



JOASA

JUDICIAL OFFICER'S ASSOCIATION OF SOUTH AFRICA



JOASA GENDER COMMITTEE REPORT 2009

HIV WORKSHOP HELD ON 6 – 8 MARCH 2009

FREE STATE PROVINCE- BLOEMFONTEIN

The workshop was hosted by the Centre for the Study of Aids (CSA) based at the University of Pretoria in association with JHPIEGO.

The workshop started on the Friday 6th March at 16h30 with registration, everyone introducing themselves and the workshop's objectives and participant's expectations were shared with each other.

On Saturday, the morning discussion was done by Jason Wessenaar, who is the Project Director- Siyazi Counselling and Testing Project of JHPIEGO.

He discussed the basic facts of HIV and AIDS namely modes of transmission; HIV distinguished from AIDS; risk and likelihood of transmission; specific vulnerabilities to women; increased susceptibility to HIV during rape, anal sex etc. He also discussed HIV testing and counseling of JHPIEGO; the experience of stigma and understanding the basics of stigma. With regards to the stigma the following were discussed: the social history of stigma and AIDS; multiple epidemics; impacts of race, class, sex, sexuality and gender; the roots and reasons for the stigma, internalized stigma and specific vulnerabilities.

The afternoon session was done by Nyasha Chingore, who is the Project Manager for the training of judicial and court officials on HIV and AIDS, human rights and the law project at the CSA, University of Pretoria. She discussed HIV/AIDS and human rights and the SA Bill of Rights. Which included the legal context at the global level (UN): binding treaties and non-binding standards and guidelines; at the regional level (AU); at sub-regional level (SADC) and the domestic level: the Constitution. The role of international law at the domestic level; other sources of law; policy and guidelines; most recent cases Hoffmann V SAA 2000(11) BCLR 1211 (C); Jansen Van Vuuren v Kruger 1993 (4) SA 842 (A); Haindongo Nghidipohamba Nanditume v Minister of Defence 2000 No LC 24/98.

Sunday morning session was also discussed by Nyasha Chingore and were the following discussed:

- HIV/AIDS and judicial contexts;
 - Bail: role of HIV and AIDS in pre-trial detention;
 - Rape: access to post-exposure prophylaxis, mandatory testing of rape suspects;
 - Sentence: the role of HIV status or AIDS in sentencing, sentencing of HIV positive-perpetrators, conditions for HIV positive persons, other inmates in prison. (S V Magida 2005 (2) SACR 591 (SCA); S v C 1996 SACR 503(T); S v Cloete 1995 (1) SACR 367 (W); S v Mahachi 1993 (2) SACR 36 (Z); Mnguni v Minister of Correctional Services and Others 2005 (12) BCLR 1187 (CC); Chauke v S (1997) JOL 1270 (T)
 - Family Law context: role of HIV in marriage, HIV and adoption, domestic violence applications
 - Law of delict: defamations (stigma, hate speech); delictual claim for damages

- HIV and the criminal justice setting: The role of criminal law in combating HIV and AIDS; offences by an HIV positive person: possible common law offences such as assault, assault with the intent to grievous bodily harm, rape attempted murder, culpable homicide, and murder. Offences against an HIV positive person such as assault, crimen injuria; relationship with hate crimes, especially against gays and lesbians.

CARMEN PARKS

CHAIRPERSON OF THE GENDER COMMITTEE