

## **HIV/AIDS: Legal Work and the Millennium Development Goals**

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### **Introduction**

A comprehensive *Guide to the Legal Aspects of HIV/AIDS for World Bank Lawyers and Task Team Members* (title not final) is now in an advanced planning stage. The *Guide* will analyze the legal issues, provide good practice examples, and give extensive references on a wide variety of topics relating, among others, to public health legislation, anti-discrimination measures, criminal law, and vulnerable groups.

The purpose of this note is to put legal work on HIV/AIDS in the context of the Millennium Development Goals (MDGs): accomplishment of, or significant progress toward, Goal 6 (which specifically addresses HIV/AIDS) has a very significant impact on other MDGs as well. Thus, legal work on AIDS directly contributes to the World Bank's efforts toward the realization of the Millennium Declaration.

### **Goal 1: Eradicate extreme poverty and hunger**

The relationship between poverty and HIV/AIDS is clear. Those living in poverty have the least access to education and prevention messages, health care services, and treatment. They also tend to have less opportunity and autonomy in general and are therefore more likely to be forced by circumstance into high risk behavior. Of the 40 million people living with HIV/AIDS in the world today, only 1.6 million live in high-income countries and 96 percent of those infected live in developing countries.

The impact of HIV/AIDS on a country's gross domestic product (GDP) has been variously reported but some sources estimate that annual reduction has been as much as 4 percentage points in some countries.

National budgets are put under pressure as funding for HIV/AIDS-related health care and programs is diverted from other areas. Just the cost of treatment alone can be overwhelming. In Burkina Faso, for example, where the AIDS prevalence rate is 8 percent, the estimated cost of treatment per person per year would amount to approximately \$810 with generic drugs purchased from Indian pharmaceutical producers. Given current prevalence rate patterns, even this scenario utilizing low-cost

generics would still require an investment equivalent to 80 percent of the health ministry's budget and 1.8 percent of the country's GDP.

In response to HIV/AIDS, households are forced to spend increased resources on medical care and treatment, as well as funeral and burial costs. Families are faced with the forgone income of those suffering from AIDS and from those pulled from work to assist in the caretaking of the sick. Studies conducted in South Africa and Zambia indicate that household monthly income decreased by 66 – 80 percent due to increased expenditures associated with the caretaking of family members suffering from AIDS.

Decreasing numbers of laborers and decreasing levels of productivity lead to significant food losses. The United Nations Food and Agriculture Organization (FAO) estimates that between 1985 and 2000 AIDS caused the death of 7 million agricultural workers in the 27 most affected countries in Africa. It further estimates that 16 million more agricultural workers will die from HIV/AIDS over the next two decades. This has significant implications for food production and sustainable development as more than 70 percent of the population of many African countries is involved in rural agricultural work. UNICEF predicts that between September 2005 and March 2006, 4.2 to 4.6 million of Malawi's population will face food shortages, in part due to AIDS.

The costs of the epidemic to government services and private businesses are also substantial. HIV/AIDS reduces staff productivity and increases absenteeism due to illness, the need to care for others, and attendance at funerals. Businesses deal with higher expenses for health and death benefits as well as investments in the training of replacement staff. A study conducted in Malawi demonstrates that due primarily to HIV/AIDS, six times as many government jobs were vacated between 1990 and 2000 than had been previously vacated.

But beyond the measurable economic costs associated with the virus, there are even more costly implications for human capital. Diminished parental support (both financial and emotional) produces children who themselves are less able to provide for their own children and future generations. "AIDS does much more, therefore, than destroy the existing abilities and capacities – the human capital – embodied in its victims; it also weakens the mechanism through which human capital is formed in the next generation and beyond." As a result, complete economic collapse may occur within four generations in certain highly impacted countries unless the rising tide of AIDS can be stemmed.

**Goal 2: Achieve universal primary education**

Goal 2 pledges countries to achieve universal primary education with the interim target of ensuring that both boys and girls will be able to complete the full primary school cycle by 2015.

Losses in household income due to HIV/AIDS have a direct impact on the achievement of universal primary education. Levels of enrollment and educational attainment drop as families shift much-needed resources from school fees (including tuition, uniform, transportation, and textbook costs) to health care. One study conducted in Kenya compared levels of school achievement between 5,200 orphans who had lost their parents to HIV/AIDS with the same number of orphaned children who had lost parents to other causes. HIV/AIDS orphans had significantly lower levels of both enrollment and retention in school.

Within communities already affected by HIV/AIDS, parents realize that their children may also eventually become infected with the virus. They reason that investments in education will be wasted as their children are likely to die young. One economic model calculates that, as parents fail to invest in children's education, resulting low levels of educational attainment will cause family income to drop from \$22,340 to \$17,770 between 1990 and 2020 and to \$12,900 by 2080. If mortality levels continue at pace, the adult population in some countries will be a primarily uneducated one within two generations.

### **Goal 3: Promote gender equality and empower women**

Goal 3 aims to increase gender parity in all areas of life. Gender equality is important not only in itself but also as a step towards achieving the other MDGs. Recognizing that education is an effective means by which to sensitize both boys and girls to the necessity of gender equity, the interim goal is to eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.

In many countries throughout the developing world, women are relegated to positions of lower social standing than men. Gender inequality contributes to cycles of continued poverty by reinforcing unequal distribution of wealth and lack of access to resources. Women lack the autonomy to make even basic decisions in relation to life choices including those pertaining to reproductive health. For social, cultural, economic, and physiological reasons, girls are especially vulnerable to infection by HIV/AIDS.

HIV/AIDS also has a disproportionate impact on the education of girls. Currently in the developing world, 150 million children aged 6 to 11 are out of school and over 90 million of them are girls. Girls are more prone to dropping out of school to care for sick relatives or to perform domestic chores no longer performed by those suffering from AIDS. Thus, HIV/AIDS further reduces girls' low enrollment and retention rates at all levels of the education system. In Africa, for example, girls' enrollment in secondary education is already extremely low and the disparity between male and female enrollment in tertiary education is very high. All indicators suggest that this disparity, which exists throughout developing regions, will increase in coming years without enhanced and targeted intervention.

#### **Goal 4: Reduce child mortality**

Today, like every other day, 30,000 children in this world will die before reaching their fifth birthday. This amounts to almost 11 million infants and children each year. With accessible and adequate health care, most of these deaths could be prevented. Goal 4 pledges to address this reality by reducing by two-thirds the under-five mortality rate by 2015.

While HIV/AIDS has had only marginal impact on global child mortality rates, in high prevalence countries the impact has been substantial. In 2002, HIV/AIDS was the seventh most common killer of children in the developing world. The results of one study suggest that by the year 2015, up to 90 percent of children who die before their fifth birthday in Botswana will have died from HIV/AIDS-related causes.

Child mortality is directly linked to maternal health. Children born to HIV-positive mothers, regardless of their HIV-serostatus, have three times the risk of dying than children born to uninfected mothers. In the absence of HIV/AIDS, an estimated 86 percent of South African children would have grown up in a nuclear family with both parents present to care for them and less than 1 percent would have suffered the loss of both parents. With predicted infection rates continuing along current patterns of transmission, it is anticipated that by 2010 only 29 percent of children in South Africa will enjoy the security of a nuclear family with two parents present and 19 percent will have experienced the death of both parents. Instantly thrown into roles of responsibility beyond their years, orphaned children are unable to properly care for themselves and are therefore especially vulnerable to abuse, ill-health, HIV infection, and death.

**Goal 5: Improve maternal health**

Each minute, somewhere in the world, a woman dies from complications during pregnancy or childbirth. Over one half million die in this way each year and for every woman that dies, another estimated 25 suffer debilitating injury. Roughly 95 percent of these deaths occur in the developing world and many could be prevented with proper access to health care services. Goal 5 aims to improve maternal health by reducing the maternal mortality ratio by three-quarters by the year 2015.

Maternal mortality rates reflect women's inequality in a given society. The lower social status afforded women in much of the developing world translates into less knowledge about health issues, less access to health services, and higher maternal mortality figures. Globally, maternal mortality rates reflect the inequality of women between regions. In 2002, for example, the vast majority of maternal deaths (approximately 95 percent) occurred in Africa and Asia. Roughly four percent occurred in Latin America and less than one percent occurred in developed regions.

Approximately 20 percent of maternal deaths occur as a result of pre-existing health conditions that are exacerbated by pregnancy –and with increasing frequency, HIV/AIDS is one of these conditions. The pandemic is undergoing a rapid “feminization” whereby the ratio of HIV-positive women-to-men is increasing at an alarming rate and is contributing to rising maternal mortality rates.

**Goal 6: Combat HIV/AIDS, malaria, and other diseases**

Millennium Development Goal 6 pledges countries to combat HIV/AIDS, malaria, and other diseases. One of the Goal's interim targets is to have halted and begun to reverse the spread of HIV/AIDS by 2015. The formulation of this target is confusing, to say the least. To halt the spread of HIV/AIDS is impossible: even if it were conceivable that there would be no increase in HIV infection (which is not realistic), there would still be an increase in cases where the infection leads to full-blown AIDS. Interpreting the target as just reducing the growth rate of new infections is also unsatisfactory as it sets too low a standard with respect to prevention and omits the need for increased treatment for those already infected.

For these and other reasons, the current official indicators (HIV prevalence among 15-24 year old pregnant women; condom use rate; percentage of 15-24 year olds with correct knowledge of HIV/AIDS; and ratio of school attendance of orphans to non-orphans in the 10-14 age group) are being supplemented by a number of actionable targets with

respect to: prevention outcomes; coverage of prevention activities; antiretroviral treatment; and treatment targets with respect to equity for vulnerable groups, training of medical personnel, and medical attention to sexually transmitted infections.

As indicated in the Introduction, action on a wide variety of legal fronts will be required in order to create country legal frameworks that support, rather than work against, the achievement of these targets.

**Goal 8: Develop a global partnership for development**

The United Nations Millennium Declaration highlighted a variety of global as well as national actions to promote development and eradicate poverty, which led to the subsequent formulation of the MDGs. In terms of the global partnership necessary to underpin these actions, six specific targets were constructed, two of which deal with the need to provide developing countries with access to affordable, essential drugs and the benefits of new technologies.

In the context of the fight against HIV/AIDS, the need to reduce the cost of antiretroviral medicines (ARVs) and related supplies (such as diagnostic tools) is well recognized. This can be accomplished through a variety of means, such as tiered export pricing regulations, voluntary discount and donation programs of drug manufacturers and international NGOs, and adequate provision for the importation and manufacture of generic medicines in countries' patent laws and drug regulatory schemes.

Some middle income countries have achieved a level of technological prowess that allows them to manufacture ARVs locally, and governments of other countries are actively working toward that goal. Countries must ensure that their intellectual property regimes are appropriate to their needs and allow them to capture the benefit of new technologies as fully as possible within internationally agreed upon frameworks such as the WTO's Agreement on Trade-Related Intellectual Property Rights. International technical assistance, including from the World Bank, in these matters can make a vital contribution.