TAC Electronic Newsletter

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March against hate crimes and violence against women

On Thursday 9 March, Women's Day, a march against hate crimes will be hosted by Concerned Residents of Soweto, People Opposing Women Abuse (POWA), Positive Women's Network, Forum for the Empowerment of Women, One in Nine Campaign and the Joint Working Group of LGBTI Organisations in South Africa.

The march is in response to the murders of Sizakele Sigasa and Salome Massoa, lesbian women from Meadowlands Soweto.

The march begins at 10am at Meadowlands Stadium. It will proceed to Meadowlands Police Station.

TAC supports this march and urges everyone to participate.

For comment from TAC please contact Nosisa Mhlathi on 084 399 0031 or Gordon Mthembu on 072 897 7552.

For comment from the host organisations please contact:

Dawn Cavanagh (

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), Prudence Mabele (

pmabele@mweb.co.za

) and Carrie Shelver (

carrie@powa.o.za

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[END OF MARCH DETAILS]

TAC Hate Crimes Pamphlet

Here is the text of a new TAC's pamphlet on hate crimes:

Everyone has the right to freedom and security of the person which includes the right to be free from all forms of violence from either public or private sources.

(Section 12 of the Constitution)

RAPE AND VIOLENCE

- **Student doctor raped at Chris Hani Baragwanath:** On 01 August 2007, a young female medical student was raped in a supposedly secure area of the hospital complex in Johannesburg while doing her job saving lives. Police are still trying to locate her attacker.
- **Soweto Rapes & Murders:** Sizakele Sigasa, 34, and her friend Salome Masooa, 23, were victims of another recent attack on 8 July 2007. Sigasa, an outreach coordinator at Positive Women?s Network and a lesbian & gay rights activisit, and Masooa were found tortured, raped and brutally murdered in Meadowlands, Sowete. Sizakele was found with her hands tied together behind her back with her underpants and her ankles bound by her shoelaces. She was shot execution-style, with three bullet-holes in her head and three in her collarbone.
- **Lorna Mlofana:** In December 2003, Lorna Mlofana was raped in a Khayelitsha shebeen toilet. When her rapist, Ncedile Ntumbukane, discovered she was HIV-positive, he brutally assaulted and murdered her. Mlofana, a Treatment Action Campaign activist, was kicked and had her head stamped on by her attacker after having been raped, her vagina bruised and lacerated. During these fatal blows, Vuyelwa Dlova, 21, and her boyfriend, on their way to the shebeen, came across Ntumbukane administering these blows. Upon hearing the rapist?s reasons for assaulting Mlofana, rather than assisting Mlofana, Dlova joined in the attack because she believed Mlofane was giving AIDS to the township men. Cape High Court Judge Dumisani Zondi sentenced Ncedile Ntumbukane to life for murder and a concurrent ten years for rape. Dlova (21) was found guilty of attempted murder for participating in the attack and was sentenced to ten years, three of them suspended. This case only came to justice and was finalized because of the sustained activism of TAC members.

HIGHEST RATE OF SEXUAL ASSAULT IN THE WORLD

More than 52 000 cases of rape and 9 000 cases of ?indecent assault? were reported to the South African Police Services between April 2006 and March 2007. ?Indecent assault? refers to forced anal penetration or forced oral sex. It is estimated that one in three South African women will be sexually assaulted in her lifetime. This rate is the worst in the world for a country not at war. A Medical Research Council study also indicates that only one in nine women who are raped actually report the assault to the police. Rape is underreported for a variety of reasons, including fear of

retaliation, lack of education about the law?s protections, economic dependence upon the assailant, the poor treatment of women who speak out, and feelings of shame about the assault. There is also a lack of faith in the police and the judiciary, as only 11% of rape cases result in conviction, and this too leads to the underreporting of rape. The low conviction rate can be attributed to a number of causes, including lack of police interest in pursuing cases, unwillingness of witnesses to testify, and poor handling of physical evidence.

The Treatment Action Campaign raises its voice in solidarity with the coalition of organisations fighting to end all gender-based violence, including rape. Sexual assault is degrading, violent and inhumane. All people in South African society must unite to oppose it!

RAPE INCREASES RISK OF HIV INFECTION

But, there is an additional reason for TAC to join, support and lead campaigns against all forms of sexual assault: rape increases the risk of HIV transmission. No amount of HIV/AIDS education or prevention training can defend a person from the transmission of HIV through rape, which, due to its violent nature, increases the likelihood of transmission. Only post-exposure prophylaxis (PEP), a treatment cycle of anti-retroviral drugs (ARVs), can prevent HIV infection. Since 2002, the government has claimed to guarantee access to PEP for all rape survivors, but most survivors, both female and male are still unable to access these medications, particularly in rural or poor areas.

We demand that the government prioritize access to PEP for rape survivors in ALL communities!

ACTS AND BILLS PERTAINING TO GENDER-BASED VIOLENCE AND SEXUAL ASSAULT

Domestic Violence Act of 1998:

This Act commits the government to the elimination of domestic violence, noting that the victims of domestic violence ?are among the most vulnerable members of society.? This act includes provisions for protection orders against perpetrators of domestic violence, guarantees the privacy of survivors, and criminalizes rape within marriage.

Sexual Offences Bill:

This bill, proposed eight years ago, was passed in the National Assembly in May 2007. It is before the National Council of Provinces. The Sexual Offences Bill is a much needed improvement on South Africa?s previous rape laws. It severely restricts the circumstances in which survivors? sexual histories can be admitted as evidence, widens the definition of rape beyond ?sexual intercourse with a woman without her consent? to include different kinds of penetration that can be perpetrated against women or men, and provides access to post-exposure prophylaxis. However, it only guarantees access to PEP if the incident is reported to the police; TAC must work with its allies to ensure access to PEP for all survivors of sexual assault, as many cannot or do not wish to bring charges against their attackers.

Make protection from sexual assault a legislative priority! The Sexual Offences Bill must become law in 2007, and it must include PEP access for ALL survivors, not just those who report the assault to the police.

LEGAL ACTIONS AND RAPE: LANDMARK CASES OF THE PAST 10 YEARS

- The 1998 case of S. v Jackson (SCA), abolished the ?cautionary rule?, a rule that characterised female complainants in all sexual assault cases as liars or witnesses with ?a deceptive facility for convincing testimony?.
- The 2002 case of Van Eeden v Minister of Safety and Security (SCA) established that the state had a duty to detain suspects likely to commit further sexual offences against women.

- The 2005 case of K v Minister of Safety and Security (CC) held the Minister of Safety and Security liable for damages after three ?on-duty? policemen had raped a woman.
- The 2005 case of S v Sikipha (SCA) reprimanded a judge for patriarchal and sexist attitudes that suggested men may be forgiven for rape if women are dressed or act seductively.

- The 2007 case Masiya v Director of Public Prosecutions and Others (CC), in which a man anally penetrated a nine year old girl, held that anal penetration of a woman constitutes rape not the lesser crime of indecent assault. In their eloquent decision, the Court wrote:
  Due in no small part of the work of women?s rights activists, there is wider acceptance that rape is criminal because it affects the dignity and personal integrity of women. The evolution of our understanding of rape has gone hand in hand with women?s agitation for the recognition of their legal personhood and right to equal protection. To this end, women in South Africa and the rest of the world have mobilised against the patriarchal assumption that underlay the traditional definition of rape. They have focused attention on the unique violence visited upon women. Much of this activism focused on creating support systems for women, such as rape crisis centres and abuse shelters; and also on the process whereby rape is investigated and prosecuted. It is now widely accepted that sexual violence and rape not only offends the privacy and dignity of women but also reflects the unequal power relations between men and women in our society. (para 29)

These decisions by the highest courts in South Africa are victories but they must be made real. We can build upon them to educate ourselves and our communities, and to make sure that the government respects, protects, and promotes the right to be free from all forms of violence from either public or private sources. TAC members and the rest of South African society must be educated about rape, the toxic social attitudes surrounding its acceptance, and the legal protections against sexual assault.

There is a stigma surrounding rape, much like with HIV status. This stigma prevents survivors from coming forward and from fighting for their rights as citizens. We must end the stigma surrounding sexual assault, so more survivors can come forward without shame. Only then will survivors be truly protected by the law. Through education, we can empower South Africa to stand up and speak out against rape.

[END OF PAMPHLET ON HATE CRIMES]

TAC welcomes decision of Indian court to dismiss Novartis petition

On 6 August 2007 the Madras High Court rejected a petition by the Swiss pharmaceutical company Novartis challenging the validity of a particular provision of the Indian Patents Act that restricts the granting of patents to substantially innovative products. Novartis in its petition had claimed that the section does not comply with the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and in addition, is in conflict with the Indian Constitution.

Dismissing the petition and upholding the validity of the legislation, the High Court ruled - amongst other things - that:

- it is not the proper forum to decide whether the Indian Patents Act is TRIPS compliant or not,
- the WTO's Dispute Settlement Body is the appropriate forum to decide on such disputes (which are ordinarily brought by governments and not corporations), and
- the impugned section of the Patents Act is neither vague nor arbitrary and therefore does not violate the Indian Constitution.

Importantly, the judgment protects a legal framework that goes to some lengths to ensure the production of affordable medicines in India. Unlike South African law, the Indian Patents Act takes significant advantage of the flexibilities and public health safeguards permitted under TRIPS, which the WTO recognises "does not and should not prevent

members from taking measures to protect public health." In particular, the WTO recognises that TRIPS "can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all."

The Indian judgment is a victory for health activists, poor people and people with life-threatening and chronic illnesses globally - including HIV/AIDS. As was the case in South Africa in 2001 when the Pharmaceutical Manufacturers' Association and 39 of its members withdrew their unjustifiable challenge to access-friendly provisions in the amended Medicines Act, the developments in India show that domestic and international activism, collaboration between government and civil society and competent legal work are essential if the rights of patients are to be protected against narrow corporate interests. In particular, the TAC congratulates the Cancer Patient Aid Association of India, the Lawyers' Collective and Médecins Sans Frontières for their strong political, technical and legal support given to the Government of India in its defence of the statutory provision under attack.

Despite a number of victories in South Africa against multinational pharmaceutical companies, some of them continue to conduct themselves in a manner that threatens access to sustainable supplies of affordable essential medicines. In ensuring sustained access to antiretroviral (ARV) treatment, two companies in particular are refusing to play ball - MSD and Abbott. In particular, they refuse to license multiple suppliers to produce and/or import generic versions of ARV medicines containing efavirenz, lopinavir and/or ritonavir. Shortly, however, the TAC's legal representative - the AIDS Law Project - will be filing a complaint at the Competition Commission on its behalf against the two companies. In the complaint, the TAC will seek an order compelling the two companies to grant multiple licences on reasonable terms and conditions.

For further comment, please contact Regis Mtutu (TAC International Co-ordinator) on 084 310 8614 or Jonathan Berger (AIDS Law Project) on 011 356 4100.

[END OF STATEMENT ON NOVARTIS CASE]

Latest developments in TAC versus Rath and South African Government

On 5 November 2005, the TAC lodged a court application against twelve respondents including Matthias Rath and the Government of South Africa. The TAC has filed its reply to Rath's affidavit. The two key affidavits are:

- Replying affidavit by Nathan Geffen
- Affidavit on science of nutrition by Nigel Rollins

For details on this court case, please see the

Interdict against Rath's clinical trial, unregistered medicines and false advertising court case

on

http://www.tac.org.za/rath.html

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The reasons for the case taking so long to be heard are partially described in this TAC electronic

newsletter

and in this newspaper

article

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TAC's lawyers will now proceed to ask for a court date to be set.

For comment, please contact Nathan Geffen on 084 542 6322.

[END OF UPDATE ON RATH CASE]

Letter by the Deputy-Editor of the Daily Dispatch to President Mbeki in response to the President's online letter

From:

http://www.dispatch.co.za/2007/07/31/Leader/lp1.html

An open letter to our President after his online newsletter regarding the Frere Hospital investigation

Dear President Mbeki,

I AM not adept at the nimble philosophical dance which weaves through the letter in which you berate this newspaper, so I?ll get straight to the point: You are right.

You are right to say that ?The facts communicate the conclusion that neonatal mortality at Frere Hospital is not significantly different from the national incidence of such mortality?.

But, this conclusion, I?m afraid, leaves you hoist by your own petard.

Before I show you how, let me explain something that may have passed you and your health minister by.

Our exposé was never about numbers, (but, of course, we had to rely on the Frere?s own unreliable statistics to illustrate the mortality trend). We did not make any particular claims about an ?extraordinary? rate of neonatal deaths at Frere, we simply noted that the rate ?exceeded? national and provincial rates.

Our reports were about the reasons for the baby deaths at Frere. This should have been clear to the average reader in our headline: ?Why Frere?s Babies Die?.

Our reports were about people ? the mothers and fathers who had to bury their babies because our health care system let them down. They were also about some dedicated medical staff who battled to provide quality care in an under-funded, under-resourced, and

mismanaged public hospital.

But you have chosen to rely on numbers, so let us hoist you then.

I would argue it is a damning admission to say Frere?s baby deaths are not significantly different to the rest of the country. From this we can assume that the reasons we described behind these deaths ? including Frere Hospital?s own notes on negligence and maltreatment ? are common in other state hospitals.

If this is the case, perhaps your deputy health minister Noziziwe Madlala-Routledge was correct to describe what she discovered on a visit to Frere as ?a national emergency?.

Mr President, you will be comforted to note that your argument that Frere is no different will be supported by the new

Saving Babies report of the Medical Research Council, which will be published soon.

This report ? which we cited in our coverage ? will say that one in five baby deaths in South Africa is completely avoidable.

Compiled by the Maternal and Infant Healthcare Strategy Unit of the MRC, the report estimates 23000 babies die annually in the first month of their lives ? and thousands more are stillborn.

Contributor Dr Joy Lawn, a senior policy and research adviser, writes in her foreword that this number is equivalent to a daily crash of four minibuses full of passengers, killing all on board.

These figures will show that it is almost impossible for South Africa to reach the UN?s fourth Millennium Development Goal of reducing by two-thirds the

mortality rate of children under five by 2015.

Interestingly, it will also show that countries poorer than us elsewhere in Africa are succeeding in slashing their neonatal mortality rates. Malawi, for one, has reduced its rate by 25 percent.

What should one make of this ?mini-skirt? of statistics, as you describe it, then, Mr President?

I trust you can see now that we did not lie in our reports. In fact, let us point out how your health minister?s team confirmed much of what we reported.

Here are some examples.

We reported on the general state of neglect and decay at the hospital. Health Minister Manto Tshabalala-Msimang responded by increasing the hospital?s maintenance budget ten-fold.

We wrote about a shortage of beds in maternity.

She responded by ordering the construction of a new labour ward.

We described the shortage of nurses. She acknowledged this was true and said she would recruit more urgently.

We cited problems with equipment. Tshabalala-

Msimang said six more incubators would be bought. And it goes on, a basket of reforms for which we are grateful.

But tell us, Mr President, if our reports were wrong and were lies, would the health minister have visited Frere at all and would she have announced all these changes?

I?m afraid I cannot argue your case that our reports represent a post-modern interpretation of reality. I cannot even begin to understand what the following statement that you quoted means: ?(Post-modernism is a) rejection of the picture of knowledge as accurate representation; rejection of truth as correspondence to reality; ... and a suspicion of grand narratives, metanarratives of the sort perhaps best illustrated by

dialectical materialism.?

I wonder, though, what kind of truth did Murchia King experience when she watched her stillborn son, Liano, being buried at Haven Hills Cemetery?

Did Mariska Barrow-Radloff, who carried her dead baby around inside her for two weeks, experience a post-modern truth?

Or what about Noxolo Macewana, whose baby died while she waited 10 hours for a Cæsarian? What was her truth?

By the way, none of these women have had their personal tragedies acknowledged by your government. Perhaps someone should offer them some basic human compassion. It would be more appreciated than the ?dialectical materialism? to which you refer.

Let us remind you, Mr Mbeki, what we said at the outset of our series on Frere:

?This tragedy is the result of our collapsing public health system, bereft of funding, resources and skilled staff. Sadly, our baby death investigation proves that when public health is mismanaged, human beings die.?

And that, sir, remains the truth for us.

Your humble servant,

Andrew Trench

Deputy Editor

Daily Dispatch

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For a history of this incident, see the following articles in the Daily Dispatch:

http://www.dispatch.co.za/2007/07/23/Easterncape/aalead.html
http://www.dispatch.co.za/2007/07/23/Easterncape/ababe2.html
http://www.dispatch.co.za/2007/07/23/Easterncape/ababe3.html
http://www.dispatch.co.za/2006/09/01/Easterncape/cris.html

See the following responses by government:

http://www.anc.org.za/ancdocs/anctoday/2007/at29.htm#preslet
http://www.doh.gov.za/docs/misc/frere-f.html

[END OF MOUNT FRERE HOSPITAL STORY]

- Patents
- Pharmaceutical Companies
- Quackery
- Rath cases
- Thabo Mbeki
- Violence Against Women

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