

Women & Girls and HIV/AIDS in Ethiopia

Fikremarkos Merso



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Note: The views expressed and arguments made in this document are those of the author and do not necessarily reflect the views of the UNFPA.

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Foreword

In many societies women and girls constitute one of the particularly vulnerable groups to HIV/AIDS. Current trends of the virus show that HIV/AIDS is affecting more women than men. In some parts of the world, including Ethiopia, the number of women being infected by and living with the virus is greater than that of men by a large margin.

A range of factors contribute to the peculiar vulnerability of women and girls to the virus. Women and girls are victims of discrimination in the economic, social and political life of the community which factors may directly or indirectly contribute to their exposure to HIV/AIDS.

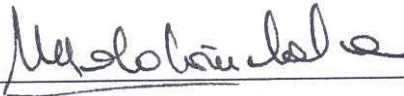
Addressing HIV/AIDS in the context of women and girls requires studying the causes of their vulnerability. Addressing this requires looking at the issue beyond a health point of view and the broader political, economic and social factors which make them vulnerable through a range of policy and legislative measures.

It is with this view that UNFPA commissioned a study in Ethiopia on the policy and legal framework protecting the rights of women and girls, and reducing their vulnerability to HIV. UNFPA commissioned this study as part of its HIV/AIDS and gender development program.

The main purpose of this study and the accompanying advocacy toolkit is to reduce vulnerability of women and girls to HIV. The study identifies gaps in the existing policies and legal frameworks; documents the existing policies and legal frameworks, together with references to international instruments and offer concrete recommendations to fill the gaps; develops an advocacy tool kit to communicate the key findings and recommendations; and provide sensitization workshops in Amhara and Southern Nations, Nationalities and Peoples Region.

UNFPA would like to extend its appreciation for all informants who provided information that went into this publication, especially informants from the Ministry of Justice, HIV/AIDS Prevention and Control Office, the Prosecutor's Office, the Judiciary, Police, Addis Ababa Women's Association, Action Aid Ethiopia, and Ethiopian Women Lawyers' Association.

Dr. Monique Rakotomalala,



UNFPA Representative to Ethiopia

Acronyms and Abbreviations

APAP	Action Professional Association for the People
ART	Antiretroviral Treatment
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CPE	Cultural Policy of Ethiopia
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
ETP	Education and Training Policy
EWLA	Ethiopian Women Lawyers' Association
FDRE	Federal Democratic Republic of Ethiopia
FGM	Female Genital Mutilation
GA	General Assembly (UN)
GDP	Gross Domestic Product
HAPCO	HIV/AIDS Prevention and Control Office
HTP	Harmful Traditional Practice
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
MOH	Ministry of Health
MDG	Millennium Development Goal
NGO	Non-Governmental Organization
NPEW	National Policy on Ethiopian Women
NPPE	National Population Policy of Ethiopia
OHCHR	Office of the High Commissioner for Human Rights
PASDEP	Plan of Action for Accelerated and Sustained Development to End Poverty
PLWHA	People Living with HIV/AIDS
RFC	Revised Family Code
SDPRP	Sustainable Development and Poverty Reduction Program
SNNPR	Southern Nations, Nationalities and Peoples Region
STI	Sexually Transmitted Infection
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGASS	UN General Assembly Special Session on HIV/AIDS
VAW	Violence Against Women
VCT	Voluntary Counseling and Testing

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Executive Summary

HIV/AIDS has already become one of the greatest challenges of humanity. Since its emergence more than two decades ago, HIV/AIDS has victimized tens of millions of people from around the globe although its devastation is more apparent in some parts of the world than in others.

While the epidemic is a potential risk to everyone, some social groups are at greater risk of acquiring the virus than others because of their peculiar vulnerability in a particular society. For different socio-economic, cultural and biological reasons, in many societies women and girls constitute one of the particularly vulnerable groups. Current trends of the virus show that HIV/AIDS is affecting more women than men. In some parts of the world, the number of women being infected by and living with the virus, is greater than that of men by a large margin.

A range of factors contribute to the peculiar vulnerability of women and girls to the virus. Women and girls are victims of discrimination in the economic, social and political life of the community which factors may directly or indirectly contribute to their exposure to HIV/AIDS. Many of them are also subjected to violence of different kinds ranging from sexual violence to harmful traditional practices which increase their chance of HIV infection. Because of their low status in society and low level of participation in education, decision making and employment, women and girls also lack access to information on their sexual and reproductive health rights and on the ways of prevention and control of HIV.

In Ethiopia, as in the rest of Sub-Saharan Africa, more and more women are becoming victims of the virus. Estimates of the future trends of the virus also suggest that more and more women are likely to be affected by the virus than men.

Addressing HIV/AIDS in the context of women and girls requires studying the causes of their vulnerability. Addressing this, requires looking at the issue beyond a health point of view and the broader political, economic and social factors which make them vulnerable through a range of policy and legislative measures.

In that light UNFPA has sought to commission a study in Ethiopia on the policy and legal framework protecting the rights of women and girls, and reducing their vulnerability to HIV. UNFPA has commissioned this study as part of its HIV/AIDS and gender development program.

Overall Objectives

The overall objectives of the study were to:

1. identify gaps in the existing policies and legal frameworks, and offer concrete recommendations to fill the gaps
2. document the existing policies and legal frameworks, together with references to international instruments
3. develop an advocacy tool kit to popularize policies and legal frameworks
4. provide sensitization workshops in Amhara and Southern Nations, Nationalities and Peoples Region

Methodology

The study has made use of different methodologies. Key amongst them, is literature review and documentary analysis where the existing literature, legal as well as policy instruments, have been identified and analysed. Furthermore, information has been obtained from various groups of informants through structured and non-structured interviews. Informants have been drawn, *inter alia*, from the following:

- Ministry of Justice
- HIV/AIDS Prevention and Control Office
- Prosecution Office
- The Judiciary
- Police
- Addis Ababa Women's Association
- Action Aid Ethiopia
- Ethiopian Women Lawyers' Association
- *Negem Lela Ken New* (literally 'tomorrow is another day') Association of Women Living with HIV/AIDS.
- In addition, feedback has been obtained from the discussions held during the two trainings held in Bahir Dar and Awasa. They drew participants from different law enforcement organs, as well as from Women's Affairs Bureaus.

Major Findings

- The HIV/AIDS policy framework is weak in addressing the link between HIV/AIDS and gender issues in general. The major policy documents have not included specific and appropriate strategies/programs to address the link between HIV/AIDS and the peculiar vulnerabilities of women. The policy framework has thus failed to set out workable strategies to address the peculiar vulnerability of women and girls to HIV/AIDS
- The need for addressing the vulnerability of women and girls has not been translated and streamlined into the different strategies and programs developed in pursuance to the HIV/AIDS Policy. The VCT and ART programs for example do not take into account gender issues /the special vulnerability of women and girls to HIV/AIDS
- The policy framework on HIV/AIDS is completely silent on the link between women's low status and their poor health. The special vulnerability of women to HIV/AIDS and its causes have not been addressed. When it comes to the National Policy on Ethiopian Women, it does not even mention the word HIV/AIDS
- Though the policy framework recognizes that HTPs have been seriously affecting women in Ethiopia, they have not been addressed in the context of HIV/AIDS. The policy framework has also failed to address the more serious violence against women that increase their chance of infection with the virus such as rape and sexual abuse
- This study has advocated that the use of criminal law in addressing HIV/AIDS should be considered scrupulously. Criminalization, apart from the difficulties in relation to enforcement, may have the effect of further stigmatizing vulnerable groups and discourage public health efforts aiming at prevention, control and care. But while the public health laws should be taken as the most effective mechanisms to address HIV/AIDS, criminal law would certainly play a role in addressing some of the causes of vulnerability of women and girls to the virus such as VAW
- The legal framework does not have specific provision on mandatory HIV testing in some cases such as rape and other cases of violence against women. Actually, the HIV/AIDS policy prohibits mandatory testing of HIV except in cases of employment in some types of work. It is to be noted that in the absence of a rule for mandatory testing, it is difficult to enforce the offence of intentional spreading of human diseases prescribed under Article 514 of the Criminal Code
- The legal framework precludes rape in marital relations. Moreover, the requirement of sexual relations as one of the marital duties under the Revised Family Law may be confused to mean that a wife may not refuse sex with her husband for any reason. Absence of a provision criminalizing marital rape coupled with the understanding that sexual relation between spouses is an obligation, would certainly be a risk factor for HIV as the wife does not have the right to determine her sexuality. In that case the wife would not have a legal right to insist that she would make sex with him only with condom or after HIV testing

- Despite its widespread practice in some parts of the country and its impact on women's vulnerability to HIV/AIDS, there is no specific law prohibiting or criminalizing widow inheritance
- The Criminal Code has not as such created an offence of domestic violence in its own right but it simply assimilates it to ordinary assault and battery and thus fails to recognize the special nature of domestic violence where the victim is usually in a relationship of dependence with the perpetrator
- HIV has already become a serious challenge facing the country, but the existing legislative framework is fragmented and lacks comprehensiveness. A comprehensive legislative framework would address several issues that may arise in the context of HIV and play an important role in the prevention and control of the spread of the virus. It would also provide for the rights and obligations of people living with the virus as well as support mechanisms taking into account the special needs of vulnerable groups such as women and girls. Such specific HIV/AIDS legislation has not yet been introduced in Ethiopia
- There has been a tremendous effort in reforming the legal framework in a particularly gender-sensitive manner. The country has also ratified most of the international treaties providing for the rights of women and girls. But enforcement of the available legal framework has remained to be a significant challenge to promote and protect the human rights of women and girls, and reduce their vulnerability to HIV/AIDS
- Even if the country has ratified most of the international human rights instruments that promote and protect the rights of women, it has not yet ratified the optional protocols to the different treaties which provide even stronger protections to the rights of women and girls

Introduction

1.1. HIV/AIDS in the Global Context

Since its detection in 1981, HIV/AIDS has become one of the most challenging problems of our age. According to the UNAIDS 2007 report, an estimated 33.2 million people were living with HIV worldwide and 2.5 million became newly infected with the virus while 2.1 million lost their lives to AIDS.¹

The number of people living with HIV continues to rise - in 2006 there were an estimated 32.7 million living with HIV/AIDS and in 2007 the number rose to 33.2 million. Globally, this means that every day, 6,800 people have been infected and 5,700 die from HIV/AIDS. AIDS remains the single largest cause of death in Africa and the worst public health crisis worldwide.²

Table 1: Global Estimates of HIV/AIDS

Global Estimates (in millions)							
	2001	2002	2003	2004	2005	2006	2007
People living with HIV	29.0	30.0	30.9	31.6	32.1	32.7	33.2
New infections	3.2	3.1	3.0	2.9	2.8	2.7	2.5
Deaths	1.7	1.9	2.0	2.1	2.2	2.1	2.1

Source: UNAIDS 2007

Africa is the region most affected by the spread of HIV/AIDS and within Africa, Sub-Saharan

¹ UNAIDS, AIDS Epidemic Update (2007) at 1.

² Ibid, p. 17.

Africa has remained to be the most devastated by the epidemic. In 2007, Sub-Saharan Africa accounted for more than two thirds (68%) of all persons infected with HIV, and 72% of global AIDS deaths.³

Table 2: HIV/AIDS: A Comparison of Global and African Situations (2007)

	Global	Africa
People living with HIV/AIDS (in million)	33.2	22.5 (68%)
New infections	2.5 (6,800/day)	1.7 (4,700/day)
Death from HIV/AIDS	2.1 (5,700/day)	1.6 (4,400/day)

Source: Computed from UNAIDS (2007)

HIV/AIDS affects society and economies at various levels, from the family and community to the national and international levels - particularly by eroding the human capital. It is for example noted that particularly in Sub-Saharan Africa, HIV/AIDS continues to slow or even reverse improvements in life expectancy and distort the age-sex structure of the entire population.⁴ The 2005 Human Development Report identifies AIDS as the factor inflicting the single greatest reversal in human development history.⁵ Between 1990 and 2003 many of the countries most severely affected by AIDS dropped sharply in the global ranking of countries on the human development index.⁶

Box 1: Important facts about HIV/AIDS in Africa

- 68% of those infected with HIV/AIDS live in Sub-Saharan Africa. Nearly 90% of all HIV positive children (less than 15 years old) live in sub-Saharan Africa
- 76% of all deaths from HIV/AIDS take place in Africa
- National adult HIV prevalence exceeded 15% in eight countries in 2005 (Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe)

³ Ibid, p. 7.

⁴ UNAIDS (2006), "Report on Global AIDS Epidemic."

⁵ UNDP (2005), "Human Development Report 2005."

⁶ Id.

1.2. Women and Girls, and HIV/AIDS

Potentially anyone could become a direct victim of HIV/AIDS. While that is true, the probability of an individual becoming infected with HIV and his/her inability to control the realization of this risk may depend upon a number of social, economic, and political factors. Not all social groups in a particular society are thus equally at risk and vulnerable to the virus. Neglect, denial and violation of basic rights of individuals as a result of social, cultural, political and economic positions of the particular groups of society may increase vulnerability, that is lack of power of individuals to reduce their risk of acquiring the virus and once they have acquired the disease, their ability to receive adequate treatment and care. Vulnerability has already been recognized as the major cause for the spread of the epidemic.⁷

Women and girls are one of the highly vulnerable groups to HIV infection. The scale of vulnerability may vary from society to society. In Sub-Saharan Africa, where gender dimension of the virus is more apparent, 61 percent of people living with HIV/AIDS in 2007 were women.⁸ In some countries within the Sub-Saharan region, the sex ratios of new HIV infections are even more disproportionate where women and girls take the lion's share of new infections.⁹ The vulnerability of women and girls include not only increased exposure to the virus but also lack of access to relevant HIV prevention, treatment and care services and information.

1.3. Reasons for the Vulnerability of Women and Girls to HIV/AIDS

Vulnerability of women and girls to HIV infection results from biological, social, cultural, economic, legal and other factors that adversely affect their capacity to protect themselves from the risk of HIV infection.¹⁰ Acting independently or concurrently these factors make women and girls a particularly vulnerable group to HIV infection. There is an intricate link between the marginalization of members of certain groups and vulnerability to HIV infection. It has been recognized that members of groups such as women and girls who are marginalized on the basis of factors including sex, economic and social factors are vulnerable to HIV infection.¹¹

⁷ Jonathan Mann, *Encyclopedia of AIDS: A social, political, cultural and scientific record of the HIV epidemic*, 2nd ed., 2001.

⁸ UNAIDS (2007), *supra* note 1.

⁹ For example, in Zambia the infection rate of girls was 16% against that of boys where their infection rate is just 1%. See World Health Organization (2005), *Violence Against Women and HIV/AIDS: Setting the Research Agenda*, Meeting Report, Geneva, 23-25 October 2005, p 11.

¹⁰ UNAIDS (1998), "Expanding the Global Response to HIV/AIDS through Focused Action: Reducing risk and vulnerability."

¹¹ *Id.*

Although the peculiar vulnerability of women and girls to HIV/AIDS has been recognized beginning from the 1990s¹² their vulnerability to the virus has remained to be a serious concern and they continue to shoulder the brunt of the epidemic. This calls for a deeper exploration into the gender dimension of the virus.

1.3.1. Physiological/Biological Vulnerability

There are peculiar vulnerabilities of women to HIV/AIDS. Women are physiologically or biologically more vulnerable to the virus than men. It has now been established that women's risk of HIV infection from unprotected sex is higher than that of men. Women are two to four times more likely to contract HIV during unprotected vaginal intercourse than men.¹³ Firstly, this is because, infected semen remains in the vaginal canal for a relatively longer period of time.

Furthermore, the extension area of mucous membrane in the vagina and on the cervix through which the virus may pass, make women more exposed to the virus. Secondly, the mucosal lining of the vagina provides a large surface area to be exposed to infected seminal fluid which makes it vulnerable to transmission physically.¹⁴ Thirdly, the vagina is more susceptible to small tears and irritation during intercourse than in the penis, allowing opportunity for HIV to enter the body and infect the woman. Women are thus more likely than men to contract HIV through single heterosexual intercourse or encounter.

The physiological vulnerability is even greater in the case of young woman than the mature one, because her cervix could easily be eroded and may face bleeding at first intercourse through the tearing of the hymen, thereby enhancing risk of HIV infection.

Women's physiological vulnerability may further be exacerbated by some sex-related practices. It has for example been noted that women in some parts of Africa apply herbal and other agents in the vagina with a view to have dry, hot and tight intercourse. While this practice is meant to provide more pleasure to their sexual partner, it again increases the risk of infection of such women with the virus.¹⁵

1.3.2. The Broader Context of Vulnerability of Women and Girls to HIV/AIDS

The vulnerability of women and girls to HIV/AIDS of such a high magnitude cannot be explained solely by biological differences between women and men. There are other reasons that increase their vulnerability to the virus and are based on economic, social and human rights factors. Physiology contributes to women's greater risk of HIV transmission,

¹² For example the 1990 world AIDS day was held under the theme "Women and HIV/AIDS."

¹³ See UNAIDS (2001), *Gender and AIDS Almanac*: Geneva, p.11.

¹⁴ See WHO (1997), "facing the challenges of HIV/AIDS, STDs: a gender-based response", available at <http://www.who.org> (accessed on 20 October 2007).

¹⁵ See WHO (2005) supra note 8.

but it is their relative lack of power over their body and their sexual lives supported and reinforced by their social and economic inequality that make them such a vulnerable group in contracting and living with the virus. In other words, though biological factors partly contribute to the increased vulnerability of women and girls to HIV/AIDS, their vulnerability has to do more with social, cultural and economic factors which arise from the deeply entrenched social and economic inequality as well as discrimination directed against them in society. In many societies, men assume a position of power and control over women and this may have a significant impact on the positions and opportunities available to women in the socio-economic as well as the political life of those societies. In many societies, women have less access to education and employment and they are also subjected to a range of human rights abuse which contributes to their vulnerability to HIV/AIDS. With a varying degree, violence against women, including early marriage, sexual abuse, abduction and rape is rampant across societies which significantly increase their vulnerability to HIV.¹⁶ Similarly, in many societies particularly in Sub-Saharan Africa, women do not have equal rights to property and inheritance with men which stems from discriminatory customary practices and discriminatory laws and policies.¹⁷

From a human rights perspective, the analysis of the vulnerability of women to HIV/AIDS should be considered from the broader context of gender-based discrimination against women and their subordination. These are in turn, the results of the historically unequal power relation between women and men in both public and private life. In other words, the issue has to be considered from the broader context of power inequalities at the individual, group, national and global levels. Within the ambit of this framework, manifestations of vulnerabilities could be shaped by a wide range of factors such as economic status, race, ethnicity, age, culture etc. Any attempt to address the vulnerability of women and girls thus needs the identification and tackling of its root cause - principally, the subordination of women, socially, culturally and economically.

Despite the fact that HIV/AIDS has increasingly been recognized as one of the greatest challenges for socio-economic development particularly in the developing countries, the strategies pursued to avert the epidemic have largely been focused on the promotion of condom use, reduction of the number of sexual partners etc without addressing the social, economic and power relations between women and men that have brought greater vulnerabilities to women and girls than men.

¹⁶ Amnesty International (2004), "Women, HIV and Human Rights", available at <http://www.amnesty.org> (accessed October 2007).

¹⁷ Id.

Economic Vulnerability

In many societies especially in the developing countries, women and girls are the primary victims of poverty. Of the 1.2 billion people living on less than \$1 a day, 70% are women.¹⁸ Women's economic dependence also makes them vulnerable to HIV/AIDS. In many parts of the world, only very limited training and employment opportunities are available to women. As a result they may easily be driven to risky behavior merely to provide basic needs such as food, shelter and clothing for themselves as well as for their family. In several societies when parents are aged or are deceased, the responsibility of caring for them and the young family members falls on the shoulder of women and this may push them into the sex industry where the risk of infection is high. Many women lack information on HIV prevention and control.

Economic inequalities may for example, be considered as causal factors for VAW both at the level of individual acts of violence or at the level of broad based economic trends that create or exacerbate the enabling conditions for such a violence which may appear at the local, national or global levels.¹⁹ Economic inequality and discrimination against women in areas such as employment, access to resources etc, reduce their capacity to act and take decisions and thus increase their vulnerability to violence.

In many societies, women are economically dependent on the male partners and family members which may greatly increase their chance of becoming infected with HIV, as they have little control over sexual matters in their relationships.²⁰ Researches in Africa show that poorer women are more likely to have experienced early sex, non-consensual first sexual encounters or exchanged sex for money, goods or favor which are all significant risk to HIV/AIDS infection.²¹ With greater ownership and control over economic assets, they could be empowered to negotiate fidelity and safer sex and can easily do away with exchanging sex for money, food or shelter.²²

Violence against Women

Violence against women (VAW) is a broad terminology which may take many forms ranging from domestic violence to sexual abuse and rape, to trafficking in person, to harmful traditional practices including FGM, honor killing, dowry and other related violence.

¹⁸ UNDP (2002/2003), "Human Development Report 2002/2003."

¹⁹ See WHO (2005) supra note 9.

²⁰ UNAIDS-Global Coalition on Women and AIDS, 'Economic Security for Women Fights AIDS', available at www.womenandaids.org (accessed 11 October 2007).

²¹ Kelley Hallman (2005), "Gendered Socioeconomic Conditions and HIV Risk Behaviors among Young People in South Africa", *African Journal of AIDS Research* 14(1).

²² UNAIDS-Global Coalition on Women and AIDS, supra note 20.

VAW has continued to be a global epidemic that kills and tortures women, be it physically or psychologically. It has become one of the most pervasive of human rights violations, denying women equality, security, dignity, and self-worth.²³ It is a common phenomenon whose existence spans cultures, classes, education, income and ethnicity although the degree and the forms of its manifestations vary from society to society, class to class or culture to culture.²⁴ Worldwide, one in three women has been beaten, coerced into unwanted sexual relations or abused.²⁵ Violence kills and harms as many women and girls as cancer and its toll on women's health surpass that of traffic accidents and malaria combined.²⁶

Several researches have shown that there is a high trend of VAW prevalence in many parts of the world. About 20-30% of women worldwide suffer from violence of one form or another. Some researches suggest that the first sexual experience of a girl will often be forced.²⁷ The findings of the multi-country study by WHO, covering more than 30 countries, shows that domestic violence is practiced in all of the countries studied although the degree of prevalence varies from one to the other.²⁸ In the study it has been shown that 10-60% of the women have experienced at least one incident of violence from a current or former intimate partner. But there were great variations between countries. In the study, 71% of the women said that they had experienced sexual violence by a partner and 17% reported their first sexual intercourse was forced.

Even if most forms of VAW have been outlawed in almost all societies, it continues to affect women in many parts of the world under different disguises such as cultural practices and

norms, as well as religious tenets. The law enforcement machinery may also condone VAW through silence or passivity especially when it is a domestic violence.

For different reasons it is difficult to get reliable data on VAW especially in the developing countries. Firstly, it is a crime not reported or is under-reported. When a

Box 2: Defining VAW

The term "violence against women" means any act of gender-based violence that result in or is likely to result in physical, sexual or psychological harm to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

Article 1, the Declaration on the Elimination of Violence against Women

²³ UNICEF (2000), "Domestic Violence Against Women and Girls", *Innocenti Digest*, No. 6.

²⁴ *Id.*

²⁵ UNFPA (2005), "State of World Population 2005: The Promise of equality, gender equality, Reproductive health and the Millennium Development Goals", p.66.

²⁶ *Id.*

²⁷ See Gracia Moreno C., 'Sexual Violence', IPPF Medical Bulletin, 2003, available at www.ippf.org/medical/bulletine (accessed 14 October 2007).

²⁸ WHO (2005) *supra* note 9.

woman files a report or seeks treatment, she may have to contend with police officers and healthcare officials who have not been trained to respond adequately or keep consistent records.²⁹ This certainly discourages women from reporting incidents of VAW. Secondly, shame, fear or reprisal, lack of information about legal rights and lack of confidence in the legal system make women reluctant to report the incident of violence. But even then, limited research suggests that VAW is rampant in many countries. For example, 42% of women in Kenya, 41% in Uganda and 32% in Zimbabwe report they have experienced at least one form of domestic violence.³⁰

VAW is not confined to the developing world; it is also prevalent in the industrialized world as well. The WHO study cited above shows that 29%, 59%, 25% and 28% of women surveyed in Canada, Japan, United Kingdom, and United States respectively have reported to have experienced domestic violence.³¹

The causes of violence could be explained by the gender relations at two different levels of the society. Firstly, at the level of family and relationship the male controls wealth and decision making within the family giving him power over the female with potential abuse. Women have reduced mobility and lack social support and thus are forced to accept violence as part of the norm and legitimate. Secondly, at the societal level, gender roles are rigidly defined and enforced and the concept of masculinity is linked to toughness, male honor or dominance. The prevailing custom tolerates physical punishment of women and children, accepts violence as a means to settle interpersonal disputes and perpetuates the notion that men "own" women.³² Justifications for violence frequently evolve from gender norms that is, social norms about the proper roles and responsibilities of men and women. In several societies, customs, traditions and religious values are often used to justify VAW. These include harmful traditional practices, restrictions on women's rights in marriage and inheritance/property rights. Cultural justifications for restricting women's rights could be defined by social groups within many countries or even by states claiming to defend cultural traditions.³³

Several factors may force women to stay in an abusive relationship which include fear of retribution, lack of economic support, concern for children, social unacceptability of being single or divorced.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² United Nations (2006), "In-depth study on all forms of violence against women-Report of the Secretary-General", UN Doc. A/61/122/Add.1.

³³ Id.

Harmful Traditional Practices

In many societies, a number of traditional practices harmful to women and girls are justified under the guise of cultural values, traditions and religious tenets.

Early marriage is a very common practice especially in Asia and Africa. In Ethiopia 19% of girls are married by the age of 15 and in some regions such as Amhara, the proportion goes as high as 50%.³⁴ In Sub-Saharan Africa and South Asia, more than 30% of girls aged between 15 and 19 are married.³⁵ In Latin America and the Caribbean 29% of women were married before the age of 18.³⁶

The available data seems to suggest that generally girls marry earlier than boys: DRC 74% of young women aged 15 to 19 compared to 5% of young men of the same age, Uganda 50% of girls compared to 11% of boys and in Nepal, 42% of girls compared to 14% of boys.³⁷

Early marriage increases a young woman's risk to HIV infection owing to lack of awareness about the virus because of tender age, lack of power in the family, increased risk to the virus due to older men's sexual experience and exposure to HIV. Early marriage also affects the girl's access to education, employment opportunity and to negotiate sexual relations. For example, some 80% of married young Ethiopian women have had no education and are unable to read.³⁸ Early marriage comes at a time when the girl has not reached maturity and capacity to act and control her sexuality which could adversely affect and impede her education and restrict her economic autonomy.

In some societies, a widow of a deceased man would be inherited by the man's brother and forced into unsafe sexual activity. If she refuses she may not receive property from the marital relation. The fact that either the inherited wife or the inheriting husband may already have HIV would be a risk factor for HIV transmission.

FGM is a cultural practice harmful to women but widely practiced in Africa and the Middle East.³⁹ Its prevalence rate varies from country to country ranging from 99% in Guinea, 97% in Egypt, 80% in Ethiopia, to 17% in Benin.⁴⁰ FGM increases the risk of HIV transmission for different reasons. Firstly, the use of un-sterilized razors and knives with a possibility of HIV contamination may transmit the virus from one girl to another. Secondly, it may make

³⁴ Population Council Briefing Sheet, Child Marriage Briefing-Ethiopia, (July 2004), available at www.populationcouncil.org (accessed on 12 October 2007).

³⁵ Mathur S. et. al (2003), "Too Young to wed: the lives, rights and health of young married girls", International Centre for Research on Women).

³⁶ UNICEF (2005), "Early Marriage, a harmful traditional practice: a statistical exploration", New York.

³⁷ Id.

³⁸ Population Council Briefing Sheet supra note 34.

³⁹ Amnesty International (2005), "Female Genital Mutilation", available at <http://www.amnesty.org/aillib/intcem/fgm/htm> (accessed October 7 2007).

⁴⁰ UNICEF (2005), "Female Genital Mutilation/Cutting: A statistical exploration", New York.

the genitals more likely to tear during intercourse and thus increasing the possibility of infection. Thirdly, penetration especially in case of infibulations may probably lead to bleeding thereby facilitating transmission of the virus.

Preference for male babies as expressed in manifestations such as female infanticide is also a common practice especially in South and East Asia, North Africa and the Middle East.⁴¹ A study in India for example suggests that parental sex selection and infanticide have accounted for half a million 'missing' girls per year for the past two decades.⁴²

1.4. Relation between VAW and HIV/AIDS Infection

A number of studies from around the globe have attempted to explore the link between violence against women and HIV/AIDS and showed that VAW contributes to higher HIV infection rates. For example, a study published in 2004, on the relation between VAW and HIV risk shows that women who are beaten or otherwise dominated by their partners are much more likely to become infected by HIV than women who live in non-violent households.⁴³ Similarly, women and girls who were emotionally or financially dominated by their partners were 52% more likely to be infected than those who were not.⁴⁴

A similar study in Tanzania also found that HIV positive women were over two and a half times more likely to have experienced violence by their partners than HIV negative women.⁴⁵ One of the main findings of the study was that there is a link between intimate partner violence and high level of male control in a woman's current relation and being HIV positive. Another major finding was that women with violent or with controlling male partners are at increased risk of HIV infection, partly because abusive men are more likely to have HIV or other STIs that render women more vulnerable to HIV infection from another source. Such men are also more likely to impose risky sexual practices on partners that may increase their infection with the virus.

In another study conducted in Zimbabwe, it has been shown that there is a high rate of sexual violence and coercion against girls as a significant causal factor in the high rate of HIV infection among the girls.⁴⁶ The study documents girls' testimonies

⁴¹ Prabhat, J. (2006), Law male to female sex ration of children born in India: national survey of 1.1 million households, *The Lancet*, volume 367.

⁴² Id.

⁴³ Dunkel, K.L. et. Al (2004) "Gender based violence, relationship, power and risk of HIV infection in women attending antenatal clinics in South Africa, *The Lancet* (2004)).

⁴⁴ Id.

⁴⁵ Maman, S. et al (2002), 'HIV-Positive women report increased partner violence in Tanzania', *American Journal of Public Health* (2002).

⁴⁶ Human Rights Watch (2002), "Suffering in Silence: the link between human rights abuse and HIV transmission to girls in Zimbabwe."

of abuse that heightened their risk of HIV infection. The abuse is partly with the understanding that men increasingly target younger girls assuming them to be HIV negative or on the myth that sex with virgins will cure AIDS.⁴⁷

Similar findings on the relation between VAW and HIV infection have also been documented in other studies in Uganda.⁴⁸

The link between VAW and HIV infection could also be considered from another perspective: fear of violence may undermine women's willingness to seek treatment as they may hesitate to be tested for HIV because they are afraid that their HIV status may result in physical violence, expulsion from their home or social ostracism.

⁴⁷ Id.

⁴⁸ Human Rights Watch (2003), "Just Die Quietly-domestic violence and women's vulnerability to HIV in Uganda".

International Human Rights Norms, and Women and Girls in the Context of HIV/AIDS

2.1. International Human Rights Instruments

At the international level, the need to ensure equality of women and men has been recognized at least since the 1940s. The United Nations Charter (1945) in its preamble provides for equal rights of women and men as one basic principle of the UN. The Charter also states that one of the main objectives of the UN is promoting and encouraging respect for human rights for all without distinction *inter alia* on the basis of sex (Article 1).

The Universal Declaration on Human Rights (the UDHR) which was adopted 3 years later in 1948, similarly states that the rights and freedoms it prescribes are to be enjoyed by all without any distinction on grounds of sex. The UN Charter and the UDHR thus lay down the basic notion of equality and a platform for further elucidation of the human rights of women to equality and nondiscrimination. Building on the UDHR's basic principles of equality and nondiscrimination in a specific and binding manner, the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social, and Cultural Rights (ICESCR) require state parties to ensure the enjoyment and exercise of human rights without distinction on the basis of sex (Article 2 ICCPR and Article 3 of the ICESCR). Particularly, the ICCPR provides that everyone is entitled to the equal protection of the law and prohibits discrimination on grounds including sex (Article 26). The Conventions also provide for the equal rights of women and men in marriage as well as for equal working conditions for women and men (Article 23 ICCPR and Article 7 ICESCR).

The human rights enshrined in the different human rights treaties apply equally to men and women. Accordingly, the rights to life, liberty and security of persons, to be free from torture

and from cruel, inhumane or degrading treatment or punishment, to be free from slavery and servitude, to equal protection under the law, to equality in marriage and family relations, to an adequate standard of living, to just and favorable conditions of work and to the highest attainable standard of physical and mental health are all applicable to women and men equally.

The standard human rights instruments, while recognizing the equal protection of the rights of men and women, do not recognize the fact that human rights abuses affect women differently because of their gender. Specific instruments on women's human rights acknowledge the fact that dimensions exist that are gender-specific which need to be addressed in dealing with the human rights issues of half of the world's population. In other words, although the above international human rights instruments have made provisions on nondiscrimination and equal rights of women, the rights were not well articulated in the light of peculiar challenges women face in many societies.

In recognition of the need for a specific human rights regime for women, the UN General Assembly (GA) adopted the Declaration on the Elimination of all forms of Discrimination Against Women in 1967, probably the first international human rights document which centers around women's rights to equality and nondiscrimination. Nonetheless, the Declaration, important as it is because it focuses on the rights of women to equality and nondiscrimination at the international level, was merely a declaration rather than a binding instrument. To address this, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) was adopted in 1979 by the UN General Assembly, which is the most comprehensive legally binding instrument dealing exclusively with human rights of women to equality and nondiscrimination. CEDAW does not create a new package of human rights for women; it reiterates the human rights of women to equality and not to be discriminated against on the basis of sex, which rights have already been enshrined in the major human rights instruments described above. Accordingly, it provides for women's rights to non-discrimination on the basis of sex and affirms equality in international law.

CEDAW obliges state parties not only to issue laws that outlaw discrimination but also to take measures to ensure elimination of discrimination and equality of women and men. It also provides for the realization of equality between women and men by ensuring women's equal access to political and public life as well as education, health, and employment. It requires parties to take all appropriate measures including legislative, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (Article 2(f)). CEDAW also calls for the elimination of prejudices which are based on the idea of the inferiority of either of the sexes or on stereotyped rules for men and women (Article 5). It specifically calls for the elimination of discrimination and ensures equal rights with men in the field of education and healthcare. (Articles 10 and 12). State parties are obliged to take actions to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life (Articles 2, 5, 11, 12, and 16). In

its General Recommendation 19, the CEDAW Committee, the Committee which monitors the treaty, noted that gender-based violence impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms under international law or human rights treaties and is a form of discrimination.⁴⁹

The Optional Protocol to the CEDAW provides for two procedures: a communication procedure that aims to redress specific grievances and an inquiry procedure that aims to identify broad human rights violations affecting a large population. But state parties to the CEDAW should first ratify or accede to the protocol for the committee to have competence to receive and consider individual complaints or undertake inquiry (Article 3).⁵⁰

In 1993 the UN General Assembly adopted the Declaration on the Elimination of Violence against Women. The Declaration affirms that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. It also recognizes that VAW is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men, and calls for state parties to condemn VAW and not invoke any custom, tradition or religious considerations to avoid their obligation with respect to its elimination. State parties should pursue a policy of eliminating VAW by all appropriate means (Article 4).

In 1989 the UN General Assembly adopted the UN Convention on the Rights of the Child (CRC).⁵¹ The CRC which defines a child under Article 1 as a person below the age of 18 unless the laws of a country sets a lower age, sets out the civil, political, economic, social and cultural rights of the child. The CRC is one of the treaties that secured near universal ratification, all countries except USA and Somalia being parties to it. The CRC provides for nondiscrimination of children on the basis of race, religion, language etc (Article 2) and requires that the best interest of the children should be the overarching consideration in making decisions affecting them (Article 3). More importantly, the CRC spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest, to protection from harmful influences, abuse and exploitation, and to participate fully in family, cultural and social life. Articles 34 and 35 of the CRC say that governments should protect children from all forms of sexual exploitation and abuse and take all measures possible to ensure that they are not abducted, sold or trafficked.

The CRC requires governments to recognize the right of the child to the enjoyment of the highest attainable standards of health and to facilitate for the treatment of illnesses and rehabilitation of health (Article 24). Article 2 requires states to take all appropriate measures to ensure that children are protected from discrimination. Article 19 requires

⁴⁹ CEDAW Committee, General Recommendation 19, 1992, para. 7.

⁵⁰ Ethiopia has neither signed nor ratified the optional protocol.

⁵¹ Convention on the Rights of the Child, G.A. Res. 44/25, UN Doc A/44/49 (1989).

states to take appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, exploitation, including sexual abuse. Article 34 also requires state parties to undertake to protect children from all forms of sexual exploitation and sexual abuse in particular inducement or coercion of the child to engage in any unlawful sexual activity and exploitative use of children in prostitution or other unlawful sexual practice. Further, it requires states to take all appropriate measures at the national, bilateral and multilateral levels to prevent the abduction, sale of or trafficking in children, for any purpose or in any form.

The Committee on the Rights of the Child, in its general comments issued in 2003, calls for identification and understanding of all human rights of children in the context of HIV/AIDS to promote realization, provide support, care and protection for children infected with or affected by HIV, formulation of child oriented action and policy at the national and international levels.⁵²

In 2000 the UN General Assembly adopted the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography which focus largely on attention to the criminalization of these serious violations of children's rights and emphasizes the importance of fostering increased public awareness and international cooperation in efforts to combat them. The Optional Protocol supplements the CRC by providing States with detailed requirements to end the sexual exploitation and abuse of children. It also protects children from being sold for non-sexual purposes - such as other forms of forced labor, illegal adoption and organ donation. The Protocol requires states to prescribe penalties not only for those offering or delivering children for the purposes of sexual exploitation, transfer of organs or children for profit or forced labor, but also for anyone accepting the child for these activities.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children adopted by the UN General Assembly in 2000, supplementing the UN Convention against Transnational Organized Crimes, similarly provides for action to prevent and combat trafficking and promote cooperation among state parties.

2.2. Human Rights Instruments in Africa

In Africa, the African Charter on Human and Peoples' Rights (the African Charter) (1981) contains provisions that may have some relevance in relation to women's rights to equality and nondiscrimination. Under Article 18(3) the African Charter requires state parties to ensure the elimination of any discrimination directed against women and to ensure the rights of women. Similarly, Article 2 provides that the rights and freedoms contained in the African Charter shall be enjoyed by all, irrespective of other sex issues.

⁵² See UN Committee on the Rights of the Child, general Comment No.3 (2003) on HIV/AIDS and the rights of the child, para 2.

Article 3 provides that everyone shall be equal before the law and shall be entitled to the equal protection of the law. But the African Charter is conspicuously shy in addressing specific issues affecting rights of women particularly in the African context such as FGM, forced marriage and wife inheritance.

With the intention of remedying the shortcomings of the African Charter in addressing the most pressing problems of African Women, the second Ordinary Session, Assembly of the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol on the Rights of Women in Africa) in July 2003.⁵³ The Protocol on the Rights of Women in Africa extensively deals with women's rights in the African context. The Protocol thus defines women's reproductive rights as human rights and provide for women's right to control their fertility (Article 14). It also extensively deals with women's rights to reproductive health services (Article 14). The Protocol on the Rights of Women in Africa is perhaps the only binding legal instrument to address specifically women's rights in relation to HIV/AIDS. In this light the Protocol not only provides women's rights to protection from HIV and other sexually transmitted infections as one component of women's sexual and reproductive rights, but also guarantees women's rights to adequate, affordable and accessible health services (Article 14). Furthermore, the Protocol also imposes the duty on member states to protect women and girls from practices and situations that increases their vulnerability to infection including child marriage, sexual violence and FGM (Articles 5, 6 and 11). In addition the protocol addresses VAW, practices harmful to women, sexual harassment in sufficiently detailed manner and provides provisions relating to the rights of women within marriage.

The international legal framework is complemented by an extensive array of policy instruments that provide detailed guidelines for action to address women's rights including declarations and resolutions adopted by UN bodies and documents from UN Conferences and meetings.

Furthermore, human rights treaty bodies established to monitor the implementation of treaties play important roles by clarifying the state obligations and provide recommendations in relation to the rights protected by the respective conventions.⁵⁴ The UN Special Rapporteur mechanism also contributes to the understanding of state responsibility in protecting and promoting women's human rights.

⁵³ Protocol to the Africa Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2nd Ordinary Session of the Assembly of the Union, July 11, 2003.

⁵⁴ These include the Committee on the Elimination of Discrimination against Women, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee against Torture.

2.3. Responsibility of States Under the CEDAW

The international human rights treaties and standards impose several obligations on the state parties. In general they are obliged to respect, protect, fulfill and promote human rights. They are required to provide the policy and legal framework for the protection and promotion of the rights including the inclusion of the principle of equality in national laws and national plan of action, and to protect their human rights. In addition to providing the policy and legal framework to protect and promote the rights of women, state parties have also the responsibility to prevent, investigate, and prosecute all forms of human rights violations and to hold perpetrators accountable.⁵⁵ Proceedings relating to violations of human rights of women should be conducted in a gender-sensitive manner to ensure that women are not revictimized, procedures are not too onerous and to provide protective measures and support to the victims. In addition, state parties have an obligation to make available just and effective remedies including access to justice reparation for harm compensation etc. Also they need to facilitate access to shelter, medical, psychological and other support. Legal aid for women whose rights have been violated is also an obligation of the state under international law.⁵⁶

It is to be noted that state responsibility arises not only from state action but also from omissions or inactions to take positive measures to protect and promote human rights. In addition to refraining from violations, states have thus a duty to prevent human rights violations by non-state actors, investigate allegations of violations, punish wrong doers and provide effective remedies to victims.⁵⁷

However, providing for the rights of women in different laws and policy documents is not a panacea to ensure the protection of those rights but such a measure should rather be considered as part of a broader effort to promote and protect the rights of women which encompasses measures on public education and awareness creation as well as on violence prevention. Promulgating laws protecting and promoting the rights of women is obviously the first important step towards protecting and promoting women's rights. But the potential of laws remains unfulfilled if they are not effectively applied and enforced. Enforcement requires among other things systematic gender-sensitive trainings of law enforcement officials, prosecutors and judges, developing programs and strategies to empower women by raising their awareness about their rights and enhancing their capacity to claim such rights. This in turn, requires devising comprehensive legal, policy and other measures at the national level, with the involvement of several stakeholders including governments at the federal, state and local levels, all branches of government and civil society.

⁵⁵ See CEDAW Committee, Recommendation 19.

⁵⁶ *Id.*

⁵⁷ *Id.*

2.4. International Standards, Statements, Declarations and Guidelines on Sexual and Reproductive Health Related Rights

Several human rights standards may be relevant to protect the rights of women specifically in the context of HIV - both in terms of prevention and response. To begin with, the ICESCR requires state parties to “recognize the right of everyone to the enjoyment of the highest attainable standards of physical and mental health” (Article 12) and as noted earlier CEDAW also requires state parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure access to health services on the basis of equality including those services related to family planning (Article 12).

Similarly, several international instruments address women’s sexual and reproductive health rights. Thus, the Cairo Program of Action adopted at the International Conference on Population and Development (ICPD) (1994) addressed sexually transmitted diseases and the prevention of HIV from the perspective of women’s vulnerability to the epidemic and provides recommendations for addressing HIV through reproductive health services.⁵⁸ Recommended measures include:

- Increasing efforts in reproductive health programs to prevent, detect and treat STIs and other reproductive tract infections
- Providing specialized training to all healthcare providers in the prevention and detection of and counseling on STIs especially in women and youth
- Making information and counseling integral components of all reproductive and sexual health services

The Beijing Declaration and Platform of Action adopted at the Fourth World Conference on Women in 1995 also requires that social, developmental and health and health consequences of HIV/AIDS and other sexually transmitted diseases need to be seen from a gender perspective and make commitments to undertake gender sensitive initiatives that address sexually transmitted infections, HIV/AIDS and sexual and reproductive health issues.⁵⁹

The Declaration of Commitment agreed at the 2000 UN General Assembly Special Session on HIV/AIDS also calls on governments to take action to empower women to have control over and decide freely and responsibly on matters related to their sexuality with a view to increase their ability to protect themselves from HIV infection.⁶⁰

⁵⁸ See program of Action of the ICPD, Chapt.7, section C, Para. 7.27-7.33- available at www.iisd.co/cairo/program

⁵⁹ See Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 Sept 1995, Recommendation Para 99-109

⁶⁰ See UN Declaration of Commitment on HIV/AIDS, Doc. A/S-26/L.2, New York, 2001, para 59

Different statements and guidelines specifically address human rights in the context of HIV/AIDS. Accordingly, the International Guidelines on HIV/AIDS and Human Rights were adopted by a joint consultation of UNAIDS and UN High Commission for Human Rights (OHCHR) in 1996, which were also adopted by the UN Commission on Human Rights in 1998.⁶¹ In 2002 following further consultation, a revised guideline on access to prevention, treatment, care and support was adopted. It provided policy guidelines based on current international law. The international guidelines on HIV/AIDS and human rights require states *inter alia* to:

- Review and reform public health laws so that they address HIV/AIDS adequately in a non-discriminatory way and in accordance with international law
- Review and reform criminal laws and correctional systems so that they are not misused, not targeted against vulnerable groups and conform to international law
- Enact or strengthen anti-discrimination laws or other laws dealing with discrimination, privacy confidentiality and ethics in research
- Provide legal support and services to educate people affected by HIV/AIDS about their rights, enforce those rights and develop legal expertise in HIV-related legal issues
- Promote a supportive and enabling environment for women, children and other vulnerable groups
- Change discriminatory and stigmatizing attitudes through education training and the media
- Establish monitoring and enforcement mechanism to guarantee that HIV-related human rights are protected

The Millennium Declaration and the Millennium Development Goals (2000)⁶² elaborate eight goals with 18 measurable targets for the international community to achieve by 2015 and calls among others, nations to promote gender equality and empower women (Goal 3) as well as to combat HIV/AIDS, malaria and other diseases (Goal 6).⁶³

The UN General Assembly Special Session on HIV/AIDS (UNGASS) has also adopted the Declaration of Commitment in 2001 which among other things states that gender equality and the empowerment of women are fundamental elements in the reduction of the vulnerability of women and girls to HIV/AIDS and calls for empowerment of women to have control over and decide freely and responsibly on matters related to their sexuality so as to increase their ability to protect themselves from HIV infection.⁶⁴

⁶¹ OHCHR/ UNAIDS (1998), "International Guidelines on HIV/AIDS and Human Rights", Geneva.

⁶² The Millennium Development Goals are a set of internationally agreed goals that countries and institutions have committed to attain by 2015. The goals were formulated at the 2000 Millennium Summit following a long process of consultations and series of agreements.

⁶³ See UN Millennium Declaration Resolution to the General Assembly (55/2), 8 Sept 2000.

⁶⁴ See UNGASS, Declaration of Commitment on HIV/AIDS: Global Crisis, Global Action, 27 June 2001, Para. 14 and 15).

The Policy and Legal Framework to Protect the Rights of Women and Girls, and to Reduce their Vulnerability to HIV/AIDS In Ethiopia

3.1. General Background

With an area of 114 million hectares and a population of about 78 million, Ethiopia is the ninth largest and the second most populous nation in Africa. It is one of the poorest economies in the world with 44 percent of its population living below the poverty line.⁶⁵ The Ethiopian economy relies heavily on the agriculture sector which contributes to about 46.9 percent of the GDP, 85 percent of export and 80 percent of total employment. Accounting for about half of the population and with their low status in the social, economic and political life of the nation, women in Ethiopia are obviously among those groups of the population that are bound to feel the impact of poverty in a particularly adverse way.

Table 3: Gender Disparity in Ethiopia: selected indicators (2004)

Indicator	Female	Male
Life expectancy at birth (years)	46.7	44.6
Adult literacy rate (%)	32.4	48
Primary, secondary, tertiary gross enrolment rate (%)	27	41
Seat in Parliament (%)	7.8	91.2

Source: Human Development Index 2004

⁶⁵ World Bank (2006), "Ethiopia at a Glance", available at www.devdata.worldbank.org/AAG/eth_aag.pdf (accessed October 2007).

Different features define the low status of women in Ethiopia. Firstly, women's roles are mainly defined in terms of household management and matrimonial duties; they are expected to replenish the race by bearing children and assume full responsibility for maintaining them. Since women are, by and large, economically dependent on men, the decision to have or not to have children rests, primarily on the husband.

Secondly, the low female enrolment rate in formal education as compared to that of male further reinforces the expectation that women play their domestic managerial and matrimonial roles. School enrollment statistics for 2006/2007 shows that although there are improvements the female participation rates to be somewhat lower than that of males (Table 5). Another indicator of the degree of female deprivation pertaining to access to education, is the literacy rate which is considerably higher than that of males (32% against 50%). An important factor explaining the relatively low access of females to the educational system is the fact that placing greater attention and investment on males than on females continues to be the traditional value system in the society.

Thirdly, another feature defining the low status of women in the country is the fact that their participation in the labor force is low. Even when they are employed they are found in non-professional types of jobs. Women represent negligible proportions of persons employed in the professional/technical and administrative/managerial occupations - all reflecting the low status of women in the country.⁶⁶

Fourthly, still another important indicator of the low status of women in Ethiopia is their very limited decision-making power and political representation. In the election in 1992 in the Ethiopian Calendar (E.C.) there were only 42 (7.7%) women parliamentarians, 6% members in the House of Federation, 12.9% in the Regional Councils, 7.1% in the Woreda Councils and 13.9% in the Kebele Councils.⁶⁷ In the election in 1997 in the E.C the number of women parliamentarians increased to 21.2%.⁶⁸ The number of women in the executive with decisions making power was 13%, and that of judges at the Federal and Regional Courts was again 13%.⁶⁹ Although the 1997 E.C. election has brought increased number of women to the parliaments, the disparity between men and women in politics and decision making has remained very large.

⁶⁶ See Daniel, H (2004), "The Legal Status of Ethiopian Women at the Workplace", EWLA sponsored research.

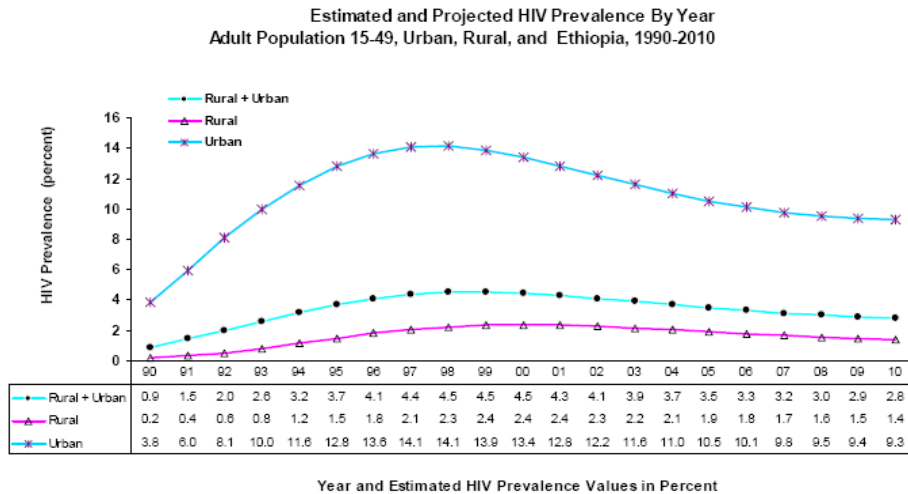
⁶⁷ National Electoral Commission of Ethiopia as quoted by Ministry of Women's Affairs (MOWA)(2006) "National Action Plan for Gender Equality (NAP-GE) 2006-20010" at 11.

⁶⁸ *Id.*

⁶⁹ *Id.*

3.2. HIV/AIDS in Ethiopia

In Ethiopia the first two AIDS cases were reported in 1986.⁷⁰ Since then, the prevalence rate has continuously increased until the year 2000 when it has begun to show some decline.



Source: FMOH/HAPCO 2006

Although the national prevalence rate has somehow declined due to increased attention and more effective responses, the current prevalence rate which is about 3.5% is still high. Actually, Sentinel surveillance data indicate that while in urban areas the epidemic appears to have been stabilized, in rural areas, where about 85% of Ethiopians live, the epidemic is on the rise. According to current UNAIDS estimates, Ethiopia hosts the fifth largest number of people living with the virus globally and it is estimated that this number will raise from 7 to 10 million by the year 2010.⁷¹

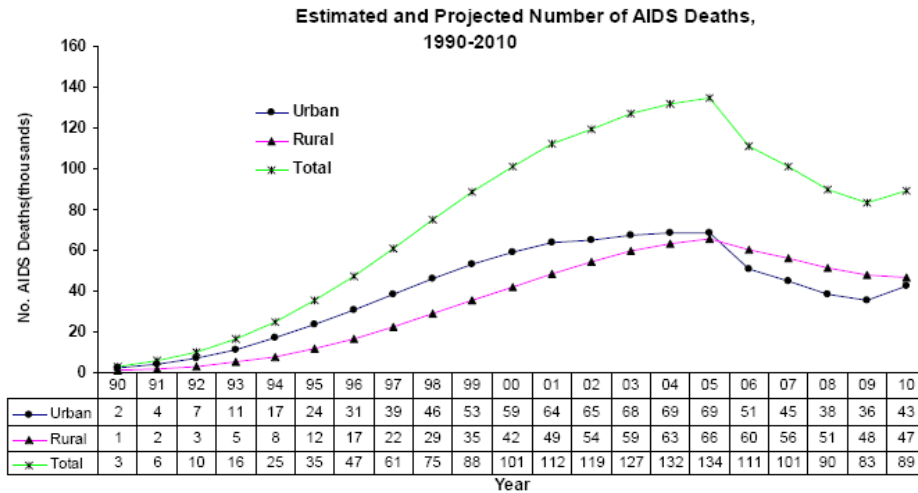
In 2005, there were a total of 137,500 new AIDS cases, 128,900 new HIV infections (353 per day) and 134,500 AIDS deaths (368 per day, including 20,900 children [<15 years]).⁷² Official reports show that there are currently a total of 1,320,000 people living with HIV/AIDS. These figures suggest that HIV/AIDS has unquestionably continued to be one of the greatest challenges facing the country. According to the UNAIDS Country Analysis the underlying factors contributing to the spread of HIV in Ethiopia are poverty, a high rate of unemployment, widespread sex work, gender disparity, rural to urban migration, and harmful traditional practices.⁷³

⁷⁰ Federal Ministry of Health/HIV/AIDS Prevention and Control Office, AIDS in Ethiopia: Sixth Report, HAPCO and U.S. Department of Health and Human Services Centers for Disease Control and Prevention Office in Ethiopia, June 2006

⁷¹ UNAIDS (2006), supra note 4.

⁷² FMOH/HAPCO (2006), supra note 70 p. 6.

⁷³ See UNAIDS, Country Situation Analysis, available at www.unaids.org/en/Regions_Countries/Countries/ethiopia.asp.

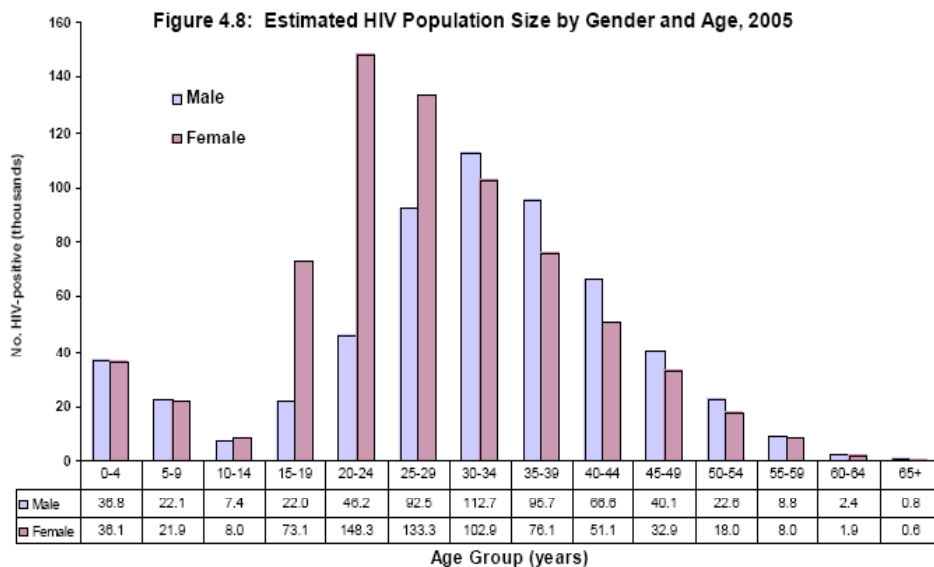


Source: FMOH/HAPCO 2006

3.3. Women and Girls, and HIV/AIDS in Ethiopia

In Ethiopia, women account for a larger share of those directly affected by HIV/AIDS.⁷⁴ The national HIV prevalence in 2005 is estimated to have been 3% among males and 4% among females while 55% of the estimated 1.32 million PLWHA were females. Females also accounted for 54.5% of AIDS deaths and 53.2% of new infections in 2005. In the age group most affected by the pandemic, ie 15-29 years, there were more women living with HIV/AIDS than men as compared to less affected age groups. In fact, women and girls constitute the first group of people at high risk of infection.

⁷⁴ MOH and HAPCO (2006), supra note 70 p. 25.



Source: FMOH/HAPCO 2006

The 'Single Point HIV Prevalence Estimate'⁷⁵ recently issued by MOH and HAPCO also shows that there is a difference in the vulnerability of women to HIV in Ethiopia in relation to prevalence rate, the number of HIV positive population, new infections and annual HIV death (Table 4). The 2008, 2009 and 2010 estimates also show that the gap in prevalence, rate of new infections and HIV death between males and females would continue. What these estimates suggest is that HIV/AIDS has become more and more a disease of women in Ethiopia as in most countries in the Sub-Saharan region.⁷⁶

Table 4: Gender Disparity in Relation to HIV/AIDS in Ethiopia

National	Male	Female	
Prevalence (%)	2.1	1.7	2.6
No. of HIV+	977,394	399,376	578,018
New infections (2006/2007)	125,528	53,494	72,033
Annual HIV deaths	71,902	31,158	40,744

Source: MOH and HAPCO (2007), 'Single Point HIV Prevalence Estimate'

⁷⁵ MOH and HAPCO (2007), 'Single Point HIV Prevalence Estimate', Addis Ababa, Ethiopia.

⁷⁶ HAPCO, the HIV/AIDS Epidemic and the National Response in Ethiopia November 2003.

3.4. Vulnerability of Women and Girls to HIV/AIDS in Ethiopia

Different factors significantly increase the vulnerability of women and girls to HIV/AIDS in the Ethiopian context. HTPs which negatively affect women in their physical, psychological and social development are rampant in many parts of the country in different forms. A national baseline survey conducted by the National Committee on HTPs reveals that about 72.7% of Ethiopian women have been subjected to HTP of one form or another.⁷⁷

Research and data on VAW in Ethiopia is patchy but the few studies on the subject show that VAW is widespread. Some reports estimate that nationally, 73% of women are subjected to FGM, while 33% of them marry below the age of 15.78 Similarly, a study on VAW in Addis Ababa in 2004, showed that most of the women who took part in the interview said they had faced violence some time in their life.⁷⁹ Another survey on the incidence of VAW in the 28 police stations in Addis Ababa between 1998-1994 EC, showed that there were 1955 rapes, 194 abductions and 280 attempted murders cases.⁸⁰ A similar survey by the Walta Information Centre in all regions except Gambella shows that in 2000 there were 2263 rapes and 507 abductions reported.⁸¹ The Family Guidance Association of Ethiopia had 96 rape victims in 2001, 200 in 2002 and 351 in 2003. The victims came to the Centre for treatment.⁸²

A recent study has shown that all of the respondents in the study said they have faced one or another form of violence in their life.⁸³ The research has also found out that while the nature and prevalence of VAW varies from region to region the most common forms of VAW in order of high prevalence were FGM, early marriage, sexual harassment and domestic violence, rape and forced prostitution - (FGM) being the most common by a large margin. 47% of the respondents noted that the most common form of VAW was FGM (39% urban, 60% rural), 14% early marriage (13% urban, 17% rural) and 12.4% domestic violence (15.4 urban, 7.5% rural). The fact that FGM is a very common violence committed on girls has also been highlighted in another study. It has for example been reported that 80% of the total population of women, and in some areas up to 100%, are victimized by FGM.⁸⁴

Even if the minimum age of marriage has now been fixed at 18 years both for boys and girls, early marriage is a widespread practice throughout the country. As noted earlier, in

⁷⁷ NCTPE (1998), "Baseline Survey on Harmful Traditional Practices in Ethiopia", Addis Ababa.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ As quoted by NAP-GE (2006) supra note 67 at 10.

⁸² Id.

⁸³ Action Aid Ethiopia (2007), "The intersection between VAW and HIV", a draft report at 8.

⁸⁴ See Hargewoin Cherinet and Emebet Mulugeta (2002), "Country Gender Profile, Ethiopia" at 26.

Ethiopia 19% of girls were married by the age of 15 and in some regions such as Amhara the number goes as high as 50%. Early marriage exposes girls to different physical and psychological harms. This may in turn force the girls to run away from their home and engage in activities which expose them to HIV infections such as sex work. A study has actually shown that about 70% of the women in drinking bars working as sex workers were married before at their tender ages.⁸⁵ Early marriage comes at a time when the girl has not reached maturity and attained capacity to act and control her sexuality, her health could be adversely affected, her education impeded, and economic autonomy restricted. In Ethiopia, early marriage is one major factor for the low level of girls in schools especially in the rural areas. Some 80% of young married Ethiopian women have had no education and are unable to read.⁸⁶ It is also a factor contributing not only to the maintenance of a high fertility regime but also to high maternal, infant and child morbidity and mortality.

Abduction is another common practice affecting women and driving them into a marital relation without their consent and exposing them to HIV infection. It is practiced in almost all regions although it is most common in Oromia and Southern Nations, Nationalities and Peoples' Regional State.⁸⁷ The revised Criminal Code has criminalized abduction in all cases unlike the 1957 Penal Code where no proceeding could be instituted if the abductee gives her consent following the abduction. This practice allowed for negotiation by her family and the abductor - the girl being excluded from making decisions for her own affairs. Under pressure from the family and community, the victim usually gives consent to the marriage and the perpetrator exonerated from criminal liability. Despite the revision of the Criminal Code, this practice has continued to prevail in different communities. Abduction limits women's access to education in addition to violation of her human rights. Fear of abduction on the way to school, especially in the rural areas which is far from home, increases female students' dropout from school in Ethiopia.⁸⁸

Women in Ethiopia are also subjected to rape and other forms of sexual abuses. A study in Addis Ababa shows that on average 3 women are raped each day in each of the 28 districts of the city and 78% of the school girls in Addis Ababa say that they were threatened and fear being raped.⁸⁹ Similarly, 74% of the schoolgirls reported being sexually harassed.⁹⁰

Some studies have also shown that women in Ethiopia are subjected to domestic violence by a partner, in most cases by husbands. Community based studies in Ethiopia for example, suggest that 50-60% of women in Ethiopia experienced domestic violence in their lifetime.^{91 92}

⁸⁵ See Daniel Haile (1980), "Law and the Status of Women in Ethiopia", 1980 p.5.

⁸⁶ Population Briefing Sheet (2004) supra note 34.

⁸⁷ Haregewoin and Emebet supra note 84.

⁸⁸ Ibid at 24.

⁸⁹ Ibid at 26.

⁹⁰ Id.

⁹¹ See for example Yemane Berhane (2005), 'Ending Domestic Violence against women in Ethiopia', Ethiop. J. Health Dev, 2005.

⁹² There are also other forms of violence against women practiced in Ethiopia such as polygamy, wife inheritance, etc.

The figures indicated in the foregoing paragraphs show only the reported cases. The exact figures would obviously be far higher because women and girls are generally reluctant to report the incidents for lack of awareness of their rights, shame, being afraid or because they think that it was pointless or even dangerous to report the cases to police.

The women's role as caretakers of the sick in the family, without knowledge and information about protecting themselves, may also be one cause for the increased prevalence of the disease on women.

Even if there is a growing research coming from around the globe on the link between violation of women's rights such as through violence, and HIV infection, there is generally a dearth of studies on the subject in Ethiopia. The link between the two has not yet been recognized by many stakeholders in Ethiopia; rather, the two are recognized as separate social issues. In one study, several respondents thought that the different violence against them had actually exposed them to HIV infection. There is also a consensus among the different people interviewed in this work that several women have actually contracted HIV as a result of violence such as rape, early marriage, abduction etc. In fact, some women openly said that they have contracted the virus as a result of violence. While these are obvious evidences on the link between VAW and HIV infection, there is the absolute need to further study the link in an unequivocal manner in the Ethiopian context.

The Policy Framework

4.1. The National Policy on Ethiopian Women

The National Policy on Ethiopian Women (NPEW) was adopted in 1993 by the Transitional Government of Ethiopia (TGE) as the first policy document that attempts to promote and protect the rights of women and to domesticate the international commitment entered into by the government. The NPEW has made an assessment of the situation of women in Ethiopia and made the conclusion that discrimination against women has been perpetuated in various forms depending on their ethnic background, culture and religion. It further noted that Ethiopian women experience a ban from owning the means of production, are victims of natural as well as man-made disasters, face prejudicial attitudes in the country's political, social and economic life, and are still subjected to discriminatory laws. The objectives of NPEW are:

- To facilitate conditions conducive to the speeding up of equality between men and women so that women can participate in the political, social, and economic life of their country on equal terms with men, ensuring that their right to own property as well as their other human rights are respected and that they are not excluded from the enjoyment of the fruits of their labor or from performing public functions and being decision-makers
- To facilitate the necessary condition whereby rural women can have access to basic social services and to ways and means of lightening their workload
- To eliminate, step by step, prejudices as well as customary and other practices, that are based on the idea of male supremacy and to enable women to hold public office and to participate in the decision-making process at all levels

The NPEW has identified seventeen implementation strategies to achieve its objectives, the majority of which focuses on issues of participation and equality of women. It has addressed the issue of HTPs, a common practice affecting women in Ethiopia, and capitalizes on the need to create awareness about and access to basic healthcare and reproductive health information and services.

4.2. HIV/AIDS Policies and Strategies

The Government approved the first national policy on HIV/AIDS in 1998 as the Policy on HIV/AIDS of the Federal Democratic Republic of Ethiopia.

The policy has the overall objective of providing an enabling environment for the prevention and mitigation of HIV/AIDS. The specific objectives are to:

- Establish effective HIV/AIDS prevention and mitigation strategies to curb the spread of the epidemic
- Promote a broad, multisectoral response to HIV/AIDS, including more effective coordination and resource mobilization by government, NGOs, the private sector, and communities
- Encourage government sectors, NGOs, the private sector, and communities to take measures to alleviate the social and economic impact of HIV/AIDS
- Support a proper institutional 'home and community' based healthcare and psychological environment for PLWHA, orphans, and surviving dependents
- Safeguard the human rights of PLWHA and avoid discrimination against them
- Empower women, youth, and other vulnerable groups to take action to protect themselves against HIV
- Promote and encourage research activities targeted toward preventive, curative, and rehabilitative aspects of HIV/AIDS

The general strategies identified by the policy are:

- Information, education and communication;
- STD prevention and control;
- HIV testing and screening;
- Sterilization and disinfections;
- HIV surveillance, notification and reporting;
- Medical care and psychosocial support;

- Research and development;
- HIV/AIDS/HIV/AIDS and human rights;
- Regional and international relations; and
- Policy implementation and coordination.

Following the adoption of the Policy, the Ministry of Health has developed a five year Federal Level Multisectoral HIV/AIDS Strategic Plan 2000-2004 and accompanying Regional Multisectoral HIV/AIDS Strategic Plans 2000-2004. Together, these plans were synthesized into the Strategic Framework for the National Response to HIV/AIDS in Ethiopia (2001-2005) and launched in 2001. In 2004 a new strategic framework, the Ethiopian Strategic Plan for Intensifying Multi-sectoral HIV/AIDS Response (2004-2008) was developed.

A number of other policies, guidelines and operational tools have also been developed within the framework of the national policy and strategic documents to supplement and facilitate effective national response on various specific issues related to HIV/AIDS including:

- The *National Monitoring and Evaluation Framework for the Multi-Sectoral Response to HIV/AIDS in Ethiopia* developed by the National HAPCO in December 2003⁹³
- The *National Guidelines for HIV Counseling in Ethiopia* issued in 2002 by MOH⁹⁴
- The *National Health Communication Strategy for 2005-2014*, adopted by the MOH in October 2004⁹⁵
- The *Guideline for an effective Community Mobilization Strategy* issued by HAPCO in May 2005
- The National Anti-Retroviral Therapy (ART) Strategic Communication Framework in March 2005
- The Policy on Anti-retroviral Drugs Supply and Use issued in July 2002
- The expanded *Government of Ethiopia "Road Map" for 2007–2008*⁹⁶

A review process of the national HIV/AIDS Policy is currently underway with a view to accommodate current developments in HIV prevention, treatment, care and support interventions and to address issues that emerged from the HIV/AIDS program implementation.⁹⁷

⁹³ However, the multi-sectoral response for 2000-2004 has already been revised and there is now a new one for 2004-2008, supposedly that incorporates lessons learned in the execution of the preceding document.

⁹⁴ National Guideline for Voluntary HIV Counseling and Testing in Ethiopia, Ministry of Health (Disease prevention and Control Department, HIV/AIDS and other STIs Prevention and Control Team, April 2002.

⁹⁵ National Health Communication Strategy: Ethiopia 2005-2014. Ministry of Health-Health Education Center, October 2004. page 18.

⁹⁶ President's Emergency Plan for AIDS Relief, 2007 Country Profile of Ethiopia, Ethiopians and Americans in Partnership to Fight HIV/AIDS, 2007 (Available at:) www.pepfar.gov/documents/organization/81660.pdf

⁹⁷ The interviews contacted in this research said that the policy is under revision but it was not possible to get a copy of the draft.

4.3. Other Policies Dealing with the Rights of Women

Poverty is the major challenge facing the nation. Poverty reduction has naturally been taken as the overarching development agenda and has informed the major policies and strategies of the country. In 2002, Ethiopia developed the poverty reduction strategy paper known as the Sustainable Development and Poverty Reduction Program (SDPRP). It was designed to guide the overall development and poverty reduction activities in the country. The SDPRP addresses “Gender and Development” as a cross-cutting issue (Section 10.3) and clearly capitalizes on the need for gender sensitivity in the education and health policies and programs for equitable development and poverty reduction. It also recognizes the need for tackling HTPs through public awareness, consultations with community and by strengthening the legal framework.

Nonetheless, poverty has not been dealt with from the perspective of gender. Most of the development goals, policies and targets of poverty reduction do not incorporate gender issues as important variables. It does not also include an immediate outcome that would measure progress towards empowerment of women and gender equality as stated under Goal 3 of the MDGs.

Ethiopia has already developed the second phase of the poverty reduction strategy papers known as the Plan for Accelerated and Sustained Development to end Poverty (PASDEP) (2005/6-2009/10). One of the pillar strategic elements targeted in the PASDEP is “Unleashing the Potentials of Ethiopia’s Women. In that light, it provides for measurable indicators that help address the gender dimension of development in the context of the agriculture-led development strategy. It targets to involve 30% of women farmers in male-headed households and 100% of women in female-headed households directly in rural development activities by 2010.

The Education and Training Policy (1994) (ETP) is another policy document that has attempted to address gender issues in education and training in the country. One of the objectives of the policy is to “gear education towards reorienting society’s attitude and value pertaining to the role and contribution of women in development”. The policy aims to recruit more female teachers, to give priority to female students and financial assistance to female students with a view to raise their participation in education. With a view to translate the objectives into policy action, the Education Sector Development Program (ESDP) was adopted in 1997. The ESDP envisages among other things, to increase girls’ enrolment share in primary schools to 45%, to reform the curricula to make it relevant and gender sensitive, and to reduce the dropout and repetition rate of girls by half.

Table 5: School Enrolments (2006/2007) (%)

Male	Female	Total
98.1	85.1	93.7
44.7	27.4	36.2
7	3.5	5.3

Source: Ministry of Education (2000 EC)

The Cultural Policy of Ethiopia (1997) (CPE) addresses some of the issues on women with a particular focus on fighting traditional practices affecting women. One of the objectives of the CPE is to abolish step-by-step traditional harmful practices.

The CPE also aims at:

- Warding off all cultural activities that could negatively affect the physical, psychological, and moral wellbeing of the youth as well as the dignity and democratic rights of citizens
- Ensuring women's active participation in all cultural activities and guaranteeing them equal rights to the benefits thereof
- Enabling cultural establishments to play an active role in all the activities being carried out to fend off harmful traditional practices and attitudes such as indolence, chauvinism, narrow mindedness; prejudices etc
- Step-by-step eliminating the prevalent prejudices against women and their professions

The National Population Policy of Ethiopia (1993) (NPPE) is one of the few policy documents that deal extensively with women's issues. The Policy recognizes the low level of women in the economic, social and political life of the society and calls for measures to be taken to empower women and enhance their participation in it

The NPPE attributes the high prevalence of maternal, infant and child morbidity and mortality problems to the low status of women, among other things.

Among the general objectives of the NPPE are:

- Raising the economic and social status of women by freeing them from the restrictions and drudgeries of traditional life and making it possible for them to participate productively in the larger community
- Significantly improving the social and economic status of vulnerable groups (women, youth, children and the elderly)
- Significantly increasing female participation at all levels of the educational system
- Removing all legal and customary practices militating against the full enjoyment of economic and social rights by women including property rights and access to gainful employment

The NPPE has also outlined several strategies relevant to addressing gender issues including:

- Planning and implementing counseling services in the educational system with a view to reducing the current high attrition rate of females
- Providing career counseling services in second and third level institutions to enable students, especially girls, to make appropriate career choices
- Designing and implementing a coherent long term policy that is likely to create conditions facilitating an increased integration of women in the modern sector of the economy
- Amending all laws impeding, in any way, the access of women to all social, economic and cultural resources and their control over them including the ownership of property and businesses
- Ensuring and encouraging governmental and non-governmental agencies involved in social and economic development programs that they incorporate gender and population content in their activities by establishing, within their organizations, appropriate units to deal with these issues

Recently, the FDRE Government issued the Ethiopian Women Development Package. It aspires as a vision for equal participation of Ethiopian women in the economic, political and social aspects and a democratic society where gender equality is enshrined. With a view to materializing the vision the document has come up with different strategies addressing the problems faced by the rural and urban women in the country.

The strategies in relation to the rural women include:

- Ensure benefits from land use
- Increase participation in education
- Improve health situations
- Eliminate harmful practices
- Ensure the full implementation of the family law and strengthen the legal protection of women

Similarly, the strategies in relation to addressing the problems faced by women in the urban areas include:

- Undertake activities to tackle unemployment
- Extensively train in preparedness for the job market
- Protect economic rights and interests
- Increase participation in education

- Eliminate traditional harmful practices
- Enhance roles in decision-making
- Strengthen the mechanism to obtain protection of the law

Globally, Ethiopia is signatory to the CEDAW, CRC and party to commitments such as the ICPD, Beijing Platform of Action, etc. Ethiopia has also launched the National Action Plan for Gender Equality (NAP-GE-2006-2010), the key strategy document for achieving gender equality.

Assessment of the HIV/AIDS Policy and National Policy on Ethiopian Women in the Context of Women's Vulnerability to HIV/AIDS

The major policy documents including the National Policy on HIV/AIDS, the Strategic Plan for Intensifying Multi-sectoral HIV/AIDS Response (2004-2008) and the Draft Revised National Policy somehow recognize HIV/AIDS as a human rights issue as well as an issue linked with gender inequality and the marginalization of certain social sectors. It specifically recognizes the increased vulnerability of women to the infection as well as the contributing role of gender inequality to the prevalence of the pandemic.

For instance, the background and objective parts of the 1998 policy recognizes the contribution of gender inequality for the increased spread of HIV/AIDS in the country and the need for women to have access to information and services regarding HIV/AIDS that help them to make reproductive choices and decisions. Moreover, one of the policy objectives is to empower women, youth and other vulnerable groups to take action to protect themselves against the epidemic.

The Policy also recognizes that harmful traditional practices contribute to the spread of HIV, although the principal cause remains to be sexual contact. It states that appropriate measures should be taken to stop HIV transmission through harmful traditional practices.

There are, however, some crucial areas not specifically covered by the policy framework particularly in relation to addressing the link between HIV/AIDS and gender issues in general. Despite recognition of the special vulnerability of women to HIV/AIDS, and the contributing role of gender inequality to the problem,, the policy framework has not included specific and appropriate strategies or programs to address the link between HIV/AIDS and the peculiar vulnerabilities of women and girls, such as VAW. More specifically,

given the fact that women and girls are particularly vulnerable to HIV/AIDS, and in the face of growing evidence, on the link between their vulnerability and HIV/AIDS infection, addressing women's and girls' vulnerability should have been clearly articulated. In fact, it should have been included as one of the major objectives of the policy framework.

Furthermore, the policy framework has failed to set out workable strategies to address the peculiar vulnerability of women and girls to HIV/AIDS although it provides for the need to protect human rights of PLWHA with emphasis on marginalized groups, such as women and children. Still, the need for addressing the vulnerability of women and girls has not been translated and streamlined into the different strategies and programs developed in pursuance to the HIV/AIDS Policy. The VCT programs for example do not take into account gender issues or the special vulnerability of women and girls. Similarly, the Antiretroviral Treatment (ART) policy does not address the special needs of vulnerable groups such as women and girls and no special treatment has been envisaged for such groups. Actually, the policy framework gives greater emphasis to HIV/AIDS as a health issue. Even though it is, looking at the issue solely with this view, it may undermine the other dimensions of the virus including gender.

There are also several gaps in the scope and substance of the National Policy on Ethiopian Women (NPEW) both in terms of adequately dealing with the issue of violence against women and its link with HIV/AIDS. Surprisingly, the NPEW is completely silent on the link between women's low status and their poor health. The special vulnerability of women to HIV/AIDS and the causes have not been covered. Actually, the NPEW does not even mention the term HIV/AIDS. In addition, forms of VAW that are more directly linked with the vulnerability of women and girls to HIV infection and the issue of access to HIV/AIDS information and services, have not been addressed in the Policy.

Although the NPEW recognizes that HTPs have been seriously affecting women in Ethiopia, the problem has not been addressed in the context of HIV/AIDS and it is not at all clear why it puts emphasis on the traditional HTPs ignoring the more serious practices affecting women, such as rape and sexual abuse. VAW has not for example, been addressed as a policy issue seriously affecting women. It has been claimed that although the NPEW tried to address harmful customs and practices, it failed from a human rights perspective as violations of human rights with physical and psychological consequences for the health and wellbeing of women.

The Legislative Framework

The last decade has seen a significant legislative reform in relation to protection of the rights of women. In addition to the FDRE Constitution in 1995 with several provisions relevant to women's rights, many other laws have been enacted and the existing ones have been revised in a particularly gender-sensitive manner. Chief among these laws are The Revised Family Law and the Revised Criminal Code.

6.1. The FDRE Constitution

The FDRE Constitution has incorporated both specific and general provisions on the rights of women. It provides for the right to equality which entitles both men and women to benefit from the catalogue of rights it prescribes. Specifically, Article 35 of the Constitution is devoted to the rights of women and contains several provisions covering important rights of women. These include equal protection of the law, equality in marital affairs, entitlement to affirmative measures, protection from HTPs, maternity rights in employment, the right to consultation, property rights, employment rights, and access to family planning information and services.

Furthermore, The FDRE Constitution recognizes the effects of past discrimination against women and entitles them to affirmative measures, the purpose of which is to provide special attention to women, so as to enable them to compete and participate, on the basis of equality, with men in social and economic life as well as in public and private institutions (Article 35.4).

The provisions of the FDRE Constitution have served as a template for other and more specific laws issued in the country subsequently.

The human rights and freedoms enshrined in the FDRE Constitution have relevance in the context of HIV/AIDS. The rights to nondiscrimination and equality before the law, access to social services including health and education, participation, employment, to marry and start a family, the right to privacy, honor and reputation are certainly rights with significant implications to HIV/AIDS in the country.

The FDRE Constitution provides that all international treaties ratified by the country are integral parts of the law of the land (Article 9(4)). It further states that the fundamental rights and freedoms it has recognized shall be interpreted in a manner conforming to the international instruments ratified by Ethiopia (Article 13.2). This is an important provision which, if properly used, provides significant opportunity to interpret the rights in light of the international treaties which have been extensively interpreted and benefit from a large body of jurisprudence that has been built-up over the years. Sadly, this has not been the case as the judiciary has been grappling with technical issues as to when and how the international treaties ratified by the country, could be used by courts to make decisions.

Ethiopia has ratified a number of the human rights instruments including the ICCPR, ICESCR, CEDAW, Convention on the Elimination of Racial Discrimination, CRC, Convention against Torture, and the African Charter.

Although the FDRE Constitution provides for several rights relevant to women, there is little experience both on the parts of courts and parties to a suit to cite the provisions in making decisions and presenting arguments. This makes elucidating the constitutionally granted rights in the subordinate laws, absolutely important in Ethiopia.

6.2. The Family Law

As noted earlier, the FDRE Constitution declares that men and women without distinction of race, nation, nationality, or religion who have attained the marriageable age as defined by law, have the right to marry and start a family. Men and women have equal rights while entering, during, and at the time of the termination of marriage (Article 34.1). It is also stated that the constitution is the supreme law of the land and any law, customary practice, or decision of an organ of the state or public officials which contravenes it, shall be of no effect (Article 9.4).

The provisions on marriage of the 1960 Civil Code of Ethiopia were founded on the understanding that men were superior while women were subordinate. The provisions treat the husband as head of the family, require the wife to be obedient to the husband's

orders, and family affairs including the upbringing of children, should be under the direction of the husband. Additionally, the husband was entitled to the administration of the common property and to guide and control his wife's relations and conduct.

The Revised Family Law has brought what may be considered a revolutionary change to the parts of the Civil Code dealing with marriage and has abolished most of the discriminatory provisions of the Civil Code in relation to marriage. It thus provides that marriage should be based on mutual respect, support and assistance of the spouses, entitles both spouses to administer and direct family affairs, including the upbringing of their children etc.

The grounds of divorce have also been relaxed and spouses can terminate their marriage through mutual consent, without regard to the cause of the divorce. This may have an important implication for women, as they can always file for a divorce if they feel they have been exposed to HIV infection from a non-behaving husband or exposed to violence.

An important feature of the Revised Family Law is that it denies legal recognition to marriage by abduction and early marriage at the pain of dissolution of such marriages. The practice of bigamy is also prohibited under the Code, prescribing dissolution of the second marriage as a remedy.

The power of the Family arbitrators has been significantly reduced, being limited to making efforts to reconcile the spouses. Power to adjudicate divorce cases has been taken away and given to the courts. During the era of the Civil Code provisions on marriage, women used to suffer at the hands of the family arbitrators who had significant powers in relation to divorce and division of property, amongst others.

The Revised Family Law has also changed the legal effect of irregular union. Under the Civil Code, irregular union does not create a community of property between the parties. This means that no property partition would be made when the union comes to end, irrespective of the fact that the union lasts for many years, except that the woman may be awarded maintenance for a maximum of 6 months (Articles 708, 712, 717 Civil Code). No consideration was allowed for the woman's contribution to the property through her labor. This has been changed under the Revised Family Code which provides for a community of property if the union lasts for a certain minimum period (RFC Articles 102 and 103).

Nonetheless, the application of the Revised Family Law is limited only at the Federal Level as Regional States have been empowered to enact their own family laws. Several regions have already promulgated their own revised family laws and have abolished the most discriminatory provisions. They have founded their bases on the principle of equality of spouses in pursuance to the provisions of Federal Constitution and the Federal Family Law. The Amhara, Tigray and Oromia Regional States have already adopted their family laws and these are generally founded on the principles of equality of the spouses, both in the management of the family

and administration of common property. Other regions are at different stages of drafting family laws. One concern is that the regions that have not yet adopted their family laws may apply the old discriminatory Civil Code provisions, pending the approval of the family laws. However, legally speaking, family laws or practices that do not recognize the equality of the husband and the wife in their marital relations, are inconsistent with the anti-discriminatory provisions of the FDRE Constitution and are simply ineffectual.

6.3. The Criminal Law

One of the major areas of Ethiopian law that has been recently revised, is the penal law. The Revised Criminal Code, which came into force in May 2005 replacing the 1957 Penal Code, includes new and revised provisions relevant to the protection of women's human rights in general, and in the context of the HIV/AIDS pandemic in particular.

Accordingly, the Criminal Code addresses violence against women in different forms, either by elaborating the existing vague provision or by introducing new offences. The Code criminalizes most forms of violence against women and girls including rape (Articles 620-628), trafficking women and children (Articles 597 and 635), prostitution of another for gain (Article 634) and physical violence within marriage or in an irregular union (Article 564). The criminalization also extends to HTPs in general, with specific provisions on abduction (Articles 587-590), FGM (Articles 565 and 566), early marriage (Article 649), and bigamy (Article 650). Furthermore, the Criminal Code has redefined the elements of some existing offences, added aggravating circumstances and revised the penalties applicable in cases of violation.

Article 514 has expressly criminalized the act of spreading or transmitting a communicable human disease. The punishment may range from 10-20 years of rigorous imprisonment or in grave cases, imprisonment for life or death. The punishment would be simply imprisonment or fines if the act was committed negligently (Article 514.3). It would be considered intentional if someone knew of their infection and knowingly infected another person. To be negligent, the person knew or should have known of their infection with a communicable disease. Whether or not the provision applies to the transmission of the HIV virus, is open to debate, as is the issue of whether or not the criminal law in general is an effective mechanism to address HIV/AIDS. These points are further explored in Section 7 below.

6.4. Labor Laws

Article 35(8) of the Constitution provides for equality of women in employment, promotion, pay and transfer of pension entitlements. The new Labor Proclamation (Proclamation No

262/2002) and the new Federal Civil Servants Proclamation (Proclamation No 515/2007) are currently applicable laws governing employment and have fully incorporated this. Both outlaw discrimination against women on grounds of sex in employment. The Federal Civil Servants Proclamation also provides affirmative action in that, priority would be given to female candidates with the same qualification (Article 3.3).

Both laws prohibit compulsory HIV testing for the purpose of employment. This prohibition is intended to address potential discrimination of PLWHA in getting employment opportunities. Other relevant areas of HIV/AIDS concerns covered by the employment laws, include non-discrimination, respect for the worker's human dignity, termination of a contract of employment for reasons of health, health and safety of workers, and sick leave.

There has been a growing concern about Ethiopian women who have been trafficked to different destinations in the name of employment, but who usually end up in sex work. Even when they get employment, they are forced to work under inhuman and degrading situations, without any rights whatsoever. A number of reports show that tens of thousands of Ethiopian women are illegally trafficked to different destinations, especially to the Middle East where they are exposed to all sorts of abuse. The private employment agency proclamation (Proclamation No 104/1998) has been issued with a view to regulate the activities of private employment agencies for local as well as foreign employment. To that end, the proclamation puts in place a mandatory licensing requirement enforced with serious imprisonment and fines. Through this requirement, as well as monitoring and supervision arrangements, the proclamation seeks to protect employees who may be victims of trafficking and other forms of VAW.

6.5. Other Laws

Some parts of the 1960 Civil Code may also have relevance in the context of HIV/AIDS. For example, the provisions of the Code provide for civil redress in the form of compensation where a person has caused damage to another person's interests, be it property, personal, body, life or health. The victim may claim compensation from the offender based on the provisions of the Civil Code dealing with Extra Contractual Liability.

The Civil Code provisions do not make distinctions between men and women in relation to inheritance and ownership of property. As noted earlier, Article 35 of the FDRE Constitution, provides that women have equal rights with men in respect to use, transfer, administration and control of land. In the spirit of this provision, the Federal Rural Land Administration Proclamation (No 89/1997) enshrines equality of women in respect of use, transfer and administration of land. It requires that the land administration laws of the regional states shall conform to equal rights of women in respect of use, transfer and administration of land as well as in transferring and bequeathing the holding rights.

Assessment of the Legal Framework

As shown above, the recent legislative reforms have a significant impact on protecting the rights of women and reducing their vulnerability to HIV/AIDS. Nonetheless, there are some gaps in the current legislative framework applicable to HIV/AIDS both in terms of coverage and recognition of the special vulnerability of women and girls to the pandemic.

As noted, Article 514 criminalizes the act of a person transmitting a human communicable disease to another. Though the article does not mention HIV/AIDS one may argue that it includes HIV/AIDS, a life threatening virus. But the application of this article to HIV/AIDS infection is compounded with difficulties. Firstly, the article talks about communicable human diseases and it is not clear if HIV per se is a disease. The understanding at least among the scientific community is that HIV is a virus that reduces the human immunity or resistance to diseases, and that may expose them to diseases rather than it being in itself a disease. Secondly, even assuming that the article covers HIV/AIDS, proof of the elements of the offence under this article brings formidable challenges to the prosecutor in the context of HIV. The difficulties in proof include establishing whether the accused knew his/her HIV status and means of transmission at the time of the commission of the offence, proving that it was the accused who actually infected the victim and that the two parties did not in fact discuss their HIV status or insist on safe sex. It is for example, no easy job to prove beyond reasonable doubt, that a particular person has transmitted the virus to another as the victim might possibly have acquired the virus from another person or from another source.

Given the growing serious impact and devastation of HIV/AIDS, it is important to consider the role of criminal law in the fight against the pandemic. One important role of the criminal law is to punish certain behaviors or acts that will intentionally or negligently transmit the virus to

another. It could also be said that through coercive power, criminal law in the context of HIV/AIDS may prevent conducts that are likely to transmit HIV, educate the public on activities likely to spread HIV and reinforces social norms against behavior that carries the risk of HIV infection in view of traditional functions such as incapacitation, deterrence and rehabilitation.

Nonetheless, whether the criminal law is the appropriate mechanism in the fight against HIV/AIDS is an issue that has ignited debate from different directions. As noted earlier, there are technical problems in applying the criminal law in the HIV context including the problems of proof (evidence). A further problem in the criminal law approach to HIV is that often such laws criminalize individuals by virtue of their membership to high risk groups, for example, sex workers. This simply encourages prejudice and discrimination against vulnerable groups and it may lead to the further stigmatization of PLWHAs. It was argued that creating a new law will increase stigma as it makes society view PLWHAs as criminals. Furthermore many PLWHAs have not been willingly infected with HIV, thus criminalization is a double stigmatization.

Key informants in this research have also said that the Article 514, supposedly criminalizing transmission of HIV/AIDS, has never been cited in the context of HIV. The discussions during the trainings in Bahir Dar and Awasa have also suggested the same. The lack of application of this article may partly be explained by the nebulous provisions contained therein.

Apart from the problems in enforcing the provisions in the context of HIV/AIDS as discussed above, one may question the wisdom of reliance on criminal law to combat HIV/AIDS, particularly in relation to its impact on public health efforts targeting vulnerable groups such as women. As noted earlier, the national response to the pandemic is aimed at providing efficient HIV/AIDS related services through prevention, treatment, care and support. An important element of the prevention effort is HIV testing and counseling, which relies on people, particularly those at risk of infection, coming forward to be tested. If found positive they receive appropriate counseling in order not to put others at risk of infection. If negative, they receive counseling so that they remain negative.

HIV testing is also the basis for a range of services such as the prevention of mother-to-child transmission of HIV and ART as well as for support. Nonetheless, enactment of HIV-specific legislation and the publicity about the potential use of the criminal law with severe punishments, may constitute a serious threat to provide HIV-related services, particularly to members of the vulnerable and marginalized groups. For prosecution knowledge of HIV, infection is a condition and is done by HIV testing. Thus HIV testing while being an important public health instrument to combat the virus, may become a self-incriminating arsenal which could be used as evidence in court of law. This may transmit the wrong message and deter people, particularly the marginalized groups, from seeking HIV testing.

The International Guidelines on HIV/AIDS and Human Rights also noted that people would

not seek counseling, testing, treatment and support if it meant facing discrimination, lack of confidentiality, and other negative consequences. Coercive measures can drive away those most in need of such services and thus fail to achieve their public health goals of prevention through behavioral change, care and health support.⁹⁸ Thus primarily, public health law should be used to respond to harmful HIV-related behavior.

It is to be noted however that the role of criminal law in addressing some of the underlining causes of vulnerability of women and girls to HIV/AIDS, has never been questioned. It is thus relevant in addressing the causes of vulnerability for instance, through the prevention and punishment of VAW and other causes of vulnerability. In that light, one option would have been to provide harsher sentences for persons who commit the crime of rape whilst knowing they are living with HIV/AIDS. Article 620 of the Criminal Code providing for rape, does not specifically refer to HIV as an aggravating circumstance, but one may argue that rape by a person who is HIV positive would cause grave physical or mental injury and thus such a crime shall entail life imprisonment as stated in the article. In such cases, it is also possible to charge the offender of the crimes of transmitting communicable disease and rape concurrently where the penalty could go as high as life imprisonment or death.

Another important gap in the legal framework is that it does not have specific provision on mandatory HIV testing in cases such as rape and other types of violence against women. Actually, the HIV/AIDS policy prohibits mandatory testing of HIV except in cases of employment in some types of work. It is noted that in the absence of a rule for mandatory testing, it is difficult to enforce the offence of intentional spreading of human diseases prescribed under Article 514 of the Criminal Code, particularly as it relates to the intentional spreading of HIV/AIDS. But in the case of criminal proceedings, the provision of the Criminal Procedure Code allowing to take a blood test of the accused, may arguably be used by the court to oblige the accused to take the HIV test. Similarly, Article 22 of the Civil Code provides that “where a person refuses to submit himself to a medical examination not involving any serious danger for the human body, the court may consider as established the facts which the examination had the object of ascertaining.” But this article does not in any way oblige the person to take any examination, including blood tests, even if it does not involve serious danger to the body, the person could avoid any examination and accept the consequences which would only have civil consequences. This provision may probably not help in enforcing Article 514 of the Criminal Code. Moreover, the existing legal regime implying mandatory testing may give rise to endless litigation in light of the policy framework prohibiting mandatory testing of HIV. There is thus the need to clearly provide cases where and circumstances in which, mandatory testing are required especially in sexual-related offences. Possibly, this issue would be addressed in the HIV legislation which is being drafted. An increasing number of countries have introduced law reform requiring the compulsory HIV testing of sexual offenders such as, the compulsory HIV testing of a rapist. Such a reform is important not only to bring criminal responsibility, but also more importantly, to provide a package of services for the survivors of rape, such as access to post exposure prophylaxis.

⁹⁸ International Guidelines on HIV/AIDS, supra note 61, Guideline 4, Para. 74.

The Criminal Code does not address the issue of marital rape. One element of the crime of rape under the Criminal Code is that the act should occur outside wedlock. It thus precludes rape in marital relations. Moreover, sexual relation as one marital duty under the Revised Family Law, may be confused to mean that a wife may not refuse sex with her husband for any reason. This understanding would certainly be a risk factor for HIV, as the wife does not have the right to determine her sexuality. In that case the wife would not have a legal right to insist that she would make sex with him only with condom or after HIV testing. Whether marital rape should be a criminal offence, could be a subject of debate. Key informants interviewed in this work have different views on this issue, some supporting the criminalization of marital rape while others opposing the idea. During the discussions in the two trainings held in Bahir Dar and Awasa, participants debated on the issue but maintained different opinions on the criminalization of marital rape. Forcing even a wife into sexual intercourse is certainly morally repugnant and from a human rights perspective, such an act is a violation of the different human rights of the wife.

As noted earlier, widow inheritance is another practice widely prevalent in some parts of the country which increases the vulnerability of women to HIV/AIDS. As far as the law is concerned widow inheritance without the free will and consent of the widow, is simply not valid. Nonetheless, in view of the widespread practice and its impact on women, there is a need to specifically prohibit in the Family Law and make it a criminal offence under the Criminal Code.

Domestic violence against a partner in marriage or irregular union, has clearly been considered a criminal offence under the Criminal Code (Article 564). However, the provision simply states that in such cases the provisions of Articles 555-560 relating to assault and battery would apply. To the extent that the article refers to assault and battery, one may argue that the Criminal Code has not created an offence of domestic violence, but it simply assimilates it to ordinary cases of assault and battery. By doing so, it fails to recognize the special nature of domestic violence where the victim is usually in a relationship of dependence with the perpetrator.

Finally, HIV/AIDS has already become an issue posing a significant problem in the socio-economic life of the society; it has already affected a very large number of people and may affect more in the future. If law has to play its own role in addressing the challenges being posed by the virus, it cannot do so in the currently fragmented fashion. It is thus high time to think of a specific legislative framework of its own. Such a comprehensive legislative framework would address several issues that may arise in the context of HIV and play an important role in the prevention and control of the virus. It would also provide for the rights and obligations of people living with the virus as well as support mechanisms taking into account the special needs of vulnerable groups such as women and girls. Such legislation has not yet seen the light of day in Ethiopia.

Implementation of the Policy and Legal Framework: The Greatest Challenge

While the gap in the legislative framework is certainly a concern, the more serious one, is the lack of implementation of the already existing laws. Only a very small proportion of cases of violence against women are reported to the authorities. Even amongst those few reported cases, an even smaller number reach prosecution and even less, to the trial stages. In one study it was noted that if 90% of the perpetrators of rape were identified by victims, only 42% were arrested by police.⁹⁹ Due to weak enforcement, the legal framework has been unable to give women and girls an effective protection against violence and the resulting risk to HIV exposure. Many of the key informants and participants in the focus group discussions, including those from the law enforcement organs and victims, agree that translating the law into practice is the most serious problem.

The interviewees in this study, as well as participants of the trainings held in Bahir Dar and Awasa, suggest that there are different reasons for the low level of enforcement of the laws.

Firstly, there is lack of awareness about the legal protections of women on the part of the victims and the community. Secondly, there is also passivity on the part of the law enforcement organs and the community in general towards violations of the rights of women and girls, especially when such violations arise in the family and between relatives as well as when they are directed towards some social groups, such as street girls and commercial sex workers. Thirdly, women and girls do not usually report incidents of violations of their rights but rather tend to keep them secret due to cultural reasons,

⁹⁹ See for example, Gessesew A. and Mesfin M. 'Rape and Related Health Problems in Adigrat Zonal Hospital, Tigray Region, Ethiopia', *Ethiop. J. Health Dev.*, 2004.

shame, fear of retribution and lack of confidence in the legal system. Fourthly, the low pace of prosecution and the complexity and unfriendliness of the procedures in the courts, have also been taken as a disincentive for taking cases to law enforcement organs. Fifthly, constraints of both human and material/financial resources have also been raised as one factor for the weak enforcement of the law.

Lack of qualified personnel has an impact on the pace of investigation and prosecution as well. The longer the delay in prosecution the lesser is the chance to get a conviction. A delay may result in the loss of evidence and give more chance for the accused to abscond. Sixthly, the release on bail of the persons accused of crimes such as rape, has also been raised as one major impediment in the prosecution and punishment of offenders. Almost all respondents and key informants in this study including police officers and prosecutors agree that, release of persons accused of rape and other similar offences against women and girls on bail has facilitated the way to the accused to escape from justice and undermine the confidence people have in the justice system.

Under Article 63 of the Code, an arrested person may be released on bail where the offence with which he is charged, does not carry the death penalty or rigorous imprisonment for fifteen years or more, and where there is no possibility of the person in respect of whom the offence was committed, dying. Even if the conditions under Article 63 are complied with, Article 67 of the Code specifies other conditions on which the accused may be denied bail. Such is the case, if for example, the court is of the opinion that the applicant is unlikely to comply with the conditions laid down in the bail bond. That means, if the Court is of the opinion that the applicant to be released on bail may not probably appear in court, it should deny bail. However, according to most informants, the Courts usually grants bail for persons accused of rape and other forms of violence against women, without consideration of the conditions stated under Article 67. This could be because of lack of understanding or absence of sensitivity to sexual offences.

Seventhly, key informants and other participants in this study have also noted that human rights of women have not been taken to law enforcement organs due to the fact that women and girls are pressured and in some cases intimidated, to settle their disputes through traditional dispute settlement mechanisms. In a number of instances victims have been pressured, sometimes 'advised' by law enforcement officials, to withdraw cases of human rights violations they reported to authorities, with a view to deal with them in a traditional dispute settlement. Such dispute settlements are usually handled by the elderly who do not, in most cases, treat women and men equally.

Conclusion and Recommendations

The broad conclusion to be drawn from the discussions in this study is that addressing women's vulnerability to HIV cannot be considered in isolation from the larger context of the position of women in the Ethiopian society. Addressing their vulnerability requires vigorous actions by government and all other stakeholders to remove all the cultural and social impediments militating against women's full enjoyment of fundamental human rights. Raising the status of women and reducing their vulnerability involves, inter alia, increasing female participation in the educational system at all levels, increasing their political participation and decision-making power, and removing all social and cultural impediments facing them in the different spheres of life.

The situation cannot be altered without significant changes in societal attitudes to and perception on the place of women in the society. This change of attitude has to take place at the national, regional, local community and household levels.

The analysis made by this study on the policy and legal framework protecting the rights of women and girls and reducing their vulnerability, which has identified different gaps both in the policy/legal framework as well as in their implementation, has come up with the following recommendations based on the findings of the study.

Firstly, in terms of the policy framework the major policy documents on HIV/AIDS while somehow recognizing the link between HIV/AIDS and gender inequality, have failed to translate this into specific programs and strategies to address gender inequalities in the context of HIV/AIDS. Furthermore, the link between HIV/AIDS and gender inequality has not been clearly articulated in HIV/AIDS prevention and control programs provided in the

policies such as IEC, VCT and ART. In the face of growing evidence on the link between HIV and gender inequality and the continued feminization of HIV, especially in countries like Ethiopia, it is high time that the gender dimension of HIV be clearly and unequivocally addressed in the different policy documents. The ongoing revision of the HIV/AIDS policy could provide a good opportunity to address the issue. All stakeholders should actively participate in the revision with a view of ensuring that the link between HIV/AIDS and the rights of women and girls, is well taken care of.

Secondly, when it comes to the NPEW, the study has shown that the policy is conspicuously shy in addressing HIV in general and the gender dimension of the virus, in particular. It is surprising that a policy on women has missed out such a crucial issue affecting women in Ethiopia. But looking at the policy in context may give some hint for its silence on this issue. The Policy was finalized before the issuance of the HIV/AIDS policy, the adoption of the FDRE Constitution and the revisions of the Family and Criminal Codes. It thus came at a time when women's rights were not fully implanted in the country's legal system and HIV/AIDS was not high on the agenda of the country. There have been significant changes since 1993 in addressing gender issues in the context of HIV/AIDS. There is thus the absolute need to revise the NPEW with a view to capture the developments since 1993 particularly in relation to the link between HIV/AIDS and women's rights.

The following recommendations have also been made in relation to the legal framework.

Firstly, even though tremendous changes have been made in addressing and articulating the rights of women and girls in the different laws of the country, the study has identified some gaps in the legal framework as well. The legal framework as it stands, does not address or adequately deal with acts such as marital rape, widow inheritance, polygamy and domestic violence, which are important contributing factors for HIV infection of women and girls. There is thus the need to address them in the legal framework.

Secondly, this study has advocated that the use of criminal law in addressing HIV/AIDS should be considered scrupulously. Criminalization, apart from the difficulties of enforcement, may have the effect of further stigmatizing vulnerable groups and discourage public health efforts aiming at prevention, control and care. But while the public health laws should be taken as the most effective mechanisms to address HIV/AIDS, criminal law would certainly play a role in addressing some of the causes of vulnerability of women and girls to the virus such as VAW.

Thirdly, the legal framework on mandatory HIV testing is not clear at the moment. This has created confusion as to whether and when mandatory HIV testing is permissible. This has a particular bearing on the enforcement of the crime of intentional spreading of communicable diseases like HIV/AIDS. There is thus a need to make this issue clear by promulgating a specific law addressing the issue.

Fourthly, the legal framework as it stands now, is fragmented and lacks comprehensiveness and coherence especially in addressing the rights of women in the context of HIV/AIDS. This could be remedied by issuing specific law dealing with HIV/AIDS where the issue of the vulnerability of women and girls is adequately addressed. To that end, stakeholders should actively engage in the on-going drafting process of HIV/AIDS at the Ministry of Justice.

This study has also shown that the problem of enforcement of the existing laws has been a more serious problem than the dearth of laws. As indicated in the study, one factor alone does not explain the problem of lack of enforcement; it is rather a result of a range of factors. In that light, the study has come up with the following recommendations in relation to enforcement.

Firstly, lack of adequate awareness about the existing laws protecting women's rights being one important factor for the weak enforcement of the law, creating extensive community awareness programs becomes important.

Secondly, capacity limitation of law enforcement and judicial organs is one of the key factors for the weak enforcement of the laws on women's rights. In that light, building the capacity of the law enforcement organs could alleviate the problem. Extensive gender sensitive trainings could enhance capacity and mitigate the attitudinal problems on the part of law enforcement bodies. Such training should also address women themselves because they are not fully aware of their rights. There is also a need to empower women to engage with their sexuality and to have frank discussions with their partners before having sex.

Thirdly, in order to encourage women to report incidents of violation of their rights, different confidence building measures should be undertaken. This includes creating a more welcoming environment in the law enforcement offices such as establishing special units of investigation and prosecution, creating a system that respects the privacy, dignity and autonomy, as well as by swift disposal of their cases. There is a good beginning in Addis Ababa of establishing a special police unit in charge of investigating sexual offences, a special prosecutor in charge of such offences, as well as a specific court handling these offences. There is a need to expand this important practice throughout all regions of the country. Lessons could also be drawn from South Africa where there are 54 specialized sexual offences courts which have greatly reduced case turnaround time and increased conviction.

Finally, it is absolutely vital to undertake an in-depth analysis on the link between HIV and women's inequality and discrimination in the Ethiopian context.

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