

The Policy and Legal Framework Protecting the Rights of Women and Girls in Ethiopia & Reducing their Vulnerability to HIV/AIDS



An Advocacy Toolkit



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Women and Girls and HIV/AIDS: the Global Context

HIV/AIDS is a potential risk to everyone. But some social groups are at greater risk of acquiring the virus than others because of their peculiar vulnerability in a particular society. Apart from their biological vulnerability, different socio-economic, political and cultural reasons prevalent in a particular society have made women and girls one of the groups particularly vulnerable to HIV/AIDS. Current trends of the spread of the virus show that HIV/AIDS is affecting more women than men. In Sub-Saharan Africa, the number of women being infected by and living with the virus is greater than that of men by a large margin.

The Ethiopian Situation

In Ethiopia, women account for a larger share of those directly affected by HIV/AIDS.¹ In 2006, the national HIV prevalence was estimated to have been 3% among males and 4% among females. In the same year, 55% of the estimated 1.32 million People Living with HIV/AIDS (PLWHA) were women. They accounted for 54.5% of AIDS related deaths and 53.2% of new infections.

The 'Single Point HIV Prevalence Estimate'² recently issued by MOH and HAPCO vividly shows the gender dimension of HIV/AIDS in Ethiopia in relation to prevalence rate of the virus, the number of HIV positive, new infections with the virus and annual HIV deaths. The 2008, 2009 and 2010 estimates also show that the gap in HIV prevalence rate, rate of new infections with the virus and HIV death between men and women would continue. What these estimates suggest is that HIV/AIDS has become more and more a disease of the women in Ethiopia as in most countries in the Sub-Saharan region.³

Why Women and Girls are Particularly Vulnerable to HIV/AIDS?

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

¹ MOH and HAPCO (2006), "AIDS in Ethiopia: Sixth Report", June 2006

² MOH and HAPCO (2007), "Single Point HIV Prevalence Estimate", Addis Ababa, Ethiopia.

³ HAPCO (2003), "The HIV/AIDS Epidemic and the National Response in Ethiopia" November 2003.

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.

Different factors significantly increase the vulnerability of women and girls to HIV/AIDS in the Ethiopian context. Harmful Traditional Practices (HTPs) which negatively affect women in their physical, psychological and social development and which increase their risk to HIV/AIDS 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.⁴

While the nature and prevalence of VAW in the country varies from region to region, the most common forms of VAW in order of high prevalence are: FGM, early marriage, sexual harassment, domestic violence, rape, and forced prostitution - FGM is the most common by a large margin.⁵ It has also been reported that 80% of the total population of women and in some areas up to 100%, are subjected to FGM.⁶

Early marriage is another violence targeting girls in Ethiopia and increasing their vulnerability to HIV/AIDS. Early marriage occurs when a 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 contributing to the low number of girls in schools especially in the rural areas. Indeed, some 80% of young married Ethiopian women have had no education and are unable to read.⁷

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 more common in Oromia and Southern Nations, Nationalities and Peoples' Regional State.⁸

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 daily in each of the 28 districts of the city and 78% of the school girls in Addis Ababa say that they were threatened

⁴ NCTPE (1998), "Baseline Survey on Harmful Traditional Practices in Ethiopia", Addis Ababa.

⁵ Action Aid Ethiopia (2007), "The intersection between VAW and HIV", a draft report.

⁶ See Hargewoin Cherinet and Emebet Mulugeta (2002), "Country Gender Profile, Ethiopia" at 26.

⁷ Population Council Briefing Sheet: Child Marriage Briefing-Ethiopia, (July 2004), available at www.populationcouncil.org (accessed on 12 October 2007).

⁸ Hargewoin and Emebet supra note 6.

and have a fear of being raped.⁹ Similarly, 74% of the schoolgirls reported being sexually harassed.¹⁰

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 have experienced domestic violence in their lifetime.^{11 12}

The figures indicated in the foregoing paragraphs show only the reported cases. The exact figures would obviously be much higher because women and girls are generally reluctant to report the incidents due to a 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 the police.

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 virus on women.

The Policy and Legislative Framework

A lot has been done in Ethiopia in terms of putting in place a policy framework providing for the protection of the rights of women and girls that may have a direct or indirect relevance to addressing the vulnerability of women and girls to HIV/AIDS. In addition to the National Policy on Ethiopian Women (NPEW) and the National HIV/AIDS Policy, several setoral policy documents have attempted to address the issue in different ways.

The last decade has also seen a significant legislative reform endeavor directed at providing better protection of the rights of women in Ethiopia. In addition to the FDRE Constitution of 1995 which has 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.

However, there are several gaps both in the policy and legislative framework in effectively protecting the rights of women and girls and reducing their vulnerability to HIV/AIDS.

⁹ Ibid at 26.

¹⁰ Id.

¹¹ See for example Yemane Berhane (2005), 'Ending Domestic Violence against women in Ethiopia', Ethiop. J. Health Dev, 2005.

¹² There are also other forms of violence against women practiced in Ethiopia such as polygamy and wife inheritance.

Key Recommendations to Fill the Gaps in the Policy and Legal 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. The link between HIV/AIDS and gender inequality has not thus been clearly articulated in HIV/AIDS prevention and control programs provided in the policies such as 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 HIV 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 work with a view to ensuring that the link between HIV/AIDS and the rights of women and girls is well taken care of in the policy.
- The National Policy on Ethiopian Women 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. The Policy precedes the HIV/AIDS policy, the FDRE Constitution and the Revised 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. There have been significant changes since 1993 in addressing gender issues in the context of HIV/AIDS. There is thus an 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 legal framework as it stands now, 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 a need to address them in the legal framework.
- There is also no clear provision criminalizing HIV/AIDS. Nonetheless, the use of criminal law in addressing HIV/AIDS should be considered scrupulously. Criminalization, apart from the difficulties relating to enforcement, may have the effect of further stigmatizing vulnerable groups and discouraging 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 current legal framework is fragmented and lacks comprehensiveness and coherence especially when addressing the rights of women in the context of HIV/AIDS. This could be remedied by issuing specific laws 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 the HIV/AIDS legislation at the Ministry of Justice

Key Recommendation Towards Better Enforcement of the Existing Laws

Apart from the existing gaps in the policy and legal framework, enforcement of the policy and legal framework has remained a daunting task in Ethiopia.

Several studies have shown that in the Ethiopian context the problem of enforcement of the existing laws has remained a more serious problem than the dearth of laws. One factor alone does not explain the problem of lack of enforcement; it is rather a result of a range of factors such as lack of awareness, capacity limitation and attitudinal problems.

- Lack of adequate awareness about the existing laws protecting women's rights is one important factor for the weak enforcement of the law. Creating extensive community awareness through programs becomes important
- Capacity limitation of law enforcement and judicial organs is the other key factor for the weak enforcement of the laws on women's rights. 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 trainings should also target women themselves with a view to make them 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
- 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 quickly dealing with cases. There is a commendable initiative in Addis Ababa in establishing a special police unit in charge of investigating sexual offences, a dedicated prosecutor in charge as well as a specific court for handling the cases. There is a need to expand this important practice throughout all the regions of the country. Lessons could also be drawn from South Africa where there are 54 specialized sexual offence courts which have greatly reduced case turnaround time and increased conviction
- Finally, it is absolutely important to undertake an in-depth analysis on the link between HIV and women's inequality and discrimination in the Ethiopian context
- The broad recommendation to be drawn from the foregoing paragraphs 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 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.

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