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Health for the poor is a fundamental human right

IN THE SEVEN YEARS since our liberation, perhaps the most contentious issues to which our country has been exposed have related to health.

These have arisen out of the legislation enabling us to acquire affordable drugs and medicine and the questions we posed on HIV/AIDS.

The fact that health assumes such prominence in the public discourse confirms the objective importance of the issue of health in our continuing struggle for a better life for all.

In terms of the programme of action of our government, we are all called upon to join in united action to mount an all-round response to the problems of health that face especially the millions of poor people in our country.

That response requires that we attend to a number of things. Central to these is the fight against poverty.

It includes such matters as ensuring that our people have access to nutritious food, clean water, modern sanitation and a clean and healthy environment.



These are important elements of primary health care. However, that primary health care also includes access to basic medical services, including affordable drugs and medicines.

The government must work to address all these needs in an integrated manner. Among other things, this will require that we increase the numbers of people with appropriate types and levels of training deployed to work among the people at the grassroots level, such as community health workers.

One of the tasks of these workers would be to conduct an educational campaign among the people dealing with a whole variety of questions, such as the importance of using clean water to avoid various illnesses as well as the need to use condoms, to deal with the serious problem of sexually transmitted diseases.

Once again, popular organisations, including the ANC and the Leagues, will have to mobilise their members to act in support of these community workers in the interest of the masses of the people.

These organisations will also have to join in the campaign to eradicate the theft of drugs, medicines and equipment from our public health institutions.

In addition to everything we have said, the issue of affordable drugs and medicines also remains central to our efforts to achieve the objective of health for all.

In this context, we must express our sincere appreciation to the US pharmaceutical company, Pfizer, which has decided to make one of its drugs available to our people for two years, free of charge.

In addition to this, the company will also provide funds both to train medical workers to dispense this drug and to purchase the equipment enabling these workers to carry out the necessary medical tests on patients.

The acquisition of the drug alone, at no cost, will enable the public health service to save R350 million a year.

All this constitutes a practical example of what can be done jointly by the public and private sectors to address the life and death question of improving the health of those who are poor.

We recognise the fact that there is an inherent contradiction between the pursuit of the goal of health for the poor, to which our government is firmly committed, and the pursuit of profit, which is the goal of every commercial venture.

Among others, the truth of this proposition is illustrated by the fact that grossly inadequate resources are committed to the development of drugs and medicines to fight diseases of poverty and underdevelopment.

Accordingly, a permanent struggle between the masses of the people and the pharmaceutical companies cannot be avoided unless everybody concerned, including the developed countries, accepts that it is possible to address both the needs of the poor and the imperatives of normal commercial activity.

Given the now universal recognition of the challenge of the global eradication of poverty, the need to bridge the divides between the rich and the poor, between the North and the South, and the importance of health to the urgent challenge of economic development, it should be possible to come to a common position that health for the poor is a fundamental human right.

The effort must continue for the attainment of this position and, consequently, the development of sustained health campaigns radically to improve the health of the majority of the people in our country and the rest of the world.

It is unfortunate that this matter of human rights, human dignity and life itself, should have ended up in our courts, as though it would

ever constitute an act of justice if we were to adopt laws that make it difficult for us to achieve the objective of health for a11.

Nevertheless, as before, we will respect whatever decision is ultimately handed down by our judiciary.

Thabo Mbeki.

DRUGS

The case for more affordable drugs - the global trend

AT A TIME when there are a number of drugs available to treat malaria, TB, cholera and other diseases, millions of people in developing countries continue to die of these diseases. The reason for such deaths is that developing countries cannot afford these drugs.

The drug manufacturers, on the other hand, argue that the price at which they sell drugs is determined by the input of drug companies into the research process that leads to the development of new drugs. In their view, therefore, profit margins justify a situation where whole communities could be wiped out by disease; curable disease.

The South African government decided that the health, and indeed the livelihood, of our citizenry cannot be traded off against higher profit margins. In 1997, Parliament passed the Medicines and Related Substances Control Amendment Act that would make it possible for the government to import drugs at cheaper prices. This Act provides that the government can import patented drugs from a patent holder or licensee anywhere in the world if the price of such drugs is cheaper than that of the South African supplier.

This Act also provides for the substitution of patented drugs with generics, as well for cases of compulsory licensing where prices of drugs are unreasonable.

We will deal here with issues around parallel importation.

First of all, we need to make it quite clear that the Act allows the government to buy only legitimate drugs from lawful suppliers. There is no intention or desire to introduce 'pirate' drugs into the South African market. The Act prohibits this.

This practice of importing drugs from legitimate suppliers at a price less than that offered by a national supplier is called parallel importation.

The pharmaceutical companies have challenged the validity of the government approach, claiming that it flies in the face of South Africa's World Trade Organisation (WTO) obligations, in particular the Trade- Related Aspects of Intellectual Property Rights agreement (TRIPS). This is simply not true.

The TRIPS agreement provides that governments can take special measures to protect the public health of its citizens. More

importantly, section 6 of TRIPS leaves open the issue of the exhaustion of intellectual property rights.

Exhaustion of intellectual property rights happens when the holder of such rights, such as the holder of a patent over a particular drug, gives permission for the drug to be put on the market. This means that she/he has given permission for the drug to be sold by other people. This practice is at times referred to as the principle of first sale. The logic behind this principle is that every lawful distributor of a patented product pays the original patentee for his invention. The patentee would therefore get returns from this first sale.

Once you have given other people the right to sell your patented product, you cannot then control the price at which they sell the product.

TRIPS does not disallow the exhaustion of patent rights.

Many countries in the world have adopted the practice of parallel importation to address the problems of unreasonably high prices of products. The EU countries practice it within the Union. The United States has adopted a version of this practice, where they allow the re-importation of US goods. Japan also practices parallel importation.

These countries have had several cases come before their courts, confirming this practice.

In the EU, cases such as Merck and Co. Incorporated versus Primecrown Limited, decided in 1997, affirm the right to parallel importation in the EU.

In Japan, the Supreme Court decision of BBS Kraft Fahrzeuge Technik AG versus Kabushiki Kaisha Racimex (Japan) and Others is a case in point. The judgement was delivered in 1997.

In the US, the 1998 case of Quality King Distributors versus L'Anza Research supports this principle.

The real issue is that the first buyer of a patented product rewards the patent holder for the research that went into developing a product. There is therefore no loss for the money spent on researching products. It will be wrong to pay the patent holder twice or thrice over for the same input and product. Subsequent sellers are therefore at liberty to fix their own price for the product.

The case becomes even more compelling where it concerns the health of people. How do the pharmaceutical manufacturers justify watching people die because the manufacturers want to be paid twice and thrice over?

Again, all that the government wants to do is buy legitimate drugs, from patent holders or their licensees, at a reasonable price. TRIPS provides that no one shall buy products under a patent without the permission of the patent holder or their licensee. That is exactly what the government wants to do. TRIPS does not say that the patent holder from whom permission is sought must be in a prescribed country. The government does not have to get the permission of the holder of a patent over drugs in South Africa. The permission of the patent holder in Kenya is sufficient, if we were to buy from Kenya.

The practice where a drug that costs R5 in Kenya is sold for R50 in South Africa must come to a stop.

The case against the government starts on Monday, 5 March 2001 in the High Court in Pretoria.

DRUG COSTS

Court case threatens the health of millions of South Africans

THE COURT ACTION brought against the government by several large pharmaceutical companies and the Pharmaceutical Manufacturing Association threatens South Africa's efforts to provide affordable health care for all its citizens.

The legal action, to be heard from 5-13 March, challenges the Medicines and Related Substances Control Amendment Act passed in 1997, which introduced measures to make medicines more affordable and improve the functioning of the Medicines Control Council.

This law forms an important part of government's efforts to make health care more accessible to millions of poor South Africans. In addition to government policy, ensuring progressive access to health care is an obligation placed on government by the Constitution.

Many of the measures introduced in the Act are standard practice in a number of other countries, in both the developed and developing world. Measures to substantially reduce the cost of medicines include:

Parallel importation of medicines

The health minister is empowered by the Act to permit parallel importation of medicines to protect the health of the public in instances where the drug is sold for more in South Africa than in another country. Parallel importation is official government policy and is listed in the National Drug Policy as one of the strategies to make medicines more affordable in South Africa.

The pharmaceutical industry argues parallel importation is prohibited under the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, article 8 of the TRIPS agreement allows WTO member states to make certain exceptions to protect public health, and "promote the public interest in sectors of vital importance to their socio-economic...development."

Generic substitution

The Act requires pharmacists to offer a patient a generic version of a prescribed brand name medicine. A generic medicine is a drug with the same quality active ingredient as a more expensive brand name drug. Although practised for many years in the public sector, generic substitution was not required in the private sector. If implemented, this measure could save the South African economy up to a billion rand a year.

The pharmaceutical industry argues this measure would interfere with the prescribing autonomy of the doctor and it might compromise the patient's treatment. However, the law allows the doctor to write "do not substitute" on the prescription if there are good grounds for doing so.

Generic substitution is not allowed if the product is listed as a 'non-substitutable' drug by the Medicines Control Council. The patient is free to insist on the non-generic product. Several European countries

and several states in the USA practice generic prescribing. The use of good quality generics is strongly supported by the World Health Organisation.

Pricing Committee

Prices of drugs are relatively high in South Africa. The Act makes provision for a Pricing Committee that will collect market information about drug pricing, and can advise the Health Minister on matters of pharmaceutical pricing.

This will introduce a transparent pricing system with a single-exit price. This means pharmaceutical companies are in principle free to set prices but they will sell their products at the same price to all buyers.

The Government also aims to replace the current system of margins by a professional fee system. This will remove the incentive for pharmacists and dispensing doctors to sell or prescribe a more expensive drug as they will receive the same professional fee whatever the prescription.

There are no international agreements that prevent the government from instituting a national drug pricing committee. In many countries, governments have introduced direct or indirect price controls for drugs.

Compulsory licensing

The Act permits the Minister of Health to issue a compulsory license without the permission from the patent holder on grounds of public interest.

A compulsory license aims to make vital essential drugs more accessible by limiting the exclusive rights of the original patent holder, and by permitting a generic competitor to enter the market with a lower priced version of the same drug before the end of the patent. Compulsory licensing is permitted in South Africa under the SA Patents Act of 1978.

Compulsory licensing allows the bypassing of patent protection in case of abusive pricing, emergencies and government use. The possible savings vary from 10 to 97 percent, depending on the differential pricing of the drugs. The TRIPS agreement allows WTO member states to enable compulsory licensing in their national laws, and is not prescriptive how this should be administered, as long as it meets certain criteria and adheres to specific conditions.

The Act also forbids the use of bonuses and free samples to doctors and pharmacists as a marketing tool. The Act allows the health minister to prescribe a code of conduct for marketing of pharmaceutical products.

The Act makes provision for the licensing of dispensing doctors, which would enable government to standardise training, quality of service and inspection. This is aimed at splitting the functions of diagnosing and prescribing, which should be the function of doctors, from dispensing drugs, the function of pharmacists. While there are cases where a doctor should be allowed to dispense medicine, such as in rural areas or far from a pharmacy, government is worried about the financial incentives that buying and selling medicines has on a doctor's choice of medicine to prescribe.

The South African government has offered a number opportunities for a co-operative engagement with the industry. In January 1998, a meeting was held with the pharmaceutical industry at which proposals were made to deal with some of the industry's concerns in the

process of the finalisation of the regulations to accompany the Act. During this meeting the government stressed it regarded some of the concerns raised by industry as unfounded.

The government will honour its international obligations and strive to contribute to a global dispensation that respects the rule of law and the protection - not abuse - of intellectual property rights.

WOMEN

In honour of International Women's Day, 8th March 2001

INTERNATIONAL WOMEN'S DAY has its origins in the women's trade union organisations, in particular the activism of women working in the garment and textile factories in America in the early nineteenth hundreds.

In 1907, women working in factories who regularly worked extremely long hours in dangerous conditions, held a 'Hunger March' in New York calling for a ten - hour working day and better wages. The march was attacked by the New York City police. The following year in 1908, a landmark march to commemorate the struggle of these women was held in the city and attended by 15 000 women. They adopted the slogan " Bread and Roses", with bread symbolising economic security and roses a better quality of life. As the First World War loomed in 1914, International Women's Day became an anti- war event and peace a major theme of the day, for the duration of the war. In the late 1960s Women's Day was revived by the new women's liberation movement and in 1975, during the International Women's Year, the United Nations began celebrating 8 March as International Women's Day.

What significance does all this mean for our country and our organisation, the ANC?

The challenges for us are to continue the struggle for a non- racial and non -sexist society through mobilising the largest sections of our society to participate in a major campaign around building a non- racial and non-sexist South Africa. Amongst others, the campaign must also review progress on gender equality and the emancipation of women. It must agitate for the need to continue to deepen our understanding of the nature of women's oppression, patriarchy and the national question in South Africa. More than 1 billion people in the world today, the great majority of whom are women, live in unacceptable conditions of poverty, mostly in the developing countries. This situation must change and the campaign must look at the impact of dehumanising poverty on the lives of ordinary South African women and their families.

Since 1994, there has been tremendous progress towards achieving equality between men and women. Women's access to education and proper health care has increased, their participation in the labour force has grown and legislation that promises equal opportunities for women and respect for their human rights has been adopted in many countries. The world now has a growing number of

women legislators and South Africa is in the top ten (10) of those countries.

However, nowhere in the world can women claim to have the same opportunities as men regardless of those laws. Women continue to be among the poorest. On average, women receive between 30 and 40 per cent less pay than men for work of the same value. Everywhere women continue to be victims of war, violence, with rape and domestic violence listed as significant causes of disability and death among women of reproductive age world-wide.

The impact of our programmes and policies adopted since 1994, have to come under scrutiny. Women's emancipation in a globalising world with regard to family and community, gender identities and the institutions and structures to take forward gender equality must be brought to account on progress achieved in this area.

Campaign on building a non-racial and non-sexist society

The African National Congress has to strengthen its endeavours to raise national consciousness on gender issues and apply zero tolerance on sexism and gender discrimination. In our January 8 statement for this year, the National Executive Committee spoke of the need to continue to wipe out poverty in our country and continent, where millions of our people are still condemned to suffer from hunger, from malnutrition and its diseases. This burden falls acutely on the shoulders of women who continue to be heads of households and caregivers for their entire families. It is in this context that the ANC applauds the increase of social pension grants from R 540 to R570 by the Minister of Finance in his Budget Speech. Key to the success of the Urban Renewal strategy should be the involvement of women as decision makers and beneficiaries of these programmes.

"A common South African identity" - thinking globally and acting locally

Our campaign on building a non-racial, non-sexist and prosperous society has to aim at building a common South African identity amongst South African women, embracing all sectors of our society. We have to ensure that our branches and allied structures take forward the fight to protect and assert the human dignity of women especially in vulnerable areas such as farms, domestic work, women affected by HIV/AIDS etc. and continue to raise public consciousness and mobilise support for government - driven programmes to address the material basis of racism and gender oppression.

In the build - up to the World Conference on Racism in August, the ANC has to lead the national debate on issues of race, class and gender that continue to be the defining elements of whether a South African woman lives in a first or third world environment.

The ANC has to continue to inform our people of their rights pertaining to anti-discriminatory behaviour which prohibit discrimination on the basis of race, gender or any other difference. Laws and institutions meant for redress such as the Human Rights Commission and the Office of the Public Protector at their disposal must be made known.

For this year, on Thursday next week, the ANC is calling on all South Africans to remember this day and pay tribute to millions of women across the world who continue to bear the brunt of poverty, disease, illiteracy and low paid wages by striving to ensure that this year of the beginning African century will bring an end to this injustice. In our workplaces, schools, churches, synagogues, social clubs and



stokvels, let us all say" Malibongwe igama lamakhosikazi, by that we would be bringing essence to the UN Beijing Conference slogan, "thinking globally and acting locally"

PUBLIC SERVICE

Jobs summit produces new approach to public service relationships

THE PUBLIC SERVICE JOB SUMMIT, which took place in Pietersburg at the end of January, produced a framework agreement which reflects a new approach to relations between government and public sector unions.

The summit allowed for management and the public service labour movement to discuss for the first time the connections between society's developmental goals and public service transformation and restructuring. It provided space for the labour unions to participate in policy discussions relating to the public good, rather than only the interest of their members.

Despite mainstream media reporting to the contrary, summit discussions reflected a sincere search for an alternative to the positional bargaining style so typical of interaction between management and public service unions.

The framework agreement signed by all parties on the last day of the summit creates a platform for further discussions on transformation, restructuring and labour relations issues. It is intentionally short on detail, laying the basis for a further process.

The agreement covers three smaller framework areas:

Transformation and restructuring of the public service. The process of transforming the public service is based on the assumption that the skewed distribution of personnel in the public service needs to be corrected. The process will adhere to existing legislation and regulations, will unfold at departmental and sectoral level and will be concluded at Public Service Co-ordinating Bargaining Council (PSCBC) level.

Improved service delivery and a consultative process are among the thirteen principles set out in the agreement to underpin any transformation and restructuring process.

There was agreement that public services should be delivered in support of development goals. These include alleviating poverty, creating employment and improving sustainable livelihoods. Sustainable economic growth should be pursued. Better access to the public service was again registered as an objective of transformation.

Conditions for improved participation by all stakeholders in the budgetary process has been negotiated. This should contribute to better understanding of the constraints faced by management in making decisions about the allocation and utilisation of scarce resources. It should also contribute greatly to increased trust and transparency in relationships.

Labour relations policy. The framework agreement on labour relations policy deals extensively with the improved performance and productivity in the public service. Labour and management will together investigate improved mechanisms for measuring and improving performance and productivity.

Human resource development and career-pathing hold the key to many of these issues. There was a commitment from all parties to pursue a developmental agenda for current public service employees. This will involve developing skills through training and in-service development opportunities, as well as seeking to achieve representivity in all ranks of the public service.

Socio-economic policies. Much work remains before a socio-economic policy for the public service is completed. Initial overarching objectives include recognition of the public service's broader societal role in the protection and creation of jobs in the short and medium term. Such employment should have a quality component to it. Above all, though, jobs should be seen in the context of improving the quality and efficiency of service delivery.