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**Gender and HIV/AIDS: ICTR challenges**

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Numerous reports have indicated that women and girls are increasingly victims of HIV/AIDS. The 1994 Genocide in Rwanda resulted in a number of women contracting the deadly infection, which subsequently has serious implications on human security as well as on the International Criminal Tribunal for Rwanda (ICTR) justice process. Violence is a threat to human security and justice for victims of violence is a prerequisite for sustainable peace and human security. In the light of this reality the need to enhance and facilitate the justice process is even more pronounced.

Although the International community was unable to prevent or stop the genocide, the United Nations Security Council did establish the International Criminal Tribunal for Rwanda for the purpose of bringing to justice the persons responsible for the genocide and serious violations of humanitarian law that occurred in Rwanda. In the ICTR's verdict in the Akayesu case, rape was defined for the first time in international law as a component of genocide. The court ruled that rape could be genocide if committed with the intention to destroy a group. In the words of Dr. Agwu U. Okali, "rape as genocidal crime was thus a new concept introduced into international law by the Rwanda Tribunal, sending a strong message that the violation of women, a common occurrence in conflicts but frequently overlooked, if not even condoned as an unavoidable by-product of war, would henceforth be met with international justice in the strongest terms".

During the Genocide, sexual violence was a widespread weapon of war perpetrated by men on women and girls. Many women endured multiple rapes during the Genocide thus inevitably contributing to the spread of HIV. This is echoed in a 1998 report by UNAIDS Joint United Nations Aids Program where it states that "wars and armed conflicts generate fertile conditions for the spread of HIV. Rape inside or outside refugee camps...has doubtless played a part in spreading the virus in Rwanda". In the case of the Prosecutor versus Jean Paul Akayesu, witness JJ testified to the lack of protection used i.e. condoms during the rapes. In examination by Akayesu's defense counsel, Witness JJ testified the following in reference to the use of condoms:

Defense Counsel: "When you were being raped in the forest did the Interahamwe utilize protection?"

Witness JJ: "The one who raped me in the forest near the commune never used a condom"

Defense Counsel: "...near the cultural center did the people raping you use condoms?"

Witness JJ: "Only 1 person used a condom. Other people raped me without a condom".

Defense Counsel: "How many people raped you without a condom?"

Witness JJ: "For the first group because they were four, 3 people did not use a condom".

In the same case, a number of women sought refuge in the communal office of Taba commune where "many women were forced to endure multiple acts of sexual violence which were at times committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. The female displaced civilians lived in constant fear and their physical and psychological health deteriorated as a result of the sexual violence and beatings..." In the case of the Prosecutor versus Alfred Musema, the accused was found guilty for encouraging his subordinates to rape Tutsi women. A witness quoted Mr. Musema as having said, "those who wanted to have fun could rape their women and their children, without fearing any consequences". Without a doubt these conditions were conducive for the rapid spread of HIV/AIDS and other diseases.

Displaced persons fleeing from violence and persecution find refuge in camps where a host of factors sometimes place them in worse situations. Women and children are especially vulnerable to sexual violence and prostitution in refugee camps, which contributes to the further spread of Sexually Transmitted Diseases (STDs) and HIV/AIDS. In another report by UNAIDS, the author points out that "AIDS is often overlooked in the wake of a disaster, because there seems to be more important things to do. However, it is just at this time that AIDS threatens most". AIDS is a major problem facing many refugee populations especially if AIDS was present in the original community. In this same report, Rwanda is sighted as an example where this was the case. According to the report, "some of the refugees fleeing to the camps in Zaire came from Kigali, where rates of HIV before the crisis ranged from 20 to 30%".

Women's' social, cultural and economic subordinate status further contributes to the spread of HIV. Extreme poverty often forces women to turn to prostitution but denies them the power to dictate safe sex. The combination of gender and culture prevents women from enjoying their human rights and makes them more susceptible to HIV. In the case of post genocide Rwanda, women are reluctant to talk about their experiences of sexual violence because of the stigma associated with such violence. This is moreover the case if they know they have consequently contracted HIV/AIDS. Often times ICTR investigators have difficulty uncovering that a certain witness was a victim of sexual violence until the witness takes the stand and reveals that during testimony. The stigma associated with talking about sexual violence is not the only hindrance, but cultural and social factors such as the assumption that men are heads of households also are counterproductive to the justice process. Often investigators have to interview men, as women are in fact preoccupied with household chores, which prevents them from participating in such a process. The cultural assumption that the man is the chief of the household still prevails in Rwanda. Without the opportunity to talk about the violence and the subsequent diseases contracted, women do not receive justice. Furthermore, the lack of dialogue and justice impacts on human security as the disease is ignorantly spread affecting a large part of the working population.

In the aftermath of the 1994 Genocide, survivors in Rwanda struggle to live life on a daily basis. Many of these survivors sustained physical injuries, psychological trauma, and infections such as STDs and HIV/AIDS. A survey on violence against women carried out by AVEGA in December 1999 revealed that out of 951 women interviewed, 327 (34.4%) had acquired HIV/AIDS. Only 13% of this group have thus far received medical care. This has serious consequences on human security as the age group affected is between 20 and 55 years.

The majority of ICTR's potential witnesses belong to the same age group and many of them suffer from HIV/AIDS amongst other diseases. HIV not only impacts the whole fabric of society but also affects and hinders the justice process. In the case of the ICTR, the witnesses of the Genocide are the backbone of the case without whom there would be no justice process. Victims have often died before giving evidence and in many other cases are too weak to participate in the justice process due to the lack of resources to sustain their health. Other HIV victims who could be potential witnesses do not feel that testifying will make a difference, as it will not bring back their health or their lives. It has been observed that witnesses with HIV/AIDS tend to experience emotions that can be grouped in six stages. These are denial, isolation, anger, negotiation, depression, and acceptance. It therefore makes it very difficult to work with these witnesses as they go through the various stages in trying to cope with their condition. Depending on when they receive intervention either in the form of physical or psychological counseling, witnesses are often not in the best position to testify.

As a result of problems with the health of potential witnesses, Investigators at the Tribunal have encountered many difficulties in carrying out their work. The ICTR Witness and Victims Support Section is not mandated to assist potential witnesses, resulting in a gap in terms of the needs of potential witnesses and what can be provided. In light of the dire intervention needed, a nurse and a counselor were recruited to provide medical and psychological support to potential witnesses, through the Tribunal's Support Program to Witnesses and Potential Witnesses. However, this is only a partial solution and in addition the nurse is limited by the lack of funds. The financial implications raises the question of the extent of the Tribunal's responsibility vis a vis HIV positive witnesses and potential witnesses especially for the post trial stage.

As a Tribunal response to ensure protection and support for potential witnesses and witnesses, Rule 34 of the ICTR Rules of Procedure and Evidence was created. Rule 34: Victims and Witness Support, at that time read:

"[a] There shall be set up under the authority of the Registrar a Victims and Witnesses Support Unit consisting of qualified staff to:

Recommend protective measures for victims and witnesses in accordance with article 21 of the statute; and

Provide counseling and support for them, in particular in cases of rape and sexual assault;

Develop short and long term plans for the protection of witnesses who have testified before the Tribunal and who fear a threat to their life, property or family....."

In discharging its work in the area of witnesses and victims, experience showed a lacuna: the Tribunal found itself confronted with a pathetic situation whereby, *inter-alia*, the victims and survivors of the genocide were *ipso facto* left destitute and were leading desperate lives. The Genocide survivors (mainly children and widows) continue to suffer from the aftermath of the war. This particular group is apparently the potential witnesses to the trials taking place at the Tribunal. It was eventually recognized that Rule 34 was unclear in several respects. In the first place it appeared to only contemplate protection to witnesses who have actually given evidence, and who express fear of a threat to their life, property or family. The protective aspects relating to pre trial periods was not made clear. Secondly, the extent and type of counseling and support was not made explicit enough. Difficulties were also arising from lack of gender sensitivity and lack of understanding of the witnesses' culture and background. This recognition led to the amendment of Rule 34 part (ii) which now states:

"(ii) Ensure that they [victims and witnesses] receive relevant support, including physical and psychological rehabilitation, especially counseling in cases of rape and sexual assault...."

Additionally, part [b] of Rule 34 now reads "A gender sensitive approach to victims and witnesses, protective and support measures should be adopted...". However ambiguity still exists over the interpretation and implementation of this rule especially as regard the mandate of the Tribunal and its involvement in providing humanitarian assistance. Further still, the question of who to provide support to and the fact that it can be seen as inducement to testify is an issue. Other obstacles to implementing the rule through the ICTR Support Program to Witnesses and Potential Witnesses possibly have to do with the narrow view of justice. Many courts feel their

role is to provide retributive justice where perpetrators are tried and held accountable for their crimes. However, the Support Program based on Rule 34, seeks to widen the notion of justice by involving restitutive elements as well which is victim oriented. It is possible that due to the innovative aspects of this program it is experiencing more challenges.

The Statutes of the proposed International Criminal Court have taken into account the need for medical and psychological support to be provided as early as possible especially for "victims of sexual assaults who have become HIV-positive or infected with AIDS as a result". In drafting the statutes of the ICC, the ICTR challenges and limitations were taken into account and it was proposed that a Trust Fund be set up to "provide interim relief to victims, such as medical or psychological attention or other humanitarian assistance". Currently, the ICTR Support Program to Witnesses and Potential Witnesses is funding a few NGOs in Rwanda to provide basic physical and psychological rehabilitation especially to victims of sexual violence and HIV/AIDS. However, this is not sufficient as their needs are immense and the program is only permitted to provide basic support.

In the light of the current reality where many potential witnesses and witnesses suffer from HIV/AIDS, the International community needs to respond in a way that will not only assist them to live their daily lives but will also enable them to participate in the justice process. Without their participation, the work of many courts will be impossible and perpetrators will not be held accountable for the crimes committed against their fellow beings.

It is clear that HIV hinders the full participation of its victim in daily life, which makes it vital to prevent the spread of such a disease. A starting point would definitely be education and dialogue about the causes and consequences of the disease as during times of stability the disease still poses a threat. The role of the nurse and counselor working with potential witnesses and witnesses is important as they can assist with facilitation of dialogue and awareness raising amongst the population thus contributing to the reduction of stigma. However, during times of conflict the disease is more likely to spread due to the conditions and strategies of war including sexual violence that is mostly perpetrated against women. Hence a culture of peace and respect for human rights must prevail so as to prevent the inevitable proliferation of such a disease during times of conflict. Women's rights must be protected which includes doing away with cultural or traditional practices that impinge on these. In the words of the author of the UNAIDS report, "refugees, displaced people and above all women and children who are the most vulnerable must be protected from violence and abuse". It is clear that the presence of peace is important for human security but the frustration generated in victims that have acquired HIV/AIDS as a result of violence may hinder attempts for peace. It is therefore fundamental for the International Community to find a solution for those already infected with the disease so as to enable them to fully participate in the justice process as well as other aspects of living. The importance of having both physically and psychologically healthy witnesses and potential witnesses enhances the quality of their testimonies and their ability to participate in trials, which is vital for a fair judgement. Gender violence that contributes to the spread of HIV/AIDS has to be addressed and one must keep in mind that without justice there cannot be sustained peace and without peace, there cannot be human security.