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MENTAL HEALTH & HIV/AIDS

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1 November 2011



Fakulteit Gesondheidswetenskappe

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WORLD HEALTH ORGANISATION



- A state of complete physical, mental and social well-being and not merely the absence of disease
- Mental Health refers to a broad array of activities directly or indirectly related to the mental well-being component in the WHO's definition of health
- It is related to the promotion of well-being the prevention of mental disorders and the treatment and rehabilitation of people affected by mental disorders



SOUTH AFRICAN CONSTITUTION



- **Section 27**
 - (1) **Everyone has the right to have access to –**
 - (a) **health care services, including reproductive health care;**
 - (b) **sufficient food and water; and**
 - (c) **social security, including, if they are unable to support themselves and their dependents, appropriate social assistance**
 - (2) **The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.**
 - (3) **No one may be refused emergency medical treatment**



SOUTH AFRICAN CONSTITUTION



- **BUT health is interrelated to a variety of other determinants**
- **The right to health is said to embrace a wide range of socio-economic factors that promote conditions in which people can lead a healthy life**
 - **E.g. food, nutrition, housing, access to safe and portable water and adequate sanitation, safe and healthy working conditions and a health environment.**
 - **Other determinants of health include: resource distribution, gender differences, socially related concerns such as violence and armed conflict, formerly unknown diseases such as HIV/AIDS and other diseases that have become widespread such as cancer, as well as the rapid growth of the world population**
- **The recognition of these underlying determinants to health requires health rights to be understood as an entitlement to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health.**



THERAPEUTIC JURISPRUDENCE



- **Therapeutic jurisprudence concentrates on the law's impact on emotional life and psychological wellbeing. It is a perspective that regards the law (rules of law, legal procedures, and roles of legal actors) itself as a social force that often produces therapeutic or anti-therapeutic consequences. It does not suggest that the therapeutic concerns are more important than other consequences or factors, but it does suggest that the law's role as a potential therapeutic agent should be recognised and systematically studied**

Wexler



THERAPEUTIC JURISPRUDENCE



- **The law itself can be a potential therapeutic agent in that legal rules, procedures and the behaviour of legal actors may produce therapeutic or anti-therapeutic results**
- **Therapeutic jurisprudence is concerned with the improvement of the law and the operation thereof by searching for ways of minimising negative and promoting positive effects on the well-being of those affected by the law**



HOW CAN WE APPLY THIS APPROACH IN SOUTH AFRICA?





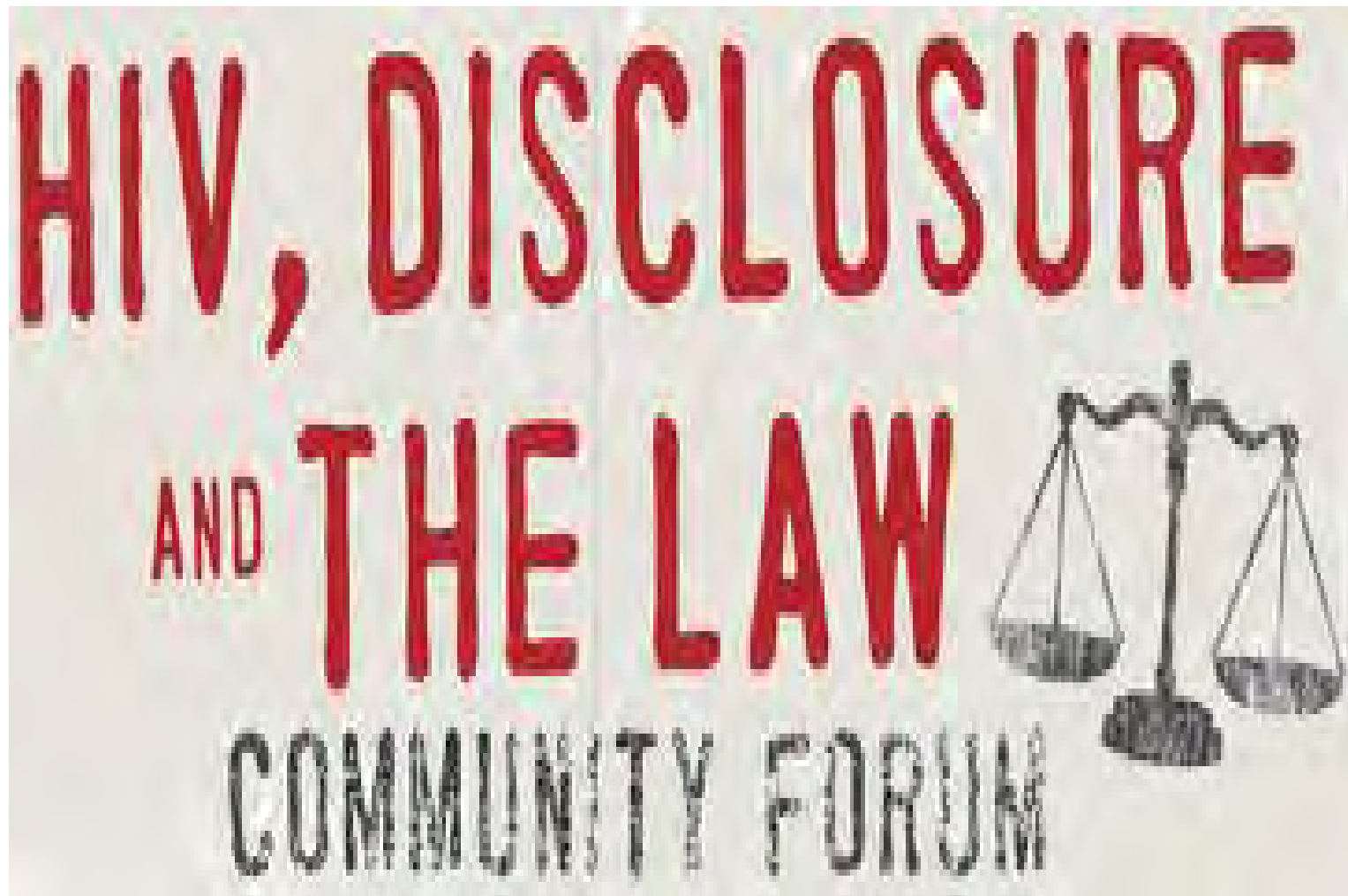
MENTAL HEALTH & WELL-BEING IN THE FACE OF HIV/AIDS IN SOUTH AFRICA



- “It is encouraging that since 1994 the South African government has worked hard to create legislation and policy that place equality, human rights and justice at the centre. This is the case for health, education, social development and the legal system. However, it is a depressing reality that in many (if not most) cases, those charged with implementing the transformative changes in society have failed due to a host of reasons. Lack of skills coupled with unwillingness to consult with those working at the coalface has resulted again and again in poor planning, inappropriate interventions and a waste of valuable resources. Nowhere is this truer than for the provision of psychiatric and mental health services for our communities.”
- “Although progress has been made since the launch of the National Antiretroviral Treatment Programme in April 2004 in providing medical treatment to people infected with HIV, their psychosocial needs have not been similarly provided for.”



DISCLOSURE, MENTAL HEALTH AND WELL-BEING AND HIV/AIDS





DISCLOSURE, CONFIDENTIALITY AND HOME-BASED CARE



- Home-based care for HIV/AIDS patients is pivotal in order to cope with the great demands placed on the health care sector
- Maintaining confidentiality of HIV/AIDS patients vs keeping pertinent information with regard to the illness from caregivers
- Marginalises care givers who assume the bulk of the responsibility for the patient's well-being and are expected to adhere to standard precautions to prevent infection
- Extend healer-patient relationship to also include caregivers?
- Shared responsibility and & confidentiality?
- Ubuntu philosophy – human relationships are based on interdependence, trust, openness, and shared responsibility
- But HIV/AIDS is not a notifiable disease, the stigma is too high and the compulsory disclosure of an individual's status is not conducive of effective public health practice & management



DISCLOSURE AND THE HIV STATUS OF MINORS



- **Early disclosure of a child's status holds therapeutic value**
 - Children will understand the risks and will generally cooperate in the treatment
 - Children under the age of 5 years with a developmental delay, poor intellectual capabilities and/or children with severe emotional disturbances not be informed of their status
 - Assess them periodically and disclose when circumstances have changed for the better
- **Counselling is extremely important pre and post disclosure**
- **When and how parents disclose to a child can affect the provision of care for the child and may influence the child's psychosocial adjustment and development**



DISCLOSURE AND THE HIV STATUS OF MINORS



- **Section 130(1) of the Children's Act 38 of 2005**
 - No child may be tested for HIV unless it is in the best interest of the child and consent was given in terms of section 130(2) or if the test is necessary to establish whether a health care worker or any other person may have contracted HIV due to contact with any substance from the child's body that may transmit HIV
- **Section 130(2)(a) of the Children's Act 38 of 2005**
 - Consent for a HIV test on a child may only be given by the child if the child is 12 years of age or older or under the age of 12 years but is of sufficient maturity to understand the benefits, risks and social implications of such a test
 - Where the child is under the age of 12 and is not of sufficient maturity to understand the benefits, risks and social implications of the test the following persons may give consent on behalf of the child: the child's parent or caregiver, the provincial head of social development, a designated child protection organisation arranging the placement of the child, and the superintendent or person in charge of a hospital



DISCLOSURE AND THE HIV STATUS OF MINORS



- **Section 133 of the Children’s Act 38 of 2005**
 - Prohibits anybody from disclosing the HIV status of a child without the consent given by the child if the child is 12 years of age or older or is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such disclosure
- **Section 129 of the Children’s Act 38 of 2005**
 - A child over the age of 12 years may consent to undergo medical treatment or surgery
 - For children under the age of 12 years the consent of a parent or guardian is required
 - No parent, guardian or caregiver may refuse to assist a child or withhold consent by reason only of religious or other beliefs unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned



**THANK
YOU**

