

## 42. Memorandum from the African HIV Policy Network

### THE AFRICAN HIV POLICY NETWORK

The African HIV Policy Network (AHPN) is a network of African community-based HIV organisations. The AHPN works to minimise the impact of HIV on African communities living with and affected by HIV in the UK by articulating their specific needs and influencing decision makers to ensure that policy is shaped to address these needs. The AHPN also supports African community-based HIV organisations so that they can deliver improvements to the lives of Africans affected by HIV either directly or indirectly.

### EXPERIENCES AND NEEDS OF AFRICAN PEOPLE LIVING WITH HIV IN THE UK

There are estimated to be more than 11,000 African people living with diagnosed infection in the UK (HPA, 2005). In addition several thousand more African people living in the UK have undiagnosed HIV infection since studies have shown that roughly two-thirds of African people in the UK have never tested for HIV (Fenton *et al*, 2002). HIV prevalence is many times higher among African people in the UK than among the White British majority. Compared to UK born men and women attending GUM clinics (each of whom have an HIV prevalence of 0.2%), 7.7% of African born women and 4.8% of African born men who attend GUM clinics are infected with HIV.

A recent quantitative study (Weatherburn *et al*, 2003) which included an analysis of the health and social needs of African people with HIV shows that between a half and three quarters of this group report significant ongoing difficulties in the following areas: income, immigration status, housing and living conditions, and access to training, skills and job opportunities. Difficulties in meeting these basic needs clearly leads to reduced quality of life. Similar percentages said they had significant and ongoing difficulties associated with anxiety and depression, their ability to sleep, their self confidence and their personal relationships. The same study compared the experiences of African people with HIV to their White British counterparts. Compared to other people with HIV in the UK, African people with HIV were 10 times more likely to report problems associated with their income, seven times more likely to report problems with their living conditions, three times more likely to report problems with discrimination and twice as likely to report problems with getting about (mobility) and personal relationships.

Thus, not only are African people with HIV likely to experience more health and social care needs than the general population, but they also experience more needs than British people with HIV. Social exclusion is undoubtedly exacerbated by factors associated with migrancy. It's likely that a significant proportion of African people with HIV in the UK are (or have been in the past) refugees or asylum seekers (Fortier, 2004), a group already significantly socially excluded (refugee council, 2004a). Exclusion associated with being HIV positive may be significantly compounded by pre-existing social exclusion and social need associated with being an African refugee or asylum seeker.

In order to survive and thrive, refugees and asylum seekers need to draw on their own personal resources (their ability to work for example) and need to draw on a supportive social environment in their host country. This environment is created first by the support of expatriate communities in the host country as well as in their home country and second by the

provision of supportive enabling legislation policy and services by the host country. African people with HIV are likely to have all of these resources particularly curtailed.

Below are some of the issues raised by the AHPN members regarding the treatment of asylum seekers.

*(i) Access to accommodation and financial support*

According to Sigma Research's Project Nasah (2003)

"Dealing with the Immigration Service was a huge and specific problem for at least half of all these Africans with HIV. For them, it is likely that their uncertain immigration status undermines other aspect of their life—their access to money via work or benefits and consequently their access to reasonable housing and other essentials for everyday life."

Experiences

Section 8 of the Asylum and Immigration Act 1996 does not allow asylum seekers to seek legal employment. However, many asylum seekers are highly skilled and would like to contribute to society. Additionally, they do not want to be dependent on the government; and state benefits provide them with limited choices of how they can lead their lives. It pushes some people to adopt survival strategies such as the exchange of sex for food or lodging, working in unsafe or exploitative environments, or participating in commercial sex work. The fact that asylum seekers has limited opportunity to work also impacts on their mental health because they take their role as providers for their families seriously and would prefer to use their time constructively to earn money and to develop their knowledge and skills.

Many African asylum seekers receive vouchers from the National Asylum Support Service (NASS); and they feel that these vouchers restrict their ability to buy culturally appropriate food. For people living with HIV, this impacts on their health because some medication needs to be taken with food and in some cases they are unable to use the vouchers to adequately cater for their nutritional needs.

Recommendations

The government policy of disallowing asylum seekers from seeking legal employment (Section 8 of the Asylum and Immigration Act 1996) should be repealed.

Ratify the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and their Families.

The voucher system should be revised to take into consideration the nutritional needs of African asylum seekers.

*(ii) The provision of healthcare*

In April 2004, in response to the media hype around "treatment tourism", the Department of Health introduced changes to the NHS (Charges to Overseas Visitors) Regulations 1989. Prior to April 2004, NHS treatment of all kinds was available free of charge to anyone who

could show that they had been in the UK for more than 12 months. These new regulations mean that asylum seekers who have not been granted leave to remain in the UK do not have access to free HIV treatment.

## Experiences

Chelsea and Westminster Hospital sent a bill of £12,671 to one patient, while another patient from St George's Hospital received a bill of £34,257. These bills are unrealistic and impact negatively on the health of people living with HIV because they become fearful about accessing future treatment; and without HIV treatment, their health will deteriorate.

These proposals would accentuate inequalities rather address them. Charging undocumented migrants, failed asylum seekers, or visitors with AIDS, Tuberculosis or Malaria runs counter to public health interests. Africans living in the UK tend to present later for HIV/AIDS testing and these measures deter people from taking up testing services. This has evident repercussions for the spread of the epidemic which will have further and weightier social and economic cost implications. These communities who by the nature of their status in this country cannot work and thus pay for medical services is both inhumane and unethical contradicting international and national legislation on human rights and discrimination.

— The Human Rights Act (HRA) brings into national law the majority of the rights and freedoms set out in the European Convention on Human Rights. Withholding proper medical care from someone with a serious illness could be held to contravene Article 2 (right to life) or 3 (freedom from torture). Those rights are actionable directly in the domestic courts and create an obligation for courts, and "public authorities" to interpret the provisions of all legislation in a way that is compatible with the Convention. The NHS, Trusts and health professionals working within the NHS are seen as "public authorities" and therefore need to be aware of the Act. Although many aspects of care remain unchanged, the HRA is likely to have a great impact on the public awareness of patients' rights in relation to medical care.

— Article 2 of the European Convention on Human Rights is concerned with the "right to life". This policy refers to any life threatening condition not just HIV. Applications for Exceptional leave within the UK remain are often made (not always successfully) under this clause. The Department of Health's policy has undermined access to treatment and therefore this article of the convention. It states, "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

— Article 3 states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

— Article 14 of the Act is related to the Prohibition of Discrimination. Stating that "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

— The UN Declaration on Human Rights also binds the UK legislatively. Article 25 of this declaration recognises the right to health by migrant communities. Stating that these rights and freedoms "shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

— The 1969 International convention on the Elimination of all Forms of Racial Discrimination also accords minority ethnic communities the right to access public health, medical care, social security and social services. The Department of Health's policy contradicts all these forms of legislation.

— As an umbrella African organisation we are concerned that the Department of Health's policy have further stigmatised African communities by compounding existing experiences of racial discrimination and social exclusion as the "bearers" of disease within the British public mind. Health professionals must be careful not to breach section 20 of the Race Relations Act by discriminating against asylum seekers (by refusing to provide them with health care services, for example, or by providing lower standards of care). It is unethical to refuse to accept particular patients solely because they may require expensive treatment (so-called "uneconomic" patients).

There is no vaccine or cure for AIDS, but provided HIV is diagnosed early enough new treatments can prolong life for many. Access to essential life-saving HIV treatments is a human right. Although the National Health Service currently makes HIV treatments widely available, a range of barriers exist to equitable treatment access for some, particularly for overseas visitors. These include limited availability of information about treatment options, lack of patient support services for adherence to complex treatments, the discriminatory attitudes of health care workers, and regulatory restrictions affecting groups such as asylum seekers. Research indicates that the most common form of discrimination experienced by people with HIV in the UK is discrimination by health care providers.

#### Recommendations

The government should re-instate lack of access to anti-HIV treatment in one's home country as grounds for Humanitarian Protection.

The Government to amend the *NHS (Charges to Overseas Visitors) Regulations 1989* in order to exempt HIV treatment and care from NHS charges. We believe that the current regulations are a danger to both individual and public health.

#### *(iii) Treatment of children*

##### *Experiences*

*Provision of Health care*—The Department of Health changes to the NHS (Charges to Overseas Visitors) Regulations 1989 does not consider the impact on unaccompanied children and young people under the age of 18. The impact upon children's issues is of specific concern to African communities—because the majority of children currently affected by HIV, tuberculosis and malaria will, be African. The proposed policy contradicts other policy and legislation such as The Children Act 1989, Lord Laming's recommendations following the Victoria Climbié

#### Inquiry and the current Children Bill.

The largely invisible population of young people born overseas, who live in British cities without their biological parents will be significantly affected by restricting access to General practice. These maybe school age children who have sought asylum (usually without any knowledge of our legal system) without any adult, even a distant relative. These children

have fled their homelands after civil war or state-sponsored genocide and few attend school or maintain a fixed address.

The health needs of these children can be serious and complex (psychological and physical trauma, TB, substance use or pregnancy following rape), however health services will be inaccessible to them if the proposed measures are introduced. Local Government currently acts as the "corporate parent" of these children. The AHPN feel that the proposed measures undermine the necessary role of primary medical providers for this group. These children maybe without parental support or guidance and can be exposed to commercial, sexual and servile exploitation. Access to a GP, for treatment of a minor injury, may be their first opportunity for contact with a responsible, law-abiding UK citizen. Removing this right will severely impact on their future life opportunities. It is also a violation of the right to health guaranteed under the UN Convention of the Rights of the Child.

*Detention*—Some children have been held in detention centres with their families. This has a serious mental impact on the children. People who live with HIV sometimes feel that they are viewed as criminals for having the virus, let alone for being held in a detention centre. For children, being in a detention centre can be even more traumatic if they see their mothers are distressed.

*Dispersal*—Some children have been unsettled by the policy of dispersal. After the initial challenge of settling in the UK, making friends and adapting to a new environment, some families have been forced to move. In one case, dispersal forced one mother to disclose her HIV status to her children because she fell ill and needed medical and social assistance. She would have preferred to disclose to her children in another way. Another issue is that it often takes time for children living with HIV to develop a trusting relationship with a support worker. When they are dispersed they are unsettled and are forced to develop new relationships all over again, which delay a child's progress.

## Recommendations

The government policy of dispersing asylum seekers across the country (as supported by Section 97 of the Immigration and Asylum Act 1999) should be repealed. This policy isolates people living with and affected by HIV from their only means of personal and community support, and for those with diagnosed HIV it substantially reduces access to adequate specialist HIV care and social support.

Families should not be placed in detention centres.

When dispersing families, further consideration should be taken for families with children, especially when a member of the family is living with HIV and might be unsettled by the move.

*(iv) The use of detention and conditions of detention and methods of removal of failed asylum seekers*

The British Medical Association and the All-Party Parliamentary Group on AIDS (APPGA) have expressed concerns that conditions in detention centres were inappropriate for the long-term health needs of asylum seekers and refugees, especially those living with HIV.

Detention centres have no specialist HIV services, could prevent individuals from adhering to their HIV medication, and they have little to no privacy for taking complex medication.

### Experiences

Some people living with HIV are experiencing difficulties accessing their medication while they are held in detention. In one case, a woman living with HIV was held in Yarl's Wood and needed to access her HIV medication. The medication was not available at the detention centre and she had to go without treatment for four days. Eventually, they took her to the nearest hospital, Bedfordshire Hospital. The hospital did not have the medication that she needed and they offered her two doses of medication to satisfy the quantity she needed. There was lack of knowledge around HIV treatment.

Another woman living with HIV was removed from her home with her three children, placed in a detention centre and deported to Uganda. In Uganda, she has very limited access to treatment and her health has severely deteriorated. She has no support from family or friends and she may die in very distressing circumstances, leaving her three children behind with no one to care for them.

The detention of asylum seekers and migrants have been severely criticised for the severe failures of the authorities to provide adequate medical care and treatment resulting in cases which would amount to a breach of Article 3 of the European Convention on Human Rights A.

### Recommendations

People with HIV should not be placed in detention or removal centres for immigration purposes, where it is not possible to provide suitable medical care, as detention can undermine efforts to maintain good health.

Asylum seekers living with HIV should not be placed in detention centres and then deported if they will not have access to medication in their home countries.

#### *(v) Treatment by the media*

African's living with and affected by HIV are subjected to inflammatory and ill-informed media coverage. This in turn has contributed to misinformation about HIV and its transmission, and the stigma surrounding HIV infection is increased by portrayals of people living with HIV/AIDS as "potential criminals" and as a threat to the "general public".

### Experiences

The media, in particular the tabloids (*Sun*, *Daily Mail*), portray negative images of asylum seekers. They send out negative messages, for example the myth around "treatment tourists", despite recent evidence that shows the average length of time in the UK before diagnosis is 3.9 years. These papers recently covered a story about a Zimbabwean immigrant who they claim knowingly transmitted HIV to six women ("Hols Fiend Gives 6 Girls HIV: Asylum Seeker's AIDS Timebomb at Caravan Park" *The Sun* 14 September 2006; "Asylum Seeker Gave Six Women HIV" *The Daily Mail* 14 September 2006). The allegations were unfounded.

Additional examples include:

- "HIV Migrants hit 1,000 in Britain," *The Times*, February 16, 2005.
- "1 in 22 migrants live with HIV," *Daily Mail*, March 2005.
- "The Secret Threat to British Lives," *The Spectator*, January 2003.
- "AIDS-infected asylum Seekers overwhelm UK hospitals," *The Telegraph*, June 2003.

These kinds of portrayal impact on asylum seekers in the UK, who automatically feel stigmatised. It has a particular impact on asylum seekers who might want to test for HIV, but fear being diagnosed with HIV and being subsequently branded "AIDS time bomb" by the media.

HIV related stigma could lead to discrimination and other violations of human rights that affect the well being of people living with HIV in fundamental ways. Prioritising the rights and dignity of people who have been diagnosed or are at risk of HIV infection creates the conditions necessary for successful prevention, treatment and care. In many international policy contexts, an integrated approach to addressing HIV prevention, care and treatment that is founded on human rights and dignity has been advocated. This is clearly embodied in HIV/AIDS and Human Rights international Guidelines (United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS 1998) and also in the Declaration of Commitment on HIV/AIDS (United Nations 2001).

#### Recommendations

The media needs to be held accountable for dishonest and inaccurate reporting. The National Union of Journalists should ensure that journalists do not present negative images of African people.

*September 2006*