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# PRISONER DIES BECAUSE OF DELAYS BY GOVERNMENT - MINISTER OF HEALTH AND MINISTER OF PRISONS MUST BE CHARGED WITH CULPABLE HOMICID

By *moderator*

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On 15 August 2006, the Treatment Action Campaign (TAC) learnt that an inmate with AIDS in Westville Corrections Centre died in King Edward Hospital.

We hold the government in particular the Minister of Correctional Services and Minister of Health responsible for this unnecessary death and suffering of this inmate.

MM - (initials used to protect confidentiality), the Seventh Applicant in the case between 15 inmates of Westville Correctional Centre and the Government of the Republic of South Africa died on 06 August 2006.

## Uncontested evidence

Uncontested evidence filed by the AIDS Law Project (ALP) before the Durban High Court on 10 April 2006 shows that:

- Since November 2004 the prison officials knew that MM had a CD4 count of 87.
- MM had a CD4 count of 86 in March 2006.
- Between November 2004 and March 2006, he had suffered: "Bleeding piles, painful rash on both ears, fungal infections, TB, body rash, general itchiness, oral thrush, lesions, penile sores, mouth sores, septic sores on knees, painful feet. (Court record page 108)

In an affidavit filed on government's behalf by Ms Jabulile Elizabeth Sishuba there is further evidence of bureaucratic bungling: McCords Hospital refusing to treat prisoners with HIV; then failure by DCS to meet an appointment and misplaced CD4 counts at King Edward Hospital. All the time MM was getting sicker.

On 20 July 2006, the AIDS Law Project again filed an affidavit stating that MM had been unavailable for consultation and was confined to high care at Westville. On 19 July 2006, Ms Sishuba was more forthcoming in her affidavit showing a dramatic decline in the health of MM.

**"Seventh Applicant:** He attended RK Khan Family Clinic on 30 May 2006. He attended again on 31 May 2006. On 13 June 2006 he was taken to King Edward Hospital. He was discharged on 15 June 2006. He was given another appointment for 19 June 2006. He was admitted at the King Edward Hospital for disseminated TB and renal impairment. He is on TB treatment. On 22 June 2006 he was assessed for medical parole. The Respondents are awaiting the decision of the parole board. This Applicant has not been examined by Dr. Zitha as he attended the RK Khan Family clinic and not the King Edward Family Clinic. That is where he attended the ART Programme. He started Anti-retroviral drugs on 12 July 2006."

MM died in King Edward Hospital on 6 August 2006.

On 15 August 2006, a week after his death the Government lawyers placed the following statement on record before the Court "(f)the Seventh Applicant is taking ARVs"

Government decided to implement ARV treatment in November 2003. A year later in November 2004, MM was desperately sick with AIDS and CD4 count of 87. In October 2005, the AIDS Law Project and TAC intervened. 8 months later and much too late he started ARVs.

The Treatment Action Campaign (TAC) demands a full judicial investigation into the death of the inmate. We also demand that charges of culpable homicide be investigated against the Ministers of Correctional Services and Health.

We demand that government withdraw their latest criminally delaying tactic to appeal the interim order and to smear Judge Pillay.

At least another 8 prisoners are desperately sick. How many more deaths will it take before government take their constitutional duties seriously?

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[END OF STATEMENT]

## **TAC: Charge Manto, Balfour with homicide**

Wendell Roelf | Cape Town, South Africa - Mail and Guardian

16 August 2006 05:08

Detailing the suffering of a late Durban Westville prisoner, Treatment Action Campaign (TAC) chairperson Zackie Achmat on Wednesday called for homicide charges to be instituted against two Cabinet ministers.

Achmat, supported by a group of TAC activists, made the call after occupying the offices of the South African Human Rights Commission (HRC) in central Cape Town.

"We hold the government, in particular the Minister of Correctional Services [Ngconde Balfour] and the Minister of Health [Manto Tshabalala-Msimang] responsible for this unnecessary death and suffering of this inmate," read part of a memorandum handed over to Western Cape HRC representative Ashraf Mohamed.

The prisoner, only identified as "MM" and the seventh applicant in a case involving 15 prisoners at Westville correctional centre and the government, died on August 6.

However, the TAC only learnt of the death on Tuesday.

Achmat said there was uncontested evidence that since November 2004 prison officials knew that "MM" had a CD4 count of 87.

A CD4 cell count is a medical test reflecting the strength of the body's immune system, and if the CD4 count falls below 250 to 200 treatment with anti-HIV drugs is recommended.

The provision of these ARVs formed the basis of the prisoners' application to court.

According to Achmat, MM's CD4 count dropped to 86 in March this year, with him suffering from numerous afflictions, such as bleeding piles, TB, lesions, penile sores, septic sores on his knees and painful feet.

MM's health declined rapidly and he was admitted to King Edward hospital on June 13 and was discharged two days later.

He was readmitted to hospital a few days later with disseminated TB and renal impairment, and was assessed for medical parole on June 22.

"He started antiretrovirals on July 12 2006. This is someone whose kidneys, whose whole body, whose whole immune system had been destroyed and waited for more than two years to be put on an antiretroviral programme by government," said Achmat at the HRC offices.

He said the TAC wanted the HRC and the Judicial Inspectorate of Prisons to ensure charges of culpable homicide be opened against the two ministers.

"Because they've known about this, they've known what the outcome would be. This man is dead because of them. In 1996 he entered the prison a healthy man. He's now dead," said Achmat, indicating the TAC activists would stay in the HRC offices until they received a response from the HRC.

He said they wanted to see action from government because those HIV-positive prisoners at Durban's Westville centre are not the only ones.

"There are many others in the same conditions," said Achmat.

In the memorandum the TAC demanded that government withdraw what it called its "latest criminally delaying tactic", to appeal the interim order to provide Westville prisoners with ARVs.

The memorandum mentions at least another eight prisoners desperately sick and asked how many more deaths it would take before government took its constitutional duties seriously. -- Sapa

- [Manto Tshabalala-Msimang](#)
- [Westville Correctional Facility](#)
  
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