

HIV/AIDS, Human Rights, and Legal Services in Uganda:

A Country Assessment

LAW AND HEALTH INITIATIVE
OSI'S PUBLIC HEALTH PROGRAM

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Public Health Program
Law and Health Initiative
Open Society Initiative for East Africa

HIV/AIDS, Human Rights, and Legal Services in Uganda: *A Country Assessment*

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May 2008

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*Published by
Open Society Initiative for East Africa (OSIEA)
ACS Plaza, Lenana Road
P.O. Box 2193-00202, Nairobi
www.osiea.org*

ISBN: 9966-7059-9-6

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*Designed & Printed by
Noel Creative Media Ltd.*

Cover depicts Ugandan Bark cloth

Preface

This report presents the findings of a review of legal services for people living with HIV/AIDS and other vulnerable and at-risk populations conducted in Uganda between September and November 2007. Based on interviews with civil society organizations (CSOs) and community-based organizations (CBOs) working on HIV, policy makers, people living with HIV/AIDS, and government bodies, the review examines the legal and policy framework related to HIV/AIDS in Uganda and interrogates the extent to which this framework offers real protection and facilitates access to justice or other mechanisms of redress for those living with, affected by, or at risk of HIV/AIDS. The review concludes by identifying several opportunities for programming that will address the dearth of HIV-related legal services in Uganda.

The Law and Health Initiative (LAHI) is a division of the Open Society Institute's Public Health Program that advances legal and human rights-based approaches to public health worldwide. By combining existing public health responses with legal and human rights advocacy, LAHI aims both to improve health outcomes and to advance access to justice, especially for socially marginalized populations. LAHI's work in East Africa is anchored within the Initiative's five global priorities, namely: (1) integrating legal and paralegal services into health services; (2) promoting human rights in patient care; (3) supporting human

rights responses to HIV/AIDS; (4) developing civil society capacity in law and health; and (5) using legal strategies in health monitoring. This report focuses on the application of Priorities (1) and (3) to the Ugandan context, though the other Priorities are also referenced in the report.

In East Africa, LAHI partners with the Open Society Initiative for East Africa (OSIEA) based in Nairobi to advance legal and human rights responses to the region's HIV/AIDS epidemic. OSIEA supports and promotes public participation in democratic governance, rule of law and respect for human rights in Eastern Africa by awarding grants, developing programs and bringing together diverse civil society leaders and groups to play an active role in creating a strong institutionalized rights framework that encourages open and informed dialogue about issues of national importance.

The invaluable insights and contributions provided by all those interviewed for this report are hereby acknowledged.

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List of Acronyms

ADR	- Alternative Dispute Resolution
ART	- Anti-Retroviral Treatment
ACORD	- Agency for Co-operation and Research in Development
AMwA	- Akina Mama wa Afrika
CEDOVIP	- Centre for Domestic Violence Prevention.
CSW	- Commercial sex workers
DRB	- Domestic Relations Bill
FIDA	- Uganda Association of Women Lawyers
HAG	- Health Rights Action Group
HCT	- HIV Counselling and Testing
HIV/AIDS	- Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HURIFO	- Human Rights Focus
IDPs	- Internally Displaced Persons
LAP	- Legal Aid Project of the Uganda Law Society
LCC	- Local Council Courts
LEDEWO	- Legal Defence for Women
LGBTI	- Lesbians, Gays, Bisexuals, Transgender and Intersexuals
LRA	- Lord Resistance Army
MTCT	- Mother to Child Transmission
NACWOLA	- National Community of Women Living with HIV/AIDS
NAFOPHANU	- National Forum of PHA Networks in Uganda
NAP	- National AIDS Policy
NSF	- National Strategic Framework
NSP	- National HIV and AIDS Strategic Plan
OSIEA-LAHI	- Open Society Initiative for East Africa - Law and Health Initiative
OVCs	- Orphaned and Vulnerable Children

PEP	- Post-exposure Prophylaxis
PHAS	- People Living with HIV and AIDS
PLA	- Platform for Labour Action
PMTCT	- Prevention of Mother-to-Child HIV Transmission
PWDs	- Persons with Disabilities
SOCADIDO	- Soroti Catholic Diocese Development Organization
STIs	- Sexually Transmitted Infections
SMUG	- Sexual Minorities Uganda
TASO	- The Aids Support Organisation
ToR	- Terms of Reference
UAC	- Uganda Aids Commission
UDHS	- Uganda Demographic and Health Survey
UGANET	- Uganda Network on Law, Ethics & HIV/AIDS
UHSBS	- Uganda HIV/AIDS Sero-Behavioural Survey
UNAIDS	- United Nations Programme on HIV/AIDS
UNCST	- Uganda National Council for Science and Technology
UNHCO	- Uganda National Health Consumers Organization
UNHS	- Uganda National House hold Survey
UWONET	- Uganda Women's Network
VCT	- Voluntary Counselling and Testing

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Summary and Main Recommendations

Despite having a myriad policies and legal protections related to HIV/AIDS, Uganda still faces a severe and generalized HIV epidemic with widespread human rights abuses against people living with, affected by, and at risk of HIV. While the country has received international praise for its responses to the adverse medical effects of the epidemic, it has paid comparatively limited attention to the epidemic's legal and human rights implications. This is especially true for marginalized populations who are most vulnerable to HIV-related human rights abuses: women (especially young women, widows, and women living in fishing communities); sex workers; orphans and vulnerable children; lesbian, gay, bisexual, transgender (LGBTI) persons; and internally displaced persons.

HIV-related human rights abuses abound in Uganda, affecting people living with, affected by and at risk of HIV. Stigmatization and discrimination trigger a wide range of human rights abuses for which the great majority of those affected have not sought justice. Among the abuses documented for this assessment include: discrimination on the basis of real or perceived

HIV status; violations of the right to medical privacy; forced HIV testing; criminalization of “invisible” social categories; barriers to employment on the basis of HIV status, denial of education on the basis of HIV status or having HIV in the family; discrimination in gaining access to medical care; arbitrary eviction from housing; and lack of access to justice.

Access to justice for all of these abuses is hindered not only by the lack of a supportive legal framework and standard mechanisms for redress, but also by context-based factors such as limited knowledge of rights among people with HIV and those at risk, judicial corruption, inability to identify perpetrators, limited access to and affordability of legal aid services, and the stigmatization, discrimination and powerlessness that stem from being a member of a socially marginalized group.

Meeting the demand for timely and affordable legal services is critical to stemming HIV-related human rights abuses in Uganda and elsewhere. In Uganda, legal services are often inaccessible, ineffective, disproportionately accessible, or non-

existent. While there are some attempts in Uganda to provide legal services for people living with HIV, legal services targeting those affected by HIV or at risk of HIV are disproportionately fewer. Interventions by the Law and Health Initiative (LAHI) and other donors should attempt to fill this gap. Efforts should both enhance efforts already being taken within the HIV legal and policy framework in Uganda, and also support new efforts to improve both accessibility and effectiveness.

Although the legal and policy framework governing HIV in Uganda is responsive to human rights in various respects, an overarching HIV/AIDS policy and comprehensive national legislation remain outstanding or in draft form only. Supportive provisions currently exist under the Employment Act, Equal Opportunity Commission Act, and through case law. Whereas the policy regime guarantees some rights in relation to the adverse medical effects of HIV/AIDS (e.g., access to HIV testing, treatment, and care), national legislation still fails to provide clear protection against HIV-related stigma and discrimination. The review further reflects some deficiencies in the policy and legal framework in relation to vulnerable categories such as commercial sex workers and the LGBT

community. There is a clear gap between policy and practice whereby Government has not translated its commitments on paper into concrete deliverables. Additionally the policies lack effective monitoring and enforcement mechanisms and require more intensive advocacy in order to secure accountability.

In the absence of a national legal aid scheme in Uganda, the provision of HIV-related legal aid services is dominated by non-governmental organizations (NGOs). Local Council Courts¹ appear to be the most utilised dispute resolution mechanism by communities. Yet these courts are not being utilised to address HIV-related infringements of rights. Based on consultations with various stakeholder during the review, five types of interventions can be identified: integration of legal support into HIV services; strategic litigation to advance particular rights and create precedent; legal empowerment of people living with, affected by, and at risk of HIV; advocacy for legislative and policy reform; and creation of a supportive environment for gaining access to legal services.

¹ These are local courts established by law that linked to the system of local government and are “informal” in nature, devoid of technicalities. They exist at the village, parish and sub-county levels. Appeals from the sub-county lie to the Chief Magistrates’ Court.

(1) *Integration:* Within the realm of direct service delivery, a number of organizations in Uganda such as The AIDS Support Organization (TASO) have well-established HIV care and treatment programs. LAHI and other donors should encourage these organizations to integrate a rights component for patients and others affected within existing health service delivery programmes. This report outlines the most promising current opportunities for such integration at the service-delivery level.

(2) *Empowerment:* Limited awareness among people living with, affected by, and at risk of HIV of their rights and entitlements under law is a major barrier to effective enforcement of these laws. Support should therefore be given to disseminating these rights and entitlements. Examples include the HIV/AIDS Work place Policy, the Employment Act, and the Equal Opportunities Commission Act. Organizations that conduct legal rights awareness programmes should be supported to develop specific and simplified materials on rights relating to

HIV to undertake dissemination and sensitization activities through their networks and existing programs.

(3) Litigation is another strategy through which the protective provisions within existing laws can be brought to life. This would involve defending particular HIV-related rights in court through test cases. Organizations such as LAW-Uganda, the Federation of Women Lawyers (FIDA), and Health Rights Action Group (HAG) have utilized test-cases as a strategy and should be encouraged to undertake strategic litigation in the area of HIV. Examples of test cases that can be brought include discrimination in the workplace, mandatory HIV testing, and denial of maintenance and child custody to HIV-positive mothers.

(4) Legislative and Policy Advocacy is required to address the deficiencies in various HIV policies and laws, to secure formal conclusion of rights-based policies and laws currently in draft form, and to ensure enforcement of rights-based policies and laws in place. More specifically:

- There is potential for advocacy to finalize the pending draft HIV/AIDS national policy and to enact a rights-based national HIV/AIDS law.
- Public hearings, forums, and dialogues to build consensus on controversies arising within the human rights field as a result of HIV/AIDS should be supported. Dialogues involving diverse stakeholders need to be conducted on criminalization of “deliberate” HIV transmission, mandatory HIV testing for sexual offenders, and other issues. The outcome of these multi-stakeholder dialogues should inform the drafting of comprehensive and rights-based national legislation on HIV/AIDS.
- LAHI should support monitoring and advocacy for the enforcement of existing policies and laws that contain protecting provisions, such as the HIV/AIDS and Workplace policy, the Equal Opportunities Law, and the Employment Act.
- Advocacy on behalf of “invisible” groups such as sex workers and the LGBTI community is critical, but needs to be preceded by capacity-building and alliance-building activities to ensure these organizations are in a position to undertake human rights advocacy. Support should be given to groups of sex workers and to Sexual Minorities to develop and implement an alliance-building strategy with other human rights organizations. Consideration should be given towards making this a joint initiative with Sexual Health and Rights Project (SHARP).
- Advocacy efforts for the ratification of the Protocol on Women’s Rights in Africa should be supported. Apart from providing women a right to protection from sexually transmitted infections, including HIV/AIDS, the Protocol guarantees women’s rights to adequate, affordable, and accessible health services, and confers a duty on the State to protect girls and women from practices and situations that increase their risk of infection.

(5) Support mechanisms such as research and the development of tools and resource guides to assist communities in providing legal services are also an important part of the work being done in Uganda to advance HIV and human rights.

Finally, given the weak institutional and programming capacities of most organizations working at the intersection of HIV and law in Uganda, a key strategy for LAHI and other donors should also be the

provision of core financial support and assistance with organizational development for key grantees as a way of ensuring they have sufficient institutional capacity to achieve these goals.

More detailed recommendations, organized according to the five strategic priorities of the Law and Health Initiative, are presented at the end of this report under “Programming Opportunities for the Law and Health Initiative.”

1.0 Introduction

Uganda has braved a severe and devastating epidemic of HIV and AIDS for almost a quarter of a century. Uganda is a low income country with a per capita gross domestic product (GDP) of US\$300/year, and with 31 percent or 8.4 million of its people estimated to be poor². Results from the 2004-05 Uganda HIV/AIDS Sero-Behavioural Survey (UHSBS) indicate a stabilisation in HIV prevalence, with just over 6 percent of Ugandan adults infected with HIV. However, this masks higher rates of HIV prevalence in Uganda's war-torn north, where HIV interventions remain scarce to non-existent. In addition, the Ugandan government's commitment to evidence-based HIV prevention has recently been questioned, with new strategies of promoting "abstinence only" among youth threatening to undermine previous gains in reducing infections.

The UHSBS indicates that the number of HIV positive individuals is set to increase from 1.1 million in 2006 to about 1.3 million in 2012.

According to the UHSBS, Uganda's HIV epidemic also shows gender variations, with women having a higher HIV prevalence than men at 8 and 5 percent respectively. The data show variations in HIV prevalence for men and women among various age-brackets, and a slight increase in HIV infection within the married women's category. Of the 130,000 new infections recorded in 2006, 42 percent were married women with domestic violence cited as the risk factor³. UHSBS data show that less than 1 percent of children are HIV positive with no difference in HIV prevalence between boys and girls.

As elsewhere in Africa, Uganda's HIV epidemic affects not only individuals, but entire families, extended families, and communities.

High rates of mortality in the prime of productive life have imposed unprecedented strains on the traditional extended family structure, leading to⁴:

² Uganda National Household Survey Report 2005/6

³ The Uganda National AIDS Commission report 2006, page 10

⁴ Ibid

- The emergence of new forms of discrimination and violation of rights for AIDS-affected individuals and their families
- Vastly increased numbers of orphans and other vulnerable children, now estimated at 2 million in the country, leading to urgent child protection challenges
- Increasing numbers of child-headed and widow-headed households
- Disruption of schooling of children, often girls who are forced prematurely into the labour market, further aggravating their vulnerability
- Adverse effects on economic activity due to loss of human capital for industrial growth, agriculture, teaching, medical care, and other professions.

The areas listed above, although not exhaustive, reflect the diversity of consequences of the HIV epidemic. These consequences in turn have given rise to new challenges in the field of human rights. The epidemic has further disempowered and increased the vulnerability of various categories of the population. The policy of transparency about HIV/AIDS that has been promoted by the Government of Uganda has resulted in increasing numbers of people infected with HIV becoming

open about their status. Although it has had considerable benefits for the fight against the epidemic, opening up has also given rise to discrimination of people infected with HIV within families, at places of work, and in communities. Discrimination on the basis of actual or perceived HIV status is often reported as the most common type of HIV-related human rights violation, and also leads to a wide range of other human rights violations affecting spouses and children. Persons affected by HIV especially orphans, widows, commercial sex workers, and those in the LGBT community are largely powerless and vulnerable to abuse of their rights in many respects. These require legal protection as do those encountering violations or in situations that place them at risk of HIV.

In Uganda, responses to the epidemic initially focused on health interventions such as HIV prevention campaigns, care for the sick, voluntary counselling and testing, and more recently antiretroviral treatment. There has been considerable investment in communication and awareness-creation to stem the further spread of HIV. Over time, some responses to the human rights violations of people living with, affected by, and at risk of HIV have been designed in the form of legal services. Many of these still have yet to take root and ensure accessibility

by those they target. It is therefore timely that the Open Society Initiative for East Africa has established a Law and Health Initiative (OSIEA-LAHI) to work jointly with partners to promote programming aimed at linking legal and human rights advocacy within health programmes as a way of improving lives of the most vulnerable and marginalized populations.

OSIEA-LAHI commissioned this country assessment on HIV, human rights and access to legal services in Uganda in order to inform its programming and develop recommendations for other donors and the Ugandan government. This report contains the findings of the country assessment.

1.1 Objectives of the Assessment

The overall objective of the assessment was to conduct an assessment on HIV and human rights in Uganda, with an emphasis on access to HIV-related legal services. More specifically, the consultant was required to:

- Review and document the existing state of legal services for people living with, affected by and at risk of HIV in Uganda;
- Examine the extent to which people living with, affected by and at risk of HIV in Uganda are aware of those legal services, availability of those services, accessibility and affordability of those services and determine how well they are able to use those services.
- Identify the kind of interventions that promote rights of people with

HIV, affected by and at risk of HIV in Uganda;

- Identify existing gaps and opportunities for programming;
- Identify and recommend possible community-based HIV/AIDS organizations that LAHI can work with to design and implement programmes aimed at promoting access to legal services and rights of people living with, affected by and at risk of HIV in Uganda.

1.2 Methodology

The methodology mainly involved review of reports, policies and laws as well as consultations with various stakeholders and specific respondents categorised among people at risk of HIV/AIDS, those infected and those affected. The

interviews were limited to Kampala where the majority of national organizations and bodies have their head offices. Stakeholders included: policy makers from Parliament, the Uganda Aids Commission⁵, Uganda Human Rights Commission and the School of Public Health; nongovernmental organizations involved in the provision of legal aid services, advocacy for human rights, and addressing the health impact of HIV/AIDS; organizations composed of or targeting people at risk, such as commercial sex workers, sexual minorities, and survivors of sexual violence; and various organizations working with people living with HIV/AIDS including post-test clubs, community-based initiatives, and national coalitions.

1.2 Organization of the Report

The report is presented in five sections that respond to the scope of work as detailed in the ToR. Section Two describes in detail the legal and policy framework in Uganda relating to HIV and AIDS and identifies key gaps

⁵ The consultant integrated consultations within the process of Mainstreaming SRH, Gender and Human Rights into the NSP 2007/8-2011/12 in which she was concurrently involved.

and opportunities for the Law and Health Initiative in both reforming and implementing this framework.

Section Three provides an account of the range of human rights abuses linked to Uganda's HIV epidemic and briefly explores the means by which Ugandans typically gain access to legal services, the legal procedures that are available and the ability of people living with, at risk of, and affected by HIV to utilize them in terms of accessibility and affordability. The section also touches on the extent to which use of legal services would address the abuses identified.

Turning to the current level of demand and supply of HIV-related legal services, Section Four indicates the options for legal services available, and identifies programmes aimed at providing HIV-related legal services in Uganda. This is followed by an assessment of the current demand for legal services among people living with, affected by and at risk of HIV in Uganda compared to the supply--the "HIV-related legal services gap".

In conclusion, Section Five identifies and recommends some new and/or existing opportunities for programming for LAHI based on the programming gaps emerging from the country assessment.

2.0 The Legal and Policy Framework Relating To HIV/AIDS in Uganda

2.1 International and Regional Framework

Human rights that are relevant to the context of HIV/AIDS are found in numerous international and regional covenants, conventions, and declarations. Such rights relate to those people at risk of infection, people living with HIV/AIDS (PLHA) as well as those affected (including not only PLHA but also their extended family members and those in their household). No single human rights treaty specifically deals with HIV/AIDS and human rights; however, many contain provisions that are particularly relevant to the context of HIV/AIDS, thus obliging governments to consider these treaties in developing their HIV responses. Binding instruments to which Uganda is state party include:

- Universal Declaration of Human Rights
 - International Covenant on Economic, Social and Cultural Rights
 - International Covenant on Civil and Political Rights
 - Convention on the Elimination of all Forms of Racial Discrimination
 - Convention on the Rights of the Child
 - Convention on all Forms of Discrimination Against Women.
- In addition to the international instruments there are regional instruments that deal with region-specific issues in the context of HIV/AIDS. African regional instruments include:
- African Charter on Human and People's Rights.
 - Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
 - The OAU Charter on the Rights and Welfare of the African Child.

- The Protocol to the African Charter on the Rights of Women in Africa.

The Protocol to the African Charter on the Rights of Women in Africa deserves special attention. It is the only treaty to specifically address women's rights in relation to HIV/AIDS, and to identify protection from HIV/AIDS as a key component of women's sexual and reproductive rights.⁶ Apart from providing women a right to protection from sexually transmitted infections, including HIV/AIDS, the Protocol guarantees women's rights to adequate, affordable, and accessible health services. It also confers a duty on the State to protect girls and women from practices and situations that increase their risk of infection, such as child marriage, war-time sexual violence, and female genital mutilation.

Despite its potential to offer protection to women who are the more vulnerable among the population at risk, those infected and also affected, the protocol had received only 21 ratifications as of

Uganda is among the State parties that have made commitments to implement the undertakings contained in various declarations programmes of action issued by international agencies as part of the HIV/AIDS response.

March 2007, and Uganda was not among them. This is an area requiring intensified advocacy for ratification as well as enforcement.

Uganda is among the State parties that have made commitments to implement the undertakings contained in various declarations programmes of action issued by international agencies as part of the HIV/AIDS response. The undertakings include:

- ♦ Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development of 2 July 1999;
- ♦ The Political Declaration and Further Action and Initiatives to Implement the Beijing Declaration and Platform for Action of 10 June 2000;
- ♦ The Political Declaration and Further Actions and Initiatives to Implement the Commitments made at the World Summit for Social Development of 1 July 2000;
- ♦ The United Nations Millennium Declaration of 8 September 2000;

⁶ Protocol on the Rights of Women in Africa, Article 14.

- ♦ The Abuja Declaration and Framework for Action for the fight against HIV/AIDS; Tuberculosis and other related infectious diseases in Africa, 27th April 2001
- ♦ United Nations Declaration of Commitment on HIV/AIDS, June 2001;
- ♦ The ILO Code of Practice on HIV/AIDS and the World of Work, 2001
- ♦ The International Guidelines on HIV/AIDS and Human Rights (1997), while not itself binding on governments, provide compelling policy guidance from the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the High Commissioner for Human Rights (OHCHR) on how to ensure that internationally guaranteed human rights underlie national HIV responses.

2.2 The National Legislative Framework

Although the draft NAP and NSP seek to ensure a legal response to HIV and AIDS in conformity with international and regional human rights standards, Uganda still lacks explicit legislation regarding HIV/AIDS. However, a number of laws have a direct bearing on the human rights of people living with, affected by, and at risk of HIV.

(i) The Constitution of the Republic of Uganda (1995)

The Constitution of the Republic of Uganda, enacted in 1995, lacks explicit reference to HIV/AIDS despite the country having recognized the disease 10 years prior to that the Constitution's passage. The Constitution has most economic, social and cultural rights imbued within the spirit of the

Constitution but not as justiciable rights⁷, while Chapter Four on the Bill of Rights is devoted to civil and political rights.⁸ Under the National Objectives and Directive Principles of State Policy in the Constitution, there is no specific reference to the right to health; rather it is implied under objectives on provision of basic medical services, access to clean and safe water, food security and nutrition.

Under Chapter 4 Article 21, the Constitution provides for equality and freedom from discrimination. This includes equality before and under the law in all spheres, equal protection of

⁷ Constitution of the Republic of Uganda 1995; National Objectives and Directive Principles of State Policy.

⁸ Article 30 on the right to education and 40 on economic rights are the only exception.

the law, and prohibition of discrimination on grounds of sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. Although health status is not among the grounds enumerated, some have argued that HIV/AIDS constitutes a disability that could be envisaged under the article.⁹ It is also possible to argue for a broader interpretation of Article 21 based on Article 45, which effectively imports all other human rights, duties, and freedoms not specifically mentioned in the Chapter 4.

Other rights guaranteed under Chapter 4 include protection of the right to life (Art.22), personal liberty (Art.23), respect for human dignity and protection from cruel, inhuman and degrading treatment or punishment (Art.24), protection from deprivation of property (Art.26), right to privacy of person, home and other property (Art.27), right to a fair hearing (Art.28), right to education (Art.30), and family rights (Art.31).

⁹ David Ssekigudde Kagawa in the Daily Monitor Newspaper, 3rd May 2007.

Although health status is not among the grounds enumerated, some have argued that HIV/AIDS constitutes a disability that could be envisaged under the article. It is also possible to argue for a broader interpretation of Article 21 based on Article 45, which effectively imports all other human rights, duties, and freedoms not specifically mentioned in the Chapter 4.

Article 32 of the Constitution provides for affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances existing against them. The provisions in Article 32 clearly did not envisage health status as a basis or reason for marginalization. Articles 33-36 that follow from this contain provisions specific to groups that are understood to be marginalized: women,

children, persons with disabilities, and minorities. It is only with the recent enactment of the Equal Opportunities Commission Act 2007, that health status has been added to the bracket of grounds for discrimination and marginalization for which equal opportunities should be ensured by law.

Whereas Article 23 puts limitations on the right to personal liberty in the interest of public safety, including “...the purpose of preventing the spread of an infectious or contagious disease” (Article 23(d)), care should be taken that this subsection is not pervasively used to infringe on the rights of people living with HIV.

(ii) Equal Opportunities Act 2007

The Equal Opportunities Act of 2007 gives effect to Articles 32(2) and 33(4) of the Constitution, making the Equal Opportunities Commission (EOC) the last constitutional body to be established more than 10 years after the enactment of the 1995 Constitution.

The EOC Act is significant in that it explicitly provides a legal basis for people living with HIV and those affected to challenge discrimination in any field, including law and policy. This is clear from the Act's preamble, its definitions of "discrimination" and "marginalization," and its Section 14 on the functions of the Commission. The definition of discrimination includes "health status," while marginalization relates to limitations on the rights guaranteed under the Constitution.

Given that the law is a recent enactment and the Commission not yet established, marginalized persons have not at this writing taken advantage of its provisions. However, once the Commission is established and its regulations gazetted by the Minister, it will be possible for people living with HIV to use the Act as a basis to advance

The EOC Act is significant in that it explicitly provides a legal basis for people living with HIV and those affected to challenge discrimination in any field, including law and policy.

their rights by challenging discrimination and/or marginalization.

(iii) The Children's Act (1997)

The Children's Act of 1997 contains provisions on the welfare and rights of children that should apply regardless of whether or not there is HIV/AIDS in the family. Some of

the critical provisions in the context of HIV/AIDS and children's rights include:

- A child's right to stay with his or her parents or guardians
- The duty of the parent, guardian, or other person having custody of the child to maintain the child, meeting all the child's needs and rights including education and guidance, immunization, adequate diet, clothing, shelter, and medical attention
- The right to play and enjoy leisure.

(iv) The Employment Act (2006)

The field of employment constitutes a major site of discrimination and oppression for people living with HIV in Uganda. Discrimination occurs in recruitment, termination of employment, deployment and transfers,

grievance resolution and disciplinary measures, and payment of benefits. Section 6 of the Employment Act of 2006 prohibits discrimination on the basis of HIV/AIDS status among other grounds. This law is stronger and more explicit than the Constitution, and it strengthens the principles of the HIV/AIDS and the Workplace Policy. Moreover it is reinforced by the Equal Opportunity legislation discussed above.

The prohibition of sexual harassment under section 7 creates legal protection particularly for female employees who are placed at risk of contracting HIV/AIDS through demands for sex by their employers. A limitation of the provision is that it does not cover sexual harassment between employees, thus failing to recognize power relations between senior and lower cadres.

(v) The Penal Code

Section 129 of the Penal Code was amended in 2006 with the offence of defilement being classified into two categories, the second one being “aggravated defilement”¹⁰. The circumstances for aggravated defilement include: where the victim is less than 14 years of age and where the offender to his or her knowledge

is infected with HIV/AIDS; where the offender is a parent or guardian or person in authority over the victim; and/or where the offender is a serial offender. Although this provision effectively criminalizes deliberate or wilful transmission of HIV, in violation of international guidelines on this issue, the amendment has not generated significant debate on its implications for public health or human rights. This may be attributed to the limited information on the amendment within the public, the limited appreciation of its implications, and the limited number of organizations or groups working on HIV-related legal and human rights advocacy.

The amendment also broadens protection beyond girls under 18 to cover ‘persons below the age of 19 years’; and further provides for compensation to victims of defilement. This means that the law of defilement protects both boys and girls below 18 years of age.

Although largely seen as a deterrent measure to provide protection to young girls and boys at risk of HIV/AIDS through sexual violence and exploitation, it has been interpreted by some as discriminatory against people living with HIV. In addition to the

¹⁰ Penal Code (Amendment) Bill No.20 of 2006. The Bill as assented to by the President to make it law has not yet been gazzetted.

potentially stigmatizing effect of creating a special crime of HIV transmission, the provision implies that all persons accused of defilement must be subjected to a mandatory HIV/AIDS test, thus exposing the sero-status of both victim and offender. International human rights experts as well as the United Nations have cautioned against HIV-specific criminal laws, urging that existing criminal law is sufficient to punish the few cases in which individuals transmit HIV with malicious intent. Uganda's provision needs to be subjected to further review in order to ensure that the protection of vulnerable children does not negatively affect the rights of others.

Another of Uganda's penal code provisions that is relevant to HIV/AIDS is Section 145, which categorises same-sex sexual behaviour as conduct against the order of nature for which one is liable to imprisonment for life. Lesbian, gay, bi-sexual, transgender and (LGBTI) persons are among the most at risk populations for contracting HIV/AIDS, due to factors such as unprotected sex

In addition to the potentially stigmatizing effect of creating a special crime of HIV transmission, the provision implies that all persons accused of defilement must be subjected to a mandatory HIV/AIDS test, thus exposing the sero-status of both victim and offender.

inaccessible health services, gender-based violence, and deep social marginalization. The risk for lesbians is aggravated when they are subjected to rape and other forms of sexual violence as part of efforts to make them "straight", which they endure in silence for fear of exposing their sexual orientation, while justice eludes them. At the same time, the invisible lives that LGBT persons live cut

them off from information and services related to HIV/AIDS. Many gay and bisexual men in Uganda believe that HIV cannot be transmitted through anal intercourse, while there is a myth among lesbians in Uganda that they cannot "catch AIDS."

Similar to the issues of the LGBT community, sex workers are another population in Uganda at high risk of HIV but whose protection is limited due to the criminalization of living off the earnings of prostitution. Sex workers face harassment by law enforcement officers who arrest them under the charge of being "idle and disorderly", an offence under the Penal Code. They also face sexual violence and exploitation which they endure in

silence because they lack an effective legal basis for seeking redress. At the same time, they have limited access to information and services, both legal and otherwise, related to HIV/AIDS.

(vi) Laws on Marriage and Divorce

Uganda's 2004-2005 HIV sero-behavioural survey indicated that the largest *proportion* (42%) of people living with HIV are in the category of married or in long-term relationships. The process of amending laws on marriage and divorce towards a more just and gender-equitable family law has gone on for over 40 years in Uganda. During the term of the 7th Parliament (2001-2006), efforts went as far as drafting a Domestic Relations Bill (DRB) in 2003 which invoked a lot of controversy among various stakeholders and ultimately forced government to stall the process. Among the most controversial proposals in the DRB, which also had a direct bearing on women's HIV vulnerability, were to out-law polygamy, marital rape and ensure equal property rights. Advocacy by women's rights organizations to place the Bill on the agenda of the 8th Parliament (2006-2011) is ongoing.

By setting out different grounds for divorce for men and women, Uganda's law on divorce for a long time constituted a major hindrance to

women wishing to get out of marriages that among other things exposed them to the risk of HIV/AIDS. Risk factors within marriage include extra-marital sex, insistence on unprotected sex, and rape. In 2003, the law governing divorce in Uganda was successfully challenged in court, and major sections of it were declared unconstitutional on the grounds of non-discrimination and promoting equality of the sexes.¹¹ Within the context of HIV/AIDS and human rights, the decision enhanced protection for people especially women in marital relationships that placed them at risk of contracting HIV/AIDS from their partners.

(vii) Criminal Adultery and Succession

Prior to April 5, 2007, the Penal Code Cap 120 contained varying definitions of criminal adultery for men and women. The definitions effectively allowed married men to have sexual intercourse with any woman provided she was not married, while married women were prohibited from having sexual intercourse with any man regardless of their marital status. Apart from contravening the principle of equality between the sexes, the law made it difficult for women to prove adultery in divorce proceedings. Moreover, as

¹¹ Uganda Association of Women Lawyers, and Others Vs. The Attorney General; Constitutional Petition No.2 of 2003.

noted above, the divorce law previously required women to prove an additional ground to adultery in order to seek a divorce. The combination of these two laws left many women trapped in adulterous marriages, leaving them at serious risk of contracting HIV. In addition to the unequal grounds of divorce, the adultery provisions were also successfully challenged in the Constitutional Court on non-discrimination grounds.¹²

The grounds for challenging the discriminatory definition of criminal adultery were also used to successfully challenge certain provisions in the Succession Act regarding heirship, distribution of intestate estates, appointment of a testamentary guardian, choice of domicile, and remarriage while in occupancy of the matrimonial home.¹³ The restriction of heirship to the male child was found to be discriminatory against females; distribution of intestate estates was found to be discriminatory against women in polygamous unions; and widows were indicated to have an automatic right to appointment as guardians with a right to remarry and retain occupancy of the matrimonial

home. These are all among the many areas in which widows and orphans affected by HIV/AIDS traditionally suffer much injustice. The successful constitutional petition, if disseminated and enforced, can therefore be utilized to protect women's rights and health.

The constitutional petitions created gaps in the laws containing the challenged provisions. In the absence of an amendment of the underlying legislation or the enactment of a new, gender-equal law on domestic relations (neither of which has occurred at this writing), courts must handle domestic relations matters on a case by case basis. This has its disadvantages in that if the presiding judge is not gender-sensitive, they could apply discretion to deny justice and undermine the decision in the constitutional cases.

(viii) *The Public Health Act Cap 281*

The Public Health Act consolidates Ugandan law regarding the preservation of public health. The Act defines an infectious disease as one that can be communicated directly or indirectly by any person suffering from it to another. The Act also includes special provisions regarding certain epidemic diseases ranging from small pox to yellow fever and any other disease declared as such by statutory order. Given that HIV/AIDS was neither known nor anticipated at

¹² Law & Advocacy For Women in Uganda Vs. Attorney General; Constitutional Petitions Nos. 13/05 & 05/06

¹³ Law & Advocacy For Women In Uganda Vs. Attorney General (supra)

the time of passing this law, the Public Health Act and other related laws such as the Venereal Diseases Act Cap 284 need to be carefully examined and reviewed to assess how they apply to HIV and whether they have potential to advance or undermine human rights.

Such a review is important in view of the UNAIDS/OHCHR International Guidelines on HIV/AIDS and Human Rights.

Guideline 3 thereof requires States to review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS in order that their provisions are not inappropriately applied to HIV/AIDS and are in line with international human rights obligations.

(ix) Towards a National Law on HIV/AIDS

In recognition of the need to pay serious attention to the issue of HIV/AIDS, the Parliament of Uganda established a Standing Committee on HIV/AIDS and Related Matters. The Committee on HIV/AIDS is mandated to:

Given that HIV/AIDS was neither known nor anticipated at the time of passing this law, the Public Health Act and other related laws such as the Venereal Diseases Act Cap 284 need to be carefully examined and reviewed to assess how they apply to HIV and whether they have potential to advance or undermine human rights.

(a) coordinate HIV/AIDS activities of Parliament and provide a link between Parliament with the Uganda Aids Commission in combating the epidemic in Uganda.

(b) scrutinise the HIV/AIDS policies and monitor and evaluate activities of government, local government and other bodies aimed at combating HIV/AIDS.

(c) examine and make recommendations on relevant Bills and other matters relating to HIV/AIDS, and

(d) in cooperation with the Uganda Aids Commission and the Ministry responsible for Health, initiate relevant Bills and motions required for combating the epidemic in Uganda.

In line with this mandate, the Committee on HIV/AIDS began a process of drafting a comprehensive bill to be debated as national legislation on HIV/AIDS. The Bill is at this writing with the legislative counsel and once ready will be subject to public dialogue. The essence of the bill is to protect

rights of people living with HIV, while balancing this with the responsibility to protect the rest of the population not yet infected. Although the Committee plans at this writing to move the bill

for debate through the procedure for private members bills, they will not resist efforts by government to adopt the bill and have it debated through the regular procedure.

2.3 The National Policy Regime

A review of the national policy and legal framework on HIV/AIDS reveals a glaring gap between what Uganda has agreed to on paper and what it has implemented in practice. The Government of Uganda has produced a number of policies that cover different aspects of health and health care including HIV/AIDS. There are also sectoral policies that are concerned with either particular sectors, specific health issues or particular population groups. The major policies that are relevant to the HIV/AIDS response are as follows.

(i) The National Health Policy

Uganda's National Health Policy aims at ensuring a good standard of health for all people in Uganda. The policy emphasizes a minimum health care package for all, and seeks to strengthen the decentralization of health care services to ensure participation and management at lower levels. The prevention and

control of HIV/AIDS is listed as one of the areas to be addressed under the components of the minimum health care package. The elements of intervention under this include mitigation of the socio-economic impact of the epidemic. The policy also addresses sexual and reproductive health and rights, including antenatal and obstetric care, family planning, adolescent reproductive health, and violence against women. Under "legal aspects," the policy provides for updating, formulating, and disseminating laws, regulations and enforcement mechanisms relating to, among other things, stigmatization and denial due to ill-health or incapacity.

Although the National Health Policy contains provisions supportive of the HIV/AIDS response, including protection of legal rights, the main challenge remains their translation into concrete service delivery.

(ii) The Draft Uganda National AIDS Policy (NAP)

The Uganda AIDS Commission finalized formulation of the National AIDS Policy in 2005 and forwarded it to Cabinet for approval. The policy is described as being “rights-based” or promoting a rights-based response based on a number of core principles, of which the following specifically relate to human rights:

- Greater involvement of persons living with HIV and AIDS (GIPA)
- Equal rights for all people, meaning that being at a higher risk of HIV infection or sero-status shall not be used as grounds for decisions that negatively impact on people’s livelihood and well-being
- Non-discrimination on the basis of gender, sex, age, religion, race, social and HIV status.

The draft policy contains both policy and legislative strategies for achievement of its aims and objectives. The policy strategies listed in the draft NAP are classified into three categories: mitigation of adverse health impacts; impact mitigation at individual and community levels; and research and utilization of research products. Under policy strategies for mitigation of adverse health impacts,

emphasis is on the provision of drugs for treating opportunistic infections and for reversing the progression of HIV and AIDS, including ARVs to all PLHA who are clinically eligible.

The draft policy contains a section on legislative strategies for prevention of HIV. This section states that:

- Behaviors and environments that put individuals at risk of HIV infection shall be targeted with relevant information, education, communication and competence strategies underpinned by the review, formulation or enforcement of relevant legislation;
- Legislation on sexual abuse and exploitation of minors, adults and spouses will be reviewed in light of HIV and AIDS;
- HIV testing will not be mandatory.

In the area of impact mitigation at individual and community level, the policy states that the legal framework (including traditional and customary law) will be reviewed to ensure a legal response to HIV and AIDS in conformity with international and regional human rights standards. The following will be specifically considered:

- Anti discriminatory and other protective laws that protect people

who are infected and affected by HIV and AIDS;

- Legal/administrative procedures for seeking redress;
- General confidentiality and privacy laws;
- Laws addressing workplace rights;
- Access to legal services for those infected and affected.
- Under the legislative strategies for research and utilization of research products, the policy states, among other things, that:
- Research that involves human subjects, including drug and vaccine trials, must be based on legislated ethical standards and implemented through a proper monitoring strategy.
- All HIV and AIDS-related researchers shall be required to obtain clearance from the National Council for Science and Technology (UNCST) and deposit reports of their research findings with UNCST and UAC.

The policy further adds that the legal framework will be reviewed to enact

protective laws that govern the legal and ethical aspects of HIV related research.

Although pending formal approval by Cabinet, the draft National AIDS Policy provides a strong basis for the

The draft National AIDS Policy provides a strong basis for the promotion and protection of human rights for people living with HIV, those at risk of infection and those affected.

promotion and protection of human rights for people living with HIV, those at risk of infection and those affected. The fact that the policy remains a draft is a limitation particularly because it can not be relied on as a basis for accountability for implementation or lack thereof. The policy

is not a public document and therefore cannot reach those who need to rely on it. However, as the review of other policies below shows, the draft policy is inspirational to the development of other sector- or issue-specific policies on HIV/AIDS.

(iii) The National HIV and AIDS Strategic Plan (NSP) (2007/8 – 2011/12)

In 2000-2001, the Government of Uganda through the Uganda AIDS Commission formulated the National Strategic Framework (NSF) on HIV/AIDS to cover a period of five years.

The Uganda Aids Commission then developed a National Strategic Plan (NSP) 2007/8 – 2011/12 to guide the national response to HIV/AIDS over the subsequent five years. While the NSP includes considerable guidance on legal and human rights responses to the epidemic, it is noteworthy for its silence on the lesbian, gay, bisexual and transgender (LGBT) community, placing this population outside the ambit of protection and bringing the NSP into conflict with the principle of non-discrimination on the basis of sexuality that is contained in the draft National AIDS Policy described above.

Text Box 3.2:

Strategic actions from the Draft NSP relevant to Protection of Human and Legal Rights

Prevention

- ♦ Accelerating prevention of sexual transmission of HIV targeting vulnerable and most at risk populations.

Strategic Action: Improve relevant legislative and policy framework that promotes the support of vulnerable groups and criminalizes deliberate transmission of HIV and AIDS.

Care and treatment

- ♦ Increase equitable access to Anti-Retroviral Treatment.
- ♦ Prevention and treatment of opportunistic infections.

Strategic Action: Promote positive living and empower PHA networks to lead prevention of HIV transmission.

Social support

- ♦ Ensure legal and appropriate social and community safety nets to benefit PHA households, OVC, women, girls and other disadvantaged groups
- ♦ Ensure there is sensitization and awareness creation on human rights and protection mechanisms

The NSP has three service thematic areas, namely, prevention, care and treatment, and social support. The service thematic areas are supported by strengthened systems of delivery that include institutional arrangements and human resource requirements, research and development, resource mobilization and management, monitoring and evaluation and infrastructure requirements.

Among the highlights in the NSP that are important for promoting a human rights response is the identification and targeting of vulnerable and most at risk populations. These are defined in the NSP to include commercial sex workers, fishing communities, uniformed services, internally displaced persons, persons with disability, orphaned and vulnerable children (OVCs), and discordant couples (i.e. couples in which one partner is HIV-positive and the other is HIV-negative). Text Box 3.2 highlights priority areas and strategic actions under each of the service thematic areas that are relevant to the rights of people living with HIV and vulnerable groups. It is noteworthy that criminalization of deliberate transmission of HIV and AIDS is among the strategic actions anticipated under the NSP.¹⁴

¹⁴ See further discussion on criminalization in section 2.3 (v) on The Penal Code

(iv) The National Policy Guidelines for Voluntary HIV Counseling and Testing (VCT) (2003) and National Policy Guidelines for HIV Counseling and Testing (HCT) (2005).

Uganda adopted national guidelines for voluntary HIV counseling and testing in 2003. These guidelines apply to all actors involved in VCT service provision, and provide that VCT services should be considered a public preventive service and should be provided free in public health institutions.

The guidelines contain special provisions relating to testing and counseling for children, emphasizing human rights and the best interests of the child as guiding principles.

test clubs, care and support, and referral for additional services.

The guidelines contain special provisions relating to testing and counseling for children, emphasizing human rights and the best interests of the child as guiding principles. The age of consent for VCT is set at 12 years, although children

In relation to the rights of PHAs, the VCT guidelines spell out the following:

- The guidelines emphasize the right of the individual to consent to an HIV test, irrespective of the reasons for the test. According to the guidelines, it is also the client's decision whether and how to disclose the results of their HIV test to others.
- Requiring HIV testing from people seeking employment, study opportunities or other services can lead to discrimination and should be condemned.
- VCT should be provided along with a range of supportive services, including ongoing counseling, post-

between 12 and 18 can only consent with the approval of their guardians/ parents. This provision may limit the seeking of VCT services by adolescents, despite research showing that many are sexually active before age 18.

In February 2005, the VCT Guidelines were reviewed and integrated into the National Policy Guidelines for HIV Counseling and Testing (HCT). The purpose of this was to develop an all-embracing policy catering for all circumstances under which HIV testing takes place. Some of the areas addressed by the HCT policy include VCT, routine testing and counseling (RTC) and home-based HIV counseling and testing (HBHCT), testing of people seeking

employment, studies or certain services, testing following occupational exposure, mandatory testing in a clinical setting, testing of legal minors (above 18 but incapable of functioning like an adult), and testing of special categories.

The shift from VCT to the more general “HCT” presents a risk, particularly where clients are not well informed of their continued right to VCT. If clinicians are able to test patients for HIV without the latter’s explicit and informed consent, this creates an opportunity for adverse consequences of HIV testing, including discrimination and violence upon disclosure of status. To the extent that the HCT guidelines endorse mandatory testing in a clinical setting, there is a contradiction with the draft NAP which was also drafted in 2005. This is an area currently requiring intense scrutiny and advocacy in Uganda.

(v) The Anti-Retroviral Treatment (ART) Policy for Uganda

The Anti-Retroviral Treatment (ART) Policy for Uganda, 2003) formulated by the Ministry of Health is guided by the core values of equity and universal access. It is also based on a human rights approach that seeks to guarantee an improved quality of life for people living with HIV. The policy provides

for “positive discrimination” for certain groups, by giving priority for free ARVs to the following categories:

- HIV-infected mothers identified through prevention of mother-to-child transmission (PMTCT) programmes, as well as their HIV-infected family members (also known as “PMTCT-plus”)
- Infants and children
- HIV-infected people already enrolled in care and support activities
- HIV-infected participants involved in health research projects for HIV/AIDS.

The policy adds that, while considering the above, efforts would be made to ensure that patients outside the above categories with limited or no ability to pay would benefit from fully subsidized ARVs. The latter could easily constitute the majority of PLHA in Uganda.

(vi) The Policy for Reduction of the Mother-to-Child HIV Transmission (2003)

Uganda’s policy on prevention of mother-to-child transmission (PMTCT) of HIV, adopted in 2003, includes provisions relating to treatment, voluntary counseling and testing, breastfeeding, infant feeding, vitamin

supplementation, and STI diagnosis and treatment, all in relation to PMTCT. In particular, the policy recommends that:

- HCT services should be available in the same facility where antenatal services are provided to ease integration of the two services.
- Every HIV-positive mother and her partner should be given information about the benefits and risks of breastfeeding and the use of alternative feeding options to enable them make informed choices on infant feeding.
- All women should be supported in a non-judgmental manner irrespective of their choices with regard to infant feeding. HIV-positive women who choose not to breastfeed their infants should be supported to safely adopt replacement feeding options.
- Routine administration of multivitamins in pregnancy and vitamin in postpartum mothers and in children

The policy is not explicit on the issue of stigma against HIV-positive women in health care settings, or of violence and discrimination upon disclosure of the HIV status of a pregnant woman.

(vii) The National Policy on HIV/AIDS and the World of Work

As far back as 2003, the Uganda Ministry of Gender, Labor and Social Development formulated a National Policy on HIV/AIDS and the World of Work. The goal of the policy is to “provide a framework for prevention of further spread of HIV/AIDS and mitigation of the socio-economic impact within the world of work in Uganda”.

The guiding principles of the policy related to law and human rights include the following:

- Non-discrimination at the place of work on the basis of known or perceived HIV status (including provisions for non-discrimination in recruitment, termination of employment, deployment and transfers, grievance resolution and disciplinary measures, and payment of benefits)
- Confidentiality, including the right to privacy and no obligation on employees to reveal their HIV status to the employer
- Prohibition of compulsory HIV testing as a condition of recruitment, promotion or career development; and provision of HIV testing.

2.1 Main Recommendations from the Review of the Policy and Legislative Framework

The foregoing review illustrates that while Uganda's policy regime guarantees at least some HIV-related human rights especially in relation to the medical dimensions of the epidemic (for example, access to HIV testing, treatment, and care), the country's laws still fail to provide clear protection to vulnerable groups against HIV-related stigma and discrimination. The review reveals significant deficiencies in both the policy and legal framework in relation to criminalized populations such as sex workers and the LGBT community. The lack of an effective enforcement mechanism to support the policy framework is an additional gap requiring intensive advocacy. Significant advances have been made under the Employment Act, the Equal Opportunity Commission Act, and recent case law; however, evidence of utilization of protective legislation and constitutional decisions is still limited because the enactments and decisions are at this writing relatively recent. The real test will therefore be in attempts to rely on the existing protective framework to defend rights, in addition to strengthening the framework itself.

Specific recommendations for improving and implementing the policy and legal framework include the following:

- The need for interventions to speed up finalization of the pending draft HIV/AIDS national policy. This should then be followed by enactment of a rights-based national HIV/AIDS legislation. LAHI should explore partnerships with groups working on HIV Policy and Legislative framework. .
- Ratification of the Protocol on Women's Rights in Africa with emphasis on the potential for strengthening HIV/AIDS integration in reproductive health rights should be supported.
- Another intervention that needs to be undertaken is Public hearings (forums) and a dialogue process to build consensus on controversies arising within the human rights field as a result of HIV/AIDS. Dialogue needs to be conducted on issues such as criminalization of transmission, mandatory testing for sexual offenders and such others. The outcome of the dialogue

involving various stakeholders should inform the drafting of a comprehensive national legislation on HIV/AIDS.

- LAHI should support monitoring and advocacy for enforcement of the protective policies and laws such as the HIV/AIDS and Workplace policy, the Equal Opportunities Law and the Employment Act. This should be done with The Platform for Labour Action (PLA) an organization focusing on rights in the workplace.
- Whereas there is need to address the situation of the invisible categories such as sex workers and the LGBTI community, opportunities for any form of advocacy on their behalf are still limited due to the deeply entrenched negative attitudes towards these categories even within the human rights movement. The advocacy therefore needs to be preceded with alliance building activities for the wider population to appreciate the plight of these groups.
- The limited awareness of HIV-related rights and entitlements contained in the laws and policies is a major setback to their enforcement. Support should therefore be given to dissemination of the rights and entitlements contained in laws and policies that address HIV-related human rights issues. Examples include the HIV/AIDS Work place Policy, the Employment Act and the Equal Opportunities Commission Act. Organizations that conduct legal rights awareness programmes could be supported to develop simplified materials for dissemination and to undertake sensitization activities through their programmes.
- Litigation is another strategy through which the protective provisions within the laws can be brought to life. This would involve defending rights in courts of law through test cases. Organizations that engage in strategic litigation can take a lead on this. Test cases can be brought on discrimination at the workplace, mandatory testing and denial of maintenance and child custody for HIV positive mothers.

More detailed recommendations regarding the implementation of HIV-related legal services are discussed later in this report.

3.0 Human Rights Abuses Linked to The HIV Epidemic in Uganda

3.1 Stigmatization and Discrimination

Consultations for this report showed that people living with, affected by, or at risk of HIV encounter many overlapping forms of differential treatment, exclusion, or restrictions against them. This may be due to their real or perceived HIV status, or because of their membership in a socially stigmatized group that leaves them vulnerable to HIV. The stigma, discrimination and human rights violations combine to form a vicious circle: they create, legitimize and reinforce each other.

Sex workers and LGBT persons in Uganda face a particular kind of stigmatization and discrimination that stems from belonging to a social category that is considered immoral.

“You negotiate and agree with the person you believe to be a client. After feeding you and giving you drinks, they introduce another person who is sometimes visibly ill and force you to have unsafe sex with them on entirely different terms. We never report such violations.”

Sex Worker, Kampala

The stigma of immorality appears to justify the various forms of abuse to which they are subjected, placing them in constant fear for their personal security. Organizations working with both populations reported sexual violence, whether against lesbians in an effort to “make them straight” or against sex workers at the hands of pimps and clients. In interviews, sex workers reported having been forcefully subjected to unsafe sex, robbed of their personal belongings, and either underpaid or not paid at all for their services. They said they

had been arrested by the police and forced to pay for their liberty in cash or sex. These and other abuses increased their vulnerability to HIV/AIDS, in addition to violating their basic rights.

In situations where sex workers and LGBT persons are HIV-positive, this has reinforced their resolve to remain silent for fear of suffering multiple discrimination. It was reported that to date, only one lesbian in Uganda had been bold enough to disclose her HIV positive status within her community of lesbians¹⁵.

Girls and women represent a much larger but also fundamentally marginalized and excluded group in Ugandan society. Girls and women who have survived rape, sexual violence and abduction face the added abuse of being stigmatized by their communities. They are often evicted, regarded as not good enough for marriage, and blamed for the abuse they suffer. Their ostracization prevents them from enjoying their full range of civil, political, social and cultural rights.

For people living with HIV in Uganda, stigmatization and discrimination represent a major obstacle to effective HIV prevention, treatment, care, and support. The Agency for Cooperation in Research and Development (ACORD) reported that fear of discrimination at work, school or other spaces prevented people living with HIV from seeking treatment for AIDS

¹⁵ This was disclosed during an interview with Freedom and Roam.

or from acknowledging their HIV status publicly.¹⁶ The forms of stigma and discrimination faced by people living with HIV are multiple and complex, with the burden on women being especially heavy. Women living with HIV are doubly stigmatized—as “people living with HIV” and as “women.”

Widows and orphans of HIV also encounter HIV-related stigmatization and discrimination in Uganda. They may be rejected and expelled from the matrimonial home, with the widows being blamed for bringing HIV into the family and the orphans considered a burden. In many cases they are denied shelter. Orphans face a high rate of school drop-out, due to many factors such as discrimination within school and the loss of parental support. Orphaned and vulnerable children may be forced

I handled a case of a woman who initially indicated a need for legal assistance to have custody of her children of tender age. On further probing I found out that she had taken an HIV test. When she informed her spouse of her positive status, he turned violent, asked her to leave the home and denied her custody of the children.

The frequency of reporting such cases and other similar ones is what inspired us to establish a specific project to promote legal rights of PHAs.

Reported by Fida Programme Officer

¹⁶ ACORD: GOOD PRACTICES for Challenging Stigma and Discrimination and Rights Promotion of People Living with HIV&AIDS. A Case of Tanzania and Uganda 2006-2007.

into child-labour, which increases HIV vulnerability especially among girls.

Legal aid service providers interviewed for this report said that they had handled a number of cases of women who were subjected to violence or denied child custody or maintenance upon disclosing their positive HIV status to their spouses.

3.1.1 Rights to Privacy, Consent, and Confidentiality

In a 2005 study by the Health Rights Action Group (HAG) on the status of human rights among people living with HIV/AIDS, people living with HIV reported they had their sero-status disclosed without their consent, while others were subjected to mandatory HIV testing.¹⁷ Mandatory HIV testing prior to joining the Police Force was also reported as an issue that the Uganda Network on Ethics, Law and HIV/AIDS (UGANET) was handling with that institution, and on which a public interest test case could be filed.

Violations of consent and confidentiality represent both a denial of basic rights and a threat to public health. Failure to maintain confidentiality of medical

information on people living with HIV often leads to fear of accessing information and services, as disclosure of status can lead to discrimination and other abuse.

Violations of the right to privacy were also cited as a concern during consultations with the Sexual Minorities Coalition. Members of the Coalition revealed that their right to privacy was under constant threat, so that they not only hid their living addresses but also the locations of their organizations. A specific case on violation of the right to privacy was filed against the Attorney General by a coalition member of Sexual Minorities Uganda (SMUG)¹⁸.

3.1.2 Right to Information

The right to freely receive and impart information lies at the core of reducing vulnerability to HIV infection and the promotion of dignity for those living with HIV and AIDS. The right to information includes seeking and receiving information about HIV prevention and treatment options. The right should also extend to seeking, receiving and imparting information about one's human rights as a person living with, affected by, or at risk of HIV.

¹⁷ UNVEILING THE TRUTH: The Status of Human Rights Among People living with HIV/AIDS in Uganda and their involvement in initiatives targeting communities, 2005. By Health Rights Action Group (HAG).

¹⁸ A discussion of the facts of this case is barred by the sub-judice principle.

The HAG study on HIV and human rights found that awareness of human rights among people living with HIV in Uganda was low. This finding was affirmed during consultations with organizations representing people living with HIV, sex workers, LGBT persons, and legal aid service providers, as well as policy makers.

Since approximately 2003, the Uganda government has placed considerable emphasis on the promotion of ‘abstinence’ within HIV/AIDS information campaigns targeting young people. Sexually explicit HIV/AIDS information has been censored from government-sponsored school curricula such as the Presidential Initiative on HIV/AIDS Strategy for Communication to Youth (PIASCY). This strategy has generated controversy in part because young people may be denied information about condoms and safer sex options, while the National Sero-Behavioral Survey of 2004/5 revealed that 14 percent of both men and women aged 15-24 reported having had sex before age 15. This policy can and should be

legally challenged as contradicting the right to information.

3.1.3 Right to the Highest Attainable Standard of Health

In a paper for the Human Rights and Peace Centre of Uganda (HURIPEC), Twinomugisha aptly observes that for people living with HIV, access to anti-retroviral treatment (ART) and to treatment for opportunistic infections is critical to the enjoyment of their right to life and to health.¹⁹ According to HURIPEC paper, by the end of 2006, there were 91,500 people living with HIV on ART in Uganda, representing

approximately 39% of those who needed it. This included 9,500 children, representing approximately 11% of children who needed ART. Despite this progress, the gap between need and delivery of ART reflects that in Uganda, availability and access to ART are not treated as entitlements giving rise to legal obligations, much as they might be taken seriously as a policy issue.

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¹⁹ Ben Twinomugisha: Protection of the Right to Health Care for Women Living with HIV/AIDS in Uganda: The Case of Mbarara Hospital; HURIPEC Working Paper No.5 April 2007.

A further issue related to the right to the highest attainable standard of health is rape within marriage and sexual violence, which not only violate bodily integrity and freedom from violence, but also increases women's vulnerability to HIV infection. The Uganda Demographic and Health Survey of 2005/6 shows that women are more likely to have experienced both physical and sexual violence than men. The survey further shows that almost one-sixth of Ugandan women (16%) who have been pregnant experienced violence during pregnancy. Victims of sexual violence frequently indulge in self blame and do not seek medical assistance. This in turn denies them the opportunity to benefit from post exposure prophylaxis (PEP) with anti-retrovirals to protect them from HIV infection. PEP is not readily available for survivors of sexual violence in Uganda, as the focus of the policy is occupational exposure.

In the case of women and girls from areas affected by conflict in northern Uganda, the Juba Peace Process could be an opportunity to seek justice for sexual violence. At this writing, consultations with the communities on Agenda Item 3 on Reconciliation and Accountability are ongoing. The major issue of discussion is whether or not

to re-integrate the ex-Lord Resistance Army (LRA) rebels without subjecting them to formal trials for human rights violations. Preliminary reports from the consultations indicate that communities prefer to re-integrate and use traditional mechanisms for justice and reconciliation.²⁰ It is important to monitor how issues of sexual violence that exposed so many women and girls to HIV will be resolved in the Peace Process. There is a need to monitor whether women infected with HIV through conflict rape get justice and ARVs, as well as support legal services for these women through organizations like Human Rights Focus based in Gulu.

3.1.4 The Right to Work

Stigmatization and discrimination underlie a range of human rights abuses related to the right to work in Uganda. The HAG study on HIV and human rights reported that people living with HIV had been dismissed from work due to their HIV status, while others had been denied promotion or employment benefits.

During an interview with ACORD it was reported that an employee of an FM radio station in Gulu district (Uganda) who had been dismissed based on HIV status was reinstated following intense advocacy by a community-based paralegal programme involving both people living with and those affected by HIV.

²⁰ "Kony should be forgiven-IDPs"; New Vision Newspaper, Friday 24th August 2007, Page 4.

Such abuses can continue unabated in the absence of strong enforcement of an explicit law prohibiting discrimination on the basis of health status. It is therefore important to monitor whether the provisions in the recently enacted Employment Act and related policy are being utilised for the benefit of people living with HIV in the workplace. Organizations like ACORD, Platform for Labour Action and HAG have the capacity to spearhead such activities.

3.1.5 Access to Justice

Any discussion on human rights abuses in the context of HIV/AIDS would be incomplete if it did not address the issue of access to justice. As the foregoing assessment of specific human rights violations has shown, in the vast majority of cases, human rights abuses linked to the HIV epidemic in Uganda are endured in silence and ultimately coupled with the denial of justice. Several factors are responsible for this, including: limited knowledge of rights; fear of seeking justice due to belonging

to a prohibited social category; powerlessness and lack of faith in the justice system; corruption; inability to identify perpetrators; limited access to and affordability of legal aid services; and lack of a supportive legal framework for access to justice.

The human rights abuses examined in this short summary are clearly not exhaustive but rather demonstrative of the challenge posed by the HIV epidemic on Uganda's human rights regime. They are also not isolated from one another, but rather overlapping and mutually reinforcing—just as the various human rights protections are interdependent. Starting with stigmatization and discrimination, a ripple effect of violations that reinforce each other is set in motion.

The remainder of this report examines how HIV-specific legal services can help to address these violations and advance the health and human rights of people living with, affected by, and at risk of HIV in Uganda.

4.0 The Demand and Supply of HIV-related Legal Services

4.1 Mechanisms for Redress

Legal procedures and mechanisms available to assert human rights in Uganda include both governmental and non-governmental mechanisms. Governmental mechanisms include formal courts, the Police, the Uganda Human Rights Commission²¹, Local Council Courts, the Probation and Welfare Office, the Administrator General's Office, and the Department for Labor and Registration of Trade Unions. Non-governmental mechanisms include programmes for legal aid, advice and counseling, advocacy, and paralegal services.

Despite what appears to be a wide range of options for seeking legal redress, access to justice continues to elude many Ugandans, particularly those who encounter HIV-related human rights abuses. A recent survey on operations of Local Council Courts (LC Courts) and

legal aid service providers in Uganda provided information on the ranking of dispute resolution fora in Uganda.²² Respondents from all categories involved in the survey indicated that LC Courts are the most utilized dispute resolution fora. LC courts were followed by the Police, traditional leaders, probation offices, and finally formal courts. It is noteworthy that although their mediation services are free or largely subsidized, legal aid service providers were not ranked highly among dispute resolution fora by communities. This was mainly attributed to the limited accessibility and visibility of legal aid providers.

The 2006 survey on LC Courts and legal aid services further highlighted the reasons for ranking LC Courts higher than other dispute resolution fora. Most

²¹ Article 52 (1) (a) and 52 (2) Constitution of the Republic of Uganda

²² The Legal Aid Basket Fund (LABF) & UNDP/UNCDF: Joint Survey on Operations of Local Council Courts and Legal Aid Service Providers, 2006 by Nordic Consulting Group (U) Ltd.

users indicated that they concluded their matters through LC Courts, and where this did not happen, they tried to exhaust all other possible avenues before trying the formal courts if at all. Indeed, the “other dispute resolution fora” referred to in Table 4.1 below mainly refers to the formal court system, with other dispute resolution fora falling in between LC Courts and formal courts as a preferred method of dispute resolution.

Table 4.1: Reasons for ranking of dispute resolution fora

Positive attributes of LC courts	Other dispute resolution fora
<ul style="list-style-type: none"> ▪ They are our first contact with government. 	<ul style="list-style-type: none"> ▪ They will always require evidence that you have been to the LC first
<ul style="list-style-type: none"> ▪ They live within the community and are accessible. 	<ul style="list-style-type: none"> ▪ Far from the users in terms of distance.
<ul style="list-style-type: none"> ▪ They are conciliatory leaving both parties satisfied. 	<ul style="list-style-type: none"> ▪ They are adversarial and the conflict never really ends.
<ul style="list-style-type: none"> ▪ They are convenient and not complicated. 	<ul style="list-style-type: none"> ▪ The process is cumbersome. “causes fatigue”
<ul style="list-style-type: none"> ▪ They have background information 	<ul style="list-style-type: none"> ▪ It depends on who argues better and has a better lawyer.
<ul style="list-style-type: none"> ▪ They are cheaper 	<ul style="list-style-type: none"> ▪ More expensive
<ul style="list-style-type: none"> ▪ They are faster 	<ul style="list-style-type: none"> ▪ They delay and cases never end.

Source: Joint Survey Report on Local Council Courts and Legal Aid Service Providers, 2006.

The above findings of the 2006 survey on LC Courts and legal aid services are only partially applicable to the search for justice in relation to HIV related abuses. As the previous section argues, due to a range of context-based factors often having to do with stigma, discrimination or criminalization, human rights abuses linked to the HIV epidemic in Uganda are still largely endured in silence and not even reported to and handled by the LC Courts. It follows therefore that although people living with, affected by and at risk of HIV should access the standard legal procedures available to assert human rights in Uganda, they are doubly constrained by the limitations within these procedures that affect all Ugandans (highlighted by Table 4.1), as well as by the context-based factors peculiar to their situation of HIV-related vulnerability.

OSIEA-LAHI should balance its support to enhance use of both formal and informal mechanisms in order to realize wider impact. In particular, OSIEA-LAHI should provide support to programmes that specifically provide HIV-related legal services as discussed in the next section.

4.2 Legal and Human Rights Programmes Providing HIV-related Legal Services in Uganda

Whereas Uganda has braved the HIV/AIDS epidemic for almost two decades, the longest existing programme for the provision of HIV-related legal services among those identified during the assessment, the Uganda Network on Ethics, Law and HIV/AIDS (UGANET), has spanned a period of only eight years, with the majority under five years of existence.

The provision of HIV-related legal services in Uganda is clearly dominated by non-governmental service providers. Based on consultations conducted, services can be grouped into four major categories of Integration, Litigation, Empowerment, and Law and Policy Advocacy. A fifth category, Supportive Mechanisms, helps individuals benefit from legal services by addressing other aspects of their livelihoods and vulnerability. A description of the services and ability of people living with affected by and at risk of HIV to utilize them in terms of accessibility and affordability follows below.

4.2.1 Integration Projects

Services within this category include the provision of legal services within the context of other HIV-related services for treatment and care or prevention. In Uganda, services in this category mainly benefit people living with HIV. The integration may be done by the same organization within existing programmes, or it may involve a joint initiative or collaboration between organizations with different focus areas and competencies. Although these services are at no cost to the target group, their accessibility is strictly limited to members from the targeted communities. Examples of integration programmes identified during the survey include the integration of “will writing” into training activities by the Training Centre of The AIDS Support Organization (TASO), a joint initiative between Federation of Women Lawyers-Uganda (FIDA-U) and Plan International, and a weekly legal aid clinic at the National Community of Women Living with HIV/AIDS (NACWOLA). FIDA-U has also found it necessary to employ in-house counsellors to provide support to HIV-positive clients on an as-needed basis.

This approach has proved effective in handling HIV-related complaints.

Under their Domestic Violence Demonstration Project, Centre for Domestic Violence Prevention (CEDOVIP) has integrated support for victims of domestic violence by linking with Police stations and legal aid organisations in the areas they cover. Masaka Diocesan Development Organization (MADDO) has a programme of Legal Defence for Widows and Orphans (LEDEWO) that links with other development initiatives of the organization.

4.2.2 Litigation Projects

This category includes services for legal representation of individuals, class actions, strategic litigation, and related supportive interventions. The services mainly benefit people living with HIV and those affected. The approach to legal representation takes different forms from one organization to another. Organizations like TASO have used a law firm retained by the organization to undertake representation of clients with serious cases; others like Human Rights Action Group have referred their cases to organizations or law firms providing pro-bono services. Although not restricted to HIV-related issues, organizations like FIDA-U and Legal

Aid Project of the Uganda Law Society provide representation for some of their clients, or mediate between parties and in some cases send authoritative communication in support of their clients to relevant persons or offices.

Litigation also involves the filing of strategic cases to set precedents and/or establish key relevant principles that can be relied upon by many others in future. Examples include the cases already highlighted in this report involving LAW-Uganda, FIDA-U and by individual lawyers. The only HIV-specific test case ever is the one filed by SMUG and is still pending before the Courts.

In terms of accessibility, apart from strategic litigation which has a wide impact, individual litigation services have limited coverage. Although litigation lawyers may handle large numbers of cases, they tend to be limited to people who are within a 10 km radius, leaving a large unmet demand. The cost of transport to pursue legal services, which at times involve multiple trips, is also not within the means of the majority of clients.

In line with its mandate, the Uganda Human Rights Commission has powers to investigate complaints of violations of human rights lodged by individuals

and give remedies such as compensation or any other legal remedy or redress.²³ Its head office is in Kampala with regional offices in Fort Portal, Kampala, Mbarara, Gulu, and Soroti. Although the Commission has issued an Annual Human Report for 9 of the 10 years it has been in existence, it is not possible to gauge from the records which complaints have been HIV-related. What consistently emerges in the UHRC reports, however, is the lack of improvement in the right to health care for people living with HIV/AIDS in prisons or other places of detention. The 9th Annual report indicates that although there is improved access to ARVs for HIV infected persons in detention, the effect is diminished by the poor diet of the prisoners.

4.2.3 Empowerment Projects

The majority of services assessed for this report fall under the category of empowerment, targeting people living with, affected by and at risk of HIV with the information and tools they need to defend their own rights. Legal empowerment approaches include sensitization and awareness creation

What consistently emerges in the UHRC reports, however, is the lack of improvement in the right to health care for people living with HIV/AIDS in prisons or other places of detention.

on HIV and human rights targeting people living with HIV, health service providers, LC Court officials, the police, and the wider community. Organizations like ACORD and LEDEWO have trained both people living with HIV and other community members as paralegals,

while others have done skills-based training on issues such as will-writing. The production of a Patients' Charter, training manuals, pamphlets, posters and other Information, Education and Communication (IEC) materials as well as radio programmes and other media-based activities are part of empowerment. Examples of service providers identified include Agency for Relief and Development (ACORD), HAG, FIDA-U, National Forum for PHA Networks (NAFOPHANU), Hope after Rape, ActionAid International-Uganda, and Uganda National Health Consumers and Users Organization (UNHCO).

Similar to the services under litigation, these are cost-free but have a rather limited coverage around the country. Although service providers are national organizations, they operate in a limited number of communities.

²³ Article 52 (1) (a) and 52 (2) Constitution of the Republic of Uganda

4.2.4 Law and Policy Advocacy Projects

Although not directly part of service delivery, this category of projects seeks to ensure a conducive legal and policy framework for the protection of human rights of people living with, affected by and at risk of HIV. Areas of focus identified include the Employment Act and Policy, national legislation on HIV/AIDS, the Sexual Offences Bill, Domestic Relations Bill, the Bill on Trafficking in Persons, and ratification of the Optional Protocol to the African Charter on Women's Rights in Africa. Key actors include Centre for Domestic Violence Prevention (CEDOVIP), Uganda Women's Network (UWONET), Uganda Women's Parliamentary Association (UWOPA), Uganda Network on Law, Ethics and HIV/AIDS (UGANET), Platform for Labour Action, and LAW-Uganda. The Parliamentary Committee on HIV/AIDS is also a critical player in this category.

4.2.5 Projects on Research, Documentation and Development of Resource Materials – “Support Mechanisms”.

Services in this category mainly include practical interventions that support and enhance the delivery of HIV-related legal services. Such activities include research to support advocacy

campaigns or inform the development of interventions such as that done by HAG, ACORD, the periodic HIV/AIDS Sero-Behavioural Surveys, as well as the Housing and Demographic and Health Surveys under the Uganda Bureau of Statistics.

Related to research are monitoring activities such as the Situational Analyses on the Status of Human Rights for PHAs such as those conducted by HAG, sex workers, and the LGBT community. Other aspects of monitoring that are important but not yet being undertaken include projects focusing on enforcement of the relevant policies and laws. Another aspect of research is the need for review of various pieces of legislation and their implications on HIV/AIDS and human rights.

Raising Voices is an organization that is skilled with the translation of large and complex issues that arise in the area of violence into practical methodologies and tools for use at the community level. In 2003, Raising Voices developed a resource guide on mobilising communities to prevent domestic violence that has been found effective by its users in East and Southern Africa.²⁴

²⁴ Lori Michau & Dipak Naker: Mobilising Communities to Prevent Domestic Violence. A Resource Guide for Organisations in East and Southern Africa, 2003.

The organization is at this writing about to conclude the development of another resource guide, “SASA,” that contains practical tools and methodologies for the analysis of power in the link between violence and HIV and targeting HIV/AIDS organizations.

In 2006, LAW-Uganda developed a training manual on legal support to survivors of domestic violence and established a pilot shelter for battered women, which ran for a year. The shelter provided a space for battered women who would be linked to the police, a medical clinic and a counsellor. Lessons taken from the pilot were valuable and

could be utilised in establishing shelters for battered women.

The National Community of Women Living with HIV/AIDS (NACWOLA) Memory Project and activities of the School of Public health can also be categorised among support mechanisms. The Memory Project of NACWOLA involves the documentation of the family tree and life histories by PLHAS that they then leave behind for their children to read. The School of Public Health undertakes has developed a course unit on Law, Ethics and HIV that would enhance the capacity of actors especially health practitioners.

4.3 The HIV-related Legal Services “Gap”

It is clear from the level of HIV-related human rights abuse in Uganda that there is a tremendous need for HIV-related legal services. However, meeting this need requires both generating demand for legal services, and generating a sufficient supply of legal services to meet that demand. In Uganda, demand for HIV-related legal services remains low for several reasons, including limited knowledge of rights, fear of seeking justice due to membership in a prohibited social category, powerlessness, inability to identify perpetrators, limited access to

services, and lack of a supportive legal framework. Overcoming these factors is crucial to any effort to advance HIV-related human rights.

Text Box 4.3:

Selected quotes regarding Legal Aid Service Provision

“We do not have any legal aid service provider in the district.”

“We have heard about legal aid providers on radio but we have never been there.”

“How does Fida work? How do we get them? Would they come and train us if we invited them?”

Source: Joint Survey Report on Local Council Courts and Legal Aid Service Providers, 2006.

Moreover, a comparison between the potential level of demand for HIV-related legal services and the supply of services reveals a serious gap. This gap is reflected in the low availability, accessibility, affordability, and quality of legal services. In other words, even those who have confidence in the justice system and seek legal services to assert their rights are very unlikely to find them.

It has been noted that although legal service providers are usually national agencies or organizations, their operations are limited in terms of geographical scope. Those that indicate operations in a number of districts are limited to small sections of the community in those districts. For instance the joint programme between FIDA-U and Plan International which covers Kawempe Division covers only 6 of the 19 parishes there, despite demand from other parishes. The 2006 Joint Survey on LC Courts and legal aid revealed that legal aid service providers were not as visible or accessible as had been assumed by the survey team.

As text box 4.3 illustrates, legal aid service providers are largely urban-based with limited facilities to conduct outreach. In one district, a community

that only 6 km away from the town had never heard of the service provider in that area.

Closely related to issues of access are issues of quality. Some legal services are ineffective at addressing HIV-related abuses, often because of long delays in the formal justice system. Increasing the quality of existing legal services, including building the capacity of service providers to use alternative mechanisms including traditional justice, should be a priority.

The assessment observed that whereas there have been some attempts to provide legal services for people living with HIV, legal services targeting the affected and at risk are disproportionately fewer. For instance, there are no legal aid service providers targeting fishing communities in Uganda, yet they are among the most at risk populations. The assessment similarly identified total gaps in legal service provision for the prohibited and therefore “invisible” populations of sex workers and LGBT persons. The organizations serving these two groups restricted their operations to the provision of basic information and services on HIV/AIDS and lacked the capacity to address the human rights issues. Their linkages with other mainstream human rights organizations were also found to be quite limited.

5.0 Programming Opportunities for The Law and Health Initiative

5.1 Introduction

It is the finding of this review that the available legal services in Uganda do not nearly match the huge need for general legal aid services, let alone the needs of people living with, affected by and at risk of HIV/AIDS, who face a range of additional issues and vulnerabilities. While some nongovernmental HIV/AIDS organizations have attempted to integrate legal support into their work, there are hardly any legal and human rights services directly related to HIV/AIDS in Uganda.

Interventions by the Law and Health Initiative (LAHI) should attempt to fill this gap, both by supporting HIV-related legal services and addressing the underlying issues that create

the “legal services gap” in the first place. LAHI should seek to support initiatives that will integrate legal services into existing HIV/AIDS programs, expand and scale-up the few services that have attempted to respond to the needs of those affected and most at risk, enhance efforts already being taken within the legal and policy framework, and ensure more equitable service provision to improve both accessibility and effectiveness. Interventions should also ultimately lead to a more balanced position in targeting people living with, people affected and those at risk of HIV/AIDS.

5.2 Recommended Actions Under LAHI's Priorities

LAHI's Global Strategy²⁵ outlines a number of priorities that fit in well with the findings of this review. These priorities are (1) integrating legal and health services, (2) promoting human rights in patient care, (3) supporting human rights responses to HIV and AIDS, (4) developing civil society capacity in law and health, and (5) using legal strategies in health monitoring.

In determining specific activities to be supported under these priorities in Uganda, the following criteria should be considered:

- **Cost-effectiveness:** activities to ensure access to justice at minimal financial cost;
- **Time:** activities to minimize the duration of dispute resolution;

- **Empowerment:** activities that have a wide impact on promoting positive-living
- **Conciliatory approaches:** strategies limiting backlash and vindictiveness;
- **Accessibility:** activities to fill programming gaps and ease access for the target groups.
- **Sustainability:** strategies building on existing mechanisms, including cost effective strategies;
- **Efficiency:** strategies that yield wide impact results with a block cost.
- **Inclusiveness:** activities targeting most at risk populations.

In relation to the above priorities and criteria, proposed interventions include:

Priority 1: Integration of Legal/Paralegal and Health Services

Supporting HIV/AIDS and legal aid organizations to integrate, mainstream and scale-up legal aid service provision to include targeting those living

with, affected by and most at risk of HIV fits in well with LAHI's priority of integrating legal and paralegal services into health services. All service providers involved in treatment and care recognized that inclusion of legal services would greatly enhance

²⁵ Open Society Institute Public Health Program, Global Strategy for the Law and Health Initiative, January 2007, available at http://www.soros.org/initiatives/health/focus/law/articles_publications/publications/strategy_20071211.

the quality and effectiveness of their services, but are limited by resources. Integration can be done using the following approaches:

a) Integration of legal services into programmes focusing on HIV treatment and care

This would ensure broader and more effective coverage because treatment and care programmes are more equitably represented throughout the country. Organizations like TASO which has eleven operational centers in 4 regional offices in the country as well as a training centre provide a good model for integration through expansion of their will writing project to cover other human rights aspects of HIV. Human rights and HIV can also be included in the training provided at the TASO Training Centre. Another organization, Meeting Point International, providing care and treatment in three informal settlements would go a long way toward enhancing its services by integrating legal services to respond to the rights-related challenges they encounter. Centre for Prevention of Domestic Violence have gained valuable experience in integrating legal protection within their Domestic Violence Demonstration Project in another informal settlement. Other groups that have elaborate

HIV care and treatment programmes that could explore integrating legal services include are the development programmes of the Catholic Church such as Soroti Catholic Diocese Development Organization (SOCADIDO) and GULU Catholic Diocesan Development Programme. Given their wide reach, there is potential to explore possibilities of integration of legal services into their already existing treatment and care programmes.

b) Integration of HIV legal services within existing legal aid programmes

As already illustrated in this review, FIDA-Uganda in collaboration with Plan International have already implemented a programme in one district offering legal aid specifically for those living with and affected by HIV. FIDA also collaborates with NACWOLA to run a weekly legal aid clinic for the membership of NACWOLA who are mainly women living with HIV. The Legal Defence Programme for Widows and Orphans implemented by the Masaka Diocese Development Programmes also provides a good model of integration. Such initiatives should be evaluated for their effectiveness with the purpose of expanding them for wider reach and ensuring that they

also target the socially marginalized populations of sex workers and LGBT persons who at the moment have no access to HIV-related legal services. Programmes for HIV-related legal services targeting fishing communities would also address a serious gap. LAHI should explore possibilities of partnership with groups working with fishing communities to address legal and human rights challenges relating to HIV and AIDS.

c) Integration of HIV legal services at the Local Council Courts

It is the finding of this report (Section 4) that although legal aid service organizations offer services for free or are largely subsidized, they remain invisible and inaccessible to potential users. Most people opted to utilize the LC Courts in resolving their disputes. LC Courts therefore play a significant role in promoting access to justice and should be capacitated to deal with violations relating to HIV/AIDS. Organizations that work with LC Courts could be supported to expand their training programmes to ensure they target the officials who preside over the LC Courts and equip them with sufficient knowledge on HIV and human rights to enable them resolve those disputes in line with human rights principles.

d) Strategic litigation based on integration projects

As LAHI's strategy notes, integrated legal and health services can be used as the basis for identifying cases for strategic litigation. Indeed, experience has shown that there are limitations in pursuing litigation for individual cases. Court procedures take long to conclude and are tedious and expensive. In that regard, strategic litigation and test cases on protective legal provisions and mechanisms such as the Equal Opportunities Commission are recommended because they would generate a wider impact in a more efficient manner. Support could be provided to organizations that engage in strategic litigation to file test-cases on discrimination against people living with HIV, especially using the new laws on employment. Coupled with this should be support to advocate for the speedy creation of the Equal Opportunities Commission that will address violations of rights of vulnerable groups.

At the individual (non-strategic) case level, to the extent possible, support should go towards mechanisms for Alternative Dispute Resolution (ADR) to protect rights of people living with, affected and at risk of HIV. Cases such as sexual and domestic violence that cannot be settled out of court should be pursued through formal processes.

Priority 2: Human Rights in Patient Care

As alluded to in this report and the LAHI Global Strategy, health services can too often be places of abuse and coercion rather than treatment and care. Indeed, one of the barriers to the realization and access to justice as highlighted in this report for those living with HIV and those most at risk populations is the lack of awareness of rights not only amongst those populations, but also amongst the health and legal service providers as well as the general public. As increasing numbers of people living with HIV gain access to health care, there will be a need to support promotion of human rights in patient care to both the consumers of health services as well as the providers. The

Patient Rights Charter developed by UNHCO and adopted by the Ministry of Health should be a good beginning point. The training and awareness-raising being conducted by UNHCO on patients' rights should be extended to specifically include those affected and at risk of HIV so that they are able to seek redress on violations. Awareness and sensitization on HIV and human rights should also be targeted at the general public to ensure they do not violate those rights and act as advocates to prevent violations. Groups that work on patients' rights could be supported to intensify the work on this with a focus on those affected and most at risk populations.

Priority 3: Human Rights Responses to HIV and AIDS

Priority 3 represents an opportunity to support national advocacy for legislative and policy reform related to HIV. Priority areas for HIV and human rights advocacy in Uganda include:

a) Criminalization of “invisible” social categories

Despite Uganda's having a plethora of policies on HIV and AIDS, there are still glaring gaps in terms of

responses based on a human rights response to HIV. This is perhaps most clearly evidenced by the continued criminalization of the “invisible” social categories of sex workers and LGBT persons.

The situation of sex workers and the LGBT community warrants special attention. Their status is effectively prohibited, placing them at heightened risk of HIV. The assessment showed

that these categories are far from a point where they can defend their rights or seek support from others. They have no strategic targets, lack skills for planning, cannot retain legal services, and need to raise allies within the human rights movement in the country. The Uganda AIDS commission fails to mention them in its national strategic plan, further heightening their invisibility. It is therefore recommended that in order for these categories to meaningfully benefit from legal services, they should first receive support for institutional strengthening and coalition-building

In seeking to initiate programmes for these populations, there is need to make reference to other findings conducted to determine funding needs and capacity gaps for these groups.²⁶ Another avenue for ensuring their rights may be the establishment of a defenders fund through the East and Horn Human Rights Defenders Network, which would in turn build the capacity of these groups and provide legal support in the event of violations.

²⁶ A situational analysis of sex workers in Uganda; Lady mermaids bureau, Off the Map; Cary Johnson.

The situation of sex workers and the LGBT community warrants special attention. Their status is effectively prohibited, placing them at heightened risk of HIV.

b) Criminalization of wilful HIV infection

Although Uganda has not enacted HIV-specific legislation, the Parliamentary Committee on HIV/AIDS in Uganda is at this writing in the process of drafting a bill on HIV/AIDS. Moreover, as noted

above, a recent amendment of the penal code introduced the offence of “aggravated defilement” that effectively criminalizes deliberate or wilful transmission of HIV. While this may be a better approach rather than creating a new crime in a new law, it is nevertheless necessary that proactive action be taken to ensure sufficient public debate on the draft bill to guard against importing provisions into the Ugandan draft bill from other jurisdictions that criminalize not just wilful infection but also knowledge of ones HIV status and failing to inform a sexual partner. Hand in hand with creating fora for debate on criminalization, other issues relating to rights of PLWA and those at risk that need to find voice in the debate on policies and laws are compulsory testing, premarital testing, testing of pregnant women, and protection of OVC’s.

Human rights advocacy organizations could be supported to convene public debates on the human rights implications of the proposed HIV/AIDS legislation. The debates would provide a platform for dialogue on contentious issues towards consensus-building. The Parliamentary Committee on HIV/AIDS is also a critical partner in this regard. They should also receive technical support in reviewing the draft bill with a view to proposing changes that would promote and protect rights of the vulnerable groups and people living with HIV.

c) Other Law and Policy Advocacy

Other strategies that could be pursued under this priority include advocacy campaigns on:

- An Overarching HIV/AIDS Policy. This would agitate for the conclusion of the pending HIV policy that would be the reference point for all other policies on HIV in Uganda.
- Finalization of a Comprehensive PEP policy. The PEP draft policy caters for PEP provision only in occupational exposure cases. It fails to provide for treatment with PEP for survivors of sexual violence, even though PEP has been proven to prevent infection with HIV when administered within a certain time frame. CEDOVIP in collaboration with other partners is already working on expansion of the provisions of the policy to include post-rape care and treatment.
- Ratification of the Protocol on Women's Rights in Africa. The protocol contains specific provisions aimed securing rights of women and girls in the face of HIV/AIDS and ratification process should be supported.
- Establishment of the Equal Opportunities Commission. This Commission is mandated to resolve disputes relating to employment matters. Given the wide discrimination of PLWA's in the workplace, the COALITION ON EOC should be supported to expedite the process of establishing this commission.
- Other laws that need to be reformed or enacted to protect those affected and most at risk of HIV include the Domestic Relations Bill under the DRB Coalition and matrimonial property laws.

Priority 4: Capacity Development in Law and Health

It is the finding of this report that there are hardly any legal and human rights interventions directly targeting people living with, affected by and at risk of HIV in Uganda. Besides being overstretched by their current interventions, the dearth of HIV related legal and human rights services points to a weak capacity on the part of institutions that offer both care and treatment and other mainstream legal aid programmes to design innovative programs to address this gap. It is also an acknowledged fact that health and human rights is a relatively new field for both health workers and lawyers

in Sub Saharan Africa, hence the limited number of interventions at the intersection between health and rights. OSIEA-LAHI should address this need by investing in capacity development programs that create a cadre of health and legal professionals committed to advancing legal and human rights responses in public health. The Makerere University's Faculty of Law and School of Public Health offers a window of opportunity to explore possibilities of formalized health and human rights training for both students and legal and health professionals.

Priority 5: Using Legal Strategies in Health Monitoring

Uganda has benefited from a dramatic increase in resources directed at addressing the HIV/AIDS crisis from various donor sources like the Global Fund to Fight AIDS Tuberculosis and Malaria, Presidents Emergency Plan for Aids Relief amongst others. While that has enabled scale up of treatment and care programs, these resources hardly go to programming that addresses legal and human rights for people living with AIDS and other vulnerable and at risk populations. Uganda is a signatory to International Human

Rights Conventions and has recognized basic rights in its constitution that are fundamental to responding effectively to HIV. In line with these commitments LAHI could support efforts in health budget monitoring with a specific focus on tracking HIV/AIDS funding in order to analyze the allocations and expenditure from a human rights perspective. Secondly the tracking should enable the use of budgetary allocations as indicators of adherence of the human rights frameworks that the country has pledged to uphold in the fight against HIV/AIDS.

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Annex 1: HIV-related legal services provided through Non-government Initiatives²⁷

Category of Service Provision	Specific Services provided	Service Providers
Integration	1. Counsellors within Legal Aid Clinics	FIDA-U
	2. Legal Services within Domestic Violence Project	CEDOVIP
	3. Legal Services within HIV/AIDS and Service Delivery Interventions	PLAN INTERNATIONAL AND FIDA-U.
	4. Legal Aid Services within PHA activities	NACWOLA
Litigation	1. ADR, advice and counselling, Referral	FIDA-U, HAG, LAP, UGANET
	2. Strategic litigation	FIDA-U, LAW-U, SMUG, LEDEWO
Empowerment	1. Training on “Will Writing”, Training Manuals and Pamphlets	FIDA-U, NAFOPHANU, UGANET
	2. Legal Rights Awareness and Sensitization; Challenging Stigma & Discrimination (Use of Media, Drama, Literature)	ACORD, HAG, NAFOPHANU, UGANET, CEWOLAPO, ACTIONAID INTERNATIONAL -UGANDA
	3. Paralegal Training	FIDA-U, HAG
	4. Patients’ Charter	UGANDA HEALTH CONSUMERS AND USERS

²⁷ The list provided here is not exhaustive but merely represent groups that were interviewed as part of this assessment.

Category of Service Provision	Specific Services provided	Service Providers
Law and Policy Advocacy	1. Advocacy on Comprehensive National Legislation	PARLIMENTARY COMMITTEE ON HIV/AIDS, NAFOPHANU, SMUG, CEDOVIP, ACTIONAID INTERNATIONAL-UGANDA
	2. Monitoring enforcement of policies	ACORD, PLA
	3. Advocacy on Supportive Legislation (DRB, Domestic Violence, Sexual Offences, Trafficking,	FIDA-U, CEDOVIP, LAW-U, UWOPA, DRB Coalition



The Law and Health Initiative (LAHI), a division of OSI's Public Health Program, promotes legal action to advance public health goals worldwide.

LAHI supports legal assistance, litigation, and law reform efforts on a range of health issues, including patient care, HIV and AIDS, harm reduction, palliative care, sexual health, mental health, and Roma health. LAHI's priorities include integrating legal services into health programs, strengthening human rights protections within health settings, and developing training and education programs in law and health. A special focus is on supporting organizations and advocacy campaigns dedicated to ending human rights abuses linked to the global AIDS epidemic. By bringing together legal, public health, and human rights organizations, LAHI seeks to build a broad movement for law-based approaches to health and for the human rights of society's most marginalized groups.

The Open Society Initiative for East Africa (OSIEA) promotes public participation in democratic governance, the rule of law, and respect for human rights by awarding grants, developing programs, and bringing together diverse civil society leaders and groups. OSIEA plays an active role in encouraging open, informed dialogue about issues of public importance in East Africa."