

# TAC Electronic Newsletter

By *moderator*

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Government in contempt of court - Must treat Westville prisoners

## **President Mbeki, Minister Tshabalala-Msimang: Stop obstructing access to treatment**

### **TAC will march to Mahatma Gandhi Hospital on 29 August to demand an end to long waiting lists for treatment**

*"The respondents are in contempt of the order of Pillay J.*

...

*If the refusal to comply does not result from instruction from the first respondent, the Government of the Republic of South Africa, then the remaining respondents must be disciplined, either administratively or in an employment context, for their delinquency. If the Government of the Republic of South Africa has given such an instruction then we face a grave constitutional crisis involving a serious threat to the doctrine of the separation of powers. Should that continue the members of the judiciary will have to consider whether their oath of office requires them to continue on the bench."*

- Nicholson J, Judgment in EN and Others v. Government of the Republic of South Africa and Others, Case No 4576\06, 28 August 2006

The TAC welcomes the judgment handed down today in the Durban High Court by Judge Nicholson. The court found that the state is in contempt of court for failing to implement the interim execution order of Judge Pillay. Judge Pillay had granted the state leave to appeal in the Durban Westville Prison matter, but he also ordered government, while the appeal was being heard, to provide treatment to prisoners and to set out in an affidavit how it intended to do so by no later than 14 August 2006.

Judge Nicholson quoted extensively from the affidavit of TAC KZN Treatment Project Co-ordinator Sindi Blose who described the "tragic and unnecessary" death of applicant MM, whose CD4 count was 87 in November 2004 and was only placed on treatment in July 2006, weeks before his death and far too late, after he had suffered from "bleeding piles, painful rash on both ears, fungal infections, TB, body rash, general itchiness, oral thrush, penile sores, moth sores, septic sores on knees, painful feet." *[A full independent assessment of his medical treatment between 1997 and 2005 will be released soon. - Editor]*

Blose further stated (as quoted by Judge Nicholson) "The respondents should not be allowed to abuse the process of the Courts by defeating the very purpose of the order that was granted on 26 July 2006 ... While the respondents attempt to out-manoeuvre the Courts and delay the exercise of the prisoners' right to adequate medical treatment, the prisoners are dying. The case is as simple, and tragic, as that."

The court also found that Advocate Moerane, acting for the state, had failed to provide a sufficient basis for Judge Pillay to recuse himself and therefore refused to grant leave to appeal against the interim order. Referring to a previous Constitutional Court judgment on this issue, Judge Nicholson stated "I am bound by the Constitutional Court and the consequence of this is that I cannot grant leave in the ... [interim] order because Pillay J failed to recuse himself."

Judge Nicholson's strong statement on the state's contempt of court indicates what TAC has always maintained:

HIV/AIDS is a crisis of governance. The 1,000 new HIV infections and more than 900 AIDS deaths daily is in large part a result of the failure of leadership. The government is now attempting to undermine the judicial system in the same way that it has destroyed the integrity of independent statutory bodies such as the Medicines Control Council, the Medical Research Council and the Health Professions Council of South Africa. It is the duty of every person in South Africa and around the globe to stop HIV/AIDS denialism and to demand political leadership in the epidemic locally and globally.

TAC calls on government to recognise the court order and implement it without further delay. We call on Parliament and the Parliamentary Portfolio Committee on Correctional Services, which convenes tomorrow, to exercise oversight of the Department of Correctional Services. We further call on President Mbeki to meet with TAC to resolve the current crisis of leadership on health-care. TAC is determined to carry out its demand for the Minister of Health to be relieved of her duties and we will continue mass demonstrations until this happens.

*Tomorrow, 29 August 2006, TAC Kwazulu-Natal members will hold a demonstration at Mahatma Gandhi Hospital in Durban. The hospital has an almost year long waiting list for antiretroviral treatment with more than 1500 people from Umlazi, Inanda and Phoenix on the waiting list. (See TAC statement of 8 August 2006: <http://www.tac.org.za/nl20060808.html>)*

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