

**On Pre-Nuptial Testing:** Zambia should enforce mandatory HIV/AIDS pre-nuptial testing with partner notification.

If we entertain the following premises, it can be shown via a logical succession of events how HIV/AIDS status of each individual is information that must be privy to both partners before marriage consent is given. With the rising concern over issues of marital fidelity and the objection of certain religious organizations to sex-education under the premise that it promotes extramarital sex, we must acknowledge that sex is not only permissible, but something that *characterizes* the special relationship of a marriage. Prudence with regards to the education of sexual practices in child-rearing is debatable, but between married couples, efforts towards open discourse of sexual health is crucial. Sexual intercourse is promoted as a function for childbirth, that which determines the success of the family's legacy. Sex between married couples is not only legal, but it can be said that it is *reasonable* to regard it as a primary characteristic of this state-sanctioned contract.

Because a married couple is presumed to have sexual relations, the state bears a responsibility at the time of validating the contract to see that there is no obvious dereliction. Suppose a man who is HIV positive and a woman who is aware that she is HIV-negative and yet is not aware of her future husband's status ask to be married by the state. If the state recognizes that via the sexual contact that is inherent in marriage, if either member is HIV positive it will be transmitted to their partner, and, this can be prevented, it has a responsibility to do so.

It is not a breach of privacy to have acknowledgement of one's potential marriage spouse's HIV status- because the couple will, by virtue of being married, develop the *same* HIV-status. The concern of protection of privacy is for those who are HIV-positive. We can assume that an HIV-negative status is only a beneficial piece of information and that it does not carry any negative stigma so that people who were aware of their HIV-negative status would have qualms about presenting the information before a spouse. In another case, where both people are HIV-positive dispelling the knowledge between them causes no conflict of interest in that the disease is already present in each person and there is no new risk imposed. In the last instance, one person is HIV-positive and the other is HIV-negative.

Whether or not the HIV-positive individual is aware of his or her status, it is destined to become the status of the HIV-negative partner. If the HIV-negative partner is made aware of the fact that in accepting marriage she is essentially remitting herself to contracting the disease *and* is also aware of the effect of HIV/AIDS and still desires to enter marriage despite the repercussions, it is not the state's business to restrict this marriage. In the event that the HIV-negative partner be unaware of his or her partner's HIV-positive status who is aware of his or her positive status, transmission of HIV-AIDS is knowingly occurring. It does not matter that this transmission will occur within an intramarital and therefore legal context of sexual intercourse: it remains a violation of law to knowingly infect another with the virus.

The state meets its responsibility in the event that a couple is not aware of their own HIV status and is consequently unaware of their partner's. If one member is HIV-positive, he or she will transmit this disease to his or her partner regardless of whether he

or she is aware. In this instance, the state needs to protect the rights of the potential spouse who is HIV-negative from HIV contraction. This is important because in a culture that rewards the birth of children and in so rejects condom use between couples and other means of pregnancy prevention, becoming pregnant is a goal. From an HIV-infected mother, there is risk to the life of the child. HIV/AIDS testing and status acknowledgment between married couples may reduce the stigma associated with HIV/AIDS testing. Of course, if someone HIV-positive is aware of his or her status and decides to request that it remain private, this privacy can still remain intact. Only in the event that he or she request marriage must the information be dispelled to each individual.

Freedom in exercising preference not to know:

Freedom to “not know” is an understandable concern with regards to a disease that has serious physiological and psychological effects. However, freedom to “not know” ceases to be a personal freedom when the status has a direct consequence on another. At this point, it is the personal freedom of the HIV-negative, uninformed individual that needs to be protected, saving him or her from needless infection.

In summary,

- 1) Sexual intercourse between married couples is legal
- 2) Culture supports the notion that wives should submit to their husbands if he desires sex
- 3) It is illegal to knowingly infect another person with HIV/AIDS.

- 4) It is not permissible to accept a course of action whereby a person avoids HIV/AIDS testing so as to get around #3.
- 5) If people are to be married and extramarital sex is outlawed, it must be acknowledged that married couples *will* engage in sexual practices.
- 6) If two people are to be married, it is the *duty* of each partner to be aware of his or her HIV status so that he or she does not knowingly infect his or her partner with the disease. Furthermore, it is the *right* of each person to be aware of his or her partner's HIV/AIDS status so that marriage is not a means of accepting personal contraction of the disease.
- 7) This strengthens the rights of individuals to protect themselves from contracting the disease.
  - a. If one spouse is determined HIV/AIDS positive and the couple decides to get married, then every available measure towards education of the consequences and responsibilities of the disease must be made.
  - b. In the event of pregnancy, an HIV/AIDS positive mother will be able to seek immediate health attention so as to get the best possible care for herself and her child. Anti-retroviral drugs are extremely successful in their ability to prevent the contraction of the HIV virus from mother to child, and by seeking such treatment early on, the entire family unit is benefited.

Questions:

1. Isn't mandatory HIV/AIDS testing invasive? Is mandatory notification of one's HIV status to one's potential spouse a breach of privacy?

- a) What should be emphasized is the extension of a human right that is made by giving both individuals of a marriage partnership an outlet from contracting the disease. No individual should be subjected to preventable death: the HIV/AIDS virus is not an exception.
- b) Consideration must be given to the future generation of Zambians. Anti-retroviral drugs are extremely successful in delaying the onset or preventing the transmission of the virus from mother to fetus. The technology is at hand so that if a mother notifies the state of her HIV-positive status, the state has a means to prevent the untimely death of her child.
- c) The health care that can be given to help save the child of an HIV-positive mother from being born infected saves an innocent child from needless torture: the torture of experiencing the painful deterioration of their young bodies while living in a country that is economically insufficient to be able to provide the HIV-positive child with a future.

Besides being ethically upright, it is furthermore economically advantageous to Zambia. Children with AIDS are costly to accommodate, many of whom are likely to be orphaned upon their parents' premature death caused by the disease. A decision that reduces the number of unemployed citizens is beneficial. HIV/AIDS renders its victims useless once it takes its toll. Furthermore, the medical health problems that it causes

increases demand of government aid to assuage the suffering and accommodate the new needs of the disabled population (e.g. the need for individual care-takers, medical care and medicines).

It is proven that reducing the stigma associated with AIDS is a means of establishing a more controlled environment of the disease. When people feel free to voice their struggles with the virus, it causes greater awareness of the gravity of the disease and thus more attention to the preventative measures that can be taken. In order to decrease the stigma associated with the disease, there needs to be adequate care accessible to those who are currently living with the disease such that they are not deemed a burden of society and disrespected. A means of extending this controlled environment would be to heighten public awareness of the importance and *right* to personal HIV/AIDS status notification.

Unfortunately, a lack of funding is only one of many barriers that will make the implementation of mandatory pre-nuptial testing a hard procedure to implement. As it stands now, within marriage, the couple is not given the right to know what the implications for childbirth and future personal health and standard of living will be unless the state demands it. Therefore, there is no reason to delay creating this policy as it demonstrates the state's commitment of a serious effort towards combating HIV/AIDS.

A substantial impediment towards AID/HIV prevention occurs due to a lack of human rights<sup>1</sup>. If women are forced into marriage by default based upon the sparse

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<sup>1</sup> A recent highlight on women's rights and a conservative religious organization:

*ZIMBABWE: Apostolic Faith churches act to prevent spread of HIV/AIDS*

09 May 2005 18:16:20 GMT

Source: IRIN

“JOHANNESBURG, 9 May (IRIN) –

economic opportunities for any form of self-sustainability, then she is indirectly completely vulnerable to contracting AIDS. At the same time, men must not be left out of the picture<sup>2</sup>.

It is important that individuals believe they are not impotent in their ability to prevent their personal contraction of the disease. An apathetic attitude towards the rewards of safe-sex practices only breeds an unwillingness to engage in safe-sex. On the other hand, if people believe that the use of condoms/ other means of HIV/AIDS prevention will successfully prevent the spread of AIDS, there is a greater incentive towards incorporating these practices in one's lifestyle.

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“The leadership of Zimbabwe's Apostolic Faith (AF) movement, one of the most conservative churches in the country, have embraced a new creed - that of AIDS prevention.”

“In a bold move, church leaders recently appealed to the AIDS Policy Advocacy Project (APAP) for assistance in developing an HIV/AIDS mitigation policy, which could see the overhaul of deeply entrenched traditional practices. The APAP is supported by the Futures Group, an international AIDS NGO that targets faith-based organisations.”

“We now know that upholding such traditions as polygamy, wife inheritance and forced marriages for our daughters is killing us. We want to change these attitudes, and adopt policies that will save the young and old members of all Apostolic Faiths, by letting them know which ones of our practices are exposing us to HIV/AIDS,” an Apostolic Faith elder, Bishop Revai Chitanda, told IRIN.”

<sup>2</sup> Reuters news brought out the important role that men play within the relationship and their limited knowledge of HIV/AIDS issues:

*ZIMBABWE: Taking the anti-AIDS message to the men*

09 May 2005 13:06:20 GMT

Source: IRIN, BULAWAYO, 9 May (IRIN) Reuters Foundation

“The preponderance of patrons are men, often overlooked in outreach programmes, which tend to focus on women, who are most affected by HIV/AIDS. But MSF recognises the critical role men can play in stemming the virus and has decided to go after this neglected 50 percent of the population.

“The reason why we are targeting men is that they are the ones who take the initiative in intimacy, and they have the final word,” said MSF Bulawayo spokesperson Fernanda Falero.

“We have come to realise that the best way to reach men is to go to where they are found most of the time, and in numbers, and that is in bars and beer halls. We have a team that we dispatch every weekend to visit drinking places and talk to them on how they can play a meaningful role in fighting HIV/AIDS,” Falero said.”

She noted that a recent MSF survey found that men's knowledge of AIDS-related issues was limited compared to their spouses, who more often receive some kind of education and counseling when they visit clinics during pregnancy or to have their children immunised.”

Extra-marital sex is an important factor to consider as it introduces changes in the HIV/AIDS status of married couples and therefore a spouse remains at risk of contracting the disease if his or her partner is not monogamous. Because of a dormant period of the virus that can cause false-negative HIV-test results and the possibility of extramarital sexual interaction with HIV-positive partners, the HIV/AIDS status of couples is susceptible to change even after marriage. Because of a lack of economic means widespread among women, the state should implement an affirmative-action based policy that provides women with the funding to have their partner tested for the virus. If the woman herself desires an HIV test for her partner, it stands to reason that she is concerned that she may contract the disease herself. (If she is already aware that she is HIV positive, she should know of the risks involved in giving birth.)

In creating this policy, the following is a potential risk that must be considered due to the pervasive gender discrimination. Because infidelity is grounds for divorce, if, after marriage, a spouse is tested and found to be HIV-positive, this could be used as an excuse to divorce one's current partner even if the infidelity falls on the part of divorcer. There is no way to tell who contracted HIV first, and because widows are vulnerable, economic burdens on the state, there should be some means to prevent this event from occurring. Perhaps this means that post-marriage HIV-test results remain private (not disclosed unwillingly to spouse).