

**OPEN LETTER TO THE GOVERNMENT OF MACEDONIA REGARDING THE DETENTION,
COMPULSORY MEDICAL TESTING AND CRIMINAL PROSECUTION OF
ALLEGED SEX WORKERS IN NOVEMBER 2008**

December 17, 2008

Mrs. Gordana Jankuloska, Minister of the Interior
Mrs. Aneta Stancevska, Vice Minister of the Interior and Chief of Sector for Internal Control
Mr. Bujar Osmani, Minister of Health
Mr. Idzet Memeti, Ombudsman

Dear Ministers and Ombudsman:

On this day, the International Day to End Violence Against Sex Workers, the undersigned, supporters and representatives of sex workers and organizations and individuals advocating for human rights, strongly condemn police actions in relation to the recent mass arrest of alleged sex workers in Skopje, Macedonia. We are also deeply concerned by reports that ministers of the Government of Macedonia have defended police conduct that violates a range of human rights — and in the course of doing so, have misguidedly invoked public health arguments and deliberately contributed to a climate of intolerance that will only heighten the risk of further violations, including violence, against sex workers.

Background

On the night of November 20, 2008, police from the “Bit Pazar” police station, the “Alfa” special mobile police unit and the local branch office of the Ministry of the Interior executed a large-scale raid targeting a well-known sex work zone in Skopje, arresting more than 30 people (the majority of them women alleged to be sex workers) and detaining them overnight on grounds such as suspicion of “involvement of prostitution” (a misdemeanor).

The following day, those detainees accused of being sex workers were subjected to compulsory testing by police for HIV and hepatitis B and C. Having obviously learned of this plan, representatives from several media outlets were present at the University Clinic for Infectious Diseases when the women were taken for testing. Media outlets subsequently published and broadcast photos of the women being escorted from police vans into the clinic, as well as information that they had been arrested for “involvement in prostitution” and about the streets where the raid took place. The Ministry of the Interior published on its website pictures of the detainees that had been taken at the police station.

The same day the tests were carried out, the Minister of the Interior issued a press statement in which she declared the police action was part of the government’s “fight against a socio-pathological phenomenon in society and to eliminate street prostitution.” The Minister also stated the testing had been done to find out if the “arrested prostitutes” were purposefully spreading infectious diseases, and that those who tested positive would face criminal charges.

On December 3rd, the Ministry of the Interior issued a press release stating that 7 of the detained women have tested positive for hepatitis C virus (HCV) and are now facing criminal charges for allegedly “transmitting an infectious disease”.¹ To date, the Ministry of the

¹ Ministry of the Interior, “After the ‘street prostitution’ action, the hepatitis C virus found in seven persons,”

Interior has simply referred to vague “suspicions” in this regard, and has claimed that medical testing would confirm or repudiate these suspicions. To date, police and prosecutors have not disclosed evidence that would support the allegation of any transmission, as is required by Macedonian law.

Human rights and public health concerns

In our view, the actions of the police, and of the Minister and your Government, violate human rights protected under international law. They also are inconsistent with sound, ethical public health practice and will likely serve to undermine efforts to protect and promote public health.

Detaining individuals in order to conduct forced medical procedures, including testing for HIV and HCV, violates the **right to security of the person**, a right guaranteed under both the *International Covenant on Civil and Political Rights* (Article 9) and the *European Convention on Human Rights* (Article 5). Forcible testing is also a violation of bodily integrity and autonomy. The UN’s expert health agencies have affirmed that HIV testing should only be done with informed consent, meaning testing must be both informed and voluntary; furthermore, testing should be accompanied by pre- and post-test counselling and the confidentiality of test results should be guaranteed.²

The conduct of police and the government has also violated the **right to privacy** of those detained. The *International Covenant on Civil and Political Rights* (Article 17) prohibits arbitrary interference with a person’s privacy. The *International Covenant on Economic, Social and Cultural Rights* (Article 12) guarantees protection of the confidentiality of personal health information, as part of the right to the highest attainable standard of health. The *European Convention on Human Rights* (Article 8) guarantees the right to respect for private and family life, and further prohibits any public authority from interfering with this right except as is necessary in a democratic society in order to achieve such objectives as protection of health or protection of the rights and freedoms of others. The *Constitution of the Republic of Macedonia* guarantees the respect and protection of personal and family life and a person’s dignity (Article 25), and further guarantees the confidentiality of personal information and declares that “citizens are guaranteed protection from any violation of their personal integrity deriving from the registration of personal information through data processing” (Article 18).

Forcibly testing someone for HIV or HCV is a violation of both bodily integrity and privacy. Disclosing by press release that some of those detained by police have tested HCV-positive, which medical information should be held confidential, implicates all those who were detained and whose identities were broadcast by the media, and exposes those sex workers and others to potential violence. Such excessive invasions of privacy serve no legitimate objective.

Furthermore, both the *International Covenant on Civil and Political Rights* (Article 7) and the *European Convention on Human Rights* (Article 3) prohibit the state and its officials from engaging in **inhuman or degrading treatment or punishment**, as does the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Article

News release, December 3, 2008, online:

www.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=6272&mid=1367&tabId=1&tabindex=0.

² UNAIDS/WHO Policy Statement on HIV Testing, June 2004, online:

www.who.int/rpc/research_ethics/hivtestingpolicy_en_pdf.pdf.

16). These prohibitions encompass not only acts that cause physical pain, but also those that cause mental suffering to the victim.³ The *Constitution of the Republic of Macedonia* also guarantees the right to physical and moral dignity and prohibits any form of torture or inhuman or humiliating conduct or punishment (Article 11). The conduct of police and the government in this case, including allowing the media to film the detained women while being forced to undergo HIV and HCV testing, not only intentionally inflicted mental suffering but could only have been aimed at humiliating them. As such, it constitutes degrading treatment and punishment.

Limits on some human rights protected under the *International Covenant on Civil and Political Rights* and the *European Convention on Human Rights* may be permitted in some cases, including in pursuit of public health objectives. (There is no permissible limitation on the right to be free from inhuman or degrading treatment or punishment; this right is “non-derogable”.) However, any such limitations may not be arbitrary, unreasonable, or discriminatory. Furthermore, they must respond to a “pressing public or social need”, pursue a “legitimate aim” and be proportionate to that aim.⁴ It is difficult to see how mass arrest, forcible testing and broadcasting the identities of sex workers responds to any pressing public need, or that these infringements of human rights could be seen to serve a legitimate aim or be proportional in achieving any such aim.

We are further concerned that, as a result of the forced HCV testing, seven of the women arrested now face **criminal charges of “transmission of an infectious disease”** pursuant to Article 205 of Macedonia’s Criminal Code. According to the December 3rd press release from the Ministry of the Interior, the basis for the charges against the alleged sex workers is that the hepatitis C virus is “an infective disease which is transmitted by sexual intercourse, via blood or secretion contact with the infected person.” However, HCV has rarely been detected in semen and vaginal fluids and most experts believe the risk of sexual transmission of hepatitis C is low.⁵ Therefore, it is not generally considered a sexually transmitted infection. Moreover, so far prosecutors and police have not identified any evidence suggesting that actual transmission of hepatitis C occurred in a circumstance involving any of those arrested on suspicion of involvement in sex work. In light of the above information, there appears to be no basis for such criminal charges. Rather, it appears that these women are being targeted for criminal prosecution simply because they have HCV (which is clearly discrimination based on ‘health status’ contrary to international law) or because they are sex workers (contrary to the principle of anti-discrimination central to international law).

Reports indicate those detained face **criminal charges for involvement in prostitution**. Criminalizing sex workers also fuels violence, discrimination and other human rights abuses against sex workers, including by police, particularly if police enjoy impunity for abuses against sex workers. International health and human rights bodies have acknowledged that criminalizing sex workers can increase their risks of HIV and other sexually transmitted infections by driving sex work underground and limiting the choice of working conditions

³ UN Human Rights Committee, General Comment 20: Article 7 (prohibition of torture and cruel, inhuman or degrading treatment or punishment), 1992.

⁴ UN Economic and Social Council, “Syracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights,” UN Doc. E/CN.4/1985/4, Annex (1985).

⁵ E.g., U.S. Centers for Disease Control and Prevention, “Recommendations for Prevention and Control of Hepatitis C Virus (HCV) Infection and HCV-Related Chronic Disease,” *Morbidity and Mortality Weekly Reports* (Recommendations and Reports) 1998; 47; No. RR-19; World Health Organization, “Hepatitis C,” Fact Sheet No. 164 (2004).

and the choice of clients. This has been noted by the Office of the UN High Commissioner for Human Rights and UNAIDS in the *International Guidelines on HIV/AIDS and Human Rights*, in which they recommend to governments that,

[w]ith regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients.⁶

All people, including sex workers, are entitled to their basic human rights, including the rights to freedom of expression and association (*International Covenant on Civil and Political Rights*, Articles 19 and 22) and the rights to the highest attainable standard of health and to safe and healthy working conditions (*International Covenant on Economic, Social and Cultural Rights*, Articles 6, 7 and 12). The *Constitution of the Republic of Macedonia* recognizes a number of these rights and further stipulates that Macedonians “are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status” (Article 9).

This latest crackdown and incident of forced HIV and HCV testing by police is occurring in a context of violence against sex workers (including police violence and extortion) and their unequal access to police protection. In recent research conducted by the Sex Workers’ Advocacy Network of Central and Eastern Europe and Central Asia (SWAN), sex workers in Macedonia reported extremely high rates of violence by both police and members of the general public.⁷ None of the sex workers interviewed in that study felt they could seek police help in future if they were being threatened or assaulted: all of those interviewed reported a fear of being mistreated by police and a majority reported a fear that going to police would put them in worse danger or lead to their arrest. The fact that the Minister of the Interior repeatedly referred to sex workers as part of a “socio-pathological phenomena” and as disease carriers only fuels the widespread stigmatization and demonization of sex workers, contributing to a climate that only encourages further violence and abuse. Furthermore, police targeting of sex workers contributes to higher HIV risk in many ways, such as making sex workers reluctant to carry condoms if these will be used as evidence to support prostitution charges, forcing sex workers to rush negotiations with clients which can lead to unsafe sex, or compelling sex workers to accept unsafe sex demanded by clients in order to pay off fines or respond to police extortion.

We understand the Macedonian Government’s concern for the health and well-being of its citizens. Yet the actions of police and the Ministry of the Interior in this case — mass arrests, abusive policing, forced medical testing, violations of privacy and criminal prosecutions — undermine not only sex workers’ basic human rights but also public health objectives, by impeding voluntary testing for HIV and HCV and by increasing stigma and discrimination against those most vulnerable to sexually transmitted infections.

⁶ Office of the High Commissioner for Human Rights and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights, consolidated version*, 2006, para 8(c).

⁷ Sex Workers’ Advocacy Network of Central and Eastern Europe and Central Asia, *Mapping Police Violence*, report forthcoming 2009.

Action needed now

Therefore, we call upon the Macedonian Government to:

- stop forced testing of its citizens and ensure all future testing for sexually transmitted infections involves informed consent, pre- and post-test counselling, and guaranteed confidentiality of test results;
- ensure post-test counselling for all the arrested sex workers, and access to necessary medical care for those who need it;
- investigate the causes, procedures and consequences of these latest arrests, including the police action exposing confidential health information and subjecting detainees to degrading treatment, as well as the apparently unfounded basis for the criminal charges related to the “transmission of an infectious disease”;
- ensure the physical safety of the arrested sex workers, including those who no longer remain in the custody of the police;
- ensure, on an ongoing basis, that incidents of violence or mistreatment of sex workers, including by police, are actively investigated and the perpetrators sanctioned appropriately; and
- re-examine laws relating to the criminalization of sex workers, in light of the evidence that such criminalization undermines both health and human rights.

Sincerely,

Richard Elliott — Executive Director, Canadian HIV/AIDS Legal Network

Joseph Amon — Director, HIV/AIDS and Human Rights Program, Human Rights Watch

Liesl Gertholtz — Director, Women’s Rights Division, Human Rights Watch

This letter has also been endorsed by the following organizations and individuals:

1. Eurasian Harm Reduction Network
2. SCOT-PEP — Scottish Prostitutes Education Project (Scotland)
3. TAMPEP International Foundation
4. European Network for HIV/STI Prevention and Health Promotion Among Migrant Sex Workers
5. SANGRAM — Sampada grameen mahila sanstha (India)
6. VAMP — Veshya Anyay Mukti Parishad (India)
7. EMPOWER Foundation (Thailand)
8. International Community of Women Living with HIV/AIDS
9. Asia Pacific Network Of Sex Workers
10. SIO — Sex Workers Interest Organization (Denmark)
11. One Love Organisation (Guyana)
12. Caribbean Sex Work Coalition
13. Guyana Sex Work Coalition (Guyana)
14. Society Against Sexual Orientation Discrimination — SASOD (Guyana)

15. International Union of Sex Workers
16. APROASE (Mexico)
17. HOPS — Healthy options project (Macedonia)
18. Kristen Yee, Program Liaison Officer, Victoria College, University of Toronto (Canada)
19. British Columbia Persons With AIDS Society (Canada)
20. Stepping Stone (Canada)
21. International Committee on the Rights of Sex Workers in Europe
22. Zi Teng — sex workers concern group (Hong Kong)
23. NGO Doverba (Macedonia)
24. International Network of People Who Use Drugs — INPUD
25. The Finnish AIDS Council (Finland)
26. Soros Foundation (Moldova)
27. SWASH — Sex Work And Sexual Health (Japan)
28. International Women's Health Coalition
29. Social AIDS Committee (Poland)
30. Sex Workers Outreach Project (USA)
31. Scarlet Alliance — Australian Sex Workers Association (Australia)
32. Canadian Treatment Action Council (Canada)
33. Northern AIDS Connection Society (Canada)
34. Coalition for promotion and protection of sexual and health rights of marginalized communities (Macedonia)
35. Macedonian Harm Reduction Network (Macedonia)