

Justice After AIDS Denialism: Should There Be Prosecutions and Compensation?

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Edward Mabunda died on April 9, 2003. At least another 600 people died of AIDS in South Africa that day.¹ Edward was just 36 years old. He left behind a wife and 3 children. He was also a leader in the Treatment Action Campaign (TAC). He became an icon of the movement because of the fiery poetry that he recited to thousands of people. His poems urged former President Thabo Mbeki to make antiretrovirals (ARVs) available in South Africa's public health system. He died because he could not obtain these life-saving medicines in time.²

From 1999 to 2007, Mbeki and his Minister of Health Manto Tshabalala-Msimang obstructed and then undermined the implementation of highly active ARV treatment (HAART) and prevention of mother-to-child transmission of HIV in the public health system. Two studies, conducted independently of each other, conservatively calculated that over 300,000 people died because of Mbeki's AIDS denialist policies.³⁻⁵ Edward Mabunda was one of them. These studies could not account for additional deaths due to the promotion of quackery, often with the health minister's support. They also did not consider the number of infections that occurred because of the confusion generated by the insipid state-funded prevention campaign and the messages by some outspoken Mbeki supporters dismissing the link between sex and HIV infection.⁶ The Mbeki era also fostered a profound mistrust of scientific medicine, the consequences of which also cannot be quantified.

What, if any, repercussions should be there for those responsible for this tragedy? The Rome Statute of the International Criminal Court, to which South Africa is a signatory, defines the "intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population" as a crime against humanity.⁷ President Mbeki did not execute people with guns or bombs, but he did have the power and responsibility to prevent several hundred thousand deaths. Yet, he and his health minister chose to ignore the scientific consensus and the vociferous demands of South African civil society groups like the TAC. Questioning scientific consensus is the prerogative of a political leader, but in this case, the consensus was overwhelming. Furthermore, dissent from the consensus, that is, the arguments of AIDS denialists, had been shown to be ludicrous long before Mbeki became president,⁸ and the consequences of that dissent were always likely to be disastrous. Therefore, Mbeki must surely be held responsible for the disastrous aftermath of his policy choices.

This raises the possibility that he and Tshabalala-Msimang should be prosecuted. In 2003, the TAC laid a complaint of culpable homicide with the police against Tshabalala-Msimang.⁹ The organization provided a detailed "docket" describing the evidence against her. The complaint was largely symbolic and part of a civil disobedience campaign that would ultimately change government policy. But perhaps, it is time to go beyond symbolism.

I am unaware of any other case in the history of the modern democratic state in which so many have died because political leaders willfully contradicted scientific advice. However, there have been instances in which political leaders have been successfully prosecuted for negligent behavior with far greater extenuating circumstances. For example, Edmond Herve, the former French health minister, was convicted for his role in the

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contamination of his country's blood supply with HIV in the 1980s. Mbeki's folly is in danger of being repeated: political leaders who use pseudoscientific arguments to deny the reality of global warming are also at risk being culpable of many deaths. Setting a precedent that will make politicians think twice before making this kind of error is an important reason to prosecute Mbeki and his advisors.

What about those who aided or failed to stop his and Tshabalala-Msimang's policies? Alec Erwin, the Minister of Trade and Industry at the time, failed to take any of the steps available to him to bring down ARV prices and was consequently named as Tshabalala-Msimang's coaccused in the TAC docket. The Parliamentary Portfolio Committee on Health is responsible for oversight of the Health Department. Yet, its head, James Ngcucu, failed to hold Tshabalala-Msimang to account for her actions. Only a handful of the hundreds of African National Congress Members of Parliament spoke out publicly against Mbeki's policies. Only 1 provincial government, the Western Cape, implemented prevention of mother-to-child transmission and HAART programmes expeditiously. The premiers and health ministers of the other 8 provinces, for the most part, failed to do so.

Also, what about scientists like Peter Duesberg and David Rasnick who provided a veneer of scientific credibility for Mbeki's views? Can Duesberg, the most prominent scientist to promote AIDS denialism, claim that the principles of academic freedom and freedom of expression protect him from sanction? Or is his situation not analogous to a financial advisor who provides fraudulent information, except in Duesberg's case, the misinformation is deadly? Rasnick is even more implicated. He was found by a South African court to have conducted an unlawful clinical trial when he teamed up with vitamin salesman Matthias Rath and others to provide multivitamin tablets as an alternative to HAART to people dying of AIDS.¹⁰ He loudly supported and encouraged the South African government's refusal to provide HAART. He usually signed his articles as a member of Mbeki's notorious AIDS advisory panel that was convened in 2000 to create the impression that there was a genuine scientific controversy about the cause of AIDS.^{11,12}

What about Matthias Rath himself or the hundreds of other charlatans who provided quack treatments for AIDS with impunity during Tshabalala-Msimang's reign, despite legislation preventing the sale of unregistered medicines for viral infections? Hardly, any have been prosecuted. Rath, for example, has had a plethora of civil court rulings and regulatory body warnings and findings against him in Germany, the United Kingdom, United States, and South Africa.¹³ But, despite breaching South Africa's Medicines Act, for example, no criminal proceedings against him have been initiated.

There is also the question of compensation. Although it is too late for those who have died, surely their families are entitled to redress? Determining compensation would be extremely difficult of course. Over 2 million South Africans died of AIDS during Mbeki's reign. It is impossible to determine precisely that 300,000 lives could have been saved. For 1 thing, many people died without ever being tested and their HIV statuses will never be known. Nevertheless, at least

some families would be able to make unequivocal claims that 1 or more of their members died directly as a consequence of the state's failure to provide medicines.

Answering the above questions will be difficult and controversial. They raise profound legal and moral predicaments. Ideally, the South African government should establish an independent Commission of Inquiry whose purpose would be to provide recommendations on what, if any, action should be taken against those responsible for the country's AIDS denialist policies. Former deputy-health minister Nozizwe Madlala-Routledge, who was fired by Mbeki arguably for her anti-denialist position, has already suggested this.¹⁴ The commission should also consider the issue of compensation. South Africa's new president, Jacob Zuma, has the power to institute it. This would be an excellent way for him to demonstrate that he is serious about accountability for the response to the HIV epidemic. Surely such a process is the minimum that the victims of AIDS denialism, their families and friends are entitled to? Edward Mabunda would have thought so.

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