EQUAL treatment

Magazine of the Treatment Action Campaign November 2011

LUNGISANI IMITHETHO– SINDISANI UBOMI BETHU!

Yiba nolwazi: Izikhokelo ezilula kumalungelo awodwa omenzi wechiza namachiza enziwa afana nalawo aveliswe ngabenzi

Indlela esebenza ngayo: Kuya kubusindisa njani ubomi ukutshintshwa komThetho wamaLungelo aWodwa oMenzi weChiza

Iipilisi neenzuzo: inyaniso malunga neenkampani zamachiza

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Imibulelo ekhethekileyo ku-Jonathan Berger we-SECTION27, ku-Brook Baker we-Northeastern University School of Law kunye naku-Yousuf Vawda we-Yunivesiti yaKwazulu-Natal ngokujonga kwakhona amanqakwana olu hlelo lwe-Equal Treatment. Sibulela nakumatsha-ntliziyo ase-Indiya, Brazil, Thailand kunye nakumanye amazwe amaninzi esinokufunda kwaye sifumane iimpembelelo kuwo.

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I-TAC izibophelele ekuncedeni abantu abane-HIV, iintsapho zabo kunye nabakhathaleli ngokubanika ulwazi oluchanekileyo olumalunga namayeza asindisa ubomi kunye nonyango. I-TAC kunye neenkokheli zayo abadibananga neshishini loxubo-mayeza ngokunjalo nakumashishini amayeza endalo kunye namayeza angamanye kwaye ayinamdla wezemali kuwo.

Olu hlelo lwe-Equal Treatment luxhaswe yi-Global Fund to Fight AIDS, Tuburculosis and Malaria kunye ne-Oxfam Australia.

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IZIQULATHO

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Iziseko zelungelo elilodwa lomenzi wechiza
Ilungelo elilodwa lomenzi wechiza kunye neemvume ezinyanzelekileyo zimisela ukuba ngawaphi na amayeza aphelela ekliniki kunye nasemizimbeni yethu. Emva kwesikhokelo esilula kumalungelo awodwa emveliso, siphonononga ukuba abusindise njani na ubomi amayeza enziwe afana nalawo enziwe ngabenzi bamachiza ngokwehlisa amaxabiso. Phakathi kwaloo manqaku mabini, sinika umbono othandabuzisayo engqondweni wokuba yimalini na eyenziwa ziinkampani zamachiza.

Indlela ekufuneka utshintshwe ngayo umthetho
Urhulumente unokusindisa ubomi obuninzi kunye nemali eninzi ngokwenza nje utshintsho olumbalwa kwimithetho yethu yamalungelo awodwa echiza lomenzi. Sidwelisa ezona zinto zintlanu zibalulekileyo ekufuneka zitshintshwe kwaye sicacise ukuba izivumelwano zamazwe ngamazwe ziyakuwunika kanjani na uMzantsi Afrika ilungelo lokuphumeza olu tshintsho.

Yithi hayi kuboyikisi
IMelika kunye neManyano yaseYurophu zifaka uxinzelelo kumazwe amaninzi ukuba asayine izivumelwano zorhwebo ezibi kwimpilo yabantu. Sijonga ke ngoku indlela amanye amazwe aye alwa ngayo kwaye aphumelela efumana uloyiso olubonakalayo. Kodwa kuqala, sizakukunika izinto ezijongela phantsi kwi-TRIPS-kunye nemigaqo-nkqubo – imiqathango enokuba nezona mpembelelo zimbi kakhulu kwimpilo yabantu.

Ifoto ngu-Deena Bosch.

Inqaku loMhleli

Abanye bethu ubomi bethu buchatshazelwe lufikelelo emayezeni okanye kukunqongophala kwawo. Kwithuba elithile ngamnye kuthi, okanye mhlawumbi umntu kusapho lwethu, uye wafuna ichiza lokunyanga isifo okanye imeko engapheliyo. Nakuba kunjalo, amayeza amaninzi abalulekileyo awafumaneki kwicandelo likarhulumente ngenxa yeendleko eziphezulu. Ngoko ke, ukukwazi kwethu ukufumana la machiza kaninzi kuye kumiselwe kukuba sinabo na ubulungu besikim sezonyango okanye siwabhatalela kwangaphambili na amayeza.

Ilungelo kwimpilo lifakiwe kuMgaqo-siseko wethu. Kodwa ingakumbi kwabo bahluphekayo, indleko eziphezulu zamayeza kaninzi zilijongela phantsi eli lungelo. Kolu hlelo lwe-*Equal Treatment* siphonononga ukuba imithetho yorhwebo yesizwe kunye neyamazwe ngamazwe, ngokunjalo nezivumelwano zorhwebo kumalungelo omenzi wechiza, zenza njani na ukuba iinkampani ezixuba amayeza zibize amaxabiso aphezulu amayeza, kuba ekugqibeleni zifuna ukuba ibe ngabo batyebileyo kuphela abakwaziyo ukuwathenga.

Isiphumo sale mithetho yamalungelo abenzi bamachiza yiloo nto abaninzi banokuyibiza njengeenzuzo ezi 'ngcolileyo' kwishishini loxubo mayeza. Ngelixa, amanani amakhulu amayeza atshintsha ubomi nasindisa ubomi esahleli engafumaneki kubantu abawafunayo.

Ukusukela ngo-1995 ukuya ku-2002, ishishini loxubo mayeza lalibekwa njengelona shishini lenza inzuzo eMelika. Ngo-2008 no-2009, ishishini laqhuba livela phakathi kwawona macandelo ezoshishino elizwe awenza eyona nzuzo, lithatha indawo yesithathu kuyo yomibini iminyaka.

Ngexa lethuba ishishini loxubo mayeza elalisenza inzuzo ephezulu kunalo naliphi na icandelo eMelika, izigidi zabantu e-Afrika zazikutshelwe ngaphandle kunyango lwe-antiretroviral, ngenxa yamaxabiso aphezulu ala mayeza. Ngo-2000, ingcali eyaziwa ihlabathi lonke kummandla we-HIV/AIDS, uGqirha Peter Mugyeni wase-Uganda, wathi okwaziwayo ngesi sifo kukuaba, "Sisifo esibakhona apho kungekho khona amachiza".

Njengento eyimfuneko kwilungelo lempilo, amayeza kufuneka abonwe njengento elungileyo kuluntu. Ngoko ke sonke kufuneka sibuze ukuba kutheni umthetho wamazwe ngamazwe ukhusela iinzuzo zeenkampani ezixuba amayeza ngaphezulu kokukhusela ufikelelo kumayeza abalulekileyo.

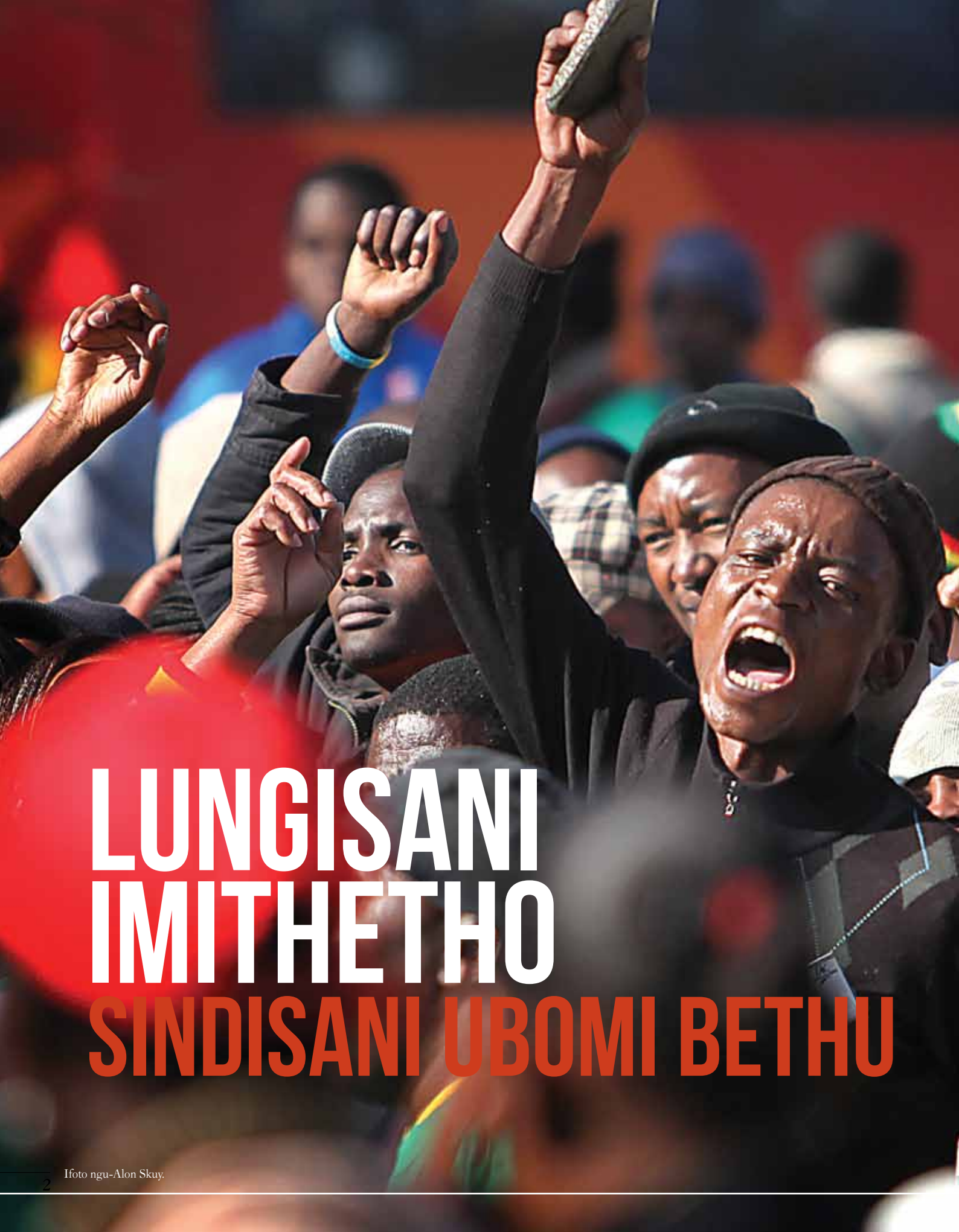
Ngaphaya kweendleko eziphezulu zamayeza kukho esinye isiphumo semithetho ekhusela amalungelo abenzi bamachiza: kunqabile ukuba iinkampani ezixuba amayeza zenze utyalo-mali ekuphuhliseni amayeza ezifo ezinqabileyo kumazwe aphuhlileyo. Amayeza ezi zigulo awaniki umtsalena kwinzuzo ofanayo nalowo wezo zigulo zichaphazela amazwe atyebileyo. Ngo-2005 i-Global Forum yoPhando lwezeMpilo yaqikelela ukuba kuphela yi-10% yenkcitho yehlabathi jikelele kuphando lwezempilo ejolise kwizifo ezichaphazela awona ma-90% abo bantu bahlupheka kakhulu ehlabathini.

Nokuba kunjalo, ngexa imithetho yorhwebo yamazwe ngamazwe kwilungelo lomenzi wechiza iye ayakwazi ukukhusela ukufumana ufikelelo kumachiza, sisekhona isizathu sokuba nethemba. Le mithetho iquka izibonelelo ezivumela ukuba oorhulumente bakhusele impilo yoluntu ngokuthatha imiqathamgo yokwehlisa amaxabiso amayeza. Ngaphandle koku, amazwe amaninzi (kuqukwa noMzantsi Afrika) akakwazanga ukufaka amanye ala magatya kwimithetho yawo yesizwe ukuze akwazi ukuyisebenzisa kakuhle. Ukuba ngaba urhulumente wethu uzimisele ngokukhusela ilungelo lethu kwimpilo, la amgatya mawabhalwe kumthetho woMzantsi Afrika. Kakade, ukutshintsha umthetho wethu welungelo elilodwa lomenzi wechiza yinxenye enye kuphela yokuqinisekisa ufikelelo olubhetele emayezeni. Eminye imiba efana nokucotha kokubhaliswa kwamayeza, ukungoneli ekuthengweni kwawo kunye nakuhlahlo lwabiwo-mali, kunye nokungabikho kwabasebenzi kwinkqubo yethu yezempilo, nayo kufuneka ilungiswe.

Kweli hlelo le-*Equal Treatment* sijonga utshintsho ekufuneka lwenziwe nguMzantsi Afrika kumthetho wethu welungelo elilodwa lomenzi wechiza ukwehlisa iindleko zamayeza. Sikwagxininisa uxinzelelo oluqhubayo oluvela kwiManyano yaseYurophu neMelika ngemiqathango yokolula ukhuselo lwelungelo lomenzi wechiza kumazwe asaphuhlayo. UMzantsi Afrika kufuneka ungayivumeli le miqathango, ezakunyusa nangakumbi amaxabiso amayeza kunye neenzuzo zamashishini axuba amayeza ngexa imisela umda ufikelelo kumayeza asindisa ubomi bethu.

Urhulumente woMzantsi Afrika unesibophelelo somgaqo-siseko sokwenza olo tshintsho kumthetho wethu oluyakuqinisekisa ufikelelo kumayeza asindisa ubomi. Lixesha lokuba urhulumente wethu athathele kuye uxanduva.

Ngu-Catherine Tomlinson, uMphandi oPhezulu , we-Treatment Action Campaign



LUNGISANI IMITHETHO SINDISANI UBOMI BETHU

Ifoto ngu-Alon Skuy.

“ICandelo lama-27. Ukhathalelo lwempilo, ukutya, amanzi nokhuselo lwasekuhlaleni

(1) Wonke umntu unelungelo lokufikelala kwii
  (a) nkonzo zokhathalelo lwempilo, kuquka ukhathalelo lwempilo yokufumana abantwana;
  (b) ukutya kunye namanzi awoneleyo; kunye
  (c) nokhuselo lwasekuhlaleni, kuqukwa, ukuba ngaba abakwazi ukuzondla bona kunye nabo baxhomekeke kubo, bafumane uncedo lwasekuhlaleni olufanelekileyo.

(2) Urhulumente kufuneka athathe amanyathelo afanelekileyo omthetho kunye namanye*, kwimithombo yakhe efumanekayo, ukuphumeza ukuphunyezwa okuqhubayo kwala malungelo.

(3) Akukho mntu unokwalelwa unyango lwamayeza lwengxakeko.”

UMgaqo-siseko weRiphabliki yoMzantsi Afrika

*** Inyathelo elinjalo elifanelekileyo lomthetho urhulumente amakalithathe ngokukhawuleza kukutshintsha umThetho weLungelo elilodwa loMenzi weChiza ukuze aqinisekise ukufumaneka kwamayeza afikelelekayo.**

Utshintsho lomthetho olufunwa ngurhulumente luvumeleke ngokucacileyo phantsi komthetho wamazwe ngamazwe. Ngokonyusa ukhuphiswano kumachiza enziwe afana nalawo aveliswe ngabenzi (generic), olu tshintsho luzakunceca ukwehlisa amaxabiso amayeza ayimfuneko. (Funda ngokuthe vetshe ngeenkcukacha zolu tshintsho kumaphepha 12–17.)

Ukuba ngaba urhulumente akakwazi ukuhlangabezana nezibophelelo zakhe zomgaqo-siseko ngokuphathelene noku, umcimbi lo unokusiwa enkundleni. Ukuba oku bekunokwenzeka, kusenokwenzeka ukuba inkundla iyalele urhulumente ukuba enze olu tshintsho kumThetho wamaLungelo aWodwa oMenzi weChiza woMzantsi Afrika.

ZAZI IINDABA ZAKHO

Ubutsha-ntliziyo obulungileyo buqala ngemfundo elungileyo. Nanga amagama alishumi angundoqo ekufuneka siwaqonde kweli phulo lokutshintsha umthetho wethu welungelo elilodwa lomenzi wechiza:

Amalungelo awodwa omenzi wechiza iphepha lesi-4

Iimvume ezinganyanzelekanga iphepha lesi-5

Iimvume ezinyanzelekileyo iphepha lesi-5

I-TRIPS-plus iphepha lama-20

Inkcaso yaphambi kunye nasemva kokunikwa iphepha lama-20

ISibhengezo sase-Doha iphepha le-13

Amayeza enziwe afana nalawo aveliswe ngabenzi iphepha lesi-8

Amayeza anamalungelo awodwa abenzi iphepha lesi-8

I-TRIPS iphepha le-13

Imigangatho yamalungelo awodwa abenzi iphepha le-14

Ngu-Alice Hyewon Won

Amayeza anamalungelo awoc

Ayintoni amalungelo awodwa omenzi wechiza?

ILUNGELO ELILODWA LOMENZI WECHIZA

Xa unelungelo elilodwa lomenzi wechiza kwiyeza, okanye kwinkqubo yokuvelisa iyeza, nguwe kuphela ovumelekileyo ukuba wenze elo yeza okanye wenze isigqibo sokuba ngubani na omnye ovumelekileyo ukuba alenze. Ilungelo elilodwa lomenzi wechiza luhlobo lwelungelo elikhethekileyo okanye ukuxhamla wedwa apho ingumntu omnye kuphela okanye inkampani enokwenza okanye ithengise imveliso ekhethekileyo. Amalungelo awodwa omenzi wechiza anikwe kuzo zonke iintlobo zeemveliso – ukususka kumayeza amatsha avelisiweyo ukuya kumalungu enza iiselula, ukuya kwiinkqubo zokuvelisa ezintsha ukuya kwiikhompawundi zeekhemikhali.

Ukuxhamla wedwa kunye namalungelo awodwa omenzi wechiza ngesiqhelo athetha amaxabiso aphezulu, kuba ubukho bazo bunqanda ukhuphiswano. Ngokwenene, yakube inkampani inelungelo elilodwa lomenzi kwimveliso inokubiza naliphi na ixabiso abantu abavumayo ukulibhatala, nokuba kubiza kangakanani ukwenza imveliso ekuqaleni. Esi sesinye sezizathu ezingundoqo ezenza ukuba kutheni na amayeza amatsha ebiza kangaka. Okwangoku, amalungelo awodwa omenzi wechiza, athatha iminyaka engama-20. Ixesha ebelithathwa lilungelo elilodwa lomenzi wechiza lalilifutshane kumazwe amaninzi phambi kwesivumelwano se-TRIPS soMbutho woRhwebo weHlabathi sika-1994. Ngokwenene kwizizwe ezininzi iimveliso zoxubo mayeza kunye nezolimo zazingenawo amalungelo awodwa abenzi. (Funda ngokungaphaya nge-TRIPS kwiphepha le-13.)

Kutheni oorhulumente benika amalungelo awodwa kubenzi bamachiza?

Okokuqala, amalungelo awodwa omenzi wechiza anikwa ukuze kuqinisekiswe ukuba iinkampani azizifihli iimfihlo zawo zokuvelisa izinto zazo ezintsha. Umzekelo, xa ufaka isicelo selungelo elilodwa lomenzi weyeza elitsha, kufuneka ungenise ulwazi onalo olumalunga nokuba yintoni ekwelo yeza. Ezinye iinkampani zinokulusebenzisa olo lwazi lakube lifikelele esiphelweni elo xesha leminyaka engama-20 lelo lungelo lilodwa lomenzi wechiza.

Okwesibini, amalungelo awodwa omenzi wechiza enzelwe ukuba abe ngumtsalane ekuvezweni kwezinto ezintsha ezingaqhelekanga. Ukuba ngaba iinkampani azikwazi ukufumana amalungelo awodwa omenzi wechiza, ngeke zichithe ixesha kunye nemali eninzi ziphanda ngeemveliso ezintsha. Ngaphandle kwenkqubo yamalungelo awodwa omenzi wechiza, iinkampani ezonqenayo zinokuvele nje zilindele ezinye ukuba zenze uphando zize ke zikope umsebenzi wazo. Uluvo apha kukuba amalungelo awodwa omenzi wechiza kufuneka avuze uphando kunye nophuhliso.

Nakuba kunjalo, kaninzi inkqubo yamalungelo awodwa omenzi wechiza iye isetyenziswe kakubi. Iinkampani ziye zibize amaxabiso aphezulu rhoqo kunoko kuyimfuneko ukubuyisa imali yazo eziyisebenzise kuphando. Kwezinye iimeko, amaxabiso aphezulu amalungelo awodwa omenzi wechiza emayezeni aye asetyenziselwe ukwenza inzuzo enkulu.

Yintoni iimvume ezinganyazelekanga?

IMVUME ENG-ANYANZELE-KANGA

Ukuba ngaba ungumnini wamalungelo awodwa omenzi wechiza kwimveliso, akekho omnye umntu ongomye ongayenza loo mveliso. Ekukuphela kwako okukhutshelwa ngaphandle kuxa omnye umntu okanye inkampani okhuphisana nayo inemvume. Zimbini iintlobo zeemvume: ziimvume ezinganyanzelekanga kunye neemvume ezinyanzelekileyo.

Imvume enganyanzelekanga yileyo umnini wamalungelo awodwa omenzi wechiza ayinika omnye umntu ukuba enze imveliso ekhethekileyo enamalungelo awodwa omenzi wechiza. Akufumanayo ke yena umenzi ngale mvume, lowo unikwe imvume kufuneka abhatale umnini wamalungelo awodwa omenzi wechiza imali ebhatalwa umenzi. Emayezeni le mali ebhatalwa umenzi imalunga ne-5 ukuya kwi-15% yexabiso elibizwa yinkampani yesibini kwimveliso. Le imvume siyibiza ngokuba ayinyanzelekanga kuba umnini wamalungelo awodwa omenzi wechiza akanyanzelwa ngumthetho ukuba ayinike.

Iinkampani ezinkulu ezixuba amayeza ziye zinikeze iimvume ezimbalwa

I-antiretroviral entsha ebalulekileyo ekuthiwa yi-raltegravir yaye yaphuhliswa yinkampani exuba amayeza i-Merck. Ngo-2002 i-Merck yaye yabhalisa amalungelo awo awodwa omenzi kwichiza. Oku kuthetha ukuba de ibe ngu-2022 kuphela yi-Merck enokwenza okanye ithengise i-raltegravir. Ngeke silindele elo xesha lide kangako ukuze ixabiso lehle

dwa abenzi awenziwe lula

ezinganyanzelekanga Oku kungenxa yokuba zinokwenza imali eninzi njengomvelisi ekukuphela kwakhe weyeza elithile. Okukhona inkampani inika iimvume ezinganyenzelekanga ezininzi, kokukhona inokhuphiswano, kwaye kokukhona liyakwehla ixabiso layo leyeza. Yiloo nto ke kufuneka sifake uxinzelelo loluntu kwiinkampani ezixuba amayeza lokuba zikhuphe iimvume ezinganyanzelekanga kumayeza ayimfuneko.

Ngo-2007 i-Treatment Action Campaign (TAC) kunye ne-AIDS Law Project (ALP) baye bafaka isikhalazo kwiKomishoni yoKhuphiswano yoMzantsi Afrika ngokuchasene ne-MSD (Pty) Ltd ngenxa yokwala kwayo ukukhupha iimvume ezinganyanzelekanga zokwenza i-antiretroviral yechiza le-efavirenz. I-MSD yinkampani yaseMzantsi Afrika elawulwa yinkampani exuba amayeza i-Merck. Ngesikhalazo kunye nephulo lokusebenzisa abeendaba i-TAC ne-ALP zaye zabeka uxinzelelo olukhulu kwi-MSD. Lwaye lwabhatala ke olu xinzelelo ekuhambeni kwexesha kuba phakathi ku-2008 i-MSD yaye yanika iimvume ezinganyanzelekanga abenzi bamayeza afanayo nalawo aveliswe ngabenzi abane.

Njengoko abantu abaninzi besiya benganyangeki zii-antiretrovirals ezifumanekayo okwangoku kwinkqubo yethu yempilo karhulumente, imfuno yamachiza amatsha afana ne-raltegravir kulindeleke ukuba ikhule. Ukuba ngaba lihlala liphezulu ixabiso le-raltegravir (okwangoku lingaphezulu kwama-R2,000 ngenyanga), amatsha-ntliziyo okanye abenzi bamayeza enziwa afana nalawo aveliswe ngabenzi kuyakufuneka ukuba becele i-Merck ukuba inike iimvume ezinganyanzelekanga ezinye iinkampani ukuze kwehle amaxabiso.

Yintoni iimvume ezinyanzelekileyo?

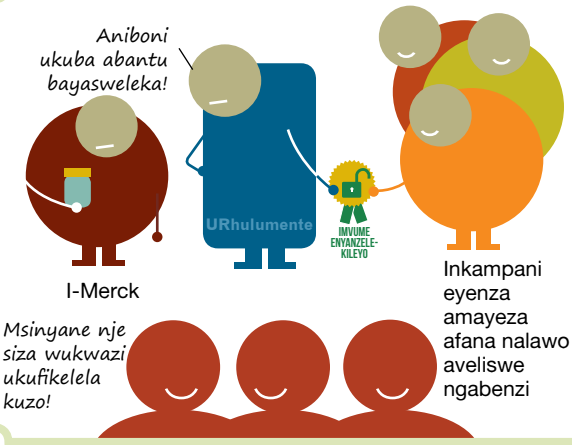
IMVUME ENYANZELE-KILEYO

Iinkampani zinokubekwa phantsi koxinzelelo, kodwa ke ngeke zinyanzelwe ukuba zinike iimvume ezinganyanzelekanga. Nakuba kunjalo, lukhona olunye uhlobo lwemvume olukhoyo: imvume enyanzelekileyo: imvume enyanzelekileyo, enokunyanzelwa ngumthetho. Ngezi mvume umnini wamalungelo awodwa omenzi wechiza akukho nto angayithetha kwaye urhulumente okanye inkundla inokukhupha iimvume ziye kubenzi bamayeza enziwa afana nalawo aveliswe ngabenzi, bona ke abayakunikeza amachiza ngexabiso elisezantsi.

Iimvume ezinyanzelekileyo yindlela yokungqinelanisa amalungelo karhulumente kunye namalungelo omnini wamalungelo awodwa omenzi wechiza. Umzekelo, kwintlekele kwezempilo kurhulumente njengobhubhane we-HIV, urhulumente unokwenza isigqibo sokuba impilo yabantu bakhe ibaluleke kakhulu kunamalungelo awodwa omnini womenzi wechiza aze ke akhuphe imvume enyanzelekileyo. Ukuba ngaba ixabiso leyeza elinokusindisa ubomi liphezulu kakhulu kunokuba kufanelekile, unokungenelela urhulumente, enika abenzi bamayeza enziwa afana nalawo aveliswe ngabenzi iimvume ezinyanzelekileyo ukuba bavelise elo yeza. Kwiimvume ezinganyanzelekanga, uminini wamalungelo awodwa omenzi wechiza ubhatalwa imali ebhatalwa umenzi ukuze abuyise ukulahleka kwelungelo elikhethekileyo lokuthengisa.

Iimvume ezinyanzelekileyo zivumelekile phantsi komthetho worhwebo wamazwe ngamazwe. Nakuba kunjalo, okwangoku kunzima kwiinkundla ukukhupha iimvume ezinjalo eMzantsi Afrika ngenxa yengxaki kumthetho wethu wesizwe wamalungelo awodwa omenzi wechiza. Kulula kurhulumente ukukhupha iimvume ezinyanzelekileyo, kodwa imfuno yezopolitiko ayikabikho. (Jonga kwiphepha le-12 ngokuthe vetshe ekubeni kufuneka utshintshwe njani na umthetho wethu.)

Ngo-2006 no-2007 i-Thailand ne-Brazil zakhuphela iimvume ezinyanzelekileyo i-efavirenz emva kokungaphumeleli ukwenza uthetha-thethwano ngokwehiliswa kwamaxabiso nomnini wamalungelo awodwa omenzi wechiza, i-Merck. Eli ikwa leli chiza linye ezafunyanwa kulo iimvume ezinganyanzelekanga eMzantsi Afrika emva koxinzelelo oluvela kwi-TAC ne-ALP. Zombini i-Brazil ne-Thailand zazizibophelele kwiinkqubo zonyango zesizwe ze-HIV/AIDS, zithembisa ufikelelo jikelele kwii-ARVs kwizigulane ezikumazwe awo. Yathi yakwala ukwehlisa amaxabiso e-efavirenz ngokwaneleyo i-Merck, oorhulumente bawo omabini la mazwe babona ukuba ngeke bakwazi ukuzaliseka izibophelelo zabo kwiinkqubo zonyango zesizwe kwaye ngeke bakwazi ukujongana nempilo yoluntu. I-Brazil ne-Thailand ke ngoko zaye zakhupha iimvume ezinyanzelekileyo, zivumela ukungeniswa kumazwe azo kweenguqulelo zamayeza ezenziwe zafana nalawo aveliswe ngabenzi ze-efavirenz zivela e-Indiya.



Ukuba ngaba i-Merck iyala ukunika iimvume ezinganyanzelekanga ngemiqathango efanelekileyo, urhulumente woMzantsi Afrika kufuneka ungenelele kwaye unike iimvume ezinyanzelekileyo ezinye iinkampani zamachiza. Oko kungonyusa ukhuphiswano kwaye kwehlise amaxabiso. UmThetho wamaLungelo awodwa womenzi weChiza kufuneka utshintshe ukuze wenze inkqubo yokunikwa kweemvume ezinyanzelekileyo ibe lula.

IIPILISI NEENZUZO

INGENISO EPHELELEYO YEENKAMPANI EZIXUBA AMAYEZA EZINTLANU EZIPHEZULU

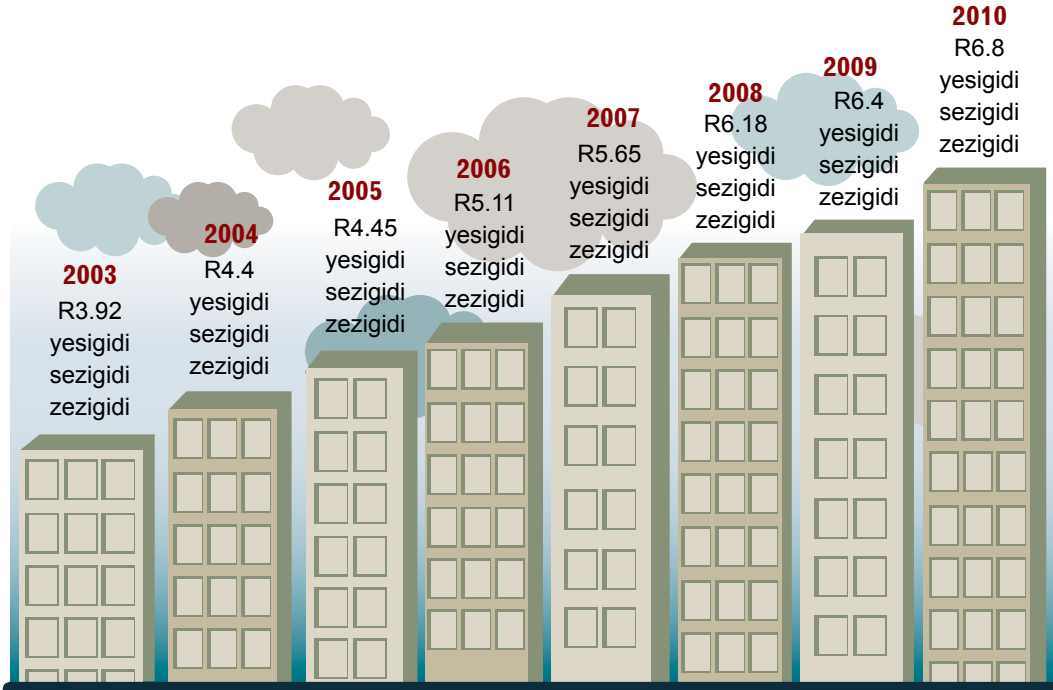
I-Johnson & Johnson
R425.77 Yezigidi zezigidi

I-Pfizer
R343.99 Yezigidi zezigidi

I-Roche
R325.7 Yezigidi zezigidi

I-GlaxoSmithKine
R315.24 Yezigidi zezigidi

I-Novartis
R304.51 Yezigidi zezigidi

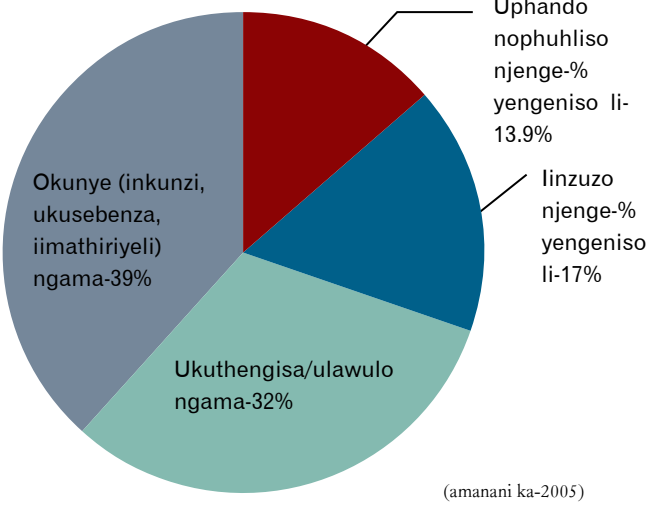


ISHISHINI LOXUBO MAYEZA LEHLABATHI JIKELELE LIYAQHUBA LIKHULA

INDLELA AMASHISHINI AXUBA AMAYEZA AYICHITHA NGAYO IMALI YAWO

Iinkampani zamachiza kaninzi zithi zifuna amaxesha amade amalungelo awodwa abenzi bamachiza ukuqinisekisa ukuba zinengeniso eyoneleyo yokuphanda ngamayeza amatsha. Kodwa ke njengoko le tshathi ibonisa, iinkampani zoxubo mayeza zifaka imali eninzi eziyenzayo kwiinzuzo nasekuthengiseni (ngokunjalo nakwinkunzi, umsebenzi neemathiriyeli). Kuphela imalunga ne-14% yengeniso yazo eya kuphando lwamachiza amatsha – naloo 14% kusenokwenzeka ukuba iqikelelelwa phezulu, ngenxa yendlela iinkampani ezihlela ngazo iintlawulo.

Ezona nkampani zinkulu ezixuba amayeza ezisixhenxe



(amanani ka-2005)

NGUBANI OFUMANA IMALI

Amanani onyaka ukuya kuMatshi ka-2010

I-R141 lesigidi sezigidi ngonyaka ichithwa ekwaziseni amachiza

Ama-R82.54 esigidi sezigidi

Ichithwa eku 'caciseni', okanye ekuthumeleni abameli beentengiso ukuba bayokuthetha noogqirha (eli nani liquka izipho ezifana nezinto zokubhala, iisampuli zamachiza, ukutya, nohambo)

Ama-R32.33 esigidi sezigidi

kwintengiso 'eya ngqo kumxhasi': 62% kwi-V, 35% emaphepheni, 3% kwikhompyutha

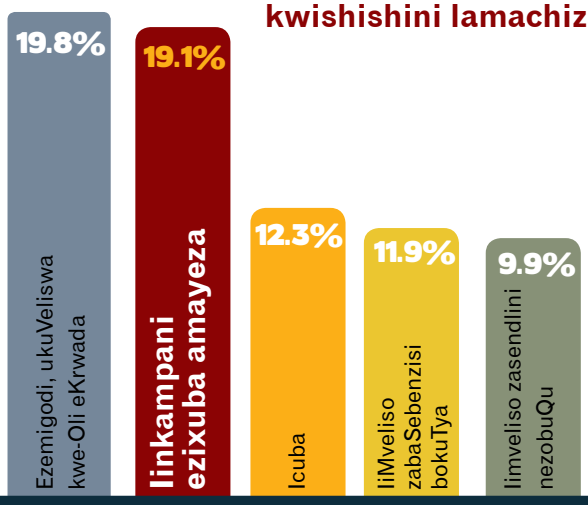
I-R16.51 yesigidi sezigidi

Ekuxhaseni iintlanganiso kunye nemisitho yamagcisa

(amanani ka-2008)

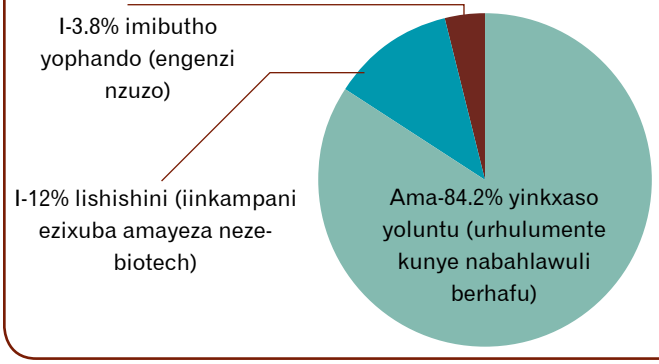
IMALI ECHITHWA KWIHLABATHI JIKEKELELE EKWAZISENI AMACHIZA

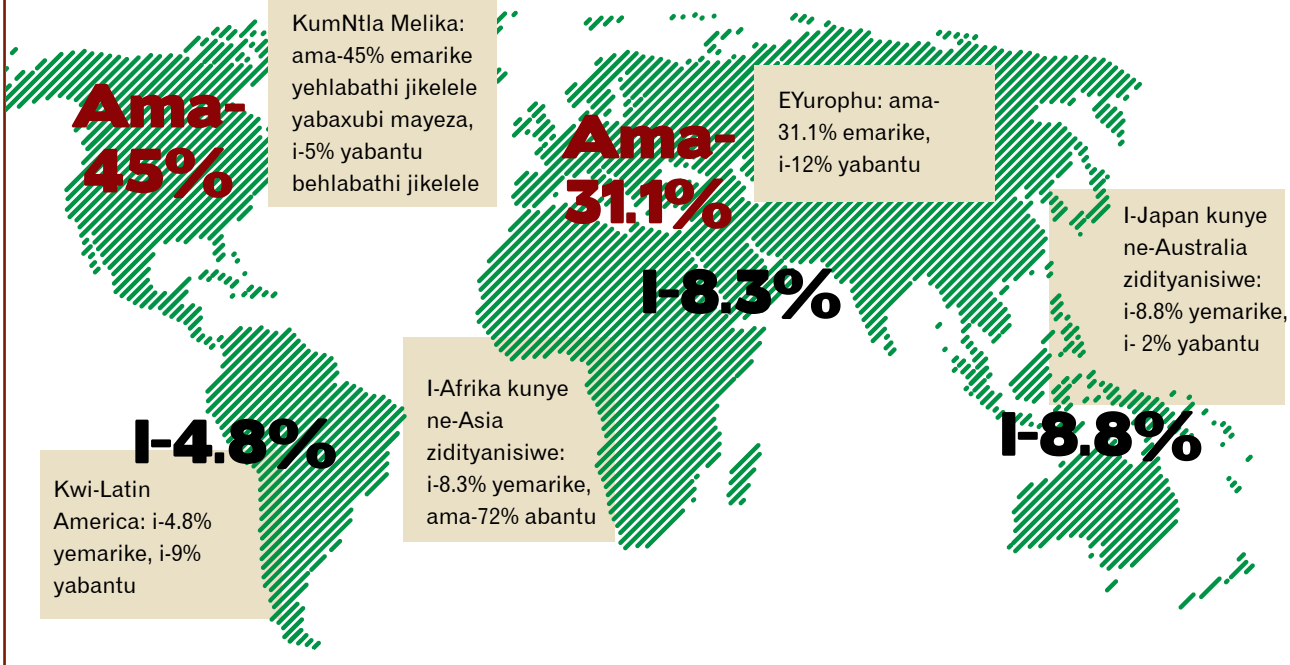
Inkulu kangakanani inzuzo kwishishini lamachiza?



UMAHLUKO WENZUZO PHAKATHI KWEXABISO LOKWENZA NELOKUTHENGISA WECANDELO LOSHISHINO

NGUBANI OBHATALELA OLONA PHANDO KUNYE NOPHUHLISO LUBALULEKILEYO LUVELISA IZINTO EZINTSHA





APHO IINKAMPANI EZIXUBA AMAYEZA ZIYENZA KHONA INZUZO YAZO

Imithombo: Brook K. Baker, Economics of the Pharmaceutical Industry presentation (2010); Leo Panitch and Colin Leys (eds), "Morbid Symptoms: Health Under Capitalism"(2010); Congressional Budget Office, "Promotional Spending for Prescription Drugs" (2009); Pharmaceutical companies' annual reports (2011).

KuNomzamo, ukufumana iyeza rhoqo liphupha eliye laba yinyaniso.

Ifoto ngu-Chelsea Maclachlan.

AMACHIZA ENZIWE AFANA NALAWO AVELISWE NGUMENZI

Amachiza enziwe afana nalawo aveliswe ngumenzi asebenza ngokufanayo nalawo machiza egama lebrendi anelungelo elilodwa lomenzi kodwa ke wona awabizi imali eninzi. Asesinye isizathu sokuba urhulumente abe nako ukufikelela kumachiza okunyanga i-HIV kunye nokuba kutheni siqala ukwenza inkqubela ngoku ukulwa lo bhubhane. Ngokwenene, amachiza enziwe afana nalawo aveliswe ngumenzi asisixhobo esiyimfuneko kumlo ochasene nezifo ezininzi.

Ngu-Elizabeth Vale

Abantu abaninzi kumazwe asaphuhlayo afana noMzantsi Afrika baxhomekeke kumachiza enziwe afana nalawo aveliswe ngumenzi ukuze bahlale bephila.

Amachiza enziwe afana nalawo aveliswe ngumenzi negama lebrendi lelungelo elilodwa lomenzi wechiza

Igama lebrendi yechiza lelungelo elilodwa lomenzi (ekukwathiwa ngumnini okanye umenzi) wechiza lelo lenziwe yinkampani ephuhlise elo chiza okanye engumnini welungelo elilodwa lelo chiza. Ngoko ke umzekelo, inkampani exuba amayeza i-Merck ingumnini welungelo elilodwa wechiza le-antiretroviral i-efavirenz. I-Merck ithengisa i-efavirenz phantsi kwegama lebrendi eyi-Stocrin. Ngoko ke sibhekisela kwi-Stocrin njengenguqulelo yelungelo elilodwa lomenzi wechiza i-efavirenz.

Ichiza elenziwe lafana nalawo aveliswe ngumenzi yikopi efana ngqo okanye esebenza ngokufanayo nemveliso yechiza elinelungelo elilodwa lomenzi (bioequivalent). Ukuba amayeza amabini asebenza ngokufanayo oko kuthetha ukuba aneempembelelo ezifanayo emzimbeni womntu. Ngoko ke, amachiza awenziwe afana nalawo aveliswe ngumenzi afana ngqo namachiza anelungelo elilodwa lomenzi ngokwedosi, ukukhuseleka, amandla, ukulunga kunye nokusebenza. Ngokuqhelekileyo owona mahluko ikuphela kwawo obalulekileyo phakathi kwawo lixabiso lawo. Umzekelo, i-Cipla, inkampani exuba amayeza ese-Indiya, yenza inguqulelo yechiza elenziwe lafana nalawo aveliswe ngumenzi ye-efavirenz kwaye iyithengisa phantsi kwegama eliyi-Cipla-Efavirenz. I-Cipla-Efavirenz isebenza kakuhle ngokufanayo nechiza elinelungelo elilodwa lomenzi i-Stocrin.

Kubenzi bamachiza enziwe afana nalawo aveliswe ngabenzi ukuze bafumane isikhundla kwimarike, kufuneka bathengise inguqulelo yabo yamachiza ngemali encinane kuneyechiza elinelungelo elilodwa lomenzi. Oku kungenxa yokuba igama lebrendi yechiza elinelungelo elilodwa lomenzi kudala yona ithengiswa kwaye sele ithengwa kakhulu ngexa kufumaneka ichiza elenziwe lafana nelo liveliswe ngumenzi. Ngokuqhelekileyo kulula kakhulu kumenzi wechiza elenziwe lafana nelo liveliswe ngumenzi ukufumana isabelo naye ekuthengisweni kwalo, kuba kaloku amachiza anelungelo elilodwa lomenzi ixesha elininzi abiza imali eninzi.

Amachiza enziwe afana nalawo aveliswe ngumenzi amaninzi, amaxabiso asezantsi

Amachiza enziwe afana nalawo aveliswe ngumenzi enza ukuba amayeza asindisa ubomi afikeleleke

ngokungaphaya. Kuqala akwenza oku ngokwazisa ezinye iindlela ezingabizi mali ininzi zamachiza anamalungelo awodwa omenzi wawo. Kodwa, ukwehlisa ngokwenene amaxabiso umntu omnye okukhuphiswano owenza amachiza awenziwe afana nalawo enziwe ngumenzi akonelanga – bamalunga nabasibhozo okanye abalithoba abafunekayo, inani elinokuba khona kuphela kwiimarike ezinkulu. Kumazwe asaphuhlayo oku kaninzi kunokufuna ufikelelo kwiimarike zemimandla okanye nakwiimarike zehlabathi ngokubanzi, hayi nje ezawo ezincinane, kwaye kunokwenzeka ukuba ibe ziimarike ezihluphekayo.

Enkosi kukhuphiswano lwabenzi bamachiza afana naveliswe ngumenzi, ixabiso le-antiretroviral esetyenziswa ngokuxhaphakileyo kwirejimeni yonyango lodidi lokuqala (3TC/d4T/NVP) elehlileyo ukusuka ngaphezulu kwama-R5,000 ngenyanga ngasekupheleni koo-1990, ukuya ngaphantsi kwe-R50 ngenyanga sithetha nje namhlanje.

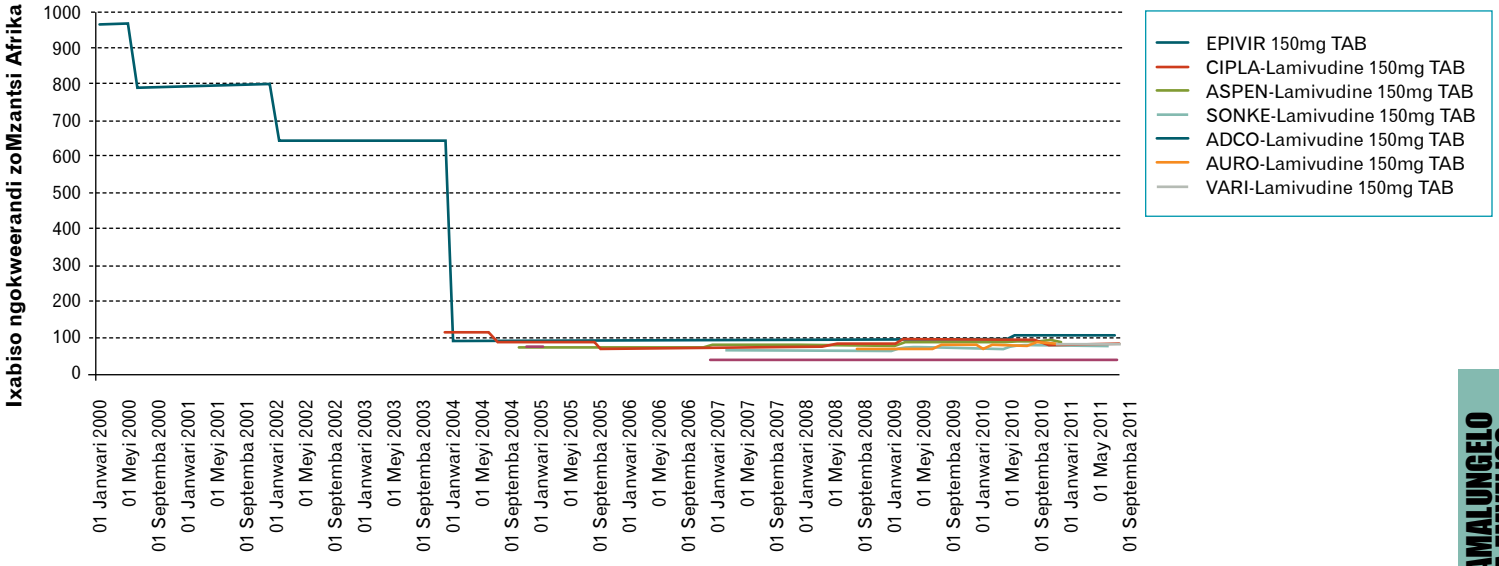
Ukhuphiswano phakathi kwabenzi bamachiza afana naveliswe ngumenzi abaninzi kumazwe apho amayeza ebengenawo amalungelo awodwa abenzi, ingakumbi e-Indiya, kwehlise iindleko zonyango lwe-antiretroviral ngama-99% kweli shumi leminyaka lidlulileyo. Kodwa ke imithetho yorhwebo yamazwe ngamazwe ngoku ifuna amalungelo awodwa abenzi bamachiza kumazwe angavavelisi abangundoqo, afana ne-Indiya. Le mithetho isongela ukhuphiswano kumayeza enziwe afana nalawo aveliswe ngumenzi kwaye inokwenza ukuba kubenzima ukufumana amachiza amatsha. Nakuba kukho ukufumaneka ngokufikelelekayo kwii-ARVs okwenziwa ngaphambi kuka-1995, amayeza amaninzi amatsha enziwe ukuba abe nelungelo elilodwa lomenzi eMzantsi Afrika kunye nakumazwe athumela ngaphandle kunye nangenisa ngaphakathi amachiza njenge-Indiya. Ngoko ke, ngaphandle kokuba amazwe asaphuhlayo asebenzisa utshintsho olufana neemvume ezinyanzelekileyo (jonga kwiphepha lesi-5), ajongene "nebhombu yonyango" ngokunxulumene nexabiso lamayeza amatsha.

Yintoni isithako esisebenzayo?

Isithako esisebenzayo yisabstanesi eyezeni ngokwebhayoloji esebenzayo – ngamanye amagama, isithako esineempembelelo emzimbeni womntu. Iyeza kaninzi liba nesithako esisebenzayo, esilichiza ngokwaso, kunye nomamkeli ongasebenziyo, eyiyisabstensi yepilisi okanye ulwelo elihleli kulo ichiza. Ngoko ke ngexa izithako ezisebenzayo zineempembelelo zebhayoloji emzimbeni, izamkeli ezingasebenziyo zisebenza njengabathwali abenza ukuba libe lula ichiza kwinkqubo yomzimba.

Ukuze kubekho inzuzo, ukuphuhliswa kwamachiza amatsha kuthembele ekunikweni kwelungelo elilodwa lomenzi kwezithako ezisebenzayo okanye kweenqubo zokwenza. Kuphela kuxa la malungelo awodwa omenzi echiza ephelelwa, okanye kunikwa iimvume, sinokufumana amayeza angabizi kakhulu awenziwe afana nalawo aveliswe ngumenzi esiwafunayo.

Iziphumo zokhuphiswano zechiza elenziwe lafana nelo liveliswe ngumenzi kwiXabiso le-Lamivudine (3TC) kwiCandelo labuCala eMzantsi Afrika



Le grafu ibonisa ixabiso elehlayo lamashumi amathandathu e-150mg eepilisi ze-lamivudine kwicandelo labucala loMzantsi Afrika phakathi kukaJanuwari ka-2000 kunye noJulayi ka-2011. Ibonisa amaxabiso afumanekayo ngesigulane ngasinye ngenyanga e-lamivudine. Kule minyaka ili-11 idlulileyo, ixabiso le-3TC lehle ngama-89% (ukusuka kuma-R969.60 ukuya kwi-R105.68) ngenxa yokhuphiswano kumayeza enziwa afana nalawo aveliswa ngabenzi. NgoDisemba ka-2003, ichiza elenziwe lafana nalawo aveliswa ngabenzi i-Cipla-Lamivudine laye laziswa eMzantsi Afrika, lisehlisa ixabiso lebrendi enelungelo elilodwa lomenzi wechiza i-3TC ngobuninzi be-85%.

Photo by:

Ifoto ngu-Harsh Vardhan.

ZAZI IINKCAZELO ZAKHO

Abantu kaninzi babhidanisa amayeza enkohliso, akumgangatho onganeno kunye nalawo enziwa afana nalawo aveliswa ngumenzi. Ukuqonda lo mahluko kubaluleke kakhulu kuba kusinika isixhobo sokukhankasela ukufikelela kumayeza enziwa afana nalawo aveliswa ngumenzi lawo izigidi zabantu zixhomekeke kuwo.

Amayeza awenziwa afane nalawo aveliswe ngabenzi

Ichiza elenziwe lafana nelo liveliswe ngumenzi liyeza elinesiphumo sezebhayoloji esifanayo nemveliso enelungelo elilodwa lomenzi wayo wokuqala. Liyavavanywa nalo ziziphathamandla ezilawula amachiza ukuqinisekisa ukuba lisebenza ngokufayao, likhuselekile kwaye lilungile lifana neyeza eliqalwe ngulowo ulenze kuqala. Ichiza elenziwe lafana nelo liveliswe ngumenzi nalo linezithako ezisebenzayo ezinjengezo zemveliso enelungelo elilodwa lomenzi wechiza kodwa ke alenziwanga yinkampani eyenze kuqala enelungelo elilodwa lomenzi wechiza elo kwaye elithengise kuqala ichiza elo. Nakuba eneziphumo ezifanayo njengamachiza anelungelo elilodwa lomenzi wechiza lokuqala, amachiza enziwe afana nalawo aveliswe ngumenzi awabizi mali ininzi.

Amachiza anegama lebrendi enelungelo elilodwa lomenzi

Ichiza elinelungelo elilodwa lomenzi (kwakhona ekuthiwa ngumnini okanye umqalisi) lelo likhuselwe luphawu lomenzi. Lenziwe yinkampani eliphuhlisileyo okanye engumnini welungelo elilodwa kwelo chiza. Ichiza elinelungelo elilodwa lomenzi nalo likhuselekile kwaye lisebenza njengechiza elenziwe lafana nelo liveliswe ngumenzi – kodwa ke lona libhetele. Kaninzi amachiza anegama lebrendi enelungelo elilodwa lomenzi abiza imali eninzi kunamachiza enziwe afana nalawo aveliswe ngumenzi.

Amayeza enkohliso

Amayeza enkohliso athengsiwa ukuze abonakale efana nemveliso ezinamagama ebrendi nakuba engenjalo. Ukuza kuthi ga ngoku umzekelo, ukuba ngaba umntu uthenga ijini ye-Levis, ulindele ukuba ibe nobulunga obububo kwaye ihlale ixesha elide. Kodwa ke ngamanye amaxesha igama lebrendi i-Levis liye libekwe kwijini engenziwanga ngumenzi we-Levis. Ngenxa yokuba ke sibona igama lebrendi, siye silindele obuya bulunga bufanayo, ibe ke into esiyifumanayo iyeyenkohliso okanye umkokotelo we-Levis owenza ngathi uyafana negama lebrendi nakuba kungenjalo. Ngokomthetho, ukuthengisa impahla ekhohlisayo kuthiwa kukwaphulwa kwegama lebrendi.

Xa oku kusenzeka ngeyeza , kungenxa yomsebenzi ongekho mthethweni wolwaphulo-mthetho. Lo msebenzi awunanto yokwenza neenkampani ezisemthethweni zoxubo mayeza ezenza amachiza enziwa afane nalawo aveliswe ngabenzi okanye lawo anamalungelo awodwa omenzi. Asiwafuni amayeza enkohliso emarikeni kuba amachiza anjalo awakhange avavanywe, kwaye anokubanga ubungozi kwaye athengiswe phantsi kwamabango abubuxoki.

Amayeza akumgangatho onganeno

Amachiza enkohliso ngumzekelo omnye wamayeza akumgangatho onganeno. Kodwa ke ayingawo onke amachiza akumgangatho onganeno anokuveliswa ngumenzi ongekho mthethweni, kodwa ke anokuthathwa njengakumgangatho onganeno ukuba ngaba awahlangabezani neemfuneko zikagunyaziwe olawulayo wamachiza obandakanyekayo. Ngoko ke ngexa onke amayeza akumgangatho onganeno isengumbuzo wolawulo ukulunga kwawo, iyeza lenkohlisa nalo ngumba wobuqhetseba.

Ii-ARVs zitshintsha ubomi

Amayeza ee-antiretroviral angaphezulu nje kokuba eziipilisi esizifaka emizimbeni yethu. Xa une-HIV, la machiza amele ukukwazi ukuphila ubomi obude, obunokuvelisa. U-Elizabeth Mills uthethe noNondumiso Hlwele noNobuhle Qabazi malunga neempembelelo zee-ARVs kubomi babo.

Nobuhle Qabazi

Ifoto ngoncedo lwe-Community Media Trust

Ifoto ngu-Elizabeth Mills

Nondumiso Hlwele

Ukuqala ii-ARVs

"Xa kwakufuneke ukuba ndiqalise ii-antiretrovirals (ARVs), kwakunzima kum kuba ndandisazi ukuba umntwana wama uzakusindiswa. Ndingumama womntwana ongenayo i-HIV ngoku ngenxa yonyango. Ndineeseli ze-CD4 ezomeleleyo kwaye ndiyaphangela ndikwasempilweni. Ndinebhongo ngokuthi ii-ARVs zandinceda kakhulu," utshilo uQabazi. UQabazi nguMsebenzi ofundisa ngoNyango kwi-Community Media Trust (CMT), inkampani evelisa ezeendaba engenzi nzuzo.

UHlwele, naye osebenza njenge-CMT, waqala unyango lwakhe lwe-antiretroviral ukugula kwakhe ngo-2002. "Ndandinomzimba kunye nengqondo ezidiniweyo kwaye ndandifuna nje into eyayiza kundenza ndibe bhetele," utshilo. "kwiiveki ezintathu emva kokuqala ii-ARVs ndawuva umzimba wam uphila; Ngoku ndandinamandla okuzilolonga kwaye [njengenxenye yendlela yam yokuzilolonga ndandihamba] ukuya ekliniki endaweni yokukhwela iteksi. Ukutya ngokunempilo [ukutya] kwandinceda kakhulu. Ndaqala ukuziva ndinethemba ngobomi bam kwakhona … Namhlanje ndiyaphangela, ndifunda kwiYunivesiti yaseKapa ndisenza iDiploma kwezeMfundo ndinenkwenkwe eneminyaka emithandathu engenayo i-HIV ngenxa yokubambelela kumayeza am."

Imiceli mngeni yokuba kwii-ARVs

"Ndaye ndathandabuza ukuthatha ii-ARVs ngenxa yeenkolelo zabanye abantu zokuba ziyityhefu kwaye zizakukwenzakalisa," uvumile uHlwele. "Ndathi ndakuva ukuba umzimba wam [awusakwazi ukunyamezela] kwaphela, kwafuneka ukuba ndithathe isigqibo sobuqu kuba ndandidiniwe kukuhlala ndigula ngalo lonke ixesha. Ndandifuna nje ukuphila. Ukusukela ngoFebuwari ka-2002, ukuqala kwam ukuthatha ii-ARVs, andikabi nayo nayiphi na ingxaki ngamayeza am. Ndibe kwi-lamivudine (3TC), zidovudine (AZT) ne-nevirapine ukusukela ngo-2002 kwaye andikawatshintshi amayeza am [ngokungafaniyo] nabahlobo bam …abatshintshe unyango lwabo kule minyaka idlulileyo." UHlwele waqala ukuthatha ii-ARVs xa isibalo sakhe se-CD4 isisi-1. Kwiminyaka elishumi esemva koko, usekudidi lokuqala lonyango. Isibalo sakhe se-CD4 ngoku singaphezulu kwama-600.

UQabazi, kwelinye icala, waye wehlelwa ziziphumo ebezingalindelekanga ezimandundu ezivela kwii-ARVs: "Ndaqala unyango lwee-ARV ngoDisemba ka-2008 ngexa ndandikhulelwe. Isibalo sam se-CD4 yayingama-249. Ndathatha i-AZT, 3TC ne-nevirapine. NgoFebuwari ka-2009, kwinyanga nje ephambi kokuzalwa kosana lwam, amehlo am ajika aba tyheli," undixelele uQabazi. "Emva kokuba ndibelekile ndaya ekliniki ndayokuyixela le [ngxaki ngamehlo am]. Ndaye ndathunyelwa kwisibhedlele sase-GF Jooste, apho kwaye kwafunyaniswa ukuba ndine-anaemia eyenziwa yi-AZT kwaye ndinokutyhefeka kwesibindi okwenziwa yi-nevirapine. Baye bandiqala kunyango olutsha: i-stavudine (d4T), lamivudine (3TC) ne-efavirenz. Kodwa nalapho ndaye ndanazo iziphumo ebezingalindelekanga. I-d4T yaye yabanga ukusasazeka kwamafutha emzimbeni wam (eyaziwa ngokuba yi-lipodystrophy) kwaze kwafuneka ukuba nditshintshwe kwakhona kwi-d4T ndiye kwi-tenofovir. Ngoku ndithatha i-tenofivir, 3TC ne-efavirenz."

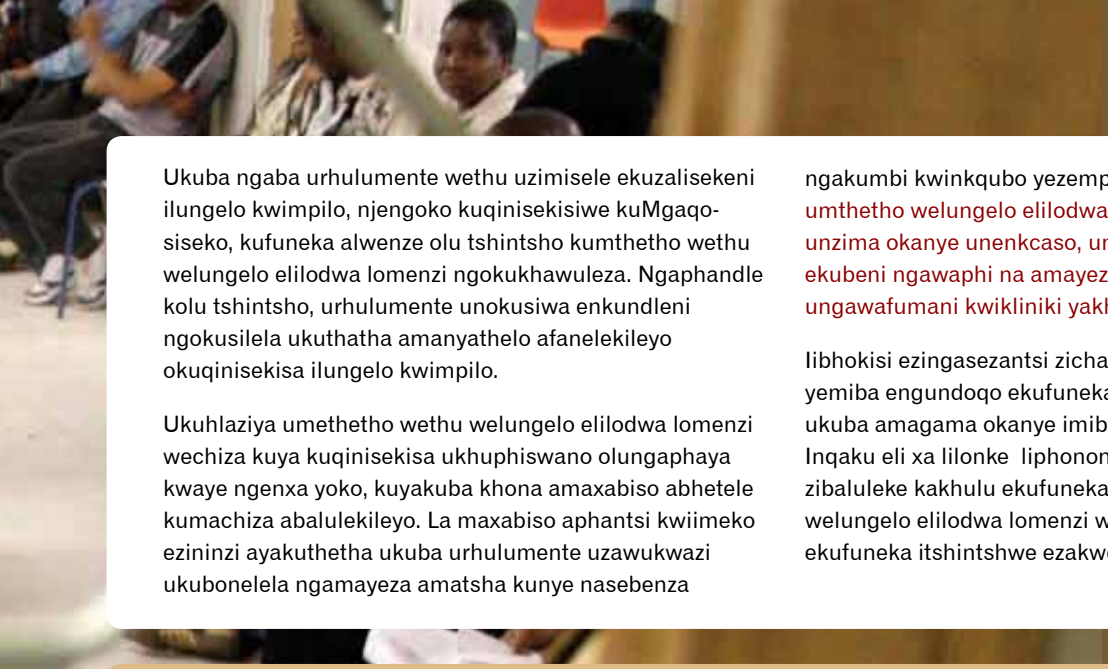
Umthetho kunye namayeza owathathayo

Umthetho wesizwe kunye nothetha-thethwano lorhwebo lwamazwe ngamazwe zineempembelelo zokwenyani kumayeza abantu abafana noHlwele kunye noQabazi abanokuwafumana kwicandelo likarhulumente. Uninzi lwamayeza afumanekayo ngoku kuthi kwinkqubo yempilo karhulumente ayafikeleleka kuphela kwaye enikwa ngenxa yobutsha-ntliziyo be-Treatment Action Campaign (TAC), i-SECTION27 kunye neminye imibutho ekhankasela ufikelelo kunyango. Ukuqinisekisa ukuba kwixa elizayo singakwazi ukufikelela kumayeza amatsha nabhetele kufuneka sitshintshe imithetho yamalungelo awodwa omenzi wechiza woMzantsi Afrika ukuqinisekisa ukuba amayeza ayafumaneka kwaye ayafikeleleka (Jonga kwiphepha le-12 ngokuthe vetshe malunga noku).

LUNGISANI IMITHETHO SINDISANI UBOMI

Ifoto ngu-Oupa Nkosi

Luninzi utshintsho ekufuneka lwenziwe kwimithetho yaseMzantsi Afrika yamalungelo awodwa abenzi bamachiza oko okuya kunceda ukuqinisekisa ukufikelela kwethu okuqhubayo kumayeza ayimfuneko anjengee- antiretrovirals okanye amachiza omhlaza. Olu tshintsho ayikukuba alufanelekanga okanye lukude. Ngokwenene, luvunyelwe ngokucacileyo phantsi komthetho wamazwe ngamazwe.



Ukuba ngaba urhulumente wethu uzimisele ekuzalisekeni ilungelo kwimpilo, njengoko kuqinisekisiwe kuMgaqo-siseko, kufuneka alwenze olu tshintsho kumthetho wethu welungelo elilodwa lomenzi ngokukhawuleza. Ngaphandle kolu tshintsho, urhulumente unokusiwa enkundleni ngokusilela ukuthatha amanyathelo afanelekileyo okuqinisekisa ilungelo kwimpilo.

Ukuhlaziya umethetho wethu welungelo elilodwa lomenzi wechiza kuya kuqinisekisa ukhuphiswano olungaphaya kwaye ngenxa yoko, kuyakuba khona amaxabiso abhetele kumachiza abalulekileyo. La maxabiso aphantsi kwiimeko ezininzi ayakuthetha ukuba urhulumente uzawukwazi ukubonelela ngamayeza amatsha kunye nasebenza ngakumbi kwinkqubo yezempilo karhulumente. Nakuba umthetho welungelo elilodwa lomenzi unokuvakala unzima okanye unenkcaso, uneempembelelo ezingqalileyo ekubeni ngawaphi na amayeza ongawafumana okanye ungawafumani kwikliniki yakho yengingqi.

Iibhokisi ezingasezantsi zichaza ngokufutshane eminye yemiba engundoqo ekufuneka siyiqonde. Ungakhathazeki ukuba amagama okanye imiba le iyabhidanisa kuqala. Inqaku eli xa lilonke liphononongа ezona zinto zintlanu zibaluleke kakhulu ekufuneka zitshintshe kumthetho wethu welungelo elilodwa lomenzi wechiza. Yile miba mihlanu ekufuneka itshintshwe ezakwenza umahluko phaya ezantsi.

YINTONI I-TRIPS?

Esona sivumelwano samazwe ngamazwe sibalulekileyo sinxulumene namalungelo awodwa abenzi kuthiwa sisivumelwano se-TRIPS. I-TRIPS imele i-Trade-Related Aspects of International Property Rights. Xa sithetha ngomthetho wamazwe ngamazwe kweli nqaku, sithetha ngesivumelwano se-TRIPS kunye neengcaciso notshintsho olulandela sona.

Ukusayina kwawo esi sivumelwano se-TRIPS amazwe asaphuhlayo, aye avumelana ngokwandisa uluhlu lube banzi lokhuselo lwelungelo elilodwa lomenzi wechiza kumazwe awo. Enye yezona mfuneko zimbi ze-TRIPS yaba kukuba amazwe kufuneka anike amalungelo awodwa omenzi echiza ithuba leminyaka engama-20 – amathuba amalungelo awodwa abenzi bamachiza ngaphambili lalilifutshane kakhulu kunelo. Aye avumelana kwakhona ukuba uluhlu olubanzi lwezinto ezintsha eziphuhlisiweyo, kuqukwa amayeza amatsha, kufuneka anikwe amalungelo awodwa abenzi bawo. Isiphumo salo mathuba made exesha lamalungelo awodwa abenzi bamachiza ibe ngamaxabiso aphezulu amayeza. I-TRIPS ibilunge kakhulu kwiinkampani ezinkulu ezixuba amayeza – kodwa ke iyingozi kakhulu kukhathalelo lwempilo kumazwe asaphuhlayo. Amazwe asaphuhlayo ebesazi ukuba i-TRIPS iyakuba nenani leziphumo ezibi aze ke asikhaba isivumelwano kuthetha-thethwano lokuqala. Nakuba kunjalo, amazwe atyebileyo aye afaka uxinzelelo olukhulu, egxininisa ukuba i-TRIPS izakuzisa urhwebo kunye notyalo-mali olonyukileyo, olo luyakunceda uphuhliso kumazwe ahluphekayo. Ngelishwa kwamanye amazwe uncedo ebekufanele ukuba luze ne-TRIPS zange lube yinyani.

Ngexa leengxoxo zokuqala ze-TRIPS, amanye amazwe asaphuhlayo aye alwa ade ke akwazi ukufumana amagatya aluncedo kwisivumelwano esi. Oku ke kwaziwa njengokuba koko kunokutshintshwa kwi-TRIPS. Sifuna ukuba olu tshintsho lubhalwe kumthetho wethu wesizwe ukuze sikwazi ukukhupha ezinye zeziphumo ezibi zesivumelwano se-TRIPS. Nakuba uMzantsi Afrika wayisayina i-TRIPS, olu tshintsho luyakuqala ukusebenza kuphela ukuba ngaba owethu umthetho welungelo elilodwa kumenzi wechiza uyatshintshwa.

YINTONI ISIBHENGEZO SE-DOHA?

Emva kwesivumelwano se-TRIPS kwaye kakho iyantlukwano kwizimvo ekubeni kufuneka atolikwe njani na amagama esivumelwano. Njengakumaxwebhu omthetho amaninzi, anokutolikwa ngeendlela ezininzi. Amanye amazwe aye avakalisa ukuba ukukhusela ilungelo lomenzi yeyona nto ibaluleke kakhulu kunokukhusela impilo yoluntu, ngexa amanye athi ilungelo lomenzi kufuneka lingahoywa ukuba lonzakalisa impilo yoluntu.

Ukucacisa okunye ukudideka okujikeleze i-TRIPS, ngowe-14 Novemba 2001 iSibhengezo se-Doha kwaye kwavunyelwana ngaso ngamazwe angamalungu e-WTO. Saye sacacisa ngokuphandle ukuba amazwe anelungelo lokwenza isigqibo sokuba azinika nini na iimvume ezinyanzelekileyo kwaye anokukwenza oko, phakathi kwezinye izinto, esabela kwiingxakeko ezifana nobhubhane we-HIV. Ngaphandle kwesi sibhengezo singqongqo, amazwe amaninzi awakayihlaziyi imithetho yawo yesizwe ukuze asebenzise la malungelo.

1 NIKA AMALUNGELO AWODWA OMENZI KUPHELA UWANIKELA IMPUCUKO EBONAKALAYO

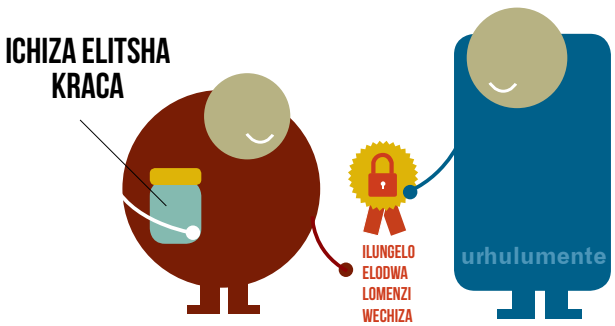
Ilungelo elilodwa lomenzi wechiza lenzelwe ukuvuza okanye ukuba nomtsalane ekuphuhlisweni kwezinto ezintsha. Nakuba kunjalo, into efaneleke ngqo ukuba ibe yinto entsha ayihlali icacile. Imithetho koku inokohluka phakathi kwamazwe. Kwelinye ilizwe ukulilungisa kwakhona iyeza ukuze lithathwe kanye ngeveki endaweni yokuba lithathwe kanye ngemini inokuba sisizathu esaneleyo sokunika ilungelo elilodwa lomenzi elitsha. Kwelinye ilizwe ukulilungisa kwakhona ichiza ngeke lilungele ukunikwa ilungelo elilodwa lomenzi wechiza.

IMelika kunye neManyano yaseYurophu zibeka uxinzelelo kumazwwe ukuba ehlise indlela ayisebenzisayo yokunika ilungelo elilodwa lomenzi wechiza. Oku kuthetha ukuba bafuna ukuba amazwe avumele amalungelo awodwa abenzi bamachiza nakutshintsho nje oluncinane kumayeza asele ekhona. Imigangatho esezantsi yokunikwa kwamalungelo awodwa omenzi wechiza ikhokelela ekubeni kunikwe amalungelo awodwa omenzi wechiza amaninzi ize ke, ngenxa yoko, amaxabiso amayeza ahlale ephezulu. Ngokusebenza kwayo, imigangatho esezantsi yamalungelo awodwa omenzi yandisa ixesha elixhanyulwa lodwa lilungelo elilodwa lomenzi ngokuvumela ukuba iinkampani zifumane amalungelo awodwa omenzi wechiza amatsha ngokwenza utshintsho oluncinane kuphela kumayeza asele ekhona (into esiyibiza ngokuba yi “evergreening”).

Ngethamsanqa, umthetho wamazwe ngamazwe uthi asinakude senze olu tshintsho lufunwa yiMelika kunye neManyano yaseYurophu. Endaweni yoko, singalandela umzekelo wase-Indiya, owazise indlela engqongqo esetyenziswa kumalungelo awodwa abenzi bamachiza ukuhlaziya kwayo umthetho welungelo elilodwa lomenzi wechiza ngo-2005. E-Indiya, amalungelo awodwa abenzi anikelwa kuphela usetyenziso olutsha okanye imixube emitsha yamayeza asele ekhona ukuba ngaba usetyenziso okanye imixube emitsha inophuculo olubalulekileyo kwezonyango kunoko kusetyenziswa okanye imixube emidala.

Okwangoku uMzantsi Afrika unika amalungelo awodwa kusetyenziso olutsha okanye kwimixube emitsha yamayeza asele ekhona. Oku akufunwa ngumthetho wamazwe ngamazwe. Ngokwe- TRIPS, amazwe kufuneka anike amalungelo awodwa abenzi bamachiza kwimveliso ezintsha ezibonisa “ubutsha”, ezine “nyathelo lokuqamba” kwaye ezinako “ukusebenza kakuhle kwishishini”. Nakuba kunjalo amazwe anenkululeko yokutolika ukuba la magama athetha ntoni na ngokungqalileyo. Ayikho into kwi-TRIPS enyanzela uMzantsi Afrika ukuba unike amalungelo awodwa omenzi wechiza kusetyenziso olutsha okanye kwimixube emitsha.

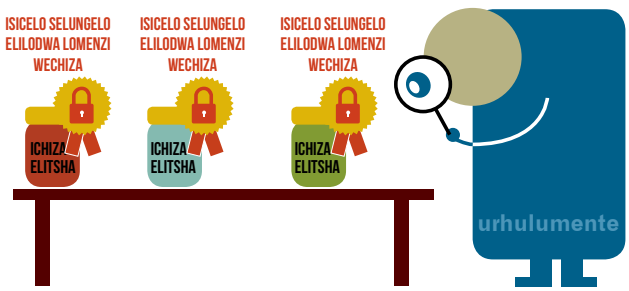
UmThetho weLungelo eliLodwa loMenzi woMzantsi Afrika kufuneka utshintshwe ukuze uchaze imiba engqongqo yokunikwa kwamalungelo awodwa abenzi bamachiza. Amalungelo awodwa abenzi bamachiza kufuneka anganikwa abasebenzisi abatsha okanye kwimixube emitsha yamayeza asele ekhona.



2 IZICELO ZAMALUNGELO AWODWA ABENZI BAMACHIZA KUFUNEKA ZIJONGWE KWAKHONA

Amazwe amaninzi aphuhlileyo anee-ofisi zamalungelo awodwa abenzi bamachiza eziphonononga zize ziphinde zijonge kwakhona isicelo ngasinye selungelo elilodwa. EMzantsi Afrika, nakuba kunjalo i-ofisi yamalungelo awodwa abenzi bamachiza ayiphononongi ukufaneleka kwesicelo selungelo elilodwa lomenzi wechiza. Ukufumana ilungelo elilodwa lomenzi wechiza eMzantsi Afrika kulula njengokugcwalisa ifom. Kuthetha ukuba amalungelo awodwa abenzi bamachiza anikwa nokuba umntu engabonisanga nakuphi na ukuyila into entsha.

UmThetho weLungelo eliLodwa loMenzi woMzantsi Afrika kufuneka utshintshwe ukuze unyanzele i-Ofisi yamaLungelo aWodwa abeNzi bamaChiza ukuba ijonge kwakhona ngokupheleleyo zonke izicelo zamalungelo awodwa zabenzi bamachiza ezinxulumene nempilo (amayeza kunye nezixhobo zonyango). I-ofisi yamalungelo awodwa abenzi bamachiza kufuneka kwakhona icele izimvo zeziphathamandla zempilo xa ithathela ingqalelo amalungelo awodwa omenzi weyeza okanye ezixhobo zonyango (njengoko kusenziwa njalo e-Brazil). Ukongeza, uNondyebo kufuneka enze kufumaneke imali eninzana ukuze kwandiswe i-Ofisi yamaLungelo aWodwa abeNzi bamaChiza. UMzantsi Afrika kufuneka ujonge izigqibo ezenziwe zezinye ii-ofisi zamalungelo awodwa abenzi bamachiza, kodwa ke emayezeni ingakumbi kufuneka wenze ezawo izigqibo, ezingqongqo, kwaye ezizezokugqibela.

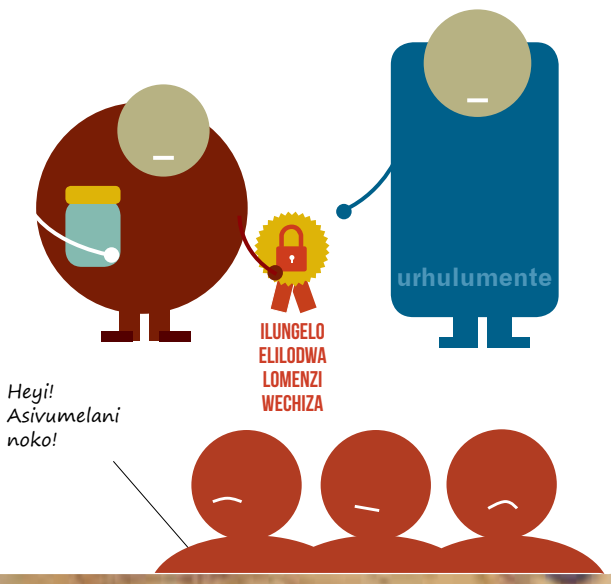


3 SINELUNGELO LOKUCELA UMNGENI KUM-ALUNGELO AWODWA OMENZI WECHIZA

Okwangoku, indlela ekukuphela kwayo esinokucela ngayo umngeni kumalungelo awodwa abenzi bamachiza eMzantsi Afrika kukusa umcimbi lo enkundleni. Oku kubiza imali eninzi kwaye kuchitha ixesha. Oku kuthetha ukuba amalungelo awodwa ebenzi bamachiza anikwe ngempazamo kuhlala kungacelwa mngeni kuwo ngenxa yeendleko kunye nobugcisa obufunekayo ukusa imcimbi le enkundleni.

Amazwe amaninzi ayabavumela abantu ukuba bacele umngeni kumalungelo awodwa abenzi bamachiza phambi kokuba anikwe kunye nasemva kwexesha elithile emva kokuba enikiwe. Oku akunakude kwenzeke ngenkundla. Kunokuba lula njengokubhalela i-ofisi yamalungelo awodwa abenzi bamachiza unika izizathu zakho zokuba kutheni kufuneka ilungelo elithile elilodwa lomenzi wechiza kufuneka linganikwa. Ezi ntlobo zemiceli mngeni kumalungelo awodwa omenzi wechiza kuthiwa yinkcaso yaphambi kokunikwa kunye neyasemva kokunikwa kwelungelo elilodwa lomenzi wechiza. Uluntu, abenzi bamayeza enziwa afana nalawo aveliswe ngabenzi, kunye nemibutho yoluntu kufuneka bonke babe nelungelo lokufaka inkcaso enjalo ephambi kunye nasemva kokunikwa ilungelo elilodwa lomenzi wechiza.

UmThetho weLungelo eliLodwa loMenzi weChiza waseMzantsi Afrika kufuneka utshintshwe ukuze uvumele inkcaso yangaphambi kunye nasemva kokukhutshwa kwamalungelo awodwa abenzi bamachiza!



AMAYEZA ATSHINTSHA UBOMI

UNzalie ubonisa idosi yakhe yodidi lwesibini lwee-antiretrovirals zakhe. Ifoto nguThandeka Vinjwa.

Ibali likaNzalie

UNonzaliseko "Nzalie" Ntwana wayehlala esoyika into awayecinga ukuba "lihlazo" yokuba ne-HIV. Wayengakwazi ukuyamkela tu into yokuba unesi sifo sibulalayo. Kwaze ke, ngo-2004 ubomi bakhe batshintsha ekujoyineni kwakhe i- Treatment Action Campaign (TAC) kwaye wafunda ngenzululwazi ye-HIV. UNzalie wafumanisa ukuba xa une-HIV loo nto ayithethi ukuba ugwetyelwe intambo.

UNzalie wazalelwa eNgobozana, eLusikisiki, apho wayenenkampani yakhe yokutya edolophini. Ngo-2003 waye wagula kakhulu uNzalie kwaze kwafumaniseka ukuba une-HIV. "Ngo-2004 isibalo sam se-CD4 sasingama- 285…," ukhumbule njalo uNzalie. "Ndaye ke ndaqala ukuthatha udidi lokuqala lwerejimeni yee-antiretroviral (ARV) ngo-2005 kwiKliniki yaseLalini eLusikisiki. Ngendakufundayo kwiNkqubo yokuFunda ngoNyango (Treatment Literacy Programme) ye-TAC ndaye ndakwazi ukuqaphela iimpawu zokunganyangeki ngamayeza ndaze ndazixela kuGqirha Herman Reuter ngo-2006. Waye wenza iimvavanyo waze … wandixelela ukuba [ndine] lactic acidosis (imeko apho i-lactic acid yakheka ngokukhawuleza kunokuba umzimba unokukwazi ukuyisusa), ndaye ke ndatshintshela kwirejimeni yodidi lwesibini (i-Kaletra ne-nevirapine). Ndibulela i-Médicins Sans Frontières (MSF) i-Siyaphila La ARV project, ezasindisa ubomi bam."

"Inkxaso kasisi wam, kunye nokukwazi ukufundisa [abanye] kunye nokuxhasa amalungelo abantu kwenza ukuba ndibe nombulelo," utshilo uNzalie, ngoku osebenza njengoMxhasi weMpilo yoluNtu (Community Health Advocate) we-TAC. "Andinantloni ngesiqu sam kuba ndithatha unyango lwam lobomi... Ndisempilweni entle, ndisenza nantoni na endifuna ukuyenza, njengaye wonke umntu ongomnye."

Udliwano-ndlebe lwenziwe nguThandeka Vinjwa

Ifoto ngu-Jose Cendon ngoncedo lwe-Médecins Sans Frontières.

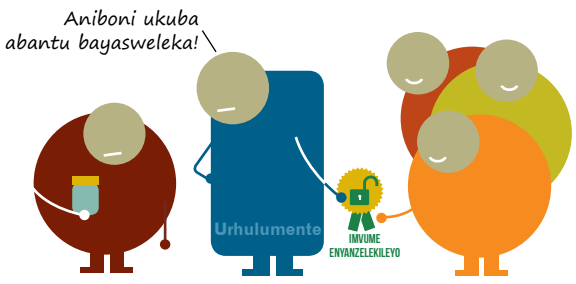
4 VULANI IINGCANGO ZEEMVUME EZINYANZELEKILEYO

Xa ichiza lisephantsi kwelungelo elilodwa lomenzi, urhulumente unokukhupha iimvume zabenzi bamayeza enziwe afana nalawo abenzi ukuba benze elo chiza – oko kusophula ukuba elo lungelo libe lelabucala emarikeni. Ezi mvume kuthiwa ziimvume ezinyanzelekileyo (Jonga okuthe vetshe kwiphepha lesi-5).

Umthetho wamazwe ngamazwe uyazivumela iimvume ezinjalo ezinyanzelekileyo ukuba zikhutshwe phantsi kwemihlaba ekugqitywa ngayo ngurhulumente. Ingxaki kukuba umthetho welungelo elilodwa lomenzi wechiza eMzantsi Afrika awukafikeleli apho okwangoku. UmThetho wethu welungelo eliLodwa loMenzi uvumela iintlobo ezimbini zeemvume ezinyanzelekileyo: ukusetyenziswa ngurhulumente (icandelo lesi-4) kunye nezicelo zeqela lesithathu enkundleni (icandelo lama-56). Nakuba icandelo lesi-4 lisenza ukuba kube lula kakhulu kurhulumente ukukhupha iimvume ezinyanzelekileyo phantsi kweemeko ezikhetheke kakhulu – ezizezi xa ilungelo elilodwa lomenzi wechiza lisetyenziswa kakubi. Ngaphaya koko, inkqubo yokukhupha imvume ezinkundleni inzima kakhulu.

IsiBhengezo se-Doha (jonga kwiphepha le-13) sithi: “Ilungu ngalinye linelungelo lokunika iimvume ezinyanzelekileyo kunye nenkululeko yokumisela imihlaba leyo imvume enjalo ikhutshwa phantsi kwayo”. Sikwathi iimvume ezinyanzelekileyo zinokunikwa “kwiingxakeko zesizwe” kunye “nakwiimeko ezingxamiseke ngokugqithisileyo” kunye nokuba amazwe anokuzithathela ngokwawo izigqibo ukuba ithetha ntoni na ingxakeko kunye nokungxamiseka. IsiBhengezo sixela ngokukhethekileyo ukuba ubhubhane we-HIV kunye nowe-TB bakulungele ukubhengezwa njengengxakeko yesizwe. Kucacile ke ngoko ukuba umthetho woMzantsi Afrika unokutshintshwa ukwenza kube lula ukunikwa kweemvume ezinyanzelekileyo.

UmThetho weLungelo eliLodwa loMenzi weChiza kufuneka uvumele ngokucacileyo iimvume ezinyanzelwayo apho amaxabiso abiza imali eninzi ngokungafikelelekiyo, kunye nakwimeko yempilo yoluntu kunye nengxakeko yesizwe apho amayeza akhuselwe lilungelo elilodwa lomenzi wechiza. Inkqubo yokukhupha iimvume ezinyanzelekileyo kufuneka kwakhona yenziwe ibe lula kwaye kufuneka kumiselwe amazinga afanayo emali ebhatalwa umnini welungelo elilodwa kwiimvume ezinjalo.



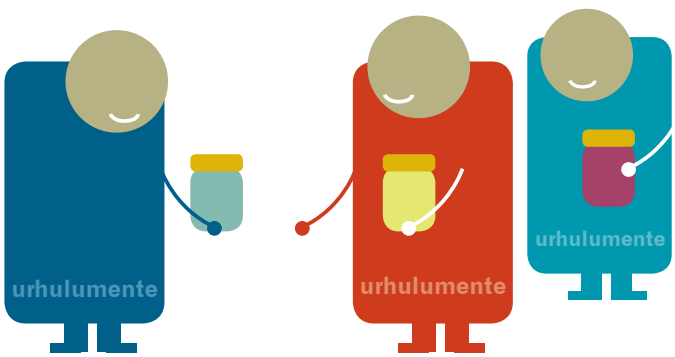
5 YENZANI KUBE LULA UKUWANGENISA NGAPHAKATHI KUNYE NOKUWATHUMELA NGAPHANDLE ELIZWENI AMAYEZA

Umthetho wamazwe ngamazwe uvumela iintlobo ezikhethekileyo zeemvume ezinyanzelekileyo zokuthumela kunye nokungenisa ngaphakathi elizweni amayeza. Ngoko ke, ukuba ngaba sifuna ukungenisa iyeza elivela e-Indiya ngaphakathi elizweni, kufuneka sifumane zombini imvume enyanzelekileyo yokuthumela amayeza e-Indiya kunye nemvume enyanzelekileyo yokungenisa amayeza eMzantsi Afrika.

Oku bekungahlali kusenzeka. Kwenzeke kuphela emva kwento ekwakusithiwa “siSigqibo soMbutho weRhwebo weHlabathi sama-30 Agasti 2003” sokuba imida ethile enxulumene nokuthunyelwa kwamayeza anelungelo elilodwa lomenzi mayipheliswe. Nakuba lemida iphelisiwe, uMzantsi Afrika awukawasebenzisi la mathuba matsha okungenisa ngaphakathi kunye nokuthumela ngaphandle elizweni amayeza ngexabiso elingabizi kakhulu.

UMzantsi Afrika, ngokungafaniyo namazwe amaninzi kummandla, unamandla okwenza amayeza anokuthunyelwa ngaphandle. UMzantsi Afrika unokufuna kwakhona ukusebenzisa iimvume ezinyanzelekileyo ekungeniseni elizweni, ingakumbi ekungeniseni izithako ezisebenzayo zoxubo mayeza. Kubalulekile ke ngoko ukuba siwutshintshe umthetho wethu ukuze sisebenzise eli thuba leSigqibo sama-30 Agasti 2003 ukuqinisekisa amaxabiso asezantsi kunye nokwenyusa ufikelelo kumayeza asindisa ubomi.

UmThetho weLungelo eliLodwa loMenzi weChiza woMzantsi Afrika kufuneka utshintshwe ngokucacileyo ukuze uvumele ukungeniswa nokuthunyelwa ngaphandle kwamachiza njengoko oko kubonelelwe kumthetho wamazwe ngamazwe (ingakumbi phantsi kweemeko zeSigqibo sama-30 Agasti 2003). Nakuba uMzantsi Afrika kufuneka wamkele inkqubo yama- 30 Agasti 2003, kufuneka kwakhona ufake uxinzelelo lwenkqubo esebenziseka lula kuMbutho woRhwebo weHlabathi kunye nakwezinye iindawo.



Ngeenkcukacha ezithe vetshe kunye nemvelaphi yomthetho ngendlela ekufuneka utshintshe ngayo umthetho welungelo elilodwa lomenzi loMzantsi Afrika, nceda ujonge iwebhusayithi yethu yokukhankasa ku: fixthelaws.org.za

AMAYEZA ATSHINTSHA UBOMI

Ifoto ngu-Adam Malapa.

Ibali likaThabiso

UThabiso Tamane likholwa elizinikeleyo, kwaye ngumxhasi omkhulu wesoka obathandayo abantu. Usebenza njengoMsebenzi oFundisa ngoThintelo noNyango (Prevention and Treatment Literacy Practitioner) we-TAC Ekurhuleni.

“Ukuqala kwam ukuza kwi-TAC kwaye kwafuneka ukuba ndifunde ukuziqhelanisa kunye nokusebenza nabantu [abane] neemvelaphi ezahlukeneyo, inkolo kunye neendlela abaziphilela ngayo ngokwezesondo. [Kodwa] kwakungafunekanga ukuba ndiyilahle into endikholelwa kuyo,” utshilo uThabiso. “Kwaye abantu endisebenza nabo kunye namaqabane am baye bandamkela. Ukuba yinxenye yomlo ochasene ne-HIV/AIDS ibe ngawona mava alungileyo obomi bam kwaye isengawo nangoku. Ndifunde okukhulu nge-HIV/AIDS kunye nangamalungelo oluntu, [izinto] Ebendingeke ndizazi ukuba ngaba bendingeyiyo inxenye ye-TAC.”

“Ndiyazi ukuba inokulawulwa i-HIV … ngokusetyenziswa kwee-ARVs kunye nokuphila ngethemba. Okunye okuye kwaqaqamba emsebenzini … wam ibe kukubona umntu [oze] ekliniki egulela ukusweleka aze kwiinyanga ezimbalwa ezisemva kokuqala unyango, abe bhetele kangangoku ungakwazi ukuthi uphila nesifo esingapheliyo. Oko kumangalisa kakhulu.

“Icebo lam ebantwini, ingakumbi emadodeni,: Madoda, ncedani, masivavanyelweni [sonke] i-HIV ukuze sisazi isimo sethu se-HIV. Ukwazi isimo sakho … kunokunceda ukusindisa ubomi bakho kuba unokuqala unyango kusekho ixesha.”

Udliwano-ndlebe ngu-Luckyboy Nkhondwane

ABAWINILEYO KUNYE NABOYISIWEYO

Umjikelo woku-1

Amalungelo awodwa omenzi wechiza kusetyenziso olutsha kunye nemixube emitsha

Iinkampani ezixuba amayeza ziye zazisebenzisela amalungelo awodwa omenzi wechiza kusetyenziso olutsha kunye nakwimixube emitsha ukwandisa ukuxhamla kwazo zodwa kumayeza athile. Ngokwesivumelwano se-TRIPS imveliso enokuba nelungelo elilodwa lomenzi wayo kufuneka ibonakalise “ubutsha”, i“inyathelo lokuqalisa into entsha” kunye nokukwazi kwayo “ukusebenza kwezoshishino”. I-TRIPS ayifuni ukuba amazwe anike amalungelo awodwa omenzi ekusetyenzisweni okutsha kwamachiza kunye nakwimixube emitsha. Enyanisweni, amazwe atolike iimfuneko “zobutsha” kunye “nenyathelo lokuqalisa into entsha” ngeendlela ezahlukeneyo.

1

I-Indiya

Umthetho wase-Indiya uwathintela ngokucacileyo amalungelo awodwa omenzi wechiza kusetyenziso olutsha kunye nakwimixube emitsha kumayeza asele ekhona. Uphuhliso olunjalo aluhlangabezani nemigangatho yabo efunekayo yo “butsha” okanye ye “nyathelo lokuqalisa into entsha”.

2

UMzantsi Afrika

UMzantsi Afrika awuwavumeli ngokucacileyo amalungelo awodwa omenzi wechiza kusetyenziso olutsha kunye nemixube emitsha, kodwa ke ayiyithinteli. UMzantsi Afrika kufuneka ungaluvumeli uxinzelelo lokwazisa ububodwa bedata, oko okunokumisela umda nangokungaphaya ukhuphiswano lokwenza amachiza afanayo nalawo enziwe ngumenzi.

Umjikelo wesi-2

Iimvume ezinyanzelekileyo kunye namachiza angena ngaphakathi elizweni afanayo

Ngokwe-TRIPS, amazwe anelungelo lokukhupha iimvume ezinyanzelwayo (jonga kwiphepha lesi-5) ezivumela ukuba umenzi weyeza elenziwe lafana nelo lenziwe ngumenzi kunye/okanye angenise amayeza ngaphakathi elizweni aphantsi kwelungelo elilodwa lomenzi. Ngaphaya koko, ilizwe ngalinye linenkululeko yokwenza isigqibo ngemiba leyo likhupha phantsi kwayo iimvume ezinjalo. Amazwe avumelekile ukuba akhuphe iimvume ezinyanzelekileyo zokuthumela amayeza kwamanye amazwe angaphandle angakwaziyo ukwenza amayeza awoneleyo ngamaxabiso afikelelekayo. Elinye igatya kumthetho wamazwe ngamazwe laziwa ngokuba kukungenisa amayeza afanayo elizweni. Imithetho yokungeniswa kwamayeza afanayo elizweni ivumela ukuba amazwe angenise ngaphakathi kumazwe awo amayeza anamalungelo awodwa omenzi wechiza evela kwamanye amazwe ukuba ngaba awabizi mali ininzi kunamayeza athengiswa ngaphakathi kwilizwe elo angeniswa kulo.

1

I-Indiya

Umthetho welungelo elilodwa lomenzi wechiza wase-Indiya uvumela naliphi na iqela elinomdla ukuba lifake isicelo semvume enyanzelekileyo. I-Indiya iyakuvumela ukunikwa kwemvume enyanzelekileyo ukuba ngaba elo yeza litsha lenziweyo linelungelo elilodwa lomenzi alifumaneki ngexabiso elifanelekileyo kuwo wonke umntu. Phantsi komthetho wase-Indiya iimvume ezinyanzelekileyo zomenzi weyeza kunye nokuthunyelwa kwalo zivunyelwe kumazwe angenako ukweza amayeza awoneleyo.

2

IMelika

IMelika inenkqubo elula kakhulu yokukhupha “usetyenziso ngurhulumente” iimvume, uhlobo olukhethekileyo lweemvume ezinyanzelekileyo. Oku kuquka ukuhlangabezana neemfuno zempilo nezokhuseleko. Ilizwe eli alivumeli ngokucacileyo iimvume ezinyanzelekileyo zokuthumela amayeza ngaphandle kwilizwe lalo, kwaye kukho ukungaqiniseki ngokomthetho ukuba ngaba ukungeniswa ngaphakathi kwamayeza afana nakhona kwilizwe elo kuvunyelwe na. I-US isaqhuba ukufaka uxinzelelo kumazwe asaphuhlayo ukuba angasebenzisi iimvume ezinyanzelwayo kunye nokungenisa amayeza afana nalawo anawo kumazwe awo.

Umjikelo wesi-3

Ububodwa bedata

Ububodwa bedata (jonga kwinkcazelo ekwiphepha lama-21) bulibazisa ukungena kwamayeza enziwe afana nalawo omenzi emarikeni, kuba buphazamisana nokubhalisa kukarhulumente amayeza asebenza ngokufanayo enziwe afana nalawo enziwe ngumenzi. Akufunwa sisivumelwano se-TRIPS. Nakuba kunjalo, kwizivumelwano zorhwebo ekwenziwa uthetha-thethwano ngazo, iManyano yaseYurophu kunye neMelika zisebenzisa amaxesha amade obubodwa bedata.

1

I-Indiya

Umthetho wase-Indiya awubuxhasi ububodwa bedata. Urhulumente wase-Indiya uxele ukuba isivumelwano se-TRIPS asilinyanzeli ilizwe ukuba linike olu hlobo lokhuselo kwilungelo lomenzi wechiza.

2

UMzantsi Afrika

Umthetho wesizwe welungelo elilodwa lomenzi wechiza okwangoku awuboneleli ngobubodwa bedata. UMzantsi Afrika kufuneka ukhabe ngokucacileyo ububodwa bedata kwaye ungavumi naluphi na uxinzelelo lokuyazisa oko ikwenza ngezivumelwano zorhwebo.

I-Indiya inerekhodi entle yokukhusela impilo yabantu ngokuba ingavumeli amazwe aphuhlileyo ukuba ayimisele imiqathamgo yorhwebo. I-Jordan, kwelinye icala, ibhatala ixabiso eliphezulu ngokusayina izivumelwano zorhwebo ezimiselwe imida. UMzantsi Afrika uwela phakathi kwezi ntlobo zimbini. Ukutshintsha umThetho wethu weLungelo eliLodwa loMenzi weChiza kuya kwenza ukuba sisondele kumzekelo we-Indiya, kodwa ke ukuba siyanikezela kuxinzelelo lweMelika kunye neManyano yaseYurophu singazifumana sikuhlobo lwengxaki ejongene nayo i- Jordan ngoku.

3

I-Jordan

Umthetho wase-Jordan awukuvumeli ngokucacileyo okanye uthintele amalungelo awodwa omenzi wechiza ekusetyenzisweni okutsha okanye kwimixube. Nakuba kunjalo ishishini lasekhaya kunye namagosa karhulumente anika ingxelo yokuba zimbalwa kakhulu iinkampani ezixuba amayeza ezifaka izicelo zamalungelo awodwa abenzi bamachiza e-Jordan kuba ububodwa bedata (jonga kwiphepha lama-21) behlise ukhuphiswano lwamachiza enziwe afana nalawo abenzi.

4

IMelika

IMelika iwugcinile umbono wokuba usetyenziso olutsha kunye nemixube emitsha iyahlangabezana nemigangatho yelizwe yamalungelo awodwa omenzi echiza. Umthetho waseMelika uwavumela ngokucacileyo la malungelo awodwa omenzi.

limpembelelo kumaxabiso amayeza

Ngo-2006, I-Indiya yaye yasikhaba isicelo selungelo elilodwa lomenzi wechiza se-Novartis kwilungelo elilodwa lomenzi wechiza i-Gleevec, iyeza elibalulekileyo kunyango lomhlaza. Isicelo sakhatywa ngokusekelwe ekubeni i-Gleevec yayiluhlobo olutsha lweyeza elalisele likhona ngoko ke ayakwazi ukuhlangabezana nemigangatho eluqilima yase-Indiya yelungelo elilodwa lomenzi wechiza. Ngelo xesha i-Novartis yayibiza ama-US$26,000 ngesigulane ngonyaka nge-Gleevec. Ngokuchaseneyo, iinguqulelo zamachiza awenziwe afana nalawo omenzi zase-Indiya zazixabisa i-US$2,100 (zisezantsi ngama-92%). Ukuphendula, i-Novartis yaye yafaka ityala elalicela umngeni ngokuba semthethweni kwemigangatho yamalungelo awodwa omenzi wechiza ase-Indiya. Ngo-2007 inkundla yase-Indiya yaye yawuxhasa umthetho welungelo elilodwa lomenzi wechiza welizwe layo yaze yalikhaba ibango le-Novartis. I-Novartis isacela umngeni kwisigqibo senkundla

3

UMzantsi Afrika

UMzantsi Afrika ngendlela ethile uyazivumela iimvume ezinyanzelekileyo oko ukwenzela ukuthintela ukusetyenziswa kakubi kwelungelo elilodwa lomenzi wechiza kodwa ke awuzivumeli ngokucacileyo njengendlela yokukhusela impilo yabantu bonke. Kwakhona, umThetho weLungelo eliLodwa loMenzi weChiza woMzantsi Afrika awuzivumeli ngokucacileyo iimvume ezinyanzelekileyo zokuthumela amayeza kumazwe angaphandle. Ukungeniswa elizweni kwamayeza afanayo nala asele ekhona apha elizweni kubonelelwe phantsi komThetho wamaYeza woMzantsi Afrika.

4

E-Jordan

I-Jordan inokunika iimvume ezinyanzelekileyo ukubuyekeza ukusetyenziswa kakubi kwilungelo elilodwa lomenzi wechiza, okanye ukusabela kwingxakeko yesizwe. Nakuba kunjalo iimfuneko zobubodwa bedata zinokusebenza njengomqobo kwiimvume ezinyanzelekileyo. Umthetho wase-Jordan uyakuthintela ukungeniswa ngaphakathi kwelizwe lawo kwamayeza afanayo nalawo banawo ngaphandle kwemvume yominini welungelo elilodwa lomenzi wechiza.

limpembelelo kumaxabiso amayeza

I-Fluconazole lichiza eliyimfuneko kunyango lwezifo ezahlukeneyo ezingenelelayo ezinxulunyaniswa ne-HIV. Ngo-2000, i-Pfizer yayithengisa ngeR29 ipilisi nganye. Nakuba kunjalo, iinguqulelo zayo zamayeza enziwe afana nalawo enziwe ngabenzi bayo zazifumaneka e-Thailand nge-R2 ipilisi nganye (ingabizi kakhulu ngama-93%). I-Treatment Action Campaign (TAC) yaye ayalivuma ilungelo elilodwa lomenzi we-Pfizer oko ikwenza ngokungenisa ngaphakathi elizweni i-fluconazole evela e-Thailand ukuba isasazwe eMzantsi Afrika. Ekugqibeleni, i-Pfizer yaye yaqala ukunikela nge-fluconazole kwinkqubo yempilo karhulumente yaseMzantsi Afrika.

3

IMelika

Umthetho welungelo elilodwa wase-US unika iminyaka emihlanu yobubodwa bedata kumayeza ekhemikhali amatsha. Amalungelo awodwa okusetyenziswa okutsha kunye nemixube emitsha kaninzi zifumana iminyaka emithathu yobubodwa bedata.

4

I-Jordan

Ekujoyineni kwayo i-WTO ngo-2000, i-Jordan yaye yamisela iminyaka emihlanu yobubodwa bedata. Ngo-2001 i-Jordan yasayina isivumelwano sorhwebo kunye ne-US yaze yamisela eminye iminyaka emithathu engaphaya yobubodwa bedata.

limpembelelo kumaxabiso amayeza

Amaxabiso amayeza e-Jordan onyuke ngama-20% ukususela ku-2001 ngenxa yokunyanzelwa kobubodwa bedata. Phakathi kuka-2001 no-2007 amayeza ebenganakhuphiswano nalawo enziwe afana nalawo omenzi kuqikelelwa ukuba abize ilizwe isixa semali esiphakathi kwe-USD$6.3m ne-$22.04m.

YILWANI NICHASE ABOYIKISI KWEZORHWEBO

Isivumelwano se-TRIPS ibe yeyona nto ingundoqo eye yabuyisela emva ufikelelo emayezeni. Ngoku amazwe aphuhlayo aphantsi koxinzelelo oluvela eMelika kunye neManyano yaseYurophu ukuba amkele imida emiselwe kurhwebo engaphaya ye-"TRIPS-plus". Ukuba ngaba le miqathango mitsha yenziwa ukuba isebenze, amakhulu amawaka abantu azakuphelelwa lunyango olusindisa ubomi.

NgoDisemba ka-2010, amakhulu abantu baseKenya aye aqhankqalaza e-Nairobi echasene neSivumelwano soRhwebo oluKhululekileyo lwe-EU-Indiya (EU-India) . Ifoto ngu-Paul Davis.

Ithetha ntoni i "TRIPS-plus"?

Isivumelwano se-TRIPS solula ukukhuselwa kwelungelo lomenzi (intellectual property) (IP) ngokwandisa ixesha lobukho bamalungelo awodwa abenzi bamachiza ngeminyaka engama-20 kwaye sivumela ukuba zombini iinkqubo zoxubo mayeza kunye neemveliso ukuba zibe namalungelo awodwa abenzi. I-"TRIPS-plus" yimigaqo-nkqubo eyolula okanye eyandisa amalungelo e-IP okanye enika imiqathango engqonggo yokunyanzela. Le migaqo-nkqubo isebenza iye ngaphaya kokufunekayo kumthetho wamazwe ngamazwe, njengoko kuchazwa sisivumelwano se-TRIPS.

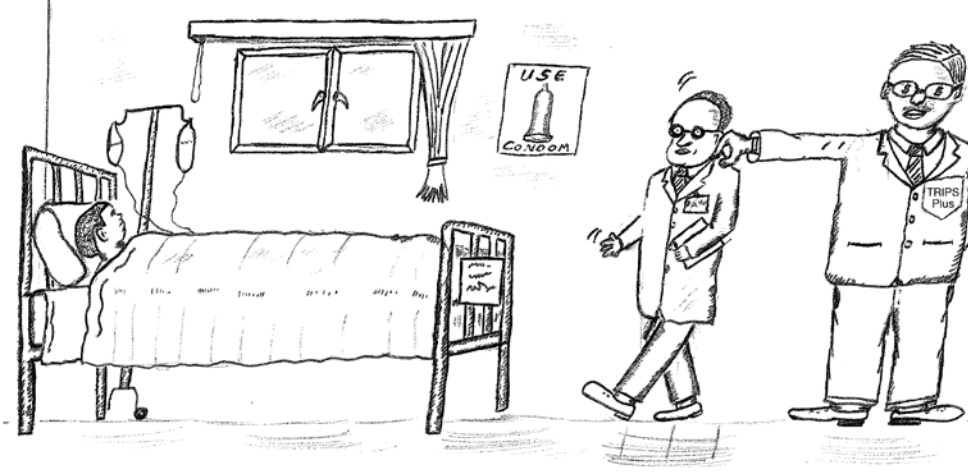
IMelika kunye neYurophu, ikhaya leenkampani ezinkulu ezixuba amayeza ezininzi, kaninzi ziye zigxininise ekusetyenzisweni kwemiqathango ye-TRIPS-plus ngexa lothetha-thethwano lorhwebo namazwe asaphuhlayo. Izivumelwano zorhwebo ezinjalo kaninzi kuthiwa ziziVumelwano zoRhwebo oluKhululekileyo (Free Trade Agreements) (FTAs), okanye iziVumelwano zeNtsebenziswano kuQoqosho (Economic Partnership Agreements) (EPAs). Uninzi lwala mazwe ahluphekayo axhomekeke kwiimarike ezityebileyo zeMelika kunye nezeManyano yaseYurophu ukuthenga amayeza awo. Zikwazi oku, i-US kunye ne-EU zinika la mazwe ufikelelo kwiimarike zawo zitshintshisa ngokhuselo olwenyukileyo lwe-IP. Ngomzamo wokukhusela amaqoqosho awo, amazwe amaninzi asaphuhlayo ayalwamkela olu tshintshiswano lungalinganiyo, nokuba oko kuthetha ukwenzakalisa impilo yabantu.

Imiqathango ye-TRIPS-plus eboniweyo kwizivumelwano zangoku zorhwebo iquka:

- ukwandisa ilungelo elilodwa lomenzi kwimveliso ukuba ngaba ukubhaliswa kwayo ngaphambili bekulityazisiwe;
- ukunyanzela ilizwe ukuba linyenyise imithetho yokunikwa kwamalungelo awodwa omenzi wechiza;
- ukuvala inkcaso yokunikwa kwemvume kwangaphambili (ilungelo lokuchasa ilungelo elilodwa lomenzi wechiza phambi kokuba linikwe);
- ukwenza ukuba kube nzima kumazwe ukunika iimvume ezinyanzelekileyo, ezo zinokunyanzela ilungelo elilodwa lomenzi wechiza ukuba avumela ukusetyenziswa kweenguqulelo zamayeza enziwe afana nalawo omenzi wechiza elo;
- ukufuna ububodwa bedata (jonga ibhokisi engaphakathi);
- ukuthatha amayeza enziwe afana nalawo abenzi bamachiza kwimida yamazwe ngamazwe;
- ukwenza ukuba kube lula kwiinkampani zangaphandle ukubambisa oorhulumente.

Amagatya e-TRIPS-plus ayavela kwakhona kumthetho ochasene namayeza enkohliso owenzeka kumanqanaba esizwe, ommandla, kunye nowamazwe ngamazwe. UmThetho oChasene namaYeza eNkohliso waseKenya, umzekelo, owamiselwa ngo-2008, unenkcazo ebanzi yamayeza enkohliso kangangokuba uze uquke namayeza awenziwe afana nalawo abenzi. Nakuba amatsha ntliziyo ecela umngeni kulo mthetho njengongekho kumgaqo-siseko, umthetho ofana nawo uyacelwa kubantu be-Afrika eseMpuma, kunye nakwiSivumelwano soRhwebo esiChasene namaYeza eNkohliso samazwe amaninzi.

Ngexa i-TRIPS-plus inokubonakala ifihlakele kwaye inobugcisa, le migaqo-nkqubo inokuba neempembelelo zokwenene kumaxabiso amayeza. Umzekelo, imithetho ye-TRIPS-plus eyamiselwa ngo-2001 yi-Jordan-United States FTA yaba negalelo kuma-20% okunyuka kwixabiso lamayeza e-Jordan phakathi kuka-2001 no-2007. Ububodwa bedata (jonga ibhokisi esecaleni) baye basolwa kakhulu ngoku; balibazisa ukubhaliswa kweenguqulelo zamayeza enziwe afana nawomenzi ezingama-79% phakathi kuka-2002 kunye naphakathi ku-2006. Ukungabikho kokhuphiswano kumayeza enziwe afana nalawo awenziwe ngabenzi kwanyanzela ilizwe ukuba lichithe isixa esongezelelweyo semali esiphakathi kwe-USD $6.3 ne-$22.04 yezigidi kumachiza.



Umfanekiso nguSizwe Nguqe.

What is data exclusivity?

Ukuze ichiza elinziwe lafana nelo lenziwe ngumenzi lisetyenziswe elizweni, umenzi wechiza elo lenziwe lafana nelinye kufuneka alibhalise ichiza elo kuqala. Ukubhaliswa kwechiza kufuna ukuba umenzi walo anike ubungqina bokuba ichiza elo likhuselekile kwaye liyasebenza njengechiza lokuqala ebelinelungelo elilodwa lomenzi, kwaye lenziwa phantsi kwemigangatho elungileyo, kwaye ekunokuqinisekiswa ubulunga bayo. Ukunika ubungqina boku, umenzi wechiza elenziwe lafana nelo lomenzi kufuneka abonise i-arhente elawula amachiza esizwe – efana neBhunga elilawula amaYeza loMzantsi Afrika – ukuba ichiza labo ngokwemfuneko liyafana nechiza elifaniswa nelo lomenzi wokuqala. Ukuba ngaba amachiza amabini aqulethe izithako ezifanayo ezisebenzayo asebenza ngokufanayo xa esetyenziswa phantsi kweemeko ezifanayo, kuthiwa loo machiza asebenza ngokufanayo (bioequivalent).

Kuba umenzi wokuqala sele ebonisile ukuba liyasebenza kumalingo, kubalulekile ukuba kuqhutywe amalingo amatsha kwichiza elenziwe lafana nelo lomenzi wokuqala. Eneneni, amalingo amatsha ayakube awahambi ngokweenqobo ezisesikweni kuba sele sisazi ukuba ichiza elo liyasebenza.

Nakuba kunjalo, iMelika kunye neManyano yaseYurophu ngoku bazakma ukuyitshintsha le nkqubo ngokumisela into ekuthiwa bububodwa bedata. Ngokuvala ufikelelo kwidata emalunga nechiza lokuqala ixesha elithile, ububodwa bedata buthethe ukuba ukusebena ngokufanayo kukodwa ngeke kube sanela ukubhalisa iyeza elenziwe lasebenza ngokufanayo nelomenzi wokuqala ngelo xesha. Abenzi bamayeza awenziwe afana nalawo enziwe ngumenzi wawo ngeke bavunyelwe ukungqinisisa kumalingo awenziwe yinkampani eqale ukwenza iyeza njengobungqina nokusebenza kwechiza. Ngaphandle kokuba umenzi wechiza elenziwe lafana nelo lomenzi wokuqala uqhuba amalingo ezonyango abiza imali eninzi kwaye angahambi ngokweenqobo ezisesikweni, ngeke akwazi ukubhalisa ichiza lakhe de kuphele ixesha lobubodwa bedata.

Ububodwa bedata buchaphazela ukubhaliswa kweyeza nokuba na ichiza lokuqala lisephantsi kwelungelo elilodwa lomenzi na. Umzekelo, inkampani exuba amayeza inokubhalisa ichiza eMzantsi Afrika ebelikwimarike yehlabathi amashumi amaninzi eminyaka, kodwa ke libe belingafumaneki ngaphambili eMzantsi Afrika. Nokuba ilungelo elilodwa lomenzi liyakube liphelile, ichiza elo liseya kulungela ububodwa bedata kuba lizakubhaliswa ngokutsha. Kubalulekile ukukhumbula ukuba amalungelo awodwa abenzi bamachiza kunye nokubhalisa zizinto ezimbini ezahlukeneyo: ngexa ububodwa bedata bungeke bandise ixesha lobukho belungelo elilodwa lomenzi wechiza, bunokuthintela ukubhaliswa kwamachiza enziwe afana nalawo enziwe ngumenzi wokuqala, nokuba sithini na isimo selungelo elilodwa lomenzi wechiza.

Ububodwa bedata ngokohlobo olugqithisileyo bunokurhoxisa iimvume ezinyanzelekileyo. Nokuba ilungelo elilodwa lomenzi wechiza linokunganakwa lize ke ichiza elenziwe lafana nelo lomenzi wokuqala liphuhliswe, elo chiza ngeke libhaliswe kwaye lithengiswe ngaphandle kokunika ubungqina bokuba lisebenza ngokufanayo nechiza elenziwe kuqala.

Ukusukela ngo-2007, amayeza amatsha e-Jordan abiza phakathi kokuphindwe kabini kunye nakalishumi ngaphezulu kunaseYiphutha engabamelwane bayo, apho imiqathango ye-TRIPS-plus ingazange yaziswe. Ngaphaya koko, i-FTA yayithintela i-Jordan ukuba isebenzise utshintsho lwe- TRIPS olufana neemvume ezinyanzelekileyo ukukhusela impilo yoluntu.

Imiqathango ye-TRIPS-plus isongela ukufikelela emayezeni kuba yenza kube nzima ukuba amayeza enziwe afana nalawo omenzi wokuqala angene emarikeni. Ngaphandle kokhuphiswano amachiza enziwe afana nalawo enziwe ngumenzi wokuqala, amaxabiso amayeza aya kuhlala ephezulu kakhulu koorhulumente abaninzi kunye nakubantu abangabodwa ukuba babe nokufikelela kuwo.

"I-India-EU FTA ecetywayo isongela unikezo lwamachiza awenziwe afana nalawo enziwe ngumenzi olungaguqukiyo, kunye nokukwazi kwethu ukufikelela kumayeza amatsha, naqaliswe ngokutsha. Ngaphandle kwamayeza enziwe afana nalawo enziwe ngumenzi wokuqala, aba bantu bangaphezulu kwesigidi esinye bafumana unyango ngoku eMzantsi Afrika, kuqukwa nam, bebengeke bakwazi ukufikelela kwii-antiretrovirals. Sithembele kula mayeza ukuba asigcine siphilile kwaye sisempilweni." - Vuyiseka Dubula, uNobhala Jikelele we-TAC.

Ifoto ngoncedo lukaVimba we-Treatment Action Campaign

Kwenzeka phi oku?

Imiqathango ye-TRIPS-plus iphantsi kokuthathelwa ingqalelo kwihlabathi jikelele. Umzekelo:

- Amazwe amaninzi kwi-Latin American nase-Asia, ngokunjalo nase-Australia nase-New Zealand, enza uthetha-thethwano ngeSivumelweno se-Trans-Pacific Partnership (TPP) neMelika. I-TPP iyakunyanzela amazwe ukuba enze kube lula ukufumana amalungelo awodwa omenzi wechiza kwaye iyakukhuphela ngaphandle inkcaso eyenziwa phambi kokunikwa kwemvume.

- UMzantsi Afrika, njengenxenye yeManyano yeeRhafu yamaZantsi e-Afrika (Southern African Customs Union), okwangoku yenza uthetha-thethwano nge-EPA neManyano yaseYurophu. Ngexa imiqathango ye-TRIPS-plus kubonakala ngathi akukho apho ivela khona, yimfuneko ukuba uluntu lulujonge banzi oluthetha-thethwano ukuqinisekisa ukuba le miqathango ayifakwa.

Yintoni esingayenza?

Imiqathango ye-TRIPS-plus iza ngeemilo kunye neesayizi ezininzi. Inokwenzeka kumthetho wesizwe; njengenxenye yezivumelwano zorhwebo zamazwe ngamazwe; okanye njengenxenye yezivumelwano kunye nemigaqo-nkqubo yemimandla. Ukulwa le miqathango ngempumelelo, kubalulekile ukujonga okwenziwa ngurhulumente wethu, kunye naboorhulumente bamanye amazwe. Kufuneka siqonde ukuba ngubani na onyanzela ukhuselo olungaphaya lwamalungelo abenzi kwaye oko ekwenza ngeziphi na iindlela.

Uthetha-thethwano lorhwebo kaninzi luyimfihlo engqongqo. Ukufikelela kulwazi kungumba ongundoqo kwimpumelelo yamatsha ntliziyo achasene nemiqathango ye-TRIPS-plus kwi-India-EU FTA kunye nekwiSivumelwano seNtsebenziswano se-Trans-Pacific (Trans-Pacific Partnership Agreement). Abakhankasi kufuneka baqhube ukunyanzelisa ukungafihli ukuze bakwazi ukusabela ngokubonakalayo.

Ngexa kufuneka silwe siziphindisele kwimiqathango ye-TRIPS-plus, ukwenza oko ngexa uMzantsi Afrika usenomthetho welungelo elilodwa lomenzi wechiza ongonelisiyo kufana nokukhupha amanzi kwinqanawa ezikayo. Eyona ndlela ibhetele yokuqinisekisa ukufikelela emayezeni esiwafunayo kukwandisa umthetho wethu welungelo elilodwa lomenzi wechiza ukuba udibanise utshintsho lwe-TRIPS – kunye nokuqinisekisa ukuba urhulumente wethu uyalusebenzisa olu tshintsho.

Umthombo: "All costs, no benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines", Oxfam Briefing Paper (March 2007). http://www.oxfam.org.uk/resources/issues/health/downloads/bp102_trips.pdf

NgoMatshi ka-2011 amaqela ase-Asia aye aqala uqhankqalazo oluchasene nemiqathango ye-TRIPS-plus kwi-India-EU FTA. Amawaka abantu aye eza, kuqukwa nomNtu owoNyulelwe ukuNika iNgxelo we-UN kwiLungelo leMpilo.

Ifoto ngu-Jockey Kit.

I-India-EU FTA

I-Indiya ithathwa njenge "khemesti yasemazantsi". Eli lizwe linikeza uninzi lwamayeza enziwe afana nalawo aveliswe ngumenzi, akumgangatho ophezulu e-HIV asetyenziswa kumaZantsi e-Afrika namhlanje. I-Indiya iyakwazi ukuvelisa amayeza enziwe afana nawomenzi wokuqala amaninzi oku kusenziwa kukuba ilizwe elo liye lathatha utshintsho kwi-TRIPS kumthetho walo welungelo elilodwa lomenzi wechiza. Imithetho yasekhaya yelungelo elilodwa lomenzi wechiza ivumela inkcaso yangaphambili kunye neyasemva kokunikwa kwelungelo; iquka imithetho engqongqo yokumisela ukuba yintoni na enokunikwa ilungelo elilodwa lomenzi wechiza; kwaye uvumela iimvume ezinyanzelekileyo. Ishishini eliqinileyo lase-Indiya lamayeza enziwe afana nomenzi weyeza wokuqala, liye laphuhlisa phantsi komThetho walo welungelo eliLodwa loMenzi weChiza ii-TRIPS zangaphambili, kwaye lasebenzisa okulandelayo kutshintsho lwee-TRIPS into ke leyo eye yachaswa kakhulu lishishi loxubo mayeza.

IManyano yaseYurophu inyanzela imiqathango ye-TRIPS-plus njengenxenye ye-India-EU FTA ngoku ephantsi kothetha-thethwano. Ukongeza kuxinzelelo lwe-EU lobubodwa bedata iminyaka elishumi, i-FTA ikwandulula nemiqathango yokunyanzela engqongqo. Oku kunokuchaphazela nabani na obandakanyekayo ekuveliseni, ekwenzeni nasekuhambiseni amayeza ekukrokrelwa ukuba ophula ilungelo lomenzi lenkampani. Oku kuthetha ukuba oogqirha, iikliniki, okanye ii-NGOs ezinika unyango zinokubonwa njengabophula umthetho ukuba ngaba inkampani inemvakelelo yokuba ilungelo layo elilodwa lomenzi lithathelwa phantsi.

Kuye kwakho ukukhathazeka kokuba imiqathango enyanzelayo engqongqo inokwenyusa umngcipheko wokuba amayeza enziwa afana nalawo enziwe ngabenzi bokuqala anokuthathwa kwimida yamazwe ngamazwe. Oku kunokuthintela amayeza anokusindisa ubomi ekubeni afikelele kwizigulane eziwafunayo. Ngo-2008 amayeza asemthethweni enziwe afana nalawo enziwe ngabenzi bokuqala avela e-Indiya adlula kwimida yaseYurophu aye athathwa xa abanini bamalungelo awodwa abenzi bamayeza baseYurophu baye babanga ukuba amayeza la ophula amalungelo abo awodwa amachiza abenzi. Kuyaziwa ukuba la mayeza enziwe afana nalawo enziwe ngabenzi bokuqala ayesisiwa kumazwe ase-Afrika kunye nawakwi-Latin American apho imithetho yamalungelo awodwa abenzi inganakwanayo, ngokwenyani, kwakungekho nje ukophulwa kwelungelo elilodwa lomenzi wechiza. Nakuba i-EU kunye ne-Indiya ziye zavumelana okwangoko ukumisela umda ekuthathweni kwamayeza kuphela kwiimeko apho kukho ubungqina bokuba amachiza lawo anokuthengiswa kwimarike yaseYurophu, awukalungiswa ke umba lowo.

I-FTA kwakhona inokufaka into ekuthiwa sisahluko sotyalo-mali, esenza ukuba kube lula kwiinkampani ukuba zibambise urhulumente. Oku kunokuquka ukukwazi ukuqhuba iinkqubo kumaqumrhu akhethekileyo ayimfihlo kunakwiinkundla zesizwe, okanye ukubambisa urhulumente ngokwaphulwa kwe- FTA ngokwayo. Ukufakwa kwesahluko sotyalo-mali kwi-India-EU FTA ckunokukhokelela kumadabi omthetho abiza imali eninzi, anokulibazisa ukufikelela emayezeni. Intsongelo yemiqathango yomthetho iyodwa nje inokutyhafisa urhulumente wase-Indiya ekulandeleni imigaqo-nkqubo ephucula impilo yabantu.

Amatsha ntliziyo aye alwa echasene nokufakwa kwemiqathango ye-TRIPS-plus kwi-India-EU FTA. Ngenxa yoko, ububodwa bedata ngoku sele bukhutshiwe kwi-ajenda yothetha-thethwano. Nakuba kunjalo, isekhona enye intsongelo. Kuyaziwa ukuba amazwe ase-Afrika athembele kakhulu kumayeza ase-Indiya ngeenkqubo zonyango, oorhulumente kunye namatsha ntliziyo kufuneka bathethe phandle ngokuchasene namagatya e-TRIPS-plus kwi-FTA.

In March 2011, over 2,500 people rallied in New Dehli in support of the Indian government during Free Trade Agreement negotiations. It was one of the largest protests in history involving people living with HIV/AIDS. Photo by Rico Gustav.

IDABI LEHLABATHI JIKELELE

Amaphulo anempumelelo amalungelo awodwa abenzi bechiza kwinxenye enye yehlabathi anokuba neziphumo ezihle ezinceda abantu abakwamanye amazwe. Njengoko ne-TAC iye yaba neempembelelo kwabanye ngaphambili, namhlanje sinokuthatha iimpembelelo kwimpumelelo yamatsha ntliziyo ase-Indiya nase-Thailand njengoko silwela imithetho ebhetele yelungelo elilodwa lomenzi wechiza. Ukutshintsha ngempumelelo umThetho welungelo eliLodwa loMenzi weChiza woMzantsi Afrika kungenza ukuba kubekho ufikelelo kumayeza anokusindisa ubomi kwaye ke ngenye indlela oko kunokuphembelela amanye amazwe ukuba enze kwa oku kufanayo.

Ityala le-PMA: Iinkampani ezixuba amayeza zinyanzelwa ukuba zinikezele

Ngo-1998 uMbutho wabaVelisi abaXuba amaYeza (Pharmaceutical Manufacturers Association) (PMA), kunye nama-40 eenkampani zamazwe amaninzi zamachiza, baye baya enkundleni beyokulwa norhulumente woMzantsi Afrika ukuba uyeke ukuphunyezwa komThetho woTshintsho kuLawulo lwamaYeza kunye neziNto eziNxulumene nawo (Medicines and Related Substances Control Amendment Act) ka-1997. Lo mthetho wawuvumela ukutshintshwa kwamayeza anamalungelo awodwa omenzi wechiza etshintshwa ngamayeza enziwe afana nalawo omenzi wokuqala lakube ilungelo elilodwa lomenzi liphelile, ukungeniswa ngaphakathi elizweni kwamayeza enziwe afana nalawo enziwe ngumenzi wokuqala, kunye nokungafihlwa kwamaxabiso.

I-Treatment Action Campaign (TAC) yalwa kunye norhulumente, inika inkxaso yezomthetho, ifundisa amalungu malunga neenzuzo ezenziwa ngamashishini axuba amayeza, kwaye iququzelela uqhankqalazo. Olu xinzelelo lwaye lwasebenza. Ngomhla we-19 Aprili 2001 i-PMA yaye yaliyeka inyathelo layo lasenkundleni.

Olu loyiso lwe-TAC kunye norhulumente woMzantsi Afrika lwaba lubi kakhulu kwishishini lokuxuba amayeza kwihlabathi jikelele. Lwenza ukuba kwenzeke izinto ezintle ezakhokelela kwiSibhengezo sase-Doha ngasekupheleni kuka-2001.

I-TAC kunye noKhuphiswano lweKomishoni

Ngo-2002 ii-antiretrovirals (ARVs) zodidi lokuqala zenyanga zazibiza ngaphezulu kwama- R2,000 kwicandelo labucala loMzantsi Afrika – ii-ARVs zazingekafumaneki ngoko kwicandelo likarhulumente. Ngenxa yoko, abantu abane-HIV ababengenayo imali yokuthenga amayeza babegula baze basweleke.

I-TAC ne-AIDS Law Project (ALP) baye bafaka isikhalazo soKhuphiswano kwiKomishoni esasibhekisele kwezimbini zeenkampani ezixuba amayeza eyayiluxanduva lwazo la maxabiso aphezulu, i-GlaxoSmithKline ne-Boehringer Ingelheim. Ngo-Oktobha ka-2003, iKomishoni yafumana ubungqina obuxhasa ezi ntsolo zokuba la maxabiso ayengafanelekanga yaze yakhombisa ukuba izakuqhubela phambili nesikhalazo.

Ngokubona ukuba izinto azihambi ngendlela yazo okanye mhlawumbi ngenxa yokoyika ukuduma kakubi, i-GlaxoSmithKline ne-Boehringer Ingelheim zaye zathamba zaze zavuma ukukhupha inani elininzi leemvume kubenzi bamayeza awenziwe afana nalawo enziwe afana nabenzi bokuqala. Olu yaba lolona loyiso lukhulu kumlo wofikelelo olukhulu kumayeza afikelelekayo.

Namhlanje, urhulumente uhlawula nje ngaphezulu kwe-R100 ngomntu ngamnye ngenyanga kunyango lwenyanga lwee-antiretroviral.

I-Indiya ithi hayi ku-Novartis

Ngo-2007, inkampani exuba amayeza i-Novartis yaye yacela umngeni kwicandelo 3d lomThetho weLungelo eliLodwa loMenzi weChiza wase-Indiya, elalimsiela indlela engqongqo yamayeza anelungelo elilodwa lomenzi wechiza, isithi igxobhe izibophelelo zorhwebo lwamazwe ngamazwe.

Ukuphendula koko, abaqhankqalazi baye baqala iphulo lamazwe ngamazwe, ekugqibeleni besoyisa i-Novartis. Ukuba ngaba yayiphumelele inkampani, oku ngaba kwajongela phantsi imigangatho engqongqo yelungelo elilodwa lomenzi wechiza yase-Indiya. Le migangatho ifuna ukuba amalungelo awodwa omenzi wechiza anikwe kuphela kumayeza amatsha ngokwenyani kwaye aveliswe aba matsha, kunokuba anikwe kutshintsho okanye kwindibaniselwano zamayeza asele ekhona. Uloyiso lwenkampani lwaluza kuphelisa ukufikelela kumayeza amaninzi anokufikeleleka.

Okulandela oko, enye inkampani yamachiza, i-GlaxoSmithKline, yaye yarhoxisa izicelo zelungelo elilodwa lomenzi wechiza i-abacavir, i-ARV yodidi lwesibini, kunye ne-trizivir, i-ARV yendibaniselwano yamayeza amathathu esetyenziselwa unyango lodidi lokuqala kunye nolodidi lwesibini. Abanye bakholelwa ekubeni i-GSK yayifuna ukuphepha ukuba yeyokuqala ukoyiswa kwilungelo elilodwa lomnzi wechiza oko okwakunokonakalisa iinzame zexa elizayo zokulandela amabango amalungelo awodwa omenzi wechiza kumazwe anemingangatho engaqinanga yamalungelo awodwa omenzi wechiza.

I-Thailand, Brazil kunye neemvume ezinyanzelekileyo

I-Malaysia, Indonesia kunye namazwe amathandathu ase-Afrika aye akhupha ngempumelelo iimvume ezinyanzelekileyo zee-ARVs zodidi lokuqala. Kodwa i-Thailand yaba lilizwe lokuqala elinengeniso ephakathi ukunika iimvume kumayeza odidi lwesibini ayebiza imali eninzi.

Imizamo eyenziwa kwangoko yokukhupha iimvume ze-didanosine zange iphumelele ngenxa yoloyiko lokuziphindisela kwezorhwebo kweMelika. Nakuba kunjalo, amatsha ntliziyo aye azingisa, kwaze ekuqaleni kuka-2007, iinkokheli ezintsha e-Thailand zenza ukuba isebe lezempilo lelizwe likhuphe iimvume ezinyanzelekileyo ze-efavirenz, lopinavir/ritonavir, ne-clopidrogel.

Ikhuthazwa yimpumelelo ye-Thailand, i-Brazil yakhupha imvume enyanzelekileyo ye-efavirenz msinyane nje emva koko.

Ngaphandle kokuba mandundu kukabhubhane we-HIV, uMzantsi Afrika zange uke ukhuphe imvume enyanzelekileyo yeyeza le-antiretroviral. Imithetho yamalungelo awodwa omenzi wechiza yoMzantsi Afrika kufuneka itshintshwe ukwenzela lula iinkundla ukuba zikhuphe iimvume ezinyanzelekileyo.

Amatsha ntliziyo ase-Thai nase-Indiya ebonisa ukungoneliseki kwawo kumlo wokufikela emayezeni. Ifoto ngu-Jockey Kit.

Abakhankasi baphumelele amadabi omthetho anzima, nakuba bekukho inkcaso eqhubayo evela kumashishini okuxuba amayeza kwaye ekwasongela nangezivumelwano zorhwebo ezimiselwe imida engaphaya. Kuphela ngokuthembela kuloyiso lwakutsha nje – ngokukhaba imigangatho engaqinanga yamalungelo awodwa abenzi bamachiza, ngokukhupha iimvume ezinyanzelekileyo ezininzi, kunye nokuchasa amagatya e-TRIPS-plus – apho amazwe asaphuhlayo anokuba namandla anokunganqandwa. Lixesha lokuba uMzantsi Afrika uphembeleleke uze wenze utshintsho oluyimfuneko kumThetho welungelo eliLodwa loMenzi weChiza.

Eli nqaku lisekelwe kwinqaku lika-Brook Baker (http://www.healthgap.org/)

Indlela eyenziwa ngayo imithetho

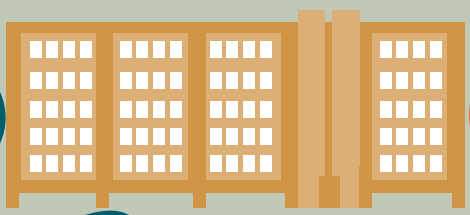
Imigaqo-nkqubo emitsha

Inyathelo loku-1

Imigaqo-nkqubo emitsha kaninzi iqala ngamaqela ezopolitiko. Ngoko ke, umzekelo, i-ANC yazibophelela kwi-Inshurensi yeMpilo yeSizwe (National Health Insurance) (NHI) kwinkomfa yasePolokwane ngo-2007. Kuba iphethe i-ANC eMzantsi Afrika, kulula kubo ukufaka imigaqo-nkqubo yabo kurhulumente.

Inyathelo lesi-2

Isebe likarhulumente



Kaninzi amasebe karhulumente, nakuba oko kungenzeki rhoqo, aye ashwankathele izimvo zemigaqo-nkqubo yawo kumba othile kuxwebhu lwengxoxo ekuthiwa liphepha lokugaya izimvo. Amaqela ezopolitiko, iimanyano zabasebenzi, imibutho yasekuhlaleni efana ne-TAC, kunye namalungu oluntu baye bamenywe ukuba bafunde baze banike izimvo kolu xwebhu.

Inyathelo lesi-3

Inyathelo lesi-4

Emva kokuba izimvo zifunyenwe kwiphepha logayo zimvo, isebe likarhulumente elibandakanyekayo, okanye igqiza lophando elikhethekileyo linokulungiselela iphepha lengcaciso nkqubo. Iphepha lengcaciso nkqubo licacisa kakhulu kunephepha logayo zimvo kwaye linika iinkcukacha ezithe vetshe ngoluvo lomgaqo-nkqubo ocetywayo. Amaqela anomdla ayacelwa ukuba anike izimvo kwiphepha lengcaciso nkqubo. Iikomiti zasepalamente ezibandakanyekayo nazo zinika izimvo zazo ngeli xesha. Zonke ezi zimvo ke ziye zithunyelwe zibuyiselwe kwisebe likarhulumente ukuze lona ke ligqibezele umgaqo-nkqubo.

Ixesha elininzi imithetho yenziwa kwakube kugqitywe imigaqo-nkqubo. Nge-Inshurensi yeMpilo yeSizwe (National Health Insurance) (NHI), umzekelo, zonke iingxoxo ukuza kuthi ga ngoku zikumgaqo-nkqubo. Utshintsho kwimithetho yoMzantsi Afrika olufunwa yi-NHI luyakufika kuphela yakube inkqubo yomgaqo-nkqubo igqityiwe.

Imithetho emitsha

Kulandela inkqubo yomgaqo-nkqubo, njengoko ichaziwe ekhohlo, utshintsho oluthile kumthetho luhlala lufuneka ukuze kuphunyezwe umgaqo-nkqubo omtsha. Ngoko ke, isebe likarhulumente elibandakanyekayo liye liqulunqe umthetho oyilwayo. Umthetho oyilwayo ke lowo uqala ingumthetho oyilwayo oqulunqiweyo de ubekwe ePalamente.

Emva kokuvunywa yiKhabhinethi, umthetho oyilwayo uye ubekwe kwindlu esezantsi yePalamente (iNdlu yoWiso-mThetho) uze ke upapashwe kwiGazethi kaRhulumente. Amaqela anomdla, kuqukwa noluntu, anika ithuba lokunika izimvo kumthetho oyilwayo oqulunqiweyo; ngamanye amaxesha umthetho oyilwayo uye wenziwe ukuba ufumaneke ukuze abantu banike izimvo zabo phambi kokuba ungeniswe.

Inyathelo loku-1

Inyathelo lesi-2

Inyathelo lesi-3

Step 5

Inyathelo lesi-4

IPalamente

Ikomiti ebandakanyekayo yepalamente ngoku iye iwuphononongе umthetho oyilwayo ize ithathele ingqalelo izimvo ezivela kumaqela ezopolitiko kunye nasebantwini. Ngamanye amaxesha oku kunokuquka iintlanganiso zeengxoxo zikawonke-wonke. Le komiti inokwenza isincomo ngomthetho oyilwayo, iwukhabe, okanye yenze utshintsho kumthetho oyilwayo de babe benza isincomo sawo. Ukuba ngaba benza isincomo sawo, uvotelwa kwiNdlu yoWiso-mThetho. Ukuba ngaba iNdlu yoWiso-mThetho iyawupasisa umthetho oyilwayo, uye ke uthunyelwe kwindlu ephezulu yePalamente (i-NCOP, okanye iBhunga leSizwe lamaPhondo) apho kunokucetysiwa olunye utshintsho olungaphaya. Iimpembelelo ze-NCOP, kunye nokukwazi ukwenza utshintsho lunokulucebisa nje, kuxhomekeka kuhlobo lomthetho othathelwa ingqalelo.

Wakube upasisiwe umthetho oyilwayo ePalamente, kufuneka uwiswe kuqala phambi kokuba ube ngumthetho. Oku kuthetha ukuba umongameli kufuneka awusayinme umthetho oyilwayo aze apapashe umhla wokuwiswa kwawo kwiGazethi kaRhulumente. Ukusuka kumhla wokuwiswa kwawo, umthetho omtsha oyilwayo ungumthetho.

Iindaba ezivela kwi-TAC eLimpopo

Ifoto ngu-Tony Baloyi.

I-TAC yesebe laseHomu ingena umnyango nomnyango

Ngowe-14 Julayi, i-TAC yesebe laseHomu yaye yaqhuba iphulo lokungena umnyango nomnyango kwilali yaseMapayeni. Umxholo wephulo elo yayikukucetyiselwa kunye nokuvavanyelwa i-HIV. Abasebenzi bempilo abavela kwiKliniki yaseMapayeni nabo bathabatha inxaxheba kwiphulo eli.

Iphule eli lenzeka ngale ndlela ilandelayo:

- Amalungu esebe le-TAC eHomu aye angena indlu ngendlu enika kwaye efundisa ngoncedo lokuvavanywa kwangoko jikelele, ingakumbi kwabasetyhini abakhulelweyo. Baye baqhuba iseshoni kubantu abangabodwa kwaye becacisa ukuba banokuza nabongikazi kunye nabacebisi nge-HIV."Ukuba ngaba ungathanda ukucetyiswa uze ke uvavanywe sazise siyakuthumela umcebisi ke kwindlu yakho," axelela abantu amalungu e-TAC.
- Ukuba ngaba umntu ucele ukucetyiswa, umsebenzi owonyuliweyo we-TAC ubefonelwa kwifowuni okanye kwiselula yakhe. Lo msebenzi we-TAC ke abize umongikazi kunye nomcebisi nge-HIV abathumele kulo ndlu bafuneka kuyo. Iseshoni e pheleleyo yokucetyiswa yenzeke umntu ekhululekile kwikhaya lakhe.

Eli phulo laye lafikelela kubantu abangama-264 oko kusenziwa ngeeseshoni zokufundisa abantu ngabodwa. Abantu abangama-34 bavavanyelwa i-HIV laze i-12 lathunyelwa ukuba liyokuvavanyelwa i-TB.

I-TAC eMariveni isebenza ngobundlobongela basekhaya

Ngowe-19 Julayi, i-Treatment Action Campaign's (TAC's) yesebe laseMariveni yaye yaqhuba iphulo kwilali yaseShipungu lokwazisa abantu ngobundlobongela obusekelwe kwisini (gender-based violence) (GBV). Oku kwalandela iingxelo zamapolisa zokuba zizehlo ezithathu ze-GBV ezixelwayo kule lali incinane nyanga nganye.

Ngexa lokuhamba engena umnyango nomnyango amalungu e-TAC aye abona iintsolo ze-GBV. Izehlo ezithathu zaye zathunyelwa kunontlalontle okwiKliniki yaseMariveni. Ayizizo zonke ezi zehlo ezazibandakanya ubundlobongela obusekelwe kwisini. Kwesinye isehlo inkwenkwe endadlana yayibetha amalungu osapho lwayo kangangokuba ade oyikisele ubomi bawo. Kwesinye isehlo, umntu onokukhubazeka kwakusolwa ukuba utshixelwa endlini kwaye kaninzi ushiywa engenako ukutya.

Ngomhla we-16 Agasti i-TAC yaye yabuyela kwilali le izokulandelela ezi ngxelo. Umntu lowo unokukhubazeka wathunyelwa kwindawo yokhuselo. Inkwenkwana endadlala leyo eyayisolwa ngokuziphatha ngobundlobongela yayibekwe iliso elibukhali ngunontlalontle kwaye kuthiwa sele ikutshintshile ukuziphatha kwayo. Unontlalontle kwakhona wavakalisa ukuba, ngenxa yokukhuthazwa liphulo le-TAC, abantu beze ngaphambili bezokuxela ezinye izehlo ezisibhozo zobundlobongela basekhaya.

Abasetyhini be-TAC bema ngeenyawo

NgolwesiHlanu womhla wama-26 Agasti, i-TAC eMopani yaye yabamba intlanganiso yoluntu eyayingomxholo othi "Sitshintsha amaxhoba ibe ngabantu abasindileyo". Injongo ephambili yephulo eli yayikukuthetha ngobundlobongela kunye nokuphathwa kakubi kubudlelwano okubo. Abameli abavela kuwo onke amasebe e-TAC e-Limpopo baye beza kwaye baxoxa ngeendlela zokumelana nobundlobongela obusekelwe ekhaya.

Eli phulo lalandela intlanganiso yeentsuku ezine yabasetyhini ye-TAC apho babephononongo khona inani lemiba yempilo. Abasetyhini ababeze kule ntlanganiso baye bagqiba ekubeni basebenzise ithuba ngalinye abalifumeneyo – nokuba kusezicaweni, kwiindibano zasekuhlaleni okanye kwiindawo zempilo – ukufundisa abanye ngoncedo lwee-pap smears, kwaye bebakhuthaza ukuba basebenzise lenkonzo yezonyango. Ii-pap smears zinokusindisa ubomi obuninzi ngokufunyaniswa komhlaza womlomo wesibeleko ngexa usenokunyangeka.

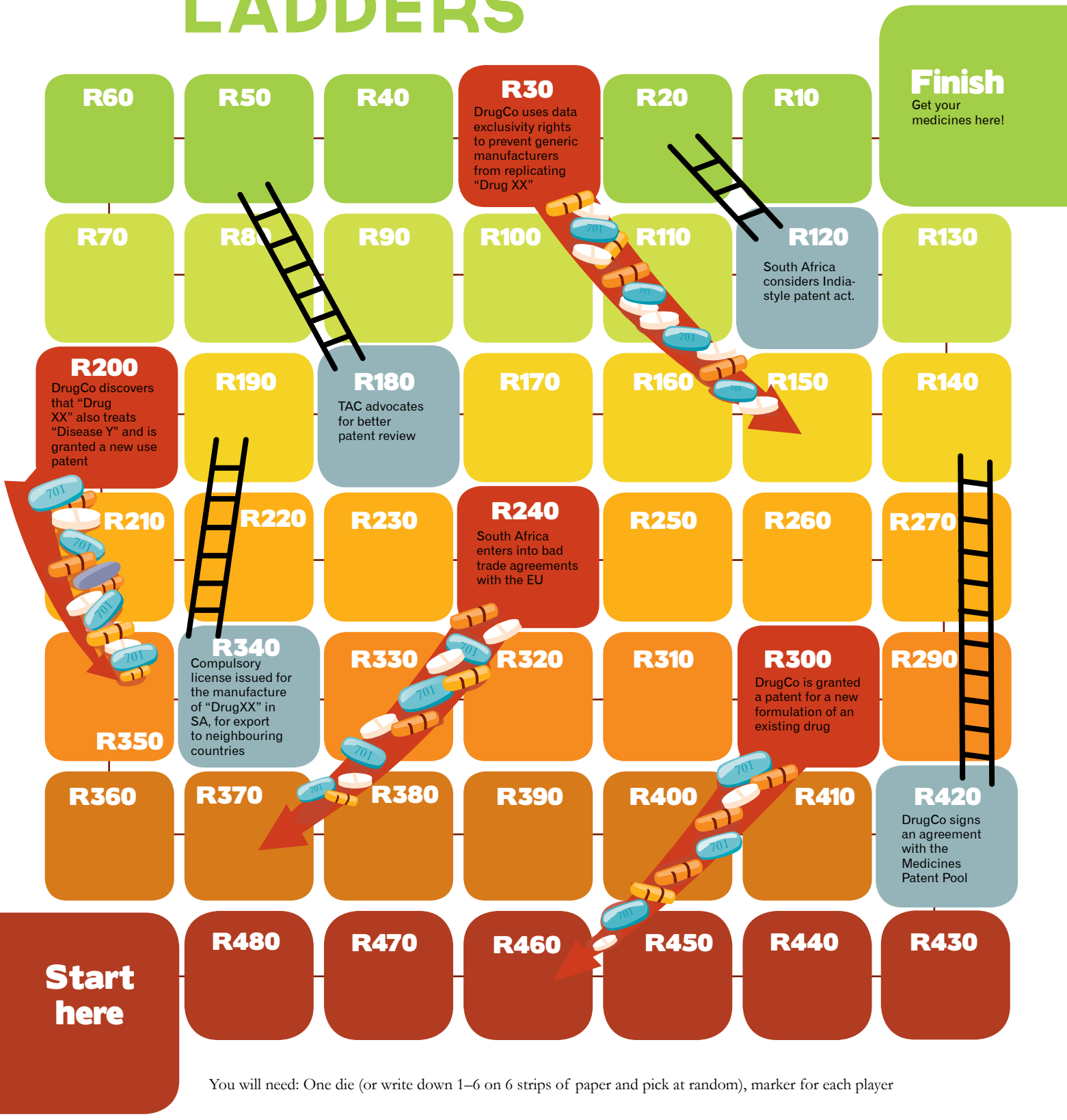
Eli phulo kwakhona laquka ukunikwa kolwazi olumalunga ne-HIV kunye nokunikwa kweekhondom kwiDolophu yaseGiyani. Ziphelele ziikhondom ezingama-42,000 zamadoda kunye ne-1,300 yeekhondom zabasetyhini ezanikwa abantu kwiirenki zeeteksi nakwizitendi zokuthengisa.

Amabali aqulunqwe ngu-Shine Mabuza, Jennifer Milambo no-Adam Malapa be-TAC eMopani.

Funda ngokuthe vetshe ngemisebenzi ye-TAC kwiiblogo zezithili ku: http://www.tac.org.za/district/

SLIPS AND LADDERS

Directions: Place player markers on Start. Each player rolls the die once, and the player with the highest number begins game. For each turn, roll the die and move your marker the correct number of spaces. If you land on a spill or ladder, follow the directions. The first player to receive their medication wins! Good luck!



You will need: One die (or write down 1–6 on 6 strips of paper and pick at random), marker for each player

SUPPORT TAC

WE NEED YOUR HELP

For more than a decade, TAC has campaigned for all South Africans to have better access to HIV/AIDS treatment, care and prevention programmes. TAC has received world-wide acclaim and numerous international accolades, including a nomination for a Nobel Peace Prize in 2004. In 2006 the New York Times called TAC "probably the world's most effective AIDS group".

FUNDING IS IN CRISIS

Funding for HIV/AIDS has been negatively affected by the global recession. The funding gap is growing fast and is now estimated to be over $7.7 billion globally. In 2009, UNAIDS released studies on the impact of the economic crisis on HIV prevention and treatment programmes. The summary report states "the negative impact of the crisis on AIDS programmes is real and getting worse".

THE EPIDEMIC CONTINUES

People with HIV and TB continue to depend on TAC's education and campaigns - but we can't continue our work without your help. Be part of our struggle. Support TAC's work.

PLEASE DONATE to Treatment Action Campaign at **www.myggsa.co.za**

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