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SOLDIER LIVING OPENLY WITH HIV DEPLOYED ON PEACE-KEEPING MISSION TO SUDAN

Sergeant Sipho Mthethwa of the SANDF's 121 SAI Battalion, which is based in Mtubatuba, KwaZulu-Natal, made history on Friday by being the first known HIV positive soldier to be deployed externally by the SANDF. External deployment relates to SANDF missions outside of the borders of South Africa.

This follows the May 2008 ground breaking case in the North Gauteng High Court, Pretoria, on the constitutionality of HIV testing policies used to exclude people with HIV from recruitment to, or promotion or foreign deployment in, the SANDF.

In that case the court was asked to declare the blanket exclusion of HIV positive individuals unconstitutional and to order the SANDF to devise a new health classification policy within six months of the granting of the order. The parties reached an agreement during the hearing of the case which was subsequently made an order of court. The AIDS Law Project (ALP) represented the South African Security Forces Union (SASFU) and three individuals with HIV who had been unfairly discriminated against by the SANDF. Sergeant Mthethwa was one of the applicants.

The court order deals with the unfair consequences of the SANDF's HIV testing policies, in terms of which no person with HIV could be recruited, deployed externally or promoted within the SANDF. It expressly declares the SANDF's policies to be unconstitutional in that they unreasonably and unjustifiably infringed the rights of aspirant and serving HIV positive SANDF members.

Despite the court order, the SANDF arbitrarily excluded Sergeant Mthethwa and many other HIV positive soldiers from external deployments, without considering their state of health and fitness levels. Sergeant Mthethwa was originally excluded when his unit was scheduled for deployment to Sudan. It was only after the ALP's intervention that the Chief of the Army, Lieutenant-General Shoke, issued an instruction on 28 September 2009 authorising Sergeant Mthethwa's deployment to Sudan. The ALP has been informed that Sergeant Mthethwa departed for Sudan on Friday, 23 October 2009.

Whilst the ALP welcomes the eventual external deployment of Sergeant Mthethwa, it is generally disappointed by the state's failure to comply promptly with the court order. Unfair discrimination against other aspirant and serving HIV positive members of the SANDF is still prevalent. Further, a new health classification policy for the SANDF has yet to be adopted, despite numerous attempts by the ALP to ensure that the court order is respected and implemented.

The ALP accordingly calls upon President Zuma and the Minister of Defence and Military Veterans, Ms Lindiwe Sisulu, to act swiftly in curbing the continuing infringements of the constitutional rights of HIV positive soldiers in the SANDF in terms of the court order. This will, in part, be achieved through a speedy adoption of a new health classification policy for the SANDF.

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