



**AIDS law
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Constitutionality of SANDF's ban on HIV positive soldiers to be tested in Court

On 15 and 16 May 2008, a ground breaking case on the constitutionality of HIV testing policies that are used to exclude ALL people with HIV from recruitment to, promotion or foreign deployment in the SA National Defence Force will be heard in the Pretoria High Court.

The court will be asked to declare the blanket exclusion unconstitutional, order the appointment or promotion of individual's adversely affected by the policy and to order the SANDF to devise a new policy within six months.

In the case the AIDS Law Project (ALP) is acting on behalf of the SA Security Forces Union (SASFU) and three individual people with HIV who have been denied recruitment or promotion in the SANDF.

The case is the culmination of more than a decade in which the ALP has tried to engage with the SANDF on the fairness and legality of their policies on HIV. Despite this, in terms of the existing policy, anyone who tests HIV-positive – regardless of their actual health and qualifications -- is automatically excluded from being employed, deployed or promoted within the SANDF.

Over the years, the SANDF has justified its HIV exclusion policy on grounds such as the following:-

- The military has a legal duty to protect the Republic and people with HIV undermine its ability to fulfill this responsibility;
- That people living with HIV are not suited medically or mentally and will therefore be unable to tolerate stress, physical exercise or adverse weather conditions.
- There is a need to keep HIV prevalence low in the military;
- HIV-positive people pose a risk to other soldiers;
- The need to comply with the United Nations regulations that they allege prohibit the deployment of people with HIV as peacekeepers.

Gilbert Marcus, SC, will argue on behalf of SASFU that these stereotype and unfairly discriminate against people with HIV. The ALP will show that there is no medical evidence to justify a blanket ban on all people with HIV. Instead the effect of the policy is to stigmatize people and undermine HIV prevention, treatment, care and support within the SANDF. Finally, we will argue that the policy is contrary to the National Strategic Plan of HIV&AIDS and STIs 2007-2011 and United Nations policy.

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The court documents for this case can be found at:

<http://www.alp.org.za/modules.php?op=modload&name=News&file=article&sid=389>