

Judges as Community Leaders in the HIV/AIDS Response in Zambia

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Support to the HIV/AIDS Response in Zambia

SHARE (Support to the HIV/AIDS Response in Zambia)



- JSI Research and Training Institute
- Abt Associates Inc.
- Initiatives

Mission:

To support the institutional response to HIV and AIDS in Zambia by strengthening leadership, building sustainable competencies, and improving the policy environment.



Background

- Overall HIV prevalence in Zambia: ~14-16%
- Thus, HIV affects all segments and aspects of society and life.
- Many HIV-related legal issues arise in the courts: criminal; civil; domestic/matrimonial; inheritance; employment.
- No HIV and AIDS-specific laws in Zambia.
- Very little/no published case law on HIV and AIDS in Zambia.



Operating Context

- Zambia has made commendable strides in combating HIV and AIDS through a variety of multi-sector interventions. These include:
 - Establishment of a Cabinet Committee of Ministers on HIV and AIDS
 - Adoption of the national HIV/AIDS/STI/TB policy, establishment of the National AIDS Council
 - Formation of national and sub-national HIV and AIDS intervention and coordination structures
 - Mainstreaming of HIV and AIDS in key national development documents such as the National Development Plan: 2006-2010, Poverty Reduction Strategy Paper, National Capacity Building Programme for Good Governance, and the Public Service Reform Programme



Project Approach

“The Law can either protect human rights or be a hindrance to the realization of rights”

- The HIV and AIDS epidemic affects every element of the population and virtually every realm of life in Zambia.
- SHARe, together with partners, Judiciary, Law Association of Zambia (LAZ), Zambia Police Service, Zambia Law Development Commission (ZLDC), Zambia AIDS Law Research Unit (ZARAN) and Legal Resources Foundation began work on a project that would look at the issues of HIV and AIDS and the courts and the Police Victim Support Units.
- This support presents important information and guidance in key subject areas in which HIV and AIDS affects life, society and human relations.

Role of the Judiciary

- Judges can act as **role models of respect, fairness, and non-discrimination**
- Judges at all levels hear cases that involve HIV and AIDS issues.
- However stigma has resulted in the lack of reported case law

Critical for Judges:

- Full understanding of HIV and AIDS related issues
- Fair application of current laws
- Avoid stigma and discrimination in rulings



Role of the Judiciary Cont'd.

- Since the Judiciary is viewed as a mirror of society it should remain the fountain of justice where people, including those with HIV and AIDS, can turn for resolution of disputes.

Challenges

- Inadequate dispensation of legal and constitutional rights for protecting people living with HIV from discrimination, unfair treatment and harassment.
- Conflict between customary law and constitutional/statute law poses serious problems. The Constitution, which is the supreme law of Zambia, contains provisions which may and do, undermine the effect of statutory laws that may be contrary to customary laws.

Challenges Cont'd.

- Customary law in Zambia governs many issues of marriage, divorce, property and inheritance. Cases involving customary law are generally decided by the local courts.
- Little case history to guide judgment on HIV and AIDS-related cases
- Reliance on personal interpretations of the law
- Lack of a human rights approach to HIV and AIDS

HIV/AIDS Case Manual

- The successful compilation and publication of the HIV/AIDS Case Manual is a significant milestone in Zambia's dispensation of justice in HIV and AIDS-related court cases.
- The Manual provides background material on the constitutional provisions and laws that are relevant for the Judiciary in Zambia
- The Manual presents important information and guidance in key subject areas: workplace issues, customary law, gender, criminal law, and courtroom issues.



Content of Manual

- Workplace Issues
- Customary Law: Marriage, Divorce, Property and Inheritance
- Gender
- Criminal Law
- Court room issues

Content of Manual Cont'd.

- The discussion of each of these topics presents first in brief matrix form and then with more detail in subsequent text:
 - Key issues to be addressed
 - Relevant laws and other instruments, with key provisions and areas open to interpretation/application by judges
 - Actual case law from Zambia and elsewhere
 - Hypothetical case scenarios
 - Principles for judges to consider in addressing these issues
- Also addresses courtroom issues and the role of judges as educators and models of an appropriate response to HIV and AIDS.
- Appendix describes key laws and legal instruments relevant to a judicial response

Dissemination and Training Plan

- Training of the Judiciary has been part of the on-going project activities
- This training will now incorporate Local Court Justices together with the Police Service Victim Support Units
- The Police service curriculum will be revised to incorporate HIV and AIDS issues.

Results: Judges Use Manual to Support Their Role as Community Leaders

- As a result of this they are able to dispense justice for all citizens regardless of handicap or medical condition, known or perceived HIV status as conferred upon the adjudicator by the constitution of Zambia.