Community service doctors 'slaves to the State' – court challenge

A Constitutional Court (ConCourt) challenge to South Africa's health authorities by a community-service doctor conscript, outraged by his 'slave-like' working conditions (including excessive overtime and arbitrary posting), has been turned down amid strong, and mixed, collegial emotion.

Miguel Desroches, a Wits-educated and former Tygerberg Hospital medical intern, hit a raw empathic nerve in complaining to the ConCourt about provincially dysfunctional administrations and dismal working conditions under which he and his peers struggle daily. Most expert healthcare system observers agree that this combination contributes to a downward spiral that results in 70% of new doctors exiting the critically overburdened public sector, abandoning their thinly spread colleagues to a healthcare load representing more than 80% of the population.

Desroches, citing National Health Minister, Dr Aaron Motsoaledi, and the Health Professions Council of South Africa (HPCSA) as respondents, wanted the ConCourt to rule the Community Service Regulations in Section 24A of the Health Professions Act (1974)[1] as unconstitutional. However, his application to be heard directly was dismissed by the judges who said it was 'not in the interests of justice to hear it at this stage' – leaving his puzzled lawyer scratching her head.

Said filing attorney, Nicolette Erasmus, 'I'm not sure they're obliged to provide more detailed reasons, but I'd love to know. The final words are most odd … I don't know what they mean … is it [do they mean] "at this stage in our democracy?" – I can only speculate.' She revealed that the South African Human Rights Commission turned down her 2012 request to probe the issue, claiming it was a labour dispute. The Public Protector, however, is still probing the matter.

Erasmus said that when the issue of excessive hours of work without pay was put to the National Health Department by the Public Protector, it denied this was happening. However, the department did admit that if junior doctors did not comply with orders to work all overtime allocated to them, they would face disciplinary action. The Public Protector subsequently put these responses to Erasmus, who at the time of going to print was collecting evidence of abusive overtime rosters from junior doctors.

Miguel Desroches. Picture: Chris Bateman

Desroches' objection to the community service statutory one-year geographical posting won less sympathy than his employer-abuse complaints. Web and blog site postings (mainly anonymous) pulsated with young medics supporting 'giving back' to disadvantaged communities (often in the most deprived deep rural areas), saying this is a valid *quid pro quo* for the huge State subsidy they receive to qualify as healthcare workers, not to mention the rich and varied hands-on exposure to an almost globally unparalleled disease and trauma profile. One doctor, Karen Milford, wrote, 'The Department of Health is not asking doctors to give up their lives and move to a remote jungle to slave away for no remuneration until they die. They're asking them to take a short break from their life of privilege, to go and serve a community that desperately needs their help.'

Recommended almost universally by medics joining the debate was 'playing' the community service deployment system by carefully doing your homework and selecting the best alternatives listed under your 'hospital-of-first choice' to reduce the chances of 12 months in a 'hospital from hell'.

Desroches told *Izindaba* that he had wanted to stay on and do his community service in the Cape because he had an aunt with breast cancer in Groote Schuur Hospital and a great grandmother (who has since died) living in Cape Town. The rest of his family had emigrated to Australia and he now plans to follow them. He began agitating for a local community service posting in April 2013, before most interns had 'even thought of doing so,' but got consigned to rural choices in the Eastern Cape and KwaZulu-Natal. His subsequent multiple attempts to change this exposed what he believes is an 'inflexible and non-transparent' process.

In the Western Cape, priority for placement is given to the province's own bursars and to Muslim women (for religious reasons). Desroches said he firmly believes in 'giving back' to society, especially to underprivileged communities. 'Of course it's true that doctors gain invaluable experience in rural areas, but there are certain drawbacks often not considered. How many of those doctors would trust their relatives into the hands of a junior, inexperienced doctor who often is working without supervision, and is often the highest authority in a remote area? I'm not saying we don't get good medical experience at these places, but it is a violation of our patients' human rights to turn them into "practice dummies". We took an oath to protect those lives and it encompasses the core of our practice as caregivers, which is to "first do no harm".'

'Forced labour violates my rights and freedoms' – Desroches

Desroches wanted the ConCourt to decide whether legislation governing the rights and freedoms of health practitioners compelled to perform community service is justifiable. He also wanted to know what the human rights norms and standards should be 'for determining forced labour, slavery and cruel and degrading treatment in the workforce in relation to community service'.

The litany of woes that interns (two years of mainly hands-on learning and service) and 'comserves' (one year, service-orientated), plus regular medical officers and more die-hard State veterans, face are well documented. They range from dismal accommodation, living for months without payment, dysfunctional and/or vindictive management, lack of proper

(or any) supervision, non-maintenance or non-existence of vital life-saving equipment, insufficient basic protective tools (masks, gloves), sometimes gut-wrenching ablution facilities and inadequate security measures (incidents of healthcare worker murder, assault and rape all made headlines last year).

In a hard-hitting article entitled 'Slaves of the State,' published in the *SAMJ* in August 2012, Nicolette Erasmus, an attorney with a PhD in corporate law, baldly laid out what she calls 'the professionally selective discrimination and exploitation' of junior doctors. Openly declaring her 'conflict of interest' in coming from an extended family of nine medical practitioners and three nursing sisters, her research exposed sleep-deprived medical interns and community-service doctors working up to 200 hours of overtime per month under the State's commuted overtime policy.

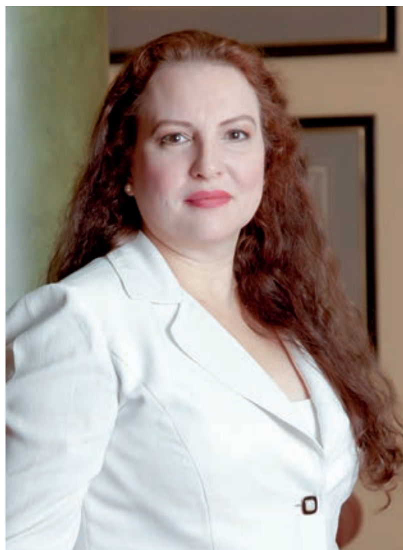
'Nurses moonlight in circumvention of the Basic Conditions of Employment Act. For trainee doctors, overtime in excess of 80 hours (per month) remains unpaid, rendered involuntarily under threat of not qualifying to practice medicine in South Africa (HPCSA rules). As forced labour, and sleep deprivation amounting to cruel and degrading treatment, this is outlawed in international law. No other professional group in the country is subjected to such levels of exploitation and discrimination by the State. These abuses should be challenged under the Constitution.'

Her solutions include the installation of electronic time-recording in State hospitals, putting a stop to unpaid overtime – limiting medical intern shifts to a maximum of 16 hours, and an investigation by the Human Rights Commission of South Africa. Desroches calls the forced overtime requirement 'cruel and degrading,' adding that married couples were being forced to separate due to placements. He says the working hours are so draining that many doctors have accidents on the way home – and stand a greater chance of making life-threatening mistakes on duty.

'Just because I can work a 36-hour shift without sleep or rest does not make it a good idea. It might make us tougher, but at what cost to ourselves and to our patients? The literature abounds with discussions of mistakes being made mostly after hours!'

SAMA fires broadside

The disgruntled young medics' opening legal salvo drew unprecedented vitriol against the HPCSA by Dr Phophi Ramathuba, chairperson of the South African Medical



Nicolette Erasmus. Picture: Chris Bateman

Association (SAMA)'s Public Sector Committee. Known for her colourful and often abrasive language, Ramathuba outdid herself, calling on the HPCSA to 'do its job or shut down'. She said it was 'abundantly clear' that the council could not fulfil its stated goals and that it was, 'in fact, detrimental to the state of healthcare'. One of the HPCSA's statutory obligations (its mission is 'to protect the public and serve the profession') is to ensure that hospitals maintain minimum standards to enable effective teaching and thus retain official council accreditation.

Ramathuba also accused the council of taking too long to register new doctors (i.e after the community service year is completed) and not rectifying the living conditions of comserve doctors. 'Dysfunctional systems, coupled with the sheer incompetence and indifference of some council staff results in unnecessary delays in registration,' she added.

Doctors and dentists want to break away from HPCSA

SAMA chairperson, Dr Mzukisi Grootboom, agreed that the problems faced by junior doctors were 'actually very serious,' describing them as symptomatic of a government unable to service its rural communities. In a tangentially related controversy, he confirmed that SAMA was consulting lawyers about the Medical and Dental Professions Board (MDPB) (one of 12 under the HPCSA umbrella) breaking away from the HPCSA. He also revealed that SAMA and a cross-section of healthcare worker unions and organisations were planning a 'campaign for positive change'. 'South Africans will have to stand up as we historically did, to say that what's happening is unacceptable.'

Declining to reveal campaign details, he spoke of SAMA's frustration in appealing repeatedly to the National Health Minister and his provincial counterparts to deal with 'the basics' in improving healthcare delivery and doctor working conditions. He illustrated the dilemma of disparate provincial health administrations, some of them severely dysfunctional, quipping, 'if the National Health Minister fails in this, then who are we?'

'When these young souls [comserves] finish their training, a lot are looking forward to leaving government service. Even their managers report not feeling wanted.'

Rogue provinces sabotage health solutions

While downplaying Ramathuba's invective, Grootboom said that she met regularly with Health Minister, Dr Aaron Motsoaledi. 'Unfortunately he has an overall mandate; running the actual hospitals rests with the provincial heads of department and MEC's, so that's where we need to focus, admit to problems and address them.'

Referring to the non-payment of junior doctors in the Eastern Cape for nearly three months in 2013 and the ugly and unprecedented (mainly junior) doctor strike that spread nationwide from KwaZulu-Natal in 2009, he said 'little or no progress' had followed. He had appealed to the health leaders in both provinces, the first time at a memorial service for the Durban comserve, Dr Senzokwakhe Mkhize (murdered on duty in 2012) and then after the Eastern Cape protest march on Bhisho by a broad protest coalition late last year. Despite promises and 'shocked' reactions, the provincial leaders remained unavailable for subsequent meetings.

Grootboom added, 'I'm afraid nothing has changed. We're hamstrung. We don't want to point fingers, we just want to engage and put things right, but we seem unable to make a breakthrough. It's time all the healthcare unions stood up together. We have an obligation to protect our members and we make no apology for that, but at the same time we're prepared to co-operate with the authorities.' Pressed on the Erasmus research and Desroches court challenge, he said the government 'needs to keep its side of the bargain and ensure fair conditions of service – we have

some solutions in mind which I cannot divulge at present, but we've consulted broadly – we cannot keep quiet any longer or be spectators. This speaks to the core of our relevance as SAMA and the doctor's we represent.'

Asked if or when SAMA would break away from the HPCSA, he said the MDPB did not believe it was 'appropriate at this stage, but they've not thrown it out the back door completely which tells me some on their board share our policy aim.' SAMA's National Council resolved in 2009 to create a separate medical and dental council because they believe the doctor/dentist voice is drowned out in a large and bureaucratic State-controlled general health council replete with competing interests. 'We're out-regulated, outvoted and stripped of any cogent ability to self-regulate – a fundamental tenet of professions the world over,' Grootboom added, citing the nursing and pharmacy councils as examples of stand-alone professional associations. He said SAMA's immediate goal was to get the National Health Professions Act revised by parliament.

HPCSA admin the real problem – SAMA deputy

His deputy, Dr Mark Sonderup, drew a distinction between the HPCSA's administrative and regulatory dysfunction, citing the conviction of apartheid-era secret biological weapons specialist, Dr Wouter Basson, as a 'time-consuming but appropriate outcome.'

'The public don't see the processes behind that. Experts in committees of first, second and third enquiry are all volunteers, there of their own goodwill, retired or partly retired folk – I'm not so fussed about the council's regulatory side. But administratively things are clearly problematic. In 2012 it took me nine months to get my registration card [after paying his annual specialist physician registration fees]. Last year I got it in June, an improvement of five months, so maybe things are improving. What I think some people miss is that many of these (Desroches-linked) issues have little to do with the council – it's the health departments!'

Sonderup, a former chairperson of the Registrar's Association of South Africa and veteran of the medico-political struggle, was in the frontline of the original comserve battle. His testimony to the Parliamentary Portfolio Committee in 1997 resulted in some degree of choice in postings and an undertaking to take into account an intern's personal circumstances.

Desroches described the publicity generated by the ConCourt challenge as 'a small victory, because people took notice. Questions are being asked and people are starting to think about the humanity of doctors now.'

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1. Section 24A, Health Professions Act 56 of 1974. Pretoria: Government Printer, 1974. http://www.hpcsa.co.za/downloads/health_act/health_act_56_1974.pdf (accessed 26 February 2014).

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