REALIZATION OF HUMAN RIGHTS: A PATH TOWARDS THE REDUCTION OF VULNERABILITY TO HIV/AIDS BY THE GOVERNMENT OF BOTSWANA

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Introduction

HIV continues to spread throughout the world, posing increasing challenges to human rights, at both national and global levels. The epidemic continues to be marked by discrimination against certain population groups; those who live on the fringes of the society or who are assumed to be at risk because of their behavior, race, ethnicity, sexual orientation, gender, or social characteristics that are stigmatized in a particular society.[1] As the number of people living with HIV and AIDS continues to grow in nations with different economies, social structures, and legal systems, HIV/AIDS-related human rights issues are not only becoming more noticeable, but also increasingly diverse.

From a global perspective, Botswana is among the countries hardest hit by HIV and AIDS. In 2005, there were an estimated 270,000 people living with HIV.[2] This, in a country with a total population below two million, gives Botswana an adult HIV prevalence rate of 24.1%, the second highest in the world after Swaziland.[3] However, Botswana's comprehensive response to the epidemic may finally be bearing fruit. According to Botswana's draft 2008 Sentinel Surveillance surveys HIV prevalence has significantly declined from 37.4% in 2003 to 32.4% in 2006 in the 15-49 age group.

The UNGASS report has highlighted that the most remarkable drop was among 40-49 year olds from 30.4% to 27.4% in 2005 and 2006 respectively, while the least reduction was among 15-19 year olds (17.8% to 17.5%).[4] Preliminary country estimates indicate that approximately

1 Joint United Nations Programme on HIV/AIDS (UNAIDS), Report of the Secretary-General, Second International Consultation on HIV/AIDS and Human Rights, UN, Geneva, September 1996.

2 The Population Reference Bureau, World Population Data Sheet, USAIDS, Washington, 2007, available at: http://www.prb.org/pdf07/07WPDS_Eng.pdf

3 UNAIDS, World Health Organization (WHO), *Report on the Global AIDS Epidemic*, UNAIDS, WHO, Geneva, May 2006.

4 Ministry of State President, National AIDS Coordinating Agency (NACA), *Progress Report of the National Response to the UNGASS Declaration of Commitment on HIV/AIDS*, NACA, Gaborone, 2008, p. 11.

113 000 people had advanced HIV infection in Botswana in 2007. 91 780 persons (81.2%) were on treatment as of 30th November 2007.[5]

While Botswana is blessed with comparatively sufficient financial resources from both domestic and external sources, it faces several important challenges that need to be overcome if it is to rapidly and effectively scale up its HIV prevention portfolio.[6] HIV/AIDS is a real and major threat directly linked to the continued protection and promotion of human rights in Botswana. With the initial understanding of the HIV/AIDS and human rights relationship, centered on the concept of vulnerability, this paper attempts to analyze the specific human rights responsibilities of the Government of Botswana and their actual accomplishment in the context of HIV/AIDS.

The Perception of Vulnerability, HIV/AIDS and Human Rights

It is now a quarter of a century since the Acquired Immune Deficiency Syndrome (AIDS) was recognized. The knowledge that has been gained since then has been far-reaching, and the velocity at which basic research has been translated into life-saving treatment is commendable. The reasons HIV/AIDS is being treated differently from other diseases include among others its impact not only on the physical health of individuals, but also their social identity and mental condition. The stigma and discrimination surrounding HIV/AIDS can be as destructive as the disease itself. Lack of recognition of human rights not only causes unnecessary personal suffering and loss of dignity for those living with HIV/AIDS but it contributes directly to the spread of the epidemic. It also appears that the spread of HIV/AIDS is disproportionately high among groups that already suffer from a lack of human rights protection, social and economic discrimination, or marginalization in terms of legal status.[7] To illustrate, the inequality evident in gender relations that provides men with greater access to economic resources, is often replicated in heterosexual interactions. Male pleasure supercedes female pleasure. The balance of power in any sexual interaction determines its outcome. Another disturbing outcome of the emphasis of sexual and physical domination of women is violence against women.

5 *Ibid.*

6 'Setting the Stage for Scaling-Up Access to HIV Prevention in the Context of Increased Treatment Access in Botswana', Discussion paper to rapidly scale up HIV prevention in Botswana, Brainstorming Meeting, African Comprehensive HIV/AIDS Partnerships (ACHAP), Botswana , 2-3 March 2006.

7 UNAIDS, *HIV/AIDS and Human Rights: Young People In Action*, UNESCO, UNAIDS, Geneva, 2001; see also T. Bruyn, 'HIV/AIDS and Discrimination: A Discussion Paper', Canadian HIV/AIDS Legal Network and Canadian AIDS Society, Montréal, 1998; 'Canadian Human Rights Commission Releases Revised Policy on HIV/AIDS', *Canadian HIV/AIDS Policy & Law Newsletter,* 1996, Issue 3 (1), pp. 7-8.

These factors have significant implications in the spread of HIV and its prevention programs.[8]

In the 1980s, the relationship between HIV/AIDS and human rights was only understood as it involved people infected with the virus and the discrimination to which they were subjected.[9] By the end of the decade, however, the call for human rights and for compassion and solidarity with people living with HIV/AIDS (PLWHA) had been explicitly embodied in the World Health Organization's (WHO) first global response to AIDS. The approach here was motivated by moral outrage and also by the recognition that protection of human rights was a necessary element of a worldwide public health response to the emerging epidemic.[10]

The implications of the WHO call were across the board. Its public health strategy in human rights terms became anchored in international law, thereby making governments and intergovernmental organizations publicly accountable for their actions toward people living with HIV/AIDS. The most important contribution of this phase was the recognition of the applicability of international law to HIV/AIDS and thereby, to the ultimate accountability of the State for issues relating to the health and well-being of its subjects.[11]

The concentration on the human rights of people living with HIV/AIDS in the 1980s led to increased understanding in the 1990s, of the importance of human rights as a factor in determining people's vulnerability and risk to the HIV infection. The problems relating to their accessing appropriate care and support were also acknowledged.[12] Vulnerability is the susceptibility to physical or emotional injury or attack.[13] It also means to have one's guard down, to be open to censure or criticism and to be assailable.[14] The term 'vulnerable population' is broad and can apply to a large number of groups who find themselves marginalised, different from the majority and under-represented: commonly understood to mean fragile, subject to hurt and harm usually from external sources, but sometimes by internal ones; a self-appraisal fashioned to justify

8 G.R. Gupta, 'Vulnerability and Resilience: Gender and HIV/AIDS in Latin America and the Caribbean', International Center for Research on Women (ICRW), August 2002, pp. 4 –6.

9 World Health Organization, World Health Assembly, *Avoidance of Discrimination against HIV-Infected Persons and Persons with AIDS*, Preamble, Resolution WHA, WHO, Vol. 41.24, 13 May 1988.

10 World Health Organization, World Health Assembly, *Global Strategy for the Prevention and Control of AIDS*, Geneva, Resolution WHA , WHO Vol. 40.26, 5 May 1987.

11 M.L. Gostin , S. Gruskin *et al.,* 'Human Rights and AIDS: The Future of the Pandemic', *Health and Human Rights*, Vol. 1, Issue 1, 1994, pp. 6–23.

12 D. Tarantola, 'Risk and Vulnerability Reduction in the HIV/AIDS Pandemic', *Current Issues in Public Health*, Vol. 1, 1995, pp. 176–179.

13 V.J. Carlos, 'Vulnerability: A Conceptual and Methodological Review', *Source,* Vol. 14, Issue 44, Bonn, Germany, February 2006.

14 G. Bankoff, G. Frerks and D. Hilhorst, *Mapping Vulnerability*, Earthscan, 2004.

negative emotions and negative orientations to sentiments such as fear, doubt, anger, withdrawal, blame, lovelessness, hostility.[15]

The vulnerability of people with HIV/AIDS affects practically every one of their human rights, be it health, unfair discrimination, violation of privacy or inhumane or degrading treatment.[16] The application of the human rights approach to vulnerability is a relevant concept for elucidating risk-taking processes and designing intervention programs by concerned stakeholders. People infected with HIV may suffer from violations of their rights when, for example, they face government-condoned marginalization and discrimination in the realms of health, education, employment and social services.[17] Freedom from discrimination can have a strong impact on the ability to enjoy the right to work, the right to be free from inhuman and degrading treatment and the right to education. This applies, albeit in different ways, to women, men, and children infected with, and vulnerable to HIV.[18]

Vulnerability to HIV basically is the lack of power of individuals and communities to minimize or modulate their risk of exposure to HIV/AIDS infection and, once infected, to receive adequate care and support. Women are, in general, for instance, more vulnerable than men to HIV infection in heterosexual relations.[19] The reasons for this are not only biological and epidemiological, but importantly also socio-economic and related to inequalities. A woman's safety in sexual relations may be compromised by, for example, the perceptions that men (and her partner in particular) have about using condoms, the potential for violence or abuse in the relationship, and the extent to which the woman depends economically or socially on her partner.[20] The gender roles within intimate relationships, families, friendships and communities depend greatly on how HIV is understood and talked about, how it is spread and how PLWAs are treated or vice versa.

15 http://www.soulprogress.com/html/Glossary/VulnerabilityGlossary.html

16 The Botswana Network on Ethics, Law and HIV/AIDS, *Human Rights and HIV: A Manual for Action*, BONELA, Gaborone, 2005.

17 Human Rights Internet, *Human Rights and HIV/AIDS: Effective Community Responses*, International Human Rights Documentation Network, Ottawa, 1998; R. Cohen and L. Wiseberg, *Double Jeopardy-Threat to Life and Human Rights: Discrimination Against Persons with AIDS,* Human Rights Internet, Cambridge, Massachusetts, 1990.

18 New South Wales Anti-Discrimination Board, Discrimination – The Other Epidemic-Report of the Inquiry into HIV and AIDS Related Discrimination, Anti-Discrimination Board, Australia, 1992, p. 5.

19 L Sherr, 'Tomorrow's Era: Gender, Psychology and HIV Infection' in L Sherr *et al.* (eds.,) *AIDS as a Gender Issue: Psychological Perspectives*, Taylor and Francis, London, 1996, p. 46 –63, at 48, cited in Bruyn, *op. cit.* n. 7

20 . *Op.cit.* n. 8

Hence, prevention, treatment, care and support programs and policies must take gender-based experiences and differences into consideration in order to be effective.[21]

Similarly, disadvantaged racial/ethnic minorities, groups which are socially or economically marginalized on the basis of sexual orientation, age, refugee status, occupation (e.g. commercial sex workers) or location (remote area dwellers) often have a higher incidence of HIV/AIDS, due to restricted access to resources, including education, adequate medical services, and political power.[22] As the pandemic progressed, it became apparent that human rights law is relevant not only to the treatment of infected individuals but also to the wider populace, vulnerable to HIV/AIDS.

Protection of Human Rights to Reduce the Vulnerability to HIV/AIDS: The Case of Botswana

There is strong political commitment to fight HIV/AIDS in Botswana. It was one of the first few countries to adopt the '*Three Ones*', key principles for co-ordinating and guiding national authorities in responding to HIV/AIDS.[23] In alliance with development partners, it has developed policies, strategies and institutions, and is in the process of implementing a national multisectoral HIV/AIDS response with the goal of zero new HIV infection by 2016. The strategy was developed to enable effective implementation of a comprehensive and integrated approach in tackling the epidemic. [24]

The 2006 Report on the Global AIDS Epidemic shows that the world is at a defining moment in its response to the AIDS crisis.[25] International human rights law, indeed, is serving as a powerful mechanism to influence domestic law and policy regarding HIV/AIDS. It is also one of the few avenues the international community can use to examine what goes on within a state's borders. This scrutiny by outside actors applies pressure on governments to change their practices and is one mechanism through which international consensus on the content of each right is built.[26] A number of international human rights treaties

21 G.M. Wingood and R.J. Di Clemente, 'Application of the Theory of Gender and Power to Examine HIV-related Exposures, Risk Factors, and Effective Interventions for Women', Vol. 27, Issue 5, *Health, Education, and Behavior,* 2000, pp. 539-565.

22 *Op. cit.* n. 16, Vol. 3, pp.16-20.

23 *Op. cit.* n. 6.

24 Botswana National Policy on HIV/AIDS, approved and adopted by the Government of Botswana through Presidential Directive CAB: 35/93, 17 November 1993; see also UNAIDS, WHO, *op. cit.* n. 3; 'The Power of Partnership:Third Annual Report to Congress on PEPFAR', Bureau of Public Affairs, US State Department, March 2007, available at http://www.pepfar.gov/press/c19573.htm

25 *Op. cit.* n. 3.

26 Centre for Human Rights, Report of an International Consultation on AIDS and Human Rights, Geneva, 26-28 July 1989; UN, New York, 1991, p. 10.

further elaborate the rights set out in the Universal Declaration of Human Rights, 1948, a document of widest significance, serving in its field as the conscience for the world and a standard against which the attitude of societies and Government can be measured. These include the following conventions to which Botswana too is a member: International Covenant on Civil and Political Rights (accession 2000); Convention on the Rights of the Child (accession 1995); Convention on the Elimination of Racial Discrimination (accession 1974);[27] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (accession 2000) and the Regional Treaty, the African Charter on Human and Peoples' Rights (accession 1986). By signing an international human rights treaty, Botswana accepts obligations at the international level, to protect the rights of all people within its territory.

Unfortunately, Botswana has not yet ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenant deals with *'positive'* rights, such as the right to food, to health care, to education and to cultural life.[28] None of the international human rights treaties specifically mentions HIV or the rights of individuals in the context of HIV/AIDS, yet all the international human rights mechanisms responsible for monitoring government action have expressed their commitment to exploring the implications of HIV/AIDS for governmental obligations.[29] This may be of critical importance for fusing HIV/AIDS and human rights in practical and concrete ways.

International treaties, however, need to be supplemented by national legislation and training for advocates of rights of minorities and vulnerable groups. Converting promises to reality could be the best medicine in the fight against HIV/AIDS.[30] Proper implementation of a treaty ensures that its laws and policies are consistent with the terms of the treaty. In some cases, the courts have shown respect to the rights contained in the treaty.[31] Laws and constitutions cannot create human rights, as they are a reflection of our common humanity. But when human rights are included in the constitution and the law, it is more likely they will be protected and people will be able to protest if they are violated.[32] Vulnerability to HIV reflects (an individual or community's) inability to control the risk of infection. HIV/AIDS is not only a health issue; rather it has huge social and economic implications that require

27 See CERD/C/BWA/CO/16, 21 March 2006.
28 Central Intelligence Agency, The World Fact Book –Botswana, USA, November 2006, available at: https://www.cia.gov/library/publications/the-world-factbook/goes/bc.htm
29 UNESCO and UNAIDS, *Advocacy Beyond Borders: Introduction to the International Human Rights Machinery,* UNAIDS, Geneva, 2001, p. 13.
30 UNGASS Declaration of Commitment 2001, para. 98.
31 *Attorney General* v *Unity Dow* (1992) Botswana Law Reports (BLR) 119 (CA).
32 D.D. Nsereko, *Constitutional Law in Botswana,* Pula Press, Gaborone, 2002 , p. 259.

multi-sectoral responses. Poverty, gender inequality and displacement as a result of conflict or natural disasters are all examples of social and economic factors that can increase vulnerability to the infection. Both risk and vulnerability need to be addressed in planning comprehensive responses to the epidemic.[33] Recently, in a Progress Report (2008) the Ministry of State President has acknowledged that in Botswana, there are laws that present obstacles to effective HIV prevention, treatment, care & support for most-at-risk groups.

It has been accepted that gaps exist in service delivery for vulnerable groups. The report has clearly acknowledged that there is lack of human rights monitoring & enforcement mechanisms.[34]

Although HIV/AIDS eradication has been accorded the highest priority in various ways at the national and local levels, very few laws have been passed by Parliament to specifically address the consequences of the epidemic in Botswana. It has been a common contention among the human right activists and organizations working in the concerned field, that HIV/AIDS policies and programs do not address the human rights dimension adequately.[35] Nevertheless, some general provisions of the existing law, including the constitution, are relevant to HIV and AIDS.[36] The human rights protections listed in Section 3 through 15 of the Constitution clearly have implications for the HIV/AIDS epidemic.[37] However, the actual legal protection they afford to those affected remains uncertain because the courts have not yet resolved many cases involving the Constitution and HIV/AIDS.[38]

The right to health is not mentioned in the Constitution even though the Government of Botswana has gone to great lengths to provide free medical care and anti-retroviral therapy to its citizens. Botswana was the first African country to provide free anti-retroviral treatment to all its citizens in need of it.[39] The health care system in Botswana is guided by the Public Health Act, 1981(amended in 2006)[40] which aims to prevent and control epidemics in Botswana. The enactment of the Health Act is the government's initiative to promote health through the provision of hospitals, clinics and skilled health personnel. However, there is no specific provision for HIV and AIDS in the Act. In addition, section 5 of the Act makes notification of certain specific diseases by a health officer to

33 *Op. cit.* n. 3, Chapter 5.
34 *Op. cit.* n. 4, Table 3: National Composite Policy Index, Trend Analysis, Human Rights, NACA, Gaborone, 2007, p. 16.
35 *Op. cit.* n. 16, Vol. 3; K.D. Ogile, *HIV/AIDS and the Law*, Printing and Publishing Company, Gaborone, 1999, p. 5.
36 *Op. cit.* n. 4, p. 24.
37 Constitution of Botswana, Part-II.
38 Industrial Court case no. 35 of 2003; see also Court of Appeal Civil Appeal no.37 of 2003 pp. 6-7; *op. cit.* n. 16, Vol. 4, pp. 12-13.
39 *Op. cit.* n. 28.
40 Chapter: 63.01.

the Ministry of Health, compulsory. HIV/AIDS, however, is not classified as a disease which requires notification. Moreover, anti-retroviral drugs are being administered to the infected without strict legal regulation in place.[41]

As the law in Botswana currently stands, it does provide for the general right to life under the Constitution which includes the right to live with dignity, freedom and safety.[42] The Constitution further prohibits subjecting any person to inhuman or degrading treatment. People living with HIV/AIDS have the right to be treated with respect and dignity like any other person in the society. The laws permit prosecution for the wilful transmission of infectious diseases, but this can be difficult to prove. It requires proof that the individual knew his/her own HIV status and may also require proof that the individual was aware of the high risk of infection and had vile intent to infect others.[43]

The National Policy on HIV and AIDS represents the Government of Botswana's plan to control the spread of HIV/AIDS and reduce its negative impact on society. While promoting personal responsibility, it recognizes the need for respect of human rights, privacy and self-determination; it expressly provides for counseling, consent and confidentiality and envisages non-discrimination in relation to HIV/AIDS.[44] It also provides guidelines for protecting human rights in a variety of contexts.

So far as vulnerability is concerned, the policy has established that some groups such as children, young people, women and sexual minorities are at greater risk. It highlights children's right to education as well as to appropriate health care and prevention information. It notes that women are particularly vulnerable to infection '*because of a complex mix of discrimination, economic deprivation, cultural and biological factors*'.[45]

It mentions that people involved in same-gender sexual activity may be particularly vulnerable; homosexual activity is still illegal in Botswana.[46] It is thus difficult for public health managers and policy-makers to reach out to homosexuals with proven means of prevention like condoms.

41 D. Ntseane, K. Solo, *Social Secuirty and Social Protection in Botswana*, Bay Publishing, Gaborone, 2007, p. 113.

42 Section 4 of the Constitution of Botswana; see also *Sarah Diau v Botswana Building Society* IC 50/2003 (unreported); *Rapula Jimson v Botswana Building Society* IC 35/2003 (unreported); *Botswana Building Society v Rapula Jimson*, Civil Appeal No 37, 2003. (unreported)

43 Constitution of Botswana Sec. 5 (g); Penal Code of Botswana Sec. 142(2); Public Health Act Sec. 11.

44 S. Puvimanasinghe, 'Lest We Do Not See The Wood For The Trees: Human Rights and Routine HIV Testing', *The Botswana Review of Ethics, Law and HIV/AIDS*, Vol. 1, No. 1, 2007, p. 67; see also *op.cit.* n. 24, para. 1.7 and para 6.

45 *Op. cit.* n. 24, *Ibid.* (1998-2004).

46 Sections 164-167 of the Penal Code of Botswana.

In relation to the rights of people who are gay, lesbian and trans-gendered, there are no policy provisions that specifically accommodate the reproductive health rights of such people so far.[47]

Equality means equal concern and respect across differences; it does not pre-suppose the elimination or suppression of differences. It is further submitted that respect for human rights requires the affirmation of self, not the denial of it.[48] Differences, therefore, should not be the basis for exclusion, marginalisation and stigma. Thus, it is important to stop discriminating against marginalised sexualities and include them in the national fight against HIV/AIDS.

As for the right to employment and allied rights, according to the HIV/AIDS Policy, people with HIV/AIDS should have the right to confidentiality in all aspects of their employment, be it pre-employment or workplace testing.[49] The Industrial Court of Botswana has considered a few cases involving HIV.[50] These cases give us some idea of how current employment law and the court's equity jurisdiction treat HIV/AIDS issues in the workplace. However, since there is no law in Botswana that specifically addresses HIV/AIDS and employment, it is unclear how the courts may treat other HIV related issues in the future.

The policy also notes that no restriction should be placed on HIV-positive travellers into Botswana and that no HIV test should be required for entry. The guidelines under section 6.5 aim to protect the rights to freedom of movement, non-discrimination, health, education and information.[51] However, while the National Policy on HIV/AIDS is a document of national importance, being only a policy statement, it does not have the strength and enforceability of law.[52]

There is no law in Botswana that specifically targets social security and HIV/AIDS. The need for social security is more pertinent to those already affected by the disease. The National Policy underscores the need to utilize the social protection system to address the consequences of the pandemic but the idea of social protection is still underdeveloped and fragmented, with no underlying policy to guide its implementation. Conversely, no law has been passed so far that encompasses social security, particularly for those more vulnerable to the epidemic.[53]

47 *Kanane* v *The State* (6) 2003 BLR 2.

48 I. Currie, J. De Waal, *The Bill of Rights Handbook*, Juta and Co.,Wetton, SA, 2005, Chapter 9: *Equality,* pp. 229-272.

49 *Op.cit.* n. 24, ss. 6.2-6.4; see also Central Statistics Office, *Botswana AIDS Impact Survey (BAIS II)* (2004); DITSHWANELO/The Botswana Centre for Human Rights and The Botswana Red Cross Society, Botswana HIV/AIDS & Human Rights Charter, adopted in Kasane, 15 September 1995; revised in Gaborone, 13 September 2002, p. 5.

50 *Op. cit.* n. 42, IC Case No. 35, 50 and 68/87 of 2003.

51 *Op. cit.* Section – 6.5, HIV/AIDS and Travellers.

52 *Op. cit.* n. 35, vol. 3, pp. 22-24.

53 *Op. cit.* n. 41, p. 113; *op. cit.* n. 35.

Besides policy, there are a number of agencies of the government of Botswana which are working "to articulate, disseminate, and educate the public at large on agreed national priorities and strategies within the scope of Vision 2016" and:

> to provide clear guidance for Ministries, districts, NGOs, and the Private Sector to enable them to work in a collaborative manner in achieving the intended goal of the National Response to HIV/AIDS: to eliminate the incidence of HIV and reduce the impact of AIDS in Botswana.[54]

Botswana's National Strategic Framework for HIV/AIDS makes provision for a 'Strengthened Legal and Ethical Environment' as one of its main goals through creation of a supportive human rights-based environment conforming to international standards for the implementation of the national purpose.[55] The Botswana HIV/AIDS and Human Rights Charter,[56] though not a legal document which seeks to assert a set of legally enforceable or actionable claims, is a statement of the aspirations of a particular group, namely PLWHAs. The Charter emphasizes that the group have legal, civil, political, social and economic rights.

Little doubt exists with regard to Botswana's status as an exceptional case of political and economic success in post-independent Africa. However, the fact that Botswana has acceded to only a few International Human Rights instruments and its failure to ratify several conventions that it is a signatory to, and bring its domestic legislation in line with them, impacts negatively on its achievement of international standards of human rights. Although the Bill of Rights enshrined in the Constitution of Botswana incorporates international human rights instruments, the country's national law and its application and enforcement by the courts have not been consistent. The country has excelled in establishing a workable relationship with the international community and organisations, in drafting promising policies to deal with the HIV/AIDS pandemic. In this scenario, however, the major challenges confronting Botswana are issues related to effective implementation of the basic rights of all concerned. There appears to be a gap between the international, regional and national commitments and Botswana's legal policies.[57] The most significant challenge in the HIV/AIDS pandemic is to bring about behavioral change to reduce the rate of new infections.

54 NACA, Botswana National Strategic Framework for HIV/AIDS, 2003-2009, 2003, pp. 8, 9.

55 Puvimanasinghe, *op.cit.* n. 44, p. 67.

56 *Op. cit.* n. 49. See also S.Puvimanasinghe, *op.cit.* n. 44.

57 Statement from *Epidemic of Inequality: Women's Rights and HIV/AIDS in Botswana & Swaziland - A Report by Physicians for Human Rights,* Physicians for Human Rights, Cambridge, 2007, available at http://physiciansforhumanrights.org/library/report-2007-05-25.html

To elaborate further, there is ample research[58] which provides evidence that socio-cultural factors influence men's and women's views on sexuality. Their access to information and health services affects reproductive health and well-being, including protection from HIV infection.

Additionally, in Botswana traditional culture dictates that women have little control over their bodies, and that men are 'in control' of sexual life; women's social position and traditional attitudes have blocked efforts to empower them to combat the disease. Early on, HIV/AIDS programs in Botswana focused on women in preventing transmission of the disease, especially to children. But the challenges women face in society are long term and require cultural change, access to education, economic empowerment and reform of the legal system.[59] A landmark change occurred early in 2005, when in an outstanding effort to empower women, the Government of Botswana approved the Abolition of Marital Power Bill which abolished the unwritten rule that gives a man control over his wife. However, the percentage of women (out of marriage) in the country is considerably higher than married women, who seek the protection of the Bill. So a larger section of women remain susceptible to *transactional* sex, for money or status, and often have no choice but to comply with a partner's wishes even in risky situations, for instance in relation to use of condoms when she is unsure of his positive status. Migration also plays a role in exposing women to the risk of HIV infection.

It is unfortunate that there are no specific laws that address HIV/AIDS in relation to any group that is most vulnerable to the disease despite the fact that research reports have clearly established the link. Recommendations to the concerned authorities have been made from time to time. DITSHWANELO, the Botswana Centre for Human Rights made the following Press Statement in 2005:

> In traditional Botswana society children are still perceived as the 'property' of their parents. Consequently, children are largely subject to the arbitrary exercise of power in unequal adult-child relationships, increasing their vulnerability and heightening the need to develop a rights-based culture and legislation. Creating child-centred laws which are in line with Botswana's international obligations will enable children, in the spirit of *Botho*, to actively participate and contribute to the fulfillment of the goals and aspirations of Vision 2016.[60]

58 *Op. cit.* n. 20; see also R.D. Mueller, 'The Sexuality Connection in Reproductive Health', *Studies in Family Planning,* Vol. 24 Issue 5, 1993, pp. 269-82.

59 Botswana Institute for Development Policy Analysis (BIDPA), *Study on Knowledge, Attitude and Behaviour toward HIV/AIDS in The Vocational Training Sector*, BIDPA, Gaborone, June 2005.

60 DITSHWANELO, Press Statement on the Commemoration of the Day of the African Child, DITSHWANELO, Gaborone,16 June 2005.*Botho* is a Setswana word, conveying the Botswana cultural concept of humanity and respect for all.

Despite all efforts made in this area, the fact remains that human rights abuses in the form of rejection, humiliation, stigma, fear, exclusion, marginalisation, and discrimination associated with HIV/AIDS are still a harsh reality in many communities. It is a well documented fact that lack of respect for human rights at personal and societal levels is directly associated to individual and collective risk of exposure and to availing of post-infection care and support as in the case of commercial sex workers for instance. Discrimination against people living with HIV/AIDS is counter-productive to public health efforts.[61] A study report[62] released very recently by Physicians for Human Rights (PHR) connects widespread discriminatory views against women in Botswana and Swaziland to sexual risk-taking and, in turn, to very high HIV prevalence.

A statement by Karen Leiter, lead investigator of the study says:

> According to the PHR research, the very fear of being subject to HIV-related stigma (as opposed to the actual experience of it), being abandoned by friends or shunned at work was pervasive. For instance in Botswana, 30% of women and men believed that testing positive and disclosure would lead to the break up of their marriage or relationship.[63]

The authors of this paper fully support the observations of Leiter, that HIV/AIDS interventions focused solely on individual behaviour will not address the factors creating vulnerability to HIV for women and men in Botswana, nor protect the rights and assure the wellbeing of those living with AIDS. Further, leaders, with the assistance of donors, are obligated under international law to change the inequitable conditions faced by women, people living with HIV/AIDS and other vulnerable groups.

Conclusion

The fundamental linkages between HIV/AIDS and human rights have been well understood by all stakeholders, whether those directly affected, their governments, policy-makers at the international level, or the public at large. The importance of bringing HIV/AIDS policies and programs in line with international human rights law is generally acknowledged but, unfortunately, rarely carried out. Planners, program managers and service providers need to become more comfortable in using human rights norms and standards to guide the actions taken by governments in all matters relating to HIV/AIDS.

61 *Op. cit.* n. 56.
62 *Ibid.*, p. 641.
63 Physicians for Human Rights, *op. cit.* n. 57, presented in the Journalists' Telephone Conference Call, University of Botswana, 28 May 2007.

Governments are responsible for safeguarding rights directly, as well as for ensuring that favorable conditions exist for people to realize their rights. So far as Botswana is concerned, on the one hand, people infected and affected by HIV/AIDS need to be informed about those human rights that are provided within the country's national and international framework, and on the other, there is a dire need to identify areas where there is a gap and to lobby for change. Finally, there is a need to initiate change in an effort to move concretely towards a rights-based approach to HIV/AIDS. Both the government and the people of Botswana should recognize that the nation is presently facing a crisis of unprecedented proportions in the form of HIV/AIDS. If no major steps are taken forthwith, this crisis threatens to negate much of the development achieved in the country since independence in 1966. Adhering to progress trends towards achieving all the Millennium Development Goals, and ensuring that there is adequate progress in crucial areas, is a major challenge facing Botswana, today.