

The Victims of 'Success': Mark Heywood Reflects on the Free State ART Crisis

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The following article, authored by Executive Director of the AIDS Law Project Mark Heywood, was originally published in the *Cape Times* and *Star* newspapers on 11 March 2009:

Somewhere around 1 November 2008 the death penalty was reintroduced in the Free State. Quietly, with the stroke of a pen, an official in the Department of Health in Bloemfontein signed a memorandum introducing a moratorium declaring that no new patients should be put on anti-retroviral (ARV) treatment. This was to be for the next five months ? until the new financial year, April 1 2009 -- when the funds would return.

Who was this official? Did he or she have a God complex, or was he an AIDS denialist who didn't believe that ARV treatment keeps people alive? Certainly a few of them still lurk within the corridors of the Free State Health department. In fact at the same time that ARV treatment was stopped an official provincial government publication was promoting garlic and the remedies of Tine van Der Mass.

Or did the official just not understand the law, the Constitution, the meaning of the right to health, or the huge life and death implications of the piece of paper that he signed that day?

Did the official think that the moratorium would save our government money and that he was doing his duty in terms of the Public Finance Management Act? Why did he not understand that the denial of ARV medicine is cost-creating, not cost-saving. It creates the added costs of managing TB, and other opportunistic infections. It puts sick people in hospital beds. For families it is the cost of a coffin, a burial, the loss of income. For a child it is the cost of a deceased parent.

Whatever, the explanation, it seems that he did not even inform the national Health Minister of his rueful decision.

In the days ahead, the effect of the moratorium began to be felt by those unfortunate citizens of the Free State who needed ARV treatment. Some had been prepared for starting treatment for weeks, a process known as 'adherence counselling' ? psychologically preparing themselves for the day that they would commence life-long treatment. At the back or the front of their minds was the prospect of recovering health, recovering strength, recovering hope. The life-restoring effect of taking ARVs is best described by Justice Edwin Cameron in his book 'Witness to AIDS'. He talks about feeling 'a miraculous new energy' and 'illness .. yielding to a nearly novel feeling ? renewed and joyful wellbeing.?

However, for people with AIDS in the Free State this hope was rudely interrupted when they crossed that arbitrary line marked '1 November' ? the day ARV treatment dried up. In the months ahead, more and more people came to clinics seeking ARVs, only to be sent away, told to come back some time in the future, that time unknown.

For overworked doctors and nurses this was an equally stressful period, even more so than usual. They were instructed to send sick people away from their health facilities knowing that they would not return. The probability of a person with a CD4 count of 10, coming back in a month, is small. The hope that health workers had developed, arising from their ability to use medicine to save lives, was suddenly dashed, bringing back memories of medicine in the time of AIDS that existed under the former Health Minister, Manto Tshabalala-Msimang.

Their feelings cannot be described. Neither can the agony or anxiety of people needing medicines, knowing that they

condemned must have wondered why there was no outcry.

And there were a lot of deaths. In cold statistics, the SA HIV Clinicians Society has calculated that at least 30 people died a day as a result of the moratorium.

These facts are galling. They make it hard to understand how the Minister of Health, Barbara Hogan, could have gone to the killing fields last week and declared that the Free State Health Department was 'a victim of its own success' and that the crisis (an understatement) was not the result of bad management.

The idea that the Free State is a victim of its own success is no more immediately believable than the claim that Schabir Shaik qualifies for medical parole. If we are to believe it the public is entitled to an independent enquiry to establish the facts of what happened.

It is strange comparing the public outcry over Schabir Shaik with the few lonely voices calling for accountability and an explanation of what happened in the Free State. Is it because the dead are poor and usually hidden? Are officials in the health department and the ANC resisting an enquiry because in the final stages of an election campaign inconvenient truths are less than welcome?

Arbitrarily stopping an essential health service must be an unlawful act. The illegality is compounded by the fact that it was not only ARV treatment that was suspended. Many other essential health services were cut back. The constitutional provision on the right of access to health care services and the jurisprudence that has built up around it must mean something in this context. If we allow tens of thousands of lives to be brushed under the carpet, it will be a dark day for democracy, a failure of the Constitution, and a harbinger of future moratoriums on life saving health services.

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