

# Recent Developments in International Health Law

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## I. Introduction

Since the first recognition in 1981 of the disease now known as AIDS, an estimated 47 million people have been infected with HIV and 14 million have died.<sup>1</sup> In 1998 alone, an estimated 2.5 million people will have died of causes related to AIDS.<sup>2</sup> Recently, however, death rates have dropped dramatically in countries where persons have access to a complicated regimen of protease inhibitors, a class of drugs which block enzymes in the human immunodeficiency virus.<sup>3</sup> Various reports show drops of seventy-five percent in the death rate in the United States,<sup>4</sup> eighty percent in Australia,<sup>5</sup> and eighty-four percent in Western Europe.<sup>6</sup>

These declines in the death rates in industrialized countries are gratifying and have restored our faith in science and medicine, but they have also lulled many into a false sense of

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1. See Lawrence K. Altman, *Dismaying Experts, H.I.V. Infections Soar*, N.Y. TIMES, Nov. 24, 1998, at F7 [hereinafter *Dismaying Experts*].

2. See *id.*; see also Donald G. McNeil, Jr., *AIDS Takes a Toll on Africa, Even After Death*, N.Y. TIMES, Dec. 16, 1998, at A1.

3. See, e.g., Roger Detels et al., *Effectiveness of Potent Antiretroviral Therapy on Time to AIDS and Death in Men With Known HIV Infection Duration*, 280 JAMA 1497 (1998); Stephanie H. Michaels et al., *Declining Morbidity and Mortality among Patients with Advanced Human Immunodeficiency Virus*, 339 NEW ENG. J. MED. 405 (1998); Bruce Jaspen, *Abbott HIV Drug Drawing Praise*, CHI. TRIB., Feb. 2, 1999, § 3, at 3; see also Denise Grady, *Study Says H.I.V. Tests Misstate Women's Risk*, N.Y. TIMES, Nov. 6, 1998, at A18 (noting that the medical debate about the best time to start antiviral drugs may differ between men and women).

4. See Rex Wockner, *World Roundup*, OUTLINES, Dec. 23, 1998, at 7 (reporting that AIDS deaths in the United States decreased 75 percent between early 1994 and mid-1997); see also Bob Roehr, *AIDS Deaths Continue to Drop Across the Nation*, OUTLINES, Feb. 4, 1998, at 7 (reporting a one-year drop of 64 percent in the death rate for New York City). At one point in the year, the top story at the *Bay Area Reporter*, a gay newspaper in San Francisco, was that for the first time in more than seventeen years the newspaper had no obituaries of persons who died of causes related to HIV. See *Good News at Paper: No AIDS Obituaries*, CHI. TRIB., Aug. 15, 1998, at 3.

5. See Rex Wockner, *World Roundup*, OUTLINES, Nov. 18, 1998, at 10 (reporting that Australian AIDS deaths are down 80 percent in 1994-97 as compared to 1990-93).

6. See Wockner, *supra* note 4, at 7.

security.<sup>7</sup> Although the popular press hails these new drugs as a "cure" to AIDS,<sup>8</sup> it is a mistake to think that they have eliminated AIDS or even reduced the rate of new infection. First, although the protease inhibitors can reduce viral loads to "undetectable" levels in many patients, they do not eradicate the virus entirely.<sup>9</sup> These latent reservoirs mean further transmission of HIV may be possible if the persons do not take safer sex precautions. Second, not all persons respond favorably to the protease inhibitors: some have died and others developed toxic side effects. Third, scientists have documented the sexual and perinatal transmission of new strains of HIV that are resistant to the entire class of new drug therapies.<sup>10</sup> As Dr. Oren Cohen and Dr. Anthony Fauci warned, the emergence of this drug-resistant viral strain "should serve as a loud wake-up call on multiple fronts in the battle against HIV."<sup>11</sup>

The undeniable success of protease inhibitors is denied, however, to persons with HIV who live in the developing world.<sup>12</sup> For the many countries that cannot afford to provide clean water and adequate medical care, the expensive regimen of protease inhibitors and other antiviral drugs such as AZT is simply beyond their economic capacity.<sup>13</sup> Countries such as Paraguay have stopped giving combination drug therapy to persons with HIV, failing to recognize that disrupting an existing drug treatment can produce multi-drug resistant variations that can be transmitted to other people. In the developing world AIDS continues to compromise gains made in overall health care,<sup>14</sup> life expectancy at birth,<sup>15</sup> and economic development.<sup>16</sup>

Despite advances in promising drugs, the AIDS pandemic continues unabated in the developing world. The director of UNAIDS warned the 1998 XII World AIDS Conference that there are 16,000 new infections each day.<sup>17</sup> On a global level, 5.8 million new infections in

7. See, e.g., Louis Weisberg, *Geneva Conference Holds Little Good News*, WINDY CITY TIMES, July 9, 1998, at 11. Among the disturbing developments is a rise in unprotected sexual activity by those lulled into a false sense of security by the availability of protease inhibitors. See *id.*

8. See, e.g., Lawrence K. Altman, *Some Scientists Are Hopeful Again for AIDS Cure*, N.Y. TIMES, July 1, 1998, at A19.

9. See P.J. Engelbrecht, *National Roundup*, OUTLINES, Dec. 23, 1998, at 12 (noting also that the discovery of HIV in the semen of men whose viral loads are "undetectable" is "the Trojan horse of AIDS which continues to elude destruction").

10. See Frederick M. Hecht et al., *Sexual Transmission of an HIV-1 Variant Resistant to Multiple Reverse-Transcriptase and Protease Inhibitors*, 339 NEW ENG. J. MED. 307 (1998); David Brown, *Researchers Find HIV Strains That Resist Most AIDS Drugs*, WASH. POST, July 1, 1998, at A3.

11. Oren J. Cohen & Anthony S. Fauci, *Transmission of Multidrug-Resistant Human Immunodeficiency Virus—The Wake-Up Call*, 339 NEW ENG. J. MED. 341, 342 (1998).

12. See, e.g., David Brown, *For AIDS Treatment, A Global Gulf in Access: World Conference Focuses on Disparities*, WASH. POST, June 29, 1998, at A2.

13. See, e.g., Blaise Salmon, *Poverty Is Scourge Behind Global AIDS Epidemic*, N.Y. TIMES, July 11, 1998, at A10 (letter to the editor). In a welcome development from Israel, the government there announced plans to pay for all anti-viral treatments for its 1,700 citizens with HIV. See Rex Wockner, *World Roundup*, OUTLINES, June 3, 1998, at 11. Israeli Health Minister Yehoshua Matza estimated the annual cost of treatment to be \$13,150 per person. *Id.* See also Rex Wockner, *World Roundup*, OUTLINES, May 6, 1998, at 10 (describing a suit filed against the national health care system in Panama to provide protease inhibitors, following the lead of a successful suit in Costa Rica the previous year to force the Costa Rican national health-care system to provide access to all anti-HIV drugs).

14. See, e.g., Barbara Crossette, *AIDS Blamed for Reversing Health Gains in Poor Nations*, N.Y. TIMES, Dec. 1, 1998, at A9.

15. See UNAIDS, AIDS EPIDEMIC UPDATE 7 (1998).

16. See, e.g., Donald G. McNeil, Jr., *AIDS Stalking Africa's Struggling Economies*, N.Y. TIMES, Nov. 15, 1998, at 1.

17. See Michael Waldholz, *New Drug Mix Would Simplify HIV Therapy*, WALL ST. J., June 30, 1998, at B1.

1998 brought the world total to 33.4 million cases.<sup>18</sup> In certain parts of Africa, a staggering one in four adults is infected with HIV.<sup>19</sup> In one prenatal clinic on the borders of Zimbabwe and South Africa, seventy percent of the women were infected with HIV.<sup>20</sup> The United Nations announced a new pilot program to test the efficacy of short-term AZT use just before birth,<sup>21</sup> building on recent trials showing reductions in the rate of perinatal transmission with only a short course of the drug.<sup>22</sup> However, some women who have access to AIDS drugs may not take them if taking the drugs would mean disclosure of illness to relatives and friends.<sup>23</sup> Other dangers may arise later, when the mother with HIV may be stigmatized if she does not breast feed her child to reduce the risk of HIV transmission.<sup>24</sup>

The continuing spread of AIDS is not only a problem in Africa. In India, a country that, until recently, denied its need to prevent HIV infections, more than four million people are now infected.<sup>25</sup> Some public health officials in India had previously thought that HIV was only a problem for sex workers and their clients.<sup>26</sup> Some of the recent health education programs in India have unfortunately focused merely on "raising awareness" about HIV without actually providing any health care information about how the disease is transmitted. The "awareness" campaigns have produced fear instead of knowledge. In the state of Tamil Nadu, for example, the AIDS awareness campaign produced "attacks on people falsely accused of deliberately trying to spread AIDS."<sup>27</sup>

As research on a possible vaccine continues,<sup>28</sup> political leaders have learned not to make false public promises about the date that such a vaccine may be developed. For many purposes, explicit health education remains the only "vaccine" against HIV. As has been the case throughout the AIDS pandemic, many countries lack the political will and leadership to provide accurate health information to the general population and to select target audiences,<sup>29</sup> such as men who have sex with other men,<sup>30</sup> or men who use the services of commercial sex workers.<sup>31</sup> Many of these countries also lack the political will to implement programs such as needle exchanges,

18. See AIDS EPIDEMIC UPDATE, *supra* note 15, at 2; *Dismaying Experts*, *supra* note 1.

19. See Lawrence K. Altman, *Parts of Africa Showing H.I.V. in 1 in 4 Adults*, N.Y. TIMES, June 24, 1998, at A1 [hereinafter *Parts of Africa Showing H.I.V. in 1 in 4 Adults*].

20. See *id.* at A8.

21. See Lawrence K. Altman, *U.N. Plans to Treat 30,000 H.I.V.-Infected Pregnant Women*, N.Y. TIMES, June 30, 1998, at A15.

22. See Nancy Wade et al., *Abbreviated Regimens of Zidovudine Prophylaxis and Perinatal Transmission of the Human Immunodeficiency Virus*, 339 NEW ENG. J. MED. 1409 (1998); Kenneth McIntosh, *Short (and Shorter) Courses of Zidovudine*, 339 NEW ENG. J. MED. 1467, 1468 (1998) (noting that the Wade study "increases the number of questions that can and should be asked about inexpensive preventive regimens that may be suitable for use in many parts of the world where the prevalence of HIV infection is high and resources are severely limited").

23. See David Brown, *In Africa, Fear Makes HIV an Inheritance: Mothers' Worries About Abuse, Stigma Thwart Detection and Treatment, Panel Is Told*, WASH. POST, June 30, 1998, at A2.

24. See, e.g., Lawrence K. Altman, *AIDS Brings a Shift on Breast Feeding*, N.Y. TIMES, July 26, 1998, at 1.

25. See *Parts of Africa Showing H.I.V. in 1 in 4 Adults*, *supra* note 19, at A8.

26. See *Dismaying Experts*, *supra* note 1, at D7; see also Yasar Bilal Ishaq, *India: AIDS Capital of the World?*, A & U, Jan. 1999, at 42.

27. *Early Warning: AIDS*, WORLD PRESS REV., Aug. 1998, at 5.

28. See, e.g., *AIDS Vaccine Begins a Major Human Test*, CHI. TRIB., June 24, 1998, at 4.

29. See, e.g., Michael L. Closen & Scott H. Isaacman, *HIV-AIDS and Government Control of Information: International Denial of Human Rights*, 4 ST. THOMAS U. L. REV. 107 (1992).

30. See Kai Wright, *Statistically Insignificant: Global AIDS Figures Don't Tell Whole Story*, WASH. BLADE, Jan. 22, 1999, at 1.

31. Cf. Celia W. Dugger, *Fighting Back in India, Calcutta's Prostitutes Lead the Fight on AIDS*, N.Y. TIMES, Jan. 4, 1999, at A4.

even though the needle exchange programs have been shown not to increase drug use and to decrease the incidence of HIV infections.<sup>32</sup> The highest rate of infection from unclean needles is now reportedly in Burma (Myanmar), where a single syringe may be used to inject heroin into forty or more persons.<sup>33</sup>

## II. Loss of a Public Health and Human Rights Activist

Health law developments should be measured today by their conformity to fundamental human rights norms.<sup>34</sup> The human rights principles applicable to the control of AIDS include:

- The right to non-discrimination, equal protection, and equality before the law;
- The right to life;
- The right to the highest attainable standard of physical and mental health;
- The right to liberty and security of the person;
- The right to freedom of movement;
- The right to seek and enjoy asylum;
- The right to privacy;
- The right to freedom of opinion and expression and the right to freely receive and impart information;
- The right to freedom of association;
- The right to work;
- The right to marry and to found a family;
- The right to equal access to education;
- The right to an adequate standard of living;
- The right to social security, assistance, and welfare;
- The right to share in scientific achievement and its benefits;
- The right to participate in public and cultural life; and
- The right to be free from torture and cruel, inhuman, or degrading treatment or punishment.<sup>35</sup>

A pioneer in using international human rights law as a tool of public health was Dr. Jonathan Mann, the former head of the World Health Organization's Global Program on AIDS. Throughout his professional life, Dr. Mann had argued that general principles of international human rights law, and specifically those rights grounded in the Universal Declaration of Human Rights and its progeny, should guide medical personnel, public health policy makers, and governments

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32. See, e.g., Robert E. Stein, *Sterile Syringes and Needle Exchange Programs: On the Front Line in the Battle to Stop the Spread of HIV*, 24 HUMAN RIGHTS 8 (Summer 1997); see also Louis Weisberg, *Geneva Conference Holds Little Good News*, WINDY CITY TIMES, July 9, 1998, at 11.

33. See Christopher S. Wren, *Myanmar's Opium Exports Set Off a Crisis at Home: AIDS*, N.Y. TIMES, May 3, 1998, § 1, at 8.

34. See, e.g., Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *HIV/AIDS and Human Rights: International Guidelines*, HR/PUB/98/1 (proceedings of the Second International Consultation on HIV/AIDS and Human Rights held at Geneva, September 23-25, 1996) (U.N. Sales No. E-98-XIV.1).

35. *Id.* at 42. The U.N. notes that "[p]articular attention should be paid to human rights of children and women" in protecting all of the rights identified here. *Id.*

in their responses to HIV and AIDS. Dr. Mann and his wife were killed in a plane crash in September of 1998.<sup>36</sup>

### III. Legal Developments

#### A. ANTIDISCRIMINATION LAW

Blatant acts of discrimination against persons with HIV continue throughout the world, even in countries with strong antidiscrimination laws.<sup>37</sup> For persons with HIV living in the United States, the most important antidiscrimination law is the Americans with Disabilities Act (ADA), which prohibits certain enumerated forms of discrimination against persons who either have or who are perceived as having a disability. The statute was reviewed in two instances by the U.S. Supreme Court in 1998. In the first decision, the Supreme Court ruled that the ADA "unmistakeably includes state prisons and prisoners within its coverage."<sup>38</sup> The second decision, *Abbott v. Bragdon*,<sup>39</sup> broadly interpreted "disability" to include asymptomatic HIV-infection. A "disability" under the ADA is a physical or mental "impairment" that substantially limits one or more "major life activities."<sup>40</sup> To be covered under the statute, a person must either have the impairment or be "regarded as having such an impairment."<sup>41</sup> The Court found that "HIV infection must be regarded as a physiological disorder with a constant and detrimental effect on the infected person's hemic and lymphatic systems from the moment of infection. HIV infection satisfies the statutory and regulatory definition of a physical impairment during every stage of the disease."<sup>42</sup> The Supreme Court also found that "reproduction" was a "major life activity" under the statute,<sup>43</sup> even though the case itself involved a visit to a dentist rather than a case of childbirth. The decision will certainly be covered extensively in academic journals.<sup>44</sup>

The confusion as to whether the ADA in the United States should cover HIV or AIDS could have been avoided with more explicit drafting.<sup>45</sup> In South Africa, for example, the new

36. For further information on the life and work of Dr. Mann, see Justice Michael Kirby, *Obituary: Dr. Jonathan Mann*, 9 HIV/AIDS LEGAL LINK, at 1 (Dec. 1998); Mark E. Wojcik, *On the Sudden Loss of a Human Rights Activist: A Tribute to Dr. Jonathan Mann's Use of International Human Rights Law in the Global Battle Against AIDS*, 32 J. MARSHALL L. REV. 129 (1998).

37. A landlord in Chicago, for example, entered the apartment of a tenant with HIV and reportedly put all of the man's belongings in the trash dumpster, even though the rent had been paid and the lease had not expired. See Louis Weisberg, *HIV-Positive Man Thrown Out Of Lakeview Apartment*, WINDY CITY TIMES, Oct. 15, 1998, at 20.

38. Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S. 206, 219 (1998); but see *Prisons: Senators Seek To Reverse Supreme Court on Disability Rights*, 13 AIDS POL'Y & LAW 4 (Sept. 18, 1998).

39. 524 U.S. 624 (1998). The Supreme Court decision in *Abbott v. Bragdon* was the first of at least twenty-eight other HIV-related appeals the Court had refused to consider. See Michael L. Closten, *The Decade of Supreme Court Avoidance of AIDS: Denial of Certiorari in HIV-AIDS Cases and Its Adverse Effect on Human Rights*, 61 ALB. L. REV. 897 (1998).

40. 42 U.S.C. § 12102(2)(A) (1994).

41. *Id.* § 12102(2)(A).

42. *Abbott v. Bragdon*, 118 S. Ct. 2196, 2204 (1998).

43. *Id.* at 2205.

44. For further proceedings in the case, see *Abbott v. Bragdon*, 163 F.3d 87 (1st Cir. 1998) (decision after remand from the U.S. Supreme Court, finding that the dental procedure of filling a cavity of a patient with HIV did not pose a "direct threat" to others). Significantly, the court did not simply defer to the medical judgment of the medical professional who claimed that treating the patient with HIV would pose a threat to others.

45. Astute political observers may believe that if the ADA had expressly mentioned HIV, it may have been excluded from coverage rather than being included.

Employment Equity Act expressly protects against unfair discrimination on the grounds of "HIV status."<sup>46</sup> Yet even explicit drafting does not always provide complete protection. Although Australia has a similar statute to protect the rights of persons with HIV, a federal court in Brisbane ruled on January 13, 1998, that the Australian military may discharge any servicemember who tests positive for HIV, chronic hepatitis B, or chronic hepatitis C.<sup>47</sup>

#### B. DENIAL OF BURIAL SERVICES

Laws that guarantee access to health care can also be used to guarantee access to funeral services.<sup>48</sup> A new comprehensive AIDS law in the Philippines enacted in 1998<sup>49</sup> is one of the first laws to expressly prohibit the denial of burial services to persons who had AIDS or who were suspected of having died from causes related to HIV.<sup>50</sup>

#### C. DRUG APPROVALS

The Canadian government changed its drug approval system to allow for faster approval of drugs for persons with life-threatening diseases such as AIDS. Pharmaceutical manufacturers were previously required to prove that their new drugs were both safe and effective. Under the change, the manufacturers must show only that the new drugs "offer a reasonable expectation of working."<sup>51</sup>

#### D. INTENTIONAL TRANSMISSION

Legislators continue to enact special HIV-laws that criminalize intentional exposure of persons to HIV, even when no transmission occurs.<sup>52</sup> By enacting new criminal statutes, legislators can claim to be "doing something about AIDS" without having to fund expanded AIDS prevention, education, and treatment programs.<sup>53</sup> The number of people potentially affected

46. The Employment Equity Act was promulgated on October 19, 1998, in Government Gazette No. 19,370, but the effective date was to be determined by Presidential Proclamation in the Government Gazette. See Fatima Hassan, *South Africa Bans HIV Employment Discrimination*, 9 HIV/AIDS LEGAL LINK, at 19 (Dec. 1998).

47. See Chris Ward, *The Importance of Bleeding Safely: HIV and the Military*, 9 HIV/AIDS LEGAL LINK, at 1 (Mar. 1998).

48. See Mark E. Wojcik, *AIDS and Funeral Homes: Common Legal Issues Facing Funeral Directors*, 27 J. MARSHALL L. REV. 411 (1994).

49. See Geoff Manthey, *New Philippines AIDS Prevention and Control Act*, 9 HIV/AIDS LEGAL LINK, at 16 (June 1998).

50. "A deceased person who had AIDS or who was known, suspected or perceived to be HIV-positive shall not be denied any kind of decent burial services." Philippine AIDS Prevention and Control Act of 1998, Act No. 8504 § 41(1998), available at [www.doh.gov.ph/aids/bill.htm](http://www.doh.gov.ph/aids/bill.htm).

51. *Health: Better Drug Access*, MACLEANS, June 8, 1998, at 36.

52. "At least twenty-nine states now make it a crime to transmit or expose others knowingly to H.I.V., the virus that causes AIDS, with a third of those states enacting laws within the last two years. This year alone, sixteen state legislatures, including New York, introduced such bills." Lynda Richardson, *Waive of Laws Aimed at People With H.I.V.*, N.Y. TIMES, Sept. 25, 1998, at A1; see also Mark Hansen, *Can the Law Stop AIDS?*, A.B.A. J., May 1998, at 26. For earlier discussions of this issue, see Michael L. Closten et al., *Criminalization of an Epidemic: HIV-AIDS and Criminal Exposure Laws*, 46 ARK. L. REV. 921 (1994).

53. See, e.g., Amanda Hall, *Risky Business: Criminalizing HIV Transmission*, 9 HIV/AIDS LEGAL LINK, at 8 (Dec. 1998); Bebe Loff, *Conflicting Rights: The Law and HIV Transmission*, 9 HIV/AIDS LEGAL LINK, at 10 (Sept. 1998); Chris Ward, *Victorian HIV Transmission Offences: One Acquittal and One Conviction*, 9 HIV/AIDS LEGAL LINK, at 1 (June 1998); Liz Parks, *Criminalizing AIDS: Why Are We Responding to HIV with Legislation Instead of Prevention?*, A & U, Jan. 1999, at 22. A related trend may be found in the debates over proposals to use name reporting to track persons with HIV. See, e.g., *California Lawmakers Approve HIV Reporting Using Coded [Identifiers]*,

by these laws is significant; one study revealed that forty percent of sexually active people with HIV did not tell their recent sexual partners about their infection, and more than fifty percent did not use condoms regularly.<sup>54</sup> These HIV criminalization laws are not only being enacted, they are also being enforced. In Arkansas, for example, a twenty-four year old man was sentenced to thirty years in prison for infecting a female sex partner.<sup>55</sup> Another man in Mississippi was sentenced to five years in prison for failing to tell his partner that he was HIV positive.<sup>56</sup> As part of a plea agreement in Ohio to reduce a sentence from five years to eighteen months, a judge ordered a male prostitute "to go on television and encourage anyone he had contact with to seek medical attention."<sup>57</sup> In addition to these criminal prosecutions, the United States also saw another successful "sexual battery" tort claim against a California man who did not disclose his HIV status to his sex partner.<sup>58</sup>

In a landmark decision in Canada, the Supreme Court ruled on September 3 that persons with HIV must disclose their status before having unprotected sex.<sup>59</sup> The decision came in the case of a man who had had sex with two women more than 100 times over two years without telling them that he had HIV.<sup>60</sup> Although neither woman contracted HIV from the man, Justice Peter Cory wrote that "[t]he risks of infection are so devastating that there is a real and urgent need to provide a measure of protection for those in the position of the complainants."<sup>61</sup> The Canadian Supreme Court thus reversed the trial court's directed verdict acquitting the man of two counts of aggravated assault and granted the prosecution a new trial.<sup>62</sup> In another case, a fifty-one year old man in Switzerland was sentenced to three years in prison for causing serious bodily harm to his girlfriend after he did not tell her that he was HIV-positive.<sup>63</sup>

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13 AIDS Pol'y & L. 1 (Sept. 18, 1998); Christi Parsons & Sue Ellen Christian, *State Changes Reporting of HIV*, CHI. TRIB., § 1, at 1. Medical studies published in 1998 again confirmed that access to anonymous testing programs contributes to earlier HIV testing and medical treatment, and that policies requiring confidential name reporting to state health departments may cause some persons to avoid HIV testing altogether. See Andrew B. Bindman et al., *Multistate Evaluation of Anonymous HIV Testing and Access to Medical Care*, 280 JAMA 1416 (1998); Allyn K. Nakashima et al., *Effect of HIV Reporting by Name on Use of HIV Testing in Publicly Funded Counseling and Testing Programs*, 280 JAMA 1421 (1998). Much of the legal debate on this issue is reviewed in Lawrence O. Gostin & James G. Hodge, Jr., *The "Names Debate": The Case for National HIV Reporting in the United States*, 61 ALB. L. REV. 679 (1998).

54. See Abigail Zuger, *Helping AIDS Patients Have Safer Sex: What Is A Doctor's Responsibility in Teaching Those With H.I.V. to Protect Others?*, N.Y. TIMES, Nov. 24, 1998, at D7; accord *Survey: Most Adults Don't Notify Sex Partners of STDs*, 13 AIDS Pol'y & L. 11 (Sept. 18, 1998).

55. See *Weaver v. Arkansas*, No. CR 97-690, 1998 WL 741036 (Ark. Oct. 22, 1998); Lynda Richardson, *Waive of Laws Aimed at People With H.I.V.*, N.Y. TIMES, Sept. 25, 1998, at A1, A25.

56. See *Criminal Exposure*, 13 AIDS Pol'y & L. 12 (Sept. 18, 1998).

57. Aaron Krach, *Crime & Punishment*, A & U, Jan. 1999, at 18.

58. See *Sexual Battery: Gay Man Must Pay \$25,000 for Putting Lover at Risk for HIV*, 13 AIDS Pol'y & L. 1 (Sept. 18, 1998). The \$25,000 award was said to be the first of its kind in California since Marc Christian won a \$21.75 million jury award from the estate of Rock Hudson. See *id.* at 7. The award was later reduced to \$5.5 million. See *id.*

59. R. V. Cuerrier, No. 25738 (Can. Sept. 3, 1998); see also *Canadian Supreme Court Rules on Criminal Prosecution for HIV Exposure*, 9 HIV/AIDS LEGAL LINK, at 16 (Dec. 1998).

60. See *Highb Court Says Exposure Without Consent Is a Crime*, 13 AIDS Pol'y & L. 9 (Sept. 16, 1998) [hereinafter *Exposure Without Consent*].

61. See Rex Wockner, *World Roundup*, OUTLINES, Sept. 16, 1998, at 10.

62. See *Exposure Without Consent*, *supra* note 60.

63. See Rex Wockner, *World Roundup*, OUTLINES, Nov. 25, 1998, at 10. Although prosecutors had asked for a ten-year sentence, "the defense argued successfully that he had not acted with intent to kill." *Id.*

### E. TRANSMISSION BY TRANSFUSION

On October 1, 1998, China joined the majority of countries that ban the sale of blood because it promotes the spread of HIV and other infections, such as hepatitis.<sup>64</sup> The government has been frustrated in its attempts to increase voluntary blood donations because: first, some people suspect the standards of hygiene at donation centers; second, there is no practice of giving blood to strangers; and third, some fear that giving blood will harm their health.<sup>65</sup> Although blood for transfusions is supposedly screened for HIV and other diseases, screenings are not always carried out. Official statistics reveal that seventeen percent of HIV infections in China were the result of blood transfusions.<sup>66</sup> In France, arrangements were being made to try a former prime minister and members of his cabinet for their criminal responsibility for the deaths of hemophiliacs who died at the onset of the AIDS epidemic in France.<sup>67</sup>

### F. REPEAL OF SODOMY LAWS

Sodomy laws are usually discussed as human rights violations rather than as measures impeding the public health. The existence of sodomy laws, however, has inhibited the free flow of information on safer sexual practices to those who need the information, such as men who have sex with other men. In 1998, the legislatures of Chile,<sup>68</sup> Cyprus,<sup>69</sup> and Kyrgystan<sup>70</sup> repealed their sodomy laws, while in South Africa the Supreme Court found that its sodomy law violated the new constitution.<sup>71</sup> Now that the sodomy laws have fallen in these countries, AIDS educators and activists will not be threatened with legal action for providing health care information to men who have sex with men. In a surprising court decision in the United States, the Supreme Court of Georgia also found in 1998 that the same sodomy law upheld by the U.S. Supreme Court in 1986 in *Bowers v. Hardwick*<sup>72</sup> violated the privacy provisions of the Georgia State Constitution.<sup>73</sup>

### G. CONTINUING TRAVEL BANS AND DEPORTATIONS

It is usually forgotten that many countries, including the United States, continue their international travel bans for persons with HIV.<sup>74</sup> These measures are uniformly in violation of regulations promulgated by the World Health Organizations, but those regulations unfortunately

64. See Erik Eckholm, *Hoping to Control Spread of AIDS, China Bans the Sale of Blood*, N.Y. TIMES, Oct. 1, 1998, at A7.

65. *Id.*

66. *Id.*

67. See, e.g., Robert Graham, *When Blood is Their Argument: A Former French Prime Minister Goes on Trial for Manslaughter Next Week*, FIN. TIMES, Feb. 6-7, 1999, at 7.

68. See Rex Wockner, *World Roundup*, OUTLINES, Jan. 27, 1999, at 10.

69. See Kai Wright, *Cyprus Alters Sodomy Law, Sort Of: Gay Activists Hope Council of Europe Will Press for Full Repeal*, WASH. BLADE, June 5, 1998, at 14.

70. See Rex Wockner, *World Roundup*, OUTLINES, Jan. 14, 1998, at 11. Other former Soviet republics that have repealed their sodomy laws include Belarus, Estonia, Kazakstan, Latvia, Lithuania, Moldova, Russia, and Ukraine. See *id.*

71. See National Coalition for Gay and Lesbian Equality v. Minister of Justice, Case CCT 11/98 (Oct. 9, 1998); Lisa Neff, *South Africa High Court Rejects Sodomy Laws*, WINDY CITY TIMES, Oct. 22, 1998, at 11.

72. 478 U.S. 186 (1986).

73. Powell v. State, No. S98A0755, 1998 Ga. LEXIS 1148 (Nov. 23, 1998); see also Mark E. Wojcik, *A Straight Victory for Gays*, CHI. PRIDE MAG., Jan. 1999, at 37.

74. See *Migration and AIDS*, UNAIDS/PCB(7)/98.5 (28 Oct. 1998), at 5; Michael L. Closen & Mark E. Wojcik, *International Health Law, International Travel Restrictions, and the Human Rights of Persons with AIDS and HIV*, 1 TOURO J. TRANSNAT'L L. 285 (1990).



have no binding effect. In March of 1998, Malaysia reported that it had deported 1,030 foreign workers who had tested positive for HIV, hepatitis, tuberculosis, or venereal disease.<sup>75</sup> The United Arab Emirates reported that it had deported 5,759 foreigners who were HIV-positive.<sup>76</sup> Saudi Arabia deported 349 foreigners from June 1997 to June 1998.<sup>77</sup>

The United States has had its share of deportations as well. In January of 1998, the United States deported an HIV-positive artist who had come to work on an exhibit for the World AIDS Conference.<sup>78</sup> In July of 1998, a Canadian artist with HIV attempted to enter the United States (at Eastport, Idaho) but was denied entry and sent back to Canada.<sup>79</sup> The artist had been carrying a sign that read "AIDS does not discriminate but governments do."<sup>80</sup>

#### IV. Conclusion

The largest challenge to health law continues to come from the scientific and medical developments that disguise HIV as a "manageable disease" for those who have access to protease inhibitors and other drugs. Most of the world does not have access to these drugs, and they do not work for all. There is simply no room for complacency. The current infection rate produces 16,000 new infections a day, which is 16,000 too many. Some of these new strains of HIV are already resistant to the new drugs.

The legal response to these developments should be to use a human rights framework as a tool to promote public health. We must not forget the lessons we learned in the first years of the epidemic: when we do not respect human rights, the disease is driven underground and becomes impossible to manage.

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75. See Rex Wockner, *World Roundup*, OUTLINES, Apr. 1, 1998, at 11.

76. See Rex Wockner, *World Roundup*, OUTLINES, Apr. 15, 1998, at 11.

77. See *Saudi Arabia: 349 With H.I.V. Deported*, N.Y. TIMES, Dec. 1, 1998, at A10.

78. See Wockner, *supra* note 70.

79. See Rex Wockner, *World Roundup*, OUTLINES, July 28, 1998, at 10.

80. See *id.*

