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People living with HIV (PLHIV) and other key and vulnerable populations (KVPs) face many social and legal challenges. Thus, it is critical for lawyers and legal academics to be fully engaged in the response to HIV.

The objective of this handbook is to assist law lecturers, legal clinic managers and law students in Uganda to respond effectively to the HIV epidemic. Effective responses include providing HIV-related legal advice and litigation support; leading in research on HIV-related law and human rights; and advising the government on HIV-related legislation, and the implementation of related laws and policies.

This handbook addresses a major challenge in scaling up legal services for PLHIV and other KVPs. It emphasizes the central legal and policy issues that lawyers, legal academics, legal clinic managers and law students might face when contributing their legal expertise to the national HIV response. This handbook is also a tool that those audiences can use to become active leaders on HIV-related legal issues, litigation, and law and policy reform in order to advance effective responses to HIV and AIDS in Uganda.
Universities should be leading partners in the national response to HIV and AIDS. Within universities, faculties of law—both the academic community and the student body—must be informed and engaged. The student body is typically young and hence is at increased risk of HIV infection. Due to the HIV prevalence in our country, we also have faculty members and students who are living with HIV or have family members who are directly affected. Universities are therefore called upon to build student capacity to respond to HIV as graduates, and also to acknowledge and support members of our community who are living with HIV and its impact.

As this guide demonstrates, the law has a central role to play in the national HIV response. Universities, and particularly faculties of law, have a responsibility to ensure that our staff and graduates have the knowledge and skills to research, teach and advise about HIV-related legal issues. This guide not only sets out the relevant national law and polices, it also situates the national response to HIV in the international legal and policy context. One guide, however comprehensive, cannot address all of the many challenging questions about HIV law and policy. We therefore anticipate and welcome further research in criminal law, family law, constitutional and administrative law, international human rights law, health and other areas of law raised by the HIV and AIDS epidemic. This research will again highlight the role of the law in addressing wider social challenges of inequality, injustice and discrimination. We therefore commend this guide to our academic staff, to students of law and to the wider university community.

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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<tr>
<td>AIDS</td>
<td>acquired immunodeficiency syndrome</td>
</tr>
<tr>
<td>ART</td>
<td>antiretroviral therapy</td>
</tr>
<tr>
<td>ARV</td>
<td>antiretroviral</td>
</tr>
<tr>
<td>HAART</td>
<td>highly active antiretroviral therapy</td>
</tr>
<tr>
<td>HAPCA</td>
<td>HIV and AIDS Prevention and Control Act, 2014</td>
</tr>
<tr>
<td>HIV</td>
<td>human immunodeficiency virus</td>
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<tr>
<td>HRAPF</td>
<td>Human Rights Awareness and Promotion Forum</td>
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<td>IDLO</td>
<td>International Development Law Organization</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>KVP</td>
<td>key and vulnerable population</td>
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<tr>
<td>MSM</td>
<td>men who have sex with men</td>
</tr>
<tr>
<td>PLHIV</td>
<td>people living with HIV</td>
</tr>
<tr>
<td>PWID</td>
<td>people who inject drugs</td>
</tr>
<tr>
<td>SDG</td>
<td>Sustainable Development Goal</td>
</tr>
<tr>
<td>STI</td>
<td>sexually transmitted infection</td>
</tr>
<tr>
<td>UAC</td>
<td>Uganda AIDS Commission</td>
</tr>
<tr>
<td>UGANET</td>
<td>Uganda Network on Law, Ethics and HIV/AIDS</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
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</table>
1.1 WHAT ARE HIV AND AIDS?

HIV is a bloodborne virus that attacks the immune system. If untreated, a person infected with HIV can develop AIDS, which is a group of potentially life-threatening infections and cancers. The first AIDS cases were identified in the United States of America in 1981, and the virus known as HIV was identified in 1985. HIV has now spread around the world, affecting individuals of all classes, sexes, sexual orientations and ethnicities (1).

The main ways by which HIV is transmitted are:

- Unprotected penetrative sexual contact (i.e. without the use of condoms or latex barriers).
- Direct blood contact, including drug injection using contaminated needles, blood transfusions or accidents in health-care settings.
- Vertical transmission (i.e. mother to fetus or baby, before or during birth, or through breastfeeding).

HIV can be transmitted from one person to another through various body fluids: blood, semen (including pre-ejaculate), vaginal secretions and anal fluids, and breast milk. It is not transmitted through casual social contact (e.g. by shaking hands, or sharing food or drinks); hence, there is no risk of HIV infection to university students or staff in providing advice and legal services to people living with HIV (PLHIV).

There is currently no cure for HIV infection and no vaccine to protect against infection. Highly active antiretroviral (ARV) therapy (HAART)—which involves the combination of at least three different ARV medications—stops HIV from replicating, allowing the immune system to maintain or recover its strength and keep the person healthy. Although HAART does not eradicate HIV,¹ it is now accepted that PLHIV who are receiving HAART and who have undetectable viral load in their blood pose no public health risk of HIV transmission through sexual intercourse (1).

1 There are guidelines for the clinical management of HIV, including recommendations about ARV treatment. Such guidelines also tailor recommendations to specific populations (e.g. infants and children, pregnant women, or men who have sex with men) and specific contexts (e.g. resource-limited settings); for example, WHO has produced guidelines on when to start antiretroviral therapy and pre-exposure prophylaxis for HIV (2).

1.2 EPIDEMIOLOGY OF HIV IN UGANDA

In 2011, Uganda witnessed a resurgence of the HIV epidemic, reaching a prevalence of 7.3% among the adult population (3), implying a total 1.6 million PLHIV in Uganda (3); of these, 176 948 are children. Prevalence of HIV is higher in women (8.3%) than in men (6.1%). Some 3% of adolescent girls aged 15–19 years live with HIV, and this prevalence doubles by the time this population reaches the age of 24 years.

HIV prevalence among key and vulnerable populations (KVPs) is higher than in the general population; such populations include fishing communities, transactional sex workers and their partners, men who have sex with men (MSM), men in uniformed services and truck drivers. The trajectory of new infections stood at an estimated 162 294 in 2011, 154 589 in 2012 and 137 000 in 2013. Declines in new HIV infections have been more pronounced among children aged below 15 years, declining from 27 660 in 2011 to 15 411 in 2012, and then falling further, to 8000 in 2013 (4).

The National HIV and AIDS Strategic Plan 2015/2016–2019/2020 is the guiding document for Uganda’s national response to HIV and AIDS during that period (4). It is intended for use by all stakeholders in Uganda’s response to HIV and AIDS.

In 2016, the HIV prevalence stood at 6.3%, with an estimated 1.4 million PLHIV. Adult women (aged 15+ years) comprise 53% of the PLHIV in Uganda, and account for 52% of new infections and 28% of deaths. Most new infections among young people (aged 15–24 years) in the country were among adolescent girls and young women, with 14 542 estimated new infections—higher than the estimated 7310 among adolescent boys and young men (5).
The key drivers of HIV incidence in Uganda continue to revolve around the following:

- High-risk sexual behaviours including early sexual debut, multiple sexual relationships, inconsistent use of condoms and transactional sex.
- Low individual level of risk perception.
- High prevalence of sexually transmitted infections (STIs).
- Low use of antenatal care and delivery services.
- Low uptake of safe male circumcision.
- Suboptimal scale up of antiretroviral therapy (ART);
- Gender inequalities, including gender-based violence.
PART TWO
HIV, HUMAN RIGHTS AND LAW
In its strategy, UNAIDS goes further to say that punitive laws, policies and practices continue to violate human rights and maintain structural conditions that leave populations without access to HIV services. HIV-related discrimination is often deeply interwoven with other forms of discrimination based on gender; sexual orientation and gender identity; race; disability; drug use; immigration status; being a sex worker; and being a prisoner or former prisoner. Violations of women’s rights, including violence, continue to render women and girls more vulnerable to HIV, and prevent them from accessing services and care. These conditions are fostered and reinforced by these discriminatory laws and practices that restrict women’s equal access to decision-making, education, employment, property, credit or autonomy.

Protection against discrimination

One of the most effective legal interventions that can halt the spread of HIV is the protection against discrimination of persons living with or affected by HIV, and those most at risk of infection. Such protection can be achieved by promoting respect for human rights, dignity and equal opportunity for all, including preventing and challenging violations of human rights, and ensuring access to legal services. HIV is not transmitted casually; therefore, discrimination in access to employment, housing, education and other services cannot be justified on public health grounds.

2.1 UNDERSTANDING THE LAW AS IT RELATES TO HIV IN UGANDA

2.1.1 International and regional law

As a Member State of the UN, the African Union and the East African Community, Uganda is bound by and should draw guidance from its international obligations and internationally accepted best practices to ensure the promotion, protection and enforcement of the rights of PLHIV and KVPs.

Uganda is a dualist state in its practice with regard to application of international law. Thus, international law does not operate automatically;
rather, it has to be domesticated and incorporated into the national legal system before it comes into force. Nevertheless, Ugandan courts have sometimes drawn inspiration from international law in making their determinations on domestic legal issues (8). Table 2.1 summarizes Uganda’s relevant international obligations in the context of HIV—see also (9).

### Table 2.1. Uganda’s international and regional obligations in the context of HIV and AIDS

<table>
<thead>
<tr>
<th>Document</th>
<th>Relevance to the response to HIV and AIDS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>International Instruments</strong></td>
<td></td>
</tr>
<tr>
<td>The Universal Declaration on Human Rights (UDHR) was proclaimed by the UN General Assembly in Paris on 10 December 1948 (certain authorities proclaim the UDHR as a customary rule of international law because its wording has been adopted by many states and it has been in existence for a long time)</td>
<td>Sets out the fundamental human rights that are to be universally protected. It expresses the fundamental values shared by the international community and has influenced development of international human rights laws including those protecting PLHIV and KVPs.</td>
</tr>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights (ICESCR) (ratified by Uganda on 21 January 1987)</td>
<td>Recognizes the right of everyone to enjoy the highest attainable standard of physical and mental health. See also: General Comment No. 14 (2000) on the right to the highest attainable standard of physical and mental health, Article 12 of the ICESCR; General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health, elaborating Article 12 of the ICESCR.</td>
</tr>
<tr>
<td>The International Covenant on Civil and Political Rights (ICCPR) (ratified by Uganda on 21 June 1995)</td>
<td>Relevant civil and political rights include the right to marry and found a family (Article 23); the right to privacy (Article 17); freedom of expression and information (Article 19); freedom of assembly and association (Article 22); freedom of movement (Article 12); the right to liberty and security of person (Article 9); and freedom from cruel, inhuman and degrading treatment or punishment (Article 9).</td>
</tr>
<tr>
<td>Convention on the Rights of the Child (signed and ratified by Uganda on 19 August 1990)</td>
<td>Relevant measures to be taken include protection from HIV transmission, provision of education on sex and HIV, and protection for those orphaned by AIDS. The Committee on the Rights of the Child in 2003 issued General Comment No. 3 on HIV/AIDS and the Rights of the Child.</td>
</tr>
<tr>
<td>The Convention on the Rights of Persons with Disabilities (signed by Uganda on 30 March 2007 and ratified on 22 September 2008)</td>
<td>Protects people from discrimination on the grounds of disability. The Committee on the Rights of Persons with Disabilities has issued relevant general comments on equal protection of the law (Article 12) and women with disabilities (Article 6). Those with disabilities have the capacity to make decisions, including in the field of the right to health (Article 25). See also: UNAIDS, WHO and OHCHR Policy Brief: Disability and HIV, April 2009, UNAIDS 2017 Reference on Disability and HIV.</td>
</tr>
<tr>
<td><strong>Regional Instruments</strong></td>
<td></td>
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<tr>
<td>African (Banjul) Charter on Human and Peoples’ Rights (ACHPR) (signed by Uganda on 18 August 1986 and ratified on 10 May 1986)</td>
<td>Lays the foundation for human rights for African countries, and obligates state parties to promote and protect human and peoples’ rights and freedoms, taking into account the importance traditionally attached to those rights and freedoms in Africa. These rights include those of PLHIV and KVPs as citizens of African countries.</td>
</tr>
</tbody>
</table>
Various other international or regional documents are relevant, but are not legally binding. They include the following:

1. The UN General Assembly Political Declaration on HIV/AIDS, 2016, whereby countries commit to HIV and AIDS strategies that promote and protect human rights, eliminate gender inequalities, review inappropriate laws and address the specific needs of vulnerable populations (10).

2. The Human Rights Council resolutions on HIV and AIDS, including encouraging the repeal of punitive laws that block effective responses to HIV.\(^1\)

3. The International guidelines on HIV/AIDS and human rights (11), which provides guidance based on international legal obligations to assist states to develop an enabling legal and regulatory framework for HIV and AIDS. The guidelines contain specific guidance on (a) the creation of effective structures to manage the national response to HIV and AIDS; (b) the enactment of laws to protect basic human rights, reduce vulnerability to HIV and mitigate the impact of HIV on people’s lives; and (c) the promotion of access to justice through legal literacy campaigns, legal support services and monitoring and enforcement of human rights.

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4. The 2030 Agenda for Sustainable Development, and the SDGs (6). Of particular importance to HIV and AIDS are Goal 1 – No poverty; Goal 2 – Zero hunger; Goal 3 – Good health and well-being; Goal 5 – Gender equality; Goal 6 – Clean water and sanitation; Goal 8 – Decent work and economic growth; Goal 10 – Reduced inequalities; Goal 16 – Peace, justice and strong institutions; and Goal 17 – Partnerships for the goals.

5. The 2001 Abuja Declaration and Plan of Action on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases (12), which commits Member States to prioritize HIV and AIDS, and recognizes the impact of social and economic inequalities on women and girls, as well as the impact of and barriers created by stigma, silence, denial and discrimination.


7. The 2001 African Commission on Human and Peoples’ Rights (ACHPR) resolution ACHPR/Res. 53 (XXIX) 01 on the HIV/AIDS pandemic – Threat Against Human Rights and Humanity (Resolution 53) (14). This resolution recognizes HIV as a human rights issue, and calls on African governments and state parties to the charter to allocate national resources that reflect a determination to fight the spread of HIV, ensure human rights protection against discrimination for PLHIV, provide support to families for the care of those dying from AIDS-related illnesses, devise educational public health-care programmes and carry out public awareness activities, especially in view of free and voluntary HIV testing and appropriate medical interventions. ACHPR also adopted the following:
   c. ACHPR/Res. 163 on the Establishment of a Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV (17), with a mandate of promotion and protection of rights (18).
   d. At the 61st Ordinary Session of the ACHPR in November 2017 in Banjul, Gambia (19), the ACHPR considered and adopted a study on HIV, the law and human rights in the African human rights system, since published by UNAIDS (20).

2.2 THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

The 1995 Constitution of the Republic of Uganda was promulgated on 8 October 1995 (21). It has binding force on all authorities and persons throughout Uganda.1 Hence, all HIV-related laws and policies must be in conformity with the provisions of the Constitution. Some of the provisions that directly affect HIV-related rights are illustrated in Table 2.2.

Objective XIV of the General Social and Economic Objectives of the Constitution provides that the state shall fulfil the fundamental rights of all Ugandans to social justice, and that all Ugandans shall enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits. As shown in Table 2.2, these provisions have a bearing on the realization of HIV-related human rights. Objective XX provides that the state shall take all practical measures to ensure the provision of basic medical services to the population. This provision has a direct bearing on PLHIV and KVPs, and their ability to access health services.

On the question of justiciability and enforceability of the right to health, which in practical terms includes HIV-related rights, the Supreme Court in Centre for Health, Human Rights and Development & 3 Others versus Attorney General emphasized...
that government policy, acts and omissions in the health sector and other sectors are subject to judicial review to ascertain their constitutionality. An important objective of the Constitution is to build a nation of equal and free individuals enjoying freedom, justice, fraternity and concord through the pursuit of the policy of socialism and self-reliance, while ensuring human dignity and respect for human rights. The Constitution prohibits all types of discrimination—either through direct enactment of laws, or discriminatory acts and conduct.

The Constitution as a whole applies to PLHIV and KVPs and their rights. Table 2.2 summarizes some of the provisions (21) that are particularly relevant in the realization of HIV-related rights.

Table 2.2. Summary of certain provisions in the Constitution of Uganda relevant to realization of HIV-related rights

<table>
<thead>
<tr>
<th>Article</th>
<th>Provision</th>
<th>How the provision is relevant to PLHIV and KVPs</th>
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</table>
| 8 A     | National interest  
1) Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy | The right to access health services is recognized in Objective XVI of the National Objectives and Directive Principles of State Policy. The objectives and directive principles of state policy have the force of law (22). |
| 20      | Fundamental and other human rights and freedoms  
Fundamental rights and freedoms of the individual are inherent and not granted by the state  
The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons | Binds not just the state, but also “all persons”, including private actors, to uphold rights. |
| 21      | Equality and freedom from discrimination  
1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law  
2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability | Prohibits discrimination and ensures that PLHIV and KVPs are not discriminated against because of their real or perceived status, while recognizing their equal rights before the law. Although this Article does not include health or HIV status as grounds for discrimination, it can be argued that this is covered under social standing. |
| 22      | Protection of the right to life  
1) No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court | Ensures that citizens are not denied the right to life through laws and policies that are unjust. This includes PLHIV and KVPs. |
| 23      | Protection of personal liberty  
No person shall be deprived of personal liberty | Ensures that no persons, including PLHIV and KVPs, are detained or confined without a just cause. However, in the event this right is limited, and especially for the purposes of preventing an infectious disease, the limitation must meet the criteria set out in Article 43 (2) (c) of the Constitution, as interpreted by Justice Joseph Mulenga in Charles Onyango Obbo & Another v Attorney General. Any limitation should be guided by democratic values and principles. |

| 24 | **Respect for human dignity and protection from inhuman treatment**  
No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment | Ensures that all people, including PLHIV and KVPs, are accorded respect and treated in a dignified manner. |
|---|---|---|
| 26 | **Protection from deprivation of property**  
1) Every person has a right to own property either individually or in association with others  
2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied:  
a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and  
b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for:  
i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and  
ii) a right of access to a court of law by any person who has an interest or right over the property | Ensures that PLHIV’s rights to own and dispose of property is guaranteed and respected and that they are not arbitrarily deprived of that property because of their health status. |
| 27 | **Right to privacy of person, home and other property**  
1) No person shall be subjected to unlawful search of the person, home or other property of that person. | Relevant in ensuring that information about a person’s HIV status is kept confidential and is not released without his or her consent. |
| 28 & 42 | **28 – Right to a fair hearing**  
In any determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.  
**42 – Right to just and fair treatment in administrative decisions**  
Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her | Ensures that in all matters affecting the rights of PLHIV and KVPs, they are treated in a just and fair manner as prescribed in law. |
| 29 | **Protection of freedom of expression, movement, assembly and association**  
1) Every person shall have the right to:  
a) freedom of speech and expression which shall include freedom of the press and other media  
b) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition  
c) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations  
2) Every Ugandan shall have the right:  
a) to move freely throughout Uganda and to reside and settle in any part of Uganda | Ensures that government cannot impose restrictive measures on the movement of the population including PLHIV without just cause. It also protects the right of association for all Ugandans including PLHIV. |
<p>| | | |</p>
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<tbody>
<tr>
<td>30</td>
<td>Right to education</td>
<td>Ensures that government cannot impose restrictive measures on the movement of the population including PLHIV without just cause. It also protects the right of association for all Ugandans including PLHIV.</td>
</tr>
<tr>
<td></td>
<td>All persons have a right to education</td>
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<tr>
<td>31</td>
<td>Rights of the family</td>
<td>Relevant to the rights of PLHIV to marry and found a family; also relevant to the rights of PLHIV to inherit and own property, and to maintain custody of their children.</td>
</tr>
<tr>
<td></td>
<td>Men and women of the age of eighteen years and above have the right to marry and found a family and are entitled to equal rights in marriage, during marriage and at its dissolution Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Affirmative action in favour of marginalized groups</td>
<td>Could be used to advocate for PLHIV to benefit from affirmative action to redress imbalances that exist against them.</td>
</tr>
<tr>
<td></td>
<td>This article provides for affirmative action in favour of marginalized groups on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purposes of redressing imbalances existing against them</td>
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</tr>
<tr>
<td>33</td>
<td>Rights of women</td>
<td>Applies equally to women living with HIV. May be read as imposing an obligation on the state to provide prevention, treatment, care and support facilities (goods, commodities, products and services) to women living with HIV to enable them realize their full potential. The article also recognizes women’s health rights, which are established in international and regional human rights instruments that have been ratified by the government. It can also be used to challenge retrogressive customs and practices that promote stigma and discrimination against women living with HIV.</td>
</tr>
<tr>
<td></td>
<td>1) Women shall be accorded full and equal dignity of the person with men</td>
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<td></td>
<td>2) The state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement</td>
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<td></td>
<td>3) The state shall protect women and their rights, taking into account their unique status and natural maternal functions in society</td>
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<tr>
<td></td>
<td>4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5) Without prejudice to Article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom</td>
<td></td>
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<tr>
<td></td>
<td>6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution</td>
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| 34 | **Rights of children**  
1) Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.  
2) A child is entitled to basic education which shall be the responsibility of the state and parents of the child.  
3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.  
4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful of their health or physical, mental, spiritual, moral or social development.  
5) For the purposes of Clause 4 of this Article, children shall be persons in the age of sixteen years.  
6) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.  
7) The law shall accord special protection to orphans and other vulnerable children. | Ensures that children living with HIV are protected and adequately cared for, and those orphaned by AIDS-related illnesses are also protected. Also upholds the principle of the best interest of the child, which should be applied in all matters relating to children. |
| 35 | **Rights of persons with disabilities**  
Persons with disabilities have a right to respect and human dignity and the state and society shall take appropriate measures to ensure that they realise their full mental and physical potential.  
Parliament shall enact laws appropriate for the protection of persons with disabilities. | Ensures that the rights of people with disabilities who are living with HIV or at risk of HIV infection are adequately taken care of. |
| 36 | **Protection of rights of minorities**  
Minorities have a right to participate in decision-making processes and their views and interests shall be taken into account in the making of national plans and programmes. | PLHIV and KVPs often live and are placed at the margins of society due to stigma and discrimination. This article ensures that they participate in decision-making and that their interests are taken into account. |
| 38 | **Civic rights and activities**  
Every Ugandan citizen has the right to participate in the affairs of government, individually or through his/her representatives in accordance with the law.  
Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations. | Ensures that all citizens, including PLHIV and KVPs, participate in governance, particularly on issues that affect them (e.g., health services delivery and the broader health and HIV-related human rights). |
### 2.3 THE HIV AND AIDS PREVENTION AND CONTROL ACT, 2014

The HIV and AIDS Prevention and Control Act (HAPCA) was passed by the Ugandan Parliament on 13 May 2014 and was assented to by the President on 31 July 2014 (23). The Act provides 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 rights and obligations of persons living with and affected by HIV and AIDS. It also establishes the HIV and AIDS Trust Fund.

<table>
<thead>
<tr>
<th>40</th>
<th><strong>Economic rights</strong></th>
<th>Parliament shall enact laws:</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>• To provide for the right of persons to work under satisfactory, safe and healthy conditions</td>
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<td>• To ensure equal payment for equal work without discrimination</td>
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<td>• To ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as remuneration for public holidays.</td>
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<td>Every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business</td>
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<tr>
<td></td>
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<td>Every worker has a right:</td>
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<td>• To form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests</td>
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<td></td>
<td></td>
<td>• To collective bargaining and representation</td>
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<td>• To withdraw his or her labour according to law.</td>
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<tr>
<th>41</th>
<th><strong>Right of access to information</strong></th>
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<tbody>
<tr>
<td></td>
<td>1) Every citizen has a right of access to information in the possession of the state or any other organ or agency of the state except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person.</td>
</tr>
<tr>
<td></td>
<td>2) Parliament shall make laws prescribing the classes of information referred to in Clause 1 of this Article and the procedure for obtaining access to that information.</td>
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<th>45</th>
<th><strong>Human rights and freedoms additional to other rights</strong></th>
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<tr>
<td></td>
<td>The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.</td>
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HIV, human immunodeficiency virus; KVP, key and vulnerable population; PLHIV, people living with HIV
The passage of the HAPCA introduced mandatory, routine testing for pregnant women and their partners (Section 13 (a) and (c)) and allowed health-care providers to disclose a patient’s HIV status to others (Section 18 (2) (e)). The law further criminalized HIV transmission, attempted transmission and behaviour that might result in transmission by those who know their HIV status (Sections 41 & 43).

The HAPCA also makes provisions on legal and ethical issues, to guide the HIV response in Uganda in relation to informed consent and confidentiality, as discussed below.

2.3.1 Informed consent

HIV testing is different from other blood tests because it presents serious psychosocial risks; for example, rejection by family, discrimination in employment, restricted or no access to health care, and insurance denial or restriction. In recognition of these circumstances and to encourage testing and treatment, service providers are required to obtain informed consent for an HIV test. Part 1 of the HAPCA defines informed consent as consent given specifically to a proposed intervention, without any force, undue influence, fraud, threat, mistake or misinterpretation, and obtained after disclosing to the person giving consent, adequate information including risks and benefits of and alternatives to the proposed intervention in a language and manner understood by the person.

2.3.2 Confidentiality

Article 27 of the Constitution guarantees the right to privacy of a person. In medical and legal practice, most medical information is considered confidential. However, due to the sensitivity of HIV-related information, it is important that those providing HIV-related services observe additional protection for HIV-related medical records and information.

Section 18 (2) of the HAPCA provides instances where such confidentiality may be breached; these instances are to:

- A parent or guardian of a minor.
- A parent or guardian of a person of unsound mind.
- A legal administrator or guardian, with the written consent of the person being tested.
- A medical practitioner or other qualified officer who is directly involved in the treatment or counselling of that person where the HIV status is clinically relevant.
- Any other person with whom an HIV infected person is in close or continuous contact including a sexual partner, if the nature of the contact, in the opinion of the medical practitioners or other qualified officer, poses a clear and present danger of HIV transmission to that person.
- A person authorized by the Act or any other law.
- Any other person as may be authorized by a court.
- Any person exposed to blood or body fluid of a person tested.

The passage of the HAPCA introduced mandatory, routine testing for pregnant women and their partners (Section 13 (a) and (c)) and allowed health-care providers to disclose a patient’s HIV status to others (Section 18 (2) (e)). The law further criminalized HIV transmission, attempted transmission and behaviour that might result in transmission by those who know their HIV status (Sections 41 & 43). For a discussion of the Act from health and human rights perspectives, see (24).
These sections of the HAPCA have been considered punitive and discriminatory by PLHIV and activists; they are discussed below.

2.3.3 Disclosure of HIV status: Section 18 (2) (e)

Section 18 (2) (e) makes it mandatory for health-care providers to disclose the HIV status (i.e. disclosure or release of HIV test results) of a PLHIV to any person who is in continuous or close sexual contact with the PLHIV. This section not only breaches confidentiality standards but would also discourage people from seeking HIV testing services, thereby delaying uptake of ART. The discretion the law gives to health-care professionals may have serious consequences if not regulated because it leaves much room for personal and biased interpretation. UNAIDS encourages disclosure and notification that is voluntary, respects the autonomy and dignity of the affected individuals, maintains confidentiality, and leads to beneficial results for the individual and partner. Such disclosure and notification should meet ethical imperatives, to maximize good for both the uninfected and the infected (25).

2.3.4 Intentional and attempted transmission of HIV infection: Sections 41 & 43

Section 41\(^1\) of the HAPCA creates the offence of attempted transmission of HIV, and Section 43\(^2\) creates the offence of intentional transmission of HIV. The offence of attempted transmission requires that one proves that the accused person made an effort to transmit HIV to another, whereas the offence of intentional transmission requires that both HIV transmission and intent be proven. In law, the offence of intentional transmission requires that both HIV transmission and intent be proved; this requires proof that the accused knew that he or she is HIV positive, he or she understood how HIV is transmitted and that he or she might be infectious, he or she had sex with someone who did not know that the accused had HIV, that no protective measures (e.g. use of a condom) were taken, and that the accused is the only person who could have transmitted HIV to the complainant. In contrast, the offence of attempted transmission of HIV requires that the intention to transmit be proved. This section as it stands is punitive, and its continued existence might stop people from being tested and knowing their status because knowing it would mean that the person could be targeted for conviction.

The Global Commission on HIV noted that such laws as above are unjust, morally harmful and virtually impossible to enforce with any semblance of fairness (26).\(^1\) The law does not take into account the success of ART in significantly reducing transmission risk (27). In 2013, UNAIDS released its guidance note Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations (27).

This guidance advises states to (27: p2):

- Concentrate their efforts on expanding the use of proven and successful evidence-informed and rights-based public health approaches to HIV prevention, treatment and care.
- Limit any application of criminal law to truly blameworthy cases where it is needed to achieve justice.

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\(^1\) Section 41 Attempted Transmission of HIV
A person who attempts to transmit HIV to another person commits a felony and shall on conviction be liable to a fine of not more than twelve currency points or imprisonment of not more than five years or both.

\(^2\) Section 43 Intentional Transmission of HIV
(1) A person who willfully and intentionally transmits HIV to another person commits an offence and on conviction shall be liable to a fine of not more than one hundred and twenty currency points or to imprisonment for a term of not more than ten years or to both.

(2) A person shall not be convicted of an offence under subsection (1) if:

a) The person was aware of the HIV status of the accused and the risk of infection and he or she voluntarily accepted the risk

b) The alleged transmission was through sexual intercourse and protective measures were used during penetration.

\(^1\) The Global Commission on HIV and the Law was launched in June 2010 to develop actionable, evidence-informed and human rights based recommendations for effective HIV responses that promote and protect the human rights of people living with and most vulnerable to HIV.
Section 13\(^1\) of the HAPCA provides that every pregnant woman and her partner shall be subjected to a HIV test. This section of the law makes the test routine and eliminates the voluntary nature of HIV testing.

Pregnant women are subject to an HIV test to ascertain their HIV status for the protection of the fetus from infection and prevention of the spread of HIV. This creates a scenario where the consent may not be informed, which goes against the requirements of informed consent for HIV tests, as provided for under Section 9\(^2\) of the HAPCA. It creates a situation that favours a range of human rights violations, including the right to the highest attainable standard of health and the right to privacy.

The act of testing pregnant women for HIV without their informed consent is punitive and does not work well for the women, especially in their preparedness to live positively with the virus and their uptake of HIV medication. It also puts the fetus at risk – if the mother is not psychologically prepared to deal with the outcome of the test results, she may be less able to ensure that the fetus or infant is prevented from vertical HIV transmission (28).

### 2.4 CRIMINAL LAW IN THE HIV RESPONSE IN UGANDA

Criminal law is a body of rules, mostly statutory, that prohibits conduct that is deemed threatening or harmful to public safety and welfare. It also establishes punishment to be imposed for the commission of such acts. Some of these offences were created before independence, well before HIV and AIDS were discovered, and have not been reviewed or amended to take into account the scientific and medical evolution of the AIDS epidemic.

On the use of criminal law in the HIV response, UNAIDS advises that the following should be considered: (a) it should be guided by the best available scientific and medical evidence relating to HIV; (b) it should uphold the principles of legal and judicial fairness (including key criminal principles of legality, foreseeability, intent, causality, proportionality and proof); and (c) it should protect the human rights of those involved in criminal law cases (27).

In Uganda, PLHIV and KVPs are at risk of being in conflict with the law, and their access to health and justice are restricted by the various criminal offences relating directly or indirectly to HIV. Certain criminal law provisions have a significant negative impact on PLHIV and KVPs, as shown by the discussion below.

### 2.4.1 Penal Code Act (Cap 120) of Uganda

The Penal Code Act (Cap 120) (29) is the main criminal legislation in Uganda that creates and defines offences and prescribes penalties. The Act has undergone several amendments since it was first enacted in 1950, but it has retained many of the sections that were introduced at inception.

**On sex workers**

In 2014, HIV prevalence among sex workers was estimated to be between 35% and 37% (4). At the same time, sex workers and their clients were said to account for 16% of new HIV infections in Uganda, with the partners of the clients of sex workers accounting for an additional 3% (30).

Sex work has been criminalized under this law. Sections 136–139 of the Penal Code create offences of living on the earnings of prostitution

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1. **Section 13 Routine HIV testing**
   The following persons shall be subjected to routine HIV test for purposes of prevention of HIV transmission
   a)...
   b) A pregnant woman
   c) A partner of a pregnant woman.

2. **Section 9 of the HIV and AIDS Prevention and Control Act of Uganda** states, “A person may take a voluntary HIV test if he or she gives his or her informed consent.”
(Section 136\(^1\)) and keeping of brothels for purposes of prostitution (Section 137\(^2\)), define a prostitute and prostitution (Section 138\(^3\)) and prohibit prostitution (Section 139\(^4\)). These sections of the Penal Code directly criminalize sex work and its related activities, and they often form the basis of the arrest of sex workers. According to a study conducted by the Human Rights Awareness and Promotion Forum (HRAPF) in 2016 (31), these sections are rarely used by law enforcement agencies because of the difficulty in prosecuting the offences (because the standard of proof is high). However, that has not stopped some police officers from arresting sex workers under Section 167,\(^5\) which creates the offences of being “idle and disorderly”. Section 167 has been widely used to arrest and arbitrarily detain sex workers; such arrests and detention often lead to extortion and sexual harassment by the arresting officers. The above provisions criminalize sex work and its related activities, and are the cause and primary basis for the arrests of sex workers because they reinforce the criminality of engaging in sex work.

The HRAPF study found that (31: p 55):

*The criminalization of sex work exposes sex workers to a greater risk of infection with HIV and other STIs. Apart from the vulnerable position they are placed in when it comes to insisting on safe sex, the criminalization of sex work also places barriers in the way of sex workers’ access to...*
health care services. Sex workers tend to be wary of approaching healthcare providers due to the fear of facing ostracism and ill-treatment, which means they are less likely to go for regular check-ups which will help to identify, treat or even prevent certain STIs.

UNAIDS notes that, in the absence of health services, HIV prevention information and condoms, sex workers may acquire and transmit HIV and other STIs at a higher rate (32). Sex workers are also exposed to violence from some clients, and fear seeking protection from the police and the justice system.

On men who have sex with men

HIV prevalence among MSM in Uganda was estimated at 13% in 2013 (32). The Uganda HIV and AIDS Country Progress Report 2014 (30) noted that, for many MSM, this action brings with it significant social burdens. Such burdens include a pervading social stigma and high levels of homophobic violence caused by enduring conservative attitudes that result in MSM feeling less inclined to access HIV services due to the hostile attitudes of health-care workers and society in general.

The Uganda AIDS Commission (UAC) reported that an increasing number of MSM were testing for HIV over the period 2009–2011 (44% tested and knew their results in 2009, compared with 70% in 2011) (32).

The survey also found a growing network of PWID beyond those interviewed that included some young adolescents in schools and wealthier adults that operate in a hidden network. The study concluded that the use of drugs exposes users to a higher risk of contracting HIV. Although this was more prominent among the PWID who share syringes, noninjecting drug users also faced a heightened risk of contracting and transmitting HIV because of risky sexual encounters under the influence of drugs.

Penalties for same-sex conduct remain enshrined in the Penal Code. For example, Section 145 ‘criminalizes “carnal knowledge against the order of nature”, for which the maximum penalty is a sentence of life in prison.

This situation makes it difficult for MSM to access health and HIV prevention services, which in turn increases their risk of HIV infection, and fuels the HIV epidemic (34).

2.4.2 The Narcotic Drugs and Psychotropic Substances (Control) Act, 2015

A 2016 survey covering 425 people who use drugs in Uganda—conducted by the Most at Risk Population Network and Uganda Harm Reduction Network—reported the existence of both male and female injecting drug users in the country (35).

The survey also found a growing network of PWID beyond those interviewed that included some young adolescents in schools and wealthier adults that operate in a hidden network. The study concluded that the use of drugs exposes users to a higher risk of contracting HIV. Although this was more prominent among the PWID who share syringes, noninjecting drug users also faced a heightened risk of contracting and transmitting HIV because of risky sexual encounters under the influence of drugs.

1 Unnatural offences
Any person who—
   a) has carnal knowledge of any person against the order of nature;
   b) has carnal knowledge of an animal; or
   c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.
The Narcotic Drugs and Psychotropic Substances (Control) Act, 2015 was enacted in 2015 (36). One purpose of the Act was to bring together and change existing laws relating to drug use and possession(36). The Act imposes heavy penalties for the use and possession of narcotic drugs. Also, it criminalizes the use of narcotic drugs and psychotropic substances, including injecting of drugs. The continued criminalization of drug use, marginalization of the population of PWID and poverty increases the risk of sharing needles and injection equipment, which in turn increases the risk of HIV infection. Harm-reduction methods such as needle and syringe programmes, opioid substitution therapy and counselling are proven, effective HIV prevention strategies for PWID (38). Harm-reduction advocates in Uganda have argued that the law has taken a criminal and punitive approach, and has not considered the rehabilitative approach in dealing with drug use.

PADA-UGANDA (39)—a nongovernmental organization whose aim is to prevent and mitigate alcohol and drug abuse, and HIV and AIDS among young people in Uganda—found that there are over 3000 street children orphaned by HIV in Kampala, and that their continued sharing of needles and syringes while injecting drugs increases their chances of contracting and spreading HIV. Most of the street children do not have access to HIV and AIDS services; where they do, there is reportedly a lack of coordination between the service providers and the police. Such limitations in access to health and HIV prevention services puts PWID at heightened risk of HIV infection and at greater risk of infecting others including their sexual partners.

UNAIDS—in its guidance note on services for PWID (40)—notes that given the breadth of injecting drug use and the disproportionate HIV-related risks in this population, preventing HIV and other harms among PWID, and providing them with effective treatment, care and support are essential components of a sound and effective national response. UNAIDS has also identified some examples of human rights violations directed at PWID; for example, compulsory drug testing, forced treatment and arbitrary detention. In addition, PWID are frequently denied basic health care, either as a result of exclusion by health-care workers or because the life-saving, evidence-based interventions that could help them are illegal. UNAIDS urges that it is essential to ensure that law enforcement and criminal justice authorities are included in policy discussions, and are aware of the need for a public health approach to PWID.

2.5 EMPLOYMENT LAW AND HIV

The right to work is provided for in the Constitution of the Republic of Uganda at Article 40, which provides for the right to work under safe, satisfactory
and healthy conditions, and to equal pay for equal work done without discrimination. Section 75 of the Employment Act, 2006 (41) protects PLHIV from unfair termination and discipline by employers. Discrimination against a person in work on the basis of HIV is also outlawed by Section 32 of the HAPCA (23). Therefore, there is sufficient constitutional and statutory basis for founding a cause of action where the employment-related rights of PLHIV have been violated.

In 2015, the International Labour Organization (ILO) developed a handbook to assist judges and legal professionals in dealing with matters related to HIV and AIDS, with a focus on employment and occupation (42). The ILO noted that HIV-related stigma and discrimination persist in many workplaces, and that violations of fundamental rights are widespread. Key groups that are already disadvantaged or marginalized may experience increased levels of stigma and discrimination.

ILO Recommendation No. 200 calls on national judicial authorities to be involved in the development, adoption and effective implementation of national and workplace policies and programmes on HIV and AIDS, including the development and application of national legislation (43). The ILO also encourages employers to take into account internationally recognized best practices that respect human rights, in responding to HIV in the workplace. Such practices lead to good industrial relations and uninterrupted production.

2.6 LAND, PROPERTY AND INHERITANCE IN THE CONTEXT OF HIV

The right to property ownership and usage is enshrined in Uganda’s Constitution at Article 26 and at Chapter 15 (Land and Environment), which deal with issues of land ownership and land tenure systems. The Land Act (44) provides for the tenure, ownership and management of land. It consolidates the law relating to tenure, ownership and management of land.

In 2015, the Uganda Network on Law, Ethics and HIV/AIDS (UGANET) reported that—despite there being no laws prohibiting women from owning land and property—traditionally, women do not inherit family land and only have access to use it through their husbands and sons. Such discriminatory cultural norms on inheritance result in most women being excluded from land and property ownership, disempowering them economically (45).

Women also bear a disproportionate burden of the impact of HIV. UGANET further notes that—although property grabbing may affect all widows, regardless of the cause of their husbands’ deaths—a woman living with HIV who is widowed is likely to experience property grabbing and asset stripping as opposed to other widows.

The Global Commission on HIV and the Law recommended that countries must reform property and inheritance laws to recognize that women and men have equal access to property and other economic resources, including credit (26). They urged governments to ensure that, in practice, property is divided without gender discrimination upon separation, divorce or death, and to establish a presumption of spousal co-ownership of family property.

Further, where property and inheritance practices are influenced or determined by religious or customary legal systems, the leaders of these systems must make reforms to protect women, including widows and orphans.

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1 Section 75 Reasons for termination or discipline
The following shall not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty
a) ……

b) an employee’s race, colour, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability.
2.7 PRISONERS AND OTHER PEOPLE IN CORRECTIONAL FACILITIES AND HIV

People in prison settings are at risk of HIV infection and transmission because of factors such as tattooing with unsterile equipment, drug use and needle sharing, high-risk sex and rape. In addition, overcrowding increases the spread of opportunistic infections (26).

In 2013, the HIV prevalence among inmates in Uganda was 11.2%—almost twice as high as the national prevalence rate, which was then estimated at 7.3%. The Prisons Act, 2006 at Part VIII provides for the rights of prisoners and guarantees their rights to have access to the health services available in the country without discrimination. However, the government has made no deliberate effort to provide prisoners with a holistic HIV and AIDS package. In most prisons, there are no HIV services and there are few trained service providers to cater for the HIV and AIDS needs of inmates in prison. The transfer of inmates to different correctional facilities and places of detention without supportive documentation makes monitoring their health progress difficult (46). There is need to increase funding to improve HIV service delivery in prison, and to ensure that there are programmes to scale up HIV prevention in prison.

In responding to HIV in places of detention, the Global Commission on HIV and the Law recommended that countries must ensure necessary health care is available, including HIV prevention and care services, regardless of laws criminalizing same-sex acts or harm reduction (26). Such care includes provision of condoms, comprehensive harm-reduction services, voluntary and evidence-based treatment for drug dependence and ART. Further, any treatment offered must satisfy international standards of quality of care in detention settings. Health-care services, including those specifically related to drug use and HIV, must be evidence based, voluntary and offered only where clinically indicated.

2.8 ADOLESCENT GIRLS AND WOMEN IN THE HIV RESPONSE

HIV and AIDS in Uganda disproportionately affect women as compared to men. The reasons include biological factors, social inequalities and general vulnerability of women in the context of HIV. Systemic social exclusion and gender inequality experienced by women in the country is partly perpetuated by harmful cultural and traditional norms, and practices that reinforce their lower socioeconomic status.

Prevailing social and gendered norms limit girls’ and women’s access to resources such as education and finances that would enable them to make important decisions about their lives and health. Harmful laws and practices in relation to early marriage, early pregnancy and lack of access to confidential sexual and reproductive health services prevent adolescent girls and young women from obtaining essential HIV prevention information and services (47).

The Children Act (Cap 59) (48) protects the rights of adolescent girls from certain defined vulnerabilities that make them vulnerable to HIV and AIDS, including harmful cultural practices; it also establishes guidelines for their protection. The Sexual Offences Act (49) also offers protection for adolescent girls and young women from gender-based violence and other sexual offences that increase their vulnerability to HIV infection. These pieces of legislation, together with the HAPCA, provide sufficient legal basis for the protection of adolescent girls and young women from HIV infection, and for the promotion of their rights if they are living with HIV.

The Global Commission on HIV and the Law recommended that countries must act to end all forms of violence against women and girls, remove legal barriers that impede women’s access to sexual and reproductive health services, reform property and inheritance laws, and ensure that social protection measures recognize and respond to the needs of HIV-positive women and women...
whose husbands have died of AIDS (26). Labour laws, social protection and health services must respond to the needs of women who take on caregiving roles in HIV-affected households. Laws prohibiting early marriage should be enacted and enforced. The enforcers of religious and customary laws must prohibit practices that increase HIV risk such as widow inheritance, “widow cleansing” and female genital mutilation.

2.9 PEOPLE WITH DISABILITIES AND HIV

People with disabilities include those who have long-term physical, mental, intellectual or sensory impairments that, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others (50).


Women with disabilities are more vulnerable to sexual abuse and consequently transmission of HIV as opposed to their non-disabled counterparts. Available HIV/AIDS services and policies do not provide for special emphasis on disability friendly services especially for Women with Disabilities (WWDs) but are rather lumped under the vulnerable populations. The National Strategic Plan for HIV and AIDS gives limited attention to HIV service provision for people with disabilities.

UNAIDS urges the inclusion of disability in the HIV response and commitment to counteract underlying inequality and discrimination and integration of HIV with disability and rehabilitation of services (53).
PART THREE
LEGAL AID PROVISION AND ETHICAL CONSIDERATIONS
3.1 SAMPLE HIV-RELATED LEGAL ISSUES

In the provision of legal advice and litigation support to PLHIV and KVPs, clients may not immediately recognize or disclose their HIV status, or may not realize that their legal issues are HIV related. Pertinent legal issues may be directly related to living with HIV (e.g. discrimination in the workplace) or may be less directly related (e.g. gender-based violence that exposes the client to HIV infection).

3.1.1 Examples of legal issues that may be HIV related

The following are examples of legal issues that may be HIV related, based on a toolkit on scaling up HIV-related legal services (54: p 13):

- Discrimination on the grounds of HIV status, sexual orientation, gender—including transgender status, HIV-related disability, illicit drug use or sex work.
- Problems in accessing treatment, care and support services.
- Problems involving breaches of privacy and confidentiality.
- Violence against women, PLHIV, MSM, transgender people, sex workers, PWID and other KVPs.
- Domestic disputes where one party is living with HIV or is affected by HIV (e.g. child custody, maintenance and property division laws).
- Guardianship and identifying caregivers for orphaned children.
- Forced sterilization or forced abortion.
- Criminal laws concerning HIV transmission.
- Criminal laws that affect sex workers, MSM, transgender people and people who use illicit drugs.
- Illegal police practices, including harassment, rape, violence, arbitrary arrest and extortion.
- Sentencing and prisoners’ rights (including access to condoms, prevention education and HIV treatment).
- Partner notification and contact tracing.
- Employment issues, including discrimination and sick-leave entitlements.

- Land tenure rights, tenancy and housing.
- Property and inheritance.
- Right to education and regulation of educational curricula.
- Public health laws and right to informed consent for testing and treatment.
- Censorship and media standards.
- Identification papers, birth and death registration, and drug user registration.
- Drug patents and right to access affordable medicines.
- Children’s rights; for example, to consent, confidentiality, care and treatment.
- Asylum, refugee status, migration laws and freedom to travel.
- Forced “treatment” under substandard conditions.
- Rights of research subjects.

3.2 HIV-RELATED LEGAL SERVICES

Legal information
Clients may seek information about the issues given in Section 3.1 or other issues in the context of HIV. Legal information can be provided orally, or through simple printed materials and other means. The information can be provided by students, or disseminated through a health centre or nongovernmental organization.

Legal advice and counselling
Legal advice is tailored to the specific circumstances and needs of the client, and is provided by a qualified legal practitioner, or by students under their supervision.

Legal representation and litigation support
Forums may be either informal or formal justice settings including courts, quasi-judicial bodies, tribunals, traditional councils, mediations and arbitrations. Representation by the legal representative may be in-person or through written submissions or memoranda.

The use of alternative dispute-resolution mechanisms in resolving HIV-related legal issues is encouraged, especially where family members
are involved and the case is not of a criminal nature. This is because such mechanisms are faster and cheaper, and encourage reconciliation, whereas the court system is adversarial in nature.

Representation and litigation support can also extend to public interest and strategic litigation cases. These cases are undertaken because of their public policy implications—a positive outcome will benefit not only the client, but also the community at large, and may lead to changes in law and policy.

3.2.1 Other strategic services that can be provided by the legal clinic

Stakeholder engagement and education
To ensure the success of the multisectoral approach to HIV, all relevant stakeholders must be involved. In the justice sector these stakeholders include lawyers, the judiciary and law enforcement officers. Other relevant stakeholders include communities of PLHIV and KVPs, health-care workers, law enforcement officers and parliamentarians. The education that could be provided includes building capacities on rights-based approaches in the HIV response, their obligations and what they can do to advocate for and to implement laws that can create an enabling legal environment for PLHIV.

Legal research
Legal clinics and legal academics attached to them can conduct legal research on the implementation of and gaps in the laws used in the HIV response. They can also conduct legal research for drafting court papers to support litigation of cases brought by PLHIV or in support of PLHIV.

Engaging in national dialogues on HIV and advising parliament on legislating on HIV and AIDS
Legal academics supported by legal clinics can engage in national and community debates and dialogues on HIV-related law and policy. Law lecturers can advise the legislature and executive on key HIV-related legal issues.

3.3 LEGAL AND ETHICAL OBLIGATIONS IN THE PROVISION OF LEGAL SERVICES

In the provision of legal services to PLHIV and KVPs, legal clinic staff and students should ensure that they advance human rights and the rule of law, protect the rights of their clients and foster the administration of justice. To carry out these tasks, students attached to legal clinics and their supervisors must act in accordance with the law and the recognized standards and ethics of the legal profession in Uganda. Legal ethics and professional responsibility set out the standards, which comprise ethical principles and duties that legal professionals owe to their clients.

3.3.1 Principles in HIV-related legal service delivery

Nondiscrimination
Students and managers attached to the legal clinic should ensure that there is no discrimination against the clients in the provision of clinic services on the grounds of their real or perceived HIV status, or membership of a KVP group. A nonjudgemental attitude is essential—clients must feel welcomed and respected at all times. Legal service providers are ethically bound by the “cab rank” rule, which obliges a practitioner to act for any person who seeks assistance without discrimination.

Independence
The legal clinic (students and clinic managers) must be independent in representing the interests of the client. The clinic must be free of the state and other powerful interests, to gain the client’s trust and that of other parties, including the court. They must also remain independent of the client, especially emotionally, in order to properly represent the client’s case.

Honesty, integrity and fairness
Those providing legal services at the legal clinic should be honest with the client, respect the fair administration of justice and act with courtesy towards the client.
Loyalty to the client’s interests
The ability to act in the best interests of the client is essential. This is reflected in other ethical duties; for example, the duty to avoid conflicts of interest, maintain confidentiality and maintain independence from external influences.

Confidentiality
The legal clinic managers and supervisors will ensure that all information provided and received in the course of seeking legal services is protected and not disclosed to any third party without the informed consent of the client. Any information shared should be for the benefit of the client and only for the advancement of the case at hand.

Other issues
Other important aspects for consideration in legal support and litigation include the identification of legal issues and choice of forum (i.e. the use of court and quasi-judicial bodies). Collection, preservation and presentation of evidence is important in the provision of litigation support on HIV-related legal issues, including the use of medical and scientific evidence.
Sample Confidentiality Agreement

This agreement is made between __________________________the ("receiving party") and ______________________ its successors ("disclosing party").

The student or legal clinic manager understands that the client (disclosing party) has disclosed or may disclose information that is strictly private and confidential in nature. This information may include health information as well as confidential client information that is protected from disclosure under lawyer–client privilege. Health information may include, for example, HIV status, and spouse or sexual partner HIV status; medical history; intimate details of sexual partners; and correspondences.

In consideration of the parties' discussions and any access the receiving party may have to the health information or confidential information of the disclosing party (or both), the receiving party hereby agrees as follows:

1. The receiving party agrees to: (a) hold the disclosing party’s health or confidential information in strict confidence, and take all reasonable precautions to protect such information; (b) not divulge any such health or confidential information to a third party; (c) not make any use whatsoever at any time of such health or confidential information, except for the sole limited purpose of providing legal advice and litigation support. Any person given access to such information must have a legitimate “need to know” and shall be similarly bound in writing.

2. Except to the extent required by law or as expressly agreed to in writing by the disclosing party, the receiving party shall not disclose the existence or subject matter of the legal issue or relationship contemplated by the parties hereto.

3. This agreement is governed by the Laws of the Republic of Uganda. It supersedes all prior discussions and writings, and constitutes the entire agreement between the parties with respect to the subject matter thereof.

4. No waiver or modification of this agreement will be binding upon either of the parties unless made in writing and signed by a duly authorized representative. No failure or delay in enforcing any right will be deemed a waiver, and the obligations contained herein shall continue in perpetuity.

SIGNED by the DISCLOSING PARTY

SIGNED by the RECEIVING PARTY

In the presence of:
Client Details Form

Date: ____________________________
Information received and compiled by: ____________________________

Interviews of witnesses:
   • No
   • Yes
      If yes, by__________________________ on__________________________

1. Location of human rights violation(s)
   1.1 Date and time of alleged violation(s):
   1.2 District:
   1.3 Institution or person responsible:
   1.4 Address (if applicable):

2. Nature of HIV-related human rights violation
   Number of victim(s):
   Briefly describe the facts of the case (include the events immediately before and after the alleged viola:

   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________
   ______________________________________________________________

3. Alleged offender
   Who is/are the alleged offender(s) (e.g. law enforcement officers, health-care workers or family membe
   Names (include nicknames, if any):

   ______________________________________________________________
   Profession/occupation:

   ______________________________________________________________
   Address (if known):

   ______________________________________________________________

4. Evidence available
   List of witnesses:

   ______________________________________________________________
   ______________________________________________________________
Forensic evidence (state whether taken by police; e.g. skin sample, blood sample, hair sample or semen):

________________________________________________________________________
________________________________________________________________________

Court records (state case number, parties and name of court or judicial body), if any

________________________________________________________________________

Hospital records (e.g. admission and discharge records, P3 forms or police abstract), if any:

________________________________________________________________________
________________________________________________________________________

Photographs:

________________________________________________________________________

Other:

________________________________________________________________________

5. Has the case been reported to any authority or organization?

Complaint lodged: When? Where?

________________________________________________________________________
Have any investigations been carried out? If yes, by whom?

________________________________________________________________________

What measures are being taken to address the case?

________________________________________________________________________
________________________________________________________________________

Have you tried any form of alternative dispute resolution to resolve the matter? (If so, please give details)

________________________________________________________________________
________________________________________________________________________
6. Client identification information

6.1 Name (optional):
6.2 Age:
6.3 Sex:
6.4 Profession/occupation:
6.5 Address/ telephone no:
6.6 Nationality:
6.7 Religion (optional):
6.8 Other identity-related status (please explain):


Key references
(note: documents are listed in reverse chronological order)

SALC. HIV criminalisation case compendium. Johannesburg, South Africa: South African Litigation Centre (SALC); 2018 (55)
This publication aims to support lawyers acting for those who are alleged to have put others at risk of HIV. Based on research conducted in late 2017, it includes criminal cases from all over the world where strong defence arguments have resulted in an acquittal or reduced penalty for people living with HIV who have been accused of HIV exposure, nondisclosure or transmission.

Right to health (UNAIDS, 2017) (56)
In November 2017, the Joint United Nations Programme on HIV/AIDS (UNAIDS) launched a new report showing the progress made on access to treatment. The report, Right to health, highlights that the people most marginalized in society and most affected by HIV are still facing major challenges in accessing the health and social services they need. The report makes it clear that states have basic human rights obligations to respect, protect and fulfil the right to health.

This handbook aims to assist judges and legal professionals in handling matters related to HIV and AIDS, with a focus on employment and occupation. It provides information on relevant national and international law and its application in domestic courts operating in diverse legal traditions and frameworks. The handbook and its accompanying training materials and discussions of cases will assist legal academics, lawyers and students in ensuring effective and transparent access to social justice and observance of the fundamental labour rights of all those living with or affected by the epidemic.

This book examines the multidisciplinary field of health law within the broader health-related legal and policy frameworks. It employs rights-based approaches to address some of the major health challenges in Uganda. HIV and the law is discussed in Chapter 5 under public health law and human rights.

Judging the epidemic: a judicial handbook on HIV, human rights and the law (UNAIDS, 2013) (1)
This document articulates critical legal and human rights considerations and best practices. Each chapter provides an overview of applicable international, regional and national laws and human rights norms; suggests key considerations that are relevant to the adjudication of HIV-related cases; and summarizes pertinent cases from different jurisdictions.

The United Nations Development Programme (UNDP) convened the Global Commission on HIV and the Law to examine the impact of the law on HIV responses. Some of the key topics examined include:

- Criminalization of HIV transmission, exposure and non-disclosure.
- The impact of discrimination on people living with HIV (PLHIV).
- The criminalization of behaviours and practices such as drug use, sex work and same-sex sexual relations; and issues of prisoners and migrants.
- The impact of discriminatory laws and practices related to women and girls as well as children and youth in the context of HIV.
- Intellectual property in the context of access to treatment.
The report analyses the critical role of the laws and human rights based legal environments in the well-being of PLHIV and those vulnerable to HIV.

**Toolkit: Scaling up HIV-related legal services (IDLO, UNAIDS, UNDP, 2009) (54)**

This toolkit provides a practical resource to help improve the quality and impact of HIV-related legal services, and to expand the availability of such services. It provides guidance on factors to consider when designing and scaling up legal service programmes related to HIV. It also provides guidance about different models and approaches for delivering, monitoring and evaluating HIV-related legal services, and gives information about resource mobilization.

**The HIV and AIDS Tribunal Compendium of cases, 1st edition (UNDP, Kenya Legal and Ethical Issues Network (KELIN) and The HIV and AIDS Tribunal, undated) (57)**

The compendium is intended to support lawyers, judges, legal researchers, students and the general public in understanding and appreciating how the law has been applied and interpreted to protect and promote the rights of PLHIV.

**Statutes**

1. The Narcotic Drugs and Psychotropic Substances (Control) Act, 2015 (36)
2. The HIV and AIDS Prevention and Control Act, 2014 (23)
3. The Persons with Disabilities Act, 2006 (51)
4. The Employment Act, 2006 (41)
5. The Land Act, Cap 227, 1998 (44)
7. The Penal Code, Cap 120, 1950 (29)

**Other international and regional documents**

2. UNAIDS (2017) Disability and HIV (53)
4. WHO (2016) Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations (38) (6)
5. The 2030 Agenda for Sustainable Development, Sustainable Development Goals (6)
7. UNAIDS terminology guidelines (2015) (37)
10. UN General Assembly (2016) Political Declaration on HIV/AIDS (10)

National policies and guidelines
1. Uganda Bureau of Statistics (2017), Uganda Demographic and Health Survey 2016 (5)

List of cases

Full list of references


55. SALC. HIV criminalisation case compendium. Johannesburg, South Africa: South African Litigation Centre (SALC); 2018 (http://www.southernafricalitigationcentre.org/2018/02/13/hiv-criminalisation-


