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The Interrelationship Between Gender-based Violence and HIV/AIDS in South Africa

By Chineze J. Onyejekwe

Abstract

This paper focuses on how gender-based violence intersects with HIV/AIDS in ways too devastating to be ignored. Women's subordinate position is linked to poverty, sexual abuse/rape, and the risk to women in long-term union. The country's pioneering steps to establish legal and judicial frameworks for dealing with these problems are discussed.

Key Words: HIV/AIDS, domestic violence, poverty, sexual abuse/rape, legal and judicial frameworks

Introduction

South Africa faces a number of problems such as high unemployment and persistent poverty that have continued to make up development challenges. These problems are however being compounded by the negative impact of the HIV/AIDS pandemic, for example, dwindling life expectancy (Paul Perret, *AWID Resource Net* Friday File, Issue 161, 23 January 2004). With less than one percent of the world's 15-24 year-olds, the country accounts for roughly 14 percent of global HIV infections among this age group. Young women are at particular risk. Within this age group, there are five infected females for every two infected males (Fredriksson and Berry 2001). This problem is further aggravated by gender-based violence such as rape and domestic violence. The Declaration on the Elimination of Violence Against Women adopted by the United Nations General Assembly in 1993, defines it (violence against women) as "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Gender-based violence contributes to the spread of HIV/AIDS throughout the world (WHO 2002; UNAIDS 2003). It (gender-based violence) is one of the most widespread human rights abuses and public health problems in the world today, affecting as many as one out of every three women (Pan American Health Organization [PAHO] 2003). It takes many forms-- physical, emotional, or sex abuse.

South Africa is said to have the highest statistics of gender-based violence in the world and this includes rape and domestic violence (Foster 1999; *The Integrated Regional Network* [IRIN], Johannesburg, South Africa, 25 May 2002). For example, the incidences of rape are high. Though it is estimated that a woman is raped every 26 seconds, the estimate given by the South African police is that one woman is raped every 36 seconds (Nicole Itano, *Women's Enews*, 28 February, 2003). The trauma of gender-based violence such as rape can last a lifetime. Rape survivors often face a myriad of emotional, physical, legal, and medical issues, resulting in significant repercussions. For example, the aftermath of rape be it marital or otherwise is compounded by the risk of HIV transmission. Many women are helpless and feel a prolonged fear for their safety.

Moreover, due to cultural reasons, most victims and their families usually do not report the matter to the police for fear of “embarrassment” (Levi 2003). In addition, many legal barriers hinder women’s access to the judicial system. For example, the police did not keep separate statistics on assault cases perpetrated by husbands or boyfriends (Human Rights Watch 1995). This situation is aggravated by South African women’s experiences of poverty. Women make up a great majority of South Africa’s poor estimated at, 22 million (Congress of South African Trade Unions [Cosatu] Labor News, 28 April, 2002). The lack of economic opportunities that will help most abused women to seek either freedom of redress from justice therefore makes matters worse. Poverty limits their ability to access antiretroviral, the female condom and microbicides, and this exposes them to more violence (Artz 1999). Access to justice also becomes very difficult. In such a situation, most women in abusive relationships do not have the financial means to leave home, and at the same time, may be unable to negotiate safer sex or condom use out of fear of their partner’s reactions (Vetten and Bhana 2001). There is also the fear of being beaten and abandoned by male partners should they disclose their HIV status” (Baylies and Bujra 2000). At the same time, men who rape, batter and otherwise molest women are rarely punished by the criminal justice system (Nicole Itano, *Women’s Enews*, 28 February 2003). The legal system often fails to address this problem, adequately. These issues will be discussed in the following sections.

Domestic Violence

Domestic violence is defined as “a pattern of behavior used to establish power and control over another person through fear and intimidation, often including the threat or use of violence, when one person believes they are entitled to control another” (The United States National Coalition Against Domestic Violence cited by Women’s Human Rights [WHR] 2003). This view is supported by a 2003 Amnesty USA which states that without exception, a woman’s greatest risk of violence is from someone she knows. According to Shifman *et al* (1997) and Gillian Dadswell (*Focus*, March 2001), intimate partner or spouse abuse otherwise referred as ‘domestic violence’ intimate partners is often used as a strategy of social control or a tactic of intimidation. This compromises women’s reproductive health. Such abuses constitute an issue of human rights. The 2003 Pan American Health Organization (PAHO) report titled *Violence Against Women: The Health Sector Responds* shows that gender-based violence is “one of the most widespread human rights abuses and public health problems in the world today, affecting as many as one out of every three women. However, domestic violence is most often considered a “private” matter and not a “public” matter (*Integrated Regional Network [IRIN]*, Johannesburg, 25 April, 2002). The dichotomous separation of the home (private sphere) from economic, political and social activities outside of the home (public sphere) reinforces the idea that the personal is separate from the political, and that privacy also implies something that should be kept a secret. Such dichotomous separation according to Moore (1994) has been used to justify women’s subordinate position in society. Women’s subordinate position in society makes them vulnerable to HIV/AIDS infection and untimely deaths. The consequences for development are many.

HIV/AIDS is undermining development gains of the past few years in South Africa leading to high rates of poverty, losses of human capital and decline in life

expectancy due to lack of access to treatment (Carrillo 1992). The high rate of infection in South Africa over-stretches the health system's capacity in coping with the provision of adequate care and support. There have been calls for more research to implement preventive policies. Currently, the government is taking pioneering steps to establish legal and judicial frameworks for dealing with rape and domestic violence as well as HIV/AIDS.

South African Legal and Judicial Frameworks

- **The New South African Constitution**

The new South African Constitution according to Thornton (1998) guarantees the equality of all persons. Non-racism and non-sexism are also enshrined in this Constitution thereby sees women's rights as human rights. These rights include the right or freedom to participate in the decision-making process. In this regard, South Africa's definition of and goals towards achieving gender equality are guided by, a vision of human rights which incorporates acceptance of equal and inalienable rights of all women and men. This ideal is a fundamental tenet under the Bill of Rights of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996). It emerged from a long period of struggle for a democratic society that respects and promotes the rights of all its citizens irrespective of race, gender, class, age, disability, etc (Bill of Rights, Sections 9.1 to 9.4) The current Constitution facilitates the basic human-rights principles of equality and equity, accountability, and empowerment. There is explicit reference to gender violence - clause (12)(1) protecting 'the rights to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources '. In addition, the commitment is translated through the establishment of various gender organizations and structures, such as the Commission on Gender Equality and through new legislation that aims to ensure those constitutional rights are not infringed (Tanya Jacobs, *Health Systems Trust*, 25 July, 2003).

The "Domestic Violence Act" of October 20 1998 (No. 116 of 1998)

Put into operation on 15 December 1999, this Act replaced the Prevention of Family Violence Act, 1993 gives a broad definition to "domestic violence" to include provisions for marital rape, violence in both marital and non-marital relationships and abuse by parents, grandparents, guardians and anyone co-residing with the victim. In addition to physical abuse, it further defines domestic violence to include sexual (including marital rape), emotional, verbal, psychological and economic abuse (Jaron Murhpy, *The Highway Mail*, South Africa, 10 December 1999). The police are empowered to effect arrests with or without warrants as well as conduct a full investigation of any offence. They are also obliged to inform a victim of her rights to gain protection, through a protection order from the courts (free of charge). In addition, the police are legally bound to arrest an abuser that has breached a protection order. Other empowering aspects of the Act include the provision of shelter for women victims of domestic violence. Compared with the Prevention of Family Violence Act of 1993 that was basically concerned with abuses occurring between spouses, the Domestic Violence Act of 1998 offers protection to victims in any type of domestic relationship with an abuser. The 1998 Domestic Violence Act therefore offers a progressive step forward. A 2001 evaluation however found a lack of resources and trained personnel undermined the

implementation of the act (Paul Perret, *AWID Resource Net* Friday File, Issue 161, 23 January 2004).

As regards domestic violence, the findings of the Institute of National Securities Studies (ISS, South Africa) show that current interventions are not having any significant impact on the nature of domestic abuse, and this tends to continue over time, rather than being a one-off incident. Few women victims of domestic abuse also seek help from service providers. Most abused women who received medical treatment were however satisfied with the treatment they received. Most of them also felt anger, depression, changes in sleeping pattern and flashbacks. These health symptoms could develop into a range of psychosomatic illnesses if not dealt with (Jo-Anne Smetherham, *Cape Times*, South Africa, 7 March, 2003).

The Witness Protection Act, 1998 (Act 112 of 1998)

The main objective of this Act is providing the protection of witnesses through the institution of witness protection programmes to be administered, by a central Office for Witness Protection.

The National policy guidelines for victims of sexual offences 1998

This policy is aimed at supporting victims of sexual offences through guidelines issued by the South African Police Service. According to Paul Perret (*AWID resource Net* Friday File, 23 January 2004), "South Africa is currently drafting a law on sexual offences (Sexual Offensive Bill) that is written to expand the definition of rape to include anal as well as vaginal penetration; allowing testimony from close closed-circuit television and problematically, changing common law rules to allow courts to devalue some victim's testimony. Critics point to the failure of the current bill to oblige the state to provide medical care and counseling for survivors. The decision, according to the report, is due to cost constraints."

The Establishment of Rape Courts

South Africa has established specialized sexual offenses courts (such as the *Protea North*) aimed at centralizing the prosecution of sexual bases offenses, having trained staff and facilities to minimize contact between victims and perpetrators. The Wynburg Sexual Offensives Court, the first in South Africa, was established in 1993 (Paul Perret, *AWID Resource Net* Friday File, Issue 161, 23 January 2004). As a result of training and more time being devoted to difficult cases, these courts are achieving much higher conviction rates ((Nicole Itano, *Women's Enews*, 28 February 2003). In response the program expanded in 1999, with the implementation of the Sexual Offences and Community Affairs unit within the National Prosecuting Authority. To date, the National Prosecution Authority has established 43 sexual offensive courts (Paul Perret, *AWID Resource Net* Friday File, Issue 161, 23 January 2004). Paul Perret states that the final section of the December 2003 report by the Human Rights Watch calls on all African governments to address gender inequality not only as a human rights abuse but also as a central element in the fight against HIV/AIDS. Among the platforms for actions outlined are:

- The protection of women and girls from sexual and domestic violence and ensuring prosecution of the perpetrators of these crimes, and

- Ensuring equal access of girls and women to health and education services.

One cannot however be dealing with these problems (rape and domestic violence) without taking the HIV/AIDS epidemic into consideration. In line with the Maseru (Lesotho) Declaration made by Southern African Development Community (SADC) Heads of State on HIV and AIDS in July 2003 which stresses the need for governments to invest in programmes that promote the use of a multi-sectoral approach to tackling the HIV/AIDS problem, there is more money than ever being spent on AIDS. Increase According to Chengetai Madziwa (Southern African News Features [SARDC], 19 December 2003), the South African government recently presented an operation plan for comprehensive treatment and care for HIV and AIDS. The plan also provides for treatment in the public sector such as:

- Treating sexually transmitted diseases
- Providing Condoms
- Blood screening
- Tuberculosis treatment
- Preventing mother-to-child transmission with single dose nevirapine
- Home care programmes
- Use of nutritious foods such as giving baby formula milk
- Access to antiretroviral drugs

This is in order to strengthen the health care system and through sustainable mechanisms. Giving priority to care over prevention due to the needs of the people already infected a good idea however, preventing fresh infection is also very important. The media plays a critical role in this regard.

HIV/AIDS and the Media— Raising Awareness

The mass media has proved to be an invaluable tool in organizing support to eliminate domestic violence, for example, through raising awareness (Commission on Gender Equality [CGE] 2000). As regards HIV/AIDS, though the rate of HIV infection is still high (Cosatu Labor news, 19 April, 2002), public education through the mass media has contributed to high levels of awareness about HIV/AIDS with the message to abstain, be faithful, and to use condom. However, this approach may not be a viable response to the lived realities of HIV epidemic, particularly for many women that are subjected to rape and other forms of sexual coercion within their relationships. This argument also applies to those women whose partners are neither faithful nor willing to use condoms.

Conclusion

Medicines can be helpful in treating those affected with HIV virus and access to reliable information is essential in confronting its spread HIV/AIDS, however, a healthy lifestyle or behavior change remains the best preventive mechanism. This involves behavior initiatives that encourage people to reduce the number of their sexual partners. As regards sexual violence, getting men involved has been the new approach of many progressives such as the active participation of progressive men as partners should also be encouraged. The Anglican Bishop of Cape Town, Njongonkulu Ndungane who led a march of more than 2000 on 25 November 2000 to parliament in Cape Town, South Africa.

HIV/AIDS remains a challenge to development in South Africa. There is therefore the need for a new offensive against unemployment, poverty, ignorance, disease and most of all crime--particularly, rape and domestic violence.

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