

# Access to medicaments

*“A united global effort by concerned citizens can make a difference”*

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## THEMES



HEALTH



GLOBALISATION



DISCRIMINATION

## COMPLEXITY



LEVEL 4

## GROUP SIZE



16-40

## TIME



190 MINUTES

<b>Themes</b>	Health, Globalisation, Discrimination and Xenophobia
<b>Complexity</b>	Level 4
<b>Group size</b>	16 - 40
<b>Time</b>	190 minutes
<b>Overview</b>	This activity is a simulation of the 2001 “AIDS drug” trial in South Africa. It addresses issues of: <ul style="list-style-type: none"> <li>▪ HIV/AIDS and access to medicines</li> <li>▪ How to resolve conflicting claims to rights.</li> </ul>
<b>Related rights</b>	<ul style="list-style-type: none"> <li>▪ The rights to life and dignity</li> <li>▪ The right to property</li> </ul>
<b>Objectives</b>	<ul style="list-style-type: none"> <li>▪ To develop an understanding of the complexity of human rights issues</li> <li>▪ To compare different ways of decision-making (adversarial approach, consensus approach)</li> <li>▪ To develop skills of communication and co-operation</li> </ul>
<b>Materials</b>	<ul style="list-style-type: none"> <li>▪ Flipchart paper and pens</li> <li>▪ Trial role cards</li> <li>▪ Instructions for small group work, one per participant</li> <li>▪ Small cards (10 cms by 6 cms). One red and one green card per participant</li> <li>▪ Space for plenary and small group work</li> </ul>
<b>Preparation</b>	<p>For part 1:</p> <ul style="list-style-type: none"> <li>▪ Make copies of the trial role cards; you need one role card per person</li> </ul> <p>For part 2:</p> <ul style="list-style-type: none"> <li>▪ Make copies of the instructions for small group work, one per participant</li> <li>▪ Make one red and one green card per participant.</li> </ul>

## Instructions

This activity is in two parts. Part 1 is a simulation of the trial and part 2 is a consensus-building phase.

**Part 1.** The trial (total time 65 minutes)

1. Set the scene. HIV/AIDS is a very serious epidemic throughout the world, but especially serious in Africa. It is a big issue in South Africa where millions of poor people are suffering and dying unnecessarily because they cannot afford the expensive drugs they need. Their only alternative is to use cheaper copies of the drugs. The leading pharmaceutical companies are against this. They wish to protect their property rights and so they have joined forces to prevent any State from

copying and selling their products at cheaper prices. They have started legal action against the South African Government, which is distributing and selling cheaper copies of the anti-HIV/AIDS drugs.

2. Explain that participants will be involved in simulating a trial that recently took place in South Africa over this issue. The question is: Is the right to property a valid argument to jeopardise the right to life and dignity of a group of people?
3. Divide the participants into four equal groups to represent Pharma Inc., the South African Government, members of the Treatment Action Campaign (TAC) and Judges.
4. Distribute the trial role cards to the appropriate groups.
5. Give the groups 25 minutes to read their role cards and prepare their cases and/or questions for the trial. Each group must also select a spokesperson to represent the group and one or two resource persons to back the spokesperson up and help answer questions during the trial.
6. Once each group is ready, invite people to come back into plenary. They should remain in their four groups.
7. Now Pharma Inc., the S.A. Government and TAC each have 5 minutes to present their positions and raise any questions. The judges should introduce the groups in turn.
8. The judges themselves now have 10 minutes to answer any questions raised by the groups, and to summarise the different arguments and positions.

**Part 2.** Consensus-building phase (total time 100 minutes)

1. Ask participants to divide themselves into small groups, each of 4 people. In each group there should be one former member of Pharma Inc., one former member of the S.A. Government, one former TAC group member and one former judge.
2. Hand out the copies of the instructions for small groups. Check that people understand what they have to do and how to use the red and green cards. The groups have 30 minutes to try to reach a consensus decision about how to resolve the conflicting claims.
3. Call everyone back into plenary and ask them to report back on the results of their discussions. Give each group 5 minutes to present their report. Note the main solutions and issues on a flipchart.
4. When all groups have reported their positions/solutions, move on to a discussion about the decision-making process. You could ask:
  - How easy was it to reach a consensus?
  - What are the strengths and weaknesses of this approach?
  - Was there a tension between trying to agree a solution and trying to include all members of the group in the decision?
  - Which were the most burning issues?
5. You may like to end this phase of the activity by reading out the following extract from the court's ruling on 19 April, 2001. "The purpose (...) to promote cheaper access to drugs (...) is a commendable purpose, and, in the context of the HIV/AIDS epidemic, a constitutional obligation of the highest order linked to the duty of the State to respect, protect, promote and fulfil a number of fundamental rights including the rights to human dignity and life (held to be the source of all other rights) (...) There is no merit to the (...) challenges to the Act made by the applicants (i.e. pharmaceutical companies)."

**Key date : Debriefing and evaluation**

- 1 December**  
World AIDS Day
- The evaluation will already have started during the discussions in part 2. Now continue by encouraging the participants to reflect on the overall process and then go on to identify the key human rights issues behind the trial. Key questions may include:
- Had participants heard about this case before?
  - What were their initial assumptions?
  - Did these assumptions change during the activity?
  - How do people compare the two forms of decision-making process, the adversarial and the consensus? Which produces the most satisfactory results? How do you define what is a successful result?
  - What were the key human rights issues behind the trial?
  - How do these issues relate to the participants' own social reality?
  - What are the implications for people where you live?

**Tips for facilitators**

You need a long time for this activity because the issues are complex and participants need to think deeply about them. You should note that the two parts do not need to be run on the same day; they can be done in two different sessions.

The purpose of using the red and green cards is to help people be more aware of what helps and what hinders decision-making. Ideally, at the end of the discussions and negotiations in part 2, all participants will show green cards and be able to agree a shared solution.

In part 2, some groups may reach a consensus, others may not. In the discussion, you should use the opportunity to explore the strengths and weaknesses of a consensus approach to decision-making. Ask those groups that did reach a consensus to report not only their final position but also the main arguments behind it. Ask those groups that did not reach a consensus to outline what brought them closer, and what contributed to the divisions between them. Note: you will find more information on consensus-building in chapter 1 on page 59.

It is important to check the actual situation of people in the local community who live with HIV/AIDS, and to adapt/link the activity to issues that concern them.

Note: The name of the coalition of pharmaceutical companies, Pharma Inc. is made up for the purposes of this activity.

**Suggestions for follow-up**

Discuss aspects of the right to life and to human dignity in your country in relation to health issues.

Inform yourselves about health and human rights issues globally. Visit web sites of, or obtain publications from key NGOs (MSF, TAC, Christian Aid) and international institutions (WHO). Find out about actions that are being taken to promote health issues and list them on a flipchart.

The TAC ran a very successful campaign. Unfortunately not all campaigns achieve their goals. There may be many reasons for this, but one may be poor organisation and ineffective publicity. The group can explore these issues and develop their skills for effective campaigning through the activity "Beware, we are watching", on page 95.

## Ideas for action

Find out who is promoting actions on health issues in your locality and how you can contribute.

### Further information

This activity is based on a case which came before the South African high court in 2001. The Pharmaceutical Manufacturers' Association of South Africa prosecuted the president of the Republic of South Africa and others, including the Treatment Action Campaign (TAC), for disregarding their patents on HIV medicines and for importing cheaper, generic drugs to treat the millions of citizens suffering from AIDS.

The judges had to balance the different interests and rights of the two sides. On the one hand the Pharmaceutical Manufacturers' Association claimed the right to property, equality or free choice of trade, occupation and profession while, on the other hand, the government and TAC claimed that it was the duty of the state to respect, protect, promote and fulfil the fundamental rights of human dignity and lives of its citizens.

In a historic judgement the court concluded that the right to property was of a lower order than the right to human dignity and life and should therefore be limited. Subsequently the drug manufacturers dropped their case. This was widely hailed as "a real triumph of David over Goliath, not only for us here in South Africa, but for people in many other developing countries who are struggling for access to healthcare" (NGO joint press release, 19 April 2001). "This is a rare and very meaningful victory of the poor over powerful multinational companies! But our challenge now is to work together with drug producers and government to get medicines to those who need them" (Kevin Watkins of Oxfam).

### AIDS and globalisation trends

In rich countries, people living with HIV/AIDS can live better and longer because of antiretroviral drugs, which are provided by states for free. In Southern countries, people affected by HIV suffer more and die earlier because they have no access to HIV treatments. On average the annual per-capita expense of their health care is around 10\$, whereas the triple therapy, available to people in Northern countries, costs between 10.000\$ to 15.000\$ a year.

Poverty, lack of education and social inequality speed up the spread of the epidemic, but the challenge is above all political, involving governments, international bodies and pharmaceutical companies. In order to be effective, the fight against AIDS needs to challenge key international mechanisms and institutions. Foremost of these are the International Monetary Fund (IMF), the World Trade Organisation (WTO), TRIPS (Trade Related aspects on Intellectual Property rights), GATS (General Agreement on Trade and Services) and the Dispute Settlement Body, which actually functions as the tribunal of the WTO.

## HANDOUTS

### *Trial role cards*

#### **Trial role card: Pharma Inc.**

You are a group of senior Pharma Inc. executives. Your company is one of the world's leading producers of pharmaceuticals. You have bought the rights for the commercialisation of key HIV- and AIDS-related medicines. You need to maintain your profit margin and to please your shareholders. Thus you wish to protect the company's right to set the selling price of your products, keeping in mind the research costs, production costs, and the wages of your work-force. To allow another company to simply copy and sell your products at a lower price would jeopardise your profit and the sustainability of your company. You have therefore joined forces with other leading pharmaceutical companies to prevent any State from allowing the copying and selling of your products at cheaper prices, and to sue them if necessary. You have started legal action against the South African Government.

You should prepare your arguments to defend your position. You will have five minutes to present them during the trial.

#### **Trial role card: South African Government**

You are senior officials in the South African Government. Your government is trying to respond to the request of the pharmaceutical companies who have started legal action against you. Pharma Inc. is trying to prevent any State from allowing the copying and selling of their products at cheaper prices, that is, below the retail price of their own products. In principle you agree with Pharma Inc's. position.

However, popular movements, led by the Treatment Action Campaign (TAC), claim that it is a constitutional obligation by the State to provide cheap access to drugs, particularly in the context of the HIV/AIDS epidemic. You have responded to popular political pressure and have started to allow the import of cheaper (copied) drugs from countries such as Indonesia.

You should prepare your arguments to defend your position. You will have five minutes to present them during the trial.

#### **Trial role card: Treatment Action Campaign (TAC)**

You are a group of activists representing the Treatment Action Campaign (TAC), South Africa. The Campaign claims that the State has the responsibility to provide cheap access to drugs, particularly in the context of the HIV/AIDS epidemic. The government has responded and has started importing cheaper drugs.

You also claim that it is the responsibility of the State to make financial provisions for patients and organisations struggling with HIV/AIDS diseases.

However, the South African Government has been brought to trial by pharmaceutical companies to prevent any copying and selling of their products at cheaper prices. Therefore, you have decided to join forces with the government to defend the role of the State in providing cheap access to drugs.

You should prepare your arguments to defend your position. You will have five minutes to present them during the trial.

## HANDOUTS

### Trial role card: Judges

You are the group of judges who are presiding over the attempt by leading pharmaceutical companies to prosecute the South African Government and to prevent it from allowing the copying and selling of their products at cheaper prices. Activists representing the Treatment Action Campaign (TAC) are defending the government position.

Your role is to invite the three parties in turn to present their respective positions. At the end of the presentations you should not make a judgement or come to conclusions. Your job is to help to clarify issues and to summarise the arguments in support of the conflicting claims.

The core of the problem is how to resolve conflicting claims to human rights. The defence (the government and TAC) claim the rights to life and dignity, and the prosecution (Pharma Inc.) claim the right to property. The official court records put it like this: “The *rights to life and dignity* are the most important of all human rights, and the source of all other personal rights. By committing ourselves to a society founded on the recognition of human rights, we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals.”

Versus

“The *right to property* is protected by section 25 of the South African Constitution which states the following: “Property 25 (1): No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property”.

You should prepare questions to the three parties. You will have ten minutes to ask your questions and listen to the answers.

### Instructions to the small groups for part 2

You are a group of four people, each one a representative of one of the four parties:

- Pharma Inc.
- the South African Government
- activists representing the Treatment Action Campaign (TAC)
- the group of the Judges in the cause initiated by the leading pharmaceutical companies.

Instructions

1. In turn, each person should identify themselves and the party they represent, that is, the role they are playing.
2. Next, each person should indicate their feelings about the situation at the end of the trial. If they think that it will be easy to find a solution, they should show a green card, and if they think it will be difficult they should show a red card.
3. Now your task is to try to come to a satisfactory decision, based on consensus among the four members. You should take the discussion in rounds. The judge chairs the discussion and presents his/her position last.
  - Round one: state your position
  - Round two: present your ideas for solution
  - Round three: negotiate different solutions
4. Listen carefully to each other. At the end of each contribution you should show your colour card to indicate how you now feel about the prospects for reaching a satisfactory solution.
5. At the end of the consensus process, choose one person to report the results back in plenary.