

REPORT OF THE COMMITTEE ON HEALTH

ON

THE HIV AND AIDS PREVENTION AND CONTROL BILL, 2010

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1.0 Introduction

Rt Hon. Speaker and Hon. Members, permit me to present to you a report of the Committee of Health on the HIV and AIDS Prevention and Control Bill 2010. As the House will recall, the Bill in question was introduced as a Private Members Bill in 2010 by the Chairperson of the Committee on HIV. It was subsequently referred to the Committee on Social Services for detailed scrutiny. But before the Bill obtained its second reading, and before the Committee on Social Services could present its findings on the Bill, the 8th Parliament ended. The 9th Parliament decided that the Bill in question be revisited and saved. Upon its revisitation, it was referred to the Legal and Parliamentary Affairs Committee for scrutiny. Later, in September 2012, after the intervention of Hon Twa-Twa Jeremiah, Chairperson, Committee on HIV/AIDS and related matters, the Speaker directed that the Bill be considered by the Committee on Health.

It should be noted that the Committee on Social Services had done a lot of work on the Bill. It had held regional consultations on the Bill and carried out study visits in neighbouring countries. In addition, it had held consultations with the Uganda Law Reform Commission, the body that in fact drafted the Bill after extensive study.

1.1 Methodology

Upon instructions to study the Bill, the Committee on Health reviewed the report that the previous Committee on Social Services had compiled. It decided to update the information by conducting hearings. The following organizations presented their views to the Committee:

1. Uganda Law Reform Commission
2. Uganda AIDS Commission
3. Uganda Human Rights Commission
4. UNAIDS

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5. Civil society coalition on the HIV Bill
6. Ministry of Health
7. Foundation for Human Rights Initiative
8. Uganda Health and Science Press Association

The Committee also took note of the East African Community HIV Prevention and Management Bill. The Committee also reviewed some literature on the HIV/AIDS epidemic in Uganda.

Lastly, during the consideration of the Bill, the Committee worked closely with the Committee on HIV/AIDS. The Committee strongly believed that through joint consideration of the Bill, consensus vital for smooth processing of the Bill through the House would be obtained.

The Committee hereby presents its findings and recommendations/proposed amendments.

2.0 Status of HIV/AIDS in Uganda

The House may wish to note that the situation of HIV in the country is very bad. Uganda won many international accolades following years of dramatic reversal of HIV/AIDS prevalence from 18.5% in the general population in the early 90s to 6.2% in 2002/03. However recent studies from the Ministry of Health's Sero-Behavioural Survey (2011) and UNAIDS AIDS Epidemic Update (2012) have reported that despite years of dramatic success, HIV prevalence has increased from 6.4% in 2005 to 7.3% in 2011. What is more scaring is that Uganda is one of the only three countries in Africa where HIV prevalence rates are increasing; the other two being Angola and Mozambique!

These results demonstrate indisputably that HIV/AIDS remains a significant health problem for Uganda. This unpleasant revelation calls for renewed action and re-dedication to up scaling scientifically proven HIV interventions. It also challenges all the actors to focus on the goal of universal access to ARV treatment, and on our shared vision of a future of zero deaths from HIV-related illnesses, zero new HIV infections, zero stigma and discrimination of those infected and affected by HIV/AIDS.

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The House may wish to recall that in 2009, Uganda adopted a policy of universal access to ART. However, presently the number of persons living with HIV/AIDS that were eligible for ART using a CD4 cell count of 350 per cubic mm and below as cut-off was at 540,094 out of which only 48% were receiving treatment leaving out 52% from this life saving / prolonging treatment. Moreover, the pediatric coverage remained low at only 28% of the eligible children being put on treatment by the end of 2010. This means that 72% of the children are not receiving treatment. The main roots for HIV transmission are heterosexual relations and mother to child transmission. Although the epidemic is generalized, there are still most at risk populations that need urgent attention. These include commercial sex workers, long distance truck drivers, fishing communities and men who have sex with men.

The House may also wish to note that the national HIV/AIDS response is heavily funded by donors. Uganda Governments' financial contribution is around 11% while out of pocket contribution is about 8%. Heavy dependence on donors to implement our HIV/AIDS programmes is risky and dangerous.

It is in the light of the foregoing account that the Committee on Health considered the HIV and AIDS Prevention and Control Bill 2010. The major line of inquiry was: Can the HIV Bill, if passed into law in its current form, help to address the current HIV/AIDS epidemic in Uganda?

3.0 Object of the Bill.

The object of this Bill is to provide for:

- A legal framework that is geared towards the prevention and control of HIV.
- Reducing the transmission of HIV.
- Providing for HIV testing and counseling services.
- Creating government obligations towards HIV management.
- Making provisions for the protection of rights of persons living with HIV.
- Creating offences for willful and intentional transmission of HIV and to provide for related matters.

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4.0 Potential Strengths of the Bill in relation to the HIV/AIDS response

The Bill responds to the HIV/AIDS epidemic in Uganda in the following areas:

1. Prevention of the HIV transmission: In this respect, the Bill provides for:
 - a. Reasonable care to avoid transmission
 - b. Counseling and testing – comprehensive testing, efficiency in testing, confidentiality to be observed during the release of the tests. It provides that HIV counselors should be persons that have undergone training approved by the Minister of Health.
2. Treatment and care of the persons living with HIV: In this area, the Bill is obliging the state to, among other things,
 - a. Process, adopt and implement a national public health strategy and plan of action for HIV;
 - b. Provide universal HIV treatment to all persons on a non-discriminatory basis;
 - c. Provide care and support to persons living with HIV/AIDS.
3. Conducting bio-medical research: In this vital area of HIV response, the Bill provides guidelines within which research should be conducted to guard against violations of rights of those participating in the research;
4. Prohibition of discrimination on grounds of HIV status: The Bill prohibits discrimination in the following areas:
 - a. In the work place: The Bill provides that a person is not to be denied employment or be transferred or denied promotion on ground of his or her actual, perceived or suspected HIV status. On the other hand, institutions where there is significant risk of occupational exposure to HIV shall provide free of cost:
 - i. International precautionary guidelines with appropriate training on the use of such precautionary guidelines;
 - ii. Treatment to people exposed to HIV with appropriate counseling;
 - iii. Compensation to persons working in the institutions referred to above.

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- b. In schools: Here, the Bill seeks to prohibit those infected with HIV or suspected to have HIV from being denied admission or expelled, punished, segregated, denied participation or any benefits on the grounds of their HIV status. grounds of one's HIV status
 - c. Travel and Habitation: The Bill directs that no person should be denied or restricted from travel and habitation on the grounds of ones HIV sero-status
 - d. Public Service: The Bill directs that no person should be denied employment to public office on the grounds only of the person's actual, perceived or suspected HIV status
 - e. The Bill also directs that a person shall not be denied access to credit and insurance services, heath institutions, healthcare services on the grounds of ones HIV sero-status.
5. Offences and penalties: In an attempt to reduce transmission of HIV/AIDS, the Bill creates the following offences:
- a. Attempted transmission of HIV
 - b. Breach of medical confidentiality
 - c. Unlawful disclosure of information regarding the HIV status of any person
 - d. Intentional transmission of HIV
 - e. Willful and unlawful breach of provisions relating to safe procedures and practices
 - f. Misleading information or statement on the cure of HIV/AIDS

The proposed penalty for attempted transmission upon conviction is a fine of not more than twelve currency points or imprisonment of not more than five years or both. For the other offences, the convicted is liable to a fine of not more than two hundred and forty currency points or to imprisonment for a term not more than ten years or to both.

The Committee is of the view that the above provisions have the potential to empower and protect the persons living with HIV/AIDS and those at risk of contracting the virus.

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5.0 Some of the Contentious Clauses

Contention has been raised on some provisions of the Bill. This contention arises from at times contradictory programming approaches mainly from the public health perspectives, human rights perspectives and moral perspectives. The major critics have been the human rights activists who raise issues of discrimination, right to privacy and consent. The public health proponents look at the wider public good of restricting freedoms and undermining consent and partner disclosure. The moralists look at the HIV/AIDS as a disease that comes as a result of irresponsible behavior. The affected people are perceived to be irresponsible people who need to be controlled and threatened with punishments if the spread of the disease is to be contained. As a result of the foregoing conflicts, some clauses of the Bill have become controversial. The Committee highlights below some of the contentious clauses.

5.1 Clause 3: Reasonable care to be taken to avoid transmission of HIV

There was concern that there was likely to be practical difficulties in implementing the clause due to the wide spread poverty within the majority of our population, and the lack of the necessary facilities in some parts of the country. Further concern was that the clause imposes responsibility on all individuals involved and would affect individuals who would wish to seek redress in cases where they are infected with HIV, since they would be taken not to have abided by the provision of the clause.

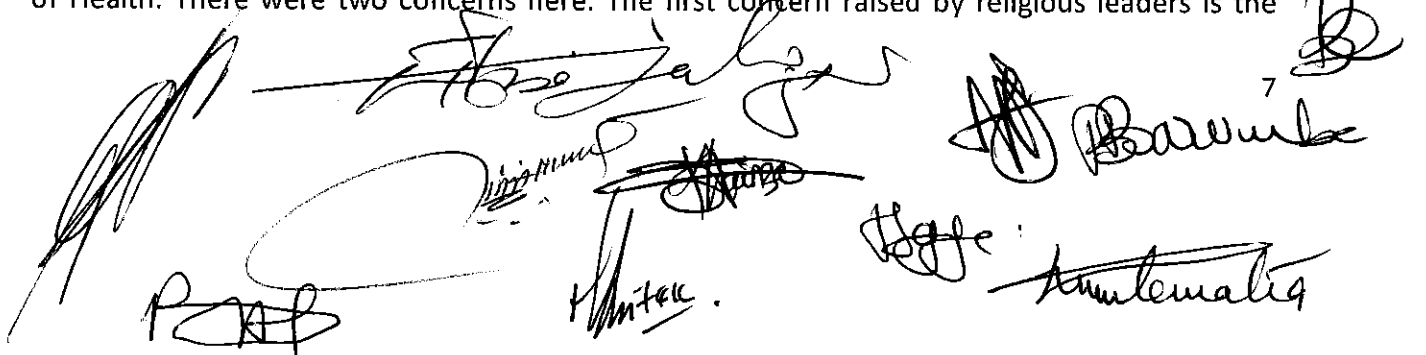
The Committee recognizes the need for everybody who is likely to be exposed to HIV to be responsible not to contract it.



The Committee therefore supports the clause in its current form.

5.2 Clause 5. Counseling to be conducted by trained HIV counselors

The Bill provides that counseling should be conducted only by qualified medical practitioners or persons who have completed an HIV counseling training programme approved by the Minister of Health. There were two concerns here. The first concern raised by religious leaders is the



attempt by the Bill to under-recognize the role that religious leaders play in counseling. Consequently, the Uganda Joint Christian Council (UJCC) proposed to expand the application of the clause, to include other organizations and agencies that conduct counseling, rather than limiting it to the mainstream health personnel. It was argued that faith-based organizations do provide a range of counseling services, including in the area of HIV and AIDS. It was proposed that this very important service by the faith-based organizations be recognized and provided for in the bill.

The Committee was of the strong opinion that it was not necessary to extend the application of this clause to religious leaders reason being that the pre-test and post-test counseling that are subjects of the clause only apply when one is going to have an HIV test. Such tests can only be taken at a health unit, and a health unit is adequately defined in the bill.

The second concern was on the competency of the Minister to approve counseling training programme, and whether the National Association of Counselors would not be the best suitable organization to approve counseling training curriculum. The Committee observed that the National Association of Counselors was not a body established by law and opined that the Minister would be better suited to approve the counseling programme. Thus, the Committee concurred with the position of the Bill.

5.3 Clause 13: HIV testing for purposes of criminal proceedings

The clause provides that a person convicted of drug abuse, charged with a sexual offence or convicted of an offence involving prosecution shall be subjected to HIV testing for purposes of criminal proceedings.

The Committee observed that for those already convicted, the HIV test would not have any judicial value. Secondly, it would appear that the clause intends to impose a stiffer penalty to HIV infected offenders compared to HIV negative offenders. This would tantamount to discrimination in the dispensation of justice.

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The Committee recommends that the HIV testing should only be subjected to those charged with sexual offences that are likely to cause the transmission of HIV. To this end, the Committee will propose amendment to clause 13.

5.4 Clause 12: Consent to test for HIV may be dispensed with

Clause 12 provides that consent is not necessary for testing when it is "unreasonably withheld" or "in an emergency due to grave medical or psychiatric condition and the medical practitioner reasonably believes that such a test is clinically necessary or desirable in the interest of that person."

There was concern from some quarters that the provisions under Clause 12 which dispense with consent were overly broad and risk unjustifiably infringing upon privacy rights. The argument was that HIV infection was not a health emergency and that there was currently no emergency treatment for HIV.

The Committee considered the grounds for the objection of the clause and found them not convincing given that the provision of the clause is standard medical practice.

5.5 Clause 14: Routine HIV Testing

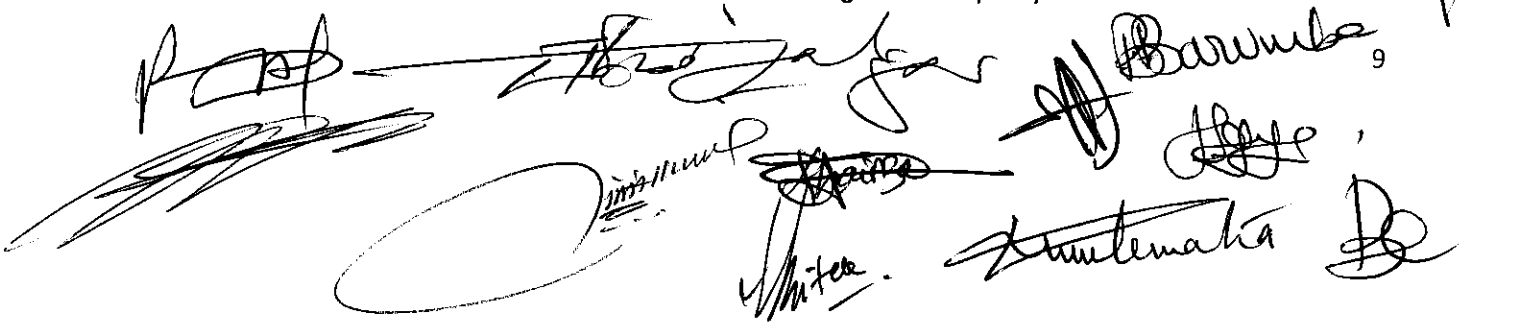
The clause provides for testing for pregnant women and their partners, and victims of sexual offences.

Opponents of the Clause



The Committee received concerns from some of the stakeholders that the provision was harmful, and advanced the following arguments:

1. That the clause does not provide for informed consent, thereby making testing mandatory. They argued that mandatory HIV testing violates fundamental rights to the security of the person and the highest attainable standard of physical and mental health protected by international treaties, to which Uganda is a party.



2. That the provision is directly against the internationally recognized principles for the conduct of HIV testing for individuals, namely, confidentiality, counseling and consent ("3Cs").
3. Those mandatory testing provisions threaten the health of those tested, without protecting the health of third parties, which is partly the rationale of such testing. Mandatory testing of pregnant women, for example, undermines the rights of women and girls to the security of person, fails to meet the requirement of consent set out in medical ethics and international human rights law, and violates guarantees of non-discrimination set out in various international and regional conventions. Mandatory testing exposes women to the risk of intimate partner violence and abandonment by male partners, especially when disclosure to sexual partners is mandatory.
4. That mandatory testing of victims of sexual crimes threatens victims' rights and may inadvertently harm them further, as it can call into question the source of their infection and their past sexual activity. Mandatory testing of marginalized and criminalized groups, such as drug users and sex workers, will make health systems appear to be places of prejudice and discrimination, rather than of treatment and care. Mandatory testing increases the stigma of such groups and creates major barriers to *HIV* treatment.
5. That mandatory testing of persons charged with sexual offenses could undermine a raped survivor's ability to make informed decisions about their health by providing misinformation about the alleged offender's HIV status. A negative test, for example, does not conclusively establish that the person who committed the assault does not have HIV. Some alleged offenders might be tested during the "window period," when an HIV test does not detect infection because HIV antibodies are not yet present. The opponents further argued that a negative test could also be misleading if an alleged offender is not the actual perpetrator of the assault, in which case a survivor might be inclined not to obtain HIV post-exposure prophylaxis (PEP) because of a false negative HIV test of the accused. Many alleged offenders are not apprehended within the time period during which PEP needs to be initiated to be effective, which would make the

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information about HIV status irrelevant in preventing the infection of the victim, and mandatory testing of criminal suspects has no appropriate forensic purpose.

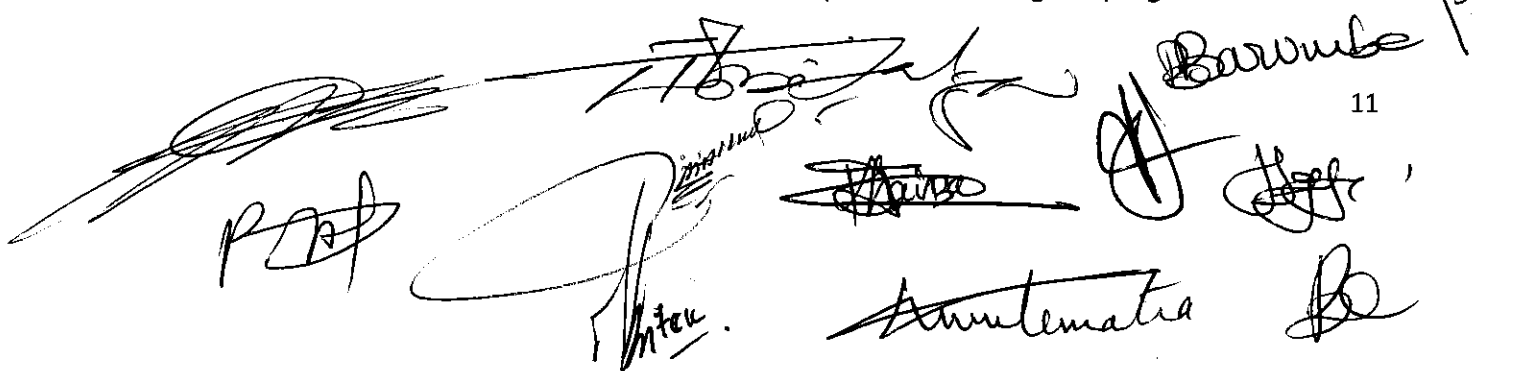
Supporters of the Clause

There was a similarly strong contrary view to the above arguments, including the following:

1. That deletion of clause 14 would kill the spirit of the bill. The three categories mentioned in the clause as being subject to mandatory testing namely; victims of sexual offences, a pregnant woman and a partner of a pregnant woman, are a key in controlling and preventing the spread of HIV and AIDS. Testing of victims of sexual offences would help in administering Post-exposure prophylaxis (PEP), as a preventive measure against contracting HIV, where one is illegally subjected to a sexual act, and HIV infection is likely to occur.
2. In the case of pregnant women, it is important that expected mothers are tested, so as to take necessary steps to save the unborn child from contracting HIV. Moreover, it is the dream of every expectant mother to have a normal child. This cannot be done, unless the mother is tested. Testing the expectant mother does not only protect the life of the unborn, but goes a long way in helping the mother to leave with whatever comes out of an HIV test.
3. Clause 14 sub clause (c) goes further to bring in all prospective parents, to participate in ensuring that the unborn child is not exposed to HIV infection.
4. It was also proposed that in addition to the categories that are subject to mandatory testing in clause 14, the Clause should include people who intend to marry, and other partners in polygamous marriage.



The Committee considered the differing views on this clause and formed a strong opinion that the spirit of the clause is not to remove rights of individuals, but rather, to protect the rights of people to life, and place an obligation on each of us to be responsible. In addition, the clause does not introduce anything new in the medical practice. Testing of pregnant mothers is



already in existence under the PMTCT programme, and the Bill is simply putting into law what is the practice.

In the case of testing of the victims of sexual offence, the objective is to administer post-exposure prophylaxis (PEP) as a preventive measure. The Committee is of the strong belief that the benefits of PEP as an HIV prevention measure are superior to the arguments of those opposing the clause on the grounds that subjecting the victim of sexual offence to routine HIV test would be stigmatizing, as this presupposes that the victim would periodically be brought forward for an HIV test.

5.6 Clauses 21 and 23: Exceptions to Confidentiality and Partner Notification

There was concern that the exceptions to confidentiality outlined in clause 21, and especially 21 (e) are too broad and might violate the privacy and confidentiality rights of people living with HIV and AIDS. The clause permits disclosure of HIV status without consent in the following circumstances, among others:

- a. when, "in the opinion of the medical practitioner, the HIV-positive person poses a clear and present danger" to a person with whom he or she is "in close and continuous contact including but not limited to a sexual partner".
- b. when a medical practitioner or other qualified officer who carried out an HIV test "reasonably believes" that the HIV-positive person poses a risk of HIV transmission to the partner, and has been given "reasonable opportunity" to inform their partners of their HIV-positive status, but has failed to do so.

A further point of concern was that the clause permits disclosure of HIV status without consent. This, it was argued, contravenes international human rights standards, which require states to ensure the confidentiality of medical information, and that a person's medical condition may not be arbitrarily disclosed to third persons without the specific consent of the individual concerned.

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Reference was made to the International Covenant on Civil and Political Rights (ICCPR) which guarantees an individual right to privacy, and the UN Committee on Economic, Social and Cultural Rights which stipulated that health facilities must uphold patients' confidentiality in health matters and the International Guidelines on HIV/AIDS and Human Rights which recommend voluntary partner notification and set a narrow set of circumstances under which health care provider disclosure is permissible.

There was a general worry that 'Partner Notification' proposed under Clause 23 was likely to lead to forced disclosure by women to male sexual partners which could expose women to violence and other abuses. Cases were cited where women had been thrown out of their marital homes after they had disclosed their HIV positive status to their husbands. Another concern was that it is women visit health centers more often and are more likely to test for HIV than the men. It was also argued that including a provision in a law that requires people who test for HIV to disclose their status to their spouses may deter individuals from getting tested.

The Committee agrees with some of the concerns raised above, and observes that clause 21(e) is too broad in application, especially the inclusion for other categories of people other than a sexual partner. The Committee proposes that the sub-clause be deleted to cure the above concerns.

With regard to clause 23 on partner notification, the Committee recommends that it be deleted.

5.7 Clause 30. Anonymous Testing

The clause provides that a person who consents to anonymous testing shall not be required to provide a name, age and address or any other information that may potentially identify him or her. The Committee observed that the clause in its current form would defeat the purpose of research. It would be difficult to present the research findings in a meaningful manner if variables like age and geographic location were not known.

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The Committee recommends that only the name of the person participating in the anonymous testing is not given or disclosed by the subject of the test. An amendment will be proposed to effect the above recommendation.

5.8 Clause 39: Attempted Transmission


This clause criminalizes attempted transmission of HIV to another person. The opponents of this clause argued that the clause does not define or limit the offence of attempted transmission. The major point of contention is related to the threshold of *actus reus* from which the attempt would be deemed punishable. The opponents further argued that obtaining evidence that one attempted to transmit HIV to secure conviction would be an uphill task. In addition, it was argued that this overly broad provision was likely to lead to arbitrary application and misuse. For example, a parent or spouse could just call police upon seeing their adult sons and daughters or partners 'talking' with people living with HIV/AIDS or suspected of being HIV positive!

The Committee considered the above concerns and agreed with them. In particular, it took note of the fact that the clause could easily be abused.

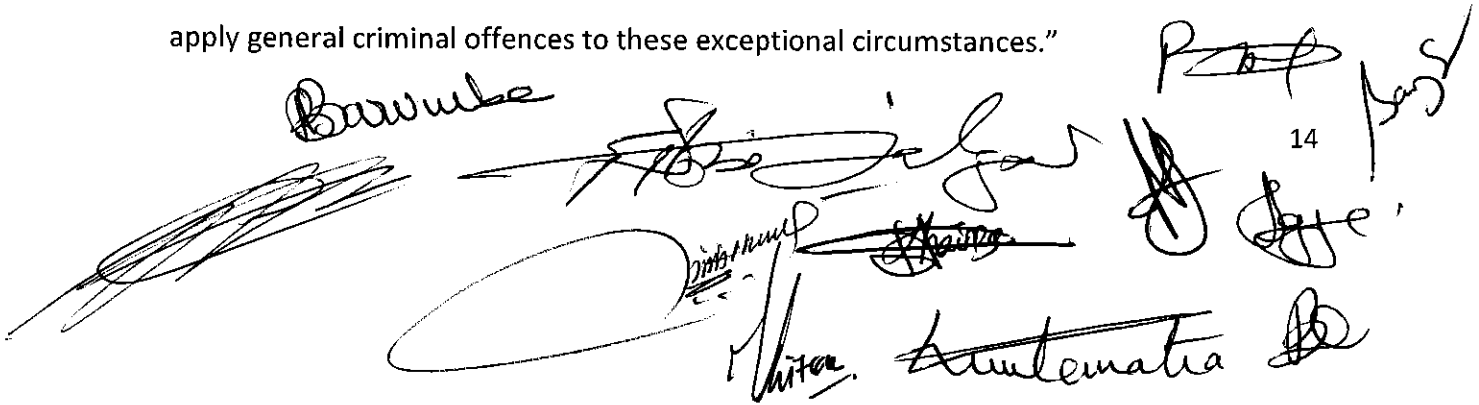
The Committee recommends that Clause 39 be deleted.

5.9 Clause 41: Intentional Transmission

The clause criminalizes the intentional transmission of HIV to another person. The objection to this clause was based on the following:



1. That the provision duplicates the existing provisions in the Penal Code Act, especially Section 171.
2. That the clause contravenes the international guidelines on HIV/AIDS and human rights which states that "criminal and or public health legislation should not include specific offences against the deliberate and intentional transmission of HIV but rather should apply general criminal offences to these exceptional circumstances."



3. That it would be difficult, if not impossible, to establish in court who between two partners was infected first or who caused transmission, for purposes of sustaining prosecution.
4. That the provision may deflect attention from measures that are more urgently needed to combat the epidemic such as effective prevention, protection against discrimination, reduced stigma, greater access to testing, and treatment.
5. That the provision demonizes individuals who are living with HIV and AIDS and exacerbates existing stigma around the illness and would particularly criminalize women, who, as a result of pregnancy-related medical care, form the majority of those who know their HIV status, thus exposing them to the risk of criminal prosecution.
6. That where two given individuals are HIV positive, it would be very difficult to establish who infected the other, given the lack of mechanisms of establishing the time period that one would have lived with the virus.
7. The provision may reduce the number of people seeking to know their HIV status, and therefore undermine HIV/AIDS prevention and treatment programmes.

The Committee considered the submission, and came up with the following observations:

1. Although Section 171 of the Penal Code which provides for "negligent act likely to spread infection of disease" is closely related to the proposal in Clause 41 which provides for "intentional transmission of HIV", the Committee finds no harm in having clause 41 in this bill. Lifting provisions from a general law to a law on a specific subject matter is normal practice in legislation.
2. Providing legal redress to people who are deliberately infected with HIV by others does not contravene the human rights of the perpetrators of the act. In any case, the parties involved will go through a due court process.
3. On the establishment on who infected the other, the Committee observes that this will be left to the courts to determine, depending on the evidence available. In any case, new technologies are being developed, which could determine the age of the HIV infection in individuals.

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4. During the regional consultative meetings, the people living with HIV AIDS strongly agreed with the prosecution of individuals who intentionally spread HIV. It was observed that criminalizing intentional transmission of HIV does not in any way demonize people living with HIV, but rather places an obligation on them to be responsible and fair to others. This consensus position was reached after it was explained to them that the clause was not meant to target people living with HIV and AIDS, but rather those who deliberately spread HIV.

The Committee therefore recommends that the clause remains part of the Bill.

6.0 Other general recommendations arising from gaps in the Bill

- 6.1 The Bill makes no provision for education and sensitization about HIV/AIDS

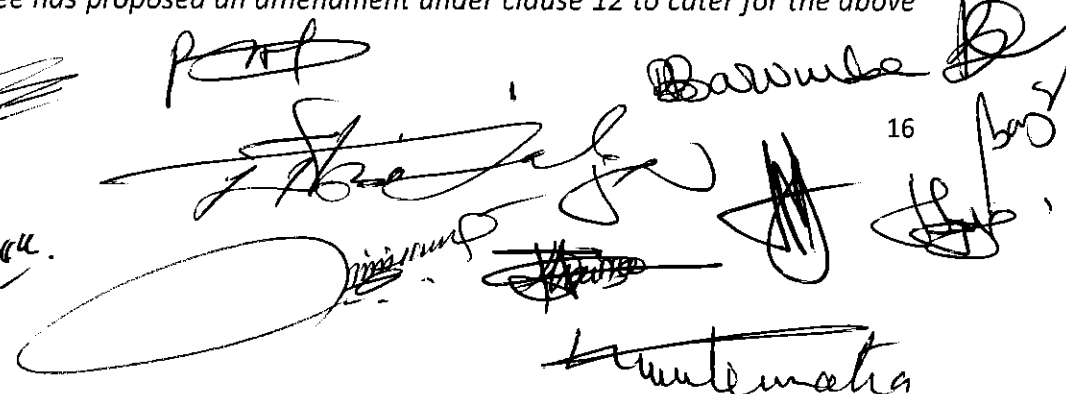
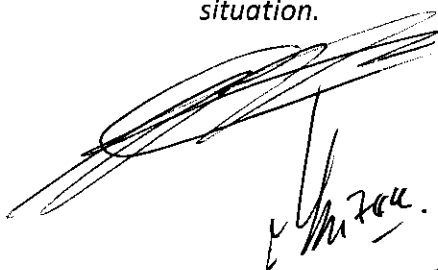
The Committee has proposed an amendment under state obligations (Clause 27) to cater for education and sensitization about HIV/AIDS.

- 6.2 The Bill makes no provision for the protection of vulnerable categories of people or people at risk (called most at risk populations) such as prisoners; commercial sex workers; migrant populations, including truck drivers.

The Committee has proposed an amendment to cater for the protection of vulnerable categories.

- 6.3 Clause 12 b (consent to test for HIV may be dispensed with) be expanded to provide for circumstances where medical personnel accidentally comes into contact with the blood of a patient, making it necessary for the medical personnel to establish the sero- status of the patient in question to enable the medical personnel access post-exposure prophylaxis, where need arises.

The Committee has proposed an amendment under clause 12 to cater for the above situation.



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6.4 Adequate and sustainable funding for the HIV and AIDS programmes

The Bill does not provide for adequate and sustainable funding modalities for HIV/AIDS programmes in Uganda.

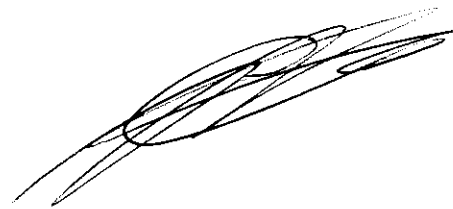
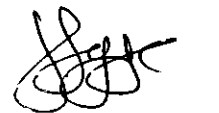
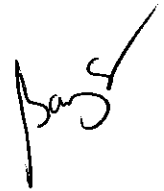
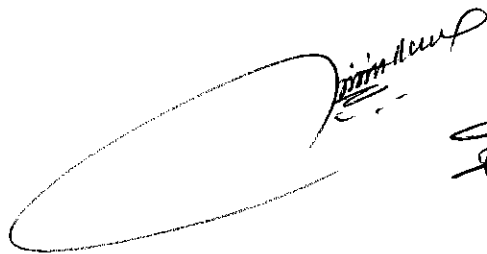
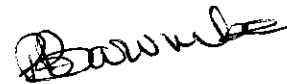
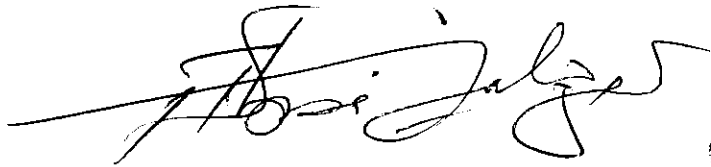
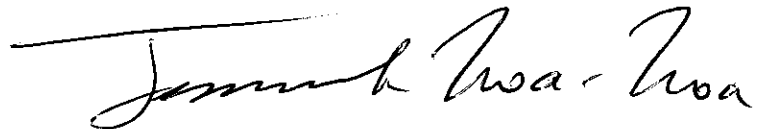
The Committee has proposed an amendment under Clause 27 – state obligations obligating government to provide adequate funding for the HIV/AIDS programmes.

In addition, the Committee has proposed an amendment for the creation of an HIV/AIDS Trust Fund.

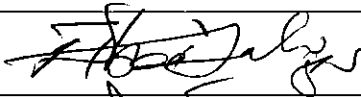
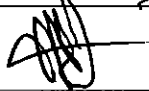
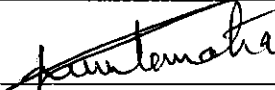

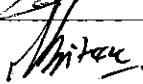
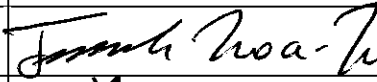
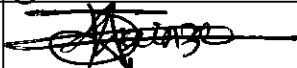
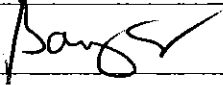
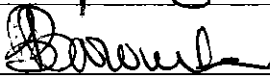

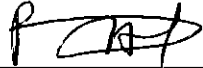
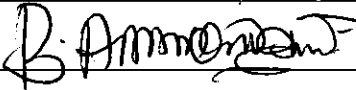
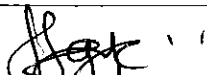
7.0 Conclusion

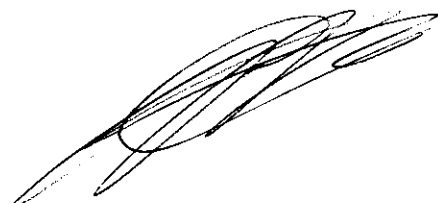
The Committee recommends that the Bill be read for the second time and the recommendations/proposed amendments by the Committee be adopted at the Committee stage.

I beg to report.



Members of the Committee on Health that Endorsed the Report on the HIV and AIDS Prevention and Control Bill 2010

NO	NAME	CONSTITUENCY	Party	Signature
1	Dr. Omona Kenneth	Kaberaido	NRM	
2	Iriama Margaret	Moroto District	NRM	
3	Lematia Ruth Molly Ondoru	Maracha District	NRM	
4	Anite Evelyn	Youth - Northern	NRM	
5	Kabasharira Naome	Ntungamo District	NRM	
6	Dr. Bitekyerezo Medard	Mbarara Munic	NRM	
7	Dr. Twa-Twa M. J.	Iki-Iki	NRM	
8	Khainza Justine	Bududa District	NRM	
9	Dr. Chris Baryomusi	Kinkizi East	NRM	
10	Barumba Rusaniya	Kiruhura District	NRM	
11	Egunyu Nantume Jennifer	Buvuma District	NRM	
12	Dr. Patrick Mutono Lodoi	Butebo	NRM	
13	Dr. Michael Bayigga Lulume	Buikwe South	DP	
14	Femiar Wadada	Sironko District	FDC	
15	Betty Aol Ochan	Gulu District	FDC	
16	Betty Amongi Ongom	Oyam South	UPC	
17	Rhona Ninsiima	Kabale Mun	Indep	
18	Oliver Katwesigye Koyekyenga	Buhweju District	NRM	



PROPOSED AMENDMENTS TO THE HIV AND AIDS PREVENTION AND CONTROL BILL, 2010 BY THE COMMITTEE ON HEALTH.

1. Title: The HIV and AIDS Prevention and Control Bill, 2010.

Substitute for the word 'Control' the word 'Management'.

Justification: The word 'management' is more encompassing than 'control'.

2. Clause 1: Commencement

Delete the entire provision.

Justification: To ensure that the commencement of the Bill takes effect on its date of publication as notified in the Gazette rather having to wait for the Minister to issue regulations appointing a date on which the Bill is to come into force.

3. Clause 2: Interpretation.

(a) "Anonymous testing"

Substitute for the words 'true identity' appearing in lines one and three, the word 'name'.

Justification: For consistency with the amendment made to clause 30.

(b) "ARVs"

Rephrase the definition of the phrase "ARVs" to read as follows-

"ARVs" means anti-retroviral drugs that suppress HIV multiplication in the body of a person living with HIV resulting in improved immunity;"

Justification: For clarity.

(c) "health unit"

Rephrase the definition of the expression 'health unit' as follows;

"health unit" includes a public or private hospital, clinic, nursing home, maternity centre, or other specialized establishment of the same nature;

Justification: For clarity.

(d) "other qualified officer"

Delete the word 'other' appearing before the word 'qualified'.

Justification: The word is redundant.

Thereafter substitute for the phrase 'other qualified officer' wherever it appears in the Bill, the phrase 'qualified officer'.

(e) "sexual offence"

Rephrase the definition of the phrase "sexual offence" to read as follows-

"sexual offence" includes rape, defilement or incest;

Justification: For specificity and to avoid ambiguity since the relationship between the other offences listed like sexual assaults do not have direct relationship with HIV transmission. Secondly, the offence of aggravated assault does not exist.

(f) **Delete** the following definitions.

(a) skin penetrative instrument.

(b) essential and non-essential drugs.

Justification: The words are not used anywhere in the Bill.

(g) **Insert** the following definitions in the appropriate alphabetical order-

“Fund” means the HIV and AIDS Trust Fund established under section 29;

“health institution” includes a public or private hospital, clinic, nursing home, maternity centre, medical laboratory, blood bank or other specialized establishment of the same nature;

Justification: For clarity since the words have been introduced in the Bill.

4. Clause 5: Counselling to be conducted by trained HIV counsellors.

Rephrase the provision to read as follows-

“Counselling of any person under this Act shall only be conducted by a medical practitioner, qualified officer or counsellor.”

Justifications:

- (i) To make the provision broader by including ‘qualified officer’.
- (ii) It is not necessary to refer to a medical practitioner as ‘qualified medical practitioner since the phrase ‘medical practitioner is defined.
- (iii) To avoid unnecessary repetition since the word ‘counsellor is defined in the Bill.

5. Clause 6: Nature of pre-testing counselling.

Rephrase the provision to read as follows-

“A counsellor shall provide pre-test counselling to a person who has consented to be tested for HIV which shall include-”

Justification: The word 'provide' is a more suitable verb than 'give'.

6. Clause 7: Nature of post-testing counselling.

(a) Clause 7 (1)

Substitute for the word 'give' the word 'provide'.

Justification: For consistency with the amendment made to Clause 6.

(b) Clause 7 (2)

Delete the word 'immediately' and **substitute** for the word 'give' appearing in line one, the word 'provide', and **delete** indefinite article 'a' appearing between the words 'getting' and 'positive'.

Justifications:

- (i) The use of the word 'immediately' is not necessary since the provision makes it mandatory for a counsellor to provide counselling services to a person getting positive HIV results.
- (ii) The word 'provide' is more suitable and for consistency with the amendment made to Clause 6.
- (iii) Deletion of indefinite article 'a' is for appropriate grammatical usage.

7. Clause 9: HIV testing services.

(a) Clause 9 (1)

Rephrase sub-clause (1) to read as follows-

"(1) A health unit may offer HIV testing services to a person.

Justification: To avoid repetition since the phrase 'health unit' is defined in the interpretation clause.

8. Clause 11: Persons incapable of giving informed consent to HIV testing.

Clause 11 (3)

Substitute for the words 'form A of the', the words 'the Third'.

Justification: The informed consent form being referred to under the provision is not reflected in the Second Schedule as form A. Therefore, following the amendment made to the section of the Second Schedule where Informed Consent Form appears, the proper cross-referencing would be the Third Schedule.

9. Clause 12: Consent to test for HIV may be dispensed with.

(a) **Insert** the words 'or qualified officer' between the words 'practitioner' and 'reasonably' appearing in line six.

Justification: To make the provision broader by catering for cases where HIV testing may be carried out by a 'qualified officer'.

(b) **Introduce** a new paragraph to read as follows-

“(c) a medical practitioner or qualified officer accidentally comes into contact with the blood or body fluid of a patient.”

Justification: To enable the medical practitioner or qualified officer establish the sero status of the patient in question so that the medical practitioner or qualified officer can access the post exposure prophylaxis where necessary.

10. Clause 13: HIV testing for purposes of criminal proceedings.

Rephrase headnote and the entire provision to read as follows-

“13. HIV testing of persons charged with sexual offences.

“A person who is charged with a sexual offence shall be subjected to HIV testing for purposes of criminal proceedings and investigations.”

Justifications:

- (i) For specificity since the requirement to carry out HIV testing during criminal proceeding would only be necessary in sexual offences which a direct link to HIV transmission like rape, incest and defilement.
- (ii) It would not be necessary to carry out HIV testing to a person who has already been convicted as this would amount to discrimination.

11. Clause 18: Efficiency to be ensured in testing.

(a) Clause 18 (1)

Substitute for the expression 'or medical practitioner' appearing in line one, the words 'medical practitioner or qualified officer'.

Justification: To make the provision all-encompassing and for consistency.

(b) Clause 18 (2)

Delete the provision.

Justification: It is superfluous because civil wrongs are not codified.

(c) Clause 18 (3)

Delete the provision.

Justification: The provision is vague and might be difficult to implement.

12. Clause 19: Disclosure or release of HIV test results.

Redraft the entire clause to read as follows-

"19. Disclosure or release of HIV test results.

- (1) The results of an HIV test shall be confidential and shall only be disclosed or released by a medical practitioner or qualified officer to the person tested.
- (2) Notwithstanding sub-section (1), the results of an HIV test may be disclosed or released to-
 - (a) a parent or guardian of a minor;
 - (b) a parent or guardian of a person of unsound mind;
 - (c) a legal administrator or guardian, with the written consent of the person tested;
 - (d) a medical practitioner or qualified officer who is directly involved in the treatment or counselling of that person, where the HIV status is clinically relevant;
 - (e) a person authorized by this Act or any other law; or
 - (f) any other person as may be authorised by a court.
- (3) Subject to sub-section (4), a parent or guardian of a minor who tests HIV positive shall inform the minor of his or her status as soon as it is practical.
- (4) A parent or guardian of a minor shall ensure that before the minor is informed of his or her HIV positive results, he or she receives counselling.
- (5) Nothing in this section shall prevent disclosure of statistical information in relation to HIV test results.

Justifications:

- (i) Clauses 19 and 21 have been merged to avoid repetition.
- (ii) The requirement to counsel a minor before informing him or her of his or her HIV positive results is prepare him or her to receive the results.

- (iii) Penalty for breach of confidentiality by medical practitioners or qualified officers is provided for under clause 40.

13. Clause 20: Confidentiality of test results and counselling information.

Delete the entire clause 20.

Justification: It is catered for in clause 19 (1).

14. Clause 21: Exceptions to confidentiality.

Delete the entire clause 21.

Justifications:

- (i) Part of the provision has been merged with clause 19 to avoid repetition.
- (ii) The deletion of Clause 21 (2) (e) is because the provision would be open to abuse and is also likely to discourage people from seeking HIV testing and care.

15. Clause 22: Persons tested to be notified on disclosure.

Insert a sub-clause as '(2)' to read as follows;

“(2) This section shall not apply where the results of an HIV test are for a minor or person of unsound mind.”

Justification: It would not be necessary to inform minors or persons of unsound of the disclosure because they are unable to make informed decisions.

16. Clause 23: Partner notification.

Delete the entire provision.

Justifications: The provision is open to abuse and is also likely to discourage people from seeking HIV testing and care for fear of their HIV status being disclosed.

17. PART IV- STATE RESPONSIBILITY IN HIV CONTROL. (Page 16)

Substitute for the word 'control' the words 'and AIDS Prevention and Management'.

Justification: To make the phrase more inclusive and for consistency with the amendment made to the short title of the Bill.

18. Clause 27: State obligations.

(a) Clause 27 (c)

Substitute for the words 'process, adopt' the word 'develop'.

Justification: The word 'develop' is more suitable.

(b) Clause 27 (e)

Rephrase the paragraph to read as follows;

“(e) to promote awareness of the rights of persons living with HIV and duties imposed on persons under this Act;”

Justification: For clarity.

(c) Clause 27 (f)

Delete the entire paragraph.

Justification: The provision is redundant.

(d) Clause 27 (g)

Rephrase the paragraph to read as follows-

“(g) promote and ensure non-discriminatory participation of people living with HIV in government programmes;”

Justification: For clarity and specificity.

(e) Clause 27 (h)

Insert the words ‘and AIDS’ between the words ‘HIV’ and ‘programmes’.

Justification: To make the provision inclusive.

(f) Clause 27 (i)

Add the words ‘and AIDS’ at the end of the paragraph.

Justification: To make the provision inclusive.

(g) Introduce two new paragraphs immediately after paragraph ‘(i)’ to read as follows-

“(j) provide adequate funding for HIV and AIDS programmes;

(k) give priority to most at risk population.”

Justifications:

(i) To ensure that the HIV and AIDS programmes are adequately funded for purposes of prevention and management.

(ii) To provide protection of vulnerable groups of people who are at a greater risk of HIV infection.

(h) Introduce a sub-clause to read as follows-

“(2) For purposes of this section, “most at risk population” include fishing communities, prisons, migrant populations or other areas as may be determined by the Minister from time to time.

Justification: For clarity.

- 19. Introduce** a new Part immediately after Part IV (State Responsibility in HIV Control) to provide for the AIDS Trust Fund as below;

“PART VI- HIV AND AIDS TRUST FUND

28. Establishment of the Fund.

There is established a Fund to be known as the HIV and AIDS Trust Fund.

29. Object of the Fund.

The object of the Fund is to secure a predictable and sustainable means of procuring goods and services for HIV and AIDS counselling, testing and treatment.

30. Source of moneys of the Fund.

The source of moneys of the Fund shall be determined by the Minister responsible for finance.

31. Administration of the Fund.

The Fund shall be administered by the Minister responsible for health.”

Justification: To ensure that there is adequate and stable funding of HIV and AIDS related programmes since HIV and AIDS resources has been largely funded by donors.

- 20. PART IV- HIV AND AIDS RELATED HUMAN BIOMEDICAL RESEARCH.**

Rename the Part to read as Part V.

Justification: For proper chronological numbering since Part IV is repeated.

- 21. Clause 29: Consent to research.**

Clause 29 (1) (b)

Delete the word 'legal' appearing at the beginning of line three.

Justification: The word 'guardian' is defined in the Bill and it would therefore not be necessary to qualify it.

22. Clause 30: Anonymous testing.

Rephrase the entire clause 30 to read as follows-

(1) "A person who consents to anonymous HIV testing shall not be required to provide a name.

(2) Subject to subsection (1), an identifying symbol shall be substituted for the person's true name."

Justification: It is a name of a person that can potentially disclose his or her true identity. The other information like age and address may sometimes be useful for research purposes.

23. Clause 32: Discrimination in the workplace. (page 16)

(a) **Renumber** the clause appropriately.

Justification: For proper chronological numbering since there appears two clauses numbered as 32.

(b) **Clause 32 (3)**

Redraft the provision to read as follows-

"(3) A health institution shall provide free of costs-

- (a) international guidelines to all persons working or present in the health institution who may be occupationally exposed to HIV, with appropriate training for the use of the universal precautions provided in the Second Schedule; and

(b) post exposure prophylaxis to persons exposed to HIV, with appropriate counseling services.

Justification: For specificity and clarity because -

(i) the definition of 'health institution' has been introduced in the Bill.

(ii) there is need for the Bill to make reference to the Second Schedule where Universal Precautions have been provided.

(iii) post exposure prophylaxis is the treatment given to people who have been exposed to HIV.

(c) Clause 32 (4)

Rephrase the entire provision to read as follows-

"(4) Subject to subsection (3), a health institution shall assist the person who acquires HIV to access HIV related treatment.

Justifications:

(i) For clarity.

(ii) Issues to do with compensation of employees by employers are provided for in the Workers Compensation Act, Cap. 225.

(iii) The duty to provide HIV and AIDS related treatment should not be placed on health institutions but be left to the State.

(d) Clause 32 (5)

Rephrase the entire sub-clause to read as follows-

"(5) Every health institution shall within sixty days of the commencement of this Act ensure that the universal precautions on post exposure prophylaxis in accordance with the regulations are complied with.

Justifications:

(i) The substitution of the word 'institution' with 'health institution' is a consequential amendment arising from the amendment made to sub-clause (3).

(ii) The words deleted in paragraph (a) are unnecessary detail.

(iii) The deletion of paragraph (b) is a consequential amendment arising from the amendment made to sub-clause (4).

(e) Clause 32 (6)

Redraft the provision to read as follows-

“(6) Notwithstanding the provisions of this Act, a policy introduced by an employer shall not require mandatory HIV testing including pre-employment HIV testing.”

Justifications:

(i) The word 'require' is more appropriate than the word 'specify'.

(ii) Deletion of the words 'as a requirement for claiming treatment and compensation' appearing after the word 'testing' in line three is to broaden the provision to apply in all cases.

(f) Clause 32 (7)

Substitute for the word 'and' appearing in line one, the word 'or'.

Justification: For easy and practical implementation.

(g) Clause 32 (8)

Substitute for the words 'An institution providing health care services' appearing at the beginning of the provision, the words 'A health institution'.

Justification: For consistency with the amendment made to sub-clause (3).

24. Clause 35: Exclusion from credit and insurance services.

Clause 35 (4) (a)

Substitute for the words 'commissioner of insurance' appearing in the last line, the words 'Insurance Regulatory Authority'.

Justification: The Insurance Regulatory Authority as an agency of Government responsible for regulating the insurance sector is best placed to carry out that mandate.

Thereafter substitute for the words 'commissioner of insurance' wherever they appear under section 35, the words 'Insurance Regulatory Authority'.

25. Clause 36: Discrimination in health institutions.

Delete the words 'or be charged a higher fee for any such services' appearing in line two.

Justification: To avoid vagueness and abuse.

26. Clause 37: Access to healthcare services.

Delete the entire provision.

Justification: It is covered in Clause 35 and 36.

27. Clause 38: Liability for discriminatory acts and practices.

Delete the entire provision.

Justification: Consequential amendment arising from the amendment made to clause 18 (2).

28. Insert the following provision under Part VI to read as follows;

"31. Protection of children living with HIV against discrimination.

A parent, guardian or a person having custody of a minor shall not discriminate against him or her on the grounds of the minor's actual, perceived or suspected HIV status."

Justification: To provide for protection of children living with HIV against discrimination by parents or caretakers.

29. Clause 40: Offences relating to breach of confidentiality.

Substitute for the entire provision, the following-

"40. Breach of confidentiality by medical practitioners or qualified officers.

A complaint against a medical practitioner or qualified officer for breach of confidentiality may be made to their respective established bodies in accordance with the Medical and Dental Practitioners Act, Cap. 272 and Allied Health Professionals Act, Cap.268 by any person."

Justification: To ensure consistency with the already existing provisions relating to inquiry into professional misconduct under the Medical and Dental Practitioners Act, Cap. 272 and Allied Health Professionals Act, Cap.268

30. Clause 42: Offences relating to breach of safe practices of HIV prevention.

Delete the entire provision.

Justification: It is not practical to have same health standards in all health units.

31. Clause 43: Penalty for offence relating to obstruction.

Delete the entire provision.

Justification: The provision is overly broad is likely to be abused.

32. Clause 45: General penalty.

Substitute the currency points and years of imprisonment with 'forty eight currency points' and 'two years' respectively.

Justification: To provide for a lesser penalty because the penalty provided is too harsh.

33. Clause 46: Exemption to creation of a risk.

Substitute for the words 'The provisions of this Part' appearing at the beginning of the provision, the words 'Sections 39 and 41'.

Justification: For specificity.

34. Clause 47: Laboratory analysis.

Clause 47 (1)

Redraft the entire sub-clause (1) to read as;

"(1) A medical practitioner or qualified officer who takes biological samples of specimens from persons in discordant relationships or from a person who tests positive initially and later test negative shall forward a sample to the Ministry of Health Laboratory for authoritative confirmation."

Justification: For clarity and specificity.

35. Schedules

(a) **Insert** the words 'THIRD SCHEDULE' on top of the words 'INFORMED CONSENT FORM' appearing on page 25 of the Bill and thereafter effect the following change in the Informed Consent Form.

(b) **Paragraph 9**

Insert the words 'or qualified officer' after the words 'medical practitioner'.

Justification: To ensure that there is consistent usage of the phrases.

(c) **Paragraph 10**

Delete the paragraph 10.

Justification: The paragraph is redundant.