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Why prisoners with AIDS must be treated

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By Nathan Geffen, Jonathan Berger and Cynthia Golombeski

Coughing blood, wasting away from diarrhea, uncontrolled bowel movements, a strange white fungus growing on your tongue and throat that prevents you from eating: this is what tens - if not hundreds - of thousands of people in South Africa experience daily, as they watch their once healthy bodies deteriorate. Dying from AIDS is usually painful, slow and undignified. But it is also avoidable. For the vast majority of people whose HIV infection has brought on AIDS, antiretroviral (ARV) treatment can restore health and dignity.

Since it is both possible and affordable to stop people from dying of AIDS, most people recognise that ensuring access to ARV treatment is a moral imperative. But is this true for prisoners, especially in the context of a society with extremely high levels of violent crime? Are they not the lowest, least deserving of people?

In 1994, we took a decision - as a society - to accept that everyone in South Africa has the rights to life and dignity. In respect of prisoners, we expressly recognised a right to adequate medical treatment. In 1995, the Constitutional Court declared the death penalty to be unconstitutional. When we adopted our final Constitution in 1996, we also included the general right to have access to health care services.

All these constitutionally guaranteed rights apply to prisoners too, no matter how vile the crimes that landed them in prison. Interestingly, treating prisoners decently is not solely a product of our constitutional democracy. As early as 1912, our courts recognised that the state must provide adequate medical care to prisoners. In practice, however, the health care of prisoners under Apartheid was more likely to be imperiled than improved.

The number of people dying in prison has increased dramatically in the last decade. According to the Judicial Inspectorate of Prison, less than two out of every 1000 prisoners died of natural causes in 1995. By 2005, this had risen fivefold to over 9 deaths per 1000 prisoners. This massive increase is due to the HIV epidemic.

Last week, the Durban High Court ruled that the state - with immediate effect - must remove the restrictions that prevent prisoners at Westville Correctional Centre who want and need ARV treatment from accessing it, and must provide ARV treatment in accordance with the public sector policy. By 7 July, the state must also report to the court on how it intends making ARV treatment available to all eligible Westville prisoners.

This court case came about for two reasons. First, the state acted unconstitutionally. Second, fifteen long-term prisoners with AIDS - one of whom has subsequently been released on ordinary parole - bravely decided to put their trust in the legal system. Some of them had previously gone on hunger strike, with one of their demands being access to ARV treatment. The promises made to them in return for abandoning the hunger strike were simply not met.

Whilst not directly binding on other prisons, the judgment clearly has repercussions for them all. A caring government would ensure that the departments of correctional services and health immediately begin making plans to ensure access to ARV treatment in all prisons. Unfortunately the official response to the judgment has been spin, prevarication and

misinformation.

For example, a Correctional Services spokesperson stated that the applicants in the case were demanding to receive ARV treatment without having gone through the assessment and counseling required by the national guideline. He went on to say that this could not be done "because that would be putting their health at risk", and that "the manner in which the judgment was made compels ... [the department] to do the opposite of what is required in terms of the national guidelines". (GCIS, 23 June 2006)

This is a misrepresentation of what the court actually ordered. On the basis of the undisputed medical evidence, the Durban High Court simply ordered the state to implement its own policy in a reasonable manner, as required by the Constitution. There is simply no talk of compelling the state to act in conflict with the national guideline. The judgment makes this plain.

A gut reaction some people have to the provision of ARVs in prisons is that many people outside of prison are not yet able to access such treatment. Why indeed should prisoners have access to treatment when approximately 500 000 South Africans need these medicines right now and are desperately struggling to access them?

Prisoners are extremely vulnerable to HIV infection and other illnesses, and are also completely reliant on the state for their medical care. Almost a third of them are awaiting trial, with thousands being released every month without ever standing trial. Many of those awaiting trial are too poor to afford bail. All of those sentenced with the option of a fine are in prison because they are poor. Not all prisoners deserve to be there.

But more importantly, the answer is not to deny people in the care of the state access to life-saving medicines, but to ensure that all reasonable steps are taken by the Minister of Health and her department to implement the public sector ARV treatment policy. These two things are not mutually exclusive - we have enough money to do both. What is lacking is leadership.

To get this right, the Minister has to do at least the following two critical things:

First, she must stop promoting pseudo-science. She should regularly and publicly encourage people to get tested for HIV. If they test positive, they should be encouraged to monitor their health with regular CD4 and viral load tests, and to begin taking ARV treatment when they need to do so. At the moment, the vast majority of people only find out their HIV status when they are very ill, rendering ARV treatment much more complicated and less effective, and increasing the burden on doctors and nurses. By encouraging people to get tested earlier, this burden can be alleviated and more lives will be saved.

Second, she needs to develop a comprehensive plan to resolve the human resources crisis in the health system. There are simply too few doctors, nurses, pharmacists, administrators, porters, counsellors and cleaners for the public health system to cope. Fixing this problem will not be easy and will require money. More importantly, it will require real leadership, as well as an express acknowledgement that the human resources for health "plan" released in April this year is wholly inadequate.

The Westville prisoners' judgment will help us to put more pressure on the Minister of Health to do her job and ensure that all people in South Africa who need ARV treatment can access it. While the Westville prisoners who took the state to court - and won - might for many people represent the worst of South African society, their actions in this case are likely to lead to the restoration of health and dignity for many of their fellow human beings.

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