

Stephen Weiner

Privacy Policy

© Produced for The Law Development Commission of Zambia

The issue of setting the appropriate level of privacy concerning AIDS in Africa is a controversial subject because the level of privacy most respecting people's rights may not be the most beneficial for the AIDS problem. Determining a compromise between these two sides; complete public and governmental disclosure of every person with AIDS or no personal disclosure forced or otherwise required, is difficult because there are many things such as discrimination from employers and community that must be considered.

The American solution to the problem of AIDS discrimination has been to lump AIDS in with the list of disabilities protected under the Disabilities Act. Employers,

schools, and communities have no right to know that a person has AIDS or is HIV positive. They can not base their decisions of employment or acceptance on whether or not a person is infected. The situation in America is very different from the one in Africa, particularly Zambia, though. Americans have access to many successful forms of treatment of AIDS, essentially being able to keep their T-Cell count high enough to function normally for as long as they can afford to continue the cocktail of drugs that must be taken daily. Americans with AIDS are able to enjoy the same freedoms that non-infected people are. In Zambia, most do not have access to intensive anti-retroviral treatment and they are much more likely to become seriously ill through AIDS. General nutrition is much worse and there is little health care infrastructure. In this setting, is disclosure of one's AIDS status something that should be known? In America, the law has prevented serious discrimination by disallowing disclosure. Currently in Zambia, there is no law forcing testing or protecting people's information about their condition. The situation is laissez-faire, but would forced testing and disclosure of information benefit the fight against AIDS? This paper explores some of the issues associated with this question.

Would an employer discriminate against a job applicant if he knew that that person had AIDS? The easy answer is that without any sort of incentive, he or she would discriminate. Choosing between two equally skilled applicants, one with AIDS and one without, it is easy for an employer to think that a person with AIDS would not be able to do his or her job as well as one without AIDS. This is not the case, as evidenced in the U.S. With the appropriate treatment, one can be a successful worker without incidence. Without hiring these workers, those with AIDS may not be able to purchase the expensive treatments, allowing them to be healthy enough to work. Clearly this is a circular process, get a job to stay healthy and keep a job. The employers must be blind when hiring so they allow those with AIDS to enter this cycle. There will be some cases where an employer hires a person with AIDS and that person in turn becomes sick and must leave his job. This is inevitable and will probably cause a marginal increase in overall cost for an employer who has to rehire and retrain an employee. In the long run though, blind hiring will be better for the Zambian economy because as people stay healthy and retain their productivity they will be adding to the GDP and economic assets that Zambia offers as a country. Zambia needs to learn to be productive while still shackled by AIDS, because this will in turn, help remove AIDS from Zambia. It can start on this path by making sure that those with AIDS have a place in the Zambian economy. A system of quotas will not be necessary to ensure a spot, if hiring is blind. Further, quotas will only increase discrimination towards those with AIDS, and prevent the ingraining of positive attitudes towards AIDS.

If employers do not get to know, then who does? We believe that no one should have to reveal whether or not they have AIDS. This includes the government, employers, schools, and communities. Risk of a transfer of AIDS from person to person, without sexual contact, is amazingly low. The virus is not airborne and as long as minimal safety procedures are followed, a person with AIDS should not be prohibited from doing anything. This includes contact sports and other activities often deemed risky, which in reality present little risk. School and schoolmates should not know that a student has

AIDS unless there is a potentially dangerous situation such as a blood drive, in which students might have to be tested or refrain from donating blood.

The situation with school acceptances is not that different from the situation concerning jobs above. There should be no discrimination concerning admittance or acceptance to a particular school or classroom because there is miniscule potential for spread of the virus. The student with AIDS should decide whether or not they want to subject themselves to the rigors of schooling.

Finally, should marriage partners be forced to share their HIV status with each other? Again, the proper course of action should be to educate each other to make sure that government intervention is not necessary here. People need to realize through education that if both partners do not have AIDS then perhaps the two should reevaluate their union. This information, and all of AIDS information, should be passed down from mother to daughter and father to son. Families should make AIDS education part of their family discussions. Marriage is certainly a family affair so it makes sense for families to talk about AIDS awareness as well.

Finally, not being forced to share information would avoid issues where revealing HIV status could be emotionally painful such as in the case of a rape. A rape could be a traumatic event for a person and information one might not want to share. In the same way that one might discriminate against an HIV positive person, one might discriminate against a rape victim. For these reasons, as well as the ones stated above, there should be no disclosure.

Overall, this committee determined that government enforcement of testing and sharing of test information should not be required. Knowing whether or not someone has AIDS will only achieve limited gains in the fight against AIDS. More effort needs to be placed on the prevention of the spread, rather than the identification of those already infected. Not only will the gains from identification be marginal but they will also be unethical. A person should not have to reveal a disability such as AIDS if they feel it will disadvantage them in certain settings, such as job employment. Clearly some areas of society should require information about someone's HIV status but this sharing of information should always be voluntary and not used as a means for discrimination. Further, this information should not be shared with other government or public agencies.