



**Development of  
The East African Community HIV and AIDS  
Prevention and Management Bill - 2010**



This document has been prepared with the assistance of:



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## **Abbreviations**

ACRWC . African Charter on the Right and Welfare of the Child

AIDS. . . Acquired Immunodeficiency Syndrome

ARV . . . Antiretroviral medicines

CRC . . . Convention of the Rights of the Child

EAC . . . East African Community

FGM. . . Female Circumcision

HIV . . . Human Immunodeficiency Virus

IDUs. . . Intravenous Drug Users

IEC . . . Information, Education and Communication

IP . . . . Intellectual Property

KDHS . . Kenya Demographic and Health Survey

LDCs . . Least Developed Countries

MCH . . Maternal and Child Health

MSMs . . Men who have Sex with Men

NACP . . National AIDS Control Programme

OVC. . . Orphans and Vulnerable Children

PLHIV . . People Living with HIV

PLWA . . People Living With AIDS

PMTCT . Preventing Mother To Child Transmission (of HIV)

PWD . . Persons With Disabilities

SGBV . . Sexual and Gender Based Violence

SWs . . . Sex Workers

TRIPS . . The Agreement on Trade Related Aspects of Intellectual Property Rights

UN . . . United Nations

UNAIDS. The Joint United nations Programme on AIDS

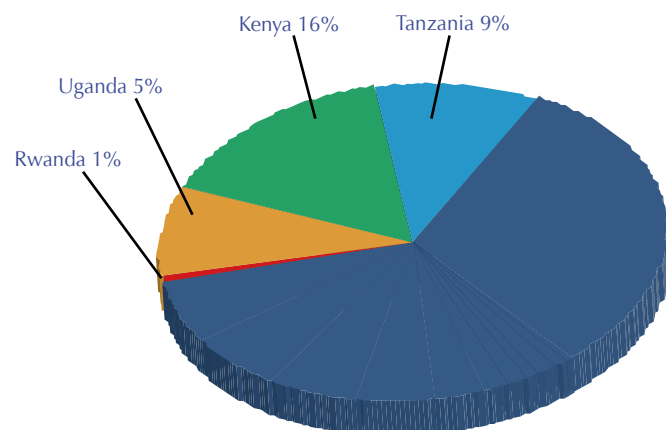
VCT . . . Voluntary Testing and Counselling Centre



## State of HIV Epidemic in East Africa

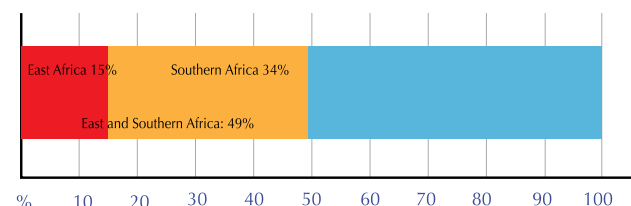
These statistics are from 2008.

- 16% of all new infections and 16% of all deaths in the world occurred in the East African region.

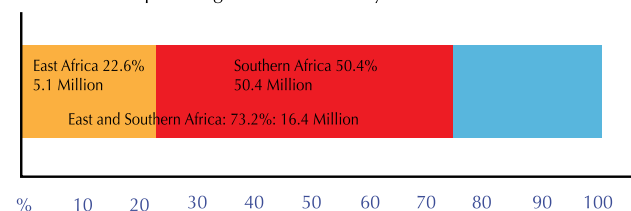


- National adult HIV prevalence were greater than 5% in 3 countries in East Africa, and between 2-3% in the other two countries
- Adult HIV prevalence in EA region accounts for 5.1 million People Living with HIV (PLHIV).
- Epidemic is stabilizing: however, the EAC was the second most affected region in the world IN 2007, and the highest child mortality rate in the world

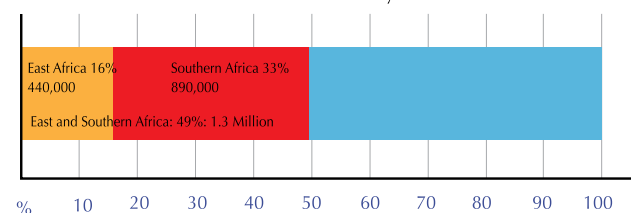
All HIV infected people



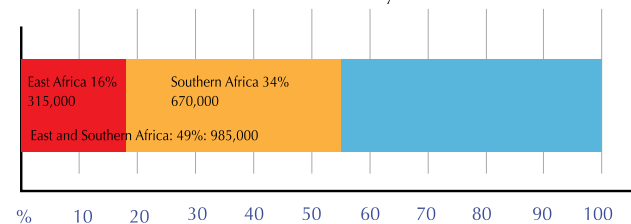
People living with HIV Globally - 2.4 million



New HIV Infections: Globally - 1.9 million



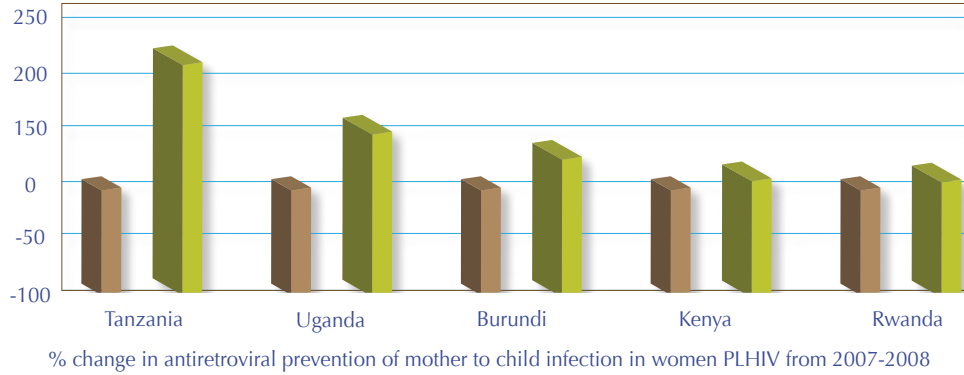
Deaths due to AIDS: Globally - 1.4 million



Comparison of EAC statistics within global HIV statistics



- The increase in treatment over the past 5 years had led to people living longer, resulting in a decline in deaths.
- Women and girls continue to get affected the most.





## Why an HIV Law for East Africa

The East African partner States signed the Protocol on Common Markets on 20th November 2009. This protocol will come into force in July 2010. The major benefit of this protocol will be the free movement of goods, persons within East Africa which is expected to boost trade opportunities for East African Community Citizens. It is expected to come into effect on 1 June 2010.

Free movement of persons will certainly have an effect on matters socio, economic and cultural matters including health and HIV. In this regard prudence demands for a harmonized, joint strategy for dealing with Health and HIV. The current legal and policy framework reveals divergent legislative positions and inadequacy in legislative and policy provisions in some matters for some jurisdictions.

An East African law brings the following opportunities:

- Uniformity and commonality of approach which will ensure clarity and certainty in HIV management in the region. Joint strategies can empower mobile populations to protect themselves and their families from AIDS transmission by having consistent access to appropriate and standard HIV information and services wherever they are within the region. While country specific programs remain the most effective response to the epidemic, a regional approach can more effectively and efficiently address commonalities between countries within a region, thereby strengthening national responses. It can also address trans-boundary issues for which inter-country responses have comparative advantage over national approaches.
- A common legal response to the HIV & AIDS pandemic.
- For Partner States without any legislation on HIV/AIDS, their people will be covered under this Law.
- An opportunity to entrench a rights approach to the management of HIV.
- Cost-effectiveness in the procurement of HIV treatment and other essential drugs is also another obvious benefit. This may be through joint negotiations to reduce drug and administration costs. Protection of patents would provide immense benefits for the region.

- It creates a structure for accountability of various actors in the region.
- PHLAs and people affected will acquire enforceable rights upon which to hang their complaints and be able to acquire legal protection.
- The Legislation can also be used to protect against HIV related discrimination which is common due to the high stigma associated with HIV.
- The law can be instrumental in promoting or impeding the social change necessary to address the underlying socio-economic determinants of infection and impact.
- It will enable EAC Partner States to adapt laws and policies that are suitable to local conditions, while maintaining public health effectiveness and complying with international legal obligations.
- Legislation is needed to address continued discrimination against HIV-positive employees in the workplace.
- The East African region has for a long time suffered frequent internal and cross border conflicts which negatively affect populations with serious consequences for those affected by HIV. Harmonized policies will facilitate easier access to services for displaced populations.







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## Summary of the Situation of HIV in EAC Countries by Themes

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### **INFORMATION, EDUCATION & COMMUNICATION**

- This involves the duty and obligation of member states to promote public awareness about the nature, causes, modes of transmission, consequences and means of prevention and management of HIV and AIDS for all persons through a comprehensive nationwide education and information campaign.
- Burundi, Kenya and Tanzania have laws that oblige their governments to facilitate public information on HIV and AIDS. However, the policies regarding sex and HIV education for Children are unclear.
- In Rwanda, Uganda and Zanzibar where there are no specific statutes on HIV/AIDS, their policy frameworks also provide for HIV related information and education. The operative policies emphasize information sharing across all sectors

### **ETHICS AND HIV RELATED RESEARCH**

- HIV research is very important given that no cure has been discovered and the disease affects millions of vulnerable populations that are socially, economically and culturally challenged with regard to management of the pandemic. The need to keep researching for a cure, effective vaccines and treatment has exposed a lot of vulnerable people to the possibility of being exploited in the various social, clinical and biomedical research initiatives.
- A lot of the AIDs related research is conducted in Africa and the East Africa region is a prime location of choice for most of the researchers. While the role of research in pursuit of a cure and/or vaccine is important, it must be done within restrictions defined in laws, policies and protocols that respect the human rights



of those involved in these initiatives, including the right to privacy and information (which should include full disclosure of the implications of the research on the health of those involved.)

- Stakeholders recommended the inclusion of clear protection standards in law. No person should undertake HIV-related human biomedical research or a clinical trial on another person, unless the research conforms to the requirements under internationally recognized standards and practices. Research should be carried out to study the long-term demographic and economic impacts of HIV and AIDS in the region, and training carried out for policy makers and planners in conducting and interpreting such studies.
- There is also need to improve HIV and AIDS surveillance, set similar standards, conduct joint research and share information on prevalence and projections at the regional level.
- Both the research and privacy aspects are relatively unaddressed in most laws in EAC member states. While most of the existing laws on this subject are not specific to research for biomedical research, they do not make express reference to some of the fundamental provisions of the International instruments governing biomedical research. The existing provisions are mostly implied from the professional duties owed to professional bodies and are not explicitly mandatory under statute.

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### **HIV TESTING & DISCLOSURE**

The HIV laws in Burundi, Kenya and Tanzania and the policies in Rwanda, Uganda and Zanzibar address concerns relating to HIV testing and disclosure though differently. In general, these laws address Prevention, Testing and Diagnosis, on the forms of testing including Voluntary Counseling & Testing, Provider Initiated Testing, Anonymous and unlinked testing done for epidemiological purposes for sentinel surveillance. Many of the jurisdictions encourage voluntary counseling and testing with informed consent.

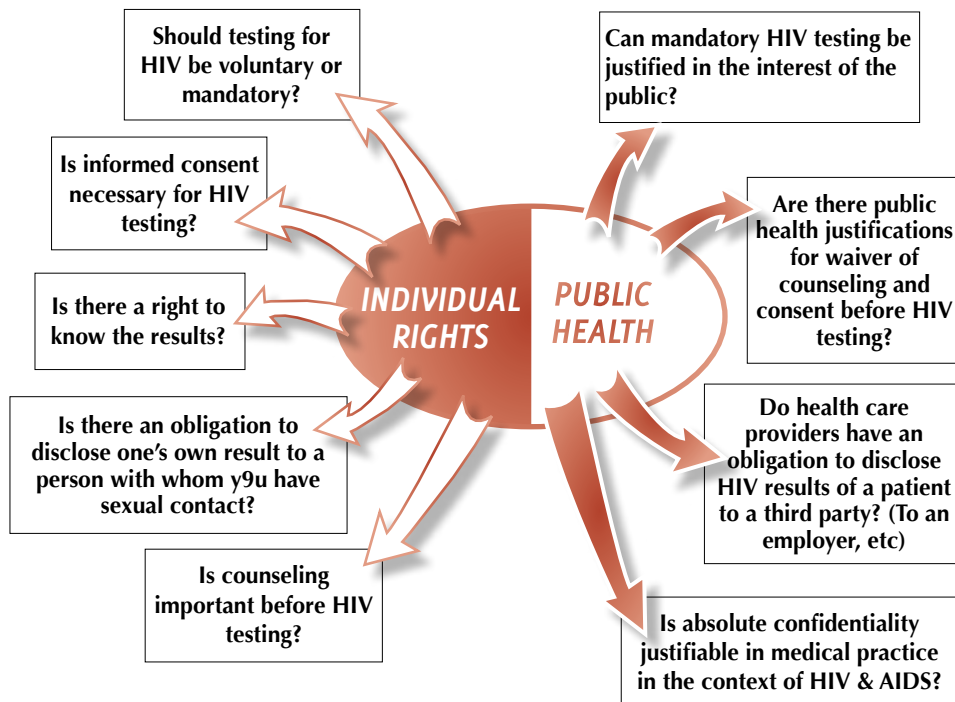
Some of the exceptions to this general rule include cases where a person is accused and convicted of a sexual offence, or where testing is unlinked and anonymous. In all the countries, interviewees suggested that testing for pregnant mothers who visit health care facilities is in effect compulsory since most facilities condition the provision of



prenatal services on the women's undergoing HIV tests. Rwanda has a proposal in the draft Reproductive Health Bill which proposes mandatory premarital HIV testing upon request of a spouse. Various testing programmes embrace informed consent.

In all countries instances of religious leaders and employers requiring pre-marital and pre-employment HIV testing have been highlighted.

On matters relating to disclosure the laws emphasize the need to protect confidentiality of HIV test results by Health Care providers. However provision has been made for disclosure to third parties through counseling of those infected to make such disclosure themselves, then disclosure to third parties who are health carers involved in the care of the infected person and disclosure to third parties who may be at risk of infection and their infected partner has failed to make a disclosure. This is a controversial issue that continues to elicit debate.



## ACCESS TO TREATMENT AND CARE

HIV is both an emergency for those without treatment and a chronic condition for those with it.

- Investments in providing access to medicines, particularly antiretroviral (ARVs) are paying off in many countries across the world, including in the East African Community (EAC).
- In EAC progress has been made in improving access to treatment through increased finance and awareness as well an enlightened approach to intellectual property (IP) laws in the region. Important gaps, however, still remain.

ARV medicines are likely to become more expensive for a number of factors including the fact that:

- » Tolerable first line treatments are likely to cost more;
- » Better medicines are required to prevent mother-to-child transmission;
- » High prices for second line and subsequent treatments; and
- » Increased costs related to meeting the price of treating opportunistic infections and diagnostics.

### Key determinants of prices include:

- Facilitation of generic competition
- The IP provisions in the economic partnership agreements (EPAs), being negotiated by EAC partner states with the rest of the world.
- Impact of patent rights on availability and pricing of ARVs.

**“We affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and in particular, to promote access to medicines for all”**

*Trade ministers in the Doha Declaration 2001*

- Use of TRIPS flexibilities under WTO:
  - » Issue compulsory licenses and government use orders;
  - » Make use of the international exhaustion of rights to parallel import;
  - » Apply a number of general exceptions available under Article 30 of



TRIPS;

- » Make use of transitional arrangements.

All EAC countries have taken measures to address TRIPS flexibilities in their laws.

Kenya: Industrial Property Act 2001

Tanzania and Uganda: Bills in progress; similar to Kenya

Rwanda: IP Code

Burundi: unclear

- Action at regional level
- Pool procurement of medicines;
  - » Harmonisation of TRIPS flexibilities (promote local manufacturing of medicines, including HIV/AIDS medicines);
  - » An Anti-Counterfeiting policy;
  - » Regulatory harmonisation.
- EAC HIV law includes at least two specific provisions on HIV treatment as a complimentary provision and to provide the linkage to broader treatment access framework in the region.
- Recognise the right of people living with HIV to access health care services, including ARV treatment and essential medicines for the management of opportunistic infections as well as palliative care and treatments to address pain associated with AIDS.
- Requiring partner states to take all appropriate measures to use TRIPS flexibilities to facilitate the availability and access to HIV medicines in their countries.
- “For every person put on treatment, there are two new infections”.-Michel Sidibe’s message on World AIDs day 2009

### HIV RELATED DISCRIMINATION: COMMUNITY CONTEXT

The predominant mode of transmission of the HIV virus through sex, combined with the fact that there is no cure for AIDs, and the rampant misinformation and myths on the disease have created fear of the disease and stigma which has manifested in various

forms of HIV related discrimination. Many persons infected, affected or perceived to be infected with HIV have suffered various forms of ostracization or exclusion, designated special rooms, burial places, isolation of utensils, isolation of sick members, denial of access to members of family like children, withdrawal of company (children kept away from others), loss of friends, and even denial of housing (including rental housing).

Whereas all the constitutions of the East African partner states entrench the principle of non-discrimination, instances of HIV related discrimination have been reported in families, communities, educational institutions and schools, employment and the workplace, the insurance sector, health care institutions, the housing sector, religious institutions and prisons.

The drive behind legislating on HIV is the need to protect those infected and affected from discrimination.

### VULNERABLE GROUPS

#### Women and HIV:

The HIV statistics in sub-Saharan Africa and all the East African Community show that it is a feminized epidemic with the prevalence being higher in women than in men. Women’s susceptibility to HIV infection is shaped/ contributed to, and is as a result of the laws, polices and complex interactions between socio-economic and socio-cultural relations (based on customs and traditions) that severely and adversely affect women.

Gender plays an integral role in determining an individual’s vulnerability to infection, his/her ability to access information, care, support or treatment and the ability to cope when infected or affected. Social, economic and cultural inequality based on gender, and a further combination of factors such as class, urban/rural location, sexual behavior and religion have contributed to the vulnerability that





has seen women suffer more in the wake of HIV.

### What makes women more vulnerable to HIV?

#### Inability to access information on HIV prevention in appropriate forms

- Inability to participate in decision making, including negotiation of safe sex
- Stigma and discrimination
- Reduced ability to make decisions on health seeking behavior;
- Burden on disclosure;
- Blamed for transmission;
- Lack of access to health care facilities and services;
- Cultural practices harmful to health (female circumcision, child marriages and wife inheritance among others);
- Sexual and gender based violence;
- Economic exploitation;
- Violation of property rights especially access to land;
- Domestic violence;
- Lack of comprehensive sexual and reproductive health services;
- Lack of control over economic and family resources.

The burden of care in HIV is also heavily borne by women.

#### East African HIV law should:

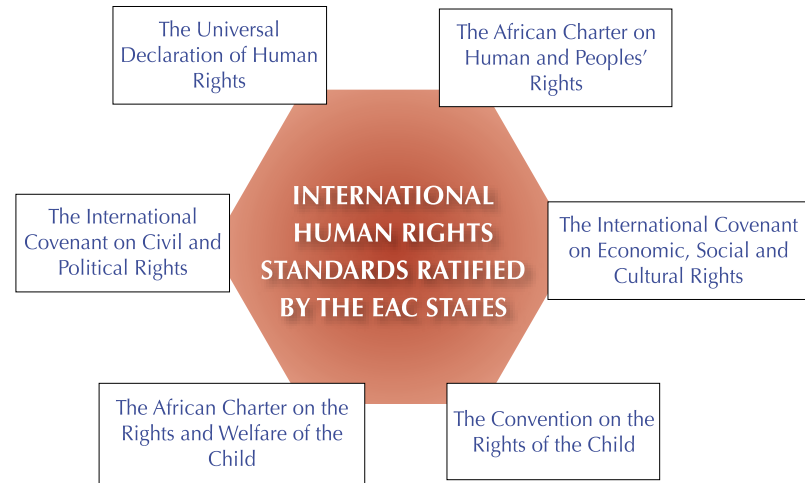
- Ensure and provide for adequate provisions that would protect women and men from stigma and discrimination
- Promote and guarantee human rights of women and men including protection from discrimination and violence
- Ensure legal services for women who are living with HIV
- Provide for policies and social protection mechanisms that address the burden placed on women to care, including home based care
- Create and sustain multi-sectoral linkages and coordinated policy making, planning, programming and budgeting, including health, women's justice, home, social welfare at national and regional level

### Persons with disability:

The National Plans for HIV often by-pass the need to fully include persons with disability. This is mainly in terms of facilitating access to HIV information and education on prevention, treatment and care. The result is failure to reach persons with hearing and visual disability with this information. The World Health Organization estimates that persons with disability are 10% of the global population. If this percentage is the guide for PWDs in East Africa, they should not suffer discrimination when comes to access to all health and HIV services.

The EAC HIV Bill should specifically provide for the inclusion of PWDs in the provision of health services.

Relevant International and Regional Human Rights instruments signed or ratified by the East African States:



### HIV AND AIDS AND CRIMINAL LAW

**“Review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted at vulnerable groups.”**

*OHCHR and UNAIDS International Guidelines on HIV/AIDS and Human Rights*



- The subject of HIV and criminal law is the most controversial of all the topics relating to law and HIV.
- Most countries that have legislated on HIV in Africa have clauses criminalizing intentional transmission of HIV to others.
- The provisions vary from the different jurisdictions and the criminalized forms of transmission, and are diverse.
  - » Through sexual contact (Kenya);
  - » Through other non sexual acts;
  - » Transmission in healthcare facilities;
  - » Mother to Child Transmission (Sierra Leone).



The International guidelines further advise:

- » No specific HIV offenses on intentional transmission of HIV
- » Use of general criminal offenses but quickly add the provision that:
- » In application ensure element of foreseeability, intent, causality and consent are clearly and legally established to support a guilty verdict and/or harsher penalties
- » Do not inappropriately apply public health provisions applicable to casually transmitted diseases to HIV.
- Burundi, Kenya and Tanzania laws on HIV criminalize wilful transmission of HIV; the Uganda Bill has similar provisions. Kenya's sexual offenses law criminalizes transmission of HIV while committing a sexual offence, Rwanda's Law Relating to Rights and Protection of the Child Against Violence makes it an offence for a rapist to cause death to a child or infect him/her with an incurable disease. In these circumstances the accused are required by the courts to take HIV tests (Rwanda cases *Murangwa Abdallah v Public Prosecution*, *Gakwaya Jerome v Public Prosecution*, *Nyirababyeyi Prtogene et al v Public Prosecution* and *Mbaraga Jules Jean Marie v Public Prosecution*).

### Legislating wilful transmission

- 1) Use existing provisions in the penal codes
- 2) Where (1) does not seem satisfactory take cognisance of the following in creating a specific offence:
  - There is need to take note of the argument that the creation of an HIV specific offense while not doing so for other similar diseases (e.g. hepatitis B) increases the HIV stigma and confirms the fact of negative criminalisation.
  - The drafting of this law should be futuristic and take into account the possibility that a cure for HIV could be found and also that other diseases with characteristics of HIV do exist and may develop.
  - Any provisions addressing wilful infection should not be located in the HIV law but should be in the penal code and drafted in general language to cater for the characteristics of HIV without mentioning HIV.
  - The law should create an obligation to protect others through sharing information on status that will enable others to make choices that can protect against transmission.
  - The law should specify the sexual offences, which if committed by a person who is aware of being infected with a life threatening disease may attract an enhanced penalty, and the nature of such enhanced penalty.
  - The law should provide sufficient safeguards as to afford fair trial of an HIV positive accused person of sexual offence.
  - The law should not include Mother to Child transmission as a form of criminal transmission
  - The HIV law should provide for access to services for those that are sexually abused including PEP services, counselling services, and others.
  - How can we balance the need to punish deviant behavior of 'wilful infection of others with the need to reduce HIV related stigma and discrimination? What are the States' Obligations in the equal protection of human rights in both situations?



## CHILDREN AND HIV

All the EAC member states have signed and ratified the Convention of the Rights of the Child (CRC) and the African Charter on the Right and Welfare of the Child (ACRWC). They also have constitutional provisions that out-law discrimination and promote equality.

Burundi, Kenya and Tanzania have specific laws on HIV that address some of the issues relating to children and HIV. While Kenya, Rwanda Uganda, and Zanzibar have specific laws dealing with rights of children, they do not make specific reference to HIV.

- Some of the human rights gaps identified in the EAC countries include the right to:
- Informed consent for HIV testing for children,
- Confidentiality and disclosure of HIV results to children,
- Sex education,
- Inherit and own property
- Reproductive health services and the best interest of the child
- Protection from discrimination
- Access to paediatric friendly health services,
- Right to appropriate PMTCT services for the family members
- Paediatric HIV specific counselling
- Good nutrition

It is important to make specific provisions for children when legislating on HIV related issues. This is fundamental as children's issues raise special concerns as compared to those of adults. It is therefore essential to have specific clauses that directly address the human right gaps and concerns of children in the context of HIV & AIDS.



The principles of best interest of the child and non discrimination must be taken into account. There is also need to protect children's rights around HIV and AIDS, especially vulnerable children orphaned by AIDS.

## MOST AT RISK POPULATIONS (MARPS)

Most at Risk Populations include Men having Sex with Men (MSM), male and female sex workers with their clients and Intravenous Drug Users (IDUs), among others.

Provision of HIV education and services to MARPS is constrained by the fact that they are criminalized populations -. All the East African countries have offences relating to prostitution and some have even gone further to specifically criminalize, or are in the process of criminalizing homosexuality (Burundi, Rwanda and Uganda). While there is some level of HIV education extended to truck drivers, prisoners and female sex workers, most national strategies on HIV education do not extend to IDUs and MSMs.

Effects of criminalization that have a direct bearing on HIV/AIDS prevention, care and treatment include:

- Leads to service providers avoiding engaging with these groups for fear that by providing services to them they may be 'encouraging' the behavior and thereby breaking the law
- Actively discourages SWs, MSM and IDUs from accessing services for fear that they may be reported to the police
- For SWs and MSM, their sexual behavior often occurs clandestinely resulting in sexual encounters which are hurried; where there is little or no opportunity for condom negotiation; and where sex occurs in unsafe places
- For IDUs the failure to adopt harm reduction policies as part of the management of HIV increases opportunities for higher infection rates through hurried use in unhygienic locations, without time or opportunity for needle and syringe sterilization of needles; and high likelihood of needle-sharing.
- Creates a barrier to the provision of condoms, lubricants, clean needles and syringes, needle-exchange programs, drug substitution therapy and targeted IEC materials for these groups as well as condom and lubricant distribution



to sexually active males in prison.

- No laws seek to balance the need to stop drug trafficking while addressing the dangers posed to those already using drugs to contracting HIV/AIDS by needle sharing.
- Whereas most of the East African Community States have HIV policies recognizing that sexual activity takes place in prisons, the policies limit services to prisoners to HIV information and education and provision of treatment. Most find it difficult to provide prevention services in prisons.

### ***Decriminalization***

It is clear that the subject of whether or not to decriminalize some of the population groups that are included in the MARPS is still controversial and elicits a lot of emotional debate. Consultants reported reluctance by stakeholders in the country consultations to recommend the decriminalization and/or legalization of sex work knowing the hostile reception such proposals are likely to encounter. Burundi has criminalized homosexuality while Rwanda and Uganda are in the process of doing so with Uganda having a private members Bill to make homosexuality illegal already tabled before parliament. In Kenya the draft constitution is already attempting to define marriage as an act between people of the opposite sex- purposely as a way of ensuring that the gay are not legally recognized. Recent events in the region have seen gays targeted with violence. Sex work is also highly stigmatized with sex workers facing a lot of prejudices and violence.

Some of the Arusha meeting stakeholders recommended decriminalization of sex work and homosexuality in the EA draft law. Whereas the issue of decriminalizing or legalizing particular population groups is a matter that is not confined to the HIV management strategies, it is widely agreed that it is in the interest of all East African citizens for the law to guarantee equal access to health and HIV services to all persons regardless of their legal status.







# Recommendations of the Arusha Meeting

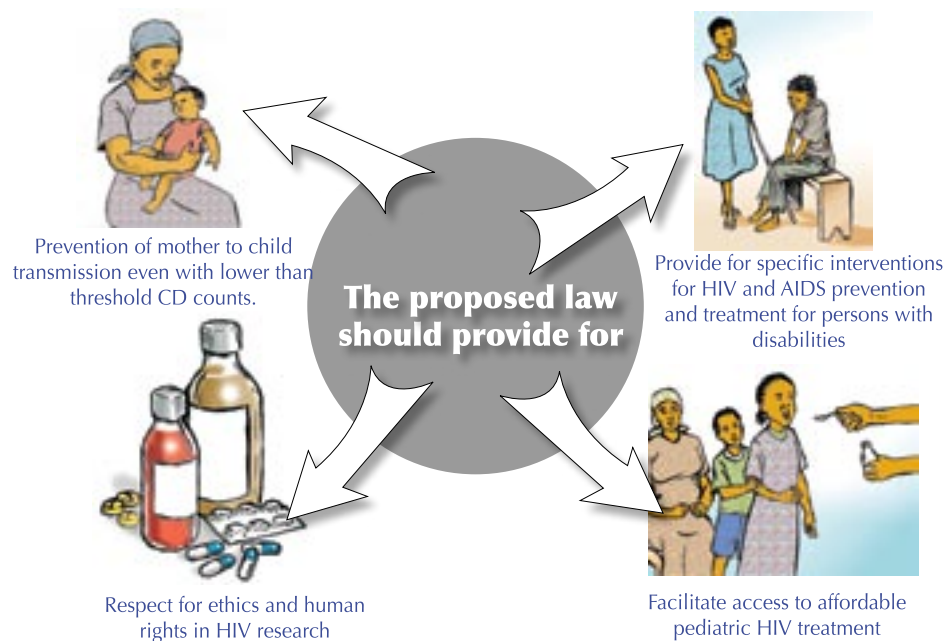
## 1. ACCESS TO TREATMENT

### HIV Treatment as a Right

The law should recognize the right of people living with HIV to access health care services, including free or subsidized ARV treatment and other essential medication for disease management and treatment.

### Responsibility to Take Measures to Use IP Flexibilities

Partner states should take all appropriate measures to use TRIPS flexibilities to facilitate the availability and access to HIV medicines in their countries.



## 2. HIV RELATED DISCRIMINATION LAW

- Provide for broad protection against discrimination on the ground of HIV and AIDS;
- Provide for protection against discrimination in the delivery of HIV related services.
- Provide for HIV and AIDS related discrimination in relation to Persons with Disabilities
- Contain the following substantive features:
  - Cover direct and indirect discrimination;



- Cover those presumed to be infected, partners, family or associates;
- Cover information, education and communication targeting all categories in society
- Cover of vilification;
- Narrow exemptions and exceptions (e.g. life insurance on the basis of reasonable actuarial data);
- Provide for wide jurisdiction in the public and private sectors.
- Provide for appropriate administrative features for complains and redress;
- Provide adequately for the powers and functions of the institution(s) administering the legislation;
- Do not provide for criminalization of HIV transmission or exposure in the HIV law ;instead provide a clause that deals with willful infection with life threatening substances and diseases generally in the penal codes where the



current laws are thought to be inadequate.

- Provide for safe practices and procedures;
- Provide penalties for discriminatory practices

### 3. CHILDREN AND HIV

Children's issues raise special concerns as compared to those of adults. It is therefore important to make specific provisions for children when legislating on HIV related issues:

- Specific clauses that directly address the human rights gaps and concerns with regard to children in the context of HIV & AIDS must be included in the law.
- The principles of best interest of the child and non discrimination MUST be taken into account

#### **CDC and African Charter:**

There is need to specify the age limits for those to whom the Law will apply. Whereas children are defined as 18 years old and below in the UN CRC and the African Charter on the rights and Welfare of the Child, specific provisions should be made to recognize the need to allow some age categories of young people in this category to individually make decisions for some issues e.g. VCT, testing and disclosure, as part of upholding the principle of best interest of the child.

#### **PMTCT:**

- Programs should be considered from pre- conception up to the end of the weaning period;
- The Law should facilitate the transition between PMTCT program and the MCH and Family planning programs in order to further support the child health (PMTCT +);
- Clarity of the needs and roles of fathers, siblings and the larger family including the parents and in-laws should be provided in this program;
- States should be bound to provide the best scientific proven type of intervention for PMTCT.

#### **OVCs:**



- There should be provision for the roles of the remaining family members in addition to the State obligations to provide a supportive environment for OVCs;

#### **Paediatric treatment:**

- States should be bound to provide the best scientific proven type of treatment for children who are HIV positive;
- Provisions should be made for the State to provide appropriate information and education for prevention among all children including HIV + children.

#### **Non discrimination:**

- The principle of non-discrimination should be holistic and in the best interest of the child.

#### **Additional concerns:**

- There should be provisions to obligate parents and communities (peer pressure) to minimize risks and vulnerability of children to HIV;



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#### **4. HIV AND AIDS AND CRIMINAL LAW**

- a. Provisions addressing willful infection should be in the penal code, NOT in the HIV law.
- b. The law should not be specific to HIV but to any life threatening disease that may be willfully transmitted.
- c. Such a law should however endeavor to succeed in ordering attitudes of all people rather than stigmatizing, blaming and discriminating against those infected with any of the diseases in question.
- d. The law should provide sufficient safeguards as to afford fair trial of the infected persons accused of willful transmission.
- e. Provide for access to PEP and counseling services, where applicable, to those who are sexually abused and may be in danger of infection.

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#### **5. TESTING, DISCLOSURE & BIOMEDICAL RESEARCH**

- Prohibit mandatory testing (in employment, marriage, insurance, travel, education) except in few instances of criminal offences. Testing should be voluntary and with informed consent
- Allow anonymous and unlinked testing
- Observe confidentiality of all testing and results except in limited criminal law settings.

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#### **6. GENDER AND HIV AND AIDS**

- Anti discrimination and provisions should be enacted to reduce human rights violations against women in the context of HIV and AIDS so as to reduce vulnerability of women to infection by HIV and to the impact of HIV and AIDS
- Acknowledge link between HIV and SGBV and provide effective protection in the relevant laws without stigmatizing HIV
- HIV and AIDS programmes to be gender sensitive and specific
- Prohibit gender based discrimination
- Promote equality of treatment of women in respect of:

- » Property acquisition, ownership and disposal;
- » Marital relations;
- » Sexual and reproductive rights;
- » Employment.

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#### **7. HIV AND AIDS LAW AND MARPS**

- Decriminalize sex work and homosexuality and embrace harm reduction policy for injecting drug users
- Ensure equal access to HIV and related services to MARPS despite their legal status.





## Key Issues in Draft HIV Bill





Member states should ensure that pre-test and post-test counseling is provided to a person undergoing an HIV test. Personnel carrying out the tests must be well trained, and approved by Government

Needs of persons with disability should also be considered.

The pre-test and post-test counseling must meet certain minimum threshold standards.

The test result shall be treated confidentially, and shall not be disclosed contrarily to the provisions of the law.

Testing can and should only be done in authorised test centers.

The Government should always make testing facilities available at all times.

Compulsory testing is prohibited, especially as a pre-condition for any employment; marriage; admission into any educational institution; entry into or travel out of a Partner State; or the provision of health care, insurance cover or any other service.

Needs of persons with disability should also be considered.

Informed consent must be given before any test is done except for children and persons with disability. For children, only persons recognised under the laws of a member state may act as legal guardians to consent on behalf of children.

Informed consent must be given before any test is done except for children and persons with disability. For children, only persons recognised under the laws of a member state may act as legal guardians to consent on behalf of children.

A medical practitioner or the courts may consent to testing of a child where a legal guardian unreasonably withholds consent, and in circumstances specified in the law.

Results of an HIV test shall be confidentially and directly communicated to the person concerned or if the person is a child or a person with a disability which renders the person incapable of understanding the meaning or consequences of the test result, to the parents or the legal guardian of that child or of that person.

In the case of a notification, the person providing treatment, care or counseling services shall ensure that follow up services in the form of counseling are provided to a third party so notified.

### 3. HIV AND AIDS COUNSELLING AND TESTING

Persons living with or affected by HIV are entitled to enjoy, without any form of discrimination, all human rights under the law and a person who suffers discrimination may sue for damages

Every person is entitled to privacy and confidentiality regarding the person's HIV status.

Every person is entitled to employment for which he/she is qualified except where an employer can prove that a job requires a person to be in a particular state of health or medical or clinical condition.

Every employer is required to take all necessary measures to reduce the risk of HIV infection through accidental exposure to HIV in the workplace and to provide post-exposure prophylaxis in case of accidents.

An employee living with HIV who, on account of an AIDS-related illness, is no longer able to fulfill the employment duties is entitled to all benefits accruing to employees who retire on grounds of ill health.

### 4. GENERAL PROTECTION OF THE RIGHTS OF PERSONS LIVING WITH OR AFFECTED BY HIV

Educational institutions should not deny admission or expel, discipline, segregate, deny participation in any event or activity, or deny any benefits or services to a person on the grounds only of the person's actual, perceived or suspected HIV status.

A person's freedom of abode, lodging, or travel, within or outside any Partner State, shall not be denied or restricted on the grounds of the person's actual, perceived or suspected HIV status.

No person shall be denied the right to seek an elective or other public office on the grounds only of the person's actual, perceived or suspected HIV status

Member states should take appropriate measures to provide treatment, care and support to persons living with HIV, including access to affordable, high quality antiretroviral therapy and other essential medicines and prophylaxis to treat or prevent HIV or opportunistic infections.

