

The cautionary tale of USAID cuts: Resources for HIV treatment and prevention programmes

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The recent United States Agency for International Development (USAID) cuts have affected South Africa (SA)'s HIV prevention and treatment programmes. The consequences of these cuts affect the lives of millions of people, given the reliance on this foreign aid to supplement government resources for the provision of HIV treatment. The cuts are the result of a changing geopolitical landscape, in which diplomatic relations can be considered unstable. This article contends that the constitutional obligation to realise socioeconomic rights within 'available resources' should therefore not necessarily be interpreted as including foreign aid. Given current global politics and the fragility of diplomatic relations, such an interpretation is arguably unreasonable. SA should seek to ensure that its HIV treatment and prevention programmes are self-sufficient, so that provision of treatment for HIV can be consistent and reliable, and lives are not lost due to disruptions in treatment resulting from diplomatic relations.

Keywords. HIV, antiretrovirals, USAID, reasonableness, available resources, socioeconomic rights.

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South Africa (SA) has come a long way in its fight against HIV/AIDS. HIV is no longer a death sentence; people are living with HIV when treated appropriately. In fact, the World Health Organization has recently stated that although there is no cure for HIV, it is a 'manageable chronic health condition'.^[1] Recent statistics indicate that 7.7 million people in SA are living with HIV, and 5.9 million of these people are on antiretrovirals (ARVs).^[2] ARVs are essential in treating HIV and ensuring that people living with the virus remain healthy, so that the infection does not progress into advanced stages and result in AIDS. ARVs are also crucial in preventing mother-to-child-transmission of HIV, a fundamental intervention to curb the spread of the virus. ARVs need to be taken daily. If they are not, patients risk developing resistance to ARVs, as well as lowered immune system strength, making them more vulnerable to other illnesses.^[2]

The recent United States Agency for International Development (USAID) cuts to SA's HIV treatment and prevention programmes should serve as a cautionary tale regarding our dependency on foreign aid, especially in view of the impact such events will have on vulnerable groups. Under the SA Constitution, the state has the obligation to realise rights such as healthcare within 'available resources'. Available resources have been interpreted as including foreign aid. However, given instances such as the decision to cut USAID funding to SA, it is questionable whether the state should place reliance on funding from other countries that is ultimately dependent on diplomatic relations. The question posed by this article is whether such reliance on foreign aid as part of 'available resources' is reasonable, especially in the context of the geopolitical shifts taking place across the world.

The actions of the USA should serve as a cautionary example of what can happen when resources are dependent on diplomatic

relations. Arguably, the SA state needs to take greater action to become independent in terms of the resources necessary to fund its HIV treatment and prevention efforts, which affect millions of people. As recently stated by SA's Minister of Health, Aaron Motsoaledi, 'We should not accept that AIDS is here forever. It is not. We want to end it. It's all in our hands and it depends on our will.'^[2] Perhaps the 'will' of the state should not be directed solely at remedying diplomatic relations, but at enhancing our independence in terms of the necessary resources to treat and prevent HIV/AIDS.

Recent events and overview of US-SA relations regarding HIV treatment

On 7 February 2025, the US President, Donald Trump, signed an order suspending all aid and assistance to SA.^[3] The reasons cited were SA's recently signed Expropriation Bill and the opinion of the USA that SA's property laws are racist towards 'ethnic minority' Afrikaners, and the fact that SA had allegedly taken 'aggressive positions' against the USA and its allies by accusing Israel of genocide in the International Court of Justice. Following the review of the USAID programmes, the US Secretary of State, Marco Rubio, announced the cancellation of approximately 84% of USAID programmes.^[4] The cancellation of USAID to SA largely affects the President's Emergency Plan for AIDS Relief (PEPFAR), a project initiated under the Bush administration in 2003 to assist resource-limited countries, including SA, in the battle against the HIV/AIDS epidemic. In 2024, SA received USD332.6 million from this programme.^[5] USAID made up 17% of SA's HIV treatment and prevention budget.

Consequences of the USAID suspension and subsequent cancellation have included service and treatment disruptions, with

clinic closures and clinics left unstaffed owing to the uncertainty of funding.^[5] If clinics are not operational, patients have no means of accessing ARVs. Modelling indicates that these disruptions in treatment could result in up to 500 000 deaths within the next decade, illustrating how crucial consistent treatment is.^[6] As a result of these cuts, the SA health budget has increased, with an additional USD1.5 billion earmarked for health spending.^[7]

Since this order was signed by the US president and issued by the White House, numerous cases have been brought before US courts in objection to it. Recently one has been successful, where a federal judge has ruled that the US Department of Government Efficiency (DOGE)'s dismantling of USAID probably violates the US Constitution. The lawsuit was brought by employees and contractors working for programmes linked to USAID.^[8]

This is not the first time that the USA has affected SA's efforts to combat the HIV/AIDS epidemic. In 2002, prior to the PEPFAR programme, a landmark case came before SA's Constitutional Court: *Minister of Health v Treatment Action Campaign*.^[9] This case is known for successfully compelling the state to provide necessary ARVs to pregnant women to reduce mother-to-child-transmission of HIV. The restricted access to the drug was found to be unreasonable, and the Constitutional Court found that the state did have the resources to ensure access to this necessary medication and compelled the state to act given its life-saving potential. The state further made additional funds available for the treatment and prevention of HIV. This case came at the time of high levels of civil society activism around the issue of HIV/AIDS and was celebrated as a victory in addressing the epidemic.

However, against the backdrop of the domestic battle, the SA government had been facing an international political and economic battle in terms of accessing the necessary ARVs prior to the Treatment Action Campaign case in 2002.^[10] This issue is often neglected in the national narrative of the fight for access to ARVs that culminated in the Treatment Action Campaign court case.^[11] ARVs had become increasingly expensive, especially for lower-income countries such as African countries. Reasons cited for the high prices were strategic efforts by multinational pharmaceutical companies who owned the patents on ARVs to profit from their monopoly.^[12] SA subsequently amended a piece of national legislation, the Medicines and Related Substances Control Act 101 of 1965, to pursue access to necessary medicines such as ARVs at lower costs. This amendment relied on provisions of the World Trade Organization (WTO)'s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).^[13] The TRIPS Agreement creates binding international obligations among member states of the WTO regarding intellectual property rights and copyright protections, including patents for medicines. However, the WTO has made provision for certain flexibilities in the interests of public health. This is codified in the Doha Declaration,^[14] which provides means by which to circumvent the protections established by the TRIPS Agreement when it is in the interests of public health to do so, such as in the case of epidemics or pandemics. SA sought to rely on the provisions of the WTO's guidelines in this regard providing for compulsory licensing, a means by which SA could manufacture a necessary drug to address a 'health emergency', which the HIV/AIDS epidemic certainly was.^[10,11] This provision serves as an exception to the normal operation of patent laws, where the WTO may issue a licence to a state to use a patented invention without consent of the patent holder if it is in the interests

of public health. SA's efforts to rely on this provision in order to access or manufacture ARVs at lower costs were met with strong objections, particularly from the USA.^[14]

At the time, the USA was the leading manufacturer of HIV medicines, and US companies held the patents for these. The USA, in response to SA's appeal to the WTO for a licence to manufacture or procure ARVs at lower cost, placed SA on the 301 'Watch List' for not having what it considered adequate intellectual property protection. A consequence of being placed on this list was that the USA could unilaterally place trade sanctions on SA. Additionally, SA faced a backlash from major international pharmaceutical corporations wanting to prevent the SA government from being granted a licence under the TRIPS Agreement.

^[10] As a result of activism, the Clinton administration removed SA from the Watch List and declared that trade policies could be negotiated to accommodate more affordable access to ARVs for lower-income countries.^[12] Agreements were also made with the major manufacturers of ARVs for more reasonable prices.

In 2001, US senators and some media platforms received letters containing anthrax spores. This incident of bioterrorism resulted in five deaths. Canada, concerned about the possibility of such incidents, then sought to obtain the same licence SA had sought under the TRIPS Agreement to manufacture the drugs necessary to treat anthrax infections in the event of such occurrences. The US government also opposed this, but came to an agreement with the patent holder of the relevant drug, Bayer, so that Canada would not need such a licence and could procure the drug at lower prices. Canada was not placed on the 301 Watch List.^[10] This illustrates a double standard regarding the differences in reaction by the USA in these two instances. A glaring issue is that only a small number of people were affected by the anthrax incident, while millions of people in Africa were suffering from HIV/AIDS. The WTO held a ministerial meeting to address these double standards.^[11]

In addition to illustrating how the TRIPS Agreement may be used when seeking to procure or manufacture drugs at lower cost, the international context here demonstrates that given power and economic imbalances between states, reliance on such provisions can result in greater geopolitical consequences such as trade sanctions. This is despite the TRIPS Agreement explicitly seeking to 'ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade'.^[13]

This history pertinently shows the impact of diplomatic relations on access to medicines, and unfortunately current events are indicative of history's ability to repeat itself as SA faces new tensions with the USA.

The reasonableness of foreign aid as part of 'available resources'

The SA Constitution obliges the state to realise the right to access to healthcare (in this instance, the access to ARVs) through 'reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights'. As mentioned, 'available resources' can be interpreted as including foreign aid. The United Nations Committee on Economic, Social and Cultural Rights, in its General Comment No. 3 on the Nature of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights, elaborates that the obligation regarding available resources includes not only domestic resources but resources

received from international assistance.^[15] This interpretation was relied on by the SA Constitutional Court where it held that claiming a lack of resources is not a sufficient reason for failing to fulfil a socioeconomic right. The case held that the government must make reasonable use of its available resources, which include international support.^[9]

However, given the current circumstances with the USA in particular, it is questionable whether the reliance on foreign aid may in fact be reasonable. Reasonableness is another requirement regarding the state's obligations to fulfil socioeconomic rights under the Constitution.^[16] Courts may assess whether a programme is reasonable to address the issue at hand and effectively provide for the realisation of the socioeconomic right in question. If the state's resources allocated to a particular right include foreign aid, and that foreign aid is then cut, does the state have an obligation to increase its resources allocated to that right, or would consequent austerity measures that may result be justified?

The reasonableness standard for achieving socioeconomic rights is well established in SA law. Courts have clarified how reasonableness can be measured and evaluated to meet the standard set by constitutional obligations. As articulated by Liebenberg^[16] with reference to landmark SA jurisprudence on socioeconomic rights, state measures will be considered reasonable if:

- the measures are capable of facilitating the realisation of the right
- the measures are comprehensive, co-ordinated and coherent
- the measures involve appropriate allocation of financial and human resources
- the measures are balanced and flexible
- the measures are reasonably conceived and implemented
- the measures are transparent
- the measures address the short-term needs of those most vulnerable.

Given these criteria, it is necessary to consider whether the reliance on foreign aid as part of the state's 'available resources' is reasonable in the context of the treatment and prevention of HIV/AIDS through ARVs. While foreign aid may aid in treating and preventing HIV/AIDS through assisting in the provision of ARVs and the administration thereof, and such foreign aid may be comprehensive, co-ordinated and coherent, there is some uncertainty regarding the allocation of such resources, as they are subject to diplomatic relations, as illustrated by the current dynamic between SA and the USA. However, most importantly, the reliance on foreign aid jeopardises addressing the short-term needs of those most vulnerable. The effects of changes in resource availability resulting from foreign aid cuts affect vulnerable members of society. Persons living with HIV are then unable to access their necessary treatment, those at risk of contracting HIV are unable to access preventive treatment, and pregnant women are unable to access treatment to prevent mother-to-child transmission of HIV. As emphasised in the *Treatment Action Campaign* case, 'The state has an obligation to ensure that the most disadvantaged members of society are not left without access to potentially lifesaving interventions.'^[9]

Considering the changing global political landscape, and the uncertainty of diplomatic relations, it is perhaps unreasonable for the state to rely on foreign aid to ensure access to ARVs. This may be the case with other reliance on foreign aid too, but that is beyond the scope of this article. Even if diplomatic relations with the USA are remedied, in 4 years' time they may be subject to tensions yet again.

Similarly, the state should perhaps not take for granted the allies we have. Relations may change, interests may change, and divisions may occur. There is no harm in ensuring that the state is able to provide ARVs to people living with HIV without assistance from foreign aid. Being able to do so would ensure that there is predictability and consistency regarding treatment with and access to ARVs, especially given that people are living with this chronic health condition and may therefore rely on treatment for decades. If the state is able to ensure the provision and administration of ARVs independently of foreign aid, then any foreign aid would be an additional benefit in ensuring that all those living with HIV have access to treatment. The current access to such treatment and prevention would then not be jeopardised by diplomatic relations.

Given the reasonableness standard set by the obligations on the state to realise socioeconomic rights, and in this instance ensure access to ARVs, 'available resources' should perhaps not be interpreted as including foreign aid, but foreign aid should rather be seen as an additional measure that can assist the state. As eloquently stated by the Minister of International Relations and Cooperation, Ronald Lamola:^[17]

'Achieving health sovereignty for ourselves and our continent is amongst the key aspirations of the African Union's Agenda 2023. Our experience with the COVID-19 pandemic taught us a great deal. It taught us we must become self-reliant or face being at the mercy of rich nations in the West who proved themselves capable of acts like hoarding lifesaving vaccines and giving us, as Africans, the leftovers. It must not happen again. It will not happen again. We owe it to ourselves and future generations to build a robust, self-sufficient, sustainable health infrastructure. The gains we have made over the last two decades are fragile.'

These sentiments echo the arguments made above to ensure self-reliance in terms of key health challenges faced by SA that disproportionately affect the poor and vulnerable in our society. Remedying relations with the USA does not guarantee longevity of the programmes and measures put in place by the state to provide for ARVs and ensure access to treatment and prevention. Taking steps to become self-reliant in the face of increasing global political shifts is the reasonable measure to take with regard to resource allocation. Ultimately, an approach to the treatment and prevention of HIV/AIDS that is self-reliant would enable SA to safeguard its public health independence, free from the effects of shifting global alliances and diplomatic relations. Such an approach would also ensure that SA is able to meet the needs of its vulnerable populations despite geopolitical uncertainties.

Conclusion

Despite the focus of news and discussions currently being dominated by the decisions taken by the US government regarding international aid and assessing the impact that these decisions may have, it is also necessary to consider our response to such actions. As stated by Minister Ronald Lamola in his address to Parliament:^[17]

'While we acknowledge the invaluable contribution of PEPFAR to our health system and the whole continent, we should not bemoan the sovereign decision of the United States of America to revise its USAID policy, but seize this moment as a catalyst for change. We must act in unison to mitigate the negative impact of USAID cuts. We must seize this moment to reconceptualise our global

system and ensure that our domestic imperatives serve our nation efficiently and sustainably.’

This statement aligns with the arguments made in this article that we should focus on how to ensure independence with regard to our HIV treatment and prevention programmes. Without doing so, or by focusing on diplomatic relations, SA runs the risk of facing similar situations in the future. Safeguarding the programmes in place to operate independently of foreign aid ensures that the treatment and prevention of HIV/AIDS can be continuous, reliable and sustainable – regardless of geopolitical circumstances.

An interpretation of ‘available resources’ to include foreign aid allows SA to depend on foreign aid for fulfilment of its obligations. While such foreign aid is welcome and has undeniably helped in our battle against HIV/AIDS, it is questionable whether such reliance can still be considered reasonable. Can a state reasonably rely on foreign aid to fulfil its obligations and thereby subject its resources to the current state of diplomatic relations? Given the history between the USA and SA, in particular regarding assistance in addressing HIV/AIDS, it is perhaps necessary to reconsider the implications of relying on such assistance. The obligations imposed on the state by socioeconomic rights require the state to ensure the viability of its programmes aimed at the fulfilment of these rights, including the allocation of resources. Although foreign aid may serve as a helpful supplement, fulfilment of the needs of people living with HIV demands a self-sufficient approach regarding resources, particularly in view of shifting diplomatic landscapes. The fulfilment of constitutional obligations, and the protection of lives against HIV/AIDS, cannot be subject to diplomatic relations and geopolitical uncertainties.

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