HIV / AIDS

Teaching Kits
Appendix “A” – Session Plans


Name: Justice Jones Dotse
Country: Ghana


Number of Participants: Fifty (50)

Participant Level: Judges and Magistrates in Trial Courts, i.e. High Court, Circuit Courts and District Courts, in the Greater Accra Region and their support staff

Teaching Level: Creating awareness, attitudinal changes and behavioural change.

Leader/Panel: Local and international persons with expert knowledge on HIV/AIDS problems in Ghana and Africa

Objectives: At the end of this session, participants will be able to:
1. identify and examine constitutional and human rights issues relevant to their judicial work;
2. understand and appreciate the issues confronting women affected by HIV/AIDS so as to be in a position to assist women affected by the virus;
3. formulate a wide range of judicial strategies by use of principles of equity, good conscience and non-discrimination to deal with the problems identified; and
4. deal with issues of discrimination at home, in the workplace, schools, hospitals, etc.

Measurable Self-Evaluation Form:

Please use a number between 1 and 5 to rate the extent to which this objective was met
5 – Excellent; 4 – Very Good; 3 – Good; 2 – Average; 1 – Poor

Comments:

Teaching Plan – Timing:

9:00 – 9:30 a.m. Introduction – summary of objectives and issues

9:30 – 10:30 a.m. First Presentation on topic
10:30 – 10:45 a.m.  Break
10:45 – 11:45 a.m.  Discussions in groups of 10
11:45 – 12:45 p.m.  Reports from groups, summary and evaluation
12:45 – 2:00 p.m.  Lunch
2:00 – 3:00 p.m.  Second presentation on topic
3:00 – 4:00 p.m.  Group discussions and second presentation, groups of 10 each
4:00 – 4:15 p.m.  Health break
4:15 – 4:45 p.m.  Reports from various groups and summary of reports
4:45 – 5:00 p.m.  Evaluation of entire session
5:00 – 5:05 p.m.  End of session

**Teaching Tools:**  Mini lecture using PowerPoint and flip charts, presentations, small group discussions, reports to plenary session, printed material with pictorial and case studies from other jurisdictions

**Background Material:**
1. Report of Dr. N. Akwei Addo, Director of Ghana Health Service Committee on HIV/AIDS
4. Other relevant papers
2. Nigeria – “Implementation of Right to Life – As Relating to Treatment and Care of Women with HIV”  

Name: Justice Abdu Aboki  
Country: Nigeria  

Topic: Implementation of Right to Life – As Relating to Treatment and Care of Women with HIV  

Number of Participants: 50  

Participant Level: Judges and Khadis from Kaduna State, Nigeria  

Teaching Level: Behavioural Change  

Leader/Panel: A person with Legal Background Familiar with the issues of Rights of Women with HIV.  

Objectives: At the end of this session, participants will be able to  
1. identify judicial strategies for the enforcement of the rights to life; and  
2. understand the issues relating to access to affordable treatment, clinical, trials of HIV drugs, research ethics, insurance and social security problem.  

Measurable Self Evaluation Form:  

Please use a number between 1 and 5 to rate the extent to which this objective was met  
5 – Excellent; 4 – Very Good; 3 – Good; 2 – Average; 1 – Poor  

Comments:  

Teaching Plan – Timing (Three hour period):  

9:00 – 9:30 a.m. Opening Address by a Special Guest or a Chief Judge  
A lecture on the subject matter of the workshop  

9:30 – 9:35 a.m. Short Break  

9:35 – 10:30 a.m. Discussion Groups (5) made up of 10 participants each. They will discuss:  
1. Role of the judges in promoting and protecting right to life in relation to access to available and affordable drugs and medical treatment to women with HIV.  
2. Need to interpret laws that protect and promote the rights of all the people living in the society particularly women with HIV.
3. Access to court for such women in need of legal remedies for violation of their rights.

10:30 – 11:00 a.m. Lunch Break

11:00 – 12:00 p.m. Presentation of Report from the 5 committee for Discussions, Adoption and Recommendation

12:00 noon Session Ends

**Teaching Tools:** Lecture using PowerPoint, Programme Objectives, Case studies from other jurisdictions – Kenya, Uganda, South Africa, Video and film slides

**Background Material:**
1. The National Response to HIV/AIDS Epidemic
6. African Charter on Human and Peoples Rights
3. Uganda – “HIV / AIDS and Gender Violence”

Name: Flavia Senoga Anglin
Country: Uganda

Topic: HIV/AIDS and Gender Violence

Number of Participants: 50

Participant Level: All levels of judicial officers, prosecutors, police and prisons

Teaching Level:
- Provision of basic legal information about the HIV pandemic and the gender implications.
- Teaching the participants a new approach to the judicial exercise of discretion and domestic application of human rights norms.
- Review new developments in cases, legislation and other developments in HIV/AIDS.
- Inspire attitudinal and behavioural change necessary to do the job.

Leader / Panel: National and external experts

Objectives:
1. Create awareness that violence against women contributes directly and indirectly to women’s vulnerability to HIV/AIDS and their ability to cope with infection.
2. Recognize that violence against women is deeply rooted in stereotypical gender beliefs and roles.
3. Wars and other armed conflicts lead to increased vulnerability of women and gives to both HIV infection and the impact of HIV/AIDS.
4. Identify human rights that persons who suffer HIV/AIDS.
5. Identify the role of the judge in protecting human rights of the vulnerable at all levels.
6. Seek to ensure that all these rights are respected, protected and fulfilled at all levels in the family, workplace, community and the state, as well as armed conflict.
7. Develop skills in implementing international human rights norms at national levels.

Measurable self-evaluation form:

Please use a number between 1 and 5 to rate the extent to which this objective was met
5 – Excellent; 4 – Very Good; 3 – Good; 2 – Average; 1 – Poor

Comments:
Teaching Plan – Timing:

9:00 – 9:10  Welcoming remarks

9:10 – 9:30  Introductions and identification of personal objectives.

9:30 – 9:45  Overview of the programme and course objective

9:45 – 11:00  Introduction of the topic. Stereotype genders beliefs and roles. To include an exercise by the participants to positive gender roles and beliefs.

11:00 – 11:30  The relevant statutory and general principles of law that a court facing a problem involving gender violence and HIV/AIDS should be aware of: Constitution, penal code, international and regional human rights instruments applicable: CEDDAW, Universal Declaration of Human Rights, African charter of Human Rights.

11:30 – 12:00  Breakout in groups to identify the specific provisions of the law / human rights instruments applicable.

12:00 – 12:30  Report back to plenary. Discussion of audience general questions.

12:30 – 1:00  Case studies, HIV/AIDS, gender and human rights, sexuality and gender violence, abuse and violence against women and children

1:00 – 2:30  Lunch

2:30 – 3:00  Presentation of case studies to the plenary
Discussion of the hypotheticals

3:00 – 4:00  Special vulnerabilities imposed by war and conflict (Lecture to deliver factual information)

4:00 – 4:30  What a judge can do to promote and protect the rights of the vulnerable at all levels

4:30 – 5:00  Wrap-up and evaluation

5:00  Close of workshop

Teaching Tools:  Workshops, case studies, group discussions, print, flip charts, overhead projectors, role plays
Background Material:

**Name:** Flavia Senoga Anglin  
**Country:** Uganda  
**Topic:** The myth and reality of HIV/AIDS  
**Number of Participants:** 45  
**Participant Level:** Appellate judges and trial judges  
**Teaching Level:** Inspiring behavioural and attitudinal change required to provide an impartial and accountable bench rising to social expectations.  
**Leader/Panel:** Local experts and foreign experts from South Africa, Australia or any other country  

**Objectives:** At the end of this session, participants will be able to  
1. differentiate between the myth and reality of HIV/AIDS;  
2. be aware of the nature and impact of HIV/AIDS on society as a whole and particularly on women and girls;  
3. identify the type of legal issues that come up at trial;  
4. apply existing statutory law and general legal principles to cases that come before them;  
5. examine the available national and international legal instruments that enable the judges to respond positively; and  
6. induce attitudinal and behavioural changes to evolve a humanitarian response to the problems.

**Measurable Self Evaluation Form:**

Please use a number between 1 and 5 to rate the extent to which this objective was met  
5 – Excellent; 4 – Very Good; 3 – Good; 2 – Average; 1 – Poor

Comments:

**Teaching Plan – Timing:**

9:00 – 9:30 a.m.  
Introduction of participants and identification of personal expectations.
Objectives: At the end of this session, participants will have been introduced to each other and articulated their personal experiences in attending the programme.

9:30 – 9:45  
An overview of the programme.
9:45 - 10:30  
Paper presentation: introduction of the topic including data that shows HIV/AIDS is a global problem and examples of the various myths attached to the disease.

Materials: Data available to show the spread of the epidemic. The relevant statutory and general principle of law that a court facing a problem involving HIV/AIDS should be aware of, e.g. the Constitution, the Penal Code Act, the Universal Declaration of Human Rights, the Children’s Act, the Divorce Act, the Marriage Act.

Objectives:
1. Create a consciousness about HIV/AIDS and the various prejudices attached to it.
2. Be familiar with the body of law growing up as a result of the epidemic.
3. Identify particular statutes where litigants suffering from HIV/AIDS might suffer discrimination.
4. Acquire skills on how to conduct a case involving HIV/AIDS to avoid prejudice and stigma.
5. Rid themselves of bias, stereotyping and the myths, and exercise their discretion in decision-making judiciously.

Discussion of audience generalized questions.

10:30 – 11:00  
Break

11:00 – 12:00  
Group discussions of studies from other jurisdictions e.g. concerning denial of access to the courtroom because of HIV status Ahamejule vs Imperial Medical Centre Emokwu (Suit No. 1627 / 2000 UA. Lagos Nigeria.
Abuse of discretion to impose a condition of negative HIV/AIDS test prior to release on bail. Relevancy of state of health of offender in considering appropriate sentence. Denial of right to freedom of association. The importance of confidentiality in relation to an HIV positive litigant.

12:00 – 1:00 pm  
Presentations to the plenary and discussion of issues arising from each case study

1:00 – 2:30  
Lunch

2:30  
Video vignette to model skill and behaviour required

3:00 – 3:20  
Discussion of questions / issues prompted by the vignette

3:20 – 4:00  
Listing appropriate remedies
4:00 – 5:00  Wrap-up for the day and evaluation

5:00  Close

Teaching Tools:  Skills workshops, group discussions, case studies, video vignette, presentation (print)

Background Material:
2. Constitution of Uganda, 1995 (as amended)
3. Penal Code Act
4. Marriage Act
5. Divorce Act
6. Case references: Georgina Ahamefule v Imperial Medical Center and Dr. Alex Molokwu (Suit 10 II 1627 / 2000) Court of Appeal, Lagos, Nigeria; People v McGreevy, 514 NYS 2d 622 (1987) NYCA; R v Smith (1987) 44 SASR 587; R v S McDonald (1988) 38 A Crim R 420 (CCA NSW)
5. “HIV and the Criminal Law – Non-disclosure of HIV Positive Status”

**Topic:** Judicial strategies to achieve a just result in a criminal proceeding involving women and HIV-related issues.

**Number of Participants:** 50

**Participant Level:** High Court

**Teaching Level:** Attitudinal change and application of skills in delivery of gender justice

**Leader/Panel:** Dr. N.R. Madhava Menon or very respected national judge

**Objectives:** At the end of this session, participants will be able to appreciate

1. the need for capacity-building of the judicial system to respond to the challenges posed by HIV in criminal proceedings and

2. the need to identify possible techniques of molding judicial remedies to meet the ends of equal justice to women.

**Measurable Self-Evaluation Form:**

Please use a number between 1 and 5 to rate the extent to which this objective was met

5 – Excellent; 4 – Very Good; 3 – Good; 2 – Average; 1 – Poor

Comments:

**Teaching Plan – Timing:**

9:00 am – 9:30

Introduction to the problem, which includes statistical evidence demonstrating that the HIV/AIDS pandemic is an immediate international crisis and the judiciary needs to develop appropriate tools to alleviate it. This session should also reveal the additional burden borne by women infected by HIV.

9:30 – 11:00

Small group workshops of ten each on case study “one”

a) to develop by consensus their decision and the reasons for their decision.

b) The group should also consider whether their decision would be different if the parties were married.

11:00 – 11:15

Health break

11:15 – 12:45

Report back to plenary session and discussion on case study “one”

12:45 – 1:45

Lunch
1:45 – 3:15  Small group workshops on case study “two” to develop by consensus their decision and the reasons for their decision.

→ The group should also consider whether their decision would be different if the parties were married.

3:15 – 3:30  Health break

3:30 – 5:00  Report back to plenary session and discussion on case study “two”

**Teaching Tools:**
3. Case Study Three – Calcutta India case in which court found consent to intercourse vitiated by failure to complete promise given before intercourse to marry female partner.

**Background Material:**
2. *Houghton v The Queen*, Criminal Court of Appeal, 2004 (Australia)
Annex to Appendix “A”

Other topics with articulated measurable objectives
given priority for inclusion in programmes

1. Sources of HIV/Aids including Gender Violence

Objective: At the end of this session, participants will leave having had an overview of the HIV/Aids virus problems in their country and the ways in which judiciaries are failing to respond to the inequalities and inequities suffered by women and children afflicted with HIV/Aids.

Expert Panel – NGO on aid statistics and lack of access to courts, Police to show sources of cases and Motivational Speakers: Reverend Gideon Byamugisha, Ghana and The Honourable Justice Edwin Cameron, Acting Judge of the Constitutional Court of South Africa

Teaching Tools: CJEI Video – ½ hour, Interactive Quiz and Panel Discussion

2. Survey of particular vulnerabilities of Women and Children afflicted by HIV/Aids

Objective: At the end of this session, participants will leave having identified inequalities and inequities suffered by women and children afflicted by HIV/Aids.

How to teach?

Perhaps compilation of lists of areas of the law that contain the “hidden fact” of HIV/Aids in cases (see Aboki Paper)

3. Legal and Judicial Remedies

a. Statutory, case study
b. Court developed enlargement of Common Law to respond to new developments, case study Cuerrier
c. Constitutional rights, case study
d. Domestic application of international human rights treaties, case study

4. Access to the Courts

Objective: At the end of this session, participants will leave having identified 10 ways to improve access to the courts by women and children afflicted with HIV/Aids.
5. **Evidentiary Issues**

   Objective: At the end of this session, participants will leave having identified evidentiary issues relative to this issue.

6. **Custom Tailoring Manuals for Judges and Court support Staff on the topic of HIV/AIDS and the particular vulnerability to inequities and injustice born by women and children afflicted with HIV/AIDS.**

7. **Rights of the Child**

   Objective: At the end of this session, participants will leave having identified the rights of the child in relation to HIV/AIDS.
Budgets
Appendix “B” – Ghana - Budget for HIV Sensitization Programme

Participants 50
Number of Resource Participants 4
Total number of participants 53
Programme duration (days) 1
Accommodation 70
Conference Package (US$) per day 25
Exchange rate (US $) 9,200
Exchange rate (Can $) 7,000
Venue Accra
Judicial Training Institute Support
Staff 3
Funded by World Bank
Date of budget 22/06/2006

<table>
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<tr>
<th>Item</th>
<th>Unit cost, Cedis</th>
<th>Number of Participants</th>
<th>Number of Days</th>
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<td>Conference Package</td>
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<td>Video production, 2 days</td>
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<td>Drivers and Police Escorts</td>
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<td>Drivers and Police Escorts</td>
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<td>Total in Cedis</td>
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THREE DAY TRAINING BUDGET FOR 25 JUDICIAL OFFICERS OR COURT STAFF

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<th>Item</th>
<th>Amount</th>
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<td>External Leaders’ Travel</td>
<td>£ 593.29</td>
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<tr>
<td>External Leaders’ Hotel and Subsistence</td>
<td>£ 8,027.51</td>
</tr>
<tr>
<td>External Leaders’ Fee or Honorarium</td>
<td>£ 2,225.71</td>
</tr>
<tr>
<td>Administrator’s Travel</td>
<td>£ 4,171.76</td>
</tr>
<tr>
<td>Administrator’s Hotel and Subsistence</td>
<td>£ 1,272.78</td>
</tr>
<tr>
<td>Administrator’s Fee or Honorarium</td>
<td>£ 334.06</td>
</tr>
<tr>
<td>Participants’ Travel</td>
<td>£ 1,484.21</td>
</tr>
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<td>Participants’ Hotel and Subsistence</td>
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<td>Phone, Fax, Shipping</td>
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<td>Photocopying</td>
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<tr>
<td>Binders, Briefcases, etc.</td>
<td>£ 946.37</td>
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<tr>
<td>Rental of Meeting Room and Breakout Rooms</td>
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<td>Coffee Breaks</td>
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<td>Equipment Rental – microphone, overhead projector, power point LCD panel, flip chart, etc.</td>
<td>£ 417.49</td>
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<td>Contingency Fee and Other</td>
<td>£ 1,613.89</td>
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<td><strong>TOTAL (UK Pounds)</strong></td>
<td><strong>£ 31,185.21</strong></td>
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Nigeria, HIV Law and Justice to Women (continued)

Breakdown of Three Day Training Budget for 25 Judicial Officers or Court Staff.

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<th>DETAILS</th>
<th>NAIRA</th>
<th>UK POUNDS</th>
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<td>1.</td>
<td><strong>EXTERNAL LEADERS TRAVEL</strong></td>
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<td></td>
<td>2 Doctors from UTH. Lagos</td>
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<td></td>
<td>2 NACA Officials from Abuja</td>
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<td></td>
<td>2 Social Welfare Officials and</td>
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<td></td>
<td>2 NGOs from Kaduna</td>
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<td></td>
<td><strong>COST OF TRAVEL</strong></td>
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<td></td>
<td>A. Lagos Return Air ticket for</td>
<td>N30,000 x 2 = 60,000</td>
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<td></td>
<td>2 Persons @ N10,000 x 2 = 20,000</td>
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<td>Airport fare 10,000 x 2 = 20,000</td>
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<td>B. 2 NACA officials from Abuja Transport fare @ N20,000 x 2 = 40,000</td>
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<td>C. Local Transport fare for 4 External Leaders from Kaduna @ N10,000 each = 40,000</td>
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<td></td>
<td>160,000.00</td>
<td>593.29</td>
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<td>2.</td>
<td><strong>EXTERNAL LEADERS HOTEL AND SUBSISTENCE</strong></td>
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<td></td>
<td>£ 151 per night and 5 days for 8 Leaders</td>
<td>1,624,000.00</td>
<td>6,026.49</td>
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<td><strong>B. SUBSISTENCE</strong></td>
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<td>N4,500 x 3 meals and 8 persons for 5 days</td>
<td>540,000.00</td>
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<td><strong>EXTERNAL LEADER’S FEE OR HONORARIUM (if any)</strong></td>
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<td>N25,000/day for 3 days x 8 officials</td>
<td>600,000.00</td>
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<td><strong>ADMINISTRATOR’S TRAVEL</strong></td>
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<td>Return Ticket from to Canada</td>
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<td>5.</td>
<td><strong>A. ADMINISTRATOR’S HOTEL AND</strong></td>
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<td><strong>SUBSISTENCE</strong></td>
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<td>B. <strong>SUBSISTENCE</strong></td>
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<td><strong>6. ADMINISTRATOR’S FEE OR HONORARIIUM</strong></td>
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<td><strong>90,000.00</strong></td>
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<td><strong>334.06</strong></td>
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<tr>
<td><strong>7. A. PARTICIPANTS’ TRAVEL</strong></td>
<td>15 Participants from Zaria and Kafanchan Judicial Divisions Transport fare @ <strong>N 10,000.00</strong> for 2 trips = <strong>N 300,000.00</strong></td>
<td><strong>400,000.00</strong></td>
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<td><strong>1,484.21</strong></td>
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<tr>
<td>B. Local Transport for 10 other Participants in Kaduna @ <strong>N 10,000.00</strong> = <strong>N 100,000.00</strong></td>
<td></td>
<td><strong>400,000.00</strong></td>
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<td><strong>1,484.21</strong></td>
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<tr>
<td><strong>8. A. PARTICIPANTS’ HOTEL AND SUBSISTENCE £112.99 x 4 days x 15 Participants</strong></td>
<td><strong>1,827,000.00</strong></td>
<td><strong>6,779.59</strong></td>
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<td></td>
<td><strong>B. SUBSISTENCE</strong> N 4,500 x 4 days x 25 Participants for dinner**</td>
<td><strong>450,000.00</strong></td>
<td><strong>1,667.88</strong></td>
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<td><strong>9. PHONE</strong> N 80 per minute x 10 for 20 times</td>
<td><strong>N 16,000.00</strong></td>
<td><strong>59.17</strong></td>
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<td><strong>PHOTOCOPYING</strong></td>
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<td></td>
<td>Photocopying of Papers @ <strong>N 3000</strong> for 25 Participants and 9 other including External Leaders and Administrator</td>
<td><strong>102,000.00</strong></td>
<td><strong>378.25</strong></td>
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<td><strong>10. BINDERS, BRIEF CASE, ETC.</strong></td>
<td><strong>A. Binding of the Papers @ 2500 x 34 = 85000</strong></td>
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<td></td>
<td><strong>B. Briefcase @ 5000 x 34 = 170,000</strong></td>
<td><strong>255,000.00</strong></td>
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<tr>
<td><strong>11. RENTAL OF MEETING ROOM BREAKOUT</strong></td>
<td><strong>Rooms @ 75,000 x 3 days</strong></td>
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<td><strong>12. COFFEE BREAKS</strong></td>
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<td><strong>102,000.00</strong></td>
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<td><strong>13. EQUIPMENT RENTAL – Microphone Overhead Projector, Power point LCD Panel,</strong></td>
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</tr>
<tr>
<td>Description</td>
<td>Cost</td>
<td>Percentage</td>
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</tr>
<tr>
<td>------------------------------</td>
<td>-----------------</td>
<td>------------</td>
<td></td>
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<tr>
<td>Flip Chart etc</td>
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<tr>
<td>Projector of Flip Chart @ ₦15,000 each = 30,000 x 3 days = ₦90,000</td>
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<tr>
<td>Screen @ ₦70,000 x days = 21,000</td>
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<td>Table @ ₦500 x 3 days = 1500</td>
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<tr>
<td></td>
<td>112,500.00</td>
<td>417.49</td>
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<tr>
<td>14. CONTINGENCY FEE AND OTHERS</td>
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<td>Cost of Drinks for Participants e.g distilled water</td>
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<td>Hiring of Vehicles for Visits and others</td>
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Appendix “D” – Nigeria - Proposed Budget for “Implementation of Right to Life – As Relating to Treatment and Care of Women with HIV”

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<tr>
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<tr>
<td>Administrator’s Hotel and Subsistence</td>
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<td>Participants’ Travel</td>
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<td>Participants’ Hotel and Subsistence</td>
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<td>Binders, Briefcases, etc.</td>
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<td>Rental of Meeting Room and Breakout Rooms</td>
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<td>Coffee Breaks</td>
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<td>Equipment Rental – microphone, overhead projector, power point LCD panel, flip chart, etc.</td>
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## Appendix “E” – Uganda - Budget for Training Programme

### DETAILS OF THE BUDGET PROPOSAL ON HIV/AIDS

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<th>1.0 Appellate Court Judges Workshop</th>
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<td>A</td>
<td>Sensitisation Programme</td>
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<td>Sensitisation/Awareness enhancement for Justices/Judges of the Supreme Court, Court of Appeal, High Court, as well as Registrars trained/sensitised on the HIV/AIDS.</td>
<td>Over Eighty Judicial Officers; Judges of the Supreme Court, Court of Appeal, High Court, as well as Registrars trained/sensitised on the HIV/AIDS.</td>
<td>3</td>
<td>32,340,000</td>
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<td>2</td>
<td>Sensitisation/Awareness enhancement for Chief Magistrates on HIV/AIDS.</td>
<td>Twenty seven aMagistrates sensitised on HIV/AIDS.</td>
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<td>Sensitisation/Awareness enhancement for Grade I Magistrates on HIV/AIDS.</td>
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<td>Administrative staff at various court levels sensitised about HIV/AIDS.</td>
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## Appendix “F” – Uganda – Proposed Budget for Drama
### “Shadows of Blind Justice”

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### Production Costs

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<th>Total</th>
<th>Average</th>
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<tr>
<td></td>
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<td>4,973</td>
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### 4.0 STAGING

#### UPCOUNTRY

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</thead>
<tbody>
<tr>
<td>Arua, Mbarara, Mbale, Gulu, Masaka, Fort Portal, Jinja</td>
<td>5,000,000</td>
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<table>
<thead>
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<th>Public address system</th>
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<td></td>
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<td>3,500,000</td>
<td>38,500,000</td>
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### Press/ media coverage

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<th>Average</th>
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</thead>
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<td>TV Stations</td>
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<td></td>
</tr>
<tr>
<td>Radio Stations</td>
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<tr>
<td>Newspapers</td>
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### Coordination

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<tr>
<td>IWJF Administrative Services</td>
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### GRAND TOTAL

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<table>
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<tr>
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<tbody>
<tr>
<td>GRAND TOTAL</td>
<td>50,168</td>
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Background Papers
by CJEI Staff
Appendix “G” – Level One Background Paper containing Information regarding HIV and Women

LEVEL ONE

A. RELEVANCE OF THE DISEASE WORLDWIDE AND WITHIN YOUR COUNTRY

Globally

In 2005, between 2.4 and 3.3 million lives were lost to AIDS. An estimated 25 million people have died around the world since the syndrome was first identified.

But we have only witnessed the beginning of the devastation this affliction has wrought upon the world’s peoples, as it continues to spread without any sign of a cure. Though the rate of infection has stabilized somewhat, this is little consolation when considering the high number of people newly infected and living with HIV.

An estimated 38.6 million [33.4 million–46.0 million] people worldwide were living with HIV in 2005. An estimated 4.1 million [3.4 million–6.2 million] became newly infected.1

Africa

Nowhere in the world has HIV/AIDS made a more severe impact than Africa. Southern Africa has the highest prevalence of HIV in the world, with a disproportionate burden on women.

Sub-Saharan Africa remains the worst-affected region in the world. In 2005, there were 24.5 million in sub-Saharan Africa living with HIV. Globally, 64% of all people living with HIV live in sub-Saharan Africa. Globally, there were an estimated 17.3 million women living with HIV in 2005 – three quarters (or 13.2 million) were living in sub-Saharan Africa. Around 59% of all adults living with HIV in sub-Saharan Africa are women.2

New survey data underscore the disproportionate impact of the AIDS epidemic on women, especially in sub-Saharan Africa where, on average, three women are HIV-infected for every two men.3

The direct toll on human lives is staggering. But the negative impact on countries in Africa and elsewhere doesn’t stop with those who become sick and die. In addition, HIV/AIDS has worsened existing problems of famine, eroded human capital, and slowed the improvement of the lives of all people in Africa.

**HIV/AIDS Rates in Select African Countries**

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of people living with HIV</th>
<th>Adults aged 15 to 49 with HIV prevalence rate (% of population)</th>
<th>Women aged 15 and over living with HIV</th>
<th>Deaths due to AIDS in 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ghana</td>
<td>320,000</td>
<td>2.3 [1.9 – 2.6%]</td>
<td>180,000</td>
<td>29,000</td>
</tr>
<tr>
<td>Mali</td>
<td>130,000</td>
<td>1.7 [1.3 – 2.1%]</td>
<td>66,000</td>
<td>11,000</td>
</tr>
<tr>
<td>Mauritania</td>
<td>12,000</td>
<td>0.7 [0.4 – 2.8%]</td>
<td>6,300</td>
<td>1,000</td>
</tr>
<tr>
<td>Nigeria</td>
<td>2,900,000</td>
<td>3.9 [2.3 – 5.6%]</td>
<td>1,600,000</td>
<td>220,000</td>
</tr>
<tr>
<td>Tanzania</td>
<td>1,400,000</td>
<td>6.5 [5.8 – 7.2%]</td>
<td>710,000</td>
<td>140,000</td>
</tr>
<tr>
<td>Uganda</td>
<td>1,000,000</td>
<td>6.7 [5.7 – 7.6%]</td>
<td>520,000</td>
<td>91,000</td>
</tr>
</tbody>
</table>


B. TRANSMISSION AND TREATMENT OF HIV/AIDS

What are HIV and AIDS?

HIV stands for Human Immunodeficiency Virus.... It belongs to a group of viruses called retroviruses. Viruses copy their genetic material into the genetic material of human cells. This means that infected cells stay infected for the rest of their lives. Through mechanisms which are still not fully understood, HIV prevents the immune system from working properly.

AIDS stands for Acquired Immune Deficiency Syndrome. AIDS is the result of damage to the immune system. A damaged immune system is unable to protect the body against certain specific 'opportunistic' infections and tumours. These are called opportunistic because they are caused by organisms which are normally controlled by the immune system but which 'take the opportunity' to cause disease if the immune system has been damaged.... Unlike most other diseases, different people with AIDS may experience different clinical problems, depending on which specific opportunistic infections they develop. This is what a syndrome means – a collection of different signs and symptoms that are all part of the same underlying medical condition.4

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Consequences of Infection

HIV leads to AIDS and early death for those infected. There is no vaccine or cure. Though antiretroviral drugs can lengthen the lives of persons with HIV, these drugs are expensive and difficult to access. Also, people taking such drugs can still transmit the virus to other persons (see below.)

Transmission

From the Centers for Disease Control and Prevention “Fact sheet on HIV and its Transmission.”

HIV is spread by sexual contact with an infected person, by sharing needles and/or syringes with someone who is infected, or, less commonly (and now very rarely in countries where blood is screened for HIV antibodies), through transfusions of infected blood or blood clotting factors. Babies born to HIV-infected women may become infected before or during birth or through breast-feeding after birth.

In the health care setting, workers have been infected with HIV after being stuck with needles containing HIV-infected blood or, less frequently, after infected blood gets into a worker’s open cut or a mucous membrane (for example, the eyes or inside of the nose). There has been only one instance of patients being infected by a health care worker in the United States.

Some people fear that HIV might be transmitted in other ways; however, no scientific evidence to support any of these fears has been found. If HIV were being transmitted through other routes (such as through air, water, or insects), the pattern of reported AIDS cases would be much different from what has been observed.

HIV in the Environment
Scientists and medical authorities agree that HIV does not survive well in the environment, making the possibility of environmental transmission remote.

Households
Although HIV has been transmitted between family members in a household setting, this type of transmission is very rare. These transmissions are believed to have resulted from contact between skin or mucous membranes and infected blood.

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Gloves should be worn during contact with blood or other body fluids that could possibly contain visible blood, such as urine, feces, or vomit.

Cuts, sores, or breaks on both the care giver’s and patient’s exposed skin should be covered with bandages. Hands and other parts of the body should be washed immediately after contact with blood or other body fluids, and surfaces soiled with blood should be disinfected appropriately.

Practices that increase the likelihood of blood contact, such as sharing of razors and toothbrushes, should be avoided.

Businesses and Other Settings
There is no known risk of HIV transmission to co-workers, clients, or consumers from contact in industries such as food-service establishments (see information on survival of HIV in the environment). Food-service workers known to be infected with HIV need not be restricted from work unless they have other infections or illnesses (such as diarrhea or hepatitis A) for which any food-service worker, regardless of HIV infection status, should be restricted. CDC recommends that all food-service workers follow recommended standards and practices of good personal hygiene and food sanitation.

Kissing
Casual contact through closed-mouth or "social" kissing is not a risk for transmission of HIV. Because of the potential for contact with blood during "French" or open-mouth kissing, CDC recommends against engaging in this activity with a person known to be infected. However, the risk of acquiring HIV during open-mouth kising is believed to be very low.

Biting
Biting is not a common way of transmitting HIV. In fact, there are numerous reports of bites that did not result in HIV infection.

Saliva, Tears, and Sweat
HIV has been found in saliva and tears in very low quantities from some AIDS patients. It is important to understand that finding a small amount of HIV in a body fluid does not necessarily mean that HIV can be transmitted by that body fluid. HIV has not been recovered from the sweat of HIV-infected persons. Contact with saliva, tears, or sweat has never been shown to result in transmission of HIV.

Insects
From the onset of the HIV epidemic, there has been concern about transmission of the virus by biting and bloodsucking insects. However, studies conducted by researchers at CDC and elsewhere have shown no evidence of HIV transmission.
through insects—even in areas where there are many cases of AIDS and large populations of insects such as mosquitoes.

**Effectiveness of Condoms**

The proper and consistent use of latex or polyurethane (a type of plastic) **condoms** when engaging in sexual intercourse—vaginal, anal, or oral—**can greatly reduce a person’s risk** of acquiring or transmitting sexually transmitted diseases, including HIV infection.

There are many different types and brands of condoms available—but only latex or polyurethane condoms provide a highly effective mechanical barrier to HIV. In laboratories, viruses occasionally have been shown to pass through natural membrane ("skin" or lambskin) condoms, which may contain natural pores and are therefore not recommended for disease prevention.

When condoms are used reliably, they have been shown to prevent pregnancy up to 98 percent of the time among couples using them as their only method of contraception. Similarly, numerous studies among sexually active people have demonstrated that a properly used latex condom provides a high degree of protection against a variety of sexually transmitted diseases, including HIV infection.

**Treatment of HIV/AIDS**

- **Antiretroviral medicines.** Because HIV is a certain type of virus called a retrovirus, the drugs used to treat it are called antiretroviral medicines. These powerful medicines control the virus and slow progression of HIV infection, but they do not cure it.

- **HAART.** The current recommended treatment for HIV is a combination of three or more medicines. This regimen of medicines is called highly active antiretroviral therapy (HAART). … Each HAART regimen is tailored to each individual patient. There is no one best regimen. 6

**C. IMPACT ON WOMEN AND GIRLS**

**The Impact on Women Generally**

HIV and AIDS have had a devastating impact on women and girls. Consider the following from the United Nations’ 2006 Report on the Aids Epidemic:

Women in sub-Saharan Africa are infected more often and earlier in their lives than men. Young women aged 15–24 are between two and six times as likely to be

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HIV-positive than men of a similar age. This evens out in older age groups, but it highlights the vulnerability of young women and girls and unequal power relations in many societies.

Although in most parts of the world women live longer than men, AIDS has driven female life expectancy below that of men in four countries: Kenya, Malawi, Zambia and Zimbabwe (UN Population Division, 2005b).

The gender inequality that is imbedded in many cultural traditions means that the domestic burden of AIDS care falls especially heavily on women because of their traditional roles as carers and homemakers, deeply engrained social attitudes and insufficient social services. Caring for family members affected by AIDS is a compassionate undertaking, but it is also a burden that can limit educational and economic opportunities for women and girls.

Stigma attaches itself strongly to women because of negative assumptions made about sexual risk behaviour—even when a woman has not engaged in any—and its association with HIV. A recent four city study in India found that while almost 90% of the HIV-positive women were infected by their husbands, they faced more stigma and discrimination than men and were often blamed for their husbands’ illnesses.7

Regional Practices that Disempower Women and Increase Vulnerability

In some African countries, despite laws and Constitutional provisions to protect all citizens, women have been disproportionately affected by cultural practices that increase their vulnerability and expose them to greater risk of HIV infection (and other sexually transmitted diseases.) Some of the identified practices in the sub-Saharan region that threaten women are:

Polygamy The practice of taking more than one wife at the same time, which remains the lot of many African women. An additional sexual partner to the husband increases the chances of HIV exposure to the other partners. Due to the stigma attached to HIV, the subject matter may not be discussed between wives even if one knows she is infected.

Child marriage The practice of girls marrying young is most common in sub-Saharan Africa and Southern Asia. It “represents perhaps the most prevalent form of sexual abuse and exploitation of girls. The harmful consequences include separation from family and friends, lack of freedom to interact with peers and participate in community activities, and decreased opportunities for education.”8

7 Supra UN Report
Wife inheritance  Young widows are inherited by a brother in-law or any other suitor chosen by elders. This exposes the woman to the sexual history of the recipient.

Widow cleansing  A traditional practice in which widows are expected to have sexual relations, often with a relative of their late husband, in order to secure property within the family. She is exposed to any infection that the men might be carrying as a result.

Dry sex  “In parts of sub-Saharan Africa, to please men, women sit in basins of bleach or saltwater or stuff astringent herbs, tobacco or fertilizer inside their vagina. The tissue of the lining swells up and natural lubricants dry out. The resulting dry sex is painful and dangerous for women. The drying agents suppress natural bacteria, and friction easily lacerates the tender walls of the vagina. Dry sex increases the risk of HIV infection for women, already two times as likely as men to contract the virus from a single encounter.”

Female genital cutting  “Female genital mutilation / cutting (FGM/C) is a traditional practice believed to enhance a girl’s beauty, honour, marriageability, social status and chastity... In addition to causing severe pain, FGM/C can result in prolonged bleeding, infection, infertility and death. Many girls and women suffer in silence. Because of the private nature of the infliction, it is impossible to estimate the death toll.”

Troksosi  “If someone commits a serious crime or social infraction, traditional leaders order that a young girl from that family be sent to the shrine as a form of atonement. She is expected to serve the priest for three to five years... the practice, however, has commonly resulted in exploitation and sexual abuse of the young girls.”

D. JURISPRUDENTIAL ISSUES INVOLVING HIV OR AIDS

HIV/AIDS can intersect with many areas of law. Following is a small sample of the ways it has had an impact on the law already, and will continue to affect in the future:

Human Rights / Constitutional Law

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10 UNICEF Study: With Global Support, the Practice Can Be Ended Within a Single Generation, see http://www.unicef.org/media/media_30047.html.
Persons living with HIV or AIDS should receive the same Constitutional protections as other citizens. With 24.5 million people living with HIV or AIDS in sub-Saharan Africa, courts can increasingly expect to see Constitutional challenges over the treatment of those people, as has happened in Western jurisdictions.

Family Relations Law

HIV or AIDS can interact with matrimonial cases, as one party may cite infection as grounds for divorce from the other.

Employment Law

Employers have used HIV-positive tests as grounds for dismissal and have also required potential employees to have tests done before being hired. Do labour laws allow for this? Is such an approach Constitutional, or desirable? See Section E – Labour Law, for the South African reaction to this trend.

Health Care Services and Access

Issues arise over the treatment of HIV-sufferers in medical settings. A Nigerian woman was denied access to a hospital because she was HIV positive, and has since had lawyers file an action on her behalf, citing discrimination.

Issues may also arise regarding intellectual property and international law, as the antiretroviral drugs that can slow HIV are patented by Western drug manufacturers but made available in Africa by alternate means.

Criminal Law and Violence Against Women

If a man infected with HIV sexually assaults a woman, his status could be considered an aggravating circumstance and increase the charge against him, accordingly. Such a situation could be considered assault with a deadly weapon, as has happened in some U.S. jurisdictions.

Additionally, if a man and woman have consensual sex, but the man knows beforehand that he is HIV-positive and withholds this information from the woman, does it change the consensual act into a non-consensual one – does the consensual act then become an assault? See the interpretation of the Canadian courts in Section E.

Thirdly, given the increased vulnerability of women to customary practices (see Section C) and as a result, to HIV infection, criminal considerations may arise where these practices continue.

Child Rights
HIV can be transmitted from a woman to her unborn child in the womb, or through breast milk. This raises difficult issues regarding both the rights of the child and the rights of the mother.

It is also possible that mothers could be found civilly liable to their children for exposing them to such a health risk.

E. LEGAL RESPONSES TO HIV ISSUES – STATUTES AND JUDICIAL DECISIONS

Constitutional Law

Many countries have Constitutional provisions protecting citizens from discrimination. This would seem to include protection from discrimination on the basis of health status, or HIV/AIDS status.

Nigeria

Here is the Constitutional guarantee against discrimination found in the Nigerian Constitution:

42. (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:
(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.
(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.12

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12 Constitution of the Federal Republic of Nigeria, s. 42 (1-3).
Unfortunately, judges have not always interpreted such constitutional guarantees in a way that protects persons living with HIV/AIDS:

Although section 42 of the 1999 Constitution protects discrimination, its provisions are too general. The section did not include discrimination on grounds of health. This provision did not also include marital status, family status.13

…[A] crucial component of the judgment was the finding by the trial judge that the provision of the Nigerian Constitution, which guarantees freedom from discrimination, does not apply to persons with HIV status or related ailments. Specifically the trial court observed that, "however the right from discrimination as enshrined in Section 42(1) of the Constitution did not cover discrimination by reasons of illness, virus or disease."

…The effect of this judgment in essence is that a person with HIV status can be lawfully discriminated against in public and social life. This judgment and the relevant provision of the Nigerian Constitution has the potential of causing untold hardship to the more than 3million Nigerians living with HIV/AIDS.14

The African Charter on Human and Peoples’ Rights

The African Charter on Human and Peoples’ Rights came into force in 1986, and has been ratified by more than forty African states. Several articles within should guarantee the protection and equal treatment of African persons living with HIV or AIDS.

The right to non-discrimination precludes discrimination on the basis of any status of the individual:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.15

Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law.16

Two articles deal with health aspects of the individual, guaranteeing rights on this point:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.17

14 Ibid.
16 Ibid, article 3, s (1-2).
Every individual shall have the right to enjoy the best attainable state of physical and mental health.\textsuperscript{18}

The African Charter recognizes and makes explicit mention of women in society and guarantees the elimination of discrimination against them:

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.\textsuperscript{19}

Such constitutional guarantees could be interpreted to providing protection of rights of persons with HIV or AIDS.

**Employment Law**

South Africa recognized that employers discriminate against HIV-positive persons using pre-employment HIV testing. In 1997, a law commission report came to the following conclusions on the negative impact this had both on infected persons and on the country’s strategy for reducing HIV/AIDS:

If pre-employment HIV testing is allowed to continue, it may create the impression that persons with HIV are a risk to our workplaces and thus in turn that their children may be a risk to our schools and their family members a risk to our communities. This would clearly undermine the Government's national prevention programme. In other words, by expressly prohibiting pre-employment HIV testing the messages contained within the Government's "beyond awareness campaign" of protection through behaviour change, acceptance of individual responsibility for sexual health, non-discrimination, and support and care for persons with HIV/AIDS, are endorsed.

The Commission is therefore of the view that a legislative ban on pre-employment HIV testing would promote the aims and objectives of the Government's National AIDS Plan and the public health goal of reducing the spread of HIV.\textsuperscript{20}

The following year, Employment Equity Act 55 was introduced in South Africa with provisions to prevent discrimination in employment based on HIV status, and to severely restrict mandatory testing:

6 Prohibition of unfair discrimination

\textsuperscript{17} Ibid, article 4.
\textsuperscript{18} Ibid, article 16, s. (2).
\textsuperscript{19} Ibid, article 18, s. (3).
(1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.\textsuperscript{21}

Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of section 50 (4) of this Act.\textsuperscript{22}

In 2002, the South African Constitutional Court overturned a lower court’s decision and found against an airline that refused to employ a man because of his HIV status; the court ordered that he be employed.\textsuperscript{23}

In Botswana, in the case of \textit{Diau v. Botswana Building Society (BBS)}\textsuperscript{24}

\textbf{Criminal Law}

Kenya recently introduced a bill that would criminalize the knowing infection of another person with HIV.\textsuperscript{25} Tanzania, in its National Policy on HIV/AIDS, has stated it will amend the criminal code to do the same.\textsuperscript{26}

Several American states have criminalized the knowing exposure of another person to HIV. Arkansas law provides that:

A person commits the offense of exposing another person to human immunodeficiency virus if the person knows he or she has tested positive for human immunodeficiency virus and exposes another person to human immunodeficiency virus infection through the parenteral transfer of blood or a blood product or engages in sexual penetration with another person without first having informed the other person of the presence of human immunodeficiency virus.\textsuperscript{27}

A person found guilty of the above is guilty of a Class A felony.

In Canada, where no similar law exists, charges have nonetheless been laid of aggravated assault, aggravated sexual assault, and criminal negligence causing bodily harm. The Supreme Court decided a case in which a man and woman had consensual sexual

\textsuperscript{21} Employment Equity Act 55 of 1998. s. 6(1).
\textsuperscript{22} Ibid, s. 7(2). Emphasis added.
\textsuperscript{24} Diau v. Botswana Building Society (BBS), Case No IC 50/2003, Industrial Court of Botswana (2003)
\textsuperscript{26} National Policy on HIV/AIDS, The United Republic of Tanzania, Prime Minister’s Office, Dar Es Salaam, September 2001, s. 3.2 (f).
\textsuperscript{27} Arkansas Code 5-14-123 Exposing another person to human immunodeficiency virus, see http://www.arkleg.state.ar.us/NXT/gateway.dll?f=templates&fn=default.htm&vid=blr:code.
relations, but the man, knowing he was HIV-positive, did not disclose this information to
the woman. The court found that failure to disclose such information met the definition
of fraud, which then vitiated consent to sexual relations; in such a circumstance, the
accused could thus be guilty of sexual assault or aggravated assault. In a later case, R. v
Williams, the Supreme Court considered a circumstance where the accused had
consensual sexual relations with the complainant before and after he was informed of his
HIV positive status, but never told the complainant. In that case, the court held that the
accused could not be guilty of aggravated assault because it could not be proved whether
the complainant became infected before or after the accused had learned of his status; the
Crown could thus not prove the aggravating element of his offence. However, the
accused was found guilty of attempted aggravated assault, because it was certain that,
whatever the complainant’s condition, the accused performed both the actions and had
the intent necessary for an attempt of such a crime.

Health Care Access and Children

In a South African Constitutional case in which the petitioner brought an action against
the Minister of Health, the Court ordered that the government, among other things: devise
a programme to realize the rights of pregnant women with HIV, make treatment available
to reduce the risk of transmission to the unborn child, and remove restrictions to access to
a drug that could help reduce the risk mother-to-child HIV transmission. This decision
was based on constitutionally guaranteed rights to health care services and the rights of
children to such services.

F. BEST PRACTICES

An Unfortunate Example

In 2001, a Nigerian nurse named Georgina Ahamefule tested positive for HIV and was
fired from her hospital job as a result. Ahamefule brought an action against her former
employer for wrongful dismissal and discrimination; it would have been one of the first
cases of its kind in that country.

Before proceedings began, however, counsel for the respondents asked for assurances
that “counsel in the matter, the judge and other litigants in the court room would not be
infected with HIV if the appellant, an HIV-positive, was allowed to come into the court
room to give evidence.” The trial judge agreed and ordered that an expert opinion be
heard on the matter.

28 R v Cuerrier,
29 Ibid at para. 125.
30 R v Williams at para. 5.
31 Treatment Action Campaign v. South Africa (Minister of Health).
32 Ibid., para. 135.
33 Georgina Ahamefule v. Imperial Medical Center and Dr. Alex Molokwu, Court of Appeal, Lagos, April
21, 2004 at para. 1.
The complainant appealed this order; in 2004, the Court of Appeal heard the appeal and denied it on a procedural matter.

1. **BEING INFORMED**

HIV cannot be transmitted between people in public settings such as a courtroom (see section B on “Transmission.”) If a trial judge knew that beforehand, would he or she allow such a request, or make such an order? Would the opposing counsel even make such a request?

This scenario illustrates the need for court officers to be informed of the facts about HIV/AIDS, and to be informed *before* the issues come to court. It also shows that such information must be made known to all court staff, so that misconceptions and fears can be dispelled.

The alternative – a judge questioning facts about HIV/AIDS that are actually well established – risks perpetuating misinformation and allowing false facts to spread in the minds of the public. Judges must be leaders and demonstrate solid, current information of HIV/AIDS and how it interacts with society. This is essential for changing attitudes. In the example above, another constitutional issue was added to the troubles of the complainant: whether or not her right to equal access to the law had been violated.

2. **COUNTERING STIGMA**

HIV and AIDS carry stigma, especially for women. The stigma is great enough that many women may not bring actions to court for fear of worsening their lives with public disclosure of their status. This not only prevents justice being done for that woman, but may, cumulatively, limit national efforts to curb the spread of the disease, as statutory and common law provisions to combat the affliction do not reach the court.

**Privacy**

The stigma is enough that courts should consider safeguarding the privacy of afflicted women. Women with HIV or AIDS could more easily bring their issues to court if they knew that their names would not be disclosed in public. One possible solution is for judges to order that names be disguised; for example, substituting “X” for “Jane Doe.”

This practice is often followed in cases involving children.

Some jurisdictions may have the option of holding proceedings in chambers or in camera.

3. **DELAY REDUCTION**

Courts around the world face high caseloads, backlog, and delays. However, when a case comes forward that pertains to someone living with HIV or AIDS, the need to expedite proceedings may be, truly, a matter of life or death. The certainty faced by persons living with HIV is that they will die sooner. If a woman comes to the court for a
discrimination case, is it right for that case to be delayed three years while a preliminary order is decided?

Court delays are problematic for many people, but for the HIV claimant, they can make the difference between justice being done, or one more injustice added to the life of a vulnerable person. This demonstrates the need to accelerate the hearing of such cases.
Appendix “H” – Customary Practices Identified

Polygamy The practice of taking more than one wife at the same time remains the lot of many African women. Legal in Ghana and Nigeria.

Child marriage The practice of girls marrying young is most common in sub-Saharan Africa and Southern Asia. It “represents perhaps the most prevalent form of sexual abuse and exploitation of girls. The harmful consequences include separation from family and friends, lack of freedom to interact with peers and participate in community activities, and decreased opportunities for education.”34

Wife inheritance young widows are inherited by a brother in-law or any other suitor chosen by elders.

Widow cleansing a traditional practice in which widows are expected to have sexual relations, often with a relative of their late husband, in order to secure property within the family.

Female genital cutting “Female genital mutilation/cutting (FGM/C) is a traditional practice believed to enhance a girl’s beauty, honour, marriageability, social status and chastity… In addition to causing severe pain, FGM/C can result in prolonged bleeding, infection, infertility and death. Many girls and women suffer in silence. Because of the private nature of the infliction, it is impossible to estimate the death toll.”35

Trokosi “if someone commits a serious crime or social infraction, traditional leaders order that a young girl from that family be sent to the shrine as a form of atonement. She is expected to serve the priest for three to five years… the practice, however, has commonly resulted in exploitation and sexual abuse of the young girls.”36 Though illegal by constitutional protections afforded to all citizens, this was identified as a problem in remote areas of Ghana.

35 UNICEF Study: With Global Support, the Practice Can Be Ended Within a Single Generation, See: http://www.unicef.org/media/media_30047.html
Background Papers by Grant Recipients
STRATEGIES AIMED AT ADDRESSING THE CAPACITY, GENDER AND LEGAL DIMENSIONS OF HIV/AIDS IN GHANA

by The Honourable Justice Jones Dotse, Justice of the Court of Appeal, Ghana

A paper presented by Justice Jones Dotse of the Ghana Court of Appeal at the 13th Commonwealth Judicial Education Institute Intensive Study Programme for Judicial Educators, June 4–24, 2006 in Halifax, Ottawa, and Toronto, Canada

1.0 INTRODUCTION

The following statement made by the UN Special Envoy on HIV/AIDS Steven Lewis, is as relevant today as it was when he made it. The statement provides the striking and threatening realities that mankind has to grapple with perhaps until the end of eternity. This is what he said:

“There has never been anything like the HIV/AIDS pandemic. Comparisons with the Black Death of the 14th Century are wishful thinking. When AIDS has run its course – if ever it runs its course – it will be seen as an annihilating scourge that dwarfs everything that has gone before. What it leaves in its wake in country after country would be hundreds of thousands or even millions of children whose lives are a torment of loneliness, despair, rage, bewilderment and loss.”

1.1 The above statement no doubt pains a very gloomy picture of the HIV/AIDS pandemic. It is now an undeniable fact that Africa carries more than 50% of the world’s HIV/AIDS burden and victims. In Ghana, where the country’s population according to the last census in 1998 is 20 million, close to 500,000 adult Ghanaians are reported to have been infected with the deadly virus, and the majority of them are within the productive ages of 15 – 49 years. These figures are quite alarming especially when we consider the fact that most of the people affected are in the prime of their working life. Attempts must therefore be made to stop the spread of the deadly plague which until now has no cure.

It has also been established through empirical evidence that women form the majority of those affected in Ghana; the sad thing is that, women are still the vulnerable group and are still at risk if serious attitudinal changes are not made by the male domineering and culturally biased society.

2.0 Legal and constitutional framework:

In Ghana, there appears to be sufficient constitutional and legal framework which seeks to abolish all forms of discrimination against women and children. For example, the Constitution of 1992 specifically provides that everybody is equal before the law. Again, the constitution provides that there shall not be any discrimination on grounds of sex, religion, tribe, etc.
2.1 There are also constitutional provisions which guarantee equal distribution of properties after divorce or death of one spouse during marriage.

2.2 The constitution also prohibits the subjection of women to dehumanising cultural and traditional practices normally associated with death of a spouse known as widowhood rites.

3.0 Cultural and Traditional practices

There are varied cultural and traditional practices associated with inheritance, rights of women in marriage, especially after the death of their husbands and also with their right to own property.

As I indicated much earlier, at least on paper, the legal regime has changed creating the impression that all is well. For instance, there is in existence an Intestate Succession Law IHDC Law 111 of 1985 which as regards devolution of property after death of one spouse has done a lot for women.

3.1 Despite all these, the prejudices and discriminations which women suffer continue to increase in leaps and bounds.

3.2 This is because most of the traditional societies in Ghana have permissible cultural practices which allow polygamy. As a result, most men have multiple sexual partners sanctioned by custom and recognized by law.

3.3 Thus, a woman married under customary law in Ghana must know that she is in a potentially polygamous marriage and cannot demand that the husband be faithful to her sexually.

3.4 Wife Inheritance

Another instance of discrimination is the existence of a custom which allows the customary succession of a deceased husband’s wife to be “inherited” by that customary successor. What this means is that, the customary successor may marry that woman after her widowhood rites and continue to have children with her, if she is still capable of having children. This particular practice is no longer widespread, but the fact that it exists in some remote parts of the country is worrying.

When this happens, the woman involved has no power or right to choose who her sexual partner should be.

4.0 The Trokosi System

In Ghana again, there are some ethnic groups particularly the Ewe and Goa Adangbe who practice the “trokosi” system. This is one system where a young girl is used to atone for the wrongs committed by an adult member of her family against a fetish. Sometimes, this wrong might have been committed generations before the girl was born, and the practice is that, girls are always used to pay reparation to this fetish from time to time.
The practice is that, the girls who are sent to these fetish shrines normally become fetish wives to the male fetish priests and have no choice in this decision making process.

4.1 Even though this practice is inhuman and clear violation of the human rights of the persons involved, it appears the practice is so much rooted in tradition and custom that non-compliance is believed to evict severe punishment to which death normally results.

4.2 As the moment, steps are being taken to release some of the girls forcibly “betrothed” to these fetish shrines to ensure that they do not become sex slaves the to the fetish priests.

5.0 Female Genital Mutilation

Another example of rights of women is a practice common among ethnic groups in the northern part of the country or in communities where Islam is the dominant religion. This is what is known as “Female Genital Mutilation” – FGM for short.

As usual, even though this practice has been criminalised, it is more honoured in the breach than in its observance.

5.1 I can go on and on in giving examples of many other instances where cultural practices result in discriminations against women leading or making men more vulnerable to their being affected with the deadly HIV/AIDS.

5.2 That is why I started at the beginning of the presentation that even though there appear to be sufficient constitutional and legal framework to protect women against all kinds of discrimination and violence, in reality, the fact is that, they are still denied those rights enshrined in the laws to protect them just as rape has been criminalised, yet it occurs every day with its attendant consequences. Those rape cases that are reported are dealt with and the offenders duly punished.

What about rape victims who get infected with HIV/AIDS? What will society do to such a person or treat such a person. What are the chances of such a victim in accessing anti-retroviral drugs?

6.0 What then are the chances of victims of such abuses, and others, in accessing the legal environment?

There exists in Ghana a Judiciary which is guaranteed under the constitution of 1992 as a separate and independent arm of state. There are therefore different levels of courts in place where victims of abuses mentioned in the preceding pages can enforce their rights.

At the moment, there are supposed to be in each of the 138 Administrative Districts, a District Court, managed by a District Magistrate.

6.1 Structure of Courts in Ghana
In order to understand this point properly, let me deal with the structure of courts in Ghana. At the apex of the court structure is the Supreme Court. Then:

- Appeal court
- High court
- Regional tribunal

These constitute the Superior Court of Judicature. Below these are what we call the Lower Courts.

- Circuit court
- District Courts, which also include Family Tribunals and Juvenile Tribunals.

6.2 Career Magistrates Program

There is an acute shortage of personnel to manage the District Courts because trained lawyers are not prepared to reside in the remote villages and towns where most of these courts are located.

As a result, His Lordship the Chief Justice, G.K. Acquah has introduced a Career Magistrates’ program. The scheme allows the training of non-law graduates for a period of two years. After successful completion, candidates are appointed District Magistrates and posted to the District Courts to sit as magistrates.

The first batch of graduates from the school have passed and have been posted. The fact therefore is that, even though on paper, there is in existence a District Court in each Administrative District, in reality, the fact is that, due to lack of personnel, about half of these courts are without magistrates for now.

The result of this is that, women who have fallen victim to any of these abuses may not have easy access to enforcing their rights or seeking redress to the wrongs that have been done to her.

The next search is to look to the Circuit Courts, which are even scarcer since they are only located in bigger towns and municipalities.

The thrust of my submission therefore is that, even though the courts are in existence, it is not very easy for people to get justice because of lack of personnel to operate the courts.

6.3 The result of this is that, for women who have fallen victims to any of these abuses may not have easy access to enforcing their rights or seek redress to the wrongs that have been done to her.

The next search is to look to the Circuit Courts, which are even scarcer since they are only located in bigger towns and or municipalities.

The thrust of my submission therefore is that, even though the courts are in existence, it is not very easy for people to get justice because of lack of personnel to operate the courts.

6.4 The second issue to tackle here is about awareness on the part of the victims about their rights. In Ghana, illiteracy is high and women who are in the majority are illiterate. This therefore means that, even though elaborate constitutional provisions and legal, statutory interventions have been made to protect women from such abuses, there is no awareness on their part about the advantages they stand to gain under those provisions.
There is therefore the urgent need to mount a vigorous and active campaign to inform women about their rights.

The campaign must take the message to the following places:
1. The local churches and this should include mosques.
2. Markets
3. Hospitals and clinics
4. Schools – this is because if the pupils and students are informed, they in turn will apprise their parents, and in any case, a girl today becomes a mother tomorrow
5. Traditional drumming groups and associations in the communities
6. Traditional leaders, chiefs and Queen mothers
7. Parks and Transport Associations
8. Constant radio and TV interaction
9. Female organisations in all workplaces, like the banks, GHAI, JUSAG, nurses and midwives
10. Print media

I believe that, a concerted effort through the above means, about, e.g., the harmful effects of female genital mutilation, about Trokosi, on harmful widowhood practices, on wife inheritance, on rape, on disinheriting women, on child trafficking and indeed on any form of discrimination against women will help raise awareness and bring to the fore issues touching and concerning gender based violence that increases vulnerability to HIV/AIDS.

6.7 HIV/AIDS

HIV/AIDS

It must however be emphasized that, any awareness programme must be focussed on imparting to the target group the following messages:

a. increasing knowledge in HIV/AIDS
b. learn about modes of the transmission of the disease
c. know about the difference between HIV and AIDS
d. learning about the history of HIV/AIDS
e. making discussions on HIV/AIDS a household word and emphasizing the debilitating and harmful effects of HIV/AIDS
f. learning about the fact that HIV/AIDS is real and its impact on society devastating
g. learning about the moral issues involved in sexual relationships especially unprotected sex
h. learning about voluntary counselling and testing (VCT). In fact, this is very crucial since knowledge about a person’s HIV/AIDS status is likely to change his or her attitude generally.
i. Knowledge about use of condoms and other methods of contraceptives
j. How to relate to and treat people living HIV/AIDS
These are but just a few of the information that must be passed on in order to increase knowledge about HIV/AIDS and risks to women. The list is by no means exhaustive.

6.8 It is my firm belief that, if the above topics are dealt with properly and by the right persons knowledgeable in the specific topics involved, it will also create the right legal education to enhance women’s awareness of their legal and constitutional rights.

This will in turn decrease women’s vulnerability to all forms of gender violence. This is because, if a woman is aware that the constitution of the Republic of Ghana does not support any dehumanizing customary and widowhood practices, she will object if same is perpetuated on her. So therefore, if her awareness is raised, then she will be minded to go to the law courts to assert her rights.

6.9 It will then remain to be seen how the courts themselves will rise up to an occasion such as will result if there is an increase in the resolution of cases touching on protection of women’s rights as against violence etc.

Training programs for Law and Justice sector professionals on the legal and human rights dimensions of HIV/AIDS

7.0 There is no doubt that there is an urgent need to train and refocus the mindset of personnel involved in investigations, prosecutions, handling and deciding the civil and criminal aspects of all human rights dimensions and abuses related to HIV/AIDS.

Quite clearly, it will be seen from the previous narratives that some of the abuses and discriminatory practices associated with violence and abuse against women including HIV/AIDS stigmatisation are deeply rooted in our societal traditional and sometimes religious beliefs.

This explains why despite the existence of favourable legal and judicial environment for the speedy eradication of such abuses, the practices still linger on.

7.1 Continuous Training

The problem can be solved if adequate continuous judicial and legal training will be given to all those involved in the handling of such cases.

7.2 The Police

In Ghana, the first point of contact for most of these cases is the police. However, most victims of such abuses have bitter memories about their relationships with the police such that they have vowed never to take them into confidence.

It is a fact that the police as an institution need a face-lift. As a legal practitioner of several years, starting before my elevation to the Bench in 2002, I am aware of the numerous frustrations most victims suffer when they report cases to the police.

The police administration, conscious of the need to improve their images some few years ago, set up an entirely new unit to handle such cases. It was then known as WAJU – Women and Juvenile Unit of the Ghana Police Service. Quite recently, the
scope of the unit has been widened and it is now known as Domestic Violence and Victim Support Unit (DVVSU).

It is my belief that the police must be very proactive when such reports are made to them. Police officers of this unit must be properly trained, to be humane, courteous, sharp, and above all, must be persons whose integrity is above suspicion. In addition, their grasp of the laws and the suspects they handle must be satisfactory.

It is only under such an environment that a solid foundation can be laid for a good beginning to be made for commencement of proceedings into such abuses.

7.3 Medical and health professionals

Medical and health professionals who will come into contact with the victims of such abuses must also be trained to enable them to deal with such cases promptly and with dispatch.

7.4 Judicial Officers

The judges and magistrates must be dealt with as a special class. This is because if frustrations exist at this level, then everything will come to naught.

Judges and magistrates must be bold, and very innovative in the sense that, since these are new, emerging areas of the law, clear-cut and reasonably prudent, rights-based positive approach decisions should be given.

7.5 Consultative Approach

There should also be constant seminars between all the relevant stakeholders, including social workers, counsellors and clinical psychologists to review all laws and rules of procedure hindering effective implementation or administration of the legal regime of the abuses.

The rational for this is that it will lead to sharing of ideas between all the professionals involved. This way, lapses and shortcomings identified during the period will be corrected.

By this method, knowledge gained so far will be shared. It might be possible for an interactive approach to be made.

Ideas from other jurisdictions and or localities will be shared and good suggestions and practices will be learnt.

8.0 Action plans to address challenges identified under legal, regulatory and institutional frameworks to combat gender violence.

In the implementation of the new legal regulatory and institutional frameworks to combat gender-based violence against women, various challenges might crop up. How do we deal with such issues?

One way of handling these issues as and when they crop up is to establish a multisectoral body to deal with them on a permanent and sustained basis.
The membership must really reflect the diverse nature of the agencies and institutions involved in the crusade against violence against women and HIV/AIDS and its related matters.

This joint working session must be well resourced and its membership must also be well-qualified and competent to deal with the problems as and when they arise. This is because any hiccup along the way which is not properly dealt with, might lead to serious dislocation or derailment. Gains made in the past can easily be eroded and frustrations will set in.

8.1 Adequate laws must be put in place to facilitate the easy rehabilitation of women and children really identified as having been abused and or having acquired HIV/AIDS.

In some instances it might be necessary to pass legislation to prevent employers from dispensing with the services of their employees whose HIV/AIDS status has been known.

Laws about general discriminatory practices against HIV/AIDS and its related abuses must be put in place.

For example, it can be argued successfully that in Ghana, because the Constitution 1992 prohibits discrimination in any form, it covers situations envisaged in HIV/AIDS case as well.

That is why I said earlier on that there will be the need for Judges and Magistrates to be bold and very flexible in their interpretation of existing laws and regulations.

9.0 Programs to improve access to antiretroviral drugs and other medical care for women and girls who are coerced into sexual activity.

From the available scanty statistics and the epidemiology of the disease, there is no doubt that HIV/AIDS has had and will be having a tremendous impact on women.

Whilst majority of women between the ages of 15-49 years are at risk, the current UNFPA statistics indicate

a) infection rate in young African women are five times higher than in men
b) it is also established that early marriages, sexual violence, etc, and the search by adult men for HIV-free sexual partners greatly increases the risk of infection among adolescent girls and young women in many countries and/or communities.
c) Young girls are frequently requested to become primary health care givers to other family and household members who have HIV as well as orphans left behind.

Finally, when one considers the devastating impact HIV/AIDS is having on our social and economic development, it will be seen that women are really at risk. This therefore brings into question the need to improve upon the accessibility of antiretroviral drugs and other types of medical attention available to women who are infected with HIV/AIDS.

9.2 Use of Anti-retroviral Drugs

In my opinion, women as living with AIDS (WLWA) should be given the anti-retroviral drugs free of charge. This is especially so if the WLWA has been someone who became
HIV/AIDS positive by involuntary methods, e.g. violence, discriminatory practices against women or by use and practice of outmoded customary traditions.

Steps must also be taken to monitor the use on a regular and sustained basis of the anti-retroviral drugs. This will ensure that WLWA remain healthy and continue to constitute their quota towards national development.

Since women contribute to the economy in many ways more than men, the advantages of such a support to them will be tremendous.

There will therefore be the need to decentralize the distribution and monitoring of the antiretroviral drugs in the 138 districts of Ghana.

This is also aimed at ensuring that WLWA, who are in the rural areas are not disadvantaged as a result of their locations. The dispensations of the drugs should be brought closer to the doorsteps of the WLWAs.

9.3 The Ghana Aids Commission and the National Strategic Framework

In this respect I believe it is because of the need to ensure that PLWA are treated very humanely that a National Strategic Framework has been designed to contain the spread of the disease in Ghana.

To this end, the Ghana Aids Commission, has been established by Act 613 of 2000 as a supra-ministerial and multi-sectoral body to direct and coordinate all activities of stakeholders (such as MDA – Ministries, Departments and agencies, NGOs, community-based organisations, civil society, development partners and the private sector), in the fight against the HIV/AIDS epidemic.

Accordingly, the National Strategic Framework has identified five intervention areas and is focusing on them. These are –

1) Prevention of new infections through awareness creation and VCT
2) Treatment and care for persons infected and affected by HIV/AIDS. Under this will come WLWA.
3) Creation of a supportive environment for the fight against HIV/AIDS – (this is meant to be a supportive policy framework.)
4) Decentralised implementation of HIV/AIDS programs. This has already been discussed by me when I stated that the distribution and use of antiretroviral drugs be localized and decentralized.
5) Research, monitoring and evaluation.

This last issue is very critical. This is because there must be assessment of all the interventions that are being made to find and whether they are working successfully or not.

It is quite clear that if proper steps are taken to make these antiretroviral drugs and other intervention mechanisms available to WLWA, it will lead to a qualitative improvement in the life of people living with HIV/AIDS as well as those who have been affected and their communities in general.

The focus really should now be on the creation of a supportive environment for WLWA and the strengthening of decentralised institutions.

9.4 Intensification of Awareness
Before I conclude this matter, I will venture to recommend that there is the need to intensify the campaign of awareness further in Ghana. This is because we need to cut down on the infection rate, even though it is reputed to be coming down.

For example, it is possible to show a two- or three-minute documentary on the harmful effects of WLWA on any of the television stations before the news are read every day.

In similar terms, before the news are read on radio, and all the numerous F.M. stations, one minute of a message on HIV/AIDS should be read.

These can be extended to include coverage of football matches or commentary on the matches on radio and T.V.

Additionally, it should be a government policy that before any government official speaks at a public function, the first five minutes must be used to talk on HIV/AIDS. By such an aggressive policy, it is hoped that more awareness would be created.

10.0 Concluding Remarks

In conclusion, it is quite apparent that the opening statement by Steven Lewis has become a stark and critical reality. Urgent steps must be taken to make the negative impact of the said statement false. Otherwise, if we do not reverse the statement, then the whole world, especially sub-Saharan Africa, including my dear nation Ghana, stands the risk of being completely annihilated from this earth. “A stitch in time,” the wise men say, “saves nine.”

References

1. Steven Lewis, UN Special Envoy on AIDS
Appendix “J” – Paper Delivered by Justice Aboki on HIV, the Law and Nigeria

Legal Dimensions of HIV/AIDS: Impacting on Women’s Rights in Nigeria
by The Honourable Justice Abdu Aboki
June, 2006

Introduction:

HIV/AIDS Pandemic is one of the major killer diseases in Nigeria. Nigeria being the most populous country in Africa and the tenth-largest country in the world is aggressively infected with HIV epidemic. The infection is present in all 36 states of the federation according to the Federal Ministry of Health report. Although the country seems to have adopted a multi-sectoral pattern in the fight against HIV/AIDS, still the epidemic is rapidly growing since the first case was reported in 1986. The epidemic is now common to the populace with the number of people living with HIV/AIDS in Nigeria between 3.2 to 3.8 million as of December 2003, through the figure is expected to rise from 3.2 to 3.8 million to 3.7 to 4.3 million within the years 2004 – 2008.

At the centre of this deadly pandemic are women, especially young ones. This is due to their vulnerability socially and biologically in so many respects. Of course, poverty is another factor pushing women and unsafe sex cannot be discarded. In Nigeria, as like other parts of Africa, generally women living with HIV/AIDS do suffer in various forms. These include stigmatization, discrimination, domestic violence, rejection, and in some cases untold repercussions economic and otherwise. The above factors make it mandatory to ensure that women living with HIV/AIDS have unfettered access to court and other necessary protective agencies. Against this backdrop, there are compelling reasons to ensure the existence of an enabling legal environment to empower them against their vulnerability to the pandemic, and guarantee their fundamental rights. The reform shall affect all the facets of Nigeria’s legally system.

Brief Outline of the Nigerian Legal System:

The Nigerian legal system, like its counterparts in most of the African countries, is largely influenced by English law. This is due to the historical tie between Nigeria and England during colonial regimes. The impact of this link remain unchanged ever since. However, many years later, the institutional framework has drastically changed with the independence of the country and its complex nature of federalism. Aside from the federal law representing the federal legal system, all the 36 states of the country have their own law, including the Federal Capital Territory. Thus, making the complexity as part of the features of the Nigerian legal system. In other words, depicting the country’s image of symbolizing unity in diversity. The sources of the Nigerian legal system may fall into the following categories:

1. English Law
English law mostly consists of the general law of England received or introduced into Nigeria before October 1, 1960. These comprise:

a. The common law  
b. The doctrines of equity  
c. Statutes of general application in force in England on January 1, 1900  
d. Statutes and subsidiary legislation on some matters and  
e. English law before October 1, 1960 and extending to Nigeria.

One of the important aspects of English law to the Nigerian legal system is the rules of interpretation. The rules are directly connected with the present discourse. Issues of right are squarely statutory and rules of interpretation are the golden thread. The received English law as a source of Nigerian law has been anchored by some legislations. For instance, s. 2 of the law (miscellaneous provisions) provides that:

2(1) “Subject to the provision of this section and except in so far as other provision is made by any federal or state enactment, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the first day of January, 1900, shall be in force in Lagos State.

2(2) The statutes of general application referred to in subsection (1) together with any other Act of Parliament with respect to a matter within the legislative competence of the Lagos State which has been extended or applied to the Lagos State shall be in force so far only as the limits of local jurisdiction and local circumstances shall permit and subject to any Federal or State law.

2(3) For the purpose of facilitating the application of the said imperial laws, they shall be read with such formal verbal alteration not affecting the substance as to names, localities, court officers, person, money’s penalties and otherwise as may be necessary to render the same applicable to the circumstances.”

Similar wording also exists for the States in Northern Nigeria under Section 28 of the High Court Law of Northern States.

2. Nigerian Legislation

Nigerian legislation simply refers to Nigerian statutes and subsidiary legislations. Nigerian statutes consist of Ordinances, Acts, Laws, Decrees, and Edicts passed by the legislation of government while subsidiary legislation consists of rules, orders, by-laws and regulations made pursuant to a statute by ministers or any persons authorized by the enabling statute.

Rules of interpretation as earlier highlighted are playing a vital role in the interpretation of the legislation, while judicial officers are the key players in safeguarding the intendment of the legislation. It may be noted here that most of the judicial activism in the country is emanating from this role, promotion of human rights included.
3. Case law / Judicial Precedent

Case law simply means laws based on judicial decisions. In other words, it refers to judicial pronouncements on law based on facts presented before the court. Certainly, for the purpose of bindingness of judicial pronouncements, ratio decidendi must be distinguished from obiter dictum. The latter simply means ‘statement by the way’ connoting non-bindingness while the former means ‘reasons for the decision’ denoting bindingness and precedence.

The doctrine of judicial precedence is a common law doctrine compelling courts to be bound by the decisions of high court in the hierarchy.

Case law as a source of Nigerian law could undoubtedly influence positively on women living with HIV/AIDS since judicial decision-making is the crux of case law. This aspect will be explored fully in the following headings.

4. Customary law

Customary law in the Nigerian legal system is divided into ethnic customary law and Muslim customary law. Ethnic customary law is unwritten and various ethnic groups have their own customs. While Muslim customary law otherwise known as Islamic law can hardly be said to be customary because it is in written form. The sources are the holy Quran, Sunna i.e. (saying and practices of Prophet Muhammad), consensus of Muslim scholars and Analogy.

The above is a brief summary of the structure of the Nigerian legal system. All four sources mentioned above play a vital role in the administration of justice. Case law and statute are the most vital for the purpose of our presentation. Their role will be analyzed in the context of analyzing the relationship between HIV/AIDS and law.

**HIV/AIDS and Judicial Decision-making**

Most of the discussions on law and HIV/AIDS are largely dominated by issues of legal rights and duties and the necessity of having qualitative legal response to the syndrome. In other words, law through its various instrumentalities has a vital role in ensuring equal rights devoid of any form of discrimination to people living with HIV/AIDS.

Moreover, scoping legal responses to HIV/AIDS from the angles of human rights will apparently support global policies for the protection of people living with HIV/AIDS. This is because the entire concept of human rights is based on the notions equality and human dignity. These qualities are applicable to all the cultures, religions and customs of the people of this country.
To this end, we can simply examine the judicial decision-making within the realms of human rights. In contextualising judicial decision-making as it relates to HIV/AIDS the following have been identified as Constitutional safeguards:

1. Right to Privacy

Section 37 of the 1999 Constitution of the Federal Republic of Nigeria provides: “The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.”

Women living with HIV/AIDS are vulnerable to be deprived of their Constitutional right to privacy e.g. conducting HIV tests without informing the victims, particularly pregnant women. There are a plethora of foreign judicial decisions upholding the victim’s right to privacy and confidentiality. In *Jansen van Vuuren v. Kruger* (1993)(4) SA 342 South Africa, ‘M’ applied for insurance and was instructed to take a blood test, where he was found positive. The laboratory gave this information to his doctor Kruger. M further requested that the information should be treated as confidential. Upon the disclosure of such information, M instituted a court case. Though he lost at trial, the appeal court held that the physician had a duty to maintain confidentiality and doing otherwise rendered the physician accountable for it.

Similarly, in *X v Y* (1984) 2 All ER 414 QBC England: a newspaper company obtained information that medical doctors working with the plaintiff’s company were HIV positive. The plaintiff came to know about this and went to court where an order of injunction was granted against the defendant restraining the newspaper company from using the confidential information. The newspaper however published another article titled ‘Scandal of documents with AIDS’ and disclosed that in a further article to be published, they would reveal their names. The plaintiffs went to court alleging contempt of the injunction order.

The court held that the disclosure of the names of the doctors was not necessary even for an informed public debate on the matter, and the newspaper company are in contempt of the injunction order.

From the above judicial authorities cited, judicial decision-making is apparently affecting people living with HIV/AIDS, women inclusive.

2. Right to Human Dignity

By virtue of s. 34 of the 1999 Constitution of the Federal Republic of Nigeria, all forms of inhuman and degrading treatment are clearly proscribed. S. 34(1) provides as follows:

“Every individual is entitled to respect for the dignity of his person, and accordingly –

a. No person shall be subjected to torture or to inhuman degrading treatment;

b. No person shall be held in slavery or servitude; and
c. No person shall be required to perform forced or compulsory labour.”

Although the section is of general application, cases of mistreatment among persons for reasons of HIV/AIDS status could serve as legal backing for judicial pronouncement. Moreover, all forms of inequality and discrimination can be treated under this section, as equality is the hallmark to human dignity.

In Hoffman v South African Airways (SAA) (Access to Justice Cases on Human Rights, Constitutional Court of South Africa 2000 (2) 628), the Court held that:

“At the heart of the prohibition of unfair discrimination is the recognition that under the Constitution, all human beings, regardless of their position in society, must be accorded equal dignity. That dignity is impaired when a person is unfairly discriminated against.”

3. Right to Freedom from Discrimination

Section 42 of the 1999 Constitution of the Federal Republic of Nigeria provides:

1. “A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:
   a. be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria or other communities, ethnic groups, place of origin, sex, religions or political opinions are not made subject; or
   b. be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religions, or political opinions.

2. No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth.”

Similarly, the Universal Declaration of Human Rights also provides

“All are equal before the law and entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

A similar provision is also contained in the African Charter on Human and People’s Rights, where the right to equality of every person is guaranteed.
The convention on the elimination of all forms of discrimination against women is of great relevance here, particularly when the majority of people living with HIV/AIDS are women.

Discrimination has been defined as practices that confer greater privileges on certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion or handicap, or differential treatment.

One of the biggest decisions upholding the principle of equality and rejecting all forms of discrimination to people living with HIV/AIDS is the case of Chhotulal Shambhai Salve v State of Gujarat No. 11766 of 2000.

The complaint of the Petitioner in this suit is that he was selected for the post of unarmed police constable and he passed the select list. Thereafter, he proceeds to the medical fitness test. The civil surgeon of the hospital forwarded his test report mentioning that the Petitioner is not medically fit because he is HIV-positive. The Respondents thereafter deleted the Petitioner’s name from the list.

The court, while declaring the act of the Respondent illegal, made an order directing the Respondent to restore the Petitioner to the list.

Similarly, in XXXX v Attorney General of the Federation and others Suit No. FHC/PH/CS/680/2003 where public interest law centre based in Lagos filed an application for enforcement of fundamental human right before Federal High Court in Lagos on behalf of certain prison inmates living with HIV/AIDS.

The main claim was for a declaration that their segregation in detention was in breach of their fundamental right to human dignity and freedom from discrimination. The court granted all their reliefs, however, not in accordance with s. 42 of the Constitution of the Federal Republic of Nigeria. In fact, the court specifically pronounced as follows:

However, the right from discrimination as enshrined by section 42(1) of the Constitution did not cover discrimination by reason of illness, virus or disease.

It is clear from the above decision that this is an area that other reform which could be by way of amendment or new legislation prohibiting all forms of discrimination is suitable. Indeed, discrimination prohibition and enforcement of equality bill is on course. With the passage of the bill our Judges will not be handicapped in making appropriate pronouncement.

Discrimination against women living with HIV/AIDS can take various forms. Deprivation of right to work, right to marry and right to associate freely are all forms of stigma and discrimination contemplated by s. 7 UDHR and Article 2 of the convention on the elimination of all forms of discrimination against women, as enunciated in Chhotulal’s case (supra), deprivation of the right to work on the ground of HIV/AIDS is unacceptable.
However, in *Mr. X v Hospital Z* (1998) SCC 296 Supreme Court of India or AIR 1998 SCW 3662, The appellant, a medical practitioner, proposed marriage to Mrs. “Y” who accepted, and their marriage was set for December 12 1995. Nevertheless, the marriage was called off on the ground of a blood test conducted at the Respondent hospital in which the Appellant was found to be HIV positive. The marriage was called off, several people including the appellant’s relatives became aware of his status, which resulted in severe criticism and he was ostracized by the community. The Appellant filed a case alleging a breach of duty to maintain confidentiality.

The court held that:

“The argument of the learned counsel for the Appellant, therefore that the Respondents were under a duty to maintain confidentiality on account of the code of medical ethics formulated by the Indian Council cannot be accepted as the proposed marriage cannot be carried with it, the health risk to an identifiable person who has to be protected from being infected with the communicable disease from which the Appellant suffered. The right to confidentiality, if any, vested in the Appellant was not enforceable in the present situation.”

It is clear from the above case that much as we appreciate the enforceability of confidentiality rule, a corresponding obligation of protecting the overall populace shall not be overlooked. Although the peculiarity of the above case will not in any way tamper with the general principle of right to marry among people living with HIV/AIDS.

**Islamic Law and HIV/AIDS**

Islamic law’s response to HIV/AIDS is unique in view of the inherent morality contained in the system. The system has made procedural safeguards that could minimize the rate of infection of the epidemic.

Although the system does not contemplate the existence of sex workers, much attention has been placed on protection of women living with HIV/AIDS inclusive.

In response to discrimination and stigma on women living with HIV/AIDS, Islamic law made a provision of care and support to those who are infected with the virus and should be treated with care and love and under no circumstance should they be stigmatized. This position applies to all litigants before Islamic law courts in whatever capacity. Judges and Kadhis of Sharia Courts are enjoined to apply the protective provisions. In Q 49.11, the Quran says: “O ye who believe ‘let not some men among you laugh at others, it may be that the later are better than the former.”

Similarly the prophet Muhammad (SAW) is reported to have said, “A Muslim is a brother to a Muslim. He should neither disgrace him nor despise him.”
In a nutshell, Islamic law does not allow for discrimination of whatever nature to women living with HIV/AIDS.

**Conclusion**

An attempt has been made in this paper to make a case for women living with HIV/AIDS as deserving better judicial and legal treatment. Brief summary of sources of Nigerian law was revisited to set motion for policies and reforms that will impact on the entire system. In regard to HIV/AIDS through judicial decision-making, a review of some judicial authorities was undertaken both within Nigeria and outside with a view to pose challenges to judicial officers and the to highlight the need to handle cases involving persons living with HIV/AIDS relying on the tools of liberal, positive and substantive rules of interpretation.

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2. Universal Declaration of Human Rights (1948)
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4. A.O. Obilade, the Nigerian Legal System (Sweet/Maxwell), 2003.
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Appendix “K” – Paper Delivered by Justice Aboki on HIV, the Law and Nigeria

Assessing the legal environment for prevention of gender based violence and spread of HIV/AIDS: the legal environment in Nigeria

by The Honourable Justice Abdu Aboki

Assessing the legal environment for prevention of gender based violence and spread of HIV/AIDS centers around evaluating and appraising both legislative and judicial response on the prevention of gender based violence in relation to the spread of HIV/AIDS. This paper will therefore seek to identify the relationship between gender based violence and the spread of the HIV/AIDS; and will attempt to discover the role Nigerian judges could play in the prevention of gender based violence and the spread of HIV/AIDS.

Gender violence is “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 or violence against women is generally believed to be a major public health and human rights problem throughout the world although the patterns and prevalence of the violence differ from society to society. Around the world at least one woman in every three has been beaten, coerced into sex, or otherwise abused in her lifetime. It has serious implications for women’s ability to protect themselves from HIV infection and it makes them more vulnerable to the disease. Gender-based violence can result in many negative consequences for women’s health and well-being. It can also affect their children and undermine the economic well-being of societies.

The Rome Statute of the International Criminal Court, adopted in 1998 which was ratified by Nigeria in 2001, recognizes a broad spectrum of sexual and gender-based violence as crimes against humanity and war crimes. These include rape; forced prostitution, pregnancy and sterilization; and gender-based persecution. See also the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, ratified by Nigeria on 18 February 2005, obliges states to take a variety of measures to address violence against women in all its manifestations.

Gender-based violence takes place frequently in our daily life. In the institutions of learning there is sexual harassment and coercion, verbal harassment, cultism, rape and...

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37 A Justice of the Court of Appeal, Nigeria.
many other forms of violence that can contribute to the spread of epidemic. In the offices and work places, women especially, have to endure spontaneous touching, verbal and sexual harassment and sexual coercion. In the market places people are subjected to verbal violent language, unwanted touches and other forms of physical violence. Surprisingly even in our religious places, seduction and acts of sexual harassment sometimes occur. There is also violence in terms of exclusion of certain persons from religious rites and duties. In Police custody, prisons and refugee camps, people, particularly women and children experience violations of their rights, physical violence, sexual coercion and rape.

There have also been many reported cases of violence taking place at homes in which large numbers of women are often subjected to violence in the family, to physical, sexual and psychological violence. Husbands, partners and fathers are responsible for most of this violence. However, both male and female members of the extended family are involved, including in their capacity as employers of women domestic workers in the household. In these circumstances, unprotected sex occurs; people are unprepared for sex and have no opportunity to negotiate safer sex. There is therefore, an increased chance of HIV/AIDS infections.42

Judges and the prevention of HIV/AIDS

Many people have been anxious to discover how the legal community, and in particular judges could contribute towards preventing the spread of HIV/AIDS. The truth is that, the task of preventing the spread of HIV/AIDS is not only restricted to medical doctors, public health workers and nurses. Legal community, and in particular judges and lawyers have a vital role to play towards seeing the prevention of the spread of this deadly disease and towards ensuring that those infected or affected by the disease are accorded better judicial remedy. The judiciary as the custodian of our laws is burdened with the responsibility of interpreting laws that protect and promote the rights of all the people living in our society. It being the last hope of the people has vital role to play towards protecting and promoting the rights of all the people, particularly the vulnerable members like people living with HIV/AIDS (PLWHA). In an African traditional set up, there are still people who think that there could not be any right to people infected with HIV/AIDS – a disease which is being carried by people who messed up their lives through promiscuity. There is also there should not be a right to anyone with AIDS as the ailment is something people bring upon themselves and so they must pay for the rough lives they had lived in the past. Judges do have a high responsibility of adjudicating over peoples’ disputes, and of making judicial pronouncement over variety of situations.

As the HIV/AIDS comes along with it many political, social, cultural and even legal problems, the role of judiciary should be a leadership role, it being the last resort of the people. Hon Justice Michael Kirby has this to say:

“Judges, by definition, are leaders of their communities. They are invariably educated above the average. They ordinarily enjoy a privileged lifestyle. Typically, they are respected because of their offices. Their special positions in society impose upon them a responsibility of leadership. Nowhere more is that responsibility tested than when a completely new and unexpected problem presents itself to society. All the judges’ instincts for legality, fairness and reasonableness must then be summoned up, to help lead society towards an informed, intelligent and just solution to the problem.”

Having said this, it may be pointed out that, although the Nigerian apex court has not yet ruled categorically on the rights of PLWHA, a few cases have come before other courts – and their attitudes have generally been discouraging.

Surprisingly last year, a Lagos High Court presided over by Justice Caroline Olufawo (rtd) ruled that a dismissed worker, Mrs Georgina Ahamemfule living with HIV/AIDS, who had challenged her dismissal in court, should submit an expert reports that she would not infect the court audience with HIV virus, if she were to be invited as a witness. Mrs. Ahamemfule had taken the Imperial Medical Center and one Dr. Alex Molokwu to court on account of her alleged wrongful dismissal from work because she is HIV positive. Before the commencement of the case, counsel to the defendants, had requested assurances that counsel in the matter, the judge and other litigants in the court room would not be infected with HIV if the appellant/applicant was allowed to come into the courtroom to give evidence. Consequently the trial court ordered an expert opinion on the issue, to be conducted by the applicant (Ahamemfule) and be produced in court. This became an object of appeal before the Court of Appeal, Lagos. The Appeal Court presided over by Justice Pius O. Aderemi in its judgement dismissed the appeal on technical ground that the appellant did not seek the leave of the High Court before going to the Court of Appeal and that such issues brought before the appellate court are not issues bothered on point of law and that it was a "consented" ruling arising from agreement by the appellant to produce expert opinion on the controversial issues. The Appeal Court in a unanimous decision relying on several authorities held that the appeal cannot hold and consequently dismissed it.

Many people from the legal community pointed out at the decision to be “the greatest form of moral calamity that could ever be inflicted on the psyche of pro life groups both locally and abroad”. One Feyisike Adeoye, Executive Director of Community People’s Against Aids stated that the ruling “…is a monumental threat to the global campaign against HIV/AIDS awareness and a slow down to the commitment of the United Nations and all its agencies, to continuously show support and care for PLWHA.”

In another controversial decision of the Port Harcourt Federal High Court, the court adopted a somehow narrow interpretation of section 42 of the Constitution of the Federal

43 www.lawfoundation.net.au/resources/kirby
44 See www.vanguardngr.com “Can a PLWHA testify in court” by Innocent Anaba and Wahab Abdullah posted to the web: Friday, March 18, 2005
46 Ibid
Republic of Nigeria which guarantees right to freedom from discrimination. A Lagos based law center brought a fundamental rights application on behalf of some inmates living with HIV/AIDS praying the court, among other things, a declaration that their continues detention and segregation was a breach of their right to dignity and freedom from discrimination; a declaration that as PLWHA they have rights to proper medical treatment while in prison custody and that the failure of the prison authorities to provide them with proper medical treatment was inhuman and degrading. They also prayed the court to order the prison service to transfer them to suitable hospital. Although the presiding judge upheld all the reliefs sought, he however found that section 42 does not apply to PLWHA. The court pointed out that “the right from discrimination as enshrined in Section 42(1) of the Constitution did not cover discrimination by reasons of illness, virus or disease”. Nevertheless, could this mean that in Nigeria a person with HIV status can be lawfully discriminated against in public or social life? While courts in countries like South Africa had since declared that refusing employment to an HIV-positive person amounted to an act of unfair discrimination forbidden by law, courts in Nigeria have not reached that far – they are still on the issue of whether PLWHA should be allowed to enter court rooms, for fear of infection.

HIV/AIDS: a human rights issue in the Nigerian Constitution:

The concept of human rights is stuck in concepts of human dignity and equality, which can be found in most cultures, religions, and traditions that are today mirrored in many legal systems, including that of Nigeria. Persons with HIV status do have the same fundamental social, cultural, civil, and political human rights as any other person because they are human. These rights are universal, indissoluble, inalienable, and inherent in person because he or she is human. The need to protect and promote the rights of PLWHA is predicated on the principles contained in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (the ICCPR) domesticated by means of the African Charter on Human and People’s Rights (Ratification and Enforcement Act, Cap 10, LFN, 1990) and other international human rights instruments. Many of these fundamental rights provisions are also preserved in Chapter IV of the Federal Constitution of Nigeria 1999.

In the case of NEMI v ATT-GEN of LAGOS STATE, the Court of Appeal stated that:

“If those rights guaranteed under chapter IV of the constitution are to be meaningful, they must be thoroughly examined from every angle and determined in an action complaining of their breach. When breached they are to be redressed in all circumstances as appropriate. In this connection, let me say that it is not enough that we have ratified the

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47 See XXX v Attorney General of the Federation and Others Suit No. FHC/PH/CS/680/2003
49 See Hoffman v South African Airlines (2000) CCT 17/00
50 See generally HIV/AIDS and Human Rights in Nigeria: Background Paper for HIV/AIDS Policy in Nigeria prepared by the Centre for the right to Health for the POLICY Project: Sept. 2003
51 Ratified by Nigeria in 1993
52 (1996) 6 NWLR (P+ 452) p.42

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African Charter on Human and People’s Rights or some Universal Human Rights. We must move with the rest of the human race in the implementation of those rights. While the executive may take steps to examine, or to set in motion, ways of improving human rights situation, the Judiciary should actively show its impetuous readiness to complement or indeed surpass the efforts of the executive by an inspiring approach to or definition and recognition of circumstances of human rights where appropriate and feasible”.

Under the provisions of the Nigerian Constitution, the fundamental rights of PLWHA can be analysed from the following:\(^{53}\)

a) the right to dignity of the human person:

Section 34 of the 1999 Constitution protects the dignity of human person; in that, the right of a PLWHA to human dignity is violated where such a person is mistreated by a fellow human being or by a public authority simply because he has HIV/AIDS. For instance, this right may be violated where a medical doctor refuses to treat a HIV/AIDS patient; or where an employer denies him employment or his movement is restricted because he carries the disease. In short, any act of discrimination against a PLWHA that relates to his status is an infringement to his right to human dignity.

b) the right to freedom from discrimination:

S.42 of the Nigerian Constitution provides that every person is equal before the law and that no one should be discriminated against as a result of his birth/social status, sex, or religious background. Discrimination is a serious psychological problem that affects the totality of a being. One of the greatest problems a PLWHA face in Nigeria today is stigma and discrimination, which is experienced in virtually every facet of human endeavour, such as in the hospitals, workplaces, higher institutions, places of worship and even in our homes.

c) right to privacy:

Section 37 of the 1999 Constitution of the Federal Republic of Nigeria guarantees the right to privacy of every citizen. This right is also guaranteed under Art. 17 of the ICCPR. Article 6 of the ACHPR also provides for the protection of this right. It has been pointed out that in other jurisdictions, such as South Africa, Britain, and Canada, the right to privacy has been held to encompass obligations to respect physical privacy, including the obligation to seek informed consent to HIV testing and privacy of information, including the need to respect confidentiality of all information relating to a person’s HIV status. This right can be violated when an HIV test is conducted without obtaining specific informed consent of person. This right can also be violated when a PLWHA’s status is revealed without his consent by health workers. It is also a breach of Rule 18 of

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the professional conduct for medical and dental practitioners in Nigeria which provides that any information about a patient that comes to the knowledge of a practitioner shall be treated with utmost secrecy and that the medical records of a patient are strictly for the consumption of the patient alone. It has been pointed out that confidentiality laws in Nigeria should be reformed to conform to the recommendations in the International Guidelines on HIV/AIDS and Human Rights.