

APPENDIX B

SOUTH AFRICAN DEVELOPMENT COMMUNITY (SADC) CODE ON HIV/AIDS AND EMPLOYMENT

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The Southern African Development Community (SADC) was established by a Treaty signed by 10 Southern African countries in 1992. SADC is an inter-governmental partnership – like the European Union (EU) or the Association of South East Asian Nations (ASEAN). It is attempting to “achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration.” (SADC Treaty, Article 5). In 1998 its members are: Angola; Botswana; Democratic Republic of Congo; Lesotho; Malawi; Mauritius; Mozambique; Namibia; South Africa; Seychelles; Swaziland; Tanzania; Zambia; Zimbabwe.

In 1994 a process was started by a group of NGO’s and trade unions in South Africa and Zimbabwe to try and persuade SADC to develop a regional “Code of Best Practice around AIDS and Employment”. In 1997 the Code that is reprinted in this pamphlet was adopted by the SADC Council. It is now an official policy of the region and it is recommended that SADC’s 14 member states find ways to incorporate the Code’s provisions into legislation.

The SADC region is severely affected by the AIDS epidemic. The purpose of the Code is to guide states on the most effective and humane ways to respond to issues of HIV and AIDS in the workplace.

CODE ON HIV/AIDS AND EMPLOYMENT IN SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

GENERAL STATEMENT

Human Immunodeficiency Virus (HIV) infection and the Acquired Immune Deficiency Syndrome (AIDS) in the countries of the Southern African Development Community (SADC) (and globally) is a major health problem with employment, economic and human rights implications. As one response to this problem, the SADC Employment and Labour Sector has established this code on industrial relations standards on HIV/AIDS, the “Code on AIDS and Employment” (“the code”). It should be noted that the provisions of this code apply only to workplaces and cannot and should not be construed as applying to other areas of law such as national immigration laws, policies and related administrative procedures.

POLICY PRINCIPLES

The same ethical principles that govern all health/medical conditions in the employment context apply equally to HIV/AIDS. However, the gravity and impact of the HIV/AIDS epidemic and the potential for discrimination, create the need for a specific code on HIV/AIDS and employment. At the same time, given the increased risk of spread of the disease under conditions of economic insecurity, non-discriminatory approaches enable economic and public health management. The code will aim to ensure non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.

The regional nature and implications of the epidemic and the desire to harmonise national standards in dealing with HIV/AIDS motivate this regional code. This code aims to ensure that SADC members states develop tripartite national codes on AIDS and Employment that shall be reflected in law. It presents guiding principles for, and components of, these national codes.

The code on AIDS and Employment is based on the fundamental principles of human rights and patient rights. WHO/ILO and regional standards and guidelines, medical and occupational health ethical principles, sound epidemiological data, prudent business practice and a humane and compassionate attitude to individuals. The approach aims to achieve a balance in protecting the rights of all parties, including those with and without HIV, employers, employees, state and

others. This will include obtaining a balance between rights and responsibilities and between individual protection and co-operation between parties. Employees with HIV should be treated the same as any other employee. Employees with HIV related illness, including AIDS, should be treated the same as any other employee with a life-threatening illness.

In its scope, the code should:

- (a) Cover all employees and prospective employees.
- (b) Cover all workplaces and contracts of employment.
- (c) Cover the specific policy components detailed below, viz: job access, workplace testing, confidentiality, job placement, job status, job security, occupational benefits, training, risk reduction, first aid, workers compensation, education and awareness, prevention programmes, managing illness, protection against victimisation, grievance handling, information, monitoring and review.

SADC member states should ensure that interactions between them are consistent with the principles and policy components of this code and that they share and disseminate information to enable an effective and planned response to the epidemic.

Policy development and implementation is a dynamic process so that the code on AIDS and employment should be:

- (a) communicated to all concerned.
- (b) routinely reviewed in the light of epidemiological and scientific information.
- (c) monitored for its successful implementation and evaluated for its effectiveness.

POLICY COMPONENTS

1. EDUCATION, AWARENESS AND PREVENTION PROGRAMMES

- 1.1 Information, education and prevention programmes should be developed jointly by employers and employees and should be accessible to all in the workplace. Education on HIV/AIDS should, where possible, incorporate employees' families.

1.2 Essential components of prevention programmes are information provision, education, prevention and management of STD's, condom promotion and distribution and counselling on high risk behaviour. Workplace AIDS programmes should co-operate with and have access to resources of National Aids Programmes.

2. **JOB ACCESS**

There should be no direct or indirect pre-employment test for HIV. Employees should be given the normal medical tests of current fitness for work and these tests should not include testing for HIV. Indirect screening methods such as questions in verbal or written form inquiring about previous HIV tests and/or questions related to the assessment of risk behaviour should not be permitted.

3. **WORKPLACE TESTING AND CONFIDENTIALITY**

3.1 There should be no compulsory workplace testing for HIV. Voluntary testing for HIV on the request of the employee should be done by a suitably qualified person in a health facility with the informed consent of the employee in accordance with normal medical ethical rules and with pre- and post-test counseling.

3.2 Persons with HIV or AIDS should have the legal right to confidentiality about their HIV status in any aspect of their employment. An employee is under no obligation to inform an employer of his/her HIV/AIDS status. Information regarding the HIV status of an employee should not be disclosed without the employee's written consent.

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

4. **JOB STATUS**

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

5. HIV TESTING AND TRAINING

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

6. MANAGING ILLNESS AND JOB SECURITY

6.1 No employee should be dismissed merely on the basis of HIV status, nor should HIV status influence retrenchment procedures.

6.2 Employees with HIV related illness should have access to medical treatment and should be entitled, without discrimination, to agreed existing sick leave provisions.

6.3 HIV infected employees should continue to work under normal conditions in their current employment for as long as they are medically fit to do so. When on medical grounds they cannot continue with normal employment, efforts should be made to offer them alternative employment without prejudice to their benefits. When the employee becomes too ill to perform agreed functions, the standard benefits and conditions and standard procedures for termination of service for comparable life-threatening conditions should apply without discrimination.

7. OCCUPATIONAL BENEFITS

7.1 Government, employers and employee representatives should ensure that occupational benefits are non-discriminatory and sustainable and provide support to all employees including those with HIV infection. Such occupational benefit schemes should make efforts to protect the rights and benefits of the dependents of deceased and retired employees.

7.2 Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used by the employer or any other party to affect any other aspect of the employment contract or relationship.

7.3 Medical schemes and health benefits linked to employment should be non-discriminatory. Private and public health financing mechanisms should provide standard benefits to all employees regardless of their HIV status.

7.4 Counselling and advisory services should be made available to inform all employees on their rights and benefits from medical aid, life insurance, pension and social security funds. This should include information in intended changes to the structure, benefits and premiums to these funds.

8. RISK MANAGEMENT, FIRST AID AND COMPENSATION

8.1 Where there may be an occupational risk of acquiring or transmitting HIV infection, appropriate precautionary measures should be taken to reduce such risk, including clear and accurate information and training on the hazards and procedures for safe work.

8.2 Employees who contract HIV infection during the course of their employment should follow standard compensation procedures and receive standard compensation benefits.

8.3 Under conditions where people move for work, government and organisations should lift restrictions to enable them to move with their families and dependents.

8.4 People who are in an occupation that requires routine travel in the course of their duties, should be provided with the means to minimise the risk of infection including information, condoms and adequate accommodation.

9. PROTECTION AGAINST VICTIMISATION

9.1 Persons affected by, or believed to be affected by, HIV or AIDS should be protected from stigmatisation and discrimination by co-workers, employers or clients. Information and education are essential to maintain the climate of mutual understanding necessary to ensure this protection.

9.2 Where employers and employees agree that there has been adequate information and education and provision for safe work, then disciplinary procedures should apply to persons who refuse to work with an employee with HIV/AIDS.

10. GRIEVANCE HANDLING

Standard grievance handling procedures in organisations, in labour and civil law, that apply to all workers should apply to HIV related grievances. Personnel dealing with HIV related griev-

ances should protect the confidentiality of the employee's medical information.

11. INFORMATION

Government should collect, compile and analyse data on HIV/AIDS, sexually transmitted diseases and tuberculosis and make it available in the public domain. SADC member states should co-operate in making available national data for monitoring and planning an effective response to the regional human resource, economic and social impact of the AIDS epidemic.

12. MONITORING AND REVIEW

Responsibility for monitoring and review of the code and its implementation should lie with the parties to the tripartite at national and regional level and with the SADC Employment and Labour Sector.