
Module 6

The Rights of Lesbians & Gay Men

Introduction

- This module deals with issues that affect lesbians, gay people, as well as bisexuals and transgender persons, especially those living with HIV or AIDS. It looks at the possible double discrimination that people have to face daily because of their sexual orientation and because they have HIV or AIDS. Participants will learn about laws, policies and practices that are unconstitutional and can be challenged because they discriminate against young lesbian and gay people, and lesbian and gay families.
- 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 hrs 30 minutes

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.

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SESSION	METHOD	TIME	PAGE
1: Welcome & introduction	Select your own	5 min	138
2: Group Introductions & Expectations	Select your own	30 min	138
3: Groundrules	Select your own	5 min	138
4: Explaining the outline of the Workshop	Input	5 min	138
5: Lesbians, Gay Men, HIV/Aids And Discrimination	Large Groups Magazines Discussion	1 hr 15 min	139
TEA BREAK			
6: Laws That Discriminate Against Gay And Lesbian People	Discussion Overhead	20 min	141 (142)
7: Young Lesbian / Gay People & HIV/Aids	Small Groups	45 min	143
8: Lesbian & Gay Families	Small Groups Cards Overhead	1 hour	145 (146) (148)
8: Reflection on the workshop	Input	10 min	149
References & Resources			150
TOTAL TIME		4.25 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: Lesbians, Gay Men, HIV/AIDS and discrimination

PURPOSE OF THE SESSION

- To build awareness of the kinds of **prejudice** and discrimination that lesbians and gay people have to live with
- To develop an understanding of the prejudice – or double stigma - experienced by lesbians and gay people who have HIV or AIDS
- To look at ways of changing the prejudice in society and breaking down discrimination

TIME IT WILL TAKE

1 hr 15 minutes

MATERIALS

- Old magazines
- Newsprint, prestik, glue, kokis, crayons and scissors

PROCEDURE:

Step 1:

- Give an input as an introduction to the section
- Use the Trainer's Notes below to help you



Trainer's notes

- Gay people, lesbian, **bisexual** and **transgender** communities have faced much of the blame, discrimination and prejudice associated with HIV/AIDS.
- When AIDS first became known, it was seen mainly in gay men. This led to the misunderstanding that AIDS is a gay disease and this led to greater prejudice and discrimination against gay men.
- The first name given to HIV/AIDS was GRID or 'gay-related immune deficiency'. For many,

homosexuality was seen as a sin, crime or disease. The HIV/AIDS **epidemic** has encouraged this kind of prejudice and discrimination.

- In the **new Constitution**, the equality clause of the **Bill of Rights** says it is **unlawful** to discriminate against someone because of their sexual orientation. This means that for the first time gay and lesbian people can go to court to protect themselves if they are discriminated against.

Step 2:

- Ask participants to work in groups of around 6 to 8.
- Give each group a couple of magazines, 2 sheets of newsprint, a piece of prestik, a glue stick, some different colour kokis, a box of crayons and a pair of scissors.

Step 3:

- Ask people to cut out people and any other pictures from the magazines
- Ask each group to prepare a story about 'X' (they can make up a name) who is gay or lesbian. He/she decides to 'come out' (be open) about their feelings towards people of the same sex. The story must show how the different sectors of the community react to the information about X's sexual orientation. For example, how do the family, neighbours, employer at work, fellow-employees, religious groups, friends, and school react to X when they hear the news.
- Ask them to tell the story using the pictures, as well as their own drawings and writing to improve the story. They must show how different people respond to the person who has 'come out'. They must stick the pictures on the newsprint. They can use colour kokis, crayons, big and interesting headings, their own drawings, and any other ideas, to make the story come alive.
- ALTERNATIVELY if there are not enough participants to divide the group into small groups of 6 to 8 then get the participants to do the exercise individually on the basis that they are the person who is 'coming out' ie they are the gay or lesbian person X. Ask them to cut out and draw and write about how the different people in their own lives would react to the news that they are gay or lesbian.

Note: Give groups 40 minutes to do this exercise

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Step 4:

- Ask each group to post their newsprint sheets up in front and to tell their story.
- They must use the cut-out figure of the person telling the story to show how he/she moves around the community, and the reactions of the different parts of the community to this person.

Step 5:

- When each group has finished telling their story, have a big group discussion.
- Use these questions as a guideline:
 - What comes to mind when you hear the words 'gay' and 'lesbian'?
 - Do some people reject the person who is gay or lesbian?
 - Why do people discriminate against gay men and lesbians?
 - How are people who are gay or lesbian discriminated against in society ie show the extent of the rejection from for example isolation to attack?
 - Would people in the stories have reacted differently if the person had also said he/she had HIV or AIDS? How would they have reacted? Why do you think they would react this way?

Step 6:

- Give a brief input on the double discrimination that gay people and lesbians living with HIV or AIDS have to deal with.
- Ask participants to give examples of other people who may experience double discrimination
- Use the Trainer's Notes below as guidelines for the input.
- Use Overhead 16 Discrimination against women with HIV or AIDS and the Trainer's Notes below to help you with your input.



Trainer's notes

- People often suffer from 'double discrimination'. This means society discriminates against them in at least two different ways. For example, a black woman suffers discrimination in two ways – because of her race and because of her gender.
- Lesbians and gay people living with HIV or AIDS also suffer from double discrimination: because of their sexual orientation and because they have HIV or AIDS. Refer to the stories that people wrote in the previous exercise and summarise the points that were raised about the reactions of the community to the person who tells everyone that he/she is gay or lesbian and also has HIV or AIDS
- Hate crimes and hate speech are also a specific manifestation of discrimination. This kind of discrimination makes lesbian women particularly vulnerable to HIV infection in the event of hate-crime related rape.

6: Laws and practices that discriminate against Gay and Lesbian people

PURPOSE OF THE SESSION

- To make people aware of laws and practices that discriminate against lesbians and gay people
- To show how these laws make HIV/AIDS work more difficult
- To consider some changes in the law which will improve the rights of lesbians and gay people

TIME IT WILL TAKE

20 minutes

MATERIALS

- Make a transparency of Overhead 21 *Laws & practices that discriminate against lesbians and gay men* on page 142
- Newsprint, prestik and kokis

PROCEDURE:

Step 1:

- Put up Overhead 21 *Laws & practices that discriminate against lesbians and gay men*
- Go through the laws on the overhead.

Step 2:

- Read through this case study and discuss the questions that follow.

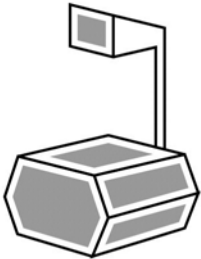


Case Study

An 18 year old male youth and a 16 year old male youth were involved in a relationship. The family of the 16 year old and the church found out about their relationship and brought a criminal charge against the 18 year old. Later, however, the attorney-general dropped the charges at the request of the 18 year old's lawyer.

Questions:

- Do you think the attorney-general was correct to drop the charges? Give reasons.
- Do you think it is fair to have a different age of consent for heterosexual and gay youth?
- Why do you think laws such as these make HIV/AIDS work with gay youth more difficult?
- What do you think should be the age of consent for youth in South Africa?



Overhead 21: Laws & practices that discriminate against Lesbians & Gay Men

DISCRIMINATORY LAWS:

• THE SEXUAL OFFENCES ACT

- . MAKES SEXUAL CONTACT BETWEEN MEN OR BETWEEN WOMEN ILLEGAL WHEN ONE OF THE MEN OR WOMEN IS UNDER 19, ALTHOUGH HETEROSEXUALS MAY HAVE LAWFUL SEX FROM AGE 16
- . THE SOUTH AFRICAN LAW REFORM COMMISSION HAS RECOMMENDED THAT THE LAW BE CHANGED

• THE COMMON LAW CRIMES OF 'SODOMY' AND 'UNNATURAL ACTS' PROHIBIT CONSENSUAL SEX BETWEEN MEN

- . IN 1998, THE HIGH COURT SAID THAT THIS COMMON LAW CRIME DISCRIMINATED AGAINST PEOPLE ON THE BASIS OF THEIR SEXUAL ORIENTATION. IT WAS DECLARED UNCONSTITUTIONAL.
- . THIS MEANS THAT SODOMY IS NO LONGER A CRIME.

DISCRIMINATION IN IMPLEMENTATION OF LAWS:

• THE MEDICAL SCHEMES ACT

- . ALLOWS SAME-SEX PARTNERS TO BE DEPENDANTS ON A MEDICAL AID SCHEME
- . IN PRACTICE, MANY COMPANIES STILL EXCLUDE SAME-SEX PARTNERS

SOCIAL PREJUDICE:

• SOCIETY STILL PREJUDICES LESBIANS AND GAY MEN.

- . THEY FACE DISCRIMINATION IN THEIR FAMILIES, IN THE COMMUNITY, IN THE WORKPLACE, IN SCHOOLS & IN CHURCHES.

7: Young Lesbians and Gay Men & HIV/AIDS



PURPOSE OF THE SESSION

- To look at the discrimination faced by young lesbians and gay people, especially in regard to sexuality education.
- To look at ways of changing attitudes and prejudices.

TIME IT WILL TAKE

45 minutes

MATERIALS

- Newsprint, kokis, prestik

PROCEDURE:

Step 1:

- Give an introductory input on young lesbians and gay people with HIV/AIDS
- Ask the group this question and write up the responses:
 - . *Why is the suicide rate of gay youth so high?*
- Read the case study on the next page and ask the question that follows:

Case Study:

In 1994 a 16 year old lesbian girl came to the Centre for Applied Legal Studies for help. She regularly faced harassment at school. At home, her divorced mother and the mother's boyfriend physically assaulted her every day because she was lesbian. Her father and step-mother also harassed and threatened her about her sexual orientation. The Department of Social Development were asked to remove her from her mother's custody. They delayed. Two weeks later, she stabbed her mother's boyfriend with a knife when he assaulted her again.

- *How do you think this incident could have been avoided?*

Step 2:

- Ask people to work in groups of 4 for this exercise
- Give each group a sheet of newsprint and a koki.
- Tell each group that they are a committee that has to put together a curriculum for sexuality education in schools in South Africa that would address the issues of all youth ie heterosexual and homosexual youth. They have to include 5 of the most important points that should go into this curriculum. They must write the points down on newsprint.

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Step 3:

- Ask the first group to present their curriculum to the big group.
- Ask other groups to add to this if they think something has been left out.
- Use the Trainer's Notes below to help you with the discussion.
- Then ask these questions:
 - . *Does the present sexuality education in schools include information on same-sex relations?*
 - . *How does sexuality education help or hinder HIV/AIDS prevention work?*
 - . *Do gay youth have a right to this kind of education and how does the access or lack of access to this information for gay youth impact on them?*



Trainer's notes

Some important issues for sexuality education in schools are:

- The definition of sex should be broad, so that it does include same-sex activities
- The way that sexual partners are discussed should include same-sex partners
- The attitude towards same-sex activities should be accepting and respectful
- Safer sex options for lesbian and gay youth should be discussed

8: Lesbian and Gay families

PURPOSE OF THE SESSION

- To build awareness of the different ways that lesbian and gay families are discriminated against
- To look at some changes in our law that improve the rights of lesbian and gay families

TIME IT WILL TAKE

1 hour

MATERIALS

- Make a copy of the *Lesbian and Gay Families Case Study cards* on pages 146-147 of the TM (one case study per group)
- Make a transparency of *Overhead 22 Legal Advances for Lesbian and Gay Families* on page 148 of the TM.

PROCEDURE:

Step 1:

- Give an introductory input on discrimination against lesbians and gay people when they live together in a family relationship, especially when one of them has HIV or AIDS. Ask the question – what is a family? Ask the question – what are some of the difficulties for lesbian and gay people to have families?

Step 2:

- Split participants up into 4 groups
- Give each group a copy of one of the *Lesbian and Gay Families Case Study Cards*.
- Tell groups to read through their case study and answer the questions below.

Step 3:

- Ask groups for their feedback to the questions.
- Give an input on legal advances for lesbian and gay families. Use *Overhead 22 Legal Advances for Lesbian and Gay Families* to help you.



Case Study Cards 8: Lesbian and Gay families



Case Study 1: HOME

John and Lwando live together as common law partners in a rented flat. The lease is in Lwando's name. Lwando discovers that he has HIV. They are both worried that if Lwando dies, then John will be evicted because the lease is not in his name.

- What should John and Lwando do to protect themselves in the future?
- If the lease was in both their names and Lwando died, what would John's rights be to stay in the flat?
- If Lwando owned the flat, what could they do to protect John's rights?
- What other legal protections would be absent for lesbian or gay people in the absence of marriage?

Case Study 2: WORK

In 1998, a lesbian who worked for the police wanted to add her partner to the police medical aid scheme as a dependant. She was not allowed to because the medical aid did not include same-sex partners as dependants. The police woman challenged the decision in court. The High Court said that this was discrimination on the basis of **sexual orientation** and that the medical aid scheme must include the same-sex partner.

- What do you think of the court's judgement?
- Can you name some other employee benefits or entitlements that lesbian and gay partners have a right to access?
- How does this impact on lesbian and gay families where one partner has HIV or AIDS?



Case Study Cards 8: Lesbian and Gay families



Case Study 3: SOCIAL ASSISTANCE

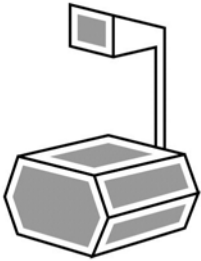
The Department of Social Development works with a wide definition of family, which includes lesbian and gay families. The 1997 White Paper on Social Welfare clearly says that 'people with a homosexual or bisexual preference will not be excluded from social services'.

- In what ways does the traditional definition of family discriminate against lesbians and gay people?
- How can we define families so as to be fair to lesbian and gay families?
- How does this assist lesbian and gay families affected by HIV and AIDS?
- What other legal protections would be absent for lesbian/gay people in the absence of marriage?

Case Study 4: FUTURE PLANNING

Susan and Helen lived together in a lesbian relationship for 15 years. Both of their families knew and relations between them were warm. Helen suddenly became ill and she went into a coma. She was admitted to hospital. Helen's parents tried to exclude Susan from making any decisions about Susan's treatment and care. They also moved Helen away from the hospital, and their joint family doctors, and said that Susan had no legal claim to have access to her.

- *How could Susan and Helen have avoided this situation?*
- *If Helen had died, would Susan have any claim to her assets? Give reasons*
- *How could Helen and Susan have avoided these problems?*
- *How could the law be changed to solve this problem?*



Overhead 22: Legal advances for Lesbian and Gay families

LAW ON PARTNERSHIPS AND MARRIAGES

THE SOUTH AFRICAN LAW REFORM COMMISSION IS INVESTIGATING THE LAW ON PARTNERSHIPS AND MARRIAGES, INCLUDING SAME-SEX RELATIONSHIPS, TO MAKE RECOMMENDATIONS FOR CHANGE.

[ADD SPECIFIC INFO ON SAME-SEX MARRIAGE COURT SUBMISSION AND RELIEF REQUESTED](#)

DEFINITIONS OF FAMILY IN LAW

MANY NEW LAWS DEFINE FAMILIES BROADLY, TO INCLUDE SAME-SEX PARTNERS, SUCH AS:

- THE MEDICAL SCHEMES ACT
- THE EQUALITY ACT
- THE CLOSED PENSION FUND AMENDMENT ACT
- THE DOMESTIC VIOLENCE ACT

LESBIANS AND GAY MEN AND EMPLOYEE BENEFITS

- IN 1998, THE HIGH COURT HELD THAT **MEDICAL AID SCHEMES** MUST INCLUDE SAME-SEX DEPENDANTS
- IN 1999, THE EQUALITY PROJECT HELPED A CLIENT TO GET HIS SAME-SEX PARTNER'S **PENSION FUND**, AFTER THE PARTNER DIED
- THE CLOSED PENSION FUND AMENDMENT ACT (1999) ALLOWS SURVIVING SAME-SEX PARTNERS TO BE PAID OUT FROM A DECEASED PARTNER'S PENSION FUND

9: 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



POLICY DOCUMENTS

Department of Education: National Education Policy Act, 1996 (Act no 27 of 1996): National Policy on HIV/AIDS for Learners and Educators in Public Schools and Students and Educators in Further Education and Training Institutions.

Department of Health: HIV/AIDS/STD Strategic Plan for South Africa 2000-2005, May 2000

White Paper for Social Welfare, Department of Social Development, 1997

REPORTS, MANUALS & OTHER MATERIALS

Achmat, Z, Abrahams, J and Lewis, J: HIV/AIDS Workbook for Schools, Cape Town, 1998

AIDS Law Project (ALP) and Lawyers for Human Rights: HIV/AIDS and the Law – The Trainer's Manual, (First Edition) 1997

ALP: HIV/AIDS Current Law & Policy Booklet 8: 'Lesbian and Gay men – your rights in the AIDS epidemic' July 2000

National Coalition for Gay and Lesbian Equality (NCGLE): Fighting sexual orientation discrimination in the workplace (pamphlet) undated.

NCGLE: Young, Out and Proud (pamphlet for young people who are lesbian, gay, bisexual or transgendered) 1999

NCGLE/Gay and Lesbian Legal Advice Center: Recognising our Relationships – A guide to claim benefits for lesbian and gay partners (pamphlet) undated.

SALC: Domestic Partnerships: Issue Paper (Project 118) 2001

SALC: Sexual Offences Report (Project 107) December 2002

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

Lesbian and Gay Equality Project: www.equality.org.za

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

UNAIDS: www.unaids.org