

Testing the Awareness of the Namibian Public and Private Sectors on the *Guidelines for the Implementation of a National Code on HIV/AIDS in Employment*

Michaela Figueira and Willem Odendaal
AIDS LAW UNIT, LEGAL ASSISTANCE CENTRE

HIV/AIDS has become one of Namibia's most pressing social and economic problems over the last decade. Together with Botswana, Zimbabwe and Swaziland, Namibia now ranks among the countries most affected by HIV in the world, with an overall prevalence of at least 20% among sexually active adults (UNAIDS/WHO 1998). According to the UNDP Namibian Human Development Report of 1999, this means that at least one in five Namibians aged 15-49 is already infected with HIV and is likely to die within the next seven years. By far the majority of Namibia's workforce are in the above-mentioned age category.

Thus it can be anticipated that HIV/AIDS will have a major disruptive effect on Namibia's workplace and economy over the next decade. The indirect costs incurred by the HIV/AIDS pandemic will be felt by economic sectors in terms of loss of productivity, absenteeism, the costs of replacing HIV-infected employees and a reduction in the market for their products or services.

Several years of experience in addressing the HIV/AIDS pandemic have confirmed that the promotion and protection of human rights constitute an essential component in preventing transmission of HIV and reducing the impact of HIV/AIDS. There is an undeniable link between human rights and health. In general, human rights and public health share the common objective of promoting and protecting the rights and well-being of all individuals. From the human rights perspective, this can best be accomplished by promoting and protecting the rights and dignity of everyone, with special emphasis on those who are discriminated against or whose rights are otherwise interfered with.

Similarly, public health objectives can best be accomplished by promoting health for all, with special emphasis on those who are vulnerable to threats to their physical, mental or social well-being. Thus health and human rights complement and mutually reinforce each other in the context of HIV/AIDS (United Nations, *HIV/AIDS and Human Rights: International Guidelines*, 1998).

One aspect of the interdependence of human rights and public health is demonstrated by studies that show that HIV prevention and care programmes with coercive or punitive features result in reduced participation and increased alienation of those at risk of infection (see J. Dwyer, "Legislating AIDS Away: The Limited Role of Legal Persuasion in Minimising the Spread of HIV", in *Contemporary Health Law and Policy*, 1993: 197). In particular, people will not seek HIV-related counselling, testing, treatment and support if this would mean facing discrimination, lack of confidentiality and other negative consequences.

Despite this, there is no law in place in Namibia that specifically outlaws discrimination on the basis of HIV/AIDS. In this context of employment, section 106 of the Labour Act, No. 6 of 1992, does proscribe discrimination in access to or continued employment in an unfair manner. In addition, the Minister of Labour promulgated guidelines in terms of the Labour Act for the implementation of the National Code on HIV/AIDS in Employment for the purpose of the application of the relevant provisions of the Labour Act in respect of HIV/AIDS and employment.

These guidelines outlaw discrimination on the basis of HIV status in the context of employment, and provide, inter alia, that “there should be neither direct nor indirect pre-employment tests for HIV. Employees should begin the normal medical tests of current fitness for work and these should not include testing for HIV.” (paragraph 6.2.1)

Confidentiality regarding HIV/AIDS in the workplace is also guaranteed in the guidelines.

The promotion of a non-discriminatory workplace environment will contribute positively to achieving the public health goal of reducing the rate of HIV infection in Namibia. This in turn will have positive spinoffs for employees in terms of reducing the impact of HIV/AIDS in the workplace.

The AIDS Law Unit at the Legal Assistance Centre has accordingly conducted a national survey to test current awareness and attitudes of the Namibian public and private sectors on the *Guidelines for the Implementation of a National Code on HIV/AIDS in Employment*. This was done with a view to assessing the extent to which the national code has been successful in achieving a culture of non-discrimination in the workplace.

A list of approximately 7 000 employers registered at the Social Security Commission was used as the sample frame. A response rate of 10% (700 employers) was anticipated using the method of random sampling. The number of employers in each of Namibia’s 13 geographical regions was determined according to the Interim Census Report of 1996. Only 613 out of the 700 targeted interviews were successfully completed. This indicates a response rate of 87.5%.

Sectors in which responding organisations operate were identified as follows:

Sector	Total #	%
Government/Public Services	95	15.5
Construction	34	5.5
Banking/Insurance	31	5.1
Mining	4	0.7
Fishing	17	2.8
Agriculture	41	6.7
Wholesale/Retail	203	33.1
Tourism	79	12.9
Transport	14	2.3
Professional Services	62	10.1
Other	33	5.3
Total	613	100.0

An open category (‘Other’) was created to categorise organisations which felt that they did not fit into any of the other 13 mentioned sectors.

Of all respondents, 73.8% indicated that they are in a managerial position, while the rest stated that they are in a non-managerial positions. Of all respondents, 409 (66.7%) were male and 211 (33.3%) were female. Interviews were conducted in the public and private sectors throughout Namibia.

Organisations were asked whether they send their staff for HIV testing. To this, 7.9% answered “Yes”, 88.9% answered “No” and 3.2% did not answer. However, employers who said that they send their staff for HIV testing did not indicate whether they would deny such an employee the right to

remain employed should such an employee test HIV-positive. Employers in this category also did not indicate whether they send staff for HIV to determine employment benefits.

Organisations were also asked whether they make voluntary testing and counselling readily available to their employees. To this, 21% answered “Yes”, 73.8% answered “No” and 5.1% did not answer. The questionnaire did not distinguish between organisations which send their staff for voluntary testing and those which send their staff for both voluntary testing and counselling. However, it is interesting to note that mainly medium to large organisations (i.e. with 51-500 employees) and large organisations (over 500 employees) indicated that they make both voluntary testing and counselling available to their employees. This suggests that larger organisations are more aware of the benefits of implementing HIV awareness programmes, or that they are financially in a better position to budget for voluntary testing and counselling.

Two mining companies falling in the large organisations group, namely NAMDEB and Rössing Uranium Ltd, have implemented impressive HIV prevention programmes. Both companies have also employed full-time support professionals who provide information and counselling to employees on HIV/AIDS-related issues. Both companies have medical facilities available where employees can voluntarily be tested for HIV. In the case of NAMDEB, the General Manager at Oranjemund stated that the company has long recognised the ethical and financial impact that HIV/AIDS will have on its operation. The company’s investment is starting to pay off in terms of the lower reported loss in working hours due to HIV-related illnesses.

The approximate amount that organisations spend per year on HIV voluntary/mandatory testing and counselling varied from N\$500 for small organisations to N\$500 000 for large ones. A number of organisations indicated that they do not provide funding for voluntary/mandatory testing because their respective medical aid schemes cover such expenses.

Very few Government ministries interviewed indicated that they have introduced preventative HIV programmes in their workplaces. This is reason for concern, particularly as Government is by far the largest employer in Namibia.

Organisations were asked whether or not they see HIV testing as appropriate in the pre-employment context. Of the respondents, 48.8% were not in favour of pre-employment HIV testing, 37.3% were in favour of this, and 13.9% decided not to give an opinion on this issue.

The outcome of this question is interesting if one compares it with the outcome of another question, namely whether there should be direct or indirect pre-employment testing for HIV. In response to this, 59.5% of employees either strongly agreed or agreed that there should be neither direct nor indirect pre-employment testing for HIV, 31.6% either disagreed or strongly disagreed with this statement and 8.9% did not give an opinion.

The overall results of this survey suggest that employers are aware of the provisions of the guidelines on the implementation of the National Code on HIV/AIDS in Employment for HIV prevention and AIDS management.

However, the evidence indicating that organisations throughout Namibia are implementing HIV prevention programmes in the workplace is much less convincing. In an open-ended question, employers were asked to give suggestions on how HIV/AIDS in the workplace should be approached. The outcome of this question indicates that much more should be done in the workplace to improve management and education strategies in order to address the prejudices that still exist against HIV-positive employees.

Misconceptions about HIV-positive employees can be gleaned from the results.

Misconception 1:

There seems to be a common misconception among employers as to how HIV is transmitted. There is no risk of HIV/AIDS transmission through casual contact that occurs during normal working activities. There is likewise no risk of transmission through the handling of food.

Misconception 2:

Some employers argue that HIV prevention programmes are not cost-effective. Examples from local and international experience show the contrary.

Locally, as noted above, NAMDEB and Rössing Uranium have implemented extremely successful HIV programmes in the workplace which have proved cost-effective. Internationally, Volkswagen Brazil, which employs 30 000 people, assessed the impact of HIV on the workplace. By 1996 the company considered HIV/AIDS to be responsible for high treatment costs, and employees were experiencing regular work interruptions, persistent illness and shortened life expectancy. It then established an AIDS Care Programme providing for medical care, clinical support, information and the installation of condom vending machines. Volkswagen also adopted a technical protocol detailing the standard of assistance and care it should provide. Three years later, hospitalisations were down by 90% and HIV/AIDS costs by 40%.

What recommendations can be made from the survey?

- The survey shows that limited information on HIV prevention programmes exists among the majority in both the public and private sectors of Namibia. Health education and information should be seen as crucial in fighting HIV/AIDS. Programmes should ideally be split into three categories: medical concerns, legal and policy issues, and social issues.
- Methods to contain medical costs could include coverage for most cost-efficient treatment alternatives to hospitalisation, such as outpatient care, home health care, and hospice care.
- Flexibility should be provided for disability plan features such as salary continuation and return to work provisions.
- Options affording job transfer, working at home, flexible hours and part-time work should be considered.
- Continuation of insurance coverage during leaves of absence should be provided for.
- Employers should display a commitment to protecting the health of all employees and providing a safe working environment.
- Employers should display a commitment to treating AIDS like any other life-threatening illness.
- If medically fit and able to perform job duties, affected employees should be permitted to work.
- In consultation with their employees, employers should develop and adopt appropriate HIV/AIDS policies which the latter should update according to current medical and scientific knowledge.
- Employers should display a commitment to maintaining confidentiality of medical information.
- Co-ordination and support should be strengthened from the highest level of government.
- HIV prevention programmes in the workplace should address the issue of Namibia's illiteracy rate and cultural diversity. Ideally employees should be able receive information on HIV prevention in a language of their choice and in a culturally sensitive manner.
- Government policy can encourage the private sector to invest in HIV prevention in the workplace, for example by providing tax breaks for companies with active prevention programmes.