

# HIV/AIDS and corporate responsibility?

The scale and impact of AIDS in Southern Africa and particularly South Africa has raised fundamental questions regarding relations between industrialised economies and developing economies. Recent press commentary, for example, has used titles like, 'Evil triumphs in a sick society' (*Guardian*), 'At the mercy of drug giants' (*Guardian*) and 'West waging drug war against Africa' (*East African*). While an article by John Le Carre (author of the recent novel, *Constant Gardener*) launches a thinly veiled attack on pharmaceutical companies in *A lot of very greedy people*.

These titles capture a sense of global outrage at the role of pharmaceutical companies in not alleviating suffering and death from AIDS in South Africa by providing low cost medication. From a business perspective, the AIDS crisis in South Africa raises fundamental and important questions that are critical to changing views on corporate responsibility.

Although debate has continued to examine corporate goals of profitability and the maximised shareholder wealth, perhaps no other global event has placed the issues so centrally as the African AIDS crisis. The stark contrast between what are viewed as the concerns of protecting intellectual property rights and the devastation of a continent has initiated global debate on the responsibility of corporations. This will not disappear and

*John Betton explores whether HIV/AIDS is redefining global corporate responsibility in a paper presented at the recent IRASA conference in Cape Town.*

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may very well fundamentally alter the social context of corporate operations.

## **AIDS and South Africa**

'We have a noble task ahead of us - reconstruction of our country. We cannot afford to allow the AIDS epidemic to ruin the realisation of our dreams.' Chris Hani 1991 (cited in Van der Vliet 2001).

When annual antenatal HIV surveys began in state clinics in South Africa in 1990, the incidence of HIV in the population was estimated at 1%. By 1999, the prevalence had risen to 22,4% and 4,2 million South Africans (19,9% of the adult population) were estimated to be affected according to the 2000 UNAIDS Report (Van der Vliet 2001). Van der Vliet (2001) estimated in 2001 that there were more people living with HIV/AIDS in South Africa than in any other country of the world.

## **AIDS and development**

The publication of the *UNAIDS Report* in June 2000 made the point that HIV would

help undermine development in countries badly affected by the virus. Education has always been considered an essential building block in a country's development. According to UNAIDS, HIV related illness is taking its toll on education in a number of ways.

Firstly, it is eroding the supply of teachers and thus increasing class sizes, which is likely to dent the quality of education. Secondly, it eats into family budgets, reducing the money available for school fees and increasing the pressure on children to drop out of school and marry or enter the workforce. Thirdly, it is adding to the pool of children who are growing up without the support of parents, which may affect their ability to stay in school.

A study commissioned by the South African government and reported by the BBC (Barrow 2001) showed that in KwaZulu-Natal Province alone at least one in five teachers was infected with HIV. Countrywide, a quarter of all undergraduates are HIV positive. AIDS was expected to be the leading cause of death among teachers. The report commented that although the impact on the education system was obvious, there are wider implications regarding the future level of skills and education in South Africa if anything up to a quarter of its students and teachers are infected with HIV.

According to an UNICEF report (Harvey 2001), the problem is that in a number of countries, including South Africa, public spending is being shifted away from education in line with microeconomic policies necessary to remain in line with the forces of globalisation. The result is 'less funding to hire and train teachers to replace those who have died'.

Projections by the International Labour Organisation in 2000 estimated that the size of the labour force in some African countries could be up to 35% smaller by the year 2020 than it would have been

without HIV/AIDS. It concluded: 'Africa today is losing its prime labour force to HIV/AIDS.' The report pointed out that many infected were experienced and skilled workers. 'The loss of these workers, together with the entry into the labour market of orphaned children who have to support themselves is likely to lower both the average age of many workers and their average level of skills and experience.'

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The impact of HIV/AIDS becomes all the more catastrophic when viewed in the context of the growing disparity of income and wealth. Many indicators of social health reported by the United Nations Development Agency in 1999 estimated that African countries were *worse* off economically than ten years previously and that purchasing power had dropped by 20% during this period.

In South Africa, the major alliance partners who were to form the new government were slow to react to the HIV/AIDS emergency. Van der Vliet (2001) reports that COSATU did not develop an AIDS programme until 1991 and that since then the political and labour climate in the context of AIDS has been 'patchy and sporadic'. AIDS in the context of the South African labour movement competed as a political priority with issues such as housing, unemployment, poverty and violence.

The crisis of HIV/AIDS and its economic implications brought to the forefront debate over the costs of addressing this crisis - particularly the costs of retroviral drugs, the patents to

which were held by western pharmaceutical companies.

### **Intellectual property**

There are several drugs that specifically target HIV at different points in the life cycle. Using them in combination has proven much more effective than prescribing them one at a time. In Europe and the US, combination therapy has resulted in a huge drop in AIDS deaths and in some people the drugs have reduced the virus to undetectable levels (AIDS Drugs Factfile 2000). The cost of these anti-retroviral drugs in combination therapy is estimated to be around \$1 000 per month and clearly is not affordable by either the majority of South Africans or the government.

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The pharmaceutical companies producing these drugs lobbied hard during the Uruguay round of the World Trade Organization (WTO). They wanted tougher rules protecting intellectual property that provided patent protection for a minimum of 20 years under the Trade Related Intellectual Property Rights Agreement (TRIPS). Although the agreement provided loopholes where countries could cite a national emergency or use compulsory license, the US government supported the major pharmaceutical companies in their bid to close these options.

In March 2001, a lawsuit brought by more than 40 pharmaceutical companies came

before the Pretoria High Court. The lawsuit sought to invalidate the South African Medicines and Related Substances Control Amendment Act of 1997 that would have permitted the South African government to import or produce cheap, generic versions of patented drugs. The outcry to this lawsuit was enormous and global in nature. The non-governmental organisation (NGO) Oxfam and Medecins sans Frontiere came out in support of the government.

Larry Elliott (2001) of the *Guardian Weekly* began an article titled 'Evil triumphs in a disease-ridden world' with the following paragraph: 'Let me tell you a story about life, death and profit. It involves some of the poorest countries in the world and some of the richest companies. It goes to the heart of how the modern world is to be run and whether the institutions set up to police the global economy are up to the job.'

The legal battle between leading drug companies and South Africa's proposed legislation that would have allowed the import of generic AIDS drugs, raised some fundamental questions about the role of corporations. The extent of public outcry over the pharmaceutical companies' lawsuit against the South African government to prevent the import of generics, led to the companies involved unconditionally dropping the case a month later.

### **Conclusion**

The global nature of the debate on the AIDS crisis in Africa raises some fundamental questions of corporate moral responsibility and the role played by international institutions in negotiating trade rules that advantaged wealthy countries' protection of intellectual property to the disadvantage of poorer countries. We have seen on the one hand, the devastating mortality from AIDS in South Africa, and on the other hand, the mobilisation of huge resources by western

pharmaceutical companies to prevent the spread of generic drug imports.

Article 27.1 of the WTO Agreement on TRIPS provides patent protection for at least 20 years. Although there were provisions for exclusion on health grounds, it was also clear that the political power of pharmaceutical companies pressed poorer countries to maintain patent protection. However, the global attention to the crisis in South Africa not only resulted in the withdrawal of the pharmaceutical companies' law suit but also produced a new declaration on TRIPS at the DOHA WTO meeting in November 2001. Article 4 stated: 'We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to promote access to medicines for all.'

However, for South Africa, the AIDS crisis leaves enormous structural questions for the labour force, for the development of human resources and for teaching and education. A report in the *Journal of the American Medical Association* (Stevenson 2000) notes that according to projections by USAID, South Africa will be experiencing a negative population growth by 2003. The same report noted that AIDS is the number one cause of death in Africa, with life expectancies expected to drop to 30 in Southern Africa by 2010. Further reductions in population are predicted due to high infection rates among 15 to 19 year-old females and the consequent impact on fertility. By 2010, Africa is estimated to have 40 million orphans. The ILO Study (2000) leading to its new code of practice estimated that the size of the labour force in some African countries could be up to 35% smaller in

2020 than it otherwise would have been in the absence of AIDS.

The issue of AIDS in South Africa has raised enormous questions for the 21st Century. It raises questions about corporate moral responsibility, globalisation, intellectual property agreements and the development of African economies and labour forces in a global economy. These questions can only be answered globally by a community that is willing to recognise that corporate profitability is no longer tenable in a global world where both economics and humanity are interdependent.

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