12 Criminalisation of Deliberate Transmission of HIV: A Subtle Perpetuation of Gender Inequality in Zimbabwe?

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1 Introduction and Background

The sudden wake of the HIV epidemic in the 1980s, when most people had a poor understanding of the epidemic, led to an increase of HIV criminalisation laws. Yet, decades later, with the epidemic well understood, the laws remain in force.[1] Zimbabwe, which has the sixth highest HIV prevalence in sub-Saharan Africa at 13.5 per cent, with 1.3 million people living with HIV in 2016,[2] is no exception. However, suffice to say, in 2016 new infections dropped to 40,000 from 79,000 in 2010, with behaviour change communication, high treatment coverage and prevention of mother-to-child transmission services thought to be responsible for this decline.[3] Be that as it may, an estimated 720,000 women are living with HIV in Zimbabwe.[4] Gender inequality – which is a common feature within relationships and marriages, courtesy of the patriarchal nature of the African society (and Zimbabwe is no exception) – is the main cause for HIV infections.[5] For instance, according to the 2015 Zimbabwe Demographic Health Survey Report, only 69 per cent of men believe a woman has the right to refuse sexual intercourse if she knows he has sex with other women.[6] In addition, although in the minority, 23 per cent of females believe women do not have the right to ask their partner to use a condom if he has a sexually transmitted infection (STI).[7] This shows how women are still regarded as perpetual minors whose role is to be subordinated to their male counterparts.

Zimbabwe, in light of the high HIV prevalence rate, also introduced HIV criminalisation laws that prohibit the deliberate transmission of HIV.[8] The introduction of HIV specific laws in Zimbabwe and the rest of the world was meant[9] to deter and thus prevent the spread of HIV by aggravating charges against HIV-positive accused persons who deliberately transmit to third parties. As already mentioned above, the criminalisation laws were put in place when HIV was barely understood and the laws are still in place. Decades later, the laws still apply without any amendments to suit the technological advancements that have been made in dealing with HIV.

Existing research has focused mainly on the impact of criminalisation on HIV prevention and behaviour change among people living with HIV or those who are at a high risk of contracting

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[1] N. Sircar, 'HIV Criminalization Laws and the Right to Health,' *Health and Human Rights Law Journal* (August 2018).
[2] UNAIDS, Aidsinfo, available at: <http://aidsinfo.unaids.org/>.
[3] UNAIDS, *DataBook* (2017).
[4] *Ibid.*
[5] E. N. Klaas, G. Tshweneagae and T. Makua, 'The Role of Gender in the Spread of HIV and AIDS among Farmworkers in South Africa', 10:1 *African Journal of Primary Health Care and Medicine* (2018).
[6] Zimbabwe National Statistics Agency, Zimbabwe Demographic and Health Survey 2015 (2016).
[7] *Ibid.*
[8] See section 79 of the Criminal Law (Codification and Reform) Act [Chapter 9:23].
[9] J. E. Cameroon, 'HIV is a Virus, Not A Crime', in Amnesty International, *Body Politics. A Primer on Criminalization of Sexuality and Reproduction* (2018).

it including women, gay men and sex workers,[10] criminalisation and the right to health,[11] constitutionality of criminalisation of deliberate transmission of HIV,[12] public health implications of criminalisation, among others. However, no research has been conducted on whether or not criminalisation perpetuates gender inequality in Zimbabwe. This paper therefore seeks to discuss the impact such criminalisation laws have on gender equality in Zimbabwe. Methodologically, the study relied on literature review and opinions of parliamentarians, magistrates and health officials. This study contributes to the debate on the impact of criminalising the deliberate transmission of HIV in Zimbabwe.

This paper has the following structure: it starts with a general introduction and background, which includes a synopsis of HIV prevalence in Zimbabwe. Thereafter, the theoretical framework is laid out. Subsequently, the paper discusses Zimbabwe's HIV criminalisation law together with cases dealt with by the judiciary. Next, the paper discusses the impact of the law on gender equality. Lastly recommendations are proffered.

2 Theoretical Framework

The research is premised on feminist legal theory.[13] The theory, *inter alia*, encompasses gendered-ness wherein laws or policies are scrutinised through gender lenses and also the theory is grounded in women exclusion, asking the 'woman question'[14] and feminist practical reasoning. Put differently, it is the study of the philosophical foundations of law and justice, informed by women's experiences. Its objective is to modify the legal system and the understanding of it to improve the quality of jurisprudence and women's lives. With the standard in law having been essentially male, almost every aspect of the law when scrutinised through gendered lenses will fall short of gendered-ness of its effects.

The paper thus seeks to interrogate the impact of Section 79 of the Criminal Law Codification and Reform Act on gender equality. The theory chosen is significant to this study as it helps to understand the impact of the law on women and thus rework the law and its approach to gender. The hypothesis is thus to the effect that Section 79 of the Criminal Law Codification is a subtle perpetuation of gender inequality. This, it is argued, is not apparent upon reading the provision. It is theorised that if an appreciation of Section 79 is made in conjunction with gendered realities, one would witness disproportionate implementation of both the law and policies that are consequential to the provision and institutional frameworks within both the health sector and the judiciary that, *inter alia*, either had different requirements as for antenatal healthcare between men and women within the health sector or a judiciary that is oblivious to the lived gendered realities of women who would have been prosecuted under the said provision that criminalises deliberate transmission. It is essential to discuss the provisions of the Criminal Code in relation to the crime of deliberate transmission of HIV.

[10] S. Burris *et al.*, 'The Criminalization of HIV: Time for an Unambiguous Rejection of the Use of Criminal Law to Regulate the Sexual Behaviour of those with and at Risk of HIV', available at: <http://ssrn.com/abstract=1189501>, accessed 23 June 2018.
[11] Sircar, *supra* note 1.
[12] G. Feltoe, 'Constitutionality of the Offence of Deliberately Transmitting HIV: Case Note on the Case of S v Mpofu & Anor CC-5-16', *The Zimbabwe Electronic Law Journal* (2016).
[13] Feminist legal theory can be regarded as a significant challenge to traditional and dominant legal doctrine.
[14] K. Bartlett, 'Feminist Legal Methods', 103 *Harvard Law Review* (1990) p. 829.

3 The Criminal Law (Codification and Reform) Act and the Judiciary

Before discussing the laws applicable to HIV criminalisation in Zimbabwe, and whether or not they perpetuate gender inequality, it is important to state that this paper was, on the 6 November 2018, presented at a national symposium in Harare sponsored and organised by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. This was before the pronouncements made by the Zimbabwean Minister of Justice, Legal and Parliamentary Affairs, Honourable Ziyambi Ziyambi, on 30 March 2019 to the effect that government was making plans to repeal clauses in the Criminal Law (Codification and Reform) Act [Chapter 9:23] which criminalise the deliberate transmitting of HIV by positive sexual partners. Minister Ziyambi indicated that the law had not served its intended purpose of reducing the spread of the virus. The Minister was quoted as follows:

> … Indeed when the legislation came into effect, the thinking there was that, we need to control the spread of HIV by criminalising those who transmit it to partners willingly. But global thinking is that the law stigmatises people living with HIV and AIDS. Studies have shown that it does not produce the intended results that it is intended to achieve and so what the ministry is going to do is repeal that section of the law ... We are looking at perhaps introducing that amendment through the Marriage Bill Act that is due to come, ...[15]

Although the government has indicated plans to repeal clauses of deliberate transmission of HIV, Zimbabwe's HIV criminalisation law which is provided for in Section 79 of the Code is still applicable. Section 79 provides as follows:

> **79 Deliberate transmission of HIV**
> (1) Any person who -
> (a) knowing that he or she is infected with HIV; or
> (b) realising that there is a real risk or possibility that he or she is infected with HIV; intentionally does anything or permits the doing of anything which he or she knows will infect, or does anything which he or she realises involves a real risk or possibility of infecting another person with HIV, shall be guilty of deliberate transmission of HIV, whether or not he or she is married to that other person, and shall be liable to imprisonment for a period not exceeding twenty years.
> (2) It shall be a defence to a charge under subsection (1) for the accused to prove that the other person concerned—
> (a) knew that the accused was infected with HIV; and
> (b) consented to the act in question, appreciating the nature of HIV and the possibility of becoming infected with it.

Zimbabwe's criminalisation law generally penalises deliberate transmission of HIV by persons who know they are infected with HIV or persons who, realising that there is a real risk or possibility that he or she is infected with HIV, intentionally transmit HIV. The wording of the provision has been criticised as too broad.[16]

The offence as provided for in Section 79 requires that an accused person has, firstly, knowledge of his HIV status and, equipped with that knowledge, has sexual intercourse with the complainant knowing that this will infect the complainant with HIV. The complainant should not, at the time s/he has sexual relations with the accused, know that the accused has HIV. In this case, it is justified that an accused person who deliberately and maliciously infects the complainant with HIV is punished severely under the offence set out in Section 79. However, this can only be done if the state proves that complainant was infected by the accused who knew

[15] *See* A. Mutema, 'Ziyambi: Government to decriminalise wilful transmission of HIV', available at <https://www.newzimbabwe.com/ziyambi-government-to-decriminalise-wilful-transmission-of-hiv/>, accessed 3 May 2019.
[16] Feltoe, *supra* note 12.

he or she was HIV positive. The problem here is that it is humanly impossible to prove in a court of law who would have infected who between the complainant and defendant in cases of deliberate transmission of HIV. As one human rights lawyer correctly pointed out:

> Judiciary can't deal with who infected who. There is no technology to generate evidence to prove that. So in most cases the person who would report first becomes the complainant. But what if the complainant is the one who infected defendant, how do you prove that?[17]

The judiciary's lack of technology to generate the relevant evidence to prosecute cases in terms of Section 79 of the Code has led to cases being declined for lack of evidence. Discussions with prosecutors at West Commonage Magistrates Court in Harare proved that mostly men report cases of deliberate transmission, especially after stumbling across anti-retroviral drugs belonging to a female partner. The cases rarely proceed due to lack of evidence. It is therefore no wonder why the government has declared its intention to delete the law criminalising deliberate transmission of HIV.

Secondly, the accused should not have knowledge of his or her HIV status but should realise that there is a real risk or possibility that he or she is infected with HIV, has sexual intercourse with another person realising the real risk or possibility that the other person will be infected with HIV. The complainant again should not know that the accused has HIV when they have sexual relations. The problem that arises in this second scenario is where the accused denies realising that there is a real risk or possibility that he or she is infected with HIV. Feltoe asks the following pertinent questions that flow from this provision:

> How will the State prove that the accused, despite his or her denial, took a conscious risk? If the accused has not been tested and told that he or she is HIV positive, would the State be able to rely on the fact that the accused, to his or her knowledge, was displaying symptoms of AIDS. Would this be enough for the State to persuade the court that the only reasonable inference was that the accused must have been aware he or she was infected with HIV and took a conscious risk?[18]

These questions show how problematic Section 79 of the Code is in as far as criminalising deliberate HIV is concerned. Suffice to say that the crux of the offence in Section 79, that is, proof of disclosure of one's HIV status at a the relevant time, is difficult to prove with certainty. In instances described by Feltoe[19] where the court is faced with an accused person who insists that they disclosed their status, and a complainant who alleges that they were never informed, the courts are always left in danger of resorting to conjecture in order to decide who between the parties will be telling the truth. As long as there exists no scientific method of determining who between two people in a sexual relationship would have gotten infected first, then the laws criminalising HIV transmission and non-disclosure will remain unjust and outrageously misplaced and serving no purpose except to exacerbate the stigma attached to HIV and the people living with it.

The failure to determine who amongst the litigants may have infected the other first may be a contributing factor to the few numbers of cases that have seen the light of day in our courts of law. What the study unearthed from the discussions made with a few members of the judiciary is that a few convictions have been made on deliberate transmission of HIV. For instance, since 2015, the Bulawayo Magistrates Court dealt with seven cases under section 79 of the Code. Of the seven cases, three complainants were female and the other four were male. Further, there

[17] Bulawayo News24, 'Pregnant HIV+ mothers face jail', 17 December 2017.
[18] Feltoe, *supra* note 12.
[19] *Ibid.*

was one conviction of 13 years imprisonment. Two cases were withdrawn before plea; two were acquitted at the end of the state's case; while as regards the last two cases further remand was denied.

It is unfortunate that the problems of the HIV criminalisation law do not end with the offence only; they also follow the defences provided. From the provision of section 79, it is a defence for the accused to prove that complainant knew that the accused was infected with HIV. This presents problems in that it is difficult, if not almost impossible, to prove that disclosure indeed took place. This is because in the handful of cases that have been entertained by Zimbabwean criminal courts, it has always been the complainant's word against the accused's word. Ultimately, it becomes difficult for the state to even prove the guilt of the accused beyond a reasonable doubt as is expected in criminal cases.

When the constitutionality of this provision was brought under scrutiny in the case of *S v. Mpofu and Another*,[20] the Constitutional Court of Zimbabwe held that:

> The legislative objective is to halt or prevent the spread of HIV/AIDS. This objective is both important and laudable. It is sufficiently important to override the right of non-discrimination and the right to privacy. Because of the grave danger to life arising from HIV infection, the measure designed to meet the objective by prosecuting those who spread the disease deliberately or recklessly is rationally connected to, and calculated to achieve, the stated objective.[21]

As legitimate as the rationale of such a provision may be, it does not really detract from the fact that there is still no basis to blame the first person to have gotten tested positive in a relationship. For instance, in the case of *Samukelisiwe*,[22] the woman found out she was HIV positive when she had gone for antenatal testing. She thus went on to disclose her positive status to her then husband. They lived in harmony for a couple of years. However, a few years after disclosure, the man turned violent. When she sought protection from the police for the domestic violence, the husband got her arrested for having deliberately transmitted the virus to him. The man got away scot-free for having physically abused the woman. The woman on the other hand was prosecuted for deliberate transmission of HIV regardless of her insistence that she had indeed disclosed her status as soon as she had found out. This case is very central in that it brings about the question of whether or not there is a nexus between having to be the first to find out about a positive status and having to be the one responsible for having brought the virus into the relationship, unless if it is in the case of serodiscordant couples.[23]

As has already been indicated, a few cases of deliberate transmission in terms of section 79 actually get to the plea stage and even fewer get to completion with either accused persons being convicted or being acquitted at the close of the state's case. It also emerged that the power dynamics within relationships influenced the decision to either report a case of deliberate transmission or withdraw such after it has been reported.[24] One magistrate indicated that she has only dealt with one case under Section 79, and the accused person was male. When asked

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[20] *S v. Mpofu and Mlilo* , Judgment No CCZ 5/2016, in which the Constitutional Court held that the provision is constitutional, clear and unambiguous.
[21] *Ibid.*
[22] 'Alone But Together', a documentary by Zimbabwe Lawyers For Human Rights where the implications of the criminalization of deliberate transmission of HIV are discussed in depth.
[23] A sexual relationship where one partner is HIV positive whilst the other is negative. In such instances, it is very obvious who would have brought the virus into the relationship unlike in instances where both partners are infected and it gets difficult to figure out who, between the parties, would have infected the other party.
[24] It will be noted that it has become the practice that a complainant can no longer withdraw a charge once a docket has been opened.

to comment on whether or not as a court they would take into account issues like literacy of the accused person, the response was "ignorance of the law is not an excuse".

At the West Commonage Magistrates Court, a number of matters were brought early 2018, but almost none of them reached completion as human rights lawyers took over and did Constitutional Court referrals. In the three matters dealt with by that local court, two had female accused persons whereas one had a male accused person. It emerged that the pattern is almost the same in these cases. The complainant stumbles across anti-retroviral drugs hidden by the accused person and then comes to know that the other party was aware of their HIV status but never bothered to disclose. In anger, the complainants usually go and report the cases to the police. Later on, after they would have calmed down, the complainants usually attempt to withdraw the charges against the accused citing, *inter alia*, that they love the accused and would like to work on their relationship. Ultimately, from the interaction with the members of the judiciary, it became clear that courts are guided by statute and rarely do they look outside the statutes when dealing with such matters. One magistrate succinctly indicated that:

> The Magistrates' court is a creature of statute. We stick to what the statute says. There is discretion obviously but the discretion is used judiciously and we are guided, in the exercise of that discretion, by what the law says.

This position negates the gender question. It also means that the normatively dynamic setting within which the people that the law professes to protect is forgotten and subsequently its influence. Ultimately, the decisions that are made are made based on the law and what the statute says without really appreciating the important questions, particularly the 'women question'.[25]

4 Impact of HIV Criminalisation Law on Women in Zimbabwe

Compared to men, women have to a much larger degree been affected by the criminalisation of deliberate transmission of HIV in Zimbabwean society. An interview with one of the leaders in the health sector revealed that prenatal testing was not mandatory, but essential for the health of both the baby and mother. She revealed that by law pregnant women should not be forced to test for HIV. However, in practice, it became apparent that most health institutions and doctors demand the HIV results of pregnant women, but do not impose the same requirements for fathers of the unborn babies. Naturally, if a woman is forced to test for HIV during pregnancy, and actually does test positive, she will have the mammoth task of disclosing her HIV status to her patriarchal husband.

Women are also affected by criminalisation of deliberate transmission of HIV because of the influence of cultural and patriarchal factors that continuously require that women be submissive to men. Lightfoot-Klein succinctly describes the situation as follows:

> Custom in Africa is stronger than domination, stronger than the law, stronger even than religion. Over the years, customary practices have been incorporated into religion, and ultimately have come to be believed by their practitioners to be demanded by their adopted gods, whoever they may be.[26]

[25] *Ibid*.
[26] Lightfoot-Klein 1989:47.

The abovementioned quotation shows how "patriarchal practices shape and perpetuate gender inequality and strip women of any form of control over their sexuality".[27] Many women in the Zimbabwean society are unable to make autonomous decisions about when to have sex, with whom, what type and whether or not to use protection. This encompasses women in marriage relationships (where the use of condoms is not even negotiable), younger women who have sex with older men for material benefits[28] and women who are victims of rape or where consent to sex is vitiated for one reason or another.[29] Cultural norms also play a very pivotal role in informing behaviour and governing sexual relationships.[30] Furthermore, despite the fact that the Constitution confers upon women the right to reproductive autonomy, the right is fraught with limitations to the extent that it is almost impossible to fully exercise it.[31]

In Zimbabwe, most women are financially dependent on men and as such the power to negotiate for safer sex is limited at most. This exposes women to the deadly HIV virus which when infected with they cannot, for fear of being physically abused, report to the police in terms of the country's HIV criminalisation law. The husband being the breadwinner has an upper hand on the wife. This means that even in circumstances where the man does intentionally infect his wife with HIV, the woman may not report the case for fear of losing the breadwinner. Moreover, the absence of the guarantee that the sexual partner to whom status is disclosed will not disclose the status to third parties makes disclosure a mammoth task to embark on.

In patriarchal societies like Zimbabwe, proposing condom use or refusing unprotected sex in a marriage is seen as questioning male authority.[32] Further, in rural communities, patriarchal norms are deeply entrenched and communities adhere to cultural practices, beliefs and traditional laws which subordinate women. The following extract from a discussion made with some women perfectly illustrates this point:

> When I got married, I was a virgin and our families celebrated my virginity. However, my husband was abusive, telling me that my primary role was to bear him children. I had no power to argue with him because I was not working then and could not afford to assist with financial issues in the house. Last year, I tested positive and it was devastating!

While women in general are vulnerable to HIV infection, married women are significantly at higher risk of being infected because of male dominance. The perceived entitlement to sex that is ascribed to men by society and male dominance contribute to forced sex in marriage and increase the risk of HIV infection for women.[33] Furthermore, in instances where a woman is tested first and finds out they are positive, they are scared of physical violence, abandonment

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[27] M. Kambarami, 'Femininity, Sexuality and Culture: Patriarchy and Female Subordination in Zimbabwe', Understanding Human Sexuality Seminar Series, Africa Regional Sexuality Resource Centre in collaboration with Health Systems Trust, South Africa & University of Fort Hare, 2006.

[28] What S. Chirawu termed transactional sex in 'Till Death Do Us Part: Marriage, HIV/AIDS And The Law In Zimbabwe.', *bepress Legal Series* Working Paper 1419, p. 3, available at: <https://law.bepress.com/expresso/eps/1419>.

[29] This includes instances where by sex is with a minor and despite the consent the full appreciation will be absent from the girl which makes the act tantamount to rape.

[30] Some cultural practices include but are not limited to: polygamous relationships, tolerance of male promiscuity, early marriages and women docility which robs women of all confidence and subsequently takes away their negotiating skills when it comes to the issue of sex and protection.

[31] Reference is made to the case of *Mapingure v. The Minister of Home Affairs and 3 Others*, Judgment No. SC 22/14.

[32] E. Small and S. P. Nikolova, 'Attitudes of Violence and Risk for HIV: Impact on Women's Health in Malawi', 19:4 *Sexuality and Culture* (2015).

[33] E. Mugweni, S. Pearson and M. Omar, 'Traditional Gender Roles, Forced Sex and HIV in Zimbabwean Marriages', 14:5 *Culture, Health and Sexuality* (2012).

or even disinheritance by the men they financially depend on.[34] A woman in such a scenario will be faced with two choices: either to disclose their status and face physical violence, stigma from the whole society and in the worst-case scenario abandonment or the second choice: to conceal the status and face prosecution. One woman working with people living with HIV stated that:

> Many women are aware of the existence of HIV and have taken it upon themselves to get tested, but the problem we found during our encounters with some of the women was that they were either afraid to tell their partners of their HIV status for fear of being blamed or their partners would not agree to using protection during sex.[35]

The statistics of cases adjudicated on under section 79 revealed that female complainants were fewer than male complainants were. This trend portrays a gloomy picture for women. Perceptions of a few women on criminalisation of deliberate HIV transmission was sought, and one woman had this to say about reporting cases of deliberate transmission of HIV by women:

> In as much as the provision of section 79 of the Code is, to some extent commendable for punishing intentional transmission of HIV, women may find it difficult to report such cases because society harshly judges women who report cases of deliberate HIV transmission. Disclosure to a partner means violence within the home and reporting deliberate transmission means violence and stigmatisation. Stigma associated not only with HIV but with reporting an abusive husband is the main factor that stops women from reporting. Stigmatisation is therefore the cancerous evil that has to be dealt with if women are to freely report cases of deliberate transmission.

This shows that women are affected either way: whether they disclose their status first to their partners or report deliberate transmission when infected by their partners, they are exposed to violence.

Gender equality and non-discrimination form part of the values and principles upon which the Zimbabwean Constitution is founded.[36] The Constitution further gives the state a mandate to take all necessary steps to ensure that gender equality is realised. The mandate includes, but is not limited to, creating safe spaces within the law and the society to enable women to enjoy the same respect and rights as their male counterparts, the abolishment of cultural practices that discriminate against women and the enactment of laws that are meant to protect women and even rectify past injustices in terms of Section 27(g) of the Constitution.[37] In terms of Section 56(3) of the Constitution, no person is to be treated differently based on one of the grounds enlisted there.[38]

It has been argued that criminalisation laws disproportionately affect women since most women are living with HIV[39] and most of them are likely to know of their statuses before their male partners.[40] In Africa, 60 per cent of individuals living with HIV are women and teenage girls

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[34] K. Siegel *et al.,* 'Serostatus Disclosure to Sexual Partners By HIV Infected Women and After the Advent of The HAART', 41:4 *Women and Health* (2005) p. 2. It is indicated that research on women and HIV highlights the difficulty that many women experience in disclosing to men, especially the ones they are dependent on.
[35] Voice of Africa, 'Patriarchal Society Exposing Zimbabwean Women to HIV Infections', available at: <https://www.voazimbabwe.com/a/zimbabwe-women-hiv-aids/2960594.html>, accessed 15 September 2018.
[36] Section 3(g) of the Constitution.
[37] This section stipulates that the state is to take necessary steps to ensure that past injustices against historically marginalised groups are rectified.
[38] The grounds include, *inter alia*, gender, sex, social status and race.
[39] A. Ahmed, 'HIV and Women: Incongruent Policies, Criminal Consequences', 6:1 *Yale Journal of International Affairs* (2011).
[40] A. Welborne, 'HIV/AIDS. A War Against Women', Open Democracy, 7 March 2008, available at:

are among the most vulnerable to contracting the virus.[41] What this translates to is that these women and girls are not only potential criminals, but they are also treated differently because of their health conditions. In a study conducted in South Africa, it was found that women, especially rural women, living with HIV face human rights abuses.[42] They suffer because they have HIV and because they are women.

5 Conclusion

Criminalisation of deliberate transmission of HIV largely perpetuates gender inequality as women have suffered the brunt of the continued existence of such legislation. Instead of protecting women and facilitating the enjoyment of equality and non-discrimination rights, the laws criminalise vulnerability. Furthermore, Zimbabwe's HIV criminalisation laws were poorly drafted and are discriminatorily implemented. They are too broad and indiscriminately affect women as they usually find out about their status before their male counterparts because of the maternal health requirements which are mandatory for the women. Disclosure of their status to their partners, whether they were infected by the same partners or not, leads to violence from these partners. Further, when they report deliberate transmission to the police, they face stigmatisation from society, violence or abandonment from their male partners. This shows how unfair the law is on women as compared to their male counterparts. The sparsity of prosecutions of deliberate transmission of HIV is a further indication that section 79 is no longer necessary as it serves no visible purpose other than to subtly perpetuate gender inequality and reignite the stigma associated with HIV and how it is transmitted. The stance by the Zimbabwean government to repeal HIV criminalisation laws is highly commendable and the next task is to ensure that maternal health requirements make it mandatory for both partners to test for HIV.

<https://www.opendemocracy.net/en/a_war_against_women/>. Welborne indicates that in as much as there are instances where men get tested first, mostly women know their statuses first. Furthermore, most women find out of their statuses during pregnancy.

[41] WHO, 'Gender inequalities and HIV', available at:< http://www.who.int/gender/hiv_aids/en/how>, accessed 10 July 2018.

[42] Amnesty International South Africa, 'I Am At The Lowest End Of It All', 2008.