

# Premier Zille's views on HIV are misinformed and unscientific

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We take issue with Premier Helen Zille's views on HIV transmission, criminalisation and who deserves treatment. This is an expanded version of an article that was published in The Cape Argus on 15 November 2011.

Last week Western Cape Premier Helen Zille made various comments suggesting that the provision of healthcare to those who behave 'irresponsibly' should be reconsidered. Writing in her [weekly newsletter](#), the Premier noted that over half of the Province's budget is spent on 'preventable illness', while the 'scraps' are given to unpreventable conditions. This, she claimed, 'has further widened the gap between 'rights' and their 'essential corollary' responsibility'. Specifically citing people who contract HIV through 'irresponsible' behavior she rhetorically questioned why 'taxpayers must foot the bill without asking any politically incorrect questions' enough already!?. She later tweeted that 'if you duck responsibility, don't come running to the state when you need treatment?.'

A few days later ? at a provincial health summit ? the Premier went further to say that people who knowingly infect others with HIV should be charged with attempted murder.

The premier's views are possibly popular across the political spectrum, but they are misinformed and unscientific. This debate is repeated periodically. Here are some rebuttals of the arguments the premier puts forward:

- Doron Isaacs has [written a succinct rebuttal](#) of the criminalisation of HIV.
- Judge Edwin Cameron has [co-authored an in-depth explanation](#) of why criminalisation of HIV is wrong.
- Gavin Silber has previously [argued against the Premier's position](#) when she made similar arguments in 2009.
- Edwin Cameron and Nathan Geffen [debated David Benatar](#) on whether a person contracting HIV through his or her irresponsibility has a right to treatment.

This article first addresses arguments about why the Premier's arguments on responsibility are wrong. We then deal with criminalisation. Finally we deal with the Premier's concern that HIV treatment is taking resources away from unpreventable diseases.

Why the Premier's arguments on responsibility are wrong

## 1. The premier's proposal is unconstitutional

The Constitution says that everyone has the right to have access to health care services and that the state must, within its available resources, realise this right. The Constitutional Court has found that the state, because it has limited

resources, can limit the provision of a health service using reasonable criteria, such as how well patients will respond to treatment. But it is unlikely that the court would consider the way an illness was contracted to be a reasonable criterion.

## **2. Provision of health-care based on ?responsibility? Is impractical**

It is impractical to provide antiretroviral treatment depending on how people contract HIV. Health workers cannot be expected to investigate how their patients became infected. Besides being an invasion of privacy, it is often impossible to determine this reliably. Also, on what criteria is a health worker supposed to decide if the particular behaviour that resulted in infection was irresponsible or not?

## **3. The consequences of the Premier's proposal are untenable**

Consistently only providing medical care to people based on ?personal responsibility? leads to frightening consequences. It would mean cigarette smokers would not get treated for cancer. People who eat unhealthily would not get treated for type II diabetes or heart disease. The same for people who don't look after their teeth properly, or suntan too much and develop skin cancer, or sportsmen who over-train and injure themselves. There is no precedent for providing health-care only to people who live a life of perfect responsibility.

## **4. Treatment based on ?responsibility? discriminates against the poor**

People who can afford private health care would still be treated irrespective of how they contracted HIV, or for that matter any other ailments acquired through irresponsible behaviour. It is only poor people who use the public health system who would be affected by Zille's proposal.

## **5. Providing antiretroviral treatment is an effective way to reduce HIV transmission.**

Zille laments the large sums of money spent on AIDS treatment, as opposed to prevention. However, science shows that HIV-positive people on treatment with an undetectable viral load are unlikely to transmit HIV. Studies in several cities around the world have shown a decline in new HIV cases, as antiretrovirals are scaled up. On balance, the evidence shows that the rate of new HIV infections is declining in South Africa. Antiretroviral treatment is likely one of the factors contributing to this. Providing treatment as widely as possible is not only good for personal health, but is also a critical public health intervention.

## **6. Withholding antiretroviral treatment has huge costs**

People on antiretroviral treatment have almost normal life-expectancy. But people denied treatment will frequently get opportunistic infections and need to be hospitalised. Failing to provide treatment will cause poor families great emotional and economic hardship. Parents will be far more likely to die young and there will be more orphans.

Why the Premier's arguments on Criminalisation are wrong

## **7. Preventing HIV transmission should be based on science not morals**

Moral judgments about responsibility are easily made by people who never have to face the choices about sex that many poor people in this country constantly have to make. Reducing HIV transmission should be based on science, not moralizing.

In a Cape Argus interview last week, Zille claimed that countries in Europe that criminalized HIV transmission had ?beaten? the HIV epidemic. But no country in Western Europe, whether or not it has criminalized transmission, has had a large HIV epidemic. What does she mean by ?beaten?? If she means a reduction in HIV incidence, there is no evidence that criminalisation is associated with reduced incidence.

On the contrary, criminalisation will stigmatise the disease further and discourage people from getting tested and finding out their status. The Premier's response to this is to make HIV testing ?mandatory?. Besides the appalling human rights consequences of this argument, the state does not have the capacity to do this.

On the other hand, the programme of voluntary counselling and testing introduced into the health system is resulting in millions of people getting tested. Why would Zille want to change an approach that is starting to produce results?

### **8. People are most infectious just after becoming infected**

A challenge of HIV prevention is that people are most infectious just after becoming infected, when they do not know their HIV status and cannot yet determine it using standard tests. Neither criminalisation nor mandatory HIV testing can address this, but scaling up antiretroviral treatment might.

### **9. Criminalisation removes responsibility from uninfected people**

An important HIV prevention message is that people should take responsibility for their own HIV status. For an HIV-negative person this means assuming that your sexual partner or partners are HIV-positive and therefore practising safer sex. Criminalising HIV-positive people who have unprotected sex sends the message that their HIV-negative partners do not have to take equal responsibility to practice safer sex.

### **10. Current laws sufficiently deal with intentional transmission of HIV**

Very few people intentionally transmit HIV. Those that do can and should be prosecuted under assault laws. HIV is no longer a fatal disease, but a chronic condition much like diabetes.

### **11. We know of no other sexually transmitted infection whose transmission is expressly criminalised**

Human papilloma virus is a sexually transmitted infection and the cause of cervical cancer. Its transmission is not criminalised. Hepatitis is often transmitted sexually; it is frequently a lifelong chronic illness that is sometimes fatal. Its transmission is not criminalised.

It would be inconsistent to demand the specific criminalisation of only one sexually transmitted infection. It would be impractical to criminalise the transmission of most or all sexually transmitted infections.

### **12. It is extremely hard to scientifically determine who infected whom**

HIV mutates quickly and it is almost always impossible for genetic tests to determine routes of transmission to determine who infected whom.

### **Spending on HIV versus spending on the disabled**

The Premier argues that HIV treatment takes resources away from other health services, such as those for disabled children. In reference to deaf children, she claimed that "there are protests outside my office every week on almost every conceivable issue. Why is no-one out there protesting for the rights of these children? Is it because people with disabilities are not regarded as fully human??"

### **13. The Premier has missed opportunities to provide care to the disabled**

But both the Western Cape and national governments opposed a court action on behalf of severely mentally disabled children requesting special provisions for their education.

Although the case was brought against the Western Cape government when the ANC was in power, it was only heard in 2010, a year into the DA's rule. The Premier had the opportunity not to oppose the plaintiff's demands. Instead the Western Cape government argued, shockingly, that "for children who do not qualify for admission to special schools, no amount of education would be beneficial". The court found for the plaintiff.

Zille's comments create competition for resources between people with HIV and disabled people for limited public health sector resources. A better strategy would be to look for ways to make the public health system less wasteful and to get the private sector to take responsibility for a greater share of the health burden.

#### **14. Government can do more to reduce preventable illness**

The Premier is right to be concerned about the large burden placed on the public health system by preventable illnesses. But there are far more productive ways for government, both nationally and provincially, to reduce disease. For one thing condoms should be available in all schools, along with sex education programmes. Many youths have sex. Pretending they do not is a recipe for increased HIV incidence and teen pregnancies.

One of the biggest causes of preventable childhood disease and infant mortality is diarrhea. This is in most cases directly attributable to poor communal sanitation facilities in informal settlements. The provincial health department has an important role in monitoring environmental health and diarrhea in these communities. While much has been done to improve treatment of diarrhea, a lot more needs to be done to address the root cause. In August this year, a Western Cape Provincial Government presentation was released showing serious shortcomings with repairs of standpipes and toilets in informal settlements ? most faults reported were never addressed. Working with municipalities to ensure that there is adequate monitoring to identify problem areas ?and to then address them swiftly? would contribute enormously to reducing this easily preventable illness, which strains the public health system.

Premier Zille's prescriptions would violate the Constitution, discriminate against the poor, increase stigma, and ultimately be counter-productive. Her views might be popular, but if they were implemented they would cause terrible harm.

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#### **South Africans must take responsibility for their actions**

*By Helen Zille*

16 November 2011

Source: <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=267156&sn=Detail&pid=71616>

WCape Premier's response to the critique of her views by Silber and Geffen

Challenging "political correctness" inevitably sparks heated reaction from those with vested interests. But seldom have I seen such distortion and manipulation as [the article](#) by Gavin Silber and Nathan Geffen ("Zille's HIV claims just a sick joke" Argus November 15).

The article focuses almost entirely on rebutting a statement I never made. It invents a position, falsely ascribes it to me - and then seeks to challenge it. That qualifies as a "sick joke".

It is totally ludicrous to say that I suggested withdrawing treatment from those who contract AIDS "irresponsibly". How would one know? I have never suggested that the public health system stop treating any person (let alone category of people) with HIV.

On the contrary, I specifically emphasised, in my talk at the health summit, that the Province would "continue to provide the most comprehensive HIV/AIDS treatment in the country" -- acknowledged as one of the best in the world. This service was started by the DA during our short period in power in 2000. And we take pride in the fact that it has repeatedly won international acclaim.

I repeatedly emphasised our commitment to comprehensive treatment, because I know how opportunists manipulate emotive issues in their own interests. Geffen and Silber's article perpetuates the myth that underlies so much of our social pathology. They take the patronising view that South Africans are passive victims, unable to take responsibility for their decisions and actions.

The authors consider it discriminatory, intrusive and unconstitutional to require people to take personal responsibility

for ensuring that they do not pass a chronic illness on to others. They take the view that the HIV-negative partner is equally guilty. The authors seem to be unaware that most women have little choice in their sexual encounters and cannot ask men to wear condoms.

South Africa will remain in denial until we acknowledge that the root cause of our AIDS pandemic (and many other social problems) is the widespread practice of inter-generational sex with multiple concurrent partners. This is not merely a "moral" issue. Nor is it a private matter. It is a serious public health issue. It is a critical social issue. It destroys families, oppresses women, results in teenage pregnancies, spreads disease, entrenches poverty and costs the state billions each year.

This type of behaviour should be stigmatised, not condoned, or patronisingly justified in the name of "culture". It is worthwhile reminding ourselves that the history of social progress is the story of cultural change to eradicate destructive practices. Intergenerational sex with multiple concurrent partners is a profoundly destructive practice, and it is time we said so unambiguously. No amount of political correctness will stop me from doing so.

Geffen and Silber compare the sexual transmission of HIV to smoking and poor eating habits that also cause ill health. The difference, of course, is that the smoker injures himself. When HIV-positive people have unprotected sex, they potentially pass on a debilitating and incurable disease to others.

No-one can be assumed to have consented to unprotected sex if they did not know that their partner was HIV positive. Yet Geffen and Silber justify this on the grounds of sex being a sensitive and complex matter. So is alcoholism. But no-one condones drunk driving, precisely because it poses such a risk to others. And most citizens expect the state to intervene to protect people from harm, not merely treat them afterwards.

Geffen and Silber are correct to quote the constitution which says that "everyone has the right to have access to health care services" and that "the state must, within its available resources, realise that right". The operative words here are "within available resources". We do not have enough. Every time the state funds something preventable, something else loses out. If rational adults would merely take responsibility for their lives, there would be so much more left for unpreventable conditions. And we need to say so, loudly, clearly and often.

This week I attended the 10th anniversary celebration of the Smile Foundation -- with remarkable donors and dedicated doctors who ensure that children born with facial deformities have the chance of a normal life. The public health system should prioritise these terrible afflictions and not continue to make excuses for destructive sexual practices with devastating public consequences.

I believe, in this context, it is entirely appropriate to require people:

1. To know their HIV status by regular testing which the state should provide, free.
2. To end the practice of intergenerational sex with multiple concurrent partners.
3. To require people to inform a prospective sexual partner if they are HIV positive.
4. To use condoms during sex.
5. To empower women to say No, and to ensure men accept No to sexual advances.

There is absolutely nothing wrong with society requiring people to know their status, and acting appropriately on the basis of that knowledge - or face the appropriate criminal sanctions. Other countries expect their adult citizens to act responsibly. Why can't we?

### **Zille's reply muddled and misguided**

*By Gavin Silber and Nathan Geffen*

Source:

<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=267418&sn=Detail&pid=71616>

17 November 2011

Premier Helen Zille's muddled reply to our article is full of rhetoric and fist-banging, but it fails to respond, except angrily, to our considered and respectfully made points. Instead she sees fit to suggest that we have "vested interests" and that we are "politically correct" (whatever that tired term means). She ascribes views to us that we don't hold and implies we disagree with her on some issues which we actually agree upon.

Most astonishingly, the Premier claims that our response was characterized by "distortion and manipulation":

"The article focuses almost entirely on rebutting a statement I never made. It invents a position, falsely ascribes it to me - and then seeks to challenge it." ... "It is totally ludicrous to say that I suggested withdrawing treatment from those who contract AIDS "irresponsibly". How would one know? I have never suggested that the public health system stop treating any person (let alone category of people) with HIV."

Below are some of Premier's public comments made on the DA website, in the media, and on her personal Twitter account. We leave it to readers to decide if she is being truthful and whether this is appropriate behavior for the head of the Western Cape government and the leader of the opposition.

#### **SA Today Newsletter (6 November 2011)**

Speaking about the State's HIV/AIDS policy, Zille claimed that "Our response has largely had the effect of fuelling further denial and dependency by absolving rational (usually male) adults from the responsibility of changing their behaviour. Taxpayers must foot the bill without asking any politically-incorrect questions. Enough already! Especially when one confronts the under-funding of so many treatable health conditions."

#### **Interview with the Cape Argus (11 November 2011)**

"A person who consents to having unprotected sex without knowing the HIV status of their partner cannot expect the State to pick up the bill for treatment, without requiring an appropriate change in behaviour"

#### **Tweets on Responsibility and State Provision of ARVs**

**Twitter user:** Don't nanny state, let's encourage common sense!

**Helen Zille:** A nanny state when ppl don't act responsibly and then expect treatment.

**Twitter user:** Unsafe sex is a choice made by both partners."

**Helen Zille:** If it's a choice let them choose 2 fund treatment. 2gether. #irresponsibility"

**Twitter User:** Everybody decides 4 hm/hrsIf,its ur choice if u want to use a condom!!"

**Helen Zille:** If you don't, pay for yr own ARVs.

**Twitter User:** Yo @helenzille get off your high horse Madame

**Helen Zille:** Get off your entitlement horse and pay for your preventable disease yourself.

**Twitter User:** Keep your laws off of my penis.

**Helen Zille:** Keep your preventable illnesses out of the state's coffers. Pay for your own ARVs.

**Twitter User:** If you have consensual unprotected sex, fund your own ARVs.

**Helen Zille:** Absolutely. The state should pay for unpreventable illnesses..

**Helen Zille:** So you think that Intergenerational sex with multiple partners is OK? Pay for treatment

**Twitter User:** Keep the nanny state out of my bedroom please.

**Helen Zille:** Then don't come looking for the nanny state when you need treatment.

**Twitter User:** outrageous! Hahaha you think u can police individual sexual activity?!" .

**Helen Zille:** Be responsible or pay for your own ARVs.

No politician can devise solutions alone to the abundant challenges we face in South Africa. There are no silver bullets or quick fixes when it comes to complex social issues such as HIV. It is a great pity that the Premier seemingly failed to consult with civil society or experts before publicly making these misinformed and confusing statements, and that she has responded to legitimate criticism - the bedrock of active citizenship and robust democratic participation - with ad hominem attacks and spin.

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