

TAC Electronic Newsletter

By *moderator*

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Contents

? SA Government excludes TAC and AIDS Law Project from the United Nations Special Assembly on AIDS (UNGASS). At least six NGOs have been excluded from UNGASS.

? Press conference: TAC and HIV i-Base will host a meeting on Friday 31 March 2006 with delegates from around the world involved in HIV treatment literacy work. The purpose of the meeting will be to learn about each others methodologies and materials so we can better educate communities about HIV science, prevention and treatment. A press conference will be held at the Ritz Hotel in Sea Point, Cape Town to launch TAC's booklet, ARVs in Our Lives. The press conference is at 1pm.

For further details, contact Nomfundo Eland on 084 399 0022.

? Make HIV Prevention Work! - Satellite Conference and March - 23 April 2006

On the eve of the International Microbicides Conference in Cape Town on 23-26 April 2006, TAC and other organisations will host a community meeting on HIV prevention, followed by a march to the opening of the Microbicides Conference. We intend for this meeting and the march following it to be a watershed event in the struggle for more effective HIV prevention. All welcome. Details and agenda will follow in the next week. In the meantime, if you are in Cape Town on 23 April, please put aside time to attend the conference and march.

? When can public servants publically attack government policy? A press statement by the AIDS Law Project (ALP) following judgment in favour of Costa Gazi (represented by the ALP) in the Pretoria High Court.

? Prisoners at Westville Prison went on a hunger strike on Monday and ended it on Wednesday following negotiations with correctional service authorities. The strikers protested poor conditions in prison including no access to antiretrovirals medicines, inadequate nutrition and tardy renewal of cotrimoxazole prescriptions. The strikers singled out the prison doctor for his negligent service. The prison authorities agreed to suspend the doctor and to meet the prisoners' demands within two months. TAC and the AIDS Law Project will try to assist the prisoners by monitoring the situation to see that the correctional service authorities keep their promises.

? Article by Anton Harber that appeared in Business Day and a response to it by John P. Moore. Harber argues that TAC was wrong to interdict Matthias Rath. Moore disagrees.

? TAC and AIDS Law Project statement in support of Indian opposition to patent protection for GSK's Combivir.

? Equal Treatment March 2006 (Issue 19) has been received very favourably. The focus section is a simple guide to the science of HIV. You can download it [here](#). To receive a hard copy by post, please email et@tac.org.za with your mailing details. Below are notes answering some queries we have received.

[? www.aidstruth.org](http://www.aidstruth.org) is a new website dedicated to debunking the pseudo-scientific claims of AIDS denialists. We highly recommend it.

TAC and ALP Excluded from UNGASS

TAC and the AIDS Law Project (ALP) have learnt that we have been excluded from accreditation by the United Nations General Assembly Special Session on AIDS (UNGASS). We suspect that this occurred because the South African government objected to our participation.

Here is a chronology of events as we understand them:

- (1) UNAIDS submitted a list of organisations for participation in UNGASS. Some organisations were not on this list that should have been (such as the Network of Sex Work Projects based in Hong Kong - an informal alliance of sex workers and organisations that provide services to sex workers). But TAC, ALP, AIDS and Rights Alliance of Southern Africa (ARASA) and others were on this list.
- (2) National governments were then given an opportunity to review the list. Under a procedure outlined in the UNGASS December 2005 resolution, NGOs would be accredited under a no-objection clause.
- (3) We suspect that TAC and the ALP were excluded by the South African government (further details provided below).
- (4) Other NGOs, including ARASA, were excluded. ARASA is based in Namibia but conducts its work regionally. We suspect ARASA were excluded because the ALP sits on its board.
- (5) It has further come to our attention that the General Assembly reinstated some organisations that were left out. But we understand that TAC and ALP are not among those reinstated.

The procedure for reviewing the the list of NGOs proposed for accreditation for UNGASS was referred to in a 23 December 2005 General Assembly resolution.

Paragraph 8 of the resolution provides the following procedure:

1. GA president to draw up list of civil society representatives (other than those from NGOs with GA observer status) by 15 February 2006.
2. List to be drawn up "following appropriate consultations with Member States".
3. Take into account UNAIDS recommendations and principle of equitable geographical representation.
4. List to be submitted to Member States for consideration on a "no-objection basis" for a final decision by the GA.

Furthermore, paragraph 5 of the resolution encourages Member States and observers to include civil society representatives in their national delegations.

The resolution is available [here](#).

It appears that TAC, ALP and others were excluded by specific objection from member countries. In the case of TAC and ALP, we suspect this objection was made by the South African government.

This is the latest in a long list of intolerant actions by the Ministry of Health. For example, the South African country report submitted to UNGASS was sent without consultation of other NGOs, in contradiction of UNGASS policy. The country report describes an inaccurate rosy view of South Africa's response to the HIV epidemic. TAC will therefore send the report that we submitted to the African Union Peer Review Mechanism to UNGASS so as to present a more balanced picture of the South African government's response to the epidemic.

Below is a letter sent to the Minister of Health and copied to the Minister of Foreign Affairs. We asked the Minister of Health to respond within 24 hours, given the urgency of this matter. We received none.

28 March 2006

Dr ME Tshabalala-Msimang

Minister of Health

Private Bag X328

PRETORIA 0001

Per fax: (012) 325-5526 and (021) 465-1575

Dear Dr Tshabalala-Msimang

CIVIL SOCIETY PARTICIPATION IN THE UNITED NATIONS GENERAL ASSEMBLY SPECIAL SESSION ON HIV/AIDS (UNGASS)

1. It has come to our attention that the South African government has allegedly objected to the participation of the Treatment Action Campaign (TAC) and the AIDS Law Project (ALP) in the upcoming United Nations General Assembly Special Session on HIV/AIDS (UNGASS), to be held in New York from 31 May ? 2 June 2006.
2. It appears that as a result of this alleged objection, the TAC and ALP ? two of only six organisations across the globe ? have been denied accreditation for participation. The ALP and TAC both have strong ties to the AIDS and Rights Alliance of Southern Africa (ARASA), one of the other four organisations denied accreditation. Not only does the ALP sit on the board of ARASA, but it is also one of ARASA?s founding members.
3. The procedure for accrediting civil society organisations is set out in General Assembly resolution A/RES/60/224 (23 December 2005), which deals with "[p]reparations for and the organization of the 2006 follow-up meeting on the outcome of the twenty-sixth special session: implementation of the Declaration of Commitment on HIV/AIDS". Interestingly, paragraph 5 of the resolution encourages Member States to include civil society representatives in their national delegations.
4. According to paragraph 8 of the resolution, the following procedure was to be followed in respect of civil society representatives from organisations other than those with permanent General Assembly observer status:
 - a. The President of the General Assembly was to draw up a list of civil society representatives by 15 February 2006, "following appropriate consultations with Member States" and taking into account, inter alia, recommendations made by the Joint United Nations Programme on HIV/AIDS (UNAIDS).
 - b. That list was then to be submitted to Member States for consideration on a "no-objection basis".
 - c. A final decision was thereafter to be taken by the General Assembly.
5. We have been reliably informed that the South African government made use of the "no-objection basis" to ensure that the TAC and ALP were denied UNGASS accreditation. We also have reason to believe that the ALP?s relationship with ARASA was the basis for that regional organisation?s exclusion.
6. We believe that through our work we have demonstrated a clear commitment to constitutional democracy, active civil society participation in HIV prevention and treatment efforts, and the protection and advancement of the rights of people living with and affected by HIV/AIDS. However, this apparent attempt to silence civil society suggests an inability on the part of our own government to demonstrate a similar commitment.

7. We are concerned that this action may well be linked to the submission to the General Assembly of the official South African country report that was drafted in the absence of any meaningful engagement with civil society. We are fearful that objecting to the presence of the TAC and ALP is an attempt to silence truthful and widely held opinions about the real character of our country's response to the epidemic.

8. We look forward to your timely response in which you either confirm or deny the allegations set out in this letter. In the event that the allegations are indeed unfounded, we trust that you will take all reasonable measures ? on an urgent basis ? to ensure that the TAC, ALP and ARASA are duly accredited.

9. Should you fail to provide an adequate response by the close of business tomorrow, Wednesday 29 March 2006, we will have no option but to take this issue to the domestic and international press.

Yours sincerely

Sipho Mthathi (TAC General-Secretary)

Mark Heywood (TAC Treasurer and ALP Head)

cc: Dr NC Dlamini-Zuma: Minister of Foreign Affairs

Ms NC Madlala-Routledge: Deputy Minister of Health

Mr J Ngculu: Chairperson, Portfolio Committee on Health

Mr TD Mseleku: Director-General, Department of Health

Dr A Ntsaluba: Director-General, Department of Foreign Affairs

Dr N Xundu: Chief Director: HIV/AIDS & TB Directorate

[END OF TAC/ALP EXCLUSION FROM UNGASS ARTICLE]

When can public servants publically attack government policy?

ALP Statement

Friday 24 March 2006, Pretoria: Today a full bench of the Transvaal Provincial Division of the High Court handed

down judgment in an appeal by Dr Costa Gazi against the Minister of Public Services and Administration and others (Costa Gazidis versus the Minister of Public Services and Administration; the Director-General: Provincial Administration, Eastern Cape Province and Magistrate Maqubela).

Background

In April 1999 Dr Gazi, in his capacity as a doctor in the public health service and as Health Secretary for the PAC, made a statement to the Daily Dispatch in which he said that the then Minister of Health, Dr Nkosazana Dlamini Zuma, should be charged with manslaughter for her Department's refusal to offer antiretrovirals to pregnant women living with HIV to reduce the risk of mother-to-child transmission of HIV. As a result, Gazi was disciplined because his comment was deemed 'prejudicial' to the administration of the Department.

Gazi's legal team argued that, to be convicted under section 20(f) of the Public Service Act, the government had to show that the comment of a public servant resulted in the management or administration of a government department (in this case the department health) being adversely affected. Nothing in section 20(f) forbids criticism unless it can be shown that such criticism adversely impacted on the administration of the relevant department.

Counsel for the Minister argued that the negative impact that the widespread circulation of Gazi's unrestrained criticism, included:

- ? Materially affecting the morale of the work-force in the department;
- ? That members of staff may be encouraged towards insubordination and unrestrained derogatory comments of the Minister;
- ? The negative effects of such statements on the emotional well-being of the Minister and the consequential effect on her ability to perform;
- ? A diminishing of the department's credibility and influence, dignity and image.

In his judgment, Bertelsmann J, rejected these assertions. He held that there was no evidence of prejudice and therefore overturned the original finding of misconduct against Dr Gazi.

Some significant extracts from the judgement are given below:

"42. It is common cause that the decision by the Minister of Health, the National Department of Health and the Government not to supply AZT to HIV-positive pregnant women because of the financial implications thereof, was hugely controversial. This Court can take judicial notice of the fact that the matter was hotly debated and that the Minister of Health came in for severe criticism.

43. Counsel for the respondents conceded that the decision not to supply AZT to HIV-positive mothers amounted to a conscious, deliberate and informed policy to sacrifice the life of babies that would contract HIV/AIDS because their mothers were not treated with AZT, in order to save the expense that would have had to be incurred if AZT was to be supplied to mothers suffering from the infection who were on the verge of giving birth.

44. It is hardly surprising that some members of the medical profession and of the public at large would describe this policy as a murderous one.

45. It is also clear that this controversy had been raging for some time before the appellant made the comments that led to disciplinary steps against him.

46. The criticism that was expressed of the government's policy and the Minister of Health may or may not have redounded to the "prejudice" of the provincial department of the Eastern Cape Administration. There is however, hardly any evidence, other than a disapproving description of the intemperate language that the appellant used, to indicate any prejudice allegedly suffered by the Department or the Minister.

47. Whatever the prejudice there may have been, however, certainly had been caused already by the time the appellant made his strongly worded comments.

48. If these comments, or the widespread criticism of the policy not to supply AZT, did cause any prejudice to the department of which the appellant was an officer, such prejudice already existed when the comments were made.

49. There can therefore be no causal link between the appellant's actions and any prejudice the department may have suffered.

50. Under these circumstances it is clear that there is no evidence upon which the third respondent could have convicted the appellant of the charge of having "caused prejudice to the department".

51. It follows that, in the absence of any evidence, the third respondent was not entitled to convict the appellant, nor was the second respondent entitled to confirm the conviction and sentence the appellant. The first respondent should therefore have upheld the appeal to her."

The result of this judgment is that in future it will be much more difficult for the Department of Public Administration to discipline public servants for speaking out and exercising their rights to freedom of speech on controversial government policies.

For more information, you can contact Dr Gazi at 082 920 0663 or Mark Heywood from the AIDS Law Project at 011 717 8600 or 083 634 8806.

[END OF GAZI CASE]

Freedom of Speech and Defamatory Lies: The TAC interdict against Matthias Rath

Below are two articles. The first is by Professor Anton Harber of Wits University. Harber, while sympathetic to TAC's struggle, disagrees with TAC's decision to interdict Matthias Rath for defaming the organisation. Underneath Harber's article is an article by Professor John P. Moore of Cornell University in which he disagrees with Harber.

For background to this discussion, see [TAC's newsletter of 3 March 2006](#) and the [court judgment](#) that interdicted Rath.

Bad idea to use courts to gag voices, even quacks by Anton Harber, Caxton Professor of Journalism and Media Studies at Wits University

Business Day, 15 March 2006

THREE times in recent months, the courts have intervened to censor material.

The first two cases - the ban on the publication of the Mohammad cartoons, and the blocking of a Mail & Guardian expose on Oilgate - caused a stir. The third, just last week, went largely ignored.

The Treatment Action Campaign (TAC) won an interim court order stopping vitamin peddlers and AIDS dissidents at the Rath Health Foundation from saying the TAC was funded by western drug companies to promote their antiretroviral (ARV) treatments.

Those concerned about the impact of AIDS and the destructive influence of AIDS dissidents celebrated the TAC court victory. The good guys got one over the bad guys, right?

The Rath Foundation is accused of encouraging people with AIDS to treat themselves with vitamin supplements rather than ARVs, so it is not a bad thing to silence them, right?

I picked up two lone voices of dissent. The Media Institute of Southern Africa (Misa) expressed "alarm" at this "unacceptable judicial censorship". It said the effect of the interdict was "no different" from the others imposed in recent months that caused such an outcry.

"Though Misa holds no brief for Rath and his questionable allegedly anti-HIV/AIDS conduct, the manner in which he has been restrained from making public statements offends against the principle of free speech and freedom of expression," Misa said.

The statement said that the TAC had "another more appropriate remedy" to deal with Rath, and that was to sue him for defamation. Similarly, Robert Brand of Rhodes University wrote a newspaper letter suggesting that this form of prepublication censorship was not an appropriate way to fight Rath.

The question is whether the Rath case is the same as these other cases.

We all accept, I believe, that in our constitutional democracy, prepublication censorship can be used only in extreme cases, the equivalent of "shouting 'fire' in a crowded theatre". In a South African context, this might arguably apply to language that provoked violence or race hate, for example.

Does it apply to someone who encourages others not to take medication that can keep them alive? Well, the thing is that it is not quite like that. Rath has not been prevented from discouraging ARV use, but has been prevented from saying certain defamatory things about the TAC. The order against him is an interim measure, pending a full defamation case against him by the TAC. It was one shot in a long and bitter war between the TAC (representing those who want to see our government denounce the AIDS dissidents and move faster in providing ARV treatment) and Rath (representing the AIDS dissidents).

The question one has to ask is what is the most effective way of dealing with Rath? Is it by silencing him?

I don't think so. I think it is by engaging in public battle with him, by exposing him, by embarrassing government for flirting with him (for that is the real source of his power and influence, isn't it?), by isolating and defeating him in the marketplace of ideas and information.

The TAC is good at this. But the tool they chose to use last week is a blunt one. It is one too often used by those who don't like what others are saying.

The TAC is perfectly entitled to defend itself against defamation. The law must protect us against false and damaging language. But the law also has to be careful about being used to silence people we don't like or agree with.

And the fact is that this is something of a side issue. If the law was being used to stop the Rath Foundation peddling fake cures and quack treatments, if it was being used to stop them undermining the drive to deal with AIDS fully and properly, then the law would be put to good use.

But to protect the TAC from an insult or two? Well, that is not really the issue, is it?

Harber is Caxton Professor of Journalism and Media Studies at Wits University. To discuss this column, visit www.journalism.co.za and click on The Harbinger.

Response to Anton Harber's Article by John P. Moore, Professor of Microbiology and Immunology, Weill Medical College of Cornell University, New York

Anton Harber's position is too theoretical for the real world we're dealing with here. He's missing a few points, principally that Rath is attacking TAC only to promote the sales of his company's products. I don't know what the law is in South Africa, but in the USA there are several legal restrictions on what companies can say and do when advertising their products.

For example, if the Red Cross came out against Coca Cola on the grounds that sugary drinks are bad for health, Coca Cola could not legally say that the Red Cross were being paid by milk producers to do so (unless they had solid evidence this were true). Conversely, and rather bizarrely, there's a law in Florida that prevents anyone from making any comment that could harm the sales of Florida Oranges or derivative products (e.g., Juice). This is in the USA, a country in which freedom of speech is, like South Africa, a constitutional right.

I also don't understand why Harber supports TAC suing Rath for defamation yet opposes TAC's seeking of an injunction. That's pedantic and hair-splitting; both strategies are designed to prevent lies from being uttered, to silence Rath. Harber might have a point if Rath hadn't previously made these false claims against TAC (it would be difficult to justify seeking a pre-emptive injunction to prevent him saying something he might want to say but hasn't actually said). But what TAC's doing is to seek to prevent a repetition of something that's provably false.

The final sentence of Harber's piece is also problematic. TAC is not seeking the injunction to protect itself "from an insult or two". That's not TAC's reason, and it implies that TAC are thin-skinned wimps who run to the courts when someone says a nasty word. Harber's missing the point: the injunction is surely being sought to prevent a commercial entity (Rath) gaining an unfair advantage in a sales war by making false statements about another organization (TAC). He's not insulting TAC, he's attempting to damage its credibility as an organization, because by doing so he can gain a competitive advantage that boosts the sales of his products (see above). It seems to me that Harber does not understand the underlying dynamics here.

[END OF DISCUSSION ON TAC INTERDICT]

TAC and ALP statement on Indian opposition to patent protection of GSK's Combivir

South Africa's Treatment Action Campaign (TAC) and AIDS Law Project (ALP) express their support for the Indian Network of People Living with HIV/AIDS (INP+) and the Manipur Network of Positive People (MNP+) in their opposition to a patent application filed in India by GlaxoSmithKline (GSK) for the fixed-dose combination of two essential antiretroviral (ARV) medicines - zidovudine (AZT) and lamivudine - which it markets as Combivir.

While extremely useful - it reduces the pill burden and thereby increases patient adherence to treatment - Combivir is not a new invention but rather the combination of two existing drugs. In line with international law, Indian patent law does not require the granting of patents for such products. Further, international human rights norms require of India's authorities - including its patent office - to -take measures necessary to ensure - the availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including antiretroviral and other safe and effective medicines?.

Indian patent law, which was amended in 2005 to give effect to international trade rules and allows opposition to a patent before it is granted, was recently invoked to prevent the granting of a patent on an essential anticancer drug - on the basis that the application claimed a new form of an old drug. INP+ and MNP+ are demanding that the Combivir patent application be rejected on similar grounds. We support their demands and express our solidarity.

In combination with another ARV medicine, the fixed-dose combination of AZT/lamivudine is used extensively in HIV treatment programmes across the world. Many of these programmes are reliant - as are people living with HIV/AIDS in India itself - on generic versions of AZT/lamivudine that are currently manufactured in India. Granting GSK a patent on Combivir will inevitably result in increasing the costs of ARV treatment in India and abroad.

Even in South Africa, where the fixed-dose combination product is produced under licence, many people rely on generic AZT/lamivudine imported under licence from India. The absence of affordable imports of the essential medicine will reduce domestic competition significantly, potentially resulting in higher medicine prices and consequently limiting treatment access.

[END OF TAC/ALP STATEMENT ON GSK PATENT ON COMBIVIR IN INDIA]

Notes on Equal Treatment Issue 19, March 2006

The focus of issue 19 is a layperson's guide to the science of HIV/AIDS. We have received very positive feedback on this issue. We are aware of one serious error which will be corrected in the online version: Page 2 (gray box) describes a Ugandan study "of nearly 10,000 people". In actual fact this study, from Rakai, Uganda, included nearly 20,000

people. (Mortality associated with HIV infection in rural Rakai District, Uganda. AIDS. 14(15):2391-2400, October 20, 2000. Sewankambo et al.)

Furthermore, we have received a number of queries about the article titled "How we know that condoms work" on page 15. It describes a study published in the Journal of Acquired Immune Deficiency Syndromes of sero-discordant heterosexual couples. Equal Treatment explains the study results as follows:

? Less than 2% of HIV-negative partners who consistently and correctly used condoms became HIV infected.

? Nearly 15% who used condoms inconsistently became HIV infected.

? Ten percent of people who never used condoms became HIV infected.

(Ref: [J Acquir Immune Defic Syndr](#). 1993 May;6(5):497-502.)

The query is: Why did the group who used condoms inconsistently have a higher sero-conversion rate than the group that never used condoms?

Equal Treatment is based in science but it is not a scientific journal. One of the magazine's objectives is to explain important scientific concepts to people living with HIV, activists doctors, nurses, policy makers and journalists. We try to balance accuracy with simplicity, which is a difficult task. We should however have prevented the confusion arising from the above description, which albeit accurate, is incomplete.

The original article shows this:

? The HIV incidence rate for women whose partners did not use condoms or only used them sometimes was 6.6 times the incidence rate of women whose partners always used condoms. This was a statistically significant result.

? In answer to the query we received, the difference in the incidence rate for women whose partners occasionally used condoms versus those who did not use condoms was NOT statistically significant. Interestingly, the male partner having AIDS symptoms was a statistically significant predictor of HIV incidence in women whose partners did not always use condoms.

At least 14 studies have shown that condom use is effective at reducing the risk of HIV transmission. They are reviewed at this [pubmed link](#).

- [AIDS Denialism](#)
- [Medicine Access](#)
- [Microbicides](#)
- [Patents](#)
- [Prevention](#)

- [South African Government](#)
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