South Africa: Court ruling forces only tactical retreat over AIDS drugs

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Following a five-hour cabinet meeting on April 17, the South African government announced it would make antiretroviral drugs available to victims of rape and would give the drug Nevirapine to pregnant women in order to prevent mother to child HIV infection.

An action to make the government provide treatment had been brought by the Treatment Action Campaign (TAC), supported by trade unions and a group of pediatricians. On March 11 the judge ruled, "Doctors have a right to prescribe Nevirapine, after the offer of voluntary counseling and HIV testing, where a pregnant woman is HIV positive... the government has a duty to provide Nevirapine to all public health facilities where the medicine is needed and can be properly used." This ruling was upheld at a further High Court hearing at the end of March.

TAC welcomed the government statement, saying that it "has given us hope after months of despair." However, the government still plans to appeal against the court ruling. The appeal is due to be heard at the beginning of May in the Constitutional Court.

Included in the statement issued following the cabinet meeting was the phrase, "[the] government's starting point is based on the premise that HIV causes AIDS." Previously the African National Congress (ANC) government, taking its lead from President Mbeki who aligned himself with so-called AIDS dissidents, had questioned the link between AIDS and the HIV virus. That position appears to have changed. According to a report in the South African *Sunday Times*, the Health Ministry, under the president's orders, has written to some dissidents instructing them not to cite his name in documents and at conferences.

The same report stated that the ANC MP Peter Mokaba has been instructed not to speak on the matter. He had made statements supporting the dissident position and his remarks were published in the *New York Times*.

Mbeki and the ANC government are coming under pressure from various sides over their position questioning the link between AIDS and HIV and the severity of the epidemic. A Reuters report of 18 April quotes chief government spokesman Joel Netshitenzhe as being concerned that "public debate on the issue was getting out of hand." He said, "the discourse was becoming conflictual and the nation was not united to deal with a threat to society as a whole. History has shown that when nations are faced with pandemics of this nature, socio-psychologically, the tendency can develop to identify scapegoats, to identify witches who need to be burned at the stake." This appeared to refer to Mbeki, who is up for re-election as ANC leader at its congress in December.

Former President Nelson Mandela and former Archbishop Tutu have both made calls in recent weeks for the government to make Nevirapine universally available.

There is also pressure on the ANC government from international finance. Some reports have cited the ANC stance on HIV/AIDS as a factor in the fall in the value of the Rand. A *South African Mail and Guardian* report of April 19 referred to concerns over South Africa's image abroad due to its stance on HIV/AIDS. Such concerns were raised at the recent meeting of South Africa's Head of Missions abroad, who met with Mbeki and foreign affairs minister Nkoasazana Zuma. The same report said many ANC ministers, especially those with economic portfolio, were also concerned about the government's image.

Currently Nevirapine is being made available to about 10 percent of expectant mothers with HIV, with pilot studies based on 18 areas covering some hospitals

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and facilities. The government claims this is part of a research project to test the safety and efficacy of the drug. Well-documented international evidence of the success of the drug in preventing the spread of HIV to babies born of HIV mothers is already available, however.

The government does not intend to make the drug universally available to pregnant mothers immediately, in spite of the ruling. In the ANC statement they explain, “Where there is capacity to provide the package of care that is needed, and where the demands of research dictate, sites are being extended. Towards the end of the year, tests will be done on the babies and mothers being monitored, for us to then consider moving to universal access of Nevirapine. A Universal Roll-out Plan in this regard is being worked on and will be released in due course.”

On the provision of anti-retroviral drugs to victims of sexual assault, they say the government, “will endeavor to provide a comprehensive package of care for survivors... Survivors will be counseled, including on the risks so that they can make an informed choice, and will be provided with the drugs if they so choose...”

The decision by the government to go ahead with the appeal in May was presented by government spokesman Joel Netshitenzhe as a question of constitutional principle about who should formulate new policy—the government or the judiciary. The Health Minister Manto Tshabalala-Msimang was more equivocal. Asked if the interim decision to make Nevirapine more available would be stopped if the government won the appeal, she said, “ I think we must wait until the 2nd and 3rd of May. We will take it from there.”

The decision also does not change the refusal of the South African government to make anti-retroviral drugs available to HIV/AIDS sufferers as a whole. A South African Medical Research Council report earlier this year estimated that one in nine of South Africa’s 44 million people is already infected with HIV, and that AIDS accounted for a third of all deaths in 2001.

Another report issued April 18 by NMG-Levy on labour relations and employee benefits in South Africa demonstrates the social impact of the disease. It shows how the disease impacts on young adults—predicting that the life expectancy for women will fall to 37 by the year 2010 and that of men will fall to 38. Population distribution will be skewed by the impact of the disease—“the population of those aged 15 and below will be relatively large, as will the population of seniors aged 50 and above. The pandemic will take a dramatic toll on the most productive members of the population, those in their 20s, 30s and 40s.”

More and more children will be left to fend for themselves or depend on grandparents as their sole carers. The report predicted that in 2005, 30 percent of the workforce will be HIV positive, and by 2010 one million will have the disease and 6 million will have died from it.

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