THE STATE OF HUMAN RIGHTS VIOLATIONS OF PERSONS LIVING WITH HIV / AIDS AND TB IN UGANDA IN 2020

Plot 19 Valley Road, Ministers village, Ntinda P.O. Box 70269, Kampala (U)
Tel:+256-414-574531, +256-772-199374Email: info@uganet.org,Web: www.uganet.org

Prepared by: Justice on the wheels LTD

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1 Executive summary

Although protection and promotion of human rights have been central to the approach and success of the HIV response worldwide, and recently the United Nations Economic and Social Council (ECOSOC)'s resolution on the UNAIDS Joint Programme calling for a reinvigorated approach to protect human rights and promote gender equality and address social risk factors, including Gender-Based Violence, as well as social and economic determinants of health; and although there are some 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/TB as well as key populations.

In Uganda, HIV-related human rights abuses affect not only people living with, but also those affected by and at the risk of HIV and key populations. Stigmatization and discrimination take central place and it enables too many human rights abuses against PLHIV/TB and key populations which has negatively affected many interventions for protection and the response to HIV in Uganda.

In this study, the documented abuses include discrimination based on real or perceived HIV status; violations of the right to food for PLHIV/TB; PLHIV human rights violations due to COVID-19; violation of the right to access to medicines and other services; Violations against minority groups such as key populations; Gender-Based Violence; violation of the right to access HIV/TB related information, violations of the right to privacy and confidentiality, denial of education based on HIV status or having HIV in the family; and lack of access to justice.

Violations not only happen due to lack of a supportive human rights legal framework and standard mechanisms for redress, but also by context-based factors such as limited knowledge of rights among people with HIV and key populations, 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.

Whereas Uganda's policy regime guarantees some rights concerning HIV/AIDS (e.g., access to HIV testing, treatment, and care), there is both government's failure to promote and provide clear protection against HIV-related stigma and discrimination; and other violations of rights of the PLHIV/TB and key populations. And although the government adopted the human rights-based approach for example under the National HIV and AIDS Priority Action Plan 2018/2019 – 2019/2020, this study reflects also some of the omissions in practice by the state on implementation.

Additionally, many PLHIV/TB and key populations suffer violations because the policies lack effective human rights monitoring and enforcement mechanisms and require more intensive advocacy to secure accountability.

COVID-19 pandemic made matters worse. Although the government had to respond to a pandemic that they did not have acute knowledge about (like it was in the early days of the HIV pandemic), many of their interventions in Uganda were out of proportion and violated the rights of persons having HIV/TB, sex workers and LGBT. Their interventions such as excessive use of force by security beating people who were going to seek medical care were unlawful, unnecessary, not-proportionate, evidence-based, and failed to have key populations or PLHIV on the committees of the COVID-19 pandemic.

Based on the current study: 25.3% indicated that health workers have never given them information on drugs and side effects; 7.8% indicated that health workers shared their HIV status with other people without their consent, 15.4% feel uncomfortable to attend clinic days because there is no privacy, 93.4% of the respondents did not know the name of the ARVs they are taking; 25.3% have suffered a violation of their right to access general information on services; 10.4% suffered access violations due to COVID-19; 24.6% suffered access violations due to condom distribution services, 98% suffered a violation of access to justice: 85.1% of Gender-Based Violence

experienced by PLHIV remained unreported; 29.9% of the respondents especially those around urban areas stated that they faced food challenges during the COVID-19 pandemic. More than 84.3% of the respondents also stated that they did not receive any support in the form of food or cash. This, therefore, means that the right to food of PLHIVs was violated during the COVID-19 pandemic; 71.1% of the PLHIVs do not know their rights and didn't even understand what was meant by human rights. They did now know that they could make complaints about violation of their rights to magistrates.

The following are recommendations made in this study.

a. Integration of human rights within the realm of direct service delivery which must integrate a rights-based approach for patients and others affected within existing health service delivery programs. All health workers must be specifically trained and given refresher courses on human rights particularly the right to health and patients' rights in the patient's charter. Local government leaders must also be trained. Patients and specifically PLHIV/TB and key populations must be sensitized as well.
b. There is an urgent need for human rights empowerment of all PLHIV/TB. It must be designed within the treatment package. This study finds that limited awareness among people living with, affected by, and at risk of HIV of their rights and entitlements under the law is a central cause of violations and many of them do not seek redress which leads to impunity.
c. Public interest Litigation for the rights of PLHIV/TB should be another strategy through which violations of rights of PLHIV/TB and other marginalized groups can be prevented. This would involve legal advocacy and filing HIV related rights in court and engage the court of public opinion.
d. The government should employ more health personnel in ART facilities. From the research, 80% of the respondents complained that they waited for so long on the clinic days to get medicine. This was mainly in Mbarara and Gulu, the PLHIVs complained that the clinic talks and giving out of medicines starts very late and persons giving out the medicines are few.

e. Increasing the supply of ART drugs and Services. Although very few patients stated that they once came to the facilities and left without any drugs, at least 31% of the patients stated that at times their hospital experienced stock-outs and they would be given medicines for one month instead of the usual 3 months that they always got, whereas 28.4% were asked to come another day hence a violation of the principle of availability of medicine and medical care to patients. For TB patients, 8.2% experienced TB drug stock-out.

f. Access to Information. Access to information is a cardinal right for PLHIVs in their treatment and care. It is therefore pertinent that health workers always inform the PLHIVs of the name of the drug they are taking. From the research, 93.4% of the PLHIVs did not know the name of the ARV they were taking and what the drug does. 15% stated that they were not given any information about the drug or its side effects. It is therefore pertinent that health workers clearly explain and tell PLHIVs the name of their drugs and what it does. This is vital in the fulfillment of the right to information for PLHIVs. For T.B patients, the research found out that 31.8% didn't know their rights as patients of TB

g. The right to food for PLHIV. The right to food is pertinent to medical care for PLHIV, where the right to food has violated the right to health of PLHIVs will be violated too. From the study, 17.6% had never or rarely receive information on food and nutrition. 95.1% understood the information shared on food and nutrition while 4.9% confessed that they didn't understand the information shared with them. Research also indicated that 86.1% of the TB patients reported having been verbally abused or insulted and 18.9% indicated mistreatment. The majority reported (52.1%) reported that GBV happened at home while 45.8% stated that GBV happened in the neighborhood yet 85.1% of GBV cases were not reported.

h. However, about 31.7% of the respondents especially those around urban areas stated that they faced food challenges during the COVID-19 pandemic. More than 84% of the respondents also stated that they did not receive any support in the form of food or cash. This, therefore, means that the right to food of PLHIVs was violated during the COVID-19 pandemic.

i. The Ministry of Health should put in place mechanisms to help sustain and give food aid to PLHIV/TB and other marginalized groups when there is a crisis or natural disaster like the COVID-19 pandemic. This will be pertinent in protecting the right to food of PLHIV/TB.

j. The study recommends that the Ministry of Gender, Labour, and Social Development should accord special attention to women and girls living with HIV to protect them against GBV and discrimination. This can be done through the establishment of special programs for women living with HIV and who are victims of domestic violence. There is also a need for more sensitization of communities about GBV and its relation to HIV by the ministry.
k. There is a need for special attention to be accorded to sex workers because according to the study, 85.1% have never reported violations to the authorities although they had faced violence from their clients even after they told the clients that they have HIV. There is a need to decriminalize sex in Uganda to change the attitude of the general public towards sex workers as "already dirty".
l. Because this research shows that most of the persons living with HIV are low-income earners and not in any formal employment, do nothing in case of the violation of their right, and that PLHIV cannot initiate legal proceedings and access justice in case of violation of their rights, there is need to draft and pass into law the Legal Aid Bill for PLHIVs to get adequate legal representation in the formal justice system.
m. It is also recommended that the Uganda Human Rights Commission is established under Article 51 of the Constitution inter alia, to include education to defend against all forms of abuse and violation. During the study, it was found that 71.1% of the PLHIVs do not know their rights and didn't even understand what was meant by human rights. They did now know that they could make complaints about violation of their rights to magistrates. There is, therefore, a need for sensitization directly to PLHIV/TB , key populations and the general community about Human Rights and how to get redress for violation of rights through the Human Rights Enforcement Act and other laws.

2 Introduction

Uganda has made impressive progress in the national response to HIV/AIDS. HIV/AIDS prevalence has reduced from a peak of 18% in the 1990s to 5.7% in 2018; new infections have reduced from a peak of 162,294 in 2011 to 53,000 in 2018; the number of HIV/AIDS related deaths has reduced from 120,000 in 1998 to an estimated 23,000 in 2018; while the number people accessing antiretroviral treatment has increased from 329,060 in 2011 to 1.1 million in

2018.[1] The country has made tremendous progress towards the 90-90-90 targets: 90% of all People Living with HIV (PLHIV) are aware of their HIV status; 96% of those diagnosed are on HIV treatment; while 87% of those on treatment are virally suppressed.[2]

Notwithstanding Uganda's remarkable progress, the national response to the HIV epidemic still has gaps to fill and HIV remains a major public health problem. Up to 1.4 million people were living with HIV in 2018; an estimated 53,000 people were infected with HIV, and an estimated 23,000 people died of AIDS-related causes.[3] The HIV response is battling a surging TB epidemic. HIV is the leading risk factor for the development of TB, and TB is the leading cause of death among PLHIV. It is estimated that about 60% of TB patients are co-infected with HIV.[4]

This situation has been exacerbated by the COVID-19 pandemic which had been declared on 11th March 2020 by the World Health Organization (WHO). The pandemic has caused grave disruptions in access to health services, stock-outs, access to food, Gender-Based Violence, double stigma and discrimination, and right to health violations for PLHIV/TB and other key populations like LGBT, sex workers, the elderly, and the disabled.

Between 2011 and 2015, World AIDS Days are held under the theme of "Getting to Zero: Zero New HIV Infections, Zero Discrimination, and Zero AIDS-Related Deaths." In this context, a global vision was developed for all countries; working together toward zeros.

The 2010 Global WHO Report ranked Uganda 16th among the 22 TB high-burden countries, and in 2017, a national survey estimated that 89,000 people get infected with TB every year, surpassing the 53,000 who got infected with HIV in that year. The survey found that TB prevalence was much higher than earlier thought, and was estimated at 253 per 100,000 people in 2017, compared to 159 in 2015.

There are still socio-cultural and structural challenges that make certain population groups more vulnerable to HIV, mainly adolescent girls and young women (AGYW), women, and key populations. An estimated 8.8% of adult women in Uganda are living with HIV compared to 4.3% of men, and an estimated 59.2% of PLHIV are women. New HIV infections among

1 UNAIDS aids info. http://aidsinfo.unaids.org/
2 Government of Uganda (2018), Uganda AIDS Country progress report July 2017-June 2018
3 UNAIDS aids info. http://aidsinfo.unaids.org/
4 Ministry of Health TB/Leprosy Control Program. Tuberculosis https://health.go.ug/programs/tb-leprosy-control-program

AGYW aged 15–24 years were nearly threefold those among males in the same age-group: 14,000 new infections among women, compared to 5,000 men. According to UNAIDS, about 570 AGYW in Uganda are infected with HIV each week, with HIV prevalence among female sex workers, most of whom are AGYW, is as high as (35-37).

According to the World Health Organization, about one-third of women worldwide have experienced violence. In some regions, women who have experienced physical or sexual intimate partner violence are 1.5 times more likely to acquire HIV than women who have not experienced such violence. Among marginalized populations, such as sex workers or transgender women, a high prevalence of violence is linked with higher rates of HIV infection. (WHO & UNAIDS, 2019)

The current criminal justice system is also discriminative as it hands down more deterrent jail terms to those suspects found to be living with HIV/AIDS than their counterparts that are not. More to that tuberculosis (TB) criminalization is rampant as prosecution for failing to comply with TB treatment regimens has been well documented, Furthermore, evidence suggests that "legislative control of TB transmission has recently regained attention due to the threat" of multi-drug-resistance TB.

According to Lawyers for HIV and TB Justice, (2017), Public health and human rights concerns have been raised against HIV criminalization by the Global Commission on HIV and the Law, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Special Rapporteur on the Right to Health, and the World Health Organization, state that:

> *"HIV criminalization is bad, bad policy. There is simply no evidence that it works. Instead, it sends out misleading and stigmatizing messages. It undermines remarkable scientific advances and proven public health strategies that open the path to vanquishing AIDS by 2030."*

3 Objectives of the study;

The general objective of the study was to identify, assess, and document the human rights violations of PLHIV, the impact of laws and policies concerning HIV/TB, and criminalization in Uganda. More specifically the study was required to;

1. Assess the status of all rights for persons living with HIV/TB and its implication on service delivery in Uganda.
2. Explore experiences of stigma and discrimination, forms of sexual and gender-based violence among persons living with HIV/TB in Uganda.
3. Examine the impact of COVID-19 on the rights to food, health freedom from discrimination, bodily autonomy, and privacy.
4. Examine the legal framework on HIV/TB criminalization and its implication in combating the spread of HIV/ TB among PLHIV/TB in Uganda.
5. Explore the cases related to the spread of HIV/ TB that have been prosecuted under the enacted laws, are pending trial in the High Courts and appeals in the higher courts
6. Explore the challenges faced during and after serving a sentence, prosecution and conviction of offense of spreading of HIV/TB, and experience from other jurisdictions on the criminalization of HIV/TB

4 Methodology

The methodology mainly involved interviewing PLHIVs, Key populations, key informants, conducting Focus Group Discussion (FGD), Observations, and surveys. The interviews were limited to five regions (Northern, West Nile, Central, Western, and Eastern) of Uganda. Stakeholders included: DHO, District TB focal person, HIV focal person, in-charge health center facilities, implementing partners. A cross-sectional design using mixed methods of data collection (quantitative and qualitative) was applied. Triangulation of different methods was used and these included the key informants, in-depth interview, focus group discussion, observation checklist, and surveys using face to face interviews. The primary data shall be captured using four methods: key informants, Focus Group Discussion (FGD), Observations, and surveys respectively. The qualitative approach was adopted in the collection of data, data quality control, and data analysis. Triangulation was adopted to get quality data.

The study included both males and females aged 18 years and above who are seeking services at health facilities and prisons in the districts and key informants were chosen from the knowledgeable persons within the district.

The study targeted and reached 25,000 males and females aged 18 years seeking services from all the 10 districts, District Health Officer (10), HIV Focal Persons (10), TB Focal persons (10) Implementing partners/CSO (10) Medical superintendent (10) In-charges (10) KP Focal Person (10) who will be the key informants. The Focus Group Discussions (10) were conducted among female and male at the facilities under violation of human rights among the PLHIV/TB.

4.1 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 human rights-based approach to HIV/TB health care in Uganda, identifies state obligations and the underlying rights that accrue to different stakeholders.

Section Three provides for the COVID-19 Legal framework and implications for PLHIV/TB /key population human rights.

Section Four discusses the major challenges faced in regards to access to justice following the demand for legal services among people living with HIV in Uganda compared to the supply of the "HIV-related legal services gap".

In conclusion, Section Five identifies and recommends some new and/or existing opportunities for programming to enable PLHIV to have equal and full-package opportunities.

5 The Human Rights-Based Approach (HRBA) to HIV/TB health care in Uganda

Uganda adopts the globally accepted human rights-based approach to HIV prevention, health services, and response interventions. The human rights approach is central in all successful interventions for the HIV pandemic. It should be noted that the United Nations Economic and Social Council (ECOSOC), in its 2019 resolution on the UNAIDS Joint Programme, called for "a reinvigorated approach to protect human rights and promote gender equality and to address social risk factors, including Gender-Based Violence, as well as social and economic determinants of health.

The human rights-based approach stems from the obligations of the state towards the citizens. These obligations apply at three levels: primary, secondary, and tertiary[5]. At the primary level, the state must respect the rights. This is more of a negative duty that requires the state to abstain from interfering with the enjoyment of the existing rights.

At the secondary level, the state is required to take affirmative action to protect people against infractions of rights by other persons, or entities, including artificial and natural persons. This could be done through the adoption of prohibitive legislative measures.

The tertiary duty to promote requires the state to take measures that facilitate the enjoyment of rights and empowers rights holders to exercise their rights. Fulfillment at the tertiary level requires the state to make provision for those who cannot provide for themselves economic and social goods and services. The duties have proven to be useful standards for determining whether the state has violated the rights in a situation. Therefore, the failure to perform any one of these three obligations constitutes a violation of such rights.

State parties are under a general obligation to ensure that the following key elements of the rights are guaranteed to realize the obligations;

a) The *availability* of rights, which ensures that the state should ensure that the necessary goods and services needed to enjoy the rights are practically available to the individual, regardless of how this is achieved.
b) The *adequacy* of the benefits provided in terms of the rights. This requires that the goods and services provided to the individual are sufficient to meet all the requirements of the rights protected.
c) The *physical and economic accessibility (affordability)* of the rights to all, particularly to vulnerable and disadvantaged groups. Physical accessibility means that the provision of goods and services required for the enjoyment of rights should be available to everyone, including members of the vulnerable and disadvantaged groups for whom special measures should be necessary. Economic accessibility on the other hand means that the individual should be able to acquire the specific requirements for the enjoyment of other rights.

5 Enforcing economic, social and cultural rights: a source book for judicial officers and court users, (OHCHR, 2019) at page 59

d) The *accessibility* of the manner of providing for the rights requires that how economic, social, and cultural rights are provided in a society respects societal and cultural norms

Following the above obligations and principles, in 2011, the Uganda AIDS Commission (UAC) developed the National Strategic Plan 2011/2012-2014/2015 with thematic areas being (i) prevention, (ii) care and treatment, (iii) social support and protection, and (iv) system strengthening. Presently, the UAC has developed the National HIV and AIDS Priority Action Plan 2018/2019 – 2019/2020 which follows the same thematic areas as the latter.

Despite the achievements attained under social support and protection, some challenges still exist that need to be addressed. These include but are not limited to: a decline in the quality of counseling, inadequate gender mainstreaming hence stigma remains a challenge; the limited success of interventions addressing gender norms that increase vulnerability to HIV; low reporting and follow up of GBV cases.

The strategic plan points to a situation where the country is within reach of providing universal ART by 2020. Basing on the research conducted, 81% of the respondents say that the drugs are always available which indicates progress, however, the problem of delays in delivery of drugs is still the main challenge that needs urgent redress.

The Strategic Plan was to increase antiretroviral therapy to 80% by 2020 and sustain the provision of long term care for patients initiated on ART. This has been achieved in a way that some facilities for community distribution centers have been set-up by TASO, for-example in districts of Mbale, Gulu, and Mbarara.

The strategic plan was to scale up efforts to eliminate stigma and discrimination of PLHIV and other vulnerable groups, this hasn't been fully achieved in some parts of the country since research conducted indicates that cases of stigma and discrimination were highest in the Northern region with over 30% and as a result of fear of stigma and discrimination, 6.8 of the people have opted not to disclose.

The plan has an objective of ensuring the availability of adequate human resources for the delivery of quality HIV and AIDS services. Although this plan has acquired attention, there are still many areas where health workers are very few compared to the PLHIV hence a delay in

service delivery. Research conducted in areas like Mbarara and Kitgum there is few health workers which creates delay, some of the PLHIV fail to pick the medication.

UNAIDS has already indicated that it will not be possible to Fast-Track the HIV response and end the AIDS epidemic without addressing human rights. UNAIDS has highlighted stigma and discrimination, violence and other abuses, negative social attitudes and legal obstacles as contributors to vulnerability to HIV among populations and a limitation to their access to prevention, testing, treatment, and care services. It should also be noted that all UN Member States in the General Assembly resolutions on HIV, recognized the realization of human rights as an essential element of HIV prevention and response[6].

At the international level[7],Human rights have been articulated mostly for the right to health including elements of availability, accessibility, acceptability, and good quality of services. Other rights related to HIV/TB care are Non-discrimination and Equality, Privacy and confidentiality, respect for personal dignity and autonomy, and Meaningful participation and accountability[8].

At the national level, the constitution and other laws provide for human rights realization for all including the PLHIV/TB and key populations. Also, civil society organizations like UGANET, have been at the forefront in the promotion of the rights of PLHIV/TB. It is therefore relevant to interrogate and document violations of human rights especially the impact of the COVID-19 pandemic on access to health services for PLHIV/TB, access to food, stigma, and discrimination, gender-based violence, inaction, and omission from duty bearers especially at the local government level.

5.1 The Legal Framework:

Uganda has put in place several strategies, policies, and laws that are critical in implementing its obligations towards achieving the end to the AIDS epidemic. These are presented below:

6 See the 2001 Declaration of Commitment on HIV/AIDS, the 2006 United Nations Political Declaration on HIV/AIDS, the 2011 Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, and the 2016 Political Declaration on HIV and AIDS.

7 See the International Convention on Economic Social and Cultural Rights -ICESCRs

8 See the International convention on political and Civil Rights, the African Charter on Human and Peoples Rights,

5.1.1 Constitution of the Republic of Uganda of 1995

Uganda is a constitutional democracy and all of its laws and policies flow naturally from the Constitution of the Republic of Uganda of 1995. The Constitution of the Republic of Uganda founds itself on accountability and provides that all authority for which it prescribes is drawn from the people and requires that people be governed according to the constitution through their will and consent[9]. The National Objectives and Directive Principles of State Policy requires the state to endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and, in particular, to ensure that all Ugandans 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[10].

The importance of these objectives and principles is reiterated by the Article 8A of the Constitution which requires that Uganda be governed based on the principles of national interest and common good enshrined in the national objectives and directive principles of state policy[11]. In the context of HIV/TB care, the state is obliged to take all practical measures to ensure the provision of basic medical services and act upon all other social aspects that negatively may impact their wellbeing.

The Constitution under Chapter four makes further provision for Uganda's obligation to recognize and respect human rights and freedoms. Under Article 20, fundamental rights and freedoms of the individual are inherent and not granted by the State and that the rights and freedoms should be respected, upheld, and promoted by all organs and agencies of Government and by all persons[12].

Under **Article 21 the Constitution** recognizes the right to equality and freedom from discrimination. All persons, including PLHIV/TB and other key populations, are equal before and under the law in all spheres of political, economic, social, and cultural life, and every other respect and shall enjoy equal protection of the law.[13] The right to access to food is also protected in the constitution under objective XXII and the right to access information in the possession of

9 Article 1, Constitution of Republic of Uganda
10 Objective XIV
11 Article 8A, Ibid
12 Article 20, Ibid
13 Article 21

the state or any organ or agency of the state[14] and the right to just and fair treatment in respect to administrative decisions including the right to appeal from such decisions[15] among other rights.

Article 33 of the constitution makes it a mandatory constitutional obligation on part of the government to provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement; protect women and their rights, taking into account their unique status and natural maternal functions in society, and all laws or customs that violate the rights of women are outlawed. This includes all acts like gender and sexual-based violence. It should be noted though that the Constitution is not exhaustive but is inclusive as far as human rights are concerned.

Article 45 of the Constitution provides that 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. By interpretation, other rights that are provided for in international instruments which Uganda has adopted and ratified and like the right to the highest attainable standard of health, the right to food, the right to housing among others should be given as much constitutional impetus as any right that is explicitly provided for in the constitution.

1. *Other relevant legislation*

Despite the progressive disposition of the Constitution, the legislative function of the state has not developed appropriately to provide for Uganda's obligation to mainstream human rights in the provision of health care.

5.1.2 HIV/AIDS Prevention and Control Act, 2014:

Although problematic in some provisions, this Act provides for the prevention and control of HIV and AIDS including protection, counseling, testing, care of persons living and affected by HIV, and Rights including rights and obligations of persons living and affected by HIV and AIDS. Under its provisions, the Act creates obligations on the government to devise measures to ensure the right of access to equitable distribution of health facilities, goods, and services including essential medicines on a non-discriminatory basis. It calls for the provision of universal

14 Article 41
15 Article 42

HIV treatment to all and several other rights. The Act has however been criticized for its provisions of privacy, compulsory testing, and disclosure requirements, and a constitutional case is before the Courts of Law for determination.

5.1.3 The Public Health Act of 1935:

The Public Health Act of 1935 remains the oldest and probably most obsolete piece of legislation for health in Uganda even where it provides for the prevention, control, and management of public health in Uganda[16]. While a few parts of the Act remain relevant to the protection of public health like provision relating to prevention and suppression of infectious diseases, the Act does not have any provisions that recognize the need to use a human rights-based approach in the management of public health.

5.1.4 Venereal Diseases Act of 1977:

This Act provides for the examination and treatment of persons infected with venereal diseases and several other matters relating to the treatment of venereal diseases. In addition to empowering medical health inspectors to examine a person suspected to be suffering from any venereal disease and giving them treatment, the Act also prescribes offences for refusing treatment and failures to comply with orders of the medical officer.

5.1.5 The Domestic Violence Act 2010

This Act provides for the protection and relief of victims of domestic violence, the punishment of perpetrators, procedures, and guidelines to be followed in the court concerning protection and compensation of victims of domestic violence, jurisdiction of the court, empowerment of the family and children court to handle cases of domestic violence and enforcement of court orders.

Under section 4 of the Act, a person in a domestic relationship shall not engage in domestic violence. Where a person in a domestic relationship engages in domestic violence, the person commits an offence and is liable on conviction to a fine not exceeding 960,000 (nine hundred sixty thousand shillings) or imprisonment not exceeding two years or both. The court may also order the offender in the case to pay compensation to the victim of an amount determined by the

16 Chapter 281, Laws of Uganda

court. Under this law, the consent of the victim shall not be a defense to a charge of domestic violence.

Laws for Professional Regulations:

Health workers are at the very end of the delivery chain as regards the implementation of the human rights approach in health care delivery and they must understand and appreciate their obligations. Accordingly, the Uganda Medical and Dental Practitioners Council which regulates the conduct of all medical and dental practitioners in Uganda through the Medical and Dental Practitioners Act has a code of ethics that prescribes the obligations that health workers have in the protection of human rights[17]. The Nurses and Midwives Council similarly has a Code of Ethics which prescribes the obligations of nurses and midwives in the protection of human rights. While the language of these codes is phrased in the context of ethical codes, they take a human rights approach by prescribing standards through which human rights can be protected[18]. The Code of Ethics for medical and dental practitioners for example under Rule 4 requires medical and dental practitioners to respect and protect human rights but phrases their respective obligations as ethical responsibilities.

5.1.6 Health Service Commission Act of 2001:

Health workers in the public sector are collectively regulated by the Health Service Commission created under the Health Service Commission Act of 2001 which similarly recognizes the duty of health workers concerning the rights of patients by phrasing them as responsibilities. The Act recognizes the duty of health workers to act in the best interest of patients at all times, to ensure informed consent, respect the privacy and confidentiality of a patient, avoid conduct detrimental to the community and abide by all laws and regulations governing their professions[19]. While these responsibilities can be interpreted as human rights obligations, the Act could have done well to phrase these responsibilities in a human rights language.

17 The Medical and Dental Practitioners Act, Chapter 272, Laws of Uganda
18 The Nurses and Midwives Act, Chapter 274, Laws of Uganda
19 Part 4, The Health Service Commission Act, 2001

5.1.7 The Patients Charter:

The Patients Charter provides for patients' rights including the right to emergency medical care, the freedom from discrimination, the right to a clean and healthy environment, the right to participate in decision-making, and the right to medical information among others. The provisions of the Patients Charter are however limited in effect by the fact that they do not have the binding force of the law and can only be equated to guidelines which health workers can discretionarily apply.

A road map towards zero new infections by 2030: Acceleration of HIV prevention in Uganda.

Under this plan, the government of Uganda states that HIV prevention programming will only achieve sustainable impacts if empowered community members take charge of their lives, practice responsible health-seeking behaviors, including exercising rights to demand quality and acceptable services. It will require sustained and serious leadership both at the community and household level, with adults setting good examples. It will also require boldness to reach key populations, as well as difficult groups such as males.

5.1.8 The National HIV and AIDS Priority Action Plan 2018/2019 – 2019/2020

Establish and/or build the capacity of existing community-based structures and networks, the local councils, police and service providers to uphold Human rights of the vulnerable group and support access to justice; training Program Managers and Service Providers in Human Rights-based programming and Build the capacity of networks of women living with HIV and other CSOs to demand and advocate for the uptake of rights-based HIV services; improve legal literacy programs and legal aid services to promote and enforce women's rights under customary and statutory law and sensitize the community, religious, cultural, school and CBO/CSO leaders on rights of PLHIV & OVC and their roles in protecting them against abuses including property dispossession.

Under this plan, Men and boys are specifically targeted for human rights enforcement. The plan requires them to know and respect the rights and responsibilities of the family members, know and understand what constitutes GBV including sexual violence as well as the consequences of SGBV concerning new HIV infections. Additionally, communities need accurate information on the causes, magnitude, and consequences of SGBV to both men/boys and women/girls.

The plan has a specific focus on the duty bearer's human rights capacity under strategic intervention 3 to build the capacity of local governments to guide implementers at the Local Government level to carry out gender mainstreaming, human rights, and disability into support program initiatives.

6 Findings of the study

6.1 Right to access ARVS/ ART

The right to health requires that there should be access to HIV medicines at all times. However, finding in this study show that Stock-outs of ARVs prevalent. It was found that 10.4% were not able to access ARVs during COVID-19 lockdown. The 10.4% failed to access ARVs during the lockdown because the majority lacked transport means to travel to nearby health facilities since they stayed in distant places. They also reported that in most cases of stock-outs, the facility gives those refills for a shorter period between two weeks and a month.

Respondents highlighted that, beyond the ARVS, other medicines are often not available at the facilities. Septrin was highlighted as a highly required drug that most PLHIV (especially those that have just contracted the virus) need but is often unavailable and as a result, they have to purchase it from pharmacies.

Sometimes this is a major challenge for the PLHIV as some of them are usually unable to afford the drug as a result, research indicated that 11.8% of the people were not satisfied when they attended clinic days. The reasons for their dissatisfaction being the lack of privacy, long queues, and mistreatment from health workers. The study found that 15.4% don't find it convenient to attend clinic days for reasons to include among others, the long distances to the facilities which go against the principle of accessibility of medical services.

Research also indicated that 13.5% of TB patients indicate that clinic days are inconvenient to them because of long distances patients commute, long waiting hours at TB clinics, and monthly refills which are burdensome to them.

6.2 The right to HIV and services' information

It is constitutionally guaranteed for all access information and all health workers have an obligation and a responsibility to educate clients about their rights as per the MOH patients' charter.

The study found that 71.1% of PLHIV respondents didn't know their rights as PLHIV. Some respondents highlighted that health workers only took them through informative sessions at the start when they had just been registered as clients of the ART clinics. However shortly after that, health workers no longer sensitize them, they simply distribute the drugs.

As regards TB patients, the study indicated that 31.8% didn't know their rights as patients.

- **Information concerning medicine**

93.4% of the respondents did not know the name of the ARVs they are taking. Most of them could only recognize them by colour and others for example in Gulu, some respondents kept referring to a certain type of ARV as '**dorotia'.**

25.3% indicated that health workers never gave them information on drugs and side effects. To most of them, the side effects came as a surprise and they did not even report to the health workers to prescribe a change of regimen or painkiller.

- **Importance of disclosure**

26.9% highlighted that they had not been sensitized on the importance of HIV status disclosure. They still lived in fear of disclosing their status to anyone and as a result, 8.5% of the PLHIV had not disclosed their HIV status.

- **Information on food**

The majority of the respondents noted that health workers teach them about the foods to eat including leafy vegetables and maintaining a balanced diet. Research indicated that 17.5% (PLHIV) and 23.4% (TB patients) had never received any information from health workers on food and nutrition and on average 5.35% didn't understand the information taught them. For most of the facilities, health workers reserve the morning session of about 40 minutes to 1 hour on clinic days to sensitize the clients about several issues including nutritious foods to eat.

- **Information on how to obtain redress after the violation**

Although respondents reported having suffered violence because of their HIV status, only 18.9% reported the said violations to the police and local authorities whereas 85.1% did nothing about it. The researchers, therefore, found that PLHIV is not informed about where and how to obtain redress when they have suffered violations. There is, therefore, a need to carry out community sensitization on the rights of PLHIV, positive living with PLHIV and counseling victims and giving them guidance on GBV reporting.

6.3 Stigma and discrimination

a) General Findings on the Subject

Cases of stigma and discrimination were highest in the Northern region with over 30% of respondents reporting that they have faced the challenge.

As a result of fear of stigma and discrimination, 8.5% of people have opted not to disclose their status to their relative or spouse in fear of discrimination and stigma and this was mainly in western Uganda in the districts of Bushenyi & Mbarara.

Clients move long distances to get drugs from other facilities out of their community reach in fear to be seen by anyone that knows them at a clinic within their home areas.

b) Specific Findings

<u>Stigma & discrimination in schools</u>

"I have not told anyone that am positive because once I do, I will lose my teaching job, my boss does not allow any positive person in school, even the students once he gets to know, he asks us to fail that student so that the student does not return. He keeps saying such people will make others sick." Said, one male respondent

On clinic days for adolescents and children, we interacted with some school going young adults, parents of school-going children, and some young school dropouts. We found that 19.9% are emotionally abused. In addition to those that were treated differently because of their HIV status, 1.4% of PLHIV were treated differently because they are LGBT, 1.9% sex workers, and 0.8. After all, they are PLWDs.

From our findings, 97% of the schools do not have an HIV policy to protect the students or employees living with HIV.

As a result, some students drop out of school because of stigma from the school environment, others abandon taking their medicines, others their parents have had to take them out of boarding school so they can monitor their adherence to drugs from home where they can take the drugs freely.

We also interviewed some teachers who said they cannot disclose their status because they may lose their jobs as a result of some parents who say they cannot trust the lives of their child with a teacher living with HIV.

Stigma at home from family members

From the interviews conducted, 20% of them reported issues of stigma in their homes from family members. The main forms of stigma reported in this aspect included;

"After testing positive when I informed my children and in-laws with whom I was staying, they did not want to share household materials with me anymore and would throw away the cup or plate I used saying I will infect them. I had to leave and go back to my parents, the in-laws refused me to take my children along saying I will infect their grandchildren with the virus, and the child also fears me till now because they were told I will infect them with a deadly disease and kill them." *Said a female respondent in Kitgum district*

Stigma and discrimination from community

We found that clients move long distances to get drugs from other facilities out of their community in fear to be seen by anyone that knows them at a clinic within their home areas. Some people have shifted from their home areas to another as a result of stigma in the community. 6.8% are still being mistreated by those people to whose they were disclosed.

Key population/ sex worker and stigma

We interviewed 30 sex workers living with HIV in the districts of Busia, Nakasongola, Mbarara & Rakai. Over 80% of them had experienced stigma and discrimination from their families and community members in form of pointing fingers, gossiping about their status, nicknaming them

bad names such as the carrier of the deadly virus, not wanting to socialize with them among others.

6.4 Privacy and confidentiality

Research indicated that the rights of PLHIV & TB to privacy and confidentiality have been violated by health workers. 7.8% confessed that health workers ever shared their HIV status with other people without their consent whereas 5.7% indicated that health workers ever openly talked about their HIV status to their colleagues moreover 18.7% were never told by health workers that the information they share with them has to remain confidential which deters clients to disclose certain information which would otherwise be important towards their treatment and care.

On the other hand, 11.8% were not satisfied with the mode of services offered due to lack of privacy. For instance, 23% complained that Community Drug Distribution Points are in open spaces and near main roads and so they are exposed. A few clients had to cross border districts for refills as a measure to protect their privacy rights while 15.4% felt uncomfortable to attend clinic days because they find the people who know them.

6.5 Access to relevant commodities specific to PLHIV

Research indicated that the mode of service on condom distribution among PLHIV violated their right to access them. 24.6% had difficulty to access condoms at ART clinics. In some ART clinics in Gulu, Bushenyi, and Mbale, condoms were served at pharmacy point upon request and so requesting condoms by some clients especially females and elderly is perceived as something that diminishes their human dignity and so they don't ask for condoms.

Over 15% of clients especially those that were newly enrolled (less than one year) on HIV treatment were not aware that condoms were available at pharmacy points. In Nakasongola, condom suspensors were placed in open spaces and so clients didn't feel comfortable picking condoms from them for fear of being seen by whoever is around the facility.

1.1 Sexual and Gender-Based Violence

From the research, it was observed that in all regions countrywide, women are still the main victims of SGBV. The respondents expressed different forms of SGBV faced ranging from insults and abuses, physical beating, forced sex, sexual denial from partners among others.

"After testing positive for HIV, I went back home and told my husband. He immediately started beating me and accusing me of being unfaithful and engaging in extra-marital affairs. Two days later, he chased me away yet I had nowhere to go. I went back to my parent's home." (Woman aged 37)

- Insults and abuses

Respondents stated that gossiping about their HIV status in communities is one of the major challenges they have faced. This often translates into abuses and insults from community members, family members, and partners. 36.9% reported having been abused, insulted, or had something bad said to them because of their HIV status. Research also indicated that 86.1% of the TB patients reported having been verbally abused or insulted and 18.9% indicated mistreatment.

- Physical beating

Only female respondents reported having faced actual physical assault and battery after disclosing their HIV status to their partners. 4.9% stated to have been physically beaten.

- Mistreatment

18.2% of the respondents interviewed reported to have been chased away from home by their partners and others by their family members. As a result of the stigma and discrimination in

communities/ families, many PLHIV has not been accepted and some family members refuse to stay with them which results in being thrown out of their homes.

- Sexual denial from partners

A female respondent from Mbarara district stated that sexual denial is one of the main reasons why she still hasn't disclosed her HIV status to her partners. She narrated that in all the previous relationships, no man could allow having sex with her because of her HIV status. 7.5% reported that they have been denied sex by their partners whereas 3.7% were forced to have unprotected sex against their will.

(i) Key population (sex workers)

A total of 30 female sex workers were interviewed. The sexual violence suffered against sex workers with HIV is immense.

- Forced sex

40% of the sex workers reported that as a measure of HIV treatment and care, health workers advise them to avoid sexual relations with clients who are HIV positive because this could affect their viral load. However, some made it clear that men who are HIV positive often refuse to use condoms. When the woman resists, the men often rape them.

The majority (49.1%) of the above-mentioned cases were caused by community members, followed by family members (24.3%) and husband/wife (20.3%). Besides, 72.9% of respondents had witnessed PLHIV being abused because of their status in the communities they live in, and women majority (over 70%) are the most affected ones followed by youths/adolescents.

85.1% of these GBV cases have never been reported; as earlier reported 77.1% of respondents don't know their rights and so this means that they can't sometimes identify and report violence and violations.

6.7 Other Specific findings

a) Nutrition

17.6% had never or received information on food and nutrition and that they could only access one type of food regardless of the doctors educating them to have a balanced diet which most said cannot afford, 4.9% confessed that they didn't understand the information shared with them.

"… ***the doctors teach us what we should eat to boost our immunity and to change diets but we only have cassava other food is for buying and it is expensive to get so we just eat what we can get…" she said***

b) Availability and accessibility of food

31.7% of the clients reported that they did not have adequate food as a result of the lockdown. 29.9% had difficulty to access food during COVID-19. The majority of these (60.7%) experienced food shortage in less than a month when the research was conducted of which 16.9% ever went a whole day or slept on empty stomachs because there was no food to eat. These took drugs on an empty stomach which caused side effects and turned them unproductive while others skipped taking drugs which compromised their adherence to ARVs. Research also revealed that 84.3% never received any support.

7 COVID-19 and the violations of the rights of PLHIV/TB

The emergence of COVID-19 caused too much panic worldwide and attempts to contain it resulted in human rights concerns and violations. Although under the public health law, human rights can be restricted, under the Uganda constitution, such must be demonstrably justifiable in a free and democratic society using human rights-based approach mandates. The COVID-19 restrictions caused a disproportionate impact on PLHIV/TB in Uganda. This was mainly due to directives issued by H.E. the President of the Republic of Uganda. These were followed by regulations made under the Public Health Act including curfew hours and restrictions on movements. The institutions charged with the responsibility to observe and enforce these directives COVID-19 committees and security forces.

Under the Public Health Act (Cap. 281), the minister came up with several statutory instruments to implement the measures given by the Presidential directive in an attempt to prevent the spread of COVID-19. These instruments include Public Health (Notification of COVID-19) Order, SI No 45/2020; Public Health (Prevention of COVID-19) (Requirements and Conditions of Entry into Uganda) Order, SI No 46/2020; Public Health (Control of COVID-19) Order, SI No

52/2020; and Public Health (Prohibition of Entry into Uganda) Order, SI No 53/2020. At the Local Government Level, the Local government authorities exercised the power to enforce these regulations under the District COVID-19 committees, although, the Ministry of Health remained the key front-line responsible institution in the fight against COVID-19 and an Inter-Agency Joint Task Force (JTF) at National and Regional levels.

Many people living with HIV and those most affected by HIV, including key populations (sex workers, people who use drugs, gay men and other men who have sex with men, transgender people, and prisoners) and women and girls were caught up in curfew orders and other restrictions. Security forces indiscriminately and blindly enforced the COVID-19 directives and regulations which resulted in illegal arrests, imprisonment, and detention of PLHIV/TB during the lockdown and gender-based violence cases. These actions bred the inability of PLHIV/TB to access food, drugs, and other necessities of life. This study interrogated the violations that happened against PLHIV/TB and other key populations including sex workers, the elderly, disabled during the strict lockdown, and generally during the COVID-19 pandemic.

Therefore, as the world undertakes focused efforts to slow the spread of COVID-19, it must also redouble efforts to ensure an uninterrupted supply of essential commodities and services to respond to HIV and other global health priorities.

This study found that 35% of the respondents especially those around urban areas stated that they faced food challenges during the COVID-19 pandemic. More than 95% of the respondents also stated that they did not receive any support in the form of food or cash. This, therefore, means that the right to food of PLHIVs was violated during the COVID-19 pandemic.

The right to a fair hearing and access to justice during COVID-19

In an **OPEN LETTER FROM CIVIL SOCIETY TO THE WORLD BANK REGARDING THE COVID-19 RESPONSE IN UGANDA, CSOs** urged the government to revise the COVID-19 rules and interventions structures, because the orders were against human rights. They stated that

"……. the complete halt to everyday operations of Uganda's Judiciary has triggered immense harm to many who must now wait an indeterminate amount of time for access to justice. In

particular, we draw your attention to recent arrests of key populations, including 19 LGBT people (arrested March 29 and currently in detention), sex workers in Mbarara, and many more. Detainees are currently unable to receive visitors, apply for bail, and obtain access to counsel. This is unacceptable."

They, therefore, recommended that the World Bank calls on the Government of Uganda to:

Designate legal aid services as essential during this unprecedented period, so that fundamental human rights are not put further at risk, and Release immediately and drop any charges against all people who have been caught up in sweeps related to curfew violations or other alleged contraventions of the Presidential Directives, such as 19 LGBT Ugandans arrested March 29, or the hundreds of other people arrested and detained from around the country. All these were never done.

Although some people were released, it was after Human Rights Awareness and Promotion Forum (HRAPF) and Children of the Sun Foundation (COSF) case in *Human Rights Awareness and Promotion Forum (HRAPF) Vs. Attorney General and The Commissioner General of Prisons, High Court Miscellaneous Cause No. 81 of 2020.* Update many illegally detained persons including PLHIV are still in illegal detention in many prisons.

In the HRAPF case *Justice Michael Elubu of the High Court Civil Division on 5th June 2020*, declared that denial of 19 LGBT persons detained during the COVID-19 lock-down access to their lawyers was a violation of their rights to a fair hearing and liberty. The Court also awarded damages of UGX 5,000,000 (about USD 1340) to each of the Accused Persons.

In *Criminal Revision, cause No. 08 of 2020 (Arising from criminal case No. 379 of 2020of Chief Magistrates court of Buganda Road),* twenty people were presented in a case where they were illegally convicted in curfew cases. They were detained in several prisons including Kigo, Nakasongola, and Kitalya. After considering submissions, the court mentioned that there is a need for guidance of lower courts in COVID-19 and that the trial court erred when they failed to follow the settled rules of procedure in recording pleas. That the irregularities caused a miscarriage of justice and illegal conviction and sentences.

This study finds that 20% of the illegal trials that happened in Kampala and the resultant detention during the indiscriminate application of COVID-19 orders and curfew were PLHIV and key populations. Many of these skipped their medication, were exposed to very harsh conditions in prison, and rights to liberty and access to justice were violated.

Findings on covid19 & access to food

Due to the COVID19 pandemic, most of the respondents who solely depend on shops (purchase) for all their food were highly affected by the lockdown and closure of the business. These were majorly urban dwellers and those from border districts like Busia and Arua & sex workers.

The research revealed that as a result of lacking food during the pandemic, PLHIV defaulted on their drugs, saying that if they take the drugs without eating they become very weak and dizzy.

In areas like Nakasongola, respondents that were dependent on fishing from Lake Kyoga, reported challenges of accessing food since the Government stopped them from fishing, and during the pandemic, the lake was guarded by soldiers who could not allow them to fish or trade at the lake.

We observed that the elderly, orphans/children and widows, are challenged to access food as a result of being displaced by family members or relatives and their inability to carry out any activity that can enable them to access food.

Some TB (only MDR) patients like those in Gulu regional referral and Arua are supported by implementing partners like global fund in Gulu, with food while in hospital on medication.

"before lockdown I used to trade between Uganda & Kenya, being a sole breadwinner for my family when the lockdown began I used all my capital and savings and three months into the lockdown I could not afford to have two meals a day, we started eating once at about 5 pm, the adults we would once in a while skip meals so that the young ones have what to eat the next day," a respondent in Busia said

The study went on trace roots into the formal employment whereby 76.8% of the workplaces don't have HIV policy and that 59.8% of the PLHIV had disclosed their status with to their

employer/workmates, and as a result, 3.5% suffered mistreatment either from workmates or employees.

8 Access to Justice for PLHIV/TB in Uganda

Access to Justice can simply be defined as the ability of people to seek and obtain a remedy through formal and informal institutions of justice for grievances in compliance with Human Rights Standards.[20] Therefore for access to justice to be fulfilled persons whose rights have been violated must be able to get redress through the formal and informal justice system in Uganda.

The formal justice systems are those that derive their structure and power from the laws, policies, and regulations made by the government.[21] Simply put one can say that formal justice systems are those that are established through the operation of law or statute these include the Courts, tribunals, etc. The Constitution under Article 129 provides a key basis for the formal justice systems and these include; the Supreme Court, Court of Appeal, High Court, and other subordinate courts as may be established by Parliament.

Informal justice systems are also known as traditional or non-state justice systems are mechanisms for dispute resolution that are not part of a state's formal judiciary.[22] One can simply say these are justice mechanisms that are established and in place without any legal statute of establishment, these include clan or traditional court systems.

These formal and Informal justice systems should be available for persons living with HIV in case their rights are violated.

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20 United Nations Development Programme, Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, Bangkok, UNDP, 2005. Accessible from http://www.undp.org/content/dam/rbec/docs/Access%20to%20justice.pdf.

21 UN Women, Virtual Knowledges Center to End Violence against Women and Girls, Formal Justice Mechanisms, December 20, 2011, accessible from https://www.endvawnow.org/en/articles/880-formal-justice-mechanisms.html#:~:text=Formal%20mechanisms%20derive%20their%20structure,for%20violations%20of%20the%20laws.

22 Joseph Ricken, The Rule of Law and Informal Justice Systems; A Potential Conflict in Judicial Development, Page 13 accessible from https://www.diva-portal.org/smash/get/diva2:626025/FULLTEXT01.pdf

8.1 Access to justice and the HIV and AIDS Prevention and Control Act 2014

This is the principle act as regards prevention and control of HIV/AIDs, however, the Act adopts human rights provisions and gives several rights to persons who are living with HIV in Uganda for example freedom from discrimination at school, work, etc.

However, it should be noted that the act although declaring several rights to be enjoyed by persons living with HIV does not provide a redress mechanism for PLHIVs in case of violation of their rights. Therefore leaves PLHIV to rely on other statutes like the Human Rights Enforcement Act 2019 to get redress for the violation of their rights.

8.2 Formal Justice Mechanisms available for persons living with HIV

Several formal justice mechanisms are open and available to persons living with HIV in case of violation of their human rights. The main statute that can be used by PLHIV is The Human Rights (Enforcement) Act 2019. The statute was passed to operationalize Article 50 of the Constitution of the Republic of Uganda.[23] The statute allows a person whose right has been infringed or threatened to seek redress through a competent court under the Act.[24] The Act gives a wide definition to a victim of a human right violation to not only include a person who suffers a human right violation but also immediate family or dependents or any other person whose rights are violated as a result of the violation of the victim's rights and freedoms.[25]

The Human Rights Enforcement Act provides a wide range of persons who can institute proceedings and this includes a person acting on behalf of another, a person acting as a member of an interest group, a person acting in the public interest, and an association acting in the interest of one or more of its members.[26] Under the Act actions of human rights violations can be heard by both the High court and Magistrates courts.[27] Therefore the High Court and Magistrates Courts are formal avenues that have been created for access to justice that can be used by PLHIVs in case of violation of their rights.

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23 The Constitution of the Republic of Uganda 1995, Article 50(1) provides that any person who claims a fundamental or other right or freedom guaranteed under this constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

24 The Human Rights Enforcement Act 2019, Section 19

25 *Ibid,* Section 2

26 *Ibid,* Section 3(2)

27 *Ibid,* Section 4 and Section 5

The Human Rights Enforcement Act endeavors to make the procedure for reporting to a Magistrates Court simple. Under Section 5(2) of the Act, the application may be made in any language orally or writing or in the form prescribed by the regulations. This is one of the avenues that can be used by PLHIV to access justice; the procedure is simple as one can institute a complaint verbally. From the research, it can easily be noticed that a big percentage of the respondent living with HIV or TB have barely got any education and cannot read and write. Many of the respondents are also low-income earners who earn less than UGX 200,000 every month. This means that most of the respondents do not understand the legal technicalities with the institution of a suit and neither can they afford to hire lawyers to represent them in courts of law however this can be mitigated through using the procedure of making a formal complaint to the magistrates orally in the language that the complainants understand.

From the research, 74.7% of the respondents stated that they were taught about their rights however 71.1% of the respondents did not know their rights and therefore they do not know where to seek redress in case of violation of their rights. During the research, 85.1% of the respondents stated that in case of violation of their rights they did nothing. One of the few incidents where a respondent took action was Gulu where a female respondent reported to the High Court a case although the same was not brought under the Human Rights Enforcement Act 2019. In this instance, the respondent was chased from her husband's land after her husband died. She was blamed for killing him as they knew that she had HIV.

8.3 Informal Justice Mechanisms available to PLHIV

During the research, several tribes and communities from different regions were visited around Uganda. Many of these tribes have redress mechanisms within their clans for example the Acholi in Gulu and Kitgum have got the Mato put courts. These mechanisms are usually used in rural communities in case of violation of human rights and other private rights.

However, where the respondents mentioned that their rights had been violated, they did not report to these informal justice mechanisms they stated that they did nothing only a few respondents stated that they reported to the police the violation of their rights.

From the research, it is recognizable that access to justice is a major challenge for PLHIV/ TB and key populations. A large proportion of the PLHIVs remain silent when their rights are

violated and do not do anything. The Human Rights Enforcement Act with a simple procedure for initiating complaints provides a new opportunity to seek redress where there is a violation of the rights of PLHIV.

9 CONCLUSION AND RECOMMENDATIONS

9.1 CONCLUSION

Although protection and promotion of human rights have been central to the approach and success of the HIV response worldwide, and recently the United Nations Economic and Social Council (ECOSOC)'s resolution on the UNAIDS Joint Programme, calling for a reinvigorated approach to protect human rights and promote gender equality and address social risk factors including Gender-Based Violence, as well as social and economic determinants of health; and although there are some 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 and key populations.

There is, therefore, a need to integrate human rights within the realm of direct service delivery which must integrate a rights-based approach for patients and others affected within existing health service delivery programs. All health workers must be specifically trained and given refresher courses on human rights particularly the right to health and patients' rights in the patient's charter. Local government leaders must also be trained on human rights and specifically, PLHIV/TB rights, and communities must be sensitized as well. There is also a need for human rights empowerment of all PLHIV/TB. It must be designed within the treatment package. This study finds that limited awareness among people living with, affected by, and at risk of HIV of their rights and entitlements under the law is a central cause of violations and many of them do not seek redress which leads to impunity; and conduct of Public interest Litigation for the rights of PLHIV/TB should be another strategy through which violations of rights of PLHIV/TB may be addressed. This would involve legal advocacy and filing HIV related rights violations in court and engage the court for public opinion.

9.2 RECOMMENDATIONS

9.2.1 Recommendations to the Ministry of Health

1. Employment of more health personnel in ART facilities.

From the research, 11.8% of the respondents complained that they waited for so long on the clinic days to get medicine. This was mainly in Mbarara and Gulu, the PLHIVs complained that the clinic talks and giving out of medicines starts very late and persons giving out the medicines are few. This, therefore, leads to long queues and waiting hours which is a major inconvenience for PLHIV. There is, therefore, a need to train more personnel for the ART clinics around the country so that they may be able to expedite their services.

2. Increasing the supply of ART drugs and Services.

Although very few patients stated that they once came to the facilities and left without any drugs, at least 31.1% of the patients stated that at times their hospital experienced stock-outs and they would be given medicines for one month instead of the usual 3 months that they always got. In some facilities like Mbarara HC IV women living with HIV who have children below 2 years complained that the hospital no longer gives them septrins for their children and they are sent to buy from another facility. Many of these women complained that they did not have the money to buy these septrins and therefore they missed giving their children these septrins. The Ministry should ensure that ART facilities are adequately supplied with drugs on a timely basis to prevent stock-outs in health facilities and also to make attending ART days more convenient for PLHIVs.

3. Access to Information.

Access to information is a cardinal right for PLHIVs in their treatment and care. It is therefore pertinent that health workers always inform the PLHIVs of the name of the drug they are taking. From the research, 93.4% of the PLHIVs did not know the name of the ARV they were taking and what the drug does. 25.3% stated that they were not given any information about the drug or its side effects. It is therefore pertinent that health workers clearly explain and tell PLHIVs the name of their drugs and what it does. This is vital in the fulfillment of the right to information for PLHIVs.

There is a need for the Ministry of Health to teach the PLHIV about their rights under the Constitution, the HIV/AIDs Prevention and Control Act, and other statutes. This should be accompanied by information about how they can legally enforce their rights when threatened or infringed. Giving Persons living with HIV this Information is very critical in empowering them to enforce their rights and holding duty bearers accountable.

4. The right to food for PLHIV

The right to food is pertinent to medical care for PLHIV, where the right to food has violated the right to health of PLHIVs will be violated too. From the study, 17.6% had never or rarely receive information on food and nutrition. 95.1% understood the information shared on food and nutrition while 4.9% confessed that they didn't understand the information shared with them.

However, about 29.9% of the respondents especially those around urban areas stated that they faced food challenges during the COVID-19 pandemic. A total of about 84.3% of the respondents also stated that they did not receive any support in the form of food or cash. This, therefore, means that the right to food of PLHIVs was violated during the COVID-19 pandemic.

The Ministry of Health should put in place mechanisms to help sustain and give food aid to PLHIV when there is a crisis or natural disaster like the COVID-19 pandemic. This will be pertinent in protecting the right to food of PLHIVs.

9.2.2 Recommendations to the Ministry of Gender, Labour, and Social Development

From the findings of the research GBV, Stigma, and discrimination of persons living with HIV mainly affect women. Therefore the Ministry should accord special attention to women and girls living with HIV to protect them against GBV and discrimination. This can be done through the establishment of special programs for women living with HIV and who are victims of domestic violence. There is also a need for more sensitization of communities about GBV and its relation to HIV by the ministry.

The Ministry should ensure that women and girls impacted by GBV and discriminated against mainly because of their status can easily get redress for the grievances.

There is a need for special attention to be accorded to sex workers who are living with HIV, from the study all the sex workers interviewed stated that they had faced some form of violence from

their clients even after they told the clients that they have HIV. There is a need to decriminalize sex in Uganda to change the attitude of the general public towards sex workers as "already dirty". There is also a need for more sensitization of sex workers on their rights to refuse to have sex with anyone who refuses to use a condom. Avenues should be created by the ministry through which sex workers can report a violation of their rights without them being apprehended for sex work.

9.2.3 Recommendations to the Ministry of Justice and Constitutional Affairs

The research shows that most of the persons living with HIV are low-income earners and not in any formal employment. The research also showed that most of the respondents do not know their rights. The respondents also did nothing in case of a violation of their rights. Many of the respondents did not also know how to read and write. All these findings show that PLHIV cannot initiate legal proceedings and access justice in case of violation of their rights as they can neither understand legal proceedings nor hire legal counsel.

For PLHIVs to access justice as indigent persons there is a need to draft and pass into law the Legal Aid Bill for PLHIVs to get adequate legal representation in the formal justice system. This will help in the legal empowerment of PLHIVs and help PLHIVs/TB to access justice through the formal justice system.

9.2.4 Recommendations to the Uganda Human Rights Commission (UHRC)

The Uganda Human Rights Commission is established under Article 51 of the Constitution and its functions, inter alia, include; educating and encouraging the public to defend the constitution against all forms of abuse and violation.

During the study, it was found that 80% of the PLHIVs do not know their rights and didn't even understand what was meant by human rights. They did now know that they could make complaints about violation of their rights to magistrates. There is, therefore, a need for sensitization directly to PLHIVs and the general community about Human Rights and how to get redress for violation of rights through the Human Rights Enforcement Act and other laws. The sensitization of PLHIVs can be vital in legal empowerment and to end human rights violations through GBV and other forms of discrimination.