
BONELA

Challenging HIV-related Discrimination

Protection for Employees
in the Workplace



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**The Botswana Network on
Ethics, Law and HIV/AIDS**



Acknowledgements

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BONELA would like to thank Elizabeth Maxwell, J.P. for her kind assistance with this publication.

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Editing and design by
Pyramid Publishing
PO Box 403092
Gaborone
Tel: 3902244



Overview

Botswana urgently needs legislation that addresses HIV/AIDS and employment and protects the human rights of workers infected and affected by HIV/AIDS. The need for legislation in this area was recently highlighted by two court cases involving HIV testing in the workplace. Part One of this publication summarizes these cases and discusses their implications. Part Two presents a draft policy framework on HIV/AIDS and human rights in the workplace in Part Two. This policy framework represents efforts to date aimed at creating legislation in this area.

In the first case discussed in Part One, an HIV-positive man was offered employment as a security guard with the Botswana Building Society (BBS). He passed his pre-employment medical examination. Nineteen days later, the employee was informed that he was further required to undergo an HIV test. He tested positive and received his test results from BBS enclosed with a letter of termination. While the Industrial Court and the Court of Appeal disagreed on whether the HIV test formed part of the pre-employment medical examination, judges in both courts noted the problematic lack of legislation in this area and found that nothing in the current employment law prevents employers from testing prospective employees for HIV.

In the second case, a woman was offered a position as a security assistant at BBS. About six months after she began work, she was told that she had to undergo an HIV test and was terminated after she refused. In this case, the Industrial Court found that her dismissal was unfair under current employment law because she already was a permanent employee of the company. The Court also found that

the woman's constitutional rights to liberty and to be free from inhuman and degrading treatment had been violated. This ruling, which was not appealed by BBS, uses an expansive interpretation of the Constitution to protect human rights in the context of HIV/AIDS and suggests that pre-employment HIV testing may be constitutionally prohibited. However, the Industrial Court's decision does not create a binding precedent, and thus the impact of the decision on future litigation remains uncertain, further underscoring the need for legislation.

The Botswana Network on Ethics, Law and HIV/AIDS (BONELA) has worked with unions, NGOs, government departments and representatives of the private sector to draft the policy framework included in Part Two. The purpose of this exercise was to identify key principles related to HIV/AIDS and human rights in the workplace for inclusion in future legislation. The policy framework includes nine key principles as well as strategies for implementing eight of these key principles. The key principles cover employment protection and job security, prohibitions on HIV testing, confidentiality of personal information, non-discrimination, protection of vulnerable groups, care and support of HIV-infected workers, gender equality and empowerment, HIV prevention, and education and awareness programmes.

BONELA continues to work with key stakeholders towards the development and implementation of legislation protecting the rights of people living with HIV in the workplace. We hope that the publication of this document will assist in these efforts as well as inform the general public about HIV/AIDS and human rights in employment.

Part One: The Industrial Court Tackles HIV Testing in the Workplace

Introduction

Given that most people living with HIV are in their productive working years, the effects of the HIV/AIDS epidemic reach the workplace. In Botswana, where an estimated 3 out of 10 people are HIV-positive, it is likely that all employers and employees will confront HIV in the workplace in some way. It is estimated, for example, that 33% of all worker deaths in Botswana are HIV/AIDS related.¹ HIV/AIDS impacts employer-employee relations, worker productivity, employee morale and may even affect the national economy.

The human rights of employees and prospective employees are also affected when they encounter HIV-related stigma and discrimination in the workplace. Such stigma and discrimination not only violate workers' human rights, but are also counterproductive to efforts to fight the epidemic. In recognition of this, the International Labour Organisation Code of Practice of HIV/AIDS and the World of Work states:

In the spirit of decent work and respect for human rights and dignity of persons infected or affected by HIV/AIDS, there should be no discrimination against workers on the basis of real

¹ Botswana Task Force on AIDS at the Workplace, Impact of HIV/AIDS and Options for Intervention (1997).

or perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention.²

HIV testing for the purpose of screening out HIV-positive job candidates is one such discriminatory practice in the workplace that violates workers' human rights. In line with international guidelines, the Botswana National Policy on HIV/AIDS of 1998 states that pre-employment HIV testing is unnecessary and should not be done. In addition, the Public Service Code of Conduct on HIV/AIDS, which applies to the public service, prohibits the inclusion of HIV testing in pre-employment medical examinations. Such guidelines support human rights because they ensure that the decision to test for HIV is left to each individual. They also prevent people living with HIV/AIDS from losing job opportunities simply because they are HIV-positive. The guidelines recognize that a policy of not hiring HIV-positive persons is discriminatory as well as irrational: the simple fact of being HIV-positive does not necessarily make a person incapable of fulfilling the requirements of a job or unfit to work.

Nevertheless, while the National Policy counsels against HIV testing in the workplace, at present there is no law to prohibit employers from screening prospective employees for HIV in Botswana. As a result, there have been reports that some employers in Botswana have engaged in compulsory HIV testing of employees and have dismissed employees infected with HIV.

However, employees dismissed because of workplace HIV testing policies have begun to challenge their dismissals in court. In 2003, the Industrial Court³ confronted this issue when it heard two cases involving employees who had been dismissed for reasons related to HIV testing—one because he tested positive for HIV and the other because she refused to undergo an HIV test as requested by her employer.

² ILO Code of Practice on HIV/AIDS and the World of Work, Section 4.2 (2001).

³ The Industrial Court is charged with settling trade disputes. It is both a court of law and of equity.

Industrial Court Case No. 35 (2003)

The Facts of the Case

In a letter dated 20 June 2002, the applicant in this case was offered employment as a security assistant by the Botswana Building Society (BBS). According to the offer, the applicant's employment was subject to a six-month probationary period during which BBS could dismiss him upon 48 hours notice. In addition, the applicant was required to undergo and pass a medical examination by a doctor selected by the company. The applicant underwent and passed the medical examination as requested and began working for BBS as a probationary employee.

Nineteen days after receiving the offer of employment, the applicant received another letter from BBS which stated that he was required to undergo an HIV test in addition to the medical exam he had already completed. The applicant returned to the doctor who conducted the original exam, but she refused to test him because she was not convinced that he voluntarily agreed to be tested for HIV. The applicant thus found and paid another doctor to perform the HIV test. The doctor did not inform the applicant of his test results, but sent them directly to BBS. On 27 August, BBS terminated the applicant's employment. Included with the termination letter was a copy of the HIV test results, which indicated the applicant had tested positive. The applicant decided to challenge his dismissal in the Industrial Court.

The Industrial Court's Determination

1. Was the Applicant's Dismissal Unfair?

The dispute between the applicant and BBS was heard by Judge Legwaila, the Judge President of the Industrial Court. After considering the facts, Judge Legwaila concluded that the applicant's dismissal had been procedurally and substantively unfair under existing employment law. In essence, the Judge found that the requirement to undergo an HIV test, coming nineteen days after the offer of employment, could not be considered as part of the pre-employment medical examination requested by BBS with its offer of employment. Rather, it was 'compulsory post-employment HIV testing'⁴ that was in breach of the employment contract entered into by BBS and the applicant. Thus it was substantively unfair to the applicant.

The applicant's dismissal was also substantively unfair because it was based upon his HIV-positive status, which did not constitute an acceptable reason for dismissal under the law. Because the applicant had already passed the required pre-employment medical exam, which the Judge found *did not include* HIV testing, the applicant should have been treated like any other employee on probation who could only be dismissed for poor performance or misconduct. "[T]he introduction of the HIV test at that stage amounted to discriminatory treatment, as it was not applied to other employees."⁵ Judge Legwaila also found, and BBS conceded, that the applicant's dismissal had also been procedurally unfair because he was only given 48 hours notice, which is not a sufficient notice time under the law.

2. What Compensation Was the Applicant Entitled To?

Based upon his findings and the manner in which the applicant was dismissed, Judge Legwaila awarded the applicant compensation in the amount of six months' wages. In his opinion, the applicant

⁴ Industrial Court Case No. 35 of 2003 at 12.

⁵ IC Case No. 35/03 at 14.

had received the “most unfair treatment that can be meted out to an HIV sufferer by a commercial entity depending upon its survival on the patronage of members of the public....”⁶ Judge Legwaila also ordered BBS to pay the applicant for the cost of the HIV test.

3. Is Pre-employment HIV Testing Legal?

Even though Judge Legwaila concluded that the applicant had been subjected to post-employment HIV testing, he considered the legality of pre-employment HIV testing. Representatives of BBS testified that the company had instituted a policy of screening all prospective employees for HIV and did not hire those who tested positive.

The Judge noted that the National Policy on HIV/AIDS states that “Pre-employment HIV testing as part of the assessment of fitness to work is unnecessary, and should not be carried out.”⁷ However, he found that as a judge he had no power to apply the National Policy to BBS because it was simply a government *policy* and not a binding *law*. In the Judge’s opinion, the National Policy only has strong persuasive moral authority in the court setting. He found that it was Parliament’s responsibility to turn this policy into law:

... it is time for the government to ‘develop and implement laws and regulations...to eliminate the stigma and discrimination against PLWHA’ as promised. The Applicant lost his employment because of an indiscriminate policy of the employer who took advantage of the absence of restraining legislative instruments. It was not that at that point in time the Applicant was found to be incapacitated but simply because he was HIV positive. This is not the type of prejudice that can be left to the courts to tackle.⁸

⁶ IC Case No. 35/03 at 25.

⁷ Botswana National Policy on HIV/AIDS (1998), Para 6.2 at 12.

⁸ IC Case No. 35/03 at 19.

The Court of Appeal's Determination

BBS appealed the part of Judge Legwaila's decision that found the HIV test to be a post-employment requirement. At the Court of Appeal, BBS argued that the test was part of the pre-employment medical examination. The company claimed that Judge Legwaila was not entitled to find that the test was a post-employment requirement because the two parties had agreed in the factual admissions in court that the HIV test was part of the initial medical examination. The applicant argued that the HIV test was in fact a compulsory post-employment test and that, as an Industrial Court judge, Judge Legwaila had the power to find that it was a post-employment requirement.⁹

The Court of Appeal agreed with BBS that the HIV test was part of the pre-employment medical examination, given the facts as well as the admissions made in the case. In the Court's view, the testing requirement and the applicant's subsequent dismissal based upon his HIV-positive status were not substantively unfair. The Court of Appeal thus set aside Judge Legwaila's award of six months compensation, and in the end, the applicant was awarded one month's notice pay¹⁰ and reimbursement for the cost of the HIV test.

The Court of Appeal briefly discussed Judge Legwaila's determination that pre-employment HIV testing is not illegal, but refrained from comment upon the treatment the applicant had received from BBS when he was terminated. The Court noted the Botswana National Policy on HIV/AIDS:

had never been translated into law and had no statutory authority. While it had strong moral persuasive force, [BBS] was not bound to follow it and had the right to make its own decisions regarding recruitment and its requirements in respect

⁹ Under §14 of the Trade Disputes Act (CAP 48:02), Industrial Court judges have the power "to eschew legal technicalities and rules of evidence where there is not likely to be a miscarriage of justice." IC Case No. 35/03 at 11.

¹⁰ BBS had agreed to pay this amount because they had given the applicant insufficient notice (48 hours) when they terminated him.

thereof. The [Industrial Court], however, severely criticised [BBS] for its attitude towards [the applicant] and his HIV status. This Court would not wish to endorse or distance itself from those criticisms. They are not matters concerned in this appeal.¹¹

Discussion

This case highlights the reluctance of the judiciary to find pre-employment HIV testing illegal in the absence of legislation that specifically prohibits it. While Judge Legwaila clearly believed that BBS's testing policy was 'indiscriminate' and based upon prejudice, as a judge he felt powerless to do anything about it other than to condemn the practice. Currently, the Employment Act allows employers to require a medical examination of every person entering into a contract of employment. This provision of the law, however, does not explicitly place limits on the types of tests that may be conducted, nor does it clearly state that the purpose of pre-employment medical examinations should be to assess the fitness of a job applicant to fulfil the requirements of a job. Thus, the law lends itself to the interpretation that employers can legally include almost any test in the medical examination.

Even though it won the court case, BBS announced in late February 2004 that it would amend its policy to conform to the National Policy on HIV/ AIDS. The CEO of the company wrote a letter to the Mmegi newspaper in which he stated that BBS would no longer test prospective employees for HIV.¹² However, the courts' finding that the law does not prohibit pre-employment HIV testing may encourage other companies to disregard the National Policy and institute pre-employment testing.

The applicant in this case did not ask Judge Legwaila to consider whether any of his constitutional rights were violated by BBS. The possibility that the Constitution may restrain employers in the absence of legislation was considered in the next case.

¹¹ Court of Appeal Civil Appeal No. 37 of 2003 at 6-7.

¹² P.K. Molefe, *BBS No Longer to Test for Pre-Employment* (letter to the editor), The Mmegi, 26 Feb. 2004 at 6.

Industrial Court Case No. 50 (2003)

The Facts of the Case

In a letter dated 18 February 2002, the employer (BBS) offered the applicant, in this case, employment as a security assistant. As in the previous case, this offer was conditioned on passing a medical examination and was subject to a six-month probationary period in which the applicant could be terminated on 48 hours notice. The applicant began working for BBS on 25 February. On 27 August, BBS informed her by letter that she was required to submit a certified copy of her HIV status. The applicant requested some time to consider whether she was willing to undergo an HIV test. On 7 October, she wrote a letter to BBS informing them of her decision not to be tested. She wrote, “As far as I know HIV status, it’s a personal right, not for public or employment requirement.”¹³ On 19 October, BBS terminated the applicant’s employment without giving any reason. She then challenged her dismissal in the Industrial Court.

The Industrial Court’s Determination

1. Was the Applicant’s Dismissal Unfair?

The dispute between the applicant and BBS was heard by Judge Dingake. After reviewing the facts, Judge Dingake found that the

¹³ Industrial Court Case No.50 of 2003 at 4.

applicant's dismissal had been both procedurally and substantively unfair because she was dismissed after her probationary period had expired, when she had already become a permanent and pensionable employee of BBS.¹⁴ As a permanent employee, she could not be terminated without a valid reason. Although BBS gave no reason for her dismissal, Judge Dingake concluded that BBS had dismissed the applicant because she refused to undergo an HIV test. In his view, "... the instruction to undergo an HIV test was irrational and unreasonable to the extent that such a test could not be said to have been related to the inherent requirements of the job. The applicant was... entitled to disobey the order and/or instruction."¹⁵ The testing requirement amounted to compulsory post-employment HIV testing, and the applicant's dismissal "...was so patently harsh, unjust and grossly unreasonable that no court of law and equity can properly, lawfully and fairly put its seal of approval on it."¹⁶

2. Were the Applicant's Constitutional Rights Violated?

Even though Judge Dingake decided that the dismissal of the applicant was unfair under employment law, he went on to consider whether BBS had violated her constitutional rights.

A. Does the Constitution Apply to a Private Corporation?

Judge Dingake found that BBS was a private corporation. He then had to determine whether BBS was bound by the bill of rights, the section of the Constitution which guarantees the fundamental rights

¹⁴ BBS argued that they were free to either confirm or dismiss the applicant after the end of her probationary period. However, Judge Dingake found that under the law the last day she could be terminated was the last day of the probationary period. BBS did not send the request for a copy of her HIV test or dismiss her until after the end of this period. By not terminating her before the end of the probationary period, BBS had tacitly confirmed her employment. IC Case No. 50/03 at 14-21.

¹⁵ IC Case No. 50/03 at 22.

¹⁶ IC Case No. 50/03 at 29.

and freedoms of individuals. Traditionally, the bill of rights is thought to regulate the relationship between the state and individuals: it confers rights and freedoms upon individuals and imposes duties on the state. Since the state has a significant degree of power over the lives of individuals, individuals must be protected through the bill of rights from abuses by the state. However, Judge Dingake found that some private entities and persons possess enough power to abuse the rights of others who are less powerful: “It is for this reason that in recent years [in some countries], the bill of rights has been applied to private entities to curb the exercise of superior social or commercial power outside the traditional domain of the ‘state’.”¹⁷

Finding that there were no provisions in the Constitution of Botswana to limit the application of the bill of rights solely to the organs of the state, Judge Dingake concluded that the Constitution was never intended to apply only to the state:

Authorities are abundant that stress the point that the language of the constitution must be given a broad and purposeful interpretation, so as to give effect to its spirit, and that this is particularly true of those provisions that are concerned with protection of fundamental human rights. In today’s world there are private organizations that wield so much power, relative to the individuals under them that to exclude those entities from the scope of the bill of rights would in effect amount to a blanket license for them to abuse human rights. This is particularly so in an employment relationship which more often than not is characterized by unequal bargaining power between the employer and employee.¹⁸

Judge Dingake cautioned that private entities should only be subject to the bill of rights “under exceptional circumstances” so as to prevent the “overproliferation” of constitutional scrutiny of their activities. Nonetheless, he was satisfied that the bill of rights applied to BBS in this case because it is a company that operates in the public domain and relies on public patronage for its business.

¹⁷ IC Case No. 50/03 at 47.

¹⁸ IC Case No. 50/03 at 43-44.

In general, Judge Dingake suggested that whether or not a private entity is subject to the bill of rights should depend upon the nature of the private conduct in question, the circumstances of the particular case, and the purpose of the right in question. For example, the purpose of the rights to liberty, equality before the law, and human dignity should not require making a distinction between state and private conduct that threatens these rights.

B. Which of the Applicant's Constitutional Rights Were Violated?

The applicant alleged that BBS's actions had violated her right to privacy, her right to be free from discrimination, her right not to be subjected to inhuman and degrading treatment, and her right to liberty. Judge Dingake concluded that only her right not to be subjected to inhuman and degrading treatment and her right to liberty were violated, but discussed all four rights in the context of HIV/AIDS.

The Right to Privacy

The right to privacy is governed by Section 9(1) of the Constitution, which states "Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises."¹⁹ In order to determine if there has been a violation of the right to privacy, one must consider 1) whether the conduct complained of amounts to an infringement of the right, and 2) whether such infringement is "reasonably justifiable in a democratic society." Judge Dingake determined that HIV testing without consent would be an unauthorised search of the person under Section 9(1). In the applicant's case, he concluded that her right to privacy was not violated. No actual invasion or infringement of her privacy took place, since she refused to undergo an HIV test and was thus never tested. Nevertheless, while not going as far as violating the right to privacy, "[BBS's] conduct undermine[d] the Applicant's right."²⁰

¹⁹ Constitution of Botswana CAP 1.

²⁰ IC Case No. 50/03 at 56.

The Right to be Free from Discrimination

Discrimination that is irrational or unjustifiable violates Section 15 of the Constitution.²¹ Section 15 does not explicitly outlaw discrimination based upon HIV status or perceived HIV status, but in Judge Dingake's opinion, HIV status and perceived HIV status should be added to those grounds of unlawful discrimination specifically enumerated in Section 15, such as race and tribe.²² The grounds listed in Section 15 should not be considered exhaustive: "A closer interrogation of the said grounds show one common feature—they outlaw discrimination on grounds that are offensive to human dignity and/or on grounds that are irrational. To dismiss a person because of perceived HIV positive status would offend against human dignity, in addition to being irrational."²³

However, Judge Dingake found that BBS had not discriminated against the applicant because there was no evidence to suggest that she had been treated differently, i.e. dismissed, due to the perception that she was HIV-positive.

The Right Not to be Subjected to Inhuman and Degrading Treatment

Section 7(1) of the Constitution prohibits inhuman and degrading treatment.²⁴ In Judge Dingake's opinion, the prohibition on inhuman and degrading treatment protects the right to human dignity. The

²¹ IC Case No. 50/03 at 62. Section 15 defines discrimination as "affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description." Constitution of Botswana CAP 1.

²² Unlawful grounds are listed in Section 15(3) and include race, tribe, place of origin, political opinions, colour, and creed.

²³ I.C. Case No. 50/03 at 63.

²⁴ Section 7(1) states "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment." Constitution of Botswana CAP 1.

right to human dignity requires respect for the individual as master of her own body and destiny: “[T]he content of the right to dignity encompasses the freedom of individuals to rebuff attempts at subjecting their bodies to any treatment or test, without being punished for exercising such freedom or right.”²⁵

In this case, the requirement that the applicant undergo an HIV test to keep her job subjected her to inhuman and degrading treatment. HIV testing should be voluntary and accompanied by informed consent²⁶ rather than compulsory: “Compelling people to undergo an HIV test is inhuman and degrading in addition to being counterproductive. In this case, the Applicant paid the highest price for refusing to undergo the HIV test: deprivation of livelihood by losing her job.”²⁷

The Right to Liberty

The right to liberty is enshrined in Section 3 of the Constitution.²⁸ The right to liberty goes beyond mere freedom from physical restraint to also protect a “narrow sphere of personal autonomy wherein individuals may make inherently private choices free from irrational and unjustified interference by others.”²⁹ The autonomy protected by the right to liberty “encompasses only those matters that can properly be characterised as inherently personal, such that by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence. Choosing whether to test or not is a private decision striking at the heart of personal and individual autonomy and no entity, the state or any

²⁵ IC Case No. 50/03 at 69-70.

²⁶ In Judge Dingake’s opinion, informed consent protects an individual’s right to self-determination and freedom of choice.

²⁷ IC Case No. 50/03 at 67.

²⁸ Section 3(a) guarantees to everyone the right to “life, liberty, security of the person and the protection of the law.” Constitution of Botswana CAP 1.

²⁹ IC Case No. 50/03 at 77.

employer ought to be permitted to interfere, barring any compelling reasons in favour of interference.”³⁰

Judge Dingake found that BBS’s requirement that the applicant undergo an HIV test and her subsequent dismissal when she refused was a violation of her right to liberty. It was an irrational demand unrelated to the inherent requirements of her position as a security assistant and had actual negative consequences – the loss of her job.

3. What Compensation Was the Applicant Entitled To?

Given that the applicant’s dismissal was both procedurally and substantively unfair and violated her constitutional rights, she was entitled to relief. Judge Dingake ordered that BBS both reinstate the applicant as an employee and pay her compensation “because of the appalling and/or disgraceful manner in which [BBS] treated Applicant.”³¹ He awarded the applicant compensation in the amount of four months wages.

4. Constitutional Interpretation in the Context of HIV/AIDS

In the course of his decision, Judge Dingake commented upon constitutional interpretation and the proper role of the judiciary in the context of the HIV/AIDS epidemic. In his view, the judiciary must interpret the bill of rights in a dynamic and purposeful fashion so that these basic provisions guaranteeing fundamental rights and freedoms keep up with social developments: “if we don’t the words of the constitution will be beholden to the values of the past, not the present.”³² The judiciary must consider how to ensure that the individual rights and freedoms enshrined within the Constitution are converted into reality. Converting rights into reality is particularly

³⁰ IC Case No. 50/03 at 77.

³¹ IC Case No. 50/03 at 89.

³² IC Case No. 50/03 at 75.

important in the context of HIV/AIDS:

...a proper application of the Constitution can serve as a potent source of a sober critique of the existing arrangements and/or practices that serve, often unwittingly, to promote stigma and prejudice about HIV/AIDS at the workplace. It is up to the judiciary to clarify the content, context, and location of any rights and duties that are conferred by the Constitution. The Bill of Rights provisions must be safeguarded from possible attempts to narrow their scope unduly or to circumvent altogether the obligation they engender.... In the context of the reality of HIV/AIDS afflicting our society, rampant ignorance of the syndrome, the consequent problems of stigma and prejudice, it is imperative for the courts to interpret the constitutional provisions purposefully, as far as the language permits, and in a manner consistent with the contemporary norms, aspirations, expectations and the sensitivities of the people of Botswana as expressed in the Constitution, and further having regard to the emerging consensus of values in the civilised international community which Botswana share.³³

Discussion

BBS in this case was found to have engaged in unfair treatment of an employee under the existing employment law, given the timing and sequence of events that led to the applicant's dismissal. If Judge Dingake had simply based his decision on employment law, however, the case would not have the far-reaching effects that it could potentially have. While this aspect of the decision reinforces the rights of existing employees (e.g., the right to not be dismissed without a valid reason), it does not reach pre-employment HIV testing policies. Existing employment law and the equitable power of the Industrial

³³ IC Case No. 50/03 at 74-75.

Court thus gives judges some power to address HIV-based discrimination in the workplace, but not nearly enough.

In contrast, Judge Dingake's expansive interpretation of the Constitution has the potential to protect individuals from a broad array of HIV-based human rights violations in the workplace and increases the reach of the judiciary's influence in this area. His finding that the bill of rights applies to private conduct is a path-breaking decision that could have effects beyond the employment context to cover a variety of private relations. Moreover, his application of provisions of the bill of rights to the HIV/AIDS context expands these constitutional protections into a new realm. Judge Dingake clearly felt a responsibility to uphold human rights in the midst of the HIV/AIDS crisis and believed that the Constitution empowered him to do so. Following his reasoning and method of constitutional interpretation, a pre-employment HIV testing policy is likely to be found unconstitutional.³⁴

Nevertheless, without a binding pronouncement on these issues from the Court of Appeal,³⁵ other judges are free to come to their own conclusions about the reach of the Constitution. BBS has decided not to appeal Judge Dingake's decision in this case and, thus, the Court of Appeal will not consider these issues. Other judges are not required to follow Judge Dingake's constitutional reasoning and thus may not agree with his decision that the Constitution applies to private conduct or with his application of various provisions of the bill of rights to HIV testing.

Even if other judges agree that the bill of rights applies to employment relations in the private sector, the judiciary on its own cannot tackle all of the effects of HIV/AIDS in the workplace in the absence of legislation. Judges must base their decisions upon the facts that the

³⁴ Judge Dingake did not rule on the constitutionality of a pre-employment HIV testing policy. He only analysed whether any of the applicant's human rights were violated, after he had found her to have been subjected to a post-employment testing policy.

³⁵ The Court of Appeal is the highest court in Botswana, and its decisions are binding on all lower courts, such as the Industrial Court and the High Court.

parties present; thus their decisions are limited by the particular factual circumstances with which they are confronted. Judges' rulings can protect the rights of particular litigants. In doing so, the rulings may well reach beyond a particular case, but leaving the work of addressing HIV/AIDS and employment to the judiciary alone will result in a slow, piecemeal resolution of the complex issues that HIV/AIDS presents in the workplace.

Judge Legwaila's call for legislation must be heeded. A more systematic treatment of HIV/AIDS in the workplace can be achieved through legislation, which protects the human rights of employees and prospective employees while also addressing the concerns of employers. It is through the participation of all branches of the government—acting with the purpose of upholding human rights—that the constitutional promise of the bill of rights can be converted into a reality.

Part Two highlights one effort underway to secure legislation that addresses HIV/AIDS and human rights in the workplace.

Part Two: A Policy Framework on HIV/AIDS and Employment

Introduction

On the 7th, 8th and 9th of October 2002 the Botswana Network on Ethics, Law and HIV/AIDS (BONELA) in partnership with the Botswana Federation of Trade Unions (BFTU) held a drafting workshop on HIV/AIDS, human rights issues and employment. Representatives from trade unions; staff associations; the private sector; non-governmental organizations, including Emang Basadi and the Botswana Network of People Living with HIV/AIDS (BONEPWA); several government departments, including the Labour Department, the National AIDS Coordinating Agency (NACA) and the AIDS/STD Unit, came together to work on a draft policy framework as well as to identify key principles for future labour legislation that will specifically address issues of HIV/AIDS and human rights in the workplace.

The idea for this workshop developed out of a previously held workshop on HIV/AIDS, Employment and Human Rights, which was organized by BONELA in May 2002. One of the recommendations from that workshop was to determine the gaps and weaknesses in the existing legislation and policies and to formulate a draft policy framework on HIV/AIDS in the workplace that could be transformed into legislation.

In February 2003 and April 2003, BONELA, in partnership with the Botswana Council of Commerce, Industry and Manpower (BOCCIM) organized two breakfast seminars with several members of the private sector in Botswana to garner their input and comments on the draft policy that was produced at the workshop in October 2002. The general comment from the private sector participants on the draft policy was that it was very worker-centered. Their ultimate aim was to have the voice of employers represented in the policy and to ensure that their concerns were adequately represented. In March 2003, another seminar was held in Ghanzi with trade union members and non-unionized farm workers to receive their input on the policy.

This draft policy framework has been endorsed by the Ethics, Law and Human Rights Sector of the National AIDS Council. The creation of a policy framework is a necessary precursor to legislative drafting. This document follows the format recommended by the government. BONELA is now working hand-in-hand with the Ministry of Labour and Home Affairs to transform the policy framework into legislation. The Ministry is primarily responsible for proposing legislation that deals with employment issues, such as HIV/AIDS and human rights in the workplace.

The Policy Problem Statement

In a broad sense, HIV/AIDS affects the workplace in many ways: it affects productivity; and, it can increase business costs, affecting the national economy. Productivity is reduced because of increased absenteeism and low employee morale. Business costs are increased because of increased benefits, increased amounts of sick pay as well as the cost of replacing workers as they become too sick to work, or die. The effect of HIV/AIDS on the Botswana economy is uncertain. A report by the Botswana Institute for Development Policy Analysis (BIDPA) on the Macroeconomic Impacts of HIV/AIDS in Botswana, suggested that in 25 years the economy of Botswana will be 31% smaller than it would otherwise have been if AIDS did not exist.

On a smaller scale, employer-employee relations in the workplace are constantly challenged by the HIV/AIDS epidemic. Workers who suffer from HIV-related illnesses or who are infected with HIV face undue stigmatization and discrimination in the workplace by both their fellow employees and their employers. There have been reported cases of arbitrary dismissal on medical grounds, and forced testing of employees by employers. Additionally, workers whose lives are affected by HIV/AIDS have to take increased leave time, both sick leave and compassionate leave as the number of funerals in Botswana continue to rise. If we are to effectively deal with HIV/AIDS in the workplace, we need to develop a policy that both employers and employees can refer to when they are faced with these issues.

Fear and misunderstanding of HIV has led to other questionable employment practices in Botswana such as pre-employment testing, screening and shared confidentiality. The concerns of the employer with regards to retaining staff and recruitment of employees who are capable of performing the tasks they are assigned must be balanced with the concerns of the employees with regards to the maintenance of confidentiality, protection from discrimination and protection of employee benefits.

Transmission of HIV in the workplace is very rare even for people in high-risk professions such as doctors and emergency medical workers. However, there is still a need for all members of the workplace to be aware of how to prevent accidental transmission and to be equipped (intellectually and practically) to practice universal precautions if a workplace accident should occur. Although transmission at work is rare, there are specific populations and specific types of employment that, due to certain social and environmental factors, carry a higher risk of HIV transmission. Employers need to recognize this and make adjustments in their policies to accommodate for it as well as provide opportunities for their employees to learn more about the virus for education and prevention purposes.

Issues relating to HIV in the workplace are a global problem; it is not specifically a problem for Botswana. However, given the prevalence

of HIV in Botswana, it presents a more urgent problem than in other areas of the world. The following key principles have been developed specifically for Botswana given the current context, but they have taken into account a number of policy guidelines and best practices from various regional and international sources. Through this integrated approach, we have hopefully developed a set of key principles that will work for both employees and employers in Botswana, as well as provide guidelines for organizations and companies to develop their own individual HIV policies.

Problem Areas

The key problem areas that were identified by stakeholders at the Drafting Workshop on Employment and HIV/AIDS are:

- 1. Pre- and post-employment mandatory testing of workers;**
- 2. Breach of confidentiality, shared confidentiality and lack of informed consent;**
- 3. Vulnerable groups at the workplace;**
- 4. Discrimination and victimization of HIV-infected workers;**
- 5. Lack of job security/employment protection for HIV-infected/affected workers;**
- 6. Insufficient care and support for workers;**
- 7. Gender inequality and disempowerment of women; and**
- 8. Prevention of HIV/AIDS at the workplace (education and occupational hazards).**

Key Principles

The following are key principles that were identified by stakeholders:

1. **Employment protection and job security of infected and affected workers;**
2. **Prohibition of testing for HIV/AIDS for purposes of recruitment, promotion or other benefits;**
3. **Confidentiality of personal information including medical information;**
4. **Non-discrimination of HIV infected workers;**
5. **Protection of vulnerable groups;**
6. **Care and support for HIV infected workers;**
7. **Gender equality and empowerment;**
8. **Prevention of HIV at the workplace; and**
9. **Provision of education and awareness programmes.**

Principle One: Employment Protection and Job Security of Infected and Affected Workers

Preamble

The prevalence of HIV infections in Botswana has led, in a lot of cases, to employees overextending their allotted leave days. This is due to illness, visits to medical practitioners, caring for sick relatives, and attending funerals.

There have been limited allowances for people who need to exceed their allowable number of leave days; this is strikingly obvious in the private sector where the leave allowances are less generous than in the public sector. There have been instances where such employees have been dismissed from their posts for misconduct because they

have missed too many days, or they have been dismissed because they are too ill to continue in the position for which they have been hired.

It is costly for employers to re-advertise, re-hire, and re-train new employees to cover staff losses due to HIV/ AIDS and other illnesses. This leads to increased operating costs and reduces efficiency and productivity.

Although it is often said that HIV should be treated as any other terminal or chronic illness, this cannot be done at the expense of understanding the unique social situation that HIV presents. Legislation is required to specifically protect people living with HIV/ AIDS (PLHWAs) because of the stigma associated with HIV/ AIDS.

Key Principle:

Employers should not terminate the employment of an employee on the diagnosis of a chronic or terminal illness.

Key Principle:

Employers should reasonably accommodate leave requirements of workers who are infected and affected by chronic illnesses.

(‘Reasonable’ would be defined in the regulations after legislation is drafted, but is generally considered to be what a regular man or woman on the street would consider reasonable.)

Strategies

These strategies can only be employed if the employer is aware of the status of the employee. If the employee refuses to disclose the reasons for his/her increased absence or leave requirements, he/ she cannot reasonably be expected to be protected under this key principle. However, the employer is responsible for creating an environment where the employee feels safe to disclose his/ her status

without fear of termination, discrimination, or barred access to promotion and training.

1. The government should compel the employer to comply with the policies on HIV/AIDS and employment.
2. Employers should introduce flexible leave policies where possible to accommodate their workers. They should also consider options such as: flexible work hours, rest time, time-out facilities or job sharing opportunities, where such options are feasible.
3. Employers should offer an alternative employment opportunity or a transfer to lighter duties where these opportunities are available, in the event that an employee becomes medically unfit to fulfil the agreement of their original contract.
4. Employers should ensure that they create a safe and open environment in the workplace so employees and employers can communicate their issues and needs with each other to ensure that they are both reasonably accommodated.
5. There should be an introduction of a medical board under the Employment Act for medical assessments of workers in the private sector for fitness to work. In the absence of a medical board, a medical practitioner should be agreed upon by both parties and there should be an allowance for a second opinion before a decision about retirement on medical grounds can be made.
6. The employer should consider giving an employee suffering from chronic illness unpaid leave.

(These principles are supported by the ILO Code of Practice on HIV/AIDS in Section 5.2.(j); by the Industrial Court of Botswana's decisions [ref. Case No. IC 64/98 and IC 68/97] which state an employer cannot dismiss someone strictly on medical grounds; the International Guidelines of HIV/AIDS and Human Rights, section 30(d); the National HIV/AIDS Policy (2003 draft) section 8.0, and the National Industrial Relations Code of Practice, section 47).

Principle Two: Prohibition of Testing for HIV/AIDS for Purposes of Recruitment, Promotion or Other Benefits

Preamble

One of the major necessities in developing an effective response to HIV/AIDS, and an area that has been largely neglected within Botswana and internationally, is the integration of legal, ethical and human rights issues into the national response.

Recognition of the rights of PLWHAs is a fundamentally important principle from a legal perspective and also from a public health perspective. The public health rationale for the incorporation of human rights into the response to HIV/AIDS is that it assists in creating an environment within which individuals are more empowered to protect themselves against the infection. By not forcing people to test, we allow them to feel safe and protected, and prevention strategies become more effective as people are more apt to access them.

The rationale for mandatory testing is strictly limited, especially in the context of employment. If people are forced to undergo mandatory testing they become frightened and stay away from medical facilities. It creates fear and resistance and is counterproductive to the aims of HIV/AIDS prevention and improved care and does not help control the epidemic.

Mandatory testing is also prohibitively costly on a wide scale and therefore is difficult to justify due to the narrow confines in which HIV is transmitted. There is no risk of acquiring or transmitting HIV between workers except for medical officers and police dealing with emergency accidents, and this risk is negligible if the proper precautions are taken.

A further concern with pre-employment testing, or testing for the purposes of training and promotion, is that testing can only determine a person's present HIV status. It cannot predict that a person will never contract HIV in the future, and a person could even conceivably be in the window period when tested. Especially in the context of Botswana where 30% of the entire population is HIV-

positive, it is not inconceivable that employers who attempt to screen their prospective employees for HIV will still end up with a high HIV prevalence in their workforce.

Key Principle:

Testing for HIV for the purposes of consideration for employment or promotion should not take place.

Testing for training can take place, if the length of the training and the cost of the investment is substantial enough to warrant the precaution. The scale on which cost/time would be weighed will be developed with input from international labour experts and local counterparts.

This should be discussed by the legislatures first.

Strategies

1. Voluntary testing should be encouraged (preferably outside the workplace) and counseling within the workplace should be made available for workers. The employer should provide pre- and post-test counseling services when a worker consents to undergo testing for the worker's benefit.
2. Employers may conduct anonymous unlinked testing on workers to determine the impact of HIV on the organization's future. In situations where the business is too small to allow for anonymous unlinked testing, companies could join forces (e.g. the Printing Industry) and test all their employees together to allow them to have a more specific idea of the impact that HIV will have on their future.
3. The public health rationale for the incorporation of human rights into the HIV response should be incorporated into workplace HIV policies to ensure the creation of a safe and empowering environment for HIV infected employees.
4. Universal precautions should be standard training for employees in higher risk jobs such as the medical profession and law

enforcement. Universal precautions should also be included in any other workplace training activities and access to gloves, first aid kits and other prevention paraphernalia should be readily available.

(This is supported by the ILO Code of Practice on HIV/AIDS sections 4.6, 7.6 and 8; the National HIV/AIDS Policy (2003 draft), sections 6.0 and 8.0; and the International Guidelines on HIV/AIDS and Human Rights, section 30(d)).

Principle Three: Confidentiality of Personal Information

Preamble

Maintaining strict confidentiality is essential in maintaining healthy working relations between employers and employees and also reduces the risk of stigma and discrimination. If an employee knows that his/her status will be kept strictly confidential, it will be easier for that employee to disclose his/her status and by doing so, it will be easier for the employer to adequately address the related issues that arise, such as sick leave and flexible working hours.

Privacy over health matters is a basic human right and is a fundamental principle of ethics in the medical practice. As HIV/AIDS is **not** a notifiable disease under the Public Health Act, then a person's status cannot be disclosed without his/her consent under ANY circumstances.

Employers have not been keeping the information on the HIV/AIDS status of workers strictly confidential. Medical information regarding some employees is, in some cases, easily accessible to other employees in the workplace.

The principle of shared confidentiality, as purported by the Botswana National Policy and the Medical Practitioners Act, whereby medical practitioners may divulge information to persons having close, regular contact with a patient without that patient's consent, is very open to being abused. There is no effective regulation to ensure that PLWHAs are protected from having their confidential matters

divulged without their consent. There is no definition of ‘close, regular contact’ and what persons would fall under this category. It is conceivable that this provision could be extended to include employers, further negating the constitutional right to privacy in Botswana.

Key Principle:

An employer should not disclose any information relating to the HIV status of any worker acquired in the course of duties without obtaining the written consent of the worker. Shared confidentiality should be restricted to those people to whom the PLWHA has agreed to disclose.

Strategies

1. All employers should have an HIV/AIDS policy which protects confidentiality of all personal information, including the HIV status of the employee.
2. The practice of shared confidentiality should be removed from public policy and the strictest confidentiality of PLWHAs should be maintained.
3. People should be encouraged to share their HIV status with those people who are in regular, close contact with them and they should be provided with counseling and support on the best way to approach this.

(This is supported by the ILO Code of Practice on HIV/AIDS, sections 4.7 and 5.2(g); and the International Guidelines on HIV/AIDS and Human Rights, section 30(d)).

Principle Four: Non-Discrimination of HIV Infected Workers

Preamble

The stigma attached to HIV/AIDS as a disease tends to undermine the human rights of people living with HIV/AIDS. Workers living with the virus are affected by discrimination in the workplace because of the stigma attached to HIV/AIDS. There is a need to reaffirm the rights not to be discriminated against in general, and in particular in the workplace.

Key Principle:

There shall be no discrimination based on the real or perceived HIV status of a worker or his or her family. Any prejudice with respect to a particular job, based on the inherent requirements of the job, shall not be deemed discrimination.

Strategies

1. Employers should develop and implement education programmes on HIV/AIDS at the workplace.
2. The Employment Act should provide for a special provision of non-discrimination based on state of health due to HIV/AIDS and other chronic illnesses.
3. There should be decisive sanctions or penalties in case of contraventions of non-discrimination.
4. The employer should not only reasonably accommodate workers living with HIV/AIDS but also create an environment conducive to allowing HIV infected workers to work as long as they are medically fit to work.

(This is supported by the ILO Code of Practice on HIV/AIDS, section 4.2, the International Guidelines on HIV/AIDS and Human Rights, section 30(d), the Botswana Public Service Code of Conduct on HIV/AIDS, and the National Policy on HIV/AIDS (2003 draft), section 8.0).

Principle Five: Protection of Vulnerable Groups

Preamble

The stigma regarding HIV/AIDS undermines prevention of the spread of the disease. There is a need to offer specific protection to some groups, which for a number of reasons are particularly vulnerable to the pandemic. Vulnerability refers to socioeconomic disempowerment, cultural context, and work situations that make workers susceptible to the risk of infection. This includes physical or mental conditions.

The affected groups are: (a) Women, (b) Medical Personnel, (c) Persons with Disabilities, (d) Uniformed Forces or Disciplinary Forces, (e) Mobile workers, and (f) Children³⁶

Key Principle:

The most effective policies and strategies should be applied to protect vulnerable people in order to reduce transmission of HIV/AIDS.

Strategies

1. Workplaces, which are prone to having accidents, should have access to medical services and other safety equipment like gloves and first aid kits.
2. Educational and counseling programmes need to be implemented in the workplace. In this case the employers should provide counseling services to employees.
3. Specific programmes, addressing factors which will increase the risk of infection, need to be developed by the employer in consultation or/and collaboration with workers' organizations.

³⁶ Children are included because the Employment Act stipulates that children over the age of 15 can work; yet international law still considers them children until they are 18.

4. Employers should ensure, so far as possible and as a priority consideration, that spouses are not separated for long periods of time because of working conditions.
5. Employers should institute gender sensitive policies at the workplace and develop programmes that encourage both men and women to question the unequal power balance in relationships and encourage wide debate on cultural issues that have a negative effect on the status of women.
6. Sexual harassment policies should be developed for the workplace.

(This is supported by the ILO Code of Practice on HIV/AIDS sections 6.3 and 9.8; the International Guidelines on HIV/AIDS and Human Rights, section 38; the National HIV/AIDS Policy (2003 draft), section 8.0).

Principle Six: Care and Support for HIV Infected Workers

Preamble

Workers infected with HIV do not receive benefits tailored to meet their needs as compared to workers suffering from other illnesses. Employers do not take responsibility to provide for a social security system and to formulate programmes that provide direct health care to workers suffering from HIV/AIDS. Employment benefits mean care and support services such as health care services, prevention programmes, provision of protective clothing, counseling and first aid kits.

Key Principle:

Employers should make reasonable efforts to make comprehensive, cost-effective and affordable care accessible to people living with HIV/AIDS in all workplaces including both the formal and informal sectors.

Strategies

1. Medical treatment for the worker, his/her spouse and children should be promoted. Where the worker is single, then he/she shall identify a next of kin or any close relations. There is a corresponding duty on the worker to take responsibility to educate his/her partner(s).
2. The employer should ensure that condoms are accessible in the workplace. In addition, the employer should facilitate treatment of opportunistic diseases and treatment with antiretroviral drugs.
3. Employers should make reasonable efforts to select the most beneficial insurance scheme for their employees. This should depend on the magnitude or size of the business.

(This is supported by the ILO Code of Practice on HIV/AIDS sections 4.10, 5.2(h) and 9 and the International Guidelines on HIV/AIDS and Human Rights, section 30(d)).

Principle Seven: Gender Equality and Empowerment

Preamble

Gender roles and gender relationships make women more vulnerable to infection with HIV. Women and girls are more likely to be victims of sexual violence and are not always able to negotiate safe sex practices, even with their husbands. Women are vulnerable to sexual harassment in the workplace, including sexual assault. Cultural practices, including the position of women as the sole caregiver in the family, further increases women's burdens in the context of HIV.

Key Principle:

Men and women should be given equal opportunity and equal chance for advancement in the sphere of employment. Sexual harassment should not be tolerated.

Strategies

1. The status of women in skills training and employment should be improved.
2. The employer should create conditions that eliminate customs and traditions that promote the unequal power balance between the sexes in the workplace.
3. Social partners should recognize that women have been marginalized and formulate educational programmes to strengthen women's confidence in the working world.
4. The employer should put in place gender sensitive policies, and all laws and policies that discriminate on the basis of gender should be reviewed, such as the law governing maternity leave and BDF employment policies.
5. Sexual harassment in employment should be formally prohibited and facilities to report cases should be provided.

(This is supported by the ILO Code of Practice on HIV/AIDS, sections 4.3 and 6.3; the International Guidelines on HIV/AIDS and Human Rights, section 38; the National HIV/AIDS Policy (2003 draft), section 8.0).

Principle Eight: Prevention of HIV at the Workplace

Preamble

Occupational transmission of HIV at the workplace is very rare, even in high-risk professions such as the medical profession or emergency health work. The biggest challenge for the workplace with regards to HIV/AIDS is not exposure at work, but ensuring a conducive working environment for those who are infected and affected while maintaining an acceptable level of efficiency and productivity. Employers need to ensure that employees are well informed about how to prevent accidental exposure and how to protect themselves in their life outside work.

Key Principle:

In a workplace where workers are at a higher risk of HIV infection or have regular contact with human blood *additional* medical services and safety items should be made available. In low risk workplaces, employers should provide information on how to prevent HIV outside of work.

Strategies

1. Universal precautions for HIV prevention should be taught as a standard procedure in all workplaces, and especially in those that are considered high risk.
2. The employer should ensure access to safety equipment like surgical gloves and first aid kits in the workplace.
3. The employer should ensure access to condoms in the workplace.
4. Information should be available at the workplace on how to manage the impact of HIV/AIDS. There should also be programmes available to teach people how to modify risky sexual behavior.
5. Counseling should be provided together with the promotion and distribution of condoms, and voluntary HIV testing should be encouraged.
6. The government should put in place an education programme that gives priority to HIV/AIDS control and prevention, and this should be adopted by the stakeholders.

(This is supported by the ILO Code of Practice on HIV/AIDS sections 4.9, 5.2(c), 6.1, and 6.2; the International Guidelines on HIV/AIDS and Human Rights, section 30(d); and the National Policy on HIV/AIDS (2003 draft) , section 8.0).

General Recommendations for HIV/AIDS Policy With Regards to Employment

1. The Government of Botswana should expand the scope of the anti-discrimination clause of ILO Convention No. 111, article 1, paragraph 1(b), to include HIV status and other disabilities as prohibited grounds for discrimination.
2. The Government of Botswana should sign and ratify the Convention on Economic, Social and Cultural Rights and incorporate second and third generation rights into the Constitution.
3. The Government of Botswana should sign and ratify all of the relevant ILO conventions (i.e. C.158, C.159, C.155, C.166).
4. There should be no disclosure/shared confidentiality of another person's HIV status within the workplace unless required by any other law.
5. Domestic Workers and Farm Workers should be included among vulnerable groups. There should be continued efforts to educate workers and employers about their rights and responsibilities.
6. The rights of children should be protected in the workplace and the age of work should be reviewed along with other legislation in Botswana and made consistent with other pieces of national and international law.
7. Surgical gloves and condoms should be made standard issue in all private sector and public sector workplaces.
8. Institutional mechanisms for monitoring standards should be strengthened through the Ministry of Labour and Home Affairs, Staff Associations, and Trade Unions.
9. Recognising the government's commitment to providing antiretroviral treatment and the need to make this programme sustainable, cost sharing between employers and workers should be introduced with regards to medical aid schemes and the treatment of HIV.

10. A contributory fund should be established to facilitate medical aid schemes, and workers should be encouraged to join medical aid schemes.

11. There should be provisions for counseling services within each company or through established service providers.

12. Workers should be encouraged to undergo voluntary testing and counseling, and the government should provide facilities for this.

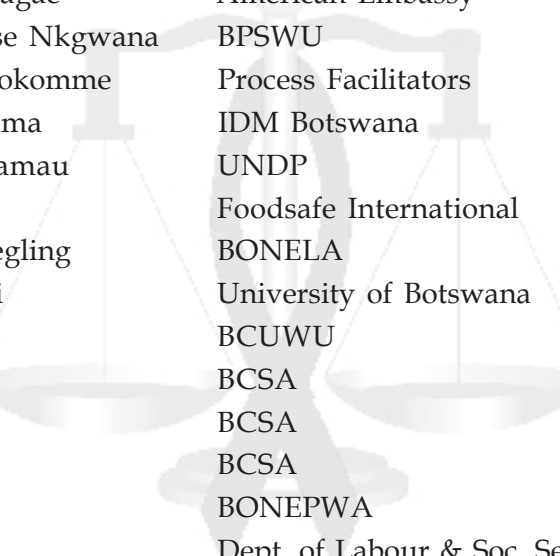
13. There is a need by the employer to emphasize the issue of social security, which includes more than medical aid or free health care.



Appendix One

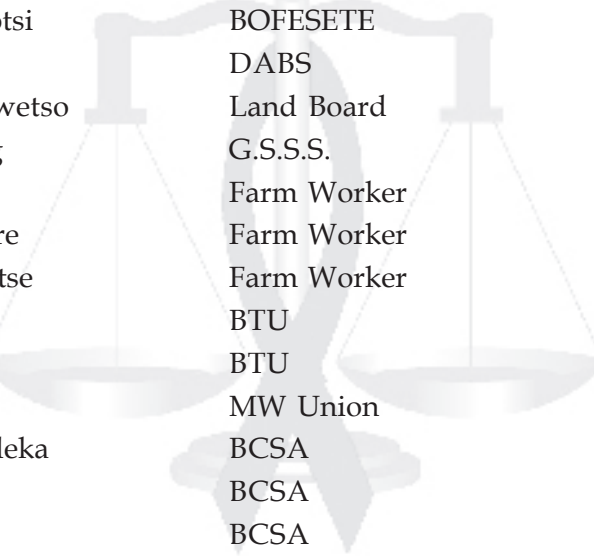
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Appendix Two

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BONELA



The Botswana Network on Ethics, Law and HIV/AIDS

is a non-governmental organization committed to integrating an ethical, legal, and human rights approach into Botswana's response to the HIV/AIDS pandemic.

Through training and education, research, advocacy and litigation, BONELA strives to promote the destigmatisation of HIV/AIDS and to prevent discrimination against those who are infected. In so doing, we hope to create an enabling and just environment for those either infected or affected by HIV/AIDS.

