

HIV/AIDS and the Law

1. Prevention

- The World Bank concluded that “the long term impact of HIV/AIDS had been underestimated and can cause far reaching damage than previously assumed”.
- HIV/AIDS law may be seen as a tool for preventing the spread of HIV

1. Prevention

- Much discussion and numerous reports written on legal rights and the importance of an appropriate legal response
- Legal response to HIV/AIDS important, but, what, where, when and how should the legal response to HIV/AIDS be?
- What is the social and ethical dimension of HIV/AIDS infection and how the law can contribute to HIV/AIDS policy?

1.Prevention

- Can legislation be HIV Specific?
- Can legislation assist in strategies for the care, treatment and support of people with HIV/AIDS?
- Are legal sanctions necessary to bring about the appropriate changes to respond effectively to HIV/AIDS?
- What have been the experience of countries with Statutory framework on HIV/AIDS?

1.Prevention

- More specifically, a law that protects against discrimination and confidentiality of people living with HIV/AIDS.
- the ultimate goal to any HIV/AIDS law is that it should be focused on policies that encourage voluntary control and behavioural change rather than a mandatory one that may induce a sense of rebellion and underground clandestine actions by many.

1.Prevention

A proposed law should be responsive to :-

- a. All conducts of wilful spread be penalised.
- b. The need to uphold the rights and interests of people living with HIV/AIDS
- c. The law should respond to the changes in values and patterns of social interaction that lead to susceptibility to HIV infection.
- d. A law that recognises people living with HIV/AIDS' rights to treatment.

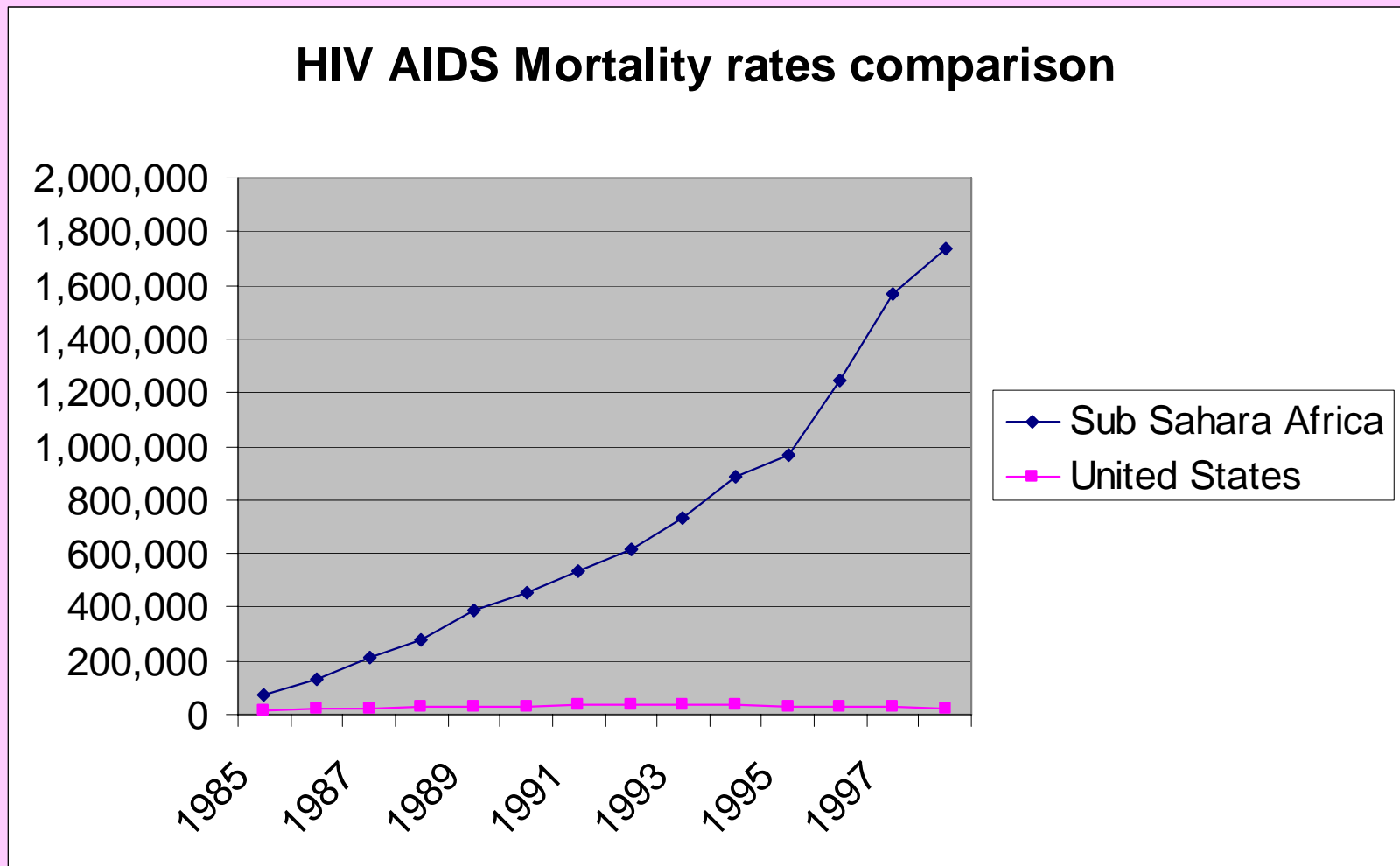
1.Prevention

- Is legislative framework the only answer to combating HIV/AIDS Epidemic?
- No.
- “focussing narrowly on behaviour change or the ABC [Abstain, Be Faithful and Condomise] message was no longer adequate. If we are to turn the tide, it was imperative that treatment be placed high on the Agenda”. the Guardian Mar 21, 2001

1.Prevention

- Brazil, through compulsory licensing of drugs have managed to manufacture and made available to all its HIV/AIDS sufferers generic drugs and lowered its infection prevalence to $\frac{1}{2}$ of a 1994 World Bank prediction.
- “ treatment is an important component of prevention; healthier people are less likely to spread HIV, and people are more likely to be tested for HIV and then adopt safe practices if they know that those with HIV/AIDS have scope, of being treated

1. Prevention



1.Prevention

- “... HIV prevention alone will not adequately or effectively respond to the epidemic, and that access to treatment, care and support is necessary, is a recent and welcome breakthrough in a scientific consensus.”

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

- National HIV/AIDS Strategy Plan [2004 – 2006]
- Priority Area 5: Clinical Management and Treatment of HIV/AIDS
- **Objective 3** : Modify Patent and Pharmaceutical legislation and identify mechanisms of supply and procurement of HIV pharmaceuticals to be in line with WTO TRIPS – compliant patent legislation [Article 8 TRIPS – public health and nutritions]

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

- Important to realise that the issue of global access to medicine requires measures and policies much broader than simply amending global intellectual property protection

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

a. Some Concerns of Developing Countries on Access to Life saving HIV/AIDS Drugs and the TRIPS Agreement:

- Drugs for the treatment of HIV/AIDS very expensive because of exclusive protection of inventors' rights under Art. 28
- The confused patent status of drugs necessary for treatments and the conflicting licensing policies of patent holders make it difficult

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

- Confused patent status of drugs and conflicting licensing policies of patent holders make it difficult to manufacture and distribute drugs in large quantity and at a cheaper price necessary to arrest death rates in developing countries.
- Developing countries that try to introduce compulsory licensing or parallel imports regime into their domestic laws are either intimidated or given carrot to stick approach by the developed countries.

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

- 3 patented antiretroviral drugs should be combined in one pill and WHO should seek compulsory licenses for 5 antiretroviral drugs for use in Sub – Saharan Africa.
- Fear of offending the TRIPS Agreement and imposed sanction an impediment for developing countries to ensure affordable access to essential drugs.

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

- WHO being sold out to big pharmaceutical companies and only concerned with prevention
- Historical inequities caused by unfair trade – neo-colonialism.
- Compulsory licensing and parallel importation of HIV/AIDS drugs almost impossible

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

- TRIPS Agreement allows enough flexibility through compulsory licensing and parallel imports for developing countries to have access to HIV/AIDS drugs
- Patents are not the problem as most anti-retrovirals are not patented in countries with high instances of HIV/AIDS epidemic like Africa.
- Poor health care infrastructures
- High debt

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

- Misdirected Government Financing and Corruption.
- Lack of political will
- Inadequate international financial support from developed nations.

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Probable Solution – Flexibility in the TRIPS and the DOHA Declaration

- TRIPS Agreement provides flexibility for WTO member countries to implement their strategies for prevention and treatment through pharmaceutical drugs.
- Art.1 – Outlines the nature and scope of obligations of members
- Art. 30- Permits members to legislate for limited exceptions

2. HIV/AIDS and Access to Treatment under the TRIPS Agreement.

- Art. 73 – provides security exceptions and permits action by members which are contrary to TRIPS at the time of emergencies
- Art. 6 and 28(2) – ‘Parallel importation’ or ‘first sale doctrine’ or ‘exhaustion principle’
- Art. 31 – Enables any Government or member countries to grant compulsory licences without the authorisation of the patent holder for patented products and process under limited circumstances