

# Module 4 > 4

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ILOAIDS  
Implementing the ILO Code of Practice  
on HIV/AIDS and the world of work:  
an education and training manual

## Introduction

Governments are in the frontline of the fight against AIDS. The international community gives technical and financial support, and civil society plays a vital role - through the workplace, community, place of worship... But the final responsibility for leading and co-ordinating national efforts to control AIDS and mitigate its impact rests with governments. It is up to them whether AIDS becomes a political priority or not.

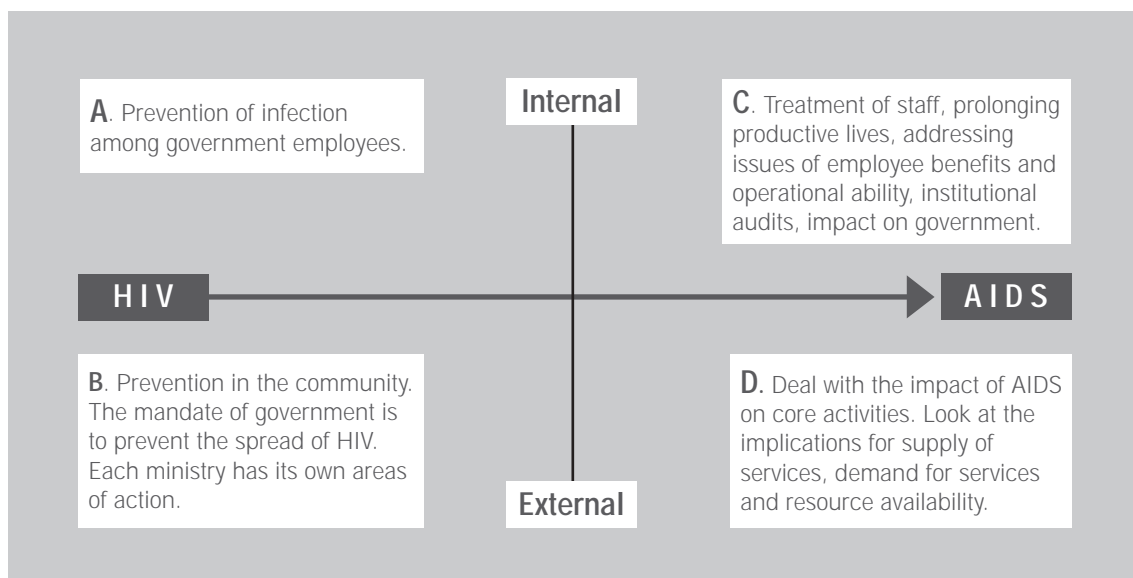
The implications of the epidemic are becoming increasingly hard to ignore. HIV/AIDS affects the work of governments in terms of revenue, expenditure, service provision, and the ability to govern:

1. Governments are themselves employers. Indeed, in many countries, the government is the largest employer. Absences from illness and eventually the death of government employees will severely impact on the ability of the government to provide services, and indeed to govern.
2. HIV/AIDS creates extra demand for many public services, especially health and social services. Not only are many hospitals overwhelmed, but so are orphanages, social security schemes, and the education system: in several countries teachers are dying at a faster rate than they can be trained.
3. Because of the impact of HIV/AIDS on the economy, countries with a high incidence of infection are experiencing slow or even negative growth as a result of falling incomes, productivity and profitability. The tax base will be reduced. Just when public expenditure needs to increase, government income is compromised by the effects of the disease.
4. The epidemic creates legal and political dilemmas. HIV/AIDS causes fear and can lead to discrimination and stigmatization. Governments may come under pressure from ill-informed public opinion or the media to discriminate, or permit discrimination, against people who are or might be infected. Governments have a vital role to play in protecting the human rights of all people affected by the disease and encouraging an open and tolerant public response.
5. Finally, under extreme pressure, governments have to work out an effective policy and strategic response. AIDS is undermining development plans and depleting human resources. Governments need to plan a response to the epidemic which addresses all of these issues, across all ministries.

The Code of Practice defines a broad range of rights and responsibilities belonging to government, that include ensuring a coherent, co-ordinated and multisectoral response; conducting research; providing an appropriate regulatory framework; promoting awareness and prevention; promoting care and support, ensuring access to social security and treatment (where possible), and establishing guidelines for employers; the mobilization of local and international funding (see Section 5.1).

Tony Barnett and Alan Whiteside show some of the key inter-connections in the figure below, which appears in the chapter on Government and Governance in *AIDS in the Twenty-first Century: Disease and Globalization*

**The impact of HIV/AIDS on government**



As understanding of the impact of HIV/AIDS in the world of work grows, Ministries of Labour, which may not previously have been involved in dealing with the issue, will have to develop a response. They need to mobilize the support of all stakeholders in the world of work, in particular employers' and workers' organizations.

## The macro-economic impact of AIDS

We discussed the impact of HIV/AIDS in Module 1, and here summarize the main social and economic implications for countries and their governments. The most seriously affected countries face a disaster from which recovery will be difficult to achieve. Botswana, where 39 per cent of adults are infected, is “faced with extinction”, according to one senior official.<sup>1</sup>

A key factor is that the epidemic not only reduces the stock of skilled and experienced workers but also reduces the capacity to maintain the future flows.<sup>2</sup>

*The main channels through which the HIV epidemic affects social and economic development are through its impact on the labour force and its related effects on savings. The effects flow from the key fact that the epidemic has its primary impact on the working age population. The effects are, of course, not confined to a simple calculus of labour losses, but have much deeper implications for the structure of families, the survival of communities and enterprises, and longer-term issues of sustaining productive capacity.*

*Similarly the HIV epidemic erodes the savings capacity of households, formal and informal productive enterprises, and of government, through its effects on flows of income and levels of expenditure. Reduced rates of savings will over time lead to ... [a fall in investment, reduced international competitiveness, and] declining per capita income. Thus it is estimated by UNAIDS that annual per capita income of half the countries of sub-Saharan Africa is falling by 0.5-1.2 per cent. Government expenditure in Botswana is expected to shrink by more than 20 per cent over the next two decades.*

*It is already the case that lower levels of household savings are having effects on investment in children's education, with consequences for the future stock of those with relevant education and skills. Public services in all countries are facing widespread attrition of trained staff and are unable to replace losses due to budget constraints. The same is happening with directly productive activities, such as mines and plantations, where losses of personnel are taking place at an accelerating rate.<sup>3</sup>*

### The government as employer

In many countries the government is, directly or indirectly, the largest employer. What is more, many government employees are in the frontline of managing the impact of the epidemic, from health workers and local government administrators to officials involved in human resource development and training.

<sup>1</sup> Dr Banu Khan, head of the National Aids Co-ordinating Agency, *Daily Telegraph* (London), 8 July 2002

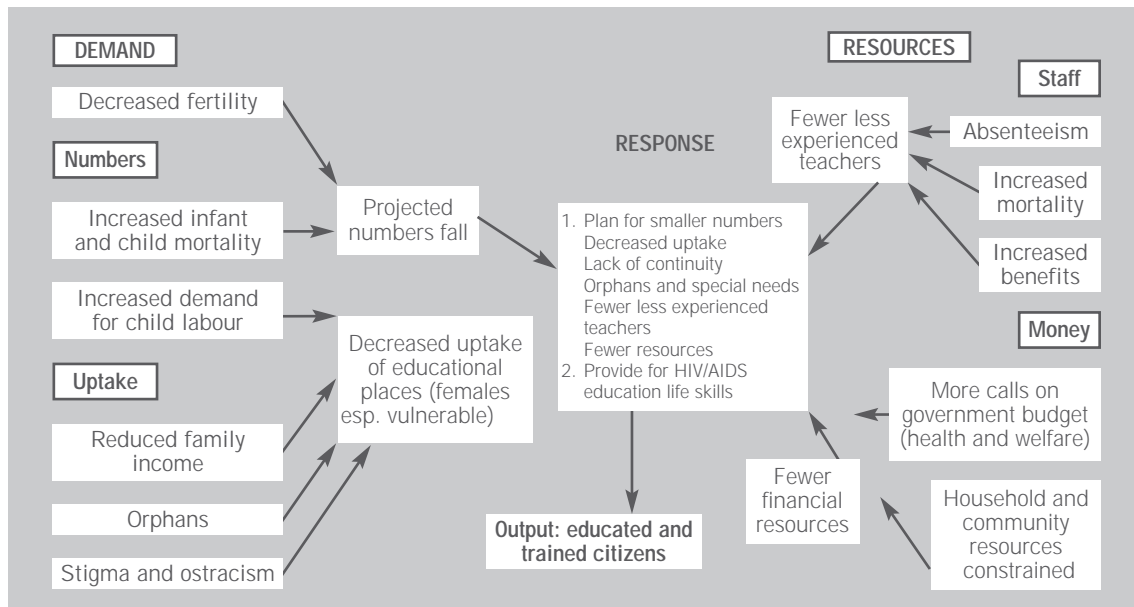
<sup>2</sup> Lisk, F.: *The labour market and employment implications of HIV/AIDS*, ILO/AIDS Working Paper (Geneva, 2002)

<sup>3</sup> Cohen, D.: *Human capital and the HIV epidemic in sub-Saharan Africa*, ILO/AIDS Working Paper (Geneva, 2002)

The health sector is under double pressure as AIDS patients increase while more and more staff become infected. Death rates among health workers in Malawi and Zambia have increased five to six times over recent years, while health spending has been diverted in several countries from training to hospital care.

Education is facing a similar crisis. In 1999 alone, an estimated 860,000 children lost their teachers to AIDS in sub-Saharan Africa. The government of Mozambique expects to lose nearly 20 per cent of its teachers to AIDS by the end of the decade. Education faces both supply and demand impacts, as pointed out by Barnett and Whiteside in *AIDS in the Twenty-first Century*.

### The impact of HIV/AIDS on education



This figure shows that the challenge is to maintain and improve the output in the face of new pressures resulting from HIV/AIDS.

Malawi is one of the few countries where there has been a study of the impact of HIV/AIDS on the public sector workforce. It examined the decade from 1990 to 2000. Mortality increased by a factor of 10. By the end of the period, 15 to 20 police officers were dying every month from HIV-related illness. There were vacant posts throughout the public sector – the Ministry of Agriculture, for example, was unable to fill nearly half of its posts – and instances of staff promoted without the necessary experience. Death rates were higher among the professional staff, where the volume of investment in education is the largest.<sup>4</sup>

Governments must take the lead in developing a strategic approach to the human resource and employment implications of the epidemic, at the same time as fulfilling their responsibilities as employers to develop workplace policies and programmes.

<sup>4</sup> Cohen, D.: *Human capital* (Geneva, 2002)

## Planning a national response

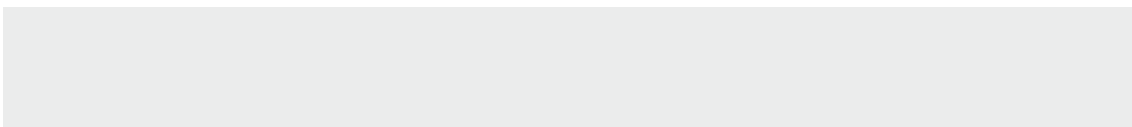
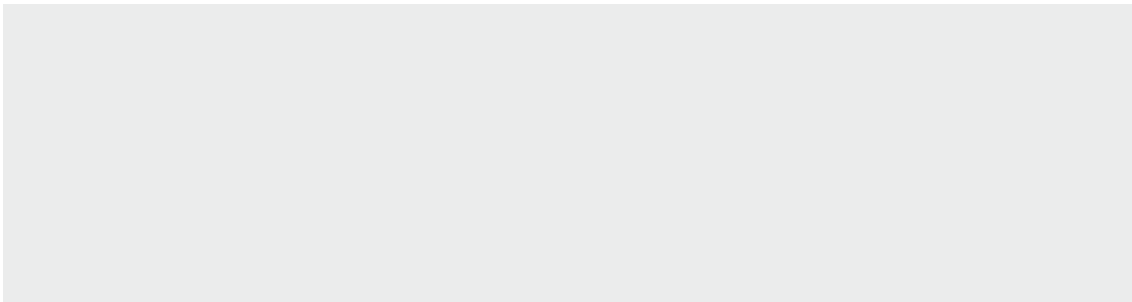
Many factors need to be taken into account here, most of them outside the scope of this manual. The following section focuses on how the world of work can be integrated into national plans and on some of the associated data requirements. It emphasizes the importance of adjusting development plans in the light of the epidemic – including Poverty Reduction Strategy Papers (PSRPs) where relevant – with particular reference to human resource needs.

### **A multisectoral approach**

It is clear that HIV/AIDS is most effectively addressed when approached as a multisectoral concern. What does this mean? Quite simply, it means that the disease needs to be fought on several fronts simultaneously. It means not seeing it solely as a medical issue, or a problem affecting only people with ‘risky’ behaviour. It means understanding its potential to affect all sectors of society, and hence the need for a wide-ranging response. The task of labour ministries will be to ensure that labour market, employment and human resource issues are included.

Mobilizing the world of work is just one way of broadening the response, but one that was given a high priority by the government representatives who agreed on the Declaration of Commitment on HIV/AIDS at the UN General Assembly in June 2001.

*49. By 2005, strengthen the response to HIV/AIDS in the world of work by establishing and implementing prevention and care programmes...., and take measures to provide a supportive workplace environment for people living with HIV/AIDS.*



■ ILO Code of Practice on HIV/AIDS and the world of work

## What are PRSPs?

In September 1999 the World Bank and the International Monetary Fund (IMF) announced a new framework to govern their lending and debt relief activities. They jointly declared that Poverty Reduction Strategy Papers (PRSPs) would become the basis for their lending programmes to the 80 or so poorest countries in the world. PRSPs are to be drawn up by national governments, with input from civil society, and with guidance from the Bank and the IMF. They are supposed to be 'owned' by the country. PRSPs should:

- measure poverty in the country;
- identify goals for reducing poverty; and
- create a spending and policy programme for reaching those goals.

According to the World Bank and the IMF, the PRSP should ensure that a country's macro-economic policies and plans are consistent with the goals of poverty reduction and social development.

A key aspect of the PRSP is that it requires that civil society be allowed to participate in the design of national development strategies. This means that employers' and workers' organizations should be able to help shape the PRSPs.

So far, PSRPs have been weak on labour issues – although the ILO is now organizing programmes in a number of countries to strengthen the contribution of the world of work. They have also tended to give insufficient attention to the impact of HIV/AIDS. When employers' and workers' organizations make their inputs and suggestions during the consultation process, they should seek to ensure that proper weight is given to the epidemic, and in particular its impact on the world of work.

## Understanding the social and economic impact

Although the evidence is mounting, we still do not know enough about the socio-economic impact of HIV/AIDS on countries, communities and the world of work. The Declaration of Commitment on HIV/AIDS identifies the need for greater understanding:

*68. By 2003, evaluate the economic and social impact of the HIV/AIDS epidemic and develop multisectoral strategies to address the impact at the individual, family, community and national levels; ... review the social and economic impact of HIV/AIDS at all levels of society, especially on women and the elderly, particularly in their role as caregivers, and in families affected by HIV/AIDS...*

Appropriate and effective responses depend on knowledge and understanding of the problem. Data are needed, on the one hand, to measure the size of the problem and monitor trends in order to plan and target responses and, on the other, to monitor and evaluate the latter's effectiveness over time. An important use for statistics is in advocacy, to help persuade potential partners of the need for action.

### Information and data collection

The stigma associated with HIV/AIDS has led to a culture of secrecy and denial that makes the collection of accurate and reliable statistics difficult. Nevertheless, data are systematically gathered on the size and spread of the epidemic (epidemiology), on behaviour, and on socio-economic impact.

The global surveillance of HIV/AIDS is the joint responsibility of the World Health Organization and UNAIDS. The results of this collaboration are published in annual overviews of the epidemic with regional and national estimates of deaths caused by the disease, new infections and the numbers living with HIV. They have also produced a document to guide monitoring and surveillance, *Guidelines for Second Generation HIV Surveillance*<sup>5</sup>, which contains useful information, even for non-specialists.

The main source of UNAIDS/WHO statistics is 'sentinel' sites. These are specific surveillance sites where blood is taken for other purposes; samples can be stripped of all identifying markers and tested for HIV infection. Individual consent is not required because the left-over blood sample is not identifiable. This procedure is called 'unlinked anonymous testing'.

### Monitoring HIV/AIDS in the world of work

Information on the impact of HIV and AIDS on households, on firms and at the level of the economy

<sup>5</sup> UNAIDS/WHO: *Guidelines for Second Generation HIV Surveillance* (Geneva, 2000)

is very scanty, and the methods to collect and assess this type of information are only now being developed. In its programme to guide and support action in the world of work, the ILO is developing indicators to measure and monitor the impact in such areas as labour, employment and productivity, and the cost-effectiveness of various measures. In particular, methods are being developed to apply the sentinel site approach to selected workplaces in order to be able to link (anonymous) epidemiological data with the impact in terms of costs and productivity. The next stage is to monitor and evaluate interventions.

Enterprises need to calculate not only how much HIV and AIDS is costing them, but also how much interventions will cost. In this way a cost-benefit analysis can be determined. Gold Fields, the South African mining company, has worked out that HIV added \$10 to the production costs of one ounce of gold, out of a total cost of \$170. The company has estimated that its strategy of prevention and treatment, working in collaboration with the National Union of Mineworkers, would enable it to reduce the costs attributable to the disease to \$4 an ounce.<sup>6</sup>

Workplace programmes often start with a situational analysis or a base-line survey to identify current levels of STIs/ HIV infection and aspects of behaviour that could lead to risk of infection. The latter are sometimes known as KABP surveys (knowledge, attitudes, behaviour and practices). They help ensure that prevention programmes are well targeted, and make it possible to measure their success.

Surveillance at the workplace should be unlinked and anonymous, though confidential voluntary testing may be offered, with counselling, to those workers who choose to know their status. The ILO Code of Practice stipulates conditions for epidemiological surveillance at the workplace:

*8.3 Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with the ethical principles of scientific research, professional ethics and the protection of individual rights and confidentiality. Where such research is done, workers and employers should be informed it is occurring. The information obtained may not be used to discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.*

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Proposals to conduct monitoring or surveillance at the workplace should be examined by both employers and workers' representatives, and implemented in full consultation with both partners. The importance of involving key stakeholders, and in particular the surveyed community, is emphasized by this advice from the US Centers for Communicable Disease Prevention & Control (CDC):

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<sup>6</sup> 'Production costs spiral at South Africa mines group', in *Financial Times* (London), 14 Apr. 2002

- A surveillance system can become a meaningless exercise in data collection unless the findings motivate action to reduce HIV transmission by key stakeholders.
- Consensus needs to be built among various stakeholders on the communities to be surveyed, the data to be collected and disseminated and the forms dissemination will take. This helps to build a sense of ownership of the findings and ensure there that their presentation is appropriate for and relevant to the various audiences.
- A comprehensive dissemination strategy needs to be developed at the same time as surveillance is planned. This strategy should include dissemination of some key findings as soon as possible after data collection is completed to sustain stakeholder interest and spread the implementation of prevention activities.
- Target audiences should be prepared to understand the meaning, limitations, and interpretation of the surveillance results well in advance of their actual release.
- Specific dissemination materials should be developed for each target audience to explain the findings in clear and simple language which they can understand.

## Mobilizing resources

Governments have to mobilize resources for the fight against HIV and AIDS. For many developing countries, with major demands on their hard-pressed budgets, this is proving difficult and they need external support. While substantial amounts of donor resources have been provided, more is needed.

One initiative is the Global Fund to Fight AIDS, TB and Malaria ([www.globalfundatm.org/principles.html](http://www.globalfundatm.org/principles.html)), a new public-private partnership which will provide grants for public, private, and non-governmental programmes. Proposals need to be co-ordinated at country level through a Country Coordinating Mechanism, usually managed by the national AIDS council or committee. The sort of activities that could be supported include: increased access to health services; provision of critical health products including drugs; training of personnel and community health workers; behaviour change and outreach; and community-based programmes, including care for the sick and orphans.

In its first grant review, the Global Fund approved projects totalling US\$ 1.6 billion; nearly 70 per cent was for HIV/AIDS. The Fund issues calls for proposals from time to time. The second round closed in September 2002.

Individual bilateral and multilateral donors will continue to make funding available; decisions are increasingly being taken at country level – for example by the country offices of the European Union. The Multi-Country HIV/AIDS Programme (MAP) of the World Bank makes flexible and rapid funding available to African countries to assist in scaling up national HIV/AIDS efforts. UNAIDS has funds available for a similar purpose under the Programme Acceleration Fund (PAF). UN Theme Groups bring together representatives of all or most UN agencies in a particular country, and they consider ways to support local initiatives.

## Legislation on HIV/AIDS

A major role for governments is to establish a policy and legal framework that protects the rights of those affected by HIV/AIDS and promotes action at all levels. A number of governments have adopted legislation to deal specifically with the implications of HIV/AIDS in the workplace.

The Declaration of Commitment on HIV/AIDS includes this target:

*69. By 2003, develop a national legal and policy framework that protects in the workplace the rights and dignity of persons living with and affected by HIV/AIDS and those at the greatest risk of HIV/AIDS, in consultation with representatives of employers and workers, taking account of established international guidelines on HIV/AIDS in the workplace.<sup>7</sup>*

The guidelines are provided by the ILO Code of Practice, which helps governments to:

- adopt or reform labour laws and other statutory instruments in order to eliminate workplace discrimination and ensure prevention programmes and social protection;
- adopt voluntary codes which guide action at the workplace;
- provide training for labour inspectors, other enforcement agencies and the judiciary on the rights of persons infected and affected by HIV/AIDS.

Legislation concerning HIV/AIDS at the workplace should cover, as a minimum:

- prohibition of discrimination at work related to HIV status
- prohibition of mandatory pre- and post-employment testing
- protection of HIV-related data (medical notes and also information relating to counselling, care, treatment and receipt of benefits)
- prevention and containment of transmission risks
- workplace accommodation, in particular working time flexibility
- grounds for dismissal related to medical unfitness to carry out adapted work, not HIV status
- benefits, including early retirement options, medical and funeral coverage
- scope for negotiation on these issues
- grievance and disciplinary procedures
- implementation mechanisms.

HIV-related legislation may assume a variety of forms. Good practices show the adoption of instruments of both 'hard' and 'soft' law.

'Hard law' is found in the provisions of law adopted by parliaments, such as the Philippines AIDS Prevention and Control Act, 1998 (see Reference materials, Module 2). It may also consist of legally

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<sup>7</sup> UN: *Declaration of Commitment on HIV/AIDS*, General Assembly Special Session, New York, 27 June 2001.

binding regulations, ordinances or decrees adopted by a Ministry or other government agency, such as Zimbabwe's *Statutory Instrument 202* of 1998, *Labour Relations (HIV/AIDS) Regulations*.

Some countries have developed national codes on HIV/AIDS; these are considered 'soft law' since they are not legally binding but provide guidelines that help develop and promote a national policy on the issue. An example is Namibia's *National Code on HIV/AIDS in Employment, 1998* (see Reference materials in this module).

A particular issue for consideration is that labour legislation frequently applies to "employees" rather than "workers". The ILO stresses that ILO standards and rights are relevant to all workers, regardless of workplace. As the Director-General said in his report to the 1999 International Labour Conference: "Almost everyone works, but not everyone is employed".

However, it is clear that most national labour legislation only covers work relations in the formal sector. Even where labour laws and codes are applicable to informal employment relationships, legal bodies and judiciaries rarely enforce them.

Governments should try to ensure the widest possible application of laws which cover HIV/AIDS, including in the informal economy.

#### Some examples of 'hard' and 'soft' law

- Zimbabwe's *Labour Relations (HIV and AIDS) Regulations* of 1998 ban non-consensual testing, outlaw workplace discrimination, require wide dissemination of the Regulations and dictate strong penalties, going as far as 6 months' imprisonment, for employers who violate the Regulations. The use of severe penalties can be controversial: it shows the Government's commitment to action but may alienate employers rather than encouraging their co-operation.
- Namibia's *National Code on HIV/AIDS and Employment*, gazetted as a Government Notice in 1998, adopts a ban on testing similar to the Zimbabwean Regulations, but emphasizes education. There is no provision for enforcement.
- South Africa, in its 1998 *Employment Equity Act*, prohibits discrimination based on HIV status. Testing is also banned, except where authorized by the Labour Court. The onus is on the employer to demonstrate that testing is necessary. In any legal proceedings in which it is alleged that an employer has discriminated, the employer must prove that any discrimination or differentiation was justified. The Act as a whole contains strong financial penalties for non-compliance.
- The 1998 *Philippines AIDS Prevention and Control Act* affirms that :  
*The State shall extend to every person suspected or known to be infected with HIV/AIDS full protection of his/her human rights and civil liberties.*



## The role of parliamentarians

One of the means of supporting an expanded response to the HIV/AIDS epidemic is to prioritize HIV/AIDS on the national agenda and to take the message to political leaders. Parliamentarians are an important group, and particular efforts need to be made to ensure that they participate in national efforts to fight the pandemic. Where national committees or similar structures on AIDS exist, it can be a good idea to include members of parliaments/national assemblies on such bodies. Parliamentary committees could be encouraged to hold hearings on HIV/AIDS, as these can play an important role in raising awareness.

The role of members of provincial parliaments and assemblies should not be overlooked, particularly when, as in some federal systems, they deal with labour matters.

It is frequently the case that members of parliament enjoy close links with either employers' organizations or trade unions. These links can be formal or informal. In either case, social partners can use them to encourage parliamentarians to keep the issue under constant review and to ensure that the dimension of the world of work is not forgotten. They can provide information and policy to parliamentarians concerning the specific impact of HIV/AIDS at work.

Actions that parliamentarians can take include:

- ensuring that there is a national policy on HIV/AIDS and structures to implement it;
- promoting/supporting reform of legislation as necessary;
- ensuring that development plans address the implications of the epidemic;
- making speeches on HIV/AIDS inside and outside parliament - to help break the silence and taboos which still surround the subject;
- visiting workplaces with strong programmes on HIV/AIDS;
- visiting HIV/AIDS projects run by government or NGOs;
- paying visits to hospitals and other medical facilities which are treating people with HIV/AIDS- this helps to make the point that everyday contact does NOT spread the virus, and that people living with the virus do not need to be isolated;
- publicly supporting associations of people living with HIV and AIDS;
- pressing for increased resources to deal with the pandemic.

Parliamentarians might like to know that UNAIDS and the Inter-Parliamentary Union have produced a *Handbook for Legislators on HIV/AIDS, Law and Human Rights* (UNAIDS/IPU, Geneva, 1999). This does not contain much about the world of work, but is very helpful in explaining how legislation can be passed or amended to respond to the HIV epidemic.

## Labour inspectors

The labour inspectorate is a key government agency. In practically every country labour inspectors are charged with the enforcement of certain labour laws. These may be concerned with safety and health, minimum wages, or other issues. Labour inspectors have a great deal of practical knowledge of workplaces and good relationships with employers' and workers' organizations.

One problem is the lack of resources:

*In developing countries generally there was a great shortage of human and material resources to carry out the functions of labour inspection. There were perhaps genuine intentions to apply the law, but performance failed to measure up to these intentions. Posts existed but qualified inspectors could not be found and there were insufficient funds for training and purchasing equipment.<sup>8</sup>*

Despite these problems, labour inspectors should receive training on HIV/AIDS, so that they can dispel myths and advise workplaces on the steps that should be taken. The ILO Code of Practice would form a sound basis for such training.

### Labour standards and labour inspectors

There are a number of International Labour Conventions concerning labour inspectors. The two most important ones are:

Labour Inspection Convention No. 81 (1947), which deals with industry and commerce;  
Labour Inspection in Agriculture No. 129 (1969), which deals with all agricultural enterprises.

There are also relevant Recommendations.

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<sup>8</sup> ILO: *Report of the Meeting of Experts on Labour Inspection and Child Labour* (Geneva, 1999)

## Social security

One key task for governments in the face of the HIV/AIDS epidemic is the provision of social protection, which the ILO defines as including:

*not only public social security schemes, but also private or non-statutory schemes with a similar objective, such as mutual benefit societies, occupational pension schemes. It includes all sorts of non-statutory schemes, formal or informal, provided that contributions to these schemes are not wholly determined by market forces. These schemes may feature, for example, group solidarity, or an employer subsidy, or perhaps a subsidy from the government.<sup>9</sup>*

The principle behind social protection is the pooling of risk. If an individual, or single family, carries all the cost and burdens of death, sickness or other interruption of earnings, such circumstances place a tremendous strain on that person or family. But if the risk is pooled - through taxation or an insurance scheme with wide coverage - then the cost is affordable.

So, in most developed countries, with nearly 100 per cent coverage, the risks are “pooled” by the whole population through the state system. People who become ill with AIDS can receive treatment at virtually no cost to themselves or their family.

Social protection is a very large and complex subject. We do not attempt in this module to deal with the subject comprehensively. The intention is to help those who take part in social dialogue, who are not experts, to understand some of the key issues and concepts.

### A human right

Social protection is a human right. The Universal Declaration of Human Rights states:

*Article 22*

*Everyone, as a member of society, has the right to social security...*

*Article 25*

*a. Everyone has the right to... necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

Not all societies can provide the same level of social protection, but there is growing realization that a broad-based national social protection policy can provide a cushion against some of the shocks and crises which can occur - drought, earthquake, floods, etc.

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<sup>9</sup> ILO: *World Labour Report 2000* (Geneva, 2000)

However, many of these “shocks” are short-term and limited - even a drought will, eventually, end. The HIV/AIDS pandemic is a long-term crisis, and therefore places an even greater strain on societies.

More than half of the world labour force and their families are excluded from coverage by statutory social security protection and are thus denied income security. The problem is greatest in developing countries. Thus, only 10 per cent of workers are covered in sub-Saharan Africa and South Asia. In other parts of the developing world coverage varies between 50 and 90 per cent. In middle income and even developed countries, there are significant gaps in social protection. In the United States, for example, about 20 per cent of people have no insurance to cover medical costs. And for many of those with medical insurance, their policy does not include cover for HIV/AIDS. The cost of AIDS-related care in the USA is approximately US \$ 20,000 for one person per year.

## **ILO standards**

ILO Convention 102 on Social Security (Minimum Standards) adopted in 1952, differentiates between nine basic benefits:

1. medical care
2. sickness benefit
3. maternity benefit
4. unemployment benefit
5. family benefit
6. employment injury benefit
7. invalidity benefit
8. old-age benefit
9. survivors' benefit (widows and children)

There are a number of more detailed standards.

## **Who provides social protection?**

Traditional ways of financing social security benefits include:

- social insurance - where contributions are made by workers, employers and (sometimes) government, and benefits are paid out to workers who qualify;
- social assistance - where benefits are paid on the basis of need from taxation the State's tax revenue;
- employer-funded benefits - usually confined to sickness and healthcare benefits, death benefits, and retirement pensions.

In recent years, there has been an increase in new ways to provide benefits for the very large numbers of workers who are not covered by traditional social security schemes and to provide benefits that are not available under those schemes. We discuss these schemes in Module 8 on HIV/AIDS and the informal economy.

### How HIV/AIDS may affect social security

HIV/AIDS does not necessarily lead to unsustainable pressures on social security schemes (see next page), and the ILO Code of Practice emphasizes that there is no justification for excluding workers with HIV/AIDS from schemes. There is no need to panic in the belief that schemes will collapse. Of course, social security schemes should be kept under careful review. The Code of Practice recommends the following:

#### 9.5. Benefits

*(a) Governments, in consultation with the social partners, should ensure that benefits under national laws and regulations apply to workers with HIV/AIDS no less favourably than to workers with other serious illnesses. They should also explore the sustainability of new benefits specifically addressing the progressive and intermittent nature of HIV/AIDS.*

*(b) Employers and employers' and workers' organizations should pursue with governments the adaptation of existing benefit mechanisms to the needs of workers with HIV/AIDS, including wage subsidy schemes.*

#### 9.6. Social security coverage

*(a) Governments, employers and employers' and workers' organizations should take all steps necessary to ensure that workers with HIV/AIDS and their families are not excluded from the full protection and benefits of social security programmes and occupational schemes. This should also apply to workers and their families from occupational and social groups perceived to be at risk of HIV/AIDS.*

*(b) These programmes and schemes should provide similar benefits for workers with HIV/AIDS as for workers with other serious illnesses.*

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The principle of pooling risk is an important one. The more people there are in any pool, the wider the distribution of the risk, and the more secure the finances of the scheme. We need more, not less, social security coverage, and schemes should attempt to cover larger numbers of people. Currently, many workers who are eligible to join schemes do not do so.

### Does HIV/AIDS mean a crisis for social security?

Specialists have been discussing the implications of HIV/AIDS for social security schemes, whether provided by the state or companies. We will here consider only developing countries. On the one hand, schemes may be paying for medical care, sickness benefits, funeral benefits and, eventually, survivors' benefits. But at the same time, schemes will not pay out so much in pension benefits for retired workers for the simple reason that, sadly, those infected by HIV will almost certainly die before reaching retirement age. This saving on pension benefits will be made over the longer term, while spending on medical care, sickness benefits and disability benefits is more short-term.

Payments of disability or invalidity benefits (payments to compensate for lost wages for long-term absence from work) will not increase a great deal overall. The reason for this is that, at the moment, with the absence of high quality care, including antiretroviral therapies, the interval between the onset of AIDS and death is relatively short. This may change as drug costs decrease and better quality treatment becomes available.

It is also possible that the duration of survivors' benefits may decrease, because of the high probability of survivors' being infected.

Many schemes will therefore be under pressure in the short term, but in the long term the impact of HIV/AIDS will be balanced. An increase in contributions to schemes by employees, workers and government may be necessary. Of course, this is a general conclusion; the reality will vary enormously between countries, within countries and from one company to another. We can, therefore, take a cautiously optimistic view of the impact of HIV and AIDS on social security schemes.

However if, because of increased mortality, the total number of members of a scheme decreases considerably, this may create problems. If fewer workers are paying into a scheme, then contributions go down, and the scheme is less viable financially.<sup>10</sup>

<sup>10</sup> Based on Plamondon P. and Cichon M.: *Assessing the impact of AIDS on social security pension schemes in developing countries* (ILO, mimeo, n.d.)

## ACTIVITY 1

### Planning government strategy

**AIMS** To review the areas where government action on HIV/AIDS is necessary in the world of work.

**TASK** Read through Section 5.1 of the Code of Practice and identify key areas for action - where policies already exist, and where policies need to be developed.

Does the national HIV/AIDS law, policy or plan include the world of work?

Does the national HIV/AIDS council or committee include representatives of employers' and workers' organizations?

## ACTIVITY 2

### Tripartism and HIV/AIDS

**AIMS** To review how tripartite arrangements can include the issue of HIV/AIDS.

**TASK** Review the arrangements and mechanisms operating at national and industry level. These can include events such as national tripartite conferences, or standing committees dealing with a single issue such as safety and health at work.

Have any of these tripartite structures discussed HIV/AIDS? If not, how could the issue be raised?

ACTIVITY 3

The multisectoral response

**AIMS** To think about the wider picture in the response to HIV/AIDS.

**TASK** Try to develop a diagram to represent your government’s response to the various problems presented by HIV/AIDS. A number of ministries may be involved in dealing with the issue. Write them all down, and **add the linkages between them**. Your diagram should not only be about the world of work, but should also include other dimensions of the epidemic. Your diagram will probably have gaps. That’s OK. The gaps might be due to your lack of information, or they may really exist! The purpose of the activity is to show the importance of a multisectoral approach.

ACTIVITY 4

Comparing the law

**AIMS** To help you to compare different legal standards.

**TASK** Compare the HIV/AIDS provisions in employment laws from two countries. One should be your own national legislation, if possible. There are examples in different modules.

Key Principle (Section 4 of the Code of Practice)	Legislation 1: (fill in title, country) Your comments	Legislation 2: (fill in title, country) Your comments
Workplace issue		
Non-discrimination		
Gender equality		
Healthy work environment		
Social dialogue		
No screening		
Confidentiality		
Dismissal		
Prevention		
Care & support		

Decide which piece of legislation best meets the standards of the ILO Code of Practice, and which you prefer, and why.

### ACTIVITY 5

## Labour inspectors and HIV/AIDS

**AIMS** To think about the role of labour inspectors in fighting HIV/AIDS.

**TASK** In your group, think about ways in which action around HIV/AIDS could be integrated into your work as labour inspectors. Consider actions which have low-cost implications and could be easily integrated into the normal work of inspectors, as well as more resource-intensive or specific initiatives.

### ACTIVITY 6

## Poverty Reduction Strategy Papers, HIV/AIDS and the world of work

**AIMS** To review your PRSP and what it says about HIV/AIDS.

**TASK** PRSPs are one of the most important documents which the poorest countries now have to develop in order to receive assistance from the World Bank and IMF.

Try to get hold of your national PRSP, interim PRSP or draft PRSP. See what it says about HIV/AIDS, including the world of work.

**Note :** It might be helpful to divide up different parts of the PRSP between different groups in the workshop, or just use key sections, as they can be quite lengthy documents. One group could look at the references to HIV/AIDS. Another group could look at what the PRSP says about the world of work.

## ACTIVITY 7

## Gender and national HIV/AIDS law

**AIMS** To review the gender implications of HIV/AIDS legislation.

**TASK** Read your country's law, policy or code on HIV/AIDS.

Discuss how far it addresses gender issues.

Find, as well, if it includes provisions for the world of work.

## ACTIVITY 8

## Governments as employers

**AIMS** To think about the role of government as an employer.

**TASK** In your group, consider the role of your government as an employer and think about ways in which it can take steps to respond to the HIV/AIDS pandemic. Consider:

- collecting information,
- developing a workplace policy,
- involving organizations which represent government employees.

- I. Guidelines for the implementation of the Namibia National Code on HIV/AIDS in Employment (1998)
- II. Resolution on HIV/AIDS passed at the World Congress of Public Services International (2002)
- III. Dispatch Online report (April 2002)

### **I. Guidelines for the implementation of the National Code on HIV/AIDS in Employment**

In the terms of section 112 of the Labour Act, 1992 (Act No 6 of 1992), I hereby, in the Schedule to this notice, publish guidelines and instructions to be followed and adhered to by all employers and employees for the purpose of the application of the relevant provisions of the Act in respect of HIV/AIDS in employment.

John M Shaetonhodi,  
Acting Minister of Labour  
19 March 1998

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This code applies to all employers in Namibia. Although the Namibian Defence Force is excluded

from the general provisions of the Namibian Labour Act, it is bound by the Act's sections on non-discrimination. It is therefore believed that the employment code does apply to the NDF.

## 1. INTRODUCTION

- 1.1 With the world-wide marked increase in the number of persons infected with the human immunodeficiency virus (HIV) and suffering from acquired immunodeficiency syndrome (AIDS) mainly in the economically active part of the population, the 20 to 50 years age group, the employers, employees and their organizations show a high level of anxiety in regard to the impact of the pandemic on the work environment.
- 1.2 From an initial response of denial to a perception of AIDS as a medical problem, AIDS is progressively being recast as a development problem and an issue for all sectors.
- 1.3 Loss of employment and individual income, loss of employees without adequate availability of replacement, and a subsequent decline in production and national income can pose a severe and detrimental effect on the social and economic stability and the growth of a country. This is so in view of the fact that HIV/AIDS will affect economic growth and production through the illness and death of productive people and through the diversion of resources from savings (and eventually investment) to care.

## 2. OPTIONS AND RESPONSES:

- 2.1 In response to the AIDS pandemic and its volatile and dynamic nature, the Ministry of Labour, in conjunction with the Ministry of Health and Social Services and with the wide tripartite consultation through the Labour Advisory Council, has formulated the National Code on HIV/AIDS and Employment for HIV prevention and AIDS management. This code is proposed as an integral part of the government's commitment to address most of the major issues related notably to the prevention of new infection, as well as to the provision of optimal care and support for the workforce.
- 2.2 Workplace-based activities that locate HIV prevention and AIDS management in a sustained and comprehensive programme of health promotion have demonstrated gains in general health indicators.
- 2.3 This implies a need for stronger public health approaches in the productive sectors.

## 3. POLICY PRINCIPLES:

- 3.1 The same ethical principles that govern all health/medical conditions in the employment context should apply equally to HIV/AIDS.
- 3.2 The gravity and impact of the HIV/AIDS epidemic and the potential for discrimination created the need for this "National Code on HIV/AIDS and Employment" to be based on the fundamental principles of human rights embodied in the Constitution of the Republic of Namibia, the provisions of the Labour Act (Act No 6 of 1992), occupational health principles, sound epidemiological data, prudent business practice and a humane and compassionate attitude to individuals.
- 3.3 The inter-dependency of SADC countries and people, nowhere more evident than in the

spread of HIV, demands equity and a shared approach to the challenges of HIV/AIDS. The Regional (SADC) nature and implications of the epidemic and the desire to harmonize national standards in dealing with HIV/AIDS motivates this Code.

**4. SCOPE:**

- 4.1 Subject to the provisions of the Labour Act (Act No 6 of 1992) this Code applies to:
  - 4.1.1 all employees and prospective employees;
  - 4.1.2 all workplace and contracts of employment;
  - 4.1.3 all human resources practices forming part of a policy component of any organization.

**5. POLICY DEVELOPMENT AND IMPLEMENTATION**

- 5.1 As policy development and implementation is a dynamic process, this Code shall be:
  - 5.1.1 communicated to all concerned;
  - 5.1.2 routinely reviewed in the light of new epidemiological and scientific information;
  - 5.1.3 monitored for its successful implementation and evaluated for its effectiveness in the workplace.

**6. POLICY COMPONENTS:**

- 6.1 Education, awareness and prevention:
  - 6.1.1 Information, education and prevention programmes should be developed jointly by employers and employees and should be accessible to all at the workplace. Education on HIV/AIDS should, where possible, incorporate employees' families.
  - 6.1.2 Essential components of prevention programmes are information provision, education, prevention and management of sexually transmitted diseases (STDs), condom promotion and distribution and counselling on high-risk behaviour. Workplace AIDS programmes should co-operate with and have access to resources of the National AIDS programme.
- 6.2 Job Access
 

There should be neither direct nor indirect pre-employment testing for HIV. Employees should be given the normal medical tests of current fitness for work and these tests should not include testing for HIV.
- 6.3 Workplace testing and confidentiality:
  - 6.3.1 There should be no compulsory workplace testing for HIV. Voluntary testing for HIV at the request of the employee should be done by a suitably qualified person in a health facility with the informed consent of the employee in accordance with normal medical ethical rules and with pre- and post-test counselling.
  - 6.3.2 Persons with HIV/AIDS should have the legal right to confidentiality about their HIV status in any aspect of their employment. An employee is under no obligation to inform an

employer of her/his HIV/AIDS status. Information regarding the HIV status of an employee should not be disclosed without the employee's written consent.

- 6.3.3 Confidentiality regarding all medical information of an employee or prospective employee should be maintained, unless disclosure is legally required. This applies also to health professionals under contract to the employer, pension fund trustees and any other personnel who obtain such information in ways permitted by the law, ethics, or the code or from the employee concerned.

#### 6.4 Job Status:

HIV status should not be a factor in job status, promotion or transfer. Any changes in job status should be based on existing criteria of equality of opportunity, merit and capacity to perform the work to a satisfactory standard.

#### 6.5 HIV Testing and Training:

In general, there should be no compulsory HIV testing for training. HIV testing for training should be governed by the principle of non-discrimination, between individuals with HIV infection and those without, and between HIV/AIDS, and other comparable health/medical conditions.

#### 6.6 Managing Illness and Job Security:

- 6.6.1 No employer should be dismissed merely on the basis of HIV status, nor should HIV status influence retrenchment procedures.
- 6.6.2 Employees with HIV-related illness should have access to medical treatment and should be entitled, without discrimination, to agreed existing sick leave provision.
- 6.6.3 HIV-infected employees should continue to work under normal conditions in their current employment for as long as they are medically fit to do so. When an employee becomes too ill to perform his/her agreed functions, standard procedures for termination of service for comparable life-threatening conditions should apply without discrimination or prejudice to his/her benefits.

#### 6.7 Occupational Benefits

- 6.7.1 Government, employers and employee representatives should ensure that occupational benefits are non-discriminatory and sustainable and provide support to all employees including those with HIV infection. Such occupational benefits schemes should make efforts to protect the rights and benefits of the dependants of deceased and retired employees.
- 6.7.2 Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used by the employer or any other party to affect any other aspect of the employment contract or relationship.

- 6.7.3 Medical schemes and health benefits linked to employment should be non-discriminatory. Private and public health financing mechanisms should provide standard benefits to all employees regardless of their HIV status.
- 6.7.4 Counselling and advisory services should be made available to inform all employees of their rights and benefits from medical aid, life insurance, pension and social security funds. This should include information on intended changes to the structure, benefits and premiums to these funds.
- 6.8 Risk Management, First Aid and Compensation
  - 6.8.1 Where there may be an occupational risk of acquiring or transmitting HIV infection, appropriate precautionary measures should be taken to reduce such risk, including clear and accurate information and training on the hazards and procedures for safe work.
  - 6.8.2 Employees who contract HIV infection during the course of their employment should follow standard compensation procedures and receive standard compensation benefits.
  - 6.8.3 Under conditions where people move for work, government and organizations should lift restrictions to enable them to move with their families and dependants.
  - 6.8.4 People who are in an occupation that requires routine travel in the course of their duties, should be provided with the means to minimize the risk of infection including information, condoms and adequate accommodation.
- 6.9 Protection Against Victimization:
  - 6.9.1 Persons affected by or believed to be affected by HIV or AIDS should be protected from stigmatization and discrimination by co-workers, employers or clients. Information and education are essential to maintain the climate of mutual understanding necessary to ensure this protection.
  - 6.9.2 Where employers and employees agree that there has been adequate information and education provisions for safe work, then disciplinary procedures should apply to persons who refuse to work with an employee with HIV/AIDS.
- 6.10 Grievance Handling:
  - 6.10.1 Standard grievance handling procedures in organizations, in labour and civil law, which apply to all workers should apply to HIV-related grievances. Personnel dealing with HIV-related grievances should protect the confidentiality of the employee's medical information.
- 6.11 Information
  - 6.11.1 Government should collect, compile and analyse data on HIV/AIDS and sexually transmitted diseases and make it available in the public domain. Stakeholders should co-operate in making available national data for monitoring and planning an effective response to the regional health, human resource, economic and social impact of the AIDS epidemic.

## 6.12 Monitoring and Review

6.12.1 Responsibility for monitoring and review of the Code and its implementation should lie with the parties to the tripartite Labour Advisory Council and with the Ministry of Labour.

## II. Composite resolution No. 5: HIV/AIDS in sub-Saharan Africa

*The 27th World Congress of Public Services International, meeting in Ottawa, Canada, from 2-6 September 2002,*

**NOTES** that while no country has been spared from the Acquired Immune-Deficiency Syndrome (AIDS) epidemic, 70 per cent of the 40 million people infected with HIV/AIDS live in sub-Saharan Africa; and

**RECOGNIZES** that the HIV/AIDS epidemic in sub-Saharan Africa has become a crisis with devastating consequences for human, social and economic progress, as AIDS is the leading cause of death killing 2.3 million Africans in 2001, 3.4 million new HIV infections occurred this past year with 28.1 million Africans now living with the virus, and HIV prevalence rates in some Southern African countries are 30 per cent and above; and

**IS DISTRESSED** to know that some of highest rates of infection are among teachers, health workers and other professional employees; and

**REALISES** that despite all current efforts, international resources devoted to combating the HIV/AIDS epidemic in sub-Saharan Africa are not equal to the size of the problem; and

**ACKNOWLEDGES** that high-level political commitment from the international community is critical to strengthening the response to the HIV/AIDS epidemic in sub-Saharan Africa; and

**RECOGNIZES** that some progress has been made in lowering the price of HIV/AIDS drugs to Africa, but

**CONDEMNS** those multi-billion dollar pharmaceutical corporations that have demonstrated strong determination to use global patent rules introduced by the World Trade Organization (WTO) to maintain their grip on the manufacture, distribution and pricing of brand-name HIV/AIDS drugs worldwide because they are driven by the hard-headed pursuit of profit; and

**APPLAUDS** the Public Services International for preparing and distributing detailed and insightful information aimed at raising awareness of the HIV/AIDS epidemic in sub-Saharan Africa; and

**RECOMMENDS** that the PSI continue to develop a comprehensive plan of action on the issue of AIDS in sub-Saharan Africa that is both 'educational' and 'political' in nature; and

**SUGGESTS** that the PSI encourage all affiliated unions to make the issue of AIDS in sub-Saharan Africa a priority in international solidarity efforts, and that PSI works in co-operation with other global union federations to seek greater resources from nations for HIV/AIDS prevention programmes and medical assistance to help stricken regions of Africa;

**URGES** the PSI to make one goal of its action plan to encourage governments and the international community to devote more financial resources to the treatment and prevention of HIV/AIDS in sub-Saharan Africa and to the research efforts aimed at developing a vaccine; and

**ENCOURAGES** the PSI to continue demanding changes to global patent rules and promoting the use of generic drugs to cut the cost of HIV/AIDS drugs to treat the people of sub-Saharan Africa.

**NOTES** that the positions adopted by certain religious authorities relating to individual protection will do nothing to improve the situation.

### III. Government to look at Aids impact in workplace

CAPE TOWN -- The Department of Trade and Industry (DTI) will be approaching companies to gain a clearer understanding of the impact Aids is having in the workplace, Minister Alec Erwin said this week. Briefing MPs on a new government plan to boost the economy's competitiveness, he said South Africa needed more accurate information on the impact of the disease. One area that needed to be looked at was what plans to put in place to counter a possible loss of skills. "If there are changes in the workforce, we must deal with it. We need to identify what is happening ... we don't have accurate records, and we must get them."

The department could look at company staff records, as well as pension fund and medical aid spending, to examine the effect of Aids. Erwin was speaking on day one of six days of public hearings -- conducted jointly by the National Assembly's trade and industry committee and the National Council of Provinces' economics committee -- on the new integrated manufacturing strategy (IMS). The minister has been criticized for ignoring the epidemic in the recently unveiled plan, which aims to accelerate economic growth and boost the competitiveness of the local economy.

Erwin said on SAFM radio last week that the disease did not seem to be having a "severe impact" on the skills level and life expectancy of the workforce. This contradicts numerous independent studies, including one released by labour consultants Andrew Levy and Associates last week that estimated about 30 percent of the country's workforce will be HIV-positive in 2005.

■ *Dispatch Online. Thursday, April 25, 2002*

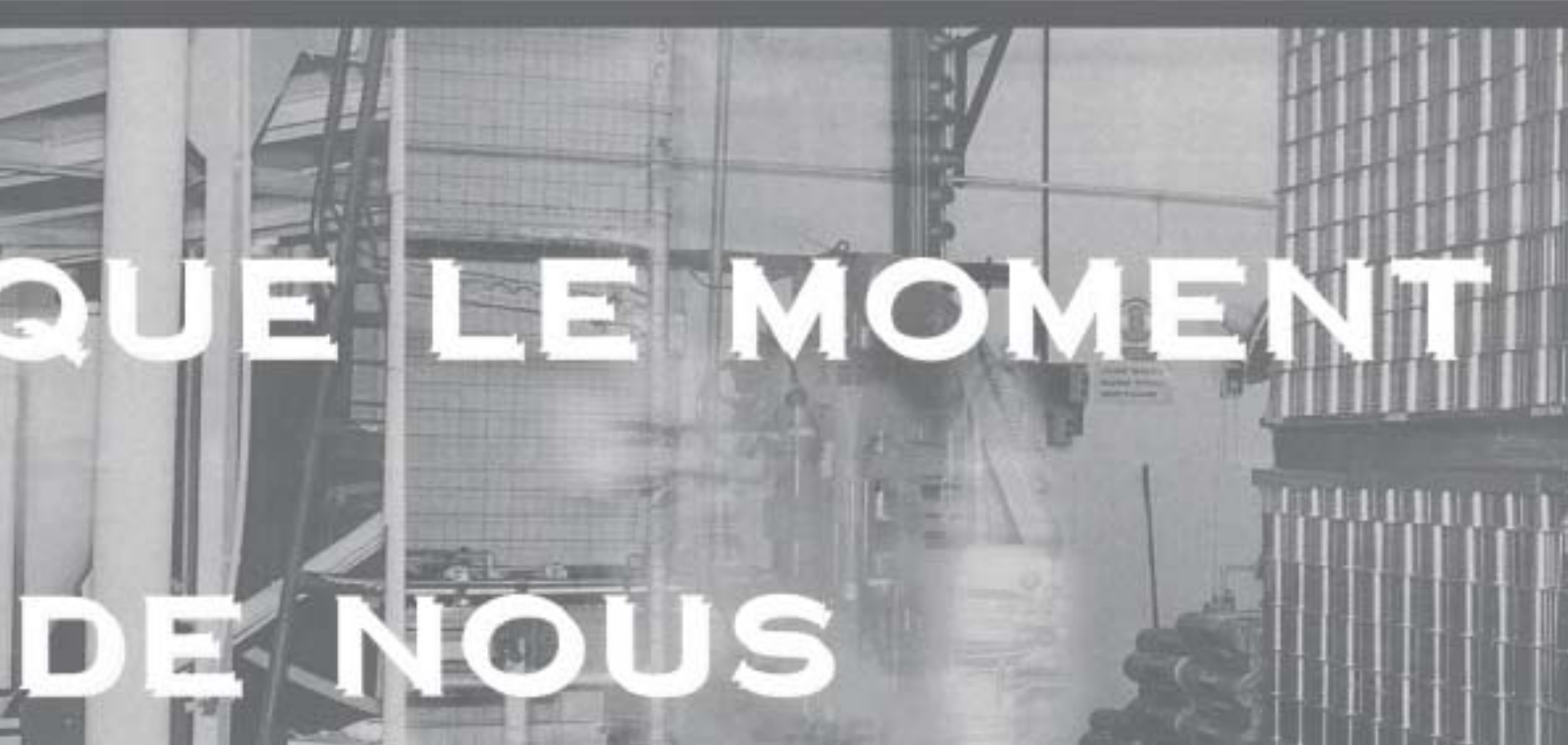


AN MEF - ILO  
PROJECT ON AIDS AT THE WORKPLACE





**SIDA** NOUS  
REGARDE



**QUE LE MOMENT**  
**DE NOUS**