

WORK ON WOMEN, LAW, AND HIV/AIDS

The following is a brief description of work on women, law, and HIV/AIDS that the Law and Health Initiative (LAHI)¹ is undertaking in coordination with the Open Society Initiative of East Africa (OSIEA), the Open Society Initiative of Southern Africa (OSISA), and the Open Society Foundation of South Africa (OSF-SA).² This work was informed by an information-gathering trip in March to Kenya, South Africa, Swaziland, and Uganda,³ as well as discussions with colleagues at the Public Health Program (PHP), the Network Women's Program, and the Africa Regional Office.

While the devastating effect of HIV/AIDS on women is widely acknowledged as a major global challenge, there is a lack of donor support for effective legal interventions to address human rights abuses that render women more susceptible to HIV/AIDS and impede the treatment of HIV-positive women. In collaboration with OSIEA, OSISA, and OSF-SA, LAHI hopes to support legal interventions in four key areas: (1) empowering women to seek legal remedies for human rights abuses fueling the epidemic, (2) promoting a health system respectful of the human rights of women affected by HIV/AIDS (with a particular focus on HIV testing), (3) providing core support and technical assistance to key partners working at the intersection of women, law, and HIV/AIDS, and (4) developing trainings and materials to strengthen civil society capacity to deal with these issues.⁴

EMPOWERING WOMEN TO ADDRESS HUMAN RIGHTS ABUSES THROUGH THE LAW

Human rights abuses fueling the AIDS epidemic include discrimination in access to property and inheritance, pervasive domestic violence, and exploitation of caregivers. LAHI hopes to support women's use of legal tools to combat these abuses.

Violations of property and inheritance rights both contribute to HIV vulnerability and compound the devastation wrought by the epidemic. The HIV/AIDS epidemic has dramatically aggravated the discriminatory effects of inheritance laws by increasing the number and vulnerability of widows and orphans. Financially dependent women are more susceptible to the disease and may be forced into widow inheritance, polygynous relationships, and prostitution to survive.⁵ Families impoverished by the inheritance system also have reduced capacity to cope with the disease if members are infected.⁶

¹ LAHI is a project of the Open Society Institute (OSI) Public Health Program (PHP).

² The appendix provides a synopsis of law, women, and HIV/AIDS grants and advocacy projects supported by LAHI, OSIEA, OSISA, and OSF-SA in 2006-2007.

³ For a list of interviews from this trip or more detailed information on any particular interview, please email Tamar at: tezer@sorosny.org.

⁴ These map onto priorities in LAHI's global strategy: (1) Integrating legal and paralegal services into health services, (2) Promoting human rights in patient care, (3) Supporting human rights responses to HIV and AIDS, and (4) Developing civil society capacity in law and health.

⁵ RICHARD S. STRICKLAND, INT'L CTR. FOR RESEARCH ON WOMEN, TO HAVE AND TO HOLD: WOMEN'S PROPERTY AND INHERITANCE RIGHTS IN THE CONTEXT OF HIV/AIDS IN SUB-SAHARAN AFRICA 5 (2004); Lawrence K. Altman, *Female Cases of H.I.V. Found Rising Worldwide*, N.Y. TIMES, Nov. 24, 2004, at

LAHI aims to address this concern by integrating legal services into existing HIV programs targeting women, including health services and economic empowerment programs. These services will advocate for women's legal rights through both formal legal and cultural structures. LAHI and OSIEA currently have a project in Kenya integrating legal and paralegal services into savings and loan initiatives for people living with and affected by HIV/AIDS, with a particular focus on the rights of women and children. Next year, LAHI and OSIEA are looking into expanding a Kenya project mobilizing women to demand redress for inheritance violations from cultural authorities. LAHI, OSISA, and PHP's health media project are supporting a group in Swaziland documenting inheritance abuses and raising community awareness through creative means such as video advocacy, while pursuing litigation of strategic cases. Litigation, coupled with community advocacy, can be a powerful tool to challenge laws treating women as minors and dependents in violation of national constitutions and ratified international human rights conventions.⁷

For all these projects, LAHI intends to support grantees in documenting the impact of law-based interventions on women's health and well-being. There exist enough studies on the bad news linking women's economic disempowerment to HIV/AIDS. There is a need for more studies linking women's legal and economic empowerment to positive health results, enabling both HIV prevention and treatment. The hope is to then use the studies' findings to advocate for increased services and funding and for government support. One way to accomplish this may be to pair researchers with grantees to monitor and evaluate their projects and document lessons from their work.

LAHI can further make a valuable contribution by supporting regional networks of advocates using law-based strategies to address inheritance violations and reduce women's HIV vulnerability. Currently these advocates work in isolation, and an informal network would allow them to share model laws, good case law, and legal strategies and to develop joint initiatives. In both East and Southern Africa, there is a thirst for strategic litigation and law reform to address discriminatory provisions and legislative gaps that violate women's rights and increase their HIV vulnerability. There is a tremendous opening for such efforts in countries that have recently adopted progressive constitutions and ratified international conventions.⁸ LAHI, OSIEA, and OSISA are discussing with the Gender Based Violence Prevention Network support for the use of their well-functioning structure to house a network for advocates working to secure women's inheritance rights in East and Southern Africa.

A11; Laurie Garrett, *Polygamy, Poverty, and Oppression of Women Are Fueling AIDS Epidemic in Africa*, SEATTLE TIMES, July 10, 2000, at A3.

⁶ STRICKLAND at 11.

⁷ Women in Swaziland, for instance, are longing to challenge their inability to obtain loans without their husband's approval. Women are arriving at banks and bringing the new Swazi Constitution with them, demanding equality. Bank loan officers do not know how to react with some granting loans, while others refusing them. The situation is ripe for a test case.

⁸ Strategic litigation and law reform efforts can also go hand-in-hand as challenging discriminatory provisions in national legislation may put pressure on passive parliaments to finally introduce new bills recognizing women's equality.

Similar to women's economic disempowerment, pervasive domestic violence functions as both a cause and consequence of HIV infection. Women subject to domestic violence have little control over their sexual lives, including condom use, and women disclosing their HIV status to partners are at greater risk of violence. Women who are HIV-positive may encounter retaliation when they disclose their status to their husband and intimate partners; this both undermines HIV treatment adherence and deters many women from seeking HIV testing in the first place. From the point of view of HIV prevention, violence is also often linked to infidelity, polygyny, and other factors that place women at high risk of HIV. These are just a few of the many complicated links between HIV and violence, which are so closely intertwined that they are often referred to as the "twin epidemics."⁹ Violence is considered a leading factor in the increasing feminization of HIV/AIDS.¹⁰ LAHI, together with OSIEA and OSISA, is interested in strengthening the work of the Gender Based Violence Prevention Network in East and Southern Africa by supporting their access to legal resources and strategies. In South Africa, LAHI and OSF-SA are supporting the integration of legal advocacy into services provided to survivors of domestic violence in South Africa.¹¹

Legal advocacy is further necessary to protect the rights of caregivers. In many countries in East and Southern Africa, AIDS has killed or incapacitated a generation of parents, and grandmothers bear the bulk of care for the sick and for orphaned and affected children. The burden of care also falls on women and girls who have to give up their jobs or drop out of school. Caregivers perform this crucial and difficult work without legal recognition or support and with no compensation, resources, or training. LAHI is in discussions with PHP's International Palliative Care Initiative (IPCI) about the possibility of promoting a legal and policy framework protective of the rights of caregivers.

PROMOTING A HEALTH SYSTEM RESPECTFUL OF WOMEN'S HUMAN RIGHTS

Women living with and affected by HIV face stigma and abuse not only within the sphere of the family and private life, but also within the very health systems that are meant to provide them with treatment and care. A priority for LAHI in this area is to ensure that HIV testing and counseling, which is currently high on the global AIDS agenda, takes place in a context protective of women's fundamental rights and well-being. LAHI's work on women and HIV testing builds on previous efforts to protect human rights as countries scale up "routine" testing pursuant to new Guidance issued by UNAIDS and the

⁹ Everjioce J. Win, *Living on the Front-Line (again)*. See also Susana T. Fried & Jenny Drezin, *Equality and Equity in Access: Take Action to Address Violence against Women and Girls in the Scale Up to Universal Access Agenda* 14 (referring to the "twin pandemics"); Helen Epstein & Julia Kim, *AIDS and the Power of Women*, V.2 N.Y. REV. BOOKS 7 (Feb. 15, 2007) (referring to the "twin scourges"); Suzanne Maman et al., *The Intersections of HIV and Violence: Directions for Future Research and Interventions*, 50 SOC. SCI. & MED. 461 (2000) (referring to "overlapping epidemics").

¹⁰ Susana T. Fried & Jenny Drezin at 2.

¹¹ Please see below for a discussion of projects integrating legal and counseling services for women into VCT centers in Kenya, South Africa, and Swaziland. The project in Swaziland, in particular, aims to address some of the intersections between domestic violence and HIV/AIDS, aiding women in safely disclosing their status and seeking treatment.

World Health Organization (WHO).¹² LAHI plans to deepen this work by supporting research and scholarship on the gender dimensions of HIV testing, the integration of legal and counseling services in VCT (voluntary testing and counseling) clinics, and the production of human rights guidelines and trainings for health workers.

For HIV testing to be effective and respectful of human rights, critical gender issues need to be addressed. The UNAIDS/WHO Guidance recognizes that “[w]omen may be more likely than men to experience discrimination, violence, abandonment or ostracism when their HIV status becomes known.”¹³ LAHI is commissioning two papers to examine the gender dimensions of HIV testing. One paper will focus on premarital HIV testing, and the other will focus on the testing of pregnant women. A growing number of countries are implementing either mandatory pre-marital testing or opt-out provider-initiated testing for pregnant women without assessing the impact of these policies on women’s health or their human rights implications. The commissioned papers will review the global evidence, analyze human rights issues raised, and propose recommendations for how testing can take place in a context genuinely conducive to good health outcomes. The papers will also identify priority countries in East and Southern Africa for follow-up reports taking a close look at the implementation of HIV testing on the ground. In 2008, LAHI further hopes to fund more quantitative and qualitative research around women’s experiences disclosing their HIV status and is in discussions with a VCT center in Kenya, which specializes in both policy research and model service delivery incorporating their findings.

Additionally, LAHI is supporting the integration of legal and counseling services for women into VCT centers in Kenya (with OSIEA), South Africa (co-funded with the Elton John AIDS Foundation), and Swaziland. These projects aim to measure the impact of legal education and referral on women’s ability to disclose safely to their partners, seek legal advice in case of abuse, adhere to a HIV treatment regimen, and other health and quality-of-life indicators.

LAHI will use this data and analysis to inform the development of human rights guidelines on HIV testing and hold trainings for health workers. As testing is mainstreamed within health facilities and countries scale up “routine” testing, it is essential to ensure women’s human rights and basic well-being. This work will hopefully incorporate lessons and best practices identified at a seminar LAHI is intending to sponsor bringing together various groups involved in human rights training for health workers both internationally and in sub-Saharan Africa. This seminar will have a strong gender component and will draw on the pioneering work of reproductive rights organizations training health workers on issues of consent, confidentiality, and discrimination.¹⁴

¹² LAHI and PHP sponsored a background paper on “Increasing Access to HIV Testing While Respecting Human Rights” available at:

http://www.soros.org/initiatives/health/articles_publications/publications/testing_20070907.

¹³ UNAIDS (Joint United Nations Programme on HIV/AIDS) & WHO (World Health Organization), *Guidance on Provider-Initiated and Counseling in Health Facilities* § 5.

¹⁴ In addition to this work on testing, LAHI has been in discussions with PHP’s Public Health Watch (PHW) regarding a new initiative PHW is spearheading also focused on promoting a health system

PROVIDING CORE SUPPORT AND TECHNICAL ASSISTANCE

A cadre of crucial organizations work at the forefront of women, law, and HIV/AIDS issues. For the most part, these NGOs operate on extremely limited budgets, relying mostly on small, time-bound, project-based grants that inhibit their ability to contest donor policies, react to sudden changes in the political environment, and challenge government actions. To enable these organizations to independently monitor government policy and conduct effective advocacy, LAHI, OSISA, and OSIEA are committed to providing these organizations with unrestricted support and to promoting their strategic development.

Currently, LAHI and OSISA are providing three-year core institutional support, coupled with technical assistance, to organizations in Swaziland and Zimbabwe with the mandate and capacity to work on women, law, and HIV/AIDS issues. This is part of a larger initiative that currently supports six organizations in Southern Africa working at the intersection of HIV/AIDS and human rights. LAHI and OSIEA hope to expand this initiative next year to provide core support to leading HIV/AIDS and human rights organizations in Kenya and Uganda.

LAHI, OSISA, and OSIEA are further supporting key partner organizations to engage in special advocacy projects, such as dialogues around gender audits of various HIV prevention and control laws. In 2007, Kenya enacted comprehensive legislation on the prevention and control of HIV, and Uganda and Tanzania will soon follow suit. In West and Central Africa, the U.S. government is supporting the enactment of “model” HIV/AIDS legislation in close to twenty countries. All of these laws lack basic protections for women such as the criminalization of marital rape; in addition, they impose criminal penalties for willful transmission of HIV, which could have a disproportionate effect on women. Gender audits and roundtable discussions around the various model and draft laws pending throughout the continent are critical. It is also crucial to conduct audits of existing laws to evaluate how effectively they address women’s rights in the context of HIV/AIDS. Both OSISA and OSIEA have convened meetings around the criminalization of HIV transmission with women’s groups and HIV activists. LAHI, OSIEA, and OSISA further submitted comments to UNAIDS on their draft Policy Brief on Criminal Law and HIV Transmission.

DEVELOPING TRAININGS AND MATERIALS

respectful of women’s human rights. The initiative aims to support advocacy for access to HIV and reproductive health services for HIV-positive pregnant women. As Public Health Watch reports, “Growing evidence suggests that HIV-positive pregnant women do not have adequate access to HIV and reproductive health services. At best, they are offered a one-time intervention to prevent transmission of HIV to their babies; their longer term health needs are rarely addressed. HIV-positive pregnant women are frequently mistreated in healthcare settings, including verbal abuse and pressure to have an abortion. Pregnant women are tested for HIV without adequate counseling, and often do not receive full information about, or have access to, antiretroviral drugs for prevention of mother-to-child-transmission (PMTCT). In sub-Saharan Africa, where 85% of HIV-positive pregnant women live, only 6% were offered PMTCT services in 2005.”

LAHI hopes to strengthen civil society capacity to deal with human rights abuses fueling the AIDS epidemic through the development of educational programs and materials.

In June 2007, the Open Society Institute (OSI) and Soros Foundations from around the world convened in Cape Town, South Africa for a one-week training seminar on health and human rights. In preparation for this seminar, LAHI coordinated the creation of a Resource Guide produced by both OSI and Equitas—The International Centre for Human Rights Education, providing practical tools for advocates working at the intersection of health and human rights. A chapter of the Resource Guide focuses on HIV/AIDS and human rights, highlighting critical gender issues. It includes fact sheets, program descriptions, jurisprudence, case studies, bibliographies, and glossary definitions. LAHI is currently exploring ways to integrate these tools into existing health and human rights trainings.

LAHI plans to support educational programs to build the capacity of legal professionals to take cases dealing with violations of women's human rights fueling the HIV/AIDS epidemic. LAHI, OSIEA, and the Open Society Justice Initiative (OSJI) are in discussion with Makerere University in Uganda about sponsoring a law clinic, where students would have an opportunity to work on these issues.

In 2008, LAHI, OSISA, and OSIEA intend to pilot a regional HIV/AIDS and human rights "Winter School" for lawyers. OSF-SA has also been participating in discussions planning this initiative. This school will provide an intense two-week course for lawyers in East and Southern Africa who wish to enhance their expertise on HIV/AIDS issues. Women's concerns will be mainstreamed throughout this course, and there will be a separate module on women and HIV/AIDS. The school will also build the capacity of lawyers to advocate using the regional African system and the new Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

APPENDIX: SYNOPSIS OF 2006-2007 LAHI, OSIEA, OSISA, OSF-SA GRANTS AND ADVOCACY PROJECTS

2006 Grants and Projects

Tshwaranang Legal Advocacy Center (South Africa)

Together with the Open Society Foundation – South Africa (OSF-SA), LAHI is supporting a project to integrate legal advocacy into services provided to survivors of domestic violence in South Africa. Lawyers from Tshwaranang will provide ongoing training to domestic violence organizations to increase their capacity to address legal problems; supply technical and legal assistance to these organizations in advising clients on their rights and lodging complaints; raise awareness of legal issues and access to justice among women and civil society; provide legal services in the area of domestic

violence and maintenance directly to women; and convene regular forums to identify systemic problems with the implementation of domestic violence legislation, share experience among NGOs, and facilitate interaction between NGOs and government officials.

CARE USA, CARE Kenya

Together with the Open Society Initiative of East Africa (OSIEA), LAHI is supporting a project to integrate legal and paralegal services into CARE's savings and loan initiative in Kenya. The project has a particular focus on the rights of women and children and aims to empower communities to increase economic security, reduce vulnerability, and seek justice when rights are violated or services denied. This empowerment will take place in two ways: (1) training a paralegal network to provide marginalized groups with legal services and knowledge to challenge abuses, and (2) training formal and informal community leaders, health care providers, and law enforcement personnel to protect the rights and livelihood of marginalized groups.

Fostering Enabling Environments for the Health and Human Rights of Sex Workers

In June 2006, LAHI and the Public Health Program's (PHP) Sexual Health and Rights Project (SHARP) convened a global gathering of sex workers, human rights advocates, researchers, and other allies to develop concrete strategies for advancing rights-based responses to HIV risk among sex workers worldwide. Inspired in part by a backlash against rights-based approaches to working with sex workers (including the conflation of all forms of sex work with "human trafficking"), the meeting sought to articulate a coherent framework for protecting sex workers' health and rights, and to seek feedback from diverse stakeholders on how OSI can build the human rights capacity of sex worker organizations.

Christian Health Association of Kenya (CHAK)

LAHI and OSIEA are supporting a CHAK project aimed at the empowerment of people living with HIV/AIDS by integrating legal services and rights awareness within 10 of its health facilities. CHAK is training health providers and point people living with HIV/AIDS to incorporate human rights sessions in their community outreach activities and support group meetings. Sessions have a strong focus on women's and children's rights and on issues of property, inheritance, and matrimonial law. FIDA (Federation of Women Lawyers)-Kenya is partnering with CHAK to take on cases coming out of this project that reflect systemic abuse of women's rights and cannot be resolved informally. Complementing this legal support, CHAK is initiating economic empowerment programs for people living with HIV/AIDS in 3 of its sites.

2007 Grants and Projects

Women and Law in Southern Africa Research and Education Trust (WLSA) - Zimbabwe

As part of a three-year project to provide core institutional support, coupled with technical assistance, to HIV/AIDS and human rights organizations, LAHI and the Open Society Initiative of Southern Africa (OSISA) are providing WLSA with core support for

their work in HIV/AIDS and women's rights. WLSA's mission is to advance the human rights and socio-economic, political, and legal status of women in Zimbabwe through action research, legal education and gender sensitization, and lobbying for law and policy reform. Over the next few years, WLSA hopes to conduct education campaigns in communities around gender, HIV/AIDS, domestic violence, and inheritance and marriage laws and to build the capacity of women to challenge discriminatory myths and customs. WLSA further intends to provide women with legal advice and to identify cases for strategic litigation.

Swaziland Positive Living (SWAPOL)

LAHI is likewise providing SWAPOL with core institutional support for their work with HIV positive women and children. SWAPOL is a grassroots organization in Swaziland that works to empower and improve the quality of life for women and children affected by AIDS by educating them as to the legal landscape, building treatment literacy, and strengthening the community response to HIV/AIDS. Over the next few years, SWAPOL plans to establish a legal clinic, continue their work on inheritance issues, and assist women living with HIV and violence. Through OSI's Information Program and PHP's health media project, LAHI was able to arrange SWAPOL's attendance at WITNESS's video-advocacy institute, enabling them to document inheritance abuses and incorporate video advocacy in their Widows Project. LAHI hopes to support follow up advocacy and strategic litigation in 2008.

Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services

In March 2007, LAHI and OSIEA released a report on access to HIV-related legal services in Kenya. Co-authored by Kristin Kalla and Jonathan Cohen, the report is based on three weeks of field research in Kenya undertaken by Kalla in July 2006. The report highlights the special vulnerability of Kenyan women to human rights violations based on actual or perceived HIV status, as well as the importance of providing legal and paralegal services to vindicate women's human rights. The report moves beyond paradigms of formal legal services to recommend legal empowerment initiatives such as training paralegals, integrating rights awareness into micro-credit programs, and training traditional leaders in rights-based adjudication of property claims.

Papers on the Gender Dimensions of HIV Testing

LAHI is commissioning two papers to examine the gender dimensions of HIV testing. One paper will focus on premarital HIV testing, and the other will focus on the testing of pregnant women. A growing number of countries are implementing either mandatory pre-marital testing or opt-out provider-initiated testing for pregnant women without assessing the impact of these policies on women's health or their human rights implications. The commissioned papers will review the global evidence, analyze human rights issues raised, and propose recommendations for how testing can take place in a context protective of women and genuinely conducive to good health outcomes. The

papers will also identify priority countries in East and Southern Africa for follow-up reports taking a close look at the implementation of HIV testing on the ground.

University of KwaZulu Natal (UKZN) (South Africa)

LAHI is supporting a UKZN project to increase pregnant women's access to legal services and evaluate the efficacy of including legal education and referral in HIV post-test support. Through a randomized, controlled trial, this project seeks to measure the impact of integrating legal education and services into community health centers, offering pregnant women HIV tests as part antenatal care. The study will measure sexual risk, psychosocial condition, decision making affecting mother-to-child transmission of HIV, and disclosure of HIV status to partners in addition to any increase in women's legal awareness, utilization of legal services, and the outcomes of services provided.

Coalition on Violence against Women (COVAW) (Kenya)

LAHI and OSIEA are supporting a grant to COVAW to integrate health and legal services for women in two post-rape centers in partnership with the Kenyan Ministry of Health and the Liverpool Voluntary Counseling Centre. This will provide women with access to HIV testing, counseling, legal services, and human rights and HIV information all in one place. The hope is to thus provide comprehensive care and protect the rights of women and girl survivors of sexual violence. Project activities include providing legal services, training health care providers, and introducing a pro-bono lawyers scheme.

Swaziland Action Group Against Abuse (SWAGAA)

LAHI is supporting a grant to SWAGAA to work together with HIV testing centers, operated by Family Life Association of Swaziland and the AIDS Information and Support Centre, to strengthen their capacity to respond to gender based violence. Project activities include training staff from the three organizations on the intersection of HIV/AIDS and gender based violence, assisting women to safely disclose their HIV status, screening rape survivors for HIV infection, providing legal support, and developing a referral map providing clients with comprehensive services.

Southern African Litigation Centre (SALC) (Southern Africa)

LAHI is currently negotiating support, along with OSISA, for SALC provision of technical and financial assistance on HIV/AIDS and human rights cases in Southern Africa. SALC intends to place particular emphasis on ensuring access to justice for women, recognizing their especial vulnerability to the epidemic. Activities include building the capacity of lawyers, paralegals, and justice officials to engage with HIV/AIDS and human rights cases, while also helping HIV/AIDS and women's groups to identify cases for legal intervention and mobilize the community around them. Through this work, SALC hopes to both build regional skills and expertise and a body of legal precedent advancing human rights jurisprudence.

The Center for Domestic Violence Prevention (CEDOVIP) (Uganda)

OSIEA is supporting CEDOVIP, the leading Ugandan organization working on violence prevention, on a project focused on the link between domestic violence and women's vulnerability to HIV/AIDS in Uganda. CEDOVIP hopes to contribute to a legal and

policy framework to address this link and to the sensitization of policy makers and civil society. CEDOVIP, for instance, will be involved in consultations around the drafting of Uganda's National HIV Post Exposure Prophylaxis (PEP) Policy.

