Dying of Sadness:
Gender, Sexual Violence and The HIV Epidemic

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Since its inception, the HIV and the Development Programme has drawn attention to the complex and dynamic relationship which exists between the HIV/AIDS epidemic and development. Many of the commonly acknowledge impediments to development, such as social and economic inequality, environmental degradation, political instability, civil disorder and the absence of good governance are also key driving forces behind the spread and unfolding of the epidemic.

Through an extensive range of publications, and in particular through its Issues Papers, the Programme has encouraged consideration of the epidemic in relations to critical aspects of development.

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The view expressed in these papers are those of the authors and may not necessarily reflect those of the United Nations Development Programme. We encourage reproduction of the materials and welcome acknowledgement, comment and feedback.

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"I was not badly wounded, but I was hurt and could not walk properly. I still wonder, even today, if I have been given AIDS. I have never seen a doctor because I have no money."

"It is as if we are now beginning a new life. Our past is so sad. We are not understood by society...We are not protected against anything. Widows are without families, without houses, without money. We become crazy. We aggravate people with our problems. We are the living dead. "

"Many women begged to be killed during the genocide. They were refused and told ‘you will of sadness’.”

Survivors of the Rwandan Genocide

"...women and men, boys and girls of all ages are at sexual risk - particularly when the purpose is to eliminate another ethnic group. The rape of men and their sexual mutilation are surprisingly common but vastly underreported. Men rarely seek direct help for such experiences, but their effects may be manifested later in post-traumatic stress."

Long 1997 p. 130
Summary

UNAIDS estimates that by December 1997, 30.6 million people around the world had been infected with HIV, with more than 70% of these infections occurring through unprotected sexual intercourse.

The proportion of these infections which is attributable, directly or indirectly, to sexual violence is unknown. Nonetheless existing evidence on gender and sexual inequality, together with data on the distribution of HIV among specific groups and locations, and available information on the nature and scale of sexual violence (particularly against women and girls), suggest that it is likely to be significant.

This preliminary overview of available literature suggests that, within the context of gender and the HIV epidemic, sexual violence is a complex phenomenon with multiple determinants, consequences and manifestations.

In the short-term, effective responses require clearly defined strategies which are locally relevant and sensitive, which provide support services for victims, including recourse to justice and the punishment of perpetrators.

Longer-term strategies need to be based upon consideration of both the specifically gendered and sexualised nature of this violence and the need to address these at the level of community and culture rather than of individual perpetrators and victims. Much may be learned from the accumulated experience of activism in relation to gender and sexuality politics and human rights, humanitarian relief and social and economic development.
I Defining Sexual Violence

The term "sexual violence" often appears in the literature but its definition is broad and the term is used to describe rape by acquaintances or strangers, by authority figures (including husbands), incest, child sexual abuse, pornography, stalking, sexual harassment and homicide.

Definitions are inherently normative. Defining sexual violence too broadly can reduce discussion to the level of the rhetorical, and risks obfuscating the specifically sexualised nature of the violence and associated trauma. On the other hand, defining sexual violence too narrowly may fail to reveal the sheer diversity and scale of the problem and may lead to inappropriate or ineffective policy responses.

At its most fundamental, sexual violence describes the deliberate use of sex as a weapon to demonstrate power over, and to inflict pain and humiliation upon, another human being. Thus, sexual violence does not have to include direct physical contact between perpetrator and victim: threats, humiliation and intimidation may all be considered as sexually violent when they are used with the above purposes.

A number of international agreements and treaties, (see Annex 1) legitimise action in relation to gender, sexual violence and the HIV epidemic. However wide disparities persist between universal declarations and local realities. Many societies implicitly (or even explicitly) tolerate and condone sexually violent behaviour under specific circumstances: for example heads of household (usually males) may abuse others (wives, dependent relatives, children and servants) more or less with impunity.2

Furthermore, while sexual violence appears to occur in most societies, it does so in quite different ways which in turn have significant implications for responses in terms of programming and policy. For example, the mass rape of women by soldiers 3 during conflict situation is different from mass rape of men, and solitary acts of sexual violence in peacetime may have quite different implications from rape committed by acquaintances or by spouses (still far from universally recognised as a criminal offense).
The Preliminary Report of the Special Rapporteur on Violence Against Women

The Preliminary Report of the Special Rapporteur on Violence Against Women (1994) argues that women’s vulnerability to violence is determined by their sexuality (resulting, for example, in rape or female genital mutilation (FGM)), from their relationship to particular men (domestic violence, dowry deaths), and from membership of groups where violence against women is a means of humiliation directed at specific groups (e.g. mass rape in conflict situations).

Violence can occur at any stage in the lifecycle (“from womb to tomb”) and while some forms of violence are region-specific (e.g. FGM, bride burning, virginity tests), most are universal. Evidence suggests that the earlier the point in the life-cycle at which violence occurs, the more enduring are its effects.

The Report argues that violence against women is reinforced by doctrines of privacy and the sanctity of the family, and by legal codes which link individual, family or community honour to women’s sexuality. However the greatest cause of violence against women, it is argued, is government tolerance and inaction. Its most significant consequence is the fear which inhibits women’s full social and political participation.

Since the Preliminary Report was prepared, the Special Rapporteur has also conducted country visits to both Haiti and Rwanda.

II. The Scale of Sexual Violence

Violence against women and girls occurs on a vast scale, and specifically sexually violent acts figure prominently. Available evidence suggests that at least one in five of the world’s female population has been physically or sexually abused at some time in their lives. Violence is as significant a cause of death and incapacity among women of reproductive age as cancer, and a greater cause of death than traffic accidents and malaria combined.

Some data exists in relation to sexual violence against men and boys, suggesting the vulnerability of specific groups of men and boys (i.e. those who occupy subordinate positions in relation to other men), of specific settings (all-male institutions such as prisons and the military) and of specific contexts (conflict situations). Women are most likely to be assaulted within the confines of their own family and household, and are more likely to be injured, raped or killed by a current or former intimate partner than by anyone else.
Available data suggest that:

- Between 16-52% of women throughout the world have been assaulted by an intimate partner.
- In the USA, ten women are killed every day by their partners with 74% of these deaths occurring after the women have left the relationship.
- A study of court records in Zimbabwe revealed that 59% of homicides of women were committed by the victim’s intimate partner. In Russia nearly half of all murder victims were women murdered by their male partners.
- In Papua New Guinea, 18% of all urban married women had to seek hospital treatment following domestic violence.
- In India, between 1988 and 1993 more than 20,000 women were murdered or committed "suicide" because they were unable to meet demands for increased dowry.
- Seventy percent of the 22,000 divorces in Vietnam during 1991 were sought because of violence.
- In rural China, suicide is thought to account for 30% of healthy years of life lost and in Sri Lanka death from suicide is five times the rate of death from infectious diseases.
- In urban Maharashtra and Greater Mumbai, one in every five deaths among women aged between 15-44 is from "accidental burns" and for younger women this figure is one in four.
- Globally, at least 10-15% of all women report being forced to have sex and that considerable proportions of the victims of sexual assault are less than 15 years old.

### III. Sexual Violence in Conflict Situations

In situations of conflict, the risk of sexual violence increases dramatically with the breakdown in law and order, large numbers of mobile, vulnerable and unaccompanied women and children. Men and boys are at risk of being forced to join militia groups. Socialisation into military culture, which often demonstrates male power at its most brutal, may involve sexual violence. Brothels, which may include "enemy" women in conditions of sexual servitude, are likely to flourish in or near combat zones. In many countries rates of HIV infection are considerably higher among military personnel than among the population generally. The very real possibility of death in combat may serve to distance men from the more remotely perceived threat of HIV infection.

Conflict situations make girls and women especially vulnerable in multiple ways. "Forced marriages" (more akin to sexual slavery than to any form of consensual union), coerced sex and voluntary remarriage are all common in conflict situations where men and women have lost partners. Rape may be used by opposing forces as an instrument of terror or as a symbol of victory. The loss of homes, income and social support deprives women and girls of the capacity to generate income and they may be forced into transactional sex in order to secure their lives (or those of their husbands or children), escape to safety, or to gain access to shelter or services (including the distribution of food). In transit, refugees who are sexually active (through choice or necessity) will be exposed to different populations with differing levels of HIV infection.
It is reported that between 250,000 and 400,000 women were raped during the 1972 war for independence in Bangladesh. More than eight hundred rapes were reported to have been committed by Indian security forces against women in Jammu and Kashmir. There is evidence that rape has been used as a tool of political repression during specific periods of dictatorship in Haiti. It was estimated that since fighting began in April 1992, between 20,000 and 50,000 Muslim women were raped in Bosnia, many of whom were held in so-called "rape camps" where they were forced to conceive and bear Serbian children against their will.

In pre-genocide Rwanda, HIV infection rates were estimated at 25% (and considerably more than 35% among the military). The conflict itself created large numbers of refugees, exposing women and girls to further risk, and contributing post-genocide to a sense of fatalism among surviving women. While it is certain that some women were infected through rape the exact proportion or numbers will never be known. To provide some sense of the scale of rape committed during the genocide it is believed that every surviving female had been raped. Some survivors report that their persecutors told them that they had been allowed to live so that they might "die of sadness". A survey of 304 survivors reported that 35% had become pregnant following rape and it is estimated that between two and five thousand "enfants de mauvais souvenir" (children of bad memories) resulted from rapes committed during the genocide.

Within refugee camps the risk of infection may still be significant. In such situations with large concentrations of unemployed, traumatised and dispirited men, rape is a common occurrence. Moreover many women in such situations will be less likely to have the ‘benefit’ of male protection and may be even more vulnerable to assault as a result. There is likely to be little recourse to justice, and those charged with responsibility for administering it may themselves be implicated in abuse. The design of camps (intended as a refuge) may inadvertently increase vulnerability. For example communal latrines, inadequate lighting, insensitivity to internal power dynamics among refugees, lack of protection for those who collect wood or water, may combine to render women and girls even more vulnerable to assault.

IV. Determinants of Sexual Violence

Attempts to explain sexual violence in terms of nature, biology or evolution, not only over-simplify a complex phenomenon, but in effect (if not intention) perpetuate the problem by implying that it lies beyond human control.

Sexual violence is a gendered phenomenon: its nature and extent reflect pre-existing social, cultural and economic disparities between men and women. The relationship between victim and perpetrator reflects existing power differentials or struggles between people: for example between husbands and wives, between older men and younger men or children, between sex workers and clients or police, or between members of particular ethnic groups.

In the same way that sexual violence mirrors gender inequalities so it reflects other forms of social inequality. Far from being universal, sexual violence is clearly associated with specific social settings and circumstances: in particular those characterised by social and political conflict and the breakdown of law and order which can occur in their wake; situations in which relations are hierarchically structured in terms of dominance and submission (most commonly reflected in
terms of gender relations but possibly in other social or political rivalries). The vast majority of sexually violent acts are committed by men, whether against women, children or other men.

The role of substance use, particularly alcohol, in relation to sexual violence is multi-faceted and complex. It is also gendered. Particular substances, e.g. alcohol, may affect individual behaviour (for instance in relation to disinhibition or aggression) while the social settings in which they are consumed, for example exclusively male environments, may implicitly or explicitly condone sexually violent behaviour. A study in New York City revealed a dynamic and mutually–reinforcing cycle of trauma and abuse in relation to the vulnerability of female crack users to sexual violence.

However women may also be implicated as accomplices or as perpetrators: within the family, mothers in law may abuse in-marrying women. Research in secondary schools in Harare revealed that 30% of 549 pupils reported sexual abuse: half of whom were boys reporting abuse by female perpetrators. On a larger scale, evidence clearly points to involvement of women (including teachers, journalists, nurses) in the Rwandan genocide whether by inciting others to commit violence, by benefiting from the violence or by direct personal involvement.

The sexual victimisation of men and boys occurs and does so on a considerable scale in certain situations. However, it is highly likely that the shame and stigma associated with such violence will result in massive under-reporting. Responses to sexual violence against boys and men also reveal the extent to which sexual victimisation and passivity are perceived, in many cultures, to be utterly inconsistent with masculine gender and sexual identities.

While there is always the danger that highlighting the need to consider male sexual victimisation may distract attention from the more substantial problem of sexual violence against women and girls, this does not necessarily follow: understanding more fully the specifically gendered and sexual dimensions of sexual violence, without resorting to uninformed generalisations and gender and sexual stereotypes, may prove ultimately to be illuminating in addressing the problem of violence more generally.

Evidence from cross-cultural anthropological studies suggests that male sexual aggression and violence are not biologically inevitable, but rather that they occur when:

"..*masculinity is associated with aggression and sexual conquest, domineering sexual behaviour and violence become not only a means of structuring power relations between men and women but a way of establishing power relations among men.*"

(Heise. 1995. p.130)

Or in the words of the report of the 1997 UNESCO Expert Group Meeting on Male Roles and Masculinities in the Perspective of a Culture of Peace:

"*...biological differences are biological differences, while social patterns of violence require social explanations and social solutions*"
Power is not distributed evenly among people, but according to specific social differences: for example gender, class, ethnicity, caste and religion. The resentments arising from these differences (real or perceived) may be used to justify violence.

**Violence Against Sex Workers**

In many countries, the HIV epidemic has resulted in increased blame and stigmatisation of sex workers. For many sex workers, violence from police and clients is among the most immediate of their problems.

The international Network of Sex Work Projects* proposes the need for differentiation between consensual involvement in the sex industry and forced trafficking. Anti-prostitution sanctions may actually facilitate violence against sex workers by compromising their rights and credibility as witnesses and victims (especially among migrants whose legal status may be uncertain), and by giving increased power to the police.

In Hungary, police broke up a successful sex work project, while in Russia, police violence against and extortion of sex workers is a problem. In Papua New Guinea, violence by police prompted sex workers to sue the police and to report individual officers to their wives.

Some sex work projects are campaigning for changes in the law which would allow sex workers to work safely and legally. In the meantime projects can assist sex workers in identifying potentially dangerous people, situations and places. For example, one project developed "ugly mugs" - a process in which sex workers exchange and disseminate information on uncooperative or violent clients.

Liaison between police and sex workers can produce higher levels of reporting of crimes of violence against sex workers and can help to respond to local concerns about the operation of the sex work industry.

*The Network's of Sex Work Projects (NSWP) includes sex workers and organizations which work with them in more than 40 different countries. It has dual secretariats in London and Rio de Janeiro, Brazil.

V. Consequences of Sexual Violence

In addition to the psychological and emotional consequences of sexual violence, survivors may experience physical injury, unwanted pregnancy and sexually transmitted infections. The possibility of HIV transmission may be facilitated by damage to the genital area. A study in Mumbai reported that 20% of all pregnancies among adolescents seeking abortion had occurred as a result of forced sex, while a study in Thailand reported that one in ten rape victims had been infected with a sexually transmitted disease.

The physical consequences of sexual violence may be easier to enumerate than the psychological, emotional or spiritual damage which may result and which may be devastating. In
recognition of the longer-term nature of the trauma associated with sexual violence, a specific set of symptoms, not directly related to physical injuries sustained at the time of the assault, are gaining recognition as the "Rape Trauma Syndrome" which describes a devastating form of post-traumatic stress disorder (first diagnosed among military combat veterans).

The consequences of disclosure of sexual victimisation may be disastrous and can include rejection, "social death" and further violence.

The consequences of situations of mass violence do not disappear in the post-conflict period. Rather they are borne (often in silence and shame) by survivors, by communities and by society at large. The healing of such trauma does not occur spontaneously but needs to be facilitated through sensitively provided health and welfare services for survivors and through collective mechanisms which bear witness and pursue justice for what was done.4

**Barriers to Justice**

It is generally acknowledged that the shame and stigma associated with the experience of rape, together with perceived or genuine obstacles at every step of the judicial process, result in a significant degree of under-reporting of rape and sexual assault.

Victims of such violence may be made to feel some degree of responsibility for "provoking" the attack, or guilt for being unable to defend themselves. For some violence may be perceived as virtually inevitable. Sex workers, for example, depending upon the specific context and conditions in which they work, may be especially vulnerable to violence whether from clients, managers or police and unlikely to receive a sympathetic hearing or to obtain justice.

Victims may have entirely justified fear of reprisals or else may recognise the extent to which such violence is tolerated and condoned in many societies.

The charge of rape may be seen to cast doubt upon a woman’s character (or that of those responsible for her), while the assault may be perceived to be as much upon a husband’s possession or upon a family or community’s honour, as upon a person. For example within the context of Islamic law, four male Muslim witnesses must testify before a man can be convicted and sentenced to the most severe punishment for rape. The Law of Evidence considers women incompetent as witnesses in cases of rape and grants their testimony the status of corroborative evidence.
Violence Against Sexual Minorities

In many countries, gay men and other males who have sex with males, lesbians and transgendered people face significant threats of violence (sexual and otherwise) in their daily lives which not only deprive them of basic human rights but which exacerbate vulnerability to HIV infection. In some states consenting sexual activity between adults of the same gender in private remains a criminal offense while HIV/AIDS activists may be threatened, beaten and murdered with impunity in certain countries.

For example:

- In Ecuador a group of men were arrested during a raid on a gay bar, one of whom was raped twice by inmates while in police custody.
- In Jamaica prison guards walked out in protest at plans to distribute condoms in the prison. In the ensuing violence, blamed on the inference of sex between men, 16 people are killed, many because they were assumed to have been gay.
- In Turkey the winner of a human rights award has sued police for assault drawing attention to the systematic harassment of Istanbul’s transvestite and transexual community.
- In Guatemala the murder of three transvestite sex workers in 1997 increased the social invisibility of other members of this community, thereby making an extremely vulnerable group even less accessible to HIV-related initiatives and support.
- In Zimbabwe, a country with a devastating HIV epidemic, homophobia produces significant social isolation and fear among gay men which leaves them unreached by HIV-related initiatives.
- In Argentina transvestites are detained for cross-dressing and forced to undergo HIV testing under threat of charges of attempted homicide. Activists report that transgendered women are arrested and assaulted by police solely on the grounds of their gender identity. In custody, some have been sexually assaulted.

NGOs, local and international, play a crucial role in terms of “bearing witness” to such violence. Amnesty International is increasing the attention it pays to human rights violations against sexual minorities while the International Gay and Lesbian Human Rights Commission (IGLHRC) monitors human rights abuses against sexual minorities and has extended its remit to include HIV status.

VI. Future Work

There is no reason to believe that any specific HIV-focused programme will be able to resolve the problems which have challenged development agencies for decades.

Nonetheless international experience demonstrates that there are policies and strategies which can reduce or alleviate the impact of sexual violence. These involve mutually reinforcing activity conducted at local, national and international levels.
Prevention

Sexual violence is seldom random. It is often possible to predict both likely perpetrators and potential victims. Preventive initiatives can therefore be undertaken.

Preventing sexual violence will necessitate a cultural shift in terms of gender role expectations, acceptable mechanisms for conflict resolution and the unacceptability of violence.

This will necessitate work with children to challenge gender stereotyping (e.g. masculine aggression and female passivity) and to promote non-violent conflict resolution skills. This could be reinforced by similar work with parents in relation to developing non-violent parenting and conflict resolution skills. This may need to be reinforced by sensitisation and advocacy work with existing community structures, leaders, and local agencies to promote the unacceptability of sexual violence and the adoption of appropriate social sanctions against its perpetrators.

Certain institutions may be strongly associated with "cultures of violence" and their members may be among the likely perpetrators of sexual violence. Specific targeting may therefore be necessary in order to reach military, police and security personnel or inmates and staff in custodial settings.

The relationship between the structural determinants of sexual violence and development need to be better understood. It is highly likely that the same activities which address gender inequality (including education for girls and women's access to resources including credit), poverty and sustainable livelihoods, and which promote civil society participation and good governance are also conducive to the prevention of sexual violence.

Needs of Survivors

Suitable and sustainable mechanisms are necessary to address the physical and mental health needs of the survivors of sexual violence. This may include, for example, the provision of rape crisis centres and help-lines, health services, shelters and refuges. Medical and social welfare personnel will require training in the recognition and management of the rape trauma syndrome and the acquisition of the counselling and communication skills necessary to support victims of sexual violence.

In Rwanda, WHO is collaborating with the Division of Emergency and Humanitarian Action (EHA) in addressing the particular needs of women and girls affected by violence. The project is intended to improve the accessibility of health services by training health workers and to establish a national network of health and psycho-social assistance for women. A set of training materials addressing the care and support of women affected by violence have been developed and are intended for use in other countries which are in conflict or post-conflict situations.
The Power of Resilience - Preventing Sexual Violence in South Africa

In South Africa, an innovative project is underway which is designed to explore and address a pervasive ‘culture of sexual violence’ which has taken root in many settlements over years of economic and political instability.

As part of the country’s overall process of development and reconstruction, local residents in a number of settlements were asked to define a vision for their community. Safety was prioritised by many as a critical issue reflected in the fact that, over a twelve month period, three out of every ten women across one entire local authority, including both rural and urban settlements, reported experiencing a severe form of sexual violence (with the most vicious assaults being the least likely to be reported).

This participatory project (undertaken by CIETAfrica in collaboration with the Southern Metropolitan Local Council (SMLC) and funded by the Canadian International Development Research Centre (IDRC)), is not only documenting the extent of sexually violent behaviour, but is contributing to its primary prevention by identifying specific "resilience" factors among the large number of men who are not sexually violent.

Law Enforcement & Judicial Process

Given the extent of under-reporting and the obstacles which may exist in the judicial process, training may be necessary for law-enforcement, custodial officers and the judiciary as priority areas. In particular, negative and unsympathetic attitudes on the part of police officers who deal with cases of sexual violence are a considerable deterrent to reporting and make training for officers essential. Survivors of sexual violence may also need to be educated as to their legal rights.

Successes have been reported with the establishment of all- female rape investigation teams in Malaysia, and with the provision of "rape suites" (in the UK and USA) which provide an atmosphere that is as supportive and safe as possible.

All-women police stations have had mixed success in a number of Latin American countries. While they have undoubtedly encouraged increasing numbers of women to report assaults, they have sometimes been overwhelmed with broader welfare demands to which they cannot respond. Work in such settings may also have low status within macho police culture and may lead to staff de-motivation and low morale.

In South Africa, the development of specialised sexual offense courts staffed by especially trained professionals country produced conviction rates almost 20% higher than other courts. Education in legal rights and the provision of legal services for survivors of violence were also found to be necessary.
Conflict Situations

The real and significant risk of sexual violence in conflict situations must be recognised and whenever possible, safe transit provided for unprotected women and children and priority for resettlement in safer locations given to those who are especially vulnerable to assault.

The occurrence of sexual violence within conflict situations can be anticipated. This can be taken into consideration in the design of camps (in order to avoid adding to the vulnerability of inhabitants) and services within them (including security and law enforcement).

Capacity can be developed among health and social service staff within refugee camps to respond to specific health needs among those who have been assaulted: including for pregnancy testing, STD treatment and counseling.

Advocacy on behalf of victims with community leaders can be undertaken for their social reintegration. Safe spaces can be made available where survivors can talk confidentially.

In conflict situations and their aftermath, in addition to the need for monitoring and reporting human rights abuses, specific judicial processes may need to be instigated to prosecute the guilty. It may also be necessary to create mechanisms which are designed explicitly to "bear witness" and to contribute to reconciliation and the re-constitution of civil society.

Involvement of NGOs

The non-governmental sector has a crucial role to play in terms of addressing the issue of sexual violence. For example at the community level, CBOs and NGOs can explore and raise the extent of the problem. They can develop and implement specific educational and advocacy activities.

Concerns relating to violence together with its prevention and the mitigation of its consequences can be integrated within ongoing development activities for example those relating to human rights, governance, gender, sustainable livelihoods, social welfare and health, micro-financing and credit.

At the national level, advocacy activities may be necessary to raise awareness of the problem, to highlight the barriers which impede the justice process, including the review of existing legislation and the introduction of new laws or prosecution policies.

At both national and international levels, NGOs have a critical role to play terms of monitoring and reporting sexual violence as abuses of human rights, in vigorously promoting the rights of victims and prosecution of offenders, and in reminding governments and international agencies of their responsibilities within the context of UN policies and charters5, and the plans of action of the relevant international conferences.
International Bodies

Within the context of the UN, the conceptualisation of sexual violence against women during conflict situations has gradually move towards a recognition of sexual violence as a violation of international human rights (see Annexes 1 and 2).

The conflict in the former Yugoslavia drew attention to the scale of sexual atrocities which can occur during armed conflict. Sexual violence was also a prominent feature of the Rwandan genocide. The Tribunals established to prosecute the perpetrators in each situation have had limited success so far.

In the case of the Yugoslavia Tribunal, its capacity to address sexual violence has been enhanced through a specific set of actions including: the appointment of a gender specialist and the establishment of a specific team to investigate sexual violence, together with the adoption of measures in support of victims and witnesses, including the establishment of a Victims and Witnesses Unit. The absence of such protective measures in the case of the Rwanda Tribunal appears to have severely hampered its ability to undertake successful prosecution for sexual violence. July 1998 the international community finally agreed to the establishment of an international criminal court. It will be important to ensure that its mandate explicitly includes sexual violence.

International Human Rights

As a result of concerted advocacy activity, the 1993 UN World Conference on Human Rights (Vienna) resulted finally in recognition of violence against women as a human rights issue. In the following year, the Commission on Human Rights appointed a Special Rapporteur on Violence Against Women.

The 1996 Second International Consultation on HIV/AIDS and Human Rights convened by UNAIDS and the Office of the High Commissioner for Human Rights produced a set of twelve guidelines for member states to assist in designing programmes and policies which protect and promote human rights in the context of the HIV/AIDS epidemic (see Appendix 2).

In order to facilitate the use of these guidelines, the International Council of AIDS Service Organisations (ICASO) has developed and Advocate’s Guide together with an NGO Summary of the International Guidelines.

UNAIDS has produced a Guide to the United Nations Human Rights Machinery for AIDS service organisations, people living with HIV/AIDS, and others working in the area of HIV/AIDS and human rights. The guide is a comprehensive resource intended to assist the above groups to access the UN human rights bodies and to be critical players in ensuring that HIV/AIDS remains on the agendas of these bodies. The Guide contains the texts of relevant international instruments including the Universal Declaration of Human Rights, Convention on the Elimination of all forms of Discrimination against Women and the Convention on the Rights of the Child.
Annex 1

Sexual Violence - International Conferences and Conventions

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women recognised violence against women as a human rights problem, a theme revisited and reinforced at subsequent international conferences and events:

- 1993 World Conference on Human Rights (Vienna)
- 1994 International Conference on Population and Development (ICPD- Cairo)
- 1995 World Summit for Social Development (WSSD – Copenhagen)
- 1995 Fourth World Conference on Women: Action for Equality, Development and Peace (Beijing)
- 1995 Crime Congress (Cairo)

The Declaration on the Elimination of Violence Against Women, adopted by the UN General Assembly in 1993, acknowledges that violence against women occurs both within the family and within the general community and that it may be perpetrated or condoned by the state. The Declaration defines gender-based abuse as:

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

The definition goes on to distinguish between physical, sexual and psychological violence that:

- occurs in the family, including battering; sexual abuse of female children in the household; dowry-related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation;
- occurs within the general community, including rape; sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women; and forced prostitution;
- is perpetrated or condoned by the State wherever it occurs.

The 1993 World Conference on Human Rights laid extensive groundwork for eliminating violence against women, including the subsequent appointment of the Special Rapporteur on Violence Against Women. The 49th World Health Assembly in 1996 recognised violence as a public health priority and endorsed the recommendations of prior international conferences to tackle the problem of violence against women and girls, and to address its health consequences.
Annex 2

International Guidelines on HIV/AIDS and Human Rights

1. States should establish an effective national framework for their response to HIV/AIDS which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities across all branches of Government.

2. States should ensure, through political and financial support, that community consultation occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation and that community organizations are enabled to carry out their activities, including in the field of ethics, law and human rights, effectively.

3. States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations.

4. States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

5. States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.

6. States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of qualitative prevention measures and services, adequate HIV prevention and care information and safe and effective medication at an affordable price.

7. States should implement and support legal support services that will educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health compliant units and human rights commissions.

8. States, in collaboration with and through the community, should promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.
9. States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance.

10. States should ensure that government and private sectors develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.

11. States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV/AIDS, their families and communities.

12. States should cooperate through all relevant programmes and agencies of the United Nations system, including UNAIDS, to share knowledge and experience concerning HIV-related human rights issues and should ensure effective mechanisms to protect human rights in the context of HIV/AIDS of the international level.

Note: These guidelines were drafted at the Second International Consultation on HIV/AIDS and Human Rights, organized by UNAIDS and the UN High Commissioner for Human Rights, Geneva, September 1996.
Endnotes:

1. For example in many legal codes rape is defined exclusively in terms of penile-vaginal penetration. In effect, this reduces other kinds of penetration (and male victims) to the status of lesser offenses.

2. This is especially likely to be the case in situations where migrant laborers are recruited as domestic servants and their legal status in the country is entirely dependent upon their continuing employment. Such conditions may be a virtual license to abuse. Numerous such cases have been documented by international human rights agencies.

3. While sexual offenses have been identified as war crimes since the 1940’s it was only in 1995 that rape was specifically acknowledged as a distinct and prosecutable crime of war. Ehloe (1998) distinguishes between 3 different types of institutionalised military rape: recreational (the assumption that soldiers need constant access to sexual outlets), national security (when the police and military use rape to bolster state control over a population) and mass rape as an instrument of open warfare. Cynthia Enloe "Does Khaki Still Become You: The Militarisation of Women’s Lives ,revised edition, Berkeley; University of California Press, forthcoming 1998.

4. For example: the Truth and Reconciliation Commission in South Africa and the International Tribunals on the former Yugoslavia and on Rwanda.

5. In recognition of the extent of abuse of human rights and fundamental freedoms in relation to HIV/AIDS International Guidelines on HIV/AIDS and Human Rights have been produced jointly by the Office of the High Commissioner for Human Rights and UNAIDS.
References & Suggested Reading


UNAIDS. The UNAIDS Guide to the United Nations Human Rights Machinery for AIDS service organisations, people living with HIV/AIDS.


