

PERSONNEL and LEGAL CONCERNS

In the year 2003 I wrote a long article for an Italian Missionary Magazine (Missioni Consolata). I told the story of how we started in the year 2000 the HIV/Aids projects in Madadeni (Newcastle, northern KZN) where I was working at that time as a Consolata Missionary priest.

We were passionate about doing something because we had one of the highest percentage of sick people in the country and a good number of volunteers ready to serve them in the name of their faith.

The main goal of the article was to share how, after training these volunteers, we started facing so many problems we never expected: like “*where*” to find the sick people (because of the stigma no one wanted to talk about it), lack of food, lack of documents (birth certificates, ID) both for themselves and their children, transport problems... and so on.

That was two or three years after we started. We never thought things would be *that* complicated. Today we are talking of a journey of more than ten years and the topics seem to be *even more complicated!*

The South African Constitution determines that nobody should be discriminated against on the basis of race, gender, physical disability, sexual orientation, religion or political beliefs. The SACBC (Southern African Catholic Bishops' Conference) subscribes to this, and ensures that this is the case at all Church projects throughout the country.

Gender

We are often asked what measures are being put in place to ensure that **women** have equal access to the benefits provided by SACBC programs, as well as equal access to the employment opportunities offered by these programs.

In practice, the opposite has proven to be the relevant gender issue – ensuring that there is good participation *by men*. In the SACBC ARV (antiretroviral) treatment program, **about two-thirds** of those receiving treatment are women - men are only one third. In home based care (HBC) programs the ratio of female to male beneficiaries is even higher.

Last August, an Italian missionary friend of mine visited the Vicariate of Ingwavuma and two of our “*Healing Centers*” in Mtubatuba and Hlabisa. As he knows English he could easily sit down with the people in charge to ask whatever he wanted to know. One of his questions was: “*where are the men in the project?*” because I guess the only men he saw (aside of the Bishop and the priests!) were the drivers!

Across the board in SACBC programs (HBC, OVC and ARV treatment), the ratio of female employees (from professional and management level all the way down to auxiliary staff) is even higher – in some treatment programs (eg. Botshabelo) there is not a single male employee. In most others, only one or two employees out of a total of 20 or 25 are male. The reasons for this dominance of females are not clear, and have been the subject of much research – in this regard it should be mentioned that SACBC is not unique.

It is also true that in our parishes / Mission, it is basically women who visit the sick at home. Men might be the ones taking communion to them but not the one looking after the sick people.

HIV Status

As mentioned above, the SA Constitution says that there cannot be discrimination against anybody based on physical disability. The country's labour legislation states that preference in employment is to be given *to women, black people and people with disabilities* (so-called "employment equity", or "affirmative action"). The Supreme Court ruled that HIV positive status constitutes "physical disability" as intended by the law, and therefore should make an HIV positive person benefit from preferential employment policies.

In practice this has been impossible to enforce at SACBC projects. It goes without saying that nobody is discriminated against because they are HIV positive.

People in projects are encouraged to know their status, and to be open about it. However, that is about as far as SACBC can go. Laying down quotas of staff at projects that must be HIV positive would be impossible to enforce, and raises another ethical dilemma – it would necessarily mean that "*compulsory*" testing (as opposed to voluntary) would have to be conducted. It also means that *confidentiality* (so vital in an environment where stigma is still prevalent) would have to be abandoned, and prospective employees would have to disclose their status. This would not only be unethical – it would actually violate the country's labour legislation, which determines that it is illegal to require HIV tests from prospective employees.

In practice, many staff members are HIV positive. At one ARV treatment site in KwaZulu/Natal, the senior professional nurse told the SACBC project manager responsible for the project, that a quarter of those employed in the project are HIV positive. It would however have been a violation of patient confidentiality for the nurse to reveal their names.

It would be incorrect to assume that this reluctance to disclose their HIV status is because of stigma within the Roman Catholic Church. It should be stated unequivocally that no non-governmental structure or organization in South Africa does as much to provide care and support to people living with Aids as the Catholic Church. The senior program manager in the SACBC Aids Office is HIV positive, and discloses his status openly. Most Dioceses and religious congregations (especially in areas with high infection rates, like KwaZulu/Natal) have had priests or nuns that have become ill with HIV-related opportunistic infections. These have been treated with compassion, and have been provided with the care they need. Not one has been ostracised. Contrary to its public image (based exclusively on its reluctance to endorse the indiscriminate use of condoms as a preventative measure), there are few organizations or institutions in South Africa where there is less discrimination against people living with Aids than the Catholic Church. The reluctance of project staff to disclose their positive HIV status is due to stigma in their communities. The Church is often the only place where they feel safe to disclose.

What one has to remember is that, still today, after twelve years from the day when Thabo Mbeki (then deputy president of Nelson Mandela) spoke to the Nation on 08 October 1998, and among other things he said: *We shall work together to care for those living with HIV/AIDS and for the orphans. They must not be subjected to discrimination of any kind. They can live productive lives for many years.* There is still discrimination in the families and communities and people are still afraid to disclose their status.

Funding

The ART program is subject to the availability of US government funding. This changes from year to year – it has happened that funding is flat-lined. In future it could even be decreased. We are presently facing the situation of a "strong Rand" or a "weak Dollar" that has affected all our budgets which might continue in the future. This presents particular problems.

- In the case of *professional staff*, it is not possible to offer them housing subsidies, health insurance, pension funds or provident funds – benefits that are offered by the state and private sector. It is also not possible to offer them permanent employment contracts – only annual contracts, subject to the availability of donors' funding. This makes it difficult to

retain staff, as they leave the program to work for employers that offer these benefits.

- In the case of *non-professional staff*, sites are dealing with very poor people, who live in areas of high unemployment. When contracts are not renewed at the end of the financial year, due to flat-lined or reduced budgets, staff who do not have their contracts renewed might resort to legal action, in attempts to ensure their continued employment.
- A new policy document by the SA government aims to regularize the status of home based caregivers as permanent workers, with employment contracts and minimum wages. Due to the nature of US government funding SACBC sites will not be able to do this. Most care givers are volunteers, who only receive a small stipend which we call *incentives*.

Staff shortages

One of our great joys is the fact of being able to offer treatment in remote areas. We reach places no one else reaches. At the same time we face a serious problem: these areas are *under resourced areas* where there is a lack of qualified people. A clear example is Kosi Bay in the Vicariate of Ingwavuma where the search for a doctor took more than a year, and was unsuccessful, as there was not a single medical doctor available in the area. We can still count on a doctor travelling 400 km for one day. At Hlabisa, always in the same Vicariate, we count on a retired doctor and we pray he will remain healthy because we know it will be difficult to find someone else.

In other sites it has taken months to find computer literate people to employ as data capturers, or persons with financial qualifications to do bookkeeping.

SACBC receives many requests from non-South African citizens, to volunteer as doctors or nurses at treatment sites. It would have solved many staff shortages if these people could have been placed at treatment sites. However, South African legislation makes it almost impossible to register doctors or nurses with foreign qualifications to work in the country in their professional capacities. Enough to read an article published last week in the webpage of “The Times”:

“Belgian national Lore Claessens was desperate enough to wait two years to register as a midwife in South Africa so that she could work in an understaffed rural hospital in KwaZulu-Natal. “The wait was endless,” said the 26-year-old. Following an article published in The Times on Tuesday, which revealed that foreign doctors face a long wait to register before they can work in the country's hospitals, it was found that foreign nurses face even longer delays. An agency has managed to place only “four or five” nurses. South Africa is expected to face a shortage of 60.000 nurses next year.

Foreign doctors and nurses desperate to practise their skills in South Africa are forced to wait up to six years to be registered by the Department of Health.

*Health professionals from countries including the UK, US, Australia, New Zealand, Germany, and Canada are among the almost 2000 who have been waiting for up to eight months for approval from the department **just to begin the process** of obtaining a licence to practise medicine in South Africa.*

This while patients queue for hours to see overburdened medics working long hours in overcrowded public hospitals.”¹

Site accreditation

Long term sustainability of the program can only be ensured if the government provides ARV drugs and laboratory tests. In the past this was only possible if a treatment sites fulfilled complex accreditation criteria, for instance it should have the services of a full time dietician, social worker

1 Timeslive.co.za (October 25 & 29, 2010)

and so on. Our sites are mostly unable to meet these criteria, due to budgetary constraints and availability of personnel in the area.

Another condition for government accreditation is that treatment sites must give patients access to services like birth control and termination of pregnancy. The Catholic Church is not able to meet these requirements, for obvious reasons.

Non-South African citizens

Many patients at SACBC treatment sites are non-South African citizens – undocumented illegal foreigners in particular. They are not entitled to receive ARV treatment from the SA government. This further complicates accreditation.

One final word

I have a *personal concern* regarding our projects, let us call it *a challenge*. I started talking about our project in Madadeni and how people were moved by their *faith* to serve those affected and infected. I fear these same people risk losing that *spirit*. Today, through the government and many NGOs, the answer to this pandemic is also seen as a way of getting a job. This is completely understandable considering the high unemployment in the country. Together with these “legal” concerns, we constantly need to make sure that we are not just another NGO or an answer to high unemployment problem in the country but a concrete sign of the one who came so that we “*might have life and have it more abundantly*” (John 10:10).