



12 September 2008

Ms. Jamesina King
Chairperson
Human Rights Commission of Sierra Leone

Dear Chairperson King:

The International Community of Women Living with HIV/AIDS (ICW) is the only international network of women living with HIV/AIDS with membership in Africa, including West, East, and Southern Africa. We are writing today, with the support of our allies, to express our concerns about *Sierra Leone's Prevention and Control of HIV and AIDS Act of 2007* (HIV and AIDS Act) as it pertains to women and girls.

Upon recent review of the HIV and AIDS Act we have noted several provisions that would have negative ramifications for women and girls. We are concerned that if these provisions are not amended, the HIV and AIDS Act will be counterproductive to its laudable goal of HIV/AIDS prevention and support for people living with HIV/AIDS by undoing gains made for women and girls. In its current form the HIV and AIDS Act will further increase the vulnerability of women and girls to HIV, violence, and stigma and discrimination and prevent and discourage women and girls living with HIV/AIDS from getting access to necessary care, treatment, and support. Several provisions, outlined below, negate the act's own Memorandum of Objects and Reasons which recognizes that women, are "marginalized and discriminated against..." and have become "the group with the a high risk of HIV infection". The HIV and AIDS Act also acknowledges that women continue to be "subject to many types of marginalization - poverty, cultural status, higher level of illiteracy and unemployment."

The act's purported goal of dealing with "rights... and support of people infected or affected by HIV/AIDS" is undermined by the following particularly detrimental provisions:

- **Criminalization of mother to fetus transmission, Subsections 21(1)(a) through 21(2):** These sections severely curtail the humans rights of HIV positive women for five related reasons:
 - 1) Section 21 criminalizes HIV positive pregnant women for either failing to take "all reasonable measures and precautions" to prevent transmission to the fetus (sec. 21(1)(a)) or for placing the fetus at a risk of infection (sec. 21(2)). This provision ignores the reality of women's lives in Sierra Leone. If the government could guarantee voluntary counselling and testing for all expectant mothers, along with medicines which prevent mother to fetus transmission, the risk of transmission would be below 2%. However, in low resource settings this provision of the act serves to solely blame the woman for any actual or potential fetal harm that she may be unable to prevent due to lack of access to necessary information and services.
 - 2) The language of this section is vague and overboard. Since section 21(2) criminalizes any person aware of her HIV positive status for "knowingly" placing a fetus at "risk of becoming infected with HIV," it could criminalize HIV positive women for the mere state of being pregnant.
 - 3) The section directly discriminates on the basis of sex, as only women are targeted for the potential transmission to a fetus, despite the more common scenario of women contracting the virus from their male partners.
 - 4) The act increases stigma for women living with HIV and AIDS by blaming women for transmission of HIV from mother to fetus. This serves to entrench the stigma against women as the "vectors" and "transmitters" of the epidemic.



5) Imprisoning caretakers will lead to untended children and orphans. With the imprisonment of women, the burden of care will most likely be carried by girls whose education and personal well-being will suffer. Notably, women may be more liable to be imprisoned because they are more likely than men to lack the necessary funds to pay the requisite fine for violating this section.

- **Criminalization of transmission, Section 21 (1) through 21(2):** The criminalization of transmission is counterproductive for several reasons:

1) This section criminalizes the “knowing” or “reckless” transmission of HIV to another person. While such provisions are often written to protect women, in practice, due to women’s overall lack of equal power in society, women are typically blamed for introducing HIV/AIDS into families and relationships. Moreover, women are more likely to be tested for and thus know their HIV status, either through routine gynaecological exams or antenatal care. Consequently, women are more likely to be accused of “knowing” transmission, whereas their male partners can escape prosecution simply for ignorance of their status. This could result in disproportionate targeting and prosecuting of women for the spread of HIV/AIDS.

2) The act as a whole fails to sufficiently define what it means for a person to be “knowingly” or “recklessly” transmitting the virus. As a result, even an HIV positive individual who takes full available precaution may be criminally liable, not even for actual transmission of HIV, but for the mere risk of such transmission.

3) The section can be used to target marginalized communities including women, sex workers, and injecting drug users whose lack of power in society will hinder the ability to negotiate condom use or other “reasonable” precautions against HIV transmission, leading to potential prosecution of these groups. Further, because the language in the act is vague and unclear, marginalized groups could be held accountable for having constructive “knowledge” of their HIV status; and

4) The intended aim of the section to protect women from transmission is undermined by the consent defence for criminalization. Under section 21(2), a person aware of his status is not responsible if “that other person ...voluntarily accepted the risk of being infected.” Given the lower socio-economic status of women and their historic and lingering marginalization, as the act recognizes in its Memorandum of Objects and Reasons, they may not be in a position to negotiate safe sex or refuse sex (such as with their spouse) to enable them to “voluntarily” accept the risk of HIV infection. Nonetheless, their male partners could claim that they have voluntarily accepted the risk of exposure and as such escape prosecution.

- **Testing without consent, Subsections 12(1) through 12(2)(c)(ii):** This section states that an HIV/AIDS test can be administered to a person deemed to have “a disability” which renders her “incapable” of giving consent with the permission of a legal guardian, partner, or adult offspring. The act fails to provide clear definition of what constitutes an inability to provide consent giving unfettered discretion to a sole medical practitioner to determine the ability of a person to give consent for testing. Section 12(2)(c)(ii) states that a medical practitioner may test an individual for HIV if that a test is “clinically necessary” or “desirable to the interest of that person”. This language is so broad that it makes it almost universally acceptable for a medical practitioner to test for HIV without obtaining informed consent.

In practice, this section could disproportionately affect women. It is often women who are tested for HIV and AIDS without their full and informed consent, most frequently in the context of ante-natal clinics. This provision essentially makes legal the testing of pregnant women without their consent if, for example, it is determined that while they are in labor they are deemed “incapable” of giving consent.



- **Partner notification of HIV status, Sections 21(7), 21(8), and 14(1):** Several provisions in the HIV and AIDS Act allow the notification of HIV status of one partner to the other(s). As explained above, women and girls are often blamed for the spread of HIV. Many women, despite contracting HIV from a husband or partner, are physically and mentally abused, thrown out of their families, abandoned and stigmatized upon partners finding out about their HIV status. Rather than opening the door to wide discretion in partner notification, as articulated in the HIV and AIDS Act, it is necessary that each woman who receives a positive HIV test result be counselled and given assistance in informing her partner and family about her status when she feels able to do so safely without risking her own well-being or that of her children. No healthcare provider should be authorized to make that decision for her, thereby placing the HIV positive woman at great risk to her well-being and life. The mandatory partner notification provision may likewise discourage women from testing and accessing treatment for HIV.
- **Lack of confidentiality, Sections 15(c) and 18(1)(e):** These provisions authorize a medical practitioner to disclose HIV test results of someone deemed to have “a disability” which renders her “incapable” of giving consent, to the legal guardian, partner, parent, or adult offspring. Conceivably then, a woman in labor may be deemed “incapable” or “disabled” and thus may no longer benefit from the confidentiality guarantees afforded elsewhere in the act.

ICW would like to offer our support in amending the provisions of the act to better protect the human rights of women and girls.

We look forward to your response.

Sincerely,

Beri Hull
Global Advocacy Officer
International Community of Women Living with HIV/AIDS
Beri@icw.org

Lillian Mworeko
Regional Coordinator
International Community of Women living with HIV/AIDS (East African Region)
lmworeko@icw.org

Aziza Ahmed
Women's Law and Public Policy Fellow
International Community of Women Living with HIV/AIDS
Aziza@icw.org

