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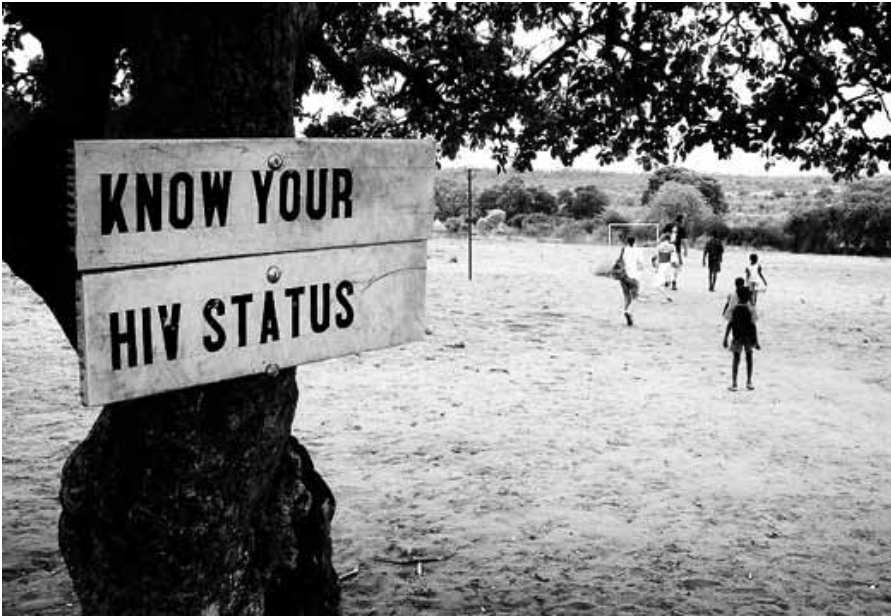
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## The Conflict Surrounding Universal Access to HIV/AIDS Medical Treatment in South Africa

By Kaila C. Randolph\*



Today, 34 million people are living with HIV/AIDS worldwide, whereas over 22 million of those infected are residing in Africa. South Africa, one of the worst countries impacted by the pandemic, hosts over 5 million people living with HIV/AIDS. Source: Wikimedia Commons

### INTRODUCTION

Every individual has the human right to life, a principle found in every international human rights treaty, convention, and national constitution. Nonetheless, what can persons with HIV/AIDS do when their government denies them access to medical treatment? What can refugees do when they are denied health care, simply based on their identity as foreigners? Consider the case of Paula Chirundu, a 34 year-old refugee from Zimbabwe, living in South Africa. After she tested positive for HIV in 2005, she was referred to Hillbrow Hospital in Johannesburg, where health professionals illegally refused to provide her antiretroviral medications because she was a refugee and did not have citizenship documentation.<sup>1</sup>

Human immunodeficiency virus (HIV),<sup>2</sup> which causes acquired immunodeficiency syndrome (AIDS) is one of the most dangerous and infectious diseases to plague the global human population. In 2010, an estimated 34 million people

were living with HIV/AIDS.<sup>3</sup> Africa continues to be the continent most highly affected by the epidemic, accounting for 22.9 million of all persons living with HIV/AIDS in 2010.<sup>4</sup> South Africa is one of the worst impacted countries in the world, with more than 5 million people living with HIV/AIDS.<sup>5</sup> By refusing to support the provision of free antiretroviral (ARV) treatment for all infected individuals, South African government officials are major obstacles to efforts to stem the pandemic.<sup>6</sup> Refugees in South Africa are further disadvantaged because medical professionals often refuse to provide them treatment.<sup>7</sup>

Access to healthcare and medical treatment are fundamental human rights protected under international law.<sup>8</sup> Recognition of this right can be found in Article 25 of the Universal Declaration of Human Rights which states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."<sup>9</sup> Despite these protections, former President Thabo Mbeki and his administration established an HIV/AIDS policy that denied access to treatment to individuals with HIV/AIDS. After much condemnation and a shift in political power in the last two years, the South African government finally developed an advanced policy for HIV/AIDS prevention and treatment; however, healthcare professionals continue to refuse to provide treatment to refugees on account of their status as foreigners. Healthcare professionals' refusal to provide ARV treatment violates the rights of refugees under domestic law; whereas the government's failure to enforce such laws violates the right to access healthcare under both domestic and international law.

An analysis of the HIV/AIDS pandemic in South Africa reveals that refugees' rights to access adequate mental and physical health care, as protected by international treaties and the South African Constitution, are regularly violated by medical professionals who refuse to provide treatment. South Africa is a signatory state to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12 of which obligates States Parties to ensure the physical and mental health of every human being within their territory. Equally important, South Africa is also a signatory state to the International

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Covenant on Civil and Political Rights (ICCPR), which provides in Articles 6(1) and 26, respectively, that all persons within the territory of a State Party have the inherent right to life and are entitled to equal protection of the law without discrimination. South Africa is also a party to the 1951 Convention on the Status of Refugees, which guarantees that refugees exercise their fundamental rights and freedoms without discrimination and also be afforded the same treatment as nationals pursuant to Article 20.

The Government of South Africa is also bound by domestic legal obligations to remedy unequal access to ARV treatment. The Bill of Rights of the Constitution of the Republic of South Africa states that everyone has the right to medical treatment.<sup>10</sup> The Refugee Act of 1998 ensures that refugees are guaranteed the same rights as South African nationals under the Bill of Rights of the South African Constitution.<sup>11</sup> In 2007, the South African Department of Health released a statement reasserting that foreigners have the right to ARV treatment in South Africa regardless of their legal status, and should be provided free healthcare if they lack the necessary financial resources to attain healthcare on their own.<sup>12</sup> Finally, as a State Party to the African Charter on Human and Peoples' Rights, South Africa is committed to protecting the rights and freedoms recognized within the Charter, without distinction based on race or ethnicity. These rights include the right to life, the right to health, and the right to non-discrimination.<sup>13</sup> Thus, the South African government, which funds the free ARV medications, has

international, regional and domestic legal obligations to prevent discriminatory treatment of refugees in the provision of medical treatment. To do this, the Government of South Africa must investigate abuses and establish a working dialogue between health professionals and refugees to stem the spread of HIV/AIDS.

The intent of this article is to illustrate the conflict surrounding the HIV/AIDS epidemic in South Africa and to provide recommendations to the government regarding the steps necessary to achieve universal access to medical treatment. Part Two illustrates how xenophobia and misinformation by medical professionals results in discrimination towards refugees with HIV/AIDS, thereby violating domestic and international legal obligations. Part Three analyzes how the refusal to treat refugees has become a conflict based on identities and assesses what potential methodologies the government could develop to ensure universal access to ARV treatment. Part Four notes the importance of resolving and managing this conflict to prevent continued hostilities between refugees and health professionals, resulting in HIV/AIDS discrimination. Finally, Part Five presents concluding conflict resolution measures to increase education

regarding refugee rights among healthcare professionals, reduce xenophobia and discrimination, and cease the identity-based conflict in South Africa.

#### REFUGEES AND THE CONTINUED FIGHT FOR MEDICAL TREATMENT

*"Xenophobia is still here. Only now it lives at the hospital."*  
— Sefu, Johannesburg<sup>14</sup>

Since the departure of the Mbeki administration,<sup>15</sup> the Government of South Africa undertook new efforts to combat HIV/AIDS with its "Strategic Plan for South Africa 2012-2016," administered under the guidance of the South African National AIDS Council. Under the Strategic Plan, the Council is work-

ing to reduce the number of new HIV infections by at least fifty percent, and to decrease the impact of HIV/AIDS on society by expanding access to ARV treatments to at least eighty percent of all persons infected.<sup>16</sup> The World Health Organization reported that within Sub-Saharan Africa, the number of individuals receiving treatment for HIV/AIDS successfully rose from 2,950,000 in 2008 to approximately 3,910,000 in 2009.<sup>17</sup> However, despite the efforts of the South African government to strengthen their health system and remove barriers to access healthcare, vulnerable groups, such as refugees, continue to face difficulties in receiving treatment.

According to Article 27 of the Constitution of the

Republic of South Africa, "(1) Everyone has the right to have access to – (a) health care services, including reproductive health care; (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights; and (3) No one may be refused emergency medical treatment." In *Minister of Health v. Treatment Action Campaign (TAC)*, the Constitutional Court of South Africa asserted that the equal accessibility to AIDS medical treatment is a socio-economic right guaranteed by the Constitution.<sup>18</sup> In *TAC*, the complainants alleged that the restrictions on the provision of ARV drugs to HIV-positive pregnant women violated the right to healthcare services of others under sections 27 and 28 of the Constitution.<sup>19</sup> The Court relied on the reasoning in *South Africa v. Grootboom*, finding that the Constitution obligates the State to protect economic rights, such as equal access to health-care.<sup>20</sup> Despite the difficulties in meeting such obligations, the Constitution requires the State to protect these rights within their available resources and ensure enforcement.<sup>21</sup> Thus, the Court held that the South African government has the obligation to enforce the right to

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access healthcare, and take the necessary legislative measures to ensure accessibility of ARV medications.<sup>22</sup>

The right to equal-access for medical treatment was expanded to include individuals with refugee status under the Refugee Act of 1998 (Act). Once individuals are granted refugee status, they are provided identification cards to be shown at local hospitals and clinics.<sup>23</sup> Pursuant to the Act, refugees enjoy the same rights guaranteed by the Bill of Rights of the Constitution. Therefore, refugees are guaranteed access to medical care.<sup>24</sup> In a response to reports that a large number of refugees were being refused treatment by medical professionals, the Department of Health released a Revenue Directive to all hospitals and clinics asserting the healthcare rights of refugees with or without an identification card to medical treatment under the Act.<sup>25</sup> The Revenue Directive emphasized refugees' right to access both basic healthcare and ARV treatment, whether or not they had an identification card. Refugees are exempt from paying for ARV treatment services, irrespective of the location or level of medical institution (i.e. public or private clinics).<sup>26</sup>

South Africa's international legal obligations under the ICESCR also require the government to uphold the right to healthcare for all, including efforts aimed at prevention, treatment, and the coordination of programs ensuring everyone medical service and medical attention in the event of illness.<sup>27</sup> The Committee on the ICESCR has examined the right to health under the Covenant, and determined that there are four components of accessibility: non-discrimination in accessibility; physical accessibility for all persons within a safe physical reach to medical care; economic accessibility and affordability for all, including socially disadvantaged groups; and information accessibility where all persons have the right to seek and receive information regarding health issues.<sup>28</sup> The Committee maintains that state obligations also include acceptability, where medical personnel must be respectful of the culture of the individuals, minorities, and other vulnerable groups seeking medical treatment.<sup>29</sup> Accordingly, pursuant to the ICESCR, the South African government must ensure that refugees are not being discriminated against on any grounds, that they have physical access to local hospitals and clinics, that they are properly being informed of their rights to health services as refugees (including information on prevention and treatment), and that ARV treatments are economically affordable given that many refugees are unemployed or lack the financial means to pay for treatment. Equally significant, the government is also required to ensure that medical officials are respectful of refugees seeking healthcare services.

Nevertheless, the right to medical treatment of HIV-positive refugees is often infringed, as a result of xenophobic<sup>30</sup> attitudes of health professionals, thereby inhibiting their ARV treatment.<sup>31</sup> According to the Southern African Migration Programme (SAMP), medical xenophobia occurs when health

professionals exhibit ill-treatment towards patients based on their foreign identity, by withholding treatment or demonstrating any form of discrimination motivated by hostility towards foreigners.<sup>32</sup> In 2011, SAMP conducted a study investigating the existence of medical xenophobia in the South African public health system finding that medical xenophobia is manifested by the following: (1) patients are required to show identification documentation and proof of residence status prior to treatment, however, those lacking documentation are denied treatment; (2) health professionals refuse to communicate with patients in a common language or allow the use of translators; (3) treatment is sometimes accompanied with xenophobic statements, insults and other verbal abuse; (4) non-South African patients are required to wait until all South African patients have received medical attention, even if they have been waiting longer for treatment; and, (5) refugees and asylum seekers have such difficulty accessing ARV for HIV in public hospitals that many are forced to rely on NGO treatment programs.<sup>33</sup> For instance, as Dr. Bernard Uzabakirilo, a medical practitioner at the Ekurhuleni Hospital outside of Pretoria, explains:

When a refugee comes to the hospital they have to present their documentation to prove their refugee status, but the staff at the registration point don't [sic] recognize the legitimacy of their identification cards because they haven't been properly educated.<sup>34</sup>

Thus, rather than be registered as a refugee at the local hospital or clinic, the individual is registered as an illegal immigrant — and thus not permitted to receive free ARV treatment — and is required to pay a consultation fee prior to receiving medical assistance, often ranging from \$290 to \$2,450, depending on the refugee's medical condition.<sup>35</sup> In addition to the costliness of treatment, the language barrier between refugees and healthcare professionals frequently delays or denies treatment. Dr. Uzabakirilo explains, "When refugees phone or come to the hospital and can't speak English they are made to sit down and wait for a translator. I have seen patients who are made to wait for eight hours."<sup>36</sup> Currently, the Department of Health does not

provide translators; thus, refugees seeking medical assistance must provide their own interpreters. Because of the costliness of interpreters, many of these refugees cannot afford to pay for a translator to assist them in the long wait for medical attention.<sup>37</sup>

Refugees are also harassed, ridiculed and persecuted by health care workers, when seeking ARV treatment at local hospitals.<sup>38</sup> For example, Eric, a 33 year old refugee from Burundi, explained that xenophobic attitudes among health professionals are widespread, and many refugees are moved to the back of the line awaiting ARV treatment, ignored, or refused medication.<sup>39</sup> Said, a refugee from the Akasia refugee camp in Pretoria, reported to Human Rights Watch:

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“The government fails to fulfill its legal obligations under the Constitution and international treaties when it does not hold accountable health professionals and government officials that allow unlawful discrimination against refugees in the provision of ARV treatment.”

I went to the hospital yesterday; I was sick. I called an ambulance but it didn't come, so someone gave me a ride. At the hospital they told me, “this is not your country, we can't treat you,” and sent me away. I left the hospital and went to another clinic. One doctor, a female doctor, was saying, “Just treat him,” but some others were saying, “Don't treat him.” Some of them said I was a human being and deserved treatment, and others fought her right in front of me. Eventually they gave me medicine. I have been in South Africa for 7 years as a recognized refugee.... I used to only go to private hospitals where I paid for treatment. I never had a problem there. Only later when I started going to public hospitals would I be treated like this.<sup>40</sup>

The United Nations High Commissioner for Refugees (UNHCR) has also reported cases where HIV/AIDS positive refugees who initially began ARV treatment in their home countries, were refused treatment in South African clinics.<sup>41</sup> According to the UNHCR senior regional HIV and public health coordinator, Gloria Peutras, these cases involved nurses and doctors who were misinformed about the right of refugees to receive free ARV treatment, displaying xenophobic attitudes and providing treatment to South Africans only.<sup>42</sup>

It is important to distinguish that the poor education of medical professionals regarding the rights of refugees is distinct from xenophobia. Such misinformation is a result of many factors, including a lack of resources, failure of healthcare administrators to inform medical workers regarding refugee rights to ARV treatment, and the government's failure to enforce the laws. As a result, many refugees succumb to treatment interruption<sup>43</sup> out of fear of intimidation or rejection. Jonathan Whittall, program director for *Médécins Sans Frontières* (MSF) asserted that “often . . . MSF personnel will have to accompany refugees to clinics to ensure they are given medical attention.”<sup>44</sup>



When refugees are incorrectly characterized as illegal immigrants by xenophobic healthcare professionals, they are prohibited from receiving free ARV treatment and thus required to pay substantial fees for medical assistance. Source: MappingPathways.blogspot.net

#### THE AIDS CONFLICT OF SOUTH AFRICA AND ITS REFUGEES

In an effort to appropriately analyze the discord between health care workers and refugees, a conflict resolution analytical framework may prove useful. Conflict resolution is a conception of law in action where human behavior is modified to avoid potential lawsuits so that an agreement can be made between parties without significant expense or time.<sup>45</sup> Such conflict prevention and management strategies are thus used to promote peaceful coexistence between groups of people, find peaceful ways to achieve resolutions, and facilitate an ongoing dialogue in meeting a common goal. An analysis through the conflict resolution framework of the unequal healthcare provided to refugees may aid the identification of power dynamics between the relevant parties (government, health-care workers, and refugees), and the conflict prevention and management methods being used to fight unequal access to ARV treatment.

Xenophobic health care professionals refusing to abide by their aforementioned legal obligations to treat refugees is a continuous disagreement dividing the government, health care professionals and refugees. This disagreement has created an *identity-based conflict*: where differences between groups are divided along ethnic, political, religious,

or cultural lines and regard the people's need for dignity, recognition, safety, and a healthy lifestyle, or control.<sup>46</sup> When healthcare workers refuse to treat HIV-positive refugees because they are not South African and speak a foreign language, the physical and mental health of refugees is threatened, and the risk that the virus will be spread is increased. The conflict surrounding access to ARV treatment exists as a result of hostile perceptions and attitudes towards refugees, and the internal desire to preserve such resources for South African nationals only. The government fails to fulfill its legal obligations under the Constitution and international treaties when it does not hold accountable health

professionals and government officials that allow unlawful discrimination against refugees in the provision of ARV treatment.

#### CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION OF THE HIV/AIDS EPIDEMIC

For South Africa's new government to meet its human rights obligations towards refugees, the government must better inform medical professionals about the healthcare rights of refugees, establish preventive measures, and produce and manage solutions. Such efforts will assist in rectifying existing conflict between xenophobic or misinformed health care professionals and refugees. Conflict prevention may be direct or structural in nature. Direct conflict prevention involves the implementation of measures that avoid short-term escalation of a potential conflict.<sup>47</sup> Structural conflict prevention establishes long-term methods that focus on the true underlying causes of the conflict.<sup>48</sup> In order to combat the increased spread of HIV/AIDS, the Government of South Africa could approach the core problem of medical access for refugees with structural conflict prevention methods in order to address the underlying xenophobia or misinformation of healthcare workers.

Once the government recognizes that structural conflict resolution can address the ongoing discrimination against refugees, officials should then manage the conflict.<sup>49</sup> The government could manage the conflict by facilitating an open dialogue between the government, health officials, and NGOs that work with refugees, all of whom share a common interest in increased access to ARV treatment. Representatives from the Department of Health could work in coordination with NGOs in collecting data of refugees denied ARV treatment as a result of xenophobia. Collection of reliable data will facilitate open dialogue between all parties. Sensitization of public officials and healthcare providers to the circumstances of refugees could further combat underlying xenophobia.

The process of conflict management is necessary to create a strong foundation for more effective and productive conflict resolution through both accommodation and cooperation.<sup>50</sup>

First, South African health professionals must abide by their Constitution, the Refugee Act of 1988, and other binding legal instruments that guarantee refugees the right to medical access and ARV treatment. Equally important, the government is obligated to enforce these laws against non-compliant health administrators and hospitals. Secondly, the government should construct more health care facilities near refugee camps, with an objective of prevention and treatment. The institution of these facilities will not only encourage refugees to seek treatment, but will also encourage HIV-positive individuals to remain on treatment, providing them medications, psychological therapy, and follow up communications with health specialists.

Although the construction of health facilities near refugee camps would be time consuming and costly, the government has access to financial resources that may be utilized for such objectives. For example, in 2011 the government received \$548.7 million from the United States President's Emergency Plan for AIDS Relief (PEPFAR),<sup>51</sup> the U.S. government's international strategic plan to assist countries that have been devastated by the HIV/AIDS epidemic.<sup>52</sup> Between 2004 and 2011, South Africa received more than \$3 billion to support HIV/AIDS prevention, treatment and care programs.<sup>53</sup> Through the use of PEPFAR, South Africa may appropriate funding to the construction of health facilities near refugee camps and meet the Act's international objective in providing treatment, care and prevention programs. The establishment of these facilities would not only meet the government and PEPFAR's objectives, but would also relieve South Africa of seeking governmental funding for such programs elsewhere.

Furthermore, the South African government should develop and continue an interactive dialogue between refugees and healthcare professionals. Refugees should be informed of their human right to access medical treatment, and that the egregious refusal by hospitals is unlawful. In addition, medical practitioners must understand that refusing treatment to refugees is illegal. The government ought to work in conjunction with human rights NGOs in providing informational workshops regarding these rights at refugee compounds, and anti-discrimination and tolerance seminars at local hospitals. Finally, the government should make every effort to properly and expeditiously investigate filed complaints initiated by refugees, when a hospital refuses treatment. Such inquiries will provide the government a proper assessment of the challenges still facing ARV treatment and how South Africa can improve strategies targeting universal access. Although the Southern region of Africa has a substantial influx of refugees, documenting approximately 146,000 persons at the end of 2010,<sup>54</sup> the government should utilize funding appropriated for combating HIV/AIDS, such as PEPFAR funds, in incorporating the aforementioned workshops, seminars and other methods within their prevention and treatment programs. Such methods practiced in numerous hospitals and refugee camps will undoubtedly reach the large number of health officials and refugees affected by the identity-based conflict and decrease the lingering xenophobic attitudes currently hindering ARV treatment.



Patients wait in line for ARV treatment at a local South African clinic. Source: Insight/Panos Pictures

## CONCLUSION

South Africa has a history of neglecting to provide ARV treatment to infected persons. Today, refugees are repeatedly rejected at local hospitals and HIV/AIDS clinics. Further resistance to de-escalating this conflict, which is based on identities and needs, is dangerous given the statistical evidence of HIV-positive persons living in South Africa, and among asylum-seekers. With so many refugees residing in South Africa, it is not only necessary to treat native South Africans to prevent the spread of the virus, but all persons, regardless of their ethnicity or nationality.

Attention should be given to removing the barriers that refugees face in obtaining ARV treatment in South Africa. The hostile attitudes by xenophobic healthcare professionals towards refugees, the government's lack of authoritativeness in tackling the issue, the resulting effects, and the common need for healthcare resources, demonstrate a clash in the common goal among all actors involved to combat HIV/AIDS. If the discourse is approached with conflict-prevention measures, the government

may systematically begin using conflict management methods, such as constructive open dialogues between the parties, resulting in a solution that meets everyone's common positive objective: reducing the spread of HIV/AIDS through universal access to ARV treatment.

The South African government should take the following measures to resolve the conflict: (1) agree to take action and enforce the Constitution and aforementioned human rights obligations upon health administrators and hospitals; (2) guarantee security in that refugees will not be turned away from treatment, by conducting investigations and follow-up inquiries with hospitals, and thereby imposing fines, should examinations reveal that health professionals are methodically discriminating against refugees; (3) assert that the interests of preventing the spread of HIV/AIDS is of equal importance with those who are infected; and (4) demonstrate that the refugees' fundamental need for ARV treatment is recognized. Only through effective collaboration between the Government of South Africa and healthcare professionals, will refugees enjoy the equal access to ARV treatment required under both domestic and international law.

### Endnotes: The Conflict Surrounding Universal Access to HIV/AIDS Medical Treatment in South Africa

<sup>1</sup> "Treatment Interrupted" in *Welcome to South Africa? A Special Report on the Systematic Abuse of Immigrants*, EQUAL TREATMENT MAGAZINE OF THE TREATMENT ACTION CAMPAIGN, June 2008, at 11.

<sup>2</sup> "HIV is a lentivirus, and like all viruses of this type, it attacks the immune system. Lentiviruses are in turn part of a larger group of viruses known as retroviruses. The name 'lentivirus' literally means 'slow virus' because they take such a long time to produce any adverse effects in the body. They have been found in a number of different animals, including cats, sheep, horses and cattle. However, the most interesting lentivirus in terms of the investigation into the origins of HIV is the Simian Immunodeficiency Virus (SIV) that affects monkeys, which is believed to be at least 32,000 years old." *The Origin of Aids and HIV and the First Cases of Aids*, AVERT, <http://www.avert.org/origin-aids-hiv.htm> (last visited Apr. 22, 2011).

<sup>3</sup> *Key Facts on Global HIV Epidemic and Progress in 2010*, WORLD HEALTH ORG., [http://www.who.int/hiv/pub/progress\\_report2011/global\\_facts/en/](http://www.who.int/hiv/pub/progress_report2011/global_facts/en/) (last visited Feb. 17, 2012).

<sup>4</sup> *HIV/AIDS in Africa*, AVERT, <http://www.avert.org/hiv-aids-africa.htm> (last visited Feb. 17, 2012).

<sup>5</sup> THE HENRY J. KAISER FAMILY FOUND, U.S. GLOBAL HEALTH POLICY FACT SHEET 1 (2010), <http://www.kff.org/hivaids/upload/3030-15.pdf>.

<sup>6</sup> Antiretroviral therapy (ART) is the medical treatment of HIV/AIDS through the use of at least three antiretroviral drugs (ARV) to decrease the progression of the HIV virus. *Antiretroviral Therapy*, WORLD HEALTH ORG., <http://www.who.int/hiv/topics/treatment/en/index.html> (last visited Apr. 22, 2011).

<sup>7</sup> See JONATHAN CRUSH AND GODFREY TAWODZERA, MEDICAL XENOPHOBIA: ZIMBABWEAN ACCESS TO HEALTH SERVICES IN SOUTH AFRICA 12, 26-27 (2011), <http://www.queensu.ca/samp/sampresources/samppublications/policyseries/Acrobat54.pdf>.

<sup>8</sup> See Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 25, para. 1, U.N. Doc. A/810 (Dec. 10, 1948); see International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 12, para. 1, 2(c), (d), U.N. Doc. A/6316 (Dec. 16, 1966). ; see International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 6, para. 1, 21 U.N. Doc. A/6316 (Mar. 23, 1976).

<sup>9</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 25, para. 1, U.N. Doc. A/810 (Dec. 10, 1948).

<sup>10</sup> "(1) Everyone has the right to have access to: (a) health care services, including reproductive health care; (b) sufficient food and water; and, (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. (3) No one may be refused emergency medical treatment." S. AFR. CONST., 1996 art. 27, § 1, 2.

<sup>11</sup> Refugees Act 130 of 1998, ch. 5, art. 27 (b) (S. Afr.).

<sup>12</sup> Leslie Odendal, *Rights for Foreign Nationals*, in EQUAL TREATMENT MAGAZINE OF THE TREATMENT ACTION CAMPAIGN 11 (Sept. 2010).

<sup>13</sup> The African Charter on Human and Peoples' Rights holds that every person within the territory of a state party is entitled to the enjoyment of the rights and freedoms enumerated in the Charter, without distinction of his or her race, ethnicity, color, gender, language, religion, political opinion, national and social origin, fortune, birth or other status. African Charter on Human and Peoples' Rights art. 2, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). Article 4 guarantees that every person has the right to life; Article 16 provides that every individual has the right to the enjoyment of physical and mental health and that state parties must take the appropriate and necessary measures in protecting such health by ensuring medical treatment to the ill; and, Article 20 holds that all individuals shall be equal and enjoy the same respect and obtain the same rights as one another. The Charter also obligates individuals to honor the right to non-discrimination, guaranteeing that all persons respect one another without prejudice. *Id.* art. 4, 16, 20, 28 June 27, 1981.

<sup>14</sup> *No Healing Here: Barriers to Obtaining Health Care*, HUMAN RIGHTS WATCH (Dec. 07, 2009), [http://www.hrw.org/en/node/86959/section/8#\\_ftn166](http://www.hrw.org/en/node/86959/section/8#_ftn166).