Stigmatisation causes litigation

“Stigmatisation continues to be a large feature of HIV litigation,” said Attorney M.B. Awuah, Board Member of BONELA. Ms. Awuah is currently dealing with several cases on behalf of BONELA. There are currently five cases in various stages of completion.

In one case the Complainant was being victimized by her Employer for having gotten pregnant despite her being HIV positive, and was dismissed on a very flimsy excuse. “It was clear in that case” said Ms. Awuah, “that people still hold negative and ignorant views on the rights of HIV positive people to have planned, monitored and safe pregnancies.” This matter was settled out of court.

In another case, an employee was sent home from work after revealing her HIV positive status to her Supervisor. She was constructively dismissed as no letter of dismissal was ever given to her. When she reported her situation to the Department of Labour and Home Affairs she was accused by her employers of no longer wanting to work for them! The lack of legislation to govern employees with HIV leaves a wide area of negative discretion to the unscrupulous employer to get rid of employees so afflicted,” said Ms. Awuah.

There are also examples of neighbours and workmates causing others to boycott members of society. They have done so by spreading rumours about the HIV status of the person causing ostracization, loss of business and reputation. “What becomes apparent is that people are still inclined to stigmatize sufferers of HIV and are still ignorant about the dangers of HIV.” Ms. Awuah feels that a lot more people in society have similar problems but do not come forward for fear of being further stigmatized by a public court case. “Eliminating stigma is the key to solving the HIV scourge.”

Most HIV litigation is settled out of court. Those accused of stigmatizing people do not want to be revealed in public as being prejudiced and politically incorrect. Further research and training needs to be done on dispelling stigma. It needs to be focused on as a substantive goal. “Only then we will start winning the war against HIV,” concluded Ms. Awuah.

THE BONELA ROUND-UP

-BONELA helped organize a BONASO workshop on Gender, HIV, Human Rights Leadership and Development and facilitated a workshop at this event.

-BONELA continued to be involved in the development of the UNDP Project Support Document on Governance (see p. 6).

-Cooperation began with the Baylor Centre for Pediatric HIV to create a training module on human rights and medical ethics for medical professionals.

-A National AIDS Council meeting was held in June.

-Work continued on the Training Manual and research meetings were held with a number of groups.

-Director Christine Stegling and Board Member Maame Awuah had abstracts accepted by the World AIDS Conference in Bangkok which they attended in early July.
Social work, ethics and law

Social work is a very diverse profession and we find social workers in varied agencies and organisations. As you are reading this article you may be wondering why a BONELA newsletter has a clip on social work. This is because I am a social work intern at BONELA and I am hoping to show how social work may be incorporated into the work that is done here at the organisation and in other fields of practice.

A social worker is an educator, an advocate, and an activist. A value of social work that is in line with the work of BONELA is the recognition of an obligation to advocate for those who have little power to ensure their rights and are therefore oppressed or dispossessed. In this case it is people living with HIV/AIDS.

Although initially the organisation had no idea of how social work could be incorporated into BONELA, they have been able to accommodate a student of social work in the organisation. Most social work students expect their placements to be focussed on case work and on one on one client interaction. This is not BONELA’s emphasis, however, I have been able to explore the different dimensions of the profession and to apply them to the work done here at BONELA.

I have been able to apply my skills of an educator in workshops that we have been invited to by teaching on human rights and HIV/AIDS. I am currently working on a section in the training manual that BONELA is producing which is part of our advocacy and activism work. There are currently more employment opportunities available in social work than in many other fields. Social workers are found in different positions of administration, community organization and supervision. In conclusion I just want to say, if you are looking for the challenge of working with people to improve social and personal difficulties, then you should seriously consider a profession in social work.

BONELA WELCOMES NEW FACES

Bontle Keitumetse joined the BONELA Board in May taking on the post of Treasurer. Bontle is an accountant with the Institute for Development Management’s Regional Office in Gaborone.

The Lawyer’s Taskforce has been joined by Monica Tabengwa. Monica is a lawyer with Awuah, Khan and Partners and has recently relocated to Gaborone from Francistown. She has a strong background in human rights work including many years with the women’s NGO Metlaetsile in Mochudi.

BONELA’s membership has also grown since our last newsletter. We have welcomed three new individual members. This brings our total membership to 36 organisations and individuals.
Canadian Prof reviews laws

In the short time that I’ve been at BONELA, and in research I’ve done, I’ve noticed that the law relating to HIV/AIDS discrimination is consistently a very grey area. Sure, Botswana’s policy is adequately progressive and addresses some of the issues pertaining to stigma. But, in the legal arena, until the policy becomes adopted as law and is incorporated into the Constitution, inconsistent judicial rulings such as in the first two BBS cases will continue (see last issue of the BONELA Guardian).

In cooperation with other organizations, BONELA hosted former Canadian parliamentarian, and current International Human Rights Law professor, Warren Allmand. He came to Botswana in February to review laws in light of the HIV epidemic and put particular emphasis on the Constitution.

Articles 3 and 15 of the Constitution deal mainly with equality rights and protection against discrimination. In examining both articles, Allmand found that “the grounds for protection that are listed appear exclusive, and there is no mention of ‘health status’ or ‘disability’ which would protect the persons living with HIV/AIDS and similar diseases...” Allmand went on to state that the Constitution also lacks a “catch-all provision such as ‘other status’ which would allow the courts to add other grounds of anti-discrimination...”.

Allmand contended that a constitutional amendment was necessary to provide “entrenched protection” of human rights as opposed to solely amending laws to ensure that they are consistent with the (HIV/AIDS) policy.” Ultimately in Allmand’s opinion, regardless of which path the government decides to take, a need still remains for a Human Rights Act. “This Act would, among other things, outlaw all types of discrimination, including discrimination based on ‘health status’ and ‘physical and mental disability,” An Act of this nature would also necessitate an enforcement agency, such as a Human Rights Commission.

Allmand concluded by stating that his recommendations, if implemented by legislation, would outlaw unfair discrimination carried out against PLWHA.” However, there is still a need to legislate in other areas that impact on PLWHA which, according to Allmand, “are not adequately covered at all by present statutes.”

For a copy of Warren Allmand’s report email bonela@botsnet.bw.

-Nicholas Murphy was an intern with BONELA in June through Project Empathy

ON THE ROAD

Mid-April BONELA was one of twenty participants from the public sector, NGOs, and CBOs to attend a facilitators workshop organized by Steps for the Future. Steps is a South African based organisation that uses media in HIV education. As a part of BONELA’s participation in this workshop that imparted skills on the effective use of films as media advocacy, we also to draft.

Late-April: BONELA conducted a two day sensitization workshop at Sugar Industries in Lobatse. Sugar Industry staff provided input into the development of the company’s HIV/AIDS policy. That BONELA will be working with the company as part of BONEPWA’s support group training program in Kanye and Palapye. This gave BONELA the chance to interact with a part of its constituency it normally has difficulty accessing due to resource constraints.

Early-June: BONELA facilitated a workshops as part of BONEPWA’s support group training program in Kanye and Palapye.

BONELA WEBSITE HAS A NEW LOOK!

The BONELA website now includes: Press Releases, Photos, Reports, a Feedback Form and much more! We would like to hear what you think of the changes we’ve made. Have a look! www.bonela@botsnet.co.bw
Decision reached on third case

A decision was handed down in the third Industrial Court case to deal with HIV/AIDS in the workplace. While the first two cases involved HIV testing, this case involved the termination of an HIV-positive employee on medical grounds.

The employee had worked for Botswana Ash since 1991. During the latter half of 1997, his health began deteriorating, his CD4 cell count dropped to 65 and he missed 70 days of work. In 1998, he was hospitalized during the latter half of January and was further booked off sick through the end of February. However, on February 5th, Botswana Ash dismissed the employee for the stated reason that his medical condition made him incapable of fulfilling his duties. The employee challenged his dismissal as premature, unfair and not done according to company policy.

The case was heard by Judge de Villiers of the Industrial Court. The Judge found that Botswana Ash did have a valid reason for dismissing the employee, but the procedure used to carry out his dismissal was unfair. More broadly, he found that employees who are HIV-positive or who have AIDS should not be treated any differently from employees suffering from other serious illnesses.

Rules of equity also require that an employer follow a fair procedure when determining if there is a valid reason to dismiss an employee. Judge de Villiers found that the employer is required to follow certain equitable guidelines as well as its own company policy and procedures before it dismisses an employee due to ill-health. The equitable guidelines require that the employer determine whether the employee is capable of performing the work for which he/she was hired, the extent of his/her incapacity, whether his/her work can be adapted, and, if it cannot, whether there is alternative work he or she can do. Most importantly, an employer should consult with the employee regarding the adaptation of work or finding alternative work and should give the employee the possibility of adapting his job or finding him alternative employment, as required to follow certain equitable guidelines as well as its own company policy.

In this case, Judge de Villiers found that Botswana Ash had followed its own policy and procedure. However, the company had discussed with the employee the possibility of adapting his job or finding him alternative employment, and it did not allow him to "state his case" before the decision was taken to dismiss him. Because Botswana Ash did not follow these well-established rules of equity, Judge de Villiers found that the employee's dismissal was procedurally unfair and awarded him two months compensation.

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On May 1st a group of volunteer models gathered at Game City Mall in Gaborone to shoot BONELA's first poster.

The poster, which forms part of BONELA's current media campaign, will be the first in a series highlighting human rights that are particularly relevant to people infected or affected by HIV.

"Every individual shall have the duty to respect and consider his [or her] fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding, and reinforcing mutual respect and tolerance.“

-Kr

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E l i z a b e t h  M a x w e l l  i s  a  F u l b r i g h t  S c h o l a r  f r o m  t h e  U n i t e d  S t a t e s  w h o  h a s  b e e n  a  v o l u n t e e r  a t  B O N E L A  s i n c e  A u g u s t  2 0 0 3 .
I was talking openly last week with a few people here in Gaborone who have been at the epicentre of the HIV/AIDS struggle for quite some time. I asked them how they felt about foreigners, and more specifically white foreigners, coming here to Botswana to provide whatever aid they could. The word “use” seemed to be most common.

I've come here to make a film, originally about the HIV/AIDS pandemic, but now I'm not so sure if this is my story to tell. I've always known that there wasn't any way that I could actually capture the essence of the situation. For one thing, I don't live here, and for another, I'm white, I was born in Canada, and this isn't my culture. Granted, the effervescently hyped realities of development are tying cultures together in this shrinking world of globalization.

I'm a member of a community based project called Project Empathy. The project itself began a year ago when Stephen Lewis, UN Special Envoy on AIDS in Africa, came to our community to speak about the epidemic. Myself, and two other members have been trying to raise awareness in our community about the pandemic. In short, we've been trying to generate empathy through awareness raising campaigns in our community.

Empathy is about an understanding. Often it gets confused with sympathy, (as the thesaurus on this computer has just been found guilty of) bringing a whole world of misconceptions about intent. To combat this, we hope to lay the groundwork for future exchanges where those active here, come to Canada to share their stories there. We're hoping to bring speakers, activists, students, and grass roots organizations back to our community to continue with the struggle of raising awareness.

We have adopted the philosophy of an exchange with some of the organizations that we have met with. An exchange with an undercurrent of empathy, which only means that we can gain an understanding by sharing ourselves with those we encounter. We can only move forward by closing our mouths, and opening our ears. We're attempting to build a sustainable partnership with organizations dedicated to establishing a social initiative to combat the stigmatizing obstacles of culture, racism, poverty, discrimination, and development.

In coming here, it was our hope to look outward, but we've found ourselves, more and more looking inward. The biggest obstacle we face going home is the inaccurate western preconceptions of what Africa “is”. Debunking this misconception has been and is a big part of our work back in Canada. In establishing sustainable initiatives in Canada and Botswana, we hope through awareness raising campaigns, creativity, and non-hierarchical co-operations, to establish partnerships for future exchanges in which people travel in both directions.

Project Empathy was formed by students at Wilfrid Laurier University who were inspired to act after hearing a speech given by Stephen Lewis.

For more info, partnering, or some good old fashion idea sharing, contact us at: projectempathy@hotmail.com
BONELA joined government and civil society organisations in the drafting of the new United Nations Development Program (UNDP) Program Support Document (PSD) on Governance. The Drafting Team held a retreat at Mokolodi’s World View Conference Centre from May 5 to 7 in order to develop a working draft of the new PSD.

BONELA was invited to participate in the development of the Governance PSD, following its earlier involvement in the HIV/AIDS PSD which ran from 1997-2002. This invitation indicates recognition of the fact that HIV is an issue that transcends the health sector in Botswana and one that has real implications for human rights and governance.

The Governance PSD retreat was opened by UNDP Resident Representative Bjorn Forde and UNDP Deputy Resident Representative and Director of Programmes Comfort Tetteh, who welcomed representatives from the Botswana Network of non-governmental organisations (BOCONGO), the Media Institute of Southern Africa (MISA), BONELA, the Botswana Technology Centre (BOTEC), the Attorney General’s Chambers, the Women’s Affairs Department, the Office of the President and the Governance Unit of UNDP. The scenic hilltop setting was perfect for such a task as large as developing a PSD—providing a quiet oasis away from the distractions of the city and the office.

The first day was dedicated to setting the background, necessary expectations and ground rules for the following two days’ work. The group was introduced to the UNDP project format, work plan and budget format, the background to the PSD, the rights-based approach to development and gender mainstreaming.

The next two days were spent in active brainstorming, discussion and debate around the three identified themes of the Governance PSD. A workshop had been convened in November 2003 at which four themes were selected: (1) Access to Justice and Human Rights, (2) Access to Information, (3) Public Administration Reform and Public Service Reform, (4) Gender and Governance. At a meeting of the reference group in February 2004 it was decided to make gender mainstreaming a reality by addressing gender in each off the other three categories as opposed to leaving it as a separate topic.

The group was then charged with identifying key activities under each of the three themes through which to strengthen governance over the next three years. The budgetary limitation of four million US dollars meant that although much could be done, not every activity that the participants had identified in their submissions could be undertaken.

BONELA’s key area of interest was under the Access to Justice and Human Rights theme. BONELA’s representative Kristi Kenyon, raised concerns with respect to civic education around the law and human rights with reference to HIV, the need for sensitisation of service providers within the legal sector and the need for legal reform to fill in the absence of law around HIV.

The group developed a working draft over the three day retreat which was presented to the Reference Group for comments on June 18th. The fine-tuning of the document is still underway with a stakeholders’ workshop planned for August. UNDP expects the document to be finalised by August with implementation expected to begin by the end of the year. The PSD will run until 2007.

- Kristi Kenyon
Human Rights Education Officer

What is a PSD?
A PSD is an agreement between the Government of Botswana and UNDP outlining a framework of activities and implementing bodies in a particular area. The activities outlined are funded 60% by the government and 40% by UNDP, in line with Botswana’s status as a medium income country. UNDP has previously undertaken PSDs on Gender, Poverty, Environment, and HIV/AIDS. This is the first PSD on Governance.
BONELA’s newest publication “Challenging HIV-related Discrimination: Protection for Employees in the Workplace” has recently been published by Pyramid Publishing.

The publication includes an analysis and summary of the two BBS cases (I.C. Case No. 35/2003, I.C. Case No. 50/2003) relating to HIV testing in the context of employment (see the last issue of the BONELA Guardian for details) as well as a policy framework on HIV/AIDS and employment. The policy framework is the result of a cooperative drafting process which involved representatives from civil society, government, unions and the private sector.

“Challenging HIV-related Discrimination” builds on BONELA’s earlier work in the sphere of employment and HIV including the publication “HIV/AIDS and the World of Work” which was prepared by Monica Tabengwa in May 2003. “Challenging-HIV related discrimination” and other BONELA publications are available from the BONELA Secretariat. BONELA would like to thank Elizabeth Maxwell for her kind assistance with this publication.

-Kristi Kenyon

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-Kristi Kenyon

“THIS IS IT!” BONELA INTERNS AT WORK

Nick Murphy
Nick is it! I came to Botswana in early June as a part of a Canadian project raising awareness about HIV/AIDS in my home community. I’m a second year cultural studies/ global studies major at Wilfrid Laurier University in Waterloo (yes like the battle), Ontario. Sadly, my stay here at BONELA was far too short for my liking.

Nthabiseng Nkwe
My work here at BONELA is part of my Bachelor of Social Work course at the University of Botswana. I am using my stay here as an opportunity to explore other areas that are of interest to me such as Human Rights. I have also been involved in leading training workshops.

Thanks for all your hard work!

BONELA’s latest publication.

CALL FOR SUBMISSIONS

THE BONELA GUARDIAN is looking for timely, insightful articles on any topic related to HIV/AIDS and human rights, ethics, policy development, or the law. We welcome first-person accounts, opinion pieces, and responses to articles we have published. Alternative topics, including articles about the medical or social dimensions of living positively with HIV, will also be considered. Submission of relevant photographs or other artwork is encouraged.

For further information, or to submit your ideas, please contact Milikani Ndaba or Kristi Kenyon at BONELA (tel:393-2516).

have your say!
FROM THE DIRECTOR’S DESK

An eventful few eventful months have passed since our last newsletter. We have been putting a lot of emphasis on publicizing human rights and HIV issues with the hope of contributing this dimension to the national debate and making BONELA more accessible. We hope that our newest publication, documenting the two most recent cases of discrimination at the workplace, will be a useful tool to initiate real activism around the introduction of appropriate labour legislation.

We are also extremely proud of our first poster which was produced on a shoestring budget. We hope that many of you will assist us in the distribution to ensure that many people know about our services. The poster is also intended to encourage people to discuss issues of equality and HIV in the public sphere. We would like to thank all of the volunteers who contributed to this successful project, in particular Koreen Reece who continues to volunteer her expertise as a photographer.

BONELA has also increased its work with regard to ethics, an area in dire need of attention. We are grateful that BOTUSA sponsored one of us to attend a course on ‘Ethical Issues in International Health Research’ at Harvard University in Boston, USA. The course discussed a number of issues that are of extreme importance in Botswana including medical consent, confidentiality and the principle of autonomy. In fact, we felt that a similar course discussing ethical concepts in the socio-cultural context of Botswana is crucial. We have therefore invited Professor Cash of Harvard University to Botswana in order to run such a course and are currently in the process of fundraising for such an event.

BONELA has also been involved in designing a lecture on the ethical, legal and human rights aspects of pediatric HIV care for the upcoming training of the Baylor Centre for Excellence at Princess Marina. This experience has shown us how much more BONELA needs to plan activities that facilitate discussions around medical and research ethics.

As you are all aware, we spearheaded the ethical debate around routine testing. We are now more convinced than ever that this new government policy needs to be closely monitored. There are many concerns about the implementation of the policy and whether or not health care providers are routinely offering HIV tests or testing people without adequate consent. We will continue to act as watch dogs and encourage all of you who to document your experiences with routine testing and communicate with us about it. More monitoring activities are planned for August. Watch this space!

Last but not least, I would like to thank our volunteers and affiliates. They make the work we do so much easier and more interesting. In particular, we would like to thank Nick a volunteer from Canada, Elizabeth who has made such a difference with regard to our research and documentation work and Nthabiseng who has shown incredible initiative during her social work placement at BONELA. To all of our members and affiliates, I would like to say: keep communicating with us, our doors always open and we welcome your suggestions about programme activities.

Yours, Christine Stegling

BONELA is...

The Botswana Network on Ethics, Law, and HIV/AIDS (BONELA) is a non-governmental organization committed to integrating an ethical, legal, and human rights approach into Botswana’s response to the HIV/AIDS epidemic. Through training and education, research, advocacy, and litigation, BONELA strives to promote the destigmatisation of HIV/AIDS and to prevent discrimination against those who are infected. In so doing, we hope to create an enabling and just environment for those either infected or affected by HIV/AIDS.

...interested in becoming a member?

We welcome members from the legal community, academia, community-based organizations, support groups, and public and private sectors, as well as people living with HIV/AIDS and concerned individuals. Contact the secretariat for your membership application form today!

Feedback? Send us an email!