over a period of one week that reports on actions taken and concerns raised on issues of rape and HIV and AIDS. This indicates, that the article is merely published as a result of the event of statistics being released by the activist and not necessarily by *The Herald* holding any interest in the action towards rape and HIV and AIDS by the women's movement.

#### HIV and AIDS reporting often compromises the rights to privacy and dignity of people living with HIV and AIDS

The media contains little if any information targeted specifically at people living with HIV and AIDS. The voices of HIV positive people regarding AIDS related issues are few and far

## We need to challenge our prejudices

**Nonhlanhla Mkhize**

According to Section 9 (1) and Section 10 of the Constitution, 'everyone is equal before the law and has the right to equal protection and benefit of the law' and 'everyone has inherent dignity and the right to have their dignity respected and protected'.

This is, however, not the reality for the majority of lesbian, gay, bisexual and transgender (LGBT) people in South Africa. They are, for example, unable, after been assaulted or raped because of their sexual orientation, to report the incidence to the police or relate their unfortunate experience(s) to medical practitioners or family members in fear of further victimisation, stigmatisation, discrimination and ridicule.

The National Department of Health (NDOH) has recognised that prevention is a priority area for intervention, but has failed to provide for and to protect bisexual and straight women. The fact, that it distributed in 2001/2002 267 million male condoms and only 1.5 million female condoms, is one of the indicators. Furthermore, people, especially lesbians, who engage in oral sex, are expected to practice safer oral sex and yet, there is no access to dental dams. The reluctance of the NDOH to provide access to dental dams further reflects the lack of interest in the safety and protection from especially orally transmitted infections of these individuals.

For most women and men, their vulnerability to violence is largely due to socio-cultural and gender stereotypes. Lesbians and gays are further subjected to 'correctional' violence and rape. The fact that most lack the skills to negotiate safer sex with their partners, as is the case with most heterosexual women, contributes to LGBT people's vulnerability to HIV/AIDS. Personal character, attitude and perceptions towards HIV/AIDS transmission and condom use, either male or female, are other 'risk factors' placing them at risk. There are also people who believe same-sex sex is safe sex, as well as young people who, in order to save their virginity, resolve to engage in anal and oral sex – perceptions and behaviours that further people's vulnerability.

People need to know that they have the right to access accurate and relevant information and materials on HIV/AIDS and sexuality. We need to also challenge our prejudices about sexual orientation and about HIV- positive people. HIV/AIDS not only affects communities targeted by most NGOs for interventions, but also cripples NGO work through the loss of staff.

The Durban Lesbian & Gay Community & Health Centre plays its strategic role in the control and prevention of the epidemic. It offers care and support to infected and affected people, makes the Bill of Rights available to communities and encourages them to read it, discuss it and to claim their rights to equality and dignity as guaranteed in the Constitution.

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between, and the media has tended to feature 'high-profile' people rather than 'ordinary people'. When people living with HIV and AIDS are presented, this is almost exclusively as 'patients' in need of care and compassion.

### Non-gendered in nature

Reporting on HIV and AIDS is in general gender neutral, sometimes gender aware and seldom gender sensitive. Apart from sex workers, depicted as inhumane 'vectors of disease', women are invariably depicted as HIV-positive mothers or pregnant women who are of concern only insofar as they may infect their babies or leave their children orphaned.

Gender-based violence is either not reported at all, because it is seen to take place in the private sphere, or reported in bizarre and sensationalist ways that invariably place the blame on the survivor. Many stories on domestic violence sensationalise bizarre cases, providing little context or sensitivity towards survivors. Stories on abuse and rape frequently imply that the woman 'asked for it to happen' through references such as 'she was alone at night' or 'she was wearing revealing clothing'. Often, these reports do not go any further than to describe the event, meaning that issues of HIV and AIDS are left out. There is also a tendency to highlight the experiences of men as perpetrators, rather than women as survivors.

## IMPLICATIONS

If we believe that media plays a critical role in informing and educating the public, then the current state of the media is in dire need of attention, especially as the reporting to a large extent is used by various political players to further their own gains, rather than serving the needs of HIV-positive people.

Misleading, inaccurate and confusing information have increased negative attitudes towards people living with HIV and AIDS, and this has further contributed towards fear and confusion amongst the public. A climate of 'Us' and 'Them' has been established and reinforces existing stereotypes, such as 'only promiscuous people get infected'; 'the disease is spread by sex workers'; and 'women who wear short skirts ask to be raped and become infected'. In this environment, people who are infected are made to feel guilty about being infected.

A different media agenda, however, holds potential to challenge some of these perceptions and to report in new ways on HIV and AIDS, as it relates to gender-based violence.

At this point in time we also know that the HIV and AIDS epidemic is becoming old news, and that it is increasingly difficult for the issue to remain newsworthy, unless one applies new angles and feed new information to the public. This certainly leaves the women's movement with a challenge.

### FOOTNOTES:

1 An earlier version of this paper was presented at a Public Debate on 'The link between gender-based violence and HIV/AIDS' held in Cape Town in March 2004.

2 This overview is based on various findings by NGOs, such as CADRE, Gender Links, Idasa and the Media Monitoring Project.

3 Øverland (2004). Managing the message: A baseline snap shot of HIV and AIDS coverage in the context of governance. IDASA.

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## We will become all equal

**Doretta Arendse**

What is this 'we are all equal...aren't we?' all about? What is the meaning of equal? The dictionary describes equal as:

1. the same in size, amount, value etc
2. having the same rights or status
3. a person or thing that is equal to another.

To clarify the meaning of 'we are all equal', we should refer to number 2.

Because we are human beings, we all have the same human rights, irrespective of who we are as an individual. There are no men's rights or women's rights. There are human rights we are all equally entitled to. Therefore, whether a person is gay or heterosexual, the law says we are all equal, as we are all human beings. This also means that while we are looking at men and women or men and men or women and women, it is not about strength or physical build, it is not about right or wrong, it is about equal rights and opportunities.

When I think about 'we are all equal', I realise that on paper it says we are, but in reality it is not so. The only time I can agree that we are all equal is in the eyes of God, because before him, we are all equal. Are we all affected? Yes, we are all affected by human rights. However, whether or not we all understand it in this way is another question. Are we all positive? To be honest, I don't know anymore, since people don't even seem to have positive attitudes anymore.

However, if one turns the slogan around, then I would say we are all positive once we realise that we are all affected and with more awareness and education, we will become all equal. But this can only happen in time and not overnight.

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# It can be ignored and hidden away

## WE ARE NOT ALL EQUAL

People are not equal, since characteristics such as rich and poor, gender, 'race', result in differences regarding prejudice, vulnerability and access. These differences are further perpetuated by both the oppressed and the oppressor in the way they view themselves and/or the other, respectively. The question seems to be if we can equalise these three consequences of inequality through changing our behaviour and putting structures in place so that in terms of AIDS people are equal.

Seemingly not, considering a reality in which, based on prejudice, poor people are commonly seen as sexually promiscuous and vulgar, as prone to sexual diseases and, consequently, black people' are seen in the same light. AIDS, occurring in poor and rural communities, is subsequently portrayed in a particular way – natural and tragic. People are positioned as perpetual victims in need of rescuing from AIDS and/or from themselves. Their position in society and the constant treatment as second class citizens promotes people internalising beliefs about themselves and responding in various ways: 'defiantly' becoming the stereotype ascribed to them; having a negative view of themselves; blaming themselves for their position in society; learned helplessness, indoctrinated into believing that this is their lot and that they are less and that their condition is naturally occurring. Their second class position in society, buttressed by the pervasive attitude toward them, adds a particular texture to their capacity to deal with situations. AIDS is expected of them. Women with AIDS are regarded as sluts, and the double standards are also attached to poor people who contract the disease, not only as individuals, but also pervading society. This translates into the existing treatment at centres, the nature of educational programmes introduced and the way in which certain communities or groups of people are portrayed.

Oppressed people are also more vulnerable. The president has, correctly, pointed to links between poverty and AIDS. And whilst this does not mean that AIDS can be cured by dealing with poverty or by denying poor people access to medication – issues like nutrition, overcrowding, denial of dignity, living conditions, lack of information and a lack of opportunities and facilities make a contribution toward creating conditions for AIDS to spread and for limited ability to deal with AIDS once contracted. Women are often second class citizens in their household, as well as second class citizens in their country, and are often indoctrinated into acting out this role. They are both more vulnerable and more susceptible.

And people have unequal access to various things. Poor women have less access to freedom, are often more dependent on 'their men', even if this dependency is an imagined one imposed by a societal view. Access to drugs, such as nevirapine is unequal. If the state does not provide it, then it is only accessible to those with money. But also access to education, health services, information, education and legal assistance is unequal.

However, it would be a strong position to promote that people should be equal in terms of AIDS. That they should have equal access, that attitudes toward poor people and women should be equalised and that the conditions that make people more vulnerable or susceptible should be equalised. But this is currently not the case.

Social inequality translates strongly into an inequality of attitudes and dignity with qualities being attributed to poor people, and women, which are disempowering, patronising and negative. We should promote equal access and equal attitude. As far as possible, we should look at ways of addressing vulnerability. But certainly the matter of addressing the dignity of people in the way they are treated in the public services should be addressed. Additional resources would need to be put into poorer communities, than into rich ones, as poor communities cannot subsidise the system. Additional means should be put into ensuring that services reach women in terms of addressing social factors inhibiting access.

To believe that all have equal rights does not mean that all are the same. In fact, to have equal access, different conditions would need to be addressed, including issues of learned helplessness and/or a culture of 'rescuing'.

## WE ARE ALL AFFECTED

HIV has social impact – AIDS orphans, people dying and the much publicised economic impact of AIDS. But, it can be ignored and hidden away.

It seems easy to shift AIDS onto some system and shunt it off in this way, much like shipping old people off to old-age homes to die

where it is not our problem – safe, sanitary and away from us. AIDS, in my experience, is something that happens to other people, away from me. I have seen more AIDS programmes, than AIDS victims. To what extent do communities provide care to AIDS sufferers, direct and indirect, and to what extent are they ‘welfare problems’? What responsibility does the state take for this and what responsibility does community take for this? I suspect, fairly little in practice in both cases. So, while it is our problem, we act unaffected and certainly not like a caring society.

There are also cases where we act affected by responding negatively to people who have contracted the diseases – shunning them, judging them or making sure they don’t infect us. We are also insincere about our attitudes, since there is such a media onslaught that we all want to be rather ‘politically correct’. We do not bring our attitudes out into the open, because we are scared of what others might say. There is quite a bit of self-censorship promoted by societal censoriousness of ‘ignorant’ views, which do not conform to conventional wisdoms about AIDS, for instance as captured in the law. There needs to be honest conversation challenging both the person holding the view and the conventional wisdom. But this does certainly not negate the need for sound education, laws and interventions dealing with the crisis.

## WE ARE ALL POSITIVE

There are two meanings to positive; firstly, positive in terms of being optimistic and secondly, positive in terms of being HIV-positive. As a nation and country, we are all HIV-positive in many ways in that we are all affected and run the risk of being infected.

However, most of us are probably negative about AIDS, as it is a deadly and dreadful disease. Our negativism is further expressed in beliefs that AIDS people are waiting to die and are not currently living.

I do not know to what extent public programmes are propaganda and public relations exercises, and to what extent they are meant to deal with the issue beyond what is expected in bureaucrats’ job descriptions. Conversely, I am not sure to what extent people have become ‘a race of beggars’, waiting for some external force to rescue them. I think Biko had something to say, when he said ‘I spit on our welfare state’, about systems where communities abdicate their responsibilities by shipping their sick off and against becoming ‘a race of beggars’.

But at the end of the day, can we CHOOSE to be equal – to insist and fight for our equality? Can we CHOOSE to be affected – to act as if this affects us and is important to us? Can we CHOOSE to be positive – not to succumb to prejudice and poor self-concept? To, if we are infected, CHOOSE to live and not wait to die?

Not easy to say, since there are many, many factors that affect us, some of them not in our control. So, what is it that we can choose? Not choices that are make-believe, delusions, but choices that are directed towards actions to impact on our circumstances, both external and internal.

### FOOTNOTES:

1 This takes the broad definition of black as those oppressed under Apartheid.

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## We are in this together

**Lau-Rache Sarrahwitz**

People who are living with HIV and AIDS do not belong in our community. They should not be accepted by their families. They should not have the rights and privileges of normal people.

This is the attitude of many people around the world today. For this reason, the Constitution of South Africa protects the rights of all people, whether you are HIV positive or negative. Therefore, I say, end discrimination against people living with HIV and AIDS and improve their social and economic living conditions. Every individual has a responsibility for their own actions ensuring that they are not violating someone else’s rights, whether one is a large company owner or a street worker. You should take the initiative upon yourself for the development of our society and base it on the basic principles of equality, freedom and human dignity. For it is said in the Bible that ‘for with what judgement you judge, you will be judged, and with the measure you use, it will be measured back to you’.

I conclude that no individual has the right to judge anyone, except the Lord. You should be considerate and compassionate of others and their feelings, because we are all affected emotionally, mentally and physically by HIV and AIDS. Knowing that so many of us are infected by this selfish disease and this makes it hard for us to live peacefully. HIV and AIDS is here and it doesn’t care who you are, what you have or where you live. It will affect you. Therefore, I say, we should all support and respect each other to enforce and promote equality, because we are in this together.

Until the day comes that will bring great changes let us stand united as a country and fight back as one. Let us live to learn and learn to live. With this, I end off by saying: We are all equal. We are all affected. We are all positive.

**Lau-Rache Sarrahwitz (Grade 9, Age 15) is a learner at the Gelvandale High School in Port Elizabeth.**

## making a point

Fatima Hassan

## Constitutional issues affecting the Comprehensive Plan on the Prevention, Treatment and Management of HIV/AIDS (the Operational Plan)

*We have firmly placed before our country a perspective of health that recognises good health as both a pre-requisite for social and economic development as well as an outcome of these factors. Health must be seen as an investment rather than simply as expenditure. ... For our country to succeed and our citizens to be healthy – government and all associate institutions cannot and should not function in isolation<sup>1</sup>.*

There are approximately 5.6 million people living with HIV in South Africa<sup>2</sup>. In a recent publication of the National Department of Health entitled 'Key Health Statistics 2003', HIV disease is listed among the five leading causes of death for both men and women.

Without appropriate treatment to prevent and/or delay the onset of AIDS, *'the number of AIDS deaths can be expected to grow, within the next 10 years to more than double the number of deaths due to all other causes, resulting in 5-7 million cumulative AIDS deaths in South Africa by 2010<sup>3</sup>*. The Medical

Research Council (MRC) estimates that about 40% of adult deaths aged 15-49 in 2000 were due to HIV/AIDS, and that about 20% of all adult deaths in that year were AIDS-related. Statistics South Africa, in its mid-year estimates for 2004, estimates that the accumulated AIDS deaths up to 2004 were 1.49 million.

The Department itself refers to the epidemic as an *'incomprehensible calamity'<sup>4</sup>*. Recognising that HIV/AIDS represents the *'greatest threat to public health in our country'<sup>5</sup>*, the Constitutional Court has said that it *'is essential that there be a concerted national effort to combat the HIV/AIDS pandemic'<sup>6</sup>*.

In the midst of such an epidemic, what obligations does the Constitution impose on the state? The Constitution (Section 27(2))<sup>7</sup> requires the state to take reasonable measures, within its available resources, to achieve the progressive realisation of the right of access to health care services. While the courts recognise that there is a range of meas-

ures that may meet the requirement of reasonableness and that it is for the state to decide which of those measures to adopt, the Constitutional Court has also recognised that *'death is different'<sup>8</sup>*. Quite clearly, the range of what is constitutionally acceptable is significantly limited where the consequence of a particular policy or programme is a failure to prevent avoidable death<sup>9</sup>. This is particularly significant in dealing with a public health crisis such as a pandemic<sup>10</sup>.

The Constitution requires the following key elements of a national treatment programme:

1. Those areas where the need is most pressing—
  - 1.1 Must provide treatment where they have capacity to do so, and must be assisted to develop further capacity and to scale up; and
  - 1.2 Where they don't have capacity, there must be a programme for developing it.
2. Sites should be able to identify themselves as

being ready to provide treatment on whatever scale they can manage.

3. Every district that cannot provide treatment should have a referral point from which people can be referred to other sites that can provide treatment.
4. If further research is going to be done, provision may not be limited to those sites. In other words, treatment may not be withheld from people who do not have access to those sites.
5. If patients, at sites that are not yet providing treatment, can pay for ARVs themselves, public health professionals must prescribe ARVs for them, and provide monitoring and support or refer them to facilities which can provide these services.
6. Those parts of the programme that can be made available must be provided where this is feasible, even where the full programme is not immediately available.
7. National government must require provinces to report on their implementation of these policies, and must ensure that they comply with their obligations.
8. Co-operation is necessary with non-governmental agencies that are able to assist in dealing with this emergency.

To satisfy the requirement of reasonableness, a constitutionally acceptable plan must be

reasonable both in its formulation and in its implementation<sup>11</sup>.

In part, this requires openness and transparency in the plan's development and execution<sup>12</sup>, which in the case of HIV/AIDS means government and non-governmental agencies joining forces in combating the common enemy<sup>13</sup>. Simply put, the Constitution requires co-operation with non-governmental agencies that are able to assist in dealing with this emergency. This is why organisations, such as the Treatment Action Campaign (TAC), request that the Minister consults with civil society and with those most affected by policies dealing with HIV/AIDS.

#### **Is government meeting its constitutional obligations?**

In July 2002, Government established a Joint Health and Treasury Task Team 'charged with examining treatment options to supplement comprehensive care for HIV and AIDS in the public health sector'.

On 9 October 2002, in its Update on Cabinet's Statement of 17 April 2002 on fighting HIV/AIDS, Government stated that its 'ultimate objective is to ensure that South Africans living with AIDS can have access to the treatment they need under conditions that will benefit them', and that it was working 'to create the conditions that would make it feasible and effective to use antiretrovirals in the public health sector'.

On 8 August 2003, Cabinet convened a special meeting to consider the Report of the Joint Health and Treasury Task Team. At that meeting, Cabinet

recognised the need to act with urgency and decided 'the Department of Health should, as a matter of urgency, develop a detailed operational plan on an antiretroviral treatment programme'. On 19 November 2003, Cabinet adopted the Comprehensive Plan on the Prevention, Treatment and Management of HIV/AIDS (the Operational Plan).

#### **The Operational Plan**

The Operational Plan aims to accomplish two interrelated goals: to provide comprehensive care and treatment for people living with HIV and AIDS; and to facilitate the strengthening of the national health system in South Africa. The critical features of the Operational Plan include the following:

- 1.1 It recognises the critical role of ARV medicines in the treatment of people with HIV;
- 1.2 It provides for ARV medicines to be made available at public health facilities for the treatment of poor people with HIV/AIDS who cannot afford ARV medicines that are readily available in the private health sector; and
- 1.3 It provides for the urgent implementation of the Operational Plan.

The Operational Plan contemplates immediate, but progressive implementation, including the procurement and dispensing of ARV medicines. In this regard, the Operational Plan reflects a roll out of treatment which will possibly see the total number of patients enrolled in the Programme rise from 265 000 in 2003/2004 to 3 169 368 in 2007/2008. The Operational

Plan contemplates that the number of patients on ARVs will rise from 53 000 in 2003/2004 to 1 001 534 in 2007/2008. However, subsequent to the adoption of the Operational Plan, these figures have since been revised both by the President in his 2004 State of Nation Address and by the Minister in a Parliamentary media briefing in July 2004. The target of 53 000 has been moved to 2005 and will probably be shifted a second time to 2006. This is because by the end of September 2004, only about 11 000 people were on treatment at public facilities nationally<sup>14</sup>.

In publishing its decision to adopt the Operational Plan on 19 November 2003, Cabinet further committed Government to establishing *'at least one service point in every health district ... by the end of the first year of implementation and within a period of five years to provide [access to ARV treatment for] all South Africans'*.

However, simply adopting the Operational Plan is not sufficient in discharging the states constitutional obligations. Government must also make appropriate provision for short, medium and long-term needs<sup>15</sup>, and it must not ignore the needs of the most urgent<sup>16</sup>. The Operational Plan has to respond to the needs of those who are most desperate<sup>17</sup>, ensuring that it does not exclude a significant segment of society<sup>18</sup>. A reasonable plan thus requires that urgent implementation take place where possible, given the *'pressing need to ensure that where possible loss of life is prevented in the meantime'*<sup>19</sup>.

It is within this context that in March 2004 the TAC threatened the Minister with legal action on the basis that she was failing to make use of measures available to her to procure medicines in the interim, until such time that the formal procurement process is completed. Given that the formal procurement process has still not been concluded, a year after the Operational Plan was adopted, that threat of legal action, which led to the decision by MinMEC to make use of such interim procurement mechanisms, was both correct and appropriate – it has possibly also saved many lives in the interim.

#### Progressive realisation

The requirement of progressive realisation means that, over time, the number of people who are served by the programme must increase, as does the quality of the services provided<sup>20</sup>. As stated above, thus far only about 11 000 people are on treatment. However, over time, Government has a constitutional obligation to ensure that this number increases, given that it set its own target of 53 000 first by 2004, since revised to 53 000 by 2005 and probably beyond.

In practice, this means that the Operational Plan must urgently identify those areas where the need is most pressing, such as, for example, Orange Farm in Gauteng<sup>21</sup> – both in terms of HIV prevalence and levels of poverty. Where areas such as Polokwane in Limpopo have capacity to implement an ARV treatment programme immediately, the Operational Plan must ensure that they proceed to do so. Despite this constitu-

tional imperative, hospitals in Limpopo that have the capacity to provide treatment have not been given the go ahead to do so. Such conduct would be actionable, because it means that patients at those clinics and hospitals cannot benefit from such services.

In addition, the Operational Plan must ensure that these areas are assisted to scale up in the short-to-medium term, which will require the strengthening of existing capacity, such as sites in Northern Cape and Mpumalanga. Where areas are unable to provide treatment services at all, the plan must provide for the urgent development of capacity. For example, in Orange Farm, an informal settlement that is home to about 3 million people, the Gauteng provincial Health Department has taken a decision to set up a community health centre in the area so that people can access basic health services, as well as ARV treatment (the closest treatment site is Chris Hani Baragwanath hospital).

The magnitude of the urgent need for treatment – especially since in some provinces there are long waiting lists – means that the Operational Plan must expressly recognise that sites should be able to identify themselves as being ready to provide treatment on whatever scale they can manage. Hence, sites in Limpopo and KwaZulu-Natal should not be prevented from providing treatment if they have the capacity to do so. Wherever possible, existing capacity must be harnessed. In addition, this means that if patients, at sites which are not yet providing treatment, are

able to purchase ARVs themselves, public health professionals must prescribe ARVs for them and provide monitoring and support or refer them to facilities which can provide such services. Also, every district that cannot provide treatment should have a referral point from which people can be referred to other sites that can provide treatment.

Based on an assessment of the implementation of the rollout in June and July 2004, the ALP and TAC found that in some parts of the country, even though sites are accredited, they have not yet been permitted to commence treatment<sup>22</sup>. This constitutes an unfair limitation of the rights contained in Section 27 of the Constitution and is actionable. In the Eastern Cape for example, a donor funded and administered treatment site commenced treatment several months ago, yet it was not formally accredited until October 2004, even though by then it was already treating about 500 hundred patients.

In the Western Cape, which has the largest ARV programme in the country, the national department has thus far failed to formally accredit all of its treatment sites (currently 24). This illustrates the schism between formal accreditation and actual capacity that exists at individual site level. It also indicates the need for a more flexible approach to accreditation and site selection.

#### **National co-ordination and oversight**

In addition to the state's constitutional obligations at all three levels of government, the

Constitution allocates a particular role to the national government. Not only must the national government ensure effective co-ordination between the different spheres of government, but it must also allocate appropriate responsibilities to each level of government and, as part of its oversight role, ensure that these obligations are met<sup>23</sup>. National government must require provinces to report on their implementation of these policies and must ensure that they comply with their obligations. This is particularly important for provinces that refuse to make information publicly available. So for example, the delays in providing treatment in Limpopo, Eastern Cape and Mpumalanga must therefore be investigated and remedied by national government.

#### **Dissemination of information**

The Constitution (Section 32(1)) provides that everyone 'has the right of access to ... any information held by the state'. This constitutionally recognised right places a duty on government to promote and not deny access to life-saving information. There is an obligation on the state to shed information about how the Operational Plan will be implemented, particularly because it is necessary to save lives. In a democratic society such as ours, access to information is not simply a desirable goal, but a constitutional recognised right.

The Constitutional Court agrees. In *Minister of Health v Treatment Action Campaign (No 2)*<sup>24</sup> the Court said that:

*In order for it to be implemented optimally, a public health programme must be made*

*known effectively to all concerned, down to the district nurse and patients. Indeed, for a public programme such as this to meet the constitutional requirement of reasonableness, its contents must be made known appropriately.*

However, despite the obligation to share information and to act in an open and transparent manner, since November 2003 an implementation plan timetable has not been made publicly available by the National Department of Health and the Minister. This infringes the rights of people living with HIV/AIDS, as well as those affected by and working in the field of HIV/AIDS. This is because, access to information about time-lines and targets (including patient targets), tasks or activities will allow community organisations and the broader public to assess the progress of the Operational Plan and to assist government with the reasonable implementation of the Operational Plan where gaps may exist. It will also assist people living with HIV/AIDS who are the main beneficiaries of the Operational Plan.

Indeed, implementing the Operational Plan is a challenge, particularly given the shortage of public health care workers. Nevertheless, provinces such as Gauteng and the Western Cape have shown that with appropriate political leadership, progress can be made. But this progress is in stark contrast to the very slow pace of implementation in Limpopo, Mpumalanga and the Eastern Cape.

The Operational Plan also says

that the key determinant of ensuring that funds are spent against designated tasks and activities *'will be adherence to the operational plans developed by each province, and demonstrated implementation progress against a set of key performance indicators'*.

In 2003 Cabinet ordered the department to develop *'provincial implementation plans, ... a schedule for rollout across district hospitals and health centres and a forecast of staffing requirements'* and referred to provincial operational plans that should be based on *'the district health systems within each province'*. To date however, these plans, except for the Western Cape, have not been made publicly available.

**Right of users of the programme**

In the context of a national ARV treatment programme the safeguards of informed consent and medical confidentiality must be given serious consideration. This is because reports of the abuse of patient rights are frequent, ranging from disclosure without consent, infringements of the right to privacy and testing without counselling.

**Privacy**

Section 14 of the Constitution provides for the right to privacy. Everyone has the right to privacy that includes the right not to have the privacy of his or her communications infringed. Within this context, the legal and ethical rules governing the disclosure of medical information are quite clear. Except in exceptional circumstances, there can be no disclosure of private medical information (here HIV status) to a third

party. A patient can expect that his/her doctor will protect the confidentiality of his/her medical information. It is illegal and unethical for health care workers to publicly announce the HIV status of their patients. It is also unacceptable to have patient folders or files marked 'HIV' on the front cover, as this will easily identify patients with HIV. This violates the principle of medical confidentiality.

The disclosure of medical information can only take place with the informed consent of the patient. Where there is a breach, it will result in legal liability, as well as a breach of medical ethics that is actionable through disciplinary action. South African case law is also quite clear about the legal enforceability of ethical principles relating to the maintenance of confidentiality of medical information – especially relating to the HIV status of patients.

Confidentiality must also not be confused with secrecy. In conducting HIV tests, an establishment must adhere to the national testing guidelines on voluntary counselling and testing. In essence, the VCT guidelines reflect the legal and ethical principles governing HIV testing. Our law provides that HIV testing can only take place with the informed consent of the patient and with appropriate pre and post-test counselling. Anything short of this is both illegal and unethical.

**Informed consent**

Everyone has the right to privacy, dignity, autonomy regarding decisions about *inter alia* their health and the right to bodily integrity that includes making choices about medical treatment.

Informed consent in the context of medical treatment includes consenting by expressed permission to medical examinations, testing, treatment, taking medicines and to operations, including surgery. With the ARV programme, a patient must first consent to being in the programme and second understand the nature of the ARV programme, the purpose of the drugs being prescribed, selection criteria, exclusion criteria, side effects of the drugs, adherence requirements, possible adverse drug reactions and any other details relevant to being on the programme. Here, informed consent must also include an agreement that information about the drug regimen prescribed, laboratory test results, success and adherence and side effects experienced will be entered into a local and national patient register that health care workers directly associated with their treatment will have access to.

In respect of the national patient register, which is used for data collection and includes information about a patient's medical history, the patient must agree and consent to his/her medical history being made available to officials responsible for the overall design, planning and research associated with implementing the programme. The national register will use a unique identifier, so that health care workers and researchers, who have access to it, are unable to identify patients by their name or through other more direct identifying features.

Finally, any local, provincial or national data collection system has to take into account mech-

anisms that will protect patient medical confidentiality and ensure the correctness of the information contained therein.

### The Charter

The National Patients Rights Charter, though not law, also sets out guidelines, which health care workers and patients are, expected to follow. Included in the charter are the rights of the patient to participate in decisions about their treatment and to enjoy confidentiality and privacy about the treatment they receive; and to give informed consent to medical treatment, including testing and ARV treatment.

Where the state collects information about a patient's medical history, the Constitution requires that the state must use that information only for the purpose for which the information was obtained (here treatment) and must also prevent others who are not involved with that purpose from accessing that information. *It is for this reason that the state has to establish a system of records as well as appropriate administrative, technical and physical safeguards in order to ensure the security and confidentiality of ... records, and to protect against any anticipated threats or hazards to security or integrity which could result in substantial harm, embarrassment, inconvenience or unfairness to any individual about whom information is kept*. [Olivier 2003:]

As a result of the implementation of the Operational Plan, a number of other legal issues also present themselves, which are not explored in this article.

Suffice to say that the implementation of government policy (here the Operational Plan) must be informed by the constitutional imperative to act lawfully, reasonably, openly and rationally, particularly because the lives of ordinary people are affected. The implementation of the Operational Plan has the potential to limit premature suffering and death, let us hope that it succeeds in doing so.

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# As they see it...

ALN approached schools to find out what Learners have to say to:

**We are all equal  
We are all affected  
We are all positive**

The varying, and often inspiring, responses can be found throughout this publication.

## **Together as infected and affected persons** Runaine Radine

We are all equal and must be treated equally. Whether or not we are HIV-positive, we have the right not to be discriminated against. There is a beautiful saying and it goes like this: *'I know that I am somebody, because God made no junk'*. This is a true statement no matter what your background or health status, you are no better or less than your neighbour. We must come to the realisation that we all have been created by an awesome and a very fair God who has no favourites. When we stand before the government or before God in judgement we most definitely will be treated equally, no matter what your health status might be.

For as many infected persons with HIV/AIDS, there are even more affected. We cannot exclude the sufferers from our lives, as we are a united country despite our differences. AIDS sufferers share the same transport and government facilities with us. So, for that reason we are all affected and must consider the mere fact that we need each other and must support one another.

Previously I mentioned that we are a united country, because of our democracy and diversity. Our unity as one nation influences us and gives us hope for a brighter tomorrow. So, we are all positive, as we are expecting this brighter tomorrow together as infected and affected persons.

Let us heal our country and the world by supporting our HIV/AIDS victims for we are equal, we are all affected and we are all positive. Khomanani, we care together.

**Runaine Radine (Grade 9, Age 15) is a learner at the Gelvandale High School in Port Elizabeth.**

## **Stay and live positively**

**Lauren Arends**

These are all keywords that state the circumstances of our daily lives. We are all equal in the eyes of the law, but we still contemplate and perceive that we might somewhat be much more preferable and superior to others living with HIV/AIDS. We reached ten years of democracy, but why is there still discrimination.

We are all affected by any person who we come in contact with. People make certain impressions on our lives or even in our hearts and minds. Therefore, our minds should make us aware that we can live like people who have this incurable disease, people who have HIV/AIDS.

It does not necessarily mean you are HIV-positive, but the inevitable is to use people, who have this fatal disease, as a role model or muse so that it can make us more conversant in our lives.

We all struggle to come to terms that it is so easy to be infected with the virus. But we still have those ignorant people in our country and they are biased. We all see that this is slowly but surely breaking our country and its humanity apart. But there is also that little hope we have with organisations like this that still keep the faith that we can make a difference in our youth of today.

Therefore, I would like to cease this passage by saying from now on we should all stay and live positively, so that there could be an innovation or breakthrough in this prevalent pestilence – HIV/AIDS.

**Lauren Arends (Grade 10, Age 15) is a learner at the Gelvandale High School in Port Elizabeth.**

## Do you care?

**Nomfundo Mbinambina**

As the South African Youth we have to fight HIV/AIDS and overcome this dreadful disease. Our parents and grandparents fought the apartheid struggle and eventually won. Now it is our time, as the X-generation, to fight the enemy that chooses its victims indiscriminately and is in the process of wiping out our fellow brothers and sisters. Unless we wake up and face the disease, we might as well kiss our country good-bye.

Whatever happened to the phrase UBUNTU? Nowadays, people are only concerned about themselves. We, as South Africans, have come too far to let something like this overpower us. At the end of the day, one of your family members might unfortunately contract the disease. Our communities are deteriorating and our beloved neighbours are dying. Newborn babies are being abandoned, while others are being orphaned at an early age. No human being can honestly say that abandoned or orphaned children have nothing to do with them...or are there such people?

South Africa has a culture of overcoming obstacles. Let's remember our heroes such as Mahatma Ghandi, Desmond Tutu, Chris Barnard and Nelson Mandela and continue to make South Africa a proud country. Let's take it upon ourselves to be our personal heroes! If you can persuade one person to practise safe sex or abstinence, then you would have done your part in the making South Africa a better place.

**Nomfundo Mbinambina (Grade 11, Age 18) is a learner at the Linkside High School in Port Elizabeth.**

## The whole world is affected

**Zikhona Xotyeni**

Even though, most people in the world have this horrible disease called HIV/AIDS that does not mean we have to treat them differently and exclude them from our busy lives, because they have their rights and they should be treated as any other human being is being treated. Everybody is equal and they should not be discriminated against because of what they have. Discrimination won't only make them feel as outsiders, but also makes them feel unloved. Let's treat everyone equal no matter if they have HIV/AIDS or not.

The moment one person got the disease, the whole world is affected. This does not mean that we all have it, but we will if we don't look after ourselves and protect ourselves against HIV/AIDS.

Even though, some of us are HIV negative, we are all HIV-positive, because we don't know when we will get it.

Let's stand together and fight against this disease. Remember, there might be drugs for treating HIV/AIDS, but there is no cure!

**Zikhona Xotyeni (Grade 10, Age 16) is a learner at the Gelvandale High School in Port Elizabeth.**

## We cannot run away from it

**Makafane Makghate**

HIV/AIDS is a killer disease, ravishing the nation. It is fatal, regardless of colour, richness, strength and age. We dream today, but tomorrow it is no longer the same, as our dreams appear to have been blown away like a candle in the wind.

In the past, people here in Africa thought AIDS is a disease for 'whites' and in the European countries they thought that it was a disease for 'blacks'. This is not true. We have seen that AIDS affects all the races, colours, faiths and nations.

People with AIDS deserve to be accepted in our community. They must be supported and loved. The stigma, that by living with a person with HIV, sharing the same toilet and same bedrooms can affect us, should be removed. AIDS can only be spread through unsafe sex, using piercing needle, poor blood transmissions and from mother to child during pregnancy and breastfeeding.

Believe it or not, no one knows how and when we will be positive to HIV and AIDS. People would run away from their continent to another one and they would find out that AIDS is everywhere. We cannot run away from it, which means we are all positive.

Therefore I would like to say, we are all equal and we are all affected and we are all positive.

**Makafane Makghate (Grade 11, Age 19) is a learner at the Altem High School in Orlando, Johannesburg.**

As they see it...

## It will affect your life

Kelly Miller

I like these statements, but the first sentence, we are all equal, is unreal. We are not all equal, figuratively and literally, outside and inside. We all have different views, opinions, likes and dislikes. So this saying is restricting our individuality, our own state of mind and our life! It is like saying we must live out someone else's dreams and ambitions.

The second sentence, we are all affected, is 100% true. No matter what you do, no matter what you say, whether you are or you are not infected, it will affect your life! It is one prolonged catastrophe that will kill millions and this alone will affect the whole world.

The third statement, we are all positive, is ambiguous and I only believe in one of the meanings. The meaning I believe in is that we are all positive to find a cure. The meaning I don't believe in is that we are all HIV-positive, which is completely false. I think they should be more specific and not give it such an ambiguous meaning.

**Kelly Miller (Grade 8, Age 14) is a learner at the Linkside High School in Port Elizabeth.**

## Our actions should speak louder than our words

Gcobisa Dinca

As human beings, we all want to be treated equal and not be discriminated against or even be judged for who we are or what we have done. Yet, people with HIV/AIDS are being shunned and kicked out of societies every day. People need to realise that our actions speak louder than our words. Human beings make silly and even death threatening decisions, the ones we often regret. To every action there is a reaction and the bad choices we make can hold hefty consequences, such as HIV/AIDS.

I feel that we should take a good look at ourselves before we judge or discriminate against others because, whether we like it or not, we are all affected by HIV/AIDS. Just because you are HIV-negative does not give you the right to turn your back on the epidemic, because one of your friends, colleagues or family members might be infected. So, living positively does not only mean you care, but also shows that you want to stop this crisis. We are all afraid, but ignoring the problem won't make it go away.

The slogan has really shown and taught me that our attitudes need to change. We should all lend a hand and join the fight against AIDS to save our children and our children's children. We need to be serious and stop living recklessly. Like Nelson Mandela said: 'HIV/AIDS is no longer a death sentence, but a human rights issue'.

**Gcobisa Dinca (Grade 9, Age 15) is a learner at the Linkside High School in Port Elizabeth.**

## They are not alone Nasstasja Matroos

We are currently celebrating our ten years of freedom, but are we truly free? In respect of South Africa becoming a democracy, yes, but there is a greater struggle.

The fight against AIDS is free from race, age or gender. We are all affected by the struggle and should be united. People do not understand the trauma which AIDS victims endure. Some even distance themselves from AIDS victims and make them feel alienated.

We are all equal and should be treated equally, whether we are HIV-positive or not. If we show support and care towards people who are HIV-positive, it would give them the confidence to accept their illness and also to become aware of the risks involved. By doing this, they could then make others aware of AIDS and destroy all the myths about AIDS.

It could not be very easy to accept that someone you know has AIDS. The whole country is affected by this disease, because it has created a new breed of prejudice in our society. People who are HIV-positive are judged so severely that they are sometimes shunned by their communities and even worse, by their families. We have to let them know that they are not alone in their struggle.

We are all positive and should be aware of the consequences involved in having unprotected sex. People should learn to treat one another fairly, but also be careful of contracting the virus by bearing in mind that anyone could be HIV-positive.

**Nasstasja Matroos (Grade 10, Age 15) is a learner at the Gelvandale High School in Port Elizabeth.**

## We are here to help

**Mystique Cockcroft**

The statement 'we are all equal' is heard often. But is it really taken into account? Do you really think we are equal? What makes us different – colour, race, gender? That is just appearance. What really counts is the inside. Whether we are HIV-positive or have AIDS makes no difference. As we are always told, we are unique. So, why do we have to fear those who are our brothers and sisters living with HIV and AIDS? We are all equal, living the life we all live, living in the same world.

Yes, we are all affected. Whether you are the one living with HIV and AIDS or you have friends or family who live with HIV and AIDS, you are affected, we all are. Looking at our environment or at our economy, HIV and AIDS affects all of it. People are dying, starving, or even are mistreated, because of the disease. A disease that we can prevent!

We are all positive, whether it is HIV-positive or positive in those/with those living with HIV. We are here to help those living with HIV and AIDS. Do we need to have the disease to understand it? We must be positive to help those who are positive.

**Mystique Cockcroft (Grade 8, Age 14) is a learner at the Linkside High School in Port Elizabeth.**

## We should not discriminate

**Zodwa Chabane**

Equality is something we all have. We don't earn it, yet it is given to us at birth. A person's HIV/AIDS status does not affect the right to equality he/she has. We are all equal. Whether or not HIV-positive, it doesn't really matter. A person with AIDS is still a person like you and me. He/she still has rights like you and me. We should not discriminate against those who are HIV-positive.

We might not all be infected, but we are all affected by it. HIV and AIDS affects us all, black or white, male or female, child or adult. If a family member or friend of ours is infected, we will be affected. HIV/AIDS affects us mostly negatively, but also positively. Some positive effects are that we learn and, therefore, can protect ourselves. We also care for, and help those infected. Unfortunately, not all of us are like this. We tend to discriminate and degrade those who are positive, but we are unaware that this is illegal. No one may discriminate or degrade anyone based on their HIV status.

This country as a whole is positive; may be not HIV-positive, but positive in fighting HIV/AIDS. We all want to belong to a HIV/AIDS free society. Government supplies us with free AZTs, condoms and ARTs. There isn't a cure for AIDS, but every country is working towards a breakthrough. This proves we all care and we all want to beat HIV/AIDS.

**Zodwa Chabane (Grade 9, Age 15) is a learner at the Gelvandale High School in Port Elizabeth.**

## They are not different

**Jean Alfonso**

The youth is affected by HIV and AIDS every day. Even though, they have made mistakes, they have fundamental rights.

We are all equal, because we are unique. We come from different ethnical races, but the colour of our skin does not make us a better person. God made us all equal, but with different talents. And it is how we use these talents that make us succeed in life. A person with AIDS can do the same things as other people, because they are not different.

We are all affected, because every time someone dies from AIDS, we lose a precious life. We are affected when we see families mourning for their loved ones who have died from AIDS. We see the harmful effects of AIDS and the lives it takes. It doesn't matter what ethnical race you are, if you have AIDS and you are dying, a precious life is lost. People are affected by AIDS according to their circumstances. A parent will be affected more deeply if their child has AIDS, as compared to a stranger who has AIDS. But it doesn't matter if it is a family member or a stranger, their lives will always be affected. It is what they do with their lives, during their time of trouble that will determine the length of their life.

We are all positive. A person with AIDS who remains optimistic about their condition can prolong their life. It is a known fact that a person with AIDS, who is stressed and has problems, is more harmful than the disease itself.

As South Africans we must stand together and help people with AIDS to stay positive. They must have hope and know there will be a cure for AIDS. We are South Africans, because we are all equal, we are all affected and we are all positive.

**Jean Alfonso (Grade 11, Age 18) is a learner at the Linkside High School in Port Elizabeth.**

We are all equal - We are all affected - We are all positive

# Feedback...

## We are all equal because...

*...if we are not equal, then we might disrespect someone's dignity...*  
[Female, under 20]

*...I am, because I feel the pain of those children who have AIDS...* [Male, under 20]

*...common humanity means that in the big scheme of things, what affects one affects all...* [Female, 30's]

## We are all positive because...

*...with reference to HIV we are all positive because you are either affected or infected. In another sense, we are all supposed to have positive thoughts, but you will find lots of people who would rather choose negativity/negative thoughts...* [Female, 50's]

*...positive that realisation will take place and see that women are also human beings and at risk of infection without a condom...* [Female, 20's]

*...our mindsets must be positive. Failing which our achievements (individual) will be meaningless...* [Male, 30's]

*...we have to believe that we can achieve a state in which we are all respected...* [Female, 30's]

*...we are all positive until proven negative. Even if we are negative that does not guarantee lifetime negative due to circumstances beyond our control. This means that we are potentially positive...* [Male, 40's]

*...we are all fighting against the virus, if not to find a cure, then to try to not get infected...* [Male, under 20]

**People contract HIV and AIDS through unprotected sex and blood transfusion. To prevent yourself from contracting this disease, use a condom or abstain from sex. AIDS is a serious matter. It breaks the family, leads to unemployment, causes people to be homeless and children to be orphaned and this also results in crime and drug abuse. [Lazola Majola, Grade 10, Age 17, Lungiso High School, Humansdorp]**

*...we are of human nature and we have the same basic needs, irrespective of race, colour, creed and social status...* [Female, 40]

*...seeing someone who is HIV-positive affects you holistically because you ask yourself if tomorrow it will be me...*  
[Female, under 20]

*...no one deserves to be treated unfairly...* [Female, under 20]

*...the result of the HIV/AIDS pandemic has grossly contributed to parents losing hope about their children's future...*  
[Male, 40's]

*...we might be different, but...equal because we are all humans and unique in our own ways...* [Female, 30's]

*...we are affected by all life situations and have coped thus far. Why can't we cope today?...* [Female, 40's]

*...the law says so, but reality shows different...* [Female, 20's]

*...being rich cannot be a reason to treat the poor like trash...* [Male, under 20]

## We are all affected because...

*...we all stand a chance of becoming HIV-positive. I can say for myself that I won't become HIV-positive, but I cannot speak for my husband...*  
[Female, 30's]

**We are all equal and we all have equal rights, whether you are black or white, rich or poor. And we must respect each other's rights and respect each other. We must help each other. When someone is in trouble, you must help, because you don't know what is coming your way after that. We are all equal, because each and everyone has some mistakes. We must not ignore each other's views, because he/she comes from a poor family. We must not separate ourselves from people who have HIV/AIDS, because they are still human beings and they have rights like us. We are all affected. We must respect one another and we must take care of people who are HIV-positive because they are still human beings. [Zolani Keseni, Grade 10, Age 16, Lungiso High School, Humansdorp]**