



ALP-HEALTH DEPT TB SKIRMISH TO BEAR FRUIT?



Mark Heywood (right), chair of the AIDS Law Project with Dr Francois Venter, chairperson of the SA HIV Clinicians Society at the last AIDS conference in Durban.

A heated public spat in the longstanding feud between the national Health Department and the AIDS Law Project (ALP) at the Durban TB conference in July may yet lead to a healthier working tension between government and civil society.

The ALP chief, Treatment Action Campaign (TAC) treasurer and deputy chair of the South African National AIDS Council (SANAC) Mark Heywood, has since accompanied David Mametja, the health department's new (March this year) TB cluster manager on two new MDR/XDR TB site inspections. This followed a heated invitation made at the Durban TB conference.

Built with the first R400 million budgeted exclusively for TB drug-resistant patients last year (this year's budget is R289 million, rising to an expected R940 million next year), the sites are among the first three due to come on line in Kimberley, Klerksdorp and Fort Grey near East London. They will feature exclusive facilities for MDR and XDR patients, UV lights, extractor fans and open recreational spaces

'to make life as normal as possible for patients', says Mametja. He says Heywood taking him up on his offer and joining him on visits to Klerksdorp and Kimberley was 'a sign that the ground is fertile for fruit to come out'.

The ALP has been at the forefront of speeding up the government's rollout of ART and prevention of mother-to-child HIV transmission drug therapy, successfully using the courts or the threat of court action to enable public access to proven therapy over the last decade. These bruising encounters have alienated top state officials with a low-scale 'war' involving Western versus traditional medicine constantly in the news.

Mametja confessed to *Izindaba* that Heywood's public skewering of government at the Durban July conference and constant references to 'negligence and the government killing people' became a 'bit rich' for his blood. He devoted an entire conference plenary report-back to rebutting Heywood, ignoring conference protocol and outraging ALP-aligned delegates.

Mametja co-chaired the TB conference track on 'Patient and Civil Society' and said Heywood had the previous day 'gone to town outlining a non-caring attitude by the department, leading to lives being lost due to negligence and all sorts of things. Our DG (Thami Mseleku) tried to respond off the floor and it got quite heated. My difficulty was: do we let that go or find a way to respond to it? What fuelled my unhappiness was that in November last year they (the ALP/TAC) helped us put together the very strategic TB plan that Heywood was vilifying'.

Heywood accused government of allowing the TB epidemic to grow at a staggering rate while 'squabbling over human rights and other issues around HIV', citing statistics dating back to 1999 to illustrate how TB had burgeoned. He spoke of 'frank discussions' with former Health Director General Dr Ayanda Ntsaluba and former HIV/AIDS Directorate Chief Dr Nono Simelela as far back as 2002 when they 'admitted MDR TB was tipping to epidemic proportions'.

The ALP and TAC condemned Mametja's 'abuse' of his conference track chairmanship and accepted protocol. They described his behaviour as 'contemptuous of all those who presented and participated in the track'.

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Into the fray...

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The ALP wanted a national inspection of MDR TB hospitals, linked to a departmental commitment to finalise a 'clear national policy on MDR/XDR isolation'. This follows ongoing drama at several MDR TB hospitals with patient breakouts, demonstrations and provincially launched public health restraining court orders amid a human rights outcry over inpatient conditions. The latest ruling was by the Cape High Court (29 July), which ordered the legal detention of two Brooklyn Chest Hospital XDR patients until their sputum tests negative for 3 consecutive months.

The ALP called for the immediate rectification of all deficiencies identified at the MDR/XDR sites and the finalisation of regulations that allow for isolation of drug-resistant TB patients 'based on principles of justice and fairness'. This last topic drew heated debate when Mseleku confronted Heywood from the conference floor, accusing him of 'changing the words of an old HIV presentation'.

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He said human rights were not relevant to considerations of health policy in a developmental state. 'These are yesterday's debates', Mseleku added.

Heywood responded that while Mseleku conceded that the State's TB response was 'not without serious problems', his primary responsibility remained to the Constitution and not the Minister of Health.

In an obvious reference to imminent political regime change and amid raucous applause, Heywood said Mseleku held a position, 'on which millions of lives depend...I hope the next DG and the next government will be more humane in its approach to health in this country'.

Heywood earlier shared letters sent to him in his capacity as SANAC deputy chairperson in which health workers spoke of their frustration and anger at the lack of action on the part of government, despite several attempts to put the high incidence of TB in their communities on official agendas.

Constructive complaints led to witch-hunts

One wrote: 'If I report problems to the Department of Health, even in a constructive way, the whole thing turns into a witch-hunt and achieves nothing positive.'

On the controversial government MDR TB incarceration, Heywood asked why patients 'feel the need to escape from a hospital'. 'Why are there barbed wire and guards? We need to ask whether we are limiting human rights in a way which is dignified, as there is no legal basis for incarceration.'

He also highlighted the high levels of TB and MDR TB infection in workers at health facilities, questioning government commitment to infection control, which he said needed to be addressed as an emergency measure.

Speaking to *Izindaba* after the conference, Mametja said his first move

upon being appointed to the job was to hold a series of consultative workshops about the 'role clarification of various stakeholders' (April) – which the ALP/TAC spurned. 'For all of that to have happened and for Mark to have the audacity to stand up and accuse us of inaction, was a little too much for me. We acknowledge there are huge challenges, but we're not sitting here doing nothing. The TB caseload has dropped from 340 000 in 2006 to 333 000 last year and the defaulter rate has come down. We've also brought in the TB rapid diagnostic tools (3 - 7 days)...', he added.

Since Heywood's tour with him of two of the budding MDR facilities, Mametja has obviously mellowed. 'We left there recognising that we don't have to turn TB into an area of conflict and tension in the same way that happened for HIV/AIDS. We're open and transparent and willing to acknowledge our limitations. We want to work with others,' he added

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Nobody was asking the ALP/TAC to shed their independence; civil society organisations that spoke independently were crucial, 'but they must be informed by the realities on the ground'. He said nobody had expected to be dealing with a TB epidemic 'of this scale', using an apartheid-era architectural infrastructure that made infection control a nightmare.

He described his approach as 'responding to an emergency', and cited the Fort Grey Hospital near East London as a model new design with bungalows housing four patients each. The CSIR was developing infection control standards and making



facility design input for the hospital revitalisation programme and the new XDR/MDR wards.

Outside view

In a recent contribution to a global TB cyber forum, Dr Richard Coker, author of *From Chaos to Coercion: Detention and the Control of Tuberculosis*, said he was 'intrigued by the discussions that surround the use of coercive

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interventions in communicable diseases'.

'The discourse seems to assume an emotional intensity that encourages polemic and positions grounded in the battlefield of personal-public rights and duties'. In his book, based on an examination of New York City's introduction of compulsory isolation of patients during that city's MDR TB epidemic in the late 1980s/early 1990s, Coker concludes that, when it comes to coercive interventions (as opposed to, for example, technological interventions), 'we seem willing to disregard the need to develop an evidence base'.

'And in pursuing coercive policies we may reject or neglect age-old legal traditions that protect some of society's most vulnerable members. The use of

coercion needs to be justified and the burden of justification should reside with the state. Thus an evidence base is required. The Siracusa Principles* demand this'.

Chris Bateman

*A group of 31 experts in international law, convened by the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human Rights and the International Institute of Higher Studies in Criminal Sciences, met in Siracusa, Sicily, for a week in spring 1984 to consider the limitation and derogation provisions of the International Covenant on Civil and Political Rights. The participants were agreed upon the need for a close examination of the conditions and grounds for permissible limitations and derogations enunciated in the Covenant in order to achieve an effective implementation of the rule of law. As frequently emphasised by the General Assembly of the United Nations, a uniform interpretation of limitations on the rights in the Covenant is of great importance. One of the crucial agreements was that all limitation clauses 'shall be interpreted strictly and in favour of the rights at issue'.