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**AIDS IN SOUTH AFRICA: ISSUES OF JUSTICE, AND
THE CHALLENGE FOR MORAL THEOLOGY**

*A thesis submitted to the Faculty of Theology in fulfilment of the requirements for the
degree of Doctorate in Theology.*

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To my Parents, in love and gratitude.

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Introduction

This thesis explores the AIDS epidemic in Developing Countries, and examines some of the factors contributing to the problem. It approaches the epidemic from a justice perspective, and so the themes discussed concentrate on issues of injustice and exploitation. The argument is that at the root of the crisis lie injustices which fuel the spread of HIV/AIDS. It is therefore not the intention here to focus primarily on AIDS as a sexual matter. Although within the Developing World, HIV/AIDS is mainly transmitted through heterosexual intercourse, the AIDS epidemic cannot adequately be discussed in these terms alone. Approaching it as a justice issue provides a broader and more inclusive understanding of the problematic.

Part One asks why the AIDS epidemic in Developing Countries ought to be seen as a justice issue. This section deals with poverty and Third World Debt, exploitative international economic policies, problems about access to HIV drugs and the cost of this medication, and the treatment of women within many societies and cultures. It is argued that these are some of the factors contributing to the scale of the crisis, and that they are primarily matters of justice; and it is proposed that until these injustices are seriously tackled, no adequate long-term solution to the epidemic will be found.

Part Two then deals with the situation in South Africa, applying the more general considerations elaborated in Part One. This country has almost 5 million people infected with HIV/AIDS, and the majority of those infected are poor. The legacy of apartheid is examined, and it is argued that the injustices suffered under that regime are now

contributing to the AIDS crisis in South Africa. Crime and poverty play a large part in the current situation. Rape is another major problem, and has obvious effects on transmission rates. Furthermore, recent debates over access to antiretroviral drugs have raised questions in this area. Strategies directed at the containment or prevention of this disease must incorporate a proper understanding of these problems.

Part Three examines the challenges which the AIDS pandemic poses for moral theology. It is suggested that if the Church's moral response to AIDS is confined solely to matters of sexuality, such as the use of condoms, or the imperative of abstinence, it will fail to offer an adequate teaching for those affected by the disease. In this regard, responses by the Southern African Bishops are examined, as well as those of the US and French Bishops. I have selected a number of documents by the Southern African Bishops' Conference which are representative of the approach taken by the Bishops on AIDS. But I will examine also some work by individual South African Bishops illustrating the varying views which exist on this matter. The variety here reflects the variety of opinions within moral theology and within the Church more generally. The US and French Bishops discuss AIDS from a Western perspective, but their views are also instructive. In addition, the work of some influential moral theologians is assessed, especially that of James Keenan and Kevin Kelly.

Because the overall focus of the thesis is on issues of injustice, it was not the intention to dwell at length on debates about condoms, but it is inevitable that when examining the contribution of some theologians and bishops, the question of condom use

dominates. It will be seen that within moral theology there appears to be a tendency to treat the AIDS pandemic in terms of sexuality alone; that is, the pandemic is approached from a sexual ethics perspective, and issues concerning the use of condoms receive much consideration. But it is contended here that if the Church is to provide an effective teaching on AIDS it must move beyond discussions which focus solely on sexual ethics. The deeper social and economic ills within society must be addressed, and greater understanding of the role they play in the AIDS pandemic must be acknowledged and confronted.

The final chapter briefly outlines some aspects of Catholic Social Teaching, where one finds a valuable source of teaching which is helpful as a basis upon which to respond to the AIDS crisis. The areas from this body of teaching which are discussed in this chapter are of relevance to the main thesis of the work, and in particular address themes mentioned in Part One.

Much of the information about the AIDS epidemic in Developing Countries and the related issues discussed here is to be found in articles and short reports. As regards South Africa in particular, few major studies have been undertaken. Various web sites were of assistance also. The Treatment Action Campaign website offers accurate and updated information concerning access to HIV drugs in South Africa, and the UN websites are useful for recent data and statistics.

Toward the end of Part Two there is a concluding piece which deals with some personal experiences in South Africa. It is acknowledged that in a work of this nature it is unusual that such a personal note is struck. But it is hoped that the inclusion of this piece will help put in perspective some of the issues discussed.

Part One

AIDS as a Justice Issue

Introductory

Figures vary as to the number of people infected with HIV, but most estimates show that approximately 36 million people are currently living with the virus. Globally over 60 million people have been infected, with 24 million deaths having already occurred. Some believe that by 2005 as many as one hundred million people will be infected with HIV.¹ The AIDS crisis has had the greatest impact in the Third World, where 90% of those infected with HIV reside.² And within the Third World itself, sub-Saharan Africa contains 25 million people who are HIV positive. These figures help illustrate in some way the scale of the problem, especially within the Developing World.³

Part One explores some of the causes of the rapid spread of HIV within the Third World, and it will be proposed that the current crisis is due to injustice and exploitation. Furthermore, until the many forms of injustice are adequately addressed within society no long-term solution to this crisis will be reached. By concentrating on a number of key themes it is hoped to show how injustice is the key to understanding this problem. The

¹ For these figures see Thomas C. Quinn, M.D., "The Global AIDS Fund – Will It Be Enough and Will It Succeed?", in *The Hopkins HIV Report*, September 2001. Available at: http://hopkins-aids.edu/publications/report/sept01_4.html. A number of other sources also contain similar figures. For example, Nana K. Poku, "Africa's AIDS crisis in context: 'how the poor are dying'", in *Third World Quarterly*, vol.22, no.2 (2001), p.191, and also see PANOS, *Beyond our Means? The Cost of Treating HIV/AIDS in the Developing World*, (London: The Panos Institute, 2000), p.1. These figures are also supported by the World Health Organisation (WHO). Slightly more updated figures from the UNAIDS website show that by December 2003 the number of people estimated to be infected with HIV/AIDS rose to approximately 40 million. See the UNAIDS 2003 global report, available at www.unaids.org.

² See Poku, "Africa's AIDS crisis in context . . .", p.191.

³ By using the term "Developing World" or "Developing Countries" I refer to countries in the Third World. However some believe that the term "Developing Countries" is misleading as it implies that the world is moving in the same direction economically, albeit at different rates. This is often not the case and many "Developing Countries" are not actually developing at all. In some cases development is now being reversed. However, despite possible misinterpretations of this term, I will refer at times to Third World countries as "Developing Countries". On this point see Mark Heywood, "Drug access, patents and global health: 'chaffed and waxed sufficient'", *Third World Quarterly*, vol.23, no.2, (2002), p. 218.

areas of attention are: poverty within the Third World and the effect this has on combating HIV/AIDS; availability of, and access to, drugs and treatment within Developing Countries; and finally the subordination of women within many societies, and the impact this has on the spread of HIV. Some of these areas will be dealt with in closer detail in the chapters concerning South Africa. The aim of Part One is to explain in general terms why the AIDS crisis within the Third World needs to be considered in these terms, and show how various injustices are the main cause for the spread of this disease.

Some of the consequences of poverty, and their relation to the transmission of HIV, will be considered first. One immediate effect of poverty is poor health. Lack of clean water, food, and adequate shelter inevitably leads to ill health. This in turn inhibits the body's ability to fight disease. In the case of HIV/AIDS the weak succumb first. However, the impact of poverty is more varied than this alone. Poverty affects medical care, education, and job opportunities. People are often driven to adopt "survival strategies" such as prostitution, which greatly increase the chances of contracting HIV. On an international scale, Third World debt drains countries of important financial resources that are desperately needed for areas like health care. Finances which could otherwise be invested in medical resources and education are used instead to repay huge debts. Structural Adjustment Programmes (SAPs) are an example of First World economic policies intended to promote development and alleviate poverty, but which often add to existing financial difficulties. These programmes often benefit donor countries far more than they do Third World countries, and impose restrictive conditions

on recipient nations. The “development” which SAPs are intended to foster is seen purely in terms of economic growth, and a more inclusive notion of development is ignored. By focusing on these issues it is hoped to show why poverty is both a major contributing factor in the spread of AIDS, and a serious obstacle to any long-term solution to the current situation.

A second major problem that many Developing Countries face is the lack of essential drugs and treatments for HIV/AIDS. This is connected to the levels of poverty faced by these countries. In most cases the cost of drugs is the main difficulty, but related issues such as lack of social infrastructure, which prevents the necessary supervision and administration of treatments, is a major concern also. This is most notably the case with antiretroviral drugs (ARVs) which require responsible consumption, and it is vital that the access to these drugs is monitored properly. But this involves resources, and many communities lack even the most basic medical facilities. Thus, difficulties concerning drug supply and access is a further factor contributing to the spread of HIV. In many instances transmission of the disease could be prevented were sufficient medical resources available, as is the case with drugs to reduce mother-to-child transmission.

A final topic I wish to discuss is the status of women within many countries/cultures. This is another example of injustice, and one which has a significant impact on the spread of HIV. In many cultures women are the poorest of the poor. They lack any social or economic status, and are often reliant on their husbands for financial

security. Women in general are more likely to become infected during intercourse than men for various biological reasons. But within many cultures the subordination of women placed them at additional risk of infection. Few economic opportunities often force women to adopt survival strategies such as prostitution. Also, the high levels of sexual violence directed against women increases transmission rates. Thus, the subordination of women is an area which requires close examination, and one that will be considered in further detail when examining the situation in South Africa in Part Two.

Chapter One

Poverty and its Relation to the Spread of HIV in the Third World

1.1 Introductory

Any adequate study of the AIDS pandemic and its causes must consider the influence of poverty on the rapid spread of this disease. It is no coincidence that 90% of those infected with HIV/AIDS live in the Third World. An understanding of the impact of poverty is essential for a comprehensive awareness of this crisis, and also for the structuring of a long-term solution to the pandemic. Poverty is a grave injustice and hinders the attainability of true human development. This particular form of injustice is a key element when considering the rapid spread of HIV/AIDS in the Developing World. A number of issues will be addressed here. First, Third World Debt will be discussed, and the impact this has on Developing Countries. Certain economic policies implemented by First World organisations in an effort to aid growth and development have also had a huge impact on poorer countries. Included here is the policy of Structural Adjustment and, the later introduced, Comprehensive Development Framework. The social impact of these development policies will be discussed in view of the AIDS crisis. Yet, the poverty in which many Third World countries find themselves is not always the result of mismanaged First World economic policies. Poor internal management of funds and resources is another reason why many countries lack essential funds for health-care and education.

Poverty often goes hand-in-hand with lack of education, poor job prospects, ill-health, and an inability to acquire essential drugs if and when one becomes ill. It is a devastating spiral – poverty aggravates the spread of HIV, and AIDS causes greater poverty. Many people are driven to engage in “high risk” behaviour such as prostitution

in order to survive. In these circumstances HIV flourishes. Until poverty is tackled properly, as well as the problems associated with it, the spread of HIV and AIDS is inevitable.

1.2 Third World Debt and Economic Policies

Debt repayments severely hinder poorer countries in their efforts at providing adequate health and educational facilities. Large sums of money desperately needed for investment in these areas go instead to paying off large loans and accumulated interest. This drain on a country's financial resources, and the resulting lack of essential social services, adds to the AIDS crisis in the Developing World. Estimates show that African external debt is approximately \$227 billion⁴, while in 1999 the total foreign debt owed by Third World Countries was believed to be \$2.1 trillion.⁵ As Alan Whiteside explains, "[i]f 50% of debt were cancelled, it would potentially double the resources for preventing, managing and mitigating the impact of AIDS . . . Debt relief offers an opportunity to rehabilitate social infrastructure and systems that have been eroded under macroeconomic decline, structural adjustment and spiralling debt. This infrastructure must be provided for delivery of both HIV prevention and AIDS mitigation".⁶ Other figures show that \$7 – 10 billion is needed each year to fight HIV/AIDS, yet African countries pay \$13.5 billion in debt service each year.⁷ This transfer of financial

⁴ Figures vary as to the total amount owed by African Countries. Alan Whiteside, for example, estimates African Debt at US\$227 billion. For these figures see Alan Whiteside, "Poverty and HIV/AIDS in Africa", in *Third World Quarterly*, vol.23, no.2 (2002), p.330. Others believe the figure is much higher. Fantu Cheru estimates it is US\$340 billion. For this see Fantu Cheru, "Debt, adjustment, and the politics of effective response to HIV/AIDS in Africa", in *Third World Quarterly*, vol.23 no.2, (2002), p.301.

⁵ For these figures see Cheru, "Debt, adjustment . . .", p.301.

⁶ Whiteside, "Poverty and HIV/AIDS in Africa", p.330.

⁷ See Cheru, "Debt, adjustment . . .", p.300.

resources away from the educational and health sectors towards debt repayment is seriously hindering efforts both at containing the disease, and preventing the further spread of HIV/AIDS. Consequently, directly tackling poverty and freeing up financial resources to address the AIDS epidemic is essential. Unless this takes place necessary provisions for fighting the spread of HIV/AIDS will not be available.

One of the main areas of criticism has been the policy of Structural Adjustment. Structural Adjustment Programmes (SAPs) were intended to stabilise and restructure the economies of poorer countries, leading to economic growth and the ability to repay debts to donor countries. “The key objective of adjustment programmes within indebted countries was to reduce consumption of goods and services. The IMF calls this ‘demand management’. It is meant to ensure that more of debtor nations’ resources will be used to produce exports to be sold for dollars that can then be used to pay debts”.⁸ One result of these adjustment plans was a reduction in the role of the state both in the economy and also in the provision of other services including health care and education. These policies also placed sole importance on *economic* development and growth, and failed to take into account the effect that this would have on other social services. Funds were directed away from these areas, since development was seen in purely economic terms. One immediately detects a number of problems with SAPs.

⁸ Cheru, “Debt, adjustment . . .”, p.302.

First, if development is seen in economic terms alone one is left with a very narrow vision of human development, and this inevitably results in other aspects of development being forgotten or ignored. Areas such as health, education, and other social services are deprived of the funds they need. Cheru explains that, “[d]emand management policies, which are central in structural adjustment programmes, have had a regressive impact by reducing the amount of foreign exchange available to purchase necessary imports, leading to severe import strangulation, depriving industry and agriculture of needed inputs. In the social sector, debt servicing and the adjustment policies pushed to free up foreign exchange needed to service the debt have worsened social welfare in the areas of health, education and poverty reduction”.⁹ A key element of adjustment programmes was to reduce consumption of goods and services, what the IMF referred to as “demand management”. The idea is that if a country reduces both the amount of goods it consumes and services it requires it will have more exports, resulting in more revenue to pay off debts. Although at first glance this may seem an effective way to increase finances for the repayment of loans, one quickly realises the extremely restrictive nature of these programmes, and the wider negative impact they will have on society.

Another major flaw of Structural Adjustment Programmes is that their conditions were applied unilaterally, with little or no consideration of a particular country’s economic and social circumstances. Applying these programmes to all Third World Countries, irrespective of economic status, leads to problems. No thought is given to the difficulty individual countries may encounter in repaying debts. Also, the conditions

⁹ Cheru, “Debt, adjustment . . .”, p.302.

accompanying these programmes benefit donor countries more so than recipient countries. This fact, along with the inflexibility of these programmes and their inability to meet the varying situations of individual countries, has meant that they have had an extremely negative effect on the economic plight of many Third World countries. Cheru concludes that, “[w]hile many elements of macroeconomic adjustment are critically important for promoting economic growth and social development, the context in which these policies have been applied is largely motivated to ensure that debtor nations fulfill their interest and principle payments to creditor institutions”.¹⁰

The result of focusing purely on macroeconomic balance and debt repayment has a regressive impact on access to education, food and social services. Cheru believes that rather than improving the economic condition of Third World countries, the living standards within many of these countries has fallen, and investment in social services has declined considerably. She says that the restrictions and economic demands enforced by Structural Adjustment Programmes have jeopardised the attainability of a number of basic rights.¹¹ For example, the right to food is threatened due to increased pressure on countries to produce cash crops such as tobacco, coffee and cotton instead of concentrating on agricultural produce. This results in low levels of food for local consumption since goods for export become the main concern. The decline in local food production increases malnutrition and food shortages.

¹⁰ Cheru, “Debt, adjustment . . .”, p.303.

¹¹ *Ibid.*, p.303-304.

Another area affected is education. Figures show a dramatic decline in children receiving primary education. In the 1960's and 1970's, 50% of children in most Developing Countries received at least four years primary education. However, Structural Adjustment Programmes have resulted in many governments suspending, or abolishing spending on education. Consequently, the percentage of children attending school has dropped from 55% in 1979 to 45% in 1995.¹² Girls in particular have suffered, since many families are unable to pay school fees and have to choose which children they can afford to send to school; often boys are sent in preference to girls. Thus, the right to education is often beyond the reach of the poor and this adds to the problem of trying to tackle the scale of the AIDS epidemic.

The right to health is also threatened by the implementation of Structural Adjustment Programmes. Due to the reallocation of scarce resources to repay huge loans essential social services such as health care are often neglected. Where medical facilities exist they are may be understaffed and under-equipped. In relation to the AIDS epidemic one realises how inadequate the existing medical resources are in combatting the crisis. Despite the urgent need to invest capital into medical care, funds are instead directed towards the payment of debt.

In a report by Sue Lucas for CAFOD in 1999 which addresses the AIDS crisis in Africa, the effect that Structural Adjustment policies have on society is examined. Looking at the situation in Zambia, Lucas notes that the "amount spent on debt repayment – US\$235 million in 1998 – exceeds spending on health, education, and all

¹² Cheru, "Debt, adjustment . . .", p.303-4.

other welfare services combined. The total debt currently stands at US\$6.5 billion . . . The impact of debt repayment on the poorer sections of society has been severe. The charging of fees has forced people to drop out of education and health care systems”.¹³ Noting that in Zambia the killer diseases are malaria, malnutrition, TB and AIDS – all of which are poverty related diseases - Lucas says that social and economic reform is needed in order to overcome them¹⁴. The financial strain caused by such large debt repayments means that there are no funds to tackle these diseases or the poverty which causes them.

These facts show how Structural Adjustment Programmes contributed in many cases to the problems within the Third World, rather than helping solve them. Both the narrow view of development and the inflexibility of these programmes led to an inadequate idea of development and how best to achieve it. The channeling of essential funds away from the social sector resulted in increased poverty, suffering and injustice. For countries trying to battle the AIDS epidemic, allocation of financial resources away from education and medical care only helped to worsen the crisis.

Cheru believes that the policy of Structural Adjustment needs to be revised and improved in order to achieve the positive goals hoped for, and reduce the negative consequences of the policies. This involves concentrating not only on how best to

¹³ Sue Lucas, *Valuing Life: A CAFOD Report on AIDS in Africa*, (CAFOD, May 1999), p.5. Although the figures in this report may, in places, be slightly dated, they nevertheless portray the problems faced by many Third World countries. This report deals mainly with the situation in Zambia.

¹⁴ *Ibid.*, p.8.

achieve economic growth, but also examining the kind of growth being achieved.¹⁵ Essentially what is needed is a more complete vision of development which will include the social and personal dimensions as well as the economic. True human development requires more than simply economic growth. Cheru outlines a number of changes necessary before this can occur.¹⁶

First, the terms and conditions of adjustment programmes need to be changed. Cheru calls for “adjustment with transformation”. This would involve adjusting economies to meet human needs, not the other way around. The main concern must be the alleviation of poverty and providing for the basic needs of the poor. This would include better educational, medical and social services, and concentrate on overall improvement of nutritional levels. “Malnourished people unable to receive health and educational services are in no position to improve their own well-being or contribute productively to the nation”.¹⁷ This clearly would have a huge impact on fighting the AIDS crisis in Third World countries. Cheru also calls for total cancellation of poorer countries’ debt, ensuring greater consistency between trade agreements and human rights, and finally establishing greater support for the Global AIDS Fund.

However, it would be naïve to think that, by abolishing Third World Debt, governments would automatically transfer the money required for loan repayments into education and health care. It may well be the case that this money would be used for

¹⁵ Cheru, “Debt, adjustment . . .”, p.309.

¹⁶ *Ibid.*, p.309-311.

¹⁷ *Ibid.*, p.309.

other purposes, and that the poor would still be neglected. Certainly wealthy nations and international organisations should work towards alleviating the poverty in which many Third World countries find themselves. Important here is the implementation of economic policies which truly help the poor and address the social as well as the economic difficulties which exist. But, individual governments also have a duty and responsibility to the poor. They must ensure that financial resources are used to address the problems within their own countries. Should debt relief occur, this money must be redirected wisely. Increasingly we see where this is not the case. For example, in South Africa R40 billion (\$4 billion) is being spent on re-armament by a government that also argues that it does not have the resources to provide facilities such as HIV counseling and testing services.¹⁸ This is only one example of how countries misuse what few resources they may have. So although international policy directly affects the growth and development of Third World countries, and often has devastating results, individual countries also have a responsibility to ensure that resources are used in a way that provides their people with the chance to live, and live well.

During the mid 1990's, doubts and criticisms emerged regarding the economic policies imposed by the World Bank and the IMF. There were uncertainties about Structural Adjustment Programmes, and the conditions and restrictions associated with them. It became clear that economic development was not being achieved at the rates predicted and it soon emerged that new strategies would need to be devised to deal with the situation. The World Bank's view of development, and how best to achieve it, made a complete U-turn. As J. Pender has put it, "Structural Adjustment lending, and the

¹⁸ See Mark Heywood, "Drug access, patents and global health: 'chaffed and waxed sufficient'", p.220.

policy of conditionality associated with it, is at an end. In its place the World Bank has developed its Comprehensive Development Framework . . . [which] is based not on conditionality, but on a relationship of partnership between itself playing the repositioned institutional role of 'Knowledge Bank', and the borrowing government, which has full 'ownership' of policies it chooses to pursue".¹⁹ But why did this shift in attitude occur?

In 1995 James Wolfensohn was appointed World Bank Group President, and in 1997 Joseph Stiglitz was appointed World Bank chief economist. These men assisted change in the way the World Bank's view of development from the narrow vision with which it was seen under Structural Adjustment, to a broader objective view of what it should mean. As Pender explains, "[the] Bank's new outlook consolidated the shift away from an approach to development premised on the primacy of economic growth. Economic growth came to be increasingly relativised in the sense that it was viewed as one among many aspects of development".²⁰ Although economic growth was still important it was no longer the sole objective.

Stiglitz himself outlined this broader framework: "[w]e seek sustainable development, which includes preserving natural resources and maintaining a healthy environment. We seek equitable development, which ensures that all groups in society, not just those at the top, enjoy the fruits of development. And we seek democratic development, in which citizens participate in a variety of ways in making the decisions

¹⁹ John Pender, "From 'Structural Adjustment' to 'Comprehensive Development Framework': conditionality transformed?", *Third World Quarterly*, vol.22 no.3 (2001), p.397.

²⁰ *Ibid.*, p.403.

that affect their lives”.²¹ The emphasis in World Bank policy had clearly moved away from a view of development in purely economic terms to one which encompassed a far broader view of human development, where the importance of education and social services was now acknowledged.

What is interesting about this new outlook by the World Bank is its self-criticism. Earlier assessments of poor economic achievement within the Third World tried to place the blame on the governments in question. The Bank believed that it was not the policies that were inadequate. Rather, fault lay with the individual countries in their inability to properly apply the policies. This defensive tone is most notable in a World Bank study in 1994 entitled *Adjustment in Africa: Reforms, Results and the Road Ahead*.²² In contrast to this, there emerged a more honest and hard-hitting assessment of the situation. The World Bank accepted that these policies were often properly implemented by Developing Countries, but that in many cases they simply failed.

The Comprehensive Development Framework was devised to redress the shortcomings of Structural Adjustment. Wolfensohn stated that, “[w]e have learned that there is a need for balance. We must consider the financial, the institutional and the social, together . . . Development is about putting all the component parts in place – together and in harmony”.²³ The needs of the poor are considered in a particular way, and the impact of poverty, gender, inequality and education on development is

²¹ Cited in Pender, “From ‘Structural Adjustment’ . . .”, p.404.

²² On this point see Pender, “From ‘Structural Adjustment’ . . .”, p.401.

²³ Cited in Pender, “From ‘Structural Adjustment’ . . .”, p.407.

understood. In short, what we see in the Comprehensive Development Framework is a new approach to development which is all-encompassing and which considers human development in a much broader way than any previous World Bank policies did.

We also see a more relaxed approach by the Bank on the question of conditionality. The coercive conditionality characteristic of Structural Adjustment Programmes is replaced with a desire for dialogue and cooperation. Partnership is now central, and this again marks a move away from earlier policies. Conditions still remain, but as Pender notes, no longer was conditionality concerned solely with achievement of economic growth. Instead, “its focus is on the subordination of society’s resources to meeting the perceived requirements of the poorest in that society”.²⁴

Only time will tell if these new policies adopted by the World Bank will be successful, and whether or not they will assist human fulfillment. However, the implementation of the Comprehensive Development Framework, and the new attitude by the World Bank towards development is important for a number of reasons. It shows the flaws inherent in earlier policies and highlights the fact that complete, integral development must be seen in a broader way than before. Also, it became evident that the restrictive nature of SAPs and the conditions they enforced were counterproductive. Economic policies need to be able to adapt to the various economic situations of different

²⁴ Pender, “From ‘Structural Adjustment’ . . . , p.409.

countries. The World Bank acknowledged the shortcomings of its earlier policies and tried to find an approach that would take into account the needs of the poor. This in itself is significant.

1.3 The Relationship between Poverty and AIDS

In the Third World the close relationship between HIV/AIDS and poverty is clear. As mentioned above, poverty drives people to adopt “survival” strategies in order to live, and this in turn increases the likelihood of infection. Poverty also results in malnutrition and poor health. Furthermore, AIDS leads to greater poverty within communities and countries. Where large sections of the work force are dying industry and development suffer. There are also serious financial repercussions for families where a member is sick and unable to work. The poverty-AIDS cycle is harsh; poverty increases the risk of HIV/AIDS transmission, and HIV/AIDS increases levels of poverty. This is a point noted by Whiteside. “There is a cycle between HIV/AIDS and poverty. AIDS deepens poverty and increases inequalities at every level, from household to global. The epidemic undermines efforts at poverty reduction, income and asset distribution, productivity and economic growth. AIDS has reversed progress towards international development goals. It is one of the most profound development challenges faced in modern human history, not because of its direct impact, but for the influence it has on other development policies and goals”.²⁵

²⁵ Whiteside, “Poverty and HIV/AIDS in Africa”, p.325.

Poverty often results in ill-health since the immune system is weakened because of poor nutrition. Whiteside explains that protein-energy malnutrition, iron-deficiency anaemia, and vitamin-A deficiency, all of which are poverty related conditions, decrease resistance to disease.²⁶ Thus, poverty and the malnutrition associated with it, make people more susceptible to this disease and inhibits their ability to fight infection.

But, as Poku explains, poverty also forces people to adopt “survival” mechanisms in order to cope with lack of income. “Poor households typically have few – if any – financial or other assets and are often politically and socially marginalised. It is not at all surprising in these circumstances that the poor often adopt coping mechanisms which inadvertently expose them to a higher risk of contracting the HIV virus”.²⁷ Two examples help to illustrate this.

Poverty and lack of employment result in labor mobility. People, usually men, are forced to migrate in search of work. Large numbers of people find themselves away from their families and traditional communities for long periods of time. For men, having left their wives and families behind, the newfound money buys, among other things, sex. In cases such as mining where the work is extremely perilous the dangers of unprotected sex seem less relevant. This is evident in South Africa where studies show that a high percentage of men working in mines were HIV positive.²⁸ Furthermore, it is

²⁶ Whiteside, “Poverty and HIV/AIDS in Africa”, p.317.

²⁷ Poku, “Africa’s AIDS crisis in context: ‘how the poor are dying’”, p.195.

²⁸ *Ibid.*, p.196. On this point see also Catherine Campbell, “Migrancy, Masculine Identities and AIDS: The Psychosocial Context of HIV Transmission on the South African gold mines”, *Social Science and Medicine*, vol.45, no.2 (1997), p.273-281.

not uncommon for men to have a second family where they work, returning home to their original family a couple of times a year. When they do return home they often bring the HIV virus with them.

Poor economic opportunities for women means that many are forced into prostitution to get money for food and shelter. These women rely on migrant workers for “business”, and in many cases prostitution is the only realistic alternative to hunger and starvation. Women whose husbands have died from AIDS are often left in a precarious situation. They may now lack any significant social or economic status within the community and were previously dependant on their husband’s wages. This lack of income, coupled with little job prospects, drives women into prostitution. Inevitably such practices increase the chances of contracting HIV, as well as adding to the spread of the virus. Consequently, poverty plays a major role in the spread of HIV as these examples show, and it makes containment of the virus increasingly difficult.

Although poverty assists the spread of this disease, HIV/AIDS in turn increases levels of poverty both at the national and local level. “The first and greatest impact is at the level of individuals and households. Macroeconomic impact takes longer to evolve and the scale and magnitude of macro-impacts will depend on the scale and location of micro-level impacts”.²⁹ Let us look first at the local impact of AIDS on households and later consider the wider impact on a region/country.

²⁹ Whiteside, “Poverty and HIV/AIDS in Africa”, p.320.

Households that were previously struggling financially, are seriously affected by a member's infection with HIV, and later death. One feature of the spread of HIV/AIDS is that it clusters in families, with devastating consequences. Both parents may be HIV positive and poorer families are less able to cope with the economic repercussions of sickness and death than richer ones. When one or more of the adult members of a family are ill it usually means that there is less money being earned, or fewer people to farm the land. These people will also need care and treatment, if available, and may need a special diet. All of this costs money, and places additional strain on a family's resources. Funeral expenses are another source of financial stress. And, as Whiteside explains, although medical costs may be partly subsidised by a government, funeral expenses fall solely on the family.³⁰

Poku discusses how this economic strain then places other members of the family at risk. "There is thus enormous strain on the capacity of families to cope with the psychosocial and economic consequences of illness, such that many families experience great distress and often disintegrate as social and economic units. Even where they do not, by eliminating the breadwinners – the parents – the process further exposes the rest of the family members to poverty, which then increases their chances of contracting the virus. This is particularly true of young women, who will often be forced to engage in commercial sexual transactions . . . as survival strategies for themselves and their dependants".³¹

³⁰ Whiteside, "Poverty and HIV/AIDS in Africa", p.322.

³¹ Poku, "Africa's AIDS crisis in context . . . ", p.196.

AIDS contributes to levels of poverty not only at the local level. It has a major impact on the economic growth of a region or country. Whiteside believes that development goals and the way they are to be carried out need to be rethought.³² “AIDS causes premature death and means that international, national and personal development goals and aspirations are not achievable”.³³ Similarly, Poku notes that the structural impact of AIDS is devastating.³⁴ Companies in Africa are suffering because of this epidemic. Workers become ill and eventually die. Absenteeism is becoming increasingly common since workers are too sick to go to work. According to studies of commercial farms carried out in Kenya, illness and death has replaced retirement as the reason why workers leave their job.³⁵ In many cases large percentages of the workforce are infected with HIV resulting in lower productivity and higher medical and health costs. This places financial strain on companies and industries, and they struggle to remain profitable.

In addition, if large percentages of the workforce are HIV positive, foreign industry may be less likely to invest in a country. Because the high-risk age category for HIV contraction is between 15 – 45 the majority of those dying of AIDS are the people who would normally work in industry and on the land. As a result hospitals are understaffed, teachers cannot be trained at a rate fast enough to cope with the numbers dying, and the workforce in general is being depleted. This places a strain on the economy, the individual companies, and other employees who have to work overtime to

³² Whiteside, “Poverty and HIV/AIDS in Africa”, p.325.

³³ *Ibid.*, p.327.

³⁴ Poku, “Africa’s AIDS crisis in context . . .”, p.193.

³⁵ *Ibid.*, p.193.

compensate for staff shortages. This sort of drain on the workforce of a country leads to serious economic difficulties. It hinders economic growth and frustrates efforts at poverty reduction.

The relationship between poverty and the spread of AIDS is something which needs to be considered thoroughly by governments and the international community. Any effort to tackle the AIDS epidemic must place poverty reduction at the core. Whiteside makes this point. "Directly tackling poverty remains the primary goal. Successful poverty alleviation will address the impact of AIDS since one of the main consequences of the disease is that it impoverishes individuals, households and communities".³⁶ Until the alleviation of poverty becomes the "primary goal" of both the international community and local government, the poverty/AIDS cycle will not be broken and the spread of HIV will continue.

³⁶ Whiteside, "Poverty and HIV/AIDS in Africa", p.330.

Chapter Two

Access to Drugs and Medical Care within the Third World

2.1 Introductory

A major obstacle in the fight against AIDS is the unavailability of drugs within Third World countries, and the cost of these drugs when they are available. Basic health care services are minimal. Medication for fighting HIV-related illnesses is scarce and it is usually only the rich who can afford them. In most cases there are only basic drugs, such as aspirin, available for pain relief. The poor are unable to meet the many costs associated with HIV infection – essential life-saving drugs, special dietary needs, the cost of care for the sick, travel expenses to hospitals and clinics. Also, the fact that many Developing Countries lack the necessary funds for investment in social services means that facilities such as clinics, HIV testing facilities, and counselling services are at a premium.

This chapter will look at some of these points, and discuss the impact of inadequate health services on the spread of HIV. The first question considered is the idea of a “right” to health. Other factors affecting health will then be considered. Included here is the question of patenting and the high cost of drugs. Much debate surrounds the practice of patenting, and a lot of blame has been directed at large pharmaceutical companies for controlling the price of drugs and charging amounts far beyond production costs. This results in the exclusion of the world’s poor from access to many medicines and has immediate consequences for people living with HIV. Furthermore, access to antiretroviral drugs raises many questions. Part of the difficulty with antiretrovirals is not just the high cost involved but also the lack of social infrastructure within many poorer countries, which is essential for the proper monitoring of these drugs. Irresponsible

consumption of ARVs leads to many problems which have a serious impact on efforts at controlling the spread of HIV. Finally, some of the positive efforts by the international community at tackling the pandemic will be examined. An example of this is the recently established Global AIDS Fund. I will look at the potential here for assisting in the provision of adequate health care systems, and consider how it may help countries deal with the AIDS crisis.

2.2 A Right to Health?

In an article entitled “A Human Right to Health?”¹ Tony Evans questions whether health should be defined as a human right, and examines why socio-economic rights are rarely given the same status as civil and political rights. There are two prevailing attitudes on this matter. The first, the liberal consensus, rejects the notion that health is a human right. This consensus accepts civil and political rights as human rights but fails to attribute the same status to socio-economic rights. Health is seen as an aspiration, something good and beneficial but lacking the status of a right. Among the reasons given for this is that “rights are meaningful only when a duty to fulfil a claim is established, which cannot be achieved in the case of socioeconomic rights. At the centre of this assertion is the argument that, while people clearly need food, shelter and an environment

¹ Discussion here is focused primarily on this article by Evans. See Tony Evans, “A Human Right to Health?”, *Third World Quarterly*, vol.23 no.2, (2002), p.197-215. Paul Hunt makes a similar argument. See Paul Hunt, “The right to health: from the margins to the mainstream”, *The Lancet*, vol.360, (December 7, 2002), p.1878.

that sustain good health, there is no reason to believe that these needs create an obligation on the part of others to provide them”.²

A feature of this view is what Evans calls the “scarcity argument”. This proposes that even if it were possible to establish a duty to provide these needs for the poor it would become too burdensome on the rich. “This fear is often expressed as the ‘deluge’ effect, an emotive term suggesting that the rich would drown in the sea of socioeconomic claims made by the poor”.³ The belief is that the demand for such needs, including health, would surpass ability to supply them, resulting in an intolerable burden on the rich. Obviously this view of health and basic human needs has a major impact on the provision of medical services for the poor and for promoting health care.

Central to the liberal view is the idea that civil and political rights are qualitatively different from socio-economic rights. This distinction is sometimes discussed in terms of negative and positive rights. Negative rights are exercised when individuals refrain from doing something which would jeopardise the rights of others, whereas positive rights require the provision of something for others, for example health care or education. “Put simply, the protection of negative rights demands nothing more than forbearance, while the protection of positive rights demands a redistribution of resources”.⁴ As a result the liberal argument sees negative rights as universal human rights while positive claims

² Evans, “A Human Right To Health?”, p.199.

³ *Ibid.*, p.199.

⁴ *Ibid.*, p.200.

are considered only as legitimate aspirations of people. There are a number of reasons for this.

First, negative rights can be achieved through the passing of laws – they require restraint whereas positive rights require the redistribution of resources. Negative rights in this sense are “cost-free”. For example, the right to life requires restraint – one refrains from killing others. Viewed in this way it is cost free since all it demands is that we refrain from the act of killing. Second, because the economic situation of countries varies considerably one cannot establish a universal standard for positive rights such as health care. If this were the case then poorer countries which are unable to provide these rights could be accused of human rights violations. It would be asking countries to acknowledge rights that they cannot provide. Third, in relation to the second point, due to cultural variation it would be difficult to apply positive rights universally. Fourth, it is thought that any obligation imposed on the rich to provide these positive rights would jeopardise and conflict with their negative rights. Finally, positive rights cannot be understood as human rights because they are made by the individual, whereas the state is concerned with the overall welfare of society which may conflict with individual claims.

These are the main reasons proposed by liberals as to why one must consider negative rights as universal human rights but why positive rights may only be seen as legitimate aspirations. These “legitimate aspirations” are best achieved through the promotion of negative freedoms. “The increasing wealth generated through the exercise of negative freedoms therefore promotes the fulfilment of positive aspirations by

generating the wealth that allows people to spend more on, for example, health care, nutrition and better housing".⁵ Any failure in achieving these social aspirations, the liberals would argue, is the result of a failure to implement properly negative rights.

While some of the ideas put forward by the liberals are important and worth considering, notably the problem of cultural variation in applying these rights universally, it seems their arguments are insufficient for excluding positive rights from the category of human rights. The liberal view certainly allows for a distinction between positive and negative rights, but it may not necessarily follow that positive rights must be relegated to a lesser category. The right to life, a negative right according to the liberal consensus and, consequently, a universal human right, may face the same difficulty of cultural variation as the right to education for example. Also, the idea that the right to life simply requires the employment of restraint in order to exercise it indicates a narrow view of what this right means. Surely the right to life must include more than simply not killing someone. "Life" means more than mere physical existence, and encompasses dimensions other than the physical alone.

An important and disturbing aspect of the liberal consensus is noted by Evans.

He writes:

At first sight the liberal consensus appears compelling, particularly because of the current normative order. If individuals, corporations and international organisations conform to the prevailing norms of conduct, and the only truly universal human rights are negative claims, then no blame can be levelled at those who take advantage of prevailing practices, regardless of the human rights consequences. Put another way, if the principles of the free market are supported by negative freedoms, and the legitimate investment and operational strategies of [transnational corporations] bring consequences that displace

⁵ Evans, "A Human Right to Health?", p.201

people, damage their prospects for providing a livelihood, destroy traditional communities and lead to the declining health of populations, no blame can be proportioned to human rights violations.⁶

The liberal view of rights focuses on rights that emphasise freedom of the individual, non-interference in economics and the right to own property – all characteristic of the free market. Part of the difficulty with this is that rights language is seen in terms of civil and political rights. It is in this setting that policies by organisations such as WTO and the World Bank which promote economic growth and free market ideas must be seen. Other social rights such as health, education, housing, are relegated and primary focus is placed on economics. This approach to development carries many problems and creates serious obstacles for the provision of social services vital in the fight against AIDS.

In contrast, the basic rights argument challenges the position proposed by the liberal consensus. Many claim that there is no clear distinction between negative and positive rights, as liberals suggest. Rather there exist basic rights without which other rights cannot exist. Among these are the right to life, security and subsistence. Subsistence here includes the means to sustain social life (which includes the right to health) as well as physical life.⁷ Also, rights cannot easily be divided into negative or positive. The “negative” right to life which liberals acknowledge involves more than simply forbearance and refraining from killing. The right to security implies taking certain precautions to protect oneself, it demands being protected against harm, and

⁶ Evans, “A Human Right to Health”, p.203

⁷ *Ibid.*, p.204.

consequently involves positive action. This then challenges the idea that the right to life is “cost-free” as it fails to take into account the funds necessary for the provision of a police force, a legal system and prisons, all of which are needed to ensure safety and security within society. Therefore, the neat categories by which the liberal consensus divides negative and positive rights is less clear than may first appear.

Similarly, the belief that provision of positive rights would place an unfair burden on the rich and conflict with their negative claims is rejected by the basic rights argument. It is not the case that the poor want to “live off” the rich, or that they want hand-outs. It is rather a case of being allowed to provide for themselves. The right to subsistence can be achieved by ensuring people have access to the necessary means for living in a dignified way. Thus, the claim that the burdens of providing social services for the poor would be too great for the rich seems less convincing, although there may be initial financial costs involved in the establishment of positive rights, and a certain amount of redistribution of resources may be required at times.

There are a number of conclusions that can be drawn from the basic rights line of reasoning.⁸ First, socio-economic rights and civil and political rights cannot be separated as conveniently as liberals would like to believe. Socio-economic rights represent the preconditions for civil and political rights. For example, when hunger and disease force people into a situation where they are always relying on others for help, civil freedoms are hindered. In the absence of basic rights such as food, health and education other

⁸ On these points see Evans, “A Human Right to Health?”, p.206.

rights cannot be fulfilled. Second, the right to health does not necessarily mean access to the latest technology and information. Rather it means providing the minimum which would enable people to lead a dignified life. People in the Third World are not likely to be concerned with the latest breakthrough by some First World pharmaceutical company in the treatment of baldness. However the fact that one billion people lack access to clean water is a primary concern for standards of health.

Globalisation has a huge impact on global health. The liberal approach to human rights promotes the interests of those at the core of economic globalisation. Evans explains that “the liberal consensus on human rights, which relegates socioeconomic rights to the status of aspirations, prioritises the interests of those closest to the process of economic globalisation rather than those on the periphery, by emphasising civil freedoms that support values associated with liberty and the free market”.⁹ This is evident, as seen above, in the implementation of Structural Adjustment Programmes.

Structural Adjustment Programmes are an example of the transfer of power away from the state/country to global financial institutions such as the World Bank and the IMF. These institutions then determine the economic policy of individual countries. The conditionality attached to SAPs means that funds are diverted away from social sectors and used instead for the repayment of debts. Evans explains that the World Bank “therefore takes responsibility for the economic co-ordination of the state, directing state policy towards addressing the freedoms associated with the market rather than

⁹Evans, “A Human Right to Health?”, p.208.

fulfilling socioeconomic rights. In this way socioeconomic claims become meaningless under SAPs, as the human rights to food, health, education and social assistance are abandoned in favour of privileging global financial and corporate interests".¹⁰

We have already seen the problems associated with Structural Adjustment Programmes. The liberal approach to human rights and the priority it places on certain rights is evident in international policy. This is hugely problematic when addressing the question of global health, and hinders efforts at promoting health as a basic human right. Although basic rights arguments go some way in challenging the liberal consensus, Evans believes that globalisation and the liberal view is still dominant and, consequently, the prospects for human rights are unlikely to improve in the immediate future.¹¹ The policies of international financial organisations, most notably the policy of Structural Adjustment, suggest that he is right. Social rights are neglected or ignored in the pursuit of economic gains.

However, the apparent change in attitude within the World Bank may suggest that socio-economic rights are finally being acknowledged and their legitimacy recognised.¹² Until this takes place many basic rights will be ignored. Within the Third World, where poverty and AIDS go hand in hand, the impact this has on health is very important. The

¹⁰ Evans, "A Human Right to Health?" p.210.

¹¹ *Ibid.*, p.213.

¹² This point is made in Chapter One. See footnotes 20 and 21.

achievement of basic rights to health, education, clean water and adequate housing are vital if efforts at containing HIV/AIDS are to succeed.

2.3 The Cost of Drugs

In terms of health the divide between the world's rich and the world's poor is growing wider, and this is most evident in relation to drugs. The cost of drugs is often far beyond the reach of the poor. There are a number of reasons for this, but a key factor for the high cost of many medicines is the policy of patenting. Debates about patents are not a new phenomenon, but they are especially strong in relation to the affordability of HIV drugs. For the majority of people living in poverty, treatment for illnesses such as HIV is too expensive. Attempts not only at controlling the spread and impact of HIV, but also of providing minimum standards of health for people are being greatly hindered as a result.

Historically a patent was something granted by the state, a reward given to an inventor who would, in return, make this invention available to the public. The idea was that the inventor would benefit from the exclusive right to sell his invention for a certain period of time, denying others access to the production of the item. The patenting of drugs has a significant impact on access to affordable treatments, especially within Developing Countries. It is another example of how international policy negatively affects the poor and fails to consider their need above profit and economics.

According to reports, the price of antiretroviral drugs would need to be reduced by 95% before they would become affordable to Third World countries.¹³ Companies are unlikely to reduce the price to this extent, although some positive steps have been taken by a number of pharmaceutical companies.¹⁴ In general though, efforts by poorer countries to get these drugs at cheaper rates, or produce them themselves, have been hampered by the might of the pharmaceutical industry, as well as the US Government. The irony is that these countries are only trying to obtain what they are legally entitled to under the WTO Trade Related Intellectual Property (TRIPS) agreement through parallel importing and compulsory licensing. All members of WTO are bound by TRIPS. "The TRIPS agreement sets a minimum standard for intellectual property protection in all member countries' national legislation. In the case of pharmaceuticals, patent protection is extended for a minimum of 20 years. Developing Countries had until 2000 (or 2006 for the least developed) to bring their national policies into line with this".¹⁵

Many Developing Countries are bound by international legislation which, in relation to access to drugs, favours pharmaceutical companies and severely damages poorer nations' ability to purchase vital medication. TRIPS undermines the ability of poorer countries to produce cheaper generic versions of drugs that are under patent in the West. It also strengthens the monopoly of the pharmaceutical industry and increases their

¹³ Caroline Thomas, "Trade policy and the politics of access to drugs", *Third World Quarterly*, vol.23 no.2 (2002), p.254. Thomas is here using estimates provided by PANOS in 2000.

¹⁴ See "Pharmaceutical giant drops prices of AIDS drugs", *AIDS Weekly*, (May 19, 2003), p.31-32. It is reported here that GlaxoSmithKline further reduced the price of its AIDS drugs for poor countries by 47%. While this is a welcome sign, this article also states that the cost of generic drugs is still less than the reduced prices offered by the pharmaceutical companies. In addition the need for provision of proper health services within poorer countries is as essential as the availability of cheap drugs.

¹⁵ Thomas, "Trade policy and the politics of access to drugs", p.254.

grip on the global market. In reality Developing Countries are often denied access to cheaper drugs through parallel importing and compulsory licensing owing to the international pressure brought on them by powerful companies and governments.

There are loopholes in TRIPS however. In theory at least, TRIPS allows countries to protect public health. Article 8.1 states that “members may adopt measures necessary to protect public health and nutrition, and to promote public interests in sectors of vital importance to their socio-economic and technological development”.¹⁶ Compulsory licensing allows the production and use of generic drugs without the consent of the patent holder. Interestingly, articles 6 and 31 allow countries to avail themselves of parallel importing and compulsory licensing respectively, but only in cases of national emergency and where compensation is given to the patent holder.

One may ask why Developing Countries are not taking advantage of these loopholes and importing cheaper drugs or producing generic forms of these drugs themselves. One reason is that they may lack the medical and industrial infrastructure necessary for such production, as well as trained personnel to work in these industries. Political factors play a large part also. “The problem for developing countries is not whether compulsory licensing of pharmaceuticals is legal, because it clearly is legal. It’s the political problem of whether they will face sanctions from the United States

¹⁶ Cited in Thomas, “Trade policy and the politics of access to drugs”, p.254.

government, for doing things that they have a legal right to do, but which the United States government does not like.”¹⁷

The example of Thailand illustrates this point. Thailand was about to use compulsory licensing to manufacture drugs for meningitis and AIDS and had a statute in place which gave it the necessary power to do so. This was consistent with international law. The US Government, however, threatened trade sanctions on Thailand unless it withdrew the license, which resulted in Thailand’s being forced out of something which it had a legal right to engage in. The result was that these drugs, which could have been produced more cheaply, were still beyond the reach of the poor. Thus, although the production of cheaper medication may be permitted under certain circumstances in international policy, there are few cases where this is actually taking place. India and Brazil are examples where it has worked, but the might of the large pharmaceutical companies and Western governments usually prevail.

It is not surprising that pharmaceutical companies vehemently oppose Developing Countries producing or acquiring cheaper drugs. However, the arguments proposed for the safeguarding of their patenting rights, and the prices they charge, are questionable. One reason offered for the high prices of drugs is the research and development costs associated with production. The pharmaceutical industry claims that these research and development costs are so high that financial incentives are necessary to ensure future investment in research. If they do not have patent protection, and if poorer countries

¹⁷ This point is made by James Love, of the Consumer Project on Technology in Washington, 1999, and is cited in Thomas, “Trade policy and the politics of access to drugs”, p.255.

begin producing cheaper drugs, there is no incentive to invest funds into the development of new drugs. This seems a legitimate argument at first glance, but there are problems with it.

First, Developing Countries do not represent a lucrative market for these companies. Thomas explains, “[the] global pharmaceutical market is huge – over \$400 billion per annum. Yet Africa only accounts for 1.3% of the global health market. About 90% of the \$70 billion invested annually in health R&D [research and development] by pharmaceutical companies and Western governments is not focused on tropical problems, but increasingly on the problems faced by the 10% of the global population living in developed, industrialised countries”.¹⁸ Examples here include baldness and obesity. The Third World is not a market priority for these companies. Therefore it could be argued that the production of generic drugs or parallel importing would not affect this industry in a major way.

Second, a significant amount of the investments into research and development is paid for by taxpayers. Clearly the companies themselves invest huge amounts in research, but a significant proportion is nevertheless obtained through governments and taxpayers. Furthermore, these companies make enormous profits each year which comfortably cover any investment risks into research which they may take. So while they claim the price of drugs reflect the research and development costs, others believe

¹⁸ Thomas, “Trade policy and the politics of access to drugs”, p.259.

the prices reflect what the market will support rather than what the drugs are actually worth.

One example which confirms this view concerns the drug Pentamidine. Pentamidine was a relatively cheap treatment for sleeping sickness until it was discovered that this drug was effective in treating an AIDS related illness – pneumocystis carinii pneumonia. Once this was revealed the price of the drug rose by 500% and the drug disappeared from the poorer African and South Asian market.¹⁹ What this shows is that the price of drugs does not always reflect research costs or the value of the drug. Rather it reflects the demand within a market, and this increases prices to exorbitant levels. Those who feel the effects of this the most are the poor. The cost of drugs and the control larger companies have over the global market means that the majority of people suffering from illness, and those most in need of treatment, will never be able to afford it.

Glaxo Wellcome produces a triple combination antiretroviral pill. The advantage of this triple combination pill is that consumption is confined to one tablet twice daily, with no food or water restrictions, unlike some other antiretroviral drugs. This would be especially effective in Developing Countries where multi-drug combinations are problematic owing to the food requirements for these drugs and the burdens this places on the poor. However, this drug costs \$2409 per patient per annum. Cipla, on the other hand, produces a similar triple combination pill which costs only \$350 per patient per annum. But owing to the patents that are held in relation to some of its parts, most

¹⁹ Thomas, "Trade policy and the politics of access to drugs", p.260.

countries cannot import this drug. Hence, patents can be highly restrictive and deny access to drugs that are essential for many people. Heywood concludes that, “the problem is with the commodification and privatisation of medicine and with the evolution of something that for many people is as essential for human life as water into something that makes profits for shareholders in countries of the first world. And this is made possible by the silent, but very deliberate, shifting of certain ‘rights’ away from the values that inspired them”.²⁰

Basic health care and drugs are far beyond the reach of the world’s poorest. The divide between the rich and the poor is growing increasingly wider, and the pharmaceutical companies are aggravating the problem. According to the World Health Organisation, there are approximately 1.3 billion people surviving on less than \$1 a day. Poverty makes access to drugs and treatment impossible for the majority who live in the Developing World. Some comparisons help illustrate the point.

In the First World there may be one pharmacist for every 2000 – 3000 people. A course of antibiotics to cure pneumonia will cost on average two or three hours wages. One year’s treatment for HIV will cost the equivalent of four to six month’s salary. Also, thanks to medical insurance and other health cover, most of this will be reimbursed. In Developing Countries, however, the picture is very different. In some places there may be only one pharmacist for one million people. A course of antibiotics for pneumonia could cost as much as one month’s salary. And one year’s treatment for HIV, if the appropriate drugs were available, would cost as much as 30 year’s income. The majority

²⁰ Heywood, “Drug access, patents and global health . . .”, p.223.

of people would have to bear these costs themselves. So for most people living with HIV/AIDS the prospect of getting treatment is slim. The high costs of drugs makes health care the preserve of the wealthy. If global health is to improve and if health care is to become available to the majority of people in the world, then we need to make drugs for diseases available to all. It does not have to be seen as charity – the chance to receive treatment and buy drugs at a reasonable price is a right to which all should be entitled.

Patents are not the only reason why drugs are so costly within the Third World, although they are a leading factor. Import duties, taxes, distribution costs, and registration costs all push up the price of medicines. In 2000, for example, there was a \$12,000 registration fee for new drugs in Russia. This is a large disincentive for a company to enter the market. In South Africa there is a 14% value added tax on drugs and condoms. This has led in many cases to people paying up to five times the manufacturer's selling price for a drug. It is normally only about twice the price in Developed Countries.²¹ Moreover, studies have shown that the cost of 15 out of 18 dosage forms of 11 antiretroviral and other drugs was higher in Africa, Asia and Latin America than in 10 wealthy nations.²²

We are left with the disturbing reality that certain drugs are more expensive in Africa, where they are needed the most, than in Developed Countries.²³ For example, ciprofloxacin, an extremely successful antiretroviral drug, costs twice as much in Uganda

²¹ PANOS, *Beyond Our Means: The cost of treating HIV/AIDS in the developing world*, (London: The Panos Institute, 2000), p.34.

²² On this point see PANOS, *Beyond Our Means . . .*, p.34.

²³ For the figures quoted here see Poku, "Africa's AIDS crisis in context . . .", p.202.

as it does in Norway. Similarly, fluconazole costs US\$0.30 in Thailand where generic production of this drug substantially lowered its cost. But to buy it in Kenya would cost US\$18.00. In conclusion, it was reported that ten out of thirteen of the most commonly used drugs were more expensive in Tanzania than in Canada.

The policy of patenting is not necessarily a negative thing. Yet, in relation to AIDS medication we see that this system is exploited and used to serve the interests of the rich above the needs of the poor. Companies use this system to protect their own interests and guarantee huge profits for themselves and their shareholders, while the poor are denied access to life-saving drugs, and treatable diseases go untreated. The injustices here need to be addressed and rectified if any prospect for global health is to be realised. There is a need to ask what it means for us as a race if we place profits before the lives of millions of people.

2.4 Problems Concerning Access to Antiretroviral Treatment

Poor access to drugs is a major obstacle in the fight for global health. There are additional problems faced by many Developing Countries in the provision of adequate health care and medical facilities. As mentioned above, patents control the price of drugs, and international policies such as TRIPS help give the leading pharmaceutical companies a monopoly in the global market. Antiretroviral drugs are all currently under patent. But this is not the only obstacle. Many poorer countries lack the necessary social

infrastructure to provide an adequate health service, and this also poses a significant obstacle for global health.

Although the cost of antiretroviral drugs has been lowered somewhat, they nevertheless remain unaffordable for the majority of people who need them. There is no doubt that cost is the main and most immediate obstacle for most people. But there are other factors influencing access to antiretroviral drugs, which highlight additional problems for the provision of proper health care. These drugs demand constant adherence and require close supervision to ensure responsible and correct consumption. This presupposes that a country/region has the necessary social and medical infrastructure. Administering and monitoring the intake of these drugs requires clinics, hospitals, specially trained doctors and nurses, as well as the appropriate equipment and medical supplies. The difficulty which many Developing Countries face is two-fold. Most immediately they cannot afford to provide essential drugs for the sick and dying, and the poor are unable to purchase them. However, even if this was overcome, countries often lack the necessary funds to provide basic health services and so the monitoring of drugs such as ARVs becomes extremely difficult.

HIV destroys the immune system and leaves those infected susceptible to other viruses and infections. Antiretrovirals help prevent the virus replicating within the body and they are particularly effective when given in combination.²⁴ Lucas explains that,

²⁴ These combinations are commonly known as Highly Active Anti Retroviral Therapy (HAART). On this see Sue Lucas, *Valuing Life . . .*, p.3.

“[if] given to people in the more advanced stages of HIV disease, ARVs can stop the virus from replicating in the body, and at best can reduce the amount of virus present to undetectable levels. This results in an improving in the functioning of the immune system and therefore opportunistic infections are less likely to occur”.²⁵ In many cases people are able to return to work and resume normal life.

Once someone starts taking antiretroviral drugs complete adherence is essential. The virus replicates quickly and develops resistance to drugs, and so if treatment is disrupted at all, even for a very short time, resistance to the drug often results. This person will not respond to these drugs again, and if he/she later infects someone else with HIV, it will be a resistant strain that is passed on, for which medication will be ineffective. It is therefore essential that adherence to antiretrovirals is maintained and that there is responsible consumption of these drugs. This may seem obvious and straightforward, but the reality is often very different.

Taking these drugs generally involves complex and difficult regimes. In some cases it may involve taking up to thirty tablets daily, and there may be dietary considerations. Some tablets may need to be taken with water, others with food, some need to be taken a certain length of time before or after food, and they need to be taken at the same time each day. In countries where food shortages exist, and where people are undernourished and may live on a single meal a day, such rigid regimes are impossible to meet. Also, side-effects can be severe and debilitating. Fatigue, vomiting, nausea can

²⁵ Lucas, *Valuing Life . . .*, p.3.

result in a patient forgetting to take a dose. In these circumstances a proper health service to monitor patients and give support and care where needed is critical.

In reality many Developing Countries cannot yet provide such a service. Lucas notes that “[t]here must be a functioning health system which allows accurate diagnosis and treatment of opportunistic infections, pain management, and adequate laboratory capacity to monitor adherence reactions and carry out essential monitoring of the effect of treatment such as viral load counts. Physicians and other health care professionals need adequate training. All these need time and funding, on top of the cost of the drugs . . .”²⁶ So monitoring, the training of staff, and the provision of essential equipment is as important as access to these drugs in the first place. This requires money, and we saw earlier that economic policies such as Structural Adjustment drained essential funds away from the social sectors, and resulted in little or no investment in these areas.

It is also vital to provide accurate information about ARVs in order to make people aware not only of their advantages but also of the risks and dangers associated with irresponsible consumption. Depending on the country, drugs may be very hard to come by. People are sometimes tempted to skip a dose and sell their drugs in order to get money for food and other goods. But a short supply of drugs is unlikely to have any long term benefits for the other person. Greater awareness of the risks and dangers need to be available so that people know what exactly they are undertaking when starting a course of drugs. In addition, and particularly in the case of antiretrovirals, the fact that it is a life-

²⁶ Lucas, *Valuing Life . . .*, p.4.

long commitment which is being undertaken needs to be made known. Unlike drugs for other illnesses such as malaria or TB, the total cost of being treated for HIV is difficult to calculate as there is no time scale for the treatment involved. People commit themselves to a particular course of medication without realising the financial effect this will have. Payment for drugs usually cannot be sustained in the long term and treatment is usually abandoned. Here again resistance to drugs will ensue, and this resistance will be transmitted should that person pass on the virus to another. It is essential that people have the necessary information and facts before taking part in a particular treatment.

A recent report supported by Caritas Internationalis (CI) and International Cooperation for Development and Solidarity, Brussels (CIDSE) suggests some guidelines for the administration of antiretrovirals. This report is helpful in that it sets out the measures necessary for responsible monitoring of antiretrovirals, but in doing so it also shows how inadequate many countries' health systems are for dealing with this. A number of points are worth mentioning here.

The report begins by stating the potential for disaster if antiretroviral drugs are not monitored and if there is poor adherence to medication. This is an important point, and the report also draws attention to the fact that uncontrolled introduction of antiretroviral drugs into a health care system could have negative effects on other aspects of that service. Antiretroviral drugs, important as they are, should not be introduced at the expense of the provision of other services and medications to people. The report outlines a number of these problems, and there is a note of caution in what it says:

An uncontrolled introduction of ARVs [antiretroviral drugs] could have devastating consequences for the effectiveness of HIV treatments, including the rapid development of drug resistance as the result of poor adherence to treatment or improperly designed drug regimes. It could also have a negative effect on other health care services, as for example if funds used to supply anti-malaria and anti-tuberculosis drugs were shifted to support HIV treatments. The uncontrolled introduction of ARVs could also jeopardise successes achieved to date regarding HIV prevention, if improper education creates the illusion that ARVs cure HIV infection. This could lead to a resumption of sexual behaviours which can transmit HIV.²⁷

The report goes on to suggest some necessary guidelines for the safe and responsible supervision and administration of antiretroviral drugs. It recommends that health care facilities administer these drugs responsibly. Those currently unable to do so should make the necessary adjustments. This includes having adequate laboratory services, well-trained medical, nursing, pharmacy and counselling staff for the administration of ARVs. Additional staff may need to be hired. The report states that antiretroviral therapies should be incorporated into the overall health care system, and they should not be seen as projects that remain in isolation from other medical services. These therapies should not be separated from other HIV services provided locally.²⁸ What the report outlines is the importance of an integrated health service, one which can support and monitor therapies such as antiretroviral therapies in conjunction with other services which sufferers may need. If antiretroviral drugs are to be administered properly, and if their consumption is to be monitored effectively, then a broad and well-equipped health service is needed.

²⁷ CI/CIDSE, *Access to Antiretroviral Therapy in Developing Countries: A Continuum of Care Approach*, (Wuerzburg, Germany: August 2001), p.9.

²⁸ *Ibid.*, p.11.

The report recommends that these services should be affordable, continuous and accessible to the people who need them. There should be no financial or geographical barriers to people availing themselves of these treatments. It places great emphasis on the importance of adherence to these therapies and once again notes the dangers if adherence is not maintained. Adherence is determined by factors such as the continued availability of drugs, a patient-friendly health service, negative side-effects suffered, strict dietary requirements, the availability of social support, and education about the therapies themselves.

This report is helpful not only in showing the complexity of antiretroviral therapies and the measures necessary for responsible consumption, but also for highlighting the inadequacies of many health systems within Third World countries. Many poorer countries lack the means of procuring essential drugs for HIV sufferers, as well as the most basic health care facilities. Hospitals are often under-staffed and under-equipped, essential medicines are in short supply, there are few counselling services and support groups. There needs to be extensive investment in health care, but when countries are faced with huge debt repayment it is the social sectors that often suffer. The money needed for investment in these areas is directed instead towards the debt repayment. In these circumstances it is difficult to see how health care will improve, and how the administration of antiretrovirals can be monitored responsibly. The dangers this carries are extremely serious.

Hence, access to these drugs is certainly not the only obstacle which must be overcome. Many believe that antiretroviral drugs ought to be made available to all, and protest against the high prices that exclude the majority of HIV sufferers from their benefits. While this claim is worthy it must be made with a note of caution. There are dangers in making antiretroviral therapies available to all without proper efforts at controlling and monitoring their consumption. Closer attention needs to be given to the health systems within these countries and greater efforts need to be made at providing a service that will be accessible to the poor and will improve standards of health. Until this is achieved the dangers of misuse of antiretroviral drugs will be more evident than their benefits. All are entitled to drugs at affordable prices, but people are entitled to a health system that will improve standards of health and provide a service that will truly serve the needs of its people as well.

2.5 Signs of Hope?

The international community has been criticised for its slow response to the AIDS pandemic and for failing to do enough to alleviate the suffering of those with HIV/AIDS. There are signs however that the world is beginning to take greater notice of this pandemic and the effect which it is having within the Third World. Initiatives have been set up to try to deal with the scale of the crisis. The Global AIDS Fund is a recent example of this. Some believe it is a case of “too little too late”, and certainly there are practical problems with this Fund. Yet, if it sticks to its agenda and achieves the goals it

has set, the Global AIDS Fund will be an important element in the present fight against HIV/AIDS.

In 1986 the Global Programme on AIDS was established in an effort to address the growing problem of HIV/AIDS. It was established by the World Health Organisation and was the first significant attempt to deal with the crisis. Although it made a number of important contributions, by the 1990s it became clear that the Global Programme on AIDS had several shortcomings. For example, the gap between rate of infection and strategies to deal with it was growing and it was becoming increasingly difficult to deal with the rapid spread of HIV. Also, knowledge and understanding of the relationship between social factors and the spread of HIV was limited, and this hampered efforts at containing the disease.²⁹

There was general dissatisfaction regarding the achievements of this programme and in 1996 it was replaced by the Joint United Nations Program on HIV/AIDS (UNAIDS). There were difficulties from the outset. It had a budget 15% less than the Global Programme on AIDS had in its last year, and there were fewer staff in the running of this programme. Nevertheless, UNAIDS has made important progress on a number of fronts.³⁰

²⁹ See Nana Poku, "The Global AIDS Fund: Context and Opportunity", *Third World Quarterly*, vol.23 no.2, (2002), p.288.

³⁰ Poku, "The Global AIDS Fund . . .", p.290.

First, information concerning those infected with HIV had increased substantially. This included data on the social background of those infected as well as their sex and age. “Thanks to the activities of the programme, over the past five years HIV surveillance and monitoring has become so sophisticated that it is now not only possible to chart the number of infected persons country by country but, perhaps more crucially, also by gender, age, socioeconomic class and so on. In return this has allowed researchers to gain a deeper understanding of the societal dynamics of the epidemic; particularly the social, cultural and economic factors that spur or curb the spread of the virus”.³¹ This sort of information is vital since it allows greater understanding of the social and economic factors contributing to the spread of HIV/AIDS. Attempts at containing this disease must include an awareness of these factors. Within the Third World, as we have seen, AIDS is a poverty-related disease in that its spread is heavily conditioned by the socio-economic status of people. The poor and marginalised are at particular risk, and information concerning this is essential when trying to tackle the disease.

A second contribution made by the programme has been the monitoring of strategies aimed at reducing infection rates. Changes in behavioural patterns have reduced rates of infection, and the programme has monitored these results and promoted the strategies as a means of reducing levels of HIV among certain sections of society. A third and very important contribution has been the change in attitude by many governments in relation to the pandemic. Within the Third World several governments ignored the crisis and suggested HIV/AIDS was not a problem within their countries. This denial assisted the spread of HIV and thwarted serious attempts at containing the

³¹ Poku, “The Global AIDS Fund . . .”, p.290.

disease. The programme, in promoting the social and economic reasons contributing to infection rates, moved the focus away from considering it purely as a sexual issue. This forced governments to take notice of what was going on within their countries and to acknowledge the gravity of the situation.

Despite these achievements HIV/AIDS still remains a huge problem within Developing Countries. As we have seen, access to drugs is limited, and their price means that they are unaffordable to the majority of people who need them. Health care and adequate medical facilities are scarce. Poverty and unemployment force people to engage in “survival” strategies which greatly increases the risk of infection. Developing countries lack the funds to invest in health and education due to huge debt repayments. It seems that the scale of the crisis surpasses efforts at tackling it. It is clear that more needs to be done to try to curb the rate of infection and alleviate the suffering of the poor. Within this context the Secretary General of the UN, Kofi Annan, proposed the establishing of a Global AIDS Fund

It was hoped that this Fund would receive annual contributions of between \$7 and \$10 billion to invest in five main areas. They are: the prevention of new infections, ending infection through mother-to-child transmission, providing access to drugs at affordable prices, accelerating scientific breakthroughs in this area, and providing social support to those affected by HIV/AIDS with particular reference to children orphaned by AIDS.³² There is little doubt that these areas need investment. Poku believes that “it [the

³² Poku, “The Global AIDS Fund . . .”, p.294.

Fund] could potentially transform the seemingly unstoppable march of the AIDS epidemic in the developing world, where the economic costs of a massive treatment programme remain a daunting challenge”.³³

Despite the Fund’s objectives, response by the international community has been disappointing. The figure proposed by Annan represents only 1% of global annual military spending but donors have been slow in meeting the estimated target. And although \$10 billion a year may seem like a large amount to tackle the pandemic, the US with a population of 800,000 infected with HIV spends \$20 billion a year on prevention. Within this context \$10 billion to help 33 million people living with HIV in Africa is not unreasonable.³⁴ When compared with global annual military expenditure it is difficult to understand why there is such reluctance and hesitancy by donor countries. The US has donated \$200 million but in doing so has set a standard for other donations – a standard too low to meet the projected amount needed. In addition, this sum was donated with conditions. President Bush stated that the Fund ought to respect intellectual property rights and provide incentives for pharmaceutical companies and future investment in this field.³⁵

A number of difficulties emerged which may help explain the meagre efforts by the international community in meeting this target. First, there are concerns as to who should govern the Fund and how donations will be distributed. Some want the Global

³³ Poku, “The Global AIDS Fund . . .”, p.294.

³⁴ For these figures see Thomas C. Quinn, “Response to the Global AIDS Pandemic: The Global AIDS Fund – Will It Be Enough and Will It Succeed?”, p.3.

³⁵ Poku, “The Global AIDS Fund . . .”, p.295.

AIDS Fund to remain independent of the UN while others, especially those in Developing Countries, want a UN structure as it will give them more say. There also seems to be differences of opinion about whether priority should be given to prevention or treatment. Differences of this nature are counter-productive as they unnecessarily slow the process down. These matters must be resolved quickly and attention must return to the pressing questions originally outlined.

There remains great potential for achieving good through this Fund. Although the amounts proposed seem meagre when compared to other spending, it would still provide the opportunity for much needed investment in vital areas. The biggest obstacle faced by many Developing Countries is the lack of capital available for investment in social services. This Fund could become a source of financial assistance for many of the world's poorest countries and greatly help their efforts at controlling the spread and impact of HIV. However, arguments concerning the governance of this Fund need to be quickly resolved so that attention can be given instead to achieving its original objectives. Donations need to be more generous, and the target of \$7-\$10 billion each year must be met if the fund will have any impact. These donations should not be cloaked in conditions. The international community is slowly realising the scale of the crisis within the Third World. Greater efforts must be made to address the situation and the Global AIDS Fund represents one such effort. Fighting the AIDS epidemic in the Third World is not just a problem for Developing Countries to solve on their own; it is a global problem. The success of the Fund and of other initiatives is vital if the scale of the epidemic in poorer nations is to be contained.

In conclusion, globalisation has been blamed for many of the social-ills we encounter within society today. Nevertheless, there are benefits also. Communications have improved rapidly, new technological and scientific advances are being made daily, better transport links have resulted in both the improvement of trade and a greater movement among people, inventions and new ideas become available to a greater market than ever before. Despite these benefits there are a number of problems. Disease has also been “globalised” for due to the increased movement of people, a particular illness is no longer necessarily characteristic of one location. This has aided the spread of many diseases and hindered efforts directed at their control. Furthermore, while significant advances continue to be made in the scientific and medical fields, the benefits of this research remain largely confined to the First World.

But globalisation is not necessarily a negative thing and it is not something we can ignore. Heywood says that “[to] return to an ethic of human rights does not mean that we must de-globalise the world. That will not ever happen. However, it is necessary to draw attention to the way in which the speed of globalisation of certain tangible world-goods (commerce, trade and communications) has frequently outstripped the globalisation of the intangibles (morality, identity and ethics) that regulate human society as much as law”.³⁶

³⁶ Heywood, “Drug access, patents and global health . . .”, p.222.

The point made here by Heywood is an important one. We have seen the problems of inequality and exploitation in relation to access to drugs and health care. The powerful pharmaceutical companies in effect retain a monopoly on the world market and control drug prices within this market. These prices often reflect the market demand rather than the actual value of the drugs, and drug prices far outstrip actual production costs. The inevitable result is the exclusion of a huge section of society from access to essential medicines. Globalisation has brought the human community closer together than ever before. The advances made in science and medicine give us the opportunity to provide greater standards of health care for everyone. Yet it seems that the globalisation of values and beliefs which are often cited as incentives for many of these breakthroughs are quickly forgotten, and increasing numbers of people are excluded from these benefits.

The lack of access to life-saving drugs, and the poor health systems and social infrastructure within the Developing World, is a major obstacle in combating AIDS. Until this, and other problems such as poverty, are seriously addressed by governments and the international community as a whole, millions will continue to die. The knowledge and technology is already available and there is a real opportunity to make a difference to those suffering from illness and disease. It seems that the crucial discovery which needs to be made is in finding the will to use this knowledge in a way that will benefit all and not just the wealthy few.

Chapter Three

Women and HIV

3.1 Introductory

As we saw above, poverty affects the spread of HIV. Those who are poorest are most likely to be infected with this disease for several reasons, and are also the least able to cope once infected. But although the poor in general are at particular risk of contracting the virus, women emerge as a group who are often marginalised and isolated within society which increases their chances of infection. In many cultures women have a subordinate status to men. They may also be financially dependent on their husband, which diminishes their freedom. This chapter will consider these and other issues and examine why injustices against women often exposes them to HIV infection. Here, as before, it will be proposed that until injustice is tackled no sufficient solution to the epidemic will be found. The subordinate status of women will be considered in general terms, as well as the effects this has on the spread of HIV. The increasing levels of sexual violence and of rape will also be discussed.

3.2 The Subordination of Women within Society

One factor which places women at particular risk of infection is their subordinate status within many societies and cultures. Women are not always given equal rights and freedoms, and often lack any kind of social and economic independence. They rely on their husbands for financial security, and are usually expected to be submissive and silent. Their “place” within society is heavily associated with their husband and understandably they are reluctant to jeopardise this security in any way.

In many cases a double-standard morality exists whereby certain activities are acceptable for men but denied to women. Although sexual practices must change in order to protect against infection it is necessary also to recognise the social, economic, and cultural factors contributing to the spread of HIV. Protecting women's dignity and rights is vital if long-term change is to occur. As Kevin Kelly says, "[in] many of these [India, Asia and Latin America] cultures women, and often their children, become infected with HIV mainly because of their sexual, social and economic subordination. Preventative work based solely on change in sexual behaviour is doomed to failure. Change has to occur at a deeper social level".¹ A number of examples help illustrate what Kelly says here.

First, it is commonly accepted that men are sexually experienced before marriage, and within marriage it is not unusual for men to have extra-marital intercourse if they become bored with their wives. Women on the other hand are expected to be virgins before marriage, and must remain faithful to their husbands within marriage. Sex workers and prostitutes are frowned upon, even though it is acceptable for men to go to prostitutes for sex. If a woman suspects her husband of being unfaithful she is very rarely in a position to demand the use of condoms during intercourse. She is also unlikely to be able to refuse sex to her husband. Such demands would be the equivalent of accusing her husband of infidelity, and may result in his leaving her or evicting her and her children from the home. Because so many women are reliant on their spouses for financial and social security, the risks associated with confrontation are often too great.

¹ Kevin Kelly, *New Directions in Sexual Ethics: Moral Theology and the Challenge of AIDS*, (London: Geoffrey Chapman, 1998), p.3.

Inevitably many men infect their wives, who in turn may infect their unborn child during pregnancy.

Marriage is not always seen as an equal partnership. Women are generally expected to be submissive and should not question or challenge their husband. Certainly when it comes to sex a woman has little or no say in what happens. One woman explained that “the problem is that women at home can’t refuse to have sex. That is the ‘law’ of marriage. That is what constitutes marriage. You can’t say no . . . Even if you can know where he goes, when it comes to sex a woman cannot refuse. Refusing sex in marriage is a case for the elders. They would just make matters worse”.² It is clear that in many cases the “law” of marriage only helps increase women’s exposure to the virus.

The irony is that many women, though infected by their partners, remain loyal to them and usually provide the care and support for their husband/partner during illness. On the other hand when a woman reveals that she is HIV positive it is likely that her husband will leave her. This results in greater secrecy about HIV within marriage, and also places most of the emotional burden on women. A study carried out in Uganda illustrates this point. Commenting on this study, Baylies explains that “[w]hile women who had a spouse who was HIV positive tended to stay in the marriage, their status changing primarily because of the death of their spouse, a much higher proportion of men with wives who were HIV positive experienced divorce, separation and remarriage during the period of the study . . . It was suggested by both male and female participants

² Cited in Baylies, “HIV/AIDS and older women in Zambia: concern for self, worry over daughters, towers of strength”, *Third World Quarterly*, vol.23, no.2 (2002), p.356.

that if a woman was HIV positive, it would be assumed that she had brought the illness into the marriage through adultery. Most men believed that if a wife was HIV positive the couple would separate or divorce”.³

Thus, the apparent financial and social safety of marriage also poses many risks for women. Most women feel that they are unable to take precautionary measures such as using condoms because their husbands would simply refuse, and would interpret this as an accusation of infidelity. Statistics from Zambia’s *Demographic and Health Survey* carried out in 1996 show that almost 40% of women feel that they are in moderate to great risk of infection, with over 90% citing as their reason the fact that their husbands have multiple sexual partners.⁴ It is clear that a change in sexual practices is necessary for containing transmission rates, but this alone is not enough. A change in attitude, both by individuals and by societies, concerning the status of women is also needed. Women’s equal dignity and rights must be acknowledged, and greater social and economic independence given them if they are to have any chance of avoiding infection.

Although within marriage women are at risk of infection and lack the necessary social status to challenge their husbands on sexual matters, young girls are also vulnerable to AIDS. Children and young teenagers may find themselves in charge of the family due to the death of both parents from AIDS. The responsibility to provide for younger siblings now falls on the eldest. After the death of one or more family members, the chances of others being infected increases since poverty may drive them to adopt

³ Baylies, “HIV/AIDS and older women in Zambia . . .”, p.360.

⁴ *Ibid.*, p.356.

“survival” strategies in order to get by. For many women and young girls the only thing they have to sell is their body. Furthermore, men increasingly look for younger girls in the hope that they are virgins and are consequently “clean”. This, together with myths suggesting that sleeping with a virgin cures HIV, places young girls at enormous risk of contracting the virus. At school, girls may be forced to have sex with their teachers in order to remain in school. Here too younger girls are targeted in the hope that they are virgins and so are less likely to be HIV positive. Girls may feel that sexual intercourse with their teachers is their only means of receiving an education.

Disturbingly, it is sometimes the case that parents encourage their daughters to engage in sexual activity for material gains. Girls are seen as a good source of “income”. Poverty forces people to survive by whatever means possible, and some parents recognise the financial possibilities here. As Kelly reports, in certain parts of Burma (unlike in China) parents rejoice at the birth of a daughter. She will become a valuable source of income because she can later be sold to a brothel in Thailand where the demand for young virgins is high.⁵ Baylies makes a similar point. She draws attention to the fact that many parents encourage their daughters to have sex in return for money and other material gains.⁶

The status of women outside of marriage may be more precarious in many ways owing to financial uncertainty and less social standing. Their lack of economic and social rights leaves women with few options for employment, and increases the

⁵ Kelly, *New Directions in Sexual Ethics*, p.6.

⁶ See Baylies, “HIV/AIDS and older women in Zambia . . .”, p.365.

likelihood that they will engage in high-risk practices such as prostitution. However, as we have seen the “security” which marriage brings is very often a false security since marriage also poses many dangers for women. A change in attitude towards women is essential for any successful attempt at containing this epidemic. But poverty also needs to be tackled, and the circumstances which expose women to infection need to be addressed.

Many cultural and traditional rituals place women at risk. In Tanzania, for example, the Luo ethnic community engage in rituals such as widow inheritance, leviratic unions, and surrogate and ghost marriages.⁷ The Luo also practice widow-cleansing whereby a widow is expected to have sexual relations with one of her deceased husband’s male relatives. The purpose of widow inheritance and leviratic unions is to take care of women by providing for their material and sexual needs. These rituals are deeply religious and play a key part in the community’s life. However, when viewed in relation to HIV/AIDS, one realises that these activities are likely to contribute to the spread of the disease.

It is not the intention here to offer a judgement on these or other cultural practices, but it is important to highlight the significance of these rites for HIV/AIDS containment. As with many cultural customs which are deeply embedded within communities, it would be futile to condemn them and propose Western solutions to the problem. For a people as

⁷ On this see Laurenti Magesa, “Recognizing the Reality of African Religion in Tanzania”, in James F. Keenan, S.J. and Jon D. Fuller S.J., M.D. (eds.), *Catholic Ethicists on HIV/AIDS Prevention*, (New York: Continuum, 2000), p.79.

religious and spiritual as the Luo, whose traditions are central to their identity, promotion of condom use or abstinence from sexual activity would have little effect, particularly when AIDS is seen in terms of a curse inflicted by witchdoctors.

The key to prevention in such circumstances is to speak to people in language they will understand and relate to. Magesa believes that “[t]his means that the motivation for change must be found within, and be based on the cultural beliefs in question themselves . . .”⁸. Or in other words, change must come from within cultures and traditional communities. “When African communities, therefore, are made to realize that some of their marriage institutions and sexual rituals do in fact diminish rather than promote the life of the community, because they are agents of death, they may more easily be persuaded to transcend and change them”.⁹ Communities must understand the dangers associated with certain customs and recognise that the high-risk nature of these rituals places many people, especially women, in greater danger of infection.

Other practices such as female genital mutilation increase women’s exposure to this virus. It is thought that as many as ten million new cases of mutilation occur in Africa each year, while others estimate that between ninety and one hundred million girls and women in Africa, the Far East and Middle East have been genitally mutilated.¹⁰ Female genital mutilation increases the risk of infection as it leaves women with permanent scar tissue which is prone to abrasions during sexual intercourse.

⁸ Magesa, “Recognizing the Reality of African Religion in Tanzania”, p.82.

⁹ *Ibid.*, p.83.

3.3 Rape and Sexual Violence

Current levels of sexual violence and rape pose major challenges for those working to contain the AIDS epidemic. For, of course, rape and sexual violence increase the risk of HIV transmission, and are another factor adding to women's vulnerability within society. The statistics for the number of rapes each year are shocking and it seems that the worst affected area is South Africa.

Accurate figures for the number of rapes and other sexual assaults are difficult to find. This is partly because many rapes are never reported. Women may find the police intimidating or unhelpful, and insensitive questioning often leads to further feelings of shame and humiliation. It is also a fact that in many cases of rape the women knows her attacker and is consequently reluctant to report the assault due to fear of reprisal. In South Africa the apartheid policies of the past have instilled deep suspicion of the police service, particularly among the black population, and this is a further reason why so few rapes are reported.

According to Rape Crisis Cape Town, only one in twenty rapes are reported, while the Southern African Police force estimate that as few as one in thirty five rapes are reported to the authorities.¹¹ So although in 1998 49,280 rapes were reported to the

¹⁰ These figures are given in Kelly, *New Directions in Sexual Ethics* . . . , p.7. There is no source of reference for the first figure while Alice Walker, *Possessing the Secret of Joy*, (London: Vintage, 1993) is used for the second estimate used here.

¹¹ See Catholic Institute for International Relations (CIIR), *Tamar's Cry: Re-reading an ancient text in the midst of an HIV/AIDS pandemic*, (London: CIIR, 2002), p.17, or PACSA, *Rape*, PACSA Factsheet no.44, June 1998, p.1.

South African police¹² estimates show that in reality as many as 985,600 rapes occurred in that year.¹³ Figures for 1996 are more shocking with estimates for the number of rapes as high as 2 million in South Africa. "Police statistics show that in 1996, over 50,000 women reported rape. Yet, these figures are the tip of the iceberg. The SAPS [South African Police Service] cite that only 1 in 35 rapes is reported. So almost 2 million women were raped in 1996 alone. It is estimated that a woman is raped every 23 seconds in South Africa, that between 1 in 3 and 1 in 2 women or girls will be raped in her lifetime, and that most will know her attacker".¹⁴

These figures are supported by others also. For example, Susan Rakoczy says that figures from 1997 on rape provided by the national Equal Rights Commission stated that every 26 seconds a woman or child was raped, and that one out of every two of the country's 20 million women will be raped. The Commission estimates that 1.6 million girls and women are raped each year.¹⁵

A further alarming trend is the increasing number of child rapes taking place. This is largely because of the belief that sexual intercourse with a virgin or child will cure a person of HIV. There are other factors for the high levels of rape within South Africa, but in the case of "baby rape" myths of this nature seem to be contributing to the number

¹² These figures exclude cases of sexual assault (4,851) and incest (179) because the South African definition of rape is limited. See CIIR, *Tamar's Cry* . . . , p.17.

¹³ *Ibid.*, p.17.

¹⁴ PACSA, *Rape*, p.1.

¹⁵ Susan Rakoczy, "Women in Peril of Their Lives: Feminist Ethical Perspectives on the HIV/AIDS Pandemic", *Grace and Truth*, vol.18 no.3, (November 2001), p.49.

of assaults on children. Between January 2000 and October 2001, 31,780 cases of child rape and attempted child rape were reported to the South African police.¹⁶

Obviously such trends have a devastating effect on society as a whole, but also make efforts at containing the AIDS epidemic very difficult. The police and legal system is weighed down with the number of cases reported daily, and the result is that many attackers will never be caught or, if so, may not be punished for their crime. This creates the impression that rape is a punishment-free crime, with many men believing they will never be caught or made pay for these attacks. Statistics reinforce this view. Figures show that in 1995/6, for example, of an estimated 3 million rapes only 3,697 perpetrators were convicted. But why has rape become such a serious problem within South Africa? Certainly the low level of convictions, and the encouragement this gives to potential attackers, plays a large part. Nevertheless the problem is far more complex than that.

Professor Amina Mama of the University of Cape Town explains that South Africa is one of the world's most dangerous environments for women. Statistical evidence shows that in post-apartheid South Africa women are more likely to be murdered, raped or mutilated than women anywhere else in the democratic world, including the rest of Africa. Their assailants are not foreign invading armies demonstrating conquest, or even members of other racial groups. Rather, they are South African men, most often the very men with whom South African women live in intimate

¹⁶ CIIR, *Tamar's Cry* . . . , p.17.

relationships.¹⁷ So unlike other situations where rape is used as a weapon of war, most rapes in South Africa are carried out by people known to the survivors.

Rape is concerned with issues of power and control. It has little to do with sexual attraction but instead is resorted to so as to allow men feel in control. In this respect it is interesting to consider the scale of the situation in South Africa. One aspect of the apartheid regime was that it denied black men any expression of their traditional roles; extreme poverty and high unemployment meant that in many cases they were unable to provide for their families. Male characteristics such as strength, powerfulness and being in control were denied. Black men generally felt frustrated and were oppressed by the strict laws within South African society. It seems that this legacy is still affecting many men today. The importance of gender, and being able to identify with gender-roles, means that men need to be able to express these characteristics. Many believe that men's violent behaviour towards women should be considered, at least partly, in terms of the process of masculinisation.

Certainly as regards rape one can see how the elements of control and power by men over women become a central aspect. With rape women are subject to men. They retain the control over the situation and are more powerful than women. It may be more an expression of these features than anything else. Also, the violence, abuse and injustice experienced under the apartheid regime must be a factor in the current high levels of violence, and its tolerance, within this society. Binaifer Nowrojee describes the effect apartheid continues to have among the poor population of South Africa. "In the black

¹⁷ Cited in CIIR, *Tamar's Cry*. . . , p.16/17.

townships, the dense population, the breakdown of the family unit under the stress of apartheid policies, high levels of unemployment and the consequent rise in crime have all contributed to increased levels of violence. Violence directed against young women by armed youth gangs has become a well-known phenomenon".¹⁸

A related reason for the growing numbers of rape is the general inferior status of women within society. Men are taught that women are their property, and women are expected to serve men, sexually and otherwise. It is "natural" for men to expect sex whenever they want from women. If and when refusal occurs, men may interpret this as a lack of respect for them and their authority. Women may be raped in order to ensure their future respect and to leave a woman in no doubt of a man's authority over her. Clearly a lack of respect for women, and the denial of equal status with men, places women in a vulnerable and dangerous position. Reform of the legal system to protect women's rights is necessary, but a change in men's attitudes towards women is essential for significant change to occur. In addition, education is vital to dispel myths regarding the cure of HIV which put women's lives and health in danger.

Yet the reality remains that rape is a major problem within South Africa. The statistics seem incredible but they reflect the seriousness of the situation there. In many cases rape is considered "fun" by men, usually young men and adolescents. Gang rape and so-called "jackrolling" are on the increase. Some see jackrolling as a game and do not consider it a crime at all. Members of these gangs are encouraged to prove

¹⁸ Binaifer Nowrojee, *Violence Against Women in South Africa: The State Response to Domestic Violence and Rape*, (New York: Human Rights Watch, 1995), p.54.

themselves in front of other gang members. Schools and universities are regularly targeted, and the lack of security in many schools means that attacks on young women and girls are common. Women who are homeless and sleep on the streets are other “easy targets”. It is not uncommon for the victim to be murdered. If she knows the members of the gang she may be killed in order to avoid their identities being revealed.¹⁹

The level of rape and sexual violence is becoming more serious each day. Nowrojee says that, “[w]hat is certain . . . is that South African women, living in one of the most violent countries in the world, are disproportionately likely to be victims of that abuse”.²⁰ The violence within South Africa, and particularly the sexual violence directed at women, is a major concern not only for South African society as a whole but also for those working to contain the AIDS epidemic. Reform is urgently needed to ensure that women’s rights are protected. But, more fundamentally, reform in men’s attitudes is required in order to ensure that in the long-term women will receive equal opportunities with men. Their social and economic subordination must be reversed, and women must have the same freedoms and rights as men. Legal reform is insufficient if women remain inferior in the eyes of men. Violence and rape are major factors in the spread of HIV and other STDs. It is therefore necessary for society to tackle these crimes not only as a means to reduce HIV transmission but also as part of the effort to restore justice and equality to women.

¹⁹ Nowrojee, *Violence Against Women in South Africa . . .*, p.50-59.

²⁰ *Ibid.*, p.44.

In conclusion, it is clear that the inferior position of women within many societies and the various injustices they suffer place women and girls at risk of HIV infection. This point is supported by Jacques du Guerny and Elisabeth Sjöberg.²¹ They argue that the spread of HIV through heterosexual activity is greatly aided by the inferiority of women and their consequent inability to protect themselves against the disease.²² It is clear that until women are treated equally and injustices against them are eradicated, they will remain particularly vulnerable to infection.

As we saw earlier, women often bear the brunt of caring responsibilities for the sick, even when they themselves are ill. Again du Guerny and Sjöberg note this point. “For women, the effects of HIV/AIDS go well beyond the suffering and death of the infected individual: the phrase *triple jeopardy* describes the dangers women face as individuals, mothers, and caregivers”.²³

When considering women and HIV/AIDS, du Guerny and Sjöberg argue that the epidemic must not be viewed simply as a medical problem; such a view allows only a partial insight into the problem. This epidemic must be considered as a gender issue, incorporating the related social and economic dimensions. “Merely looking at women and AIDS from a health perspective is not enough – a gender analysis of the socio-economic and cultural causes and effects of the epidemic is necessary to achieve a more

²¹ Jacques du Guerny and Elisabeth Sjöberg, “Interrelationship Between Gender Relations and the HIV/AIDS Epidemic: Some Possible Considerations for Policies and Programs”, in Jonathan M. Mann, Sofia Gruskin, Michael A. Grodin, and George J. Annas, (eds.), *Health and Human Rights: A Reader*, (New York and London: Routledge, 1999), p.202-215.

²² *Ibid.*, p.202. The article is based on this belief, and its aim is to show the relationship between gender relations and the spread of HIV.

²³ *Ibid.*, p.205.

comprehensive picture of the magnitude of the problem and ideas on how to combat the epidemic effectively”.²⁴ One realises that the cultural, social and economic factors contributing to women’s exposure to infection need to be addressed, as well as the medical aspects of the pandemic.

It is not the intention here to create the impression that women are the only group severely affected by HIV/AIDS, or that injustices against women in particular are more serious than others. However, what we saw above helps show why women are particularly at risk of infection. HIV/AIDS is a disease that has devastating consequences for all sections of society, and the suffering is not exclusive to any one group or community. Yet serious analysis must be given to the situation of women, and injustices against them must be addressed if a complete understanding of this very complex problem will be reached.

²⁴ du Guerny and Sjöberg, “Interrelationship Between Gender Relations and the HIV/AIDS Epidemic. . .”, p.214.

To conclude, the purpose of Part One has been to show in broad terms why the HIV/AIDS epidemic ought to be viewed primarily as a justice issue. Sexual conduct cannot be discussed in isolation; the cultural, social and economic contexts are critical when examining sexual activity. Where this is taken into account, one realises that although most HIV transmissions occur through sexual contact, the underlying problems need to be addressed. Until one explores why people act in certain ways, one fails to recognise the root causes for such action. The examples used above illustrate not only the complexity of the crisis but also why it needs to be considered in terms of justice. From what we have seen one could say that poverty is possibly the greatest contributing factor to the spread of this disease.

It has also been shown above that, granted that the poor and marginalised are generally worse affected by HIV/AIDS, women are particularly at risk of infection. Thus, at the heart of the HIV/AIDS epidemic are matters of justice, equality and human rights. Numerous injustices lie at the core of this epidemic and until they are adequately addressed both nationally and internationally the future spread of HIV is guaranteed.

Part Two continues on from the issues discussed here, and specifically examines the situation in South Africa. Some of the problems already mentioned will now be explored in more detail within the South African context. This society displays a number of the injustices set out above, which suggests once more the close relationship between injustice and AIDS.

Part Two

Injustice in South Africa and Its Relation to the Spread of HIV/AIDS

Introductory

In Part One we considered in general terms some social and economic factors which contribute to the spread of AIDS. It is time now to examine specifically the South African experience. In that experience these factors are exacerbated by the legacy of Apartheid, and so it is necessary to set out the ways in which that regime contributed to the current situation. Apartheid's legacy is evident in a number of ways.

Apartheid created an environment in which poverty, violence and crime flourished. Today this has serious repercussions for the containment of HIV/AIDS. The restrictive laws imposed on Blacks resulted in a system of migratory labour, whereby men had to travel long distances in search of work. The social consequences of this are still evident today, and one finds that industries in South Africa which are dependant on this system of labour, most notably the mining industry, suffer high levels of infection and transmission among workers.

The brutality witnessed under Apartheid created the impression that violence was not only tolerated within society, but was the accepted means to resolve conflict. Today South Africa is considered one of the most violent countries in the world. In addition, personal crime such as rape and murder is a serious problem within South African society, and one sees again the influenced here of apartheid policies. Part Two therefore examines these points which again show the relationship between injustice and AIDS.

Chapter Four
The Legacy of Apartheid

4.1 Introductory

Although many of the injustices associated with apartheid have “officially” been eradicated, the effects of years of discrimination and inequality still remain. The many social ills evident in South African society today have their origins in this unjust system. A number of areas will be discussed here.

First, I wish to outline briefly the ideology and aims of apartheid. I will then discuss some aspects of life under this system. Poverty and crime became commonplace, and the repercussions of this are still felt today. South Africa remains one of the most unequal societies in the world. The violence witnessed during this time came from a number of quarters. State-sponsored violence was employed to suppress anti-apartheid movements. These movements eventually turned to force themselves in their political struggle. Inevitably the experience of violence, so common within society, became a feature of family life also. These areas will be explored, and will serve as the context from which to understand contemporary social problems such as rape and sexual violence, to be discussed in Chapter Five.

4.2 The Ideology of Apartheid

When Dutch settlers arrived at the Cape of Good Hope in 1660 they brought with them beliefs not only in white supremacy but also deep religious convictions. They were a “chosen people” and this was their “promised land”. Fired with the Calvinist doctrine of predestination the Dutch believed they were the Elect of the Lord. After eighty years

of struggle with Spain, which ended in 1648, Holland emerged with political and religious victory. Allister Sparks explains this. “The long war with Spain . . . was the national epic that evoked the spirit of Dutch nationalism and profoundly influenced the generic mind . . . And because it was a war for religious as well as national independence, when the Dutch finally triumphed, their victory merged with the amphibious geography of their homeland to form a national myth of a reenacted Exodus.”¹

These convictions were brought to South Africa and greatly shaped the settlers’ attitudes towards the native peoples they encountered. The Dutch Calvinists were not alone in their beliefs in racial supremacy; Spanish and Portuguese Catholics also thought that they were superior. However, Sparks observes some differences between the convictions of Protestant and Catholic settlers. The Spanish and Portuguese, despite the brutality and suffering they inflicted, did not leave a legacy of segregation and entrenched racism like that found in South Africa, India or the American South.² When the English arrived, considerable tension developed between them and the Afrikaner.³ But they had one thing in common, a belief in the supremacy of white people over black. The treatment of Blacks, policies and laws discriminating against them, and the total disruption of their way of life, left a lasting effect. The racial views of the white man and

¹ Allister Sparks, *The Mind of South Africa*, (London: Heinmann, 1990), p.25. Here Sparks gives an illuminating and comprehensive account of the history of South Africa.

² *Ibid.*, p.23.

³ “Afrikaner” refers to the Dutch who settled in South Africa. It is derived from Afrikaans, the language developed by these settlers, which is similar to Dutch.

the policy of separation and discrimination resulted in deep social problems which are still evident within South African society today.

One of the most obvious features of apartheid, as the word itself suggests, was the enforced separation of people on the basis of race. Black impoverished and isolated communities were formed. The townships operated like detention facilities – movement was restricted, Blacks had to carry identification passbooks, and residents regularly suffered at the hands of the police force. The police presence was intended to enforce this separation and suppress political anti-apartheid resistance. The police were not concerned with maintaining peace or upholding justice within the townships. As a result, violence within these townships often went unpunished, as the authorities were uninterested in unrest unless it threatened their authority.

In 1950 the South African Government passed the Group Areas Act. This Act required separate residential areas for people of different races. In the same year the Government also passed the Population Registration Act, which classified people into particular racial categories.⁴ The result of these Acts, apart from requiring Blacks to carry identification passbooks, was to establish the official ideology of apartheid, based on separation and exclusion, within the legal system of the country. The South African Government then forced many land-owning Blacks off their land and placed them in Black homelands. These homelands were overcrowded and had neither the space,

⁴ See Michelle J. Anderson, "Rape in South Africa", in *Georgetown Journal of Gender and Law*, vol. [sic], Issue 1 (Summer, 2000), p.801.

resources nor industry to support the vast numbers that were arriving. The Group Areas Act resulted in the removal of over 834,000 people.⁵

In the years that followed, urban planners changed the boundaries of major cities within South Africa. It was to have a profound impact on the lives of many people, and created townships which were characterised by poverty, high unemployment and crime. Anderson explains that these planners “extracted so-called ‘coloured’, Indian, and black people from the tangled mass of inner-city ghettos and forced them out to physically isolated townships, far from the eyes of white city dwellers. Because the Black homelands were not economically viable, many men became migrant laborers and moved into hostels in black townships, the only legal place for them to move.”⁶

The planners did not create these townships with the protection of the residents in mind, nor with the hope of maintaining law and order. They were created, rather, for the safety of the white community. Their design meant that the police and military could monitor and control opposition and resistance to the apartheid state. Anderson explains that these areas were often surrounded by buffer zones known as “machine-gun belts”. These zones allowed for great military manoeuvrability in times of trouble, and they could easily target trouble groups.⁷ The “trouble groups” in question were those engaged

⁵ Anderson, “Rape in South Africa”, p.802.

⁶ *Ibid.*, p.802.

⁷ *Ibid.*, p.802

in political resistance, and who were considered a threat to the state as a result. Little attention was given to “less serious” crime.

Consequently, large areas were created containing impoverished and isolated populations. Within these populations women were especially isolated. They became exposed to high levels of crime, and were often the targets of the frustration and disillusionment felt by husbands and male relatives. While the black population as a whole suffered inequality and discrimination under South African law, the position of women was particularly discriminatory. Binaifer Nowrojee observes that, although focusing to a large degree on race, “the legislated inequalities of the apartheid system applied also to gender, and women were brought under direct state control after 1948 to a far greater extent than had previously been the case. Women of all races were legally inferior to men and African women were especially disadvantaged.”⁸ This is most notable when we look at women’s rights within marriage. Women had very few legal entitlements under South African law. For many years they were considered minors within marriage in so far as their husband became the “guardian” over his wife and her property. I will discuss women’s status under South African law in Chapter Five, but here I will only draw attention to the general point.

The poverty and inequality established by apartheid became contributing factors to the social difficulties which the country later faced. High levels of crime and violence, as well as the general subordination of women, would contribute to serious problems

⁸ See Binaifer Nowrojee, *Violence Against Women in South Africa: The State Response to Domestic Violence and Rape*, (New York: Human Rights Watch, 1995), p.15.

such as rape and sexual violence. These crimes in turn would greatly influence the spread of STDs including HIV/AIDS, and affect attempts at controlling the spread of AIDS.

4.3 Poverty

“The dismal shame of poverty, suffering and human degradation of my continent is a blight that we share. The blight on our happiness that derives from this . . . leaves us in a persistent shadow of despair..[sic] This is a savage road to which nobody should be condemned.”

Thabo Mbeki (1996).⁹

South Africa is one of the most unequal societies in the world. Although it is one of the wealthier countries in Africa, large sections of the population remain impoverished. Indeed South Africa could be described as being both a First World country and a Third World country all in one, a place where luxurious hotels and resorts, and top class facilities of every kind exist alongside great poverty and hunger. Although the racial divide between rich and poor is becoming slightly less evident in recent years, it is nevertheless the case that most of South Africa’s poor are black, while a considerable amount of the wealth remains in the hands of the white minority.

⁹ Cited in Julian May (ed.), *Poverty and Inequality in South Africa: Meeting the Challenge*, (London and New York: Zeb Books, 2000).

The South African Human Development Index (HDI)¹⁰ shows the level of inequality in society. Cheru explains that according to its Gini-coefficient¹¹ of 0.58 (which measures the degree of inequality), South Africa is only second to Brazil, which at 0.63 has the worst inequality among similar middle-income countries. This inequality, historically determined by the apartheid policies of the past, continues to be the source of poverty today.¹² Without becoming involved in the complexities of measuring economic development and inequality within society, this shows the gulf which exists within South Africa between rich and poor.

Thus, it is clear that South Africa is an extremely unequal society, and one in which poverty is a major problem. For example, estimates suggest that as much as 40% of the population is defined as “poor”. This means that as many as 18 million South Africans are living below the poverty line. Race determines where the greatest concentration of these 18 million people are found. Poverty is certainly not confined to the black population, but it is most concentrated here. 61% of black South Africans are poor compared to 38% of coloureds/mixed descent, 5% of Indians and only 1% of

¹⁰ The Human Development Index records levels of development and inequality within countries and between countries. Barnett and Whiteside explain that “The Human Development Index (HDI) introduced in 1990 is designed to capture as many aspects of human development as possible in one simple composite index, producing a ranking of human development achievements . . . The HDI determines how nations and regions of nations compare with each other and over time.” See Tony Barnett and Alan Whiteside, *AIDS in the Twenty-First Century: Disease and Globalisation*, (New York: Palgrave Macmillan, 2002), p.276-7.

¹¹ The Gini coefficient figure of 0.58 is supplied by the South African Government’s report *Poverty and Inequality in South Africa*, issued in May 1998. The Gini coefficient measure the level of economic inequality within society. If income is perfectly distributed and no inequality exists the coefficient will be zero. If, however, all the income goes to one person the number will be 1. Thus the higher the coefficient the greater the economic inequality among people. The figure 0.58 is very high. The coefficient for developed countries, in comparison, averages out at 0.34. For these figures see the Southern African Catholic Bishops’ Conference Pastoral Letter, *Economic Justice in South Africa: A Pastoral Statement*, (Pretoria: SACBC, May 1999), p.18.

¹² Fantu Cheru, “Overcoming apartheid’s legacy: the ascendancy of neoliberalism in South Africa’s anti-poverty strategy”, in *Third World Quarterly*, vol.22, no.4 (2001), p.505-06.

whites.¹³ Furthermore, poverty is high among women, and so there is a gender dimension to this problem also. Rural areas are particularly badly affected. A large percentage of the population is rural (as much as 50% of the population is rural), and here we find that 72% of the total population considered poor are located in rural areas.¹⁴

It was clear to the post-apartheid Government that one of the main priorities was the reduction of levels of poverty within South African society. This became a major task of the new Government and although there was some initial success under the Reconstruction and Development Policy, this was later abandoned for a Growth, Employment and Redistribution Strategy (GEAR). GEAR would prove less successful for a variety of reasons. One flaw with GEAR was its concentration on macroeconomic theories. It became evident that this approach did not suit the South African economy.

In many respects GEAR appears to address the poverty and inequality within South Africa. Cheru explains that GEAR “has largely focused on attacking structural inequalities and eradicating poverty through market led economic growth and reprioritisation of government budget in favour of disadvantaged communities . . . The GEAR also emphasises the importance of redistribution in government expenditure priorities and the role of sectoral policies in meeting basic needs and improving services to previously disadvantaged people and the poor”.¹⁵

¹³ Cheru, “Overcoming apartheid’s legacy . . .”, p.506.

¹⁴ *Ibid.*, p.506.

¹⁵ *Ibid.*, p.508.

It was hoped that by adopting macroeconomic policies like GEAR, the South African economy could achieve the rapid successes of the newly industrialised countries in East Asia which managed to reduce levels of poverty in a short period of time.¹⁶ However, one difference between the success enjoyed by these Asian countries and South Africa was that these countries protected their infant industries and recognised the importance of having a “basic needs” economy, before embarking on the establishment of a more ambitious export market. As a result they achieved a high measure of economic success without acquiring large international debts.¹⁷ In South Africa this was not the case. This, along with the fact that the post-apartheid Government inherited huge international debt owing to loans incurred by the outgoing Government prior to its fall, meant that the new Government had to deal with large international repayments. Consequently, most of GEAR’s targets were missed. For example, GEAR predicted that 650,000 jobs would be created between 1996 and 1998. Instead approximately 300,000 jobs were lost during that period.¹⁸

Despite the shortcomings of the economic policies adopted, it must be acknowledged that the new Government inherited many structural problems from the outgoing apartheid regime. Prior to 1994 many of the departments, systems and finances were designed to cater for the white minority. Now they had to be used to accommodate the entire population. The debts that the incoming administration inherited added to the

¹⁶ Cheru, “Overcoming apartheid’s legacy . . .”, p.508.

¹⁷ *Ibid.*, p.509.

¹⁸ *Ibid.*, p.509.

economic problems which the Government had to tackle. It must also be noted that despite the failures mentioned above, many positive initiatives were introduced by the ANC. For example, electricity was connected to over 1.5 million homes, water supply programmes were established, and public works programmes were set up in an effort to combat high levels of unemployment. But these improvements were not the result of a successful and vibrant economy. Rather they resulted from direct intervention by the State. "These [positive initiatives undertaken] are the result of direct and concerted government intervention (in the face of budget reductions) rather than an outcome of the magic of the market place".¹⁹

So despite the best intentions, the economic policies used in an effort to reduce poverty often failed. Unemployment levels remain very high in South Africa, health care requires immediate investment, education also needs investment, and economic inequality is as evident today as it was during the apartheid years. Attempts to reduce inequality have failed to a large extent, and South Africa still remains one of the most unequal societies in the world.

The effect of poverty is felt in a number of areas including housing, education, health care and nutrition. The most immediate and noticeable result of poverty perhaps is poor living conditions. Malnutrition is also associated with poverty, and many of the poverty-related diseases are the result of poor nutrition among people. This fact, along with the existence of diseases such as TB which spread easily in overcrowded living conditions, reduces the body's immune system and its ability to fight off infections. In

¹⁹ Cheru, "Overcoming apartheid's legacy . . .", p.509.

addition, it is the case that many STDs are common in poor communities which also adds the overall poor standards of health and makes the spread of viruses such as HIV extremely easy.

Many illnesses are avoidable when proper access to food and clean water exists. Poverty, however, reduces access to these. Medicine, even when available, is not always adequate for treating poverty-related illnesses. “The great weapons of modern medicine are aimed at the pathophysiology of disease . . . Health services are designed to deliver these weapons mainly through the hands of doctors. The dismal fact is that these great killers of children – diarrhea, pneumonia, malnutrition – are beyond the reach of the weapons.”²⁰ Thus economic deprivation has a direct impact on many areas of people’s lives. It implies more than simply a lack of money; it is something which also reduces a person’s access to many of the basic but essential needs which others often take for granted.

The link between poverty and AIDS is apparent in many ways. Inevitably poor communities display a high incidence of HIV infection. Generally the more impoverished the community the greater the rate of infection. Mining communities in South Africa are a good example of this. These areas are extremely poor, and shack settlements have grown up around the mines. Living conditions are harsh and mining is the main source of employment in the area. Women are reliant on men to provide money

²⁰ Cited in Stephens Ntsoakae Phatlane, “Poverty and HIV/AIDS in Apartheid South Africa”, in *Social Identities*, vol.9, no.1 (2003), p.81.

or food. One finds that pharmaceutical companies wishing to perform drug trials often opt for these locations since the rate of infection is usually very high.

D. Fassin and H. Schneider explain that “[a] low income or level of employment is associated with: a greater exposure to risky sexual experiences, diminished access to health information and to prevention, higher frequency of sexually transmitted infections generally, absent or delayed diagnosis and treatment, and less concern about one’s health and the future because of the harshness of the present”.²¹ Therefore levels of poverty within South African society need to be urgently addressed. The fact that a large portion of the population is still impoverished, in many cases trying to survive on \$1 a day, shows how much still needs to be done to combat inequality in South Africa. Poverty breeds resentment and despair, and often this finds expression through violence and crime.

4.4 Violence and crime

The violence associated with apartheid left long-lasting consequences. One cannot divorce the current levels of violence within South Africa from the regime that used force as its main instrument for maintaining the status quo. A number of areas will be examined here. First, the state-sponsored violence during the apartheid years will be discussed. Then the use of force by resistance groups in their struggle for equality will be mentioned.

²¹ Didier Fassin and Helen Schneider, “The politics of AIDS in South Africa: beyond the controversies”, in *British Medical Journal*, vol.326, (1 March 2003), p.495-6.

The existence of state sponsored violence instilled fear within the black population. The South African police and defence forces were repressive and brutal in their treatment of Blacks, particularly those in the poor townships. Defence forces were deployed in large numbers within these areas. In 1985 alone, 35,000 troops were used in townships throughout South Africa.²² The brutality of these forces was arbitrary and indiscriminate. The main purpose of this tactic was to instil fear. Nobody felt safe, and there was the constant threat of arrest and imprisonment. One police officer interviewed in 1988 said that “now everyone is afraid of going to jail without any reason, no one is causing trouble”.²³ Between 1984-6, many black townships became known as “zones of terror”. “Within these areas, relationships were structured around violence and fear. It is important to note that the violence and fear was largely confined to these areas. Outside the townships, power relations followed conventional rules of authority for most people not involved in anti-apartheid activities.”²⁴

The character of the violence changed somewhat after 1986 with the emergence of vigilante groups. The South African police and military were more than willing to allow vigilantism to take root, and often turned a blind eye to much of the attacks and assaults carried out by these groups. They saw it as an opportunity to let others do their “dirty work” for them. The aim of these groups was to destabilise and disrupt anti-apartheid organisations. Although state officials did not participate in vigilante activity there are numerous testimonies from individuals within these groups which explain how

²² See J. Cock, “Political Violence”, in Brian McKendrick and Wilma Hoffmann (eds.), *People and Violence in South Africa*, (Cape Town: Oxford University Press, 1990), p.50.

²³ Cited in J. Cock, “Political Violence”, p.54.

²⁴ *Ibid.*, p.54.

the police and defence forces assisted them in their efforts.²⁵ In many cases the security forces supplied vigilante groups with weapons and training, and gave them protection.

One consequence of vigilante violence was that it deepened segregationist sentiment within the white community. Accounts of black-on-black violence created the image of Blacks as brutal animals, and the white community felt they needed protection from this. Thus, the portrayal of black townships in this way seemed to legitimise the purpose of apartheid. Also, black-on-black violence did not receive the same level of media coverage as white-on-black violence. So vigilante activity allowed the white security forces to achieve the ends they wished but with less international attention.

Furthermore, vigilante groups destroyed what little resources existed within the townships. Anderson draws attention to this. "Vigilante violence terrorized the black population and depleted public resources in areas that had no public facilities."²⁶ Communities already isolated, discriminated against, and brutalised by the police, now faced the terror and repression of these groups. The police rarely intervened. The 1986 killings at Crossroads squatter camp outside Cape Town show both the police's encouragement of this form of violence, and also their reluctance to intervene to restore the peace. At Crossroads the residents were strong supporters of the African National Congress. Reports suggest that police organised a group of anti-ANC vigilantes who attacked the squatters. The police watched as they burned four shack settlements, killing hundreds in the process and forcing 70,000 people to flee.

²⁵ See Anderson, "Rape in South Africa", p.803.

²⁶ *Ibid.*, p.804.

During the height of the violence in 1986 two new police forces were deployed. An additional 16,000 “kitskonstabels” (special constables) and municipal policemen joined the police force.²⁷ They were hastily trained, in many cases receiving only an average of six week’s training. They were known for their excessive use of force, and many people felt less safe after their deployment than before it. They created an atmosphere of fear, using intimidation to control communities. In a document by the Catholic Institution for International Relations (CIIR) we read that, “[t]hese hastily trained black policemen were deployed in large groups in all areas where resistance was strong. From the beginning they used excessive violence. Their brutality created an atmosphere of fear that was aimed not only at activists but at intimidating entire communities. The behaviour of the new police is characterized by an arrogant disregard for the law.”²⁸

Yet the high level of violence and unrest in society was not brought about solely by the defence forces. Although we see that the South African Defence Force, the South African Police, vigilantes, municipal policemen and kitskonstabels treated the black population with brutality, fighting among resistance groups was also a feature of this time. One example of this is “the comrades” which consisted mainly of unemployed township youth. They were responsible for many acts of cruelty in the name of “liberation”.

²⁷ See J. Cock, “Political violence”, p.53.

²⁸ This extract from CIIR is taken from J. Cock, “Political violence”, p.53.

The forms of violence varied. State sponsored violence included capital punishment, police killings, detention without trial and torture. According to reports about 700 people were executed between 1983 and 1988. In 1987 alone 164 people were hanged, four times more than in Iran and thirty two times more than in China.²⁹ Assassinations and “disappearances” were common, and there is evidence of death squads operating for the State. Detention without trial was used to instil fear among the population. People could be arrested at will with no explanation given. It was a mechanism both of controlling populations through fear and threats, and also of arresting groups of people without hard evidence. Detention without trial was lawful since the 1960s, but the unrest throughout the 1980s saw a dramatic increase in numbers. In 1984 an estimated 1130 people were held in detention. This rose to over 3000 in the first seven months of the emergency period of 1985/6.³⁰

Torture was widely used under the apartheid Government. Its purpose was more than simply extracting information or confessions. It also had the effect of isolating the individual from the political organisation and beliefs to which they subscribed. “Torture is an effective instrument of social atomization, a function which may be more important than obtaining information . . . Guilt and isolation dislocate the individual from any sense of identification with the group. The outcome is an exaggerated individualism and sense of aloneness – it is in this sense that social organizations are fragmented and social

²⁹ J. Cock, “Political Violence”, p.59.

³⁰ *Ibid.*, p.62.

relations atomized.”³¹ Torture became vital for the State’s ability to suppress and contain political resistance.

Other forms of violence are associated with black communities rather than the state. Resistance groups openly engaged in the same expressions of force as police. Yet other forms of violence were characteristic of black communities. “Necklacing” is one example of this. It is interesting that this type of execution is exclusively black.³² There were almost 400 necklace murders between 1984 and 1987, and another 200 people were burned to death in which the perpetrators and the victims were black. Reports concerning crime of such a violent nature tended to move attention away from any state violence taking place. It also aided the image of a brutal and violent black population that should be kept separate from “civilised” white areas.

In 1990 F.W de Klerk introduced a number of changes in response to the international condemnation of the apartheid system and to the economic sanctions imposed on South Africa. In February of that year he lifted the thirty-year ban that had been imposed on the Government’s main opposition group, the African National Congress. He also released thousands of political prisoners, and moved to rid the townships of the large military presence. He lifted the State of Emergency and abolished detention without trial. In addition, the Group Areas Act was repealed. These changes

³¹ J. Cock, “Political Violence”, p.63.

³² There was one recorded instance of necklacing which involved a white person, but it is thought that the person in question used this form of execution because it is associated with the black population and thereby wanted to divert suspicion away from himself. See J. Cock, “Political violence”, p.65 footnote 5.

were openly welcomed by the black community and many felt that this would mark the beginning of a new South Africa.

But despite the apparent progress on these fronts, the changes were accompanied with an increase in violence in the townships. One reason may lie in the fact that the releasing of thousands of political prisoners also resulted in the release of many men convicted of rape and other serious crimes such as murder. The withdrawal of the military from many areas allowed vigilantism to flourish and to go unpunished. Furthermore, extreme poverty among a large section of society marred the victory over apartheid, resulting in frustration and disillusionment.

The recruitment of vigilante members into the kitskonstabels in the late 1980's and early 1990's contributed further to the high levels of violence within society. Recruitment into the police force gave members of vigilante groups the power, means and protection they needed to continue their wars with activists and other groups. The Government paid little attention to the force used by the kitskonstabels as they presented a cheap way to police large portions of the population. Consequently, many crimes went unpunished as the kitskonstabels were left to tackle crime as they saw fit. The result was an increase in fear and intimidation in the townships despite the withdrawal of the military.

It is clear from this brief account that violence became an integral part of life in the townships.³³ The state used excessive force to suppress the black majority, especially anyone suspected of involvement in anti-apartheid movements. A reign of terror existed whereby people could be arrested at any time with no explanation, held in detention for long periods, tortured or killed. Resistance groups retaliated with equal brutality. Informers or those suspected of collaboration with the state were severely dealt with. The police and military were concerned with suppressing opposition, and everyday crime went unpunished as a result.

With the introduction of kitskonstabels the situation got worse rather than better, and violence became a part of everyday life for many. People were forced to endure cruelty and suffering, and live under constant fear and suspicion. The extreme brutality witnessed would shape future relationships within South African society, and it became the accepted norm by which to resolve problems. Violence experienced in the public domain would also be reflected in the home, often expressed through rape and other forms of abuse. This point will be discussed in closer detail in the following chapter which deals specifically with rape in South Africa. Clearly crimes of this nature have a

³³ Interestingly, some reports suggest that people felt safer during apartheid rule than post 1990. See Gary Kynoch, "Apartheid Nostalgia: Personal security concerns in South African townships", *SA Crime Quarterly*, no.5, (September, 2003), p.7-10. This article is based on findings from interviews conducted over a two year period among residents in Soweto. A large majority of those interviewed said that violent crime was relatively rare before the 1990's and felt that the police were more successful in controlling crime than is currently the case. However, the author acknowledges some possible difficulties with the findings. For example, many of those interviewed were young during the apartheid years, and the author recognises that the elderly generally feel more vulnerable than the youth. He also suggests that the disillusionment experienced because of unfulfilled expectations after the collapse of apartheid created a sense that the past was not so bad. Despite this, the report does raise interesting questions about the current levels of crime and the general insecurity within society.

major impact on the spread of HIV/AIDS, and any examination of the crisis in South Africa ought to incorporate a study of his form of violence.

Chapter Five

Rape and Sexual Violence in South Africa

5.1 Introductory

As we saw earlier, rape and sexual violence more generally are a major problem in South Africa. Although it is extremely difficult to obtain accurate figures for the number of rapes and other sexual attacks, estimates show that as many as 1.6 million girls and women are raped each year.¹ South Africa contains approximately 5 million people, including 250,000 children, infected with the HIV.² Thus, when considering the transmission of the virus one must closely consider the impact of rape.

In sub-Saharan Africa a greater number of women are infected with HIV than men. It is thought that a ratio of six women to five men are HIV positive, while within the 15-24 year age category the ratio is two to one for young women infected. This is reflected also in South Africa where more women than men are HIV positive. In addition, increasing numbers of married women are becoming infected³ suggesting that women are exposed to the virus both before and after marriage. The growing infection rate for married women shows not only their low status within marriage, but also their inability to negotiate sexually with their husbands. It also draws attention to the high levels of rape within South African society, especially since most rapes occur within the family unit.

¹ Susan Rakoczy, "Women in Peril of Their Lives: Feminist Ethical Perspectives on the HIV/AIDS Pandemic", *Grace and Truth*, vol.18 no.3, (November 2001), p.49.

² CIIR, *Tamar's Cry: Re-reading an ancient text in the midst of an HIV/AIDS pandemic*, (London: Russell Press, October 2002), p.10. These figures are based on statistics for 2000.

5.2 Rape and Sexual Violence

In South Africa attacks involving rape and sexual violence are common⁴, and it is difficult to gauge the scale of the problem since very few rapes are actually reported to the authorities. The majority of rapes are committed against black women, although this crime is by no means confined to the black population. Bearing in mind that as few as 1 in 35 rapes is reported⁵, Anderson explains that the “rate of reported rapes in the [South African] population is fully double that of the United States, which is itself higher by many orders of magnitude than other countries that compile national data on rape. According to statistics compiled by Interpol . . . more rapes are committed in South Africa per capita than in any other country in the world.”⁶ Others express similar views. “South African women, living in one of the most violent countries in the world, are disproportionately likely to be victims of that violence.”⁷ The violence experienced within South African society in general very often finds expression in the poor treatment of women. Because of the low levels of reporting, and also the shortcomings of the legal system⁸ regarding this crime, many rapists go unpunished. Less than one third of

³ See PACSA, *Gender, Violence and HIV/AIDS*, (PACSA Factsheet No.46, Nov. 1999).

⁴ My discussion here of rape and sexual violence in South Africa is confined to attacks on women. This is not to say that women are the only victims of these attacks. Many men are victims of rape, and the problem is especially evident within South African prisons. For an overview of the problem of sexual violence in prisons see K.C Groyer, “Prison Health is Public Health: HIV/AIDS and the case for prison reform”, in *SA Crime Quarterly*, no.2 (November 2002), p.23-26. While acknowledging the fact that men are often victims of this crime, attention here is concentrated on the rape of women in South Africa.

⁵ Figures vary slightly depending on the source, but the above estimate seems to be broadly accepted. See Michelle J. Anderson, “Rape in South Africa”, in *Georgetown Journal of Gender and Law*, vol. [sic] issue 1, (Summer 2000), p.790, or PACSA, *Rape in South Africa*, (PACSA Factsheet No.44, June 1998). Similar figures are found in CIIR, *Tamar's Cry . . .*, p.17, which also draws attention to the low report rate.

⁶ Anderson, “Rape in South Africa”, p.789.

⁷ Binaifer Nowrojee, *Violence Against Women in South Africa: The State Response to Domestic Violence and Rape*, (New York: Human Rights Watch, 1995), p.44.

⁸ For example, the definition of rape under South African law is very narrow. “Rape” refers to unlawful sexual intercourse with a women. It applies only to sexual intercourse between a man and woman, and there must be penetration by the penis into the vagina. So acts of forced oral sex, for example, do not qualify, nor does penetration by foreign objects such as bottles or sticks. These acts are criminalised under indecent assault, but are not defined as rape.

reported rapes reach court, and of those cases prosecuted less than half result in conviction.⁹ The impression created as a result is that rape is a punishment-free crime.

Between 1980 and 1994 the number of reported rapes rose from 9,365 to 32,107. This is partly due to an increase in reporting, but it may also reflect the scale of violence within South African society. The number of reported rapes on children is also rising. Between 1993 and 1994 the number rose from 4,736 to 7,559, while 2,809 rapes on children were reported between January and April 1995 alone.¹⁰ Thus, although it is extremely difficult to calculate the actual number of rapes each year, one can conclude that these attacks on women and children are increasing.

Unlike domestic abuse¹¹, the occurrence of rape is concentrated to a large extent among the poor and disadvantaged. This is not to imply that rape is a specifically “poor” crime, since women from all backgrounds are raped. Yet the fact remains that poor black women are particularly vulnerable. Owing to greater economic and social dependence on their husbands, many women are reluctant to report the crime. Also, inadequate policing in disadvantaged districts leaves poorer women more susceptible to assault. Nowrojee explains that, “[a]ccording to South African police, an overwhelming 95 percent of rapes are reported by black women. Sixty-five percent of rapes reported in Johannesburg, Alexandra and Soweto during 1992 occurred in Soweto.”¹² In December 1994 alone, the

⁹ For these figures see Nowrojee, *Violence Against Women in South Africa . . .*, p.90.

¹⁰ *Ibid.*, p.50-1.

¹¹ Domestic abuse/violence here refers to violence within the home between spouses which may or may not include rape. Marital rape is common in such assaults.

¹² Nowrojee, *Violence Against Women in South Africa . . .*, p.52.

Baragwanath medico-legal clinic in Soweto dealt with 200 cases of rape.¹³ One can conclude that poorer sections of society are more likely to experience this particular crime.

5.3 Child Rape

Also on the increase is the number of child rapes and attempted child rapes. These attacks have been reported on infants as young as 3 months old.¹⁴ Because of the violent nature of the assault it is not uncommon for the death of the child to result owing to internal bleeding. This form of rape appears to be on the increase, and a number of high profile baby rapes have drawn attention to the severity of these assaults which in many cases are carried out by family members, usually the father, an uncle or some other male relative. It is common also that these attacks involve more than one rapist. As Pitcher and Bowley explain, cases of infant rape “have generally been committed by apparently ‘normal’ individuals with no history of mental illness. Frequently there are multiple rapists, as many as six in one case, and many perpetrators are first-degree or second-degree relatives.”¹⁵

It seems that one reason for these attacks on infants and young girls is the myth that sexual intercourse with a young virgin will cure a person of HIV. Initially this myth emphasised sexual intercourse with a virgin, usually resulting in young girls being

¹³ *Ibid.*, p.52, footnote 104.

¹⁴ See Nowrojee, *Violence Against Women in South Africa . . .*, p.108.

¹⁵ Graeme J. Pitcher and Douglas M. G. Bowley, “Infant Rape in South Africa”, in *The Lancet*, vol.359, January 26, 2002, p.274.

targeted, but now sexual contact with infants and very young children is increasing. Pitcher and Bowley draw attention to this. "There is growing support for the theory that infant rape is related to a myth that intercourse with a very young virgin infant will enable the perpetrator to rid himself of HIV/AIDS and other sexually transmitted infections."¹⁶ It is believed that this myth originated in Central Africa and spread south with the epidemic.¹⁷ However, as Bowley and Pitcher note, this idea is not new. "The idea that sex with a virgin will cure men of sexually transmitted infection is not new, nor exclusively African. In renaissance Europe, it was widely believed that syphilis could be cured by intercourse with a virgin."¹⁸ What is clear is that myths of this nature are placing infants and young children in serious danger.

One consequence of this is that young girls in South Africa are at great risk of becoming infected with HIV. The rate of infection is particularly high among infants since internal physical injury is common during these attacks, resulting in a greater surface area exposed to HIV, and consequently greater chances of infection. Also, because of the "virgin myth" it is reasonable to assume that most men committing these rapes on young children are HIV positive. The conviction rate is very low, partly because the victims are so young and many are unable to testify in court. Most perpetrators are known to the family, and this is another reason why certain cases may not be reported. Methods of collecting forensic evidence are often inadequate, and vital evidence is either overlooked or lost.

¹⁶ Pitcher and Bowley, "Infant rape in South Africa", p.274.

¹⁷ *Ibid.*, p.274.

¹⁸ Douglas M. G. Bowley and Graeme J. Pitcher, "Motivation behind infant rape in South Africa", in *The Lancet*, vol.359, April 13, 2002, p.1352.

Pitcher and Bowley rightly state that better educational programs are required in order to provide accurate information about HIV transmission. Programs are especially needed for communities at risk, namely poorer sections of society where illiteracy and poor education is common.¹⁹ The South African Government ought to take a tougher stance if these myths are to be countered. “The naïve and dishonest view that there is no proven, causal link between HIV and AIDS will perpetuate crimes of this nature. The failure of the political leadership to frankly acknowledge the causes, effects, and treatment of HIV/AIDS has been the fertile ground for bizarre and dangerous myths to take root and flourish. The central government should openly debunk the ‘young-virgin myth’.”²⁰

Not everyone however is convinced of a link between these myths and attacks on young girls and infants generally. For example, Jewkes, Martin and Penn-Kekana dispute the idea that such a link exists. Instead, they believe that assaults of this nature are grounded in the more widespread problem of sexual violence against women and girls. “Cases have been reported in which this myth was a motivating factor for child rape, but most evidence suggests that this motivation is infrequent.”²¹ They also disagree that there is any evidence that child rape is on the increase. However, in view of the low

¹⁹ See Pitcher and Bowley, “Infant rape in South Africa”, p.274, and “Motivation behind infant rape in South Africa”, p.1352.

²⁰ Pitcher and Bowley, “Infant rape in South Africa”, p.274.

²¹ See Rachel Jewkes, Lorna Martin, Loveday Penn-Kekana, “The virgin cleansing myth: cases of child rape are not exotic”, in *The Lancet*, vol.359 (February 23, 2002), p.711.

rate of reporting of this crime it is difficult to determine accurately whether these attacks are on the increase or not.

They conclude that sexual assaults on children are more likely to be the result of the overall levels of extreme sexual violence within South African society rather than the result of sexual myths. Some of these assaults, for example, were linked to Cape Town gang initiation rituals which are extremely brutal.²² They believe that the problem of child rape lies more with poverty, inequality and violence within society than with sexual myths of different kinds. They suggest that:

Many people in South Africa have been extremely brutalised by the political violence in the country's past, the disruption of families and communities, high levels of poverty, and the very high levels of violence of all forms. The direction of much of this violence at women and girls might be explained by sex inequalities, a culture of male sexual entitlement, and the climate of relative impunity for rape.

The root of the problem of infant rape, as for rape of older girls and women, lies mainly at these more mundane doors, and it should be seen as part of the spectrum of sexual violence against women and girls. Infant and child rape will be prevented only if these issues can be ameliorated.²³

It seems likely that a combination of both sexual myths and the problems mentioned by Jewkes, Martin and Penn-Kekana contribute to child rape in South Africa. In a society where violence, poverty and inequality abound, the motivation for attacks on children will at times be associated with these problems. But the influence of sexual myths is important also, and must be considered in any examination of these attacks.

The motivation for rape in general is a complex issue, and I will explore possible factors for the high levels of rape in South Africa shortly. Rape is concerned with issues

²² Jewkes, Martin, Penn-Kekana, "The virgin cleansing myth . . .", p.711.

²³ *Ibid.*, p.711.

of power and control, though the rape of infants is also likely to be, at least partly, linked with the “virgin-myth” discussed above. In a society where the vast majority of those infected with HIV/AIDS are unlikely ever to gain access to essential drugs, hope fades quickly. Poverty, desperation and illiteracy provide the perfect breeding ground for these beliefs.

Child rape must be viewed within the wider context of child sexual abuse. Growing numbers of children are exposed to child sex rings, child prostitution, child pornography, as well as abuse within the home. Poverty may force families to involve their children in these activities. Children may be seen as “assets”, with the potential for generating income for the household. An example by Jewkes shows the vulnerability of children as a result. She cites the case where one mother allowed a HIV-1-positive man to rape her daughter in exchange for money.²⁴

Within the home the abuse of children, especially sexual abuse, is related to issues of power, dominance, and the enforcement of the ideal of male supremacy. The actual number of sexual assaults on children is difficult to estimate. Particularly if these assaults occur within the home it is unlikely that it will be reported to the authorities. However, available statistics on child abuse show that the overwhelming majority of these cases involve sexual abuse. From May 1988 to May 1989 one Child Abuse Clinic in Johannesburg dealt with 227 cases of child abuse, of which 90 percent were concerned

²⁴ Jewkes, Martin, Penn-Kekana, “The virgin cleansing myth . . .”, p.711.

with the sexual abuse the children involved.²⁵ More recent figures show that in 1999 the Crime Information Management Centre of the South African Police Force recorded 221,072 sexual offences against persons under 17 years of age.²⁶

5.4 Rape at School

It is becoming more evident that rape and sexual abuse is a serious problem within many South African schools. A recent report by Human Rights Watch examines the dangers posed for girls while attending school.²⁷ This report focused on three South African provinces - KwaZulu-Natal, Gauteng, and the Western Cape. Students and teachers from both public and private schools were interviewed, including individuals from poor and wealthy backgrounds. Although girls from all economic backgrounds were in danger of attack, the problem appeared more serious in poorer areas. This report documents the nature of the situation in many schools and illustrates the risks faced by girls every day in their pursuit of education.

The report explains that, “[a]lthough girls in South Africa have better access to school than many of their counterparts in other sub-Saharan African states, they are confronted with levels of sexual violence and sexual harassment in schools that impede their access to education on equal terms with male students.”²⁸ In fact estimates show

²⁵ See McKendrick and Hoffmann, *People and Violence in South Africa*, p.228. This chapter covers the problem of child abuse in South Africa. The statistics are dated but give some insight into the situation here.

²⁶ These figures are cited in Pitcher and Bowley, “Infant rape in South Africa”, p.274.

²⁷ See Human Rights Watch, *Scared at School: Sexual Violence against Girls in South African Schools*, (New York: Human Rights Watch, 2001).

²⁸ Human Rights Watch, *Scared at School . . .*, p.4.

that between 1996 and 1998 girls aged seventeen and under accounted for forty percent of all rape and attempted rape victims in the entire country. In addition, 1998 figures from the Child Protection Unit in the South African Police Service (SAPS) show that rape was the most prevalent crime perpetrated against children. It accounted for one third of all serious crimes against children reported between 1996 and 1998.²⁹

When a girl is raped she often finds that the response by the school authorities or wider state authorities is inadequate. In cases where teachers rape girls the school authorities are slow to act, if they act at all. Similarly, where girls are raped by schoolmates little action is taken to punish the perpetrator. Consequently girls regularly find that they have to return to classes where they continue to be taught by the teacher who raped them, or they have to sit beside their attackers. The situation has become so widespread that it is considered “normal” – part of every day life. “Because it often remains unchallenged, much of the behaviour that is violent, harassing, degrading, and sexual in nature has become so normalized in many schools that it should be seen as a systematic problem for education, not merely a series of individual incidents.”³⁰

The violence currently witnessed in South African schools must be understood within a wider social and historical context. As we saw already, years of brutality under the apartheid regime helped create a culture whereby force became the accepted, and in

²⁹ Human Rights Watch, *Scared at School . . .*, p.23. Accurate figures for the number of children raped or the number of rapes on children are difficult to provide. As in the case of rape on adults, rape of children may not always be reported to appropriate authorities for fear of reprisal or due to a lack of confidence in state authorities. Nevertheless rape of children in schools is recognised as a serious problem not only by child protection groups but also by the South African Government.

³⁰ *Ibid.*, p.5.

many cases the only, means of resolving problems. The apartheid Government's insistence on the use of Afrikaans as the medium for teaching prompted student protests in 1976. "Already the site of conflict, schools became the locus of increasing violence as the education crisis intensified and student expectations were frustrated".³¹ Schools became places of violence. This fact, along with an increasingly serious rape crisis in the country, meant that sexual violence was often directed at girls.

Reforms are being introduced by the Government in an effort to address this problem. For example, domestic violence, child abuse, and sexual assault units have been created within the police force to deal with crimes of this nature. Special family courts have been set up to deal with cases concerning violence within the home. Law reform is also taking place. The Domestic Violence Act of 1998 rectified some previous legal shortcomings by addressing the many forms of abuse which take place within the home.³² In 1995 South Africa ratified the Convention on the Rights of the Child, and in doing so committed itself to establishing and safeguarding the rights of children. There are also greater efforts being made to make the courts more "child friendly", and thereby less frightening for children to testify. For example, children now do not have to testify in the presence of the accused.

Despite these efforts, the fact remains that the majority of rapes directed at children do not reach court. Girls may be too frightened of their abusers to bring charges against them, and in several cases money is used to buy their silence. Consequently,

³¹ Human Rights Watch, *Scared at School . . .*, p.20.

³² *Ibid.*, p.88-9.

many rapists not only escape punishment; they very often remain in environments where they can easily re-offend.

Evidence shows that the transmission rate for HIV is high during rape. Girls have a greater chance of contracting HIV than boys, and the younger the girl the greater the chance of infection. Biologically it is easier to transmit the disease from a male to a female than from a female to a male. Also, the fact that rape is always violent increases the chance of tissue tearing during intercourse, which in turn makes transmission easier. According to UNAIDS the transmission rate is higher among young African women than among young African men.³³ “South African health officials say adolescent girls are twice as likely to become infected with HIV as boys, a reflection of their increased sexual activity, often coerced, with older men who have had longer exposure to the virus. In South Africa, the prevalence rate of HIV in girls and young women aged fifteen to twenty-four is almost twice that of boys and young men of the same age.”³⁴

Apart from the serious social, medical, emotional and psychological impact that rape has on individuals and communities, high levels of rape in schools is undermining education in South Africa. Many young girls who are victims of rape or sexual abuse, either by teachers or fellow students, drop out of school for long periods of time. Inevitably their education suffers. Furthermore, in a country that is trying to promote reconciliation, equality and justice within society, one realises the importance of education and of schools as a medium to convey such messages. The credibility of these

³³ Human Rights Watch, *Scared at School . . .*, p70.

³⁴ *Ibid.*, p.70.

hopes and ideals is greatly undermined when the environment in which the messages are proclaimed is violent and denies basic rights to many children. "The South African education system is uniquely situated to play an important part in combating gender inequality. It is not only the curriculum that teaches children respect for human rights; the context in which learning takes place also informs the lesson."³⁵ The South African Government and local authorities have a duty to ensure an equal standard of education for all students within an environment that is safe for girls.

Such high instances of rape will have a direct impact on the rate of HIV infection, and it is a major concern for those working to combat the spread of this disease. Thus, it is necessary to address this growing problem within South African society not only as a means to combat the spread of AIDS and other STDs, but also in order to restore women's rights and equality. Effort to address this situation must be based on an understanding of its complexity as well as the root causes for rape. It is therefore necessary to examine the contributing factors for the high instances of rape in South Africa. Of particular importance here is the role the apartheid policies of the past play in the current crisis.

5.5 Reasons for Rape

The motivation for rape is complex, and may vary depending on the circumstances surrounding the attack. However, at this point attention will focus on the connection between apartheid, its policies, and the current rape problem in South Africa.

³⁵ Human Rights Watch, *Scared at School . . .*, p.112.

One aspect of the apartheid regime which is of relevance here is the violence it generated. Anderson explains, “[t]he brutal history of apartheid in South Africa facilitated the current rape crisis now facing the country. The white minority government’s ‘repressive, excessive, and indiscriminately violent’ response to pro-democracy political organizations encouraged a culture of violence to thrive in the country, one in which people came to consider both public and private violence legitimate and appropriate.”³⁶ The violence experienced by Blacks under the repressive policies of apartheid became an acceptable means to end the repression. Thus, a spiral of violence emerged within society; one group using force to repress Blacks, and the anti-apartheid movement in turn using force to end the repressive measures inflicted against them. Within this context, violent behaviour not only became the norm, it was also glorified. This violence was often directed against women in the form of sexual abuse. Anderson discusses the structural relationship between apartheid and the current levels of rape, referring to two main points.³⁷

First, those enforcing apartheid regularly used rape, and the threat of rape, as a means of ensuring political control and stability. Police and interrogators used rape to terrorize women in detention. Rape by the police force and the military was common in prisons, but they also raped women who were not imprisoned. It was particularly common if women were suspected of being members of an illegal organisation. “The apartheid state employed many instruments to disintegrate political resistance at a

³⁶ Anderson, “Rape in South Africa”, p.790-1.

³⁷ *Ibid.*, p.791 ff.

personal level and to express its belief in white supremacy: the premier tool of male supremacy – rape – was one of them.”³⁸

In an effort to protect the apartheid regime the Government detained thousands of political prisoners. Anti-apartheid activists were held in detention for indefinite periods and were arrested at will. Female political prisoners were treated differently to male prisoners. For example, they served all their time in solitary confinement, whereas male prisoners were allowed to mix with each other. Torture was commonly applied as a means to extract information and confessions from prisoners. In the case of female detainees rape was an obvious form of torture. “Rape and the threat of rape . . . were the most effective tools for terrorizing women in custody. The Federation of South African Women describes the fear of rape inside prison as one of the biggest concerns of women held in political detention . . . As in other parts of the world, women who were sexually abused in detention in South Africa rarely reported these violations, and when they did, they usually could provide no corroboration.”³⁹

The police and military did not confine their sexual attacks to women held in detention. It was common for Defense Forces to rape women in the general population also. Nor were sexual attacks committed solely by white police or military personnel. Liberation forces were also guilty of attacks on women. For example, a sixteen year old girl, Bajabulile Nzama, was abducted by members of the African National Congress because they believed she was a supporter of the Inkatha Freedom Party. She was held

³⁸ Anderson, “Rape in South Africa”, p.791-2.

³⁹ *Ibid.*, p.796.

prisoner for a month, during which time she was repeatedly raped. When she eventually escaped she informed the police and the case went to court. However, the judge concluded she was a concubine and found the men not guilty.⁴⁰ Anderson believes that, “Nazama’s case highlights how the white state’s use of rape as a political tool communicated to other entities in the country that rape was a valid device for achieving one’s political ends. It also highlights a familiar theme: the inability of the legal system to take rape seriously.”⁴¹

A second point discussed by Anderson is that apartheid created a unique set of social structures in which rape could escalate and go unpunished. Blacks were forced to live in certain areas, often over-crowded townships. Living conditions were cramped and lacked basic facilities. The police were not concerned with tackling crime in these areas. The strong police force and military presence was mainly preoccupied with keeping Blacks separate from whites, and repressing any signs of political resistance. Consequently, many crimes went unpunished and this facilitated violence against women. The authorities thought that they had more serious matters to concern themselves with than sexual violence directed against poor black women, especially when most of this occurred within the home. The result is that rape has become a major problem in South Africa. “Today, rape is rampant in black townships and ‘coloured’ areas such as Cape Flats, particularly where poverty and cramped living quarters mean that women have no

⁴⁰ This case is reported in Anderson, “Rape in South Africa”, p.801.

⁴¹ *Ibid.*, p.801.

privacy or safety. As a result of their tremendous vulnerability, women of color are 4.7 times more likely to be raped than white women in South Africa.”⁴²

This is not of course to suggest that apartheid created the current rape crisis in South Africa. Rape predated the apartheid regime, and it alone is not sufficient to explain why the problem has become so serious. Nevertheless, it does have a role to play in explaining the situation today. Anderson explains that “apartheid contributed to rape, as it contributed to many other social ills, such as poverty, violence, and homelessness. Sexual violence against women is one of the most pressing problems facing the new South Africa. It flourishes in a hostile ecosystem: grounded in racial brutality of apartheid: watered by inevitable post-apartheid difficulty with correcting gross incompetence and lack of training in the police: and sunned by widespread apathy for the pain of those who remain at the very bottom of the social order – women of color.”⁴³

Apartheid could be said to contribute to the problem of rape in other ways also. If we realise that rape is concerned primarily with issues of power and dominance, the significance of apartheid becomes clear. Under apartheid black males were denied freedom of movement, unemployment was high, and stereotypical male attributes such as dominance, power, and control were difficult to exhibit. Unemployment meant that many men were often unable to provide for their families, which also challenged the image of the man as provider. The fact that men had to travel long distances in search of work regularly resulted in marital breakdown, and the wife now was seen as the “head”

⁴² Anderson, “Rape in South Africa”, p.792.

⁴³ *Ibid.*, p.793.

of the family. These factors contributed to a crisis in the male image. Traditional male characteristics could not be achieved, resulting in feelings of despair and frustration. Rape and the sexual domination of women provided an opportunity to display some of the traits otherwise denied to black men. Attributes such as strength, dominance, control and power were now expressed through their physical and sexual control over women.

Jewkes and Abrahams draw attention to this. "The problem of rape in South Africa has to be understood within the context of the very substantial gender power inequalities which pervade society. Rape, like domestic violence, is both a manifestation of male dominance over women and an assertion of that position . . . Both sexual and physical violence against women form part of a repertoire of strategies of control."⁴⁴ It is therefore necessary to examine these factors, and how they contribute to the crisis today. Campbell discusses what she calls a "crisis in masculinity" among working class African men. In her article Campbell explores the link between this crisis in masculinity or identity, and the violence directed at women. A number of points are discussed which give an insight into this complex problem.⁴⁵ Campbell explains:

Apartheid and capitalism have limited the power of working-class men in the wider community. For men who were oppressed both in race and class terms, their socially sanctioned power over women and young men in the family was often the only arena in which they were able to exercise any dominance. It was largely through their role in the family that the men were able to give expression to their masculinity in working class communities. However in the more recent past, male power in the family has been severely threatened on both the material and decision-making fronts.⁴⁶

⁴⁴ Rachel Jewkes and Naeema Abrahams, "The epidemiology of rape and sexual coercion in South Africa: and overview", in *Social Science and Medicine*, vol.55 (2002), p.1238.

⁴⁵ See Catherine Campbell, "Learning to Kill? Masculinity, the Family and Violence in Natal", in *Journal of Southern African Studies*, vol.18 no.3, (September 1992), p.614-628.

⁴⁶ *Ibid.*, p.618.

From this a number of topics emerge for discussion. Older men were always considered the providers and guardians of wealth within the family and wider community. The traditional view focused on male economic dominance. However, poverty and unemployment result in few men attaining such “ideals”. Apartheid facilitated the poverty experienced by the majority of the population, and black males were excluded from certain jobs and careers. Fathers and husbands who are unable to provide financially for their families are looked down upon and there is consequently considerable financial pressure placed on them⁴⁷. Low wages and unemployment remain the reality for many men, which results in emotional strain and increased pressure. Many men believe that their lack of economic control results in little respect for them or their position within the family. Campbell explains that these situations trap families in vicious circles with negative consequences for individual family members, and the family as a whole. The father becomes a victim of expectations which he is incapable of fulfilling.⁴⁸

The father’s/husband’s role in decision-making is also being eroded. Again this undermines his dominance within the family, and threatens traditional traits of a husband/father. He may feel that the respect due to him as the head of the family is lost

⁴⁷ For an examination of the relationship between poverty-induced stress and violence against women see Rachel Jewkes, “Intimate partner violence: causes and prevention”, *The Lancet*, vol.359, (April 20, 2002), p.1423ff. Jewkes makes the point here that poverty inhibits men to fulfil the social expectations of manhood. The stress which this in part creates is often directed at women in the form of sexual violence. Jewkes therefore believes that sexual violence is not just an expression of power and dominance, but also reflects male vulnerability given the social and economic male stereotypes which are difficult to meet because of poverty.

⁴⁸ Campbell, “Learning to Kill? . . .”, p.619.

or threatened. Campbell interestingly makes this point more in relation to older men. She suggests that the older generations in township families of the late 1980's and early 1990's were faced with social conditions that were changing at a fast rate. Children were being faced with situations and possibilities that previous generations had no experience of, and which they could offer little advice on. Parents, and especially fathers operating in their capacity as head of the household, felt ill-equipped to deal with the new political and social situations which were emerging.

This may have heightened feelings of incompetence and a sense of isolation from younger generations. The respect due to them as the older generation was not forthcoming. Again this points to a crisis in identity, particularly on the part of males within the family unit. "Older men are struggling to reconcile what they would call the traditional view of men as potent, powerful, proud beings, as well as repositories of community wisdom and experience, with a set of social relations where as black workers they fall low in the current hierarchy and have little power within the family. The result of this is that men feel alienated and displaced in their families as well as their township communities."⁴⁹

This crisis of identity also applies to young black men. While younger women can retain an identity as mother and housekeeper, young men are finding it increasingly difficult to assert their identity. Disillusionment exists because of high unemployment

⁴⁹ Campbell, "Learning to Kill? . . .", p.621.

and poor job prospects. Younger men may find it difficult to find a wife, particularly if they are unemployed. Women are unwilling to take the financial risk of marrying a man who has no work. Unemployment also makes it difficult to raise the money for *lobola* (brideprice). Thus, younger men often face difficulties and uncertainties within society, and find it hard to live up to traditional traits and stereotypes.

Against this background one must evaluate the increasing level of violence, and the impact this has on women and on the spread of HIV/AIDS. Physical force becomes the means through which men assert their masculine dominance and display traditional male characteristics of power, strength, and control. “In a community where the opportunities for assertion of masculine power are limited, violence is a manifestation of the structural forces of patriarchy reasserting themselves at a time when race and class oppression has dealt the status of adult men a particularly severe blow.”⁵⁰ This violence became associated with the macho culture of political resistance where violence was glorified, and young men were prepared to lay down their lives if necessary for “the cause”. Nowrojee explains that, “[v]iolence in support of a political cause offered these young militants known as ‘comrades’ an opportunity to define themselves in an overtly macho manner, when other routes – as breadwinner and head of a household – were denied.”⁵¹

⁵⁰ Campbell, “Learning to Kill? . . .”, p.623-4.

⁵¹ Nowrojee, *Violence Against Women in South Africa . . .*, p.22.

The home became one place where the dominance of the black male was not threatened or suppressed. The attributes of strength and power were displayed in his physical domination of his wife and children. The violence directed against them was a means of displaying these features of his person. A vicious circle was created whereby children witnessed, and were often subject to, this abuse, which in turn increased the likelihood that they too would use force at a later date within their own families. Force became the medium through which disputes were solved and family relations were controlled. This is reflected in the increasing numbers of young men who feel violence is a normal part of their sexual relationships. Girlfriends are expected to be submissive and obedient. Violence has become the normal way to control women and it is the socially sanctioned way of resolving conflict and keeping wives/girlfriends in line. Violent behaviour within society and within the home contributes to the rape crisis within South Africa and rape must be understood in terms of gender inequality.

L. Vogelmann, in discussing the aetiology and nature of rape, explores a number of these points.⁵² Vogelmann acknowledges the difficulty in trying to put forward common criteria as to why men rape. But there are two generalisations which can be made. First, there is a strong desire to assert power, and second, rapists are unable to see the women they rape as persons.⁵³ Vogelmann makes the important point that human conduct, and the violence directed against women, is socially conditioned. An examination of rape in any particular area/region must, therefore, consider the social, economic, and cultural

⁵² See L. Vogelmann, "Violent crime: rape", in Brian McKendrick and Wilma Hoffmann (eds.), *People and Violence in South Africa*, (Cape Town: Oxford University Press, 1990), p.96-134. This paper is focuses on the Riverlea area in Johannesburg and examines the contributing factors for rape in that area.

⁵³ *Ibid.*, p.99.

influences affecting people in that area. For example, the importance society attaches to male power and aggression will influence private as well as public relations. A culture in which women are expected to be docile and submissive, and where sexual aggression is desirable, contributes to high instances of sexual violence and rape. Economic aspects such as unemployment also play a part in the way women are treated, since much of the frustration and disappointment experienced by men in these circumstances is directed at women within the home.

In the Riverlea area of Johannesburg a direct link is made between unemployment and assaults on women. "Work is of central importance because men fix much of their identity around their occupation . . . Thus unemployment, a condition with which anywhere between two to four million men in South Africa are familiar, and which has become an increasing problem in Riverlea, is likely to threaten the personal identity of a mass of men. Instead of perceiving their situation as a fault of the economic system, many see it as a personal failing."⁵⁴ Dissatisfaction at work, feelings of frustration at the lack of work available or limited opportunities, and boredom, all contribute to men's sense of economic powerlessness. It challenges their image and increases feelings of despair. The economic stress suffered may be then re-directed at wives and girlfriends. Thus, the poverty created by apartheid, and the associated economic conditions which emerged, are contributing to the situation today. It also partly explains why a high number of rapes occur in poorer sections of society.

⁵⁴ Vogelmann, "Violent crime: rape", p.101.

However, as Vogelmann points out, it is unlikely that a man will rape just because he is unhappy in the workplace or because he is dissatisfied with job prospects. "To rape, he will also need to feel inadequate in other spheres of life, and to objectify the woman, feel aggressive towards her, and see violence and coercion as a means of resolving tension and fulfilling desire."⁵⁵ In a society where violence is the norm for resolving conflict, it is not surprising that it is used within the home and in schools as well as in the political sphere. The violence experienced within the home has a profound effect on the family, particularly on young boys, since it provides the model to which they relate.

The broader experience of culture is important also. Rape is not caused by the economic circumstances of individuals or communities alone. Nor is it sufficient to examine levels of rape by referring to the sub-culture within communities where rape and sexual violence, particularly within the home, are accepted. To view rape as a crime that exists only within poorer communities and as part of the sub-culture of the working class fails to account for rape among wealthy or middle-class areas. Vogelmann says that "while a familial and sub-culture theory of rape is useful in explaining rape, the purpose and aim of sexual violence must not be placed in a social vacuum."⁵⁶ Rather the broader culture and history of the country as a whole must be considered. In South Africa, violence, in whatever shape, is accepted. It carries no shame or embarrassment. It is, instead, often ignored, and crimes go unpunished. Within this setting, and particularly in view of women's low social status, attacks on women are inevitable. Thus, society as a whole needs to address this problem. It is not just a "black problem" or something

⁵⁵ Vogelmann, "Violent crime: rape", p.102.

⁵⁶ *Ibid.*, p.105.

confined to poorer areas. It is a problem deeply embedded within the wider culture, and one which needs to be addressed by all sections of society.

5.6 The Law and Rape

It is important to advert to the role of the South African Government and the South African legal system in this crisis. As mentioned, the conviction rate for rape is very low, which in turn creates the impression that it is a punishment-free crime. The legal system and the South African Police Service (SAPS) are barely coping with the scale of the crisis. This is partly because of the lack of resources and an understaffed and ill-equipped service, but it is also the result of indifference and apathy in the treatment of rape as a serious crime. It is therefore necessary to examine the contribution made by the legal system to the current rates of sexual assault and rape on women. As we shall see many of the short-comings within the legal system, and especially the police force, have their roots in the apartheid policies of earlier times. Nevertheless, legal reform is not enough to alleviate the magnitude of the problem, although it would certainly assist it. Reform of attitudes towards women is the key to change within South African society.

Despite recent political and legal changes within South Africa, women are still considered inferior to men in many respects, as is evident with South African law.⁵⁷ There are two legal systems in operation in South Africa: civil law and customary law.

⁵⁷ The following account of the position of women under the South African legal system is based on work carried out by Human Rights Watch. See Binaifer Nowrojee, *Violence Against Women in South Africa: The State Response to Domestic Violence and Rape*, (New York: Human Rights Watch, 1995). Binaifer here gives an informative account of the complexities of South African law as regards women.

Civil law is mainly based on Roman-Dutch law, while customary law is a mixture of law based on practices of pre-colonial African society and the attempts of the colonisers to codify and amend these practices.⁵⁸ Historically, all women were discriminated against under South African law, but the status of black women was especially low. In addition, while married women of all races were at one time considered minors, most married white, colored, and Indian women, although still subject to certain inequalities, achieved full major status. This is not the case for African women,⁵⁹ who may still be subject to serious disadvantages. "African women married under customary law, on the other hand, are still subject to serious legal disadvantages, and in former homelands those married under civil or customary law may not have benefited from the reforms of the last decade."⁶⁰ Laws relating to marriage and the family for the most part affect black women, and it is here where one notices obvious discrimination.

Not all marriages are given equal status in South Africa. Within the civil marriage system women previously had an inferior legal status to their husbands. The man was awarded guardianship over his wife's property and also over her person. Prior to 1984 women were married in "community of property" and were subject to the "marital power" of their husbands. This meant that the property of the man and the woman was joined into one, giving the husband total control over it. In these marriages the wife was considered a minor, which meant that she was unable to enter into deals and

⁵⁸ Nowrojee, *Violence Against Women in South Africa . . .*, p.35. Nowrojee explains that "[i]n South Africa, as in other African countries, the official recording of 'customary law' took place largely in the context of the relationship between the (male) colonial authorities and (male) African ruling elites and perhaps had the most significant impact on in the sphere of the family".

⁵⁹ The term "African women" here refers to black South African women.

⁶⁰ Nowrojee, *Violence Against Women in South Africa . . .*, p.27.

transactions regarding the estate without her husband's consent. He, on the other hand, had total freedom over any transactions, even those concerning the property of his wife.⁶¹ However, this law was later changed, and marriages entered into after November 1, 1984 were not subject to marital power. Both parties were now considered joint administrators of the estate. In December 1993 further improvements were made and marital power in all civil marriages, regardless of their date, was abolished.⁶²

The situation of African women varies depending on whether they married under civil or customary law. Marriages according to customary law were not fully recognised by the State. Partial recognition is given in some instances which does give women in customary unions certain protection. Registration is among the requirements for proof of a customary marriage. However, in many cases the registration requirement is not observed, which makes it extremely difficult for women in these unions to claim whatever limited benefits are accorded to them by the State. This increases a woman's dependence on her husband. Under customary law the husband is considered head of the household and has extensive rights over the family, particularly if *lobola* has been paid. The woman is considered a minor, and the husband deemed her guardian.

One problem with customary law is that it reflects the pre-colonial African views on the family and marriage. In many cases customary law was not adapted or revised to meet the changing situations within society, particularly those rapid changes ushered in by urbanisation and by the problems faced by migrant laborers. It is not uncommon for

⁶¹ Nowrojee, *Violence Against Women in South Africa . . .*, p.28.

⁶² *Ibid.*, p.28.

men to have two families and marriages, one according to customary law in their home area, and another according to civil law in cities where they work and live. Furthermore, customary law has assisted in creating the image of women as property, something controlled and owned by a man.

Attitudes towards women leave them in a disadvantaged position economically and socially. Nowrojee explains that “[t]he importance of women as childbearers leads to a complex of rules relating to infertility, including the duty of a younger sister to take the place of a wife who is unable to bear children (the sororate), and the duty of a wife to bear children by a relative of her husband, should he die while she is still fertile (the levirate). Similarly, the institution of lobola, or brideprice, can reinforce the view of women as the property of their husbands: in traditional practice, in which polygamy was the norm, the number of wives a man had – and had paid cattle for – was an indication of his wealth.”⁶³

Thus, we can see that women are seen here primarily as child bearers and are believed to be the property of the man. This affects the way women are seen today and is important when examining contributing factors for high levels of rape. “The continued existence of dual civil and customary marriage systems prejudices a substantial number of African women, especially rural women who are most likely to be married according to customary law. The overlap and occasional conflict of the two systems means that

⁶³ Nowrojee, *Violence Against Women in South Africa . . .*, p.36.

equal protection of the law is not provided to women, especially in relation to inheritance and property – and women may even be put into conflict with each other.”⁶⁴

The aim of this brief examination of South African law is to show the inequalities still experienced by many African women. It deepens images of women as the property of men, and as inferior to them. Within this context one can see why men may deem it appropriate to force women to have sex. Prevailing male attitudes towards women are reflected within the wider framework of the legal system of the country. Reform is needed here to protect the rights of many women within South African society. But the difficulties encountered under the law in relation to marriage and the family are only part of the wider problem. The judicial system’s treatment of rape as a crime is at best problematic. Laws concerning rape need to be addressed, and the courts need to tackle this particular crime in a more convincing and thorough manner.

The legal definition of rape under South African law is very narrow, and, consequently, excludes a number of serious sexual attacks from prosecution as “rape”. Nowrojee says that rape is defined as “intentional, unlawful sexual intercourse with a woman without her consent. The essential elements are *mens rea* (intent); unlawfulness; sexual intercourse with a woman; absence of consent.”⁶⁵ There are several difficulties with this definition of rape. First, it confines rape to something perpetrated against women. A man cannot be a victim of this crime, and a woman cannot commit rape. Second, the legal definition of “unlawful sexual intercourse” is limited. For example,

⁶⁴ Nowrojee, *Violence Against Women in South Africa . . .*, p.36.

⁶⁵ *Ibid.*, p.89.

until 1993 a husband could not be convicted of raping his wife. Also, South African law fails to include cases of forced oral or anal sex but confines rape instead to vaginal intercourse. In addition, penetration by anything other than the penis does not qualify as rape. Finally the definition of consent is vague and does not include instances of “coercion” by a man.⁶⁶

A further criticism has been the use of “the cautionary rule”. This rule requires that courts be especially cautious when dealing with a crime of this nature owing to the unreliability of the testimony of women and children. The rule states that the courts “in dealing with sexual offences are required to take cognizance of the dangers of possible unreliability in a complainants [*sic*] testimony, due to the private nature of the crime and the various social and psychological factors which might make this evidence unreliable.”⁶⁷ The “psychological factors” mentioned here include women’s tendency to become over-emotional and exaggerate matters of a sexual nature. Suspicion is therefore cast on the reliability of women’s testimony simply on the grounds that they are women.

Needless to say the cautionary rule has received much criticism from those working for reform of rape laws. In 1985 the South African Law Commission concluded that there was no need to change the cautionary rule. A report by the Law Commission stated that:

Experience has shown that it is dangerous to rely on the uncorroborated evidence of the complainant in such circumstances . . .[A] complainant could be motivated by an emotional reaction or spite, an innocent man might be falsely accused because of his

⁶⁶ On these points see Anderson, “Rape in South Africa”, p.813.

⁶⁷ Cited in Anderson, “Rape in South Africa”, p.815.

wealth, the complainant might be forced by circumstances to admit that she had intercourse and then represent willing intercourse as rape.⁶⁸

In 1998 the appellate division court in South Africa did say that this rule should no longer be used automatically in court cases. However, it suggested that it be employed in cases where the facts call for particular caution.⁶⁹ Thus, the cautionary rule has been revised somewhat in recent times but it still exists and may be used in court cases dealing with rape.

The purpose of the rule is to try to ensure that a man is not falsely convicted. Yet the reality is that the cautionary rule allows courts and judges to exercise unfair levels of discretion in deciding whether or not a woman has been raped. The result is that many rapists go unpunished for their crime, and where a man is convicted of rape the sentence is often too lenient. Nowrojee concludes that “[s]ince in the overwhelming majority of sexual assault cases the complainants are women, the use of the cautionary rule in sexual assault cases affects predominantly woman [*sic*] and is therefore discriminatory.”⁷⁰

The leniency and inconsistency of sentencing for conviction must be addressed. Judicial prejudice based on sexist and unjust assumptions about women add to this problem. A number of cases help illustrate this, and show the casual nature with which these cases are dealt.⁷¹ In 1987, for example, a five-year jail sentence for rape was

⁶⁸ Cited in Nowrojee, *Violence Against Women in South Africa . . .*, p.101-2.

⁶⁹ Anderson, “Rape in South Africa”, p.815.

⁷⁰ Nowrojee, *Violence Against Women in South Africa . . .*, p.102.

⁷¹ The following cases are taken from Nowrojee, *Violence Against Women in South Africa . . .*, p.103-107.

reduced on appeal to two and a half years. The judge in that case, Mr. Justice Michael

Corbett stated that:

To my mind, it is a mitigating factor in that the shock and affront to dignity suffered by the rape victim would be ordinarily less in the case where the rapist is a person well-known to the victim and someone moving in the same social milieu as the victim . . . In my opinion the lack of any serious injury to the complainant and the fact that she was evidently a woman of experience from the sexual point of view, justice would be served by a suspension of half the sentence imposed.

Other examples show similar disregard for the victims of rape. In 1994 a businessman was convicted for raping a prostitute at gunpoint. He was fined R. 8000 (\$2,285) and was sentenced to four years in prison, two of which were suspended. The magistrate in charge of that case said that, “[if] the complainant was an innocent young woman, I would not hesitate to send you to jail for a very long time”. Similarly in 1994 a radio news editor was acquitted of raping a former lover. Having learned of the prior sexual relationship the magistrate concluded that “it was improbable that Mr. Hilton-Barber would have raped the complainant when he could have had sex with her at any time”.

Thus, it seems as though the sexual history of a victim plays as great a part in the outcome of a trial as the crime committed against her. Should the victim of a rape attack have a lot of sexual experience, be a prostitute, or have some sexual history with the accused, immediate doubt is cast on the reliability of her testimony. There appears to exist the notion that these women were somehow “asking for it”, or were to blame for the assault.

In 1993 a Port Elizabeth policeman was convicted of four charges of sexual assault, one involving a teenage girl. The magistrate, Peter Campbell, ruled that the

policeman should not be dismissed from his job since the crimes were not serious enough and the victims had “over-reacted”. He went on to joke that, “[w]e men must learn to keep our hands to ourselves . . . It may be difficult for us men to understand why women react the way they do.” In March 1994 a seven year sentence for two rapists was set aside by Mr. Justice Pierre Olivier, although the jail sentence was later upheld by the Cape Supreme Court. The reasons Mr. Justice Pierre Olivier gave for his decision were: the rape was not based on violence, but the need for sexual gratification; the woman in question suffered no injury or psychological harm; the woman knew her attackers and had not been raped by total strangers; and finally she must have known that there were lying when they threatened her with violence. One of these men was later convicted of raping a minor.

These are only a few examples of the attitude by the courts to this crime. They help show the apathy which exists towards rape and sexual assaults on women. They also give some insight into the difficulties faced by many women should they be lucky enough to get their case to court. The reluctance of women to report these crimes is understandable as they feel unconfident that they will find justice within the judicial system.

The inconsistency in the treatment of rape cases is reflected in the sentencing for this crime. Factors in sentencing include the age of the victim, her profession/background, her level of sexual experience and the level of violence involved in the attack. A lack of sentencing guidelines allows a judge considerable discretion in

each case. For example, the rape of a prostitute incurred a R.8,000 fine, a four year long molestation of a eleven year old girl incurred 2,000 hours of community work at weekends, the sexual assault of four school girls between the ages of fourteen and seventeen incurred a R.3,500 (\$1,000) fine, while the rape of a three month old baby incurred a twenty five year sentence.⁷²

Another important factor influencing rape convictions is that until 1993 marital rape was not recognised as a crime under South African law. This changed with the Prevention of Family Violence Act of 1993. Prior to this a husband could not be convicted of raping his wife, and the fact that most rapes occur within the home has meant that many women were unable to seek justice until recently. Despite this reform in the law Nowrojee is skeptical about the overall impact of this Act. "While the marital rape provision is an important reform, the difference that it will make in practice to women in abusive marriages is probably limited. Because marital rape is most likely to occur in the home, proof of rape by a husband is difficult to obtain. The use of the cautionary rule and the ingrained attitudes of largely male judges further reduces the likelihood of achieving a conviction."⁷³ Evidence seems to support Nowrojee's doubts. In 1994 a thirty year old man was acquitted of raping his wife. According to his wife, the man had come home drunk, threatened her with a hammer, hit her and forced her to have sex with him. The magistrate concluded that since the woman had not responded with violence or tried to push him away, she must therefore have consented to sex.

⁷² Nowrojee, *Violence Against Women in South Africa . . .* , p.108.

⁷³ *Ibid.*, p.107.

We can see from these examples that considerable reform is needed within the judicial system. Better sentencing guidelines are needed and a minimum sentence for such assaults should be enforced. This would help reduce the levels of discretion employed by magistrates in these cases, and help eliminate the arbitrary and inconsistent sentencing imposed. Until the courts and the legal system take rape seriously as a crime, high levels of rape and low conviction rates will continue.

5.7 Police Response to Rape

Having briefly considered the response of the law and the legal system, it is now necessary to look at the police response to this crime. Much criticism has been directed at the South African Police Service (SAPS) for its handling of reported rapes. The fact that so few rapes are reported suggests many women remain suspicious of the police force. This is especially true among black communities where the police were traditionally seen as instruments of violence rather than keepers of the peace. There are other reasons why women are so reluctant to report these crimes, but it is true to say that their treatment by police increased fear, and women remain doubtful about their chances of receiving justice.

As mentioned earlier, the police were traditionally employed to enforce the policies of apartheid. Their failure to address crime within poor black communities resulted in the emergence of township justice whereby gangs would administer punishment for crimes carried out in these areas. Nowrojee notes that “[t]he apparent

powerlessness of the police to act against criminals has encouraged support for vigilante justice against gangsters and others who seem to operate with impunity.”⁷⁴ Such vigilante retribution only serves to increase the violence within society, and helps create the impression that force is the only way to solve problems.

It must be acknowledged that many of the short-comings of the police service are not the direct fault of the officers themselves. There are many officers dedicated to crime prevention and work tirelessly towards that end. Yet one legacy of apartheid is the existence of an under-staffed police service. The new Government inherited in 1994 a police service of approximately 146,000, including uniformed, non-uniformed and administrative staff, for a population of over forty-four million. This amounts to a police ratio of 2.5 per thousand as opposed to the international average three to five per thousand. The personnel and resources that do exist are still disproportionately devoted to white areas. Consequently, in some areas of South Africa the ratio is as low as 0.75 per thousand.

As a result, response times to emergency calls can be extremely slow. For example, on Christmas Day 1990 an armed gang broke into the Salvation Army’s girls home in Soweto. The head matron rang the police but they failed to respond, telling her that the patrol car was out on a call and that she had to be patient. In the meantime the gang stabbed the matron and gang-raped six of the girls.⁷⁵ This example is only one illustration of the failure of the police to respond adequately to emergency calls. This

⁷⁴ Nowrojee, *Violence Against Women in South Africa . . .*, p.111.

⁷⁵ This case is cited in Anderson, “Rape in South Africa”, p.812.

may be the result of lack of resources, or of apathy towards certain crimes in certain areas. Poor pay and working conditions at junior levels makes it difficult to recruit people for the police service. Well-trained officers are also in short supply since the training involved is often short and hurried. It is not uncommon for many junior officers to be unsure what procedures to follow for certain crimes.

Mistreatment of rape victims by police, as well as many instances of poor handling of sexual assault cases, reduces public confidence in the police service's ability to tackle crime of this nature. Here again a number of examples help show some of the fundamental problems evident within the service.

Indifference by the police and insensitivity in the way they deal with rape victims adds to the humiliation already suffered. One woman explained her experience with the police after her boyfriend assaulted and raped her:

I was beaten by my boyfriend, who is unemployed. One day in February [1995] he beat me so badly and raped me that I couldn't walk. My face was swollen from all the beating and I had to have eight stitches on the back of my head. I went to the police, and told them where to find him. The police told me that they will have nothing to do with the case because he is my boyfriend.⁷⁶

Riana Taylor, a criminologist working in Durban, describes the carelessness by police in the way they deal with rape cases. Vital evidence is often lost or misplaced, causing delays and even the acquittal of rapists. Victims may have to give statements many times because the original statement is misfiled. Taylor recounts how:

⁷⁶ Cited in Nowrojee, *Violence Against Women in South Africa . . .*, p.92

A woman was raped at Sea Cow Lake. She reported it to Greenwood Park Police Station. All the procedures were followed correctly and the case went to trial. The day of the trial the investigating officer arrived approximately two hours late to court. It then turned out that he had lost the 'docket' for the case which he had to hand over to the court. Valuable evidence was lost as a result. Statements from the rape survivor and other witnesses had to be taken again – approximately nine months after the rape. As a result of the time delay, some witnesses could not be traced and some witnesses could not remember certain details. The accused was acquitted.⁷⁷

These experiences are not exceptional. It is common for police to overlook certain procedures, lose or misplace vital evidence and delay. Corruption is another problem. Officers may be bribed to “look the other way” or “accidentally” lose evidence. In one case outside Pretoria a young girl was raped by a male relative. The police Child Protection Unit was called in to investigate the assault but was later bribed to drop the case. The child remained in the same household despite the obvious dangers this posed.

Surveys carried out show that many officers lack training and knowledge of the appropriate procedures for rape charges. One survey by the Human Rights Committee of South Africa showed that 90 percent of police said they did not know what to do if a complaint of rape was made.⁷⁸ In many cases women/girls may be sent home to wash and told to come back the following day, resulting in the loss of vital evidence.

Despite these difficulties some initiatives have been introduced in order to try to address the short-comings within the police service. In 1993 a specialist course was introduced for all police officers involved in investigating rape cases. In 1995 a national training session was held for officers, and it was expected that 2,000 detectives would be

⁷⁷ Nowrojee, *Violence Against Women in South Africa . . .*, p.92.

⁷⁸ On this point see Nowrojee, *Violence Against Women in South Africa . . .*, p.94.

trained to specialise in sexual assault and rape cases.⁷⁹ Nevertheless, greater efforts must be made to establish a police service that is well trained and experienced in dealing with these cases. A more sensitive, and less indifferent, approach by the police towards rape victims is needed, as well as greater efficiency and determination in the handling of cases. Until women believe the police can and will help them they will remain reluctant to report attacks. The result will be continued low levels of reporting, low levels of conviction, and high numbers of attacks on women and girls.

⁷⁹ Nowrojee, *Violence Against Women in South Africa . . .*, p.95.

Chapter Six

HIV/AIDS Treatment in South Africa

6.1 Introductory

This chapter examines access to HIV/AIDS medication in South Africa. South Africa received considerable media attention recently owing to the Government's failure to provide drugs to those infected, and the lawsuit involving some of the leading pharmaceutical companies. President Mbeki's handling of this situation also generated criticism both locally and internationally. The fact that the majority of people infected in South Africa cannot afford drugs has prompted groups like Treatment Action Campaign (TAC) to advocate for affordable medication for all infected with the virus. This chapter will look at these issues, and discuss their relevance to the AIDS epidemic in South Africa.

6.2 South African Government V Pharmaceutical Companies

The recent court case involving the South African Government and forty two multinational pharmaceutical companies attracted much publicity throughout the world. The lawsuit was initiated by the pharmaceutical industry in an effort to prevent the South African Government from enacting legislation which could reduce the price of medicines in South Africa. The Medicines and Related Substance Act of 1997 was fought by these companies as it was being passed through parliament. This Act became associated with issues of parallel importing and compulsory licensing¹ although it had broader concerns also. Pat Sidley explains that the lawsuit was "portrayed as being primarily concerned

¹ Parallel importing occurs where a product which is under patent is purchased from another country usually because it is cheaper in the foreign country. Compulsory licencing allows the government to import or manufacture generic medication, so long as the state pays a royalty on all sales of the generic product to the patent holder. See Treatment Action Campaign website at: www.tac.org.za

with drugs for treating HIV and AIDS (mainly antiretrovirals), but this was only one aspect of a complex law. The law also dealt with generic substitution on prescriptions; the banning of certain practices between drug companies and doctors that provide incentives for doctors to prescribe certain drugs; the establishment of a pricing committee; and “section 15c”, which dealt with parallel imports of brand name drugs.”² Despite the complexity of the 1997 Act and the various issues it dealt with, media attention focused on HIV/AIDS drug prices and the case became associated with the battle for cheaper drugs within the Developing World.

In South Africa patent rights are protected by the Patents Act of 1978. The 1997 Medicines and Related Substances Act was created with the hope of addressing some of the inequalities of the apartheid period in health care. Private health care was very expensive, while public health care charged prices for drugs in excess of many neighbouring countries. It was clear that measures needed to be introduced to try to rectify the distortions here. The new Act was expected to help reduce the cost of drugs and medicines in two ways.³

First, through generic substitution, which involves prescribing a generic drug as long as the patent on the original drug has expired and as long as the generic version is cheaper than the original brand name drug. The second means of lowering drug prices

² See Pat Sidley, “Drug companies withdraw law suit against South Africa”, in *British Medical Journal*, vol.322, (28 April, 2001), p.1011.

³ On this point see Susan Cleary and Don Ross, “The 1998-2001 Legal Struggle between the South African Government and the International Pharmaceutical Industry: A Game-Theoretic Analysis”, in *The Journal of Social, Political and Economic Studies*, vol.27 no.4, (Winter 2002), p.450.

under this Act is through parallel importation. The pharmaceutical companies strongly opposed these provisions, claiming they were in violation of the 1978 Patents Act.

Section 15c of the new Medicines Act generated particular opposition. This section gave the Minister for Health considerable power and discretion in the provision of cheap medicines (mainly through parallel importation). The Pharmaceutical Manufacturers Association (PMA) was worried about this and claimed that section 15c could be used to allow both parallel importation and compulsory licensing of certain medicines. They said section 15c of the Medicines Act was unconstitutional since

It allows the Minister of Health to prescribe the conditions for the supply of more affordable medicines. It does not set out any guidelines which would limit the power of the Minister in this regard.

It allows the Minister to decide on the extent to which rights under a patent shall apply, irrespective of the provisions in the Patents Act.

It allows the minister to deprive patent owners of their property without any provisions for compensation.⁴

The chief executive of the PMA, Mirryena Deeb, reiterated these sentiments by stating that the trial was not about denying people access to these drugs but, rather, it was concerned with the rule of law and constitutionality.⁵ Deeb said the Act gave the Minister for Health unconstitutional power, as well as contravening South Africa's Patents Act. The PMA believed the Act violated global Trade Related Intellectual Property Rights (TRIPS) treaty. South Africa, they claimed, was breaking World Trade Organisation and TRIPS regulations as a result. The Government and many activist

⁴ These points are from the PMA's Notice of Motion, and are cited in Cleary and Ross, "The 1998-2001 Legal Struggle between the South African Government and the International Pharmaceutical Industry . . . , p.451-2.

⁵ Pat Sidley, "Drug companies sue South African Government over generics", in *British Medical Journal*, vol.322, (24 February, 2001), p.447.

groups replied by saying that they were fighting for the right to provide cheap drugs for the many people who needed them.

Deeb furthermore claimed that parallel importing of drugs would undermine pharmaceutical companies' ability to alter the price of drugs in different parts of the world. She said that a tiered pricing system would mean that wealthier nations would subsidise poorer ones, and at the same time give the companies the profits they needed.⁶ Yet the fact that many Third World countries actually pay more for certain drugs than First World countries would seem to contradict Deeb's argument here.⁷

Although by mid 1999 the court case had become associated with the provision of cheap HIV/AIDS drugs for all, section 15c of the Medicines Act deals only with access to essential medicines as defined by WHO. Essential HIV related medicines here include AZT and Nevirapine, which are used *exclusively* for the prevention of mother-to-child transmission. So despite the huge media coverage, and the fact that the public saw this case in terms of mass distribution of cheap antiretroviral and other HIV/AIDS drugs, antiretrovirals for regular adult use were not covered under section 15c.

In the course of this debate some argued that the case should not be about price cuts, but about the overall standard of health care in Developing Countries. This point was raised by the head of the Association of the British Pharmaceutical Industry, Trevor

⁶ On this point see Adele Baleta, "Drug firms take South Africa's government to court", in *The Lancet*, vol.357 (10 March, 2001), p.775.

⁷ See Chapter Two, footnote 21.

Jones. He stated that “the problem of ill health in the developing world is far more complex than simply providing medicines cheaply. In countries where inhabitants earn less than US\$1 a day and governments are not able to support public health, no price is low enough.”⁸ While there is much truth in what Jones says here, this should not be used as a reason to defend the failure to lower drug prices in the Third World. This argument would later be used by the South African Government in support of its refusal to provide antiretrovirals to people infected with HIV.

Interestingly, the World Trade Organisation came out in support of the South African Government during the case. The suggestion that the Government would be breaking TRIPS regulations was dismissed by WTO spokesman, Gregory Hartl. He said that there was enough scope within TRIPS to allow for the acquisition of cheaper drugs within South Africa. “There is latitude within the TRIPS agreement for getting drugs to Africans much more cheaply than they are currently getting them.”⁹ We know, for example, that in the case of a national emergency allowances are made for the acquisition of cheaper drugs, either through parallel importing or compulsory licensing. Given that South Africa alone contains approximately 5 million people infected with the virus,¹⁰ it could be argued that a national emergency exists, which compels the production of cheap drugs.

⁸ Cited in Baleta, “Drug firms take South Africa’s government to court”, p.775.

⁹ *Ibid.*, p.775.

¹⁰ See “Drug Companies Drop Lawsuit Against Generics in South Africa”, *AIDS Weekly*, (7 May, 2001), p.10.

A turning point in the way the public perceived the court case was the admission of the Treatment Action Campaign (TAC) group to participate in the trial as an *amicus curiae* (friend of the court). The pharmaceutical companies strongly resisted TAC's involvement, and continued to claim they were protecting their constitutional rights and the rule of law. TAC however said it would bring a new dimension to the trial. The judge agreed, saying the issue of HIV/AIDS and affordable drugs was something that needed to be urgently addressed. This decision forced the case to be dropped, mainly because replies to the "friend-of-court" testimony would result in the disclosure of vital information about the pricing of drugs and profits.¹¹ This would only serve to increase the already mounting negative public opinion of the companies. The case had been a public-relations disaster for the pharmaceutical companies, while the South African Government, it seemed, emerged victorious.

It now appeared that the passing of this legislation, which was at the heart of the dispute, removed one of the administration's main reasons for failing to provide antiretrovirals to those infected with HIV. However, with the resolution of the court case, and the revised Medicines Act that followed, it emerged that there were no measures for compulsory licensing, but for parallel importation only. Cleary and Ross explain that, "[in] terms of the original grounds of dispute between the PMA and the Government . . . it is in no way obvious how this constitutes any sort of 'victory' for the latter. The PMA stands to lose very little market power through parallel importation, and

¹¹ See "South Africa's moral victory", in *The Lancet*, vol.357 (April 28, 2001), p.1303.

only minimal weakening of intellectual property protection is implied.”¹² Despite the apparent “victory” which the South African Government and AIDS activists proclaimed, little changed in the aftermath of the trial.

The initial response by the Government was disappointing. The Minister for Health, Dr. Manto Tshabalala-Msimang, addressed a press conference shortly after the court case and claimed that the Government was coping adequately with the HIV/AIDS epidemic in South Africa. When asked about the provision of cheaper antiretrovirals she gave no hint that they would be provided in the short or long term. She said these drugs were still unaffordable, and that the hospitals and clinics in South Africa did not have the infrastructure necessary to administer antiretrovirals.¹³

The Minister maintained that no country in that region could afford these drugs, yet Botswana announced it would provide antiretroviral treatment for any of its people who were infected.¹⁴ Many believe that HIV treatment in South Africa is actually affordable. Also, the health costs of *not* responding to the AIDS crisis could prove much more costly to the Government in the long run.¹⁵

¹² Cleary and Ross, “The 1998-2001 Legal Struggle between the South African Government and the International Pharmaceutical Industry . . .”, p.455.

¹³ See Pat Sidley, “South Africa will not pay for antiretroviral therapy”, in *British Medical Journal*, p.vol.322 (16 June, 2001), p.1441.

¹⁴ *Ibid.*, p.1441.

¹⁵ On this point see Josef Decosas, “HIV prevention and treatment in South Africa: affordable and desirable”, in *The Lancet*, vol.361 (5 April, 2003), p.1146.

Another concern of the Government was whether or not people would adhere to the specified doses of antiretrovirals, and the resistance to drugs which would develop should people fail to comply with the regime. Owing to the lack of medical infrastructure within the country these fears are understandable. However, this argument should not be used as justification for failure to act in response to the HIV/AIDS crisis. Problems of cost and infrastructure can be overcome if the will and the leadership exist.

The toxicity of the drugs was also called into question by the South African administration as a means to explain its failure to give drugs like nevirapine to pregnant women – a drug which would greatly reduce the vertical transmission of HIV between mother and unborn child. The Health Minister is quoted as saying that nevirapine would “poison” South African women. But statements like this have no scientific support. On the question of the provision of antiretrovirals for mothers to prevent mother-to-child transmission, South Africa’s Constitutional Court ruled that the Government’s refusal here was unconstitutional. The Government was failing to ensure women’s rights as stated in the Constitution. Hospitals with adequate facilities would now have to give this drug to women who needed it.

Sidley explains the importance of this ruling by the Constitutional Court. “The Constitutional Court ruling, which was unanimous, has shown clearly that the court will hold the government’s policy up against the constitution and rule accordingly.”¹⁶ There apparently exists a certain amount of apathy, and even denial, by the present South

¹⁶ Pat Sidley, “South African government forced to give mothers antiretroviral drug”, in *British Medical Journal*, vol.325 (20 July, 2002), p.121.

African Government which is reflected in the guarded, disappointing, and unfounded responses by the Minister for Health and President Mbeki. Mbeki's views on HIV and AIDS have received much criticism throughout the world. His doubts about the link between HIV and AIDS, and his belief that poverty causes AIDS generated both interest and anger.

Cleary and Ross give two reasons for the Government's reluctance on this issue.¹⁷ First, the Government places great importance on economic growth and the development of the economy in an effort to overcome the high levels of poverty and economic inequality. Its official policy since 1996 has been the Growth, Employment and Redistribution (GEAR) plan. As we saw earlier, GEAR focuses on increased investment as well as increased exports and fiscal restraint. These goals have had a direct impact on the Government's attitude to the provision of cheap HIV/AIDS drugs, according to Cleary and Ross. The fiscal restraint led to reduced public spending. It was hoped that this would help stabilise the economy but instead it has resulted in less money for public resources, and has slowed the provision of social services and infrastructure.

Without publicly acknowledging this factor, the Government's desire for economic stability and the reduction of domestic poverty has meant a slow and frustrating approach to the question of HIV/AIDS drugs. The need to reduce domestic poverty in a country which displays gross economic disparities is clear. It is an issue that the Government is right to address and try to solve. But it is wrong to use these excuses

¹⁷ See Cleary and Ross, "The 1998-2001 Legal Struggle between the South African Government and the International Pharmaceutical Industry . . .", p.456 ff.

to justify failure to provide life-saving drugs for those who need them. The difficulties posed by the cost of drugs and the lack of medical infrastructure are real, but these problems will never be overcome if the authorities continue to divert spending away from the public sector.

A second argument put forward by Cleary and Ross for the Government's poor response to the AIDS crisis is its desire to increase levels of exports and maintain good public relations with the international community. South Africa is reluctant to "rock the boat" too much in trade relations, and the Government is eager to portray South Africa as a model WTO member. Despite the apparent victory over the pharmaceutical companies the poor response by the Government on AIDS may support this view. What is clear is that the South African administration is responding slowly to the AIDS crisis in its country. Arguments concerning cost, lack of infrastructure and toxicity are regularly circulated by the President and the Minister for Health in an effort to justify the failure to provide HIV/AIDS drugs to the poor.

There are other examples of the Government's hesitancy in providing proper health care for people infected with HIV. It is reluctant to accept aid from other countries for antiretroviral treatment and has refused loans in the past intended specifically for AIDS drugs, saying that acceptance of these loans would jeopardise the policy of fiscal restraint. Donations from pharmaceutical companies and the work of some NGO's have met with resistance also. For example, the Greater Nelspruit Rape Intervention Project was evicted from state hospitals in Mpumalanga. The project had facilities to counsel

rape survivors and provided post-exposure packs to try to reduce HIV infection. The Minister of Health supported the move claiming there was no conclusive proof that the distribution of antiretrovirals in these cases lowered the chances of contracting HIV. Despite this, when some Government hospital workers suffered needle injuries they were immediately treated with antiretroviral drugs to lower chances of infection.¹⁸

These examples show the half-hearted attempt by the Government to take decisive and positive action against the spread of HIV/AIDS. The credibility of arguments concerning cost and lack of infrastructure is diminished by what appears to be indifference and a refusal to try to overcome these difficulties. Rather than try to address the problems associated with antiretroviral distribution, the Government instead appears stubborn in its approach to the crisis.

6.3 President Mbeki's Response

President Mbeki received world-wide attention for his remarks about HIV/AIDS in his country. "Faced with this deep tension between its goals of fiscal restraint, determination to show commitment to TRIPS, and a public health crisis, the Government – especially the President and the Minister of Health – responded throughout the period . . . by continuously trying to contextualize AIDS as fundamentally caused by poverty."¹⁹ One could conclude that by trying to promote the poverty dimension, Mbeki is trying to

¹⁸ Cleary and Ross, "The 1998-2001 Legal Struggle between the South African Government and the International Pharmaceutical Industry . . .", p.463.

¹⁹ Cleary and Ross. "The 1998-2001 Legal Struggle between the South African Government and the Pharmaceutical Industry . . .", p.459.

justify the economic policies adopted by his Government. This may well be the case, but his focus on poverty does draw attention to this vital, and sometimes forgotten, aspect of the AIDS debate. To the extent that poverty contributes to the AIDS crisis in Developing Countries either by driving people to adopt high risk practices or because poverty results in malnutrition and poor health, the President's view seems reasonable. These points were explored earlier and need no further articulation here.

The problem however with Mbeki's remarks is that they led to general confusion and misunderstandings about HIV and AIDS, and were seen by many working in this area as dangerous and irresponsible. "The Government's general stance in the conflict came to be very widely labelled as a 'public relations disaster', and front-line HIV/AIDS treatment workers complained that statements by the President and Health Minister were undermining efforts to educate people about the risk and prevention and HIV infection."²⁰

Despite this it could be argued that one positive thing has emerged from the President's remarks, namely the focus on poverty. Paul Farmer, for example, supports much of what Mbeki says about AIDS in South Africa. Farmer admits that Mbeki made some unfortunate decisions that did nothing for his public image, such as the participation of Peter Duesberg in a panel to discuss HIV/AIDS in South Africa.²¹ Duesberg believes HIV is *not* the etiologic agent of AIDS. Although within the scientific community

²⁰ Cleary and Ross, "The 1998-2001 Legal Struggle between the South African Government and the International Pharmaceutical Industry . . .", p.460.

²¹ See Paul Farmer, "AIDS heretic", in *New Internationalist*, vol.331 (January/February 2001), p.14.

Duesberg and his theory are dismissed instantly, his participation in this panel provoked a very negative response.

Farmer believes Mbeki has received unfair criticism for his stance on HIV/AIDS. He refutes the widely circulated idea that Mbeki agrees with Duesberg's position. "He [Mbeki] has never denied that HIV is the etiologic agent of AIDS. He knows a good deal about the complexity of disease distribution and outcome in a post-apartheid South Africa in the thrall of neo-liberalism."²² Farmer also agrees with Mbeki's idea that "poverty and social inequality serve as HIV's most potent co-factors, and any effort to address this disease in Africa must embrace a broader conception of disease causation."²³

There is certainly some truth in what Mbeki says about HIV and its spread. His focus on poverty and its relation to the AIDS debate is valuable. There is even a certain amount of validity in the reasons proposed for not providing antiretrovirals to those who need them. Despite this, it appears that Mbeki's arguments are used with frequent ease to justify failure to provide drugs to the poorest within society.²⁴ There must be greater efforts to overcome the problems outlined by Mbeki and his Government Ministers.

²² Farmer, "AIDS heretic", p.15.

²³ *Ibid.*, p.15.

²⁴ Zackie Achmat questions arguments of this nature for failure to administer life-saving drugs to those infected with HIV/AIDS. He says that healthcare infrastructure, for example, should be developed while drugs are being administered, and believes that the inadequate response by Mbeki to the crisis reflects the lack of political will to administer antiretroviral drugs more than anything else. See Zackie Achmat, "Most South Africans cannot afford anti-HIV drugs", *British Medical Journal*, vol.324, (January 26, 2002), p.217ff.

One thing which emerges from the AIDS debate in South Africa is the apparent tension between the state and others non-government bodies working in this field. This tension hinders efforts at tackling the situation in an effective way. The inability of the two to work together was seen when TAC brought the South African Government to court over failure to supply drugs to pregnant women to prevent mother-to-child transmission. This has increased feelings of alienation and mistrust between the state and other groups at a time when all should be working together to remedy the AIDS crisis. Helen Schneider says that one possible reason for the tension and mistrust here lies with issues of power and legitimacy. "Equally plausible is that the conflict around AIDS, in the context of an emerging post-apartheid state, represents a battle between certain state and non-state actors to define who has the right to speak about AIDS, to determine the response to AIDS, and even to define the problem itself."²⁵

Mbeki inherited many structural difficulties from the apartheid era, as we saw. Implementing AIDS policy is not always easy in a country with so many problems, and Schneider acknowledges this point. "In South Africa, the ability of political leaders to ensure that policies are implemented through the government machinery has been limited, firstly by structural weakness of the state bureaucracy inherited from apartheid, and secondly by the independence of provisional spheres of governance in a quasi federal political system."²⁶ The new government elected in 1994 inherited the apartheid system intact. This system was more concerned with maintaining political power than with

²⁵ Helen Schneider, "On the fault line: the politics of AIDS policy in contemporary South Africa", in *African Studies*, vol.61 no.1, (2002), p.153.

²⁶ *Ibid.*, p.161. On this point see also Helen Schneider and Joanne Stein, "Implementing AIDS policy in post-apartheid South Africa", in *Social Science and Medicine*, vol.52, (2001), p.723-731.

delivering social services to its people. South Africa's administrative system consists of one national Government and nine provincial governments. The tasks of providing public services and implementing policies generally lie at provincial level. This is also the case for AIDS programmes. The outcome is an inconsistency in implementing AIDS policies between provinces. In some cases certain provinces have implemented policies or provided drugs which were otherwise banned by the state.

These facts show the inconsistency of the administration as regards the implementation of AIDS policy, and also the tension and mistrust between the State and other groups who work in this area. So despite the fact that South Africa is one of the wealthier African nations, national efforts to tackle the crisis are disorganised and inadequate. What we have seen is a Government failing to address one of its most serious health crises in a decisive and pro-active way. It is easy to level criticism at those working in this area, and many of the difficulties put forward by the Government contain some truth. However, the fact remains that 5 million South Africans are HIV positive. Thousands die daily from this disease. Greater efforts should be made to address the inadequacies with health care, and ensure that medicines and proper medical facilities are available to those who need them.

6.4 Why South Africa?

Why has South Africa been so badly affected by the AIDS epidemic? Estimates which calculate that approximately 5 million South Africans are infected also acknowledge that the crisis has not yet peaked. So the situation is going to get worse

before it gets better. Indeed some calculations estimate that by the time the AIDS epidemic peaks in South Africa, as many as 10 million people could be infected. The reasons why the epidemic is so severe here are complex, but one major contributing factor which underlies many other influences is the continuing consequences of years of apartheid.

Some of the ways in which the apartheid Government contributed to the current crisis have already been explored, and they warrant no further examination. But it is important to reiterate the connection between the injustices endured under this regime, and the many injustices which are now aiding the spread of HIV/AIDS. High levels of violence and crime, as well as poverty and inequality, are today playing a major role in the transmission of the virus. In addition, the system of migratory labour on which the economic wing of apartheid relied provided the perfect environment for the spread of HIV/AIDS and other STDs. We see that communities based on this system of migratory labour are severely affected by HIV/AIDS and mining communities experience particularly high levels of infection.

The new administration which came to power in 1994 inherited many problems from this regime. For example, huge debt had been accumulated during the final years of apartheid, mostly for purposes beneficial to the outgoing administration. The new Government had to deal with the debt repayments, and this had a significant impact on the poor. Investment in social services such as health care and education had to be either cutback or suspended in order to repay debts.

The incoming Government also had to deal with structures which had for so long been designed to cater for the few and largely ignored the needs of the majority. Health and educational facilities which had traditionally facilitated the needs of the white population were now expected to cater for all South Africans. This placed enormous strain on the structures of the country.

All of these factors play a significant role in the current AIDS crisis in South Africa. They help form the perfect conditions in which a disease such as AIDS can spread and make containing the problem very difficult. There is however another reason that is important and deserves consideration. It too has its roots in the apartheid system of the past. It is the question of effective leadership.

Barnett and Whiteside draw attention to the importance of leadership in the fight against HIV/AIDS.²⁷ One consequence of years of apartheid rule was the erosion in the minds of the majority of any concept of legitimate government. For Blacks, governance or rule became associated with oppression and injustice, and was not accredited with any real legitimacy as a result. This is not necessarily confined to the situation in South Africa. Difficulty in establishing credible rule in the eyes of the people has been experienced by other post-colonial African countries. Barnett and Whiteside note that “the colonial and pre-colonial history of Africa did not provide a firm foundation for the establishment of legitimate states and governments: complex ethnic mixes, cross-border affiliations, Cold War rivalries, adverse terms of trade, economic incentives to mass

²⁷ See Tony Barnett and Alan Whiteside, *AIDS in the Twenty-First Century: Disease and Globalisation*, (New York: Palgrave Macmillan, 2002). In particular see chapters 5, 12 and 13 on this point.

corruption . . . the baleful influence of the apartheid regime in South Africa – all meant the value of government was rarely established in the minds of the people after the initial euphoria of independence.”²⁸

In South Africa where “government” was perceived in terms of oppression, corruption, and as a system which safeguards the needs of only the white minority, it is not difficult to see why state authority is today viewed at best with suspicion. This has a big influence on the state’s ability to tackle the current AIDS crisis. Furthermore, the confusion generated by President Mbeki’s public remarks concerning the cause of AIDS, and the widespread criticism he received, also damages the chances of conveying an image of strong leadership on this matter. A much more decisive and determined stance is needed by the South African administration if it is to have any chance of controlling the scale of the crisis.

Barnett and Whiteside contrast the leadership of Mbeki on this matter with the situation in Uganda. Here we find a stronger and more definite stance by the Government. They explain:

A key feature of Uganda’s response was leadership. This ensured that AIDS was consistently on agendas and people were not stigmatised. It began with President Museveni talking openly and frankly about AIDS as early as 1986. He insisted that AIDS be put on the political agenda at all levels, and set up the National AIDS Prevention and Control Committee – which was subsequently replaced by the better known Uganda AIDS Commission (UAC). Religious leaders – Protestant, Catholic and Muslim – were brought into the process and played an important role in prevention activities . . . Of course the other ingredient arising from involvement of political and religious leaders is instruction: *the population was being told what to do by a leadership – with legitimacy.*²⁹

²⁸ Barnett and Whiteside, *AIDS in the Twenty-First Century* . . . , p.296.

²⁹ *Ibid.*, p.320. Emphasis added.

In addition, Barnett and Whiteside explain that personal networks of communication have been crucial in the dispersal of knowledge and information. There is a notable openness among people in Uganda, something lacking in South Africa. Openness about HIV/AIDS not only helps the spread of information; it also helps avoid discrimination and stigmatisation. This is in contrast to the situation in South Africa, where one finds reluctance among people to acknowledge infection³⁰, and there still exists considerable confusion about HIV/AIDS. The point raised here by Barnett and Whiteside is very important.

In crisis situations people need strong and decisive leadership from those in authority, something lacking in South Africa at present. This is partly because of the lack of credibility given to government in general and also because of indecisiveness of the present Government on this matter. Similar sentiments are expressed by A. Ammann and S. Nogueira. Like Whiteside and Barnett, they too contrast the commitment between the Ugandan Government and the South African Government in their handling of AIDS. Whereas Uganda forcefully dealt with the crisis and reduced HIV seroprevalence by over 50% in four years, South Africa's approach to the crisis was far less committed. Debates over the price of antiretroviral therapy, and arguments that drugs for perinatal HIV prevention were too expensive, are undermined by the fact that the Government was nevertheless able to allocate \$3bn-\$4bn to refurbish military weapons.³¹ Ammann and

³⁰ During conversations with Irish priests in South Africa I learned of the reluctance of many people to acknowledge that a family member died of AIDS. At funeral ceremonies it is more common to hear that the deceased died of TB for example, although most realise he/she in fact died of AIDS.

³¹ On this point see Arthur J. Ammann, and Susie Nogueira, "Governments as facilitators or obstacles in the HIV epidemic", *British Medical Journal*, vol.324, (January 26, 2002), p.185.

Nogueira here question the commitment by governments to seriously tackle the problem, and note the importance of strong leadership in that quest.

6.5 Epilogue: A Strange Sort of Freedom

The diocese and town of Rustenburg are in the North West Province of South Africa. This is a big platinum mining area, and as you drive into the countryside you see mining shafts and mining plants at every turn. One of the results of the mining industry has been the influx of migrant workers into the region in search of employment. This leads to the existence of squatter camps. These camps offer little to the inhabitants – there is no electricity, no toilet facilities and no running water in many cases. People live in poorly constructed shacks which are often overcrowded and lack privacy. One such place which I visited during a recent trip to South Africa³² is called Freedom Park.

What I saw during my brief visit to Freedom Park helped put in context some of the matters discussed above. The most obvious and immediate thing one notices is the extreme poverty and terrible living conditions here which are generally worse than in townships. For without minimising the poverty in townships, it is true to say that the living conditions have improved somewhat in recent years.

³² In July 2003 I spent two weeks in South Africa. The purpose of the trip was to visit AIDS projects and speak with people involved in AIDS-related work. I visited Freedom Park clinic on two occasions and went into the squatter camp on one of those occasions where I met and spoke with people infected with, and affected by, HIV/AIDS.

As in many areas affected by poverty the rate of HIV transmission is high in Freedom Park. The situation is made worse because this area is a mining area. Mining communities are known to be badly hit by HIV/AIDS. The social conditions in these areas make the spread of HIV especially easy. Men migrate long distances in search of work and in many cases begin new relationships and families in these places. They return home a couple of times a year and usually bring infection with them. Women in the squatter camps are totally reliant on men for income or food. There is little chance of employment for most women. Should a relationship break up, many women feel their best chance of survival is to find another boyfriend who will provide for them. The fact that there are few (if any) recreational facilities for people means that wages are often spent on alcohol and sex.

When I arrived in Freedom Park first I met Tseidi, one of the day care nurses who works in Freedom Park Clinic. We arranged to meet the following morning when she would bring me into the camp to meet some families who lived there. As we spoke that first day Tseidi told me of events the previous Friday. Two young girls, one aged ten and the other aged fourteen, were kidnapped by a taxi driver as they went to the shops. The two girls were killed and mutilated. Their reproductive organs were taken out, their kidneys removed, fingers and ears chopped off, and tongues cut out. Their body parts were sold to a Sangoma³³ for muti³⁴. This brutal killing obviously left the community in shock.

³³ A Sangoma is a traditional witchdoctor.

³⁴ Muti is a ritual where the body parts of children are sacrificed to gain spiritual power and prosperity. Muti is based on the belief that there is only a certain amount of luck in the world and everyone is allocated a portion of that luck. It is believed that very young children have not yet used up their supply of luck

When I enquired about the police response to this crime Tseidi replied that she doubted that the man would be caught, even though people suspected whom he was. She said the police are not interested in what happens here, and most people would be too afraid to co-operate with them in any case for fear of reprisal. Despite the horrific nature of this crime I began to wonder why people do things like this.

The following day we went into the squatter camp itself where we visited some of the families living there. At the first place we visited I met a woman who had three young children, one of whom was an infant. This woman was HIV positive and her partner left her after realising that she was infected, and she was left with the responsibility of feeding and caring for her children. Her shack was empty and there was no food at all. One of her children had no clothes but tried to keep warm with a blanket. She could not afford to send her children to the local national school at Freedom Park Clinic where they would at least receive a hot bowl of porridge in the morning. It only costs 10 rand a month to send a child to school here – about €1.

Naively I asked Tseidi where this woman would get food for her hungry children – I thought there must be a soup kitchen or a food programme somewhere. Tseidi replied that the best way for her to secure food for her family was to quickly find another boyfriend. The trap in which many women find themselves became clear to me. One of the results of poverty is that sex is often the only realistic means for a woman to obtain

which can be transferred to whoever takes the medicine derived from their remains. The younger the child the more potent the medicine, especially if the child's organs were removed while the victim was still alive since it is thought that the body parts are rendered more potent by their screams. Not all Muti involves the use of body parts. Plants and shrubs are also used for this "medicine".

food and shelter for her family. This one example illustrates how difficult it is to break the poverty-AIDS cycle, and how deadly it is.

At another shack I met a woman who had TB, but she was not HIV positive. This woman had four young children and their living conditions were poor. Tseidi asked to see her medication card to ensure she was taking her daily dose of tablets. It emerged that this woman had not taken her medication for several days. Tseidi enquired why this was the case, and the woman explained that the medication must be taken with food but since they had nothing to eat she was unable to take her tablets. The family had not eaten in three days. Again this case raises a number of points. It shows the effects of poverty and income deprivation on a family. But it also illustrates that where medication is available, its consumption is often governed by conditions that people are unable to meet, such as special dietary requirements. This is an important point to be considered in the debates over the provision of antiretroviral drugs and shows the importance of providing conditions that enhance their effectiveness. Not only does the medical and social infrastructure need to be in place but the effects of poverty need to be tackled also. Many ARV cocktails have strict consumption guidelines. In cases where food is scarce and where people eat irregularly the conditions for correct use of these drugs are difficult to meet.

The two cases cited above are representative of most families in this area. Yet some positive initiatives are being taken. The clinic in Freedom Park at least provides a place where people can come when ill and in need of medication. It means that people in

this area do not have to travel long distances in search of medical assistance. Workshops have been started where women can meet and make crafts and clothes in the hope of generating a little income. There are plans to build a secondary school at the clinic also. Furthermore, it is hoped that the pharmaceutical company Bristol Myers Squibb will start a drug trial in the area. The fact that this is a mining area is a big attraction for the company. Should this materialise, essential AIDS drugs would be available to people infected here.

Before I left, Tseidi drew my attention to the name “Freedom Park”, and the irony contained within it. “No one here is free”, she said. The truth of that statement struck me, and the experience of my visit in this squatter camp confirmed what she said. In a particular way my visit to the first family whose survival depended on whether or not the mother would find another boyfriend illustrated the trap many women find themselves in. Poverty locks people in a daily struggle for survival, and this denies many of the freedoms which others enjoy. This is a point noted by Amartya Sen in his book *Development as Freedom*.³⁵

Sen draws attention to the importance of viewing poverty not simply as absence of money or lack of income; poverty implies more than simply income deprivation. It also diminishes freedom, denies opportunities and ability to make choices that would otherwise be available. In a similar way development must include more than just

³⁵ Amartya Sen, *Development as Freedom*, (Oxford: Oxford University Press, 1999).

economic development. True human development means that people are free and are not constrained by the crippling effects of poverty. Sen writes:

Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states. Despite unprecedented increases in overall opulence, the contemporary world denies elementary freedoms to vast numbers – perhaps even the majority – of people. Sometimes the lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological programs, or of organized arrangements for health care or educational facilities, or of effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.³⁶

For Sen, any adequate theory of development must go beyond considering solely the accumulation of wealth. Development must also incorporate freedom. This freedom is denied by poverty because people find they are unable to make choices and are unable to determine the sort of lives they want to live. It is immediately clear that poverty is a major barrier to people's development in a place like Freedom Park since it affects the freedom of the inhabitants and infringes on their rights and decision-making ability. Thus, true development must mean more than the elimination of financial or material inadequacies. It is the restoration of a person's freedom to make choices, to secure his/her rights, and to have the opportunities that poverty denies.

³⁶ Sen, *Development as Freedom*, p.3-4.

To conclude, we have examined in Part Two the AIDS crisis in South Africa and considered some of the underlying reasons for the spread of the virus here. It has been shown that various forms of injustice are central to the transmission of HIV/AIDS. In this respect, apartheid has had a lasting effect on the country. It is clear that many of the current social problems have their roots in that regime. The levels of poverty, crime, violence, the treatment of women, and the inadequate provision of medical care, are in part, at least, due to the years of oppression and exploitation under apartheid. It has been argued that injustices such as poverty and sexual violence are key features of the current problem. In relation to HIV/AIDS one can easily see how this will contribute to infection rates.

However, one must not conclude that the causes of the present crisis rest solely with the apartheid years, however much a factor. The epidemic in South Africa is also due to poor management of the situation by the present authorities. The post-apartheid governments have so far failed in their attempts at tackling the epidemic effectively. It is not enough to blame the mistakes of the past for the current situation. Greater measures must be taken to contain the spread of HIV and prevent further transmission of the disease. Central to such efforts should be the alleviation of poverty, the provision of proper medical facilities, greater job prospects, and protection of women from sexual and physical abuse. The Government must take a clear and definite stand on the AIDS crisis and provide strong leadership on this matter. This is essential for the future of millions of South Africans.

Part Three

Church Teaching and AIDS: Challenges for Moral Theology

Introductory

Having examined in general terms why the AIDS epidemic ought to be considered as a justice issue in Part One, and then exploring the situation in South Africa in Part Two, it is now time to look at the Church's response to AIDS. First, the contributions of some Bishops' Conferences will be set out, paying particular attention to the Southern African Catholic Bishops' Conference. The US Bishops' statements on AIDS will then be examined, and finally the French Bishops' reaction to the epidemic will be discussed. The US and French Bishops are included as representative of First World reactions, while the Southern African Bishops' statements are of obvious importance here.

The following chapter then examines the work of some moral theologians on this matter. James Keenan writes about the epidemic from a predominantly sexual ethic perspective, and focuses on the condoms debate in particular. Using traditional moral principles Keenan argues that condom use as a means of HIV prevention is licit, and by employing these principles Keenan shows how this in no way contradicts Catholic sexual teaching. Kevin Kelly, on the other hand, explores the deeper social and economic realities affecting the spread of HIV/AIDS. His work is also predominantly concerned with the sexual ethics aspect of the problematic. Yet Kelly's approach strongly emphasises the justice dimension of the crisis also. Thus, Kelly does not focus overly on debates about condoms, but is concerned instead with the relational aspect of sexual ethics, and the social and economic factors influencing this.

Finally, the importance of Catholic Social Thought will be briefly examined. Much of what we find here is relevant to the areas discussed throughout the thesis, and provides a basis for approaching the epidemic. This body of teaching is often overlooked when examining the AIDS crisis, yet it deals with many of the problems discussed earlier, particularly those examined in Part One. Thus, there are the resources within the tradition to examine the epidemic in a more complete way, without necessarily dealing only with the sexual questions raised.

Chapter Seven

Bishops' Conferences Respond

7.1 Introductory

This chapter explores the response by some Bishops' Conferences to the AIDS pandemic, paying particular attention to a number of documents published by the Southern African Catholic Bishops' Conference (SACBC) which are representative of the position taken by the Southern African Bishops. It is clear that the response by the Church in South Africa extends far beyond written documents and pastoral letters, and involves essential work "on the ground". However, my assessment will be confined to the manner in which the Church is addressing the crisis through its official statements. Included here is their treatment of poverty in South Africa and their evaluation of the economic state of the country, as well as statements specifically concerning the AIDS crisis in South Africa. Contributions by individual bishops on the question of HIV/AIDS will also be assessed. Finally, some statements by the US and French Bishops will be examined. Although they approach the issue from a "Western" perspective, assessment of their treatment of this matter is nevertheless instructive.

7.2 Responses by the South African Church

As outlined in Part Two, any examination of the AIDS crisis in South Africa needs to consider the consequences of wider issues such as poverty and the subordination of women. As we have seen, rape is a major problem within South Africa and has obvious consequences for the spread of the disease. Poverty contributes to the spread of HIV, and we saw how the poor and marginalised are especially exposed to infection. Here I wish to assess the South African Church's response to the crisis by examining key

texts produced by the South African Catholic Bishops' Conference as well as by individual bishops.

7.2.1 Poverty

In 1999 the Southern African Catholic Bishops' Conference produced a Pastoral Letter entitled *Economic Justice in South Africa: A Pastoral Statement*.¹ This document addresses the economic situation of the country and especially the poverty suffered by millions. It gives a clear outline of the economic reality facing most South Africans and shows the effects this has on the people, including the social problems that result.

The bishops draw attention to the unequal and unjust distribution of wealth both within South Africa and in the world in general. They warn of the unsustainable way in which the wealthy minority consume the world's resources, and of the "dire consequences" which are inevitable should this situation continue. They urge a change in human actions and a change in the attitudes which underlie these actions. They call for the development of a greater social conscience and greater recognition of the social responsibility we all share towards each other.

¹ SACBC, *Economic Justice in South Africa: A Pastoral Statement*, (Pretoria: Southern African Catholic Bishops' Conference, May 1999). It will be convenient to include references in the main text, hereinafter cited as SACBC, *Economic Justice in South Africa*, and page number given.

One of the first items discussed is human development. The bishops recognise that although in South Africa political reform has taken place in recent years, economic improvement did not necessarily follow. The legacy of the apartheid years is still being felt, and this is evident in the economic situation of the country. Thus, they call for further reforms to rectify the financial plight of their people. They say:

It cannot yet be said that all South Africans have an equitable share of the opportunities and the material conditions which are necessary to ensure their full human development. For this to be achieved a second transformation is needed, a transformation of our economic system from one which now, as in the past, tends to serve the interests of a minority at the expense of the rights of the majority, to one which accommodates the rightful and reasonable hopes and ambitions of all our people. (SACBC Letter *Economic Justice in South Africa*, p.3).

The document then lists a number of social ills within South African society, and the impact this is having on the wider community.

The bishops first address poverty, and they criticise the policies which are in place since these policies serve the greed and ambitions of the rich. This is true at both a national and international level. They state that the problem is not the economic systems *per se*, but rather their organisation. The manner in which world and national economies are structured serve the minority, whereas better organisation of these economic structures could ensure a fairer distribution of wealth. "In the modern world, however, it has long been the case that sufficient wealth and resources exist to wipe out poverty, if only they were properly distributed. The same is true for most individual countries, apart perhaps from the very poorest nations in the world . . . In essence, the problem is not that these economies are *unable* to meet the basic needs of all their people, but that they are organised in such a way that they fail to do so." (SACBC, *Economic Justice in South*

Africa, p.6. Emphasis in original). The bishops explain that in many cases a country's economy has the potential to provide for the needs of all its people, but that in reality it is organised in such a way as to cater for the rich and powerful minority. Thus, there is a duty and responsibility to ensure that economies serve the needs of the people.

Other social matters examined are high levels of unemployment, discrimination against women and greed. The bishops criticise economic systems which encourage migratory labour, since this has a negative impact on families and indeed threatens the family unit. As seen earlier, this is an established trend in South Africa especially among men who travel long distances to work in the mines. As well as threatening the family unit, this also has a major impact on the spread of HIV/AIDS and other STDs. It becomes a vicious circle where poor economic systems force people to migrate in search of work, in turn creating many social and health problems that have serious repercussions for the economy. Although not mentioned here by the bishops, levels of HIV/AIDS among the migratory labour population are extremely high and should be addressed.

In Chapter Five the bishops turn their attention to some principles of Catholic Social Teaching. They discuss the importance of the concept of the common good, and say that since we are "social animals" we ought to consider the interests of the community and the "other" as well as our own interests. We have duties and responsibilities to others which need to be recognised, rather than concentrating only on what we as individuals need. "[W]e must find our own interests within the framework laid down by the common good. We must recognise that what is good for the community

is good for us, and what is bad for the community is bad for us. Because we are bound together and dependent on each other, it is an illusion to think that a choice which harms the community can, in the long run, be anything but harmful to us as individuals” (SACBC, *Economic Justice in South Africa*, p.13). Certainly in the area of economics a deeper awareness of the common good would aid a more just system of distribution, one which recognises the needs of all rather than the desires of the few.

The bishops also call for greater solidarity with the poor, as well as greater international solidarity which should be reflected in fairer trade agreements. They call for an “option for the poor”, and they also promote the idea of subsidiarity. The document here discusses these and other Christian ideals and draws on the vast corpus of Catholic Social Teaching to promote principles which would help achieve a more equal distribution of wealth within society. One notices that the main target of criticism is not any particular economic system, but rather the operation of systems which are manipulated to ensure that the interests of the few are protected. A change of attitude and a greater recognition of the needs of the poor is required in order to achieve fairer economies. Many of the principles and ideals of Catholic Social Teaching are helpful in the promotion of this kind of change.

Certainly a change of attitude is needed before real economic reform will take place. However, many economic policies, both national and international, fail to fulfil the needs of poor. These systems in themselves fail, perhaps because they were designed with the wealthy in mind. The policy of Structural Adjustment is an example of this. As

we saw earlier, these programmes were designed to benefit creditor nations rather than debtor nations. This shows the need for reform of attitude by those in power, as well as a greater recognition by the wealthy of the needs of the poor. The Southern African Bishops proceed to set out in greater detail various economic policies and their negative impact on the poor. They start by discussing the South African economy and then turn to the wider international situation.

The bishops begin their assessment of the economic situation in South Africa by noting that despite poverty, unemployment, homelessness and poor education and health care systems, the Government is cutting back on social spending and thereby failing to improve social services for its people. High levels of poverty and unemployment, as well as poor social services could lead some to believe that South Africa is a poor country. In reality, it is a relatively well-off country compared to its neighbours, and average yearly incomes are much greater than in other Developing Countries. South Africa is classified by the World Bank as an upper middle income country, but there exists a huge gulf between the rich and the poor.

Over half the population is living in poverty, and the level of inequality is one of the highest in the world. The bishops explore this fact and draw attention to the consequences of apartheid:

In the context of South Africa it cannot be denied that our painful history has resulted in a state of affairs in which a small minority was, and to a large extent still is, able to appropriate to itself the lion's share of the country's wealth and resources; in fact, both colonialism and apartheid were intended to produce just this result. Whether through inequalities of opportunity such as lack of decent education and health-care, or through direct coercion such as the practical enforcement of migratory labour on the mines and the use of virtual slave labour in agriculture, or through statutory measures such as the

laws which deprived people of their land, successive political dispensations in South Africa conspired to produce an economy which advantaged a minority by disadvantaging the majority. In South Africa more than in most countries, the rich are rich *because* the poor are poor. (SACBC, *Economic Justice in South Africa*, p.19).

Thus, the economic difficulties now faced by South Africa have their roots, at least partly, in the unjust system of apartheid. Its legacy is still being experienced in many areas, but the consequences of the regime are particularly evident in the poor economic state of the country. Under this regime a major part of the population was impoverished and given only minimal education. The bishops rightly draw attention to the continuing effects of apartheid on the economy, and the burdens and suffering which are still being felt by the majority of South Africans.

They go on to say that even if Christian values such as charity, concern for the poor and brotherly love were abandoned, common sense would dictate that it is in the interests of the wealthy to address the poverty and suffering of the majority. They say that society cannot prosper under current conditions, and this in the end could lead to social instability and upheaval. Again they employ the notion of the common good to show that by denying equal economic opportunities to some, the well being of all could be threatened. This is becoming evident in parts of South Africa where white people feel increasingly unsafe, and Blacks believe they have the right to take what was for so long denied to them.

On a more international note, the president of the World Bank has on several occasions made the point that poverty is one of the main threats to stability in the world. The concept of the common good requires us to recognise the rights of others and our

duty to protect these rights. It reaches beyond individualistic notions of rights and points to a wider more inclusive notion. The bishops explain that “the good of each of us in the long term is secured and promoted by the common good of all. Self interest requires, therefore, that those who have in abundance must share with those who have nothing. Failure to do so can only precipitate social instability and threaten the well-being of all, rich and poor. History abounds with instances where the rich and powerful have brought about their own downfall by refusing to recognise in good time the legitimate demands of the poor.” (SACBC, *Economic Justice in South Africa*, p.19).

The bishops then turn attention to the urgent problem of unemployment, and they begin by noting that one out of three economically active people in South Africa is without work, (SACBC, *Economic Justice in South Africa*, p.21). In some parts of the country unemployment rates reach 50%. Importantly, the bishops make the point that unemployment affects not only those without work but it also has negative economic repercussions for those who have work. In reality each worker may have to support not only his/her immediate dependants, but also other family members such as parents and siblings. This adds to the financial stress of earners and does little to relieve poverty, a point sometimes forgotten.

However, the effects of unemployment are not confined simply to financial or materialistic matters.

The harm caused by unemployment is by no means limited to material matters; there is also an enormous social cost. While simplistic deductions must be avoided, there can be no doubt that that a connection exists between high rates of unemployment and the distressingly high incidences of crime, family breakdown, domestic violence, gangsterism, and drug and alcohol abuse which beset our society. Many of these social

problems in turn impact negatively on the economy, resulting in a vicious circle which will only be broken by the provision of jobs. (SACBC, *Economic Justice in South Africa*, p.21).

In addition to these social difficulties the bishops say that unemployment is also a denial of an essential aspect of human dignity. Consequently, although it is important to provide jobs for the unemployed, it must be dignified work, where working conditions and wages do not deny or threaten the dignity of any person. “[O]ur economy as a whole tends to place a large proportion of our population in a situation of lifelong drudgery, struggling merely to survive from one day to the next . . . An economy in which a significant proportion of the employed have little prospect of anything but a lifetime of unstimulating, low-paid, mundane work, merely in order to survive, invites the social problems which we are currently experiencing. Respect for human dignity demands that workers be treated as much more than just another ‘input’ along with capital, machinery and technology.” (SACBC, *Economic Justice in South Africa*, p.24).

Later the bishops criticise the amount of debt accumulated during the final years of apartheid rule. They recognise that this is now a huge drain on the new administration, and that it limits the amount of revenue available for investment in social sectors. The result is that those who endured most under apartheid continue today to suffer because of this system, and although political freedom has been achieved, the lot of many South Africans has not changed significantly. Certainly in economic matters many people are in the same financial crisis in which they found themselves under apartheid. The bishops describe this as an intolerable situation. “Just as, in the global arena, poor countries subsidise rich countries through the iniquities of international debt, so in our country, the

poor continue to subsidise the rich by virtue of an internal debt which was not acquired on their behalf. The debt is thus a drain on the economy in general, and a particular burden on those who have been, and continue to be, especially disadvantaged economically.” (SACBC, *Economic Justice in South Africa*, p.26-7).

The problems experienced are also influenced by external, international realities, and the document explores certain international trends and their consequences for the poor in South Africa. The bishops begin by saying that globalisation is adding to the problem of inequality between nations, where the strong and powerful nations retain control over trade and financial agreements. Poorer nations are unable to compete with the strength of the major countries and often find that they have little or no influence in decisions which ultimately affect them. They say that “[i]n too many instances, globalisation takes advantage of, and exacerbates, the inequalities between nations. Poor countries find themselves unable to compete on an equal footing with the rich, and are consequently exploited. The amoral ethos of survival of the fittest, long present in national economies, has now been translated onto the international stage. As a result, we are seeing the creation of an ‘underclass’ of nations.” (SACBC, *Economic Justice in South Africa*, p.28-9). They note that advancement towards a global economy has not included attitudes of global responsibility and global solidarity towards poorer nations.

The financial structures and institutions which are part of the global economy are then examined, and their shortcomings addressed. While acknowledging some of the good achieved by institutions such as the World Bank and the IMF, the bishops point out

that many of the financial agreements between states benefit larger, more powerful nations rather than poorer ones. Lending agreements often carry conditions which place burdens on poorer countries, and in so doing, create more problems than they solve. We saw in Part One some of the shortcomings associated with Structural Adjustment Programmes, and how they ultimately did little to alleviate the financial predicament of poor countries. In this document the Southern African Bishops draw attention to these matters and criticise the narrowness and inflexibility of international financial agreements. "An inflexible adherence to free-market fundamentalism, as it is sometimes called, has been insisted upon by these bodies as a condition for their assistance. This has had disastrous consequences for the poor: social expenditure has been reduced, affecting already low standards in health and education; food subsidies, which often stand between the poor and starvation, have been cut; and the cultivation of cash crops, rather than food, has been encouraged in order to promote exports." (SACBC, *Economic Justice for South Africa*, p.29).

Ironically, it was the unjust and oppressive system of apartheid which sheltered South Africa from many of these agreements, while other African nations subscribed to them in the hope of alleviating their economic crises. Nevertheless, the bishops speak of the negative effects of these international policies, and note that even within some of these international financial bodies there is recognition of the failure of many policies to achieve their intended goals. Despite its relative isolation from various international development policies, South Africa, the bishops say, must be aware of the risks associated with "free-market fundamentalism".

Returning to the economic situation in South Africa, the bishops discuss some of the economic policies in operation there. They say that governments have a responsibility to ensure the welfare of their people, “[o]ne important way in which they do so is by formulating policies and strategies which will enhance the economy and enable it to meet the needs of the poor and the vulnerable” (SACBC, *Economic Justice in South Africa*, p.33). In the case of South Africa many people lack the most basic provisions and are living in extreme poverty.

They criticise the macro-economic policy of Growth, Employment and Redistribution Strategy (GEAR) adopted in 1996. The two main targets of GEAR are to create better economic growth and create more jobs. The projected economic growth rates of GEAR proved unrealistic and actual growth rates fell far short of their original targets. For example, the projected growth rate for 1997 was 2.9%, whereas the actual growth rate was only 1.7%. The 3.8% prediction for 1998 once again proved too ambitious since the actual growth rate for that year only reached 0.1%. Figures for job creation also show overly optimistic estimates. The Southern African Bishops explain that as regards employment GEAR predicted that 126,000 new jobs would be created in 1996, and a further 252,000 in 1997. In reality 71,000 jobs were lost in 1996, while in 1997 an additional 142,000 were lost. Thus, GEAR also fell short of its job creation targets. Moreover, the bishops point out that no target was set for the redistribution of wealth, even though this is given prominence in the title of the programme, (SACBC, *Economic Justice in South Africa*, p.34). The growth estimates fall short of the reality,

and the strategy of GEAR is failing to improve the economy sufficiently to tackle poverty and related social problems within South Africa.

The bishops conclude by calling for a greater change of heart by people. More social awareness needs to be created and a deeper concern for the poor is essential. They say the best way to achieve this is by adhering to “Christian economic values” which have been outlined in their statement. These values must help shape our attitudes towards each other, especially in economic matters, so that the poor and marginalised will not be forgotten and so that all can live in a dignified manner.

This document raises a number of important points. The inequality among people and the gulf between rich and poor is an alarming problem. Levels of poverty and unemployment are becoming increasingly serious, and the many social ills which accompany poverty and unemployment need to be urgently addressed also. The SACBC statement does not simply focus on the economic and materialistic aspects surrounding poverty and unemployment; the bishops are also concerned with the effects this has on family life, on women, and on society as a whole. In the midst of so many problems the bishops call for a change in heart and a greater concern for others. In a world caught up in material matters it is becoming increasingly important to develop economic and social policies which are based on a concept of the common good. Development must imply more than a good economy, or state-of-the-art technology and facilities, however important they may be. Human development must place the person at the centre. We see again in this publication that employment is not the whole answer; human dignity must

also be protected in other ways. These are the values which Christian teaching promotes, and the bishops emphasise their importance for the establishment of a truly just economic system, whether national or international.

Similar matters are raised in a document by the Southern African Catholic Bishops' Conference Parliamentary Liaison Office.² This publication discusses poverty and Third World Debt, and calls for greater efforts at alleviating the suffering caused by poverty. Currently two thirds of the world's population are impoverished, and since the 1970's unemployment has tripled. Greater inequality exists in income and wealth distribution than ever before, and 60% of the world's population live on just over 5% of global income.³ The Parliamentary Liaison Office examines in detail international lending to Developing Countries and criticises economic policies designed for the benefit of lending nations.

Section Three looks at the situation in Southern Africa and the consequences of apartheid-caused debt. It states that:

In Southern Africa, efforts by the region to recover from the devastation caused by the crimes of apartheid are being seriously obstructed by the demand to repay foreign debts borrowed to resist apartheid. In South Africa the odious foreign debt accumulated by the illegitimate apartheid regime for the oppression of the people of our country, continues to drain resources that could be otherwise used for job creation, social delivery, and capacity building. In addition, unnecessarily inflated amounts of money continue to be diverted to government's pension fund in the form of debt servicing at the expense of easing the social backlog.⁴

² SACBC Parliamentary Liaison Office, *Jubilee 2000: Making the strongest call for justice that has ever been heard*, (Occasional Paper 2, May 1999). The Parliamentary Liaison Office is an office of the Southern Catholic Bishops.

³ *Ibid.*, p.1.

⁴ *Ibid.*, p.3.

Thus, the debts created by the outgoing apartheid Government remain a burden on the country today, a burden felt most of all by the poor. We have seen that this is a point also criticised by the bishops in their pastoral statement on economic justice. It shows that although political freedom has been established, the plight of the poor has improved little.

This statement by the Parliamentary Liaison Office calls for the cancellation of outstanding apartheid foreign debt by invoking the Doctrine of Odious Debt.⁵ It makes clear that “apartheid debt is an odious debt, a debt that was incurred by an illegitimate regime for the oppression of the people of South Africa and the destabilisation of its neighbouring states”. It continues, “[d]emocratic South Africa cannot be expected to repay this odious debt, to pay for apartheid twice. Apartheid was repeatedly condemned as a crime against humanity in numerous international fora. Those who financed apartheid repression must now pay for the risk they were willing to take by supporting the apartheid regime.”⁶

⁵ *Ibid.*, p.3. Odious debts are debts contracted against the interests of a state or country with the full knowledge of the creditor. The doctrine says that in these cases, the debt is odious under international law and is therefore unenforceable against the alleged debtor state/country. Alexander Nahum Sack was the first to develop this doctrine at length. He proposed that there are three conditions necessary for a debt to be considered odious. They are: the debt did not receive the consent of the nation, the borrowed funds are contracted and spent in a way which is unbeneficial to the nation, and the creditor lends the money with knowledge of these facts. For a detailed discussion of the doctrine of odious debt see Jeff King, “The Doctrine of Odious Debt Under International Law. Definition, Evidence and Issues Concerning Application”, available at: www.woek.de/pdf/kasa_mcgill_kapl.pdf

⁶ SACBC Parliamentary Liaison Office, *Jubilee 2000: Making the strongest call for justice that has ever been heard*, p.3.

Additional criticism is directed at civil servants of the apartheid regime who placed large sums of money in pension schemes. The debts incurred are now being paid by taxpayers. In effect the poor are still paying for apartheid and guaranteeing financial security for those who operated this form of government.

Attention is turned to the international stage and to the economic policies which contributed to the crisis in which many Third World countries now find themselves. Structural Adjustment Programmes are criticised but so too are the Highly Indebted Poor Country (HIPC) policies which followed. As with Structural Adjustment policies, the HIPC initiatives were too rigid and inflexible, and ultimately served the interests of creditor institutions rather than debtor nations.

The biggest problem with HIPC, however, was the rigid economic adjustment conditions imposed by the IMF for participation in HIPC. Debt relief was openly being used as a means to unilaterally dictate IMF economic policies to poor countries. After years of enforcement, these policies have clearly failed to deliver on their promises, as is evident even in South Africa. On the contrary, they have proven to increase joblessness, stall growth, worsen working conditions, and deepen poverty while making domestic economies more vulnerable to exploitation and domination by multinational corporations to the benefit of the rich and the detriment of the poor. Poor country debt dependency was being transformed into nothing other than debt slavery.⁷

What HIPC ultimately succeeded in doing was refinancing debts already owed. Rather than insisting on the repayment of existing debts, which was not happening in any case, these loans were restructured or recreated under HIPC. There were no real benefits for poor countries, while international lending institutions reaped the reward and tightened their control over the economic circumstances of poor nations. Thus, although this new initiative of HIPC looked to reform the shortcomings of policies such as Structural

⁷ SACBC Parliamentary Liaison Office, *Jubilee 2000: Making the strongest call for justice that has ever been heard*, p.5.

Adjustment, in reality the outcome differed little. The statement by the Parliamentary Liaison Office is highly critical of such policies, and points to the continued financial struggle of most developing nations.

The document concludes by calling not only for the cancellation of debt, but the establishment of a more just system of international lending. As long as the powerful nations are in a position of being able to dictate the terms of lending or of financial assistance, the possibility for exploitation always remains. “What is required for a genuine exit from debt for impoverished countries is an international mechanism that will provide a fair, transparent, and accountable process for negotiations between debtors and creditors, with participation by civil society representatives from both parties. Such a process should establish principles of responsibility and accountability in future international borrowing”⁸ Similar points were raised by the Southern African Bishops in their document on economic justice when they called for greater international responsibility towards poor countries and greater international recognition of the importance of the concept of the common good.

7.2.2 HIV/AIDS

As we saw earlier, HIV/AIDS is a major problem in South Africa and is affecting the economy and society in a number of ways. An estimated 5 million people are infected, and South Africa is in the unenviable position of being the country with the

⁸ SACBC Parliamentary Liaison Office, *Jubilee 2000: making the strongest call for justice that has ever been heard*, p.7.

highest number of people infected with this disease in the world. It is clear that HIV/AIDS is an issue that cannot be ignored. It affects all walks of life, and raises important questions for the Church and its leaders. The Southern African Bishops have discussed HIV/AIDS on a number of occasions, and I will now examine some of their contributions to the debate.

In 1990 the Southern African Catholic Bishops Conference produced a pastoral statement on AIDS. The first note of caution which must be sounded is the fact that the HIV/AIDS crisis was only beginning in South Africa at this time. While many other countries had experienced the devastation of AIDS by 1990, South Africa had been relatively spared up to that point. For this reason the pastoral letter should be read with certain reservations, remembering also that it is now somewhat dated.

The document begins by drawing attention to the fact that the AIDS crisis has challenged many of the moral and theological assumptions of people. It has forced us to rethink our view of certain theological positions. The bishops cite as an example how many people described AIDS in terms of punishment from God. They criticise such beliefs, and the marginalisation and discrimination which resulted. The AIDS crisis also makes people confront the mysteries of death and suffering, and once again raises questions for Christians about their loving God.

The bishops ask, “[is] morality simply a matter of blind obedience to moral laws or is it a matter of how we human beings relate to one another and how we take responsibility for one another. The latter frequently calls for both self-giving and patient understanding of others that are more demanding than simply keeping the law. The AIDS crisis reveals not simply the existence of sexual sins but also, and much more significantly, the absence of love and care for people in their suffering”.⁹ It is unfortunate that AIDS is seen here in terms of “sexual sins”, with rather little consideration of the economic and social context in which much sexual activity takes place.

However, the bishops also point to the positive things which may emerge from the crisis. As with all crises there exists the possibility to grow and to learn from the experience, and ensure that existing problems are rectified and prevented from occurring again. They say that “[p]erhaps the AIDS crisis is God’s way of challenging us to care for one another, to support the dying and to appreciate the gift of life. AIDS need not be merely a crisis, it could also be a God-given opportunity for moral and spiritual growth, a time to review our assumptions about sin and morality.”¹⁰ Although the point is not elaborated on by the bishops, one realises the challenges AIDS raises for moral theology and for the Church’s teaching on many issues. This crisis, as devastating as it is, could force us as Church to grow and develop through a re-examination of official teaching.

⁹ Southern African Catholic Bishop’s Conference, *Pastoral Statement on AIDS*, (Pretoria: SACBC, January 1990), p.1.

¹⁰ *Ibid.*, p.2.

Later we read about the duty to prevent the spread of HIV. The bishops call on governments and organisations to provide accurate information about the disease, as well as calling on individuals to ensure they are informed about the facts of HIV. They express certain reservations about the use and distribution of condoms, arguing that they are not always reliable and that they often promote sexual promiscuity which in turn leads to greater chances of contracting HIV. However, they go on to say that “any person who has contracted AIDS should take very seriously the responsibility of preventing it spreading further. This will call for greater consideration of others, which will often have to be shown by taking great care and exercising restraint.”¹¹ Although the preferred option for the bishops here is the exercise of restraint by those infected, one could also conclude that the responsibility for not spreading the disease might include condom use.

The section entitled “Sexual Responsibility” examines in more detail the central theme of the Bishops’ statement. Here the bishops say that “[i]t has already been noted by others that an important way to ensure one neither contracts nor spreads AIDS is for two sexual partners to remain faithful to one another. The risk of AIDS, therefore, places a further moral obligation on people to be sexually faithful to each other. For such unfaithfulness is not only a sexual sin against one’s partner but also a sin of putting his or her life at risk. Mutual sexual fidelity eliminates a major source of AIDS transmission.”¹² One point which emerges from this extract is the immorality of unnecessarily putting one’s partner at risk of infection. The “sin of putting his or her life at risk” must be avoided and greater responsibility shown towards the other. Although not expressed by

¹¹ SACBC, *Pastoral Statement on AIDS*, p.4.

¹² *Ibid.*, p.5.

the bishops, it could be argued that in such cases the use of condoms may be justified where the intention is to avoid the contraction of a deadly disease, and as an expression of responsibility towards others. It is of course not the ideal way of prevention since condom use is not without its risks. However, studies show that where condoms are used in a responsible way transmission rates are reduced considerably.¹³

Abstinence from sexual intercourse remains a safer option as regards reducing the risks of transmission. The bishops, however, feel that “abstinence out of fear of this disease is not yet chastity. Chastity has to be seen as a quality of genuine relationship. This is a special message for youth who should try to see their companions as persons of immense dignity and beauty and not as sexual objects.”¹⁴

The importance of the sexual union within marriage is emphasised. The bishops say that it is an expression of the growing and committed relationship between two people, and it is the “expression of a loving human relationship which has reached the stage of mutual commitment to each other for life . . . The sacrament of marriage is an

¹³ Thailand is probably the best example of a country that adopted an intense condom-use programme, particularly in the commercial sex industry. The result of this was a dramatic reduction in transmission rates. For example, HIV prevalence among army conscripts dropped by more than half. See Martha Ainsworth and Waranya Theokul, “Breaking the Silence: setting realistic priorities for AIDS control in less-developed countries”, *The Lancet*, vol.356, (July 1, 2000), p.55. Uganda is another example where condom use helped reduce the rate of infection, although there were also strong efforts at changing existing sexual behavioral patterns among people. On these points see also Kevin Kelly, *New Directions in Sexual Ethics*, (London: Geoffrey Chapman, 1998), p.200 ff. Finally, Jon Fuller discusses the effectiveness of correct and consistent use of condoms in lowering transmission rates. See for example, “AIDS prevention: a challenge to the Catholic moral tradition”, *America*, (December 28, 1996), p.18, and “Condoms, Catholics and HIV/AIDS Prevention”, *The Furrow*, vol.52, no.9 (September 2001), p.459-460.

¹⁴ SACBC, *Pastoral Statement on AIDS*, p.4.

expression of faith in the power of God's love at work in married couples and the hope that this love will conquer human weakness and infidelity."¹⁵ The social repercussions of HIV/AIDS are touched upon, albeit briefly. Certain features of South African society which have contributed to the spread of HIV/AIDS are mentioned, such as single sex hostels, migratory labour, and poverty and harsh living conditions.

The crisis is examined again in a more recent statement by the Southern African Bishops called "A Message of Hope", published in November 2001.¹⁶ In a fashion similar to their 1990 pastoral statement on AIDS, this document focuses on the spread of AIDS as a matter of sexual ethics. The bishops begin by condemning the use of condoms in the fight against AIDS. They say that efforts by governments and others to promote condom use is of great concern to the Church. They make their own position clear when they say:

The bishops regard the widespread and indiscriminate promotion of condoms as an immoral and misguided weapon in our battle against HIV/AIDS for the following reasons.

- The use of condoms goes against human dignity.
- Condoms change the beautiful act of love into a selfish search for pleasure – while rejecting responsibility.
- Condoms do not guarantee protection against HIV/AIDS.
- Condoms may even be one of the main reasons for the spread of HIV/AIDS.

Apart from the possibility of condoms being faulty or wrongly used they contribute to the breakdown of self-control and mutual respect. The promotion and distribution of condoms as a means of having "safe sex" contributes to the breakdown of the moral fibre of our nations because it gives a wrong message to people.¹⁷

¹⁵ SACBC, *Pastoral Statement on AIDS*, p.4.

¹⁶ This statement by the Southern African Bishops can be found in *Grace and Truth*, vol.18, no.3 (November 2001), p.57-60. This is the version of the statement used here.

¹⁷ *Ibid.*, p.57.

One is left in little doubt as to the bishops' stance on the matter. However, this passage raises a number of important questions. It is certainly true that condom use will not guarantee protection from the disease. Yet it has also been proven that proper and consistent use of condoms considerably reduces the rate of transmission.

Later the bishops call on people to “[a]bstain from sex before marriage and be faithful to your spouse in marriage – this is the answer, which Christ gives us.” Turning to the youth, the bishops ask: “Do not allow yourselves to be misguided by people who show you the wrong way by offering you condoms. Abstain from sex before marriage and be faithful to your spouse in your future marriage – this is the way Christ shows us”.¹⁸

Notwithstanding all of this, the section entitled “Message to Married Couples” appears to signal a change. The bishops acknowledge that:

There are couples where one of the parties is living with HIV/AIDS. In these cases there is the real danger that the healthy partner may contract this killer disease. The Church accepts that everyone has the right to defend one's life against mortal danger. This would include using the appropriate means and course of action.

Similarly where one spouse is infected with HIV/AIDS they must listen to their consciences. They are the only ones who can choose the appropriate means, in order to defend themselves against the infection. Decisions of such an intimate nature should be made by both husband and wife as equal and loving partners.¹⁹

The Southern African Bishops do not here explicitly endorse the use of condoms, and yet the paragraph appears to envisage that they might licitly be used in certain circumstances. The importance of listening to one's conscience when deciding the appropriate means to

¹⁸ SACBC, “A Message of Hope”, p.58.

¹⁹ *Ibid.*, p.59.

avoid infecting one's spouse is alluded to. The question one must ask however is if condoms are permitted in the above circumstances, i.e. within marriage where one spouse is infected, can they be permitted in other circumstances also? In other words, are condoms licit only within the context of a loving, stable relationship? Surely the right to protect one's life against mortal danger, as the bishops mentioned above, extends to all people, and includes prostitutes or those engaging in high-risk sexual activity outside marriage.

7.2.3 Individual bishops respond

Such is the position of the Southern African Conference of Bishops. But when we examine what some individual bishops are saying about HIV/AIDS diverse views emerge. Some bishops take the approach adopted in collective statements such as those cited above. Again the main topic for consideration focuses on sexual morality and the use of condoms. A publication by Bishop Hugh Slattery of Tzaneen is a good example of this.²⁰ In *HIV/AIDS: A Call to Action*, the crisis is seen in terms of sexual immorality, and although poverty is briefly examined it receives minimal consideration as a factor in the problematic. The bishop notes that the AIDS crisis has worsened in recent years, and says that it “will continue to get worse until people change their lifestyle in the area of sexuality”.²¹

²⁰ See Hugh Slattery, *HIV/AIDS: A Call to Action. Responding as Christians*, (Nairobi: Paulines Publications Africa, 2002).

²¹ *Ibid.*, p.14.

Later Bishop Slattery, following the line taken by the Conference, condemns the view which sees AIDS in terms of punishment from God. However he goes on to say that “we can say that it [HIV/AIDS] is the inevitable result of sexual behaviour which is against God’s law. The people themselves and not God are responsible for their actions and therefore for getting AIDS. We shouldn’t blame God for allowing people to misuse their freedom and get AIDS as a result. So the problem is not God punishing people by AIDS, but people bringing the disease on themselves by not listening to God’s word and keeping his law of love.”²² This statement raises many questions. First, where Slattery says that people “misuse their freedom and get AIDS as a result”, he presupposes that people are actually free to make sexual choices. But we have seen that in many instances this is not the case. Poverty may diminish or even take away a person’s freedom, insofar as they are not free to make choices in the same way as others who are financially secure. In South Africa, poverty and the coping mechanisms which people are forced to adopt as a result, place them in greater danger of contracting HIV. In many cases people are not “misusing their freedom” since their decisions are not based on freedom but on the necessity to survive.²³ Thus, one would have to question the general statement that people infected with HIV are infected because of misuse of their freedom.

Second, the notion that people bring “the disease on themselves by not listening to God’s word and keeping his law of love” appears judgmental. It also overlooks the complexities earlier argued for here. The main emphasis in Bishop Slattery’s book is on the connection between the spread of AIDS and sexual immorality; it follows that any

²² Slattery, *HIV/AIDS: A Call to Action* . . . , p.26.

²³ Cf. Amartya Sen, cited at p.168 above

solution is seen in these terms only. Bishop Slattery maintains that this “breakdown in the area of sexual morality is the reason why AIDS is spreading so rapidly in this country and in so many other countries also.”²⁴ He reiterates this point in the following section where he writes: “There is no doubt whatsoever that the rapid spread of AIDS is due to the widespread breakdown of sexual morality. AIDS thrives on promiscuity and loose sexual behaviour. The HIV/AIDS disease is out of control because sex is out of control.”²⁵

In Chapter Eight Bishop Slattery in fact turns to the issue of poverty and rejects the idea that poverty causes AIDS. Although he does not mention him directly, one immediately thinks of President Mbeki’s remarks on this point. Bishop Slattery dismisses such notions and reiterates that it is HIV that causes AIDS. He argues that poverty cannot be the cause of AIDS, “for as we have seen it is caused mainly through sexual contact. To a great extent it is therefore a preventable disease irrespective of the economic situation of people.”²⁶ While acknowledging the fact that poverty is not the direct cause of AIDS, one cannot dismiss the importance of poverty and economic considerations in this matter. To state that since HIV is transmitted to a large extent sexually, and is therefore a “preventable disease *irrespective of the economic situation of people*”, is misleading. The economic situation of people is hugely important, and determines in a major way the vulnerability of people to infection.

²⁴ Slattery, *HIV/AIDS: A Call to Action . . .*, p.46.

²⁵ *Ibid.*, p.47.

²⁶ *Ibid.*, p.51.

Bishop Slattery continues by saying that “[i]n other countries of Southern Africa as well as here in this country the people with the highest rate of AIDS infection are generally not the economically poor people but the more wealthy and more educated people.”²⁷ One does not find this view supported in studies. AIDS certainly affects all people – it is not confined to any one race, class, or profession. It is true also that in some African countries high percentages of “professionals” – doctors, nurses and teachers are infected with this disease. But in the wider view AIDS is unquestionably a disease of the poor. The vast majority of those infected world-wide live in the Third World, and within poorer countries we see that it is the poor and economically marginalised who are most likely to become infected.

In his treatment of poverty Bishop Slattery mentions what he calls the “poverty of morality”.²⁸ Here he brings the discussion back to issues of sexual morality. He says that “[t]here must be an equally deep commitment to overcoming the ‘poverty of morality’ which leaves people open to getting AIDS. We have to educate, train and form people for a long, happy and productive life and not for an early death . . . The effects of wealth or poverty, of education or lack of education on the spread of AIDS must never blind us to the real cause of the disease which is the large scale breakdown in sexual morality.”²⁹

²⁷ Slattery, *HIV/AIDS: A Call to Action* . . . , p.51.

²⁸ *Ibid.*, p.52.

²⁹ *Ibid.*, p.52.

The points raised here by Bishop Slattery concern mainly matters of sexual morality. But this is only one aspect of an extremely complex situation. To view the problem in terms of sexual immorality avoids the deeper issues which need attention. An understanding of injustices such as poverty and sexual violence are necessary if the Church and its leaders are to address the AIDS epidemic more thoroughly.

There are, however, alternative positions taken by other bishops, of which the most noteworthy is Bishop Kevin Dowling. In an interview given by Bishop Dowling,³⁰ when asked how the Church is responding to the epidemic, he begins by stating that “on the ground” tremendous work is being done for those who are suffering and in pain. However, he says that as regards HIV prevention the Church is still struggling in the areas of morality and theology. “How do we theologise and proclaim a message about morality in a way which is meaningful, a way that reaches the people where they are? It’s tempting to take what appears to be the pharisaical approach of merely saying ‘if you want to avoid AIDS, keep God’s law’. It’s easy to have simplistic attitudes . . . But that kind of approach is blind to the realities of life for millions of poor people.”³¹

He draws attention in particular to the situation of many women who may have lost their husband/partner to AIDS or who have been deserted by them, and are now left with the responsibility of feeding and caring for their families on their own. Poverty and few financial alternatives force women to turn to prostitution in order to survive. Bishop

³⁰ See “The Church has AIDS: An Interview with Bishop Kevin Dowling”, in Gideon Byamugisha, Lucy Y. Steinitz, Glen Williams, and Phumzile Zondi, *Journeys of Faith: Church-based responses to HIV and AIDS in three southern African countries*, (Pietermaritzburg: Cluster Publications, 2002), p.94-98.

³¹ *Ibid.*, p.94.

Dowling makes the important point that “[u]nless one meets people living in poverty, really listen to them and tries to understand their situation, one is going to have a skewed theology and a skewed morality as well. We must theologise in what is a very complex situation”.³² Thus, there is a challenge for the Church and its teachings to address the realities of the poor, rather than simply speak abstractly about ideals which are unrealistic given the economic situation in which so many people find themselves. Greater understanding is needed in order to reach out to the marginalised in a compassionate way and one which is real to the people.

Bishop Dowling develops this, saying that a deeper understanding of people’s poverty and its effects are needed for a more complete response by the Church to this crisis. “We have to start grappling with the issue of people who don’t accept – or feel unable to live up to – some of our ideals, like abstinence before marriage and faithfulness within marriage”.³³ In addition, Bishop Dowling says that “[w]e can just say they are wrong and should change their behaviour. But we live in a world where many people choose not to live according to the values espoused by the church. And especially in our southern African region, there are so many poor people, women and girl children whose socio-economic and cultural situation takes away their options and choices.”³⁴

This point is of great importance to the debate. As we have repeatedly seen, to speak only in terms of behavioural change, or in terms of ideals such as chastity without

³² “The Church has AIDS: An Interview with Bishop Kevin Dowling”, p.94-5.

³³ *Ibid.*, p.95.

³⁴ *Ibid.*, p.95.

any consideration of issues like poverty, is to fail to appreciate the complexity of the problem. Bishop Dowling rightly draws attention here to the fact that many people find themselves unable to live up to the ideals promoted by the Church because of dire poverty, even if they wish to do so in the first place.

In relation to discussions concerning the use of condoms Bishop Dowling says that condoms may be used in certain circumstances as a means of preventing the spread of HIV and lowering transmission rates. He says that in such cases the use of a condom would not be seen as a contraceptive but rather a medical means of reducing the risks of transmitting a disease. In the same way that *Humanae Vitae* allows for use of the pill for medical reasons and where the intention is not its use as a contraceptive, Bishop Dowling believes use of condoms in the circumstances of HIV/AIDS is justified. “In my view, the condom should be viewed . . . as something that is incidentally a contraceptive but whose primary purpose in this dreadful pandemic is to prevent the transmission of death.”³⁵

Bishop Dowling believes that current teaching which maintains that condoms can never be used under any circumstances undermines the church’s credibility as being compassionate and caring. “If we simply proclaim a message that condoms cannot be used under any circumstances, then I believe people will find it difficult to believe that we, as a church, are committed to a compassionate and caring response to those who are suffering, often in appalling living conditions. For me the condom issue is not a matter of chastity but of justice.”³⁶

³⁵ “The Church has AIDS: An Interview with Bishop Kevin Dowling”, p.96.

³⁶ *Ibid.*, p.95.

This is not to say that condom use is risk-free or that they provide a one hundred percent guarantee against infection. Bishop Dowling acknowledges this fact, but he says that to argue that condoms must not be used for this reason is unhelpful. “[T]o say that, because they are not 100% effective, they should not be used at all is a leap in the wrong direction. Scientific studies show that, given the enormity of the AIDS pandemic, especially in sub-Saharan Africa, proper and consistent use of condoms is a significant means of reducing HIV transmission.”³⁷

It is clearly important for people to have accurate information about condoms so that their choices are informed and they are aware of the risks involved. But to say that condom use should not be promoted because it does not guarantee total protection from transmission is excessive. If total protection from transmission is pivotal to this argument, even if it is not the only issue involved, one wonders why a similar argument is not used in the case of medication administered to reduce mother-to-child transmission. These drugs help reduce considerably the rate of transmission to unborn children, but by no means preclude transmission completely. It would seem unthinkable to suggest that for that reason these drugs should not be available to pregnant women. In the same way it is extremely difficult to see why using condoms during intercourse should be dismissed on the grounds that they do not provide total protection from transmission. The evidence is that consistent and correct use of condoms significantly reduces the rate of transmission.³⁸

³⁷ “The Church has AIDS: An Interview with Bishop Kevin Dowling”, p.96.

³⁸ See footnote 13 above.

However, one must not become fixated on the condom debate since the issues involved are more varied than this alone. In an article entitled “The Church’s Response to AIDS”³⁹ Bishop Dowling discusses the socio-political and economic factors in the spread of HIV/AIDS. Here we find a broader and more inclusive analysis of the situation than that by others who insist on defining the problem in terms of sexual immorality.

He begins by examining the legacy of apartheid and the effects that regime is still having on the country. Although political change has taken place, the consequences of so many years of apartheid rule remain evident today. The policies and structures enforced by Government under that system provided the ideal basis for the spread of diseases such as HIV. This is often overlooked when examining the HIV/AIDS epidemic in South Africa. However, closer understanding of the impact of apartheid and its continuing legacy reveals some of the complex causes that lie at the heart of the crisis. Bishop Dowling writes:

Our country’s history has created textbook-perfect conditions that fuel the spread of HIV/AIDS. Many years of white supremacy and racism, hand in hand with rampant capitalism, dispossessed the indigenous population of their land, destroyed their cultures, physically destroyed their communities, and relegated them to barren, infertile areas, where they were used as cheap labour for the mines and industries, and discarded when their usability was exhausted.

The legacy of this, which we are confronting today, is an alienated, rootless population, a society whose moral and social fabric has been shattered. Vast masses of people depend on migrant labour to support them in an economy that, due to globalisation, is unable to provide a future to even the well qualified. Sucked dry and discarded by a modern industrial economy . . . our people face bleak, violent lives, either in closely packed rural slums, or in appalling urban slums.⁴⁰

³⁹ See Bishop Kevin Dowling, “The Church’s Response to AIDS”, in *Grace and Truth: a journal of catholic reflection*, vol.18, no.2 (August 2001), p.16-21.

⁴⁰ Dowling, “The Church’s Response to AIDS”, p.16.

Some of the social and economic problems arising from the apartheid years have been discussed in Chapter Four, and do not need repeating. But it is important to acknowledge the connection between the consequences of apartheid rule and the current HIV/AIDS crisis in South Africa. Bishop Dowling here examines the deeper social and political factors which have played such a major part in shaping South African society, and which are still having serious repercussions for the lives of most South Africans.

Apart from the socio-political factors involved, the financial situation of people is extremely important when one is considering the reasons for the scale of the crisis in South Africa. Economic matters are closely linked to the social and political realities of a country, and I am not suggesting that they ought to be considered independently of each other. Particularly in a country like South Africa one immediately realises how intertwined the political, social and economic fields actually are. The political structure of the country for so long determined the economic fate of millions of South Africans, and deprived them of the opportunity to emerge from poverty. The desperate economic circumstances of the majority of the population has had a serious impact on their health, and has contributed to and facilitated the spread of diseases such as AIDS.

Bishop Dowling draws attention to this. He acknowledges that tackling poverty is central to any realistic long-term solution to the crisis in South Africa. Fighting for access to antiretroviral drugs, for example, is important, but drugs offer little hope to people too poor to afford food. He says that “[it] is obvious to those who live and work among the poor in the midst of misery that, for example, free drugs and medication and

awareness campaigns are going to have little lasting effect as long as people's economic reality predisposes them to infection and sickness of all types, and this in a variety of ways . . . Disease, whether it be TB, STD's . . . or HIV/AIDS, thrives in overcrowded situations, where people have minimal to very poor nutrition, and where their social condition and poverty can drive them to liaisons and relationships which are fraught with danger."⁴¹

The reality is that economic deprivation drives people into situations which in turn exposes them to infection from HIV. In Umtata, for example, girls from about the age of twelve onwards are forced to get pregnant yearly in order to avail themselves of the Government maintenance grant of R100 per month per child. In King Williams Town, TB patients do not take their medication in order to get a disability grant. In other areas such as De Aar, girls are sent out to have sex with truck drivers in return for some food products which the drivers are transporting so that their families can be fed.⁴² Obviously these situations greatly increase the likelihood of infection and they show the importance of tackling poverty. In such circumstances it seems both unrealistic and futile to proclaim ideals such as chastity or abstinence from sex. To do so is to fail to appreciate the underlying economic factors of these sexual acts, or the lack of freedom which often accompanies them.

Bishop Dowling concludes by saying that the Church "views the HIV/AIDS pandemic as a call from God to a response which is intimately linked to its mission in the

⁴¹ Dowling, "The Church's Response to AIDS", p.17.

⁴² These examples are cited by Dowling in "The Church's Response to AIDS", p.17.

world, a response which must be based on fundamental Gospel values such as compassion, solidarity, care for the vulnerable, striving for justice and commitment to overcoming unjust structures in society.”⁴³ From the midst of this crisis emerges an opportunity for the Church to respond in ways which are in keeping with the Gospel. Part of this is acquiring a true understanding of the epidemic and its causes, and formulating teaching which includes addressing the injustices which are at the core of the problem.

7.3 US Bishops and AIDS

“The Many Faces of AIDS: A Gospel Response”⁴⁴ was published by the US Catholic Conference on December 11th, 1987. This document on AIDS received widespread reaction among Church leaders. Among the American Bishops themselves there emerged varying opinions on the document. Some of its contents will be discussed here. This gives us an insight into the teaching of the US Bishops on this matter, and also provides the context from which to consider the work of some theologians on AIDS.⁴⁵ Their 1989 pastoral statement “Called to Compassion and Responsibility: A Response to the HIV/AIDS Crisis”⁴⁶ will also be examined.

⁴³ Dowling, “The Church’s Response to AIDS”, p.21.

⁴⁴ Translation of this document is from *Origins*, vol.17, no.28 (December 24, 1987). Extracts from the document will hereinafter be referred to as “The Many Faces of AIDS”, and page number given.

⁴⁵ James Keenan, for example, whose work is examined in the following chapter, makes use of this document’s teaching.

⁴⁶ For translation of this document see *Origins*, vol.19, no.26 (November 30, 1989). Extracts will hereinafter be referred to as “Called to Compassion”, and page number given.

In “The Many faces of AIDS”, the US Bishops distinguish between the treatment of people with HIV/AIDS and the prevention of the spread of this disease. They acknowledge that it is at the level of prevention that most controversy has arisen. The bishops clearly outline their position regarding the prevention of HIV/AIDS. “We believe that the best source of prevention for individuals and society can only come from an authentic and fully integrated understanding of human personhood and sexuality, and from efforts to address and eliminate the causes of intravenous drug abuse. We are convinced that the only measures that will effectively prevent this disease at present are those designed to educate and to change behaviour”, (“The Many Faces of AIDS”, p.486).

Later in the document we again read that the bishops believe the best way to prevent the future spread of HIV is through an understanding of human sexuality which is in keeping with Catholic moral teaching. “We are convinced that unless, as a society, we live in accord with an authentic human sexuality, on which our Catholic moral teaching is based, we will not address a major source of the spread of AIDS. Any other solution will be merely short term, ultimately ineffective and will contribute to the trivialization of human sexuality that is already so prevalent in our society. That is why we oppose the approach to AIDS prevention often popularly called ‘safe sex’”, (“The Many Faces of AIDS”, p.486).

The stance taken by the US Bishops here as regards human sexuality and the prevention of HIV transmission is clear. The best and only way to contain the spread of this disease is through adherence to the Church's teaching on sexuality. Short-term answers such as condom distribution is neither approved nor believed to be suitable for a long-term answer to the crisis. Rather, a change in sexual behaviour – one in line with Church teaching – is required.

However, the bishops do make concessions. They acknowledge support for legislation and educational programs which provide accurate and clear information on HIV/AIDS. Indeed education is vital for behavioural change, and the bishops state the importance of promoting Catholic ideals such as chastity. However, they also say:

Because we live in a pluralistic society, we acknowledge that some will not agree with our understanding of human sexuality. We recognize that public educational programs addressed to a wide audience will reflect the fact that some people will not act as they can and should; that they will not refrain from the type of sexual or drug abuse behaviour which can transmit AIDS. In such situations educational efforts, if grounded in the broader moral vision outlined above, could include accurate information about prophylactic devices or other practices proposed by some medical experts as potential means of preventing AIDS. We are not promoting the use of prophylactics, but merely providing information that is part of the factual picture. ("The Many Faces of AIDS", p.486).

It is interesting that the bishops indirectly make provision for allowing the use of condoms in certain circumstances, even though this is not the ideal and would normally be condemned. Those infected ought to be encouraged to live a chaste life so as to avoid infecting others with the disease. However, when it becomes clear that this is not a realistic option for someone, then the necessary steps must be taken to ensure that person will not infect and cause harm to others. "On the more personal level of the health care professional, the first course of action should be to invite a patient at risk, or one who has

already been exposed to the disease, to live a chaste life. If it is obvious that the person will not act without bringing harm to others, then the traditional Catholic wisdom with regard to one's responsibility to avoid inflicting greater harm may be appropriately applied", ("The Many Faces of AIDS", p.489). As with the Southern African Bishops' document, the US Bishops appear to leave room for the possibility of condom use as a lesser evil.

Responsibility is a central theme here. Earlier in the publication the bishops stated that, "[if] a person chooses not to live in accord with this meaning [of human sexuality] or has misused drugs, he or she still has the serious responsibility not to bring injury to another person. Consequently, anyone who is considered to be 'at risk' of having been exposed to the AIDS virus has a grave moral responsibility to ensure that he or she does not expose anyone else to it", ("The Many Faces of AIDS", p.487).

In this statement therefore, the US Bishops promote traditional teaching concerning sexual morality. They say on a number of occasions that the best and most effective way to avoid infection is through adherence to the teachings of the Church on human sexuality. Their document in no way contradicts traditional teaching. But the bishops do acknowledge that not everyone is able, or wishes to, live in accordance with the way of life proposed by the Magisterium. In such circumstances, where risk of infection exists, and living a chaste life is unlikely, the necessary steps ought to be taken to ensure that greater harm is not inflicted on others.

This publication by the US bishops generated widespread reaction; some of the most outspoken criticisms were voiced by individual US bishops themselves.⁴⁷ I do not wish to dwell on the reception of “The Many Faces of AIDS”, but some responses are worth noting. Cardinal Ratzinger wrote a letter responding to the document which is useful in indicating the varied reactions with which it was met.

Cardinal Ratzinger dismisses the use of condoms in circumstances where one person is HIV positive. Indeed he seems to agree with the suggestion that the cause of the AIDS crisis lies in sexual permissiveness. The Cardinal quotes from an article which appeared in *L'Osservatore Romano*. “To seek a solution to the problem of infection by promoting the use of prophylactics would be to embark on a way not only insufficiently reliable from the technical point of view, but also and above all, unacceptable from the moral aspect. Such a proposal for ‘safe’ or at least ‘safer’ sex – as they say – ignores the real cause of the problem, namely, the permissiveness which, in the area of sex as in that related to other abuses, corrodes the moral fibre of the people.”⁴⁸ Although these are not Cardinal Ratzinger’s own words, he does not reject these arguments, which suggests agreement with the sentiments expressed.

Cardinal Ratzinger also questions the US Bishops’ use of the principle of toleration, since he believes their statement does not represent an instance of toleration of evil, but rather the “facilitation of evil”. As such this is active participation and cannot be

⁴⁷ For some of these reactions see “Reaction to AIDS Statement”, *Origins*, vol.17, no.28 (December 24, 1987), p.489-493.

⁴⁸ Cited in Cardinal Ratzinger’s letter on the US bishops AIDS document. For the text of this letter see *Origins*, vol.18, no.8 (July 7, 1988), p.117-118.

described as “toleration” because toleration implies something passive. This point is later taken up by James Keenan who thinks that traditional principles concerning cooperation in wrongdoing would more accurately justify the bishops’ stance on this matter. By invoking this, Keenan believes their stance on condoms is legitimate, a view, presumably, not shared by Cardinal Ratzinger.

On the issue of educational programmes in Catholic schools, Cardinal Ratzinger goes on to say that, “[t]hese facilities are called to provide their own contribution for the prevention of AIDS in full fidelity to the moral doctrine of the church, without at the same time engaging in compromises which may even give the impression of trying to condone practices which are immoral, for example, technical instructions in the use of prophylactic devices.”⁴⁹ Ratzinger’s description of prophylactic devices as “immoral” is questionable. Indeed it will be argued later that the use of such devices in this context is not necessarily immoral, and does not compromise traditional teaching on sexual ethics. Cardinal Ratzinger’s comments here reflect the sentiments of many others who believe that the use of condoms during sex can never be justified regardless of the circumstances.

In expressing this viewpoint some people have made astonishing statements. For example, Bonifacio Honings, a Dutch moral theologian for the Congregation for the Doctrine of the Faith said that even if a husband is infected with HIV the use of a condom to prevent transmission can never be justified. The husband has no right to demand sex from his wife since he would be endangering her life. However, the wife may consent to

⁴⁹ *Ibid.*, p.118.

unprotected sex in order to avoid a worse thing happening – her husband being unfaithful and committing adultery. This appears to carry the extraordinary implication that the life of a spouse may be jeopardised in order to avoid a sin against marriage by the other spouse.⁵⁰

The statement “Called to Compassion” by the US Bishops was written largely because of the reaction to “The Many Faces of AIDS”. Several bishops disagreed with its contents, particularly sections concerning public health programmes and the use of prophylactics. Consequently, this later document, it was hoped, would redress some of the difficulties which emerged from the earlier statement. “Called to Compassion” is certainly more reserved in tone, and one gets the impression that the intention here was to restore the status quo on several matters.

There are moments where the social and economic conditions influencing the spread of HIV/AIDS are recognised: social conditions “like poverty and oppression, and psychological factors like loneliness and alienation, can strongly influence people’s decisions to behave in ways which expose them to the AIDS virus”, (“Called to Compassion”, p.423). Later we read that “HIV/AIDS is not only a biomedical phenomenon but a social reality rooted in human behaviour. It is a product of human actions in social contexts. The actions and their circumstances are shaped by larger cultural and social structures”, (“Called to Compassion”, p.425). But the implications of these considerations are left undeveloped.

⁵⁰ Cited in Keenan and Fuller, “Condoms, Catholics and HIV Prevention”, *The Furrow*, vol.52, no.9 (September 2001), p.463.

The bishops re-state the importance of chastity and traditional sexual norms concerning marriage. In relation to the use of prophylactics, one notices a far more reserved analysis than in "The Many Faces of AIDS". For example, the bishops here condemn the notion of "safe sex". They say that this kind of approach to HIV prevention compromises human sexuality and leads to promiscuity. Rather than controlling rates of infection, the bishops say that condoms instead lead to increased spread of HIV/AIDS. "The use of prophylactics to prevent the spread of HIV is technically unreliable. Moreover, advocating this approach means in effect promoting behaviour which is morally unacceptable. Campaigns advocating 'safe/safer' sex rest on false assumptions about sexuality and intercourse. Plainly they do nothing to correct the mistaken notion that non-marital sexual intercourse has the same value and validity as sexual intercourse within marriage", ("Called to Comapssion", p.429). They reiterate the point that condoms do not provide a remedy for this "health problem", but rather insist on appropriate attitudes and behaviour towards human sexuality as the solution. Unlike "The Many Faces of AIDS" there is no consideration given to whether or not prophylactics may be used, even as a "lesser evil".

The overall tone of this statement is more conservative than what we find in the 1987 document. There appears to be less room for compromise or discussion than in the "Many Faces of AIDS". In this sense it seems more defensive and provides less scope for debating the AIDS epidemic and the challenges it poses.

7.4 The French Bishops

In 1996 the Social Commission of the French Bishops' Conference produced a 235 page document entitled *SIDA: La société en question*.⁵¹ Its publication immediately attracted widespread attention. Press statements and media coverage suggested that this publication represented a major shift in official Church teaching on condoms. Much commentary focused on the section written by Bishop Albert Rouet of Poitiers, president of the commission. As he later explained in interviews, the media confined its analysis and conclusions to one area of the document, and its coverage of the points here was excessive. Yet many believed this publication represented a contradiction of official teaching on contraception.⁵²

A number of facts must be noted at this stage. First, there exist several sections within this document. The first is based on the work by experts in this field – doctors, counsellors and so forth. The following section contains personal responses by people affected by HIV/AIDS. Included here are accounts from a nurse, a chaplain, a homosexual who is HIV positive, and relatives of others infected. There is then an analysis of the way the Church and other institutions have responded to the crisis. Section Five is written by a lay theologian, Xavier Lacroix. Section Six is written by Mgr Albert Rouet, while the final section contains a statement by the Social Commission of the French Bishops. Technically it is only this part of the document which is officially

⁵¹ Commission sociale de l'épiscopat (Albert Rouet, président), *SIDA: La société en question*, (Paris: Bayard Editions/Centurion, 1996).

⁵² See for example, "French bishops ease ban on condoms", *British Medical Journal*, vol.312, (February 24, 1996), p.462, or "French Bishops: Condoms OK", *The Associated Press*, (February 12, 1996), where we read, "Contradicting Vatican doctrine against artificial birth control, the French Bishops [*sic*] Conference said on Monday that the use of condoms is necessary to prevent AIDS from spreading".

binding on the French Bishops. However it was the sections by Lacroix and Rouet which received the greatest reaction.

As the title suggests, the overall emphasis is concerned with the social dimensions of AIDS. The main theme is that there is something fundamentally wrong within society which is affecting the spread of HIV/AIDS and responses to the crisis. Thus, the epidemic must be understood as something more than a sexual problem – the social factors also deserve examination. In the introduction we read that AIDS is a social event or phenomenon which reveals the problems within society. It challenges both citizens and Churches to reflect upon the notion of man which has developed, and calls for collective responsibility in overcoming the pandemic.⁵³ The emphasis is very much on the social and collective dimensions of the disease, rather than approaching it solely as the consequence of individual behaviour. Thus, AIDS reveals the problems and shortcomings of society. “Each day AIDS opens our eyes a little more to the world of drug addiction and homosexuality, to the reality of prostitution, the misery in jails, the degradation of countries in the South.”⁵⁴

The document continues by acknowledging the failed response within many Third World countries, as well as the failure of Developed Countries in their relations with less developed nations. The many political and economic difficulties which countries in the

⁵³ *SIDA: La société en question*, p.13. “En effet, le sida est un fait social qui met en cause des comportements collectifs et révèle des dysfonctionnements dans notre société. Il est un défi à tous les citoyens, un défi aux Églises, <il oblige à réfléchir à la conception de l’homme que nous voulons élaborer. Il conduit à l’heur d’un choix qui est de notre commune responsabilité>”.

⁵⁴ *SIDA: La société en question*, p.27. “Le sida nous ouvre chaque jour un peu plus les yeux sur les milieux de la toxicomanie et de l’homosexualité, sur la réalité de la prostitution, la misère carcéral, la dégradation des pays du Sud”. (Trans. mine).

South face assist the spread of the disease.⁵⁵ Later we read that although France is the country most affected by AIDS within Europe, this compares little to the crisis within Developing Countries. Greater efforts must be made both within France and within other countries to educate and inform people, to prevent further infections, as well as to support those affected.⁵⁶

Furthermore, because of the social dimensions affecting the spread of HIV/AIDS, sexual activity cannot be viewed in isolation. One must consider not only the sort of activity that contributes to infection, but also the social structures which underlie this activity. "In effect 'sexuality is not solely concerned with the more intimate aspects of personal life, it concerns all sectors of the social life, economic and political, which conditions it' ".⁵⁷ In the course of this thesis we have seen how the social and economic realities within countries, especially poorer nations, play a direct role in the spread of HIV/AIDS. Efforts at prevention must also incorporate this understanding into proposed strategies if they are to be effective. The point raised here by the Social Commission is very important. It recognises that sexual activity cannot be divorced from the socio-economic factors which may influence this activity.

⁵⁵ *SIDA: La société en question*, p.29. "Le sida révèle aussi l'échec des pays du tiers monde et notre échec par rapport à eux; eux qui ont à faire face à tant de difficultés politiques et économiques se trouvent affrontés à une pandémie en constante expansion."

⁵⁶ See p.43. "En Europe et plus précisément en France, le virus du sida accentue les multiples fractures de notre société. La situation dans les pays du tiers monde est dramatique. Ici et là-bas des personnes souffrent, ici et là-bas des <communautés ignorées> ont besoin de l'aide des communautés organisées. En France et dans le tiers monde, un effort d'information, de prévention et de soutien est à poursuivre sans relâche".

⁵⁷ *Ibid.*, p.45. "En effet <la sexualité ne concerne pas seulement les aspects les plus intimes de la vie personnelle, elle concerne tous les secteurs de la vie sociale, économique et politique, comme elle est conditionnée par eux>".

It is encouraging to see this so clearly recognised by the Social Commission. It shows a deeper understanding by the Commission of the underlying conditions which influence the spread of HIV/AIDS. Many of the social concerns raised within this document are of central importance when discussing the epidemic. Despite this, considerable media attention focused instead on statements concerning condoms, and some of these important issues were overlooked or ignored. Much of the attention concerned Sections Five and Six of the publication.

Section Five, written by Xavier Lacroix, discusses among other things, the role of responsibility. He says that remedies which suggest that condoms are the only way to prevent the spread of HIV/AIDS are inaccurate and omit two other important ways of controlling the spread of infection, namely limiting the number of sexual partners and abstinence. However, condoms do have a part to play when incorporated into a wider approach to prevention. Lacroix, it seems, is not opposed to condom use as a means of prevention, but to their promotion as the only means of prevention. "It is this *trilogy* – condoms, limiting the number of partners, abstinence – which offers a balanced and coherent message . . . Opposing condoms with fidelity . . . is pointless. In this regard, total or exclusive discussions impact little and may have the opposite effect . . . Presented as the *minimum preventative means necessary*, condoms must be seen as the first step towards responsibility."⁵⁸

⁵⁸ *SIDA: La société en question*, p.156. "C'est cette *trilogie* – préservatif, limitation du nombre de partenaires, continence – qui offre un message équilibré et cohérent . . . Opposer le préservatif à la fidélité, ou l'inverse, est vain. À cet égard, les discours totalisants ou exclusifs . . . sont de peu de portée et peuvent

In his discussion of the AIDS epidemic in Section Six of the document, Rouet makes some valuable comments. He reiterates the collective or social dimension of AIDS. For example, he says that condoms are presented as providing an individual solution to the crisis, while insufficient attention is given to the social problems which actually facilitate the spread of HIV/AIDS. "In the same way that our society wants to eliminate unemployment while protecting the system which created unemployment, so it thinks of overcoming AIDS by measures dependent on the individual without changing the ways of life which favour transmission".⁵⁹ Thus, Rouet recognises that efforts directed solely at individual behavioural change are only part of the solution. The wider social factors influencing this behaviour in the first place need to be addressed. Furthermore, in relation to medical treatments and the development of a cure for AIDS, Rouet explains that such remedies would not replace the social and material factors which favour the spread of the disease⁶⁰, again emphasising the need to tackle the more fundamental reasons for infection.

Later Rouet says that, "many competent doctors assert that a good quality condom is at present the only method of prevention. In that respect, it is necessary . . . Those responsible for public health, legitimately worry about the spread of AIDS and the cost of care, support this use [of condoms]. The Church, suspected of being totally opposed to

avoir des effets pervers. . . Présenté comme le *minimum préventif nécessaire*, le préservatif doit être reconnu comme une toute première étape de responsabilisation." (Trans. mine).

⁵⁹ *SIDA: La société en question*, p.185. "De même que notre société veut éliminer le chômage en gardant le fonctionnement qui a provoqué ce chômage, elle pense vaincre le sida par des mesures dépendant de la personne sans changer les représentations de la vie qui en favorisent la transmission." (Trans. mine).

⁶⁰ *Ibid.*, p.186.

them, sees itself accused of working for death.”⁶¹ It was widely thought that this represented a change in official teaching on AIDS and a more open attitude towards the question of condoms.

However, Rouet almost immediately reiterates that responses based solely on individual behaviour, and solutions such as the use of condoms for prevention, fail to incorporate the wider social dimensions of the pandemic. For this reason, promotion of condoms alone will not provide an adequate solution to the crisis. “As we have already remarked, individual prevention does not respond to social difficulties . . . To think that a generalisation about condoms removes all the risks, is to take the consequences without examining the causes and conditions for the spread of AIDS. The response is insufficient.”⁶² Rouet also examines attitudes within society regarding sexuality and rejects the idea that condoms have made sex “risk-free”. In the area of sexuality it has become “normal” to have many partners and a variety of relationships. Responses emerging from this view of sexuality are incorrect, Rouet believes.⁶³ He explains that the most important aspect of a relationship lies not with the number of partners one has, but rather with the quality of that relationship. Responsibility is not limited therefore to individual protection, but entails recognising the other’s equality and dignity.

⁶¹ *SIDA: La société en question*, p.191-192. “Beaucoup de médecins compétents affirment que le préservatif de qualité fiable est actuellement le seul moyen de prévention. À ce titre, il est nécessaire . . . Les responsables de la santé publique, légitimement inquiets devant l’expansion du sida et le coût des soins, soutiennent cet usage. L’Église, suspectée d’y être totalement opposée, se voit accusée d’œuvrer pour la mort.” (Trans. mine).

⁶² *Ibid.*, p.192. “Comme nous l’avons déjà remarqué, une prévention individuelle ne répond pas aux difficultés sociales . . . Penser qu’une généralisation du préservatif enlèvera tous les risques, c’est s’en tenir aux conséquences sans examiner les causes et les conditions de l’expansion du sida. La réponse est ici insuffisante.” (Trans. mine).

Nevertheless, Rouet does acknowledge the role condoms may play where individuals are intent in engaging in high-risk sexual activity and therefore need to avoid the serious risks associated with that activity, though he does also insist on the importance of educating people towards a mature adult sexuality.⁶⁴ Thus, although he acknowledges the possible role of condoms in some circumstances, Rouet makes it clear that their use is not necessarily the best or only course of action.

In conclusion, Rouet says that AIDS is something which needs to be addressed by all the Churches. Supporting those infected with HIV/AIDS is a matter of justice. Rouet acknowledges that many regions do not have the necessary social and medical structures to tackle the crisis. Again the emphasis is on the social aspect of this problem. To suggest, as some media coverage did, that Rouet is concerned only with condoms and their effectiveness as a means of prevention, overlooks the many other points he makes about the social and cultural aspects of the epidemic. His contribution moves discussion beyond the realm of condoms alone, and is very much concerned with the social nature of the disease.

The next section of the publication was written by the French Commission where one finds no reference to condoms, and the Commission was bound only by this final declaration. Nevertheless, it is significant that a publication by the Social Commission of the French Bishops discussed these areas with honesty and clarity, even where the entries were not the direct work of the Commission itself.

⁶³ *SIDA: La société en question*, p.192.

⁶⁴ *Ibid.*, p.194.

This publication by the Social Commission is an important document. While the role of condoms as a means of prevention is referred to, the main emphasis is on the social factors influencing the spread of HIV. The Commission makes it clear that solutions such as the promotion of condom use which focuses on the individual, are in themselves insufficient. Condoms may be part of the short-term solution, but deeper social issues must also be tackled. Abstinence, fidelity within marriage, and a more adult understanding of sexuality must be encouraged. Although this publication obviously concentrated on AIDS in France, much of what it had to say on social matters is applicable to other countries, and it is significant that the Commission did not confine discussion to matters of condom use, but rather was willing to explore the deeper social ills which contribute greatly to the problem.

7.5 Evaluation

Having examined some of the responses to the AIDS epidemic by various Bishops' Conferences a number of comments can be made. For example, in the case of the Southern African Bishops statements, their 1990 pastoral statement discusses AIDS predominantly in terms of sexual ethics. It is disappointing that closer attention was not given to the social factors affecting the spread of HIV/AIDS since, as is now widely acknowledged, they are a major aspect of the pandemic. In particular, poverty and the economic plight of South Africans needed much closer attention. It seems too simplistic to argue for a change in sexual habits as a means of curbing the spread of HIV when so many live in dire poverty and in conditions which contribute to the spread of the virus.

We saw in earlier chapters how poverty drives many to adopt “survival strategies” in order to live. The system of migratory labour in South Africa is an example of this, as is prostitution. In such circumstances the rate of transmission increases rapidly. Therefore, sexual practices cannot be separated from the social and economic circumstances in which people find themselves. The document would have benefited from closer examination of these realities and an acknowledgement of their importance for an adequate examination of the crisis in South Africa. In addition, rather than speaking only of “sexual sin” as is the case in this document, it would have perhaps been better to speak of the sinfulness of poverty, and of the duty to address injustices within society immediately.

In the light of such considerations it could be said that the Southern African Bishops’ 1990 document focused too closely on the sexual ethics aspect of HIV/AIDS in South Africa. Perhaps because AIDS was only becoming a serious problem at the time, and its larger implications not yet thought through, the more complex issues surrounding HIV/AIDS were not mentioned in the detail they deserved. Earlier in the thesis it was shown why HIV/AIDS in South Africa, or indeed other Developing Countries, needs to be seen and discussed in much broader terms. This document would have been more credible and of greater use had it explored more deeply some of these issues also.

The more recent SACBC statement entitled “A Message of Hope” also raises a number of questions. Some might query the bishops’ arguments in places. For example, they state that the use of condoms goes against human dignity, but they fail to explain

why this is the case. One could argue also that the maintenance and promotion of human dignity must surely include ensuring the health and well being of the person. In addition, their claim that condom use transforms an act of love into an act of selfish pleasure seems far too general. As some moral theologians have pointed out, it is difficult to see how one can make a moral judgement about an act without concomitantly considering the intention and circumstances.⁶⁵ And a strong argument can be made that the use of a condom where one person is infected with the virus is in fact a responsible act, to the extent that condom use reduces the rate of transmission. Abstinence is highly unlikely to provide a realistic alternative for many who live in extreme poverty and depend on commercial sex to survive. Responsibility in these circumstances means ensuring to the best of one's ability that the virus is not passed on to another.

As with the 1990 statement, there is a one-sided emphasis here on the sexual ethic dimension of the AIDS epidemic in South Africa, and there is little apparent understanding of the social conditions which render the values and suggestions expressed virtually impossible to implement, even where people wished to do so.

We saw in *Economic Justice in South Africa: A Pastoral Response* that the Southern African Bishops do deal with issues such as poverty. But this is dealt with as a matter in its own right. This is not a criticism since poverty and inequality need to be addressed. The problem arises, however, when attention turns to HIV/AIDS. It seems that this matter is dealt with solely in terms of sexuality. However, the epidemic is far

⁶⁵ See, for example, J. Fuchs, "The Absoluteness of Moral Terms", in Charles Curran and Richard McCormick, *Readings in Moral Theology No. 1*, (New York: Paulist Press, 1979), p.94-137.

more complex than that and its discussion must also include the economic and social ills within society which contribute to its spread. The 1990 statement therefore is disappointing owing to the narrow discussion of the epidemic. Until analysis of HIV/AIDS in South Africa becomes more inclusive and focuses on the many injustices aiding the rate of infection pastoral statements of this nature will not be a “message of hope”.

In a statement responding to the Bishops’ publication, the Sisters for Justice in Johannesburg raised some important points.⁶⁶ They begin by drawing attention to certain phrases used in the document which would suggest that “Message for Hope” is directed to people in a stable and loving relationship. In reality a great number of people do not find themselves in relationships of this nature. They say, “[p]hrases in the bishops’ statement such as ‘the beautiful act of love’ and ‘equal and loving partners’ indicate to us that ‘Message of Hope’ is directed to people in fairly healthy and stable marriage relationships. It is not clear that the statement is equally directed to people (usually women) in abusive, oppressive or desperate relationships or circumstances and who are very much at risk of being infected by HIV.”⁶⁷ It is important to ensure the teaching or advice on such matters adequately reflects the reality in which so many find themselves. It is clear that pastoral statements which deal with the problem in this way offer little to millions who are living in extreme poverty. Later the Sisters for Justice state that it seems “unreasonable and unjust to insist that people in desperate straits should adhere

⁶⁶ See Sisters for Justice, “Condoms as a lesser evil”, *The Tablet*, (August 25, 2001), p.1218-1219.

⁶⁷ *Ibid.*, p.1218.

absolutely to standards which describe the morally correct response of people living in fully human situations and conditions.”⁶⁸

They here defend the belief that use of condoms for the purpose of preserving life is morally defensible, and they invoke the principle of double effect to illustrate this. Without going into the specific application of the principle, they believe its use illustrates how it is morally permissible to use a condom where the primary aim is to prevent the transmission of a deadly disease, even though a secondary consequence is the prevention of conception. Furthermore they say that although the Church has emphasised the immorality of sexual activity outside marriage since it violates the principle of chastity, this wrong is compounded if people engage in unprotected sex, since the value of justice is also then violated. In these circumstances they say that the principle of the lesser evil could be invoked to justify condom use.⁶⁹ “The principle does not diminish the sin against chastity but is concerned that another evil is not added to the moral wrongfulness of the action. If either person is infected, the decision to use the condom shows some measure of responsibility, according to the principle of the lesser evil.”⁷⁰

It is clear here that the Sisters for Justice are employing traditional Catholic principles to legitimise the use of condoms in circumstances of HIV prevention. Although this is helpful to the debate, using these principles presupposes that one is talking about an “evil” or a “lesser evil”. It implies that one is discussing activity which

⁶⁸ Sisters for Justice, “Condoms as a lesser evil”, p.1219.

⁶⁹ *Ibid.*, p.1219.

⁷⁰ *Ibid.*, p.1219.

is morally questionable. This is something I will discuss in due course, and I do not wish to go into it at this point. Suffice to say now that the application of these principles to the issue of condom use, while helpful to some extent, imply that one is dealing with activity which is negative and morally suspect. It will be argued that the use of condoms where one person is HIV positive should not be seen in this way, and principles which describe their use as a “lesser evil”, for example, enforce a view which sees this activity as immoral.

Finally, the Sisters for Justice make the important point that the AIDS crisis is about much more than condom use. “It is about the kind of Church we would like to be as we reach out in compassion, as disciples of Jesus, to those who are in mortal danger and have no other means of protecting themselves . . . It is about the ongoing injustice, violence and discrimination against women . . . It is about whether we attach more importance to defending the Church’s ethic of sexuality or to defending lives.”⁷¹ The epidemic challenges us as Church to respond in a way that is realistic and hopeful to those infected with, and affected by, HIV/AIDS.

If we turn our attention now to Bishop Slattery’s book, we see that he approaches the epidemic along the same lines as the Bishops’ Conference. Bishop Slattery emphasises that the crisis must be seen on terms of sexual immorality, and solutions must be based on behavioural change in keeping with Catholic sexual ethics. Given the many serious social and economic problems within South Africa, it is difficult to understand

⁷¹ Sisters for Justice, “Condoms as a lesser evil”, p.1219.

how the AIDS crisis can continue to be seen simply in terms of sexual immorality, and the prevention of further spread seen in terms of behavioural change.

No detailed attention is given by Bishop Slattery to the socio-economic factors contributing to the crisis in South Africa, or to the impact of sexual violence on transmission rates. I am not suggesting that behavioural change is not necessary to curb infection rates. It is obviously very important in this respect. However, it remains the case that poverty, economic destitution, and violence against women make a call to behavioural change by itself an unrealistic solution at present. The deeper social and economic injustices which underlie people's sexual behaviour must be tackled before we can speak realistically about a change in people's sexual behaviour. It is also disappointing that the Bishop applies the terms "sin" and "immorality" only to the sexual activities of people. It is often the immorality of poverty which forces people to engage in high risk sexual activity. Thus, rather than judging and condemning the sexual behaviour of people, it would be better to criticise the injustices often underlying that behaviour.

If we return to the French Bishops' treatment of the AIDS epidemic, we see that their publication contains an inclusive and honest analysis of the crisis. The purpose of the book was to highlight the social dimensions of AIDS, and they discuss throughout the many social and economic factors contributing to the spread of the disease. The social consequences are also stated. It is therefore disappointing that this positive feature was overlooked in much of the media reaction. Considerable reaction to this document was

concerned with its treatment of condoms, while many other important items raised throughout were ignored. The Social Commission's publication is extremely important since it discusses the deeper social causes for infection, and states in many places the need to overcome social and economic problems as a means of tackling AIDS.

The French Bishops offer a more recent analysis of the AIDS pandemic, and their document is significant because it examines not only issues of sexuality and condom use, but also the social and cultural influences which are an integral part of the problem. It is interesting that recognition of this relationship occurs in this document and forms the basis of the French Bishops' assessment of the crisis.

Chapter Eight

The Response of Moral Theologians

8.1 Introductory

Having examined some of the responses by the South African Bishops and other Bishops' Conferences, I now wish to discuss the response by moral theologians to the pandemic. I will concentrate on the work of two theologians, James Keenan and Kevin Kelly whose contributions are perhaps best known among English speaking moral theologians.

8.2 James F. Keenan, S.J

In a number of articles¹ Keenan seeks to show how, by employing traditional moral principles, it is legitimate to use condoms as a means of HIV prevention. His views are perhaps best outlined in the article "Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles", where he comments on the US Catholic Bishops' document, "The Many Faces of AIDS: A Gospel Response". Here Keenan uses the principles governing cooperation in the wrongdoing of others to demonstrate the legitimacy of using condoms as a preventative means to curb the spread of HIV/AIDS.

¹ See James F. Keenan, S.J., "Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles", *International Philosophical Quarterly*, vol.29, no.2 Issue no.114 (June, 1989), p.205-220, "Applying the Seventeenth-Century Casuistry of Accommodation to HIV Prevention", *Theological Studies*, vol.60, (1999), p.492-512, "Institutional Cooperation and the Ethical and Religious Directives", *Linacre Quarterly*, vol.64, (August, 1997), p.53-76, James F. Keenan and Jon D. Fuller, "Condoms, Catholics and HIV/AIDS Prevention", *The Furrow*, vol.52, no.9 (September, 2001), p.459-467, Fuller and Keenan, "Introduction: At the End of the First Generation of HIV Prevention", in *Catholic Ethicists on HIV/AIDS Prevention*, (New York: Continuum, 2000), p.21-38.

With “The Many Faces of AIDS” in mind, Keenan discusses the principle of cooperation², and its application to the use of condoms for purposes of disease prevention. In the US Bishops’ statement the principle of toleration is used to justify their stance. However, in order to justify their position more accurately, Keenan believes that the principle of cooperation is needed instead. He says that although the principle of toleration can be used in relation to what the bishops say about educational programs, it cannot be accurately applied to the case of counselling individuals.

Keenan explains that given the regrettable situation created by AIDS, the bishops do not oppose educational programs which may include information about prophylactics. But the bishops also use the principle of toleration to justify counseling people who have the virus, or who may be at risk of infection. In these circumstances they believe that the principle of tolerating the lesser of two evils applies because if an agent is unable to observe abstinence, then he/she should be counselled to avoid causing greater harm.³

Keenan explains that when speaking of the educational programs on AIDS, the bishops are tolerating information about prophylactics. Thus, the object of the bishops’ toleration is not the activity that prompts the establishment of these programs; rather given the activity, they seek to limit the actual physical effects of the immoral activity. Consequently, they tolerate not an intrinsic evil, but rather educational programs which

² Keenan uses the term “principle of cooperation”. In reality several principles govern cooperation in the wrongdoing of another. For convenience I will continue to follow Keenan’s usage, although the term “doctrine of cooperation” would perhaps be more accurate.

³ See Keenan, “Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles”, p.206.

include information about prophylactics.⁴ Therefore, when the bishops speak about certain educational programs which include information about prophylactics, it is clear that they are not promoting or condoning in any way the use of condoms, but tolerate programs which include information about prophylactics as a means of limiting the harm which could occur were this information not available, and where efforts to promote abstinence have failed.

For Keenan, however, the applicability of the principle of toleration within the document ends here. He believes that in order to justify what the bishops say at other times in the document, most notably in relation to the counselling of individuals, the principle of cooperation is needed instead. This is because the bishops move from the institutional level to the personal level. They now address individuals, not institutions or programs. For Keenan this is where the applicability of the principle of toleration ends. The reasons for this are two-fold.

First, the letter is no longer addressing institutional activity but is referring instead to the individual. As a result an apparent remoteness found in the first instance where they speak of educational programs is no longer evident. The bishops are now speaking to individuals, and the advice given to minimise harm or danger is at a personal level. As Keenan says, “[t]he bishops’ permission of Church members to give such advice is not an extension of toleration. Permission is the form of toleration, but it does not extend to advice. To tolerate is to detach oneself from opposition or to permit. To advise,

⁴ Keenan, “Prophylactics, Toleration, and Cooperation . . . , p.206.

however, is a positive action which assists. Because assistance is a positive action, it is not a form of toleration, but of cooperation.”⁵

Second, in the case of counselling individuals the bishops are now speaking on a personal level, and since their involvement is now greater, it cannot be a case of toleration. “Because the bishops have no effective control over those persons who will not exercise abstinence, the stance of toleration has no more meaning than the statement ‘I will tolerate the sun’s rising’”.⁶ The argument here is somewhat difficult to follow, but I will attempt to make it clear. Keenan is concerned with the degree of remoteness involved. In the case of counselling someone who is intent on participating in high-risk activity regardless of advice given, one is talking about the activity of someone that cannot be controlled. Therefore, one must instead try to limit the harm caused by the agent’s actions. This requires involvement or participation, and so it cannot be a question of toleration.

For these reasons Keenan argues that the principle of toleration, which the bishops used to justify their stance in “The Many Faces of AIDS”, can only be used where they speak of educational programs. When advice moves to the personal level, Keenan believes the principle of cooperation must be applied instead, since the bishops have moved away from a remote, detached position, to one which is participatory and involves positive action.

⁵ Keenan, “Prophylactics, Toleration, and Cooperation . . .”, p.206-207.

⁶ *Ibid.*, p.207.

It may be helpful at this point to look briefly at the principle of cooperation itself. Keenan explains that when examining this principle, and whether or not an act of cooperation is licit, one must consider five conditions or distinctions.⁷

The first distinction is between formal and material cooperation. Formal cooperation is always wrong. Here one assents or agrees with the evil intention of the person performing the action. In other words, the cooperator agrees with the actions of the wrongdoer. As Jorge J. Ferrer, S.J. explains, “[f]ormal cooperation implies assistance or cooperation that is a clear participation in the evil *intention* of the main agent. Usually authors say that formal cooperation implies an approval of the main agent’s sin. It could happen through an interior approval of the evil action or through a contribution that, by its very nature, represents such an approval.”⁸ Material cooperation, on the other hand, implies assistance in an act of wrongdoing without approving that act. This form of cooperation can be justified in certain circumstances. A person becomes involved in the action without having the same intention as the evildoer. Intention is the key factor when distinguishing between formal and material cooperation.

As regards material cooperation a second distinction can be made. The distinction now concerns the action itself, rather than the intention as in the previous instance. Material cooperation can be divided into immediate and mediate cooperation.

⁷ On this point see Keenan, “Institutional Cooperation and the Ethical and Religious Directives”, p.58-59, or Keenan, “Cooperation, Principle of”, in Judith A. Dwyer, (ed.), *The New Dictionary of Catholic Social Thought*, p.232-235.

⁸ See Jorge J. Ferrer, S.J., “Needle exchange in San Juan, Puerto Rico: A Tradition of Roman Catholic Casuistic Approach”, in James F. Keenan and Jon D. Fuller, (eds.), *Catholic Ethicists on HIV/AIDS Prevention*, (New York: Continuum, 2000), p.186.

Mediate cooperation implies that a person/institution is not directly involved in the wrongful activity. Immediate cooperation, on the other hand, means that the activity of the cooperator is the same as the activity of the wrongdoer. It involves collaboration in the evil act itself. It has been argued that some instances of immediate cooperation are allowed, but only in cases of duress.⁹ Mediate cooperation, on the other hand, has been allowed by the tradition, but here it is necessary to establish whether cooperation is proximate or remote. One must remain as detached or remote from the activity in question as possible. Thus, the more remote and less proximate the better.

The fourth condition, Keenan explains, requires that the reason for cooperation must be serious.¹⁰ Cooperation “is not invoked to simply promote something, but rather to protect something that is endangered. Thus, in the majority of cases of legitimate cooperation, either the source of one’s livelihood and/or a particular dimension of the common good is jeopardized.”¹¹ Thus, proximate or remote material cooperation may be justified should a proportionate reason exist.

⁹ Generally immediate cooperation is in practice indistinguishable from formal cooperation, and so can be justified very rarely, if at all. An apparent exception is in cases of duress or constraint. For example, in the case of a woman whose son has been captured and she is forced to take part in a robbery lest her son is killed, we see that her cooperation is immediate but it could not be described as formal since she obviously acting under duress. See Ferrer, “Needle Exchange in San Juan . . .”, p.188, fn.23.

¹⁰ Keenan says that “the reason for cooperating must be serious”, “Institutional Cooperation and the Ethical and Religious Directives”, p.58. He later acknowledges that the tradition has more commonly used the phrase “proportionate reason” to describe this condition. In “Prophylactics, Toleration and Cooperation . . .”, p.216, he uses the phrase “grave reason” when describing this condition. It is suggested here that the traditional term “proportionate reason” is more accurate than Keenan’s terminology, but for convenience I will stay with Keenan’s usage.

¹¹ Keenan, “Institutional Cooperation and the Ethical and Religious Directives”, p.59.

Finally, the question of scandal arises. Scandal may result from our cooperation in wrongdoing, and may lead to some equating our cooperation with approval of that activity. It is important to show that cooperation in wrongful activity does not imply approval of that activity.

These are the main features of the principle of cooperation. Keenan makes some additional comments concerning the principle's use. For example, there is sometimes the tendency to view principles such as cooperation or double effect as permitting principles. Keenan emphasises that the principle of cooperation is not a permitting principle but rather a *guiding* principle. "It provides guidelines for determining to what degree one should cooperate. It is not a 'may I' cooperate principle, rather it is a guide as to 'whether' and 'how much' one should cooperate. We need to get away from the notion that principles permit activity."¹² However, it is clear that doctrines such as double effect or cooperation do in fact permit activity. The point Keenan is trying to make here is that such principles are not intended to justify or legitimise wrongful activity.

Because the principle of cooperation is a guiding principle it must be used in a limited way; that is, it should be used as sparingly as possible. Keenan says that, "[to] cooperate in the wrong-doing of another is something every morally good person regrets. While there may be morally legitimate reasons for cooperation, we must remember that the controlling insight in applying the principle is to cooperate as little as is necessary."¹³ It must also be remembered that a person or institution cooperates in wrongdoing only to

¹²Keenan, "Institutional Cooperation and the Ethical and Religious Directives", p.56.

¹³ *Ibid.*, p.57.

minimise the harm to others. This must be the only reason for cooperation; the principle is not intended as a means of “turning a blind eye” to certain activity. A further point noted by Keenan is that this principle cannot be applied mechanically to all situations, but that its application is the product of careful reasoning; and care must be taken that the principle is not exploited or manipulated in any way.

As mentioned above, Keenan employs the principle of cooperation in support of the stance taken by the bishops in “The Many Faces of AIDS”. To do this it is first necessary to establish the object of the bishops’ positions. It cannot be said that the bishops are promoting illicit sexual activity; this is not the object of their intention.¹⁴ What is their objective?

Their public stance regarding educational programs which provide accurate information about prophylactics cannot be considered wrong in itself. They are simply providing information which is part of the overall factual picture regarding HIV/AIDS. So in relation to the educational programs mentioned, the object of the bishops’ cooperation is to provide information; something not immoral in itself. However, when we move to their position on personal counselling we see that determining the object here is somewhat more difficult.

It is complicated by the fact that many believed that the advice concerning the use of prophylactics implied endorsement of illicit sexual activity. Keenan says that the use of prophylactics in such circumstances in no way promotes or approves this sort of sexual

activity. Illicit sexual activity remains exactly that, whether or not a condom is used. He says that “[a]ctually, the letter is really saying that the use of the prophylactic, not the sexual activity with the prophylactic, is being considered. They are not cooperating with the illicit sexual union, but rather with methods that protect the common good. On this personal level, the bishops require an advisor to invite a person who has the AIDS virus, or is at risk, to live a life of abstinence. But if this advice is not going to be heeded, then the advice to avoid committing a greater harm, even implicit advice to use a prophylactic, does not constitute in itself a morally wrong object.”¹⁵ Thus, Keenan concludes that regarding educational programmes the object of cooperation concerns the provision of accurate information. In relation to counselling individuals the object of cooperation is to give hygienic advice which greatly reduces the threat to the common good.

If we move on to consider whether or not cooperation here is formal or material we see that in both cases, not surprisingly, the bishops’ involvement constitutes merely material cooperation. As we saw above, formal cooperation means that one approves of the evil actions of the other, and is, therefore, always wrong. Material cooperation, on the other hand, means that one cooperates with the other without approving of their action. A justified material cooperation implies that one cannot intend or approve the illicit action. In the case of the bishops, both positions taken in their statement are instances of material cooperation. They clearly and publicly denounce the illicit activity concerned.

¹⁴ On this point see Keenan, “Prophylactics, Toleration, and Cooperation . . .”, p.211 ff.

¹⁵ *Ibid.*, p.212.

On the question of whether the cooperation is immediate or mediate we see that cooperation here is mediate. Cooperation is immediate when the object of the cooperator is the same as the object of the agent of the illicit activity.¹⁶ Keenan explains that “[b]ecause the letter’s position on public education programs and on personal advice are not the same as the object of any sexual union, illicit or not, they are both instances of mediate, material cooperation.”¹⁷ Similarly, on the question of whether the mediate cooperation is proximate or remote, Keenan concludes that it is remote, and we saw above the more remote the cooperation the better. Here, Keenan notes, the bishops avoid becoming too involved in the issue and try to keep some distance. “Despite the gravity of the risk involved in the AIDS problem, the bishops hesitate to draw any closer to the dangerous activity.”¹⁸ When it is asked whether or not there are sufficiently serious reasons for cooperation here, it is obvious that as regards AIDS there are very grave reasons to cooperate. One is cooperating in order to prevent the spread of this disease, and to avoid endangering the common good.

Keenan therefore concludes that both positions taken by the US Bishops in their letter are legitimate. In another article he explains that the bishops were “opposed to the promotion or advocacy of condoms, but when faced with a person who could further spread the disease and whose conduct would not be altered, they tolerated the advice that the patient should use a condom to prevent the spread of the disease. This position allowed the bishops both to resolve the new case [AIDS] and to protect the material

¹⁶ Keenan, “Prophylactics, Toleration, and Cooperation . . .”, p.216.

¹⁷ *Ibid.*, p.216.

¹⁸ *Ibid.*, p.216.

principle that sex is illicit outside of marriage. It was a typical casuistry of accommodation, the same one used on nuclear deterrence.”¹⁹

Keenan’s use of the principle of cooperation is helpful for discussions on the condom debate. He shows that the use of condoms in certain circumstances, and the availability of information concerning their use, need not contradict traditional teaching on certain sexual matters. In fact, by employing principles such as toleration or cooperation one employs methods from the tradition which have been invoked by the Church on many other issues.

In a letter to *The Tablet*, Keenan states that “[we] must be careful to interpret our Church teaching so as not to impose burdens on the people of God that Rome never intended. With similar care we should see that raising the condom question does not mean compromising *Humanae Vitae*.”²⁰ He goes on to use the example of English priests who were sent back to England on mission in 1585. They were given a fifty page manual entitled *The Resolution of Cases of the English Nation*. At the end of the preface to this one reads: “The law of the Church can never of itself oblige a man to put his life in danger, because the conservation of life is enjoined by natural law”. Keenan says that “[they] recognised then, as we should now, that a time of crisis requires a responsible understanding of how the law of the Church applies. The methods of applying the law

¹⁹ See Keenan, “Applying the Seventeenth-Century Casuistry of Accommodation to HIV Prevention”, p.502.

²⁰ James Keenan, “Living with HIV/AIDS”, *The Tablet*, (June 3, 1995), p.701.

are not easy, but neither is the crisis. Careful scrutiny of all the factors, including the law's intention, is necessary."²¹

8.2.1 An alternative to Keenan's approach

Such are the main features of Keenan's discussion of this topic. Despite the usefulness of what he says, a number of difficulties emerge. For example, one feature of using principles such as toleration, cooperation or double effect is that there is an implication that the action in question is "evil" or "immoral". By applying these principles to condom use, one suggests that their use is also evil or immoral, even though it may be a "lesser evil" in certain circumstances, and therefore justified. It is suggested here that by using these principles an unnecessarily negative image is cast over the sexual act. Condom use need not always be seen as "evil" or as a "lesser evil". To define something as such one must understand the intention and circumstances surrounding the act, rather than simply focusing on the act in isolation.

An alternative approach is to consider the Three Font Principle. There is one main difference between using the Three Font Principle in this context and the use of other principles such as cooperation. Principles concerning cooperation or toleration imply that moral judgement has already been passed on an act. The question then becomes whether or not it is licit to cooperate in such an act in order to prevent a greater evil occurring. Thus, by applying these principles to condom use one has already placed a question mark over the moral character of the act.

²¹ Keenan, "Living with HIV/AIDS", p.701.

The Three Font Principle, on the other hand, is concerned with matters before one reaches this stage. One has not yet established the morality of the act in question, and so there is no question at this point of cooperating in, or tolerating, an evil action. This is helpful when we turn to condom use during sexual intercourse.

Using the Three Font Principle we see that a complete understanding of human action must take into account three aspects of that action; the intention (*finis operantis*), the act in itself (*finis operis*), and the circumstances. The intention is the internal aspect of an action, and gives meaning to an act. It is also called the end of the agent. The act itself is the external or material aspect – that which we can see and observe. Louis Janssens shows that in discussing these features of an action, St Thomas Aquinas believed that one cannot make a moral judgement on an action alone without also considering the intention of the person performing that action. Janssens outlines in detail Thomas' thoughts on this matter.²² For Thomas, the role of the will is essential for considering human acts. Janssens explains that “the will, as **appetitus ratiōnalis**, is specifically characteristic of the human being and consequently, only the acts which emanate from the will (*actus voluntarii*) are properly speaking *human* acts . . . The agent, consequently, is so essentially related to the structure of the activity that his activity can only be called *human* to the extent that it originates within a thinking and willing subject who is therefore capable of a free act of the will.”²³

²² See Louis Janssens, “Ontic Evil and Moral Evil”, in Charles E. Curran and Richard A. McCormick (eds.), *Readings in Moral Theology No. 1: Moral Norms and Catholic Tradition*, (New York: Paulist Press, 1979), p.40 ff.

²³ *Ibid.*, p.41.

Therefore, St Thomas understood that the human agent is an essential component in evaluating human acts. One cannot separate the two. Selling explains this further.

It is in the 'simple act of the will' that the moral event takes place, whether or not any concrete activity is ever actually done (or omitted). This is what Thomas and Janssens refers to as the '*inner* act of the will'. It helps to explain why our tradition holds that it is possible to 'commit sin' even if one's commitment to carry out an act (e.g., murder) is never realized. The morally determining factor is not the act, the object, or any circumstances as such. It is the commitment of the moral person to something that includes all of these elements and even more: the relation between all these elements.²⁴

Thus, an act-based morality which fails to acknowledge sufficiently the human person would be alien to Thomas' views on this matter.

This is elaborated by Janssens. "[Thomas] reacts sharply against those who are of the opinion that the material event of an act can be evaluated morally without consideration of the subject, of the inner act of the will or of the end. As he sees it, an exterior action considered as nothing but the material event (*secundum speciem naturae*) is an abstraction to which a moral evaluation cannot be applied. This object-event becomes a concrete *human* act only insofar as it is directed towards an end within the inner act of the will. Only this concrete totality has a moral meaning."²⁵

The inclusion of intention and circumstances is therefore essential in order to distinguish the rightness/wrongfulness of otherwise identical material acts. For example, one can say only a limited amount about the physical act of killing without taking the intention of the person into account also. Otherwise one would be unable to distinguish

²⁴ See Joseph A. Selling, "Proportionate Reasoning and the Concept of Ontic Evil: The Moral Theological Legacy of Louis Janssens", *Louvain Studies*, vol.27, no.1 (Spring 2002), p.21.

²⁵ Janssens, "Ontic Evil and Moral Evil", p.49.

between killing in self-defence and murder, since the action taken on its own may appear the same. Incorporating intention into the evaluation allows one to make a moral judgement on a particular action. R. Gula explains that St. Thomas' thought shows how different intentions constitute different human actions. One cannot judge the morality of the physical action without also referring to the meaning of the whole action. This includes the intention of the agent. Intention is part of the objective act, or the act taken in its totality. It is neither a mitigating factor, Gula says, nor an accidental extra; rather it is constitutive of the meaning of the action.²⁶

However, this leads to the question of whether the end (intention) always justifies the means (act). For example, in the case of self-defence, we see that the physical act of killing is morally different to murder, since the intention in self-defence is to protect one's life. But in circumstances where one could disarm the attacker instead of killing him, we see that the means used are not proportionate to the intention. Gula explains this. "We determine whether the physical action is properly proportionate to the intention by considering the action within its *circumstances*. The end and means exist in relational tension to one another and to all the essential aspects which make up the circumstances . . . Only by considering the action in reference to the intention within the total context of its qualifying circumstances can we determine the true moral meaning of the action."²⁷

²⁶ Richard M. Gula, *Reason Informed by Faith: Foundations of Catholic Morality*, (New York: Paulist Press, 1989), p.266.

²⁷ *Ibid.*, p.267.

Traditional Catholic moral theology maintains that all three aspects of the human action must be considered before any moral evaluation of that action can take place.

Selling explains that:

for a *moral* act to be performed it must be *willed* (*voluntas*) by the acting person. What is willed is directed toward an end and in fact determines the moral species of that action. What is important is that the action itself stand in *due proportion* to the end to be achieved . . . [The] primary concern of Thomas is the meaning of the whole of human activity, its content, its circumstances and its end. But just as important are the inner relations of all these elements. It is not enough that one, two, or even all three of them are accounted for. The relation between them must be balanced and the way in which Thomas spells out that balance is with the concept of *due proportion*.²⁸

If we turn to the question of applying the Three Font Principle to the case of condoms and HIV prevention, we see that it can be of considerable assistance to the debate. First, the use of condoms during intercourse cannot be defined as “contraceptive” without determining the intention and circumstances. Should one exclude these two criteria, one is left simply with the act of wearing a condom during intercourse. Intention and circumstances are vital. For example, the circumstances of a married couple where one spouse is infected with HIV is different from the circumstances of a single, uninfected person. Similarly, the circumstances of intercourse where a woman is post-menopausal are different from the circumstances of a fertile woman. It is argued here that in the case of HIV prevention, a condom is used as a prophylactic. The primary intention of using this device is to prevent the transmission of a deadly disease.

²⁸ Selling, “Proportionate Reasoning and the Concept of Ontic Evil . . .”, p.27.

The argument that because contraception is an indirect result of using the condom during intercourse and therefore cannot be permitted does not survive closer scrutiny either. If we look at *Humanae Vitae*, for example, we see that, in the case of the contraceptive pill, it is permissible to use it for a medical reason, i.e. to regulate the cycle or to reduce bleeding. Thus, the physical act of taking the pill is not immoral or evil unless the *intention* is to avoid conception. Regardless of intention and circumstances, the fact remains that the pill renders the woman infertile. It is one result of taking this medication, although not the intended reason for its use. In a similar way this argument can be used in the case of condoms. An unintended consequence may be the prevention of conception, but its intended use is as a prophylactic.

There are also cases where conception is biologically impossible in any case, namely if the woman is post-menopausal or at particular times in the cycle. Where conception is not a possibility, then a device cannot be labelled “contraceptive”. Circumstances are important here. The side-effect of contraception does not occur in these circumstances.

So on the issue of condoms and HIV prevention, we see that the teaching of *Humanae Vitae*, and its interpretation by theologians cannot be said to prohibit the use of condoms in these circumstances. As John Tuohey explains, “one must say that condoms are not contraceptive in the moral sense unless they are used with a contraceptive intention, either as an end or as a means to an end. Generally speaking, the use of a

condom as a specific pattern of behaviour can, but need not be, a way of contracepting.”²⁹

In the case of HIV prevention, the intention of the persons using a condom during the sexual act is to protect the health the other. The main concern, and the intended use of the condom, is the avoidance of infection.

Tuohey questions the current reluctance to recognise this point, and the continued prohibition of condoms during intercourse by many Church officials, regardless of intention and circumstances. He believes this represents a definite inconsistency in moral methodology. Having examined the teaching of *Humanae Vitae*, he says that the use of condoms for HIV prevention is justified and in no way contradicts Church sexual teaching. He writes:

It is here that the question of consistency in methodology emerges. The understanding of *Humanae Vitae* is that the moral character of a contraceptive act is found in the direct intention to impede the coming to be of possible life. The specific pattern of behaviour typified by a condom does not, according to *Humanae Vitae* and the reasoning seen thus far, morally qualify the action. It is a contraceptive intention which morally defines the use of a condom as contraceptive.³⁰

He goes on to say that by using a condom one foresees that conception will be prevented, although this is not the reason for its use. It is, therefore, difficult to see how condoms can be universally defined as contraceptive. To describe them as contraceptive, and as a result intrinsically evil, appears inaccurate.

²⁹ See John Tuohey, “Methodology or Ideology: The Condom and a Consistent Sexual Ethic”, *Louvain Studies*, vol.15, (1990), p.59.

³⁰ *Ibid.*, p.62-63.

So it is clear that inclusion of intention and circumstances is essential before any moral judgement can be passed on the use of condoms during intercourse. To label their use always wrong, fails to appreciate this approach. Joseph Fuchs explains that “an action cannot be judged morally at all, considered purely in itself, but only together with all the ‘circumstances’ and the ‘intention’”. Consequently, a behavioural norm, universally valid in the full sense, would presuppose that those who arrive at it could know or foresee adequately *all the possible combinations* of the action concerned with circumstances and intentions, with (pre-moral) values and non-values (bona and mala ‘physica’). A priori, such knowledge is not attainable.”³¹ It is not possible to say that using condoms is immoral/evil until one has assessed the intention and circumstances surrounding their use. Defining condom use as “intrinsically evil” suggests knowledge of all possible intentions and circumstances. Nowhere is it taught that condoms are “intrinsically evil”. This term is applied to artificial contraception, and as we have seen, to define an act as contraceptive one must consider intention and circumstances. Not all instances of condom use are contraceptive, and consequently, condom use cannot be universally labelled “intrinsically evil”.

If we turn to *Humanae Vitae* once again we see that the importance of intention is acknowledged. In paragraph 14, for example, we read that “there must be a rejection of all acts that attempt to impede procreation, both those chosen as means to an end and those chosen as ends. This includes acts that precede intercourse, acts that accompany

³¹ Joseph Fuchs, “The Absoluteness of Moral Terms”, in Curran and McCormick (eds.), *Readings in Moral Theology No. 1*, p.124.

intercourse, and acts that are directed to the natural consequences of intercourse”.³² The document continues, “it is a serious error to think that a conjugal act, *deprived deliberately [ex industria]* of its fertility, and which consequently is intrinsically wrong [*intrinsece inhonestum*], can be justified by being grouped together with fertile acts of the whole of the marriage”, (HV, n.14. Emphasis added).

In paragraph 15 we also read that, “[the] Church, moreover, does allow the use of medical treatment necessary for curing diseases of the body although this treatment may thwart one’s ability to procreate. Such treatment is permissible even if the reduction of fertility is foreseen, *as long as the infertility is not directly intended* for any reason whatsoever”, (HV, n.15. Emphasis added). It could be argued that the use of condoms as prophylactics, where their intended use is to reduce risk of infection with a deadly disease, is justified using the same reasoning expressed here. One can conclude from the above passages also that *Humanae Vitae* does not condemn outright all activities which may be contraceptive, but rather a contraceptive intention. It condemns actions which directly intend to impede conception, not certain devices or treatments which may indirectly cause infertility.

This line of reasoning is supported by John Finnis and William E. May among others, who say that “[the] moral act of contraception cannot be defined in terms of any specific pattern of behaviour . . . Contraception can be defined only in terms of the

³² The translation used here is by Janet E. Smith. See Janet E. Smith, *Humanae Vitae: A Challenge to Love*, (New Hope Publications). Extracts from this encyclical will hereinafter be referred to as HV, and cited in the body of the text.

beliefs, intentions and choices which render behaviour contraceptive.”³³ What is important for Finnis and May is the intention. Only by considering the intention can one conclude whether or not an act is contraceptive. They say that, “since contraception must be defined *by its intention* that a prospective new life not begin, every contraceptive act is necessarily contralife.”³⁴ Finnis and May note that there may be instances where drugs are taken for medical purposes, with the side-effect of contraception. Also, some treatments for illnesses may render a woman infertile. In these cases it cannot be said that the sexually active woman is choosing contraception, although inability to conceive is a consequence of the treatment.³⁵ This line of reasoning is in keeping with the teaching of *Humanae Vitae*, and clearly illustrates the necessity of including intention in any judgement of an act.

Some theologians such as Tuohey have questioned the inconsistency in methodology which appears to have emerged within moral theology. He says that the importance of intention when defining the moral character of an act cannot be over-emphasised. Intention is part of the reasoning for a ban on contraception. Yet it does not appear to be part of the reasoning for rejecting condoms for the prevention of HIV infection within marriage. Here lies the inconsistency. The reasoning allows it, he explains, but the teaching does not.³⁶

³³ Germain Grisez, Joseph Boyle, John Finnis, William E. May, “ ‘Every Marital Act Ought to be Open to New Life’: Toward a Clearer Understanding”, *The Thomist*, vol.52, (1988), p.369.

³⁴ *Ibid.*, p.370-371. Emphasis added.

³⁵ *Ibid.*, p.369.

³⁶ Tuohey, “Methodology or Ideology . . .”, p.66.

Tuohey believes that when the role of intention is inconsistently applied in moral theology the entire moral enterprise is endangered. One is left with the situation where norms appear arbitrary and make little sense, or else one is left with a tendency towards legalism.³⁷ Either way the process of moral discernment ceases. He suggests that methodology must be consistent if people are to take seriously, and enter into, the process of moral discernment. Where methodology is inconsistent, one is left with what seems more accurately termed “ideology” rather than theology, and both the teaching and mission of the Church, as well as the moral process, is undermined and threatened.³⁸

Tuohey clearly establishes the legitimacy of condom use for HIV prevention. Using the teaching and methodology found in *Humanae Vitae* one realises that this teaching should not prohibit condoms in circumstances of HIV prevention. Intention is critical in moral discernment, a point recognised in *Humanae Vitae*. It is therefore difficult to understand Magisterial teaching, which maintains that condom use is intrinsically evil and consequently cannot be justified for any reasons.

³⁷ Tuohey, “Methodology or Ideology . . .”, p.67.

³⁸ *Ibid.*, p.68-69.

8.3 Kevin T. Kelly

Discussion up to now has been largely confined to matters concerning condoms, and of the use of traditional moral principles which may justify their use in certain circumstances. In relation to the AIDS pandemic, many believe that debates about condom use are outdated. Keenan and Fuller have stated that these discussions should have concluded years ago, and focus now should be on the long-term solutions to the pandemic.³⁹ It has been argued in this work that the fundamental social and economic injustices which are at the core of the crisis need to be tackled before meaningful long-term solutions will be found. It seems that condoms at best provide short-term options for the containment of the disease. Although it has been necessary to deal with the debate concerning condoms, it is hoped that this is not at the expense of our central thesis. From a “traditional” Catholic sexual ethics standpoint there is a tendency to focus on the AIDS crisis in terms of sexual immorality, and the immorality of condom use. However, the pandemic raises questions about the traditional Catholic approach to human sexuality and human relations, as well as broader issues of economic justice and human rights. Kevin Kelly has written about HIV/AIDS with this in mind.

In an article in *The Tablet*⁴⁰ Kelly discusses some of the main issues concerning the pandemic, and from the outset one notices that his treatment is not confined solely to matters of sexual ethics. There is a broader understanding of the economic and social factors which contribute to the crisis. He writes:

³⁹ See Jon Fuller and James Keenan, “Catholic Answers to AIDS”, *The Tablet*, (June 30, 2001), p.943.

⁴⁰ See Kevin Kelly, “Living with HIV/AIDS”, *The Tablet*, (May 13, 1995), p.597-599.

When the pandemic is subjected to social analysis, it becomes clear that some of the more fundamental underlying causes for its rapid spread are to be found in the 'sinful structures' which undergird the global life of our human family. One of these is structural poverty within which many developing countries are imprisoned . . . The other is the implicit denial of the full and equal dignity of women which can render dysfunctional so many dimensions of social, cultural and family life.⁴¹

Kelly then proceeds to explain that these two causes are very often interconnected. Poverty and poor economic opportunities for women may force them to adopt lifestyles which expose them to infection. Poverty also increases women's dependence on men for financial support, and this further increases their vulnerability.

Kelly acknowledges that the spread of HIV/AIDS in Developing Countries can to some extent be attributed to irresponsible sexual behaviour. However, to confine the crisis to this alone misses the wider picture. He believes that certain aspects of the Church's teaching on sexual matters may be part of the problem rather than part of the solution. He says:

It is possible, too, that aspects of Catholic teaching on sexual ethics are part of the problem rather than helping to provide a solution. Time and again I found the credibility of the Catholic Church in this field compromised by the absolute intransigence of its stance on contraception and the translation of this stance by some bishops into outright opposition to any government programmes involving the promotion of condoms. . . . The Church has a most serious responsibility to make sure that its teaching on sexual ethics does not impose burdens on men and women which would, in practice, oblige them to live negatively rather than positively with HIV/AIDS.⁴²

⁴¹ Kelly, "Living with HIV/AIDS", p.598.

⁴² *Ibid.*, p.599.

These themes are explored in more detail in his book, *New Directions in Sexual Ethics*.⁴³ The book focuses mainly on the sexual ethics rather than on the economic dimensions of the problematic, although mention is given to this area also.

Kelly believes that a new approach to the way we think about sexuality is needed, and particularly the way we perceive gender relations and the role of women. He recognises that women are particularly exposed to HIV infection because of their social and economic subordination. He writes, “[in] many of these cultures women, and often their children, become infected with HIV mainly because of their sexual, social and economic subordination. Preventative work based solely on change in sexual behaviour is doomed to failure. Change has to occur at a deeper social level.”⁴⁴ Kelly describes some of the main factors contributing to women’s vulnerability. He talks of the “double-standard morality” often evident in relationships, and he concludes:

In the light of the picture presented above, it would seem unrealistic and even harmful to suggest that the only real solution to the HIV/AIDS pandemic lies in the traditional ‘faithful to one partner’ sexual ethic. That offers no help to many women. For them, what is lacking is the very foundation without which such a sexual ethic is virtually meaningless. As long as their full and equal dignity is not accepted in theory and in practice, many of the norms of this traditional sexual ethic are likely to work against the well-being of these women and may even prove to be the occasion of their becoming infected by HIV.⁴⁵

Consequently, a more person-centred sexual ethic, one which affirms and protects the dignity of women, is essential if Catholic sexual teaching is to respond in a positive way to the lives of many women.

⁴³ See Kevin Kelly, *New Directions in Sexual Ethics: Moral Theology and the Challenge of AIDS*, (London: Geoffrey Chapman, 1998).

⁴⁴ *Ibid.*, p.3.

⁴⁵ *Ibid.*, p.9.

For Kelly, the justice dimension here is vital. It is not simply a matter of finding a solution that will best tackle the current crisis. It is also about finding an approach to sexual ethics which affirms the dignity and equality of women. As such, it is also a question of justice for women. He writes, “the justice dimension of sexual ethics must be taken on board by the Church. An awareness of the plight of women suffering sexual exploitation or trapped in the sex industry highlights this justice dimension. However, the Church must accept that it has implications for the entire field of sexual ethics. For instance, it would be a more credible witness to the Gospel if the Church was renowned for its opposition to female genital mutilation rather than to its opposition to the use of condoms.”⁴⁶

Kelly explains that this leads to a more fundamental point. Given the current crisis, and the sexual exploitation often endured by many women, Christian sexual ethics ought to be “pro-women” before it is “pro-marriage”. Because of the sexual subordination of many women within marriage, and the abuse they often experience, a sexual ethic which is strongly pro-marriage offers little to women in these situations. A pro-woman (or pro-person) sexual ethic places the human person at the heart of the teaching. Consequently, Kelly suggests there exists a greater need to develop a more satisfactory sexual ethic.

Kelly realises that not all marriages/relationships are based on equality and love. Many women find themselves in abusive relationships where their dignity is neither acknowledged nor respected. In these circumstances women are often denied a say in

⁴⁶ Kelly, *New Directions in Sexual Ethics*, p.9.

sexual matters. Sex is considered a husband's "right", one which he may demand at any time. Obviously, in the context of HIV/AIDS, a further injustice is committed against a wife, namely the endangering of her life. Kelly says that the "criterion of the dignity of the human person means that, if a wife feels she has to agree to sex in the kind of scenario envisaged above, any Church official who told her that it would better [*sic*] if her husband did not use a condom would be perpetrating a serious injustice against her."⁴⁷ It is, of course, not always the case that a woman can negotiate for condom use during intercourse. However, where it is possible, it is clear that a sexual ethic based on the dignity and value of the human person would in no way obstruct such activity.

Essential for a person-centred, or pro-women, sexual ethic is an understanding of the social and economic factors underlying sexual activity. Sexual activity does not occur within a vacuum. It has been argued throughout this thesis that the social and economic injustices are key factors in the spread of HIV/AIDS. In Kelly's book we see the recognition of this, and acknowledgement of its importance. He explains that it is often poverty which drives many women into prostitution. It is poverty which forces men to migrate long distances in search of work, leaving their families at home. It is poverty which in many cases contributes to the break-up of families and traditional communities. Poverty results in poor medical facilities, and the inability of many to acquire medication when needed.⁴⁸ These factors are central to a comprehensive understanding of the epidemic, and have implications for the formulation of a meaningful sexual ethic.

⁴⁷ Kelly, *New Directions in Sexual Ethics*, p.206.

⁴⁸ *Ibid.*, p.12.

Perhaps the need for new directions in sexual ethics arises because the starting point has been wrong, as Kelly indeed suggests. The traditional ethic has focused too much on the sexual act, and on trying to define when it was ethically acceptable. However, for many women this is not the main priority, for their primary concern is the quality of the relationship. In other words, they are looking for a relationship which fully respects them as women, and acknowledges their equal dignity as human persons.⁴⁹ It is easy to see why an act-centred sexual ethic fails to provide a complete view of human sexuality. A more person-centred approach incorporates the dignity of the human person, and the quality of the relationship. Unfortunately, traditional teaching appears more preoccupied with the act involved rather than the persons involved in, and affected by, the relationship.

In Kelly's opinion, sexual ethics should not be solely about the sexual act. It must also be concerned with the relationship. Unless this is the case, traditional sexual ethics will not address the needs of many women. He believes that:

One of the principal ways in which the dignity of the human person is being violated today is through the systematic oppression of women through the all-pervading influence of patriarchy. Therefore, a sexual ethics which starts from the dignity of the human person must, at this point in history, interpret this particularly through the lens of the dignity of women. At present, the playing field is not level in terms of the equality of women and men. This is why we must face the disturbing fact that traditional Christian sexual ethics will almost certainly contain major flaws within it. Otherwise it could not have been blind to the evil of patriarchy down through the ages. Therefore, it is only to be expected that a transformed Christian sexual ethics, if it is to respect living Christian tradition, will involve a radical reappraisal of certain aspects of what we have considered to be traditional Christian sexual ethics.⁵⁰

⁴⁹ Kelly, *New Directions in Sexual Ethics*, p.139.

⁵⁰ *Ibid.*, p.38-39.

For this reason Kelly believes that a more fundamental starting point ought to be employed, and he proposes the principle of respect for the human person.⁵¹ However, in doing so, Kelly is not suggesting that this person-centred morality implies rejection of objective morality. Objective morality is person-centred insofar as it is interpreted and realised by the human person. Thus, the person must be at the heart of morality, and a sexual ethic which is overly focused on acts, in many cases may fail the people involved.

We saw earlier that when considering the AIDS crisis and Catholic sexual teaching, the issue of condoms features prominently. On the question of condom use within marriage where one person is HIV positive, Kelly argues that a sexual ethic based on the dignity of the human person would allow condom use. He says that “[a] morality based on the dignity of the human person will have no difficulty in recognizing that such a couple may, and even should, use a condom if their love-making involves sexual intercourse. In doing so they are being true to their dignity as human persons. They are, therefore, doing what is God’s will for them.”⁵² Here again Kelly moves the emphasis of sexual morality away from the act in question, towards a person-centred view of sexuality. This is critical in developing a positive sexual ethic. In another article he writes that a sexual ethic of this kind “would be light years away from a sexual ethics which gives the impression that the main concern of Christians should be to oppose all use of condoms, for whatever reason!”⁵³

⁵¹ Kelly, *New Directions in Sexual Ethics*, p.140.

⁵² *Ibid.*, p.205.

⁵³ See Kevin Kelly, “A Moral Theologian Faces the New Millennium in a Time of AIDS”, in Keenan and Fuller, *Catholic Ethicists on HIV/AIDS Prevention*, p.327.

Drawing on a paper presented by Richard Parker in 1996 at the 9th International Conference on AIDS in Vancouver, Kelly once again highlights the social and economic dimensions of the epidemic.⁵⁴ He says that Parker detects changes in the approach to AIDS. For example, there is a change from viewing AIDS in terms of the individual and individual risk, to recognising the wider social dimensions of AIDS. The spread of HIV is determined by the social, economic, and political circumstances of a country/region. Parker believes that “social vulnerability” plays a very real part in the spread of HIV/AIDS, and an understanding of this is essential for any analysis of the problem.

Kelly also notes the change from information-based intervention towards collective empowerment and community mobilisation.⁵⁵ This progresses from the first point just mentioned. Although information is important, communities must work together to overcome the injustices and oppression they experience. Kelly explains that “[c]oming together, the socially vulnerable build up a critical perception of the ‘social, cultural, political and economic forces that structure reality’ and, working out of this awareness, are better able to take action against those forces which are seen to be oppressive. This model demands a whole new approach to public health with regard to vulnerable communities. While not ignoring the health care needs of individuals, its main focus is on empowering communities to respond to these needs and also to develop effective programmes of action aimed at confronting the root causes of their social

⁵⁴ Kelly, *New Directions in Sexual Ethics*, p.210 ff.

⁵⁵ *Ibid.*, p.211.

vulnerability.”⁵⁶ These two changes mentioned by Parker, and cited here by Kelly, are critical in addressing the pandemic. Consideration of the social and economic vulnerability of communities will play a major part in developing effective policies for HIV prevention.

A third shift mentioned by Parker is the move from individual-based behavioural change to global change. A change by the international community is needed, as is a greater understanding of the needs of the poor. Parker writes that unless we “redress the social and economic injustice that exists both within nations as well as between the developed and developing world, the poor (both in the North and in the South) will continue to suffer the major impact of an epidemic that has become all-too intimately linked to poverty and misery.”⁵⁷ This is the point which above all this thesis has tried to establish.

In conclusion, Kelly believes that for the Church to live positively with AIDS it must seriously address two main issues. First, the Church must promote, and work to ensure, the equal dignity of women. This not only involves repudiating views which consider women inferior, but also visibly expressing this belief in the daily ministry of the Church. Second, the Church must use its influence to address the poverty and global economic injustice in the world. Kelly says that the Church should use “the full power of its authority and influence to change and eradicate the basic causes of poverty in our world today, especially the many factors which owe their continued existence to human

⁵⁶ Kelly, *New Directions in Sexual Ethics*, p.211.

⁵⁷ Cited in Kelly, *New Directions in Sexual Ethics*, p.212.

agency and which constitute global structural injustice on a world-wide scale.” He continues, “[viewed] from any angle, the eradication of such extreme poverty is a moral imperative of the highest order. In this ‘time of AIDS’, however, it has acquired even greater urgency, since failure to eradicate this level of poverty is, at the same time, failure to tackle one of the major underlying causes of the rapid spread of HIV/AIDS in our world today.”⁵⁸

This is the challenge faced today by the Church. In his work Kelly borrowed the phrase, “The Body of Christ has AIDS”. This is why the Church must face the AIDS pandemic in a positive way. Approaching it in a manner which fails to move beyond debates about condom use, or which promotes a sexual ethic which is act-centred, offers little to the many members of this body who are infected with HIV/AIDS. The starting point must always be the human person – the suffering and dying Body of Christ.

8.4 Evaluation

The work of James Keenan and Kevin Kelly contributes greatly to the debates within moral theology concerning AIDS and HIV prevention. It has been stated repeatedly throughout this thesis that the AIDS epidemic in the Third World must be addressed as a justice issue. Yet within moral theology there remains a tendency to view the pandemic as a sexual matter only, confining discussion to questions about the licitness/illicitness of using condoms during intercourse. We saw Keenan’s treatment of this earlier, and his use of traditional moral principles to support his views. In contrast to

⁵⁸ Kelly, “A Moral Theologian Faces the New Millennium in a Time of AIDS”, p.330-331.

Keenan's approach, Kelly deals with the broader dimensions of the AIDS crisis. He believes that a new approach to human sexuality is needed, as well as greater recognition of the social and economic aspects of the problematic. Kelly describes how the subordination of women and the burdens of poverty in particular play a major role in HIV transmission. Consequently, long-term prevention must overturn these forms of injustice.

In "A Moral Theologian Faces the New Millennium in a Time of AIDS", Kelly mentions a point made by Teresa Okure.⁵⁹ Okure suggests that there are two viruses which are more deadly than HIV, and which contribute to its spread. One is a virus in people's minds. It affects the way women are seen and treated. It contributes to their subordination and abuse, and facilitates transmission rates. This is reflected in the fact that within many countries in the Developing World, the condition which carries the greatest risk of infection is that of being married. V. Tallis, quoting UNAIDS findings, also supports this view. "[S]tudies in Africa and elsewhere [show that] married women have been infected by their husbands (as their only sexual partner). Simply being married is a major risk for women who have little control over abstinence or condom use in the home, or their husband's sexual activities outside the home".⁶⁰

The second virus Okure mentions is the virus of global injustice. Similarly, Denise Ackermann discusses these points raised by Okure, and mentions an additional

⁵⁹ See Kevin Kelly, "A Moral Theologian Faces the New Millennium in a Time of AIDS", p.325, in Keenan and Fuller, *Catholic Ethicists on HIV/AIDS Prevention*, p.324-332.

⁶⁰ Cited in Denise Ackermann, "A Gendered Pandemic? – HIV/AIDS in South Africa", p.127, in Carl-Henric Grenholm, and Normunds Kamergrauzis, (eds.), *Feminist Ethics: Perspectives, Problems and Possibilities*, (Uppsala: Uppsala Studies in Social Ethics 29), p.119-143.

“virus” to the two just mentioned. She talks of the virus of denial.⁶¹ In particular she discusses the denial of the South African Government, which has contributed to the current situation in that country. She criticises its denial of the relationship between HIV and AIDS, and its half-hearted handling of the crisis. Peter Piot, executive director of UNAIDS, expresses similar sentiments. “[N]o amount of dollars can make a difference if there is not concerned leadership, at all levels from the head of state to the district level, involving government in partnership with non-governmental organisations, communities and the private sector.”⁶² So although denial at all levels has negative effects on containment, it is vital that governments take decisive action to curb the spread of HIV/AIDS.

Kelly extends the problem of denial to the Church’s response. He uses the expression, “The Body of Christ has AIDS”, to convey the message that as the body of Christ, we all have AIDS. If one person is infected then all are infected. We must remain in solidarity with those who are dying and suffering. However, Kelly explains that the expression, “The Body of Christ has AIDS” can have a second meaning radically different from the one just considered. “It still has to do with solidarity, but this time it refers to the solidarity of the church, the body of Christ, in the sinful structures which constitute the underlying causes of the rapid spread of AIDS”.⁶³ Kelly makes this point

⁶¹ Ackermann, “A Gendered Pandemic? . . .”, p.124ff. The significance of denial is also raised by Kelly.

⁶² *Ibid.*, p.128.

⁶³ Kelly, “A Moral Theologian Faces the New Millennium in a Time of AIDS”, p.325.

in relation to the institutional Church rather than efforts by the church at local level to deal with injustices and AIDS.

For this reason Kelly believes that the institutional Church must be more active on two fronts. First, it should be a Church which offers a credible witness to its belief in the equal dignity of women, and which repudiates as contrary to Gospel teaching anything which implies their inferiority. In addition, the Church must use its authority to influence change and eradicate the basic causes of poverty in the world. It must react to the injustices, exploitation and corruption within society which increase the vulnerability of the poor to infection, and further marginalise communities. Kelly's exploration of the justice dimension of the debate shows the wider concerns raised by the AIDS pandemic.

Other theologians support the approach taken by Kelly. For example, Lisa Sowle Cahill discusses how various forms of injustice contribute significantly to transmission of HIV/AIDS.⁶⁴ Cahill explains that "an exclusive focus on sexual promiscuity or drug abuse, condoms or needle exchange programmes, obscures the fact that the behaviours that transmit HIV are strongly influenced by social conditions. Likewise, a choice to engage in different behavioural patterns – like sexual fidelity in marriage to an uninfected spouse and a healthy lifestyle – is only possible when one's social circumstances offer those different patterns as real possibilities for oneself."⁶⁵

⁶⁴ See Lisa Sowle Cahill, "AIDS, Justice, and the Common Good", in Keenan and Fuller, *Catholic Ethicists on HIV/AIDS Prevention*, p.282-293.

⁶⁵ *Ibid.*, p.282.

In her analysis of the problem, Cahill examines some aspects of Catholic Social Teaching which provide a helpful approach to the AIDS crisis. For example, she notes the emphasis within this corpus of teaching on the dignity of the human person. The dignity of people as individuals is recognised, but the social nature of human beings is also affirmed. "Particularly in the light of the AIDS crisis, it must be stressed that, in Catholic social teaching, the dignity and equality of each and every person, no matter what his or her condition, is the cornerstone of social justice."⁶⁶ Similarly the concept of the common good has important implications for AIDS prevention. In relation to the cost of HIV/AIDS drugs and treatment, Cahill observes that the principle of distributive justice within the framework of the common good demands fairer access life-saving medication. To place profits and greed above the prevention of AIDS transmission, is to violate the principles of Catholic social teaching.⁶⁷ We shall examine in the following chapter aspects of Catholic Social Teaching which are relevant to discussions on AIDS, particularly when the pandemic is viewed in terms of justice.

In conclusion, we see here some of the approaches by moral theologians to the question of AIDS. The pandemic has created many challenges for the Church, one of which is the challenge to promote a theology that is true to the experiences of those affected by, and at risk of, HIV infection. To confine AIDS to debates about sexual ethics, condom use, or behavioural change offers little to many living in the Developing World who are often unable to live according to the norms proposed by official Church teaching owing to their economic or social circumstances. Work by theologians like

⁶⁶ Cahill, "AIDS, Justice, and the Common Good", p.287.

⁶⁷ *Ibid.*, p.289.

Kelly helps illustrate the complexity of the problem. It has been argued throughout this thesis that the socio-economic realities of the problematic need greater attention in order to achieve a more complete understanding of the pandemic. Until this happens, moral theology will be unable to address this issue adequately.

Chapter Nine

Catholic Social Teaching as a Basis for Response

9.1 Introductory

Having examined some of the responses of Bishops' Conferences and moral theologians one sees that in the majority of cases, the AIDS crisis is viewed as a matter of sexual ethics. Discussion is often conducted in terms of the use of condoms, of marital values and of chastity. Without trying to minimise the importance of any of these issues, either in themselves or in relation to the AIDS epidemic, the main argument of this thesis has been that AIDS in Developing Countries needs to be addressed in terms of justice/injustice.

When examining the AIDS crisis, theologians and bishops have in many instances drawn on traditional teaching concerning sexual ethics, without paying much attention to the social and economic problems. Parts One and Two examined in detail some of the topics which are central to the debate. As it happens there is in the same Catholic Tradition a body of teaching which addresses many of these areas. The social encyclicals, from John XXIII onwards especially, address the social realities which now affect the spread of HIV/AIDS. Of course the encyclicals examine these social and economic matters for their own interest rather than as factors which affect the AIDS pandemic.

I give an account of them here in order to show that the tradition furnishes ample material for a more holistic understanding of the problematic and a more comprehensive response. Of particular interest is the analysis of Third World poverty, international trade agreements, and a more inclusive understanding of human development. The choice of

Mater et Magistra as a starting point reflects the fact that it was with this encyclical that the popes turned the light of Catholic social teaching on the international stage, focusing especially on the plight of poorer countries.

9.2 Important Contributions from Catholic Social Thought

It was clear that by the time John XXIII published *Mater et Magistra* (1961) a new direction in the Church's outlook was gradually taking place, culminating most notably in the teachings of the Second Vatican Council, and this was also influencing Catholic social teaching. In Section Three of *Mater et Magistra*¹ new aspects of the social question are dealt with. The main theme is development, and *Mater et Magistra* extends this to countries in the Developing World. Pope John updates existing social teaching so as to envisage social justice on an inter-continental scale.

He begins by stating that "perhaps the most pressing question of our day concerns the relationship between economically advanced commonwealths and those that are in the process of development" (MM 157). John then explains that human solidarity makes it impossible for people in advanced countries to ignore the plight of the poor in other parts of the world. As a global community, our duties to our neighbour extend further afield than before. "Today men are so intimately associated in all parts of the world that they feel, as it were, as if they are members of one the same household. Therefore,

¹ The translation of *Mater et Magistra* used here is from Joseph Gremillion, *The Gospel of Peace and Justice: Catholic Social Teaching since Pope John*, (New York: Orbis Books, 1976). For convenience extracts from this encyclical will hereinafter be referred to as MM, and in the body of the text.

the nations that enjoy a sufficiency and abundance of everything may not overlook the plight of other nations whose citizens experience such domestic problems that they are all but overcome by poverty and hunger, and are not able to enjoy basic human rights” (MM 158). Extreme economic imbalances may pose difficulties for peace in the world. Thus, it is in the interest of the entire world to try to eradicate such inequalities and safeguard human rights.

In order to achieve this, John believes, emergency aid is essential to countries in order to strengthen their economies. He is pleased that “countries with advanced productive systems are lending aid to less privileged countries, so that these latter may the more readily improve their condition” (MM 160), and he stresses that “justice and humanity require that these richer countries come to the aid of those in need” (MM 161). Similarly, he realises that “international banks, single nations, or private citizens often make loans to these countries that they may initiate various programs calculated to increase production” (MM 165). For this “we gladly take this opportunity to give due praise to such generous activity” (MM 165). With hindsight one realises that “such generous activity” was not always as generous as first appeared. In fact, the international loans given to countries in the Third World are primarily responsible for their current economic predicament. Burdened by the repayment of these huge debts, and the interest accumulated on them, many Developing Countries are financially crippled. They have no money to reinvest in their own economies and social services, and basic facilities such as health care and education are neglected. We saw in Part One how economic policies

like Structural Adjustment Programmes actually benefited donor countries more than recipient ones.

However, John was not totally unaware of these dangers. He warns that economically advanced countries must not exploit developing nations under the guise of international aid. This would lead to “another form of colonialism” (MM 172). That his words fell on deaf ears is now evident. He was also anxious that countries that give aid do not impose their culture on poorer countries, destroying native cultures in the process (MM 170, 176-177).

Despite the importance of international aid, John was aware that this was only a short-term answer. A longer-term solution rests with the development and strengthening of native economies. Furthermore, it is essential that social progress accompanies economic development. “The underlying causes of poverty and hunger will not be removed in a number of countries by these means [emergency assistance] alone. For the most part the causes are to be found in the primitive state of the economy” (MM 163). John believed that all should be done to allow developing nations to “acquire the capital wherewith to promote economic growth by ways and means adapted to our times” (MM 163). However, the very wealth and prosperity experienced by the West relied largely on the cheap labour and raw materials from the Third World, so that in practice the developing nations were kept in an inferior economic position. Eradicating this inequality was the long-term solution which needed to be addressed.

One notices the emergence of two new phrases in *Mater et Magistra*, namely “justice and equity”, and “justice and humanity”.² Both of these phrases are closely linked to the concept of social justice, but as we shall see the meaning of “justice and equity” and “justice and humanity” differ slightly from the notion of social justice. The introduction of these two phrases is an important feature of Pope John’s encyclical.

“Justice and equity” appears quite frequently in *Mater et Magistra*. For example, in relation to remuneration for work, John writes that “remuneration is not to be thought of in terms of merchandise, but rather according to the laws of justice and equity. Unless this is done, justice is violated in labor agreements, even though they are entered into freely on both sides” (MM 18). Governments have a role to play in ensuring that such contracts are just and fair. “The State should see to it that labor agreements are entered into according to the norms of justice and equity, and that in the environment of work the dignity of the human being is not violated either in body or spirit” (MM 21). Later we read that “just as remuneration for work cannot be left entirely to unregulated competition, neither may it be decided arbitrarily at the will of the more powerful. Rather, in this matter, the norms of justice and equity should be strictly observed” (MM 71).

The emphasis at stake in the phrase “justice and equity” points to the individual rather than to the common good as is the case with the concept of social justice. By using “justice and equity” John is applying the more general norms contained in the notion of

² Jean-Yves Calvez, *The Social Thought of John XXIII: Mater et Magistra*, (London: Burns & Oates, 1964/5), p.94-99.

social justice to specific situations. Calvez explains that “the pope preferred ‘justice and equity’ when he wrote of assurance for the respect of persons, of the consideration of particular and concrete circumstances, or to give importance to the needs that are not comprised in general norms of procedure or in pre-established agreements. This brings us within the domain of the concrete application of justice”.³

One can conclude that “justice and equity” is something distinct from the common good. That is not to say that the common good no longer applies as a governing norm for all social relations. However, “justice and equity” is used to promote the rights and needs of the *individual* within this larger framework. It takes account of the varying situations which individuals may find themselves in, whereas the idea of the common good is more general. So although the common good remains a vital norm which must be observed within society, the expression “justice and equity” points to the specific situations and needs of the individuals within this. For example, it is generally accepted that a strong and healthy economy will aid the common good of society, since, due to the growing availability of wealth, vital facilities such as education and health care can be improved and made available to all. However, despite the good that may result from a strong economy, economic development must not become the only goal within society, neglecting other values, and denying basic human rights in order to achieve it.

“Justice and equity” promotes the needs and rights of the individual, which may otherwise be smothered under the idea of the common good. John alludes to this when he says that “excessive burdens are placed upon men in order that the commonwealth

³ Calvez, *The Social Thought of John XXIII . . .*, p.96-7.

may achieve within a brief span, an increase in wealth such as can by no means be achieved without violating the laws of justice and equity” (MM 69). “Most often . . . ‘justice and equity’ indicates a particularizing process, an adaptation of justice, within the framework of the general norms of the common good. It is as if the Church, after fighting to obtain “[*sic*] the recognition of the highest needs of the common good, brought our attention back once again to the consideration of the needs of each individual situation that occur legally within this common good”.⁴

The phrase “justice and humanity”, on the other hand, gives the notion of social justice an air of universality. This expression now moves the idea of social justice towards the international arena. It complements the overall tendency within the encyclical to divert attention of economic problems to a more global setting. We realise that the requirements of social justice not only apply to our own situation, but to people all over the world. Correspondingly, there exist duties not merely between individuals, but also between countries. We have become a global family, and this has a profound effect on the way we approach questions of development and justice. Social and economic imbalances affect the world at large, and the exploitation of workers and certain sectors of society spoken of by previous pontiffs, now becomes the exploitation of entire nations.

John says that “in our day, there occur in economic and social affairs many imbalances that mitigate against justice and humanity” (MM 94), and, as a result, “justice and humanity require that these richer countries come to the aid of those in need” (MM

⁴ Calvez, *The Social Thought of John XXIII . . .*, p.97-8.

161). By using the expression “justice and humanity”, John draws attention to the fact that the social ills evident in the world concern all of humanity. Calvez explains that, “without overthrowing doctrine, the vocabulary evolution noted in *Mater et Magistra* indicates simultaneously the universalization of social justice made necessary and possible by the world-wide socialization now in progress, and a deepening and refinement of the concern for justice”.⁵

Turning to *Gaudium et Spes*⁶, we see that considerable time is given to the idea of development. This document addresses need for investment in poorer countries in order to promote development. It criticises those who store their wealth in such a way as to deprive others of essential financial assistance. “Above all in areas of retarded economic progress, where all resources must be urgently exploited, the common good is seriously endangered by those who hoard their resources unproductively and by those who . . . deprive their community of much needed material and spiritual assistance” (GS 65).

There is a change in tone here from earlier documents. Pius XI, for example, also saw the need for investment, and said that productive investment can help others by creating employment. The impression created was that investment of this kind can be an act of generosity, whereas it was usually an act of greed, motivated by self-interest. Investors had little concern for employees, but were intent, instead, on making profits

⁵ Calvez, *The Social Thought of John XXIII* . . . , p.99.

⁶ The translation of *Gaudium et Spes* used here is taken from Austin Flannery, O.P., *Vatican Council II: The Conciliar and Post Conciliar Documents*, (Dublin: Dominican Publications, 1992), (New Revised Edition). Extracts from this document will hereinafter be cited as GS, and in the body of the text.

from their investments.⁷ The tone in *Gaudium et Spes* is different. Donal Dorr believes it was because the Council Fathers did not want to convey the impression that capitalist investors were the saviours of mankind.⁸ Despite this change in tone, the Council Fathers did acknowledge the importance of investment for poorer economies, and recognised its overall benefits for development.

An essential element of any development and investment is trade. The Pastoral Constitution calls for more equitable trade agreements between nations, particularly between richer and poorer countries, as well as the establishment of organisations to ensure and regulate fair trade. “The establishment of an authentic economic order on a worldwide scale can come about only by abolishing profiteering, nationalistic ambitions, greed for political domination, schemes of military strategy, and intrigues for spreading and imposing ideologies” (GS 85). Later we read that “it is up to the international community to coordinate and stimulate development, but in such a way as to distribute with the maximum fairness and efficacy the resources set aside for this purpose. It is also its task to organize economic affairs on a worldwide scale, without transgressing the principle of subsidiarity, so that business will be conducted according to the norms of justice” (GS 86, C). Fair trading agreements are essential for poorer countries to achieve strong economies. Yet the political and financial might of wealthy nations often dictates the terms of agreement.

⁷ Donal Dorr, *Option for the Poor: A Hundred Years of Vatican Social Teaching*, (Dublin: Gill and Macmillan, 1992), Revised edition, p.161.

⁸ *Ibid.*, p.161.

The notion of development put forward in *Gaudium et Spes* is not simply confined to economic development. “The ultimate and basic purpose of economic production does not consist merely in the increase of goods produced, nor in profit nor prestige; it is directed to the service of man, of man, that is in his totality, taking into account his material needs and the requirements of his intellectual, moral, spiritual, and religious life; of all men whomsoever and of every group of men of whatever race or from whatever part of the world” (GS 64). This must be undertaken and overseen by the largest number of people and nations; no one group should control such matters as it may lead to exploitation and promotion of group interests (GS 65). This more holistic notion of human development would be developed further by Paul VI.

Gaudium et Spes makes some very important contributions to the concept of development. The Pastoral Constitution views economic development as the key to overcoming poverty, and essential to any adequate long-term solution to the suffering of the poor. However, some criticisms may be made of the understanding of development found here.⁹ The document does state the possible dangers associated with economic development; the achievement of material advantages gained at the expense of spiritual and cultural values, resulting in the loss of native traditions and heritage. Dorr, however, believes that the Council Fathers gravely underestimated these dangers, and failed to take account of certain limitations which their notion of development contained.¹⁰

⁹ See Dorr, *Option for the Poor* . . . , p.171-173, and p.165-167.

¹⁰ *Ibid.*, p.172-173.

For example, the type of development which brought prosperity to the West could not be applied universally. This is due mainly to the fact the Western prosperity relied on the availability of cheap raw materials from the Third World. It was a case of prosperity for the West at the expense of the poorer countries. This sort of economic development could not be expected of the very countries whose exploitation was necessary if economic growth was to occur in richer countries in the first place.

Furthermore, the Council Fathers' idea of development was itself a product of the West. They failed to take sufficient account of the fact that the imposition of their notion of development would be like a form of cultural imperialism. "The Council Fathers and experts assumed too easily that the basic elements of *Western* 'development' and its underpinning values are trans-cultural. In recommending it so enthusiastically they were unwittingly encouraging an imposition of a product of Western culture which could undermine other cultures".¹¹

We saw earlier in the thesis how economic policies imposed by the "West" in fact contributed to the economic plight of poorer countries, rather than producing the development which was their intended goal. Unequal political and economic circumstances means that rich nations can actually continue to exploit poor countries in the name of development.

¹¹ Dorr, *Option for the Poor . . .*, p.173.

In his encyclical *Populorum Progressio*, Paul explores the concept of development more thoroughly than his predecessors. In many respects *Gaudium et Spes* paved the way for this advance in Papal teaching. The originality of *Populorum Progressio*'s analysis of development, Dorr explains, lies in its definition of this concept.¹² At the heart of this is the belief in the importance of integral development. The Council Fathers offered an account of development which implied methods of economic growth already employed by many Western countries, while pointing to the improvements and changes necessary in those systems. Paul, on the other hand, did not take the existing idea of economic development and try to modify it. Rather, he wanted to establish certain standards and criteria from which we can evaluate human development. As Dorr explains, "what *Populorum Progressio* gives is a framework or anticipation of the 'shape' of genuine human development. In technical terms what it offers is a 'heuristic' notion of development".¹³ So what exactly does the encyclical say?

Paul offers a Christian vision of development, one which considers all aspects of development and not simply a concept which is concerned with economic matters. This will certainly include economic considerations, but must also involve the spiritual and cultural components of man's existence. "Development cannot be limited to mere economic growth. In order to be authentic, it must be complete; integral, that is, it has to promote the good of every man and of the whole man".¹⁴ The Pope warns of the dangers

¹² Dorr, *Option for the Poor . . .*, p.180.

¹³ *Ibid.*, p.181.

¹⁴ *Populorum Progressio*, n.14. The translation of this encyclical is taken from Joseph Gremillion, *The Gospel of Peace and Justice . . .*, p.387 ff. Additional extracts from *Populorum Progressio* will be referred to as PP, and in the body of the text.

in seeing development purely in economic or materialistic terms. He is clearly trying to promote a concept which will respect all the dimensions of human living and will lead to greater fulfilment for mankind. "Increased possession is not the ultimate goal of nations nor of individuals. All growth is ambivalent . . . The exclusive pursuit of possessions thus becomes an obstacle to individual fulfilment and to man's true greatness. Both for nations and for individual men, avarice is the most evident form of moral underdevelopment" (PP 19). The message from Paul is clear: man's true and complete fulfilment cannot be subordinated to economic progress. It is interesting that the World Bank acknowledged this point in reference to the failure of Structural Adjustment policies. A concept of development based purely on economic considerations ultimately fails since the other integral aspects of human fulfilment are ignored.

The second section of the encyclical is concerned with development and solidarity. "There can be no progress towards the complete development of man without the simultaneous development of all humanity in the spirit of solidarity" (PP 43). For the wealthier nations of the world there exists a triple duty towards poorer nations; firstly there is "the duty of human solidarity – the aid that rich nations must give to developing countries"; secondly there is "the duty of social justice – the rectification of inequitable trade relations between powerful nations and weak nations"; and finally there exists "the duty of universal charity – the effort to bring about a world that is more human towards all men, where all will be able to give and receive, without one group making progress at the expense of the other" (PP 44).

Paul calls on richer countries to help the poorer ones in an effort to overcome underdevelopment. The responsibility to eliminate poverty and promote progress rests not merely with individuals but with entire nations, (PP 48). Developed Countries have the means to assist weaker countries in the struggle for economic growth, and the Pope calls on these countries to place part of their resources and production at the disposal of developing nations (PP 48). Paul then gives a clear warning to wealthy countries that unless they are more generous with their wealth they risk calling upon themselves the wrath of both God and the poor (PP 49). Again, the points made here by Paul were later acknowledged by international economic advisers. As mentioned earlier, James Wolfensohn, president of the World Bank, on several occasions warned of the threat to world security posed by poverty. Thus, the poverty experienced in the Third World may have global repercussions, and is therefore the concern of the entire international community.

World-wide co-operation is called for in order to achieve these ends, and Paul also suggests the availability of an international fund to assist development. He calls for low interest or interest free loans being made available to countries who need them, and he realises that these loans should be “conditioned by the real needs of the receiving countries”. He hopes that “developing countries will thus no longer risk being overwhelmed by debts whose repayment swallows up the greater part of their gains” (PP 54). Paul obviously saw the dangers involved in loans given by wealthy and powerful nations, and he wanted to highlight and condemn the possible exploitative nature of these

loans. His fears were to prove correct, and his call for equity and justice in such transactions fell on deaf ears.

Paul discussed the implications and importance of development on a global scale. This brings us to the idea of international social justice. Chenu says that Paul did on the international level what Leo XIII did at the national level.¹⁵ This is evident particularly in Paul's treatment of equal trade relations. He adopts many of the same principles that Leo used in his analysis of the working class but Paul applies them to the world of international relations. This is a vital section of the encyclical, and it constitutes a major element in Paul's thought on the overall development of peoples.

Paul stresses the importance of fairness in trade relations, and points to the exploitation too often evident in such relations. He begins by stating that efforts which are being made to assist Developing Countries on a financial and technical basis, although significant, would be illusory if their benefits were to be partially nullified because of the trade relations existing between rich and poor countries. He says that the confidence of poorer countries would be severely shaken if they had the impression that what was being given to them with one hand was also being taken away with the other (PP 56). So-called aid to developing nations, given by wealthy countries, can often prove a useful disguise for further exploitation. This has proved the case with the large international loans given to countries of the South in order to assist economic and social progress. The huge interest rates attached to these loans have virtually crippled

¹⁵ See Marie-Dominique Chenu, *La Doctrine Sociale de l'Église Comme Idéologie*, (Paris: Les Éditions du Cerf, 1979), p. 75. "On a dit que *Populorum progressio*, c'est *Rerum novarum* à l'échelle des peuples".

Developing Countries, and resulted in even greater evils than those they were expected to eradicate.

Essential to any realistic attempt at fairness in trade relations between the North and South is the achievement of equality among the trading partners. The wealthy countries of the North hold all the power in trade agreements and can, consequently, impose unfair restrictions on Developing Countries, as seen in many cases by the WTO's implementation of Trade Related Intellectual Property Rights. Having little political or economic power on a global scale, these countries have no choice but to agree to these exploitative terms. We have seen examples of this in Part One. The result is that the rich countries of the North get richer, while the poor countries get poorer. Paul applies Leo XIII's teaching in *Rerum Novarum* to the global situation. He says that "what was true of the just wage for the individual is also true of international contracts: an economy of exchange can no longer be based solely on the law of free competition, a law which, in its turn, too often creates an economic dictatorship. Freedom of trade is fair only if it is subject to the demands of social justice" (PP 59). Paul calls for the same norms used in national affairs to be applied to international trade relations (PP 61). It is essential for more just and equal trade relations to be established between countries if any true and authentic human development is to occur.

Paul realised that a change in attitude on the part of the rich was needed, but just as essential is a change in the economic and social structures within society which enable injustices of various kinds to occur. As Chenu explains, "for this reason, it then is not

enough to convert individuals; it is the structures which have to be reached and changed, even in the redistribution of power".¹⁶ There is a similarity in style here between Paul and Pius XI in *Quadragesimo Anno*. While Leo, for example, called for a change in attitude by the rich, and believed this sufficient to alleviate the plight of the poor, we see in both *Quadragesimo Anno* and *Populorum Progressio* the recognition that structural change is vital also for the eradication of poverty.¹⁷

Paul's next social encyclical was *Octogesima Adveniens*, issued May 14th, 1971.¹⁸ Perhaps one of the most striking aspects of this document is the new methodology employed by Paul VI. Paul is far more realistic here than his predecessors in addressing social matters, and acknowledges the difficulties involved in applying universal solutions to specific situations. Chenu notes the inductive, rather than deductive, approach taken by Pope Paul when dealing with social issues. He says that while *Octogesima Adveniens* continues the social teaching of the Church, it, in effect, also overturns the method employed up until then in Catholic social teaching.¹⁹ Paul himself states that "in the face of such widely varying situations it is difficult for us to utter a unified message and to put forward a solution which has universal validity. Such is not our ambition, nor is it our mission" (OA 4).

¹⁶ Chenu, *La Doctrine Sociale de l'Église Comme Idéologie*, p.72. "De ce fait, il s'ensuit qu'il ne suffit pas d'un conversion des individus; ce sont les structures qu'il faut atteindre et transformer, jusque dans la redistribution des pouvoirs" (trans. mine).

¹⁷ On this point see Dorr, *Option for the Poor . . .*, p.187-89.

¹⁸ The translation of *Octogesima Adveniens* used here is from Joseph Gremillion, *The Gospel of Peace and Justice . . .*, p.485ff. Extracts will be referred to as OA, and in the body of the text.

¹⁹ Chenu, *La Doctrine Sociale de l'Église Comme Idéologie*, p.80. "Il [*Octogesima Adveniens*] présente une déclaration, qui dans la continuité d'un enseignement social, renverse en réalité la méthode jusqu'alors employée pour cet enseignement: non plus 'doctrine sociale' enseignée en vue d'une application à des situations changeantes, mais ces situations mêmes deviennent le 'lieu' théologique d'un discernement à mener, par la lecture des signes des temps".

Here we see recognition by Rome that to offer a universal message to the world on social issues, given the vastly different situations in which many countries find themselves, would be virtually impossible. The economic, social and political circumstances of countries may, and often do, differ considerably. No one solution will fit all, and the pope is eager to emphasise that Rome cannot offer a global solution to all social problems. As we saw earlier, a major flaw of many international economic policies, most notably Structural Adjustment Programmes, was that they were universally applied to all Developing Countries irrespective of specific circumstances. This ultimately led to their failure, and the point made here by Paul was later acknowledged by the World Bank also.

This approach contrasts with earlier Church pronouncements, where the papacy felt that it had the right and duty to intervene in social matters. However, most of this teaching was heavily influenced by Western thought, and displayed little recognition of the difficulties involved in applying these ideas on a global scale. Paul, however, wishes to avoid this and adopts a less ambitious, and more realistic, approach to social questions. He insists that Christians find appropriate solutions to the problems experienced in their particular country.

Finally, the social teaching of John Paul II develops many of the themes found in earlier encyclicals. For example, a key aspect of *Laborem Exercens*²⁰ is the distinction

²⁰ The translation of *Laborem Exercens* used here is from Gregory Baum, *The Priority of Labor: A Commentary on Laborem exercens, Encyclical Letter of Pope John Paul II*, (New York: Paulist Press, 1982). Extracts from this encyclical will hereinafter be referred to as LE, and in the body of the text.

made between the direct and indirect employer. This has major implications for an examination of injustices within the Third World. Section 17 examines the existence of structural sin present in the world. Although workers may often be the subject of injustices, the Pope here explains that the direct employers may not always be to blame. The term "indirect employer" refers to "both persons and institutions of various kinds and also collective labor contracts and the principles of conduct which are laid down by these persons and institutions and which determine the whole socio-economic system or are its result . . . The indirect employer substantially determines one or other facet of the labor relationship, thus conditioning the conduct of the direct employer when the latter determines in concrete terms the actual work contract and labor relations" (LE 17).

This section highlights the importance of global responsibility in efforts to solve the social question. Discussion of the rights of workers, the injustices carried out against them, and the need for a just wage, involves recognition of the global dimension of these problems. In relation to the socio-economic situation in many Developing Countries, it is clear that many trade agreements and sanctions imposed by the First World contribute to the present economic crisis. In order to compete with trade and technology in more Developed Countries, employers in the "South" must pay their workers unjust wages. Without trying to lessen the responsibilities of the direct employer, it is also clear that the First World must claim its share of responsibility for the structural injustices present in the world. Thus, any solution which may be reached when tackling the question of worker's rights must retain a more global or universal perspective. Clearly when

attempting to eliminate social injustice, relations between the direct employer and the worker need to be addressed. But so too do the relations between nations.

John Paul stresses “the importance of the indirect employer . . . in achieving full respect for the worker’s rights, since the rights of the human person are the key element in the whole of the social moral order” (LE 17). He is once again drawing attention to the global scale of injustice. This is an important part of the document, and reflects the position held in previous social encyclicals, namely that change is needed at the “top”. Governments, multinationals, businessmen and politicians have the power and the means to make a change. Unfortunately, the will to implement these necessary changes is often lacking.

One result of the distinction between the direct and indirect employer is a better appreciation of the term “impoverishment”.²¹ Poverty implies a condition or state of misfortune. Impoverishment implies a deliberate action to inflict poverty on others. As Dorr has shown, studies have helped to bring out the fact that the mis-development and poverty of Developing Countries are due less to nature than to human intervention; they are largely the result of unjust actions in the past and present, most notably the actions of people and institutions in wealthier countries.²²

The teaching of *Laborem Exercens* on the indirect employer is important for this reason. It helps one realise that in many cases poverty in the world is due to injustice and

²¹ On this point see Dorr, *Option of the Poor . . .*, p.294 ff.

²² *Ibid.*, p.294.

impoverishment. Acknowledging the role of the indirect employer allows for a greater understanding of this reality, and enables us to realise both the root causes of poverty and the necessary remedies for this poverty. In this way *Laborem Exercens* allows for a deeper appreciation of the existence of structural sin in the world, and the consequences this has for millions of people. Dorr says that “one aspect of social sin is the way in which injustice has become embodied in our world through an unequal distribution of wealth and power. If we opt to resist injustice we must be opposed to the process of impoverishment and the systems that promote poverty”.²³

The above account of some of the contributions found within Catholic Social Teaching is brief, and cannot do justice to the depth of that teaching. However, it does help illustrate the point that within the social teaching of the Church one finds a corpus of texts which has a great deal to offer in the area of international relations. Many of these points are of relevance to this work, for they concern themes which are examined throughout the thesis. Of course the teaching deals with the various economic and social matters as subjects in themselves, yet as this work explains, these areas also have a direct impact on the spread of HIV/AIDS. Thus, there exists within Catholic social teaching valuable points of departure for discussion of the deeper social and economic realities involved in the AIDS crisis. By examining the pandemic as a justice issue, one realises the role which poverty and exploitation plays in the spread of this disease. Catholic Social Teaching addresses some of these areas, and therefore could provide a basis for a more inclusive examination of the crisis by the Magisterium and by theologians.

²³ Dorr, *Option for the Poor . . .*, p.299.

This is not to suggest that these documents are without flaws. They seem at times naïve in their assessment of situations or their proposed solutions, and they are obviously written without reference to the AIDS crisis in mind. In addition, by their nature they often remain vague, and do not develop in detail the points being made. But it is contended here that they are valuable in understanding the social and economic dimensions of injustice within the world, which in turn has significant implications for appreciating the causes of the AIDS pandemic.

Conclusion

We have seen the ways in which the AIDS epidemic is affecting Developing Countries with particular severity. In many areas, including South Africa, the epidemic has not yet peaked. Countries, already struggling with the scale of crisis, are faced with the prospect that things are likely to get considerably worse before they get better. In addition, it is predicted that India will soon become the next “AIDS capital” of the world, replacing South Africa as the country with the greatest number of infected people. The causes for this epidemic are as complex as they are varied.

The aim of this work has been to examine some of the fundamental causes underlying HIV infection. Greater understanding of these factors is necessary for the achievement of realistic, long-term solutions to the crisis. It has been argued that the fundamental reasons for the AIDS pandemic are essentially matters of justice. This is particularly evident when examining the situation in the Developing World. Consequently, approaches which are based on sexual ethics alone, and solutions which correspond to this, fail to address the deeper social and economic ills which fuel the spread of HIV/AIDS.

It is especially important for the Magisterium to incorporate this understanding into its response to AIDS. The AIDS pandemic poses many challenges for moral theology, and it makes us examine the way in which we respond to the crisis. One finds that a recurring theme which appears in discussions on AIDS is the question of condoms, and their use for HIV prevention. Certainly within moral theology this topic has received

considerable (and, I believe, a disproportionate amount of) attention. As we saw earlier, the various Bishops' Conferences and the work of many theologians remains fixed on this issue. Any evaluation of their responses therefore inevitably resulted in the question of condoms being discussed at some length. It was hoped that this would not be at the expense of the main argument of this work. Condoms at best provide a short-term solution for containing the disease. Long-term prevention strategies must incorporate efforts to eradicate the social and economic injustices which assist the spread of HIV/AIDS.

Approaching the AIDS crisis from a mainly sexual ethics perspective can certainly offer much to the debate, as Kevin Kelly has shown. But most official teaching uses a starting point which is unattainable to many who are vulnerable to infection or who are infected already. Kelly believes that current traditional teaching on marriage, for example, offers little to women in abusive relationships, or to women who depend on commercial sex to survive. The fact that in some countries being married poses the greatest risk of HIV infection suggests that relying on traditional teaching on marriage or sexuality alone will not provide a solution to the situation.

The fact remains that current Magisterial teaching on sexuality simply cannot be implemented by many people, even where they may wish to do so. Poverty often diminishes or takes away a person's freedom to make such decisions, and the need to survive becomes the priority. The high-risk behaviour which people engage in cannot be divorced from their social and cultural situation. Thus, official Church teaching on

AIDS, and the solutions proposed, are often unrealistic. In order for people to be in a position to choose the way of life proposed by the Church, the socio-economic factors which deny their freedom must be addressed.

For these reasons, this thesis has focused primarily on some of the justice issues surrounding the AIDS epidemic in Developing Countries, with particular reference to the crisis in South Africa. In understanding the deeper issues involved, one realises the complexity of the problem. Solutions are not as simple as focusing exclusively on behavioural change, however important that might be. Recognising the social and economic contexts which are part of that behaviour means that proposed solutions must take account of this also. It appears unrealistic to expect a woman to live a chaste life if prostitution is the only means by which she can feed her children. Thus, the injustices within society must be urgently tackled before we can begin to talk about issues of behavioural change. This involves action. Until the unjust global and local structures are reformed there appears little hope for the millions living in poverty and dying of AIDS. Any meaningful analysis of the epidemic by the Magisterium, it is argued, must seriously consider the relationship between injustice and AIDS.

Perhaps, in conclusion, the words of Jonathan Mann are appropriate. He once said, “[o]ur responsibility is historic. For when the history of AIDS and the global response is written, our most precious contribution may well be that in a time of plague, we did not flee, we did not hide, we did not separate ourselves”¹. This is the challenge

¹ Cited by J Michael Kilby, “The Legacy of the Global HIV/AIDS epidemic for public health”, *The Lancet*, vol.362, (October 18, 2003), p.1339.

for moral theology also. In this time of AIDS it is necessary for the Magisterium and theologians to formulate a response that truly offers hope, a teaching which says “we did not hide, we did not separate ourselves”.

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