

NATIONAL EMPOWERMENT NETWORK OF PLHAs IN KENYA (NEPHAK)

DRAFT REPORT ON THE EVENTS AND FACTS AROUND THE 3 TB PATIENTS BEING HELD AT KAPSABET GK PRISON

1.0 Overview and Summary

This report summarizes the events and the facts so far established around the TB patients being held at the Kapsabet GK Prison. The National Empowerment Network of people living with HIV/AIDS in Kenya (NEPHAK) has taken keen interest in this case both because of their national mandate as the voice of communities living with diseases in Kenya and also because of it being a collective body of people living with HIV and who are particularly vulnerable to Tuberculosis. This report which is still fairly in draft form and which does not contain all details of the three TB Patients has been compiled by NEPHAK staff with information gathered from a number of sources but mainly from the visit to the Kapsabet GK Prison, Kapsabet District Hospital, and the community and families of the 3 TB Patients. It should be noted that during the visit discussions were also held with the 2 patients in the prison and the 1 at the District Hospital.

After carefully reviewing the events, circumstances and the facts of the case, NEPHAK finds this case unfortunate and attributes this to both the weakness of the health systems and the near-collapse of the community support systems in the village where the 3 men were residing before their arrest. Invoking of Public Health Act to deal with the 3 TB defaulters is a desperate measure taken up by the provincial administration to deal with an equally desperate situation. Nevertheless, NEPHAK finds no justification for keeping the 3 patients in prison for 8 months for the pure reason “of ensuring treatment completion”. We therefore call for an urgent transfer of the 3 TB Patients from the Prison to a health facility where they can be managed and monitored.

1.1 Background

The news about the arrest of 2 TB patients reached NEPHAK national secretariat through a phone call from NEPHAK member in Eldoret on the 20th August 2010. The call was rather alarmist! The following day, a member organization of NEPHAK, Network of men living with HIV/AIDS in Kenya (NETMA+) called NEPHAK to enquire what NEPHAK was doing about the TB Patients arrested and jailed in Kapsabet for defaulting TB treatment. NETMA+ officials informed NEPHAK that they had heard this news from local FM Radio station. These media reports were confirmed by NEPHAK Nandi District Representative who actually reported to NEPHAK that the arrest included 3 and not 2 TB Patients who had more than twice defaulted on their TB Treatment and were therefore ‘thought to be putting others at risk of getting this infectious disease’. What did not help matters was a report in the media (by Associated Press) quoting Dr. Sitiene, the Head of the Division of Leprosy TB and Lung Disease with claim that Dr. Sitienei was supportive of the arrest. NEPHAK leadership took great exception to public

support of the TB Patients arrest and imprisonment by the head of NTP in Kenya and immediately communicated their displeasure.

Nevertheless, since this was the first time this was happening in Kenya, the leadership of NEPHAK decided to systematically follow the matter in order to establish more and accurate information on the matter. The steps outlined below have been useful in establishing the facts of the matter and has supported NEPHAK to arrive at the above verdict:

1. Monday 23rd August 2010: Anne Ronoh, NEPHAK District Representative visits Iruru Village where the 3 patients were residents. Her report from the village has some details on the 3 and their arrest. The details are confirmed by NEPHAK Josephat Amose. NEPHAK Ambassador of Hope in Kapsabet and Selina Sang' a Community Health Worker affiliated to Kapsabet District Hospital. Selina Sang' is also the DOTs contact person for the Iruru village and from whom the failure of the DOTs programme for the 3 can be confirmed.
2. Tuesday 24th August 2010: NEPHAK District Representative make follow-up visit to Kapsabet GK Prison, Kapsabet District Hospital and meets the 3 TB Patients (2 in prison and 1 in hospital ward).
3. Wednesday 25th August 2010: Lucy Ghati, NEPHAK staff visits Kapsabet District and holds discussions with local support group leaders, NEPHAK Ambassadors of hope, the district representative and community health worker affiliated to Kapsabet District Hospital. Together with the District Representative, Lucy pays visit to Kapsabet District Hospital and Kapsabet GK Prison. **The main purpose for the visit at this time was to establish the health status of the arrested TB patients and to verify facts reported earlier by the NEPHAK District representative.** During the visit, Lucy also held discussions with Dr. Zachariah Maina Bett, the Public Health Officer who is also in charge of TB patients defaulter tracing, Sammy Rop DTLC Nandi, Truphena Korir, a nutritionist and Regina Odhiambo and William K. Mutai of the Kapsabet GK Prison.

From the steps outlined above, NEPHAK established that **Daniel Ng'etich**, his brother **Henry Ng'etich** and **Patrick Kipng'etich** were arrested on the **12th of August 2010** at **Iruru village by their local Chief**. Before this arrest, the Chief sought the opinion of Dr. Zacharia Bett Maina, who is the Public Health Officer who in turn ordered that the 3 be arrested and taken to court. The following day on the 13th of August 2010, they were taken to court and charged under the Public Health Act Cap 242 (Section 27) with "*spreading infectious disease knowingly*". Subsequently, the three were imprisoned for a period of 6 months (it was communicated as 6-8 months). The three have been in prison since although **Henry Ng'etich** had to move to Kapsabet District Hospital where he is being treated.

According to all people reached by NEPHAK so far, the arrest, prosecution and imprisonment of Daniel Ng'etich, his brother Henry Ng'etich and Patrick Kipng'etich on the 12th of August 2010

was the last desperate effort by the Public Health Officer. Earlier, the programme had tried a number of options which did not work. Both the Public Health Officer and the DTLC, Nandi maintain that this was the last option and the only available and practical step they could take under the circumstances. The 3 TB patients (2 are blood brothers have been put on TB treatment and defaulted 3 times (health authorities say 5 times but the patients say it is only 3 times). Whether, 3 or 5 times, the opinion of health professionals in this area is that the three 'were now becoming a threat to other people's health' Both the Chief and the Public Health Officer claimed that during one of the patients tracing episodes, the three were found drunk and turned violent and refused to be talked to.

Therefore according to the Public Health Officer, the three although patients, had turned into criminals the moment they contravened the Public Health Act. They could not be left to the health sector and will have to be supported from the prisons department. In addition, he explained that the 3 cannot be released because they may default again and put others and themselves at risk. Accordingly, the 3 patients will be in prison for the entire period that they will be required to take their TB medication (6-8 months).

1.1.1 Only way out of Prison

According to Regina Odhiambo, who is the Deputy Prisons Officer at Kapsabet, the 3 are now under their custody and because they are under TB treatment, they are considered special inmates. The only way out of Prison is if the three demonstrate commitment to adherence then the sentence can be reviewed and the 6-8months can be reduced. The Prisons Health Officer, Dr. William K. Mutai agrees with this assertion and is monitoring the patients. The patient could not confirm if they are in special diet.

1.1.2 No need to isolate the Patients

Ironically, authorities (health and prisons) maintain that since the patients have been on treatment for more than 2 weeks, they are no longer infectious and there is no need to separate them from the other prisoners. The special TB Patient-prisoners will have to share the crowded cells and sleep on the floor for 8 months. Occasionally, they will be treated to special diet like other prisoners diagnosed with TB.

2.0 We have to censure the statements from the Patients

Since the patients could not be interviewed under privacy (*Prison rules require that an officer is present when prisoners are talking to the public*), we cannot share what they had to say as it may be unreliable. Nevertheless, the 3 patients were met and discussions around their plight and perspective on the issue sought. It should be noted that the 2 patients looked fine. The third was not fine and had been transferred to Kapsabet District Hospital for treatment. He was however able to talk to the visiting NEPHAK team.

2.1 And the Un-informed Public

Prior to being arrested, the 3 patients had community health care workers (CHW) attached to them, whose role is to ensure that their clients take their medication as prescribed by the doctor under the DOTS Programme. The CHW said that their clients had become so stubborn and could not take their medication! The same sentiments were echoed by family members! Upon arrest, some community members tried to enquire how long the 3 will be in prison and had even requested that the 3 be started on treatment then left to return home. It was reported that some health workers explained to the community members how dangerous the 3 were and this has made even family members to be scared of the three. We see a clear case of TB-related stigma being planted and nurtured.

3.0 And now, Our Verdict.

We find the circumstances described above as unfortunate. This unfortunate situation has arisen from the failure of the health system and particularly the National TB Programme and partners to invest in the community component of the national TB response. We acknowledge that invoking Public Health Act to deal with the 3 TB defaulters was a desperate measure taken up to deal with an equally desperate situation. However, we find no justification for keeping the 3 patients in prison for 8 months for the reason “of ensuring treatment completion”. We found that the main reason for putting TB Patients in prison is to monitor their adherence to treatment. The other reasons are that when in prison, the 3 are kept away from alcohol and are finding food that they need for their medication to work. These reasons cannot compare with the abuse to the human rights of these patients. It is also creating a dangerous precedent in a country with high TB and HIV/AIDS burden. It is our position that monitoring of patients on treatment should be a health and not judicial or criminal issue. In the short term, we call for the immediate transfer of the 3 TB patients from prison to an appropriate health facility. In the long term, NEPHAK commits to working with other partners to ensure that TB advocacy, communication and social mobilization (ACSM) is rolled out to this and other regions of Kenya with high TB burden. We also call upon the health sector stakeholders to look keenly at the Public Health Act and its implications to health care delivery. More importantly, patients should be viewed as equal partners in the national response to TB and should be empowered to play this role. Only then will patients understand the interplay between rights and responsibilities.