

Protective shield or punitive sword?: A critique of the Uganda HIV and AIDS Control and Prevention Act, 2014 from a human rights perspective

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Background

In 2014, the Government of Uganda enacted a specific law, *The HIV and AIDS Control and Prevention Act, 2014*, that seeks to provide for the prevention and control of HIV and AIDS, including protection, counselling, testing, care of persons living with and affected by HIV and AIDS, and the rights and obligations of persons living with and affected by HIV and AIDS in Uganda, among others

However, human rights activists and organisations of people living with HIV and AIDS contested the Act on grounds that it carries provisions that don't comply with international human rights law standards, especially in respect to the rights of people living with and affected by HIV and AIDS in Uganda. They particularly contested provisions on criminalisation of 'attempted' and 'wilful' transmission of HIV; mandatory testing of pregnant women; disclosure of one's positive HIV status to an "at-risk" partner or household member without consent; and other provisions that call for criminal penalties for vaguely defined conduct.

In view of the above concerns, the study undertook to assess the extent of compliance of the *Uganda HIV and AIDS Control and Prevention Act, 2014* with international human rights law standards. The study focussed on three specific objectives:

1. To examine the extent to which the contested provisions of the Act do not comply with international human rights law standards in promoting and protecting the rights of people living with and affected by HIV and AIDS.
2. To examine the extent to which non-contested provisions of the Act comply with international human rights law standards in the protection of the rights of people living with and affected by HIV and AIDS.
3. To propose measures, if necessary, that would ensure that the Act creates a legal environment in HIV and AIDS response in Uganda that complies with international human rights law standards.

Methods

The study used a qualitative design, and adopted document analysis methodology. This was because the kind of information required to answer the research questions was mostly available in published form from reliable and credible human rights agencies and experts, including UN Agencies, institutions of human rights, government legal institutions, civil society organisations, academic institutions, and human rights experts.

The study focused on secondary sources of information and analysed relevant literature on legislation for HIV and AIDS, human rights and HIV and AIDS, international and regional human rights instruments, treaty body recommendations, UN body general comments, reports, articles, position papers, journals, books and other publications, including data from research, by various human rights experts, both local and international. In addition, similar laws promulgated by other countries and their impact on human rights were reviewed. Literature from those sources was triangulated to look for corroborating evidence to ensure consistence and reliability in drawing of conclusions.

The secondary sources helped to provide a pointer or indication of the potential impact the Act is likely to have on human rights over time, if left as it is.

Selection of secondary sources of literature was based on the following considerations:

- 1Authenticity of documents to ensure reliability of findings.
- 2Credibility of documents to ensure that their content is trustworthy and reliable.
- 3Representativeness of the content to ensure that the findings can be applied to the Uganda context.
- 4Meaning of contents to ensure that they contain comprehensible content that addresses issues raised in the research questions.

Results

The study established that the Act contains provisions that comply with international human rights law standards; and provisions that do not comply.

The compliant provisions include: HIV counselling, testing, and treatment; state responsibility in HIV and AIDS control; the establishment of the HIV and AIDS Trust Fund; HIV-related human biomedical research; and prohibition of discrimination in various settings on grounds of HIV status.

The key rights protected by these provisions include: the right to health, the right to equal treatment and non-discrimination, the right to security, the right to privacy and confidentiality, the right to equal treatment and non-discrimination in accessing health services; the right to work; the right to freedom of movement; the right to education; the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment; and the right to participate in public and cultural life.

Non compliant provisions include: mandatory and routine HIV testing; disclosure of one's sero-status without their consent; criminalization of wilful and attempted HIV transmission; and criminal penalties for vaguely defined conduct.

The key rights likely to be undermined by these provisions include: the right to the security of the person; the right to the highest attainable standard of physical and mental health; the right to seek, receive and impart HIV and AIDS related prevention and care information; the right to freedom from torture cruel, inhuman or degrading treatment; the right to fair trial and hearing; the right to confidentiality and informed consent; the right to equality and non-discrimination; the right to access health care; and the right to freedom of expression and information.

The study also established that the Act lacks provisions that would make it more effective in controlling and preventing HIV & AIDS. Such provisions include commitments by the state to be accountable for its obligations stated in the Act; definition of what constitutes discrimination in various settings; inadequate professional human resources at health facilities, lack of HIV-friendly services in health facilities, and how to regulate the informal sector to comply with the law.

Conclusions

Having established the compliance and non-compliance of the Act to international human rights law standards, the study made recommendations to the Government of Uganda, civil society organisations that advocate for human rights, and national human rights institutions

To the Government of Uganda

- Emphasise anti-discrimination provisions, with a clear and comprehensive definition of the conduct that constitutes unlawful HIV-related discrimination, and its underlying causes.
- Repeal from the Act references to mandatory HIV testing of persons charged with sexual offences. This is already stipulated in Penal Code laws on sexual offences
- Repeal references to mandatory disclosure and disclosure without the informed consent of the person tested (with the exception of court-ordered or court-authorized disclosure), and replace them with provisions that support positive or voluntary disclosure in all circumstances
- Repeal all clauses that penalize vaguely defined conduct because they are overly broad
- Repeal criminalisation clauses from the Act and instead use existing criminal law in the Penal Code, where mandatory testing is already stipulated.

To Civil Society Organisations

- Challenge the non compliant provisions through the court of law or other formal complaint mechanisms such as the Uganda Human Rights Commission
- Undertake further research to inform efforts to amend the law in order to improve the legal environment for HIV response in Uganda.

To National Human Rights Institutions

- Strengthen capacity and competences on HIV-related human rights issues to effectively handle complaints from people living with HIV and AIDS and other key populations.
- Review the Act and raise concerns and recommendations to government to amend it to ensure compliance to human rights standards.