

AIDS campaigners sue South African government

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On August 21, the South African Treatment Action Campaign (TAC) sued the government in an attempt to force it to make available anti-HIV drugs that TAC estimates could save 35,000 new born babies a year from becoming infected by their HIV infected mothers. The organization has given the government until 12 September to respond to its legal challenge.

TAC is an alliance of 100 pediatricians and advocates for AIDS patients, including the AIDS Law Project, the AIDS consortium and the Congress of South African Trade Unions. The three applicants to the affidavit filed were Siphokazi Mthathi deputy chairperson of TAC, Dr Haroon Saloojee, head of the Division of Community Paediatrics at the University of Witwatersrand and Johannesburg and The Children's Rights Centre based in Durban. The respondents were named as Manto Tshabalala-Msimang and the heads of the nine provincial health authorities in South Africa.

TAC has been campaigning for provision of the anti-retroviral drugs, used to combat AIDS, to pregnant women for several years. In South Africa around 11 percent of the population, 4.7 million people are infected with HIV. For pregnant women the rate of HIV infection is close to 25 percent. A quarter of babies born to HIV-infected women become infected during childbirth. A single dose of Nevirapine administered to the mother during the labour would halve the transmission rate of HIV infection to babies.

There is every possibility of such a procedure being implemented in what is a comparatively wealthy country. According to TAC figures, the annual cost of such treatment would be only US \$30m. But the African National Congress (ANC) government, led by President Thabo Mbeki has continually stalled on the use of anti-retroviral drugs. Mbeki declared his own support for the so-called AIDS dissident movement,

who both denies that AIDS is a specific disease associated with a "retrovirus" and consequently believe the powerful anti-retroviral drugs to be harmful rather than beneficial. In October 1999, Mbeki ordered a study of whether AZT, one of the leading anti-retroviral drugs, might be "a danger to health."

In November 1999, Health Minister Tshabalala-Msimang ruled out the provision of AZT saying, "Before we can even begin to consider the appropriateness of the drugs, we fall at the hurdle of affordability." Whilst accepting Nevirapine was less expensive, safer and more practical, she raised the fact that the drug had not then been registered in Uganda. In April 2000, she said that while the trials of Nevirapine had been conducted in Uganda, the "studies have not yet been concluded with respect to long-term safety." She also went on to say "In South Africa, a study known as SAINT is currently comparing Nevirapine with short course AZT and 3TC for safety and efficacy for mother-to-child transmission. We have been told by the scientists concerned that the results of this study will not be available until June/July this year (2000). The Medicines Control Council (MCC) has not yet registered Nevirapine in South Africa for paediatric use."

In April this year, 39 pharmaceutical companies were forced to withdraw their planned court action against the South African government. In order to safeguard their patents, and therefore their vast profits internationally, the drug companies had challenged a paragraph in the 1997 South Africa Medicines Act, which gave the government power to override patent laws when faced with a medical emergency. But TAC had made a submission to the court for the drug companies to reveal their research funding details. This was to show how much of the research on anti-AIDS

drugs is done by universities or publicly financed bodies. Rather than reveal this information the drug companies withdrew their action.

TAC issued a campaign statement on 24 April welcoming the dropping of the court action and calling on the South African government to “Enact the Medicines Act immediately: Begin realising the implementation of a country-wide mother-to-child transmission programme without further unnecessary delays: Develop a treatment plan by June 16, which will outline how treatment will be made accessible to all South Africans with HIV/AIDS, and will commit the government to increased health-care spending.”

The TAC affidavit points out that the results of the SAINT study are now available and indicate Nevirapine as being effective in reducing mother-to-child HIV transmission. Also following the withdrawal of the court action, the South African Medicine Control Council approved the use of Nevirapine for pregnant women.

In July 2000 the German pharmaceutical company, Boehringer Ingelheim, offered to make Nevirapine free for HIV infected pregnant women for a five-year period.

Despite all this, the government still did not move to create a national system of distribution of Nevirapine. Instead, the Health Ministry announced it would set up a pilot project at 18 centres with the perspective of treating 90,000 expectant mothers—just 10 percent of all pregnant women.

The TAC affidavit states, “Therapeutically effective and highly cost-effective therapy is now available. But there is still not a comprehensive system of testing and counselling in place. All that the Respondents currently propose is a two-year pilot phase at 18 sites, after which the government will consider designing and implementing a comprehensive plan. Meanwhile, the rate of HIV infection in our country has escalated at an alarming rate during this past seven years. It is, as Dr Abdool Karim says, an ‘explosive’ epidemic which has had and will continue to have devastating consequences.”

The affidavit raises whether the government is obliged, “as a matter of law, to implement and set out clear timeframes for a national programme to prevent mother-to-child transmission of HIV, including voluntary counselling and testing, antiretroviral

therapy, and the option of using formula milk for feeding.”

Supporting TAC’s initiative Dr Saloojee said, “health professionals have almost been sidelined from these issues, issues we deal with on a daily basis. It is us in the health profession and not the politicians and policymakers who have to deal with the consequences of this policy. Everyday we have to deal with dying children. Everyday we have to inform parents that their children have HIV when it could have been prevented at minimal cost.”

The refusal of the ANC government to carry out such a program cannot be simply attributed to Mbeki’s support for the position of the AIDS dissidents. The ANC is committed to financial policies in line with the dictates of the World Bank, the IMF and the major Western corporations and investors for massive cuts in public spending. Western governments have made clear they will not provide the funds necessary to tackle such human tragedies as the HIV epidemic in Africa and do not expect the ANC to do so, if this means substantially increased taxation on their South African affiliates. Moreover, through the drug companies suffered a setback in their efforts to protect their patent-protected monopoly position, the ANC is far from anxious to pick a fight with them by giving any ground to those demanding the implementation of the Medicines Act.



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