

# Questions & Answers

## *Attorney General and Others v Tapela and Others*

### WHAT IS THIS CASE ABOUT?

The *Tapela* case concerns the right of HIV-positive non-citizen prisoners in Botswana to access anti-retroviral (ARV) treatment at state-expense.

### WHO ARE THE PARTIES INVOLVED?

The appellants comprise members of the government including the Attorney General, the Permanent Secretaries of the Ministries of Health and of Defence, Justice and Security, as well as the President of Botswana. The respondents include two HIV-positive foreign prisoners (who have since completed their prison terms and have been released) and the Botswana Network on Ethics, Law and HIV/AIDS (BONELA).

### WHAT HAPPENED IN THE HIGH COURT?

The two foreign prisoners and BONELA argued that the government's decision refusing foreign prisoners access to ARV treatment was unlawful and unconstitutional for violating the Prisons Act, the common law, and the rights to life, freedom from inhuman and degrading treatment, and the prohibition against discrimination. The government parties argued that there was no legal obligation to provide the medication and that it could not afford to do so. The High Court, per Sechele J, held in August 2014 that the government is under an obligation to provide the ARVS to HIV-positive foreign prisoners and ordered the medicines to be provided to all prisoners who meet the treatment criteria immediately. The government parties appealed to the Court of appeal.

### WHAT HAPPENED IN THE MWALE CASE?

A third-party foreign prisoner sought to enforce the August 2014 judgment to gain access to ARV treatment. In response, the government parties applied on an urgent basis to the High Court to stay the execution of the *Tapela* order, pending the appeal. BONELA opposed the application and argued the State was in contempt of court. The High Court, per Rannowane J dismissed the applications reasoning that they lacked urgency. The *Mwale* case came before Dingake J who held that the State was in contempt of the August 2014 order and ordered that the prisoner be provided with ARV treatment immediately. The appeal in the *Mwale* case has now been joined to the State's appeal in the *Tapela* case.

### WHAT HAPPENS NOW?

The Court of Appeal will hear the parties' arguments on 23 July 2015 at 09:30. Until the August 2014 High Court judgment is overturned or stayed, it remains enforceable.

For more information:

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<http://www.southernafricalitigationcentre.org/cases/ongoing-cases/botswana-securing-access-to-hiv-treatment-for-prisoners/>

Twitter updates from the hearing at #BONELA

