

Module 12

Legal Systems &

Legal Remedies

Introduction

- This module covers the legal remedies or solutions available to people when their rights have been abused - in other words, how people can use the law to protect their rights. This module has been integrated with the module on the Introduction to the Legal System.
- Have you read the section on Using this Trainer's Manual?

REMEMBER:

- You can find words in **bold** in the Key Words section in the Resource Manual.
- TM stands for Trainer's Manual.
- RM stands for Resource Manual.

TIME IT WILL TAKE

4 hours

Preparation

- Plan the workshop. Remember:
 - You do not have to do all the sessions in the module. You can do parts of a session or leave the session out altogether
 - Decide which sessions, or parts of sessions, are most *important* for your participants and adapt the times for those sessions to fit with the times you have available for the workshop.
 - If participants are not getting a copy of the Resource Manual, make copies of the chapters in the Resource Manual on The Rights of Lesbians and Gay Men as well as Future Planning and The Constitution and Bill of Rights
 - If *participants* are not getting a copy of the Resource Manual, make copies of the chapters dealing with *The Rights of Women, Customary Law and Criminal Law and Procedure*
- The basic materials and equipment you will need for the workshop include overhead projector, newsprint, kokis, flipchart, prestick, name-stickers, refreshments, chairs, tables. If you have to make copies of cards (case-studies, pictures etc) for the workshop, make sure you keep the originals in your file.
- The additional materials for each session are written at the top of each session.
- Read through all the sessions a day or two before the workshop. Make sure you have all the correct materials for the numbers of people who will attend the workshop. Also read through the appropriate chapters in the RM to familiarise yourself with the content.

Module 12

Legal Systems & Legal Remedies

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SESSION	METHOD	TIME	PAGE
1: Welcome & introduction	Select your own	5 min	247
2: Group Introductions & Expectations	Select your own	30 min	247
3: Groundrules	Select your own	5 min	247
4: Explaining the outline of the Workshop	Input	5 min	247
5: What is the law?	Pairs Overhead	30 mins	248 (249)
6a: Understanding the courts & legal remedies	Small Groups Overhead Cards	1 hr 30 mins	250 (252) (253-255)
TEA BREAK			
6b: Understanding the courts & legal remedies	Report Back/ Big Group	1 hour	Cont...
7: Reflection on the Workshop	Input	10 mins	256
References & Resources			257
TOTAL TIME		4 HOURS	

1-3: Introductions, expectations, groundrules

TIME IT WILL TAKE

40 minutes



Trainer's notes

- Only do these sessions if this module is run as a separate workshop.
- There are guidelines on running these sessions in the Trainer's Manual.

4. Explaining the outline of the workshop

TIME IT WILL TAKE

5 minutes



Trainer's notes

- Have the outline of the workshop ready on newsprint. Briefly go through the outline with participants.

5: What is the law?

PURPOSE OF THE SESSION

- To build participants' understanding of what the law is and why people follow the law.

TIME IT WILL TAKE

30 minutes

PROCEDURE:

Step 1:

- Show the overhead transparency 38 - *The Law and Its Sources* on page 249 of the TM or write it up on a flipchart or board
- Give an input into the legal system using the overhead to help you

Step 2:

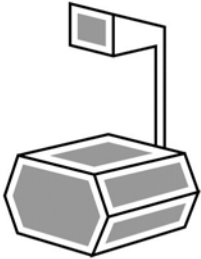
- Ask participants to work in pairs and to discuss these questions for a few minutes:
 - . Do you feel that people in our country play a role in helping create the law?
 - . How can people contribute to the process of making laws?
 - . Can you name some international organisations that influence international law and therefore our law?
 - . Is it important that the South African legal system takes notice of international and foreign laws?
- Get feedback from all the pairs and have a big group discussion.
- Use the guidelines below to guide the discussion.



Trainer's notes

Guidelines for discussion

- Form or join lobby groups to make your voice heard if you feel strongly about something;
- Encourage other people to join your lobby group
- Organise marches or demonstrations to make your voices heard
- Organise petitions to be sent to your local political representatives
- Read newspapers, go to community meetings, learn about issues that affect you;
- Write letters to newspapers
- Attend parliamentary committee meetings, or organise someone from your organisation or lobby group to attend these
- Make your local councillors, and provincial and national Member of Parliament aware of how you and your group feel.
- International organisations like the United Nations are powerful entities when it comes to dealing with violations of human rights around the world. The World Trade Organisation decides on some of the key international rules and laws that affect trade between countries.
- Before the South African government can ratify an international agreement, and make it binding on the country, the agreement must be approved by the National Assembly and the National Council of Provinces and must not be in conflict with the Bill of Rights in the Constitution.



Overhead 38: The law & its sources

THE LAW

- THE LAW is a set of rules which govern the way people behave
- In a DEMOCRACY the public help to make the law and the law brings order to society by determining boundaries of behaviour
- CONSTITUTIONAL law tells you how the State is organised and what your human rights are
- CRIMINAL law sets out how the State expects you to behave in society
- CIVIL law sets out your rights and duties in private relationships with other people

THE SOURCES OF LAW

• STATUTE LAW

This is written law, made by Parliament.

• COMMON LAW

This is inherited law from the Roman Dutch laws and English laws. Many of the general principles of law come from the common law.

• CUSTOMARY LAW

This is law that develops from customs of a community. Customs only become law when they are: generally known by the community and followed by everyone in the community and are enforced in some way.

• INTERNATIONAL LAW

This law is made up of international standards, rules and principles, which are binding on States when they interact with each other and that reflect the need for co-operation between national governments. The South African Constitution says that international law *must* be considered when interpreting the Bill of Rights.

• FOREIGN LAW

These are judgements and statutes from other countries around the world, which are courts *may* consider when deciding similar cases in this country.

6: Understanding the courts & legal remedies

PURPOSE OF THE SESSION

- To make participants aware of the different courts
- To build participant's understanding of what legal remedies (including alternative dispute resolution methods) are available to people in situations where they believe their rights have been abused.

TIME IT WILL TAKE

2.5 hours

MATERIALS

- Copies of the Cards 15 - Legal Remedies Cards on pages 253-255 of the TM (one card per group). Cut these out.
- Make an overhead transparency 39 on Courts & Commissions on page 252 of the TM or write up the overhead on the white board or flipchart
- Newsprint, kokis, prestik.

PROCEDURE

Step 1:

- Make an overhead transparency of Courts and Commissions
- Give an input into the different courts and what legal remedies are available in each court
- Use the transparency to assist your input

Step 2:

- Divide the big group into 6 small groups.
- Give each group a Legal Remedies Card
- Give each group newsprint sheets, kokis, prestik
- Ask groups to read the cards and do the tasks
- Note: Give groups 60 minutes to prepare the exercise.

Step 3:

- Ask each group to do the report back in front of the big group.

Note: Each group has 10 minutes to do their report back

- After each group has completed their report have a brief discussion to summarise what the group has done.
- Use the guidelines below to help with the discussion after the report back



Trainer's notes

Guidelines to the Legal Remedies Cards.

Card 1:

This is breach of confidentiality. Jabu can make a civil claim for damages against Dr. Vincent. He could also lodge a complaint against the doctor with the Health Professions Council of South (HPCSA)

Card 2:

This is breach of confidentiality on the part of Dr. Vincent. However, because the doctor says he told the Minister "in the best interests of Jabu" it may be that the case could be resolved by mediation. If the case went to an arbitrator it would mean that the arbitrator makes a decision, which is final and must be followed by everyone involved.

Jabu could also make a civil claim for damages (compensation) against Dr. Vincent.

Card 3:

Susan has been assaulted and she could lay a criminal charge of assault against the workers who assaulted her. She could also make a civil claim for damages against the people who assaulted her.

Card 4:

Melanie and her parents could make a submission to the Human Rights Commission because of the abuse of her following rights: her right to a basic education, her right not to be discriminated against on the basis of her disability, and her right to have her dignity respected.

She could also make a civil claim for damages against the school for the harm caused to the family and reputation. The school's selection policy could be challenged and be declared unconstitutional.

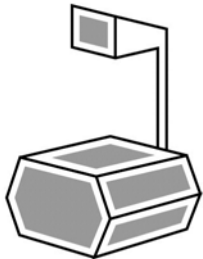
She could also lodge a complaint with the Public Protector to investigate the actions of the Principal.

Card 5:

Prital should take her matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) or to a Bargaining Council.

Card 6:

- A person who has been tested for HIV without their consent is being treated unlawfully. Dominic can lodge a complaint against the nurse and the hospital with the South African Nursing Council (SANC) and the HPCSA and the Department of Health.



Overhead 39: Courts and commissions

- **CONSTITUTIONAL COURT** - this court deals only with constitutional issues.
 - **SUPREME COURT OF APPEAL** - this court only hears appeals from the High Courts and only constitutional issues can be appealed from this court to the Constitutional Court.
 - **HIGH COURTS** - hear all criminal and civil cases and listen to appeals from the lower Magistrates Courts.
 - **MAGISTRATES' COURTS** - hear cases such as less serious criminal cases and civil cases. They can also review cases from the Small Claims Court.
- DIFFERENT TYPES OF MAGISTRATES' COURTS:
- . Regional Magistrates' Courts
 - . District Magistrates' Courts
 - . Maintenance Courts
 - . Juvenile Courts
 - . Childrens' Courts
- **EQUALITY COURTS & COMMISSIONS** - created by The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000. Non-government organisations and the South African Human Rights Commission or the Commission for Gender Equality can bring cases to the Equality Courts.
- **OTHER SPECIAL COURTS & COMMISSIONS**
 - . LABOUR APPEAL COURTS – appeals from the Labour Court
 - . LABOUR COURTS / CCMA / Bargaining Council – labour issues
 - . SMALL CLAIMS COURTS – civil cases under R3000
 - . FAMILY COURTS – being tested throughout the country
 - . COURTS OF CHIEFS AND HEADMEN – use customary law and hear both criminal and civil matters.
- **DISPUTE RESOLUTION BODIES & COMMISSIONS:**
 - . The South African Human Rights Commission
 - . The Commission on Gender Equality
 - . Public Protector
- **ALTERNATIVE DISPUTE RESOLUTION** includes:
 - . Mediation
 - . Arbitration



Cards 15: Legal remedies

CARD 1 –CIVIL CASE

Doctor Vincent is a doctor at the Langa Hospital. He tells two other doctors about his patient's HIV status. The patient, Jabu is very angry about this. He believes that Dr Vincent should have kept his HIV status confidential. He wants to bring a civil case against Dr Vincent for giving the other doctors this information.

- What action can Jabu take against the doctor?
- If he wants to bring a civil case what steps would he take to resolve the case through the CIVIL COURTS?
- If he wanted to complain to the HPCSA what can he do?

CARD 2: CIVIL CASE (Negotiation and mediation)

Jabu is HIV positive. The doctor, Dr Vincent, belongs to the same church as Jabu. The doctor knows that Jabu is HIV positive. He feels it is important to tell the Minister so that he can try and help him through his illness. When the Minister hears this news she feels it is her duty to tell the other members of the church committee. Gradually news leaks out to many people and Jabu finds himself cut off from the people who used to be his friends at the church. He asks Dr Vincent how this information got out. Dr Vincent tells him that he told the Minister, but he told the Minister not to say anything. Jabu is very angry because he says no one will speak to him anymore. He wants to make a case against Dr Vincent. The minister intervenes and suggests that they get a mediator to try and sort the problem out.

- What can Jabu do about this matter? Discuss the steps he would take to resolve the case through NEGOTIATION and MEDIATION.
- Are there any other legal remedies available to Jabu, if these remedies don't work?
- Describe how mediation differs from arbitration? Could Jabu and Dr. Vincent use arbitration to resolve their dispute?



Cards 15: Legal remedies

CARD 3: CRIMINAL CASE

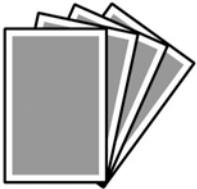
Susan is the machine-operator in a factory. She finds out she is HIV positive. She decides to tell her employer about her HIV status. The employer tells the supervisor and the supervisor tells the people who are working on the same machine as Susan. One day when Susan arrives at her machine she finds herself blocked off from it by 4 of her fellow-workers. They say they know that she has got AIDS and they don't want to catch it from her. They tell her to leave. When Susan tries to brush past them they push her down and kick her while she is on the floor. Susan wants to lay a charge of assault against them.

- What action can Susan take? Discuss the steps she would take to resolve the case through the CRIMINAL COURTS.
- Are there any other legal remedies available to Susan, besides going through the criminal courts?

CARD 4: ABUSE OF A HUMAN RIGHT

The Principal of the local high school, Mrs. Shabangu, refuses to admit a student, Melanie, to the school because she believes that Melanie has HIV. Melanie and her parents refuse to accept this and want to take action against the school.

- What action can Melanie's parents take against the school? Discuss the steps they would take to resolve the case through the HUMAN RIGHTS COMMISSION.
- Are there any other legal remedies available to them, besides going to the Human Rights Commission?



Cards 15: Legal remedies

CARD 5: LABOUR CASE

Prital is the machine-operator in a factory. She finds out she is HIV positive. She decides to tell her employer about her HIV status. The employer tells the supervisor and the supervisor tells the people who are working on the same machine as Prital. The workers decide that they are not going to carry on working with Prital. They go to the employer and tell him that he must dismiss Prital or face a strike! The employer doesn't want a strike and so he dismisses Prital. He pays her 2 weeks notice pay and all her leave. But Prital is angry because she thinks she has been unfairly dismissed.

- What action can Prital take against her employers? Discuss the steps she would take to resolve the case through the CCMA/ Bargaining Council and LABOUR COURTS.
- Are there any other legal remedies available to Prital, besides going to the CCMA/Bargaining council and /Labour Court

CARD 6: LODGING A COMPLAINT WITH MEDICAL BODY

A nurse in the Langa Hospital does an HIV test on a patient, Dominic, without his consent. When the results of the test come out, the hospital informs Dominic that he is HIV positive. Dominic says that he never agreed to have an HIV test and that he came in for a normal blood test to check for TB. He wants to report the nurse and hospital to the Medical Council.

- What action can Dominic take in this situation? Discuss the steps Dominic would take to resolve the case through the PROFESSIONAL ASSOCIATION (e.g. South African Nursing Council).
- Are there any other legal remedies available to Dominic, besides going to a professional association?

7: Reflection on the workshop

PURPOSE OF THE SESSION

- To give participants a chance to reflect on the workshop – in other words, to look back at how the workshop helped them.

TIME IT WILL TAKE

10 minutes

Step 1:

- Give a brief summary of what the group has covered in the session.

Step 2:

- If this is the end of the workshop, do a go-around and ask people whether their expectations were met.
- Compare these to the expectations that were expressed at the beginning of the workshop
- You can ask the following questions as part of the process of reflection:
 - . What will you remember most from the workshop?
 - . What can you do to change the things in the community around you?
 - . In what ways has the workshop helped you to change your ideas?

References & resource materials



REPORTS, MANUALS & OTHER MATERIALS

AIDS Law Project and Lawyers for Human Rights: HIV/AIDS and the Law:

A Trainer's Manual (First Edition) July 1997

AIDS Legal Network (ALN): ALQ – The AIDS Legal Quarterly

Black Sash and Education Training Unit: Paralegal Manual (Update edition) , January 2000

Community Law Centre: Socio-Economic Rights in South Africa (A Resource Book), October 2000

WEBSITES

AIDS Law Project: www.alp.org.za

AIDS Legal Network: www.redribbon.co.za/legal

Department of Correctional Services: www.dcs.pwv.gov.za

Department of Education: www.education.pwv.gov.za

Department of Health: www.health.gov.za

Department of Labour: www.labour.gov.za

Department of Welfare: www.welfare.gov.za

Office of Public Protector: www.polity.org.za/html/govt/pubprot/?rebookmark=1

South African Human Rights Commission: www.sahrc.org.za

South African Law Commission: www.law.wits.ac.za/salc/salc.html

Treatment Action Campaign: www.tac.org.za