

Activists demand revision of 'poisonous' clauses in HIV legislation



While framed as a public health measure, the practical and ethical application of the 2014 Act has drawn sustained criticism from the global medical community. Organisations including UNAIDS, the World Health Organisation, and the International Aids Society consistently warn that HIV criminalisation laws are counterproductive, unscientific, and violate human rights.

Dora Musinguzi, flanked by people living with HIV/Aids, addresses the media. PHOTO/ELVIS BASUDE KYEYUNE

BY ELVIS BASUDE KYEYUNE

Sylvia Kyomuhendo, 33, was incarcerated for nine months under Uganda's HIV criminalisation laws, a conviction later overturned on baseless evidence. Arrested in December 2020, she was accused of drawing her own blood and injecting it into an infant to transmit HIV. The Kitgum Magistrate's Court sentenced her to two years for "committing a negligent act likely to spread disease."

However, the Gulu High Court overturned the ruling, with Justice Stephen Mubiru noting that forensic analysis found no blood on the cloth Kyomuhendo used to wrap the child, only her DNA.

Her case has become a rallying point for The Uganda Network on Law, Ethics and HIV and Aids (UGANET) and activists living with HIV, who argue such laws are unjust and fuel stigma, demanding urgent revision.

What is HIV Criminalisation?

Immaculate Owomugisha, an advocate with UGANET, defines HIV criminalisation as the unjust use of criminal law against people based solely on their HIV status. This includes prosecuting unintentional transmission, potential exposure where no transmission occurred, or non-disclosure of one's status.

Activists argue these laws, lacking any evidence of public health benefit, undermine the HIV response by violating human rights and contradicting scientific evidence. "It complicates living with HIV, complicates HIV prevention and confuses the partnership of communities and leaders," Owomugisha said.

Dora Musinguzi, former executive director of UGANET, hailed the overturning of Kyomuhendo's conviction, stating that global consensus recognises HIV criminalisation as harmful. "With an environment where this occurs of

A PATH TO RECTIFICATION

Despite his forceful criticism, Prof Nantulya sees two potential avenues for change. He pins hope on an ongoing constitutional petition by civil society and expresses confidence that the current parliament will re-examine the act. "The previous parliament made a mistake, and he prays that this parliament doesn't have to keep the error, and this is urgent." He reserves his strongest disappointment for medical professionals within the legislature. "It is very disappointing because there are doctors in parliament but none came to protest these bad provisions. They acted unprofessionally." While he withholds blame from President Museveni due to a lack of professional expertise, he squarely faults the ministerial advisors. "The Minister of Health ought to have guided the president not to assent to the act. This simply means that the president was not properly served."

ten, not many will want to bear such a burden of knowing their status," Musinguzi said, noting that UGANET's legal team has handled more than five such cases, many likely involving framing.

She emphasised the disproportionate impact on women, who face greater vulnerability. "By the time the court process ends, their lives have changed so much and cannot be normalised," she said.

Lillian Mworeko of the International Community of Women Living with HIV and Aids warned that the law's contentious clauses mistake HIV status for criminal intent. "Kyomuhendo was jailed for an offence she did not commit, but because she is HIV positive!" Mworeko said, arguing that without revision, Uganda risks failing its 2030 Aids targets.

Owomugisha concluded that persistent criminalisation and discrimination threaten epidemic control. "Human rights and dignity need to be accorded to all. We need to stop stigma and end HIV criminalisation."

Background

In 2014, Parliament endorsed the HIV and Aids Prevention and Control Act, which came into effect on 31 July when President Yoweri Museveni assented to it. The law seeks to provide a legal framework for the prevention and control of HIV.

clauses in HIV legislation

HIV activists say although the law contains important commitments by government for the HIV and Aids response in Uganda, there are some "poisonous" clauses that could deter all the benefits realised in the fight against the scourge.

Activists cite clauses 41 and 43 of the law, which provide for prosecution on grounds of attempted and intentional transmission of HIV, respectively. Among the provisions is a criminal penalty for risk and intentional transmission of the virus.

The law requires mandatory disclosure of one's HIV status; failure to do so would be regarded as "criminal," as would attempting to or intentionally transmitting the virus. Failure to use a condom where one knows their HIV status would constitute a criminal offence, making them liable for prosecution.

They say that provisions in the law not only stigmatise and discriminate against people living with HIV but also deter communities from seeking HIV services such as testing and subsequently treatment.

A well-intentioned law's damaging consequences

While framed as a public health measure, the practical and ethical application of the 2014 Act has drawn sustained criticism from the global medical community.

Organisations including UNAIDS, the World Health Organisation, and the International Aids Society consistently warn that HIV criminalisation laws are counterproductive, unscientific, and violate human rights.

The central critique is that such laws, like Uganda's, are based on fear rather than fact. Scientifically, it is virtually impossible to prove "intentional" transmission in a court of law, often leading to convictions based on a person's status rather than any malicious action.

Furthermore, by making non-disclosure a crime and mandating that health workers can breach confidentiality, the law destroys the trust essential for an effective HIV response.

People may avoid testing altogether to escape legal liability, remaining unaware of their status and unable to access life-saving treatment that also prevents further transmission. This creates a perverse outcome; a law intended to control HIV may actually be facilitating its spread by pushing vulnerable communities away from the healthcare system.

Retired Maj Rubaramira Ruranga, who has lived with HIV for more than 30 years, and Dr Stephen Watiti, an activist, said although they were consulted, their views were not considered. "The draftsmen insisted on including the contentious clauses in the final Bill," they noted.

"Honestly, if proven, such behaviour cannot go unpunished. The question however is: How can it be proven that, indeed, the HIV of the accuser was got from the accused? There is fear that public knowledge of one's HIV-positive status would be used against them due to personal differences," Maj Rubaramira Ruranga.

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Dr Watiti says, "HIV criminalisation will ultimately discourage people from testing to know their status, fearing that if found positive, their status could be used against them in courts of law at any point in time. It should thus be noted that one who does not know their status cannot be held liable under this law."

Richard Sserunkuma, the executive director of the Positive Men's Union (POMU), warns that "we should avoid creating scenarios where people living with HIV and Aids are looked at as criminals or potential criminals."

He adds, "People will inadvertently live with the virus without accessing treatment and by the time they get to know their status it will be too late. He regrets that these clauses seem to target those already openly living with HIV and as such will affect disclosure, fuel stigma and discrimination thus increasing new infections and affecting access to already available services."

"To this effect, HIV infections and deaths will escalate thus watering down all the achievements so far attained in the fight against HIV. Partner and third-party notification in clause 18(2)(e) is likely to breed domestic violence as a health worker is given a right to disclose to a partner without a client's consent. It also infringes on the right to privacy as per our constitution, Article 27," Sserunkuma said.

Confidentiality and medical ethics

Professor Vinand Nantulya, the former chair of the Uganda Aids Commission, identifies profound ethical and scientific flaws in Uganda's 2014 HIV law, calling for its immediate repeal. His critique centres on two core pillars of the legislation: its mandate for medical professionals to breach patient confidentiality and its criminalisation of "intentional" HIV transmission. Prof Nantulya condemns the provision al-

lowing health workers to disclose a patient's HIV status to third parties as "inconceivable" and "totally inappropriate." "We are bound by an oath called the Hippocratic Oath... there is no law above the Hippocratic Oath. If you did that you would be destroying professional ethics," he states, adding that such a breach should lead to a practitioner being struck off the medical register. He confirms these objections were raised with parliamentarians, who included the clauses regardless. "It was ill-advised for them to do that, and it would be most appropriate for this to be repealed."

On the impossibility of "intentional" transmission

Shifting from ethics to evidence, Prof Nantulya argues the law's foundational logic is scientifically unsound. "Scientifically you cannot prove 'intentional,'" he asserts. He warns this legal overreach actively sabotages public health by creating a powerful disincentive for testing.

"This kind of procedure is going to discourage people from coming to get tested, and yet it is important that everybody knows their status," he explains, framing testing as the gateway to life-saving treatment or preventative information. "If you are neither of these, you are in the dark."

A broader principle of non-discrimination

Expanding his argument, Prof Nantulya connects these specific faults to a universal principle in healthcare. Guided by the Hippocratic Oath, he insists, "You cannot deny anybody access to health service... whether that person is homosexual or not, belongs to a different tribe, religion or social leaning." He concludes emphatically, "So to bring in any law that interferes with that is completely wrong."

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ABOUT THE ACT

Uganda's HIV and Aids Prevention and Control Act of 2014 includes two HIV criminalisation provisions: section 41, Attempted transmission of HIV, and section 43, Intentional transmission of HIV.

"Wilful and intentional" transmission of HIV is punishable by a fine and/or up to ten years' imprisonment. Section 43 provides a defence if the accused's partner was aware of, and accepted, the risk of transmission, or transmission occurred during sexual intercourse and protective measures were used. Attempted transmission is punishable by a fine and/or up to five years' imprisonment.

The scope of section 41 is undefined, but cases demonstrate that the law criminalises perceived HIV 'exposure' broadly.

The laws are known to have been used in a broad range of circumstances, including prosecution of a man for 'defilement' (2013), prosecution of a teacher for alleged transmission to his student (2013), the alleged injection of a toddler/needle stick injury (2014), alleged transmission by a woman to a number of young men (2014), alleged breastfeeding of an employer's child (2018), the arrest, conviction and acquittal of a nurse wrongfully convicted of injecting a baby with HIV-infected blood (2018), and the alleged defilement of a boy by a woman (2019).

An earlier prosecution from 2008 involved a man charged with alleged transmission. In the most recent case in 2023, a woman living with HIV pled guilty to charges under section 43 after injecting her five-year-old son with her blood, and was sentenced to seven years' imprisonment. Cases have generally not used scientific evidence to prove allegations, with convictions at lower level courts relying only on testimony.

The HIV and Aids Prevention and Control Act also includes a section (12) relating to HIV testing of people charged with sexual offences. The section states that persons arrested for a sexual offence shall be subjected to HIV testing for the purposes of criminal proceedings and investigations. That is, the person will be forcibly tested upon arrest, before the matter has been heard by a court to establish whether, in fact, a sexual offence has been committed.

In 2022 it was reported that pilot scheme was being rolled out in which people arrested of any offence would now be tested for HIV. Section 18(2)(e) of the law also permits HIV test results to be disclosed by medical professionals without consent of someone living with HIV to anyone in 'close or continuous contact' with them, including sexual partners, if that contact is deemed to pose a risk of transmission. Section 18(2)(h) also permits disclosure to anyone 'exposed' to blood or bodily fluids of a person tested.

In 2016, a civil society coalition led by UGANET brought a challenge to several problematic sections of the HIV and Aids Prevention and Control Act to the Constitutional Court. The case challenged sections 18(2)(e) & (h), 41, 43(1), and 44 (the latter of which criminalises 'obstruction' of implementation of the provisions of this law with a penalty up to 10 years' imprisonment) on the basis that these laws violate several articles of the Constitution and National Guiding Principles of State Policy.

Specifically, the claim argued the laws are overbroad, vague, and subjective, permit unlawful disclosure of HIV status, and that criminalisation unconstitutionally singles out people living with HIV.

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