

Activists push for HIV law amendment

By Betty Amamukirori

Activists and people living with HIV/AIDS want the new HIV Act amended, saying that some of its sections are discriminatory, overly vague and undermine the efforts made in the fight against the disease.

"Some sections are good, but the bad sections have overshadowed them. You cannot get a new cloth and bury it in the mud," Irene Namyalo, the publicist Uganda Network on Law Ethics and HIV/AIDS (UGANET) says.

"Criminalisation is not the solution. Instead, we need to encourage people to test and talk to them, tell them what to do," Namyalo notes.

The HIV/AIDS prevention and control Act was enacted in July 2014, amidst resistance from the human rights defenders.

The then Parliamentary HIV/AIDS committee chairperson, Rosemary Najjemba, told the legislators on the committee that the Bill, once passed, will protect those without the infection from being infected.

Najjemba says the Bill is aimed at combating the intentional spread of the disease, stating that it is a crime for someone to intentionally infect another with HIV and such a person should not go unpunished.

When President Yoweri Museveni assented the Bill into law, activists rejected it and took to the streets,



Vice-president Kiwanuka Sekandi inspecting stalls on World AIDS Day

carrying banners written in bold, expressing their displeasure with the law while demanding a rethink of the law.

The banners spoke boldly and loudly, demanding a law that works for everyone, saying that criminalisation of certain acts in regards to the disease will escalate stigma, scare away people from seeking help and in turn increase the spread of the disease.

The activist did not stop at demonstrating. In 2016, over 100 human rights organisations petitioned the Constitutional Court

challenging some of the sections in the new law. They wanted a declaration that the sections are unlawful, undermine public health objectives of HIV prevention and control and contravene the national guiding principles of public policy.

The group led by UGANET states that the sections are discriminatory and negatively impact on the lives of people living with HIV/AIDS, discourages voluntary testing of HIV and will increase the spread of the disease.

In her affidavit in support of the petition, Dora Kiconco Musinguzi,

the executive director of UGANET notes that allowing the disclosure of results of an HIV test by medical practitioners to a broad range of undefined persons will undermine the right to privacy, which is crucial in HIV testing and treatment.

The infamous sections

The section the activists are challenging include; 18 (2) (e) and (h), 41 and 43 (1) of the Act. They stated that these sections undermine the public health objectives of HIV prevention and control and contravene objective XIV (b) of the National Guiding Principles of Public Policy and Articles 8A, 45, 287 and 2(1) and (2) of the Constitution.

Section 18 (2) (e) provides for the disclosure or release of the HIV test results. It states that the results of an HIV test shall be confidential and shall only be disclosed or released by a medical practitioner or other qualified officer to the person tested.

(2) Says notwithstanding the above, the results of an HIV test maybe disclosed or released to (e) 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, in the opinion of the medical practitioner or other qualified officer, poses danger of HIV transmission to that person.

Namyalo described the section as vague, arguing that it is hard to tell whether someone is in danger or not. She wondered the yardstick

doctors will use to measure danger.

"This article presupposes that incase I'm infected and I have a personal driver who is always driving me around, he has the right to know my status because, according to the article, he is in danger of getting infected," Namyalo says.

She adds that forced disclosure without consent will promote stigma and people will fear coming out to freely speak about their status.

Namyalo also notes that the article contravenes Section 19 of the same Act, which provides for confidentiality of test results and counselling information. The section states that its an offence for a person in possession of the test and counselling information to disclose without permission.

Dr. Stephen watiti, who was the first Ugandan medical doctor to go public his HIV status, says doctors are supposed to protect persons with HIV, instead of subjecting them to ridicule and stigma by disclosing their results without authorisation.

Prossy Luzige, an HIV activist, says there is no clear judgment and definition as to who and which circumstances a health worker should follow to disclose the results.

"The section gives the health workers a lot of power to disclose the results to whoever they think is in danger," Luzige says.

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