

Uganda: Human Immunodeficiency Virus Control Bill (2007)

The full title of the Bill is 'A Bill for an Act to provide for the testing and controlling of Human Immunodeficiency Virus, the counselling of persons infected or living with Acquired Immunodeficiency Syndrome and for other related matters'. The Bill outlines the duty to protect oneself and others from HIV. It also deals with a spouse's right to refuse sexual intercourse on reasonable fear of HIV transmission and sets conditions for widow inheritance.

PART I - Preliminary

1. Objective

The objective of the Act is to provide for testing and counselling services to persons infected or living with Acquired Immunodeficiency syndrome.

2. Interpretation

In this Act, unless the context otherwise requires

“AIDS” means the medical condition known as the Acquired Immunodeficiency Syndrome, caused by the infection of an individual by the human immunodeficiency virus;

“Commission” means the Uganda AIDS Commission established under section;

“HIV” means the Human Immunodeficiency Virus the pathogenic organism responsible for AIDS.

“discordant” means a situation where one of the spouse is HIV positive and the other spouse is HIV negative in unsafe sexual relationship;

“medical practitioner” means a person registered under the Medical and Dental Practitioners Act (cap 272) to practice medicine, surgery or dentistry;

“other qualified officer” includes an allied health professional registered under the Allied Health Professionals Act (cap 268), nurse or midwife registered or enrolled under the Nurses and Midwives Act (cap 274) and a health work recognised by the laws of Uganda and the Ministry responsible for health.

“informed consent” means acceptance to take an HIV test after pre-test counselling, which acceptance is given freely without threat, coercion, duress, fraudulent means, representation or undue influence.

PART II - Prevention and control of AIDS

3. Duty to protect oneself and others from AIDS

Every person in Uganda has a duty to

- (a) contribute to the well-being of the community where he lives by promoting and encouraging an HIV/AIDS free community;
- (b) promote responsible parenthood which protects children from HIV infection;
- (c) protect oneself and others from being infected with HIV; and
- (d) assist and do everything possible to make a person having HIV cope with that situation.

4. Acts resulting into infection of another person an offence

A person who, directly or indirectly, omits to do or does any act which he knows or has reason to know or believe that it will result into the infection of another

person with HIV commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or to imprisonment not exceeding one year.

5. Denying sexual intercourse

A spouse may, where the other spouse refuses or is negligent to take precautions against HIV infection, deny that other spouse the right to sexual intercourse on reasonable fear that engaging in sexual intercourse is likely to infect the denying spouse with AIDS.

6. Sexual intercourse without consent

Where a person has sexual intercourse without the consent of the other spouse, and there is reasonable suspicion that the forcing spouse might be infected with HIV, the act shall create both a criminal and civil liability and in the case of

(a) a criminal offence, the person who commits the offence is liable on conviction, to a fine not exceeding twenty four currency points or to imprisonment to a term not exceeding one year or to both.

(b) a civil wrong, the complainant shall be entitled to a restriction order, suspension of conjugal rights or compensation as the court may determine.

7. Neglect of responsibility

A person legally responsible for the maintenance of a child, relative or other person shall be responsible for the welfare and for organising the treatment of that child or person if that child or person is infected with HIV and any person who neglects or refuses to carry out that responsibility commits an offence.

8. Widow inheritance and welfare of children

(1) No person shall inherit a widow or accept to be inherited as a widow under any customs, traditions or practices of the community before undertaking an HIV test of the parties involved.

(2) Where one of the parties taking a test under subsection 1 is found to be HIV positive, widow inheritance shall be effected only to the extent of responsibilities and no conjugal rights shall be attached to the inheritance.

(3) Whatever the results of the testing of the parties under this section, the welfare and support of the children and the widow shall be the responsibility of the person to whom the customs, traditions and practices of widow inheritance entrust them.

PART III - Testing for HIV

9. HIV testing services

(1) Any public or privately owned hospital, clinic, maternity centre or health centre providing common health conditions, ante-natal care, family planning service or special or general treatment to patients shall offer HIV testing services to patients.

(2) The identity of a person tested under subsection 1 shall be maintained only at the place where the sample for testing is drawn and shall not be disclosed or released to any person except in accordance with the law and medical standards of disclosing or releasing personal medical information.

(3) The performance of a test shall be carried on by a medical practitioner, or other qualified officer

10. Voluntary HIV testing

(1) A person may take a voluntary HIV test and the test results may be identified with that person if he gives his or her informed consent after discussion of the

implications of the test with a medical practitioner or other qualified person during pre-test counselling.

(2) A child or a person incapable of giving informed consent may be tested for HIV and the test results may be identified with that child or person, if his or her parent, guardian, caretaker or agent gives informed consent after discussion of the implications of the test with a medical practitioner or other qualified person during pre-test counselling.

(3) The informed consent shall be in the form specified in form A of the Schedule to this Act.

11. Identified test results without consent

(1) A medical practitioner or other qualified person may draw blood and secure identified test result for HIV/AIDS where

(a) the person to be tested is a child and has no parent, guardian or caretaker and the test is required for purposes of giving treatment to the child;

(b) the person to be tested is a child who appears to be symptomatic for HIV/AIDS and the parent, guardian or caretaker refuses to give the consent;

(c) the blood or bodily fluids of the person to be tested gets into dangerous contact with or exposure to another person in the course of that other person's employment or charitable action and the person to be tested refuses to give voluntary consent;

(d) in an emergency due to grave medical or psychiatric condition, it is not possible to obtain consent from the person to be tested or his or her parent, guardian, caretaker or agent;

(2) No test shall be conducted under paragraph 1(c) unless the complainant has submitted an incident report to a medical practitioner within forty eight hours of the contact or exposure, identifying the person and stating the time, place and nature of the event leading to the contact or exposure and has submitted to HIV test within seventy two hours of the incident and tested negative.

12. Compulsory HIV test

(1) The following persons shall be subjected to a compulsory HIV test

(a) a person convicted of drug abuse or being in possession of hypodermic instrument associated with drug abuse;

(b) a person convicted of sexual offence;

(c) a person convicted of an offence involving lewdness prostitution; and

(d) a pregnant woman during the first antenatal clinic visit or soon thereafter.

(2) A person tested under this section shall be informed of the results of the test after discussion of the implications of the test with a medical practitioner or other qualified person.

13. Confidentiality of test results and counselling information

A medical practitioner or other qualified person who performs counselling or HIV test shall ensure that all information gathered from the text or counselling of a person is kept confidential and the testing and counselling shall be conducted in an area where privacy and confidentiality are assured.

14. Report of test results

(1) A medical practitioner and other qualified person who performs HIV tests shall report the test results to the tested person's medical practitioner or other qualified person who requested for the test.

(2) The medical practitioner or other qualified person may enter HIV test results forwarded to him or her in the medical record of the patient as would be the case with any other diagnostic test.

(3) The medical practitioner or qualified person to whom a report is made under subsection 1 may notify the results of the test to

(a) Other health professional directly involved in the treatment and care of the person tested or to whom the person is referred for treatment;

(b) The parent, guardian, caretaker or agent of the child or person tested;

(c) Any third party with whom an HIV infected person is in close and continuous contact including but not limited to a spouse, if the nature of contact, in the opinion of the medical practitioner, poses a clear and present danger of HIV transmission to the third party, subject to subsection 4;

(d) Any person exposed to blood or body fluid of a person tested under paragraph 1(c) of section 5;

(e) The relevant court that requested for a test in case of a convicted person;

(f) The AIDS Commission.

(4) No notice of results shall be given under paragraph 3(c) unless the medical practitioner or other qualified person has reason to believe that the person tested has not and will not inform the third party of the results of the test, in spite of the very strong encouragement from the medical practitioner or other qualified person.

15. Person tested to be notified on disclosure

The medical practitioner or other qualified person giving the results of HIV test to any person shall, except in the case of other professionals involved in the treatment or care of the person tested, inform the person tested of the disclosure giving

(a) the nature and purpose of disclosure;

(b) date of disclosure; and

(c) the recipient of the information.

16. Organ, tissue, sperm or part of the body to be identified with test results

(1) Any person donating any organ, tissue, sperm or part of his or her body for the treatment of another person or insemination of sperm shall provide blood for HIV testing and the results of the test shall be identified with the organ, tissue, sperm or part of the body donated.

(2) Where the person donating an organ, tissue, sperm or part of a body provides proof of prior testing to the satisfaction of the relevant medical practitioner, the donor may not provide blood under subsection 1.

17. Efficiency to be ensured

A person who performs or is otherwise involved in the performance of an HIV test shall take all reasonable measures within his or her control to ensure that

(a) the testing process is carried out promptly and efficiently; and

(b) the results of the test are communicated promptly to the tested person, medical practitioner or other qualified person who requested for the test.

PART IV - Prevention of mother to child transmission

18. Testing as a prevention of mother to child transmission

(1) All pregnant women who are not confirmed to be living with HIV shall be tested under section 11 to determine their HIV status.

(2) A pregnant woman who tests HIV negative in the first test shall take a second or subsequent test after three months from the date of the first test.

(3) A pregnant woman who is HIV positive shall be entitled to safe and appropriate ARV regimens and routine medication to prevent transmission of HIV to the child.

19. Counselling of spouse of pregnant woman

A spouse of a pregnant woman tested for HIV under section 18 shall be entitled to pre-test counselling to help him take a decision on HIV testing.

20. Testing of the new born child

Every child born to a mother living with HIV shall, between ten and fourteen weeks of age, be tested for HIV and where necessary shall be given follow-up treatment, care and support.

PART V - Pre-test and post-test counselling

21. Professional counsellors

There shall be professional HIV/AIDS counsellors who shall be

- (a) qualified medical practitioners; or
- (b) persons who have completed an HIV counselling training programme approved by the AIDS Commission.

22. Persons entitled to counselling

Any person to be tested for HIV/AIDS under this Act is entitled to pre-test and post-test counselling.

23. Pre-test counselling

A professional counsellor shall give a person to be tested for HIV/AIDS pre-test counselling which shall include

- (a) information pertaining to the nature of HIV infection
- (b) the desirability of having an HIV test,
- (c) an explanation of the informed consent form,
- (d) client-centred information tailored to the behaviour, circumstances and special needs of the person to be tested,
- (e) personalised risk assessment,
- (f) possible results and how to handle the situation to reduce transmission,
- (g) such other relevant information as the counsellor may deem necessary.

24. Post-test counselling

(1) A professional counsellor shall give post-test counselling to a person getting negative HIV test results which shall include

- (a) the test results and the implication;
- (b) importance of further testing for persons with a high risk of infection;
- (c) continuing necessity of taking protective measures to avoid contracting AIDS.

(2) A professional counsellor shall give spot-test counselling to a person getting positive HIV test results which shall include

- (a) test results and the implication;
- (b) the infectious nature and types of the disease and measures to prevent transmission;
- (c) referral to medical and social services;
- (d) the importance of notifying his or her partner and other persons in close and continuous contact posing danger of infection;
- (e) continuing necessity of taking protective measures to avoid contracting other types of infection;
- (f) such other information as the counsellor may deem necessary.

25. Ongoing counselling

Any public or privately owned hospital, clinic or health centre providing common health conditions or special or general treatment to patients shall, after the post-test counselling, offer ongoing counselling sessions to a person whose test results are HIV positive to enable the person to effectively cope with the situation.

PART VI - Intentional creation of risk to others

26. Reasonable care to be taken

A person who is aware that he is infected with HIV shall take reasonable care to protect others from infection and as such shall

- (a) at all times, take reasonable measures and precautions to prevent the transmission of HIV to others;
- (b) use a condom or other reliable protective measures to protect his or her partners from infection with HIV during sexual intercourse;
- (c) inform any intended sexual partner or any person with whom a skin penetrative instrument is to be used, in advance of the sexual intercourse or sharing of the skin penetrative instrument, that he is infected with HIV.

27. Intentional transmission of HIV

(1) A person who intentionally transmits or attempts to transmit HIV to another person commits an offence of intentional transmission of HIV and shall be liable on conviction to two years imprisonment or to a fine not exceeding fifty currency points or to both.

(2) No person shall be convicted of an offence under subsection 1 if

- (a) the person alleged to have committed the offence was not aware of being infected with HIV at the time of committing the act which is the result of the complaint;
- (b) the other person was aware of the HIV status of the accused and the risk of infection and he voluntarily accepted the risk;
- (c) the alleged transmission or attempted transmission was through sexual intercourse and a condom or other reliable protective measure was used during penetration;
- (d) the other person was already infected with HIV at the time of the alleged transmission or attempted transmission.

28. Reckless behaviour causing risk of infection to others

(1) Where it is reasonably believed that a person

- (a) who is aware of being infected with HIV is behaving in such a way as to expose others to a significant risk of infection; and
- (b) is likely to continue that risky behaviour; and
- (c) has been counselled without success in achieving appropriate behaviour change; and

(d) presents a real danger of infection to others, the chairperson of a local court may issue a written notice to that person.

(2) A notice under subsection 1 shall state

- (a) grounds upon which it is believed that the notice should be issued;
- (b) the nature of the risky behaviour of the person;
- (c) an order or direction to stop the behaviour;
- (d) any other order or direction to the person considered necessary to ensure change of behaviour; and
- (e) that breach of any order or direction shall be an offence.

(3) An offence committed under subsection 2(e) shall be deemed to be intentional transmission of HIV and the provisions of section 27 shall apply.

29. Exemption to creation of risk

The provisions in this Part shall not apply to any transmission of HIV by a mother to her child before, during or after the birth of the child.

PART VII - Discrimination of persons with HIV

30. Discrimination against persons with HIV

(1) A person, agency or organisation shall not discriminate against a person on the basis of positive HIV results or perception of a positive test in housing employment granting of credit public accommodation or in deliver of service.

(2) An HIV test shall not be required as a condition of employment by any person or body except where it is declared in writing by a medical practitioner, that the nature at the employment constitutes a danger to that person or a clear and great danger of transmission at HIV to other employees.

31. Exemption of insurance

(1) Any insurance company offering life insurance policy may require a person to be tested for HIV for purposes of determining the insurance premium.

(2) Any requirement for a test under subsection 1 shall be in writing and no testing shall be effected without the informed consent of the person or in case of a child, the informed consent of his or her parent, guardian or caretaker.

(3) Nothing in this section shall be construed to permit an insurance company to cancel or refuse to renew a life insurance policy that by its terms has not lapsed on the basis of a positive HIV test result.

PART VIII - Miscellaneous provisions

32. Information on counselling and reports confidential

(1) All information and reports pertaining to HIV counselling, testing and reporting under this Act shall be confidential and save as is provided under subsection 3 of section 7, shall not be disclosed to a third party without the written consent of the person to who the information or report relates.

(2) Any person who releases any information or report contrary to subsection 1 commits an offence and shall be liable on conviction to a fine not exceeding ... or to a term of imprisonment not exceeding two years or to both the fine and imprisonment.

33. Acquired information not to be disclosed

Any person who acquires any information in the course of his or her duty, that another person

(a) is presumed to be HIV positive or has AIDS;

(b) has been, is being or has refused to be tested; or

(c) is related to or associated with, a person who is presumed to be HIV infected or who has AIDS;

shall take all reasonable steps to prevent disclosure of such information to any person who is not required to get that information.

34. Court or tribunal proceedings

Where in any proceedings before court or tribunal, it appears that the HIV status of any person may come into consideration, the court or tribunal may order that

(a) the public or any particular person be excluded from the proceedings or any part of the proceedings;

(b) only persons specified by the court or tribunal be present in the proceedings or any part of the proceedings; or

(c) the publication of the proceedings, decision or report of the court or tribunal or any part thereof be prohibited.

35. Free counselling and testing centres

The Uganda AIDS commission may establish free HIV testing and counselling centres in all regions of Uganda as it may deem fit.

36. Laboratory analysis

(1) Any medical practitioner or other qualified officer who takes biological samples of specimens from persons in discordant relationships or from persons who tests positive initially and later tests negative shall forward a sample to the Ministry of Health Laboratory through the Uganda AIDS Commission for analysis.

(2) The samples and specimens forwarded to the Ministry of Health laboratory shall not include names identified with them or any other information which would identify the person tested.

37. Regulations

The Uganda AIDS Commission may, in consultation with the Minister responsible for health, make regulations generally for the better carrying out of the provisions of this Act.

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