**TAC and MSF intervene in a case for a lifesaving cystic fibrosis drug priced at over R5 million**

*10 May 2023, Johannesburg* – In what could be a groundbreaking case for affordable access to medicines in South Africa, the [Treatment Action Campaign (TAC)](https://www.tac.org.za/) and [Doctors Without Borders (MSF)](https://www.msf.org.za/) Southern Africa, both represented by [SECTION27](https://section27.org.za/2023/03/section27-representing-tac-and-msf-in-amici-curiae-intervention-on-access-to-life-saving-drug/), have filed papers in the Pretoria High Court to intervene as *amici curiae* (friends of the court) in a compulsory license application for access to a lifesaving drug to treat cystic fibrosis, called Trikafta.

Cystic fibrosis is a severe multisystem illness that can cause frequent serious lung infections, including antimicrobial-resistant bacteria, liver and pancreatic damage, lung failure, and can even necessitate lung transplant.

Cheri Nel, a South African patient with cystic fibrosis has brought a case against Vertex Pharmaceuticals Inc, an American pharmaceutical company that patented Trikafta, an effective new drug that changes the trajectory and impact of cystic fibrosis for patients diagnosed with the illness. The drug is however priced at an impossible amount of US $311,000 per year, per patient in America (approximately R5,722,400). *Given that cystic fibrosis is a chronic condition, patients are required to take this drug for the rest of their lives*.

If Nel's application is successful and a [compulsory license](https://www.wto.org/english/tratop_e/trips_e/public_health_faq_e.htm) is granted, another manufacturer of generics for Trifakta would be permitted to enter the South African market. In this case, it is likely that competition between manufacturers would affect the price of this medicine, thus becoming more accessible. A compulsory license allows the holder of the license to produce a patented product without the patent holder’s consent.

With their wealth of experience in access to medicines on a domestic and international level, in their application for intervention, TAC and MSF seek to make legal submissions on the broader context of access to medicines in South Africa. As organisations that were at the forefront of fighting for lifesaving HIV medicines, that were unaffordable for most people living with HIV in the early 2000s, TAC and MSF also seek to introduce evidence on the recent international developments in intellectual property particularly on access to treatments for drug-resistance tuberculosis (DR-TB), Hepatitis C virus, andCOVID-19 medicines and vaccines amid the pandemic. This evidence will place into context the role of compulsory licensing as a mechanism to expand access to medicines.

*“MSF has dealt first-hand with the frustration and impact of intellectual property protection on access to medicines in the delivery of care to patients. To this end, South Africa’s patent law remains unreformed, making our fight for access even more difficult and cyclical despite the historical nature of the issue spanning from the formidable fight to access ARVs. We have had to fight similar challenges in the struggle to access lifesaving medicines for other life-threatening diseases. And the struggle is further made difficult because pharmaceutical corporate powers are more entrenched in our public health system and are now more globalised than ever before,” says Candice Sehoma, MSF Advocacy Advisor.*

The application seeks to make legal submissions on how the denial of access to medicines, occasioned by monopolies due to patent protections, can infringe the constitutional right to access health care services, which includes the right to access medicines. In this regard, TAC and MSF’s submissions provide guidance to the Court on how to interpret the Patents Act 57 of 1978 in a manner consistent with the Constitution and international law, including binding human rights covenants and the WTO Agreement in Trade-related Aspects of Intellectual Property (TRIPS Agreement).

TAC and MSF’s evidence and legal submissions are significant to the determination of the main application. This is because they demonstrate how compulsory licenses are a legal mechanism to enable access to medicines. The main applicants as well as Vertex have granted consent for TAC and MSF to be admitted as friends of the court.

See link to court papers by [TAC](https://section27.org.za/wp-content/uploads/2023/05/Nel-v-Vertex-Founding-Affidavit_TAC.pdf) and [MSF](https://section27.org.za/wp-content/uploads/2023/05/Nel-v-Vertex-Supporting-Affidavit_MSF.pdf).

For media queries contact:

-Pearl Nicodemus, SECTION27 Communications Officer | nicodemus@section27.org.za | +27 82 298 2636

-Seipati Moloi, MSF Media Liaison Coordinator | Seipati.Moloi@joburg.msf.org | +27 76 752 5594 | + 27 79 872 2950

-Xabisa Qwabe, Treatment Action Campaign Communication & Media Coordinator | xabisa.qwabe@mail.tac.org.za | +27 69 411 9299 | + 27 76 859 6736