

## South Africa: Advocacy and Litigation to Get Government Moving

South Africa has more HIV-positive people living in it than any other country in the world. However, in the late 1990s the South African government refused to implement effective HIV and AIDS prevention and treatment programs. One of the reasons for this refusal was AIDS denialism, in that President Mbeki and other policy makers questioned the link between HIV and AIDS. A second reason was the cost – in particular the high cost of anti-retroviral (ARV) medicine.

The Treatment Action Campaign (TAC) is an advocacy group run by people living with HIV and AIDS. During its campaign, TAC used many different strategies to convince the government to change its policy. It worked with scientists, academics, and health professionals. It sent activists and health workers to villages to provide the medicine and care that HIV-positive people needed. It used the media and public events to shame the government and international pharmaceutical companies and to fight stigma. It mobilized citizens through awareness-raising campaigns.

Nevertheless, the government did not change its policy. In August 2001, after the Medicines Control Council approved the use of Nevirapine to prevent mother-to child-transmission (MTCT), TAC filed papers with the High Court. TAC's papers said that the government's position was unconstitutional. TAC used analysis by an economist that showed that spending government money on MTCT prevention would save the government US\$90,000 per year by reducing expenditures on future HIV infections. The government's court papers said that a full rollout of Nevirapine would cost the government US\$33.3 million. TAC responded that publicly available budget documents showed that provincial departments of health underspent their budgets by about US\$63.1 million in 2000.

In December 2001 the High Court judge decided in favor of TAC. The court ordered the government to draw up a plan for a national MTCT prevention program. The judge stated that TAC's evidence showed that this was affordable. The government appealed to the Constitutional Court, but the judgment was upheld.

TAC then focused on ARV for adults. TAC established a research committee of health economists and medical professionals that produced a draft National Treatment Plan. TAC then persuaded the Congress of South African Trade Unions to co-convene a national meeting that brought together labor and business leaders with government officials to discuss the plan. TAC commissioned two research papers to support its argument. The first paper showed that the plan would save 3 million lives and prevent 2.5 million new infections by 2015. The second paper showed that the cost of providing comprehensive ARV treatment could increase from US\$31.8 million in 2002 to a maximum of US\$2.4 billion by 2015. However, the paper said that the costs were likely to be lower because of an expected drop in medicine prices and savings from having fewer orphans to support.

The government rejected TAC's plan and in 2002 TAC announced a civil disobedience campaign and threatened to take legal action again. Before TAC could file court papers, it received a leaked copy of a report from the government's Joint Treasury and Health Task Team that showed that an ARV treatment plan was affordable and would save hundreds of thousands of lives. TAC released this information to the public. The government then announced that the Department of Health had been instructed to draw up a plan for an ARV program in South Africa. After further delays, a plan was approved by the cabinet in November 2003.

In 2007 the South African cabinet approved a further strategic plan which committed the government to spending US\$6 billion on HIV and AIDS prevention and treatment over the period 2007-2012. This plan allowed for 1.6 million people to receive ARV treatment by 2011.

The constant decline in drug prices during the advocacy period assisted TAC's case. However, this was also partly due to TAC's efforts; in 2003 the Competition Commission of South Africa found in favor of TAC and partner organizations that had filed a complaint with the Commission about excessive ARV prices. The result was that several drug companies provided licenses to generic manufacturers who charged much lower prices.