

**A COMPREHENSIVE ANALYSIS OF THE HIV & AIDS
LEGISLATION, BILLS, POLICIES AND STRATEGIES
IN THE EAST AFRICAN COMMUNITY**

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ACRONYMS

AIDS:	Acquired Immuno-deficiency Syndrome
AMREF:	Africa Medical and Research Foundation
ANC:	Ante-Natal Care
AU:	African Union
CBO:	Community based Organisation
CEDAW:	Convention on the Elimination of All forms of Discrimination against Women
EAC:	East African Community
EAHP:	East African Health Platform
EALA:	East African Legislative Assembly
EANNASO:	Eastern African National Networks of AIDS Service Organisations
eMTCT:	elimination of mother to child transmission
FBO:	Faith-Based Organisation
FGM:	Female genital mutilation
GBV:	Gender Based Violence
GCHL:	Global Commission on HIV and the Law
GDP:	Gross Domestic Product
GFATM:	Global Fund for AIDS, TB and Malaria
HIV:	Human Immune Virus
IDP:	Internally-displaced person(s)
IDU:	Injection Drug User
ILO:	International Labour Organisation
IOM:	International Organisation for Migration
KP:	Key Population
LVBC:	Lake Victoria Basin Commission
M & E:	Monitoring and Evaluation
MARPS:	Most at Risk Populations
MDG:	Millennium Development Goals
MSM:	Men who have Sex with Men
NGO:	Non-Governmental Organisation
PLHIV:	People living with HIV
PMTCT:	Prevention of Mother-To-Child-Transmission
PWD:	People with Disabilities
SADC-PF:	Southern African Development Community-Parliamentary Forum
STI:	Sexually Transmitted Infection
SW:	Sex Worker
TB:	Tuberculosis
UDHR:	Universal Declaration on Human Rights
UNAIDS:	Joint United Nations Programme on HIV/AIDS
UNDP-RSC:	United Nations Development Programme-Regional Service Centre
UNGASS:	United Nations General Assembly Special Session
VCT:	Voluntary Counselling and Testing
WHO:	World Health Organisation

Kenya

IBBS:	Integrated Biological and Behavioural Surveillance
KAIS:	Kenya AIDS Indicator Survey
KNASP:	Kenya National AIDS Strategic Plan
NACC:	National AIDS Control Council

NASCOP: National AIDS and STI Control Programme

Rwanda

CNLS: National AIDS Commission

IHDPC: Institute of HIV/AIDS, Disease Prevention and Control

MINEDUC: Ministry of Education

RBC: Rwanda Biomedical Centre

TRACPlus: Centre for Treatment and Research on HIV/AIDS, Malaria, TB and other epidemics

Tanzania

HAPCA: HIV and AIDS Prevention and Control Act

NACP: National AIDS Control Programme

NMSF: National Multisectoral Strategic Framework

TACAIDS: Tanzania Commission for AIDS

TDHS: Tanzania Demographic and Health Survey

THMIS: Tanzania HIV/AIDS and Malaria Indicator Survey

URT: United Republic of Tanzania

Zanzibar

MoHSW: Ministry of Health and Social Welfare

RGoZ: Revolutionary Government of Zanzibar

ZAC: Zanzibar AIDS Commission

ZACP: Zanzibar AIDS Control Programme

ZHAPMoS: Zanzibar HIV and AIDS Programme Monitoring System

ZANGOC: Zanzibar NGO Cluster for HIV and AIDS Prevention and Control

ZIHTLP: Zanzibar Integrated HIV/AIDS and Leprosy Program

ZNSP: Zanzibar National HIV Strategic Plan

ZSGRP: Zanzibar Strategic for Growth and Reduction of Poverty

Uganda

ASO: Aids Support Organisation

MACA: Multisectoral approach to the Control of AIDS

UAIS: Uganda Aids Indicator Survey

UNPAC: Uganda National Programme of Action for Children

UPDF: Uganda People's Defence Force

Burundi

ABUBEF: Association Burundaise pour le Bien-Etre Familial

EXECUTIVE SUMMARY

Recently there has been a surge of national laws to address HIV in a number of African countries. At the regional level, there are at least two regional model laws developed by regional economic communities. These are the West Africa HIV Model Law and the Southern Africa HIV Model Law. Model laws serve to set the standards, norms for good practices and for legal as well as policy reviews and reform at domestic and regional levels. Ideally, national legislators should strive to emulate, adapt and domesticate model laws and make them applicable at the national level.

In accordance with Chapter 21, Article 118 of the Establishment of the East African Community (EAC) with respect to cooperation in health activities, the Partner States of the EAC are required to undertake, among others activities, harmonisation of national health policies and regulations and the promotion of exchange of information on health issues in order to achieve quality health within the Community.

In 2011, the EAC Sectoral Council on Legal & Judicial Affairs advised the EAC to develop a framework for harmonization of national laws on HIV & AIDS as a step towards further regional integration. In the following year, 2012, the East African Legislative Assembly (EALA) passed the EAC HIV & AIDS Prevention and Management Bill 2012. This Bill awaits the assent of all the EAC Heads of State.

In a bid to harmonise and standardized the health policies in East Africa, the EAC in partnership with the Eastern African National Networks of AIDS Service Organisations (EANNASO) and the East African Health Platform (EAHP) have requested the support of the United Nations Development Programme Regional Service Centre for Africa (UNDP RSCA) to conduct a comparative analysis of the EAC partners states' HIV legislations, bills, policies and strategies to identify legal, policy and strategic gaps and develop a framework to address them.

This analysis presents a synthesis of a number of laws, bills, policies and strategies in the context of HIV in the five Partner States. It has been enriched by country validations meetings where interested stakeholders provided their inputs.

The analysis indicates that the Member States have a strong commitment to fight against HIV and AIDS through the enactment of a range of laws and policies as well as through a number of institutions and initiatives. It further shows that an audit of laws, bills, policies and strategies was necessary to identify gaps and to eventually harmonise legal and policy recommendations across the Member States. Additionally, the analysis shows that while there continues to be strong emphases on enactment of laws and on drafting good policies in the context of HIV in the Member States, more requires to be done across the region to ensure that these laws, policies and strategies are applied on the ground and disseminated widely to the people and to stakeholders.

Lastly, the analysis demonstrates that there is widespread agreement among the Member States on a number of issues that need to be included in the laws and policies pertaining to HIV and AIDS. For example Member States agree on use of gender-sensitive language, the inclusion of people with disabilities, the importance of youth-friendly services, and of access to female condoms. However, issues around criminalisation of HIV transmission, and key populations and HIV, especially criminalised status of sex workers, men who have sex with men and transgender people, and people who use drugs continue to remain contentious and do not align well with the EAC HIV & AIDS Prevention and Management Bill 2012. It is important therefore the next steps for intervention on the context of HIV prevention and control, human rights and the law is to coordinate Member States' realignment of their national Bills and Acts with the EAC HIV & AIDS Prevention and Management Bill 2012.

CHAPTER ONE: Introduction

Countries continue to achieve dramatic results in the AIDS response—in lives saved and new infections averted. The data presented indicates that countries are keeping their commitments to reach the targets of the 2011 United Nations Political Declaration on HIV and AIDS.¹

In the preface of the Report of the Global Commission on HIV and the Law “Risks, Rights and Health”, Fernando Henrique Cardoso, the Chair of the Global Commission on HIV and the Law (GCHL), asserted that the end of the global AIDS epidemic was within our reach, but said that that will only be possible if science and action were accompanied by a tangible commitment to respecting human dignity and ending injustice. He averred that the law could be a human good that made a material difference in people’s lives, and therefore had the power to bridge the gap between vulnerability and resilience to HIV.²

The African region has been identified as the most legislated region as far as HIV related laws are concerned. For most part that has resulted in laws that protect against HIV-related discrimination. However in some cases it has meant that African countries have championed highly inefficient laws that are counterproductive to the fight against HIV and AIDS.

The East African Community (EAC) Sectoral Council on Legal & Judicial Affairs, in its meeting held from 24th October to 2nd November 2011, recommended the development of a framework for the harmonization of national laws on HIV and AIDS. One of the consequences was the development and adoption of the EAC HIV and AIDS Prevention and Management Bill in 2012. The Bill aimed at harmonizing HIV-related laws in the region, and have, till now, been assented to by the Heads of State of Kenya, Burundi and Uganda.

Following from these developments and in a bid to support Partner States to harmonise and standardize health laws and policies in East Africa, the EAC, in partnership with the East African National Networks of AIDS Service Organisations (EANNASO) and the East African Health Platform (EAHP) requested the support of the United Nations Development Programme’s Regional Service Centre for Africa (UNDP RSC-Africa) to (a) conduct a comparative analysis of the EAC Partner States’ HIV, health and related legislation, bills, policies and strategies; (b) to identify strategic gaps and challenges in the domestic legal and regulatory frameworks of Partner States, in relation to the EAC HIV and AIDS Prevention and Management Bill; (c) to make recommendations for steps to strengthen and harmonize domestic laws and policies, for purposes of regional harmonization, and (d) to identify strategy gaps to inform the Post-2015 Agenda for the region.

The report below consisting of two chapters and three annexures attempts to address these objectives.

1.1 HIV and AIDS in the Sub-Saharan Africa

According to UNAIDS (2014), globally 35.0 million [33.2 million–37.2 million] people were living with HIV at the end of 2013. An estimated 0.8% of adults aged 15–49 years worldwide are living with HIV, although the burden of the epidemic continues to vary considerably between countries and regions.

Sub-Saharan Africa remains most severely affected, with nearly 1 in every 20 adults (4.9%) living with HIV and accounting for nearly 71% of the people living with HIV worldwide. In numerical terms, of the 35 million people living with HIV, 24.7 million [23.5 million–26.1 million] are living in sub-Saharan Africa. Ten countries—Ethiopia, Kenya, Malawi, Mozambique, Nigeria, South Africa, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe—account for 81% of all people living with HIV in the region and half of those are in only two countries—Nigeria and South Africa. There are also more women living with HIV in sub-Saharan Africa than HIV-positive men: women account for 58% of the total number of people living with HIV. There are 2.9 million [2.6 million–3.2 million] children (aged 0–14), 2.9 million [2.6 million–3.4 million] young people (aged 15–24) and more than 2.5 million [2.4 million–2.7 million] people aged 50 years and older living with HIV in sub-Saharan Africa. Of the estimated 1.8 million people living with HIV who were affected by conflict, displacement or disaster in 2006, 1.5 million were living in sub-Saharan Africa. This number has since increased as the total number of people displaced has increased globally.³

There were 1.5 million [1.3 million–1.6 million] new HIV infections in sub-Saharan Africa in 2013. However, new infections are on the decline. There was a 33% drop in new HIV infections among all ages in the region between 2005 and 2013 and a 19% reduction since 2010. The number of new HIV infections is falling in every country in the region except Angola and Uganda where increases were recorded. Among young people aged 15–24 years, the number

1 Michel Sidibe, UNAIDS Executive Director in The state of the world epidemic 2012. P.6

2 Global Commission on HIV and the Law (2012) risks, rights and health, New York UNDP, p.6

3 UNAIDS (2014). The Gap Report

of new infections has declined by 42% since 2001 in sub-Saharan Africa and by 17% since 2010. Despite gains in preventing new HIV infections, sub-Saharan Africa remains the region most severely affected, with nearly 1 in every 25 adults (4.4%) living with HIV. Three countries—Nigeria, South Africa and Uganda—represented almost 48% of the new HIV infections in the region.⁴

The number of AIDS-related deaths in sub-Saharan Africa fell by 39% between 2005 and 2013. Countries that recorded major declines in AIDS-related deaths include Rwanda (76%), Eritrea (67%), Botswana (58%), Burkina Faso (58%), Ethiopia (63%), Kenya (60%), Zimbabwe (57%), Malawi (51%), South Africa (48%) and the United Republic of Tanzania (44%). This success is directly due to the rapid increase in the number of people on antiretroviral therapy. HIV treatment is now available to 37% [35–39%] people living with HIV in the region. However, as access to antiretroviral therapy expands in sub-Saharan Africa, significant gaps remain. Chief among these is that only 45% [39–62%] of people living with HIV know their HIV status, underscoring the need to increase HIV knowledge and expand testing.⁵ The proportion of pregnant women living with HIV who did not receive antiretroviral therapy has halved over the past five years, from 67% [65–69%] to 32% [26–36%]. However, there is concern about the stagnating number of HIV-positive pregnant women receiving antiretroviral therapy.⁶

The sub-Saharan African epidemic also affects key populations—sex workers, gay men and other men who have sex with men and people who inject drugs—and their share of the burden is significant. Seventeen of the top 18 countries where HIV prevalence among sex workers exceeds 20% are situated in sub-Saharan Africa. Median HIV prevalence among sex workers in sub-Saharan Africa is 20% compared with the global median of 3.9%. Female sex workers have a slightly higher prevalence than their male counterparts in five of the six sub-Saharan countries that reported such data. But, with a median HIV prevalence of 13%, male sex workers also urgently need HIV-related services.⁷

HIV prevalence among gay men and other men who have sex with men is also very high in the region. While precise measures for this population are not easily available, the high levels of HIV prevalence among gay men and other men who have sex with men must not be ignored and HIV services must be made available. In addition, significant political and community leadership is required to end stigma, violence and to decriminalize homosexuality and, thus, enable and encourage men who have sex with gay men and other men to access HIV services.⁸

1.2 HIV and AIDS in the EAC

A number of factors drive the HIV and AIDS epidemic in the EAC region and include the free flow of people, goods and services throughout the region. For example, EAC Partner States have many common road transport corridors. Workers who construct these transport networks and users of the corridors are prone to interact sexually with the communities along the roads and expose each other to HIV infection. The transport network expose communities along the highways, stations and border crossing centres to HIV infection. Similarly, the maritime sub-sector has facilitated close interaction among traders and communities within the region with consequences for the spread of HIV. An illustration is the example of Lake Victoria Basin. The reasons for the region's vulnerability and high HIV prevalence are complex and include population mobility, poverty, gender inequality and various socio-cultural practices. Additionally, heavy and frequent movement of people within and through the Basin and, the inadequacy of the health systems have largely failed to meet the demand for improved health and HIV and AIDS services.

Finally military conflicts in EAC have increased the risk of vulnerability to HIV. Most people in conflict-prone areas of Northern Uganda have lived in internally displaced persons' (IDP) camps for several years. In Kenya, Tanzania, Rwanda and Burundi, refugee influx from neighbouring countries of Somalia, Sudan and the DR Congo have increased the risk of HIV infection to both the refugees and populations of the host countries.⁹

1.3 International and regional instruments pertaining to HIV, health and human rights

HIV requires a multi-sectoral approach which also includes the rule of law and human rights. There is growing recognition of the need to formulate policies and strategies, to enact rights-based legislations and emulate good human

4 *Ibid.*

5 *Ibid.*

6 *Ibid.*

7 *Ibid.*

8 *Ibid.*

9 East African Community, Regional Integrated Multisectoral Strategic Plan for HIV and AIDS. 2008-2012

rights practices in law-, policy- and strategy-making to ensure the enjoyment of human rights so that people living with and affected by HIV get access to services they need without undue harassment and/or violation of their rights. At international and regional level, there are a number of instruments and frameworks guiding different stakeholders on how to respond to HIV and AIDS.

United Nations declarations and meetings focused on HIV and AIDS

In 2001, the United Nations' Declaration of Commitment on HIV/AIDS called for the scaling-up of global financing of HIV, targeting at least US\$7 billion to US\$10 billion by 2005. At the June 2006 United Nations General Assembly Special Session on HIV and AIDS (UNGASS), the global community also committed itself to universal access to comprehensive prevention, treatment and care programmes by 2010. To monitor progress on UNGASS commitments on HIV and AIDS, UN Member States were also required to submit annual country reports on selected core indicators. Referring to 2001 United Nations General Assembly Special Session on HIV/AIDS declaration of commitment, member states committed themselves to achieving a 25% decline in HIV prevalence among young people by 2010.

The UN High Level Meeting in June 2011 on the global response to combat HIV and AIDS culminated into the development of the Global Plan towards eliminating new HIV infections and keeping people alive. The Political Declaration on HIV/AIDS, adopted by the United Nations General Assembly, set ambitious targets aimed at achieving universal access as highlighted within the health-related Millennium Development Goals by 2015. Similarly there are the WHO Global Health Sector Strategy on HIV/AIDS, 2011–2015, and the UNAIDS 2011–2015 strategy of countdown to zero new infections.

International instruments and declarations

The Universal Declaration on Human Rights 1948: The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10th December 1948 as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. The UDHR does not mention HIV and AIDS but stands as a moral authority on human rights and on issues pertaining to the preservation of human dignity and therefore is invoked when dealing with HIV and AIDS from a legal and human rights perspective.

The International Guidelines on HIV/AIDS and Human Rights are guidelines jointly developed by the UNAIDS and the UNOHCHR¹⁰ that define the mechanisms of application of human rights in the context of HIV and AIDS and provide examples of concrete measures for the attention of States and other social actors. The Guidelines identify actions that governments should take to respond to HIV and AIDS based on their agreed-to obligations arising from international human rights law. The Guidelines were developed through a consultative and participatory process involving government representatives, human rights advocates and people living with HIV (PLHIV). Although the Guidelines do not have the legal status of a treaty, they have legitimacy and governments are urged to adopt them.

The Millennium Development Goals (MDG) are 8 development goals that 189 states agreed to at the Millennium Summit of the United Nations in 2000. Of the 8 development goals MDG 5 ("Improving maternal health") and MDG 6 ("combating HIV and AIDS, malaria and other diseases") are linked directly to HIV and AIDS.

The International Labour Organization (ILO) 'HIV and AIDS Recommendations' of 2010 expressly requires state parties to, among other things, to "(A)dopt national policies and programmes on HIV and AIDS, the world of work and on occupational safety and health, where they do not exist;" and to "(I)ntegrate their policies and programmes on HIV and AIDS, world of work in development plans and poverty reduction strategies, including decent work, sustainable enterprises and income-generating strategies, as appropriate."¹¹

Regional instruments and declarations pertaining to HIV and AIDS response

The African Union Roadmap on Shared Responsibility and Global Solidarity for AIDS, TB and Malaria Response in Africa: Developed in 2012 by the African Union Commission (AUC), following the January 2012 African Union (AU) Assembly Decision No: Assembly/AU/Dec.413 (XVIII), the roadmap desires "to work out a roadmap of shared responsibility to draw on African efforts for a viable health funding with support of traditional and emerging partners to address AIDS dependency response". It presents a set of practical African-sourced solutions for enhancing shared

10 UNAIDS (2006). International Guidelines on HIV/AIDS and Human Rights. Available: http://data.unaids.org/publications/irc-pub07/jc1252-internguidelines_en.pdf

11 ILO (2010). Recommendation concerning HIV and AIDS and the world of work, 2010 (No. 200). Available: http://www.unplus.org/downloads/wcms_142706.pdf

responsibility and global solidarity for AIDS, TB and malaria responses in Africa on a sustainable basis by 2015. The solutions are organized around three strategic pillars: diversified financing; access to medicines; and enhanced health governance. The Roadmap defines goals, results and roles and responsibilities to hold stakeholders accountable for the realization of these solutions between 2012 and 2015.¹²

SADC-PF model law on HIV and AIDS: the 24th Plenary Assembly of the SADC Parliamentary Forum adopted, in Arusha, Tanzania, on 24th November 2008, a Model Law on HIV in Southern Africa. The adoption of the Model Law on HIV came at a time when several countries in the sub-region had adopted or were in the process of adopting their HIV laws. As of November 2008, five countries (Angola, the DRC, Madagascar, Mauritius and Tanzania) have adopted HIV-specific laws while two countries had draft HIV bills (Malawi and Mozambique). In contrast to most HIV-specific legislation adopted in Southern Africa and in sub-Saharan Africa in general, the Model Law on HIV in Southern Africa rejects coercive measures such as the criminalisation of HIV transmission, compulsory HIV testing for pregnant women and compulsory disclosure of HIV status. Furthermore, the Model Law on HIV encourages States to consider the de-criminalisation of sex work and same sex relationship as specific measures that may advance the response to HIV. The Model Law on HIV in Southern Africa was drafted through a broad consultative process that brought together HIV experts, organisations of people living with HIV, legal drafters, members of law reform commissions and human rights activists from across Southern Africa countries and beyond. Its adoption by the Plenary Assembly of SADC Parliamentary Forum reaffirms the importance of well-informed and human rights-based legislation as a fundamental element of the response to HIV. The Model Law on HIV in Southern Africa is expected to serve as a yardstick and inspirational document for national parliaments to guide their legislative framework on HIV. It is also likely to be used by civil society activists and people living with HIV as a powerful tool to advocate the respect of human rights in the response to AIDS.

The Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases (2001): In the wake of the September 2000 Millennium Summit, the heads of African Union Member States assembled in Abuja, Nigeria from 24th–27th April 2001, and adopted the Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases. The primary objective of the Abuja Declaration was for Africa to collectively and individually work towards arresting and reversing the staggering rate at which these diseases were eroding prior progress made in socio-economic development.¹³

Grand Bay Declaration and Plan of Action (1999) was adopted by the First Organization of African Union (OAU) Ministerial Conference on Human Rights in Africa, held in Grand Bay, Mauritius, from 12th–16th April, 1999. It was the first legal instrument to reflect the renewed emphases on human rights. The Ministerial Conference affirmed “the principle that Human Rights are universal, indivisible, interdependent and interrelated” and urged “governments, in their policies, to give parity to economic, social and cultural rights as well as civil and political rights.” The declaration is often cited as manifesting a regional commitment to human rights in addition to the legally binding instruments.¹⁴

1.4 The East African Community HIV and AIDS (Prevention and Management) Bill

The East African Legislative Assembly (EALA) passed the East African Community HIV and AIDS (Prevention and Management) Bill in 2012. The Bill asks that Governments ensure that persons living with or affected by HIV and AIDS are protected from all forms of abuse and discrimination, and are provided with appropriate support, care and treatment services. The Bill further promotes and puts in place prevention programmes which take cognizance of the new knowledge related to treatment and other areas in the context of HIV and AIDS. The Bill seeks to create a common, responsive legal framework for HIV and AIDS in the region by applying the rights based approach and through incorporating good standards and practices in HIV prevention, treatment, care and support. The Bill awaits assent by the EAC Heads of State before it can become an Act of the Community. So far Uganda, Burundi and Kenya have assented to the Bill.

Some Key provisions of HIV and AIDS (Prevention and Management) Bill 2012

On HIV-related discrimination, the Bill covers the general protection of the rights of persons living with or affected by HIV including general prohibition of discrimination; protection of privacy and confidentiality of HIV status; the

12 African Union (2012). ROADMAP ON SHARED RESPONSIBILITY AND GLOBAL SOLIDARITY FOR AIDS, TB AND MALARIA RESPONSE IN AFRICA. Available at: http://www.au.int/en/sites/default/files/Shared_Res_Roadmap_Rev_F%5B1%5D.pdf

13 OAU/AU (2001). Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases. Available at: http://www.un.org/ga/aids/pdf/abuja_declaration.pdf

14 ACPHR (1999). Grand Bay Declaration and Plan of Action. Available at: <http://www.achpr.org/instruments/grandbay/>

prohibition of discrimination in employment, in educational institutions and in health institutions; the prohibition of restriction on travel and habitation; the prohibition of inhibition from public service, from exclusion from credit and insurance services, and from access to healthcare services.

On the issue of HIV testing and disclosure, the Bill covers HIV and AIDS counselling and testing, pre-test and post-test HIV counselling, the contents of pre-test HIV counselling, the contents of post-test counselling, provision of testing facilities, the prohibition of compulsory testing, and the issue of consent to testing and to the receiving and sharing of HIV test results.

On the issue of compulsory testing, Article 22 states: “(1) Subject to this Act, no person shall compel another person to undergo an HIV test. (2) Unless otherwise provided under this Act, every HIV test shall be confidential. (3) Without prejudice to the generality of subsections (1) and (2), no person shall compel another to undergo an HIV test as a precondition to, or for continued enjoyment of (a) any employment; (b) marriage; (c) admission into any educational institution; (d) entry into or travel out of a Partner State; or (e) the provision of healthcare, insurance cover or any other service.”

On HIV education and access to information, the Part II of the Bill specifically deals with education and information in learning institutions, education and information as a health care service, education and information at the workplace, education and information and the media as well as education and information in communities.

Regarding the rights of vulnerable populations and key populations, Part VI of the Bill focuses on the protection of vulnerable groups and most at risk populations and covers “Children living with or affected by HIV, Women and Girls, Persons with disabilities, Prisoners and Other vulnerable groups”.

The Bill recommends that the Governments should ensure that persons with disabilities living with or affected by HIV are protected from all forms of discrimination and are provided with appropriate support, care and treatment. Regarding other vulnerable groups, the Bill recommends that the governments, in consultation with relevant stakeholders should develop and implement strategies, policies and programmes to promote and protect the health of vulnerable groups and most at risk populations. The list of these populations, is open-ended and non-exhaustive.

On the issue of discrimination in health institutions, the Bill states that a person shall not be denied access to healthcare services in any health institution, or be charged a higher fee for any such services, or be subjected to any other form of discrimination, on the grounds of the person’s actual, perceived or suspected HIV status.

On prevention of mother to child transmission, and on children living with HIV, the Bill states that a child born of a woman living with HIV receives all relevant scientifically proven services for the prevention of HIV transmission in accordance with relevant national and international guidelines for the prevention of HIV transmission in infants. A number of sections provide guidance with regards to children getting tested for HIV. For example, the Bill states that “When, in the opinion of a medical practitioner or of a court the best interests of a child so require and the consent of a parent or guardian has been unreasonably withheld, the absence of the consent of the parent or guardian shall not constitute an obstacle to testing and counselling”. Additionally, “Where special circumstances so require, a child may... be tested without the consent or notification of a parent or guardian”. However, other sections speak of situations where the “child understands the implications of the test and is capable of making informed choices on matters relating to the results of the test” in which case it has to be ensured that “the child has been appropriately counselled in accordance with this Act”.

On restriction on travel and habitation, the Bill says that 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 quarantined, placed in isolation, refused lawful entry or deported from a Partner State on the grounds of the person’s actual, perceived or suspected HIV status”.

Again on access to healthcare services, the Bill states that Persons living with HIV have the right of access to healthcare services. In addition, the Government shall take appropriate measures to provide sustainable treatment, care and support to persons living with HIV, including access to affordable, anti-retroviral therapy and other essential medicines and prophylaxis to treat HIV or prevent opportunistic infections. These measures shall include the use of all flexibilities under the Agreement on World Trade Organization Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) as well as measures to encourage the local production of medicines.

1.5 EAC Regional Response

While the individual national institutions for addressing HIV and AIDS have registered positive progress in reducing the prevalence of infection, there has been little progress in addressing the epidemic from a regional perspective. Reasons for the relative slower regional response include, among others, inadequate human resources and resources for implementing the regional response and the need to realign the response with the EAC HIV and AIDS Multisectoral Strategic Plan 2012-2014, which provides strategic direction to guide a comprehensive HIV and AIDS response within the entire East African region.

However, over the last 2 years, the EAC Secretariat, through its EAC HIV and AIDS Programme has focused on:

- (a) Harmonising EAC Partner States HIV and AIDS policies, laws, protocols, guidelines and strategies; including harmonising EAC HIV and AIDS Prevention, Care and Treatment guidelines policies and protocols among the five Partner States;
- (b) Accelerating responses to reduce spread and mitigate the impact of HIV and AIDS in the cross border areas with focus on the mobile populations and other most at risk populations.
- (c) Generating and sharing information and knowledge on HIV and AIDS in the region to influence HIV and AIDS programming, policy and change in the EAC region.¹⁵

As mentioned earlier, the EALA in 2012 passed an HIV and AIDS Prevention, Management and Control Act that has been assented to by Kenya, Burundi and Uganda till date. The Act aims to improve the HIV legal and policy environment in the East African Community Partner States. The EAC has also mainstreamed HIV and AIDS in the Military, emphasizing the rights based practices in the armed forces.

Additionally, there is the East African Community, AMREF and Lake Victoria Partnership (EALP) Programme which is coordinated by the Lake Victoria Basin Commission (LVBC) and managed by the African Medical and Research Foundation (AMREF). The EALP aims to improve the HIV and AIDS response and to reduce the risk and vulnerability among mobile populations within the Lake Victoria Basin region, by strengthening the capacity of the EAC, its key institutions and select regional networks to coordinate HIV and AIDS responses in the Lake Victoria Basin region; by promoting the harmonisation of HIV and AIDS policy frameworks and practice for mobile populations across the East African region; and by strengthening the capacity of select networks and organisations of mobile populations to address HIV and AIDS related risks and vulnerabilities.

CHAPTER TWO:

Analysis of HIV and AIDS laws, policies, bills and strategies in East Africa Community

2.1 HIV and AIDS in Kenya

The first recorded case of HIV was diagnosed in 1984 in Kenya, and by the 1990s, the infection spread rapidly throughout the country – reaching prevalence rates of 20 to 30% in some antenatal care centres (ANC) sites.¹⁶ In 1999, the Government of Kenya declared HIV as a national disaster and established the national AIDS control council to co-ordinate a multi-sectoral national response. Since 1999, the national adult HIV prevalence is estimated to have dropped from over 14% to about 7.4 in 2007. Whilst many people in Kenya are still not being reached with HIV prevention and treatment services, access to treatment is increasing. The KAIS 2013 data shows that 81% of people in need of ARVs are receiving them free of charge, and 43% of children living with HIV are also under ARV. According to the Kenya National AIDS Strategic Plan III (KNASP III), the HIV prevalence among women (8.8% among the 15-49 years group and 8.4 among the 15-64 years age group) is significantly higher than among men (5.5% among the 15-49 years age group and 5.4% among the 15-64 years age group).¹⁷

15 http://www.eac.int/health/index.php?option=com_content&view=article&id=141&Itemid=160. Accessed on 16th January 2014.

16 Kenya National AIDS Control Council (2009). Kenya National AIDS Strategic Plan 2009/10-2012/13 National Aids Council

17 Ibid.

Legal, policy and institutional framework

The legal, policy and institutional framework on HIV and AIDS in Kenya is led by a number of laws, policies, strategies and institutions. The Constitution forms the basis of laws in Kenya as in all other countries in the EAC.

The Constitution of Kenya (revised edition 2010) – fundamental rights

The relevant articles of the Constitution include the following: (a) Equality and freedom from discrimination Art. 27; (b) Women and men have the same rights Art. 27(3); (c) Right to fair labour practice Art. 41; (d) Children's rights Art. 53 (free and compulsory basic education); (e) Humane treatment of persons detained, held in custody or imprisoned Art. 51; and (f) Persons with disability have the right to be treated with dignity and respect Art. 54.

The Kenya Health Policy 2012-2030

The policy gives direction to ensure significant improvement in overall health status in Kenya in line with the country's long term development agenda, Vision 2030, the Constitution of Kenya 2010 and global commitments. It demonstrates the health sector's commitment, under government stewardship, to ensuring that the country attains the highest possible standards of health, in a manner responsive to the needs of the population. This Policy is designed to be comprehensive, balanced and coherent and focuses on the two key obligations of health: contribution to economic development as envisioned in the Vision 2030; and realization of fundamental human rights as enshrined in the Constitution of Kenya 2010. It focuses on ensuring equity, people centeredness and participatory approach, efficiency, multi-sectoral approach and social accountability in delivery of health care services.

The Policy has six objectives, and seven orientations to attain the overall government's goals in health. It proposes a comprehensive and innovative approach to harness and synergize health services delivery at all levels by engaging all actors, signalling a radical departure from past approaches in addressing the health agenda. This is demonstrated by the policy directions outlined, particularly the right to the highest attainable standard of health.

The HIV and AIDS Prevention and Control Act 2006

This is the main legal document guiding the fight against HIV and AIDS. The Act seeks to:

- a) Promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS;
- b) Extend to every person suspected or known to be infected with HIV and AIDS full protection of his human rights and civil liberties by:
 - Prohibiting compulsory HIV testing save as provided in this Act;
 - Guaranteeing the right to privacy of the individual;
 - Outlawing discrimination in all its forms and subtleties against persons with or persons perceived or suspected of having HIV and AIDS;
 - Ensuring the provision of basic health care and social services for persons infected with HIV and AIDS;
- c) Promote utmost safety and universal precautions in practices and procedures that carry the risk of HIV transmission; and
- d) Positively address and seek to eradicate conditions that aggravate the spread of HIV infection.

The Kenya Health Bill and the proposed Health Legislation 2012

The Health Bill seeks (a) to consolidate all the laws relating to health in Kenya; (b) to provide for regulation of health care services and health care service providers; (c) to provide for the establishment of national regulatory institutions; (d) to consolidate the inter relationship between the national and county health institutions; (e) to establish a coordinating agency of professionals within the health industry, and (f) to provide for attainment of the basic right to health.

Institutions dealing with HIV and AIDS in Kenya

- National AIDS Control Council (NACC): As provided in the Legal Notice No. 170 of 1999, one of the core mandates of NACC is to develop strategies, policies and guidelines relevant to the prevention and control of HIV and AIDS in Kenya. The NACC has to date led the national response by coordinating and implementing two five year and a four year strategic plans covering the periods 2000 to 2013.
- National AIDS and STI Control Programme (NASCO): was established in 1987 to spearhead the Ministry of Health's interventions on the fight against HIV/AIDS. NASCO therefore operates as a unit within the Ministry of Health and is mainly involved with technical co-ordination of HIV and AIDS programmes in Kenya. NASCO contributes to the bulk of the implementation of the Kenya National HIV and AIDS Strategic Plan III (KNASP III).
- HIV Equity Tribunal: The mandate of the Tribunal is outlined in the 2006 HIV/ AIDS Prevention and Control Act. The Tribunal has jurisdiction to hear and determine complaints arising out of any breach of the Act and any matter or appeal as may be made pursuant to the provisions of the Act. The Tribunal can also perform functions related to the Act, excluding criminal jurisdiction.

Laws and policies related to the Criminalisation of HIV transmission

Under Article 24 of the National HIV and AIDS Prevention and Control Act, the deliberate or reckless transmission of HIV by one person to another is an offence. An infected person is prohibited from putting another person at the risk of becoming infected with HIV either recklessly or knowingly.

The Sexual Offences Act 2006 similarly creates an offence of deliberate transmission of HIV or any other life threatening sexually transmitted disease. This offence carries a prison sentence of up to 15 years. The Act provides that a person will be convicted of this offence if it is proven that they were infected with HIV or any other life threatening diseases regardless of whether or not they have knowledge of their positive status.

Laws and policies related to HIV-related Discrimination

The Constitution does not make specific reference to discrimination on the basis of HIV status. However, the HIV and AIDS Act prohibits discrimination on the basis of HIV status. The Act further covers discrimination at the workplace, in schools, on restriction on travel, habitation and inhibition from public service, credit and insurance services, health institutions and burial services. The Employment Act 2007 reinforces prohibition of discrimination on HIV status.

Laws and policies related to Mandatory HIV testing and disclosure

Consent and confidentiality lie at the heart of testing and disclosure debate when it comes to HIV and AIDS. In Kenya, the policy on HIV testing is found in the National Guidelines of HIV testing and counselling 2008, the guidelines for HIV Testing in clinical settings 2006 and the Act 2006. Although the guiding principle is that no one should be compelled for HIV testing, there are circumstances under which mandatory testing can occur. Under the Sexual Offences Act 2006, a person charged with an offence of a sexual nature may be compelled to undergo HIV testing. In addition, the Act provides for compulsory HIV testing where a person is charged with the offence of "wilful transmission of HIV" or any other life threatening sexual disease. If the alleged offender contests such a test, an order from the court may be obtained to carry out such test.

The Guidelines for Prevention of Mother to Child Transmission (PMTCT) of HIV/AIDS in Kenya encourages all pregnant women to learn their HIV status as well that of their sexual partners. The guiding principle is that every pregnant woman should be tested for HIV. The Guidelines however recommends – among others – these operational principles: (a) all pregnant women of unknown HIV status should be offered opt-out testing at the first ANC visit; (b) repeat HIV testing (after 3 months) should be offered; and (c) women who decline HIV testing at the first antenatal visit should have follow-up counselling at the subsequent visit and offered HIV testing.

On testing for children, the HIV Prevention and Control Act states that children can only be tested with their parents' written consent. Art 14(b) exception to testing children include cases where the child is pregnant, married, a parent or is engaged in behaviour which puts him or her at risk of contracting HIV.

Under the Act, a person who offers to donate blood or human tissue shall be deemed to have consented to the HIV test required in respect of such tissue or blood.

A medical practitioner may also carry out an HIV test without consent if the person is unconscious and unable to give

consent and the medical practitioner reasonably believes that such a test is clinically necessary or desirable in the interest of that person.

Laws and policies on sexual and reproductive health

The Constitution of Kenya 2010 provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care (Article 43 (a)). It further outlines that a person shall not be denied emergency medical treatment and that the State shall provide appropriate social security to persons who are unable to support themselves and their dependents (Articles 43(2) and 3). In recognition of previously centralised services that have undermined access to services including health services, Article 6 (3) on devolution and access to services lays emphasis on enhancing access to services in rural and remote areas. To guarantee implementation of these rights, Article 21 clearly articulates and directs that every institution has the duty to ensure that the rights are fulfilled and report on the progress made in respect to Article 43.

The Constitution further singles out health care for specific groups such as children and persons living with disabilities in Article 53 article 54 respectively. The underlying determinants of the right to health are also guaranteed in article 43(1) (b-f) and include right to adequate housing, right to adequate food, clean safe water, social security and to education.

Other laws promoting sexual and reproductive health rights in Kenya include the Children's Act revised edition of 2010, the Sexual Offences Act 2006, and the Prohibition of Female Genital Mutilations Act 2011. The key focus areas in the health sector are access, equity, quality, capacity, and institutional framework. The main management instrument is the National Reproductive Health (RH) Policy 2007 being implemented through the National Reproductive Health Strategy 2009-2015. The goal of the RH Policy is to improve reproductive health status of all people in Kenya by increasing equitable access and improving quality, efficiency and effectiveness of service delivery at all levels. Other specific policies relating to sexual and reproductive health include the 2003 Adolescent Reproductive Health and Development Policy; the National Condom Policy and Strategy (2009-2014); the Contraceptive Policy and Strategy (2002-2006); the Contraceptive Commodities Procurement Plan (2003-2006); the Contraceptive Commodities Security Strategy (2007-2012); etc.

Laws and policies pertaining to HIV in the workplace

The Employment Act 2007 sets out the minimum standards applicable for conditions of employment, relating to health, among others. Under this Act, no employer shall discriminate directly or indirectly against an employee on grounds of HIV status, among others (section 5). The employer shall provide proper healthcare for his/her employees during serious illness. The employer can only discharge this function if the employee notifies the employer of the illness (section 34). The Act implies that there should be no discrimination on the grounds of HIV/AIDS status, and states in Section 46 (g) that HIV/AIDS does not constitute a fair reason for dismissal or for imposition of a disciplinary penalty on an employee.

The HIV and AIDS Prevention and Control Act, 2006, gives guidance to review of HIV and AIDS workplace policies, making specific reference to HIV and AIDS in relation to provision of education and information in the workplace, discrimination, privacy, confidentiality and personal rights. Specifically, in Sections 4 and 7, the Act provides that the government shall promote public awareness about the causes, means of transmission, consequences and means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign at all places of work, and ensure the provision of basic information and instructions on HIV/AIDS prevention and control to all public sector employees. Section 7 further notes that such information to be provided shall cover issues of confidentiality in the workplace and attitudes towards infected employees and workers. To promote confidentiality, Section 13 states that no employee shall be compelled to undergo an HIV test unless he/she is charged with a sexual offence under the Sexual Offences Act (2006). Section 22 prohibits the disclosure of an HIV test result or any related assessment result of another person without his/her written consent. Part VIII of the Act supports Employment Act in making it an offence for any person to be discriminated against on the grounds of actual, perceived or suspected HIV status, in relation to employment, among others.

The Federation of Kenya Employers, in conjunction with the International Labour Organization, the Ministry of Labour, the National AIDS Control Council and other bodies in the Kenyan labour sector have instituted the National Code of Practice on HIV and AIDS in the Workplace 2009 that prohibits employers from compelling employees and prospective employees from undergoing HIV tests without consent. Applicants selected for a job are routinely given medical tests to ensure that they are healthy and qualify for insurance cover. Employers of people with medical conditions such as hypertension and HIV have to pay higher insurance premiums.

Laws and policies mentioning sexual and HIV education and access to information

The Education Sector HIV policy stipulates that it is the responsibility of all learning institutions to address HIV and AIDS through education, developing skills and values and changing attitudes to promote positive behaviours. The policy endorses a curriculum with content guidelines that address HIV and AIDS but is sensitive to cultural and religious beliefs and appropriate to age, gender and special groups. It requires Higher Education institutions to develop a common framework for teaching HIV/AIDS. The policy states that relevant and suitable teaching and learning materials for HIV prevention will be developed for use by all institutions and workplaces. The policy also requires that learning institutions will create rape and sexual harassment awareness through sensitisation of girls, boys, men and women to enhance safety and protection. The policy requires that research on levels of HIV prevalence, orphan hood, vulnerability, access to education and other relevant areas will be undertaken. Nevertheless, the policy recognises that ultimately, behaviour changes in minors rests with their parents, guardians and caretakers. The policy statements in this area are broad and all-encompassing and relate to all learning institutions. However, the statements are often non-committal rather than authoritative, for example it appears to suggest that institutions of higher learning should implement HIV/AIDS intervention, rather than requiring them to. The policy also does not comment upon the availability of resources.

In 1999, the Kenyan government established a national curriculum on HIV/AIDS education to reach children in primary school. The national curriculum was developed with the assistance of UNICEF, and was the outcome of an extensive consultation process within Kenyan society that included many stakeholders, including religious groups. The Ministry has sent books covering the curriculum to all schools. The primary school HIV/AIDS curriculum teaches basic medical facts about AIDS, HIV transmission, prevention, and care for people living with AIDS. It stresses abstinence as the most effective way to prevent pregnancies and infection with sexually transmitted diseases. The official Facilitator's Handbook recommends that teachers organize a debate among students on whether condom use should be taught to primary school students (page 66). Individual schools and teachers effectively have a lot of discretion about whether to teach about HIV/AIDS.

Laws and policies on the rights of key populations

The National HIV Testing and Counselling Guidelines provide testing and counselling for key populations including sex workers and men who have sex with men. On its part, the KNASP 2009/10-2012/13 notes that there are challenges among key populations which include: (a) overall lack of data about the number of such populations which make it difficult to target these groups for example, sex workers, with relatively high HIV prevalence among them, are widespread in urban centres and along major transport routes, MSM are a significant population but their size is difficult to estimate, and PWUD are increasing in Kenya but again real numbers and distribution is uncertain; (b) Living off the gains of prostitution, same-sex acts and drug use are illegal in Kenya and attempts to de-criminalise these activities have been faced with significant religious and cultural resistance; (c) key populations are still marginalized from formal health services especially in the public sector as many service providers find it difficult to provide non-stigmatising services to clients perceived to be practicing illegal behaviour; and (d) denial and social intolerance of key populations is leading to reluctance to prioritise interventions and services aimed at these groups even among professional planners and policy-makers.

The IBBS 2011 reveals a HIV prevalence of 18.3% among IDU/PWUD; 18.2 among MSM (2010) and 29.3% among sex workers (2010).

There are no HIV-specific entry and residence regulations in Kenya. The government of Kenya has not introduced any restrictive law regarding people with HIV or affected by AIDS.

Laws and policies on gender inequality, harmful gender norms and gender-based violence as it relates to HIV and AIDS

Kenya does not have a specific law dealing with gender but the issue is addressed in a number of policies and statutes. In addition to being a party to the convention on the elimination of forms of discrimination against women (CEDAW), the country Judicature Act recognizes the application of African customary law practices and the Constitution recognises culture as the foundation of the Nation and as the cumulative civilization of the Kenyan people and nation (section 11). Some of the provisions of policies and statutes as well customs and practices are not always in favour of the full enjoyment of women's rights however. For instance, under the Marriage Act girls can be married off with the consent of their parents, at the age of 12. The law further recognizes polygamous marriages. Article 13 (2) (b) of the 2010 Constitution prohibits compulsory HIV testing as a precondition to or for continued enjoyment of marriage.

The National Action Plan on Mainstreaming Gender in HIV responses in Kenya 2009/10 – 2012/13 reveals the

following on gender disparities: (a) HIV Prevalence among females (8.0%) is almost double that of males (4.3%), these differences in prevalence persist in all provinces, with women bearing a higher burden of the HIV epidemic; (b) HIV prevalence among youth aged 15–24 years is alarming—young women in this age group are four times more likely to be HIV positive than men (4.5% and 1.1%, respectively); (c) in urban populations prevalence among women is three times more than men (approximately 10% compared to 4%); (d) HIV prevalence is significantly higher among women who are separated/divorced and widowed compared to other adults;¹⁸ and (e) contrary to previous beliefs that marriage is a safety net against HIV infection, almost half new HIV infections in Kenya occur within union/regular heterosexual partnerships.

Laws and policies on access to healthcare, treatment and services

The Safety and Occupational Health Act 2007 guarantees access to health care for people living with HIV and AIDS especially in the workplace. However, the KNASP 2009/10-2012/13 brings forth the fact that only 38%–45% of those in need of treatment are being reached at present, with coverage for children much lower at about 15%. Up to 300,000 PLHIV are still at risk of dying due to lack of access to treatment.

Laws and policies on children and HIV

The Children's Act revised 2010 provides for the rights of the child and could be rightly considered as the Children's Code. Article 14 provides for the protection of children from harmful cultural practices including early marriage and female genital mutilation. This provision plays two crucial roles, it first takes into consideration the dignity of a girl child and also it might be useful as far as HIV prevention is concerned though HIV is not explicitly mentioned. Healthcare for children is covered by the Children's Act although under the Ministry of Health Guidelines, only under-5 children are guaranteed free medical attention.

The Education Sector Policy on HIV and AIDS, 2013 provides a framework for prevention, treatment, care and support as well as the management of response within the education sector at all levels. The policy also proposes a strengthened coordination mechanism to improve implementation of HIV and AIDS programmes by various stakeholders.

The National Plan of Action for Orphans and Vulnerable Children 2007-2010 defines a child as any human being under the age of 18 and a vulnerable child as one whose safety, wellbeing and development are, for various reasons, threatened, including children who are emotionally deprived or traumatized. The plan notes that close to 15 million people in Kenya are under the age of 14. While malaria kills 26,000 children yearly, the impacts of HIV and AIDS too are heavily felt in this group.

Laws and policies on Customs, traditions and religion and their relation to HIV and AIDS

Female genital mutilation (FGM) was banned in Kenya through the Prohibition of Female Genital Mutilation Act 2011, making it illegal to practice or procure it, or to take somebody abroad for the procedure.¹⁹

Laws and policies on conflicts and post-conflict settings

The Government of Kenya has drafted a National Policy for Disaster Management which has a section dealing with the effects of HIV and AIDS in time of instability. The draft national policy is dated 2009.

Laws and policies on migration and cross-borders movements and their implications on access to health

As a general rule, Kenya does not put any restrictions upon entry, residence and exit of the country as far as HIV and AIDS are concerned.

Laws and policies on insurance as they relate to HIV and AIDS

The 2006 Act provides that patients have a right to be treated for HIV and AIDS, including access to medical cover.

¹⁸ HIV prevalence is by far the highest among women who are widowed, in Nyanza Province, for instance, approximately one in every two widows is infected.

¹⁹ E. Day & A. Maleche. Global Commission on HIV and the law. Working Paper: traditional cultural practices and HIV: reconciling culture and human rights.

It prohibits insurance companies and employers from forcing people to undergo HIV tests. “Every health institution and health management organisation or medical insurance provider shall facilitate access to health care services to persons with HIV without discrimination” says the Act. However, the Act does not regulate refusal of medical cover to HIV and AIDS patients.

2.2 HIV and AIDS in Rwanda

With an estimated 3 percent of the population infected by HIV, Rwanda has faced unique challenges posed by HIV and AIDS in this country. Rwanda is much less affected by HIV than other countries in the region. Nonetheless, HIV transmission is far from being under control. And although nearly 80% of those in need are already receiving treatment, the social, economic and health burden of HIV and AIDS on those affected is a heavy one.

HIV prevalence in women (3.6%) is significantly higher than in men (2.3%). HIV prevalence data are also sourced from sentinel surveillance of pregnant women attending antenatal clinic. 2011 statistics show that HIV prevalence in pregnant women was 1.8% of pregnant women. The ANC data show significantly higher HIV prevalence in urban sites than in rural sites with 4.8% and 3.3% respectively.

Legal, policy and institutional framework

The Constitution of the Republic of Rwanda adopted in 2003 guarantees fundamental human rights. Article 10 states that the human person is sacred and inviolable. The State and all public administration organs have the absolute obligation to respect, protect and defend him or her.

Article 11 of the Constitution state that all Rwandans are born and remain free and equal in rights and duties. Discrimination of whatever kind based on, inter alia, ethnic origin, tribe, clan, colour, sex, region, social origin, religion or faith, opinion, economic status, culture, language, social status, physical or mental disability or any other form of discrimination is prohibited and punishable by law. Similarly, Article 12 guarantees that every person has the right to life and that no person shall be arbitrarily deprived of life. Additionally, responding to specific Rwandan conditions, Article 13 and Article 14 of the Constitution discuss the crime of genocide, for which there is no period of limitation, and for which the State “shall, within the limits of its capacity, take special measures for the welfare of the survivors of genocide who were rendered destitute by the genocide committed in Rwanda from 1st October 1990 to 31st December 1994, the disabled, the indigent and the elderly as well as other vulnerable groups.” Lastly, Article 16 clearly states that “All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law.”

The Government of Rwanda has developed several policies dealing either explicitly or implicitly with HIV /AIDS. The National HIV Policy or the “Politique Nationale de Lutte contre le VIH” was developed in 2005. The main objective of the policy is to provide guidance on the implementation of the strategic plan in the fight against HIV. The policy states among its main principles including the prohibition of any form of discrimination including sex, the inclusion and consideration of gender in the implementation of the policy.

The National Community Health Policy was developed in 2008 by the Ministry of Health. The general objective of this policy is to provide clear guidance for the provision of holistic and sustainable health care services to communities with their full participation. This policy acknowledges that Community involvement in Prevention from Mother to Child Transmission (PMTCT) is key to turning some of the community challenges into opportunities. Gender equality and Equity in community health is among the principles to which the policy is guided.

The National Employment Policy was developed in 2007 by the Ministry of Labour. The main objectives of the policy are to distribute optimally the labour force between the public sector and the private sector; to improve the competitiveness of individuals and enterprises; to improve work productivity by aiming at a better synergy between education and employment; to promote self-employment activities and strengthen the capacities of the private sector and to promote innovation, entrepreneurship and a saving culture. With regard to HIV and AIDS, the policy states that persons affected by HIV will receive social protection from the government, irrespective of whether they are workers or not.

The National Nutrition Policy was developed in 2005 by the Ministry of Health. The overall objective of this policy is to improve the nutritional status of all Rwandans. The policy acknowledges the crucial role of a balanced nutrition on HIV treatment and care. Nutritional care and support for people living with HIV as well as the prevention of HIV transmission from mother to child through appropriate breastfeeding and infant and young child feeding practices are among the specific objectives the policy seeks to achieve.

The National Reproductive Health Policy which was developed in 2003 by the Ministry of Health, has the general objective of reducing maternal and child morbidity and mortality. The promotion of equality between men and women is among the specific objectives of the policy. With regard to HIV related strategies, the policy has identified prevention and treatment of genital infections as one its strategies.

The National Policy on Orphans and Vulnerable Children was developed in 2003 by the Ministry in charge of Social Affairs. This Policy's main objectives are to protect the rights of the child and to ensure the physical and psychosocial long-term development of orphans and other vulnerable children. The policy considers the following categories of children to be at special risk and requiring particular protection and/or assistance: children from child-headed households; children living with foster parents; street children; children affected by armed conflicts; children living under institutional care; children in conflict with the law; disabled children; working children; child victims of exploitation and sexual abuse; children infected /affected by HIV; children of imprisoned mother(s); refugee or displaced children; children from single mothers; children from very poor families; and children forced into early marriage.

In terms of institutional arrangements, in 2011, Rwanda reorganised its institutional architecture to collect several separate governmental health agencies into the Rwanda Biomedical Centre (RBC). The two major actors at national level in the HIV field before the restructuring, the National AIDS Control Commission (Commission Nationale de Lutte Contre le SIDA) and Centre for Treatment and Research on HIV/AIDS, Malaria, TB and Other Epidemics (TRACPlus), became the Institute of HIV/AIDS, Disease Prevention and Control (IHDP/C), serving as an integral part of RBC.

Laws and policies related to the Criminalisation of transmission of HIV

Rwanda does not have a specific HIV and AIDS law. At this stage, the Prevention and Punishment of Gender-based Violence law 59/2008 and in its Article 29 on Penalty for intentionally transmitting a terminal disease, states that any person guilty of intentionally transmitting a terminal disease to someone else shall be liable to life imprisonment. There has not been any prosecution for wilful transmission of HIV in Rwanda.

Laws and policies related to HIV-related Discrimination

Article 11 of the Constitution prohibits all forms of discrimination. Although HIV and AIDS are not specifically mentioned, the wording "...and any other form of discrimination is prohibited..." could be construed to include HIV and AIDS.

The HIV and AIDS National Strategic Plan 2013-2018 stipulates that people infected and affected by HIV have the same opportunities as the general population. Moreover, the strategic plan recommends that the social environment for PLHIV has to be supportive, exempt of discrimination and stigmatization. And for that the legal framework must be clear regarding rights of PLHIV. This impact result aims to ensure that persons infected and/or affected by HIV and AIDS have the same access to services as the rest of the community, and that being infected and/or affected by HIV/AIDS does not constitute a barrier or obstacle to accessing services.

Laws and policies related to HIV testing and disclosure, sexual violence, reproductive health, etc.

The Rwanda reproductive health bill was initiated in 2008. The draft legislation is meant to enable most Rwandans access reproductive health care services, and it lists 14 restrictions but does not prescribe punitive measures nor does it reference itself to the Penal Code, in the event these restrictions were violated. Restrictions include forcibly subjecting a person to sexual intercourse, and forcing ones' spouse to have children against their will, or where, for health or family planning reasons, they do not want to. The legislation stipulates that public health facilities have the obligation of providing free family planning services. The draft law also makes it mandatory for adult Rwandans to adopt reproductive health services to improve quality of life as well as the inclusion of reproductive health education in the national curricula.

However, the bill has the following flaws: (a) it requires physicians conducting HIV testing to violate the principle of informed consent and patient confidentiality (Article 14); (b) it describes offences, like rape, that one would normally expect to find in criminal law, and which may already be covered by Rwandan criminal law (Article 4); and (c) it requires spouses to practise "family planning", though it does not impose the obligation on unmarried couples (Article 12).

On its part, the Rwanda National Reproductive Health policy's priority components include maternal and child health, family planning, prevention and treatment of HIV and other sexually transmitted infections, adolescent reproductive health, prevention and treatment of sexual violence, and increasing women's decision-making authority in family planning and in reproductive health matters.

In 2009, there was a move from the civil society to revise some sections of the Reproductive Health Bill 2008. The offending sections include compulsory HIV testing for people who want to get married, and sterilization for the disabled. These were seen as violations of basic human rights of privacy and reproductive health rights.

Human Rights Watch said that the Reproductive Health Bill, contains three particularly troublesome provisions related to HIV testing. First, it provides that all individuals who plan to marry must undergo HIV testing and provide a certificate beforehand. Second, married individuals are required to be tested for HIV upon the request of their spouses. Third, if a physician finds it “necessary” for a child or an incapacitated person to be tested for HIV, he or she may conduct the test without seeking consent and may show the result to the parent, guardian, or care provider.

In 2012, the Ministry of Health (MOH) Government of Rwanda released a National Strategy on Adolescent Sexual and Reproductive Health and Rights. The strategy prioritizes access to information related to the male and female reproductive systems, sexuality and the stages of sexual development, family planning, sexually transmitted infections, sex, gender, prevention of gender-based violence, risky behaviour of adolescents, alcohol and substance abuse, and post-abortion care.

HIV in the workplace including pre-employment and mandatory HIV testing of employees

The Constitution lays down the principles of the right to free choice of employment as well as the right, with the same competence and ability, to equal pay for equal work article 37 and 38.

Section 4, article 12 of the Labour Code No. 13 of 2009 is on prohibition of discrimination on work matters. It lists the non-discrimination criteria which states: “It shall be forbidden to directly or indirectly make any discrimination aiming at denying the worker the right to equal opportunity or to the salary especially when the discrimination is based upon the following: race, colour or origin, sex, marital status or family responsibilities, religion, belief or political opinion, social or economic conditions, country of origin, disability, previous, current or future pregnancy and any other type of discrimination.”

Laws and policies mentioning sexual and HIV education and access to information

The Education Sector Policy 2003 developed by the Rwanda Ministry of Education, Science, Technology and Scientific Research tells us that the introduction of teaching HIV and AIDS and life skills was initiated in formal and less formal ways in the education system a number of years ago. In primary schools, some teaching has begun on a small scale, concentrated in the P5 and P6 grades, though there is a suggestion that HIV education shall begin in P1. In secondary schools the subject of HIV and AIDS is covered in science lessons to varying degrees. In higher institutions students are given advice about HIV/AIDS during their induction, and some limited counselling facilities exist in some of the Institutions.

The policy goes on to state that the teaching of HIV and AIDS in schools (primary, secondary and tertiary levels) shall take account gender differences and focus on and address the greater vulnerability of girls and women to HIV. It also emphasises that HIV and AIDS life skills education urgently needs to be integrated and incorporated into the national curriculum at all levels of education, with approved text books and teaching materials produced and disseminated across the country. The HIV/AIDS Unit at the Ministry of Education has the responsibility of coordinating interventions by NGOs, international organisations and other partners, in line with the policy on HIV and AIDS in Education which has recently been adopted. The Unit is also responsible for monitoring and evaluation of interventions.

Laws and policies on the rights of key populations

Article 225 of the Rwandan Penal Code states that “Any person who practices the profession of prostitution shall be liable for a term of imprisonment ranging from six months to three years or a fine ranging from 50,000 [US\$81.5] to 500,000 [\$815] Rwanda Francs.” This is despite the fact that sex workers fall into the category of most at-risk populations in terms of HIV infection and transmission, and according to the 2010 Rwanda Behavioural and Biological Surveillance Survey the overall prevalence of HIV among female sex workers was 51 percent—17 times the national average of 3 percent. The survey also found that condom use by sex workers was inconsistent with their paying sexual partners as well as with their chosen partners, and 36 percent of sex workers reported having had at least one sexually transmitted infection symptom in the 12 months preceding the survey.

In 2010, Rwanda removed an article from the Penal Code proposing to criminalise same sex practices. Engaging in same-sex sexual activities is not an offence in Rwanda, and any sort of discrimination is legally prohibited in

Rwanda. A reliable estimate of the number of men who have sex with men does not exist, and Rwanda does not report a percentage of men who have sex with men who are reached by HIV prevention services. In 2011, a study measuring the size of key populations for the HIV response in Rwanda set out to estimate the number of MSM in Rwanda. However, due to reporting and information biases related to the stigmatisation of MSM, the estimated MSM population size (<100–4,700) was noted in the study report to very likely be a large underestimate. A qualitative study in 2009 using snowball sampling found that 52.3% of MSM in Rwanda had used a condom the last time they had anal sex with a male partner. In the same study population, 42.4% had received an HIV test in the past 12 months, a proportion comparable to the testing rate in the general population (CNLS, 2009). Like other countries in the region, including Kenya and Uganda, Rwanda's HIV policy regards prisoners as a group that is most at-risk of contracting and transmitting HIV.²⁰

Laws and policies on gender inequality, harmful gender norms and gender-based violence as it relates to HIV and AIDS

The Constitution of 2003 provides for the establishment of a Gender Monitoring Office that shall be in charge of monitoring to evaluate on a permanent basis compliance with gender indicators within the vision of sustainable development. Further, Article 9, 4° of the Constitution states the equality of all Rwandans and equality between women and men; Article 11 ensures “freedom and equality of all Rwandans with regard to rights and duties, prohibition of all forms of discrimination based, inter alia, on sex”; and Article 16 ensures the “equality of all human beings before the law and the right to equal protection of the law.”

The Law No. 59/2008 of 2008 on Prevention and Punishment of Gender-Based Violence covers and defines conjugal rape as coercing a spouse into sexual relations without that spouse's consent, by way of force, intimidation, tricks and others. Article 5 on conjugal rape states that both spouses have equal rights as to sexual intercourse, reproductive health and family planning. The law forbids sex with one's spouse without the spouse's consent. Rwandan legislation is innovative in the context of marital rape, as many countries in Africa and elsewhere do not recognise rape within the confines of a marital relationship.

Despite this law, however, sexual and gender-based violence remain a challenge in the country, especially for young women and children. To address this issue, the government, in 2010, launched a policy and strategic plan for gender-based violence: the National Accelerated Plan for Women, Girls, Gender Equality and HIV 2010–2014, which was launched specifically to address the needs and rights of women and girls in the HIV response.

Laws and policies on access to care, treatment and services

The Right to Health is found in Article 41 of the 2003 Constitution in Rwanda. In this framework, the Ministry of Health understands the right to health to mean that all opportunities for health and well-being are shared among the entire population, and that there is no geographic, gender, age, or other disparities in accessing health care. In Rwanda, efforts to buoy the health and well-being of all people, including those across categorizations associated with vulnerability, have borne fruit. A community-based health insurance scheme, called Mutuelles de Santé, covers 92% of the entire population; the poorest 25% of Rwandans pay no health care co-payments or premiums. Recent analyses show that Rwanda is on track to achieve the health-related United Nations Millennium Development Goals 3.²¹

Laws and policies on children, HIV and the Law

There are about 1,350,800 orphans and vulnerable children in Rwanda between the ages of 0 and 17. The National Policy for Orphans and other Vulnerable Children 2003, defines a vulnerable child as a person under 18 years exposed to conditions, which do not permit him/her to fulfil her/his fundamental rights for her/his harmonious development. An orphan is a child under the age of 18, who has lost one or both parents.

Article 28 of the Constitution states: “Every child is entitled to special measures of protection by his or her family, society and the State that are necessary, depending on the status of the child, under national and international law.”

20 According to 2006 data, 16.5 percent of imprisoned women and 15 percent of male prisoners were HIV-positive in Kigali Central Prison.

21 According to the UNAIDS country progress report for Rwanda in 2012, by June 2011 the HIV annual report showed that 96,123 people were receiving antiretroviral therapy in Rwanda, including 7,597 infants and children less than 15 years old and 88,526 adults were reported. With an estimated number of 105,190 people eligible for ARV treatment in 2011 (HIV Epi Update-median 2010), 91% of HIV-positive individuals eligible for ARV therapy are receiving this treatment. Data however remain relatively scarce on the most at-risk populations, including sex workers, men who have sex with men and on people who use/inject drugs.

The national policy further states that there are indications that the situation of OVC is worsening. The HIV infection rate suggests that the number of vulnerable children will increase along with child headed households. These growing numbers of vulnerable children will pose a problem to the traditional ways of incorporating vulnerable children into the extended family structure. This coupled with the lack of other services, will expose increasing numbers of children to rights abuses including exploitation through harmful labour and sexual abuse. The National Policy, concerned with the plight of children affected and infected by HIV and AIDS recommends that as institution-based solutions are not feasible, community-based approaches present the only possibility to establish safety nets and to support the big number of vulnerable children. It also recommends to avoid distinguishing between the different categories of orphans in support programmes to avoid stigma associated with AIDS.

Laws and policies on customs, traditions and religion and their relation to HIV and AIDS

Article 15 of the Constitution in states that every person has the right to physical and mental integrity, and goes on to state categorically that “No person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment”. Despite Constitutional and legal provisions, certain harmful cultural and traditional practices continue, which have the potential of exposing people to the risk HIV infection.

Traditionally, children who have lost their mother are breastfed by another woman in their family or community. Although the child will continue to have breast milk, the national guidelines for food and nutritional support and care for people living with HIV/AIDS in Rwanda guards against this practice due to the possible transmission of the virus from the wet nurse to the infant.

In Rwanda widows may be forced to have intercourse with a close male relative (i.e. brother or cousin) of her deceased husband to achieve the purification intended from the ceremony. This ceremony, which may occur more frequently during periods of elevated mortality in conflict situations, places the economically vulnerable widow at an elevated risk of HIV transmission, and clearly in contradiction to Article 10 and Article 11 of the Law on Prevention and Punishment of Gender Based Violence.

Laws and policies dealing with HIV in conflict and Post-conflict settings

Article 13 of the Constitution states that the crime of genocide, crimes against humanity and war crimes do not have a period of limitation. The Law on Prevention and Punishment of Gender Based Violence on its part prohibits rape and sexual violence in any form. However, despite the lessons learned from the past, the legislator in Rwanda has not specifically catered for HIV and AIDS in conflict and post-conflict settings.

Laws and policies on migration and cross-borders movements and their implications on access to health

There are no specific entry or residence regulations for people with HIV/AIDS. Neither a medical certificate nor an HIV test result is required when entering the country. Foreigners with a known HIV infection are not subject to specific residence regulations. There are no regulations regarding the control, deportation or expulsion of those concerned. Article 25 of the Constitution states that: “The right to asylum is recognized under conditions determined by the law. The extradition of foreigners shall be permitted only insofar as it is consistent with the law or international conventions to which Rwanda is a party”. The above article read together with Article 42 which states that: “Every foreigner legally residing in the Republic of Rwanda shall enjoy all rights save those reserved for nationals as determined under this Constitution and other laws”, could be construed as an implied right to access to medical facilities for non-Rwandans.

Laws and policies on insurance as they relate to HIV and AIDS

Discriminatory treatment based on HIV/AIDS in the insurance sector must be regulated by the State either because this sector is considered as quasi-public, or because the discrimination is of a “systemic” nature. The State must take action to comply with its obligation to protect. In the context of Rwanda, there are no specific laws and / or state policies addressing health insurance matters in the context of HIV and AIDS.

2.3 HIV and AIDS in the United Republic of Tanzania

The first three cases of HIV in Tanzania were reported in 1983 from the Kagera region and since then over 2 million people have been infected. By 1986 all the regions in Tanzania Mainland reported cases. By the end of 1999 there were some 600,000 cases of HIV and AIDS and a similar number of orphans. The Tanzania HIV/AIDS and Malaria

Indicator Survey (THMIS) 2011–2012 tell us that overall 5.1% of the Tanzanian population aged 15–49 years are infected with HIV. The HIV prevalence among this age group has reduced from 5.7% in 2007–2008 to 5.1% in 2011–2012. The 2011–2012 THMIS also found that more women in this age group (6.2%) are infected with HIV than men (3.8).²²

Legal, policy and institutional framework

The Constitution of the United Republic of Tanzania guarantees to everyone the right to enjoy their fundamental human rights. The Chapter on basic rights and duties covers a range of human rights including the right to access education (Article 11), equality of human beings (Article 12), equality before the law including freedom from discrimination (Article 13), the right to life (Article 14), the right to personal freedom (Article 15), the right to work (Article 22) among others.

The legal framework covering HIV and AIDS in Tanzania, is the HIV and AIDS (Prevention and Control) Act 2008 (HAPCA) which provides for prevention, treatment, care, support and control of HIV and AIDS, for the promotion of public health in relation to HIV and AIDS, and for the provision of appropriate treatment, care and support using available resources for people living with or at risk to HIV and AIDS.

The National HIV and AIDS Policy (2012) further emphasize the importance of respect for the human rights of PLHIV, as stipulated in the Constitution of the United Republic of Tanzania. Specifically the policy commits to enhancing measures that ensure all civil, legal and human rights for men, women, boys and girls living with HIV and AIDS, in accordance with the URT Constitution and other International Conventions.

The Third National Multi-Sectoral Strategic Framework for Mainland Tanzania 2013/14–17/18 (NMSF III) provides a common understanding for all HIV and AIDS stakeholders and reflects current normative guidance in the national response effort. The NMSF III recognizes that while the national average adult HIV prevalence rate has declined over the last ten years, HIV transmission rates among key populations, women, and in certain regions are not being adequately controlled. Further, there has not been a significant decline in overall HIV prevalence over the periods covered by the last two THMIS surveys. The comprehensive needs of PLHIV are often not being met; stigma and discrimination still prevail; and the coordination of the national response is not resulting in all necessary services being available to those who need them. It is with this in mind that the NMSF III aims towards the long term goals of elimination of new HIV infections, deaths from HIV, and HIV-associated stigma and discrimination. Specifically, the NMSF III aims to achieve the following three overarching results by 2018: a HIV incidence rate of no more than 0.16% (from a baseline of 0.32% in 2012), a significant reduction in AIDS-related deaths, and a reduced HIV related stigma and discrimination among PLHIV in the society.

In terms of institutions, the Tanzania Commission for AIDS (TACAIDS) was established by the announcement made by the President on 1st December 2000. The first step was the enactment by the Parliament of a law establishing Tanzania Commission for AIDS, Act No. 22 of 2001. This step was taken so as to ensure that the Government of the United Republic of Tanzania has an institution that is legally mandated to provide strategic leadership and to coordinate and strengthen efforts of all stakeholders involved in the fight against HIV/AIDS.

In Tanzania, institutional efforts to combat HIV/AIDS started in 1985 by establishing a National Task Force within the Ministry of Health. In 1988 this task force was transformed into the National AIDS Control Programme which was launched in April 1988.

Laws and policies related to the Criminalisation of transmission of HIV

Article 47 of the HIV and AIDS (Prevention and Control Act) 2008 states that any person who intentionally transmits HIV to another person commits an offence and on conviction shall be liable to imprisonment to a term of not less than five years and not exceeding ten years. The act also requires anyone who has knowledge of being infected with HIV after being tested to immediately inform his/her spouse or sexual partner of this fact and to take reasonable measures and precautions to prevent the transmission of HIV to others.

The National Policy on HIV and AIDS 2012 on its part states that communities and individuals have the right to legal protection from wilful and intentional acts of spreading HIV.

Laws and policies related to HIV-related Discrimination

Article 28 of the HIV and AIDS (Prevention and Control) Act 2008 states that a person shall not formulate a policy,

22 THMIS 2011–2012 (2013). Available at: <http://dhsprogram.com/pubs/pdf/AIS11/AIS11.pdf>

enact any law or act in a manner that discriminates directly or by its implication persons living with HIV and AIDS, orphans or their families. Article 29 of the Act prohibits all medical practitioners from discriminating anyone when providing medical services based on their HIV status, and clearly prohibits discrimination. The Act further states that laws and policies should be formulated /enacted in such a way that they do not discriminate against people living with HIV, orphans and those affected by HIV. Article 30 on its part, prohibits stigmatisation and discrimination in any manner any other person on the grounds of such person's actual, perceived or suspected HIV and AIDS status.

The Employment and Labour Relations Act 2004 prohibits discrimination at the workplace and promotes equal opportunities for all. The law states various grounds for non-discrimination including sex, gender, pregnancy, disability, HIV and AIDS status and age. The Act further prohibits discrimination in trade unions and employer associations in its admission, representation or termination of membership, in any employment policy or practice or in any collective agreement.

The National Policy on HIV and AIDS 2012 stipulates that people living with HIV and AIDS have the right to comprehensive protection, including legal protection, against all forms of discrimination and human right abuse.

The National Guidelines on Prevention of Mother-to-Child Transmission of HIV 2013 recognises the adverse effects of stigma and discrimination and the role they play in fuelling the HIV epidemic in Tanzania. The guidelines further point out that discrimination towards PLHIV leads to loss of fundamental human rights, social status and decision-making power in the household and community. The guidelines recommend particular care from health care workers when delivering PMTCT services and more importantly asks them to be aware of their own stigmatising attitudes towards PLHIV.

The Tanzania Elimination of Mother-to-Child Transmission of HIV plan 2012-2015 highlights the current status of implementation of the PMTCT programme and areas where progress has been made towards achievement of eMTCT targets. It sheds light on some of the major bottlenecks that have affected programme implementation and proposes targets, strategies and resources that will facilitate achievement of virtual elimination of new infection among children in Tanzania. The plan also informs the equity focused programming for eMTCT and guide priority setting for cost efficient interventions that will lead to elimination of new infections among children and keep their mothers alive.

Laws and policies related to HIV testing and disclosure

The Constitution of the United Republic of Tanzania, (1977), strives to preserve the dignity of its entire people. The rights to privacy is also enshrined in Article 16 of the Constitution. Pursuant to these, HIV testing and counselling should be conducted on the basis of choice, consent and confidentiality. There should therefore not be any coercion when it comes to counselling and testing for HIV.

Article 15(1) of HAPCA states that every person residing in Tanzania may on her or his own volition volunteer to undergo HIV testing. With the exception of children and people unable to give their consent and with the provision that an HIV test is necessary as prescribed in article 15(2), no one should be forced to undertake an HIV test as prescribed under Article 15 (3). To these exceptions, Article 15 (4) speaks of HIV testing which is made under a court order, or on a donor of human organ and tissues and on sexual offenders.

Tanzania has also guidelines on Clinical Management of HIV and AIDS 2012, the National Guidelines for Voluntary Counselling and Testing 2013 and the Guidelines for HIV Testing and Counselling in clinical settings 2013 which are all against mandatory testing. On the issue of disclosure, Article 16 (1) of the HAPCA states that results are confidential and shall be released only to the person being tested. In addition, article 16 (2) states that tests results may be released to: (a) in a case of a child, his parent or recognised guardian; (b) in case of person with inability to comprehend the results, his spouse or his recognised guardian; (c) a spouse or sexual partner of an HIV tested person; or (d) the court, if applicable.

Laws and policies on sexual and reproductive health

The Tanzanian Constitution guarantees the right to life in Article 14, but it does not have an explicit article on the right to health. However, the State commitment for the wellbeing of the people has been expressed under Article 8 (b), stating that "...the primary objective of the Government shall be the welfare of the people".

In spite of the Constitution and legal disposition on the rights to sexual and reproductive health, some outdated legislation still exist and these may undermine the efforts against HIV and AIDS in Tanzania. For instance, the Law of Marriage Act of 1971 allows girls to get married at the age of 14 or 15 "under special circumstances". Similarly, the Education Act of 1978 does not include protective measures for girls who become pregnant while in school. Lastly,

the Public Health Act of 2009 does not explicitly provide for the enforcement of the right to health.

HIV in the workplace including pre-employment and mandatory HIV testing of employees

The general principle, as discussed in previous sections, is that no one shall be discriminated against based on their perceived or actual HIV status. The right to work of “every person” and the “right to just remuneration” are enshrined in Articles 22 and 23 of the Constitution of the United Republic of Tanzania. No one shall be denied employment and the continuation of the latter solely based on HIV status.

The Employment and Labour Relation Act of 2004 noting that HIV and AIDS have a serious impact on society and economies, on the world of work in both the formal and informal sectors, on workers, their families and dependants, on the employers’ and workers’ organizations and on public and private enterprises, has provisions for protecting the rights of workers with HIV at work place. Section 7 of the Act provides among others that: “7(1) (E)very employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice. 7(2) An employer shall register, with the Labour Commissioner, a plan to promote equal opportunity and to eliminate discrimination in the work place. 7(4) No employer shall discriminate, directly or indirectly, against an employee, in any employment policy or practice, on any of the following grounds: (m) HIV/AIDS; (n) Age; or (o) station of life.”

Article 9 of the HAPCA states that every employer in consultation with the Ministry shall establish and coordinate a workplace programme on HIV and AIDS for employees under his control and such programme shall include provision of gender responsive HIV and AIDS education, distribution of condoms and support to people living with HIV and AIDS.

Laws and policies mentioning sexual and HIV education and access to information

Article 11 of the Constitution in guarantees the right to access education in general. Article 7 of the HAPCA has provisions for public education and programmes on HIV and AIDS, and says that “7(1) it shall be the responsibility of the ministry to consult the respective local government authority and other relevant stakeholders with a view to formulating education and programmes relating to prohibition of stigma and discrimination against persons living with or taking care of patients living with HIV and AIDS. Similarly, Article 8 provides that the Ministry, health practitioners, workers in the public and private sectors and NGOs, shall for the purpose of providing HIV and AIDS education to the public, disseminate information regarding HIV and AIDS to the public. Sub-section 3 is to the effect that every institution providing HIV and AIDS information, whether public or private, shall ensure that the information to the public is provided in appropriate format, technology and is accessible to disabled persons. Finally, the National Policy on HIV and AIDS 2012 emphasizes the importance of education and information in fighting HIV and AIDS.

Laws and policies on the rights of key populations

In the Tanzanian context, key populations include PLHIV, as well as sero-discordant couples, sex workers and their clients, men who have sex with men, women who have anal sex, and people who use drugs. Other vulnerable groups who may also be among those at higher risk for HIV exposure or transmission include women and girls, youth, people in conflict and post-conflict situations, refugees and internally displaced persons, migrant labourers, and people working in mining and fishing industry and their surrounding communities. Recent studies conducted in various regions in Tanzania showed varying degrees of HIV prevalence among key population groups, with the prevalence of MSM, FSW, and PWUD all significantly above the national average.²³ In Tanzania, other population groups that deserve special consideration in HIV programming include prisoners, long-distance truck drivers, disabled people, fishing communities, people in mining industry, and women and children.

Same sex activities are illegal under the Penal Code 1945 and punishable by life imprisonment even though MSMs are twice as likely to be HIV positive as the general population in Tanzania. However, Tanzania criminalizes the activities of all three groups. Consensual “carnal knowledge against the order of nature” is punishable in mainland Tanzania by a minimum of 30 years and a maximum of life in prison, while “gross indecency” between males is punishable by five years in prison.

Engaging in sex work is illegal in both mainland Tanzania and in Zanzibar. Tanzania’s penal code punishes with three months in prison “loitering or soliciting in a public place for the purposes of prostitution.”²⁴

23 Country Progress Reporting, Part A: Tanzania Mainland, 2012

24 Tanzania Penal Code article 176 (a). CAP 16 2002.

Personal consumption of narcotic drugs and psychotropic substances is prohibited in both the mainland and in Zanzibar, with sentences ranging from seven to ten years.²⁵

In spite of the above laws, the National Voluntary Counselling and Testing Guidelines 2013 enhances the right of MSM to access healthcare by providing that VCT services shall be provided without discrimination based on a number of grounds including sexual orientation. In the same vein, the NMSF III recognises that stigma and discrimination against people who use drugs, sex workers and MSM remains high, posing a significant challenge to outreach and delivery of friendly health services. On MSM the NSMF III acknowledges that given the criminalisation of consensual adult homosexual intercourse, the multi-sectoral national response requires significant cooperation from all key stakeholders to ensure that MSM are reached with HIV and AIDS services.

The Prisons Act, 1967 as amended in 2008 does not directly focus on HIV/AIDS issues, but it contains provisions that address matters associated with the prevention of the spread of the disease. For example, the law requires every prison to have a responsible medical officer who shall be responsible for the health of all prisoners and shall cause all prisoners to be medically examined at such times as may be prescribed.

Laws and policies on gender inequality, harmful gender norms and gender-based violence as it relates to HIV and AIDS

The Law of Marriage Act, Revised 2002 has various loopholes which allow abuse and infringement of women's rights. The Law recognizes customary law which impinges on women's right to equal division of property when husband and wife divorce or legally separate. It does not speak about domestic violence which is rampant in many marriages; and it allows early marriages where girls at the age of 15 years can be married with consent from parents or guardians. The Anti-Trafficking in Persons Act, 2008 is not explicit about the trafficked persons within the country where especially girls from the rural areas are sent into towns and cities for domestic labour and sexual exploitation, and is not implemented with rigour.

In the Sexual Offences Special Provision Act 1998 marital rape has not been considered.

In the Village Land Act 1999 there is a clause on application for customary right of occupancy in village land which states that "A person, a family unit, a group of persons-... may apply to the village council of that village for a customary right of occupancy". This clause does not instantaneously enable women to be involved in the process for applying customary rights of land occupancy due to preventive traditional values and customs.

The HIV and AIDS (Prevention and Control Act) 2008 makes a requirement for mainstreaming gender into HIV and AIDS plans. The Law in Article 15 (5) states that pregnant women and the men responsible for the pregnancies be offered voluntary HIV testing but there is no mechanism in place to enable men to comply.

Laws and policies on access to care, treatment and services

Article 19 of the HIV and AIDS (Prevention and Control) Act 2008 guarantees access to health care to people living with HIV and AIDS, vulnerable children and orphans using available resources and such services to be provided free of discrimination both in public and private healthcare facilities. The Act also stipulates in article 19 (2) that every CBO, private organisation and FBO dealing with HIV and AIDS matters shall in consultation with the local government authority in the area of its jurisdiction, provide community based HIV and AIDS prevention, support and care services. The government has the responsibility to ensure the availability of ARVs and other services and medication and those exposed to the risk of infection.

The National Policy on HIV and AIDS 2012 stipulates that PLHIV have the right to comprehensive health care. Under the Tripartite Code and Conduct on HIV and AIDS at the workplace in Tanzania Mainland, food allowances are provided.

Laws and policies on children, HIV and the Law

Article 11 of the Constitution guarantees to right to access to education in general. Article 19 of the HAPCA 2008 makes specific mention of vulnerable children and orphans under health and support services.

The Law of the Child Act, approved by the Tanzanian Parliament in November 2009 enshrines fundamental rights of children and lays the foundation for a child protection system that will oblige a range of bodies to prevent and respond

25 The Laws of Tanzania, Chapter 96. The Drugs and Prevention of Illicit Traffic in Drugs Act, 1995, art. 17; Drugs and Prevention of Illicit Traffic Drugs Act, 2009 (Zanzibar), sections 15(1)(c), 15(2), 16

to violence, abuse and exploitation of children.

In 2004 the Ministry Education developed a policy on HIV and AIDS education titled Guidelines for Implementing HIV/AIDS and Life-Skills Education Programmes in Schools (URT, 2004). The objectives of the guidelines are twofold: firstly, to mainstream the teaching of HIV and AIDS education in schools and other educational institutions. Secondly, to guide and control the amount and type of HIV/AIDS information and materials that should reach school premises and classrooms. Each organisation that intends to implement any form of sexuality education in schools is required to follow these guidelines. Through this policy, the government of Republic of Tanzania has committed itself to ensuring that HIV/AIDS/STIs preventive education is accessible to all schools and other educational institutions in the country.²⁶

The National Plan of Action for the Prevention and response to Violence against Children (2011-2015) is Tanzania's Multi- Sector Task Force on Violence against Children, led by the Ministry of Community Development, Gender and Children. The Plan is responsible for guiding the Violence against Children survey and overseeing the development and implementation of a National Plan of action to prevent and respond to violence against children, involving the police, justice system, health and social welfare services, HIV and AIDS sector, education and civil society.

Laws and policies on customs, traditions and religion as they relate to HIV and AIDS

The Tanzanian Constitution as amended from time to time states in its Article 12(1) that all human beings are born equally and are all equal. Article 15 protects the right to personal freedom while Article 16 protects the right to privacy and personal security. Article 13(1) ensures equality before the law for all its citizens, and Article 64(5) states that any law that shall contravene the Constitution shall to that extent of contravention be null and void and that the Constitution shall prevail.

The NMSF III notes that although Tanzania has positive traditional practices which help to mitigate the impact of HIV and AIDS, such as strong extended family support structures and social sanctions, there are also risky traditional practices that hinder the effectiveness of the national response. These include wife inheritance by a male relative of the deceased husband, female genital mutilation, early or child marriages, and limited property rights for widows. HIV prevalence among widows aged 15 and 49 years is estimated at 24.7%.²⁷

Laws and policies on HIV management during conflicts and Post-conflict settings

There is a complex linkage between gender based violence (GBV) and HIV. Sexual violence is exacerbated in time of conflict and post conflict situations. Although Tanzania is relatively calm, it is affected by the political and social instability that occur in the region. The country however does not have a policy to effectively deal with the adverse impact of conflicts and post-conflict situations with a specific reference to HIV and AIDS.

Laws and policies on migration and cross-borders movements and their implications on access to health

The United Republic of Tanzania does not have restriction on a person's freedom of abode, lodging or travel within or outside Tanzania. A person shall not be denied or restricted on the grounds only of the person's actual, perceived or suspected HIV status. No person shall be quarantined, placed in isolation refused lawful entry or deported from Tanzania on the same grounds listed above.

2.4 HIV and AIDS in Zanzibar

Zanzibar is a semi-autonomous part of Tanzania. It is composed of the Zanzibar Archipelago in the Indian Ocean, 25–50 kilometres off the coast of the mainland. As a semi-autonomous part of Tanzania, Zanzibar has its own government, known as the Revolutionary Government of Zanzibar. It is made up of the Revolutionary Council and House of Representatives.

²⁶ K Mkumbo (2009). Content analysis of the status and place of sexuality education in the national school policy and curriculum in Tanzania.

²⁷ Note: A comparison of Tanzania Demographic and Health Survey (TDHS) 2004 data and TDHS 2010 shows that the proportion of married young women aged 15-19 years fell by 20% while, pregnancy and childbirth among young women of this age dropped by more than 12%. Nevertheless, despite the gains, one in six young women aged 15-19 is married. In addition, young women and girls face significantly higher risk of death from pregnancy and delivery-related complications.

The first three cases of AIDS were officially reported from Zanzibar in 1986. Zanzibar has a concentrated epidemic, with higher infection rates in key populations compared to 1.0% in the general population (THMIS 2012). The prevalence among men who have sex with men is 2.6%, among sex workers is 19.3%, and among people who use drugs is 11% (ZIHTLP 2012). An increase of HIV infection from 0.6% in 2008 (THMIS) to 1% in the general population in just 4 years is very alarming (THMIS 2008, 2012). HIV infection is also significantly higher in women compared to men (0.9 men, 1.1% women aged 15-49 years; THMIS 2012). It is estimated that there are about 7200 people living with HIV in Zanzibar (THMIS 2012).

Legal, policy and institutional framework on HIV and AIDS in Zanzibar

The Constitution of the Revolutionary Government of Zanzibar 1984 as amended in 1990, 1992 and 2002 lays down the protection of fundamental rights and individual freedoms in Chapter 3. Amongst which are included, equality (Art. 11), equality before the law (Art. 12), privacy and personal security (Art. 15), freedom of movement (Art. 16), right to freedom of religion (Art. 19), freedom to participate in public affairs, and the right to work and receive remuneration (art. 21).

The Constitution in chapter 2, section 10 (6) states that the Revolutionary Government of Zanzibar (RGoZ) shall direct its policies towards ensuring that every person has access to adequate health care, equal opportunity to adequate education for all and that Zanzibar culture is protected, enhanced and promoted.

The Zanzibar HIV and AIDS Prevention and Management Bill 2011 provides a well-articulated rights-based framework for managing HIV and AIDS in the country, and is consistent with international and regional human rights norms, standards and guidance for best practice approaches to managing the epidemic. It echoes many of the provisions of the EAC HIV and AIDS Prevention and Management Bill 2012, including provisions for a comprehensive public health response to HIV and AIDS protection of the basic human rights of vulnerable and key populations affected by HIV and AIDS. The Bill does not have a provision criminalising HIV transmission and therefore strengthens an evidence-based and rights-based approach to managing HIV and AIDS.

In 2002 RGoZ established the Zanzibar AIDS Commission (ZAC) with the mandate of leading, managing and coordinating the National Multisectoral Response to HIV in Zanzibar through the development and implementation of the five year Zanzibar National HIV&AIDS Strategic Plan 2004/5–2008/9 (ZNSP). Today, Zanzibar has mobilized all the sectors and achieved a lot in implementing the ZNSP. The ZNSP recognises the need for intensifying Monitoring and Evaluation of the national HIV&AIDS response in the Isles. As such ZAC, with main support from The World Bank, UNAIDS, and other stakeholders has established and has commenced to implement key components of a comprehensive national multisectoral HIV M&E system.

The RGoZ adopted the Zanzibar National HIV Strategic Plan (2004/5–2008/9) in 2005 (ZNSP-I). The consequent publishing of the Zanzibar HIV and AIDS Programme Monitoring System (ZHAPMoS) guidelines was an important milestone for the Zanzibar AIDS Commission (ZAC). In 2006, the RGoZ approved the National HIV/AIDS Policy. The comprehensive policy addresses every aspect of the HIV response including the issue of key populations. The policy also calls for a house-to-house anti-HIV educational campaign, and includes instruction on how to prevent HIV in school curriculum and encourages the use of condoms. The Zanzibar National HIV Strategic Plan II (ZNSP-II) 2011–2016 has been formulated to guide the national HIV response and builds on the efforts and achievements of the ZNSP-I (2005–2009). The ZNSP-II development benefitted from the broad participation of implementing partners, communities infected and affected by the epidemic and development partners. In addition, there is the Zanzibar Health Sector Strategic Plan for the three (3) year period of 2011–2014 drafted by the Zanzibar AIDS Control Program (ZACP).

In 1996 The Zanzibar NGO Cluster for HIV and AIDS Prevention and Control (ZANGOC) was legally established as an umbrella organization with the aim of strengthening and collaborating with all HIV and AIDS related NGOs, Community Based Organizations (CBOs) and Faith Based Organizations (FBOs) in Zanzibar. As an umbrella organization, ZANGOC has built collective efforts through its member organizations to combat HIV and AIDS in Zanzibar. In 2011 ZANGOC updated its vision and mission and, while continuing to combat HIV and AIDS, has expanded to address issues of malaria, TB, drug abuse and environmental conservation in Zanzibar.

The RGoZ has established a good enabling environment as one of the critical components to address the HIV epidemic. The enabling environment includes the development of guiding tools (i.e. national policy, strategic plan, M&E framework and tools, advocacy strategy) and orientation of stakeholders to these tools and guides. Besides, the RGoZ through ZAC endeavoured to broaden and clear more space for partnership between government ministries, departments and agencies, development agencies and with other stakeholders.

Other related strategies include the National HIV Advocacy and Communication Strategy 2006-2009; the Health

Sector HIV Strategic Plan; the HIV and AIDS Strategic Plan for Substance Abuse; National HIV Monitoring and Evaluation Operational Framework; and strategies for UWAKUZA and for ABCZ (Joint Review Report 2007). These documents have been important guiding tools in the development of the annual implementation plan of HIV responses by the public sector, and by both non-profit and private organizations. The RGoZ through the ZAC also launched a joint review of the HIV epidemic in 2007. It is clear that the Government of Zanzibar has a bill, policies and a variety of strategies, in accordance with international human rights standards as far HIV and AIDS are concerned.

Criminalisation of transmission of HIV

The Zanzibar HIV Bill is silent on criminalisation of wilful transmission of HIV and it could be taken to mean that, Zanzibar focuses on prevention, fight against stigma and discrimination rather than on laws criminalising people who infect others with HIV. There is no recorded case of prosecution for intentional HIV transmission in Zanzibar. However, the existing criminal laws could be invoked if such a case is brought to court.

HIV-related Discrimination

Article 11 and 12 of the Constitution covers the right to dignity and freedom from discrimination. Article 25 of the Constitution further secures Zanzibar citizens their rights and duties to “enjoy fundamental human rights and personal freedom provided that personal freedom” regardless of their gender, tribe, social status, etc. It also assures citizens of their rights to live, to individual freedom, freedom of thought, of expression and of assembly and association; and ensures their rights to domestic privacy and protection of one’s property.

The Zanzibar HIV and AIDS Prevention and Management Bill defines discrimination as distinction, exclusion or restriction made on the basis of the actual or perceived HIV status of a person living with or affected by HIV which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by that person on a basis of equality with other members of the community, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The Bill prohibits discrimination generally and under various provisions including in employment, in educational institutions, in public service, in insurance, in travel and habitation and in health institutions. The ZNSP-II notes that stigma and discrimination are major challenges in the fight against HIV and AIDS. Related challenges include negative attitudes among health care workers that hamper accessibility and utilisation of existing services by key populations; homophobia and unfriendly environment at service delivery points which affect service utilisation and accessibility to key populations. It further notes levels of self-stigmatisation of PLHIV.

HIV testing and disclosure

The general human rights standard as far as HIV testing and disclosure is concerned is that no one shall be tested without their consent. The Constitution under the right to privacy in article 15(1)(2) states that “Every person is entitled to respect and protection of the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communication.” Every Zanzibar citizen has a right to privacy including the right to keep his or her HIV results confidential and cannot be compelled to get tested except in special circumstances as laid down by the law. Under article 21 of the HIV Bill, with the exception of a court order upon an offence of a sexual nature, no one should be subjected to compulsory HIV testing. The Zanzibar HIV and AIDS Prevention and Management Bill 2011 also states that a child or a person with a disability which renders the person incapable of understanding the meaning or consequences of the test results may be tested without consent and the results disclosed to the parents or the guardian of that child or that person and to any other person who is likely to be affected by the results of the test. The Bill further states that an HIV test should be carried out by a healthcare provider approved by the minister for that purpose. The Bill prohibits compulsory testing and underscores that every HIV test result shall be confidential.

HIV in the workplace including pre-employment and mandatory HIV testing of employees

Article 21(3) of the Zanzibar Constitution states that every Zanzibar citizen has the right to work and is entitled to equal opportunity and right on equal terms to hold any office or discharge any function under the state authority of Zanzibar. Article 21(4) stipulates that every person, without discrimination of any kind, is entitled to remuneration commensurate with his/her work and all persons working according to their ability shall be remunerated according to the measure and nature of the work done.

The Employment and Labour Relations Act of Zanzibar 2005 prohibits all forms of discrimination from employers towards employees. Therefore, no one can be tested for HIV prior to and during the continuation of employment.

Article 21 of the Bill prohibits testing as a pre-condition to, or for continued enjoyment of any employment. The article also covers prohibition of compulsory testing in marriage, admission into any educational institution, on entry into or travel out of Zanzibar or in the provision of healthcare, insurance cover or any other services.

HIV education and access to information

Article 6 of the HIV Bill encourages the government to promote public awareness about the nature, causes, modes of transmission, consequences and means of prevention, control and management of HIV and AIDS for all persons and groups. The provision goes further to state in Article 6(e) that education and information campaigns shall be carried out in schools and other institutions of learning, prisons and places of detention, in places of worship, workplaces, amongst the police and military forces and in rural and urban communities.

The rights of vulnerable populations and key populations

The HIV Bill defines most at risk population as any groups of persons who because of their particular personal, behavioural, situational or environmental characteristics are or perceived to be at an increased level of risk of exposure to infection with HIV. Under the Article 33 of the Bill, the following categories fall under most at risk population. Children, woman and girls, persons with disabilities, and prisoners. The bill also includes other most at risk populations not specifically mentioned in the Bill.

On its part, the ZNSP II defines key populations as injecting drugs users, female sex workers, students in the Institute of Education for Offenders (correctional facilities) and men having sex with men. The HIV prevalence in each of these groups is higher than in the general population. The latest available HIV prevalence rates for key population in Zanzibar are as follows: MSM 2.6%, FSW 19.3%, IDU 11.3% (IBBS, 2011/2012).

The Zanzibar Penal Code of 1934, as amended in 2004, provides for a number of punitive provisions. For example, Section 132(1) says “Any person who carnally knows any boy is guilty of an offence and shall on conviction be liable to imprisonment for life” And Sec. 132(2) says “Any person who attempts to have carnal knowledge of any boy is guilty of an offence and shall on conviction be liable to imprisonment for a term not less than twenty-five years”. However, despite of the criminalisation of same sex relationships (section 150, 153, 154, 158), substance use and sex work in the Penal Code 1932 as revised in 2004, the ZNSF II, ZANGOC and the NSF 2011–2016 covers key populations.

In conclusion despite criminalisation of three key population groups (PWUD, MSM and SW), the HIV policies and strategic frameworks have laid down inclusive provisions to reach these groups. Other groups falling under the umbrella of key population in Zanzibar are equally protected by legislative, policy and institutional framework.

Laws and policies on gender inequality, harmful gender norms and gender-based violence as it relates to HIV and AIDS

Key provisions in the Constitution of Zanzibar (e.g. Chapter 3, Articles 11, 12 and 15, etc.) clearly task the State with the duty to protect every citizen including women and the girl child from any inequality, gender-based violence and social and cultural norms that may put them at risk in terms of the full enjoyment of their human rights,

The Sexual Offences (Special Provisions) Act 1998 was passed and adopts a gender-sensitive language and provides punishments for violence, abuse, trafficking of women and children. Additionally, Article 34 of the HIV Bill states that the government shall ensure that women and girls regardless of their marital status, (a) Have equal access to adequate and gender sensitive HIV related information and education programmes, means of prevention and health services including women-specific and youth-friendly sexual and reproductive health services for all women of reproductive age and women living with HIV; (b) Are protected against all forms of violence as well as against traditional practices that may negatively affect their health; and (c) Have equal legal rights in all matters and are not discriminated against on the ground of their sex, or their actual, perceived or suspected HIV status. The section goes further to state that the ministry in charge of gender and health shall develop strategies, policies and programmes that respect, protect and fulfil the human rights of women and girls in the context of HIV.

Access to care, treatment and services

Chapter 2, section 10(6) of the Constitution states that the RGoZ shall direct its policy towards ensuring that every person has access to adequate health care, equal opportunity to adequate education for all and that Zanzibar culture is protected, enhanced and promoted.

The Zanzibar HIV Bill states that a person shall not be denied access to healthcare services in any health institution,

or be charged a higher fee for any such services on the grounds only of the person's actual, perceived or suspected HIV status. Moreover, the bill states that the government shall take appropriate measures to provide treatment, care and support to persons living with HIV including providing access to affordable anti-retroviral therapy and other essential medicines and prophylaxes to treat or prevent HIV or opportunistic infections.

Migration and cross-border movements and their implications on access to health

The Zanzibar HIV Bill states that a person's freedom of abode, lodging or travel within or outside Zanzibar shall not be denied or restricted on the grounds only of the person's actual, perceived or suspected HIV status. No person shall be quarantined, placed in isolation refused lawful entry or deported from Zanzibar on the same grounds listed above. The Bill further states that the actual perceived HIV status of a person shall not constitute the only reason to deny or exclude a person from gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.

Children, HIV and the Law

The Children's Act 2011 enshrines fundamental rights of children and lays the foundation for a child protection system that will compel a range of bodies respond to and to prevent violence, abuse and exploitation of children. The Sexual Offences (Special Provisions) Act 1998 also prohibits trafficking of children, child prostitution and all other sexual offenses that further put children in a vulnerable position. The HIV Bill too covers children under its MARPS section.

Customs, traditions and religion and HIV

Chapter 2, section 10 (6) of the Constitution states that the RGoZ shall direct its policy towards ensuring that Zanzibar culture is protected, enhanced and promoted. Human interactions are governed by a range of laws including the Marriage and Divorce Muslim Registration Act (Muslim Act). Some customs and traditions have been taken into account in favour of fighting HIV in Zanzibar. For instance traditional birth attendants are trained on HIV risks during childbirth, on VCT and about PMTCT. Traditional leaders are also included in trainings on HIV education.

Laws and policies relating to conflict and post-conflict settings

Zanzibar does not have a law or policy dealing specifically with HIV and AIDS in time of conflict and post-conflict situations.

Laws and policies on insurance as they relate to HIV and AIDS

The Zanzibar HIV Bill states that the actual or perceived HIV status of a person shall not constitute the only reason to deny or exclude a person from gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.

Laws and policies on migration and cross-borders movements and their implication on access to health

The Zanzibar HIV Bill states that a person's freedom of abode, lodging or travel within or outside Zanzibar shall not be denied or restricted on the grounds only of the person's actual, perceived or suspected HIV status. No person shall be quarantined, placed in isolation, refused lawful entry or deported from Zanzibar on the same grounds listed above.

2.5 HIV and AIDS in Uganda

Data from Uganda AIDS Indicator Survey (UAIS) 2011 indicate that the HIV prevalence among Ugandan adults is 7.3 percent, with the prevalence being higher among women (8.2 percent) than among men (6.1 percent). The overall HIV prevalence also increased from 6.4 percent observed in 2004–05. HIV is much more common among women and men who are widowed, divorced, or separated than among those who are married or never-married. Six percent of co-habiting couples in Uganda are sero-discordant, and less than one percent of children under age 5 tested positive for HIV during this period. Between 2004–05 and 2009–10, the proportion of HIV-positive women age 15–49 years increased from 7.5 to 8.3 percent, while the proportion among men increased from 5.0 to 6.1 percent.

Legal, policy and institutional framework

The cornerstone of Ugandan domestic law, the 1995 Constitution as amended by the Constitution (Amendment)

Act 21 of 2005, has pertinent provisions as regards HIV and AIDS which include statements made in its Preamble. Of note are the provisions for “fulfilment of the fundamental rights of all Ugandans to social justice and economic development” (Objective XIV), and for “basic medical services” to the population (Objective XX).

Other relevant provisions are those providing for equality under the law, and freedom from discrimination (Art. 21); protection against intentional deprivation of life except as regards the death penalty (Art. 22); the right to privacy of person, home and other property (Art. 27); the right to education (Art. 30); rights of the family, including that men and women over 18 are entitled to marry and to equal rights, and that laws will be enacted to protect the inheritance rights of widows and widowers regarding property and children (Art. 31); a duty of the state to take affirmative action in favour of marginalised groups (Art. 32); rights of women to equality with men, and freedom from laws and customs which are against their dignity and welfare (Art. 33); and rights of children to, among other things, basic education, family life, protection from exploitation, and to special protection if orphaned or otherwise vulnerable (Art. 34). In addition, under its social and economic objectives, 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.

The Revised National Strategic Plan (NSP) of 2011/12–2014/15 followed its predecessor and envisions a population free of HIV and its effects. The Revised NSP outlines the goals, objectives and strategic interventions upon the national HIV response will hinge their HIV programming as they build on the gains attained during the last four years of NSP. The national coordinating agency is the Uganda AIDS Commission and its role is coordination of all stakeholders to achieving the goals of prevention, care and treatment, social support and protection and underscore the need to effectively build the systems for the HIV response.

The Ugandan NSP has four goals to achieve by 2015: (1) to reduce HIV incidence by 30%; (2) to improve the quality of life of PLHIV by mitigating the health effects of HIV; (3) to improve the quality of life of PLHIV, OVC and other vulnerable populations; and (4) to build an effective and efficient system that ensures quality, equitable and timely service delivery.

The National AIDS Control Programme was established in 1987 by the Ministry of Defence in response to the special needs of the armed forces, and in that same year the AIDS Support Organisation (ASO) was officially established to provide psychosocial support to those living with or affected by HIV and AIDS. The AIDS Information Centre was formed in 1990, providing the first confidential voluntary testing and counselling services in Uganda. In 1992, the government adopted the Multisectoral Approach to the Control of AIDS (MACA), and established the Uganda AIDS Commission to coordinate the nationwide activities of the various actors involved in MACA, and to mobilise resources. The Uganda National Programme of Action for Children (UNPAC) was also initiated in 1992. Further, 1996 saw the adoption of the Universal Primary Education Policy, aiming to provide free and compulsory primary education, and specifically including orphans.

The National HIV and AIDS Policy was developed and disseminated, and the NSP reviewed and a Revised NSP launched on World AIDS Day 2011 to “re-invigorate the fight against the epidemic”. The revised NSP represents a new compact of national commitment in responding to the epidemic. In the same period too, noting that prevention is the cornerstone for the national response, the national prevention strategic plan and eight sector prevention strategic plans were developed and launched.

Other related policies include the second National Health Policy 2010, the Safe Male Circumcision Policy 2010, the Public Private Partnership for Health Policy 2010, the HIV/AIDS Workplace Policy 2010, the Revised Care and Treatment Policy 2011, Uganda Antiretroviral Treatment Policy 2011, the Home Based Care Policy 2011, the HIV/AIDS Policy for the Roads Sub-Sector 2010, the HIV Counselling and Testing Policy 2011, the Infant and Young Feeding Policy 2011, and the Integrated ART Guidelines for Feeding 2011.

In addition to the above policies, there is the Marriage and Divorce Bill 2010 and the HIV Prevention and AIDS Control Bill 2010 tabled at Parliament. Relevant plans related include the Health Sector HIV/AIDS Strategic Plan 2010/11–2014/15, the Sector HIV Prevention Strategic Plans 2010/11–2014/15, the National Condom Strategy 2011, the Scale-up Plan for Prevention of MTCT of HIV and Care of Exposed Infants 2010–2015 National HIV/AIDS Strategic Plan 2011/12–2014/15 National Prevention Strategic Plan 2010/11–2014/15, etc.

Laws and policies related to the Criminalisation of transmission of HIV

The HIV/AIDS Prevention and Control Bill 2010, that seeks, to criminalize intentional transmission of HIV/AIDS, is still pending at the Ugandan Parliament. If enacted, the Bill would make intentional transmission of HIV/AIDS an offense punishable, on conviction, by up to ten years’ imprisonment and/or a fine. Imposition of restrictions on travel or habitation, and denial of access to public services (including elected office), credit and insurance services, or health

services are prohibited by the Bill.

Laws and policies related to HIV-related Discrimination

Article 21 of the Constitution covers equality and freedom from discrimination, and states that (1) All persons are equal and entitled to the same protection under the law; (2) A person shall not be unfairly treated on grounds of sex, race, colour, tribe, birth, belief, religion, social or economic standing, political opinion or disability of any kind, and that (3) the Parliament has the power to pass laws that are necessary to put into practice policies and programmes aimed at resolving social, economic, educational or other differences in society.

The HIV and AIDS Prevention and Control Bill makes employment discrimination against people living with HIV and AIDS an offense. It specifically states: "A person shall not be denied access to employment [for] which he or she is qualified or transferred, denied promotion or have his/her employment terminated on the ground of his/her actual, perceived or suspected HIV status". The bill also prohibits expulsion of people from school or restriction of their freedom of movement on the basis of their HIV status. It requires that the government provide care and support to people living with HIV.

Although Uganda lacks explicit legislation relating to HIV/AIDS at this stage, various laws including an Equal Opportunities Act passed in 2007 provide a legal basis for people living with and affected by HIV to challenge discrimination.

Laws and policies related to Mandatory HIV testing and disclosure

The Bill introduces mandatory testing for HIV/AIDS for certain individuals and imposes mandatory release of test results. The Bill seeks to force individuals with drug-related or prostitution convictions and those charged with a sexual offense (but not necessarily convicted) to undergo mandatory HIV testing. The Bill allows for HIV test results to be released to the parent or a guardian if the infected person is a minor or is mentally challenged; to anyone authorised by a court; to courts, for purposes of use in criminal proceedings; and to persons close to the infected person, including but not limited to sexual partners. Mandatory HIV testing is one of the more controversial clauses in the HIV/AIDS and Control Bill 2010. However, legislators on the Parliamentary HIV/AIDS committee feel that mandatory testing is for the benefit of all Ugandans and will allow government to plan better for persons living with the virus. Other controversial clauses in the Bill which are being scrutinised by the civil society close include: disclosure of one's HIV status to third parties; discretion by medical personnel to disclose one's HIV status to one's sex partner; and the criminalisation of "intentional and attempted transmission of HIV".

Laws and policies on sexual and reproductive health

The Constitution guarantees the right to life in Article 22 and makes specific reference to the life of an unborn child that shall not be ended except as permitted by the law.

Article 33 on the right of women states that: (1) Women shall be given full and equal dignity of the person, and equal opportunities in political, economic and social activities with men; (2) The State shall provide for the facilities and opportunities necessary to improve or realise women's full potential and advancement; (3) The State shall protect the rights of women. Article 33, read together with Article 21 of the Constitution, distinguishes the unique status of women and their natural maternal functions in society. The Constitution explicitly recognises the sexual and reproductive health of women including those living with HIV as they should be free from discrimination based on their status.

The National Policy Guidelines and Service Standards for Reproductive Health Services 2006 address the need for provision of reproductive health services in Uganda. It provides a framework for guiding reform and development of a results oriented national reproductive health program. Chapter 7 of the Reproductive Health Policy 2006 covers integration of STI, HIV and AIDS into sexual and reproductive health services. The policy equally covers target and priority groups including adolescents, sex workers and men who have sex with men. Additionally, reproductive health issues affecting adolescents are dealt with in the National Adolescent Health Policy, 2004. It complements all sectoral policies and programmes and defines structures and key target areas for ensuring that adolescent health concerns are mainstreamed in all planning activities.

The overall objective of the National Health Policy 2009 (NHP) is to ensure a good standard of health for all people in Uganda. In the policy, the state commits to the promotion of access to education, health services and clean and safe water.

HIV in the workplace including pre-employment and mandatory HIV testing of employees

Article 40 of the Constitution of Uganda covers economic rights and also indicates that all Ugandans have the right to work. In the National objectives and directive principles of State policy it is indicated that all Ugandans must enjoy rights, opportunities and be able to access work. Article 40 (2) states that every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.

In 2007, the Ministry of Gender, Labour and Social Development launched the National Policy on HIV/AIDS and the World of Work, which forms the basis for the development of workplace policy guidelines; it applies to both private and public sector workers.

The Employment Act 2006 prohibits any form of discrimination based on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, the HIV status or disability which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.

The HIV Bill on its part, seeks to provide certain protections to enable people living with HIV and AIDS to live a normal life. It prohibits discrimination in the workplace based on HIV status.

Laws and policies mentioning sexual and HIV education and access to information

Article 30 of the Constitution states that all persons have right to education.

The HIV Bill prohibits discrimination in schools on the basis of HIV/AIDS status. The Ministry of Education and Sports (MOES) faces formidable challenges: a growing population and an HIV epidemic which continues to decimate teachers as well as parents. The revised NSP has, as strategic actions, the support of enrolment and retention of orphans and vulnerable children, PLHIV of school-going age and other identified beneficiary groups and the promotion of informal education, vocational and life skills development for OVC, PLHIV of school-going age and persons most vulnerable to exposure to HIV. The Revised NSP therefore strives to encourage access to education and information for all children including those infected and affected by HIV.

Laws and policies on the rights of key populations

A 2008/2009 study of key populations in Uganda, reported that the HIV prevalence among MSM respondents was 13.7 percent, twice the national prevalence of about 7.3 percent. Despite these figures, “carnal knowledge of any person against the order of nature” carries a sentence of up to 14 years imprisonment in Uganda’s penal code.

In Uganda, sex work is illegal under the Penal Code Act. Section 138 defines Prostitution as the exchange of sex for monetary or material gains while Section 139 states that a person who engages in prostitution commits an offence and is liable to imprisonment for seven years. Section 136 avails that it is an offence for anyone to knowingly live fully or in part on the earnings of prostitution. A person found guilty under this provision is liable to imprisonment for seven years while Section 136(2) states that it is an offence to be in the company or exercise control over a prostitute. Section 137 states: “It is an offence to keep a house or room for purposes of prostitution upon conviction under this provision a person is liable to 7 years imprisonment”.

The Sexual Offences (Miscellaneous Amendments) Bill seeks to consolidate and repeal laws on sexual offences. The offence of prostitution and other related offences such as procurement have been incorporated into the Sexual Offences Bill without much alteration. Clause 11 provides for the offence of Procurement, Clause 15 provides for the offence of living on the earnings of prostitution while Clause 16 provides for the offence of keeping a brothel and Clause 17 prohibits prostitution and provides for imprisonment of a period not exceeding 7 years.

Uganda has a very rich legal and policy environment favourable to people living with disability (PWD). For instance, Article 32(1) of the Constitution on special provisions for disadvantaged persons stipulates that the State must take positive steps in favour of the groups disadvantaged on the basis of their sex, age, disability or for any other reason created by history, tradition or custom, so as to correct the imbalances against those groups. Uganda also has a 2006 Disability Act and a 2005 Disability Policy, both supporting equal rights for persons living with disabilities.

The Anti-Homosexuality Act was passed earlier in 2014 and criminalises same-sex relationships, strengthens the penalties on same-sex acts and criminalises sexual orientation. It has especially punitive provisions for persons convicted for “aggravated homosexuality”.

Laws and policies on gender inequality, harmful gender norms and gender-based violence as it relates to HIV and AIDS

Article 32(2) of the Constitution states that laws, cultures, customs and traditions which are against the dignity or interests of women or other disadvantaged groups are prohibited.

Gender is acknowledged, within the Revised NSP, as a factor increasing vulnerability to HIV; and is treated as a priority issue. The NSP has as strategic actions, provision of legal and social services for the protection of women and young people against gender based and sexual violence (GBSV) on account of HIV, and promotion of rights awareness and sensitization to address cultural norms, practices and attitudes that perpetuate gender based and sexual violence in the context of HIV. The NSP further notes that “women are often unable to negotiate safer sex due to lower status, economic dependence and fear of violence; caretaker roles; gender aspects of HIV, stigma for STIs in women (especially among the elderly and PWDs) where HIV positive women are more likely to be rejected, expelled from home and denied treatment, care and basic human rights. All of these issues increase women’s vulnerability to HIV infection.” The NSP highlights the need for gender mainstreaming, and the fact that efforts to mainstream gender within the previous NSP were inadequate.

Uganda has also developed a National Policy on Gender-Based Violence 2011–2015 (National Policy on GBV) and National Action Plan on Gender-Based Violence (NAP) both based upon findings of a national situational gender-based violence (GBV) analysis. Commitments are made within these documents to “use actual findings from the GBV analysis to establish and strengthen the capacities of community based and state institutions”.

The National Policy on GBV includes a clear conceptualisation of GBV, identifying that “GBV issues have been found to originate from institutionalised male dominance as opposed to female subordination, leading to unequal power distribution (relations) in the home and the society”. The definition of GBV also incorporates various forms of abuse, including child labour, political violence/discrimination, trafficking of women and girls, pornography, forced control over reproductive functions of women and the “denial of economic opportunities for women and the girl child”. The Ugandan Domestic Violence Act 2010 also includes a broad definition of abuse to include economic, emotional, physical, verbal and psychological abuse. The Act broadens the concept of domestic relationship to include domestic workers.

The NAP also highlights the need to challenge “patriarchy/male dominance tendencies” as a root cause of GBV, and notes that at a community level, “GBV is an articulation of, or an enforcement of, power hierarchies and structural inequalities that are informed by belief systems, cultural norms and socialisation processes”. The NAP clarifies what is meant by the terms it employs, such as “harmful cultural values/beliefs”, by providing examples, citing increased male dominance due to dowry payment, denial of property inheritance, denial of access to services such as education, health and finance facilities, and prevention from decision-making, amongst others. In addition to the above, the NAP lists the enactment of specific legislation on sexual violence as one of its strategic actions.

Laws and policies on access to care, treatment and services

Article 39 of the Constitution states that every Ugandan has a right to a clean and healthy environment. This environment entails access to healthcare services including HIV and AIDS care, treatment and support.

Uganda has developed the National Antiretroviral Treatment and Care Guidelines for Adults, Adolescents and Children 2008. In its foreword, the Guidance acknowledge that the Ministry of Health (MOH) in collaboration with partners have supported implementation of HIV-treatment programs in Uganda. The increasing availability of cheaper generic drug formulations and has permitted expanded HIV-treatment programs in Uganda. However, the burden of HIV care is enormous and continues to increase rapidly. An estimated 1.1 million individuals are infected with HIV and this number may increase significantly over the next several years if the current annual rate of 132,000 new infections is not reversed.

Laws and policies on children, HIV and the Law

Article 34 of the Constitution covers the rights of children. These include children’s “right to know and be cared for by their parents or those entitled by law to bring them up”; their right to “basic education which is the responsibility of the State and the parents of the child; their right to “protection from social or economic exploitation” and right not to be “denied medical treatment or any other social or economic benefit by reason of religious or other beliefs”. For purposes of employment, a child is defined as “a person below the age of sixteen years”. Further a “child who has committed an offence, who is kept in lawful custody must be kept separately from adult offenders”. Additionally, the Constitution says that the “law shall give special protection to orphans and other disadvantaged children”.

The Ugandan VCT Guidelines 2005 recommend that the legal age for VCT consent is 18 years. Children aged 12–18 years can consent and the parents' consent may or may not be sought depending on the child's wish. For children below 12 years the parent or guardian should sign the consent and for those children without a parent or guardian the head of the institution, health centre, hospital, clinic or any responsible other may sign. Emancipated minors should be treated like adults, such as child mothers and fathers, children heading homes and abandoned children. If a child below the age of 12 asks for HIV testing, their parents or guardians should be fully involved. However if it is established that they can understand the test results, they should be counselled, tested and given their result.

The National Adolescent Health Policy for Uganda was developed in 2004 by the Ministry of Health. The overall goal of this policy is to mainstream adolescent health concerns in the national development process in order to improve the quality of life and standard of living of young people in Uganda.

Customs, traditions and religion and HIV

The cultural objectives in the Ugandan Constitution cover customs and traditions, and says that cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution may be developed and incorporated in aspects of Ugandan life. Article 37 states that: "A person has a right to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others". In addition, article 246 (2) recognises the institution of a traditional or cultural leader in any area of Uganda in accordance with the culture and traditions or wishes of the community.

The Prohibition of Female Genital Mutilations Act 2010 provides for the prohibition of FGM, the offences, prosecution and punishment of offenders and protection of victims as well as girls and women under threat of FGM and to provide for other related matters. The Act defines FGM as all procedures involving partial or total removal of the external female genitalia for non-therapeutic reasons. The Act speaks of aggravated FGM in article 3 and in particular sub section (d) where the victim is infected with HIV as a result of the act of FGM. Article 10 on its part states that any culture, custom, ritual, tradition, religion or any non-therapeutic reason shall not be a defence under this Act.

As alluded to earlier, the NSP provides for legal and social services for the protection of women and young people against gender based and sexual violence (GBSV) on account of HIV and promotes rights awareness and sensitization to address cultural norms, practices and attitudes that perpetuate gender based and sexual violence in the context of HIV. Overall, the Constitutional and legal framework in Uganda is against all customs, traditions and religions that further lead to the loss of human dignity and safety and security of the person and particularly customs and traditions that further stigmatise women and put them at risk of being infected with HIV.

Post-conflict settings

While there are no specific guidelines for HIV in post-conflict settings, the National Policy for Disaster and Preparedness and Management 2010 recognises that loss and damage due to disaster is on the rise in Uganda with grave consequences for the survival and livelihood of citizens, particularly the poor. It recognises that changing demographics, unplanned urbanization, development within high-risk zones, environmental degradation, climate change, geological hazards, competition for scarce resources, and the impact of epidemics such as HIV and AIDS, points to a future where disasters could increasingly threaten Uganda. It further recognizes the need to place emphasis on the vulnerable groups and persons with special needs such as unaccompanied minors, the elderly, the mentally and physical disabled, victims of physical abuse or violence and the pregnant, the lactating and persons with HIV/AIDS. The Ugandan policy is one of the few policies on disaster management that makes mention of HIV in general and in times of instability.

Laws and policies on migration and cross-borders movements and their implications on access to health

The aliens (Registration and Control) Act contains only two prohibitions pertaining to foreigners which state that (1) "No alien shall be a member of an executive committee of a trade union, a youth movement or a cooperative society in Uganda" and (2) "No alien shall form, manage or join a political party, or play any part in politics in Uganda". One may construe from this that all aliens/foreigners living in Uganda have equal access to health care, HIV and AIDS services in time of peace and war.

2.6 HIV and AIDS in Burundi

Available epidemiological data show that HIV is a public health problem in Burundi. The 2007 survey revealed an overall prevalence of 2.97% in the general population from the age of 18 months and above. It was 4.59% in urban

areas, 4.41% in semi urban areas and 2.82% in rural areas. Moreover, among sex workers, the overall national seroprevalence was 38%, with a higher rate in the cities of the interior vs. in Bujumbura Mairie (46% against 29%).

Legal, policy and institutional framework

The Constitution of Burundi 2005 forms the basis of law and policy on HIV and AIDS in Burundi. Article 22 of the Constitution prohibits discrimination on the basis of HIV. The Constitution guarantees fundamental human rights and freedoms, notably the right to dignity (Article 21) and the rights to privacy (Article 28).

Law 1/018 of 12 May 2005 titled the “Legal Protection of People Infected with HIV and of People Suffering from AIDS” provides the statutory framework for the protection of people living and affected by HIV and AIDS. The new strategic plan was drafted with a view to put forward the results and expected changes centred on primary beneficiaries of interventions. In that light, Burundi Vision 2016 is to quicken its efforts in the fight against HIV and AIDS to reach universal access to prevention, treatment care and support as well as to reach the Millennium Development Goals.

The promotion of condom use is covered by the revised National Policy on Condoms (Politique Nationale du Préservatif 2009) which involves the private sector through condoms marketing and sales. The National Policy on Reproductive Health (Politique nationale de la santé de reproduction 2007) recognises that there are no reproductive health services for young people except for 5 clinics. Sexual and reproductive health for young people remains a taboo in the country. The Penal Code of 2009, the Labour Code 1993 and Public Health Code are other relevant legislation when dealing with HIV and AIDS in Burundi.

The Conseil National de Lutte contre le SIDA CNLS (National AIDS Council) was created by a presidential decree on July 2001. Since 2001, the CNLS is active in its mission to conceive and direct the fight against HIV and AIDS in Burundi.

Laws and policies related to the Criminalisation of transmission of HIV

Article 42 of the HIV law states that “Any person who wilfully transmits HIV by any means will be prosecuted for attempted murder and is punishable according to the provisions of criminal law”. This is backed up by Articles 558 and 567 of the penal code. Article 558 provides for life imprisonment in case of wilful transmission of an incurable disease resulting from rape. There is no recorded case of wilful transmission of HIV in Burundi.

Laws and policies related to HIV-related Discrimination

Article 13 of the Constitution states that all Burundians are equal. All citizens enjoy the same rights and have right to the same protection of the law. No Burundian may be excluded from the social, economic or political life of the nation because of their race, of their language, of their religion, of their sex or of their ethnic origin. Article 17 states that the Government has as [its] task to realize the aspirations of the Burundian people, in particular to heal the divisions of the past, to ameliorate the quality of life of all Burundians and to guarantee to all the possibility to live in Burundi protected from fear, from discrimination, from disease and from hunger. Article 22 states all citizens are equal before the law, which assures them an equal protection. No one may be subject to discrimination based on their origin, race, ethnicity, sex, colour, language, social situation, religious, philosophical or political convictions or because of a physical or mental handicap or because they are infected with HIV or suffer from any other incurable disease.

The Burundi Constitution is the only one in East Africa Community that makes a specific mention of HIV and AIDS as a ground for non-discrimination. Article 3 states: “For the purposes of the present Law, ‘discrimination’ refers to any distinction, exclusion, limitation or stigmatisation founded on HIV status or AIDS, which purpose is to impair or alter equality of treatment.”

Laws and policies related to HIV testing and disclosure

Article 11 of the HIV law stipulates that compulsory HIV testing is practised, especially (a) in cases of epidemiological precedents, with due respect for the provisions set out in Chapter IV of this present Law; (b) in case of a clinical presumption of HIV infection; (c) at the person’s request; and (d) at the request of the judicial services. Article 13 on its part states that the result of an HIV test shall be communicated to the patient by the family doctor, or by default, to a member of the health personnel qualified for counselling.

Article 28 states “Notwithstanding what is said in the provisions of articles 25 and 26 of this present Law, doctors must reveal to the spouse or sexual partner of a person infected with HIV or suffering from AIDS the latter’s sero-status, if the latter is psychologically incapable of revealing this information or is opposed to this”. However, Article 30 states

“Compulsory HIV testing is prohibited in the following cases (a) admission or continued stay in a sports or social education centre; (b) access to any professional activity or continued stay within this professional activity. Similarly, Article 31 states that “Despite the possible individual and collective sanitary measures [which may be taken] and the right of any person to obtain a certificate of his health status when he deems it necessary, requesting a compulsory certificate [of a person’s HIV status] is considered ineffective and discriminatory. This practice is thus prohibited”.

Laws and policies on sexual and reproductive health

Article 55 of the Constitution recognizes that every person has the right of access to health care.

The National Policy on Reproductive Health 2007 reveals that there are no public health services adapted for young people. Only 5 clinics are youth friendly and supported by ABUBEF (Association Burundaise pour le Bien-Etre Familial). Due to the lack of youth friendly services, young people tend to lack crucial information therefore exposing them to risky behaviour. These dangers range from HIV and STIs infections, early and unplanned pregnancies, abortions. For example, a research conducted in 2002 showed that 16% of youth had their first sexual intercourse when they were 10 years old, 17% between ages 10-14 and 38% between ages 15 and 20.

HIV in the workplace including pre-employment and mandatory HIV testing of employees

Article 54 of the Constitution guarantees the right to work and says that “The State recognizes to all citizens the right to work and makes the effort to create the conditions that render the enjoyment of this right effective. It recognizes the right that every person has to enjoy just and satisfactory conditions of work and guarantees to the worker the just retribution for their services or for their production.” Article 34 of the HIV Law states that “Any person infected with HIV or suffering from AIDS who applies for paid employment enjoys the same rights as those who do not have HIV, and may not be deprived of any employment opportunity because of his health status. In particular, the hiring of employees may not be conditioned or linked to HIV test results”. Similarly, Article 35 states “An employee infected with HIV or suffering from AIDS shall remain employed and enjoy all the advantages recognised by law until he or she is deemed, by a medical commission, physically and/or mentally inept to perform his or her tasks. This ineptitude shall be recorded so that the person who is deemed inept may receive social security benefits provided for by the law.” Article 36 likewise speaks to employers saying that they “shall ensure that the atmosphere at the workplace is such that persons infected with HIV or suffering from AIDS do not feel rejected or humiliated”. Article 37 finally says “Regulations relative to social or professional benefits to workers shall also be of benefit to workers infected with HIV or suffering from AIDS.”

The National Policy on the fight against HIV and AIDS at workplace (Politique Nationale de Lutte contre le VIH et le SIDA sur le lieu du travail) was developed in 2011 by the Ministry of Public Service and Social Security. The aims of the policy are to protect employees against new infections on one hand and to strengthen cooperation and tripartite social dialogue. The Labour Code 1993 of Burundi also proposes that testing before getting insurance and compulsory pre-employment testing should not be allowed.

Laws and policies mentioning sexual and HIV education and access to information

Article 53 of the Constitution states in that every citizen has [a] right to the equal access to instruction, to education and to culture. There is a National Strategy on HIV education and the Ministry of Education has put in place a peer education strategy. In spite of this, HIV education in primary schools is scarce.

Laws and policies on the rights of key populations

The BBS 2011 defines key populations as sex workers, MSM, seasonal workers (fishermen), detainees and people in uniform (army and police). The BBS shows that HIV prevalence among sex workers is 19.8%, among men who have sex with men 2.4%, among seasonal workers 1.4%, among detainees 3% and among personnel in uniform 0.4%.

Article 33 of the HIV Law, state that persons [in custody] may not be subjected to compulsory HIV testing, except in the cases of criminal investigations. Article 567 of the Penal Code (2009) prohibits homosexuality and a person convicted is liable to imprisonment for a period of 3 months to 2 years and a fine. Sex work is similarly criminalised under the Penal Code. Burundi’s HIV/AIDS policy has no special provision for HIV education for the disabled.

Laws and policies on gender inequality, harmful gender norms and gender-based violence as it relates to HIV and AIDS

Burundi's revised Penal Code 2009 defines rape as "vaginal, anal and oral penetration by the male sexual organ as well as penetration of the female sexual organs by an object." Sentences range from 5 years to life imprisonment. The Penal Code also recognizes domestic violence: "Anyone who has intentionally injured another person is subject to two to eight month's imprisonment, a fine, or both, with harsher penalties if the violence is premeditated."

The revised Penal Code includes the comprehensive definitions of genocide, war crimes and crimes against humanity as discussed in the Rome Statute, the Geneva Conventions and the Convention against Genocide. Discussions about inheritance laws have been ongoing for several years. Previously, Burundian women had no legal rights to inherit land, which made them economically dependent on their male relatives and husbands. The Revised Family Code 1993 provides for inheritance rights for women. However, the persistence of violations of women's human rights is encouraged by the maintenance of discriminatory legislation. For example, the Penal Code criminalises voluntary termination of pregnancy (Art. 510). Similarly, despite having a formal legal system that ensures gender equality, important aspects of family life (such as matrimonial arrangements, succession, legacies and gifts related to marriage) are still governed by customary law.

The Code of Person and Family was modified in 1993 to help amend such discriminatory provisions. Article 88 of the Code of the Person and the Family says that the legal age of marriage in Burundi is 18 years for women and 21 years for men. However, exceptions to these provisions can be approved by the Provincial Governor.

Laws and policies on access to care, treatment and services

Article 55 of the Constitution of Burundi states that everyone has the right of access to healthcare services. Other articles, e.g. articles 17, 27 and 52 also address the issue.

Article 16 of the HIV law states that every person infected with HIV or suffering from AIDS has the right to be consulted by a physician of his choice as well to receive medical treatment appropriate for their condition. Article 17 goes further to prohibit healthcare workers and services to refuse to treat someone infected with HIV or suffering of AIDS. Access to ARVs is free of charge in Burundi for all requiring them, including non-Burundians who need them.

Laws and policies on children, HIV and the Law

Article 32 of the HIV Law states that "children of infected persons, whether they themselves are infected or not, may not be denied admission or stay in public or private education centres, nor be the object of discrimination in any given pretext".

Customs, traditions and religion and HIV

Burundi has legislations and policies that guarantee freedom from harmful customs, traditions and religions that may be prejudicial to Burundians and especially women. The Revised Penal Code 2009 (Law Number 1/05 April 2009) establishes rape, sexually slavery, forced prostitution, forced pregnancy, forced sterilization, and other generalized and systematic acts of sexual violence against civilians as crimes against humanity with strict punitive measures.

In addition to the revisions to the Penal Code, Burundi is currently considering a draft bill for the "Prevention, Protection, Repression and Reparation for GBV". The proposed Bill forms part of efforts to incorporate clauses on sexual violence from the Pact on Security, Stability and Development in the Great Lakes Region into Burundian national law. The proposed Bill would help in the prosecution of perpetrators of sexual violence. In 2009, the Government of Burundi developed a National Strategy to Combat Gender-Based Violence 2009. One of the key achievements of the strategy is its identification of the major challenges to preventing and responding to gender-based violence in several key sectors (health, justice, education, security, health, and social rights).

Post-conflict settings

Conflict has scarred Burundian society since independence in 1962, although in recent years a still fragile peace has emerged from a series of ceasefire agreements signed by armed groups.

In Burundi and elsewhere, the relationship between conflict and HIV and AIDS is complex²⁸ and mediated by gender

28 Hakan Seckinelgin, Joseph Bigirimwami and Jill Morris. Gendered violence and HIV in Burundi. Forced Migration Review (Oct. 2010). Available at <http://www.fmreview.org/AIDS/Seckinelgin-Bigirimwami-Morris.htm>

norms and values that pre-date the conflict. Prolonged conflict, displacement and restrictions on movement damaged social relations and traditional livelihood options, creating increased vulnerability to HIV. In this prolonged conflict, both within the household and outside, women were the most vulnerable while pre-conflict gender relations had also created expectations among females from early childhood that they should be voiceless and submissive. However Burundi does not have a law or policy on management of HIV and AIDS in time of conflict and in post-conflict settings.

Laws and policies on migration and cross-borders movements and their implications on access to health

There are no restrictions on entry, stay and residence for people living with HIV in Burundi. Access to ARVs is also free of charge for foreigners living in the country.

Laws and policies on insurance as they relate to HIV and AIDS

Article 38 of the HIV law states that “Persons infected with HIV or suffering from AIDS may subscribe to life insurance from insurance companies. The latter do however have the right to take into account the elements they consider indispensable to provide coverage appropriate to the [higher] risk of death”. Article 39 states that “The insurer has the right to know all the elements he or she deems necessary about the health of an applicant to an insurance policy to determine the risk level”. Finally, Article 40 states that “Insurance companies shall respect the confidentiality of their findings in addition to any other medical and personnel information mentioned by an applicant during the determination of the risk level”.

ANNEX ONE: MATRIX ON ANALYSIS OF HIV AND AIDS LAWS, BILLS, POLICIES AND STRATEGIES IN EAC

Issue	Kenya	Rwanda	Tanzania	Zanzibar	Uganda	Burundi
Criminalisation of HIV transmission	<p>Article 24 of the National HIV and AIDS Prevention and Control Act criminalises reckless transmission of HIV</p> <p>The Sexual Offences act 2006 creates an offence of deliberate transmission of HIV or any other life-threatening sexually transmitted disease</p>	<p>The Prevention and Punishment of Gender-based Violence law 59/2008 and in its Article 29 on Penalty for intentionally transmitting a terminal disease</p>	<p>Article 47 of the HIV and AIDS (Prevention and Control Act) 2008 states that any person who intentionally transmits HIV to another person commits an offence</p> <p>The National Policy on HIV and AIDS 2001 states that communities and individuals have the right to legal protection from wilful and intentional acts of spreading HIV.</p>	<p>The HIV Bill 2011 is silent on criminalisation.</p>	<p>The HIV/AIDS Prevention and Control Bill 2010, that seeks, among other things, to criminalize intentional transmission of HIV/AIDS</p>	<p>Article 42 of the HIV law states that 'Any person who wilfully transmits HIV by any means will be prosecuted for attempted murder and is punishable according to the provisions of criminal law'</p> <p>Article 558 of the Penal Code provides for life imprisonment in case of wilful transmission of an incurable disease resulting from rape</p>
Prohibition of discrimination	<p>Employment Act 2007</p> <p>HIV Act 2006 prohibits all forms of discrimination</p>	<p>The Constitution in article 11 prohibits all forms of discrimination.</p> <p>The national strategic plan 2013-2018 recommends to the social environment of PLHIV has to be supportive, exempt of discrimination and stigmatization</p>	<p>Article 28 of the HIV and AIDS (Prevention and Control) Act states that a person shall not formulate a policy, enact any law or act in a manner that discriminate directly or by its implication persons living with HIV and AIDS, orphans or their families.</p> <p>Article 30 on its part, prohibits stigmatisation and discrimination in any manner any other person on the grounds of such person's actual, perceived or suspected HIV and AIDS status.</p> <p>The Employment and Labour Relations Act 2004 prohibits discrimination at the workplace and promotes equal opportunities for all</p> <p>Article 30 prohibits stigmatisation and discrimination in any manner any other person on the grounds of such person's actual, perceived or suspected HIV and AIDS status.</p> <p>The Employment and Labour Relations Act 2004 prohibits discrimination at the workplace and promotes equal opportunities for all</p>	<p>Article 11 and 12 of the Constitution covers the right to dignity and freedom from discrimination</p> <p>ZNSP-II notes that stigma and discrimination are major challenges in the fight against HIV and AIDS</p>	<p>Article 21 of the Constitution covers equality and freedom from discrimination</p> <p>Equal Opportunities Act 2007 prohibits all forms of discrimination</p>	<p>Article 13 of the Constitution covers equality before the law and non-exclusion</p> <p>Article 17 covers non-discrimination</p> <p>Article 22 covers equality and non-discrimination based on HIV/AIDS among other grounds.</p>

Issue	Kenya	Rwanda	Tanzania	Zanzibar	Uganda	Burundi
Mandatory testing and disclosure	<p>Sexual Offences Act 2006 when charged with an offence of a sexual nature</p> <p>Art 14 HIV act: children to be tested with parents' written consent. Blood and tissue donors</p>	<p>Reproductive Health Bill 2008 which has Compulsory HIV Testing.</p> <p>Compulsory HIV testing for people who want to get married and provide a certificate and sterilization of Disabled.</p>	<p>Article 15(1) of HAPCA states that every person residing in Tanzania may on his own motion volunteer to undergo HIV testing except when there is a case of sexual offence, court order or blood and tissue donation.</p>	<p>Article 15 of the Constitution covers the right to privacy</p> <p>article 21 of the HIV Bill, with the exception of a court order upon an offence of a sexual nature, no one should be subjected to compulsory HIV testing</p>	<p>The bill introduces mandatory testing for individuals with drug-related or sex work convictions and those charged with a sexual offense</p> <p>The bill allows for HIV/AIDS testing results to be released to the parent or a guardian if the infected person is a minor or is mentally challenged; to anyone authorised by a court; to courts, for purposes of use in criminal proceedings; and to persons close to the infected person, including but not limited to sexual partners.</p>	<p>Article 11 stipulates that compulsory HIV testing is practised, especially in the following cases:</p> <p>(a) in cases of epidemiological precedents, with due respect for the provisions set out in Chapter IV of this present Law;</p> <p>(b) in case of a clinical presumption of HIV infection;</p> <p>(c) at the person's request;</p> <p>(d) at the request of the judicial services;</p> <p>Article 28. Notwithstanding what is said in the provisions of articles 25 and 26 of this present Law, doctors must reveal to the spouse or sexual partner of a person infected with HIV or suffering from AIDS the latter's sero-status, if the latter is psychologically incapable of revealing this information or is opposed to this.</p> <p>Article 30. Compulsory HIV testing is prohibited in the following cases (a) admission or continued stay in a sports or social education centre; (b) access to any professional activity or continued stay within this professional activity.</p> <p>Article 30. Compulsory HIV testing is prohibited in the following cases (a) admission or continued stay in a sports or social education centre; (b) access to any professional activity or continued stay within this professional activity.</p>

Issue	Kenya	Rwanda	Tanzania	Zanzibar	Uganda	Burundi
Sexual and reproductive health rights	<p>2010 constitution article 43: right to health</p> <p>Children's Act revised edition of 2010, the Sexual Offences Act 2006, and the Prohibition of Female Genital Mutilations Act 2011</p>	<p>Reproductive Health Bill 2008 prohibits forcibly subjecting a person to sexual intercourse, forcing ones' spouse to have children against their will</p>	<p>The Constitution Article 8 (b), stating that "...the primary objective of the Government shall be the welfare of the people".</p>		<p>Article 33, read together with article 21 of The Constitution, distinguishes the unique status of women and their natural maternal functions in society</p> <p>Chapter 7 of the Reproductive Health Policy covers integrating of STI/ HIV/AIDS into sexual and reproductive health services.</p> <p>the National Health Policy 2009 (NHP) is to ensure a good standard of health for all people in Uganda</p> <p>Reproductive health issues affecting adolescents are dealt with in the National Adolescent Health Policy, 2004</p>	<p>Article 55 of the Constitution recognizes that every person has the right of access to health care.</p>
Pre-employment testing	<p>Prohibited under employment Act 2007 and HIV Act 2006</p>	<p>Section 4, article 12 of the Labour Code NO 13 of 2009 is on prohibition of discrimination on work matters</p>	<p>Article 22 that, "every person has the right to work" and article 23 provides for the right to just remuneration</p> <p>The Employment and Labour Relations Act, 2004 has provisions protecting the rights of HIV/AIDS workers at work place.</p>	<p>The Constitution states in article 21(3) that every Zanzibari has the right to work</p> <p>The Employment and Labour Relations Act of Zanzibar 2005 prohibits all forms of discrimination from employers towards employees</p> <p>Article 21 of the Bill prohibits testing as a pre-condition to, or for continued enjoyment of any employment.</p>	<p>Article 40(2) of the Constitution states that every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.</p> <p>The Employment Act 2006 prohibits any form of discrimination including based on HIV status</p> <p>The Bill prohibits discrimination in the workplace on the grounds of HIV status</p>	<p>Article 54 of the Constitution guarantees the right to work</p> <p>2005 law Article 34. Any person infected with HIV or suffering from AIDS who applies for paid employment enjoys the same rights as those who do not have HIV, and may not be deprived of any employment opportunity because of his health status. In particular, the hiring of employees may not be conditioned or linked to HIV test results</p> <p>Article 35. An employee infected with HIV or suffering from AIDS shall remain employed and enjoy all the advantages recognised by law</p> <p>The Labour Code 1993 of Burundi stipulates that compulsory pre-employment testing should not be allowed.</p>

Issue	Kenya	Rwanda	Tanzania	Zanzibar	Uganda	Burundi
HIV education and information	The Education Sector HIV policy stipulates that it is the responsibility of all learning institutions to address HIV and AIDS through education, developing skills and values and changing attitudes to promote positive behaviours that fight the scourge.	The Education Sector Policy 2003 developed by the Rwanda Ministry of education, science, technology and scientific research tells us that the introduction of teaching HIV/AIDS and life skills was initiated in formal and less formal ways in the education system	The Constitution in article 11 guarantees the right to access education in general The HAPCA in article 7 lays down provisions for public education and programmes on HIV and AIDS	Article 6 of the HIV Bill encourages the government to promote public awareness on HIV article 6(e) that education and information campaigns shall be carried out in schools and other institutions of learning, prisons and places of detention, in places of worship, workplaces, amongst the police and military forces and in rural and urban communities.	Article 30 of the Constitution states that all persons have right to education. The HIV bill prohibits discrimination in schools on the basis of HIV/AIDS status.	Article 53 of the Constitution Every citizen has [a] right to the equal access to instruction, to education and to culture The State has the duty to organize public education and to favour [its] access
Key populations	The National HIV Testing and Counselling Guidelines provide testing and counselling for MARPS KNASP III works with all most at risk groups and seeks innovative ways to reduce HIV transmission.	In 2010, Rwanda removed an article from the Penal Code proposing to criminalise same sex practices.	The NMSF III covers key populations Same-sex, sex work and injecting drugs are all criminalise under the Penal Code the NMSF III recognises that stigma and discrimination against people who inject drugs, sex workers and MSM remains high The Prisons Act, 1967 as amended in 2008 requires every prison to have a responsible medical officer who shall be responsible for the health of all prisoners	The HIV Bill defines key population including Children, woman and girls, persons with disabilities, and prisoners and populations not specifically mentioned in the Bill Criminalisation of same sex relationships (section 150, 153, 154, 158), substance use and sex work in the Penal Code 1932 as revised in 2004 ZNSP II defines key populations as injecting drugs users, female sex workers, students in the Institute of Education for Offenders (correctional facilities) and men having sex with men	Article 32 of the Constitution on special provisions for disadvantaged persons. 2006 Disability Act and the 2005 Disability Policy, both supporting equal rights for persons living with disabilities. Sect 138 Penal Code Act criminalises sex work The Anti-Homosexuality Act 2014 criminalises same-sex activities	The Penal Code in article 567 prohibits homosexuality and the Code also criminalises sex work BBS 2011, key populations include sex workers, MSM, seasonal workers (fishermen), detainees and people in uniform (army and police).

Issue	Kenya	Rwanda	Tanzania	Zanzibar	Uganda	Burundi
Gender equality	<p>Article 13 (2) (b) of the 2006 Act prohibits compulsory HIV testing as a precondition to or for continued enjoyment of marriage</p>	<p>The Law No. 59/2008 of 2008 on Prevention and Punishment of Gender-Based Violence covers and defines conjugal rape</p> <p>The National Accelerated Plan for Women, Girls, Gender Equality and HIV 2010–2014 was launched to specifically address the needs and rights of women and girls in the HIV response.</p>	<p>The HAPCA makes a requirement for mainstreaming gender into HIV and AIDS plans</p> <p>the Sexual Offences Special Provision Act 1998 marital rape has not been considered</p>	<p>Article 11 and 12 of the Constitution covers equality of all and equality before the law as well as freedom from discrimination. Article 15 is on the right to privacy and personal security</p> <p>The Sexual Offences (Special Provisions) Act 1998 was passed and adopts a gender-sensitive language and provides punishments for violence, abuse, trafficking of women and children</p> <p>article 34 of the HIV Bill protects women inter alia from all forms of violence, traditional practices that may negatively affect their health</p>	<p>Article 32(2) of the Constitution states that laws, cultures, customs and traditions which are against the dignity or interests of women or other disadvantaged groups are prohibited.</p> <p>The NSP has as a strategic actions to provide legal and social services for the protection of women and young people against gender based and sexual violence (GBSV) on account of HIV</p> <p>The National Policy on Gender-Based Violence 2011–2015 includes a clear conceptualisation of GBV.</p> <p>Domestic Violence Act 2010 also includes a broad definition of abuse</p>	<p>The Penal Code also recognizes domestic violence</p> <p>The revised Family Code 1993 provides for inheritance rights for women.</p> <p>Under article 88 of the Code of the Person and the Family, the legal age of marriage in Burundi is 18 years for women and 21 years.</p> <p>Article 122 of the code of the Person and the Family states that the man is the head of the family.</p> <p>Forced marriages are prohibited under article 29 of the Constitution</p>
Access to healthcare, treatment and services	<p>The Safety and Occupational Health Act 2007 guarantees access to health care for people living with HIV and AIDS especially in the workplace</p>	<p>The right to health is found in article 41 of the 2003 Constitution in Rwanda</p>	<p>HAPCA in article 19 guarantees access to health care to people living with HIV and AIDS, vulnerable children and orphans</p>	<p>The Constitution in chapter 2, section 10 (6) states that the RGoZ shall direct its policy towards ensuring that every person has access to adequate health care,</p>	<p>Article 39 of the Constitution states that every Ugandan has a right to a clean and healthy environment.</p> <p>National Antiretroviral Treatment and Care Guidelines for adults, adolescents and children 2008 acknowledges the Ministry of Health (MOH) in collaboration with partners have supported implementation of HIV-treatment programs in Uganda</p>	<p>The Constitution in its articles 17, 27, 52 and 55 deals globally and specifically with the right to health.</p> <p>Art 17: the government has the duty to realise the aspiration of the people of Burundi and in particular heal the wounds of the past, improve living conditions of all Burundians and guaranteeing the possibility for all Burundians to live in their country without fear, discrimination, illness and hunger.</p> <p>Article 27 states that the people of Burundi should lead a life in conformity with human dignity.</p> <p>Article 55 on its part states that everyone has the right of access to healthcare services.</p> <p>Article 16 of the HIV law states that every person infected with HIV or suffering from AIDS has the right to be consulted by a physician of his choice as well to receive medical treatment appropriate for their condition. Article 17 prohibits healthcare workers and services to refuse to treat someone infected with HIV or suffering of AIDS.</p>

Issue	Kenya	Rwanda	Tanzania	Zanzibar	Uganda	Burundi
Children and HIV	<p>The Children's Act revised 2010 Article 14 provides for the protection of children from harmful cultural practices including early marriage, female genital mutilations.</p> <p>The Education Sector Policy on HIV and AIDS, 2013 provides a framework for prevention, treatment, care and support as well as the management of response within the education sector at all levels.</p>	<p>Article 28 of the Constitution states that:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>"Every child is entitled to special measures of protection by his or her family, society and the State that are necessary, depending on the status of the child, under national and international law."</p> </div>	<p>Article 11 The Constitution guarantees to right to access to education</p> <p>The HAPCA in article 19 makes specific mention of vulnerable children and orphans under health and support services.</p>	<p>The Children's Act 2011 enshrines fundamental rights of children</p> <p>The HIV Bill covers children under its MARPS section</p>	<p>Article 34 of the Constitution covers the right of children generally</p> <p>34(6): The law shall give special protection to orphans and other disadvantaged children</p> <p>VCT guidelines 2005 recommend that the legal age for VCT consent is 18 years.</p> <p>National Adolescent Health Policy 2004 goal is to mainstream adolescent health concerns in the national development process</p>	<p>2005 law article 32. The children of infected persons, whether they themselves are infected or not, may not be denied admission or stay in public or private education centres, nor be the object of discrimination in any given pretext.</p>
Customs, traditions and religion	<p>Prohibition of Female Genital Mutilation Act 2011</p> <p>The Children Act provides for the protection of children from harmful cultural practices including early marriage, female genital mutilations.</p>	<p>The Constitution in article 15 states that every person has the right to physical and mental integrity.</p> <p>No person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment.</p> <p>Article 2 of Gender Based Violence law prohibits gender based violence</p>	<p>Land Act No 4 of 1999, Section 3(2) provides that every woman has the same right to the land as men.</p> <p>The NMSF III notes that there are risky traditional practices that hinder the effectiveness of the national response</p>	<p>Chapter 2, section 10 (6) of the Constitution states that the RGoZ shall direct its policy towards ensuring that Zanzibar culture is protected, enhanced and promoted.</p>	<p>Article 37 of the Constitution covers cultural, traditional and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution</p> <p>The Prohibition of Female Genital Mutilations Act 2010 provides for the prohibition of FGM.</p>	<p>Article 13 of the Constitution of Burundi further guarantees that "all Burundians are equal in value and dignity. All citizens are entitled to equal rights and to equal protection under the law. No Burundian shall be excluded from the social, economic or political life of the nation on account of her/his race, language, religion, gender, or ethnic origin</p> <p>The Revised Penal Code 2009 (Law Number 1/05 April 2009) establishes rape, sexually slavery, forced prostitution, forced pregnancy, forced sterilization, and other generalized and systematic acts of sexual violence against civilians as crimes against humanity</p> <p>National Strategy to Fight Gender Based Violence 2009 identification of the major challenges to preventing and responding to gender-based violence in several key sectors</p>
Conflict and post-conflict settings	<p>Draft National Policy for Disaster Management 2009 which has a section on HIV management</p>	<p>Article 13 of the Constitution states that the crime of genocide, crimes against humanity and war crimes do not have a period of limitation</p>			<p>The National Policy for Disaster and Preparedness and Management 2010 covers among other, HIV in a time of conflict and post-conflict situations</p>	

Issue	Kenya	Rwanda	Tanzania	Zanzibar	Uganda	Burundi
HIV and insurance	The 2006 The Act provides that patients have a right to be treated for HIV and AIDS, including access to medical cover. It prohibits insurance companies and employers from forcing people to undergo HIV and Aids tests.			The HIV Bill states that the actual perceived HIV status of a person shall not constitute the only reason to deny or exclude a person from gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.		<p>Article 38. Persons infected with HIV or suffering from AIDS may subscribe to life insurance from insurance companies. The latter do however have the right to take into account the elements they consider indispensable to provide coverage appropriate to the [higher] risk of death.</p> <p>Article 39. The insurer has the right to know all the elements he or she deems necessary about the health of an applicant to an insurance policy to determine the risk level.</p> <p>Article 40. Insurance companies shall respect the confidentiality of their findings in addition to any other medical and personnel information mentioned by an applicant during the determination of the risk level</p>
HIV and Migration	No restrictions	No restrictions	No restrictions	No restrictions	No restrictions	No restrictions

ANNEX TWO: MATRIX OF LEGAL AND POLICY GAPS AND PROPOSED REFORMS

Identified gap	Proposed intervention	Time frame	Resources required	Responsible Party/organisation
ZANZIBAR				
1. Zanzibar has an HIV and AIDS bill 2013, that was passed by parliament and is waiting for presidential signature	<ul style="list-style-type: none"> - Conduct lobbying for President to sign - Conduct legal literacy 	2014 – 2016	Financial, Human resource, Media, sensitisation materials	Ministry of Justice and constitutional Affairs, MOH, ZAC and CSOs
2. Inadequate involvement of males in PMTCT services.	<ul style="list-style-type: none"> - Develop Policy to promote male involvement - Advocacy / awareness Campaign 	2014 – 2016	Financial and Human resources	MOH, Ministry of Justice and constitutional Affairs, CSO
3. Slow process in law review. Review of laws has been neglected which need to be given adequate consideration in line with the fast changing HIV epidemic	<ul style="list-style-type: none"> - Lobbying / advocate for timely review of laws in line with the changing epidemic. 	2014 – 2016	Financial and Technical Assistance	CSOs, multilateral development agencies, Zanzibar Law Review Commission
4. People with disabilities including those with Mental health problems are often left out in policies and strategies regarding access information on HIV and AIDS	<ul style="list-style-type: none"> - Lobby and advocate for provision or readily accessible and user friendly IEC materials - Improve infrastructure (physical including construction of conducive buildings and human expert in working with people with disabilities) to cater for PWDs. 	2014 – 2016	Financial and Technical Assistance	MOH and First Vice President's office (FVPO)
5. Zanzibar does not have a policy of strategy to deals with HIV and AIDS in situation of disasters / emergencies, conflict and post conflict situations.	<ul style="list-style-type: none"> - Review the existing laws to incorporate provision for management of HIV and AIDS in situation of disasters / emergencies, conflict and post conflict situations. 	2014 – 2015	Technical assistance (legal support) and financial resources.	Zanzibar Law review commission, ZAC and MOH.
TANZANIA				
1. Inadequate operationalisation of HIV and AIDS (Prevention and Control) Act 2008	<ul style="list-style-type: none"> - Finalize and operationalize all the regulations (under section 52 of the Act) - Ensure all the regulations embrace the recommendations in this study 	One (1) year	Financial & Technical	Ministry of Health and Social Welfare (MOHSW); Tanzania Commission for AIDS (TACAIDS); Attorney General's Chamber's
2. There are some laws with outdated provisions which are not in line with the HIV and AIDS response e.g. <ul style="list-style-type: none"> ● The Law of Marriage Act ● The Child Act ● The Prison's Act 	<ul style="list-style-type: none"> - Recommend amendment of laws 	Six (6) months	Financial & Technical	Ministry of Health and Social Welfare (MOHSW); Tanzania Commission for AIDS (TACAIDS); Attorney General's Office; Law reform Commission; EAC
3. Contradictory laws i.e. Child Act, Marriage Act and Penal Code. Issues: <ul style="list-style-type: none"> ● Age of consent to marriage ● Age of consent for HIV testing ● Definition of a child 	<ul style="list-style-type: none"> - Recommend harmonization of these laws 	Six (6) months	Financial & Technical	Ministry of Community Development; Gender and Children; Law reform Commission; Attorney General's Chambers; EAC
RWANDA				
1. There is no specific law on HIV and AIDS	<ul style="list-style-type: none"> - The Republic of Rwanda should consider strengthening integration of HIV and AIDS in existing laws as well as aligning to regional and international standards - (No need for specific law) 	Medium Term	Meeting costs	MOH; Ministry of Justice; Law Reform Commission; EAC Secretariat; Ministry of EAC

Identified gap	Proposed intervention	Time frame	Resources required	Responsible Party/organisation
2. Criminalisation of HIV: Art: 30 of the Gender Based Violence Law (2008) is not clear and needs revision. HIV is no longer considered a terminal disease	<ul style="list-style-type: none"> - Make it more comprehensive to include other communicable diseases 	Long term	Human Resources & Meeting Costs	MOH; Ministry of Justice; Law Reform Commission; EAC Secretariat; Ministry of EAC
3. Discrimination based on HIV status e.g. denial of loans, insurance and other services	<ul style="list-style-type: none"> - Enforce implementation of all policies and legal provisions against discrimination 	Short Term	Meeting costs & Human resources	MOH; Ministry of Justice; Law Reform Commission; EAC Secretariat
4. Mandatory HIV testing & disclosure: The Reproductive Health Bill provides that a health worker may test: <ol style="list-style-type: none"> a child or a mentally ill individual Couples engaged/about to legally marry 	<ul style="list-style-type: none"> - Fast-track adoption of the Bill - The Law should stipulate that no one should be tested without their consent with the exceptions of minors, mentally disabled and in cases of medical emergency - The provision should be deleted. It contravenes the right to voluntary Testing and Counselling - The policy should be retained - Government to promote awareness of the importance of Voluntary Counselling and Testing for couples engaged to be married 	Short Term	Human Resources & Meeting Costs	MOH; Ministry of Gender and Family Promotion; Civil Society; National Council of People with Disabilities
5. The Reproductive Health Bill (2008) does not provide for punitive measures	<ul style="list-style-type: none"> - The Bill should provide corresponding punitive measures for prohibitive provisions 	Short Term		Ministry of Justice; Law Reform Commission
6. HIV in emergency and post-conflict situations e.g. cases of disaster, accidents, wars, rape and other instances of high risk exposure to HIV infection	<ul style="list-style-type: none"> - Put in place a clear protocol on management of such cases vis-à-vis HIV 	Medium Term	Human Resources & Meeting Costs	MOH; Ministry of Disaster Management and Refugee Affairs
7. Access to HIV and AIDS information for key population and People living with disabilities (PWD) particularly the Blind and Deaf	<ul style="list-style-type: none"> - Enforce the implementation of Chapter 6 Article 25 of Law No. 01/2007 relating to protection of disabled persons in general 		Human Resources & Meetings costs	National Council of People Living with Disabilities; MOH; Civil Society; EAC Secretariat
8. There is no law on high-risk cases such as: Customs and traditions hindering the fight against HIV (wet nursing, early marriages, widowhood cleansing, traditional births, scarification)	<ul style="list-style-type: none"> - Reinforce/Enforce existing law that regulate traditional behaviours and cultural norms hindering HIV prevention/treatment - Continued education and sensitization 	ASAP	Human Resources & Meeting Costs	MOH
UGANDA				
1. Mandatory Testing	<ul style="list-style-type: none"> - Should be done for medical-legal reasons 	May 2014	Human Resources & Meeting costs	Ministry of Health, Ministry Responsible for Justice Parliament, Civil Society
2. Limited access to health (HIV and AIDS) services for care services for key populations, refugees and aliens under emergency situations	<ul style="list-style-type: none"> - Government should ensure access to health services 	Dec 2014	Human Resources & Meeting costs	Ministry of Health
3. Discrimination - Pre-employment mandatory testing for the armed forces	<ul style="list-style-type: none"> - Lessons and evidence - Lobby Parliament and East African Defence Chiefs to reconsider the current position 	Dec 2015	Human Resources & Meeting costs	EAC Secretariat; Ministries responsible for Health; Civil Society (regional and National); EANNASO; Ministry of Defence
4. Mandatory Disclosure to third party ¹ Article 21, subsection (e)	<ul style="list-style-type: none"> - Redraft as it contravenes the constitution and promotes discrimination - Should apply only to spouses with the consent of both 	June 2014	Human Resources & Meeting costs	Civil Society; Parliament of Uganda; Ministry of Health

Identified gap	Proposed intervention	Time frame	Resources required	Responsible Party/organisation
5. Criminalisation of HIV i. Attempted Transmission of HIV – there are no investigations that one would rely on to conclude that there is an attempt to commit an offence ii. Intentional transmission	<ul style="list-style-type: none"> - Recommend deletion - The article is ambiguous – e.g. pregnant mothers, breastfeeding mothers, and discordant couples and not properly elaborated 			
6. Sexual Reproductive Health Rights i. Marital Rape ii. Male involvement	<ul style="list-style-type: none"> - Further Analysis on the magnitude of the problem - Sensitise the population about the male involvement strategy - Implement the male involvement strategy 	Dec 2015		Civil Society & Ministry of Health
7. Supportive legal and policy environment for minors i. Pregnancy among school-going children	<ul style="list-style-type: none"> - Need to review of the Education policy to ensure it provides for continuation of education in the event of pregnancy among school-going children 			Ministry of Education; Ministry of Gender; Ministry of Justice; Civil Society
BURUNDI				
1. The Republic of Burundi has no holistic HIV and AIDS Law, but instead have a Law No 1/018 of 12 th May 2005 which provides for legal protection of people infected with HIV and those living with AIDS which is restrictive.	<ul style="list-style-type: none"> - Amend existing law to make it consistent with other regional and international HIV legal instruments - Include details text to provide additional guidance and hence make it possible to operationalise the existing HIV law. 	December 2015	Financial resources & Technical assistance	Ministry of Public Health and Fight Against AIDS, Ministry of Justice
2. Criminalisation of wilful transmission of HIV: Art 42 of HIV law: It is not easy to determine if a person wilfully transmits HIV except in case of rape.	<ul style="list-style-type: none"> - Included under issues to be considered during amendment of the law. - State clearly under which cases, wilful transmission is to be considered. - Testing should be done for both medical and legal purposes on both the perpetrator and victim. 	December 2015 Immediately and at Three (3) months after the rape.	Human Resources. Testing facilities such as reagents and medication (PEP)	Ministry of Justice; Ministry of Public Security; Ministry of Health and Fight Against AIDS
3. Discrimination based on HIV Status: - Mandatory pre-employment HIV testing for armed forces - Pre-registration HIV test result requirement for HOPE University	<ul style="list-style-type: none"> - Lobby to change this practice to avoid mandatory pre-employment HIV testing for armed forces - Field visit to confirm practice - Sensitise University leadership on the impact of this practice - Provide support to University management to mitigate / change practice 	Complete by December 2014	Human Resources & Financial Resources	Human Rights Commission; CSO; Ministry of Public Health and Fight Against AIDS; Ministry of Defence; Ministry of National Solidarity, Gender, and Human Rights; Ministry of Public Security; Ministry of Higher Education and Scientific Research; NAC
4. Gender inequality, GBV, harmful gender norms and HIV: Inability for women in Burundi to inherit property especially land which puts them in a weak socio economic status, thus increasing their vulnerability to HIV.	<ul style="list-style-type: none"> - Advocate for a law that provides for women to inherit land in Burundi - Fast track enactment of a law that provides for women to inherit land 	By December 2015	Financial resources, Technical assistance and human resources	Ministry of national solidarity, Human Rights and Gender; Ministry of Public Health and Fight Against AIDS; Parliament of Burundi; CSO; Ministry of Justice

Identified gap	Proposed intervention	Time frame	Resources required	Responsible Party/organisation
5. Limited access to services and information for key populations (people with disabilities, Youth, Sex workers, prisoners, seasonal workers truck drivers, men who have sex with men).	<ul style="list-style-type: none"> - Fast track adoption of the draft law on People with Disabilities' rights (national assembly adopted). - Build capacity of medical personnel to provide quality services to these groups - Ensure availability of accessible good quality of comprehensive services for these groups - Ensure availability and access to information for the groups in forms that are user friendly including for the blind and the deaf. 	December 2015	Financial resources & Technical assistance	Ministry of Public Health and Fight Against AIDS; CSOs; Ministry of National Solidarity, Human Rights and Gender
6. There is no Policy or strategy on conflict and post conflict HIV management	<ul style="list-style-type: none"> - Recommend a policy or strategy to address this gap. 	December 2015	Human and financial resources	Ministry of Public Health and Fight Against AIDS; Ministry of Public Security/Multisectoral platform handling risk and disaster management
KENYA				
1. Gap between the HIV Act 2006 and the HTC Policy <ul style="list-style-type: none"> - The Act requires written consent for children to get tested (under 18) - The age of consent in the policy is 16 with no written permission 	<ul style="list-style-type: none"> - To harmonise the Act and the HTC in order for children to test without legal impediments from 16 years old 	24 months	Financial and human resources and consultancy support	MOH & the National Assembly
2. Criminalisation of wilful transmission of HIV in the HIV Act, Article 24	<ul style="list-style-type: none"> - Amend the existing law to clarify and be specific on what 'deliberate transmission' entails 	24 months	Financial and human resources	NACC; MOH; National Assembly; State Law Office
3. Access to HIV related information for PWD <ul style="list-style-type: none"> • The Bill of rights in article 57(1)(c) of the Constitution 	<ul style="list-style-type: none"> - Enforcement of the Constitution in programming and implementation 	1 month	Financial and human resources	NACC & Council for PWD
4. Marital rape in section 43 of the Sexual Offences Act	<ul style="list-style-type: none"> - Need for a clearer definition and interpretation 	1 month	Financial and human resources	NACC & State law Office
5. Alternative medicine/ traditional healers	<ul style="list-style-type: none"> - Need for regulation on traditional medicine - All practices to be harmonised and managed under one regulatory body 	On-going	Financial and human resources	MOH; Ministry of Culture, Arts and Sports
6. The HIV Act 2006 is not aligned with article 43(1)(a) of the Constitution	Amend the HIV act to define what is exactly 'high standards of HIV care'	24 months	Financial and human resources	MOH; National Assembly

Annex 2.1 SELECTED BEST PRACTICES IN PARTNER-STATES

Partner-state	Best practices
KENYA	<ul style="list-style-type: none"> • The establishment of an HIV Tribunal • An insurance firm has introduced medical cover tailored made for people living with HIV and AIDS patients. There is no waiting period and no exclusion
RWANDA	<ul style="list-style-type: none"> • Amended Penal Code has removed a section on criminalisation of homosexuality. Research shows that there are higher prevalence rate in MSM and further sending them underground with punitive laws fuels discrimination, stigmatisation and the spread of HIV • Marital rape is specifically covered in details in the Gender-based violence law. This expand the protection of women especially those that are married and experience violence in the confines of marital matrimonial homes
TANZANIA	<ul style="list-style-type: none"> • In spite of the legislative sanctions on KP , specifically MSM, sex workers and IDUs, the Tanzanian Policy on Clinical management of HIV and AIDS acknowledges that increased access to health care of these groups will reduce transmission of HIV not only among these KP but also among the general population
ZANZIBAR	<ul style="list-style-type: none"> • Enhancement of VCT and PMTCT awareness through the involvement of FBOs and faith leaders • The HIV Bill does not have a criminalisation clause
UGANDA	<ul style="list-style-type: none"> • The country has a comprehensive national Policy on disaster preparedness and management 2010 which covers HIV
BURUNDI	<ul style="list-style-type: none"> • The constitution is innovative in that it specifically makes mention of HIV status as a ground for non-discrimination

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