

The background is a solid blue color with several white snowflake graphics scattered across it. The snowflakes vary in size and opacity, with some being more prominent than others. The main text is centered on the left side of the slide.

# REMOVING LEGAL BARRIERS TO TREATMENT: LEGAL TRAINING ON HEALTH AND HUMAN RIGHTS

**CASE STUDIES: MANDATORY HIV TESTING OF  
MILITARY EMPLOYEES IN ZAMBIA: KINGAIPE AND  
ANOTHER V. THE ATTORNEY GENERAL**

# HOW THE CASE DEVELOPED AND SUPPORTING PARTNERS



- Reporting of case to ZARAN
- ZARAN's referral of clients to LRF
- Agreement to sign an MoU
- Sharing of expertise and information on case through partners' meetings and involvement of SALC

# BRIEF OVERVIEW OF THE FACTS OF THE CASE



- Both petitioners employed by ZAF in 1989 and discharged from military in 2002
- Both petitioners were HIV positive and suffered from opportunistic infections that forced them to see the Resident Doctor at ZAF.
- Both petitioners were ordered to appear before a medical board which did not examine them. They continued to work normally after the Board.
- Both petitioners were soon ordered to undergo medical check-ups which involved the drawing of blood and prescription of additional medicine .

# BRIEF OVERVIEW OF THE FACTS OF THE CASE



- None of the petitioners were counselled nor were their drugs explained to them.
- Both received letters of discharge from military on medical grounds .
- Both petitioners discovered their HIV positive status after their discharge from military service.

# IN DEPTH LEGAL STRATEGY USED

- Overall strategy
- Legal arguments
- Sources of law used
- Evidence required
- Procedural challenges
  - How these may have developed with the evolution of the case



# Summary of Legal Strategy

- Creating a conducive environment for the protection and promotion of the rights of PLHIV; mostly through:
  - Use of a broad spectrum of rights applicable to Zambia.
  - raising strong arguments against mandatory HIV testing and discrimination on account of one's HIV status.
  - Assess the courts willingness to apply international and comparative law.
  - Assess the courts willingness to interpret and apply the directive principles of state policy
- Gather a broad spectrum of evidence
- Use of ordinary and expert witnesses to support the legal arguments raised.

# Share challenges and strategic best practices



- Challenges:
  - Clients withdrew from the case for fear of victimisation
  - Limited understanding of the issues for determination by the court at the commencement of the case
  - Lack of clarity on the procedures to be followed in producing documents in court
  - Accessing evidence of the petitioners' medical records from ZAF
  - Accessing documentary evidence of the proceedings and recommendations of the Medical Board
  - Finding expert witnesses willing and able to testify on behalf of our clients
  - Too much interest by media and other CSOs posed a challenge in managing the court proceedings
  - Internalising the vast amount of research on the issues and arguing them with conviction.

# Share challenges and strategic best practices

- Strategic best practices:
  - Settlement of non-contentious matters via consent orders
  - Fully understand the legal arguments and the case before the commencement of process
  - Development of formal partnerships for other cases
  - Persistence in approaching experts and negotiating with them to testify.
  - Use of social capital to get experts to testify
  - Well funded litigation
  - Readily available and suitably qualified researchers who are dedicated to ensuring that the legal team has readily available information and that they understand this information to the fullest.
  - Identified the need for a pre-determined media campaign or advocacy plan



# Outcome of judgment and its comparative usefulness

- The court found for the Petitioners on the issue of mandatory HIV testing without informed consent and pre and post test counselling.
- The court found for the Respondent on the issue of discrimination on account of the petitioners' HIV positive status.
- The court made some declarations on the need for a transparent system of the sittings of the Medical Boards.
- It was the first case of its nature that provided an authoritative provision on mandatory testing in Zambia. This served (s) as a guide for other countries in the Region.
- It provided authoritative guidance on the importance of international and comparative law in determining novel cases in Zambia.

# Post litigation issues

- No problems with enforcement of judgment as ZNS was very cooperative
- Opened channels of communication with the Defence Forces for other complaints received by ZARAN. Most of these cases were settled outside court.
- Many government HIV policies were streamlined to ensure that they do not violate the rights of PLHIV.
- Opened channels of communication between ZARAN and many line ministries working on HIV-related matters. E.g intervention in the PMTCT policy and its review; review of the National AIDS policy and strategy documents.
- Poor reporting by the media drove a wedge between ZARAN and LRF which saw the partnership formally terminated.