MAINTENANCE AND HIV AND AIDS
Overview of presentation

• Presentation is made in line with

a) LSSA objective for provincial workshops on maintenance; specifically measuring access to maintenance by understanding gaps and conflicts within current maintenance system

b) Collaborative partnership between government and civil society organizations, aimed at improving lives of all people living in South Africa, particularly vulnerable communities

c) The Department of Justice and Constitutional Development’s (hereafter referred to as DOJCD) commitment to improving access to justice for all

d) Presentation aims to present maintenance in the context of HIV and AIDS and make recommendations for discussion
Understanding issues- maintenance legislative framework

• Spousal maintenance (in terms of Divorce and Rule 34 application)
• Child maintenance

• South African context – legislative framework
  – Constitution Act 108 of 1996
  – Maintenance Act 99 of 1998

• International context – Conventions

• Other supporting legislation and international instruments that entrench right to support and maintenance
International maintenance

- Aims to provide an effective system of cooperation
- Give recognition and enforcement of maintenance decisions
- Establish accessible, speedy and cost-effective procedures

- DoJCD International Relations Section coordination role with foreign countries, including maintenance issues

- **Advocacy role:** Educate, encourage and support caregivers who are foreign nationals with maintenance orders
Understanding issues – Maintenance system...Research findings

• Maintenance – gendered and influence on poverty
  – Feminization of poverty
• Child maintenance system – inaccessible and inefficient

• Inaccessible:
  – court processes – “complex forms” (literacy levels), “long queues”, “informal enquiries not in camera”, awards are “invariably too small” [Mills S, 2003]

• Inefficient:
  – “officials unaware of provisions of Maintenance Act” [Moyo B, 2003]

• Link between maintenance and HIV and AIDS in SA “not formally documented” [Tshwaranang Legal Advocacy Centre, 2007]

• Limited research to show positive / best practises/ successes
Understanding issues – HIV and AIDS

• Effect on individual as opposed to families
• Families – effects include: disintegration, stigmatization, income (poverty) and discrimination
• Predominately affect families with low socio-economic status, particularly vulnerable families such as single-headed households, migrants etc
• HIV disease progression in children more rapid than in adults
Understanding issues – HIV and AIDS

• National Strategic Plan on HIV and AIDS 2007 – 2011 (NSP)

• NSP acknowledges vulnerability and human rights framework in addressing HIV and AIDS

• NSP priority area 4 – human rights, access to justice and law reform
  • NSP Strategic Goal 5 ‘increase access to legal services’ for vulnerable

• What does this mean for vulnerable families and care givers accessing maintenance?
Linkages – maintenance, human rights, HIV and AIDS and access to justice

• **Maintenance and Human Rights Framework**
  - Right to spousal maintenance (Divorce Act 88 of 1984)

• **Conflicting Rights:**
  - Right to dignity: Do court officials have a duty to uphold care-givers right to dignity by treating information about status with sensitivity, prioritize cases where status is disclosed and ensure that court facilities are accommodative?
  - Right to privacy: Does the care-giver have a right to disclose status including that of child and how do we ensure right to privacy and confidentiality in court?
  - Right to just administrative action: Does the lack of information by court officials about impact of HIV and AIDS in maintenance cases undermine care-givers right to efficient administration?
Maintenance and HIV and AIDS and access to justice

- Balance rights in context of disclosure
- Legal assistance with court processes
- Service from legal officers (understanding impact of HIV and AIDS)
- Monetary award
  - Consider cost of HAART (Highly Active Antiretroviral therapy): R7 000 per patient (R583 per month) [Department of Health and Treatment Action Campaign, 2008]
  - HAART must be supported by nutrition and psychological support: Food per month to include nutrient supplements and Support could be in the form of support groups (transport to meetings etc): R1 500 per month

- Default and non involvement of care-givers (particularly devastating and life threatening for children infected by HIV)
Moving forward… Ideas/ proposals for discussion

• Realizing access to justice for maintenance users infected or affected by HIV and AIDS
• Continually improving maintenance system (from legislation to administration and resources)
• Defining Access to legal services
  – Some lessons [International Development Law Organization and UNAIDS, 2009]
  – No “one size fits all”
  – Legal information and advice: telephone hotlines, formal litigation and strategic litigation
  – Community legal education
• Research – best practices
• Involvement of maintenance users infected or affected by HIV and AIDS in development of interventions, strategies and policies
Specific Recommendations – DoJCD and SANAC

• Public awareness – focus on impact of HIV and AIDS in families and link with poverty

• NSP: include specific responsibilities for stakeholders such as Law Society and Bar, Magistrate and Judicial Commission

• Strengthen government campaigns

• Mainstream HIV and AIDS in campaigns, programmes etc
Recommendations ..... DOJCD

• Improve maintenance system
• Research: experiences of care givers and their children living with HIV and AIDS and Accessing maintenance
  – Time – legal process
  – Medical treatment – amounts
  – Responses of legal/court officials to maintenance and HIV and AIDS (maintenance officials (investigators, clerks), interpreters, court managers, attorneys, magistrates and prosecutors)
• Research: Monitoring court cases
• Research: Different models of legal services in different contexts
• Policy formulation, implementation and monitoring
• Public awareness on international maintenance
• Training / Information provision for court officials
• Advocacy with LSSA and other stakeholders
Recommendations...Stakeholders: LSSA and NGOs

- Monitor and report on DOJCD commitment to improving maintenance system
- Advocate for greater access to treatment
- Develop strategy to provide legal assistance to vulnerable families, especially women and children infected and affected by HIV and AIDS
- Stronger linkages with organizations of people living with HIV
- Training and information sessions with attorneys and NGOs/Community based organizations
References

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