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To: Health Professional Network

From: Health and Human Rights Team

Date: 27 March 2008

Health Professional Action

"I am at the lowest end of all" - Rural women living with HIV face human rights abuses in South Africa

Please see report, AI Index AFR 53/001/2008 and accompanying action circular, AI Index AFR 53/002/2008. An additional circular (AFR 53/003/2008) contains the following excerpts from the report: table of contents, preface, introduction, conclusion and recommendations.

Background

South Africa is continuing to experience a severe HIV epidemic in which five and a half million South Africans are HIV-infected, one of the highest numbers in the world. Fifty-five per cent of these are women. At the same time South Africa has high levels of sexual and other forms of gender-based violence. In South Africa, women under 25 are three to four times more likely to be HIV-infected than men in the same age group. Women are biologically more vulnerable than men to contracting the virus through unprotected intercourse. They are also placed at risk of infection through rape, or over time when living in abusive relationships because men who are perpetrators of violence are more likely to engage in risk-taking behaviour themselves.

The discriminatory impact of gender roles and stereotypes can also hamper women's ability to protect themselves and to make the best decisions for their health. For instance, they are often unable to insist on condom use to protect themselves against the risk of HIV transmission by a male partner because they are economically and socially dependent on that partner or his family, and/or because they risk being subjected to violence or abandonment as a result of suggesting condom use. These patterns of discrimination also place women at risk of violence, abandonment and other abuses when they test for HIV and disclose their status. Finally, rural women are disproportionately represented among the poor and unemployed in South Africa. Poverty acts as a barrier to access to health services for rural women living with HIV and AIDS because of distance and the cost of transport, particularly where facilities equipped to provide necessary treatment and care are mainly at hospital level, as opposed to at more accessible local-level clinics. This is particularly a problem in Mpumalanga, one of South Africa's nine provinces.

Despite the steady upward trend in the infection rate over the past 10 years, the South African government's response to the HIV epidemic was slow and has been characterized by conflict over policy and tense relations with civil society and the medical sector. However a recent important and positive development was the adoption in April 2007 of the new HIV & AIDS and STI Strategic Plan for South Africa, 2007-2011 (NSP).

The NSP reflects a consensus between government, civil society organizations, health care providers, people living with HIV and other concerned organizations to collaborate to overcome continuing barriers to prevention, treatment and care and universal access to health services. They agreed that the challenges posed by persistent poverty as well as violence and other forms of discrimination against women had to be addressed as part of an effective overall response to the epidemic and the realization of the right to health of those affected and infected by HIV. The NSP sets out clear targets for phased implementation of its objectives from 2007 to 2011.

In addition to these developments, on 13 December 2007 the Criminal Law (Sexual Offences and Related Matters) Amendment Act (SO Act) was signed into law. Human rights, gender and legal advocacy groups had campaigned for more than 10 years for reform of the law covering the crime of rape. The 2007 Act defines rape in gender-neutral terms, applicable to all forms of "sexual penetration" (vaginal, anal and oral, by body part or an object) without consent. It defines a set of "coercive circumstances" which may indicate the presence or absence of consent. It obliges the authorities to develop a national policy framework and national instructions to ensure training and coordination in implementation of its provisions. However, the Act's protective measures and services for complainants and witnesses are more limited than originally sought by advocacy organizations. It does, however, require the public health sector to ensure that complainants have access to post-exposure prophylaxis (PEP) to prevent HIV transmission as a consequence of rape.

South Africa's obligations to women

In its response to the HIV epidemic and to discrimination and violence against women, the Government of South Africa has obligations under both national law and international human rights law to eliminate all forms of discrimination, including on the grounds of gender, sexuality or economic status, in the realization of the right to health. It also has obligations to promote, protect and fulfil women's right to equality, their sexual and reproductive rights and right to freedom from all forms of violence and abuse.

Amnesty International's objectives

For the first phase of campaigning, Amnesty International has two main objectives, calling on the government to:

1 - ensure that each health sub-district in rural areas has at least one health centre designated to provide PEP to rape survivors along with other aspects of comprehensive care and treatment.

2 - remove the barrier of transport costs to access to health services for women living with HIV and AIDS and in circumstances of poverty in rural areas.

Recommended action

Please write to the authorities below:

- explaining that you are a health professional concerned about human rights;
- referring to AI's report, using its full title and publication date (18 March 2008);
- reminding the authorities that South Africa has signed and announced its intention to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR) under which states are obliged to ensure equitable distribution of all health facilities, goods and services. The UN Committee on Economic, Social and Cultural Rights (CESCR) has identified this obligation as a "core obligation" for states, and therefore its realization should be an immediate priority for the government;
- reminding the authorities that South Africa has obligations under international human rights law, regional human rights treaties and national law to protect women from all forms of violence and abuse, and to eliminate discrimination in women's realization of the right to health;

Objective 1 - Letters to the Minister of Health (f) and the Director-General of the Department of Health

Please call on these targets to:

- ensure that health services are consistent with the Constitution, the Health Act and national policy, through effective communication strategies, appropriate budget allocation, and training of staff;
- take effective steps to establish a sufficient number of centres designated to provide PEP, in particular, to ensure that each health sub-district in rural areas has at least one designated health centre;
- ensure the centres provide a comprehensive service which includes access to PEP and other health services for rape survivors, and access to counselling and support to help ensure adherence to PEP treatment over the 28-day period;
- ensure that the management of all health facilities are informed of their obligations under the SO Act, the Constitution and international human rights law, and that all health facilities display information publicly to inform survivors of their right to PEP services;
- ensure all health workers are trained in treating and caring for rape survivors sympathetically, and ensure that survivors who learn they are HIV infected through testing at the time of reporting rape are referred for additional counselling and wider HIV health services;
- ensure information about the location of designated centres is regularly updated and passed to health care facilities, police stations and service-providing NGOs for public display;
- the Department of Health should provide information on the steps taken to ensure the police and other relevant state services have the most current information on the location of these care centres;
- discuss with other relevant ministries steps to overcome the barriers to access to health care caused by distance and cost of transport, including with regard to access to and adherence to PEP as part of a comprehensive care service for rape survivors.

Objective 2 - Letters to the Minister of Transport and Minister of Social Development

Please call on these authorities to:

- ensure that, where transport costs act as a barrier to access to HIV health services, this is urgently remedied by government at national, provincial and municipal levels. Possible solutions include the introduction of some system of subsidized or free transport, or patient grants to cover transport costs or "chronic illness" grants or other measures which do not have the effect of stigmatising those who may use the systems or do not have a negative impact on the right of others to access health care services;
- ensure that, in all provinces, government meets South Africa's human rights obligations in regard to accessibility of health services without discrimination.

Addresses

Objective 1

Dr M Tshabalala-Msimang (f)
Minister of Health
Ministry of Health
Private Bag X399
Pretoria, 0001, South Africa
Salutation: Dear Minister

Mr T D Mseleku
Director-General, Department of Health
Private Bag X828
Pretoria, 0001, South Africa
Salutation: Dear Mr Mseleku

Objective 2

Mr J T Radebe
Minister of Transport
Ministry of Transport
Private Bag X193
Pretoria, 0001, South Africa
Salutation: Dear Minister

Mr Z S T Skweyiya
Minister of Social Development
Ministry of Social Development
Private Bag X 901
Pretoria, 0001, South Africa
Salutation: Dear Minister

COPIES:

1) Please send a copy of at least one of your letters under either Objective 1 or Objective 2 to:

a) Mr Mark Heywood
Deputy Chair of South African National AIDS Council (SANAC)
C/o AIDS Law Project
PO Box 32361
Braamfontein, 2017, South Africa

Mark Heywood co-chairs SANAC with Deputy President Mlambo-Ngcuka. He is SANAC's lead civil society representative, and a high-profile, committed activist and lawyer in the area of human rights and HIV/AIDS.

b) Mr W Lubisi
MEC for Health and Social Development – Mpumalanga Province
Private Bag X11285
Nelspruit 1200, South Africa

2) Please send a copy of at least one of your letters under Objective 1 to:

Mr L V J Ngculu
Chairperson
Portfolio Committee on Health
Parliament of the Republic of South Africa
PO Box 15
Cape Town 8000, South Africa

OR

The Chairperson
South African Medical Association (SAMA)
PO Box 74789
Lynnwood Ridge, Pretoria 0040, South Africa

3) Please send a copy of at least one of your letters under Objective 2 to:

Mr J P Cronin
Chairperson
Portfolio Committee on Transport
Parliament of the Republic of South Africa
PO Box 15
Cape Town 8000, South Africa

OR

Ms J M Masilo
Chairperson
Select Committee on Social Services
Parliament of the Republic of South Africa
PO Box 15
Cape Town 8000, South Africa

4) Please also send copies to the diplomatic representative of South Africa accredited to your country.

If you receive no reply within six weeks of sending your letter, please send a follow-up letter seeking a response. Please send copies of any letters you receive to the International Secretariat, attention of Health and Human Rights Team, 1 Easton Street, London WC1X 0DW or e-mail: health@amnesty.org