

Upcoming Events

Interfaith Service, St. Georges Cathedral, 12h30 and march to Parliament Monday 12 February 2001

Join the interfaith service at St Georges Cathedral and the march to parliament:

- Support the Medicines Act!
- Demand that the government import and produce generic HIV/AIDS medicines.
- Demand that the government increase the health and welfare budgets and reduce military spending;
- Scrap the Apartheid debt to finance health, welfare and education;
- Implement a country-wide mother-to-child transmission prevention programmes now!

TAC Provincial Conferences-

- February 17: Gauteng
- February 24: KZN & Western Cape

TAC will hold provincial conferences in Gauteng, Kwazulu-Natal and the Western Cape. These conferences will be an opportunity to discuss critical treatment access issues, formulate action plans and elect provincial executive committees. The conferences are open to individuals and organisations committed to fighting for HIV treatment access and better health care for all.

Western Cape Contact Linda - (021) 364 5489 Gauteng Contact Pholokgolo (011) 403 7021 KZN - Contact Sizwe - (031)304 3673

8th March 2001 • Women's Day

TAC encourages its members to participate in International Women's Day activities.

In March • Western Cape Workshop on Clinics

This workshop aims to improve the service offered by clinics and hospitals. A plan will be drawn up for visiting health care services to identify how they can be improved and how TAC can work with staff to ensure the supply of essential medicines. Contact Mandla on (021) 364 5489. Venue: TAC Office, Town One Properties, Sulami Drive, Site B, Khayelitsha. Contact Western Cape TAC office for dates.

18-21 March • TAC National Congress

TAC will be holding its first National Congress in March. All organisations who wish to participate in the fight for access to treatment are urged to send representatives. Treatment access issues such as mother-to-child transmission, the production of generic anti-retroviral treatments and financing will be discussed. Action plans will be formulated. The participating organisations and branches in the congress will elect a TAC Executive Committee. Please contact Zamo Zwane on (011) 717 8600 for further information. Where: Johannesburg (venue to be announced)

5th March 2001

Global Day Of Action

Stop Drug Company Profiteering!

Support the Medicines Act! Defend Brazil!

The case of the drug companies against the SA government is being heard in the Pretoria High Court. TAC has called for a global day of action. Activists around the world will protest the pharmaceutical company's action and the US government's bullying of poor countries.

Pretoria: Protest rally in Church Square and march to the US embassy.

Cape Town: Demonstration at US embassy Monte Carlo Building, Heerengracht Street;

Durban: To be announced.

10 Reasons to join the Treatment Action Campaign

TAC offers a supportive and comfortable environment for people with HIV. There is no pressure on anyone in TAC to disclose their HIV status. Many of our activists are HIV-positive and many are not. TAC is part of a growing global movement that is combatting the excesses of big business and the bullying tactics used by governments against poor people around the world. TAC refuses to take money from pharmaceutical companies or government.

1. Campaign for affordable, quality treatment and health-care for people with HIV/AIDS.
2. Campaign for AZT and Nevirapine for pregnant women to prevent mother-to-child transmissions.
3. Campaign for access to femidoms, microbicides and the treatment of women.
4. Promote an informed understanding of the treatments people with HIV/AIDS have a right to receive.
5. Campaign to promote openness about HIV/AIDS and fight discrimination.
6. Fight drug company profiteering and government neglect.

HOW WILL WE ACHIEVE OUR OBJECTIVES?

7. Build a mass TAC membership.
8. Build networks and alliances with unions, employers, religious bodies, women and youth organisations, lesbian and gay organisations and other interested sections of the community.
9. Maintain pressure and sustain awareness through posters, pamphlets, meetings, street activism and letter writing.
10. Research all relevant issues related to HIV/AIDS and treatment access. Produce high-quality research and advocacy documents for the public.

For more information on TAC contact:

Western Cape:	Contact Linda, Mandla or Nathan:	(021) 364 5489
Gauteng:	Contact Pholokgolo:	(011) 403 7021
KZN:	Contact Sizwe:	(031) 304 3673
website:	www.tac.org.za	
email:	info@tac.org.za	



TAC
TREATMENT ACTION CAMPAIGN

HIV POSITIVE equal treatment

Newsletter of the Treatment Action Campaign

February 2001
Vol 1

Stop Drug Company Profiteering

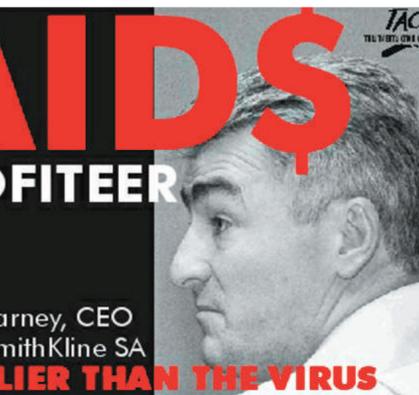
TAC supports our Government against the Drug Companies.

In a step towards ending apartheid in health care, Parliament passed the Medicines and Related Substances Control Amendment Act 90 of 1997, (Medicines Act). President Mandela signed the law on 25 November 1997. This law changes the old Medicines Act.

The new law contains measures that will make medicines more affordable and improve the functioning of the Medicines Control Council.

On 18 February 1998, the Pharmaceutical Manufacturers Association (PMA) and forty multinational drug companies tried to stop the Medicines Act by going to Court against the South African government.

After nearly three years of delays the case will be heard in the Pretoria High Court from 5th - 12th March 2001. In this period of delay,



more than 400 000 people have died of AIDS-related illnesses. Many people have died because they cannot afford expensive medicines.

The Treatment Action Campaign has called for a Global Day of Action on March 5th in support of the new Medicines Act. This law will give government the power it needs to make anti-

retroviral medicines available to all who need them. Anti-retroviral medicines control HIV and greatly improve the quality and length of life for those infected.

Do we Do we need a new medicines law?

Health care in South Africa is still racially divided and unequal. In the private sector are highly paid doctors and advanced and expensive medical facilities. This sector serves only 20 percent of the population - but accounts for 80 percent of national spending on health. On the other hand there is the public health sector, where 80 percent of the population seek care - but where only 20 percent of health expenditure takes place.

Making health care accessible to South Africa's poor is a constitutional duty facing the government. Our Constitution says that

everyone has the right of access to health care. The state has a constitutional duty to progressively improve health care access for everyone. The most important way to do this is to bring down the costs of medication and laboratory tests on which doctors rely.

What happens in private health care directly effects public health care. If private care is expensive more people depend on public hospitals. Doctors and nurses get more money in the private sector, drawing them away from government hospitals and clinics. That is why it is government policy to make private care more affordable, as this will reduce the burden on the public sector and make more resources available for poor patients in government hospitals.

One of the main ways ways to make health care more affordable is to bring down the costs of medicines. Lack of control of medicine prices in South Africa has allowed very high prices to be set for private doctors, clinics and hospitals. This has made private care so

continued top of page 2

Drop WTO action against Brazil now!

TAC supports the demand by Brazilian organisations that the US government drop its complaint against Brazil at the World Trade Organisation (WTO).

The US claims that Brazil's new patent legislation violates the WTO's Trade Related Intellectual Property Rights (TRIPS) agreement, because it allows the Brazilian government to issue compulsory licenses. A compulsory license would allow Brazil to continue making affordable anti-HIV medicines.

The US government complaint is an attempt to destroy Brazil's generic pharmaceutical industry which has significantly reduced medicine prices and saved the lives of thousands of people in Brazil with HIV/AIDS.

In 1997 Brazil accepted that it would have to fall into line with TRIPS. In future, when Brazil wants to produce generic anti-retrovirals the government will have to issue compulsory licenses. Legislation to allow for this is now being challenged by the US. This callous action by the US not only threatens the lives of the half million people with HIV in Brazil - it also hampers many third-world countries who hoped to follow Brazil's example.



The lesson of Brazil is that AIDS can become a manageable disease in the third world. To do this, government must have the power to bring down the price of AIDS drugs. The willingness of the big drug companies to negotiate prices arises only from the threat of competition from generic medicines.

The US complaint is unlikely to be successful because TRIPS allows for compulsory licensing and parallel imports. These measures are often

used by the United States government itself. Clearly this is an attempt by the US to intimidate Brazil and other poor countries attempting to break their dependency on multi-national pharmaceutical companies. The complaint protects the excessive profits of the big drug companies. The US action is not even in the interest of most American people who pay extremely high prices for pharmaceutical products.

Millions of lives are at stake in this case. TAC demands that the US government immediately drops the complaint to the WTO. TAC also asks WTO Director, Mike Moore, to immediately convene the dispute settlement body of the WTO. In line with TRIPS, the WTO should rule that any country is allowed to use compulsory licensing for products under patent to protect public health. Failure to do this will demonstrate that the WTO is defending

the interest of the USA and multinational companies. TAC calls on the South African Ministries of Foreign Affairs, Health and Trade and Industry to urgently issue a joint statement in defense of Brazil.

Join the Global Day of Action on 5 March against drug company profiteering

TAC is calling for a global day of action on the 5th March 2001 to expose pharmaceutical company profiteering and to express support for legislation introduced by the South African government to allow compulsory licensing and parallel importation of medicines. In light of the US complaint at the WTO, we are now also calling for our global allies to defend Brazil and demand that the complaint be dropped. Demonstrations are planned for Pretoria, Cape Town, Durban and New York, Washington DC, San Francisco, London, Paris, Sao Paulo and Sydney.

continued from page 1
 expensive that most people can't afford it. In 1999, 66 percent of people in a survey said cost was the main reason for not seeking health care when they were sick. 40 percent of African people said that access to medicines had got worse.

Your Health and Big Business

But why are the drug companies taking the government to court? Across the world, drug companies made sales of more than \$315 billion in 2000. This is more than the total economies of all 12 countries in the Southern African Development Community (SADC). The drug companies complain that the South African government wants to expropriate their property and that the Minister of Health will have too much power if the new Medicines Act is introduced. In fact, they fear competition and being exposed as profiteers from medicines. TAC supports the Medicines Act because it introduces a legal framework to make medicines more affordable in the public and private health care sectors.

How does the government intend making medicines more affordable?

The Medicines Act introduces four important elements to contain health care costs to government and the private sector.

- The Medicines Act will require pharmacists to inform everyone who buys medicines of cheaper generic alternatives to the brand name medicine. This is known as generic substitution. A generic medicine is a drug with the same active ingredient as the brand name drug. The patient will have the right to refuse the generic substitution. Generic substitution will also not be allowed if the doctor forbids it in the prescription. Generic substitution will *only* be allowed where the 20 year patent has expired

- Government will set up a pricing committee. In future the big pharmaceutical companies will have to justify the prices they charge.

- Section 15C of the Medicines Act allows for the parallel importation of medicines. Parallel importations means that government is not bound to purchase only from the local supplier of a particular medicine, and may shop around for the cheapest price.

- The Medicines Act also allows international tendering for medicines used in the public sector.

Why is the PMA going ahead with this action now?

Governments across the world recognise that the costs of medicines are unacceptably high. These measures are used in many countries to lower the price of medicines. Yet, the US

government and the European Union have supported the drug companies in their action against the South African government.

HIV/AIDS Activists in the USA and South Africa forced President Clinton to issue an Executive Order not to interfere with legal measures taken by governments in Africa to reduce the cost of medicines. The European Union also supports this position. But now, the new US administration under George Bush, is threatening to withdraw this order. After delaying their action against our government since 1997, is the PMA going to court now because they have a friend in the White House?

How Generic Substitution Will Affect You?

In 1995, 19 percent of South African households with an income of less than R885.00 per month relied on the private sector for health care services. They take their prescriptions to a pharmacy. Some doctors don't think of the costs, and get bonuses from drug companies for prescribing medicines. Generic substitution will make prices much lower for safe, good quality medicines. You will spend less on medicines and many more people will be able to afford medicines. The costs to the medical aids will be lower and fees will not have to rise as much.

Generic Substitution: What the Medicines Control Council says:

Professor Peter Folb former MCC

chairperson said: *"The South African public can rest assured that the generic medicines available to us in this country are thoroughly assessed and monitored; that they are of high quality and strictly comparable with the innovator products, and that the drive towards promoting the wider use of generic medicines is not in conflict with the public health. Generic medicines are demonstrably more affordable."*

Generic Substitution: What the Drug Companies Say

The drug companies claim that generic substitution is unfair discrimination. They also claim that generics are of lower quality than their brand name products. What is their real reason that the drug companies oppose generic substitution? Mr. G. Farber, then CEO of SmithKline Beecham told Parliament that: *"generic substitution will remove the ability of my company to retain the profits from its pharmaceutical operations to which it is entitled"*. TAC says Mr. Farber and his drug company friends will not lose profit - they will lose only the super profit they make from exploitation of the health needs of the country.

The experience of generics in the United States:

An official US government report stated that in 1996, 43 percent of the prescription drugs sold in the United States were generic. Twelve years earlier, the figure was just 19 percent. Generic drugs cost less than their brandname counterparts. Thus, generic medicines have played an important role in holding down national spending on prescription drugs. The Congressional Budget Office (CBO) estimates that by substituting generic for brandname drugs, consumers have saved between 8 to 10 billion dollars in 1994.

How was this possible?

This big rise in the sale of generics in the US came about as a result of three factors: The Drug Price Competition and Patent Term Restoration Act of 1984 - commonly known as the Hatch-Waxman Act - made it easier and less costly

for manufacturers to enter the market for generic, non-antibiotic drugs. Second, by 1980, most states had passed drug-product substitution laws that allowed pharmacists to dispense a generic drug even when the prescription called for a brandname drug. And third, some government health programs, such as Medicaid, and many private health insurance plans have actively promoted such generic substitution. If this is allowed in the US why do these mostly American drug companies not want us to do the same thing here?

Pricing Committee

The Medicines Act says that the Minister of Health must appoint a pricing Committee to make recommendations to the Health Minister

on the introduction of a transparent pricing system for all medicines. Drug companies will be allowed to set a single exit price for any medicine. Pharmacies will not be allowed to charge an amount higher than the exit price. Instead, the Pricing Committee will recommend a dispensing fee that pharmacists can charge any person.

Price controls - What the drug companies say?

The drug companies say that price controls will interfere with their constitutional right to trade. They want this provision in the Medicines Act to be declared unconstitutional. Drug companies argue that they spend money on research and development. However they never disclose how much they *really* spend on research and development. TAC supports the creation of a pricing committee that would be able to establish real costs of research, development and production.

Price Control in Other Countries

The South African Pharmacy Council notes that in major markets like Germany, Netherlands, Sweden and Denmark, governments have introduced some form of direct or indirect price control. Indirect Price Controls are applied through tendering, negotiations, and generic purchases in the public sector.

In 1987, Canada introduced a Patented Medicines Review Board. Drug companies tried to challenge the constitutionality of this measure and lost. Since 1987, Canadians have paid consistently less for prescription medicines.

Parallel imports

The price of medicines differ widely from country to country-even within the same company. For example, GlaxoWellcome makes the drug Zantac used for ulcers. Glaxo sells Zantac at a very low price in India and at a very high price in the USA or Indonesia. The Medicines Act allows the Minister of Health to import a medicine made by the same company if it is sold at a cheaper price in another country.

Parallel Importation - What the Drug Companies Say

The drug companies say that parallel importation conflicts with the World Trade Organisations rules on intellectual property. They are wrong. Article 6 of TRIPS - the agreement on intellectual property rights says that the agreement does not cover parallel importation. Many countries of the European Union and even the USA use parallel importing.

Parallel Importation - the Philippines Example

The most recent example of parallel importation has been from the Philippines government. The Philippine Department of Health and Department of Trade and Industry used a state-owned company to buy the same medicines from the same companies sold at a lower price in India. Instead of paying 5 million Phillipine dollars for the medicines, the shipment only cost the government 1.5 million Phillipine dollars. The drug companies in Phillipines took the government to court. They asked that the court stop the parallel importation by the government because it infringed their patents and other intellectual property rights.

The Phillipines Supreme Court court refused their application and argued that the parallel importation of medicines will be beneficial to patients in Government hospitals by making these drugs available to them at a cheaper price.

The Medicines Act deserves the support of all people in South Africa and internationally. It is an attempt to improve health care by lowering the price of essential medicines. In a country with over four million people living with HIV, this is especially important. If the Pharmaceutical Manufacturers Association succeed with their legal action, it will be an enormous blow, and could delay by many years the possibility of affordable medicines and quality health care for poor people in South Africa and throughout the developing world.

CIPLA offers HIV/AIDS anti-retrovirals at R400.00 per month!

Minister Erwin; support compulsory licences for anti-retrovirals now!

The Indian generic medicines producer, Cipla has offered all governments in poor countries triple HIV anti-retroviral therapy at less than R400.00 per month (US\$600.00 per year). It has also offered MSF these drugs R280.00 per month. These drugs include Nevirapine, Stavudine/D4T and Lamivudine/3TC.

TAC welcomes the unilateral and significant price reduction by CIPLA. Now, the only obstacles major in the way of access to HIV/AIDS medicines, are the patents of drug companies such as Bristol-Myers Squibb, Glaxo-SmithKline and Boehringer Ingelheim. TAC calls on the

government to use and produce generic anti-retrovirals. The government will have to apply for compulsory licences to accept the offers from Brazil and CIPLA.

Minister Alec Erwin and the Department of Trade and Industry must issue a statement of intent to apply for compulsory licences. Section 78 of the Patents Act (NO. 57 OF 1978) gives the Minister of Trade and Industry the power to issue a compulsory licence for generic anti-retrovirals. Section 58 reads as follows: "Acquisition of invention or patent by State.-The Minister (of Trade and Industry) may, on behalf of the State, acquire, on such terms and conditions as may be agreed upon, any invention or patent."

There can be no question that Minister Erwin has the power to negotiate licences for all HIV/AIDS drugs. Such a licence can be used to allow a range of generic producers to begin local generic production and, where necessary to import these drugs. TAC calls on the Minister Erwin to fulfill his constitutional obligations without delay.

Only a legal framework controlling profiteering will ensure affordable medicines on a sustainable basis. The majority of multinational drug companies have taken the government to Court. Every person in South Africa will benefit from cheaper medicines should this legislation pass. We ask everyone to join the Global Day of Action against drug companies profiteering and in defense of Brazil right to produce generic medicines.



Welcome to this special edition of Equal Treatment. There has never been more reason for people living with HIV/AIDS to be hopeful and optimistic.

Just yesterday Cipla Ltd. of India announced it would be supplying anti-retroviral triple combination therapy at less than R300 per month to Doctors Without Borders (Medicine Sans Frontiers). Although this is a limited offer it shows what can be done. Compare this to the R650 per month which is the best that the branded multinational pharmaceutical companies can come up with in their patent protecting deals with various African governments - and the importance of generics such as those made by Cipla is clear.

On this page we call on Minister Alec Erwin and the Department of Health to immediately issue compulsory licenses to make these generic medicines available. Our lead article calls for support for the government in the court action. The back page brings you a diary of upcoming events which allow you to add your voice to the call for effective treatment NOW for people living with HIV/AIDS.

This is the role of ET- to go where no newsletter has gone before in pointing out the way forward in confronting the HIV/AIDS crisis. We have the chance in the next two years to turn HIV/AIDS from a social and political crisis into largely a health care challenge. ET will contribute to meeting this challenge by bringing you health information and articles on how we can build a quality health care service that treats all people (and all health problems) equally.

Please feel free to submit letters and articles to ET at: <mailto:info@tac.org.za>
 For more information on TAC go to our website at: www.tac.org.za

CAPE TIMES

Blocking the fight against Aids

Unless they change their previous opposition to the importation of cheap anti-retroviral drugs into South Africa, the big pharmaceutical companies must stand accused of blocking the fight against HIV/AIDS.

As reported in the *Cape Times* yesterday, an Indian manufacturer, Cipla Ltd, has offered to supply top-of-the-range treatments to people with HIV for under R400 a month. This is one-tenth the current prices. With existing funds that means that ten times as many sufferers can be treated and have their lives significantly and usefully prolonged.

But the three drugs in question are under patent in South Africa and the big companies are certain to oppose their distribution. At present less than one percent of their profit margin is generated in Africa, yet they continue to maintain a dog-in-the manger attitude towards the sale of drugs on continent where the spread of AIDS is greatest. Last year they actually stopped generic drugs being sold in Ghana through legal threats.

It is an immoral situation that cannot be allowed to continue. People are dying needlessly, children are being orphaned prematurely and whole communities are being decimated merely through lack of access to drugs whose cost is kept artificially inflated.

One of the reasons why many who suspect they might be HIV-positive are not bothering to have themselves tested is their belief that expensive treatments that could treat their life expectancy are beyond their means. What Cipla Ltd has done is provide a life-line that would encourage far more people to confront their condition in the hope of surviving, with treatment, a lot longer.

Surely the government can play a stronger role here. There must be some way in which it can circumvent the pharmaceutical companies? holding the country to ransom in the interests of profit, when the overriding national need is to control the AIDS pandemic.

Cape Times Editorial, Friday, February 9, 2001

