

One in eight South Africans HIV-positive

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Currently 6 million South Africans, one in eight, are HIV positive, with 1,500 new cases reported every day. More than 60 percent of beds at state hospitals are filled with AIDS patients.

The devastation wrought by HIV/AIDS in South Africa is among the worst in the world. A recent report entitled "AIDS Epidemic Update—December 1999," issued by the Joint United Nations Program on HIV/AIDS (UNAIDS) and the World Health Organization (WHO), documents the continuing impact of the disease on South Africa as part of the worldwide epidemic.

The average annual income in South Africa is \$2,600. The Health Ministry does not pay for drug treatment of HIV/AIDS patients. To date the South African government has rejected proposals to fund AZT treatment for HIV positive mothers as too expensive and possibly even dangerous, in terms of long-term side effects.

Even rape victims cannot receive government subsidized treatment and most rape victims cannot afford the 2,000 to 4,000 rand (\$325-651) for antiretroviral drugs to help hinder infection.

In 1997 South Africa passed a law known as the Medicine Act, with the hope of giving HIV/AIDS patients access to less expensive versions of the antiretroviral drugs. The law would allow the import of commercial drugs from third countries where they are available at a lower cost, a practice known as parallel importing. Many countries regulate the price of drugs and sell them cheaper than in the US. For instance, price comparisons between the US and Canada show that the same drugs in Canada cost about one-third the US price.

A second initiative, called compulsory licensing, would allow the South African government to license local companies to make generic versions of the drugs.

The World Trade Organization allows both practices

under certain emergency conditions, but the pharmaceutical companies, backed by the Clinton administration, oppose them.

About 40 pharmaceutical companies in South Africa, Europe and the United States sued in South African courts against the legislation. The pharmaceutical companies are claiming it violates the companies' patent rights under the World Trade Organization's intellectual property rights, which regulate music, computer programs and medications, among other things.

In February, US Vice President Al Gore commented in a memo that the protection of pharmaceutical patents should be "a central focus" in upcoming talks with South Africa's then-Deputy President Thabo Mbeki. Gore stated that the Clinton administration was concerned about the law's vagueness and asked the South African government to assure it would "not undermine legal protections" for patent holders.

In April, lobbyists for the pharmaceutical industry asked the Clinton administration to impose trade sanctions on South Africa for passing the 1997 law. The US government responded by placing South Africa on a trade "watch list," and Gore, as chairman of the U.S./South Africa Bi-national Commission, threatened sanctions against South Africa if it went ahead with the law.

Since it is impossible for the vast majority of South Africans, or even for the government, to afford the antiretroviral drugs the Clinton administration and pharmaceutical companies are not afraid of an immediate lost of profits on drug sales. Rather, they fear that this would set a precedent for other impoverished countries to enact similar laws allowing parallel importing or compulsory licensing. Furthermore, they fear that such legislation might be expanded from AIDS-fighting medications to other drugs.

After a series of protest by activists on behalf of HIV/AIDS patients outside a Gore fundraising event, and a letter from the South African government pledging that they will strictly abide by patent agreements, the Clinton administration stated that sanctions would not be imposed on South Africa. The administration, however, has not removed South Africa from the trade "watch list," meaning the administration still considers South Africa as a country that violates patent rights.

While easing the sanction threat against South Africa, the US government still opposes compulsory licensing on principle and has stated that it will not make the policy on South Africa universal, but rather take it up on a case by case basis. The Clinton administration has also stated that it planned to seek stronger intellectual property, copyright and patent protections at the recent World Trade Organization conference in Seattle.

Glaxo Wellcome, a major producer of antiretroviral medicines, has now offered to sell South Africa medication at prices substantially below world averages, including a 70 percent price reduction of AZT. However, South African Health Minister Manto Tshabalala-Msimang stated that the government still might not begin using the drugs. She explained that the price would be linked to US dollars, and that since the South African rand has fallen sharply against the dollar over the last two years South Africa still cannot afford the medication.

South African pharmaceutical companies have not yet dropped their suit against the Medicine Act. They are opposing being required to produce generic versions of the antiretroviral drugs because there would be no profit in it for them.

It is not yet clear whether the agreement will allow South Africa to have inexpensive access to the antiretroviral drugs. To date the South African government has not implemented the provisions of the law. Whatever the outcome, during the three-year delay more than 1.5 million people have contracted the deadly virus in South Africa alone, and the rest of sub-Saharan Africa will still not have inexpensive access to the lifesaving medications. The refusal of the US government and drug companies to make antiretroviral treatment widely available has played a major role in the continued spread of HIV/AIDS throughout the world.



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