The rights of women
8.1 Why are women’s rights important? ........................................... 184
8.2 What are women’s rights? ............................................................ 186
8.3 Termination of pregnancy (Abortion) .............................................. 187
  8.3.1 General principles ................................................................. 187
  8.3.2 Common questions on termination .......................................... 188
     How does a woman apply to have a termination? ......................... 188
     Where will the termination take place? ...................................... 189
     Can a woman with HIV or AIDS have a termination? .................. 189
     Is there counselling before a termination? .................................. 189
     Does a woman need to get her husband’s consent before she terminates her pregnancy? ................................. 189
     Can a girl under 18 have a termination? .................................... 190
8.4 Sterilisation .............................................................................. 191
8.5 Rape ....................................................................................... 192
  8.5.1 Why should women be tested for HIV after rape? .................... 192
  8.5.2 Post-exposure prophylaxis ..................................................... 193
  8.5.3 Taking an HIV test after a rape .............................................. 193
  8.5.4 How do I know if a rapist has HIV? ...................................... 194
8.6 Domestic violence ................................................................. 195
  8.6.1 Who can get a protection order? ........................................... 196
  8.6.2 What abuse is covered by the Domestic Violence Act? .............. 197
8.7 Violence against women with HIV or AIDS ......................... 198
8.8 Sexual harassment ......................................................... 199
  8.8.1 What are your rights at work? ................................. 199
  8.8.2 What can you do if you are sexually harassed? ............ 200
    Informal way ............................................................ 200
    Formal way ............................................................. 201

8.9 Customary practices and women's rights ......................... 202
  Virginity testing ....................................................... 202

8.10 Commercial sex work ................................................. 203
  Talking points ......................................................... 204
  References and resource materials ................................ 205
Women are seriously affected by HIV/AIDS. A large percentage of people living with HIV in South Africa are women. Young women of school-going age are most vulnerable to HIV (at risk of getting HIV).

There are many reasons for the vulnerability of women to HIV:

- Physical reasons
- Social and economic reasons
- Sexual reasons.

**Physical reasons**

A woman’s vagina has a larger surface area for HIV to enter. Some sexual practices are dangerous for women as they can increase the risk of getting HIV.

**INCREASED RISK**

- **Having dry sex can lead to vaginal tearing and this can make it easier for HIV to enter the body.**
- **Rape, especially if it is violent, can also increase the risk of getting HIV, when women being raped cannot make the rapists wear a condom.**

**Social and economic reasons**

Because women are often financially dependent on their partners, it can be difficult for a woman with HIV to tell her partner to use a condom because she may be afraid that he might reject her and leave her with no financial support.

This is especially a problem for women when they know that their partners are having unprotected sex with other partners.

The unequal position of women in society also means that it is often difficult for women to get access to good health care and information about how to prevent HIV.
**Sexual reasons**

Many men do not believe that women have the right to make decisions about their bodies and when to have sex. This makes it difficult for women to be assertive (to make their own decisions) about sex and to demand that their partners have **safer sex**. Many women do not even know that they have a right to refuse to have sex with their husbands. They do not know that if they do not agree to have sex with their husbands, their husbands can be charged with rape.

---

**THE EFFECT OF GENDER INEQUALITY**

We can see that gender discrimination and **inequality** between men and women lead to women being vulnerable to HIV and AIDS.

Gender discrimination causes society to treat men and women differently, and usually it is women who are treated less favourably than men, at schools, at work and at home. There are even laws that treat women less favourably than men, although there are steps being taken to remove these laws and replace them with ones that treat men and women equally.

For all of these reasons, it is very important that women understand their legal and constitutional rights. This Chapter looks at women's rights, and the ways that women can use the law to challenge **discrimination** against themselves and other women.

---

Many men believe that women do not have the right to make decisions about their own lives.
What are women’s rights?

Our Constitution and laws give women many rights. Most importantly, the Bill of Rights gives all women the right to equality. The Equality Clause says that no person may be discriminated against on a number of grounds, including things like their sex and gender.

Equality between men and women is one of the most important aims of the Constitution.

The Constitution also created a Commission on Gender Equality (CGE) to act as a watchdog to make sure that women are not discriminated against.

The South African Human Rights Commission (SAHRC) was also set up under the Constitution to help people who have been discriminated against.

For contact details of the CGE, see 17.2.4 on page 402.
For contact details of the SAHRC, see 17.2.2 on page 399.
A termination of pregnancy is when a woman decides to end her pregnancy before its full term, by medical or surgical means. People often refer to a termination of pregnancy as an ‘abortion’.

8.3.1 GENERAL PRINCIPLES

There are many reasons why some women are not able or do not want to continue with a pregnancy. Some women choose to end their pregnancies early by having a termination. This is sometimes called a ‘TOP’ for short.

The Choice on Termination of Pregnancy Act gives women the right to have safe and legal terminations.

### TIME PERIODS WHEN A WOMAN HAS A RIGHT TO TERMINATION

**In the first 12 weeks**

_On request in the first 12 weeks (3 months) of a pregnancy_ — this means that a woman does not have to give a reason for wanting the termination, if she is only 3 months pregnant, or less.

**13 - 20 weeks**

Between 13 and 20 weeks of pregnancy:

- A woman can still have a termination if her doctor says that there is a risk to her health or to the health of the fetus if she continues with the pregnancy.
- She can also have a termination if the pregnancy is the result of rape or incest.
- She can have a termination if her social and economic circumstances will be affected by the pregnancy, eg she will not be in a position to care for the baby financially.

**After the 20th week**

A woman can only have a termination after the 20th week of her pregnancy if a doctor, after discussing it with another doctor or a registered midwife, believes that the pregnancy could be dangerous for the women or could result in a deformed baby.
PRINCIPLES AFFECTING DECISIONS ABOUT TERMINATION

- An abortion can only take place with the informed consent of the woman.
- A woman cannot be forced to have an abortion because she has HIV.
- Every person has a right to have a family, and a hospital must help a woman to make an informed choice about terminating or continuing with a pregnancy.
- With proper management and access to drugs such as AZT, it may be possible to greatly reduce the risk of mother-to-child transmission of HIV.

8.3.2 COMMON QUESTIONS ON TERMINATION

How does a woman apply to have a termination?

APPLYING FOR TERMINATION

She can:

- Ask her doctor to refer her to a hospital or clinic where terminations take place.
- Go to a non-profit clinic that assists women with advice and care on issues around pregnancy and reproduction.
- Go to the hospital in her area that the government has set aside to do terminations (called ‘designated hospitals’).
- Go to the nearest doctor or nurse at the local primary health care clinic.
- Consult a counsellor at a community centre.
- Visit a social worker in her district.

Sometimes health care workers do not give women the right information because they think that it is wrong for a woman to terminate her pregnancy.

At other times, health care workers have forced pregnant women living with HIV or AIDS to have a termination. This is against the law as only a woman has the right to decide whether she wants to continue with her pregnancy or not. If this happens to you, you should make a complaint to the Commission on Gender Equality (CGE) or the Department of Health.
Where will the termination take place?
The termination will take place at a hospital or clinic that has been authorised to do terminations by the Minister of Health. Social workers, doctors, nurses and midwives will be able to advise a woman where the nearest place is.

Can a woman with HIV or AIDS have a termination?
Yes, a woman living with HIV or AIDS may apply for a termination. It is possible that she may be able to have a termination even after the 20th week. For example, without treatment there is nearly a 20% risk of infection to her child.

Is there counselling before a termination?
The decision to end a pregnancy is often a difficult decision for a woman to make – it is therefore important that she is able to get advice from family or friends if this is possible, or from a health care worker or counsellor if she cannot talk to her family or friends.

The Department of Health should provide counselling both before and after the termination. The counselling will help women think about all the options that are available and then make the best decision for themselves.

Does a woman need to get her husband’s consent before she terminates her pregnancy?
No. The Choice on the Termination of Pregnancy Act says that it is not necessary for a woman to ask her husband before she decides to end her pregnancy. Health care workers cannot refuse to do a termination because a woman has not told her husband.
A WOMAN’S RIGHT TO DECIDE

Thandi is a woman of 24 living with HIV. Thandi found out that she had HIV when she went to her local clinic for a check-up. At this time she was two months pregnant.

The nurse at the clinic referred her for counselling where Thandi spent a lot of time discussing what she would do about her pregnancy with an AIDS counsellor.

Thandi thought about this a lot. She also spent time talking to her husband about it. He did not believe that it would be right to have a termination and wanted her to keep the baby.

After some time, Thandi decided to end her pregnancy by having a termination, because she knew that this was not the right time for her to have a baby. The counsellor helped her with all the procedures.

Can a girl under 18 have a termination?

Yes. The law says that a young woman under 18 may apply for a termination without the knowledge or consent of her parents. Doctors and midwives should advise her to discuss this with her parents, but they cannot force her to do this. Health care workers cannot refuse to terminate her pregnancy if she does not want to discuss her decision with her parents.

A GIRL OF 16

Joan is 16 and has been having sex with her boyfriend since she was 14. She has recently fallen pregnant and is thinking about having a termination. Joan’s father does not live with Joan and her mother, while Joan and her mother do not get on very well. Joan’s mother is very religious and believes that abortion is a sin.

Joan does not want to discuss the termination with her mother as she thinks that her mother will not support her and may even try to stop her (from having a termination). Joan discussed her situation with a counsellor at the designated hospital in her area and together they talked about all the options.

Joan then decided to go ahead with the termination without telling her mother.
A woman with HIV cannot be sterilised unless she agrees that this is what she wants. All women, including women with HIV, have the right to bear children. Any woman who has HIV should think carefully about having children since it is possible that her children will also get HIV.

If a woman with HIV chooses to get sterilised, the hospital must respect her decision. She does not have to discuss her decision with her husband or get his consent.

**CONSENT TO STERILISATION**

A woman of 18 or older can consent on her own to sterilisation.

As sterilisation is a medical operation, a woman under 18 must have the consent of her parents or legal guardians before a hospital will agree to the operation.
Rape is an act of violence against women. Women are often injured during a rape and there is often vaginal tearing. This increases the risk of being infected with HIV.

### 8.5.1 WHY SHOULD WOMEN BE TESTED FOR HIV AFTER A RAPE?

A woman may want to be tested for HIV to find out if she is HIV negative at the time of the rape, and to follow up with more tests to see if she becomes HIV positive as a result of the rape. However, she should have pre-test counselling before she takes an HIV test.

---

**HOW TESTING CAN HELP A RAPE SURVIVOR**

1. It is sometimes possible to prevent HIV infection, even after exposure to HIV (for example, after being raped). A combination of anti-retroviral drugs like AZT and 3TC can reduce the risk of seroconversion. This is called post-exposure prophylaxis. But this drug treatment must be started as soon as possible, and not later than 72 hours after the rape.

2. If a rape survivor has been infected with HIV by her rapist, she could make a civil claim against him for the costs of her medical expenses. It is often very difficult to prove that she was infected by the rapist and not by another sexual partner, and this claim may take a long time before it gets to court.

3. Rape survivors should tell the prosecutor if they believe that they have been infected with HIV as a result of the rape. This is important because in 1997 the law was changed to create tougher penalties for rapists infected with HIV. Under these new laws:
   - If a person accused of rape knew that he had HIV, he is automatically denied bail.
   - If a person convicted of rape knew that he had HIV at the time of the rape, by law he will receive a minimum sentence of life.

4. Knowing her HIV status, and the risks of HIV infection, will help a woman to make decisions on things like having safer sex or continuing with a possible pregnancy.
8.5.2 POST-EXPOSURE PROPHYLAXIS

Post-exposure prophylaxis means taking anti-retroviral drugs that may stop you from being infected with HIV.

If you have been raped, you should ask the district surgeon or the doctor that you go to, to advise you:

• On taking drugs for post-exposure prophylaxis, and
• On where you can get them.

Many women’s organisations that work with rape survivors also have information about these drugs.

DIFFICULTIES WITH ACCESS TO ANTI-RETROVIRAL DRUGS

In April 2002 Cabinet decided that these drugs should be provided free of charge by government. But some provinces have been slow to carry out the decision.

These drugs are only effective if taken shortly after the rape has taken place – if you only go for medical treatment a long time after the rape has taken place, these drugs cannot be given to you as they will not help.

It is important to know that these drugs can make you feel sick and if you are able to get these drugs, you must discuss all the side-effects with the doctor who gives them to you.

8.5.3 TAKING AN HIV TEST AFTER A RAPE

HAVING AN HIV TEST

1. A rape survivor can ask the district surgeon for an HIV test straight after the rape.

2. A rape survivor should try not to have the test without pre-test counselling. The counselling will explain to the rape survivor the type of test to be done, what will happen if she is HIV positive and where she can go for help.

3. We suggest that rape survivors ask for the ‘PCR test’. This HIV test is expensive (up to R500), but it can pick up if there is HIV in the blood more quickly than other tests. If you cannot afford to have this test, there are other tests that are cheaper, but these tests can not tell immediately whether you have HIV in your blood. Some organisations that work with rape survivors provide some of the tests for free.
HOW DO I KNOW IF A RAPIST HAS HIV?

Many rape survivors want to know whether the person who raped them has HIV. If the rapist has been arrested or his whereabouts are known, rape survivors often ask why the rapist cannot be tested.

In the past the law did not allow for the testing of people accused of rape unless they gave their permission for the test to take place.

TESTING SEXUAL OFFENDERS

In early 2001, the South African Law Commission (SALC) recommended that the law is amended so that:

- A person accused of a sexual offence where there is a risk of HIV transmission (e.g., a person accused of rape) can be tested without his permission, and
- His HIV status can be disclosed to the victim.

We expect that this law will be passed in late 2003. Until then, rapists still have the right to refuse an HIV test.
Domestic violence

‘Domestic violence’ includes physical, emotional and economic abuse. Although domestic violence can affect both men and women, it generally affects women and children.

Women who are involved in violent relationships are not usually able to negotiate safer sex with their abusive partners and this can put them at risk of getting and passing on HIV.

Some people think:

- It is a man’s right to beat his wife or partner.
- If a woman has been beaten, then she must have done something to deserve it.

These views are wrong. No-one can beat or assault another person, even if they are married or in a relationship. Any woman who is being beaten can apply for an interdict or bring a criminal charge against the abuser.

The new Domestic Violence Act came into force on 15 December 1999 and replaces the old Prevention of Family Violence Act. The Domestic Violence Act has a new definition of domestic violence and a different procedure for getting an interdict. In many ways, the new law creates better protection for women who are in abusive relationships.

Domestic violence is a crime against women.
8.6.1 WHO CAN GET A PROTECTION ORDER?

A protection order is the new name for an interdict.

WHO CAN APPLY FOR A PROTECTION ORDER?

- People who are married under civil law, customary law or religious law.
- People who are divorced from one another.
- People who live together, even though they are not married, including same-sex couples.
- People who have a child together.
- People who are related to one another, eg parents and children, brothers and sisters, cousins, step-families and extended families.
- People who were dating or who slept together at any time.
- People who share a household, eg if you are a domestic worker who “lives-in”, you may be able to use this act to get a protection order against your employer.

A RELIGIOUS LAW MARRIAGE

Faizel and Rebecca got married two years ago in a Muslim ceremony. Faizel often beats Rebecca and she had to go to hospital once to have stitches in her cheek. Rebecca wants to get a protection order against Faizel, but the police officers at the police station in her area have refused to help her because they say that she is not really married.

Rebecca went to speak to an organisation in her area that helps battered women and they told her that the police must help her because the Domestic Violence Act protects women who are in religious law marriages like hers. Rebecca went to the Magistrate’s Court and got a protection order against Faizel.
8.6.2 WHAT ABUSE IS COVERED BY THE DOMESTIC VIOLENCE ACT?

The Domestic Violence Act includes these kinds of abuse:

- Physical violence and threats of physical violence.
- Emotional abuse.
- Economic abuse – this can include situations where a partner refuses to provide money for food and shelter, and where he tries to destroy or remove property that is jointly owned.
- Sexual abuse or threats of sexual abuse.
- Harassment, which can include:
  - Watching your place of work or home or anywhere that you go to.
  - Making a lot of telephone calls to your place of work.
  - Sending letters, parcels or anything else to your home or your place of work.
- Stalking – this is when you are often being followed.
- Entry to your place of residence without your permission – this can only be domestic violence if you no longer live with the person.
- Damage to your property.

You can get a protection order to stop any of these kinds of domestic violence from happening to you.

CONFIDENTIALITY AND PROTECTION ORDERS

You do not have to tell anyone that you are living with HIV or AIDS when you apply for a protection order.
In December 1998, Gugu Dlamini, an HIV/AIDS activist in KwaZulu-Natal, was murdered. Her murder took place shortly after she had announced that she was HIV positive. There is strong evidence to show that Gugu's killers murdered her because she had HIV.

The economic and social inequality of women in South African society means that women are very vulnerable and they are often blamed for spreading the infection.

It is against the law for any person to abuse you or threaten you because you are living with HIV or AIDS. The Constitution says that everyone has the right to be free from violence.

**DEALING WITH ABUSE AND VIOLENCE**

*If this is happening to you, you should:*

- Report the behaviour to the police who must help you.
- Ask for help from organisations that help women and men living with HIV or AIDS.

---

**GUIDELINES**

JUST YOU TRY GETTING ON TO ONE OF OUR TAXIS AGAIN WITH YOUR AIDS AND YOU WONT LIVE TO SEE ANOTHER DAY - NOW MOVE IT!!
Sexual harassment is any unwanted attention of a sexual nature that takes place in the workplace.

This is any kind of sexual behaviour that makes you feel uncomfortable, including:

- Touching
- Unwelcome sexual jokes
- Unwanted questions about your sex life
- Whistling
- Rude gestures
- Requests for sex
- Staring at your body in an offensive way.

The Labour Relations Act is the main act that deals with sexual harassment in the workplace. It has a Code of Good Practice on Sexual Harassment that sets out the best ways to deal with complaints about sexual harassment.

8.8.1 WHAT ARE YOUR RIGHTS AT WORK?

Sexual harassment is an unfair labour practice and if it happens to you, you can ask your employer to deal with it.

You have the right to:

- A workplace that is free from sexual harassment.
- Be treated with dignity and respect at work.
- Be treated equally, and not to be discriminated against because of race, gender and your HIV status.
- To report sexual harassment without fear of victimisation (ill-treatment).
- Have your complaint treated seriously and confidentially.

For information on the Code of Good Practice on Sexual Harassment, see References and resource materials on page 205.
8.8.2 WHAT CAN YOU DO IF YOU ARE SEXUALLY HARASSED?

You can deal with sexual harassment in an informal or formal way.

**Informal way**

This is when you try to sort out the problem without taking up a grievance (formal workplace complaint) against the abuser.

**WAYS OF TAKING INFORMAL ACTION**

1. Talk to the abuser and ask him to stop the behaviour that makes you feel uncomfortable.
2. If you feel uncomfortable about being alone with the abuser, you can ask someone that you trust to come with you when you talk to the abuser.
3. Write to the abuser and tell him that his behaviour makes you uncomfortable and ask him to stop. In your letter, write down the things that the abuser does that make you feel uncomfortable.
4. Keep a copy of the letter.
5. Send the letter by registered mail so that you can prove that you sent it.
6. Ask someone else to speak to the abuser. You can ask your shop steward or a work colleague to do this for you.

**WORKPLACE SEXUAL HARASSMENT**

Thandeka and Deon work in the same office. Deon always makes remarks about the way that Thandeka dresses and the way she wears her hair. Sometimes he whistles at her when she arrives at work in the morning. This behaviour makes Thandeka feel very uncomfortable and she hates going to work.

Thandeka asked the shop steward at her factory, Doreen, to talk to Deon about his behaviour. Doreen explained to Deon that he was sexually harassing Thandeka and that this could lead to a disciplinary action against him. Deon has stopped his behaviour and Thandeka no longer feels uncomfortable at work.
Formal way

This is when you decide to report your complaint to your superior and the complaint is then investigated under your company's Disciplinary Code.

Once you have reported the harassment, your employer must take steps to deal with your complaint. Usually this will mean that a disciplinary hearing will take place where:

- You and the abuser will have the chance to tell your stories and call witnesses.
- The person in charge of the hearing will then decide on what to do about the complaint.

TAKING YOUR COMPLAINT TO OTHER BODIES

If you are not happy with the way in which the complaint was dealt with by your employer, you can take it to the Commission for Conciliation, Mediation and Arbitration (CCMA) or to your Bargaining Council, if you are covered by one. The CCMA office in your province will tell you what you will need to do to make a complaint.
Customary practices and women’s rights

Some customary rules and traditions put women in an unequal and vulnerable position in society. We have seen how this puts women at risk of HIV infection. For example, many rules of customary law give women little status or limited rights with marriage, property and inheritance.

**CUSTOMARY MARRIAGE LAW**

The customary law rules of marriage give a husband marital power over his wife, so that she has little power to do things like entering into a contract. This makes a wife dependent upon her husband.

Also, some customary practices make women vulnerable. In this section, we look at the practice of virginity testing to show how it affects a girl child.

**Virginity testing**

This is a traditional practice (custom) that happens in many places in South Africa. The virginity test is usually done on girls, although sometimes boys are also tested.

People in favour of testing say that it is an important cultural practice that needs to be preserved. They also say that it is a way of preventing the spread of HIV and AIDS since it encourages young girls not to have sex.

Most gender activists believe:

- Virginity testing is a violation of a woman’s rights to privacy and dignity under the Constitution.
- Virginity testing does not help to stop the spread of HIV/AIDS. In some areas, doctors believe it is causing an increase of HIV infection because girls and young women are having anal sex (which has a higher risk) to avoid vaginal penetration.
- The tests are often wrong because they are done by people who are not medically trained.
- Virginity testing may stigmatise young women who are not virgins, without recognising that many young women are not really in a position to choose whether or not to have sex, and may be forced to have sex.
- The practice can also be dangerous as it identifies the virgins in a community – this can expose them to rape and sexual abuse.
In South Africa, it is a crime to be a commercial sex worker. This is sometimes still referred to as ‘prostitution’. It is also a crime to solicit (get customers).

Although both men and women can be sex workers, it is usually the women working on the street who are most often prosecuted and who are most vulnerable to violence and abuse.

**Why are sex workers vulnerable to HIV?**

- They are not always able to insist that their customers use condoms and sex is often violent.
- Because sex work is still illegal, it is difficult for sex workers to get information about HIV and safer sex practices.
- Sex workers are often scared to say that they are sex workers and are not able to go to organisations where they could get help and information.
- They are also not able to protect themselves from rape and abuse because they cannot report these crimes to the police.

There has been a lot of discussion in women’s organisations about the need to **decriminalise** sex work. This would mean that sex work would not be illegal and sex workers could receive proper legal protection. At the moment, our law still makes sex work illegal.

Although Baleka’s work is seen as a crime, the prison authorities had no right to test her for HIV without her consent.
1. Is it useful for a rape survivor to know the HIV status of a person accused of rape?
   - How will this help?
   - Can you think of any problems with testing the accused?

2. What can you do if you live in a community where some people are calling you names and harassing you to be tested for HIV?

3. Do you think that the traditional practice of virginity testing can help to stop the spread of HIV?
   - Do you think virginity testing should be encouraged? Why or why not?
   - Can you think of other traditional practices which could be important ways of preventing the spread of HIV? Do these practices also respect the rights of women?

4. Do you think that sex work should be a crime? Explain your answer.
LAWS
Black Administration Act, No 9 of 1927.
Choice on Termination of Pregnancy Act, No. 92 of 1996.
Commission on Gender Equality Act, No 39 of 1996.
Sexual Offences Act, No 23 of 1957.

POLICY DOCUMENTS

CASES
Brink v Kitshoff 1996 (4) SA 197 (CC) 1996 (6) BCLR 752 (CC).
Christian Lawyers Association of SA and Others v Minister of Health and Others 1998 (4) SA 1113 (T).
Mthembu v Letsela 1997 (2) SA 936 (TPD).
Mthembu v Letsela and Another 2000 (3) SA 867 (SCA).
State v Baloyi (Minister of Justice intervening) 2000 (1) BCLR 86 (CC).
REPORTS, MANUALS AND OTHER USEFUL MATERIALS


WEBSITES

AIDS Law Project: www.alp.org.za

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

Commission on Gender Equality: www.cge.org.za

Department of Health resources: www.aidsinfo.co.za

Rape Crisis: www.rapecrisis.org.za

Sex Workers Education and Advocacy Task Force (SWEAT): www.sweat.co.za


UNAIDS: www.unaids.org