

ENGLISH



ARASA
AIDS & Rights
Alliance
for Southern Africa

Proposed Code
for the Southern
African Development
Community (SADC):

**URGENT
MEASURES
NEEDED to
PROMOTE the
EQUALITY
of WOMEN
and the
REDUCTION
of WOMEN'S
RISK of HIV
INFECTION**

The first drafts of the **Code** were formulated at the – SAT/AIDS Consortium/AIDS Law Project *Advocacy Training Workshop* held in February 2003.

The following organisations participated –

Malawi:

Youth-Net and Counselling (YONECO); Women's Voice; Foundation for Community Support Services (FOCUS)

Mozambique:

RENSIDA, Campaign against Child Abuse

Namibia:

AIDS Law Unit

South Africa:

Sinelungelo Children's Project (SCP); Sakhisizwe Support Group; He-tic; AIDS Consortium; Youth Power Organisation

Swaziland:

Women and Law in Southern Africa (WLSA)

Tanzania:

SHDEPHA+; Faraja Trust Fund; Tanzania Media Women's Association (TAMWA); Tanzania Gender Networking Programme (TGNP)

Zambia:

Copperbelt Health Education Project (CHEP); Churches Health Association of Zambia (CHAZ); Zambia AIDS Law, Research & Advocacy Network (ZARAN) and Kara Counselling & Training Trust

Zimbabwe:

Musasa Project; The Centre; Zimbabwe AIDS Network (ZAN); SAfAIDS and Southern Africa AIDS Training Programme (SAT)

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ALIGNING HIV/AIDS and Human Rights

The **Code** was then further developed by Collette Campher (Namibia), Lomcebo Dlamini (Swaziland) and Marlise Richter (South Africa) for the AIDS & Rights Alliance for Southern Africa (ARASA)

- 🎗 March 2004
- 🎗 Design & illustration by Ellen Papciak-Rose of Soweto Spaza cc
- 🎗 The material contained in this booklet can be copied and distributed. Please acknowledge original source.

This booklet is also available in Portuguese.

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Introduction

The draft '**Code on the equality of women and the reduction of risk of HIV infection**' that you will find in this booklet was written as a result of a resolution taken by members of the AIDS & Rights Alliance for Southern Africa (ARASA). ARASA was tasked with drawing up a **Code** that is similar to the 'SADC Code on HIV and Employment', but focused specifically on gender-related issues within the AIDS epidemic.

What is ARASA?

The AIDS & Rights Alliance for Southern Africa (ARASA) was established at a meeting held in Windhoek in October 2002 by organisations working within the HIV/AIDS and human rights field in the Southern African Development Community (SADC) region. At this meeting, participants decided to establish a regional alliance of organisations working on HIV/AIDS and human rights to:

- ⌘ Facilitate sharing of information, materials and expertise between members;
- ⌘ Act as a regional alert network to respond to human rights infringements in the region;
- ⌘ Organise and facilitate training opportunities on HIV/AIDS and human rights;
- ⌘ Disseminate information on regional developments on HIV/AIDS and human rights; and
- ⌘ Organise annual meetings on HIV/AIDS and human rights in the region.

WHY is a 'Code on the equality of women and the reduction of risk of HIV infection' IMPORTANT?

The links between HIV/AIDS and gender, and particularly how HIV/AIDS affects women differently from men, have not received sufficient attention by governments or civil society in Southern Africa. Despite the fact that many people may accept that women are more vulnerable to contracting HIV because of their biological make-up and that this vulnerability is increased because of women's social status in society, very little has been done to deal effectively with gender inequality, gender-based violence and women's empowerment.

Most SADC governments have signed or ratified the International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). All have signed the UNGASS Declaration. But within our countries and communities measures are still not being implemented to tackle women's inequality.

The AIDS epidemic has taught us that it is vital to address gender imbalances and power inequalities as part of a comprehensive approach to HIV/AIDS. A '**Code on the equality of women and the reduction of risk of HIV infection**' can be a useful instrument to highlight the most important and common gender issues in the region, and

propose strategies on how to deal with these issues in an urgent and comprehensive manner. Areas that should receive particular attention include:

-  Violence against women and girls
-  Women's lower socio-economic status
-  Laws and customs that discriminate against women and girls
-  Women's sexual and reproductive rights
-  Women as caregivers
-  Women's lack of access to treatment

The proposed **Code** should be an instrument that can be used by the community, traditional leaders, civil society as well as policy- and law-makers to design and implement gender-sensitive programmes, participate in interventions that will address women's vulnerability and to contribute to the prevention and treatment of HIV/AIDS in Southern Africa. By working together as a region we will be better able to address gender inequalities and engage with the epidemic in a constructive way.

What should I do about the Code?

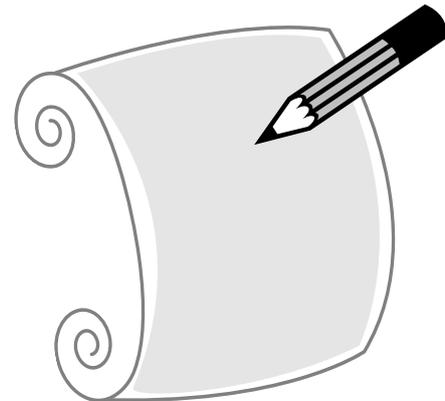
This **Code** should guide communities, organisations, and governments on steps that must be taken to reduce women's risk of HIV and the burden of care and illness that is placed on women. These steps can be taken immediately.

We hope that with popular support for this **Code** it will be possible to pressure SADC to adopt it. However the draft **Code** has not yet been passed through the SADC structures and is therefore not yet binding on SADC governments. Your organisation is invited to send comments on the draft **Code** to ARASA to the following address by 1 June 2004:

ARASA - AIDS Law Unit - Legal Assistance Centre
P.O. Box 604, Windhoek, Namibia
Tel: (264) (61) 223-356, Fax: (264) (61) 227-675
E-mail: arasa@lac.org.na

Ask your organisation to support the passing of the **Code**. If so, **please send a letter of support to ARASA** at the above address. Also send a letter supporting the passing of the **Code** to the SADC Gender Unit at:

Ms Christine Warioba
SADC Gender Desk Unit
Southern African Development Community
Private Bag 0095
Gaborone, Botswana
E-mail: CWarioba@sadc.int



'Code on the equality of women and the reduction of risk of HIV infection'

A. General statement

The Human Immuno-deficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) pose a risk of enormous proportions to the health and wellbeing of all people of the Southern African Development Community (SADC). The high HIV prevalence rates and the extraordinary levels of gender-based violence in the region reinforce and deepen existing inequalities between women and men. While gender equality should be a priority area in all programmes and policies across the SADC region, the AIDS epidemic is lending urgency to this demand.

Within this context, the need for a campaign to promote the rights of women was identified and thus gave rise to the '**Code on the equality of women and the reduction of risk of HIV infection**'.

B. Objectives of the Code

- 
- ⦿ To promote equality between men and women;
 - ⦿ To show that women's greater vulnerability to the effects of HIV and AIDS is as a result of unequal treatment of women in law, custom, the economy and the household;
 - ⦿ To give guidance to law- and policy-makers on policies, mechanisms, and expertise needed to reduce women and girls' risk of HIV;
 - ⦿ To promote the review and change of customary and religious laws and practices that maintain and retain gender inequalities, while bringing them in line with international and regional human rights principles;
 - ⦿ To promote the formulation and implementation of policy, laws and programmes that give effect to gender equality; and
 - ⦿ To ensure that the biological, social and cultural factors that increase the risk of women and girls to contract HIV are understood by the community, and are addressed as soon as possible.

C. Policy principles

In drawing up this **Code**, we, the SADC members of state acknowledge the principles and values contained in:

- ⦿ The UN Convention and the Elimination of All Forms of Discrimination Against Women (CEDAW);
- ⦿ The Beijing Platform of Action;
- ⦿ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- ⦿ Global Coalition on Women and AIDS.

And reiterate commitments we made in:

- ⦿ The SADC Declaration on Gender and Development;
- ⦿ The Code on HIV/AIDS and Employment in SADC;
- ⦿ The UNGASS Declaration of Commitment;
- ⦿ The Abuja Declaration on HIV/AIDS, Tuberculosis and other related infectious diseases;
- ⦿ The Maseru Declaration on the Fight against HIV/AIDS in the SADC Region.

D. Areas of concern

We, the citizens of countries of SADC, are concerned about the high vulnerability of women and girls to HIV and AIDS and the effect this has on our countries and communities. We also recognise that this vulnerability is made worse by the unresolved inequalities between the sexes within the Southern African region.

In particular we identify the following issues as areas of concern:

1. Gender-based violence

There is a high level of gender-based violence in the SADC region – a large number of women live under constant threat of rape, sexual assault and domestic violence. This form of violence is often not punished because of various reasons, amongst which is the general perception and acceptance of women's subordinate status. Many of our institutions still condone this behaviour as being acceptable – for example, wife chastisement is seen as “culture” and many laws in the region do not recognise marital rape as a crime. Because of this the use of violence against women and girl children continues and is perpetuated.

The majority of cases of violence against women occur in intimate relationships. The psychological and physical trauma of violence is made even worse by the increased risk of contracting HIV. Yet in many instances, immediate police assistance, medical attention, ongoing health care, counselling and support services for survivors of sexual violence (especially the provision of anti-retroviral medicines as post-exposure prophylaxis) are not available or are inaccessible.

The failure to prevent and campaign against gender-based violence, particularly sexual violence against women, contributes both to the trauma of the survivor and to the spread of the HIV epidemic.

2. Lower socio-economic status

For millions of women in SADC “traditional” gender roles confer less social status and power to women. Women are placed in subordinate roles both within the family and in public.

As a result of this inequality, women find it difficult, and in some cases impossible, to access and control resources such as land, credit, finance, education and information. This places women in an inferior socio-economic position to men and the effect is that many women are not in a position to maintain themselves and their families independently of their male relatives or partners.

The financial/economic dependency that thus exists increases women’s risk of HIV infection. It makes it difficult for many women to insist on safer sexual practices and to generally maintain their sexual and reproductive health by accessing treatment where necessary. In addition, women’s lower economic status places many of them within the home and in the gendered role where there is an expectation that they will take care of others. This often happens at the expense of women neglecting their own wellbeing in the process.

3. Discriminatory laws and customs

Many laws and customary practices in Southern Africa give rise to and entrench women’s subordinate legal, social and economic status. Examples include, but are not restricted to, the perpetual minority status for adult women, wife inheritance, polygyny, virginity testing and female genital mutilation.

Many countries in SADC have not yet formulated or enacted laws that provide specifically for the protection of women and the advancement of gender equality. Nor have current policies of gender mainstreaming provided for the actual economic and social empowerment of women.

Many judicial institutions and laws are insensitive to and do not take into account current gender issues in their operation. As a result of this failure of legal and customary institutions to address the needs of women and girls, many women do not know their rights, and even where they do, cannot access legal assistance. The inability of the law to respond to the needs and experiences of women in this regard also increases their vulnerability.

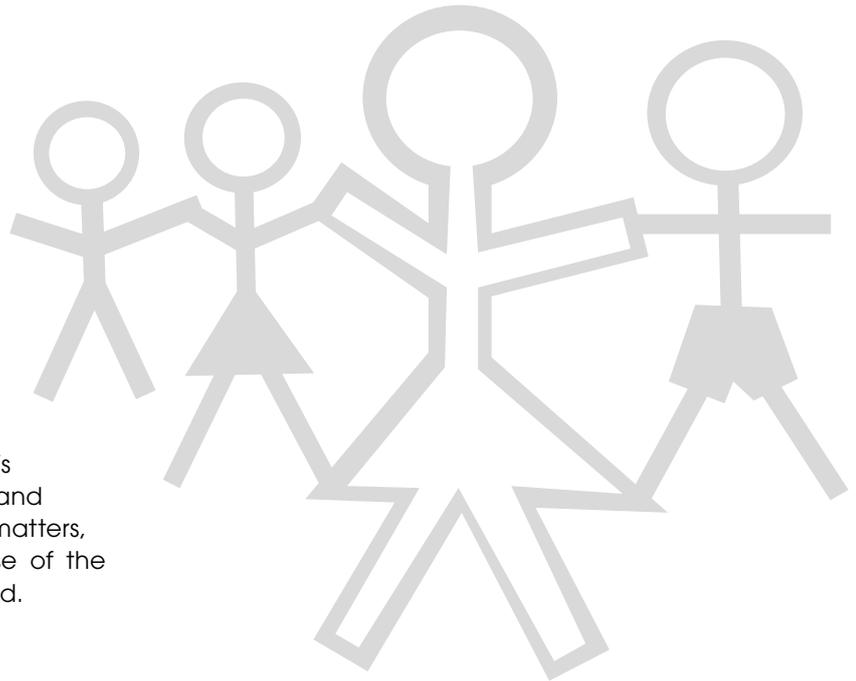
4. Sexual and reproductive rights

Throughout much of SADC the position of women in society and within families is such that they are expected to fulfil certain roles such as:

- ⌘ bearing children
- ⌘ being the primary caregivers to children and men
- ⌘ taking responsibility for issues relating to sexual and reproductive health

However, at the same time, many women have no decision-making power over when and how they fulfil these roles. This compromises a woman's right to bodily integrity and autonomy and impacts negatively on her ability to negotiate safer sexual practices, making her vulnerable to the effects of HIV and AIDS. In addition, the lack of access to adequate health care and medicines and the cultural expectations attached to breastfeeding practices undermine women's capacity to prevent the transmission of HIV to their newly born babies.

As a result of the combination of women's biological vulnerability to infection with HIV and their gendered role in sexual and reproductive matters, the mistaken belief that women are the cause of the continued spread of the epidemic is perpetuated.



5. Women as caregivers

Women are generally responsible for looking after the psychological and physical wellbeing of children, spouses and members of the extended family.

Inequitable economic policies and the failure of governments to plan and allocate state resources and support structures to cope with the pressures exerted by the AIDS epidemic, have transferred much of the burden of care for the ill and dying from public health facilities to the home, and therefore mostly to women. Where women themselves fall sick or are overburdened, girl children are the first to be taken out of school to assist with additional household responsibilities. The demand of having to care for ill family members, in cases where little or no resources exist, often forces women and girl children to engage in risky sexual behaviour in order to obtain the means to support their families.

6. Lack of access to essential medicines and health services

Where access to treatment for HIV related opportunistic infections of HIV/AIDS or services that aid the prevention of HIV exist, a range of barriers, such as the cost of treatment, distances to health facilities, the cost or lack of transport to health facilities, lack of trust in health care systems and need for treatment literacy for users, prevent women from gaining access to proper medical examinations, tests, diagnosis, medication and treatment.

It is of particular concern that very few Southern African women can access anti-retroviral medication that would reduce the risk of mother-to-child transmission of HIV, as well as HIV transmission after rape. The same holds true for women with HIV/AIDS who would benefit from on-going Highly Active Anti-Retroviral Therapy (HAART). Women's information about the benefits of these interventions is severely limited and this prevents them from making informed decisions about their health and the health of their children (for example the lack of information on feeding alternatives for babies of mothers with HIV/AIDS).

It is important to ensure that as governments step up access to anti-retroviral treatment and treatment of opportunistic infections, that the best medicines possible in the circumstances are provided for, and that women and girl children are given equal access and not discriminated against either in the family or by governments.

E. The role of civil society

Civil society must play a more dynamic role in dealing with the effects of HIV/AIDS and campaigning for women's equality in the region. Some suggested programmes include, but are not limited to:

- ✚ Advocacy, both at local and regional level that seeks review and amendment of policies, legislation and practices that reinforce gender bias and inequalities and which results in women's increased vulnerability to HIV and AIDS;
- ✚ Lobbying for policy and laws that promote gender equality and respect for the rights of those living with and affected by HIV/AIDS;
- ✚ Advocacy on the provision of, and access to, affordable anti-retroviral treatment, treatment for opportunistic infections and, where necessary, access to dietary and food supplements;
- ✚ Conducting sensitisation, awareness campaigns and programmes on HIV/AIDS that pay proper attention to gender and the effects of harmful customary practices;
- ✚ Training of service delivery personnel in government and in community-based organisations and structures in order to sensitise them to issues relevant to their service in relation to gender and the cultural dynamics of HIV/AIDS.
- ✚ Provision of services such as counselling and legal advice and/or representation where necessary;
- ✚ Provision of support for programmes aimed at assisting orphaned and vulnerable children and child-headed households;
- ✚ Training of other relevant sectors, such as the media, that are in a position to promote practices that reduce women's risk and vulnerability to HIV/AIDS, dispel myths surrounding HIV/AIDS, reduce stigma and discrimination against those living with HIV/AIDS and to provide education on HIV/AIDS and human rights.

F. The role of traditional leaders

The majority of people in Southern Africa regard the maintenance and practice of culture and tradition as important. While it is true that culture and tradition play a central role in providing and maintaining a sense of identity, it also needs to be acknowledged that the continued practice of certain customs such as “wife inheritance” and other rituals associated with mourning for women, virginity testing and cleansing, forced marriages, as well as the perpetual minority status of women, increase women and girls’ vulnerability to contracting HIV and being disproportionately affected by HIV/AIDS.

In many communities, traditional leaders are highly respected and are regarded as the appropriate authorities for the enforcement of culture and tradition and therefore have a lot of influence and power. These leaders are thus ideally placed to provide education on HIV/AIDS issues and to raise awareness of the harmful effects of certain customary practices on women’s vulnerability to HIV/AIDS. Traditional leaders can therefore be involved in the following ways:

- ✘ Consultative involvement at the planning stage of HIV/AIDS awareness, educational and implementation programmes so that they can advise on their suitability and applicability;
- ✘ Informing the design of programmes specifically targeting and transforming harmful cultural practices;
- ✘ Endorsement and support of HIV/AIDS awareness and educational programmes in the community as well as ensuring access to community members;
- ✘ Express pronouncement on the detrimental effects of certain customary practices, discouraging them and calling for their transformation.

G. Policy components

Having identified **six key problem areas**, we believe that the SADC member states should urgently commit themselves to the following, and that these measures should be implemented by the time the SADC Heads of State meeting is held in 2005:

1. Gender-based violence

- 1 Enacting legislation that recognises and prohibits the various forms of gender based violence and provides for appropriate sanction for offenders;
- 2 Establishing mechanisms for the enforcement of legislation or interventions that facilitate women's access to justice delivery structures and/or legal advice and/or representation where they are under threat of gender based violence;
- 3 Establishing and implementing mechanisms to improve access to immediate medical and psychosomatic treatment of women who have experienced violations related to gender-based violence, particularly that which exposes them to contracting HIV;
- 4 Develop and ensure implementation of appropriate sensitisation and training programmes of personnel in the justice delivery and other structures/ institutions through which women who have experienced gender based violence must pass (from law enforcement officers, to medical personnel, to prosecutors and other judicial personnel) to take cognisance of the traumatic nature of this type of violation against women and girls particularly in the context of the HIV/AIDS pandemic;
- 5 Work together with civil society on national campaigns raising public awareness on gender-based violence and the harmful gender stereotypes that underlie it, and aim to promote their eradication.

2. Socio-economic status

- 1 To urgently review and amend laws and principles such as minority status that impede women's equal participation in the economic sphere and in turn prohibits them from independently accessing economic resources and benefits such as land, credit, ownership of property and inheritance rights;
- 2 To promote the equal rights of women and girls to opportunities to access education, skills training and employment opportunities in order to facilitate their self-empowerment and reduce potentially high risk behaviour due to dependency on men;
- 3 To recognise women's disproportionate experience of poverty and within programmes aimed at poverty reduction support efforts by women to economically empower themselves;
- 4 To work together with partners such as traditional and community leaders and as well as civil society to promote gender equality and the need to discontinue cultural practices that promote and/or perpetuate the subordination of women.

3. Discriminatory laws and practices

- 1 To urgently amend discriminatory policies and legislation bringing them into conformity with the principles of equality and non-discrimination between women and men;
- 2 To review national legal frameworks to assess whether they adequately take cognisance of the issues pertinent to HIV/AIDS such as principles of confidentiality, non-discrimination, protection in the workplace, etc. and incorporate such issues accordingly;
- 3 To urgently facilitate national, provincial and community dialogues to review customary laws and practices that promote gender inequality and increase women's and girls' vulnerability to contracting, as well as experiencing the adverse effects of HIV/AIDS;
- 4 Together with relevant partners to embark on continuous legal literacy campaigns to ensure that information regarding legal rights and the appropriate structures to approach for legal redress is disseminated as widely as possible, especially to women and girls, and particularly that which is related to such rights in relation to HIV.

4. Sexual and reproductive rights

- 1 To adopt appropriate legislative and other measures that recognise and protect women's rights to bodily integrity, autonomy and reproductive choice;
- 2 To urgently implement measures that provide information and counselling to women on sexual and reproductive issues, (including safer sex strategies), on their rights and how to enforce their rights;
- 3 To make female-controlled contraception and barrier methods widely and freely available to all women, including young women;
- 4 To urgently implement measures that assist women to gain access to adequate health care facilities, care and treatment.

5. Women as caregivers

- 1 To modify the social and cultural patterns of conduct of women and men, with the aim of achieving the elimination of gender prejudices and stereotypes and other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotyped roles for men and women;
- 2 To ensure equal access to institutions of learning to learners of both sexes and to reduce the rates of drop-out of girl children from schools;
- 3 To provide easy access to social grants and social assistance to people with disabilities, including assistance to people with HIV/AIDS who are not able to work anymore, as well as to caregivers of young children.

6. Access to essential medicines and health services

- 1 To enable women to access educational information and to make informed decisions that will ensure the health and wellbeing of themselves and those they care for. This includes information on preventing HIV-transmission, medicines that can treat AIDS-related illnesses and HAART;
- 2 Take all reasonable measures to ensure access to all the relevant interventions stated above;
- 3 Take legislative and executive action to ensure a sustainable supply of affordable essential medicines and diagnostic and monitoring tools necessary for the successful implementations of these interventions.

STOP HIV/AIDS DISCRIMINATION



aidslaw
project

KNOW
YOUR RIGHTS!

THIS BOOKLET CONTAINS A PROPOSED 'Code on the equality of women and the reduction of risk of HIV infection'.

The AIDS epidemic has taught us that it is vital to address gender imbalances and power inequalities as part of a comprehensive approach to HIV/AIDS. A '**Code on the equality of women and the reduction of risk of HIV infection**' can be a useful instrument to highlight the most important and common gender issues in the Southern Africa region, and propose strategies on how to deal with these issues in a comprehensive manner. The **Code** focuses on the following areas:



- ⌘ Violence against women and girls
- ⌘ Women's lower socio-economic Status
- ⌘ Laws and customs that discriminate against women and girls
- ⌘ Women's sexual and reproductive rights
- ⌘ Women as caregivers
- ⌘ Women's lack of access to treatment

It is envisioned that the **Code** will be an instrument that can be used by members of the community, traditional leaders, civil society as well as policy- and law-makers to design and implement gender-sensitive programmes, participate in interventions that will address women's vulnerability and to contribute to the improvement of the HIV/AIDS situation in Southern Africa.

Funding for this Project was provided by Development Co-operation Ireland

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