

# TAC Electronic Newsletter

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## Summary

- **Defending Health Rights:** a timeline of the court case to restore health services in Khayelitsha.
  - State appeals interim Cape High Court Decision ordering it to restore health services in Khayelitsha.
  - TAC National Executive Committee resolves to mobilise the widest support for sufficient human resources in the health system.
- **Setting the historical record straight: Books and articles demonstrating that the claims by Ronald Suresh Roberts about President Mbeki and AIDS in his book *Fit to Govern* are false.**
  - Articles and books with detailed factual accounts demonstrating that President Mbeki supported AIDS denialism:
    - *Mortal Combat: AIDS Denialism and the Struggle for Antiretrovirals in South Africa* by Professor Nicoli Nattrass (published 2007), which is a detailed history of state-supported AIDS denialism in South Africa. (The proceeds of this book will go to TAC's Treatment Project and will be used to pay for diagnostics and medicines for people with HIV.) Available from various booksellers and online at [Kalahari.net](#).
    - James Myburgh's article in [Moneyweb](#) (published 12 July 2007) responding to an article by Essop Pahad in *The Star* repeating Suresh Roberts' claims
    - Nicoli Nattrass's article in the [Mail & Guardian](#) (published online 23 July 2007) in response to reviews of Ronald Suresh Roberts' book *Fit to Govern*.
  - Also see:
    - Xolela Mangcu's review of *Fit to Govern* in [Business Day](#) (published online 21 June 2007).
    - Drew Forrest's review of *Fit to Govern* in [Mail & Guardian](#) (published online 2 July).
    - [Price of Denial](#) (2004, Development Update 5(3)) by Mark Heywood.
    - [Echoes of Lysenko: State-sponsored pseudo-science in South Africa](#) (2006, CSSR working paper) by Nathan Geffen.
    - *Beyond the Miracle: Inside the New South Africa* by Allister Sparks, which contains a chapter on President Mbeki's approach to HIV/AIDS. Available from various booksellers and online at [Kalahari.net](#).
    - [The AIDS Rebel](#) by Samantha Powers, which albeit a profile of Zackie Achmat, deals with President Mbeki's denialism. Originally published in the New Yorker in May 2003. [Witness to AIDS](#) by Edwin Cameron, which examines the president's AIDS denialism and was the co-winner of the Sunday Times Alan Paton award in 2006.

## Defending Health Rights: the court case to restore health services in Khayelitsha

- Latest News:

- State appeals interim Cape High Court Decision ordering it to restore health services in Khayelitsha.
- TAC National Executive Committee resolves to mobilise the widest support for sufficient human resources in the health system.

On 11 June 2007 the Department of Health dismissed 41 health care workers in Khayelitsha for participating in the public sector strike. Before the industrial action started on 1 June, Khayelitsha's clinics were already seriously understaffed. The strike exacerbated the staff shortage, but the dismissals made it impossible for at least two of Khayelitsha's three health facilities to offer adequate care. At all times before the dismissals in Khayelitsha essential services were being provided and workers who participated in industrial action did so peacefully without any destruction to property or endangering patients lives.

Most of the workers were dismissed from Site B Clinic. On 31 May, workers at this facility, in conjunction with the facility manager, agreed to a skeleton staff system that ensured that treatment for patients with chronic illnesses would still be available, as well as emergency services.

Following a meeting with some of the remaining health workers at Site B, the Treatment Action Campaign (TAC) together with five patients who use Khayelitsha's health services proceeded with urgent litigation in the Cape High Court to compel government to restore health services in Khayelitsha including re-instating the dismissed workers. The first applicant was TAC. The second to sixth applicants were Sizeka Maya, Nomafrica Velem, Neliswa Nkwali, Norute Nobola and Fanelwa Angel Gwashu. They described how they are dependent on Khayelitsha's clinics to treat their and their children's chronic illnesses which include HIV, TB and asthma.

The respondents were Minister of Health for the Western Cape (Mr Pierre Uys), Director-General of Health for the Western Cape (Dr Craig Househam), Minister of Health (Dr Manto Tshabalala-Msimang) and Minister of Public Service and Administration (Ms Geraldine Fraser-Moleketi).

On 26 June 2007, Judge Siraj Desai handed down judgment and granted an interim interdict ordering the respondents to restore the reasonable functioning of health care services in Khayelitsha. The order is temporary pending a final hearing scheduled for 20 August in the Cape High Court. Costs were awarded to the Applicants.

Judge Desai could not order the reinstatement of the health workers because, he said, they were not before the court and that they had other mechanisms available to them to seek recourse . However, given the evidence before him, he found that the state acted unconstitutionally and violated the rights of patients by not having a reasonable contingency plan in place to maintain health services. He upheld the evidence of doctors and nurses working in Khayelitsha who testified that service provision had been dramatically affected because of the dismissals.

The judgment of the Cape High Court demonstrates that government may not terminate the provision of health services without making contingency plans to replace these terminated services with reasonable and functioning services. This case is therefore important for determining government's health delivery obligations.

The end of the nearly month long industrial action was announced two days after the judgment was delivered. As part of the settlement agreement between the unions and the state all dismissed workers were reinstated.

Nevertheless, the state has appealed the interim judgment. The TAC National Executive Committee has resolved to mobilise the widest support for sufficient human resources in the health system.

The following is a timeline of the events of the trial.

**Thursday 31 May**

12h00

Public service unions decided to begin industrial action on 1 June 2007.

On 31 May 2007, one day before the beginning of the strike, a staff meeting took place at Site B health facility in Khayelitsha. The staff decide to create a skeleton staff setup for the duration of the strike. The system was agreed between physicians, nurses, pharmacists and other health care providers with the purpose of maintaining emergency and essential chronic health services during industrial action. This was discussed by a doctor in Site B who said: "In the last 12 months, we have battled to maintain an adequate level of service delivery. We have struggled to implement a proper system within our reception areas, within trauma services and in chronic units. Our efforts have been largely hampered by the lack of sufficient staff. Before the strike we were barely functioning because of staff constraints. The strike has therefore meant that we can only really render emergency services. We have a triage system where patients that are not considered emergency cases are turned away. Since the strike, patients with chronic conditions have been able to get their medication but have not been examined."

The Khayelitsha Site B clinic remained busy during the industrial action. It dispensed medication to 600 patients per day. The rape crisis center remained open. HIV/AIDS, TB, epilepsy and other chronic illness medication were still delivered. The skeleton system created by Site B ensured that these services continued despite the strike.

18h00

The labour court in Johannesburg handed down an interdict preventing health workers in essential services from striking. Government warned that striking workers would be dismissed.

## **Friday 1 June**

The strike began. The skeleton staff system went into place in Site B as planned.

## **Monday 11 June**

The state dismissed health workers across the country, including over 70 in the Western Cape, 41 of whom worked in Khayelitsha's three health facilities: Site B Day Hospital, Nolungile Community Health Centre and Michael Mapongwana Community Health Centre. 30 workers were dismissed from Site B, one from Nolungile and ten from Michael Mapongwana.

The method of dismissing workers was haphazard. Administrators at various health care sites were asked by government officials to record names of individuals who they noted were not at work, were striking - or a combination of the two. This informal process resulted in imprecise and many times simply incorrect dismissals. TAC learned of many health care workers who were on leave, medically unable to come into work, or had other reasons for not being at work but were still dismissed. Others were fired because they were striking, despite the fact that they were coming in to uphold the skeleton staff system that both management and health care workers had agreed upon. Others were fired for alleged intimidation and damage to clinic equipment, even though no hearings were conducted to determine if the allegations were true. In the course of the court case, no evidence was presented by the state that intimidation or damage to equipment took place in Khayelitsha.

The result of the dismissals was that even those health workers who were working to fulfill the skeleton staff agreement and were striking at the same time were dismissed. Therefore, these workers were unable to work at all after the dismissals and therefore unable to sustain this system of assistance.

## **Tuesday 12 June**

Eric Goemaere, the head of mission for Médecins Sans Frontières (MSF) who helped introduce antiretrovirals to Khayelitsha six years ago, Mandla Majola, TAC's Khayelitsha District Co-ordinator, and others in Khayelitsha's health facilities informed TAC members and others that the situation in Khayelitsha's facilities was dire as a result of the dismissals.

After talking with Khayelitsha community members who had attempted to get service, it was clear that dismissing health care workers and nurses exacerbated the already prevalent problems within the health care system, and particularly in Site B which was an already an under-resourced and understaffed clinic.

*13h00*

A meeting was held in Khayelitsha. TAC chairperson, Zackie Achmat, as well as Mandla Majola, Eric Goemaere, Marta Darder of MSF, Fatima Hassan of the AIDS Law Project (ALP) and others attended to discuss the impact of the dismissals. The situation was tense because workers were upset about dismissals and worried about disruption to services in Khayelitsha. With members of the community, TAC and ALP decided to push forward with a legal case against the unfair dismissals, if the government did not immediately reverse the dismissals. Affidavits were taken by ALP staff from patients and health care workers which showed that it was only after the dismissals by government that the emergency services deteriorated, and that even during the strike, before the dismissals, emergency services were still available.

## **Wednesday 13 June**

Additional affidavits were taken in Khayelitsha from dismissed health care workers and also from more community members whose emergency services were interrupted because of the dismissals. The one remaining pharmacist assistant that was still working after the dismissals in her affidavit stated that only 150 of the necessary 600 prescriptions could be filled at the pharmacy and community members in their affidavits explained that they were turned away from receiving medicines.

## **Thursday 14 June**

A letter of demand by the ALP on behalf of TAC was sent to provincial and national ministers of health stating that the actions taken by government were inappropriate and a disservice to the members of the community that have a right to emergency services. It demanded that health service providers be re-instated in order to ensure that health services were returned to a functioning state given that it will take weeks or even months to train replacements.

The deadline for a response was set at 11h00 on 15 June. The letter demanded that services, guaranteed by the Constitution, be restored to the members of the community. If there was no response, or if the response did not meet the demands, then legal action would be taken against government officials.

## **Friday 15 June**

By 11h00 only one of the respondents had replied and the government had not yet reversed the dismissals. ALP and

TAC began preparing a court application with Senior Counsel Advocate Peter Hodes and Junior Counsel Advocate Anton Katz. Five members of the community who use Khayelitsha's health services, join the Application. The application was filed and a hearing set down for Tuesday 19 June at 11h00. A deadline for answering papers was set for Monday 18 June.

## **Tuesday 19 June**

It was not until the very beginning of the hearing, at 11h00, that the answering papers by the government were served. The Respondents did not depose to any affidavits. Keith Cloete and Leslie August deposed to affidavits on behalf of the First and Second Respondents. Thami Mseleku and Karsananan Govender deposed to affidavits on behalf of the Third and Fourth Respondents. As a result, court was postponed until 14h30 to allow TAC and the second to sixth applicants to read and respond appropriately to the papers. At 14h30, the court met briefly and ordered that answering papers must be filed by the next day at 16h00 and that the hearing will resume on Thursday 21 June at 11h00.

## **Wednesday 20 June**

The applicants serve their reply and file it by 16h30.

## **Thursday 21 June**

The state served further affidavits. So the applicants immediately prepared further responding affidavits and submitted them to court at 12h30. Oral argument was presented on behalf of TAC and the other applicants. The main argument was that the interruption of emergency services, which directly resulted from the dismissals, was a direct violation of certain Constitutional rights . Because of the health system's human resource crisis, the applicants argue that, realistically, the restoration of essential services can only occur by reinstating the health workers. We made it clear that the case that we brought was not about labour rights or labour matters.

The first and second respondents start presenting their argument in the afternoon.

## **Friday 22 June**

The four respondents are the Western Cape Minister of Health and Director-General of Health (represented by Advocate D. Ntsebenza SC and Advocate Nobu) and the Ministers of Health and Public Service and Administration (represented by Advocate S. Moerane SC, Advocate Coppin and Advocate B Vally). The respondents argued that the case was moot, that the court had no jurisdiction and that they acted lawfully because health workers violated a court interdict. Judge Desai indicated that judgment would be handed down on Tuesday 26 June. TAC's counsel responded.

## **Tuesday 26 June 2007**

Judge Desai handed down his order (explained above) with reasons. Mandla Majola meets with TAC Khayelitsha members to explain the ruling.

A copy of the written judgment is not yet available.

## **Wednesday 27 June**

Dismissed workers at Michael Mapongwana Community Health Centre tendered their services.

TAC held an early morning demonstration at Site B. TAC volunteers explained the court order to the packed waiting rooms in the clinic. Then TAC members met with facility manager Mr Leslie August to determine how the court judgment would be implemented. August promised that the order would be carried out but was unable to say how. He explained that a meeting would be held with management shortly.

Some of the dismissed workers (who were not TAC members) threw stones at August's car as he leaves the facility. Fortunately, no-one was injured. Mandla Majola and TAC's Western Cape Co-ordinator, Vuyiseka Dubula, met with the workers to explain this is not how TAC conducts its demonstrations. TAC decided to hold its demonstrations separately from the dismissed workers from hereon.

The ALP sent a letter to the State Attorney asking how the state intended complying with the court order. The State Attorney responded by stating that services had been restored but failed to explain how or in what manner.

## **Thursday 28 June 2007**

TAC members met at Site B early in the morning again. They held demonstrations, met with the facility managers and explained the court order to patients again.

At 12pm, it was announced that the public service sector strike was resolved. Mandla Majola in Khayelitsha confirmed that the workers would be reinstated and that services would be restored.

The ALP sent a letter to the State Attorney confirming that services will be restored given that workers will be reinstated. The State Attorney responded by stating that they have no knowledge of any reinstatement agreement

## **Monday 2 July**

The dismissed workers returned to work, and all services were restored.

## **Tuesday 17 July**

The state filed leave to appeal against the interim judgment, even though the case is now moot.

## **Monday 24 July**

The TAC National Executive Committee held a teleconference and resolved to mobilise the widest support for sufficient human resources in the health system.

**Monday 20 August**

The case is set down to be heard for final determination on this date.

[END OF TIMELINE OF KHAYELITSHA HEALTH SERVICES CASE]

- [AIDS Denialism](#)
- [AIDS Denialism](#)

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