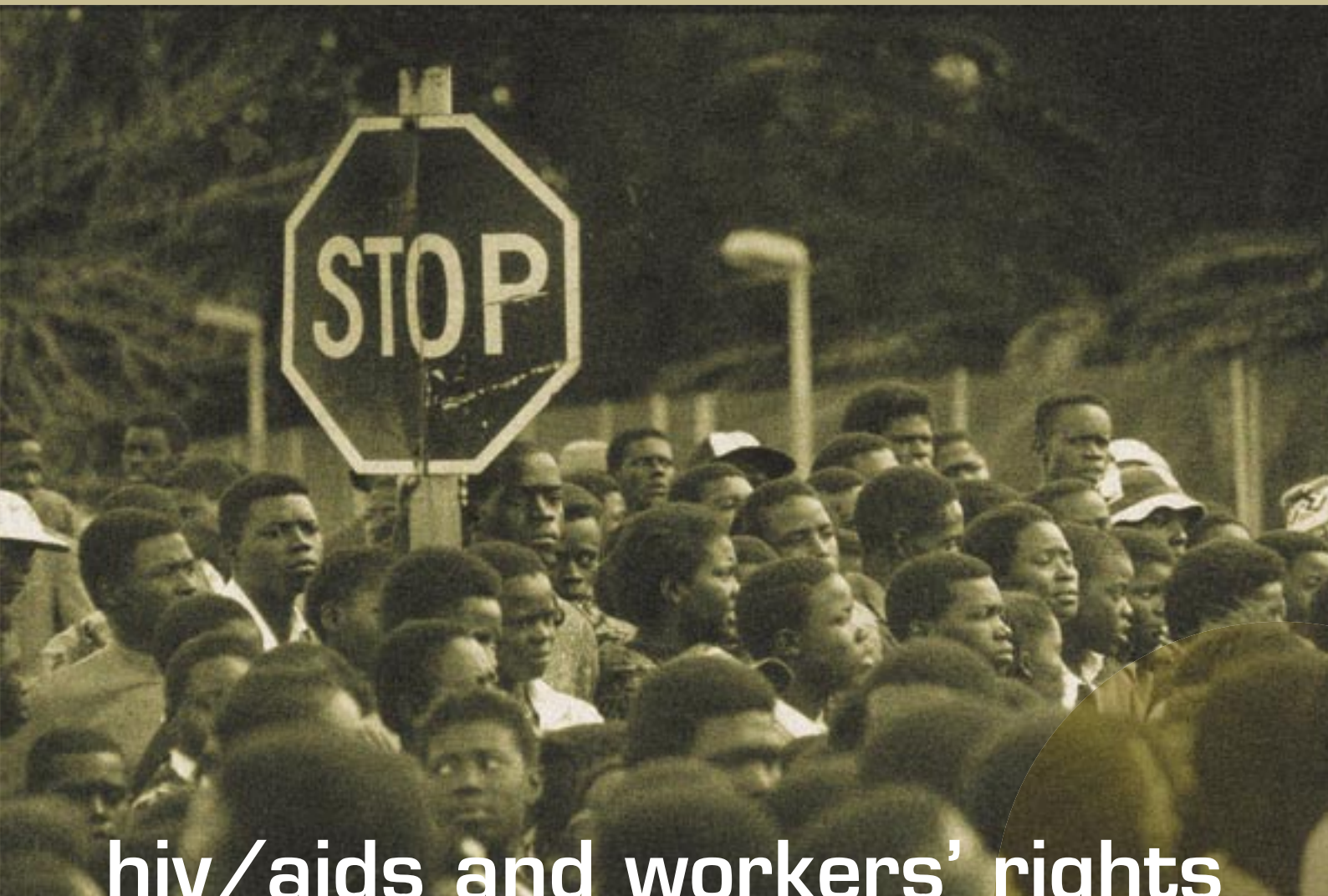


# Norwegian Church Aid



**hiv/aids and workers' rights**

UNDERSTANDING THE ISSUES

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Since joining Fafo, he has worked on studies of the capital equipment sector, the wholesale and retail sector in South Africa, and a study of the consequences of HIV/AIDS in Botswana enterprises. He has also worked on projects on the chemical industry and written and presented a paper on the role of white and black intellectuals in the development of the trade union movement in South Africa.

### **HIV/AIDS AND WORKERS' RIGHTS**

By Thabo Sephiri

FAFO, Johannesburg, South Africa

Commissioned by Norwegian Church Aid, 2002

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# Forword

**By Secretary General  
Atle Sommerfeldt**

*Norwegian Church Aid is an organisation commissioned by the Norwegian churches to fight global poverty and injustice. We recognise that workers' rights are of vital importance for both individuals and communities when it comes to enabling and empowering them to fight poverty. Earning a decent living under satisfactory conditions is vital not only for financial reasons, but also in terms of human dignity and self esteem. Stigma and discrimination in the workplace are workers' rights issues, based on ethical and moral principles. Norwegian Church Aid aims to promote a rights-based approach to combat the impact of HIV/AIDS on the world of work. We believe that all of us are created in the image of God, and that God treats us with love and mercy. Therefore, the fundamental right of non-discrimination lies at the very heart of the organisation's work.*

*The majority of people infected with HIV live in poor countries with few social benefits and very limited social security. People are strongly dependent on earning an income in order to survive. The right to earn a decent income under satisfactory conditions is fundamental for both individuals and communities in order to participate in and take responsibility for their own development. However, revealing one's HIV status – voluntarily or not – may have severe consequences for the individual's work situation. Dismissal is not an uncommon result. An already burdened family is left with little or no income. Stigma and discrimination in the workplace and the violation of workers' rights, are therefore issues of great concern to those who are infected with or affected by HIV/AIDS.*

*In many countries, mandatory pre-employment testing is now common. This is very unfortunate. Such testing may hinder qualified candidates from entering into the labour market, leaving them with few options for generating income. An HIV diagnosis does not signal incompetence or the inability to work. Denying employment on the basis of HIV status alone is a violation of rights and consequently, discrimination in practise. It is therefore high time for a stronger focus on workers' rights for people living with or affected by HIV.*

*It is our hope that this study may contribute to a fruitful debate regarding HIV/AIDS and workers' rights. Workers' rights for those infected and affected by HIV represent a specific challenge to all of us operating in developing countries, whether it is NGOs, governmental development agencies, or businesses. We need to take our part of corporate social responsibility, strive for a high degree of awareness in regards to HIV/AIDS in the workplace, and we need to develop clear policies and practices on the issue. The global HIV epidemic causes trauma and stagnation in already poverty-stricken societies. The structures of whole societies are threatened by the consequences of the epidemic. The impacts on the labour force and on business are detrimental, and the costs are high. The conditions for establishing successful business have been dramatically altered for the worse, and this will have widespread effects to local communities as well as national economies. Who will cover the costs of the necessary prevention and health care systems, the training of additional staff, the social benefits when a person is no longer able to work, and finally who will cover the costs of the funeral? One thing is certain: This enormous burden cannot and must not be carried by the HIV positive person alone. National governments, the international society and not the least - businesses and employers, must take the challenge and share the costs.*

# Summary and keypoints

By Special Advisor on HIV/AIDS  
Anne Marie Helland, Norwegian Church Aid



The HIV/AIDS epidemic has reached staggering proportions. One of the major obstacles in restraining the epidemic lies in the increasing stigmatisation and discrimination that people living with or affected by HIV/AIDS experience on a daily basis. This discrimination is also present in people's working environment, making the earning of an income increasingly difficult and hindering the vital prevention work that needs to be done in order to restrain the epidemic. Apart from stigmatisation and discrimination of those infected with or affected by HIV/AIDS, the epidemic has severe impacts on the labour market as a whole. Absenteeism and early retirement due to illness threatens the competence base of companies, putting productivity and sustainability of whole businesses at risk.

The concept of "workers' rights" is nothing new. However, already established workers' rights are often not followed when facing an HIV positive employee and therefore need to be given a renewed focus. This report concludes that workers are seldom aware of their rights, and are therefore easy victims for unjust treatment from their employers.

Workers' rights seldom regulate work in the informal sector. It is probably in this sector that we find the poorest of the poor, often at high risk of contracting HIV. And when infected, they have few or no possibilities of access to proper health care, and only very rarely access to any kind of social welfare. This leaves them with no income in the periods they are too ill to work and the fragile nature of their business may very well not survive such downturns. Stigma and discrimination also pose a threat to business, as customers and markets shrink due to misconceptions and prejudice.

This report looks into how HIV/AIDS affects workers' rights and concludes with a suggested advocacy agenda for Norwegian Church Aid, based on the findings of this report. As a very first and immediate step, Norwegian Church Aid will develop its own Code of Practise for HIV in the workplace. This will be based on the International Labour Organisation's (ILO's) Code of Practise, but tailormade for Norwegian Church Aid and its employees.

# Introduction

HIV/AIDS is probably the single most disastrous pandemic that human beings have ever faced. It has become not only a major health problem, but also an economic and developmental challenge. It affects everybody and has impact on all sectors of society including religious and all other communities, businesses, governments, trade unions, and workers. One of the major problems related to HIV/AIDS is the growing tendency of stigma and discrimination that people living with or affected by HIV/AIDS experience. This complicates the work in regards to information on how people may protect themselves. It makes people hesitate to test themselves, lays the ground for social problems in local societies, and leads to a violation of people's rights both in local communities and at the workplaces. Norwegian Church Aid is working mainly with people in the informal sector. Workers' rights seldom regulate work in the informal sector. However, the work to ensure the rights of workers may also improve the working conditions in the informal sector. For this reason, Norwegian Church Aid commissioned FAFO to write a report on the relationship between HIV/AIDS and workers' rights. Together with its partners Norwegian Church Aid has been working on projects related to HIV/AIDS in different regions throughout the world. One of the main principles of this work is the "promotion of human rights and human value"<sup>1</sup>. This "Understanding the issues" is compiled within the context of finding ways of promoting and protecting the rights of workers as part of human rights in general.

This is a paper of Norwegian Church Aid, based upon the work of FAFO. It is organised around three main themes, where FAFO has written the two first, and NCA is responsible for the third theme. The first theme is the impact of HIV/AIDS on various factors, including but not limited to, workers' rights, gender, the informal sector, households, and companies. The second theme deals with responses to HIV/AIDS ranging from HIV/AIDS programmes in the workplace to international responses by business and labour. The final theme is Norwegian Church Aid's recommendations for advocacy to different duty bearers. In covering these issues the paper discusses a number of factors which can help explain how HIV/AIDS impacts on workers' rights.

# The impact of HIV/AIDS on the world of work



## HIV/AIDS and workers' rights

HIV/AIDS affects all areas of life including the workplace by reducing the income of many workers and their households. The impact of HIV/AIDS on the workplace threatens the main objective of the International Labour Organisation (ILO) to provide decent work for its workers. Decent work means “productive work in which the rights of workers are protected, generating adequate income with adequate social protection”. In this regard, ILO has formulated a number of strategic objectives, which are undermined by HIV/AIDS in the workplace. They include:

- The promotion of the ILO declaration on fundamental principles and rights at work and its follow-up<sup>2</sup>
- To provide women and men with decent and productive work
- Strengthening social protection and social security

The ILO is of the opinion that HIV/AIDS “threatens fundamental principles and rights at work and undermines efforts to provide women and men with decent and productive work in conditions of freedom, equity, security and human dignity”<sup>3</sup>. In response, ILO formulated a Code of Practice on HIV/AIDS and employment. It was adopted in June 2001 and was a product of a collaboration between ILO and its global tripartite constituencies (governments, labour and business). A number of governments have adopted this code.

The fundamental aim of the code is to help secure decent work and to protect the rights and dignity of workers and all people living with HIV/AIDS. In doing so, the code provides practical guidance for governments, employers, workers, and their organisations when drawing up policies and programmes at the national

and at the company level in order to combat the spread of the virus. It applies to all workers in all sectors, public and private companies and the formal and informal sectors. In its promotion of decent work it outlines specific responsibilities for governments, workers, employers, and their organisations for the management of the disease and alleviating its impact on the workplace. The code has a number of principles that have to be integrated into both workplace policy programmes and national policy programmes directed at addressing HIV/AIDS in the workplace.

The key principles of the code include:

- Recognition of HIV/AIDS as a workplace issue
- Respect for fundamental rights at work
- Non-discrimination against workers on the basis of real or perceived HIV status
- The right to work and protection against termination of employment on the basis of HIV status alone
- The right to confidentiality regarding one's health status
- The right to a healthy work environment
- Gender equality
- Strict limits on testing.
- The need for social dialogue
- The right to prevention programmes, care and support based at, or accessible to, the workplace

The ILO is promoting a rights-based approach to combating HIV/AIDS in the workplace. It is emphasising the need for an ethical, humane and compassionate legal and policy framework to deal with problems brought about and/or aggravated by HIV/AIDS in the world of work<sup>4</sup>. This approach promotes the fundamental rights of workers living with and affected by HIV/AIDS. These rights are covered by core



# The impact of

ILO conventions and are also supported by the ILO's Declaration on Rights at Work, other conventions regarding occupational health and safety and the ILO Code of Practice.

## The impact of HIV/AIDS on the workforce

HIV/AIDS has become a workplace issue because of its impact on both workers and enterprises. Currently there are over 40 million people infected worldwide with HIV, and at least 25 million of these are workers between the age of 15-49<sup>5</sup>. This is nearly three-quarters of all adults infected with HIV/AIDS. Subsequently, most of those who die from AIDS are adults in their productive and reproductive prime. It is therefore mostly workers who die as a result of the epidemic. The international Labour Organisation (ILO) projects that by 2020, there will be 24 million fewer workers as a result of the AIDS epidemic in hard hit countries including 13 African countries, Haiti and Thailand<sup>6</sup>. It is possible that with the increasing number of infected people in the developing countries, the violation of workers' rights will increase as businesses try to protect themselves by screening applicants for employment for HIV/AIDS. This situation will worsen the already fragile position of workers in developing countries who often have limited rights and protection compared to those in northern countries.

In countries with an HIV prevalence higher than ten percent of the adult population the labour force will be ten to 22 percent smaller (or about 11.5 million fewer workers) than it would have been without HIV/AIDS by the year 2020<sup>7</sup>. In countries with an HIV prevalence rate below ten percent of the adult population the labour force is expected to be between three and nine percent smaller than it would have been without HIV/AIDS by the year 2020<sup>8</sup>. The disease affects all levels of occupation in the workplace in addition to the families and communities of the infected workers, and thus becomes a threat to the overall social and economic progress. The reduction of the labor force will also result in workers' inability to demand and protect their rights collectively because their strength lies in their numbers. The trade unions representing and protecting the rights of workers, which are already weakened by globalisation, will find it increasingly difficult to function.

The loss in membership in trade unions is double edged in the sense that it comes as a result of both global pressures such as restructuring, outsourcing, mergers and acquisitions, but also from the negative impact of HIV/AIDS on the size of the labor force. These strong forces combine to weaken the trade unions' organisation, and affect their financial stability. If these conditions prevail, it will result in the erosion of workers' rights. Furthermore, this has major implications for meaningful social dialogue and collective bargaining and will negatively affect the state of industrial relations within national boundaries and in the international context.

The workplace is not only affected by the circumstances imposed by the epidemic, but can also be an arena for contracting HIV/AIDS, especially for mobile workers such as migrant mineworkers, fishermen, truckdrivers and armed

# HIV/AIDS on the world of work



forces. There are in addition some specific occupational risks in certain jobs for contracting HIV/AIDS (for example in health and emergency services). This implies that workers in these sectors are more at risk of contracting the virus than workers in other sectors. A comparison of the impact of HIV/AIDS on four Botswana enterprises, one in the tourism industry, one in the media industry, and two in the transport industry, revealed that the transport companies were much more susceptible and vulnerable to HIV/AIDS<sup>9</sup>. One reason for the vulnerability of transport companies to the virus is that workers tend to spend extended periods of time on the road away from their wives and families and hence engage in risky sexual behaviours such as buying sex.

The impact of HIV/AIDS on the labor force is not only evident through a reduction in the size of the workforce, but also in terms of the skills of the labor force. This can be seen in the area of education and training. It is estimated that the rate of newly trained teachers to replace AIDS victims will rise by an average of 66 percent in Southern Africa by 2010<sup>10</sup>. Even with a decline in the number of pupils enrolling the number of newly trained teachers needs to increase substantially to avoid deterioration in the quality of education. Both the high turnover of younger teachers and the loss of experienced teachers due to HIV, have led to a reduction in the quality of education. Globalised production and trade also increases the demand for skilled labour, while reducing the demand for unskilled labour. The combination of this and decreasing educational standards leads to further economic marginalisation due to national skills shortages and increased unemployment of less skilled and poorly educated workers who are unable to enter into the labour market. This poses a

threat to remove their right to earn a living through employment. A further possible outcome of decreasing quality of education is that the quality of trade union strategy, policy and tactics will also lag behind, preventing the workers from engaging effectively with their better educated employers and social partners in governments.

The agricultural sector, which is the largest sector in most African economies and accounts for a large proportion of production and the majority of employment, cannot be ignored in this discussion. HIV/AIDS negatively affects the agricultural sector, in particular by causing key labour shortages, and thereby reducing food production. This threatens food security and results in a reallocation of rural labour and time from agricultural work to non-agricultural care activities. Studies in Tanzania show that AIDS affects the sector through the loss of rural labour supply and consequently, the loss of income from urban areas. Furthermore, a loss of a few workers at crucial periods of planting and harvesting can significantly reduce the size of harvest<sup>11</sup>. A loss of agricultural labour also causes farmers to switch to less labour intensive and less nutritious crops.

In developing countries a much greater proportion of the total employment is in the informal sector of the economy compared to developed countries. In many developing countries, this trend is increasing, as the formal sector growth is not very employment intensive, and certainly does not absorb new, young entrants to the labour force. For many workers this means moving into a sector which tends to provide little protection of their rights compared to the formal sector. This implies that HIV positive workers entering into the informal sector will be provided with even less protection and support to enable them to continue being productive. It therefore becomes im-

# The impact of HIV/AIDS on the world of work

perative that HIV/AIDS workplace programmes focus on the informal sector as well. What is clear from the discussion above is that the impact of HIV/AIDS on the labor force has far-reaching implications on workers' rights. Hence, there is a need for a rights-based approach in dealing with HIV/AIDS as advocated by the ILO.

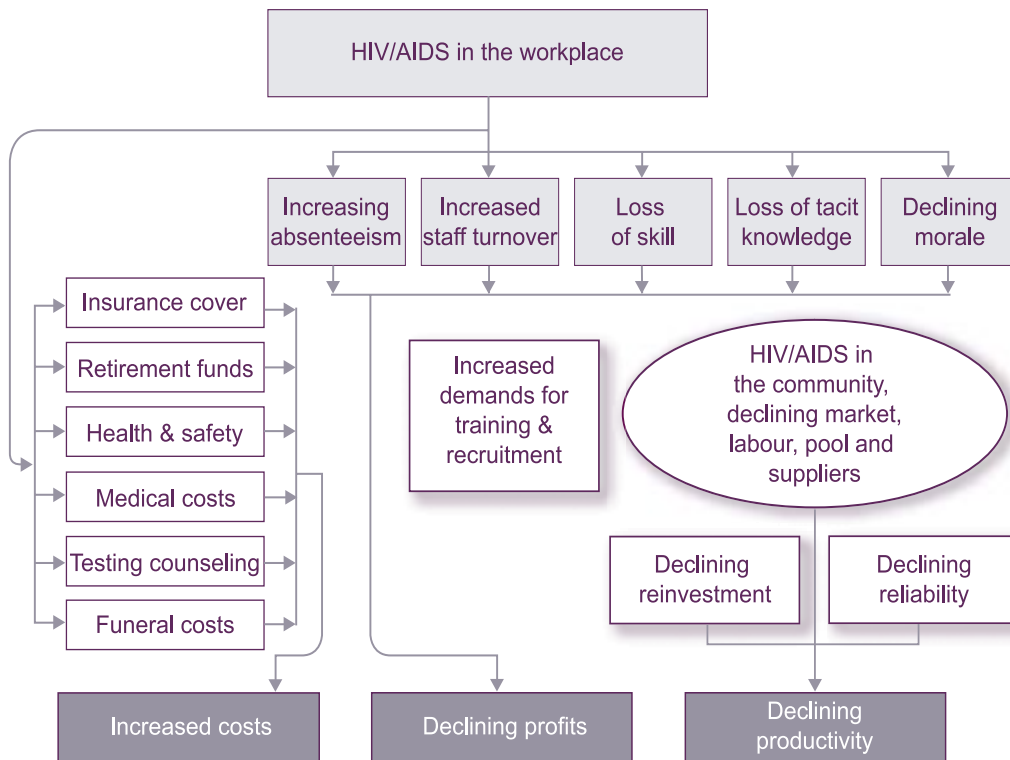
The impact of HIV/AIDS on the labour force in both the formal and the informal sector can be summed up by the following:

- It reduces the labour supply and thus the collective power of trade unions to protect and advance their members' rights and interests.
- It changes the composition of the labour force. In the event that working parents die, children are forced to enter into the labour market and retired people are forced back into the labour market. The ILO declaration "Fundamental Principles and Rights at Work" calls for the abolition of child labour, but HIV/AIDS aggravates this problem.<sup>12</sup>
- The loss of skilled and experienced workers. As a result, companies experience a mismatch between human resources and labour requirements.
- Reduced productivity.
- Absenteeism and early retirement of infected workers causes bottlenecks that further threatens productivity.
- Increased labour costs for employers.
- Loss of wage earners in a household and increased poverty for affected households.
- Reduced income to households from migrant workers, who are most among the vulnerable to the disease because of their mobility and extended stays away from home.<sup>13</sup>

- Death or illness of a worker can lead to the collapse of a business in the informal sector. This means the loss of employment for workers who are dependent on these businesses for their income, in a situation where they have little or no social security.



## The impact of HIV/AIDS on enterprises and the economy



Based on source: The business response to HIV/AIDS: Impact and lessons learned, The Prince of Wales business leaders Forum and the Global Council on HIV/AIDS, 2000.

The figure above provides a graphic illustration of the possible effects of HIV/AIDS on enterprises. It shows that the overall resulting costs of HIV/AIDS on companies are increased labour costs, declining profits and productivity. Companies offering social protection to workers through life insurance, health care, funeral expenses, and death benefits in provident funds, will experience rising costs of labour. If companies provide little or no social protection and if the state welfare provision is also minimal, the burden will fall on the workers and their families. Lack of social protection for HIV positive workers can force many families into poverty as they divert their income to caring for infected members. This has severe implications for the development of communities. Workers' rights with respect to social protection for HIV positive workers will therefore become one of the key factors in addressing HIV/AIDS in the workplace.

# The impact of HIV/AIDS on the world of work

## Employment security

Mr Brian Celes is HIV positive, an engineer 45 years of age, and was in the service of a mining company for 20 years. After the company found out about his status, they appointed him as the HIV/AIDS co-ordinator of the company. He was used as a source of information in dealing with HIV/AIDS in the workplace. He plays an important role in the company in spite of his status as HIV positive.

The major impact of HIV/AIDS on companies is most often thought to be declining productivity and increased costs. Productivity will be affected by HIV/AIDS through absenteeism and organisational disruptions. This subsequently affects the profitability of the companies. Illness due to HIV/AIDS, the need to take care of family members who are ill, as well as funeral attendance will induce absenteeism. In many instances absenteeism contributes to high turnover costs as AIDS sufferers leave their employment. The number of workdays lost as a result of absenteeism and abandoned employment due to HIV/AIDS not only affects the company negatively, but also affects the right of the workers to earn an adequate income to subsist. The right to earn an adequate income is an important element of the workers' rights.

Increased labour costs can affect a company in a number of ways. One indirect cost of labour lies in the difficulty in undertaking transmission of skills and knowledge gained from the company environment (tacit skills). This is often aggravated by high levels of turnover, low morale from the loss of a colleague, the discrimination against people with HIV/AIDS and the disruption of the production process due to sickness or death. Transmission of skills and knowledge is one of the processes through which workers can be empowered in the workplace. This is an important element in the provision of decent work. Skills transfer and development of workers' competence are important to ensure the workers' continual access to earn adequate income. This can contribute to the realisation of the provision of decent work as visualised by ILO.

In Zimbabwe life insurance premiums quadrupled over a two-year period as a result of HIV/AIDS<sup>14</sup>. A study in Zimbabwe National

Railways projected that AIDS related costs would almost triple from 1996 to 2005, with the number of infected workers increasing to 11500. From this, health expenditure accounted for 56 percent, absenteeism 24 percent, and training costs 17 percent<sup>15</sup>. The second category of labour costs is direct health care costs. In 1991, a Zambian company, the INDENI Petroleum Refinery, found that it was already paying out more for medical services than it was making in profits in that same year<sup>16</sup>. Between 1989 and 1997, a Kenyan sugar estate saw a tenfold rise in its health care costs due to HIV/AIDS<sup>17</sup>. The rising costs of company based health schemes act as an incentive to employers to restrict premiums and therefore limit health services and products available to workers. If the state welfare provision is poor, it threatens the right to social protection for workers.

The third category of costs is funeral costs. These are rapidly rising given that AIDS is a major cause of death in hard hit countries. For example, in Barclays bank in Zambia the rate of AIDS related deaths is 36 out of 1600 employees. This is ten times the deathrate in most US companies<sup>18</sup>. As a result, a company offering funeral benefits to its employees is likely to see a considerable rise in costs as AIDS related deaths increase. This disrupts the organisational operations of companies and contributes to reduced productivity.

The fourth category of costs that directly affect companies are related to the need for recruiting, training and retaining of employees. The mismatch in skills resulting from loss of skilled labour can force companies to make new investments in recruitment and training. Another important consideration of the impact of HIV/AIDS on companies is the decline in profit due to a reduced demand for their projects or services. If a company's source of



income is based on communities that are severely hit by the disease, it will lead to declining profits and thus threaten the sustainability of the business. This will in turn lead to the loss of employment. The overall effect of HIV/AIDS on companies, as summarised by research done in South Africa, indicates that productivity levels will decrease by as much as 50 percent in the next five to ten years if the HIV/AIDS epidemic is not significantly restrained<sup>19</sup>. The decline in productivity will eventually lead to declining investments and to a lost potential for growth and job-creation.

### The impact of HIV/AIDS on economic growth

The impact of HIV/AIDS reaches far beyond the workplace and affects the broader national economic development. It is estimated that the rate of economic growth in Sub-Saharan Africa has fallen by as much as four percent because of AIDS<sup>20</sup>. In rural areas, agricultural output has been severely damaged by the death of seven million farmers due to the epidemic. In Burkina Faso it is estimated that one out of every five rural families have reduced their agricultural work or even abandoned their farms as a result of AIDS<sup>21</sup>. With fewer people available to work, the farmers switch to less labour intensive crops or they are forced to do subsistence farming, which often have lower nutritional and market value.

In Botswana, it is estimated that the government will lose 20 percent of public revenue by 2010 due to AIDS<sup>22</sup>. As a result, its capacity to provide service delivery will be severely reduced. Poor and vulnerable households heavily reliant on public health will be particularly affected with the decline of such a basic service. HIV/AIDS has therefore become a major

threat to enterprises and economic development. Workers' rights are not only affected by the impact of HIV/AIDS in the workplace but also in the workers' communities. The loss of public revenue and the subsequent threat posed to the delivery of essential social and health care services, challenge the workers' right to good and healthy living conditions in their respective communities.

### Stigma and discrimination

Stigmatisation, discrimination, and denial have posed a major challenge to efforts seeking to combat HIV/AIDS and protecting those infected. Stigma can be defined as an attribute that significantly discredits the possessor<sup>23</sup>, or as a differentiating feature of social disgrace<sup>24</sup>. Stigma functions as a mechanism of social control in the sense that it marginalises, excludes, and exercises power over individuals with attributes viewed as not worthy. The stigmatisation of social groups such as sex-workers, homosexuals, injecting drug users, and migrants pre-exists the HIV/AIDS stigmatisation. HIV/AIDS stigmatisation is therefore applied to already existing stigma and thus in many cases reinforces the existing social inequalities in society. Furthermore, those infected with HIV/AIDS are often perceived to belong to these already stigmatised groups. Discrimination, on the other hand, refers to the actual action or the negative treatment against those who are stigmatised.

The ways in which HIV/AIDS related stigma and discrimination manifest themselves in the workplace show its complexity. Its appearances vary in form, level, and also in context. It is important to identify the complex levels of HIV/AIDS related stigma and discrimination in the workplace. In Zambian workplaces, it is reported that people with HIV/AIDS are

# The impact of HIV/AIDS on the world of work

My name is Francisca. I was born in Guatemala in 1975 in the rural part of the country, near the border of El Salvador. My parents migrated to the city when I was a child...I am now 27 years old. In 1998, I worked at a supermarket for five months, but they sent me to have a blood test because I fainted various times and they thought I was pregnant. Due to the test they found out that I was HIV infected. The fainting spells were the effect of the medicine. I was fired because they said that I had disguised my disease. I told them it was not my obligation to tell them and that they had no right to fire me. In order not to cause a scandal, I left it at that. At that time I didn't know about fighting for my rights. When I was fired I felt bad because they did it in front of many people. Most of them were surprised. Of the friends I met there, only one person called me to ask me how I was doing<sup>27</sup>.

mistreated, isolated, and victims of gossip. In Ukraine, pre-employment testing is part of the recruitment process and is often practised by commercial farmers who refuse employment to HIV positive persons. Migrants in Burkina Faso, including migrant workers from Côte d'Ivoire are often accused of transporting HIV/AIDS across borders<sup>25</sup>. Therefore, workers whose HIV infection status becomes known in the workplace are dismissed and some have to take compulsory AIDS tests as a condition of employment<sup>26</sup>.

## The fear of stigma

HIV/AIDS related stigma and discrimination could lead to a situation where the epidemic is pushed further underground. Infected workers may refuse to reveal their status for fear of humiliation, rejection, and losing their jobs. The shame brought on by being infected, due to the moral stigma in connection with the disease, makes the workers hesitant to reveal their HIV status and thus contributes to keep the disease a secret. All these factors interfere with the efforts to combat the epidemic because it can only be dealt with if it is in the open. The responsibility of management should in this context be to ensure the protection of confidentiality if they know of a worker's status as HIV positive. In cases where the status is known by fellow workers, management needs to ensure that the worker is treated fairly and equally in the workplace and that all the workers' rights are respected, and support mechanisms will have to be established or made available for the infected workers. In the absence of these measures, management may cause stigmatisation and discrimination of HIV positive workers.

The stigmatisation and discrimination of HIV positive workers does not only come from employers or management, but it can also come from co-workers. Workers whose status is known at work often face rejection, isolation and hostility from co-workers, which can force management to dismiss the HIV positive worker. A case was reported in India where workers refused to work alongside of an HIV positive worker and therefore forcing the management to fire that person<sup>28</sup>.

The impact of HIV/AIDS related stigma and discrimination in the workplace could be summarised as follows:

- Reduced disclosure in the workplace amongst workers because of fear of discrimination.
- Fear of rejection by colleagues, and fear of loss of employment and the common breach of confidentiality contribute to push the epidemic further underground.
- For people discriminated on the basis of their status, the available legislation for their protection often has a very limited enforcement mechanism and hence remains useless for their defence.
- Fear of stigmatisation tends to be greatest amongst men<sup>29</sup>.
- Stigma creates fear based on misinformation on how HIV/AIDS is transmitted and prevented.
- In some workplaces, HIV positive workers are discriminated against, isolated, and gossiped about.
- Being HIV positive or suspicions thereof creates barriers to training and promotion.
- Voluntary HIV testing is often viewed as an admission of infidelity or promiscuity.



- Within the health care context, health workers expressed unsafe working conditions and fear of infection as contributors to their stigmatising behaviours against PLWHAs (People Living With HIV/AIDS).
- The inability of health workers to understand and deal with HIV/AIDS also resulted in a negative attitude towards PLWHAs. Because they lack the psychological resources to deal with the situation they see no remedy for how to deal with the inevitable death of a person with HIV/AIDS<sup>30</sup>.

Although some work has been done on stigma and discrimination in general, the International Centre for Research on Women (ICRW) feels that the information available is insufficient to adequately understand these phenomena and to be able to reduce them<sup>31</sup>. Therefore, more work is necessary to deepen the understanding of stigma and discrimination.

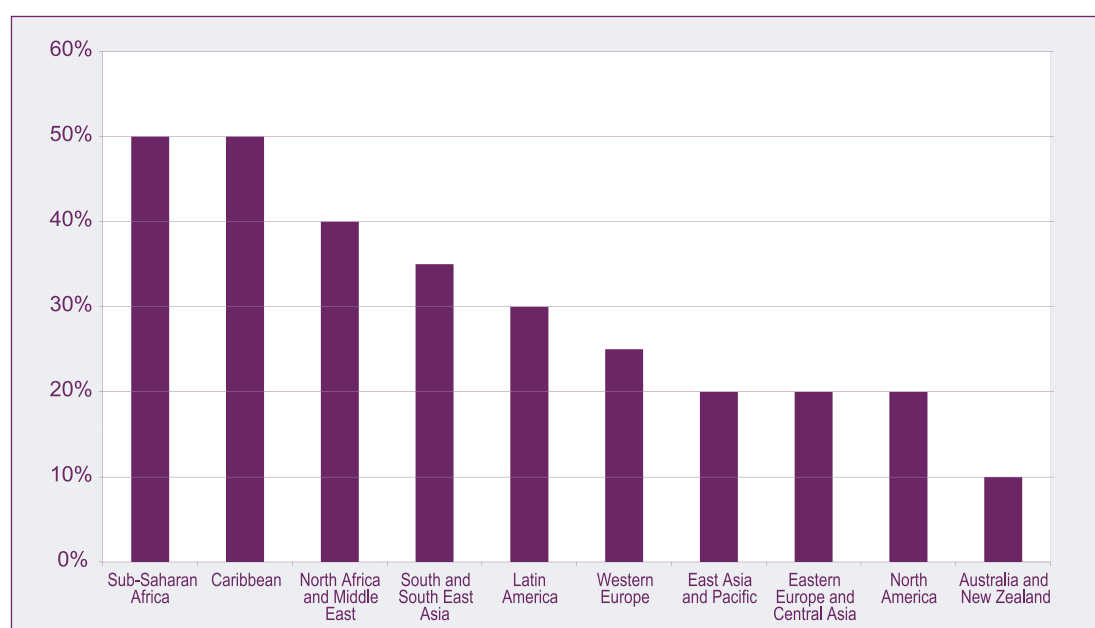
My employer told me that I have a problem and have to go back to India. Police were searching for me; I was caught and put in jail for two hours. I was given a third class air ticket and sent back from the Gulf (HIV positive man, India)<sup>32</sup>.

My name is Erickson Chiclayo. I am 28 years old. I was born in Lima, Peru and have been living in Guatemala City since January 1998. I am the executive director of the Positive People Association, an organisation of people with HIV that was created in 1997( . . .) More than 60 percent of the people coming to Positive People have faced work related discrimination. The most frequent reason given for firing a person is the time of absence needed to go to social security or the changes in their physical appearance. According to the bosses, these changes give the company a bad image. At Positive People we have between 30 and 40 unemployed persons who contact us because a company has asked them to submit to an HIV test. One of the biggest producers of toothpaste in Central America had the presentation of an HIV test as a requirement. However, after a training session on the topic of AIDS they no longer require the test... One of the most common problems is following cases where the person infected does not want his/her identity revealed. Much would be resolved if they were willing to make cases publicly... Even though the constitution of Guatemala establishes the right to work without any discrimination, persons infected with HIV/AIDS are discriminated against in the area of employment<sup>33</sup>.

# The impact of HIV/AIDS on the world of work

## Gender, HIV/AIDS and workers' rights

### HIV positive women as percent of total infected population



Source: HIV/AIDS: Threat to decent work, productivity and development, ILO, 2000

Women are particularly vulnerable to the impact of the epidemic because of their low level of economic security due to gender inequalities. Women also usually bear the main responsibility for care in the family and the community. The proportion of adult women living with HIV/AIDS has been steadily increasing, for example in 1997, 59 percent of people globally infected with HIV/AIDS were men compared to 41 percent of women<sup>34</sup>. However, by 2000 women constituted 47 percent (16.4 million) of people infected with HIV/AIDS<sup>35</sup>. In Sub-Saharan Africa 50 percent of the total number of adults living with the virus are women. Teenage girls in some of the hardest hit countries in the region are infected at a rate of five to six times higher than that of teenage boys. Similarly, because of physiological reasons, the risk of contracting the disease

during unprotected intercourse is 2-4 times higher for women than for men<sup>36</sup>.

Women's low economic status in society and their economic dependence increases the likelihood that they will be subject to sexual harassment, and/or their tendency to turn to prostitution as a survival strategy. Thus the low social status of women increases their vulnerability to HIV. If employed, they may be over-represented in the informal sector, in subsistence farming or in the most poorly paid jobs in the formal sector. This position of vulnerability for women in the workplace might easily lead to sexual harassment. Therefore, the low economic position of women in society and the workplace itself may result in women engaging in high-risk sexual activity for financial gain.



Rooted in these problems for women is the question of gender relations in society in general. Gender refers to societal expectations and norms concerning appropriate male and female behaviour<sup>37</sup>. Power is central in mediating gender relations and is tilted in favour of the men in society and thus unequal gender relations are based on power. In patriarchal African societies, this power imbalance has resulted in African women being hit the hardest in terms of numbers by HIV/AIDS. In many African countries, when a decision is made to withdraw a child from school as a result of economic hardship and HIV/AIDS, it is most likely the girl child who will be withdrawn first<sup>38</sup>. In this way, women tend to be disadvantaged at an early age in society, and this compounds their vulnerability to HIV/AIDS.

The unequal power relations in the workplace and at home expose women to the threat of sexual violence and harassment. Their roles as mothers and caregivers mean that their ability to access and retain work in all types of employment is more easily disrupted by HIV and AIDS. As a result of absenteeism from work, they may lose their jobs, trading or other production opportunities and it is often difficult to re-enter into the formal or informal labour market.

### **HIV/AIDS and the informal sector**

Currently there is little knowledge on how HIV/AIDS affects small formal and informal enterprises. A recent survey done in Malawi on the effects of HIV/AIDS on micro and small enterprises revealed that the largest concentration of the firms that were affected by HIV/AIDS, were located in the urban low income and commercial areas. They employ about 1.7 million people and contribute to

approximately 15 percent of the Gross Domestic Product (GDP).

The biggest impact was felt on the markets because of the reduction in the number of customers due to AIDS related deaths (63 percent), reduced profits (21 percent) and 12 percent of these businesses had to downsize their activities as a result of HIV/AIDS<sup>39</sup>. The sectors most adversely affected were construction followed by services. Mobile workers within the fishing industry surprisingly scored lowest in regards to incidence of HIV/AIDS. It is also known that the informal sector workers have no income security, health care, social protection and enforceable labour rights<sup>40</sup>.

In most countries, HIV prevention has almost exclusively been directed at large employers in the formal sector<sup>41</sup>. However, the informal sector has been steadily growing and is a source of employment for millions of people. It is reported that the small size of these enterprises will make it much more difficult to replace a skilled or semi-skilled worker in the event that the employee falls sick or dies. Because of their size they will also find it difficult to absorb the costs of increased absenteeism, staff turnover and death. They are therefore much more vulnerable to the impact of HIV/AIDS than large enterprises.

Many small and micro enterprises have yet to respond to the epidemic. As mentioned earlier it is mainly large companies in the formal sector which have devised measures to restrain the epidemic, mainly because they have resources and access to information. The need for small and medium enterprises (SMEs) to get involved becomes even more crucial in the developing countries, because they are the main source of new employment and household income.



Some SMEs have however taken a lead in education and prevention both within the workplace and beyond. An example is ALMS, an IT-marketing consultancy company in the Czech Republic<sup>42</sup>. On recognising that half of the population of HIV positive people become infected before the age of 25 in that country, the company set up an internet-server-based information on HIV/AIDS in partnership with HIV/AIDS professionals, Non-Governmental Organisations (NGOs) and academic institutions. Another issue is that SMEs are in a better position to run small, low cost, well targeted, but effective HIV/AIDS programmes such as the “Healthy Highway” project run by a company called Teddy Exports in India<sup>43</sup>. The company placed two “trucker’s booths” on the main highway to Southern India and one at an oil refinery unit at Manila. These provide information to 80 000 truck drivers through street play, slide shows, leaflets, stickers and condom distribution.

The informal sector is not organised and is very vulnerable to the impact of HIV/AIDS for a number of reasons. Firstly, the informal sector does not have prominent business leaders with the means to pressure governments to help combat the epidemic<sup>44</sup>. Secondly, they lack

health facilities and social programmes to educate workers about HIV/AIDS. Thirdly, their activities are to a large extent survivalist in nature and if one or two of their workers fall ill and do not come to work, the business may collapse. The nature of the business itself such as a market stall, a roadside shelter or a spot next to the traffic lights means that if the worker falls ill, he/she may lose his/her place. Most informal sector workers are traders and sell perishables such as vegetables. If they are absent from work, they may lose their investment in the products they trade.

According to UNAIDS, women often represent the majority of those in the informal sector and for this reason become even more vulnerable to the economic effects of HIV/AIDS<sup>45</sup>. A study of the impact of HIV/AIDS on women in the informal sector in the Owino market in Uganda showed how quickly they could lose their means for survival. When a woman falls ill or has to care for someone, her work is interrupted, spoilage of the stock occurs and the small investment made is also lost. They forfeit their stall and their business eventually collapses, and many whose business collapses this way will turn to prostitution. HIV/AIDS has therefore a more negative effect on the informal sector and puts women at risk of sexual exploitation. In contrast to the formal sector, the informal sector businesses often do not provide social protection for the worker in the form of medical aid, sickness cover, and pension fund. The majority of the workforce in Africa who is in the informal sector is neither covered by these measures, nor by unemployment insurance<sup>46</sup>. This then implies that the experience of HIV/AIDS by informal sector workers become even more severe compared to the formal sector workers. They need access to health care facilities and social



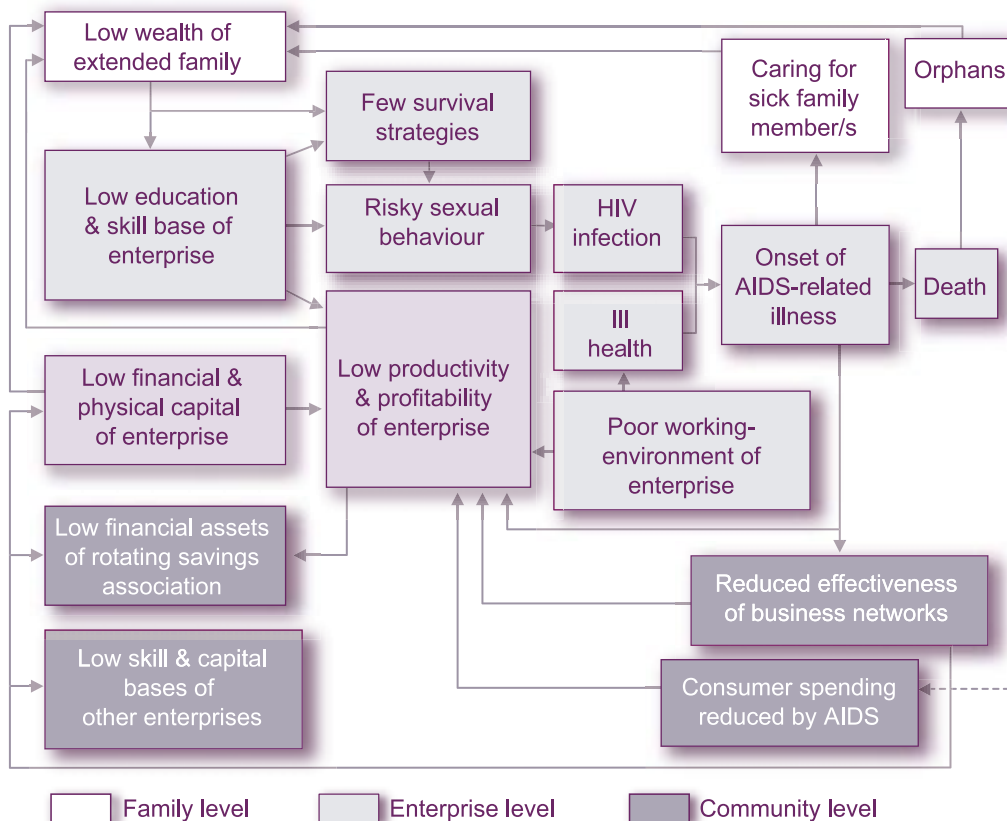
# The impact of HIV/AIDS on the world of work

protection in the form of social insurance, which is not dependent on contributions by the beneficiary.

The ILO has responded to challenges faced by the informal sector by working with associations into which they are organised. It works closely with the informal sector on a number of programmes, including training for prevention of HIV/AIDS, social protection, and health care insurance. Other programmes include assistance in setting up micro-insurance schemes in order to provide them with access to health care.

In instances where a family member gets sick, an added burden is placed on the resources of the family. The epidemic also affects the already low levels of skills on which enterprises depend, thereby affecting the productivity and profitability of the informal sector. The potential for growth of the sector is also affected by the reduction in the number of its consumers owing to AIDS related deaths. Due to a reduction in consumer spending, the income of the sector and its profitability decline. The poor environment in which the sector operates also contributes to low productivity and bad health, which places an even further strain on the sector.

## The impact of HIV/AIDS on the informal sector



The figure on the left shows three levels and interconnections in which HIV/AIDS can affect the informal sector, starting from the family to the enterprise, and then the community level. It shows that a family's quality of life can be reduced by low levels of wealth and coping mechanisms as a result of the disease, for example with orphans heading the household due to the death of both parents. This leaves the household with fewer survival strategies with a possible risk of child exploitation and a risk of contracting the disease where exploitation takes place.

Sours: Smart, R. (1999). "Aids in the workplace" in AIDS Bulletin. Vol. 10. No. 9.

# The impact of HIV/AIDS on the world of work

## HIV/AIDS and Micro credit

In many developing countries the informal business sector is dependent on the micro lending industry to grow and to stay in business. HIV/AIDS poses a major challenge to the innovation in the sector. The micro finance industry provides a small amount of loans to either an individual or a group of members. In the group the participants are in solidarity with each other responsible for repaying the loan. The group decides which members will receive loan from the group, and are responsible for ensuring that the payments are made. If a person falls ill and is no longer able to repay his/her loan, his/her family members, associations, or solidarity groups would continue making repayments.

In some places, micro finance is considered an important tool for development when it comes to making life better for individuals and families at the grassroots level. It is not very costly and is based on the initiative and effort of the persons receiving the loan. They can establish and develop businesses according to their own needs and resources.

HIV/AIDS has a negative impact on micro-credit as a method for development. The increasing absenteeism will affect the punctuality of loan repayments<sup>47</sup>. At the same time the problem with people falling ill is a threat to the whole idea of group solidarity in repaying the loan. How can you be co-responsible for an HIV positive neighbour's loan if this person dies of AIDS before repaying the loan? In the end the concept of group solidarity in regards to loans can push the group members deeper into poverty as many die from AIDS.

Many NGOs and governmental development institutions are using micro credit as a tool for development today. For this tool to be effective in the future they will have to make some important considerations. How can micro-finance handle the problem of many group members falling ill and dying? Is it possible to establish a central fund to cover the loan of the group members falling ill and dying? Can the group be offered an insurance that covers the loans of such persons? These and more questions will have to be discussed for micro credit to be an effective tool for development in the future. Policy considerations regarding micro financing and the informal sector can only be made with an in-depth understanding of the impact of HIV/AIDS on microfinancing. A survey conducted in Zimbabwe on micro financing and HIV/AIDS, showed that none had a written policy on HIV/AIDS<sup>48</sup>. An important issue for organisations operating in the informal sector is the development of an HIV/AIDS policy for this sector. It should include innovative ways of alleviating the impact of HIV/AIDS on the informal sector and micro finance. For example, the micro lending industry could get involved in developing HIV/AIDS programmes directed at raising the awareness of its clients and their communities.

# The response to the HIV/AIDS challenge



## HIV/AIDS prevention in the workplace

One of the major problems in fighting HIV/AIDS in the workplace has been the employers' resistance in investing time and money to develop HIV/AIDS programmes. Many employers still mistakenly rely on exclusion and discrimination of PLWHAs to control the impact on their enterprises.

With the formulation and implementation of an HIV/AIDS programme in the workplace, a Brazilian steel company, Villares, with 8000 employees, saw a 31 percent reduction in newly diagnosed HIV infections a year later<sup>50</sup>. In Zimbabwe, 40 factories that participated in an AIDS programme had a 34 percentage lower rate of new infections than non-participating factories<sup>51</sup>. According to UNAIDS, well-organised workplace prevention programmes have a positive impact not only on the workplace, but also on society at large<sup>52</sup>. They require the participation and commitment of both management and workers. They should also include the participation of communities in which the companies operate, or companies should have their programmes extended to communities.

This implies that it is important that workplace programmes are adapted to local conditions and that they utilise the strength of the communities.

There are several elements shared by the two programmes described above. They include:

- Ongoing commitment from the management.
- Training fellow employees to become peer educators.
- Ongoing condom distribution with supportive information and education.
- Providing treatment for other sexually transmitted diseases (STDs) since they increase the risk of HIV transmission.

These elements share similarities with the UNAIDS recommended components of any HIV/AIDS prevention programme<sup>53</sup>. These include:

- Policies that are implementable and easily communicated to staff at all levels.
- Ongoing formal and informal education on HIV/AIDS for all staff.
- The availability and distribution of condoms.
- The diagnosis and treatment of sexually transmitted diseases for both employees and their partners.
- The creation of an environment of trust, transparency and confidentiality to allow voluntary HIV/AIDS testing, counselling, care, and support for employees and their families.

My name is Leonor. I am 33 years old and was born in Guatemala City in 1968. I found out that I was infected on August 10, 1998. When I found out that I was infected, I was working at a print shop. My boss kept asking why I had frequent trips to social security. I told him they were running tests because they didn't really know what was wrong with me. When I found out I was HIV positive I told my boss, because I wanted to be sincere, and I thought that he would understand because he was a professor at the national university. Nevertheless, he fired me without giving me a reason or opportunity to continue paying my social security. He simply closed the door on me after finding out that I was HIV positive...At that moment I didn't know about my work-related rights<sup>49</sup>.

# The response to the HIV/AIDS challenge

Sibongile Mkhize, a 7<sup>th</sup> grade teacher at Sion Primary School in Ozwathini near Wartburg, KwaZulu-Natal, found out that she was infected with the virus in 2000. Motivated by the education department's commitment to support infected employees, Mkhize bravely chose to be open and honest about her HIV status. But instead of providing her with support, the school dismissed her for absenteeism. She challenged the decision and was reinstated to her position by the intervention of the provincial education department early last year. Recently, a department official visited her at home to hand her a letter of dismissal due to absenteeism. Her plight has been taken up by the SA Democratic Teachers Union, the Human Rights Commission and the Treatment Action Campaign<sup>59</sup>.

UNAIDS also suggests that the most effective HIV/AIDS workplace programmes involve all stakeholders - including workers and management representatives -, health services, and local communities in the planning and monitoring process<sup>54</sup>. Furthermore, because neither the employers nor the trade unions have the necessary expertise in dealing with HIV/AIDS, it will be important that they collaborate with Non-Governmental Organisations that possess the desired competence. This proved successful in the Philippines, where the Remedios AIDS Foundation<sup>55</sup> helped large private companies such as Philippines Shell Petroleum Company develop HIV/AIDS workplace programmes in 1993. It also assisted in workers' education on HIV/AIDS. In Côte d'Ivoire the Abidjan Centre for Biological Research and Care has been providing HIV/AIDS education to companies since the 1990s<sup>56</sup>.

Some HIV/AIDS workplace programmes should be tailor-made for specific workplaces and groups of workers as in the case of mobile workers. HIV/AIDS workplace programmes can also reach many young people in the workplaces; for example the Youth committee of the Confederation of Mexican workers developed programmes aimed at young workers and children of workers<sup>57</sup>. In the South African gold mines where innovative HIV/AIDS workplace programmes have been developed, trade unions are negotiating for family accommodation on minesites to replace the old single-sex hostel situation. It is hoped that with their families and partners nearby, mineworkers will engage less in risky sexual behaviour<sup>58</sup>.

## The response of workers' organisations

Increasing unemployment has been a major source of concern for workers' organisations because this weakens their strength due to a reduction in membership numbers. In view of the rapid increase of HIV/AIDS amongst the most productive section of the labour force, HIV/AIDS also poses serious threats to workers' organisations. According to the ILO many workers' organisations seem to have grasped the importance of devising means to combat HIV/AIDS. The main response of workers' organisations to HIV/AIDS has been on awareness raising and representing the interests of their members in regards to these issues. They stand up for their members by fighting against stigmatisation and discrimination of people living with HIV/AIDS and their families. Furthermore, they also fight for better working conditions for their members and the provision of treatment for people infected with HIV/AIDS.

The Congress of South African Trade Unions (COSATU) is the biggest union federation in South Africa and a political ally of the government. However, they strongly disagree on the HIV/AIDS issue, due to the "dissident" views of HIV and anti-retroviral treatment held by the political leadership. COSATU teamed up with the Treatment Action Campaign (TAC) to put pressure on the government to provide anti-retroviral drugs to HIV positive pregnant mothers in order to prevent mother-to-child transmission (MTCT) and to rape survivors. This partnership has proved successful as the government has recently been compelled by the South African Constitutional Court to provide such medication within its means<sup>60</sup>.



COSATU held a conference on HIV/AIDS and developed a programme of action for its affiliates to deal with the epidemic. It has also held regional workshops and disseminated information on how HIV/AIDS affects the workplace. It has trained a number of shopstewards and produced a manual titled "COSATU campaign against HIV/AIDS: A guide for shopstewards". Some of COSATU's affiliates such as the National Education Health and Allied Workers Union (NEHAWU), South African Clothing and Textile Workers Union (SACTWU) and the National Union of Mineworkers (NUM) have in addition developed their own HIV/AIDS policies and programmes<sup>61</sup>.

Large trade unions are better placed to reach the mass of their members on HIV/AIDS education and awareness. It will therefore often be the unorganised workers in the informal sector that will be least aware and informed about HIV/AIDS.

At the international level, the International Confederation of Trade Unions (ICFTU) called on all its affiliates to mobilise themselves to engage governments, businesses and other NGOs in the fight against the epidemic in the workplace<sup>62</sup>. This challenge was a result of the 17<sup>th</sup> World Congress in April 2000. In particular, focus must be placed on issues such as health and safety, and the fight against stigma and discrimination. Workers' organisations have created awareness and initiated programmes for prevention and care in the workplace using a rights-based approach adopted by UNAIDS.

The International Transport Federation (ITF) has also initiated HIV/AIDS programmes; it developed a prevention focused programme for truckdrivers in Uganda and is negotiating with

government authorities to improve the efficiency of border authorities and formalities, in order to reduce the time truckdrivers have to spend away from home<sup>63</sup>. This is done in the anticipation that by shortening the waiting time for drivers, the opportunity to buy sex will be reduced, and thereby reducing the risk of HIV infection. Education International, the international union for teachers and workers in the education sector, has been networking with various UN organs to develop "training and resource manual on school health and HIV/AIDS prevention"<sup>64</sup>. Despite all these efforts by workers' organisations, still more needs to be done given the lack of workplace HIV/AIDS programmes and the rate at which the violation of workers' rights take place. Even in South Africa where serious efforts have been made to restrain the spread of the virus, organised labour has yet to commit enough resources to address the epidemic<sup>65</sup>.

## The Business Response to HIV/AIDS

There is some evidence to suggest that business has begun counting the costs of HIV/AIDS and taking action<sup>66</sup>. As discussed earlier many large enterprises have their own HIV/AIDS policies and programmes in the workplace, whilst small and medium enterprises in the formal and informal sector often lack the financial and human resource capacity to deal effectively with HIV/AIDS. Companies such as the Body Shop in Japan, the Warsaw Marriott hotel in Poland, and the International Hotel and Restaurant Association have all focused on HIV/AIDS in the workplace<sup>67</sup>. In South Africa, even though business has been slow in responding to the epidemic, it has become part of a global business partnership to reduce the rate of HIV/AIDS in the workplace. This is

# The response to the HIV/AIDS challenge

Mr Jacob Saal is HIV positive, 55 years of age, and was in service at a mining company for 30 years. When he found out about his status as HIV positive, he went to his trade union and discussed the matter. They took it to the management of the company who gave him the option to go on early ill health retirement with full financial benefits and to spend quality time with his family. They gave him and his family the necessary legal and moral support and access to counselling services. He was also provided assistance for relocation<sup>75</sup>.

especially true for companies in the mining sector. For example, Anglo American, South Africa's biggest company and the world's second largest mining group, just recently announced that it would soon start to provide anti-retroviral drugs to its workers<sup>68</sup>.

De Beers, the diamond giant in South Africa took a similar move to provide anti-retroviral drugs to its workforce<sup>69</sup>. The company had earlier formed a joint venture with the Botswana government (Debsawna) to provide anti-retroviral drugs to its workers in that country. De Beers also has a similar move in the pipeline with the Namibian government. The Johannesburg Stock Exchange (JSE) has insisted that all companies listed in its Security Exchange should include a report on HIV/AIDS in their financial reports<sup>70</sup>. They will have to indicate the prevalence of HIV/AIDS in the workforce, its effect on costs and productivity, and the programmes they have put in place to address HIV/AIDS in the workplace. It is hoped that the sharing of such information will help destigmatise HIV/AIDS in the workplace.

The new practice from JSE needs to be closely monitored by workers' organisations and NGOs working with HIV/AIDS. It raises some crucial questions. Will companies start mandatory testing of their working stock? How will this affect the workers revealed as HIV positive? What kind of followup will these people and their families receive from the companies? Can we be sure that a forced openness will lead to destigmatisation, or will it contribute to an even stronger stigmatisation and discrimination of those being revealed as HIV positive? Will companies be sincere in their reports, or could it be that they do not provide the correct information to JSE anyway? To reveal to JSE that you have a working stock with a very high prevalence of

HIV, will probably lead to the company's stocks being less valuable. Who will invest in a company where the know-how soon will be expected to disappear?

Co-operation between employers takes place in the form of partnerships to disseminate information on HIV/AIDS. These include multi-sectoral partnerships (public-private partnerships), international HIV/AIDS alliances, and partnerships between NGOs and business. Some of the big companies and multinationals are aware of the HIV/AIDS issue but there are many companies that have not yet grasped the impact of the epidemic including many in South Africa. For example, in South Africa awareness and educational programmes on HIV/AIDS are prevalent, but 75 percent of the small companies have not responded to HIV/AIDS<sup>71</sup>. These companies have not yet realised the full impact of the epidemic on the workforce, enterprise, and society at large, and have not started counting the costs in their businesses<sup>72</sup>. In Ghana, a country popularly known for its relatively low levels of HIV/AIDS, prevention programmes in the workplace have largely been developed and sponsored by NGOs and not by business<sup>73</sup>. However, multinational companies with previous experience from HIV/AIDS have implemented more HIV/AIDS prevention programmes than other companies. At the international level, the Global Business Coalition (GBC) on HIV/AIDS has experienced a growth in membership from 17 to 70 enterprises in the past 12 months<sup>74</sup>. This shows that the level of commitment of businesses to addressing HIV/AIDS is growing. The GBC is documenting best practice examples of HIV/AIDS programmes in the workplace and this includes successful company programmes from "resource-poor settings" from different parts of the world through its



“Workplace protocols and Practices”. The GBC has also established partnerships with businesses in East Africa, South Africa, Botswana and China.

According to the ILO, certain responses adopted by some of the employers are encouraging but their programmes vary according to company size, resources, structure, company culture, and public policy. There is no single programme able to serve as a model for all companies<sup>76</sup>.

However, there are some common features of successful programmes:

- Peer educators.
- Clear assignment of responsibilities and resources.
- Joint policies negotiated with trade unions.
- Voluntary counselling and testing, treatment for sexually transmitted diseases, and in some cases the provision of anti-retrovirals, which drastically increases the participation in voluntary testing and counselling.
- Adequate welfare benefits for HIV positive people.
- No pre-employment testing and proper management of confidentiality.

Notwithstanding these basic requirements, it is important that companies develop and adopt models that will suit their own organisational environment and culture. Part of developing such programmes is ensuring that they extend to the communities where the companies operate. A good example is the long distance road haulage industry of a company in South Africa that has extended its HIV/AIDS programme nationally to clinics around the roads used by trucks. These hot spot clinics provide their services to both truckdrivers and commercial sex workers<sup>77</sup>.

## HIV/AIDS and the law

Given the widespread violation of workers' rights, one can agree with one of the Norwegian Church Aid partner organisations, the St John's Community Centre in Kenya, which states that “even if HIV/AIDS is set aside, most workers are not aware of their rights”<sup>78</sup>. The Ghana AIDS commission issued a statement recently, reminding the public that an HIV test is not a mandatory pre-employment requirement<sup>79</sup>. Using pre-employment testing as a condition for employment is discrimination in practice. The Constitutional Court in South Africa ruled that refusing employment to a person simply because he/she was infected with HIV affected his/her dignity and was considered to be unfair discrimination. Likewise, the Namibian Labour court ruled against pre-employment testing as a condition for employment.

The South African constitution has a Bill of Rights with a list of fundamental human rights that all South African people have as human beings. These rights must therefore be protected and respected. For workers and others with HIV/AIDS the Bill of Rights is important because among others, it lists the right to human dignity, privacy, freedom of trade, occupation or profession and the right to fair labour practice. The Constitution allows the courts to use international law as a guide when interpreting constitutional rights. The courts take note of international agreements and declarations on HIV and AIDS, such as:

- The 1988 ILO Consensus Statement on HIV/AIDS.
- The SADC Code on HIV/AIDS and Employment (1997).
- The UNGASS declaration, 2000.

## Namibia:

In May 2000, the Namibian Labour Court ruled that the Namibian Defence Force is not entitled to exclude people from recruitment on the grounds of their HIV status. Acting judge Harold Levy ruled that excluding a person from employment purely on the basis of being HIV positive was unfair labour practice and constituted discrimination<sup>80</sup>.

# The response to the HIV/AIDS challenge

## The hidden killer in Soweto township in South Africa.

The epidemic is said to be rapidly growing in a population of about 4 million in Soweto. Lately there has been an upsurge of funeral undertakers, as deaths from AIDS become a lucrative business. Yet still many families respond to HIV/AIDS in a deafening silence and funeral ceased from being a weekend business to a Monday to Sunday activity. Traditionally funerals are reserved for weekends when most people are at home. The silence is killing mostly young people who die of "flu", as their families allege<sup>82</sup>.

This means that workers with HIV infection who are healthy should be treated equally to any other worker. Similarly, workers with HIV related illnesses, including AIDS, should be treated the same as any other worker with an illness<sup>26</sup>. Therefore, there are no reasons for discriminating on the basis of a person's HIV/AIDS status. The major problem related to HIV/AIDS and workers' rights is the lack of awareness among the workers. They do not know what actions to take when they are discriminated against in the workplace.

## Community level response

Some companies have extended their programmes to include their employees' communities. The communities can play a crucial role in reducing the spread of the virus if they are made aware that stigma and discrimination are not helpful in the fight against the epidemic.

The ILO views NGOs as crucial elements in the fight against HIV/AIDS in communities due to their close links with people at the grass-roots level. Therefore, they serve as an important link in reaching the people in local communities. This position is also shared by Norwegian Church Aid, which, through its partners, can reach a broad base of communities. Norwegian Church Aid as an NGO is therefore located at an important societal position that provides ample opportunities for assisting in alleviating the impact of HIV/AIDS on communities, especially rural communities which are less empowered to deal with the epidemic.

## The church and HIV/AIDS

The religious communities and faith-based organisations can play an important role in promoting workers' rights and protecting the rights

of people infected and affected by HIV/AIDS in general. They have access to a large number of people and their teaching seriously contributes to the success or failure in working with HIV/AIDS. In many countries they are already one of the major providers of care, information, and support for people infected and affected by HIV/AIDS. They may play a vital role in addressing the stigma and discrimination against HIV positive people. The religious community in South Africa has already adopted a positive and a proactive role in this respect.

However, in countries like Burkina Faso some religious leaders and community leaders were identified as perpetrators of stigmatisation concerning HIV/AIDS by labelling infected people, insinuating they were infected because of their immoral behaviour<sup>83</sup>. The stigmatisation and the rejection of people infected with HIV/AIDS have been witnessed within the church itself where people are shunned because of their status as HIV positive. Just as they have different political stances, church organisations have different approaches to HIV/AIDS, and working with church organisations requires a good understanding of their practices and teachings.

A Norwegian Church Aid supported organisation, DIAKONIA Council of Churches, a partner in South Africa, points out that the role of the church should not only be to assist breaking down the stigma and discrimination faced by people infected and affected by HIV/AIDS. It should also challenge government policies in regards to the rights of the infected and affected people. This makes sense given the South African context where the government had to be compelled through the courts by NGOs, trade unions, the churches, and other civil society organisations to make anti-retroviral drugs freely available in public



hospitals in order to prevent mother to child transmission of HIV<sup>84</sup>. The churches can also play a significant role in combating the spread of HIV/AIDS by incorporating the need to be accepting and supportive of people infected and affected by HIV/AIDS. In doing so, it will contribute in the fight against stigma, prejudices and discrimination of people infected with HIV/AIDS.

The Ecumenical Advocacy Alliance (EAA) is a relatively new ecumenical body with some 70 participating churches and church-related organisations (representing more than 100 million people). Norwegian Church Aid is an active participant in this alliance, which specifically works within HIV/AIDS advocacy. The alliance has stigma and discrimination as its main focus for its advocacy work in 2002/2003<sup>85</sup>.

### Regional responses to the epidemic

In 1997, the South African Development Community (SADC) endorsed "Code on HIV/AIDS and Employment in SADC", and recommended that SADC member states develop such codes and incorporate them into their labour legislation. After Zambia and Zimbabwe, South Africa became the third country to formally adopt and legalise the code<sup>86</sup>. The National Economic Development and Labour Council (NEDLAC), (a national tripartite body which debates all labour and developmental legislation prior to its consideration by the elected parliament) in South Africa, together with the government's Department of Labour, launched the "Code of Good Practice: Key Aspects of HIV/AIDS and Employment", in 2000. NEDLAC in essence ratified the department of labour's code on HIV/AIDS.

Many of the principles adopted in the code had already been entrenched in the South African domestic case law. The code provides a guideline for employers, employees, and trade unions with methods of managing HIV/AIDS in the workplaces using HIV/AIDS workplace programmes. The problem with the code is that it is not legally binding, and therefore, failure to comply with it will not necessarily lead to a legal sanction.

### Manatory testing

Pre-employment testing is common in many industries, especially where companies provide health benefits to its employees. Some have even discovered their HIV positive status in this way, and subsequently have had their employment terminated or the offer of employment withdrawn because they are viewed as less productive, as a health danger or as a threat to the other workers.

The withdrawal of employment on the basis of one's HIV/AIDS status is discrimination. The right of HIV positive workers to freedom from discrimination, which is a fundamental human right, is violated. Many who are fearful of facing this discrimination voluntarily leave their employment in anticipation of social rejection at work or they just keep silent about their HIV status.

This pushes the epidemic further underground and contributes to the spread of the disease in the workplace. HIV/AIDS can only be dealt with in the workplace if it is in the open. This places the question of testing at the centre of the debate on HIV/AIDS in the workplace. Unless conditions regarding confidentiality, trust, stigma and discrimination are improved, the epidemic will remain an underground disease.

### Land mark case "A" vs. SAA

A recent court settlement in the Labour Court marks an important step towards bringing South Africa in line with its laws. The case, known as "A" versus South African Airways (SAA), was brought by Aids Law project (ALP) on behalf of a 30 year-old Gauteng man who had been refused employment by SAA, one of South Africa's largest employers. During the trial, SAA admitted that the applicant, a man known only as "A" in order to protect his privacy, was qualified for the position that he had applied for. The airline further admitted that it had in fact intended to hire "A" before he tested positive in a compulsory pre-employment HIV test. It had, however, declined to hire "A" as it contended that his HIV status would prevent him from being able to fly internationally... Expert medical evidence contradicted this view and ALP was able to show that SAA created

# The response to the HIV/AIDS challenge



a policy based on misinformation and generalisation about HIV. At the conclusion of the lengthy legal process, SAA was forced to publicly admit that its policy of excluding all persons with HIV amounted to unfair discrimination. SAA acknowledged the severity of the injuries “A” had sustained when it agreed to pay him R100 000 (approximately US\$ 15 000) in damages as well as all his legal costs<sup>87</sup>.

Mandatory testing violates the right of workers to privacy and therefore should not be condoned. Voluntary testing, however, represents the right to decide over your body. As shown above, many people choose not to disclose their HIV status for fear of stigma and of losing their employment. This represents a dilemma in dealing with HIV/AIDS in the workplace: The disease must be brought into the open, but people are not willing to disclose their HIV status. The challenge is therefore to improve or change the conditions that hamper the efforts to combat the disease in the workplace; namely, stigma and discrimination.

As mentioned earlier, companies that provide social services will experience an increase in medical and insurance services as HIV infects more workers. When these services are

depleted or not provided, the costs of the epidemic are transferred to the workers, their families and even their communities. It may be useful for HIV positive workers to receive special medical or insurance coverage on the basis of their needs. To do so, however, will require that infected workers should reveal their HIV status. This challenges employers to provide social services in the workplace if these are not provided by the state welfare system. If testing is voluntarily taken for increased coverage or medical aid benefits, it will be positive. Likewise, it becomes negative if the testing is made compulsory and done in order to deny access to employment or social services. It is therefore the responsibility of both employers and employees to ensure that voluntary testing is encouraged in the workplace.

# Advocacy on HIV/AIDS and workers' rights



A preliminary analysis of data submitted by Norwegian Church Aid partners for this report suggests that whilst programmes on HIV/AIDS exist, they do not necessarily focus on workers' rights<sup>88</sup>. A key element emphasised regarding programmes on HIV/AIDS is inadequate or lack of education by both employers and employees on the legal rights of people living with HIV/AIDS.

Furthermore, as pointed out by a KOINONIA in Brazil, such education has proved successful if done by peers of those infected. In the workplace it is therefore management and shopstewards whose capacity needs to be built to provide peer education. In Brazil, the problem faced by small and micro enterprises is similar to those faced by others, especially in the developing countries; small and micro enterprises often lack the financial and human resource capacity to establish HIV/AIDS programmes.

Many NGOs try to fill this gap, but still struggle due to lack of resources. Others, such as Norwegian Church Aid, are already firmly established within the network of NGOs. The Social Change Assistance Trust in South Africa, already focusing on promoting human rights, is one example. Another is St John's community Centre in Kenya, working with unemployed youth that often get involved in the informal sector. Since the informal sector has become the main source of employment in developing countries and given the informal sector's vulnerable position in regards to HIV, it becomes even more important for advocacy to focus on the education of workers within this sector.

## Inputs for further work

*By special advisor Anne-Marie Helland, Norwegian Church Aid*

All employers should formulate a specific HIV/AIDS Code of Practice that includes and protects the rights of the HIV positive employees. This is needed for two reasons: Firstly, employers themselves need to increase their awareness of the challenges posed by HIV/AIDS and the social responsibility they have as business leaders. Secondly, workers need to know that their workplace has recognised that HIV/AIDS is a factor in their working environment, and that HIV positive workers have rights that protect them.

*As a first and immediate step, Norwegian Church Aid will thus develop its own Code of Practice for HIV in the workplace on the basis of the ILO code. We will also encourage all of our partner organisations to do the same.*

As a result of this report and as a response to feed back from our partners, Norwegian Church Aid has identified some issues to be followed with particular attention in the time to come. These are:

- **To resist all forms of mandatory testing** Mandatory testing is a major obstacle for securing workers' rights and securing equal access to employment opportunities. Pre-employment testing is particularly harmful, as it hinders employment opportunities for HIV positive people, leaving them with an HIV diagnosis and often no follow-up or counselling, as the employers have yet no formal responsibility for the tested applicants. HIV testing must always be done on a voluntary basis, and must always be accompanied by professional pre- and post-test counselling, as well as by a system for follow-up on the people who are diagnosed as HIV positive.

# Advocacy on HIV/AIDS and workers' rights

- **To promote better information about workers' rights to both employees and employers**

A major concern for many trade unions and AIDS organisations is the lack of accurate information concerning the rights that HIV infected workers or job applicants have. Many countries actually have national legislation in place prohibiting the dismissal of employees due to for example HIV status. The problem is, however, that neither employees nor employers are aware of this, and often base their actions upon inaccurate information regarding both HIV and workers' rights.

- **To give attention to the informal sector**

Workers in the informal sector are normally not part of the regulations that provide at least some security for workers in the formal sector. Access to information is limited, and HIV infected workers in the informal sector must rely on an often badly functioning public health care system.

- **To give attention to female workers**

Women are often subject to discrimination in the world of work, and are often not aware of their rights. Evidence also suggests that HIV infected or affected women are more likely to experience sanctions from their employers than men are. Women are often over-represented in the informal sector, and are thus vulnerable in terms of violation of their workers' rights.

- **To highlight the need for good medical care for HIV positive workers**

With good medical care, often of simple character (e.g. treatment for simple opportunistic infections), HIV positive workers may maintain good health and high productivity for many years. HIV positive persons should be offered medical treatment, primarily through the national health care systems or alternatively through workplace health schemes (or a combination of these). Ac-

ording to international agreements (such as the 2001 UNGASS-declaration), HIV/AIDS should be treated no differently than other diseases in terms of the healthcare offered by for example governments or employers. There should thus be no discrimination of HIV positive workers in terms of the health care the employees are offered through workplace.

Norwegian Church Aid, in co-operation with partners, networks or relevant stakeholders asks the following actors to respond to the issue of HIV/AIDS and workers' rights according to the outlined recommendations:

**a) The Norwegian Government:**

- To make sure that Norwegian corporations and organisations that receive governmental support for their work abroad have a clear HIV/AIDS policy that includes the protection of workers' rights.
- To support trade unions, both in their work to disseminate information about workers' rights, and in their general work. The trade unions' position has been weakened in many countries as a consequence of HIV/AIDS, and this will in turn threaten the implementation of workers' rights.
- To use its membership in the UN, WTO etc and through bilateral partnerships, to actively promote workers' rights.

**b) Governments in developing countries:**

- To invest more in "soft sectors" such as health and education. This is necessary in order to secure basic public services, and is of particular importance for those who work within the informal sector and have no other options for health care than the public health care system. Basic education is often a prerequisite to gain access to the formal sector, and gives people more



options in terms of employment opportunities.

- To closely collaborate with businesses to secure health care and social services for workers who fall ill and their families. As this report clearly shows, the costs of setting up good systems for HIV prevention and care in the workplace are high. It may not be feasible for all types of businesses to carry this load on their own, even though employers have a clear responsibility for their employees in this respect. Likewise, governments have a clear responsibility for their people, and collaboration between governments and business may be the only realistic way of financing proper services to all workers.

**c) Norwegian business operating in or importing goods from developing countries:**

- To ensure that own company, partner companies and/or suppliers have developed a Code of Practice on HIV/AIDS, where workers' rights are highlighted. Issues such as confidentiality and non-discriminatory practice should be accentuated. The development of such a code of practice should be done in co-operation with trade unions and relevant NGOs. For retailers and importers, an appropriate action in this regard is to become a member of the Norwegian Initiative for Ethical Trade. Here, work towards an HIV/AIDS Code of Practice will be embedded in generic corporate social responsibility programmes.
- To ensure that own company, partner companies and/or suppliers establish prevention programmes in the workplace, including free condom distribution.
- To encourage the establishment of workplace health care systems, including comprehensive STD management, treat-

ment of opportunistic infections and the utilisation of other available treatment regimes.

**d) Trade Unions at all levels (local, national, regional and international):**

- To ensure that the rights of HIV infected/affected workers are protected, including confidentiality and non-discriminatory practice. In order to carry this work through, HIV/AIDS awareness training is necessary for both union leaders/employers and union members.
- To encourage trade unions in the North to support the above mentioned activities in developing countries, both morally and financially.

**e) Academia:**

- To encourage more research on the concept of workers' rights in relation to the HIV/AIDS epidemic.
- To encourage more research on HIV related stigma and discrimination in the informal sector, and possible solutions to the challenges that the informal workers face in terms of HIV/AIDS.
- To encourage more research on peer educators/counsellors/HIV/AIDS officers; how they are selected, supported, and retained. For programmes to be sustainable, they need to ascertain how these people can be sustained.
- To investigate the dynamics involved in the provision of anti-retroviral drugs (ARVs). Some companies are exploring the opportunities to provide ARVs to their staff but are still not sure about the best and most effective way of doing so.

# Advocacy on HIV/AIDS and workers' rights

## **f) Churches and church related organisations:**

- To urge all churches to engage openly in the struggle against HIV/AIDS. One significant way of doing this is to secure good and safe working conditions for their HIV infected and affected staff members. Even though churches may not be the biggest source of employment, they play a major role in passing on messages to the local communities. The church is a significant role model, and should hence take a particular responsibility for securing the rights of its HIV infected and affected employees, and break down the barriers of stigma and discrimination.
- God treats us with love and mercy. For this reason, churches must resist all forms of simplistic moralising about those infected and affected by the virus. Churches and church related organisations that perform discriminatory and/or stigmatising practices towards people living with or affected by HIV/AIDS in their programmes must quit this practice immediately. Partners and programmes that continue to stigmatise and discriminate against people living with and affected by HIV/AIDS will no longer be eligible for support from Norwegian Church Aid.

## **g) Norwegian Church Aid partners:**

- To develop their own Code of Practice on HIV/AIDS in the workplace.
- To follow the national debates on HIV/AIDS and workers' rights closely, and mobilise the NCA network on particular advocacy issues, if necessary.
- To engage in dialogue with Norwegian companies on the issue of workers' rights.

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# Appendix

## Questionnaire

Norwegian Church Aid has commissioned FAFO to write a report on HIV/AIDS and workers' rights. We hope that the report can give us insight information in the situation of HIV/AIDS infected and affected workers, both in formal and informal sector. We'd also like the report to come up with suggestions for Norwegian Church Aid's future advocacy work related to HIV/AIDS and workers rights. We therefore kindly request you to answer the short questions below that will assist us in gathering information on this subject. Your assistance will be highly appreciated.

Note: Organisations participating in filling out the questionnaire will also receive a copy of the report.

### Biographical information

1. Country \_\_\_\_\_

2. Organisation \_\_\_\_\_

3. Date \_\_\_\_\_

4. Where do you operate? \_\_\_\_\_

5. Is it a church based organisation?

6. What links does it have with the Norwegian Church Aid?

- Is it a partner of Norwegian Church Aid? Please explain.
- Is it networking with Norwegian Church Aid? If so please explain how?
- Or are you in a joint venture with Norwegian Church Aid and other partners?
- Other

7. Do you know of any projects or programmes that deal with HIV/AIDS and workers in the formal or informal sector where you are operating?

8. If so, what are they and how can they be improved?

9. If not, what would be most relevant programmes for workers in these different sectors (formal/informal)?



10. Do you have any examples or cases about stigma and discrimination related to HIV/AIDS in workplaces at formal or informal sector where you operate? If so please attach or provide them below.
11. Are workers requested to disclose their HIV/AIDS status when applying for employment in your country?
12. If so, how widespread is this practice?
13. Do workers have legal protection if they become or are infected by HIV/AIDS in your country? How is this in the informal sector?
14. If they have legal protection are workers aware of their legal protection, and how they can get the information?
15. What is the role of the churches as advocates for the rights of people infected and affected by HIV/AIDS in your country?
16. How can other civil society organisations such as trade unions and Non-Government Organisations assist in dealing with HIV/AIDS in general and the workplace in particular? And how have they been assisting?
17. Have your organisation done any programme on HIV/AIDS and workers' rights. If so, please describe the programme and the results.
18. How would you like to see Norwegian Church Aid's role in their future advocacy work with regard to HIV/AIDS and workers' rights?
19. If you have information, stories or documentation that you think might be useful for the report please attach them!

We thank you for your assistance and input towards this report.

**FAFO**

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# Notes



Norwegian Church Aid  
is an independent and ecumenical  
organisation working for people's fundamen-  
tal rights and based on God's love for all humans.  
Norwegian Church Aid works in a comprehensive way,  
through church-based and other local organisations in  
order to save and protect lives and develop sustainable  
living conditions. Norwegian Church Aid also works to  
influence attitudes and decisions for the benefit of  
the poor, needy and oppressed – regardless  
of gender, political convictions,  
religion and ethnicity.



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