
HIV/AIDS in Zambia: Prospects for law reform

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Submitted in partial fulfillment for the Masters in Women's Law course, SEARCWL 2005/2006

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Introduction

The decimation of the population in Africa, especially sub-Saharan Africa, has been caused by HIV/AIDS related illnesses, among other things. The transmission of the infection among women is higher than that among men. The main route of transmission is through heterosexual contact and blood products. Studies in Africa have indicated that women are at greater risk than men of acquiring HIV infection. This is because, for women, risk taking and vulnerability to infection is increased by norms that make it difficult for them to demand safer sex. Further, the large surface area of the female genitalia (vagina) facilitates the efficient transmission of the virus, especially with the use of dry sex practices which subject women to bruises which, in turn, render the genital walls permeable. Additionally, polygamous unions and multiple partners multiply the vulnerability to infection.

This essay seeks to examine the legal provisions in relation to HIV/AIDS in Zambia. It shall attempt to elucidate and delineate the social, economic and cultural factors that enhance the transmission and spread of HIV. It shall further endeavour to identify specific factors that encourage the spread, while giving examples to concretize the discussion. In addition, it shall examine the provisions relevant to transmission of communicable diseases in relation to HIV/AIDS. Lastly, it will describe an envisaged position of the law, whilst drawing on a specific example from Zimbabwe.

The essay is divided into three parts. Part one deals with the Zambian legal position in relation to the social, economic and cultural factors that influence HIV/AIDS transmission. Part two deals with the Zimbabwean legal position on the wilful transmission of HIV/AIDS and this will serve to illustrate the comparative approach with the Zambian situation. Part three will be the conclusion.

PART ONE

The Zambian legal position

In Zambia, the prevalence of cases such as defilement, early marriages, marital rape and other forms of sexual exploitation has contributed to the increase in the spread of HIV. Despite the fully fledged education campaigns, the country lacks efficient, specific, legal provisions to curb transmission through the above mentioned routes. This makes women and girls more susceptible to wilful transmission by men. The sexual offences are perpetuated unabated because of the legislation gap. The laws which are pertinent to the issues are the following:

- Chapter 87 of the Penal Code of Zambia states that ‘any person who unlawfully or negligently does any act which is and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life is guilty of a misdemeanour.’
- Chapter 15 (1) states that any person who unlawfully and indecently assaults a women is guilty of a felony and is liable to imprisonment for 14 years.

The above laws appear relevant to the issue of transmission of diseases but, given the gravity of HIV transmission, it is paradoxical that an infection of this nature should be treated as a misdemeanour. The cases before the courts are treated according to visible situations such as abduction, rape and defilement but ignore the real consequences of such offences. This makes it difficult even for law enforcers to find efficient laws to fall back on.

The main setback is that the laws have not been amended or repealed frequently enough to keep abreast with the demands of the prevailing social changes. Certain crimes, like marital rape and abduction, are not regarded with the gravity that they deserve. The provision in Chapter 18 which has been cited, refers to transmission of communicable diseases such as syphilis and gonorrhoea. The treatment for such diseases is available but there is no cure for AIDS, hence people need to be protected. The above provision has little or no relevance to HIV/AIDS transmission. Law reform in this regard would operate at a broader far-reaching level. It would not only deter would-be offenders but also mediate the human rights and change attitudes vis-à-vis perceptions of marital rape or abduction.

Social, economic and cultural factors

There are social, economic and cultural factors that encourage the spread of HIV/AIDS, especially among women. Social factors include widow inheritance, myths surrounding condom use and marital rape. The inadequacies in the law are compounded by the pertaining social situations which in turn influence lived realities. These shape the underlying values in social interactions and present vulnerability to HIV/AIDS transmission.

(1) Social factors

- *Widow cleansing*

Customary laws in Zambia provide for cleansing of a widow after the husband dies. Cleansing means that a widow is set free from her deceased husband's spirit. It is believed that when people die, they leave behind their spirit which haunts their partner who has been left behind. A relative of the deceased person is identified to perform the ritual which is performed by having sexual intercourse with the widow. It is believed that the successor cleanses the widow from her husband's spirit and thus renders her free to engage in other sexual relationships. Further, the use of condoms during the ritual is discouraged because of the belief that the widow is unclean and can only be purified through unsafe sex. In addition, it is held that direct sex will appease the spirit and consequently rest it. If a woman is not cleansed, it is assumed that she cannot have another sexual relationship lest the widow and the man develop mental illnesses and eventually die.

But with the advent of the HIV/AIDS pandemic, this ritual has contributed to the transmission of the infection. The possible scenarios are that the deceased person or the woman herself or the deceased's relative could be HIV positive. The HIV status of the appointed person is not a deterrent to performing the ritual. He will wilfully transmit the virus in the name of *ulya zyina*, successor. There is no law that forbids widow cleansing. The calls by civil society to prohibit it have received very little attention because of lack of political will. The delay in passing legislation presents untold hardships for women especially in relation to HIV/AIDS transmission. As a result, women cannot enjoy full human rights because the practice not only impinges on their rights but also renders them vulnerable to contaminated viral loads. It is important to point out that, more often than not, women are forced into accepting the ritual for economic reasons. Women who refuse to be inherited forfeit their right to access the accrued marital property and are hence, compelled to return to their natal homes. WILSA notes that:

‘... a widow earns her right to continued residence in her husband's home because of marriage. If she refuses to continue marriage once the husband dies, there are no grounds upon which she can continue living there, since her children are her brother's responsibility (WILSA, 1997:182).

The fact that a widow is considered part of the husband's chattels means that she is to be inherited like any other property. In other words she forms part of the estate. This ultimately gives her restricted power to negotiate safer sex and, therefore, makes her susceptible to HIV/AIDS transmission.

The Lozis are the only bilateral tribe in Zambia (they follow fathers or mothers lineage in inheritance issues but

lean mainly to patrilineal patterns). For them widow cleansing is done differently – by sprinkling mealie meal on the widow. Most tribes are matrilineal (inheritance follows mothers lineage) and for these, widow inheritance which involves sexual intercourse is rampant. The question of whether or not a widow is to be inherited by direct sexual contact is ultimately determined by one's kinship group. As much as the ritual is being discouraged, people still practise it because of the entrenched beliefs already alluded to.

Zambia is a signatory to the international conventions. Article 5(a) of CEDAW obliges state parties to modify the social and cultural patterns of men and women, with a view to achieving the elimination of prejudices and customary practices which are based on the idea of inferiority or superiority of either sexes or stereotyped roles for men and women.

Further, article 2(a) requires the embodiment of the principle of equality in the countries' constitution. Article 2(b) urges states to adopt appropriate legislative measures, including sanctions where appropriate, prohibiting all forms of discrimination against women and article 2 (c) requires states to change customary provisions which are not akin to human rights.

Nevertheless, article 23(4) of the Zambian constitution states that in matters of personal law, customary law is applicable. Customary laws in Zambia support widow inheritance.

By and large, the constitution shields harmful customary practices which are embedded in traditional norms and values. The constitution thus enables the perpetuation of the ritual and consequently increases the spread of AIDS.

Even if human rights exist, it is difficult for women to access them. This is, firstly, because women lack information that can help them avoid the infection. Secondly, they are subjected to violence which compels them to succumb to male overtures for risky behaviours. Thirdly, the unequal power relations deter women from exercising full control over their bodies. In the final analysis, women find themselves in a precarious situation with no room to manoeuvre and hence their rights become compromised. There are instances where the human rights come into conflict with traditions such as widow cleansing, early marriages, abduction, marital rape inter-alia. The most viable option is to elucidate the values or relevance of the practice, thereby counterbalancing the resultant evils of continuing the practices in favour of human rights. This is to explain that the prevention of transmission of HIV/AIDS through widow cleansing does not lie in changing the law alone. Ultimately, the change in social attitudes is of paramount importance. This would encourage people not to consider women as property to be inherited; it would also discourage unsafe sexual practices and thus prevent transmission through this mode. Society could devise other means of performing the ritual, for example, by sprinkling mealie meal, as the Lozi tribe does.

- *Condom use*

‘While the idea of ABC – abstain, be faithful and use a condom – has been successful in some countries, such as Uganda, there is mounting evidence that the approach needs to be expanded to meet the needs of women and girls. According to Noerrine Kaleeba the approach simply misses the point for the majority of women and the girls in many cultures and situation’ (UNAIDS *et al.*, 2004:16).

Men and women reject condom use or use them inconsistently. Condom use is also surrounded by the myth that they have holes that permit the transmission of the virus.

‘Abstinence is meaningless to girls who are forced into sexual activities. Faithfulness offers little protection for wives whose husbands have several partners or were infected before they married. Condoms require the cooperation of men, who may refuse to use them. Further, married couples frequently do not use condoms either because they want to have children or because condoms will indicate lack of trust (UNAIDS *et al.*, 2004:1).

Further, religious belief factors prohibit the use of condoms, especially among married people. The Catholic church prohibits the use of condoms because of the belief that it breeds mistrust. Sex without a condom in some instances attracts more financial incentives.

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Article 14(b) in CEDAW ensures women’s right to access adequate health care, including information, counselling and family planning services.

Government’s failure to provide female condoms negates the prevention of the spread and constrains women’s ability to control the infection. Male condom distribution far surpasses female condom distribution. Many cases of HIV could be averted through condom use. The lived reality is that female condoms are less readily available and not user friendly. This makes women extremely vulnerable as infected men will deposit the viruses in the face of no protection. Meena observes that:

‘Young women in sub-Saharan Africa are still engaging in unprotected sex in order to become pregnant, regardless of the risks of infection. What is the motivating factor? It is the age-old belief that having a baby with a man will make the difference between her and other women and that he will consider the existence of a child or children sufficient reason to provide the mother with some form of social and financial support...’ (Meena, 1992:192).

Given the unequal relations of power between men and women, it becomes difficult for women to ask for condom use. They fear being labelled prostitutes, violence from husbands and rejection, hence, they find it easier to accept unprotected sex. Adulterous men and those in polygamous marriages expose their partners to wilful transmission. The prohibition of condom use by the church was perhaps relevant in the past but the changing social dynamics require methods that are responsive, not only to time specificity but also to the needs of the people. The use of condoms will empower people to make choices and therefore prevent the spread of HIV.

- *Marital rape*

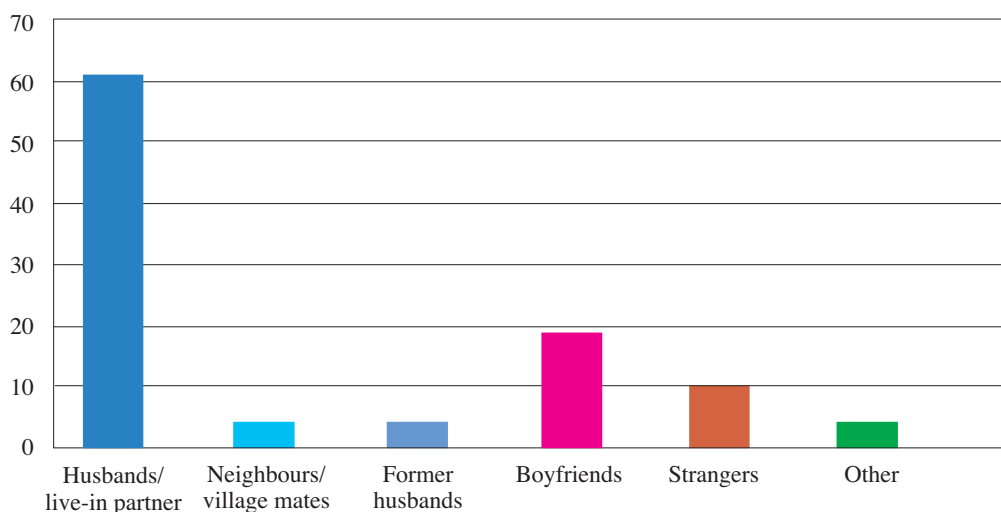
‘Marital rape, as an unproblematic dimension of sex in marriages, is another silent aspect of the sexual arena in our societies. Most African men deny and/or resist the concept of rape, although this concept is now been accepted in many of the legal systems of western countries, albeit with much resistance on the part of some married men. In Africa, the resistance to acknowledging this phenomenon seems to be directly related to the notion of sex as the prerogative of men (especially in the case of husbands) because it is still defined in relation to male needs and desires. If the man wants to have sex, then the woman is obliged to provide her body for his gratification of that need, regardless of whether she wants to or not, except during menstruation and immediately after child birth when sex is socially prohibited’ (Meena, 1997:187).

In Zambia, husbands rape wives because traditionally it is expected that a wife must avail conjugal rights on demand. Additionally, it is perceived that by consenting to marriage, a woman would have consented to a husband’s sexual exploitations without limit. Further, a husband is allowed as many sexual partners as he desires, especially in customary marriages. The risks of infecting a partner are very high. Adulterous or polygamous husbands act as catalysts of infection. Culture plays a role in intensifying this havoc. The promiscuity of men is associated with being macho. Women are also socialized to accept multiple partners for their husbands as normal. Besides, transmission may occur in sex intended for procreation, especially if couples are ignorant about their status. According to the UN study carried out in Zambia:

'Fewer than 25 per cent of the females surveyed believed a wife could refuse sex with her husband (even if he had multiple partners. Only 11 per cent believed she had the right to ask him to use a condom.' (UNAIDS *et al.*, 2004:16).

Zambia has no legal provision to prohibit marital rape. The concept is excluded from the provisions. This denies the promotion of rights for women. The calls by civil society to demand legislation has landed on deaf ears or received marginal attention. The state machinery simply denies its existence unless the couple is divorced or separated. Customary law provisions compound the problem by suggesting that a man cannot rape his wife. As stated earlier, the paper reiterates here for additional emphasis that women are at a higher risk of infection. Yet, criminalizing marital rape still remains a sensitive issue. Putting a law in place would act as a deterrent factor but it should be used to enhance and buttress other strategies towards preventive measures to avoid AIDS.

Distribution of perpetrators of forced sex reported by female respondents



Statistics adopted and modified into a chart. Source: Zambia Sexual behaviour survey 2003:30

The graph illustrates that most forced sex occurs between intimate partners, especially married couples. The percentage violated by ex-husbands is only 3 per cent as against 61 per cent who are married. It is expected that married women will therefore be at higher risk because of the prevalence of marital rape.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) article 3, 5(a), the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women article 2(a and d) demand that countries modify social and cultural patterns of men and women with a view to achieving elimination of prejudices and customary and all other practices which are based on the idea of superiority and inferiority of either sexes or on stereotyped roles for men and women.

The above articles encourage state parties to legislate and take appropriate measures to ensure women enjoy their fundamental freedoms and human rights. But the state has little conviction on the matter and excludes the possibility of forcing a partner who consented to marriage at the beginning. The argument here is that the consent women give is, presumably, 'to love and to hold... and not to be raped and infected with AIDS. A Ugandan Minister of Justice and Constitution Affairs commented that:

'The law existing now does not know marital rape; husbands should not be worried for now' (Gender News, February-March 2000).

A comment of this nature coming from a high level decision maker with regard to laws presents very faint rays of hope that government pledges to take appropriate measures to change all customs that hinder women from advancement in all aspects of human rights remains a mirage and is hence far fetched.

In Zambia, while rape per se attracts a penalty of life imprisonment, marital rape is not reflected. This encourages men to practise it. The infected men therefore transmit the infection without much ado. Women cannot insist on protected sex because they have no power over 'male headship'. Besides, Zambia has not signed the Protocol to the African Charter on the Rights of Women, hence making the provisions inaccessible.

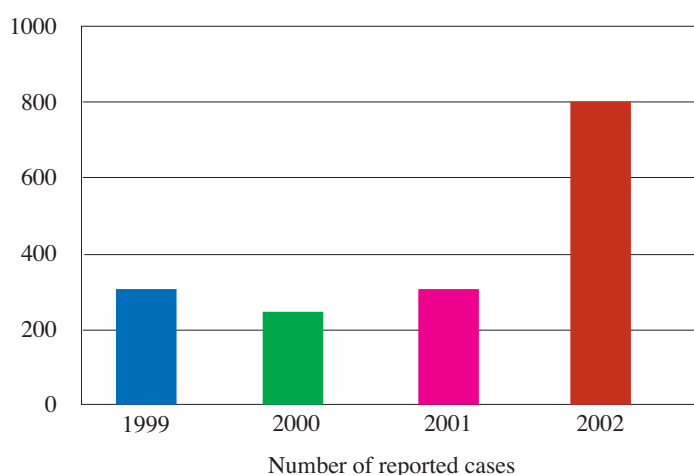
(2) Economic factors

- **Prostitution**

'Aids cannot be separated from extreme poverty, lack of resources and the burden of work for women, nor can it be separated from the problems of female subordination, oppression and exploitation through perpetuation of patriarchal cultures and traditions which underpin African societies to the present day. Yet AIDS control programmes have not considered women's particular needs; neither those of urban women nor of the wives men return to in the rural areas, bringing HIV to them' (Meena, 1997:188).

Prostitution is widespread globally. Society seems to lay the blame on women. Despite changing social and cultural norms, prejudices against women are unchanging. Traditionally, prostitution is blamed on women but sex as a commodity is both bought and sold. The role played by long distance truck drivers, fishmongers, military bases, mines, plantations and migrant workers, among others, is largely disregarded. Men have little or low esteem for sex workers. They exploit them and infect them with HIV with no regard for their right to life. The economic gain for prostitutes is valued more than the risk of infection. Sex workers suggest that hunger will kill them in a few days but AIDS will take some time. Thus, prostitutes prefer the former to the latter despite the possibility of contracting the deadly virus.

Number of reported cases of prostitutes for the period 1999–2002



Source: Victim Support Unit

The Penal Code chapter 87 of the laws of Zambia provides that every woman who knowingly lives wholly or in part on the earnings of prostitution or of another person or who is proved to have sex for the purpose of gain is guilty of a misdemeanour.

The statistics indicate that the reported incidences of prostitution are steadily increasing despite the penal code provisions. The law should be canvassed further by bringing out the dangers of the infection with a view to reinforcing good habits. The legal provision has done little to address the matter. The law should be used to actively augment the behavioural changes and social patterns that lead to susceptibility to HIV/AIDS.

CEDAW article 6, demands that state parties take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

In as much as legal measures may be provided, very little can be achieved by ‘bending one side of the pendulum’. The law assumes that only women are prostitutes and hence masks the real exploiters and middlemen in sex trafficking. After all, more often than not, women do not initiate the sexual acts. Further, analysis is made that the law is gender biased by making assumptions and loading the matter on women. There is no legal provision for their male accomplices. The education messages too, tend to blame female vectors. The ‘United Nations has of late formulated various instruments to define prostitution as a human right violation ‘... only if it involves overt coercion or exploitation.’ They are silent however, concerning human rights implications of prostitutes per se. In an article entitled ‘Women’s rights: Towards re-vision of human rights’, Charlott Bunch argues that:

‘The specific experiences of women must be added to traditional approaches of human rights in order to make women more visible and transform the concept and practice of human rights in our culture so that it takes better account of women’s lives’ (quoted in Meena, 1997:89).

Most frequently, women suffer coercion, marginalization, degradation and emotional blackmail, among other pressures. The question to ask perhaps is what are the interests of one person vis-à-vis those of another. Men who realize that they are HIV positive do not usually disclose their status to the partners. They instead look for new sexual relationships. In addition, they regard prostitutes as a cheap source of unprotected sex.

(3) Cultural factors

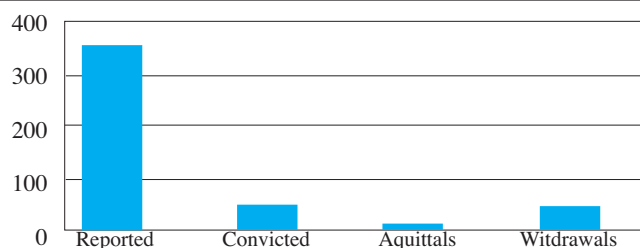
- **Defilement**

The Penal Code of Zambia, section 139 of chapter 87.1 provides that any person who unlawfully and carnally knows any girl under the age of 16 is guilty of a felony and is liable to imprisonment for life.

The upsurge in offences against children of a sexual nature has resulted in transmission of HIV/AIDS. The resulting infections are many and pose a threat to life.

Cases reported in Zambia in 2001

| Cases | Reported | Convicted | Aquittals | Withdrawals |
|------------------|----------|-----------|-----------|-------------|
| Rape | 340 | 42 | 12 | 62 |
| Defilements | 366 | 52 | 9 | 48 |
| Indecent assault | 65 | 6 | 4 | 36 |



Defilement cases in Zambia 2001

Source: VSU

The figures show the tip of the iceberg. This is because most of the defilement cases go unreported. Since they are done in the private sphere, the conspiracy of silence cannot be overemphasized. Women fear to report if a relative is involved, they dread being labelled 'uncultured'. Additionally, the lack of economic empowerment compels them to keep mum about such offences, as reporting the matter will have grave consequences for their relations or husbands. The upswing of cases has been accompanied by public media campaigns and hence the steep rise in cases reported. The traditional beliefs have contributed to the increase in the scourge. The problem mainly emanates from a lack of understanding of the nature of cases especially in rural areas. Most rural communities regard defilement as sex with an underage girl who has not attained puberty or with a virgin. Such cases attract premiums to the girls' parents. The legislated age and the one traditionally believed pose different interpretations. Traditional beliefs such as virgin cure (the belief that if an infected man has sex with a young girl, his blood will be cleansed of the virus) thus perpetuates the practice. Traditional healers prescribe this treatment for their patients despite the fact that the act has no scientific or empirical evidence of cure.

Article 19, 34 (a b c), of the Convention on the Rights of the Child calls on state parties to ensure children's protection from all forms of physical violence including sexual abuse. Ncube clarifies that:

'The general principle on most common law jurisdiction is that ratification of international treaties by the state does not, ipso facto transform that instrument into a piece of domestic law' (Ncube, 1988:29).

While the law clearly prohibits abuses against children, defilement cases are skyrocketing. The main problem does not lie in the law per se, but in the decayed moral fibre, social attitudes, and sexual habits of perpetrators. He adds that:

'When considering strategies for raising the status of girl children, we have to remember that gender-specific violations are in many ways a reflection of local cultures and religious systems in which they occur. On the other hand, the situation is made more complex by the fact that these cultures have largely been evaded and transformed by market and external influences such as state regulation. Therefore, in looking at how judges ruled on children's rights it is useful to bear in mind that we are dealing with structural violations of rights and not merely isolated incidents of abuse.' (Ncube, 1988:34)

- **Abduction**

The paper discusses abduction in the context of forced confinement and not willing elopement per se. Mostly, the victims are young girls (possibly virgins) whom men want to expropriate.

Abduction which is described by the Penal Code of Zambia as 'any person who unlawfully takes an unmarried girl under the age of 16 years out of the custody or protection of the father or mother or other person having the lawful charge of her, and against her will, is guilty of a misdemeanour.' (Chapter 87, Section 136 of the Penal Code of Zambia.)

Abduction is common, especially among the Tonga people of the southern province of Zambia. The traditional understanding is that, if a man desires a girl below 16 and fears that other men might get her, he abducts her, has sexual intercourse with her and then reports to the girl's parents. The offence carries some financial gains for the girl's parents in the form of compensation. The rights of the child are grossly violated and her interests are not considered. Whether the child is schoolgoing or not is of no consequence. In some cases the child is married off in that way. Other men with no marriage intentions simply exploit them for expediency. Some of the men may be HIV positive but this does not deter them from targeting young girls, especially if they know that the girls are virgins. Their appetite for sex undermines a girl's individual rights and interests. A girl may be compelled to marry a man she does not like. The action does not only serve the man or parents' interests but exposes her to infections, including HIV. Abduction attracts a lighter punishment. This is why men continue to practise it without fear of the law. The costs of acquiring the HIV far outweigh the benefits the parents get from the offender.

The Convention on the Rights of the Child protects children from all forms of sexual abuse. State parties have also pledged to take appropriate action, including legislation, to protect children from abuse and unlawful confinement and to prohibit harmful cultural practices that inhibit the enjoyment of human rights.

In the light of such provisions, government has no specific legislation for sexual offences that lead to acquiring the virus through forced sexual activities. This obscures the individual rights of a child and renders the international instrument as academic endeavour. It is analyzed as follows:

‘...those treaties and conventions do not confer enforceable rights on individuals within the state until parliament has legislated its provisions into the law of the land, in so far as such relevant international treaties and conventions may be referred to as an aid to constructions of enactments, including constitutions...’ (Ncube, 1998:30).

States drag their feet on domesticating international instruments. While ratification indicates willingness by the state to be bound by the treaty, law enforcers sometimes refuse to enforce those provisions. Hence, the rights which are provided become meaningless.

- **Early marriages**

‘In South Asia and sub-Saharan Africa, the value of early marriages is being debated. In many developing countries, it is common to marry young people, especially girls, at an early age. But with the threat of HIV, many parents are marrying their daughters still younger in the mistaken belief that this might protect them from the infection. Since the men who are financially able to marry are generally older, and more sexually experienced, many are unwittingly bringing HIV to the marriages’ (UNAIDS *et al.*, 2004:51).

The legal age of marriage in Zambia is put at 16. But girls, especially in the rural areas, continue to be married immediately they attain puberty, particularly girls from poor families. The child’s interests are largely marginalized if not ignored. In a study carried out in Ndola, Zambia;

‘Twenty-seven per cent of the married girls were HIV positive compared to 16 per cent of unmarried girls. The Kisumu study also found that adolescent girls who were married to much older men – a common occurrence – were likely to be HIV positive as compared to number of women whose husbands were up to three years older’(UNAIDS *et al.*, 2004:16)

A child under the age of 16 has no capacity to marry unless the judge of the high court has given consent to the application or parents consent to the marriage under customary law. This constrains the legal age of marriage as parents consent to such marriages because of economic reasons. The dual systems of the law predispose the girls to marriages before the legal age by application of customary law where the general law provides to the contrary. Marriages under customary laws do not take into consideration the age of the bride or the bridegroom. The most important determining factor in this regard is puberty.

The African Charter on Human and Peoples Rights articles 5(a), 19, and 34 encourage the state parties to modify customs that are inconsistent with human rights, and states that in all actions concerning the child the best interests of the child is of paramount importance. Article 21 (2) prohibits against child marriages and early betrothal of girls.

The legislated age here is 18. Some men perceive the age of the partner as immaterial, while the law perceives children as below marriageable age. This makes the children vulnerable to contracting HIV from older men with advanced sexual prowess.

Article 19, 34 (a b c), of the Convention on the Rights of the Child calls on state parties to ensure children’s protection from all forms of physical violence including sexual abuse.

In the absence of such a provision in local law, parents will continue consenting to such marriages and receiving bride price (*lobola*) to the detriment of the rights of a child and increasing their susceptibility to HIV infection. Further, most women envisage monogamous marriages but later discover when it is too late that customary marriages are potentially polygamous. Societal norms encourage them to stay even when they know a husband has multiple partners. This exposes them to high risk as far as the HIV virus is concerned.

SECTION TWO

The Zimbabwean legal position on the wilful transmission of HIV/AIDS

Zambia's lack of efficient and specific legislative measures to address the traditions and spread of the infection, means that the country is in danger of destroying the entire population. The cure is not in sight or in the pipeline either, hence, the legislative measures are imperative. These will act in tandem with other strategies that aim at preventing the spread. Feltoe noted that:

‘Countries could either introduce legal measures to deal with AIDS, or they could extend their current public health legislation to deal with the problem. Before establishing new laws, it would be important to check whether such laws would help or hinder the nation's awareness campaigns, and whether they would be economically feasible and practically enforceable. In addition, check on how the laws themselves might infringe individual rights... (For example laws to isolate and quarantine seropositive people, which have no public health rationale)’ quoted in Willmore, 1990:16).

Zambia has attempted the health strategies, but these have not evolved in useful solutions. The national campaigns should encourage preventive measure, which are health as well as legally related. The available instruments are not responsive to the needs of women. They fail to address the gravity of the spread of HIV, which in many circumstances is done wilfully. The country has witnessed expanded home-based care programmes, blood screening and blood testing, for example. The responses to HIV/AIDS in Zambia have been focused on prevention of transmission by caring for the sick, providing medication, reducing stigma and health education, among other strategies. Despite these approaches the prevalence of the disease is shockingly high and still skyrocketing where one would expect a rescinding trend.



The inserted picture shows a nurse attending to HIV/AIDS patients in Zambia

The interventions should be homegrown because of apparent differences in the social cultural setting. Incorporating a specific law will reduce the spread of the infection so some countries have taken steps to introduce special legal measures to deal with the problem of AIDS. Zimbabwe has introduced specific laws to curb the spread, especially through wilful transmission. The provision, among other things, addresses the punishment of perpetrators who commit sexual offences, regardless of whether these offences are consented to or not. It also allows the compulsory testing of sexual offenders who are found to have infected others. In addition, it protects persons below 16 from sexual offences. These are positive observations in the right direction. Whether or not these measures are effective is too early to judge but the efforts the Zimbabwean government has made could be emulated by other countries, especially Zambia.

CEDAW article 2(a) encourages state parties to condemn discrimination against women in all forms, agree to pursue by all appropriate measure means without delay, including through policy, to end the discrimination against women and to embody the principle of equality of men and women in their constitutions or other legislation if not yet incorporated.

The provision of legal protection as far as women are concerned, is not agent on the state agenda .Other laws, such as those pertaining to car thefts, receive express attention. This amounts to discrimination, albeit informally. All in all, while domestication of international conventions into local provisions may result in positive contributions, the defect lies in the lack of machinery to punish defaulting countries. Revising laws on sexual offences with specific provisions for HIV/AIDS would result in a positive contribution. What needs to be done in addition, is putting in place an effective machinery to translate the provisions into real benefits, that is, in line with the human rights provisions.

SECTION THREE

Conclusion

It is therefore the conclusion of this paper that the laws as they stand do not protect people from human rights violations. They do not ensure due process of the law. Without addressing these issues the dissemination of information, counselling services and all other strategies will be ‘down the drain’. The other option is to engage the law with the social factors obtaining. What we basically need to change are the social practices that enhance the spread of the infection while the law plays a facilitating role.



Actions to be undertaken

- The state should undertake to codify and revise laws and practices to promote and protect women and girls in line with human rights principles.
- Make a provision for punishing offenders with stiffer penalties. This will deter would-be offenders.
- Provide mandatory testing of offenders. This will give relief to the victims if the offender is tested negative. (This is if the test is not done during the window period.)
- Publicize data on violence against women with a view to providing data on the gravity of the issues in the country.
- Harmonize customary and general laws in line with constitution provisions.
- Train paralegal advisors and the victim support unit – these will carry a message on legal, ethical and reproductive health.
- Ensure human rights have a place of pride in the country.
- Criminalize willful transmission.
- Use the law to compliment and reinforce other strategies.

Afterthought: ‘Use law as a sword rather than a shield.’

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