IN THE INTERNATIONAL CRIMINAL COURT AT THE HAGUE

CRIMINAL COMPLAINT OF GENOCIDE AGAINST

ABDURRAZACK ‘ZACKIE’ ACHMAT

To:

Chief Prosecutor Luis Moreno-Ocampo

International Criminal Court

Maanweg 174

2516 AB Den Haag/The Hague

The Netherlands

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THE ACCUSED

The accused subject of this criminal complaint is Abdurrazack Achmat (‘Achmat’), better known to his admirers by his pet name ‘Zackie’, a 44 year-old male, who conducts his business at 10 Main Road, Muizenberg, Cape Town, South Africa.

THE CHARGE

Achmat is guilty of genocide, the gravest crime among the ‘most serious crimes of concern to the international community as a whole’ specified in Article 5.1(a) of the Rome Statute of the International Criminal Court, and defined in Article 6:

> For the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group; […]

JURISDICTIONAL FACTS

South Africa (‘the state party’) is a party to the Rome Statute; Achmat is a South African national; Achmat has committed his crime on the

territory of the state party; there is no common law or statutory provision for the prosecution of genocide by the state party, with the result that Achmat's crime cannot be prosecuted by the national prosecuting authority in South Africa; and although Achmat commenced with the commission of his crime before 1 July 2002, the date on which the Rome Statute came into force, he has continued perpetrating it actively since this date, thus rendering him liable to prosecution before the International Criminal Court.

PARTICULARS OF THE CHARGE

Achmat directs Treatment Action Campaign ('TAC'), a professional lobby group that he founded in South Africa to shill on behalf of the multinational pharmaceutical industry by promoting the patented chemicals that it markets as so-called antiretroviral drugs ('ARVs') for the treatment of AIDS.

Although the TAC has criticized the pharmaceutical industry on the pricing of ARVs (thereby burnishing their commercial reputation brightly), and makes a show of being financially independent from it (but collaborates with organizations openly funded by it), to all practical effect the TAC functions in South Africa as its marketing agent.

Notwithstanding the nominal posts within the TAC formally held by dozens of salaried employees in provincial offices and sub-branches

all around South Africa, it is notorious that Achmat completely owns the organization, directs its agenda and operations, and deploys it as his personal executive for implementing them. In view of this, *Rapport* newspaper aptly described Achmat on 10 February 2002 as the mastermind ('*meesterbrein*') behind the TAC, and he is accordingly personally culpable for its criminal activities.

Since its inception in 1998 the TAC has engaged in an intense coercive, subversive political campaign against South Africa's democratic government to force it to enter into trade agreements with the pharmaceutical industry for the purchase of ARVs, and to provide these drugs in public hospitals and clinics for prescription and administration to the poor, overwhelmingly African. In this project the TAC has been entirely successful. Interviewed by the *Mail&Guardian online* on 30 November 2006, Achmat claimed – indisputably – that

> Our biggest success is that we got government to accept a treatment plan. [Our] second-biggest success: the mother to child prevention court case that we won.

Achmat's reference to his 'biggest success' was to achieving the South African government's capitulation on 17 April 2002 to his demand for the provision of ARVs in the public health system.

Achmat's 'second-biggest success' was obtaining, by means of false and incomplete information presented to court, a judicial interdict on 14 December 2001, confirmed on appeal on 5 July 2002, to force the

South African government to provide nevirapine, another highly toxic so-called ARV drug, in public hospitals to HIV-positive women in labour and to their new-born babies, nearly all African.

Achmat's claim that he 'got government to accept' his demand that it spend billions of rands on purchasing ARVs from the pharmaceutical industry, and to supply them in the public health system, implies that he forced this change of policy by the South African government against its will and better judgement. Indeed so: the policy change in question was the result of enormous local and foreign political pressure spearheaded and orchestrated by him. On Achmat's own version the provision of ARVs in South Africa's public health system is his personal achievement, for which consequences for their victims, to be detailed below, he bears full criminal responsibility.

The drug that Achmat commenced publicly campaigning for in 1998, and which he continues to champion, is AZT (zidovudine), then owned under patent by GlaxoWellcome (the patent expired in 2005), then and still marketed by the company (now GlaxoSmithKline) under the brand name 'Retrovir'.

GlaxoWellcome was engaged at that time in a heavy marketing drive to sell AZT to South Africa's newly elected first democratic government for provision to HIV-positive pregnant women. The company's goal was to generate a new, substitute medical indication for AZT, namely to prevent so-called mother to child transmission of HIV, after the drug had been reported to be an outright failure as a

treatment for AIDS in the biggest, best conducted clinical trial of the drug, the European Concorde trial. South Africa was targeted as a suitably vulnerable, strategic portal market for a commercial assault on the Developing World.

GlaxoWellcome's chief marketing tactic was to make repeated well-publicized price discount offers, increasing over time, to amplify the moral and political pressure on the South African government to accept its solicitation to trade. Gulled by this marketing ploy and by the sales propaganda being disseminated about the drug in the commercial media, Achmat joined hands with GlaxoWellcome in demanding that the government spend billions of rands on buying AZT to give HIV-positive pregnant women, and, as a second priority, to HIV-positive people generally.

About a year after Achmat started publicly agitating for the provision of AZT to pregnant women in South Africa, practically all African, President Thabo Mbeki went on public record drawing attention to the fact that the drug that Achmat was pressing on the government is in fact dangerously toxic. Addressing Parliament on 28 October 1999 he stated:

> Concerned to respond appropriately to [AIDS in South Africa], many in our country have called on the government to make the drug AZT available in our public health system. … There … exists a large volume of scientific literature alleging that, among other things, the toxicity of this drug is such that it is in fact a

> danger to health. These are matters of great concern to the government as it would be irresponsible for us not to heed the dire warnings which medical researchers have been making.

On the same day that President Mbeki alerted the people of South Africa to the serious hazard to health posed by AZT, the South African Press Association (SAPA) wired a report that Health Minister Dr Mantombazane Tshabalala-Msimang had confirmed to reporters that there was indeed

> a body of scientific research and information which indicated that AZT was a dangerous drug, and had not been designed for the treatment of HIV/AIDS. Because it was unable to target only the human immunodeficiency virus when it went to work in the body, it further weakened the immune system. There was also a danger that ... mothers taking the drug might produce children with disabilities. Tshabalala-Msimang said her ministry would not like to look back ten or fifteen years down the line and find it had exposed the vast majority of historically disadvantaged people in South Africa to a dangerous drug.

Two weeks later, on 16 November, Dr Tshabalala-Msimang again confirmed, this time by way of a formal statement in Parliament, that

> AZT is a drug that was developed for use in chemotherapy for cancer patients. It was, however, never used in cancer patients because it was regarded as too toxic to use. Tests have clearly

> shown that rats that were exposed to … AZT [in the womb during gestation], developed vaginal cancer. This is a very serious finding. Other toxicological data exists with respect to AZT, including damage to nerves, muscles and bone marrow. All of this data needs to be assessed very thoroughly. As the Minister of Health I have a responsibility for ensuring that South Africans get appropriate and affordable healthcare. This responsibility extends to ensuring that no healthcare intervention has a long-term negative effect on people.

Apropos 'the dire warnings that medical researchers have been making', as President Mbeki put it, in a large 'body of scientific research and information which indicated that AZT was a dangerous drug', as Dr Tshabalala-Msimang did, by the time these announcements were made in October/November 1999, a substantial corpus of medical and scientific literature had already been published to this effect, supporting a plea made as early as 1991 by Hayakawa et al. in *Biochemical and Biophysical Research Communications* 176:87-93 that

> for AIDS patients, it is urgently necessary to develop a remedy substituting this toxic substance, AZT.

In 1994 Lenderking et al. reported in the *New England Journal of Medicine* 330(11):738-43 that even at the lowest 500mg daily dose then and still recommended by GlaxoSmithKline in its package insert for the drug, AZT is so extremely toxic that the 'severe side effects' it

was found to cause ‘asymptomatic patients’ were ‘life threatening in some cases’.

The following year, in *Nature Medicine* 5:417-22, Lewis and Dalakas explained why:

> It is self-evident that ANAs [antiretroviral nucleoside analogues, such as AZT], like all drugs, have side-effects. However, the prevalent and at times serious ANA mitochondrial toxic side-effects are particularly broad ranging with respect to their tissue target and mechanisms of toxicity: Haematological; Myopathy; Cardiotoxicity; Hepatic toxicity; Peripheral neuropathy.

Mitochondria are the energy powerhouses inside all cells of the body. By destroying them or by inhibiting their functioning, AZT and similar ARVs kill or seriously damage blood, muscle, heart, liver and nerve cells.

That nucleoside analogue drugs such as AZT are extremely poisonous was noted again the following year in *Adverse Drug Reaction Bulletin*, No.178:

> The antiretroviral drugs currently licensed in the United Kingdom are zidovudine (azidothymidine) [AZT], zalcitabine (ddC) and didanosine (ddI). … All are very toxic. Suppression of bone marrow elements can occur with any of the three, as can peripheral neuropathy.

In fact, AZT is so ‘very toxic’ that in accordance with international industrial conventions for the labelling of poisons the chemical supply company Sigma-Aldrich Chemie Gmbh labels miniscule 25mg quantities of the drug for laboratory research use with a skull and crossbones icon set against a broad orange stripe to signify potentially fatal toxic chemical hazard to the handler upon accidental exposure, above the warning in six languages, ‘Toxic Giftig Toxique Toxico Tossico Vergiftig’, and spelt out in the following terms:

> TOXIC Toxic to inhalation, in contact with skin and if swallowed. Target organ(s): Blood Bone marrow. In case of accident or if you feel unwell, seek medical advice immediately (show the label where possible). Wear suitable protective clothing.

Taking cognisance of published research findings in this regard, Sigma-Aldrich’s latest version of the label also carries a warning that accidental contact or ingestion of AZT may cause cancer.

A few months before President Mbeki and Dr Tshabalala-Msimang’s warnings in Parliament about the dangerously harmful toxicity of AZT, Papadopulos-Eleopulos et al. reiterated Hayakawa’s et al. entreaty that AZT be ‘urgently’ abandoned as an AIDS drug, due to what the former identified as its ‘widespread, serious toxicity’ via ‘a number of biochemical mechanisms’. The conclusion of their extensive review, ‘A Critical Analysis of the Pharmacology of AZT and its Use in AIDS’, published in May 1999 in a special supplement to the prestigious academic medical journal *Current Medical Research and Opinion* 15,

squarely supported President Mbeki and Dr Tshabalala-Msimang's statements about AZT a few months later:

> AZT underwent clinical trials and was introduced as a specific anti-HIV drug many years before there were any data proving that the cells of patients are able to triphosphorylate the parent compound to a level considered sufficient for its putative pharmacological action. Notwithstanding, from the evidence published since 1991 it has become apparent that no such phosphorylation takes place and thus AZT cannot possess an anti-HIV effect. However, the scientific literature does elucidate … a number of biochemical mechanisms which predicate the likelihood of widespread, serious toxicity from use of this drug. … Based on all these data it is difficult if not impossible to explain why AZT was introduced and still remains the most widely recommended and used anti-HIV drug. [The continued administration of AZT] either alone or in combination … to HIV sero-positive or AIDS patients warrants urgent revision.

And just a couple of weeks before President Mbeki's statement on the subject in Parliament, Brinkman et al. emphasized in *Lancet* 354(9184):1112-5 that drugs in the AZT class

> are much more toxic than we considered previously. … The layer of fat-storing cells directly beneath the skin, which wastes away … is loaded with mitochondria … other common side effects of [AZT and similar drugs are] nerve and muscle

> damage, pancreatitis and decreased production of blood cells … all resemble conditions caused by inherited mitochondrial diseases.

Despite President Mbeki's warning in Parliament that there 'exists a large volume of scientific literature alleging that, among other things, the toxicity of this drug [AZT] is such that it is in fact a danger to health', a warning repeated by Dr Tshabalala-Msimang in Parliament and on many occasions in other fora since, Achmat has wilfully disregarded this information and has persisted in campaigning on behalf of GlaxoSmithKline and other pharmaceutical corporations on the basis that ARVs such as AZT are life-saving medicines.

However, not even the drug companies make this claim in their drug package inserts and product information releases because there's no evidence for it. Nonetheless Achmat falsely pretends in his TAC drug propaganda that these drugs save lives and that they make the sick well, when stacks of published reports demonstrate the contrary, i.e. that they induce serious disease in healthy people. (AIDS doctors call this phenomenon 'immune reconstitution syndrome': as the lab test results improve, the patient's physical health deteriorates – as might be expected from drinking poison.)

Given the toxicity of AZT, and its particular toxicity to blood cells, including immune cells, leading AIDS expert Professor Jay Levy of the University of California at San Francisco opined in *Newsday* on 12 June 1990:

> I think AZT can only hasten the demise of the individual. It's an immune disease and AZT only further harms an already decimated immune system.

No less an AIDS authority than the inventor of the HIV theory of AIDS, Dr Robert Gallo, truthfully swore (for a change) in Application No: 245259 on 17 May 1994 for a US patent on a novel treatment approach:

> the United Kingdom-Irish-French Concorde Trial conclusions … reported that the nucleoside analog zidovudine (AZT), a mainstay in the treatment of patients infected with HIV-1, failed to improve the survival or disease progression in asymptomatic patients.

Indeed so, but not only did the researchers in this major study of 1849 patients find AZT useless as a therapeutic drug, Phillips et al. reported in the *New England Journal of Medicine* 336:958-959 in 1997 that

> Extended follow-up of patients in one trial [of AZT], the Concorde study, has shown a significantly increased risk of death among the patients treated early.

This is to say, it's been known for a decade that the toxicity of AZT is cumulative, with the result that the longer the treatment with it, the higher the death rate.

On the ABC television show *Nightline* on 6 June 2001, Martin Delaney, director of the pro-antiretroviral drug lobby group Project Inform in San Francisco, foresaw a catastrophic epidemic of ARV-induced deaths in Africa, based on what he'd seen in the US:

> Well, I think the dilemma here is we've got to learn from what has happened here in the last 18 years and try not to repeat it, as we move into Africa … I can't overstate, I think, how severe the problems are with the current therapies. … People are dying from the effects of the therapies themselves in some cases. … People are suffering from severe life-threatening complications of drugs. And a lot of them get to the point where they simply can't use them anymore. So as we talk about bringing therapy to Africa, even if we can solve the problem and cost and infrastructure and delivery, I have this pang in my heart of are we doing the right thing, you know, with these drugs? Or are we unleashing another kind of epidemic over there of drug side effects as well?

Delaney's anecdotal but remarkably frank and unbiased observations from a professional ARV drug promoter were formally confirmed in 2003 by Reisler et al. in the *Journal of Acquired Immune Deficiency Syndromes* 34(4):379-86 under the title, 'Grade 4 events are as important as AIDS events in the era of HAART'. The study involved a review of the case files of 2 947 patients treated with ARVs between 1996 and 2001 to

> estimate incidence and predictors of serious or life-threatening events that are not AIDS defining, and death among patients treated with highly active antiretroviral therapy (HAART) in the setting of 5 large multicenter randomized treatment trials conducted in the United States.

In plain terms, the researchers' purpose was to determine the toxicity of ARVs having regard to the incidence of dangerous side effects, sometimes fatal. They began by noting:

> All 4 classes of antiretrovirals (ARVs) and all 19 FDA approved ARVs have been directly or indirectly associated with life-threatening events and death.

And they found that more than twice as many people had suffered a drug related (grade 4) life-threatening event as against an AIDS event. The most common causes of grade 4 events from drug toxicities were 'liver related'. 'Cardiovascular events', the researchers found, are 'associated with the greatest risk of death'. They concluded:

> Our finding is that the rate of grade 4 events is greater than the rate of AIDS events, and that the risk of death associated with these grade 4 events was very high for many events.

Treated with ARVs then, one's greatest risk of dying is not from an AIDS-defining disease but from ARV-induced 'cardiovascular events'.

In sum, Reisler et al. found the cure to be deadlier than the disease, and that ARV-induced heart failure is the leading cause of death among people treated with these drugs.

Consistent with these data, the Antiretroviral Therapy (ART) Cohort Collaborative has recently reported, in August 2006, in *Lancet* 368:451-458:

> The results of this collaborative study, which involved … over 20 000 patients with HIV-1 from Europe and North America, show that the virological response after starting HAART [Highly Active Antiretroviral Therapy (i.e. ARV drugs)] has improved steadily since 1996. However, there was no corresponding decrease in the rates of AIDS, or death, up to 1 year of follow-up. Conversely, there was some evidence for an increase in the rate of AIDS in the most recent period. [We noted a] discrepancy between the clear improvement we recorded for virological response and the apparently worsening rates of clinical progression.

A covering editorial in *Lancet* commenting on 'these somewhat paradoxical trends' summed up:

> The major findings are that, despite improved initial HIV virological control … there were no significant improvements in early immunological response as measured by CD4-lymphocyte count, no reduction in all-cause mortality, and a

significant increase in combined AIDS/AIDS-related death risk in more recent years.

This is to say that irrespective of the early transient effects observed on a surrogate laboratory marker for drug efficacy ('viral load'), a massive review study found ARV drugs to have no actual clinical benefits for the health of people given them. On the contrary, HIV-positive and AIDS-diagnosed people treated with ARVs were found to die of AIDS defining or 'AIDS-related' diseases at a higher rate than those who aren't.

It is relevant to mention that the laboratory test marker for 'improved initial HIV virological control' i.e. so-called 'viral load', considered for a decade to be an index of ARV drug efficacy, was itself discredited as a prognostic indicator the following month.

In a review of 2 800 HIV-positive cases, Rodriquez et al. reported in the world's biggest medical periodical, *Journal of the American Medical Association* 296(12):1498-506, that in more than 90% of cases, 'viral load' failed to predict or explain immune status. As the title to an article about it in the leading scientific journal *Science* 313(5795):1868 put it, contrary to popular medical belief, 'Study says HIV blood levels don't predict immune decline'.

As anticipated by the above-cited findings in the US and Europe, the following figures bear out the fact that the ARV drugs which Achmat has personally engineered into the South African public health

system, and which he continues to promote reckless of the President and Health Minister's warnings that they are dangerously toxic, are killing thousands of South Africans, mostly black.

According to information provided by Department of Health Media Liaison Officer Maupi Monyemangene on 6 October 2005,

> The Western Cape report showed that: – Out of a total of 4251 patients enrolled in 3 months, a total of 207 (4.8%) patients died. Out of the total of 2715 patients enrolled in 6 months, a total of 196 (7.2%) patients died. Out of the 914 patients enrolled in 12 months, a total of 114 patients (12.2%) patients died.

Plotted on a graph as X and Y values, these data reveal a perfect linear relationship between the death rate of people taking ARVs and the duration of their treatment; and they predict that within seven years everyone on ARVs will be dead.

Citing UN Integrated Regional Information Networks (IRIN) as its source, Reuters Foundation published an article on 14 Nov 2006, 'SOUTH AFRICA: Govt AIDS programme on course but people still dying':

> South Africa's Ministry of Health has confirmed that close to 6,000 HIV-positive people had died while receiving antiretroviral (ARV) drugs since the government rollout began in 2004 … just

> below 3 percent of the number of HIV-positive people accessing treatment at government ARV sites during the same period. Health department spokesman Sibani Mngadi said … 'The number of people being treated with antiretroviral therapy through our "Comprehensive Plan on HIV and AIDS" has increased [by] 60,000 in the past year to 235,378 by the end of September 2006.'

Having regard to the 'extended follow-up' findings in the Concorde study, and the rising rate at which ARVs are killing people in the Western Cape – the longer the ARV treatment, the higher the death rate – there is every reason to believe that reports of the nearly 3% national death rate on the drugs that Achmat has 'got' into the public health system in South Africa will soon equal Malawi's:

In an article on 1 November 2006, 'UN concerned about Malawi's rising deaths of AIDS patients on ARVs', the Chinese *People's Daily Online* reported (but no Western corporate media did) that

> United Nations Special Envoy for HIV/AIDS in Africa Stephen Lewis expressed concern on Tuesday over Malawi's rising number of deaths among people receiving HIV/AIDS treatment in the country. Lewis was speaking at the end of his three-day visit to the impoverished southern African country when he was briefed by Malawian government officials that the country was grappling with an 11 percent death rate of people who were receiving free antiretroviral (ARV) drugs in public hospitals.

> Malawi has managed to increase the number of people receiving free ARVs from about 4,000 two years ago to 70,000 at present.

It is trite and beyond any serious disputation that the overwhelming majority of South Africans being treated with ARV drugs and consequently being poisoned and killed by them are African, and Achmat is well aware of this. That Achmat wants Africans on ARVs is evidenced by his establishment of dozens of TAC mission stations in the African townships, and none in the white suburbs.

The manner in which African victims are selected for poisoning with ARVs in South Africa is by means of testing with non-specific HIV antibody tests – designed for blood-screening and not making diagnoses – followed by CD4 cell count testing.

According to the Americans who run the AIDS division of the South African Human Sciences Research Council ('HSRC'), and who, disregarding their manufacturers' instructions, misapply antibody tests to make epidemiological determinations of 'HIV Prevalence' in South Africa, black South Africans are riddled with the sex virus: 40.7% of women in the Zulu Kingdom for instance, and 37.9% of African women aged between 25 and 29 years countrywide; whereas nationally, only 0.6% of whites of both sexes and all ages are supposedly infected (per HSRC 'HIV Prevalence' report in December 2005). (This American junk science implies that young African women are about a hundred times more promiscuous than whites, and that,

unlike whites, they can't control themselves, and copulate randomly like dogs.)

Because 'HIV antibody' tests are not specific, about seventy unrelated health conditions have been documented in the medical and scientific literature to cause them to react positively, including simple malnutrition, TB, malaria, past pregnancy – even the common cold. And since as President Mbeki pointed out to the Leader of the Opposition, Tony Leon (in correspondence released to the media in October 2000), that 'even a child, from among the black communities, knows that our own "burden of disease" coincides with the racial divisions in our country', the African poor predictably show up 'HIV-positive' at a very substantially higher rate than whites. Thus by encouraging South Africans to 'get tested', Achmat and his TAC are directly involved in the Western medical *selektion* of the poor African majority in South Africa for poisoning off with ARVs.

Possibly accounting for his callous indifference to the human cost of his criminal conduct in marketing the pharmaceutical industry's useless and deadly toxic wares in South Africa, for consumption mainly by the African poor, Achmat attributes the high rate of 'HIV antibody' seropositivity among them not to the manifold health stresses that cause these non-specific tests to react, but to their prodigious, indiscriminate venery. This racist opinion of Africans was openly expressed in the *Guardian* on 10 December 2002:

> ‘The central problem,’ says Achmat, ‘is the absence of political will. Why is the president like this?’ … Achmat’s theory is this: ‘The president doesn’t want to believe that people in Africa have a lot of sex.’

To put a point on it, in Achmat’s view the undernourished African poor trapped in the peri-urban favelas and arid rural wastes have only themselves to blame when their health collapses.

HIV-AIDS Research Professor Jerry Coovadia of the Nelson R Mandela Medical School, University of KwaZulu-Natal, also a fan of ARVs for Africans, expressed the same racist view in a speech at the University of the Witwatersrand on 24 June 2003:

> As we stagger under the massive weight of AIDS [it is the] unbridled sexuality ... of newly independent people ... especially the promiscuity of men [that has led to] AIDS ... ripping through millions of our people.

According to this big time AIDS expert, the leading cause of the African masses’s susceptibility to TB and other diseases endemic among them is not malnutrition and other concomitants of poverty, it’s their orgiastic instincts let loose and running wild since the advent of their own democratic government.

Another energetic ARV salesman, Supreme Court of Appeal Judge Edwin Cameron, earlier expressed a concurring racist judgment of

Africans in the *Daily Dispatch* on 13 November 2001. They are rife with HIV, he suggested, on account of ‘sexual practice among African men’, their priapism being what he proposed as having chiefly ‘contributed to its spread’.

No less distinguished an expert on AIDS in Africa than the director of UNAIDS Dr Peter Piot (from Belgium) backed these racists up on BBC News on 14 September 1999, referring to ‘multi-party sexual behaviour deeply rooted in polygamous African societies’ – but not sexually continent European and American ‘societies’, he implied, where ‘multi-party sexual behaviour’ is extremely unusual, and where having a single sexual partner for life is the norm in those ‘societies’, being white, industrious and God-fearing.

It is not known whether Dr Francois Venter, president of the Southern African HIV-AIDS Clinicians Society, also thinks Africans have far too much sex. Nor is it known whether his American colleague Dr John Moore, professor of microbiology and immunology at Cornell University Medical Center, shares this expert opinion of Africans too. But being top AIDS experts like Dr Piot they probably do.

The second leg of the selection process for poisoning Africans with ARVs is CD4 cell counting, on the premise that such a count indicates a person’s immune status, i.e. his health. But as early as April 1994, having employed CD4 cell counts as a surrogate marker for drug efficacy in the Concorde trial, the researchers reported the irrelevance of this laboratory measure and its lack of a correlation to

clinical health in *Lancet* 343(8902):871-81, noting that the results of the study

> call into question the uncritical use of CD4 cell counts as a surrogate endpoint for assessment of benefit from long-term antiretroviral therapy.

In their review ‘Surrogate End Points in Clinical Trials: Are We Being Misled?’, published in *Annals of Internal Medicine* 125;7:605-13 in 1996, Fleming and DeMets pointed out that CD4 cell counts are in reality

> as uninformative as a toss of a coin … Effects on surrogate end points often do not predict the true clinical effects of interventions. … Three … trials, including the Concorde Trial showed an inverse relation between survival and improved CD4 cell counts.

Which is to say, the better you got on AZT according to your CD4 cell count, the faster you died.

And a paper, ‘HIV infection, antiretroviral therapy, and CD4+ cell count distributions in African populations’, just published by WHO researchers Williams et al. in *Journal of Infectious Diseases* 194(10):1450-8, has yet again highlighted the unreliability of CD4 cell counting as a measure of health, by reporting considerable

> variability in CD4+ cell counts within and among human immunodeficiency virus (HIV)-positive and -negative African populations.

Plenty of HIV-negative people have CD4 cell counts below 350, they found, a figure that would get them diagnosed as having AIDS had they been HIV-positive. And they reported that HIV-positive people with low CD4 cell counts treated with AIDS drugs died off at just the same rate as those with high counts.

But in November 2006, the same month as the WHO researchers' paper was published, Achmat continued calling on people to 'GET TESTED' on the back page of his TAC magazine, *Equal Treatment*, that is to (a) submit to non-specific blood screening antibody tests so they can be misdiagnosed as infected with HIV, (b) have their CD4 cells counted so they can be misled about how healthy or sick they are and thereby terrified into going on ARVs, and (c) have their 'viral load' recorded so they can be misinformed about how infected they are and how soon they can expect to get sick and die of AIDS.

It would appear that the reason for Achmat's enthusiasm in pressing people to 'GET TESTED' with useless antibody-, CD4- and 'viral load' tests despite the above-cited data is because he's not mentally equipped to understand them, having left school with a Standard Six.

CRIMINAL MENTAL ELEMENT

Article 30 of the Rome Statute provides that

> 1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
> 2. For the purposes of this article, a person has intent where:
> (a) In relation to conduct, that person means to engage in the conduct;
> (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
> 3. For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

Since October/November 1999 when President Mbeki and Dr Tshabalala-Msimang cautioned the people of South Africa against the dangerously harmful toxicity of AZT, Achmat's genocidal conduct in pushing these drugs has been committed with deliberate criminal 'intent and knowledge' in that, as a direct 'consequence' of his actions, thousands of South Africans, mostly black, would likely be killed or seriously harmed in the 'ordinary course of events'.

FACTS VITIATING ANY DEFENCE OF MISTAKE OF FACT

It is conceivable that when, like a Nazi at Nuremburg, Achmat is confronted with the enormity of his crime particularized in the International Criminal Court's bill of indictment, he may attempt to raise a defence of mistake of fact, as contemplated in Article 32.1:

> A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

This is to say, to escape punishment, Achmat may try apologizing from the criminal dock and contend that he really thought he was on a life-saving mission rather than a genocidal one. In this event it is likely that he will plead that he didn't make it beyond his first year of junior high school and consequently lacks even the most rudimentary high school tuition in biology and general science. Achmat may accordingly argue that that the reason he persisted in his criminal conduct, even after hearing President Mbeki and Dr Tshabalala-Msimang's warnings about the grave dangers of AZT in Parliament, was not because he didn't want to see his millions in foreign funding dry up and his new career as a world famous pharmaceutical industry pimp implode, but rather because he was too stupid and too ignorant to understand what President Mbeki and Dr Tshabalala-Msimang were saying.

As convincing evidence of this, Achmat may cite a statement he made in the *Saturday Star* on 12 January 2002:

> It can only be Thabo Mbeki's belief that antiretrovirals like AZT are toxic and destroy the immune system. There is no other explanation for the paranoia that's going on.

Achmat was apparently referring to President Mbeki's point in his letter to the said Tony Leon on 1 July 2000:

> In your letter to me of June 19, you make the extraordinary statement that AZT boosts the immune system. Not even the manufacturer of this drug makes this profoundly unscientific claim. The reality is the precise opposite of what you say, this being that AZT is immuno-suppressive. Contrary to the claims you make in promotion of AZT, all responsible medical authorities repeatedly issue serious warnings about the toxicity of antiretroviral drugs, which include AZT.

However, none other than the US Food and Drug Administration provided support for President Mbeki's statement a decade earlier in a press release concerning AZT on 5 March 1990:

> The drug [AZT] can inhibit the production of red blood cells and may reduce white blood cell counts [which include immune cells] to the point where the drug has to be discontinued to avoid infections.

GlaxoSmithKline itself cautions in its ‘Prescribing Information’ for AZT:

> Patients should be informed that the major toxicities of RETROVIR are neutropenia and/or anemia.

Neutropenia is defined in the *Oxford Concise Medical Dictionary* as a

> decrease in the number of neutrophils in the blood. … It results in an increased susceptibility to infections. … [A] neutrophil [is] a variety of granulocyte (a type of white blood cell) … capable of ingesting and killing bacteria and provides an important defence against infection.

And in their standard text *Nucleoside Analogs in Cancer Therapy* (New York: Marcel Dekker Inc., 1997), Cheeson, Keating and Plunkett underscore this gravely harmful effect of AZT-class drug treatment on the very first page of their foreword. Due to their

> potent immunosuppressive properties … profound immunosuppression … often accompanies therapy with nucleoside analog drugs. … they have a number of associated toxicities, some of what may be severe. Of particular concern is immunosuppression which is uniform with standard treatment programs. Each of the nucleoside analogs is associated with a profound lymphocytopenia [*depletion of immune cells*], with a reversal of the CD4/CD8, and opportunistic infections.

Even Judge Cameron, who commends Achmat as ‘a man of principle’ because he also pushes drugs, knows this, contradicting Achmat and confirming the lethal toxicity of ARVs in the Canadian *Globe and Mail* on 13 September 2003:

> ‘Of course the drugs are toxic,’ said Mr. Cameron, almost trembling with exasperation. TAC recently lost three prominent activists whose bodies could not withstand the drugs.

Following this clear-headed concession, the International Criminal Court may be somewhat perplexed by the senior jurist’s remark directly thereafter:

> But there is no question among credible scientists, he said, that ARVs are the only thing that keep most people with AIDS alive.

This opinion may be found particularly puzzling in the light of Mr Cameron’s self-estimation in an interview in the *Daily Dispatch* on 13 November 2001:

> I have no doubt that I have natural intellectual gifts.

But the mystery may resolve when the Court learns that this unusually gifted person said about a week earlier on the MNet television show *Carte Blanche* on 4 November 2001 that he’s the sort of bloke who talks to his drugs and asks them to enter him:

> I talk to them. I say, ‘You’re my allies. I want you to enter my virological system and I want you to fight with me against this alien invader.’

A month after Achmat’s equally stupid outburst in the *Star*, ignorantly disputing President Mbeki’s matter of fact statement that ARVs are toxic and destroy the immune system, Achmat frankly confirmed the obvious inference that he’s a total scientific moron in an interview in *Rapport* newspaper on 10 February (translated from Afrikaans):

> With great honesty the TAC has always tried to understand medical science. And this is something with which all South Africans have always struggled. We are scientifically illiterate.

(Presumably Achmat meant to include in this category Judge Cameron and his ‘virological system’.) Achmat admits, in other words, that he doesn’t ‘understand medical science’ because he’s unable to make any sense of the medical literature, much less read it with any critical intelligence. However, Achmat’s projection of his own intellectual deficits onto everyone else in South Africa is obviously not supported by President Mbeki and Dr Tshabalala-Msimang’s informed opposition to ARV drugs such as AZT and their concern about the serious danger they pose to the health of South Africans, mostly black. But Achmat’s foolishness in this regard may be explained by the general observation of the philosopher Arthur Schopenhauer, who once explained that

Intelligence is always invisible to the man who has none.

It may be that Achmat pleads from the dock in the International Criminal Court that his lack of a high school education is responsible for his inability to understand what President Mbeki identified as 'the dire warnings that medical researchers have been making' about AZT, and so for this reason failed to immediately quit supporting GlaxoWellcome's marketing operation to sell the drug to the South African government for the poisoning of the populace, mostly African, and instead apply his TAC's millions to a publicity campaign in South Africa to generally disseminate President Mbeki's warning that South Africans, mostly black, stood in serious danger of being poisoned by a criminal drug corporation dumping its toxic wares in South Africa on the basis of such fraudulent claims as AZT and similar 3TC 'Prolong Life and Delay Disease Progression', as GlaxoWellcome falsely advertised the drugs for African children in the April 2000 issue of *Modern Medicine of South Africa*, whereas in point of fact abundant research data already pointed to precisely the contrary conclusion on both scores.

Any defence to the charge that Achmat might seek to raise before the International Criminal Court that he's not fully criminally culpable and therefore not liable to punishment like any adult in his full sound and sober senses, because he's a self-admitted cretin in the field of medical science (and therefore perfectly qualified to be a member of the WHO's HIV Strategic and Technical Committee since 2004) and so he childishly and uncritically believes everything and anything drug

companies say about their merchandise in their marketing propaganda, will be vitiated by the fact that he has direct personal knowledge of the dangerous toxicity of ARVs that President Mbeki and Dr Tshabalala-Msimang have repeatedly warned against, inasmuch as he has personally experienced their toxic ill effects to the extent that he was very severely harmed by them, and then nearly killed by them a year later:

At a media briefing on 8 September 2003 Achmat said that four days earlier he'd swallowed his first dose of Triomune, a generic ARV cocktail of d4T, 3TC and nevirapine in one tablet. He'd immediately suffered a severe headache and an intoxicating light-headedness that made him feel 'high'. Within a few months the poisonous drugs had made him so sick that he'd become completely invalided.

An article in the *Daily Dispatch* on 28 May 2004 revealed that not only had the toxicity of his triple-combination ARV regimen crippled and incapacitated Achmat both physically and mentally, he had also been determinedly concealing this – for the reason that he had not wanted to lose face to President Mbeki and Dr Tshabalala-Msimang over this, by seeing their many public warnings about the toxicity of ARVs publicly vindicated by his admission that they had caused him severe injury, particularly since he had been vilifying them without any kind of decent restraint throughout their first terms as President and National Health Minister on account of their aversion to the drugs that he himself had now found too hot to stomach. And more than not lose face, he had not wanted to lose the political ground he'd won through

his relentless propaganda campaigning, by conceding that they'd been perfectly right about the drugs and he'd been flat wrong.

'Things have changed in Zackie Achmat's life,' went the report:

> Once readily accessible and always quick with a sound bite, a personal assistant now monitors the cellphone and diary of the chairperson of the Treatment Action Campaign (TAC) and screens visitors before ushering them into Achmat's study. ... As much as these changes signify a new level of structure in Achmat's life and the need to manage multiple requests for interviews, the more profound changes emerge from his first six months of anti-retroviral therapy and how this has forced the charismatic activist to review his life. … a frightening setback ... occurred in February and March ... which shook Achmat's self-confidence. ... 'Going into my fifth month I started feeling a sensation in my feet. At first I dismissed it, thinking I'd done something at the gym. The second week it was clear to me and I thought, "I can't let Manto win and I can't let Mbeki win", and I kept quiet for three more weeks.' When Achmat finally told his doctor about his symptoms, the nerves in his feet were so sensitive that he could barely walk. A change of drugs (from d4T to AZT) has arrested the situation and his left foot feels better, but he still can't put any weight on his right foot for any length of time, nor can he walk long distances. ... Achmat, who has a clinical history of depression, says that the fact that he was immobile for a week while his doctor tried to bring the side

> effects under control brought on a terrible depression, the worst he's had in two years.

In point of fact, AZT is no less neurotoxic than d4T: as nucleoside analogues the drugs are in precisely the same chemical class, and have substantially the same toxic pharmacology. Furthermore, the neurotoxicity of the drugs that had physically incapacitated him also appeared to have caused him conspicuous mental deterioration (an ill effect doctors call 'chemobrain') by late 2004.

The early indications of this in the *Daily Dispatch* report were confirmed by journalist Willemien Brummer, who observed Achmat during an interview published by News24.com on 1 December 2004. She was perturbed to notice that

> His words were bats that flew into each other in the dark. His sentences ended in mid-air. It was as if he looked at you through a dense layer of fog. It was during these times that I wondered what was happening to him. Especially when he cancelled press conferences and public appearances at the eleventh hour. … Between gulps ['of soup and a glass of orange juice'] he talks about his past and the complex interaction between the chemicals in his brain, his genes and the virus with which he was diagnosed in 1990.The HI virus already penetrates the brain during cero-conversion [sic]. ... Every patient's reaction to this penetration is different. Chances are good this can lead to depression and cognitive reduction

> and, during the final stages, even to dementia – a condition that usually only afflicts the elderly.

Achmat's own subjective appreciation of his deteriorating mental condition, his incipient ARV-induced AIDS dementia, was conveyed by his concern expressed to Brummer that 'Losing control of his mind [was] his biggest fear' – worrying to her like an increasingly senile old man aware that he is losing his marbles: 'As long as I hold on to my dignity.'

Brummer continued:

> And then came the physical side effects of the antiretrovirals. Especially peripheral neuropathy – a condition that takes place when the nerve endings are impaired; burning pains are felt in the feet and legs. It was so bad for Achmat, that by the fifth month of antiretroviral treatment he could no longer walk. 'I was totally melancholic and dysfunctional at the beginning of the year. I fought with my nearest and dearest, and I did not want to accept that I was experiencing side-effects.'

Achmat's phrase 'experiencing side-effects' would seem to be inappropriately light for being physically crippled and mentally reduced, but in any event the admitted fact that he had been seriously harmed by his ARVs within months of starting to swallow them flatly refutes his blatantly false claim on the back page of the

March 2006 issue of his TAC's *Equal Treatment* magazine, 'I am healthy again because of them.'

Anxious to project an impression that he was thriving on his pills, not sinking on them, Achmat insisted to Brummer:

> I have been fine since June. In September I went to London, Germany, Addis Adeba and back to London, and I managed three appointments a day. I returned from Durban on Tuesday.

What Achmat sought to imply was that 'since June' he'd no longer experienced the poisonous drugs as poisonous. Obviously the more likely reason is that, contrary to his claim in the caption to his happy mugshot in his *Equal Treatment* magazine, Achmat was in truth either no longer taking the drugs, or no longer taking them at the prescribed doses and at very much lower ones instead. This surmise is supported by Achmat's self-admitted public deceitfulness, and the perfect impossibility that a mix of three toxic chemicals that had made him extremely ill, should thereafter be experienced as benign and health-supporting, after substituting one of them for another almost chemically identical one.

Certainly he's made it clear that he doesn't want anyone checking up on him to make sure he really is taking his poisonous pills as prescribed (what doctors call DOT, i.e. Directly Observed Therapy – routine in TB treatment) because, as he said in the 7 May 2006 issue of the *Statesman*,

> That, for me, is unacceptable because it limits the autonomy and dignity of every person.

In reality, the reason Achmat doesn't want anyone catching him cheating by throwing his ARVs down the lavatory when no one's looking is because for most people they are unendurably toxic.

In a novel investigation to quantify the 'Prevalence of adverse events associated with potent antiretroviral treatment' in single, double, and triple regimens of ARVs, published in *Lancet* 358(9290):1322-7 in October 2001, Fellay et al. reported 'a high prevalence of toxic effects' in a cohort of 1160 patients. More than two thirds of patients on these drugs suffered side effects severe enough to affect treatment adherence – in other words prevent them taking the drugs as prescribed. Forty-seven per cent reported clinical problems like vomiting, diarrhoea, nausea, fat growth, mood swings, insomnia and fatigue. Blood tests revealed 'potentially serious' abnormalities among twenty-seven per cent. The researchers classed a 'significant proportion' of these adverse events as 'serious or severe'. Kidney dysfunction and severe fatigue that were 'probably or definitely' due to their HIV treatment led to some patients winding up in hospital.

More recently, the 'Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HIV and Recommendations for Postexposure Prophylaxis', released by the

US Centers for Disease Control ('CDC') on 30 September 2005, cited numerous studies reporting that

> as a result of toxicity and side effects among HCP ['health-care personnel'], a substantial proportion of HCP have been unable to complete a full 4-week course of HIV PEP … Side effects have been reported frequently by persons taking antiretroviral agents as PEP … In multiple instances, a substantial (range: 17%–47%) proportion of HCP taking PEP after occupational exposures to HIV-positive sources did not complete a full 4-week course of therapy because of inability to tolerate the drugs.

But Achmat makes out that he's taking these drugs at their full prescribed dose year after year, unaffected by their 'toxicity and side effects', which the CDC acknowledges prevents up to half of doctors and nurses completing a mere '4-week course of therapy because of inability to tolerate the drugs'; and instead of campaigning to warn people in South Africa that they face being poisoned and made very ill by the toxicity of ARVs, as he was – just as the findings of Fellay et al. and numerous other researchers predicted – he now goes about lying that he is 'healthy again because of them'.

Nevirapine, which Achmat was also taking, is neurotoxic too, and was reported to cause severe mental problems by Wise et al. in the *British Medical Journal* 324(7342):879 in April 2002, under the title, 'Neuropsychiatric Complications of Nevirapine Treatment'. A second

paper along the same lines was published in the same year by Morlese et al. in *AIDS* 16(13):1840-1841: 'Nevirapine-induced neuropsychiatric complications, a class effect of non-nucleoside reverse transcriptase inhibitors?'

In Achmat's case these 'neuropsychiatric complications' were in evidence almost immediately. He told journalist Jennifer Barrett during an interview published in *Newsweek* on 24 November 2003:

> The most remarkable thing after I started taking the medicines actually is that in the first three weeks, I became so depressed – I'd never been as depressed in my life.

An article wired by Associated Press on 15 October 2006, 'Scientists battle HIV dementia: Doctors can't predict which patients will suffer from "neuroAIDS"', helps explain Achmat's mental incapacity. Though first blaming HIV, the piece noted that

> Today, anti-HIV medication has resulted in a more subtle dementia that strikes four years or more before death: At first, patients forget phone numbers and their movements slow. Some worsen until they can't hold a job or perform other activities, but not everyone worsens – and doctors can't predict who will. … many specialists worry [that] nearly all of them may suffer at least some brain symptoms … memory loss and other symptoms of so-called neuroAIDS, which afflicts at least one in

> five people with HIV and is becoming more common as patients live longer.

After replacing d4T with AZT in his drug combo, imagining this would solve his problems apparently, Achmat claims that he continued with a daily fix of ARVs until 28 March 2005, when he suffered a major heart attack at the age of forty-three, following which he was rushed to hospital by ambulance and kept there for several days. This terrible misfortune was eminently predictable having regard to the reported findings of Reisler et al. (cited above) that (a)

> All 4 classes of antiretrovirals (ARVs) and all 19 FDA approved ARVs have been directly or indirectly associated with life-threatening events and death.

That (b) twice as many people on ARV drugs suffer a life-threatening toxic ill effect than what the researchers called an ‘AIDS event’.

And that (c), induced by toxic ARVs,

> Cardiovascular events are associated with the greatest risk of death.

In the same month that Achmat was falling down having his heart attack, kicking and groaning on the floor, McKee et al. were reporting one of the several ways in which AZT damages hearts in their paper ‘Phosphorylation of Thymidine and AZT in Heart Mitochondria:

Elucidation of a Novel Mechanism of AZT Cardiotoxicity' in *Cardiovascular Toxicology* 4(2):155-67:

> Antiretroviral nucleoside analogs used in highly active antiretroviral therapy (HAART) are associated with cardiovascular and other tissue toxicity associated with mitochondrial DNA depletion.

The reason, they explained, is that 'AZT is a potent inhibitor of thymidine phosphorylation in heart mitochondria'. What this means is that AZT wrecks the synthesis of cellular DNA and thereby poisons heart tissue.

And in a press release on 5 February 2001, when the US Department of Health and Human Services was announcing its abrupt renunciation of its 'hit early, hit hard' approach to AIDS with AZT and similar ARVs, a year after President Mbeki had formally drawn the world's attention to the dangerous toxicity of AZT, National Institute for Allergies and Infectious Diseases director Anthony Fauci explained:

> We are very concerned about a number of toxicities associated with the long-term use of anti-retroviral drugs. … We are seeing an increasing number of patients with dangerously high levels of cholesterol and triglycerides. … The bad news is that we now must find ways to deal with unanticipated toxicities, including the potential for premature coronary disease.

‘Premature coronary disease’ like Achmat’s – exacerbated by the dyslipidaemia found by his cardiologist, being what Fauci would call ‘dangerously high levels’ of lipids in Achmat’s blood.

Achmat consequently can’t successfully be heard to plead to the International Criminal Court for pardon for his crime on the basis that he’s what primary school teachers call a slow learner; that he’s an extremely stupid and ignorant person; that he honestly didn’t know what he was doing when duped and co-opted by the pharmaceutical industry into helping it push its useless, deadly drugs in South Africa; and for the same reason couldn’t make sense of what President Mbeki and Dr Tshabalala-Msimang were saying when warning the country’s people that they were in danger of being severely harmed by AZT; and that although at the end of his Parliamentary statement about AZT, President Mbeki said –

> To understand this matter better, I would urge the Honourable Members of the National Council [of Provinces] to access the huge volume of literature on this matter available on the internet, so that all of us can approach this issue from the same base of information.

– he, Achmat, didn’t even try following this advice himself, because as he’s said, he’s a ‘scientifically illiterate’ person, so the ‘huge volume of literature on this matter available on the internet’ would have been complete Greek to him. In the circumstances, it obviously behoved Achmat to ask someone intelligent to explain to him in

simple terms what it all meant, instead of turning a deliberate blind eye to it in the manner of the Nazi war criminal Albert Speer, not wanting to disturb his brilliant career by investigating evidence of the atrocious abuse of slave labour for war production taking place under his jurisdiction, much less putting a stop to it.

In the premises, it does not lie in Achmat's mouth to pretend to the International Criminal Court that he did not know about the dangerously harmful toxicity of ARVs that nearly killed him, and which are killing thousands of Africans in South Africa. He cannot claim a genuine mistake of fact as the basis of any defence excluding criminal responsibility, as envisaged by Article 32 of the Rome Statute, because he subjectively appreciated, from direct personal experience, that his criminal activity in South Africa was leading thousands of people to their deaths, mostly black, mostly poor.

FACTS EXCLUDING ANY DEFENCES BASED ON MENTAL DISEASE OR DEFECT

As he witnesses his defences collapsing under the mass of evidence of his crime led during his trial, Achmat may resort to applying to amend his plea to claim the protection of the special defence set out in Article 31.1(a) of the Rome Statute. This would provide him with immunity from conviction and punishment if he could show that he

> suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law.

In this regard, Achmat is on record repeatedly claiming to be mentally ill, in that he says he's suffered from severe depression from childhood, for which tragic medical condition he is being chronically doctored with mind dulling psychiatric drugs that alter normal brain chemistry. But whether the extent of Achmat's endogenous mental disease is advanced enough and/or the compounding 'slipping clutch' effect of his psychiatric drug treatment on his cognitive abilities is sufficiently pronounced to legally excuse his crime will only be determinable upon a full, extended medico-forensic investigation conducted in a suitable lock up mental hospital.

An obstacle to Achmat's reliance on the Rome Statute's mental infirmity defence will be his own doctor's cheerful assertion in an affidavit filed in the Cape High Court in 2006, in Case No: 12156/05, that

> Zackie is currently in complete control of his mental faculties.

Rather clouding the picture, however, Dr Andrews also noted that Achmat's ARV treatment had damaged not only the nerves in his limbs ('grade 2 peripheral neuropathy … being treated … with … neurological pain adjuncts') but his brain too, caused him 'sensory,

motor and proprioceptive' disturbances. The learned doctor leaves open the question as to whether as a result of his ARV intoxication he thought Zackie was previously not in complete control of his mental faculties.

At all events, whatever the court-appointed psychiatric panel's findings might be, Achmat's further deteriorated mental condition, apparent to several journalists after he commenced his ARV treatment, cannot avail him as the basis of a defence under Article 31, because its onset appears to have occurred after the commission of the principal act constituting his crime, namely coercing the South African government, in collusion with other pharmaceutical interest groups, to announce on 17 April 2003 that it would be providing ARV drugs in the public health system for provision to the poor, mainly African.

Although Article 31.1(b) provides that criminal responsibility will be excluded where

> The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law,

and Achmat may fairly contend at his trial that the neurotoxic effect on his brain of the ARV drugs that he took for a few months caused him to become so intoxicated that he no longer had his wits about

him, as all the journalists who interviewed him seemed to think, Article 31.1(b) disallows the defence where

> the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court.

Given President Mbeki and Dr Tshabalala-Msimang's repeated warnings about the dangerous toxicity of AZT, and the latter's specific mention in Parliament on 16 November 1999 that AZT attacks nerve cells, Achmat was on notice that he might become even more stupid on drugs of this type when he commenced to take them, because even the most dim-witted person knows that much of the brain comprises nerve cells. Achmat therefore cannot competently rely on the defence created by Article 31.1(b).

FACTS IN AGGRAVATION OF THE CRIME

In the International Criminal Court's deliberations on what suitable sentence to pass on Achmat following his conviction for genocide, several considerations will operate as aggravating circumstances.

Not only has Achmat deliberately disregarded the evidence of the grave harm that his continuing conduct is causing, he has also

venomously attacked President Mbeki and Dr Tshabalala-Msimang for warning about ARV drug toxicity and for emphasizing poverty and malnutrition as the principal causes of broken health (i.e. acquired immune deficiency) among the poor African majority in South Africa; and he has strenuously sought to discredit their due warnings for the protection of the South African public they serve against his toxic ARV drug agenda by attacking and insulting them personally and working to destroy their reputations.

Achmat's marketing of the pharmaceutical industry's ARVs has been conducted in a grossly dishonest and misleading manner in several respects:

He has puffed ARVs in a manner so at variance with the known facts about their debilitating, unendurable toxicity for most people that it would be illegal for him to have done so in the US, and would have exposed him to immediate arrest and prosecution were he to have marketed the drugs in that country on the back of the false claims that he makes in South Africa with impunity.

On 12 May 2001 the *British Medical Journal* 322(7295):1143 reported that

> The US Food and Drug Administration (FDA) has issued a warning letter to manufacturers of AIDS drugs cautioning them to tone down the optimistic tenor of their antiretroviral ... billboard and magazine ... drug advertisements. Thomas

> Abrams, director of the FDA's division of drug marketing, advertising, and communications said that current antiretroviral advertisements directed at consumers are misleading as they fail to depict the limitations of AIDS drugs and also feature healthy looking people … sexy and athletic models in the prime of health who were climbing mountains, sailing boats, and riding bikes. These are pursuits which are quite difficult for people with HIV infection, who have to take drugs several times a day that have debilitating side effects … The advertisements therefore violate the Federal Food and Drug Act.

Noting this move by the FDA, South Africa's governing party correctly predicted in *ANC Today* on 18 May 2001 that Achmat, his TAC, and other pharmaceutical interest groups would disregard this information and persist in enticing people to their deaths with misinformation about ARVs and false promises about the benefits of swallowing them:

> Most unfortunately, there is little chance that the politicians, corporate, medical, non-governmental and media people in our country, who are involved in a campaign that is not different from the one which the US FDA seeks to prohibit, in the public health interest, will listen and respond to the message of the US FDA. In the consequence, innocent people in our country will continue to suffer, even to the point of death, thanks, in part, to the wilful behaviour of these fellow South Africans.

Whereas the toxicity of his ARVs had crippled Achmat within months of starting treatment with them, he is currently pretending (in the *Cape Times* on 17 February 2006) that the drugs are now giving him a zest for life that he never had before, to the extent that he is even 'climbing mountains'. That is to say, he's now presenting himself as a poster-boy for ARVs in precisely the bogus terms and images that even the drug industry friendly FDA has outlawed as misleadingly false, namely of

> healthy looking people … sexy and athletic models in the prime of health who were climbing mountains, sailing boats, and riding bikes.

Just as Achmat fraudulently pretends to be so invigorated by ARVs that he's now 'climbing mountains', the November 2006 issue of his TAC's *Equal Treatment* magazine features a back-page ARV drug advertisement with a photograph of Judge Cameron grinning in his cycling gear, 'riding bikes', and claiming falsely, 'Antiretrovirals keep me healthy', alongside the caption: 'In 2006 he rode the 110 km Argus cycle race.'

As the *British Medical Journal* has pointed out, this sort of dishonest and misleading ARV advertising is illegal in the US and would get the persons involved in it thrown in jail.

Since he acts beyond the jurisdiction of the FDA in the criminally deceitful manner in which he promotes ARVs in South Africa,

Achmat's next ARV advertisement in *Equal Treatment* can be expected to feature 'healthy looking … sexy and athletic models in the prime of health … sailing boats' around Cape Point.

Not even the pharmaceutical corporations manufacturing ARVs claim that they have the medical benefits that Achmat and Judge Cameron falsely allege. For instance, AZT manufacturer GlaxoSmithKline says frankly about its new state of the art ARV Ziagen in its 'Product Information': 'Ziagen has not been studied long enough to know if it will help you live longer or have fewer of the medical problems that are associated with HIV infection or AIDS.' About Combivir, a combination of its drugs AZT and the chemically similar compound 3TC, GlaxoSmithKline concedes: 'COMBIVIR is not a cure for HIV infection and patients may continue to experience illnesses associated with HIV infection, including opportunistic infections.' Boehringer Ingelheim says about nevirapine: 'VIRAMUNE does not cure HIV or AIDS, and it is not known if it will help you live longer with HIV. People taking VIRAMUNE may still get infections common in people with HIV (opportunistic infections).' Merck is no more encouraging about its protease inhibitor drug in its package insert: 'It is not known whether Crixivan will extend your life or reduce your chances of getting other illnesses associated with HIV.' Gilead Sciences is equally pessimistic about its drug tenofovir, which the TAC is currently trying to ram through the Medicines Control Council approval process; its 'Product Information' reads: 'VIREAD does not cure HIV-1 infection or AIDS. The long-term effects of VIREAD are not known at this time. People taking VIREAD may still get

opportunistic infections or other conditions that happen with HIV-1 infection. Opportunistic infections are infections that develop because the immune system is weak. Some of these conditions are pneumonia, herpes virus infections, and Mycobacterium avium complex (MAC) infections.'

In marketing the pharmaceutical industry's ARVs in South Africa, Achmat has consistently underplayed their potentially fatal toxicity. His TAC pamphlet 'Immune Reconstitution Syndrome (IRS)', for instance, features a smiling 'healthy looking' black man in a sparkling white print shirt, looking 'sexy and athletic' and 'in the prime of health', announcing:

> I got sick with TB after starting ARV treatment.

The perverse, infantile, magical reason provided in the model's voice bubble for this health downturn is that it's 'because the TB that was sleeping in my body took a chance to wake up as my immune system began to recover'. Since ARVs are potent general metabolic poisons, as Lewis and Dalakas (cited earlier) have pointed out, further comment on this inane explanation for why healthy people fall severely ill when poisoned by them would be superfluous.

No manufacturer of any ARV alleges, as Achmat's TAC does in its propaganda piece on 'IRS', that its drug, alone or in combination, will make and keep a person who has fallen ill with TB 'well and healthy again'. This is because there's no reported clinical evidence

supporting this untruthful, wholly fabricated claim. On the contrary, numerous research papers have reported – and Achmat explicitly confirms this in his TAC's 'IRS' article – that ARVs actually induce such serious diseases as

> TB, Pneumonia, Cryptococcal Meningitis or generally [make people] feel sick.

The TAC's unbelievably stupid allegation in the 'IRS' piece that 'When you start ARV medication' you develop 'TB, Pneumonia, Cryptococcal Meningitis or generally feel sick' because 'your immune system gets stronger' on the drugs would seem to be par from an organization led by a mentally unstable and intellectually challenged person who brags of being 'scientifically illiterate'.

As mentioned above, Achmat's dishonesty in marketing ARVs on behalf of the pharmaceutical industry extends even to deceitfully concealing from President Mbeki and Dr Tshabalala-Msimang, and from the people of South Africa, the crippling harm that these drugs have caused him personally (mitochondrial myopathy, peripheral neuropathy and mental deterioration) and that nearly killed him (heart attack).

A particularly deplorable aspect of Achmat's criminal activity in hegemonizing the pharmaceutical industry's ARV drugs as the only permissible treatment modality for AIDS has been his campaign of cultural genocide in denigrating and undermining centuries-old

African healing systems and medical knowledge in South Africa, generally referred to in the West as Traditional African Medicine. Achmat smears as 'unethical' any traditional healer who treats people suffering from AIDS-defining illnesses with natural indigenous medicine, and who warns against the toxicity of ARVs; and he implies that such healers should be criminally punished. In an editorial under the subheading 'Stop unethical healers' in the May 2005 issue of his TAC journal *Equal Treatment*, he wrote:

> Some traditional healers spread dangerous messages. They claim they can treat AIDS and antiretrovirals are toxic. Their behaviour gives other traditional healers a bad name. This shows that regulation is needed so that the traditional healing profession will serve patients better. This is something traditional healers should support. If we modernise traditional medicine, it will benefit everyone, traditional healers most of all.

By 'modernise' Achmat evidently means that traditional healers should abandon ancient indigenous models of understanding and treating disease, and should adopt allopathic, capitalist, pharmaceutical bio-medicine, centring on the use of ARVs in cases of AIDS, thereby not healing but killing their patients.

Carrying on Achmat's attack on Traditional African Medicine, TAC treasurer Mark Heywood repeatedly demeaned it at the 16th International AIDS Conference in Toronto in August 2006, both in his speech before the plenary session and in a statement to newspaper

reporters after his TAC colleagues grabbed the vegetables on display in the South African government's conference booth, threw them on the floor, and stamped on them with their shoes. In both cases Heywood falsely contended that African traditional healers are useless in the treatment of AIDS; that they kill people by treating them ineffectively with traditional natural remedies; that treatment with the pharmaceutical industry's ARVs instead would save their lives; and that only the pharmaceutical industry's ARVs are any good for treating AIDS.

It is not known whether GlaxoSmithKline paid Mr Heywood to promote AZT and other ARVs in this way by paying his conference registration fees for him – as the corporation gladly did TAC lawyer Fatima Hassan's in 1998, shelling out R5000 so she could go around earnestly telling everyone at the 12th International AIDS Conference in Geneva that ARVs are a human right.

Even though he says he takes vitamin supplements every day, because he knows they're good for him, Achmat aggressively assails advocates of nutritional medicine, who point out that, being natural and non-toxic, essential micronutrients are much better at restoring sick people to health than synthetic, dangerously toxic ARVs; and in this manner he works as a craven servant of the pharmaceutical industry by entrenching its virtual monopoly on formal-sector healthcare in South Africa, particularly in the treatment of AIDS, with wide-scale fatal consequences, described above.

Achmat's repeated vicious attacks on the democratic government of South Africa (for instance, referring to Dr Tshabalala-Msimang as 'this criminal' on 25 March 2003, and filing vexatious criminal complaints against her with the police) have been carried out under the guise of a public benefit organization, with Achmat and his TAC claiming to represent 'civil society', as if he and his TAC do, rather than South Africa's liberation movement, the African National Congress, elected to power by an overwhelming majority of the popular vote, increasing with every election.

Achmat's pretensions to speak for the electorate (for 'civil society'), however, are laid bare by the fact that his TAC is entirely a child and tool of foreign commercial and political interests, has no genuine grassroots base in South Africa, and would be nothing without colossal foreign government and corporate funding – R38 million in 2006, according to a report on its website – to keep its otherwise unemployed staff in paid jobs and to finance its ARV marketing operation for the pharmaceutical industry.

The basic theme of the Achmat's vilification of South Africa's democratic government is that by not promoting the use of ARV drugs, it is criminally neglecting its responsibilities to govern properly, with catastrophic results for the majority constituency it represents – a charge epitomized by Achmat's accusation, shouted outside the Cape High Court in June 2005, that

> Mbeki is responsible for the deaths of thousands of people.

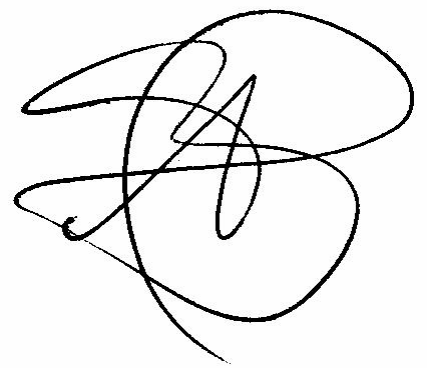
In other words, to Achmat's mind, although he has successfully 'got' ARVs into the public health system in South Africa, for pointing out that they are dangerous toxic and for not encouraging people to use them, President Mbeki and Health Minister Dr Tshabalala-Msimang are basically mass murderers.

APPROPRIATE CRIMINAL SANCTION

In view of the scale and gravity of Achmat's crime and his direct personal criminal culpability for 'the deaths of thousands of people', to quote his own words, it is respectfully submitted that the International Criminal Court ought to impose on him the highest sentence provided by Article 77.1(b) of the Rome Statute, namely to permanent confinement in a small white steel and concrete cage, bright fluorescent light on all the time to keep an eye on him, his warders putting him out only to work every day in the prison garden to cultivate nutrient-rich vegetables, including when it's raining, in order for him to repay his debt to society, with the ARVs he claims to take administered daily under close medical watch at the full prescribed dose, morning, noon and night, without interruption, to prevent him faking that he's being treatment compliant, pushed if necessary down his forced-open gullet with a finger, or, if he bites, kicks and screams too much, dripped into his arm after he's been restrained on a gurney with cable ties around his ankles, wrists and neck, until he gives up the ghost on them, so as to eradicate this foulest, most loathsome, unscrupulous and malevolent blight on the human race, who has

plagued and poisoned the people of South Africa, mostly black, mostly poor, for nearly a decade now, since the day he and his TAC first hit the scene.

Signed at Cape Town, South Africa, on 1 January 2007



Anthony Brink
Advocate of the High Court of South Africa
Chairman, Treatment Information Group

Complainant's Contact Particulars:

Postal address:
Adv A Brink
Treatment Information Group
Postnet Suite 273
Private Bag X1
Vlaeberg 8018
Cape Town
South Africa

Email: arbrink@iafrica.com

Telephone: 0027 21 426 4513

Telefax: 0027 86 6720776

Internet website: www.tig.org.za

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