

**A Policy Analysis on the
Enforcement of the East African
HIV & AIDS Prevention and Management Act**



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1.1 INTRODUCTION

On 23rd April 2012 the East African Legislative Assembly passed the EAC HIV and AIDS Prevention and Management Bill. Its prime mover was Ugandan Legislator Hon Lydia Wanyoto-Mutende.¹ It was enacted to:

- a. Promote a rights-based approach to dealing with all matters relating to HIV and AIDS;
- b. Promote public awareness about the causes, modes of transmission, means of prevention and management and consequences of HIV and AIDS;
- c. Extend to every person living with or affected by HIV the full protection of the person's human rights by:
 - i. Providing HIV related services as provided for in the Act
 - ii. Guaranteeing the right to privacy of the individual
 - iii. Prohibiting HIV related discrimination
 - iv. Ensuring the provision of quality health care and social services for persons living with HIV and their care givers
- d. Promote utmost safety and universal precautions in practices and procedures that carry the risk of HIV transmission, and;
- e. Positively address and seek to eradicate the conditions that aggravate the spread of HIV infection².

Every East African Community country has enacted a HIV AIDS Act.

¹East African Legislative Assembly, 'EALA Passes Regional Bill on HIV and Aids' (EALA 23 April 2012) <<https://www.eala.org/index.php/media/view/eala-passes-regional-bill-on-hiv-and-aids>> accessed 9th September 2022.

²EAC HIV and AIDS Prevention and Management Act, 2012, sec 3

1.2 OBJECTIVES OF THE STUDY

The aim behind the EAC HIV and AIDS Prevention and Management Act 2012 (hereinafter the EAC HIV Act) has been to create a common, responsive legal framework for HIV and AIDS in the region applying the rights-based approach and in incorporating good standards and practices in HIV prevention, treatment, care and support.³ To this extent, its success depends on EAC member States implementing their Act in their legislative, policy and institutional frameworks. To what extent has this been done? This Policy Analysis looks at Kenya, Tanzania, Uganda, Rwanda, Burundi and South Sudan and how they have implemented the provisions of the EAC HIV Act in their local jurisdictions.



1.3 KENYA'S ENFORCEMENT OF THE EAC HIV AIDS ACT

Recent data from the Kenyan government indicates that Kenya's HIV prevalence now stands at 4.9% with a seemingly high disparity in infection rates as the prevalence of HIV in women is at 6.6%, twice that in men at 3.1%.⁴

Kenya has embarked on implementing a legislative, policy and institutional framework dedicated to addressing the scourge of HIV and AIDS. This has involved the scaling up of HIV prevention, care and treatment efforts. The success of these efforts has resulted in the reduction of the annual number of new HIV infection and AIDS-related deaths, resulting in improved quality of life for people living with HIV and reduced risk of infection.⁵ Over 96% of people who know their HIV-positive status are on life saving treatment. More than 90% of those on treatment have controlled the HIV

virus and therefore posing very low risk of HIV transmission.⁶

Kenya's legislative and policy framework includes:

- a. The Constitution
- b. The HIV and AIDS Prevention and Control Act 2006
- c. The Kenya Health Policy 2012-2030
- d. National Guidelines of HIV testing and counselling 2008
- e. Guidelines for HIV Testing in Clinical Settings 2006
- f. The Guidelines for Prevention of Mother to Child Transmission (PMTCT) of HIV/AIDS
- g. Childrens' Act 2010
- h. Sexual Offences Act 2006
- i. Employment Act 2007
- j. Female Genital Mutilations Act 2011
- k. The 2003 Adolescent Reproductive Health and Development Policy;

³Ibid East African Legislative Assembly

⁴Ministry of Health, 'Kenya's National HIV Survey Shows Progress Towards Control of the Epidemic (MOH Nairobi, 20th February 2020) <<https://www.health.go.ke/kenyas-national-hiv-survey-shows-progress-towards-control-of-the-epidemic-nairobi-20th-february-2020/>> accessed 9th September 2022

⁵Ibid Ministry of Health

⁶Ibid Ministry of Health

- l. The National Condom Policy and Strategy (2009-2014);
- m. The Contraceptive Policy and Strategy (2002-2006);
- n. The Contraceptive Commodities Procurement Plan (2003-2006);
- o. The Contraceptive Commodities Security Strategy (2007-2012)
- p. The National Code of Practice on HIV and AIDS in the Workplace 2009
- q. The National Action Plan on Mainstreaming Gender in HIV responses in Kenya 2009/10 – 2012/13
- r. The Education Sector Policy on HIV and AIDS, 2013
- s. The National Plan of Action for Orphans and Vulnerable Children 2007-2010

No single document can guide one to a conclusion of how Kenya has implemented the EAC HIV AIDS Act. The following analysis could cure the problem.

1.3.1. HIV and AIDS Information, Education and Communication

The EAC HIV AIDS Act places great emphasis on the governments of member states promoting public awareness. This is the extent to which Kenya has implemented EAC HIV AIDS Act in information and education.

No.	EAC HIV AIDS Act	HIV and AIDS Prevention and Control Act	Health Act No. 21 of 2017
1.	<i>Section 4(a) - Govt to inform and educate all population groups including PWDs in its jurisdiction about HIV including the modes of transmission and means or prevention.</i>	Section 4: Govt shall promote public awareness about causes, modes of transmission, consequences, means of prevention & control of HIV AIDS	No provision.
2.	<i>Section 4(d) - Govt to ensure equitable access to relevant information (in relation to HIV and AIDS), goods and services including essential medicines without discrimination.</i>	Sec 4: Govt shall promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign. In conducting the educational and info campaign gov't shall collaborate with relevant stakeholders to ensure involvement and participation of individuals and groups infected and affected by HIV and AIDS, including persons with disabilities	Sec 4: National gov't, county gov'ts and every organ having a role within the National Health System, shall ensure appropriate, adequate and comprehensive info is disseminated on health functions for which they are responsible. Including the <i>types, availability and cost if any of health services, procedures for access to the health service and procedures for laying complaints;</i>

No.	EAC HIV AIDS Act	HIV and AIDS Prevention and Control Act	Health Act No. 21 of 2017
3.	<i>Section 6</i> - Govt shall 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.	<i>Section 4</i> : Govt shall promote public awareness about causes, modes of transmission, consequences, means of prevention & control of HIV AIDS through a comprehensive nationwide educational and information campaign conducted by the Government.	No provision.
4.	<i>Section 6(2)</i> - that the education and information campaign on HIV and AIDS shall: (a) Employ scientifically proven and evidence based approaches (b) Encourage the voluntary testing of individuals (c) Be adapted to the age, gender disability, nature of activities and sexual practices of target groups (d) Address social, religious and cultural beliefs and unequal gender relations and specially sensitise men on HIV prevention, gender based violence.	<i>Section 4</i> : The educational and information campaign referred to in subsection (1) Shall (a) employ scientifically proven approaches; (b) focus on the family as the basic social unit; (c) encourage testing of individuals; and (d) be carried out in schools and other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities throughout Kenya.	<i>Section 4</i> : It is a fundamental duty of the State to observe, respect, protect, promote and fulfil the right to the highest attainable standard of health including reproductive health care and emergency medical treatment by ensuring the realization of the health related rights and interests of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religious or cultural communities.

1.3.2 HIV and AIDS Prevention, Counselling and Testing

No.	EAC HIV AIDS Act	HIV and AIDS Prevention and Control Act	Guidelines for Anti-Retroviral Therapy in Kenya
1.	<i>Section 12</i> - Govt to take measures and promote practices and procedures that prevent,	<i>Section 9</i> - the proposed recipient of donated tissue or his immediate relatives shall have the right to	<i>Page 11</i> : Provides for tests for children under 18 months with maternal HIV antibodies passively

or reduce the risk of HIV transmission in particular

a. provide clear policy guidelines to all public and private healthcare institutions to ensure total protection from facility based HIV transmission in matters relating to blood transfusion, organ transplant.

demand a second HIV test on such tissue before a transplant or other use of the tissue and such test shall, except in the case of emergencies, be carried out

Section 10: All donated blood shall, as soon as reasonably practicable after donation, be subjected to an HIV test. Any blood tested which is found to be HIV positive shall be disposed of in accordance with the prescribed guidelines on the disposal of medical waste as soon as reasonably practicable after such result is obtained.

Section 11 The Minister shall, in consultation with registered professional associations of healthcare providers, prescribe guidelines on precautions against HIV transmission during surgical, dental, delivery, embalming and similar procedures; and the handling and disposal of cadavers, body fluids or wastes of persons with HIV.

Sec 12: person who, in the course of his professional practice, knowingly or negligently causes another to be infected with HIV through unsafe or unsanitary practices or procedures contrary to the provisions of this Part, or of any guidelines prescribed hereunder, commits an offence.

transferred to them to confirm infection and if not for preventive measures to be taken.

No.	EAC HIV AIDS Act	HIV and AIDS Prevention and Control Act	Guidelines for Anti-Retroviral Therapy in Kenya
2.	Section 12(3)- The HIV test result of a potential donor of any blood or product shall be confidential and shall not be communicated to the proposed recipient of the bodily fluid or product.	The Kenyan Act states in sec 9(3) that the proposed recipient of donated tissue or his immediate relatives shall have the right to demand a second HIV test on such tissue before a transplant or other use of the tissue and such test shall, except in the case of emergencies, be carried out.	No provision

1.3.3 Gaps in the Kenyan Legal Framework vis a vis the EAC HIV AIDS Act

- i. The HIV and AIDS Prevention and Control Act in section 24 provides that any person who is aware of being infected shall take all reasonable measures to prevent the transmission of HIV to others. The section by extension contributes to the stigma towards PLWHIV as it imposes a stereotype that PLWHIV are immoral/ dangerous and undermines the public health message that everyone should practice safe behaviours regardless of their HIV status. This goes against 4(e) of the EAC HIV AIDS Act that requires govt to provide HIV AIDS prevention, treatment and support without discrimination.
- ii. Health is largely a devolved function with the National Government handling policy⁷ while county governments are responsible for county health facilities and pharmacies, ambulance services and promotion of primary health care⁸. There is no framework that guides how the two levels of government work together to achieve the objectives of the legislative and policy framework relating to HIV AIDS. This falls short of the requirement by section 4(h) of the EAC HIV AIDS Act which requires governments to create an institutional framework for an integrated and multi-sectoral approach to the prevention and management of HIV and AIDS.
- iii. The Constitution of Kenya makes no mention of HIV AIDS. It is silent on the rights of persons living with or affected by HIV AIDS. It may be argued that this is a failure to place a responsibility upon the government to promote and protect the rights of persons living with or affected by HIV AIDS by the country's grundnorm.⁹
- iv. One of the most significant policies on HIV AIDS is the Education Sector HIV. However while it provides for the responsibility of all learning institutions to address HIV and AIDS (such as through education, developing skills and values and changing attitudes to promote positive behaviours) the Policy statements are largely cautious and unconvincing through their failure to be authoritative. For instance the policy suggests that institutions of higher learning should implement HIV/AIDS intervention, rather than making it obligatory to do so. The policy is also silent on how programmes it suggests should be financed.
- v. The criminalisation of homosexual acts between consenting adults under sections 162

⁷Constitution of Kenya 2010, Fourth Schedule, Part 1, Clause 28

⁸Ibid Constitution of Kenya, Part 2, Clause 2

⁹East African Community HIV and AIDS Prevention and Management Act 2012, Article 4(c)

and 165 of the Penal Code has greatly limited the success of the National HIV Testing and Counselling Guidelines that provide for testing and counselling for key populations including sex workers and MSM. This is because it contributes to their stigma, marginalisation and institutionalisation of their crackdown. Consequently, there has been a lack of data about the number of such populations which make it difficult to target these groups as well as sex workers despite their high HIV prevalence.¹⁰ This greatly inhibits Kenya from attaining the requirement of section 12(b) of the EAC HIV AIDS Act which provides that the government shall take measures and promote practices and procedures that prevent or reduce the risk of HIV transmission including by providing recognised protective methods and devices to risk populations.

- vi. The Insurance Act 2012 does not regulate refusal of medical cover to HIV and AIDS patients and thus fails to meet the requirements of sec 3(c)iii) of the EAC HIV AIDS Act (to prohibit HIV related discrimination).



1.4. TANZANIA'S ENFORCEMENT OF THE EAC HIV AIDS ACT

Tanzania reports that around 1.4 million people were infected with HIV in the country by 2017¹¹. In the country HIV/AIDS affects women and girls disproportionately compared to men. UNAIDS reports that adolescent girls and young women account for 80 percent of all new HIV infections.¹² HIV prevalence is at 6.2 % among women and 3.1% among men¹³. Tanzania seeks to end HIV & AIDS by 2030 and has invested in HIV prevention, care, treatment and support services including the recent adaption of Treat All (test and treat) strategy

thereby reducing HIV incidence rates from the peak of 1.34% in 1992 to as low as 0.07% among 15-24year-olds and 0.25% among adults (aged 15-64) in 2017.¹⁴

The country has a wide legislative and policy framework being utilised to deal with HIV&AIDS. These include but are not limited to:

- i. The Constitution
- ii. The HIV and AIDS (Prevention and Control) Act 2008
- iii. Tanzania National Multisectoral Strategic Framework for HIV and AIDS 2018/19 to 2022/23

¹⁰Ministry of Health, 'Kenya National Aids Strategic Plan 2009/10 – 2012/13' (Ministry of Health) <http://guidelines.health.go.ke:8000/media/Kenya_National_Aids_Strategic_Plan_2009-2010.2012-2013-.pdf> accessed 24th September 2022

¹¹National AIDS Control Programme (NACP), 'HIV/AIDS in Tanzania'

¹²USAID, 'HIV/AIDS Tanzania' (USAID September 2020) <https://www.usaid.gov/sites/default/files/documents/Tz-HIV-AIDS_Fact_Sheet_Sep_2020.pdf> accessed 9th September 2022

¹³UNAIDS, 'Country Progress Report – United Republic of Tanzania Global AIDS Monitoring 2020' (UNAIDS 2020) <https://www.unaids.org/sites/default/files/country/documents/TZA_2020_countryreport.pdf> accessed 9th September 2022

¹⁴Ibid National AIDS Control Programme (NACP), n.1

- iv. Health Sector HIV and AIDS Strategic Plan 2017–2022
- v. National Policy Guidelines for Collaborative TB/HIV Activities
- vi. Standard Operating Procedure for Community Based HIV and AIDS Services

The following part looks at the legislative and policy framework with a view to establish to what extent Tanzania has enforced the EAC HIV and AIDS Prevention and Management Act 2012.

The Constitution of Tanzania bears the following provisions:

- Article 11 provides that everyone has a right to education.
- Article 12 provides for that all human beings are born free, and are all equal and every person is entitled to recognition and respect for his dignity.
- Article 13 provides that all persons are equal before the law and are entitled, without any discrimination, to protection and equality

before the law.

- Article 22 provides that every person has the right to work right to work and to equal opportunity and right to equal terms to hold any office or discharge any function under the state authority.

Unfortunately, despite these provisions, a 2016 study found that persons living with HIV and AIDS face a lot of discrimination and stigma in their workplaces¹⁵ to an extent that some reported having to take ARVs in the toilet.¹⁶ Others face discrimination and mistreatment from health care workers¹⁷ whereby health workers use abusive language, or provided services in a hostile manner (delays and overusing protective materials such as gloves).¹⁸ This could be indicative of gaps in the implementation of efficient legislative and policy frameworks. The following table looks at the state of implementation of Tanzania's HIV and AIDS (Prevention and Control) Act 2008 and related policies in comparison to the standards set by the EAC Act.

No.	EAC HIV and AIDS Prevention and Management Act 2012	Tanzania HIV and AIDS (Prevention and Control) Act 2008	National Guidelines for the Management of HIV and AIDS April 2012
1.	Any person interpreting the Act should give effect to the letter and spirit of the EAC Treaty, and interpret it to comply with international obligations as well as the objects of the EAC Act - <i>Section 3(2)</i> .	No such provision	None
2.	Duty to inform and educate all population groups including PWDs in its jurisdiction about HIV including the modes of	Duty of the Ministry to disseminate HIV and AIDS education and information as part of delivery of health care services – <i>Section 8(2)</i>	Patient and family members (with patient consent) should be educated on HIV/AIDS and need to adhere to ARV treatment plan (page125) Patients should be educated

¹⁵Maisara Mhode and Tumaini Nyamhanga, 'Experiences and Impact of Stigma and Discrimination among People on Antiretroviral Therapy in Dar es Salaam: A Qualitative Perspective' 2016 Hindawi Publishing Corporation AIDS Research and Treatment at page 8

¹⁶Ibid Maisara Mhode and Tumaini Nyamhanga, at page 7

¹⁷Ibid Maisara Mhode and Tumaini Nyamhanga at page 9

¹⁸Ibid Maisara Mhode and Tumaini Nyamhanga at page 6

	<p>transmission and means or prevention.- <i>Section 4(a)</i>.</p>		<p>on appropriate nutrition using locally available foods and guided on feeding patterns and preparation of foods to suit the condition of the patient. (page 254)</p> <p>Educate family members and treatment assistants about HAD i.e. HIV Associated Dementia (page 234)</p> <p>At page 249: Community Home Based Care programmes (CHBC) should be utilised to enhance HIV and AIDS awareness, reduce stigma, and mobilize communities to use HIV testing and counselling services.</p>
<p>3.</p>	<p>Duty to prevent and control HIV transmission adopt and implement a national HIV prevention , treatment and management strategy – Section 4(b)</p>	<p>Duty to design and implement gender and disability responsive HIV and AIDS plans in respective plans. – Section 6(1)</p> <p>Develop programmes to ensure prevention and control of HIV and AIDS to the public – Section 10</p>	<p>At page 47: The National Blood Safety Programme has developed an integrated strategy to promote the provision of safe and adequate supplies of blood to reduce the risks associated with transfusion</p> <p>At page 56: Effective post-exposure management entails the following elements: (1) Management of Exposure Site, (2) Exposure Reporting, (3) Assessment of Infection Risk, (4) Appropriate Treatment, Follow-up and Counselling.</p> <p>At page 193: PMTCT (Prevention of Mother to Child Transmission) Scale-up is based on the UN recommendation of a comprehensive four-element strategy to prevent HIV in infants and young children which includes;</p> <p>a) Primary prevention of HIV among women of reproductive age b) Prevention of unintended</p>

			<p>pregnancies among women living with HIV</p> <p>c) Prevention of HIV transmission during pregnancy, delivery and breastfeeding</p> <p>d) Treatment, care and support for women living with HIV, their children and families</p> <p>At page 194: Although family planning (FP) is part of a comprehensive public health strategy to prevent MTCT, it is recommended that it is implemented in a way that respects and responds to reproductive rights of woman and her partner. HIV-infected women should receive information about preventing unintended pregnancies, the risks of MTCT of HIV infection and consequences thereof, thus enabling them to make informed decision.</p>
4.	Duty to promote and protect the rights of persons living with or affected by HIV – section 4(c)	No such provision	<p>PLHIV have a right to bear children and get support from health care workers to avoid unwanted pregnancies or plan for them. Family planning and pregnancy services should be provided (p.37)</p> <p>At page 42: Recommended that there is support to community outreach campaigns to fight HIV-related stigma and discrimination against PLHIV.</p>
5.	Duty to ensure equitable access to relevant information (in relation to HIV and AIDS), goods and services including essential medicines without discrimination.- section 4(d)	Sec 29: Any health practitioner who deals with persons living with HIV and AIDS shall provide health services without any kind of stigma or discrimination.	No provision

6.	Duty to provide HIV and AIDS prevention, treatment, care and support without discrimination – section 4(e)	Sec 29: Any health practitioner who deals with persons living with HIV and AIDS shall provide health services without any kind of stigma or discrimination.	At page 252-253: Provide home based care to reduce stigma and discrimination against PLHIVs. At page 42: Support community outreach campaigns to fight HIV-related stigma and discrimination against PLHIV and MARPs.
7.	Undertake, coordinate and regulate research on HIV and AIDS – section 4(j)	No provision	Recommends that there is operational research to enhance collaborative TB/HIV activities (page 187)

1.4.1 Gaps in the Tanzania Legal Framework vis a vis the EAC HIV AIDS Act

- i. Tanzania Constitution has no provision that addresses the right to health.
- ii. Some laws are outdated. The Law of Marriage Act of 1971 allows girls to get married at the age of 14 or 15 “under special circumstances”. The Education Act 1978 does not include protective measures for girls who become pregnant while in school.
- iii. The Public Health Act of 2009 does not explicitly provide for the enforcement of the right to health.
- iv. 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. sex work is illegal in both mainland Tanzania and in Zanzibar. Section 176(a) Tanzania’s penal code punishes with three months in prison “loitering or soliciting in a public place for the purposes of prostitution.”
- v. 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.
- vi. The Law of Marriage Act, Revised 2002 allows early marriages where girls at the age of 15 years can be married with consent from parents or guardians.
- vii. 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.
- viii. The Sexual Offences Special Provision Act 1998 does not recognise marital rape while the HIV and AIDS (Prevention and Control Act) 2008 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.
- ix. The Zanzibar HIV and AIDS Prevention and Management Bill 2011 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.



1.5 UGANDA'S ENFORCEMENT OF THE EAC HIV AIDS ACT

1.5.1 A Brief Overview of Uganda's Legal, Policy and Institutional Framework

Recently, there have been calls for more concerted efforts to end stigma against persons living with HIV AIDS and the dedication of more funds by the Ugandan government to support testing and the procurement and distribution of ARVs. This has been amidst concerns that HIV AIDS is continuing to spread thus posing a risk to Uganda's future. One thousand (1,000) new infections are reported every week among adolescent girls and young women.¹⁹ High rates of stigma against injection drug users, transgender people, men who have sex with other men, and sex workers are also reversing the gains made against HIV AIDS as these groups account for the majority of undiagnosed HIV infections.²⁰

Uganda has however still made huge strides in the fight against HIV AIDS. The country has an elaborate legislative, policy and institutional framework that is dedicated to addressing the challenges of HIV and AIDS. The legal framework consists of the Constitution, the HIV and AIDS Prevention and Control Act 2014 and the Equal Opportunities Commission Act 2007. Uganda also

has a number of policies that include the National HIV and AIDS Policy, the Safe Male Circumcision 2010, the Public Private Partnership for Health for Health Policy 2010, the HIV/AIDS Workplace Policy 2010, the Revised Care and Treatment Policy 2011, the 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. All these are besides the various plans that have been made for similar purpose of combating HIV AIDS, such as the National HIV and AIDS Strategic Plan 2015-2020, Prevention Road Map, National Priority Action Plan 2018-2020, the Presidential Fast Track Action Plan, the Presidential Fast Track Initiative Progress Report August Edition and the Revised National Strategic Plan 2011/12 – 2014/15 and the Uganda Population-Based HIV Impact Assessment (UPHIA 2016-2017).

The enforcement of the EAC HIV and AIDS Prevention and Management Act is spread across the wide legislative and policy framework outlines above. Such enforcement is achieved through a number of institutions: These include The Equal Opportunities Commission and the Uganda AIDS Commission.

¹⁹Patrick Odongo Lango, 'Stigma hampering the fight against HIV' (Daily Monitor 7 September 2022) <<https://www.monitor.co.ug/uganda/oped/letters/stigma-hampering-the-fight-against-hiv-3939734> > accessed 11th September 2022

²⁰Ibid Patrick Odongo Lango

1.5.2. Uganda's Enforcement of the EAC HIV Act on Information, Education and Communication

Sections 6 - 11 of the EAC HIV Act place an obligation on the governments of member states to promote public awareness about the nature, causes, modes of transmission, consequences, means of prevention, control and management. This should be done using scientifically proven and evidence-based approaches, through encouraging voluntary testing and by addressing social, cultural attitudes, gender-based violence and inequality. Uganda has embarked on this as the Uganda HIV Act mandates the State to promote awareness of the rights of persons living with HIV and the duties

of persons under the Act.²¹ The Act seeks to ring-fence the aspect of information, education and communication by providing that all statements or information regarding the cure, prevention and control of HIV infection shall be subjected to scientific verification.²² Any person who may cause to be made or publishes any misleading information regarding cure, prevention or control of HIV contrary to section 45 of the Act commits an offence.

The Revised National Strategic Plan 2011/12-2014/15 makes provision for the enrolment of children infected with or affected by HIV AIDS to school and the promotion of informal education, vocational and life skill development for OVC.

Uganda's Enforcement of the EAC HIV Act on Information, Education and Communication

No.	EAC HIV Act	Uganda HIV Act
1.	Sec 6: Govt shall promote public awareness about the nature, causes, modes of transmission, consequences, means of prevention, control and management.	Sec 24(1)e): The government shall devise measures to promote awareness of the rights of persons living with HIV and duties imposed on persons under this Act.
2.	Sec 6(2)b): The education and information campaigns by government shall encourage the voluntary testing of individuals.	Sec 30: A person shall not undertake HIV and AIDS related human biomedical research on another person or on any tissue or blood removed from a person except with the written informed consent of a person on whom the research will be carried out. Where that person is a minor or is incapable of giving consent, with the written informed consent of a parent or legal guardian of the child or other person. A person whose consent is sought to be obtained shall be adequately informed of the aims, methods, anticipated benefits and the potential hazards and discomforts of the research.

²¹Uganda HIV and AIDS Prevention and Control Act, 2014

²²Ibid sec 45

1.5.3. Uganda's Enforcement of the EAC HIV Act on the Protection of the rights of Persons Living with or Affected by HIV AIDS

The EAC HIV Act places a lot of emphasis on the protection of the rights of persons living with or affected by HIV AIDS.

a. Freedom from discrimination

Section 24 of the EAC Act provides that persons living with HIV AIDS are entitled to enjoy all human rights without discrimination. That way, no person may directly or indirectly discriminate against a person living with or affected by HIV on the basis of his actual or perceived HIV status, A victim of such acts may institute legal proceedings to claim damages. Article 21 of the Constitution provides for the equality of all persons before and under the law and their protection from discrimination. The Constitution also safeguards the rights of women²³ and children²⁴ who are some of the persons requiring special protection as they bear the brunt of HIV AIDS.

The Uganda HIV and AIDS Prevention and Control Act tackles discrimination through various aspects. Section 32 outlaws the denial of access to employment where a person is qualified, or such person is transferred, denied promotion or has his/her employment terminated on the ground of his or her actual, perceived or suspected HIV status unless the employer shows that the person has not met the requirements of the employment in question; or he is incapable of performing his or her work due to his or her medical condition. The Act also prohibits discrimination in schools (section 33), restrictions on travel and habitation (section 34), discrimination of a minor by the parent or guardian (section 38); denial of public service positions (section 35) and exclusion from credit and insurance services (section 36) particularly where any of the aforementioned instances of discrimination result from a person's

actual, perceived or suspected HIV status. Finally, the Act prohibits discrimination in the provision of healthcare services in healthcare institutions (section 37) and expressly requires private and public health institutions to facilitate access to healthcare services to persons with HIV without discrimination on account of their HIV status.

The Equal Opportunities Commission Act, 2007 establishes the Equal Opportunities Commission with the powers to monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of organs of state at all levels, statutory bodies and agencies, public bodies and authorities, private businesses and enterprises, non-governmental organizations, and social and cultural communities²⁵. The Commission works to ensure that they are compliant with equal opportunities and affirmative action in favour of groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom.²⁶ For the time being, it can be argued that health status is envisioned as one of the grounds envisaged although not explicitly stated in the Equal Opportunities Act because the preamble states the Commission shall work to eliminate discrimination on grounds 'created by history, tradition or custom for the purpose of redressing imbalances which exist against them'.

b. Right to privacy

Every person is entitled to privacy and confidentiality regarding the person's HIV status (EAC HIV and AIDS Prevention and Management Act 2012 sec 25) The EAC HIV Act further provides that a person in possession of information relating to the HIV status of any other person shall observe confidentiality in the handling of that information. (section 25(2).A person may only disclose info concerning a person's HIV status to another person except where (as under sec 23) the person

²³The Constitution of Uganda, Article 33

²⁴The Constitution of Uganda, Article 34

²⁵The Equal Opportunities Commission Act, 2007, sec14(1)

²⁶Ibid The Equal Opportunities Commission Act, 2007

living with or affected by HIV AIDS is a child or a person with disability; where such information is being disclosed to a health care provider directly involved in providing health care to that person where knowledge of the patient's HIV infection is necessary to make clinical decisions in the best interests of that person; for the purpose of an epidemiological study where the release of information cannot be expected to identify the person to whom it relates; and finally, upon a court order, where the information is directly relevant to the proceedings before the court.

Section 24(1)e) of the Uganda HIV and AIDS Prevention and Control Act places a duty upon the State to promote awareness of the rights of persons living with HIV. Many of those rights have been discussed herein but when it comes to privacy, section 18 cannot be ignored. It provides that the results of a HIV test shall be confidential and shall only be disclosed or released by a medical practitioner or other qualified officer to the person tested. This prohibition has exceptions: such information may be released to a parent or guardian of a minor, a parent or guardian of a person of unsound mind; a legal administrator or guardian, with written consent of the tested person; a medical practitioner or other qualified officer directly involved in the treatment or counselling of that person where the HIV status is clinically relevant; any other person with whom an HIV infected person is in close or continuous contact including a sexual partner if the nature of the contact poses a clear and present danger of HIV transmission to that person. There are only three other categories of persons exempted under section 24: a person authorised under the Act or any other law; a person authorised by a court; and any person exposed to blood or body fluid of a tested person. Section 19 of the Act states that test results and counselling information relating to a person's HIV status are confidential and that a person who breaches such confidentiality commits an offence.

The Health Service Commission Act 2001 provides that a health worker shall respect the confidentiality of information relating to a patient and his or her family and shall not disclose such information without the patient's or appropriate guardian's consent except where it is in the best interest of the patient - section 30(5). Section 33(3) states that

a health worker shall respect the confidentiality of information relating to a patient or client and his or her family. Further, that such information shall not be disclosed to anyone without the patient's or appropriate guardian's written consent except where it is required by law. Such confidentiality shall apply even where a health worker attends to a person held in detention -section 30(6). These provisions form part of the Code of Conduct established under the Act.

Clause 15 of the Patients' Charter provides that Patients have the right to privacy in the course of consultation and treatment and that information concerning one's health, including information regarding treatment may only be disclosed with informed consent, except when required by law or on court order. The Charter places a duty on facility managers to put mechanisms that ensure that health workers under their direction shall not disclose any matters brought to their knowledge in the course of their duties or their work (clause 15). A health facility or health worker may however pass on medical information: where the disclosure is for the purpose of the patient's treatment by another health worker; where the disclosure of the information is vital for the protection of the health of others or the public, and that the need for disclosure overrides the interest in the information's non-disclosure; and where the disclosure is for the purpose of publication in a medical journal or for research or teaching purposes if all details identifying the patient have been suppressed.

Uganda's Enforcement of the EAC HIV Act on the Protection of the rights of Persons Living with or Affected by HIV AIDS

No.	EAC HIV Act	Uganda Relevant Statute and provision
Freedom from Discrimination		
1.	<p>Sec 24: persons living with HIV AIDS are entitled to enjoy all human rights without discrimination.</p> <p>No person may directly or indirectly discriminate against a person living with or affected by HIV on the basis of his actual or perceived HIV status.</p> <p>A victim of such acts may institute legal proceedings to claim damages.</p>	<p>Constitution of Uganda</p> <p>Article 21: All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law</p> <p>A person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.</p> <p>HIV and AIDS Prevention and Control Act</p> <p>The Act prohibits:</p> <ol style="list-style-type: none"> i. Discrimination in the work place (sec 32) ii. Discrimination in schools (section 33), iii. Restrictions on travel and habitation (section 34), iv. Discrimination of a minor by the parent or guardian (section 38); v. Denial of public service positions (section 35) vi. Exclusion from credit and insurance services (section 36) vii. Discrimination in the provision of healthcare services in healthcare institutions (section 37) <p>The Equal Opportunities Commission Act, 2007</p> <p>Section 2: establishes the Equal Opportunities Commission with the powers to: monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of organs of state at all levels, statutory bodies and agencies, public bodies and authorities, private businesses and enterprises, non-governmental organizations, and social and cultural communities (section 14).</p>

No.	EAC HIV Act	Uganda Relevant Statute and provision
Right to Privacy		
2.	<p>Right to privacy and confidentiality regarding a person's HIV status - sec 25</p> <p>A person in possession of information relating to the HIV status of any other person shall observe confidentiality in the handling of that information. (section 25(2).</p> <p>A person may only disclose info concerning a person's HIV status to another person except where the person living with or affected by HIV AIDS is a child or a person with disability; where such information is being disclosed to a health care provider directly involved in providing health care to that person where knowledge of the patient's HIV infection is necessary to make clinical decisions in the best interests of that person; for the purpose of an epidemiological study where the release of information cannot be expected to identify the person to whom it relates; and finally, upon a court order, where the information is directly relevant to the proceedings before the court.</p>	<p>Uganda HIV and AIDS Prevention and Control</p> <p>Section 24(1)e)- duty upon the State to promote awareness of the rights of persons living with HIV.</p> <p>Results of a HIV test shall be confidential.</p> <p>Results shall only be disclosed or released by a medical practitioner or other qualified officer to the person tested. This prohibition has exceptions: such information may be released to a parent or guardian of a minor, a parent or guardian of a person of unsound mind; a legal administrator or guardian, with written consent of the tested person; a medical practitioner or other qualified officer directly involved in the treatment or counselling of that person where the HIV status is clinically relevant; any other person with whom an HIV infected person is in close or continuous contact including a sexual partner if the nature of the contact poses a clear and present danger of HIV transmission to that person. There are only three other categories of persons exempted under section 24: a person authorised under the Act or any other law; a person authorised by a court; and any person exposed to blood or body fluid of a tested person</p> <p>Section 19: test results and counselling information relating to a person's HIV status are confidential and that a person who breaches such confidentiality commits an offence.</p> <p>The Health Service Commission Act 2001</p> <p>A health worker shall respect the confidentiality of information relating to a patient and his or her family and shall not disclose such information without the patient's or appropriate guardian's consent except where it is in the best interest of the patient - section 30(5).</p>

Section 33(3) A health worker shall respect the confidentiality of information relating to a patient or client and his or her family. Further, that such information shall not be disclosed to anyone without the patient's or appropriate guardian's written consent except where it is required by law. Such confidentiality shall apply even where a health worker attends to a person held in detention -section 30(6). These provisions form part of the Code of Conduct established under the Act.

The Patients' Charter

Clause 15: Patients have the right to privacy in the course of consultation and treatment and that information concerning one's health, including information regarding treatment may only be disclosed with informed consent, except when required by law or on court order.

There is a duty on facility managers to put mechanisms that ensure that health workers under their direction shall not disclose any matters brought to their knowledge in the course of their duties or their work. (clause 15).

1.5.4. Gaps in the Ugandan Legal Framework vis a vis the EAC HIV AIDS Act

- i. In 2019 the Parliament of Uganda adopted the Sexual Offences Bill 2019. The Bill was criticised for clauses which criminalize lesbian, gay, bisexual, and transgender (LGBT) people and sex workers.²⁷ Human Rights Watch argues that instead of advance the rights of survivors and potential victims of violence, the Act was criminalizing consensual sexual acts between adults.²⁸ Human Rights Watch contends that such criminalisation means that LGBT survivors of sexual violence are unlikely to seek access to or obtain justice and that criminalization of sex work leads to violations of the rights of and abusive working conditions for those involved and contributes to impunity for those who commit violence against sex workers.²⁹
- ii. Moreover, Sexual Offences Bill 2019 provides for extraterritorial jurisdiction, Ugandans who engage in consensual same-gender sexual conduct or anal sex outside Uganda could be prosecuted, irrespective of whether such conduct is legal where it takes place. Human Rights Watch has contended that this provision means that where a country sends a person to Uganda after the person committed the crime it would breach obligations under international law of nonrefoulement – the prohibition on returning someone to a country where they could face torture, cruel, inhuman, or degrading treatment or punishment, and other irreparable harm.
- iii. Section 12 of the Uganda HIV Act provides for mandatory testing for HIV/AIDS for certain individuals and imposes mandatory release of test results.

²⁷Human Rights Watch, 'Uganda: Reject Sexual Offences Bill' (HRW 6 May 2021) <<https://www.hrw.org/news/2021/05/06/uganda-reject-sexual-offences-bill>> accessed 15th September 2022

^{28 29}Ibid Human Rights Watch



1.6 SOUTH SUDAN'S ENFORCEMENT OF THE EAC'S HIV AIDS ACT

The Republic of South Sudan remains to be the world's youngest nation. Its independence was preceded by conflict and unfortunately, even after independence, the young nation has suffered from conflict,³⁰ global economic shocks and even the most recent Covid-19 pandemic. UNAIDS reports that as at 2020 South Sudan had an estimated prevalence of 2.5% among adults aged 15-49 years with 18% of the estimated PLHIV (190,000) on treatment.³¹

South Sudan became a full member of the East African Community on 5 September, 2016, four (4) years after the EAC HIV and AIDS Prevention and Management Act came to effect in 2012. The country has not assented to the EAC HIV AIDS Act. In line with the principle of *pacta sunt servanda*, South Sudan may on the face of it be deemed not to be subject to the EAC HIV Act. However, Article 7(1)h) of the EAC Treaty states that the principle of asymmetry shall be one of the principles that shall govern the practical achievement of the objectives of the Community. Asymmetry means the principle that addresses variances in the implementation of measures in an integration process for Purposes of achieving a common objective. This way, it is

incumbent upon South Sudan to ensure that its laws and policies catch up with the EAC HIV Act. South Sudan has however embarked on a number of measures through legislative and policy making. To what extent do they enforce provisions of the EAC HIV Act? The Country has no HIV AIDS Act but the following form its statutory, policy and institutional framework:

- i. Comprehensive Peace Agreement 2005
- ii. The Penal Code Act of 2003
- iii. The Southern Sudan 2007 HIV/AIDS Policy
- iv. GOSS HIV/AIDS Strategic Framework 2007-11

South Sudan has not ratified/ assented to the EAC HIV Act. The country does not have a HIV AIDS law. The only law that addresses HIV AIDS is the Penal Code and several policies that have been put in place. Some of these policies however were introduced even before independence. In 1995 Dr. John Garang de Mabior, the Chairman and Commander-in-Chief of the SPLM/SPLA identified HIV/AIDS as the second-most critical issue facing New Sudan. In April 2001, Dr. Garang launched the nation's first HIV/AIDS National Conference in Natinga, charging it with developing a national HIV/AIDS policy and program.³² The mission of the HIV/AIDS Policy and Control Strategies for the New Sudan, which came into force on 1st

³⁰bid

³¹UNAIDS, 'Country Progress Report - South Sudan Global AIDS Monitoring 2020' (UNAIDS 2020) <https://www.unaids.org/sites/default/files/country/documents/SSD_2020_countryreport.pdf> ACCESSED 17TH September 2022

³²African Child Forum, 'Southern Sudan HIV/AIDS Policy (2008)' (African Child Forum' (ACF) <http://www.africanchildforum.org/cfr/policy%20per%20country/south%20sudan/ssudan_hivavids_2008_en.pdf> accessed 16th September 2022 at page 11

September 2001, was to “Prevent the spread of HIV/AIDS and mitigate its effects on the people of New Sudan to ensure economic development and progress.³³ The main aims of the intervention strategies were to prevent the spread of HIV to those that are not infected; reduce HIV/AIDS-related morbidity and mortality, and protect the rights of those who are infected with and affected by HIV/AIDS.”³⁴

The following part looks into legislative and policy enactments that have occurred. For a country that was birthed 4 years after the HIV AIDS Act came into effect, it would only be fair and accurate to put to account measures taken before the country was birthed albeit to a limited extent, as those actions have contributed in one way or another to the current prevalence rates.

1.6.1. South Sudan’s Enforcement of the EAC HIV Act on Information, Education and Communication

Pre Independence measures

The Sudan National Strategic Plan and Sectoral Plans on HIV/AIDS 2004-2009³⁵ placed a lot of emphasis on information relating to HIV AIDS. The plan sought to reduce the prevalence of HIV/AIDS to a level that renders HIV/AIDS not to be a public health problem through a multi-sectoral national response using various mechanisms that include increasing awareness and knowledge about HIV/AIDS, its mode of transmission and methods of prevention including increase condom use from less than 5 to 70 percent.³⁶ The Plan further sought to encourage traditional believes and practices that will enhance the positive behaviour that enable the youth to get married, discourage illegal sex outside the marriage boundaries and discourage negative sexual behaviour among

youth, university students and other risk groups.³⁷ Equally as important, the Plan sought to provide for the organisation, implementation and well planned information dissemination, advocacy campaigns targeting all sectors concerned with the HIV/AIDS problem including government authorities, private sector, NGOs, civil society organizations, the community and people living with HIV/AIDS so as to:

- i. Ensure commitment of the state, the community and the families of people living with HIV/AIDS to shoulder responsibility for provision of treatment, counselling and nursing care. Ensure better understanding and commitment of members of the family, community and the state to shoulder responsibility of meeting the needs of PLWHA and their right to treatment, counselling and care
- ii. Ensure availability of treatment for STIs in all health units throughout the country
- iii. To eliminate transmission of HIV/AIDS through blood transfusion by screening the blood donation in all health units
- iv. To use appropriate methods to reduce mother to child transmission of HIV/AIDS
- v. To provide voluntary testing and counselling in government and private health institutions
- vi. To provide treatment including antiviral therapy, treatment for opportunistic infections and nursing care for people living with HIV/AIDS
- vii. To encourage research that will assist in the control of HIV/AIDS³⁸

The Strategic Plan emphasised on the provision of all relevant information about the HIV infection and its modes of transmission, the consequences of different preventive measures including the condom use and the correction of the wrong beliefs.³⁹

³³Ibid African Child Forum

³⁴Ibid African Child Forum

³⁵The Republic of Sudan - Sudan National AIDS Council, ‘Sudan National Strategic Plan and Sectoral Plans on HIV/AIDS’ (Sudan National AIDS Council) <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127609.pdf> accessed 16th September 2022

³⁶Ibid The Republic of Sudan - Sudan National AIDS Council, page 6

³⁷Ibid The Republic of Sudan - Sudan National AIDS Council

³⁸Ibid The Republic of Sudan - Sudan National AIDS Council page 6-7

³⁹Ibid page 10

These undertakings are important because section 4(a) of the EAC HIV Act provides that governments should inform and educate all population groups including PWDs in its jurisdiction about HIV including the modes of transmission and means or prevention. Section 4(d) provides that governments should ensure equitable access to relevant information (in relation to HIV and AIDS), goods and services including essential medicines without discrimination. This began even before the youngest nation got independence.

South Sudan Provisions on Information, Education and Communication

No.	EAC HIV Act	South Sudan provisions
1.	<p>Sec 6: Govt shall promote public awareness about the nature, causes, modes of transmission, consequences, means of prevention, control and management</p>	<p>Sudan National Strategic Plan and Sectoral Plans on HIV/AIDS 2004-2009</p> <p>Page 10 – Emphasis on the provision of all relevant information about the HIV infection and its modes of transmission, the consequences of different preventive measures including the condom use and the correction of the wrong beliefs.</p> <p>Page 6 - that include increasing awareness and knowledge about HIV/AIDS, its mode of transmission and methods of prevention including increase condom use from less than 5 to 70 percent</p> <p>Southern Sudan HIV/AIDS Policy (2008)</p> <p>Page 10- Govt to undertake culturally appropriate intensive HIV awareness raising and STI prevention, management, and promotion of care-seeking behaviour</p> <p>Page 21 – Govt to raise awareness of and generate interest in the GOSS HIV/AIDS policy, using Radio and television, Posters and billboards, Local artists (e.g., drama/dance/drumming troupes etc.</p>
2.	<p>Section 6(2)b): The education and information campaigns by government shall encourage the voluntary testing of individuals.</p>	<p>Southern Sudan HIV/AIDS Policy (2008)</p> <p>Page 19- Promote counselling and testing as a prevention strategy and ensure that its provision adheres to laws, policies, and guidelines on informed consent, privacy, confidentiality, and facilitation of an environment for safe disclosure for those who voluntarily choose to share their serostatus</p> <p>National Strategic Plan</p> <p>Access to HIV testing and counselling, treatment, effective social support and care for sex workers who test positive for HIV fronted as key intervention measure for dealing with HIV AIDS.</p>

1.6.2. South Sudan's Enforcement of the EAC HIV Act on the Protection of Rights of Persons Living with or Affected by HIV AIDS

There are several actions that may not have been committed in pursuance of the EAC HIV Act but which serve the overall object of the Act in South Sudan. For instance, in 2001, the New Sudan National AIDS Council was created, with its chair reporting directly to the chair of the SPLM (and, post-CPA, the President of Southern Sudan). In 2006, the Southern Sudan AIDS Commission was created by a presidential decree 55/2006, also reporting directly to the President of Southern Sudan. SSAC is mandated to among other things to reduce the vulnerability of individuals and communities to HIV/AIDS and to contribute in alleviating the socio-economic and human impact and to promote and protect the rights of both infected and affected persons.⁴⁰ Section 24 of the EAC Act provides that persons living with HIV AIDS are entitled to enjoy all human rights without discrimination. That way, no person may directly or indirectly discriminate against a person living with or affected by HIV on the basis of his actual or perceived HIV status, a victim of such acts may institute legal proceedings to claim damages.

The Comprehensive Peace Agreement of 9 January 2005 captured the aspirations of commitment of the parties to a negotiated settlement on the basis of a democratic system of governance which is... founded on the values of justice, democracy, good governance, respect for fundamental rights and freedoms of the individual, mutual understanding and tolerance of diversity within the realities of the Sudan.⁴¹

The Constitution of South Sudan provides that every child has a right to be free from any form of discrimination.⁴² Article 31 of the Constitution provides that all levels of government shall promote public health, establish, rehabilitate and develop basic medical and diagnostic institutions and provide free primary health care and emergency services for all citizens. Article 32 provides that every citizen has the right of access

to official information and records, including electronic records in the possession of any level of government or any organ or agency thereof, except where the release of such information is likely to prejudice public security or the right to privacy of any other person. Article 48 requires the National Government and the states to work towards the promotion of the welfare of the people and protection of their human rights and fundamental freedoms. Article 53 provides that the national government shall bear the primary responsibility of ensuring the protection of the rights and interests of the people. Article 145 of the Constitution establishes the Human Rights Commission with the mandate to:

- monitor application and enforcement of the rights and freedoms;
- investigate any violation of human rights and fundamental freedoms;
- establish a continuing programme of research, education and information to enhance respect for human rights and fundamental freedoms;
- recommend to the National Legislative Assembly effective measures to promote human rights and fundamental freedoms;
- create and sustain within society awareness of the provisions of this Constitution as the fundamental law of the people of South Sudan;
- educate and encourage the public to defend their human rights and fundamental freedoms against all forms of abuse and violation;
- formulate, implement and oversee programmes intended to inculcate in the citizens awareness of their civic responsibilities and understanding of their rights and obligations as citizens;
- monitor compliance of all levels of government with international and regional human rights treaties and conventions ratified by the Republic of South Sudan;
- express opinion or present advice to government organs on any issue related to human rights and fundamental freedoms; and
- among other functions.

In June 2006 the President of the Government of Southern Sudan appointed members of the

⁴⁰Republic of Sudan, Government of Southern Sudan (GOSS). 2006. The Establishment of the HIV/AIDS Commission Act. Juba

⁴¹Comprehensive Peace Agreement 2005

⁴²Constitution of South Sudan 2011 (Rev 2013), Article 17(1)e

Southern Sudan Human Rights Commission with the mandate to uphold, protect and promote human rights in Southern Sudan and monitor the application and enforcement of the rights and freedoms enshrined in the Interim Constitution of Southern Sudan, 2005, and ensure that all levels of Government in Southern Sudan comply with international and regional human rights treaties and conventions ratified by the Republic of the Sudan.⁴³ The Act was established under the Establishment of the HIV/AIDS Commission Act, 2006 and was accompanied by the creation of 10 State AIDS Commissions.⁴⁴

South Sudan's Provisions on the Protection of the rights of Persons Living with or Affected by HIV AIDS

No.	EAC HIV Act	South Sudan Relevant Statute and provision
Freedom from Discrimination		
1.	<p>Sec 24: persons living with HIV AIDS are entitled to enjoy all human rights without discrimination.</p> <p>No person may directly or indirectly discriminate against a person living with or affected by HIV on the basis of his actual or perceived HIV status.</p> <p>A victim of such acts may institute legal proceedings to claim damages.</p>	<p>Constitution of South Sudan</p> <p>Article 17(1)e) - The Constitution of South Sudan provides that every child has a right to be free from any form of discrimination.</p> <p>Article 14 - All persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status.</p> <p>Article 17(1)e) - Every child has a right to be free from discrimination.</p> <p>Article 139(1)d) - The Civil Service shall be governed by, inter alia, the following values and principles: services shall be provided to all persons impartially, fairly, equitably and without bias or discrimination on the basis of religion, ethnicity, region, gender, health status or physical disability.</p> <p>Article 31 - All levels of government shall promote public health, establish, rehabilitate and develop basic medical and diagnostic institutions and provide free primary health care and emergency services for all citizens.</p> <p>The Comprehensive Peace Agreement of 9 January 2005</p> <p>captured the aspirations of commitment of the parties to a negotiated settlement on the basis of a democratic system of governance which is...founded on the values of justice, democracy, good governance, respect for fundamental rights and freedoms of the individual, mutual understanding and tolerance of diversity within the realities of the Sudan.</p>

⁴³United Nations Mission in South Sudan, 'Government of Southern Sudan Presidential decree No. 55/2006 of 27th June 2006' (UNMISS) <<https://unmis.unmissions.org/sites/default/files/Annex%2044%20-%20GoSS%20Commissioners.pdf>> at page 5

⁴⁴African Child Forum, 'Southern Sudan HIV/AIDS Policy (2008)' (African Child Forum' (ACF) <http://www.africanchildforum.org/cfr/policy%20per%20country/south%20sudan/ssudan_hiv aids_2008_en.pdf> accessed 16th September 2022 at page 13

No.	EAC HIV Act	South Sudan Relevant Statute and provision
Right to privacy		
2.	<p>Right to privacy and confidentiality regarding a person's HIV status - sec 25</p> <p>A person in possession of information relating to the HIV status of any other person shall observe confidentiality in the handling of that information. (Section 25(2).</p> <p>A person may only disclose info concerning a person's HIV status to another person except where the person living with or affected by HIV/AIDS is a child or a person with disability; where such information is being disclosed to a health care provider directly involved in providing health care to that person where knowledge of the patient's HIV infection is necessary to make clinical decisions in the best interests of that person; for the purpose of an epidemiological study where the release of information cannot be expected to identify the person to whom it relates; and finally, upon a court order, where the information is directly relevant to the proceedings before the court.</p>	<p>Constitution of South Sudan</p> <p>Article 22- The privacy of all persons shall be inviolable; no person shall be subjected to interference with his or her private life, family, home or correspondence, save in accordance with the law.</p> <p>Article 32 - every citizen has the right of access to official information and records, including electronic records in the possession of any level of government or any organ or agency thereof, except where the release of such information is likely to prejudice public security or the right to privacy of any other person.</p> <p>Southern Sudan HIV/AIDS Policy (2008)</p> <p>Page 19 – GOSS approach to promote counselling and testing as a prevention strategy and ensure that its provision adheres to laws, policies, and guidelines on informed consent, privacy, confidentiality, and facilitation of an environment for safe disclosure for those who voluntarily choose to share their serostatus</p> <p>Page 19 – GOSS approach to Promote prevention of mother-to-child transmission of HIV and ensure that its provision adheres to laws, policies, and guidelines on informed consent, privacy, confidentiality, and voluntary safe disclosure</p>

1.6.3. Gaps in the South Sudan Legal Framework vis a vis the EAC HIV AIDS Act

- i. South Sudan has not signed the EAC HIV AIDS Act.
- ii. The country has no HIV AIDS specific law.



1.7 BURUNDI'S ENFORCEMENT OF THE HIV AIDS ACT

Burundi assented to the EAC HIV Act on 6th February 2013. In addition, the country has enacted a HIV AIDS specific law, i.e. Law No. 1/018 of 12 May 2005 on the Legal Protection of Persons with Human Immunodeficiency Virus and People with Acquired Immunodeficiency Syndrome.

The Act enlists everyone in the duty to be are involved or should be involved in one way or another in the prevention and other actions related to the infection with the Human Immunodeficiency Virus (HIV) and the Acquired Immunodeficiency Syndrome (AIDS)⁴⁵. Some of the ways that the Act recognizes to fight HIV AIDS are research activities, AIDS diagnosis, treatment, prevention,

voluntary testing, counselling and care, as well as any other measures which purpose is to avoid the spread of AIDS such as HIV/AIDS education⁴⁶. Besides the Burundi HIV Act, the Constitution and the country's Penal Code bear progressive clauses for the fight against HIV AIDS. 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. The following section takes a deeper look into Burundi's statutory, policy and institutional framework provisions and how these sections enforce the EAC HIV and AIDS Act.

1.7.1. Enforcement of the EAC HIV Act on the Protection of the rights of Persons Living with or Affected by HIV AIDS

⁴⁵Law No. 1/018 of 12 May 2005 on the Legal Protection of Persons with Human Immunodeficiency Virus and People with Acquired Immunodeficiency Syndrome, Article 1

⁴⁶Ibid Law No. 1/018 of 12 May 2005, Article 4

Burundi's Enforcement of the EAC HIV Act on the Protection of the rights of Persons Living with or Affected by HIV AIDS

No.	EAC HIV Act	Burundi Relevant Statute and provision
Freedom from Discrimination		
1.	<p>Sec 24: persons living with HIV AIDS are entitled to enjoy all human rights without discrimination.</p> <p>No person may directly or indirectly discriminate against a person living with or affected by HIV on the basis of his actual or perceived HIV status.</p> <p>A victim of such acts may institute legal proceedings to claim damages.</p>	<p>Constitution of Burundi</p> <p>Article 22: All citizens are equal before the law, which assures them equal protection. No one may be the target of discrimination based on, notably: origin, race, ethnicity, sex, color, language, social situation, religious, philosophical, or political belief, physical or mental handicap, HIV/AIDS status or having any other incurable illness.</p> <p>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</p> <p>Burundi: Law 1/018 of 12 May 2005 on the Legal Protection of People Infected with HIV and of People Suffering from AIDS (2005)</p> <p>Article 32 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.</p> <p>Article 22: The public authorities have the obligation to set up all appropriate mechanisms to fight against all forms of discrimination against persons infected with HIV or suffering from AIDS, in addition to providing them with medical and psychosocial care</p> <p>Article 23. The national community as a whole shall provide sustained and constant support for the elimination of all forms of discrimination against persons infected with HIV or suffering from AIDS, in addition to the provision of medical and psychosocial care to them.</p> <p>Article 31. 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/AIDS status] is considered ineffective and discriminatory. This practice is thus prohibited.</p>

No.	EAC HIV Act	Burundi Relevant Statute and provision
Right to privacy		
2.	<p>Right to privacy and confidentiality regarding a person's HIV status - sec 25</p> <p>A person in possession of information relating to the HIV status of any other person shall observe confidentiality in the handling of that information. (section 25(2).</p> <p>A person may only disclose info concerning a person's HIV status to another person except where the person living with or affected by HIV/AIDS is a child or a person with disability; where such information is being disclosed to a health care provider directly involved in providing health care to that person where knowledge of the patient's HIV infection is necessary to make clinical decisions in the best interests of that person; for the purpose of an epidemiological study where the release of information cannot be expected to identify the person to whom it relates; and finally, upon a court order, where the information is directly relevant to the proceedings before the court.</p>	<p>Burundi: Law 1/018 of 12 May 2005 on the Legal Protection of People Infected with HIV and of People Suffering from AIDS (2005)</p> <p>Article 24. HIV testing is voluntary and confidential except in the cases provided for in article 11.</p> <p>Article 26. Doctors as well as any other person who has or who could have, through their profession, access to information on a person's HIV status, are obliged to keep this information confidential, or else be subjected to sanctions provided for in the Penal Code relative to breach of confidentiality.</p> <p>Article 27: The following instances of communicating this information are not considered a breach of confidentiality:</p> <ol style="list-style-type: none"> 1. communicating it to the person infected with HIV, or if this person is not capable, to his legal guardian; 2. communicating it to colleagues and health authorities if this is necessary for the proper administration of medication to the patient; 3. communicating it to judicial authorities for the purpose of investigations where such information is necessary. <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>

1.7.2. Burundi's Enforcement of the EAC HIV AIDS Act Provisions on Prevention Measures, Practices And Procedures

Burundi's Enforcement of the EAC HIV Act on Information, Education and Communication

No.	EAC HIV Act	Burundi Relevant Statute and provision
1.	Sec 6: Govt shall promote public awareness about the nature, causes, modes of transmission, consequences, means of prevention, control and management.	<p>Revised National Policy on Condoms (Politique Nationale duPréservatif 2009) Involves the private sector through condoms marketing and sales.</p> <p>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.</p>
2.	Section 5: A person living, registered, operating in or otherwise present within EAC has a duty to take reasonable steps to protect themselves and other persons from HIV infection.	<p>Burundi HIV law Article 42: 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>Penal Code 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.</p>
3.	Sec 6(2)b): The education and information campaigns by government shall encourage the voluntary testing of individuals.	<p>Burundi HIV law Article 11. HIV testing is practised, especially in the following cases; (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; (d) at the request of the judicial services;</p> <p>Article 24. HIV testing is voluntary and confidential except in the cases provided for in article 11.</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 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"</p> <p>Article 33. Persons [in custody] may not be subjected to compulsory HIV testing, except in the cases of a criminal investigations</p>

No.	EAC HIV Act	Burundi Relevant Statute and provision
4.	<p>Section 26 states that no person shall be denied access to any employment for which the person is qualified or transferred, denied promotion or have the person's employment terminated on the ground of the person's actual perceived or suspected HIV status.</p> <p>Sec 26(2): it's a disciplinary breach for an employee to discriminate against another employee on the ground of the person's actual perceived or suspected HIV status.</p> <p>Sec 26(3): Every employer shall take all necessary measures to reduce the risk of HIV infection through accidental exposure to HIV infection occurring in the work place, the employer shall ensure free access to post exposure prophylaxis and counselling for the affected employee in accordance with guidelines prescribed by the Minister.</p>	<p>Constitution of Burundi 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."</p> <p>Burundi HIV Law Article 34 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".</p> <p>Article 35 states that 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.</p> <p>Article 36 states that employers 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.</p> <p>Article 37 states that Regulations relative to social or professional benefits to workers shall also be of benefit to workers infected with HIV or suffering from AIDS.</p> <p>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) Aims to protect employees against new infections on one hand and to strengthen cooperation and tripartite social dialogue.</p> <p>The Labour Code 1993 of Burundi Proposes that testing before getting insurance and compulsory pre-employment testing should not be allowed.</p>

1.7.3. Burundi's Enforcement of Other Provisions of the EAC HIV Act

Burundi's Provisions on the Enforcement of Other Provisions of the EAC HIV Act

No.	EAC HIV Act	Burundi Relevant Statute and provision
1.	Subject to this Act, no person shall compel another person to undergo a HIV test.	<p>Burundi HIV Law 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.</p> <p>Article 33 -persons [in custody] may not be subjected to compulsory HIV testing, except in the cases of criminal investigations.</p>
2.	<p>Section 32- Persons living with HIV have the right of access to quality healthcare services. 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.</p> <p>Section 32(4) – A health institution whether public or private, and every health management organisation or medical insurance provider shall facilitate access to healthcare services to persons with HIV without discrimination on the basis.</p>	<p>Constitution of Burundi Article 55 - everyone has the right of access to healthcare services.</p> <p>Burundi HIV Law Article 16 - 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.</p> <p>Article 17 - prohibits 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.</p>

No.	EAC HIV Act	Burundi Relevant Statute and provision
3.	Section 34- The government shall ensure that women and girls regardless of their marital status have equal access to adequate and gender sensitive HIV related information and education programmes, means of prevention and health services; are protected against all forms of violence including sexual violence, rape and other forms of coerced sex, sexual and economic exploitation and traditional practices that may negatively affect their health.	<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 with strict punitive measures.</p> <p>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).</p>

1.7.4. Gaps in the Burundi Legal Framework vis a vis the EAC HIV AIDS Act

- i. 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. Although there is no recorded case of wilful transmission of HIV in Burundi, such laws may contribute to greater stigma of persons living with HIV AIDS.
- ii. 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.
- iii. Burundi’s HIV/AIDS policy has no special provision for HIV education for the disabled.
- iv. Burundi has no law that enables women to inherit property especially land which puts them in a weak socio economic status, thus increasing their vulnerability to HIV.



1.8 RWANDA'S ENFORCEMENT OF THE HIV AIDS ACT

Rwanda joined the East African Community in July 2007. The country assented to the EAC HIV AIDS Act on 29th August 2014. They have an elaborate statutory and policy framework comprising of:

- The Constitution of the Republic of Rwanda adopted in 2003
- Revised Penal Code 2010
- The Law No. 59/2008 of 2008 on Prevention and Punishment of Gender-Based Violence
- The HIV and AIDS National Strategic Plan 2013-2018
- The National Accelerated Plan for Women, Girls, Gender Equality and HIV 2010–2014
- The National HIV Policy 2005
- The National Community Health Policy 2008.
- The National Employment Policy 2007
- The National Nutrition Policy 2005
- The National Reproductive Health Policy 2003
- The National Policy on Orphans and Vulnerable Children 2003

- The Rwanda reproductive health bill was initiated in 2008
- The National Strategy on Adolescent Sexual and Reproductive Health and Rights 2012
- The Education Sector Policy 2003

To what extent has Rwanda implemented the provisions of the EAC HIV Act?

1.8.1. Rwanda's Enforcement of the EAC HIV Act on the Protection of the rights of Persons Living with or Affected by HIV AIDS

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. This part looks into whether Rwanda has made provision for rights of persons living with or affected by HIV AIDS as guided by the HIV AIDS Act.

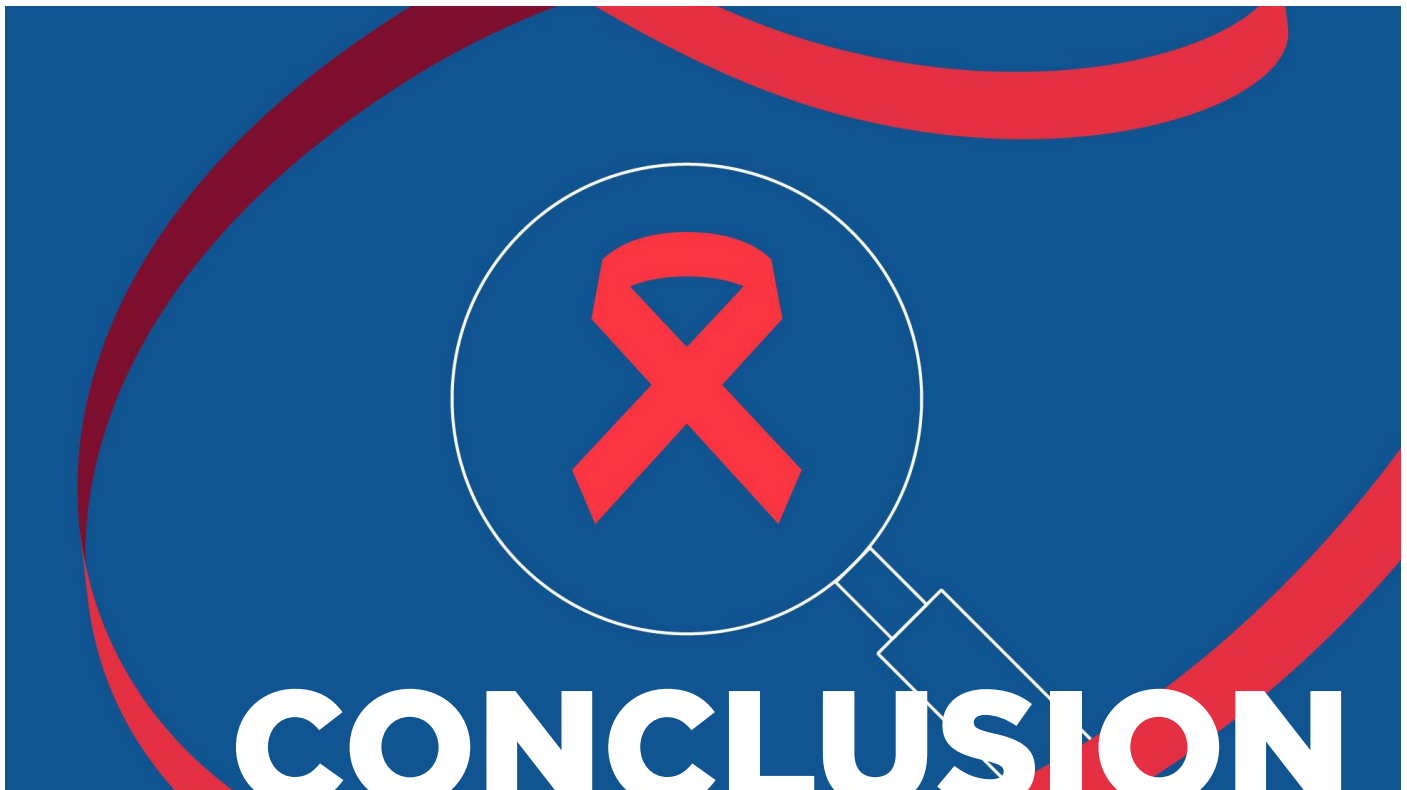
No.	EAC HIV Act	Rwanda Relevant Statute and provision
Freedom from Discrimination		
1.	<p>Sec 24: persons living with HIV/AIDS are entitled to enjoy all human rights without discrimination.</p> <p>No person may directly or indirectly discriminate against a person living with or affected by HIV on the basis of his actual or perceived HIV status.</p> <p>A victim of such acts may institute legal proceedings to claim damages.</p>	<p>Constitution of Rwanda</p> <p>Article 11 of the Constitution states 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.</p> <p>Article 16 - All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law.</p>

1.8.2. HIV and AIDS Information, Education and Communication

No.	EAC HIV Act	Rwanda Relevant Statute
1.	<p>Section 4(a) - Govt to inform and educate all population groups including PWDs in its jurisdiction about HIV including the modes of transmission and means of prevention</p>	<p>The HIV and AIDS National Strategic Plan 2013-2018 Page 22: In order to enhance primary prevention, youth sensitisation will be reinforced and provided through peers. Anti-AIDS clubs, peer educator systems, youth corners and youth friendly centres will be working through a more effective and monitoring system.</p> <p>Page 25: One of the key prevention interventions is community sensitisation involving local authorities and community health workers to promote safe sexual behaviour.</p>
2.	<p>Section 4(d) - Govt to ensure equitable access to relevant information (in relation to HIV and AIDS), goods and services including essential medicines without discrimination.</p>	<p>The HIV and AIDS National Strategic Plan 2013-2018 Page 10: Fight stigma around condom use and ensure better access to condoms for youth and key populations.</p>

1.8.3. Gaps in the Rwandan Legal Framework vis a vis the EAC HIV AIDS Act

- i. Rwanda does not have a HIV AIDS specific law.
- ii. Article 30 of the Gender Based Violence Law (2008) is not clear and needs revision. It amounts to criminalisation of HIV AIDS.
- iii. Rwanda's Reproductive Health Bill provides that a health worker may test a child or a mentally ill individual or couples engaged/about to legally marry. The provision should be deleted. It contravenes the right to voluntary Testing and Counselling.
- iv. The Reproductive Health Bill (2008) does not provide for punitive measures.
- v. Rwanda lacks a law that deals with high-risk cases such as: customs and traditions hindering the fight against HIV (wet nursing, early marriages, widowhood cleansing, traditional births, scarification).



1.9 CONCLUSION AND RECOMMENDATIONS

This policy analysis has examined the enforcement of the EAC HIV AIDS Act by the EAC Countries of Kenya, Tanzania, Uganda, South Sudan and Burundi. The analysis has found that there is still a lot of work to be done by each country in order to protect the rights of persons living with HIV AIDS or those affected by it. The gaps that need to be addressed have been highlighted at the end of every country specific section of this policy analysis. To enhance this analysis, further inquiry is needed particularly through consultations with local professionals.



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