

# **HIV, infant nutrition and health care:**

**Implications of the state's obligations  
in providing formula milk to prevent HIV  
transmission through breastfeeding**

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## CONTENTS

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Acknowledgements	iv
Executive summary	v
<b>1. INTRODUCTION</b>	<b>1</b>
<b>2. THE TAC JUDGMENT</b>	<b>4</b>
<b>3. THE INTERNATIONAL FRAMEWORK: THE RIGHT TO ADEQUATE NUTRITION</b>	<b>7</b>
<b>4. THE CONSTITUTIONAL FRAMEWORK: THE RIGHT TO BASIC NUTRITION</b>	<b>8</b>
4.1 Analysing the applicability of the constitutional jurisprudence on the right to basic nutrition	10
<b>5. ASSESSING THE STATE OBLIGATION TO PROVIDE FORMULA MILK UNDER THE RIGHT OF ACCESS TO HEALTH CARE AND AGAINST THE CONSTITUTIONAL PRINCIPLES</b>	<b>14</b>
5.1 Applying constitutional principles	14
<b>6. CONCLUSION</b>	<b>18</b>

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## EXECUTIVE SUMMARY

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**M**other-to-child transmission (hereafter, MTCT) of HIV through breast-feeding poses serious implications for children's rights to basic nutrition and to have access to health care services. While more research is needed on infant feeding in the context of HIV, current policy guidelines recommend two infant feeding options in HIV-infected women, namely exclusive breast-feeding and exclusive formula feeding. These policy guidelines recognise that mothers (HIV-infected mothers in the present case) have a choice and a responsibility regarding infant feeding, and that all mothers should be counselled and supported in the decision they make. Despite these policy guidelines, South Africa does not have a policy on HIV and infant feeding, particularly in respect of the provision of formula milk to prevent MTCT through breast-feeding. The absence of a policy raises two interrelated questions. First, do all HIV-infected women really have a choice between exclusive breast-feeding and exclusive formula feeding? Second, what support does the state give to HIV-infected mothers who choose not to breast-feed?

This paper critiques the judgment in *Minister of Health and Others v Treatment Action Campaign and Others* for failing to pronounce on whether the state has an obligation to make formula milk available to HIV-infected mothers who choose not to breast-feed. It argues that the absence of a policy in this regard is constitutionally suspect. Providing formula milk to HIV-infected women would assist the state to meet its international and constitutional obligations to prevent MTCT under



the right to basic nutrition and alternatively, under the right of access to health care services. Regarding the latter, this paper argues that the absence of a policy on HIV and infant feeding is inconsistent with some of the constitutional principles established in *Government of the Republic of South and Others v Grootboom and Others (Grootboom)*.

Inevitably, this paper also critiques the *Grootboom* approach to children's socio-economic rights insofar as it is applied to the right to basic nutrition. Contrary to the conflation of the children's and the general socio-economic rights provisions, the paper suggests that the right to basic nutrition, especially in the present case, creates an independent obligation separate from the right to sufficient food.