

**INVESTINGATING THE PROMOTION AND PROTECTION OF THE RIGHTS OF  
EMPLOYEES LIVING WITH HIV/AIDS AT WORK PLACES IN UGANDA**

**A CASE STUDY; OF RUBAGA DIVISION KAMPALA DISTRICT**

**BY**

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## **DEDICATION**

This research is dedicated to my parents, Mr. and Mrs Kamara Bayeye and Kamara Annette and my lovely grandmother for their love, prayers and support.

I also dedicate it to my sisters, brothers, and in laws for their love, encouragement and support during the course of my studies.

May the almighty God reward you all.

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Am grateful to all of their support.

May GOD bless you abundantly!

## DECLARATION

I CHARITY MARIA O; LLB/40882/91/DU, do hereby declare that the work presented here in this dissertation Is my own, except where I have acknowledge different sources, and it has never been submitted or examined in any University as an requirement for the any award.

*Charity*

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### APPROVAL

I certify that I have reviewed and read this study and that in my opinion; it confirms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as dissertation in partial fulfillment for the award of the degree of Bachelor of Laws of Kampala International University.

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SIGNATURE: 

DATE: 06/08/2013

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3. The Penal Code Act Cap 120, Laws of Uganda
4. The Public Health Act, Cap 281, Laws of Uganda
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6. The HIV/AIDS Prevention and Control Bill

## **LIST OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND CONVENTIONS**

1. African Charter on Human and People's rights (ACHPR) adopted at the 18<sup>th</sup> conference of Head of States and Government of the Organization of African Unity (O.A.U) on 27<sup>th</sup> June, 1981, Nairobi Kenya, entered into force on 21<sup>st</sup> October, 1986
2. International Conventions on Economic, Social and Cultural Rights (ICESCR) adopted by General Assembly Resolution 220 (xxi) of 16<sup>th</sup> December 1966 and entered into force on 3<sup>rd</sup> January, 1976
3. The International Convention on Civil and Political Rights (ICCPR) adopted by General Assembly Resolution 220 (xxi) on 16<sup>th</sup> December, 1966 and entered into force on 23<sup>rd</sup> March, 1976
4. The United Nations Convention on Elimination of all forms of Discrimination (CEDAW) adopted by General Assembly Resolution, 1979
5. Universal Declaration of Human Rights (UDHR) adopted and proclaimed by the UN General Assembly Resolution, 1948

## LIST OF ACRONYMS

AIC	-	Aids Information Centre
AIDS	-	Acquired immunodeficiency syndrome
ART	-	Anti-Retroviral Therapy
ARVs	-	Anti-Retroviral Drugs
CSO	-	Civil Society Organization
ELWHA	-	Employees Living With HIV/AIDS
FGDs	-	Focus Group Discussions
HIV	-	Human immunodeficiency virus
HRO	-	Human Rights Officer
ILO	-	International Labour Organization
MoH	-	Ministry of Health
NGO	-	Non-Governmental Organization
PLWHAs	-	People living with HIV/AIDS
RHRO:		Regional Human Rights Officer
TASO	-	The Aids Support Organization
UAC	-	Uganda AIDS Commission
UHRC	-	Uganda Human Rights Commission

## **ABSTRACT**

*The study focused on the role of the protection of the rights of HIV/AIDS victims at workplaces. HIV/AIDS is a world-wide health problem affecting the young and the old irrespective of the status. The scourge has got no cure as yet and the PLWHA survive on the availability of the antiretroviral drugs. There has been an outcry from the people living with HIV/AIDS regarding the violations of their human rights citing lack of protection from the existing legal instruments. The purpose of the study was to examine the state of the law protecting and promoting the rights of people living with HIV/AIDS (PLWHA) while at their workplaces. This involved exploring the challenges with the hope of developing recommendations that will be adopted to ensure realization of the rights of ELWHA.*

*The information obtained from the respondents as regards the state of affairs of the promotion and protection of employees living with HIV/AIDS at their work places, that they are faces with many challenges like lack of privacy discrimination and confidentiality.*

*It has been found out that the rights of people living with HIV/AIDS ought to be obverted, respected, promoted and protected.*

*Recommendations suggests that the Uganda Human Rights Commission should push for enactment of relevant laws that directly promote and protect the rights of the ELWHA and also utilize the existing legal base to ensure that the rights of the ELWHA are not only realized but also promoted and strictly protected.*

## **CHAPTER ONE**

### **INTRODUCTION**

This chapter generally covers the employment sector and the employees living with HIV/AIDS at their work places, background of HIV/AIDS its challenges posed by the disease to mankind have proven the most difficult to deal with since its reception to date.

The legal frame work in regards to protection and protection of the right of employees living with HIV/AIDS at work places in Uganda

role of the protection of the rights of HIV/AIDS victims at workplaces. HIV/AIDS is a world-wide health problem affecting the young and the old irrespective of the status. The scourge has got no cure as yet and the PLWHA survive on the availability of the antiretroviral drugs. There has been an outcry from the people living with HV/AIDS regarding the violations of their human rights citing lack of protection from the existing legal instruments. The purpose of the study was to examine the state of the law protecting and promoting the rights of people living with HIV/AIDS (PLWHA) while at their workplaces. This involved exploring the challenges with the hope of developing recommendations that will be adopted to ensure realization of the rights of ELWHA.

### **BACKGROUND**

Employment means work, especially when is done to earn money.

Section 2 of the employment Act 2006<sup>1</sup>, defines an employee to mean any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by government of Uganda, including the Uganda public service, a local authority or a parastatal organization but excludes a member of the Uganda peoples defense forces .

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<sup>1</sup> Employment Act 2006 No.1

Section 2 of the employment Act 2006, defines employer as any person or group of persons, including a company or corporation, a public, religion or local authority, a governing body of an unincorporated association, a partnership organization or other institution or organization whatsoever, for whom an employee works or has worked.

An employer<sup>2</sup> is a person or company that pays people to work for them.

The word AIDS is an abbreviation that stands for Acquired immune Deficiency Syndrome<sup>3</sup> which is an illness which attacks the body's ability to resist infection and which usually causes death. It is usually caused by an HIV (Human Immune virus) infection which kills the person's body cells which helps a person fight infections and diseases, thus breaking the body's entire system giving way to other infections that can eventually result into death.<sup>4</sup> The challenges posed by the disease to mankind have proven the most difficult to deal with since its reception to date.

There are several means through which it is transmitted from one person to another but the most common is through having unprotected sexual intercourse between an HIV positive person and an HIV negative person. There however prevails other means of passing on the infection which include but not limited to transfusion of infected blood, sharing infected equipments and mother to child infection at child birth.<sup>5</sup>

There are a number of symptoms that can be reflected upon in determining that a person is HIV positive which include fever, diarrhea, mental changes (memory loss), weight loss, persistent cough, severe skin rashes, herpes zoster, opportunistic diseases like cancer, among others, though the prevalence of any of these signs is not conclusive evidence of the availability of HIV infections within the person's blood.<sup>6</sup>

Every endeavor has been taken to make drugs that can provide a lasting solution to the problem but in vain. However, the best that has been put in place are the Antiretroviral

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<sup>2</sup> Oxford university, oxford advanced dictionary 8<sup>th</sup> edition pg 207

<sup>3</sup> Oxford Advanced Dictionary, 8<sup>th</sup> Edition

<sup>4</sup> WHO 1994, AIDS Images Of The Epidemic, WHO Geneva 1994 pg3

<sup>5</sup> Ibid Note 2

<sup>6</sup> W. Gaiser: Aids Origin, Spread And Healing, Koln, Bipawo Verlag, 1994

drugs that can only improve on the person's immunity and it has been established that just like any other virus, AIDS has no vaccine neither has it got a cure.<sup>7</sup>

## **THE GENESIS OF HIV/AIDS IN UGANDA**

The virus set into Uganda in 1980's when Uganda was just on its road to recovery from the civil wars that had torn the country apart.<sup>8</sup> The first HIV/AIDS case was identified in Uganda was 1982 on the shores of Lake Victoria in Rakai District, in the southern part of the country.<sup>9</sup> Due to the political instabilities in the country at that time, there was a rapid spread of the virus and by the end of 1988, a cumulative total of 6750 HIV/AIDS cases had been reported to the Ministry of Health.<sup>10</sup> Uganda, after escaping the bullets and the guns, HIV/AIDS had come to claim all the hope of the Ugandans. By 1990, Uganda had become Africa's epicenter of the disease with over one million people living with HIV/AIDS.<sup>11</sup>

The current HIV prevalence rates in Uganda stand at 6.5 percent among adults and 0.7 percent among children.<sup>12</sup> HIV prevalence is higher in urban areas (10 percent) than rural areas (96 percent) (CEDAW),<sup>13</sup> Convention Against torture (CAT),<sup>14</sup> and many others.

In their essence, the guidelines underscore the very important concern to persons living with HIV/AIDS (PLWHA) under the international guidelines of instruments that are geared at protecting PLWHA in relation to human rights protection non-discrimination, equality before the law, health, privacy and gainful employment among others.<sup>15</sup>

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<sup>7</sup> Asingwire N & S.K Kyomuhendo, a review of HIV/AIDS policy environment , January, Makerere2003

<sup>8</sup> Ibid, Note 5

<sup>9</sup> Philip Collin Monitor Newspaper January 13<sup>th</sup> 1996

<sup>10</sup> Global report on AIDS 2004, 4th

<sup>11</sup> Ibid Note 5

<sup>12</sup> Government of Uganda (2010, March) 'UNGAS Country Progress Report: Uganda' pg3

<sup>13</sup>UN General Assembly 1967

<sup>14</sup> UN General Assembly 1984

<sup>15</sup> This is majorly attributed to the low performance levels in ensuring that the rights of the individuals are made known to the very people who do suffer such violations.



The international community has through its instruments and conventions established the means of protecting the rights of the PLWHA from being violated. As such, the challenges of the same remain with the state parties to put it into reality to save the situation. This requires the ratification of the conventions that protect human dignity, those that condemn discrimination, and those that promote equality before and under the law among others.

## **HIV/AIDS AND HUMAN RIGHTS IN UGANDA**

The government of Uganda has embarked on an aggressive approach against HIV/AIDS by adopting a new strategy which requires involvement of all citizens and sectors in the fight against the scourge of AIDS in the care of people affected directly by the epidemic.<sup>16</sup> Although attempts to ensure that the pandemic is washed away have registered considerable results in that regard by having the prevalence rates reduced from 5.1% in 1998 to 4.1% in 2003,<sup>17</sup> all the achievements gained in combating the challenge of HIV/AIDS are being watered down by the continued abuse of the employment right of the PLWHA especially by local Ugandan employers.<sup>18</sup> This reflects in an increment in the prevalence rates among the adults which accounts for approximately 6.2% of Uganda's population.<sup>19</sup> Workers continue to implicate company employers who force employees to take compulsory HIV/AIDS tests with intentions of dismissing those who are HIV positive.<sup>20</sup>

The impacts posed by HIV/AIDS on both economic and social sectors of the population are quite great negatively. The most impacted is the employment sector, comprising of the employers and the employees as well as the socio-economic ramifications that are by the default linked to the work place. This is based on the fact that Uganda's workforce presumably declined by approximately 3 million people by the year 2001 as a result of the HIV/AIDS, and the productive age which ranges between 15 years – 48

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<sup>16</sup> HIV/AIDS surveillance report 2003

<sup>17</sup> UNGA Report on HIV/AIDS in Uganda 2010

<sup>18</sup> Ibid Note 15

<sup>19</sup> UNAIDS 'Report on the global AIDS epidemic'(2008)

<sup>20</sup> The New Vision march 1996, pg 1

years has approximately 6.5% infected with HIV/AIDS.<sup>21</sup> The prevalence rates in children are 0.7% by 2010 and 6.7% amongst adults.

HIV/AIDS has also increased absenteeism of employees from work due to illness and the need to attend funerals and this has resulted into insignificant decline in labour productivity and efficiency, loss of earnings and increased health care costs.<sup>22</sup>

Employment Act (2006) Section 33(3) where a medical examination required under this section the results of the examination shall be confidential by the person who is the subject of the medical examination, without than the person who is the subject of the medical examination, without that person's consent.

HIV/AIDS poses human rights issues in the employment sector. Although every employee is entitled to privacy right to work without discrimination and right to informed consent, many employees have been discriminated against because of the serotype and status. Some employers require HIV/AIDS tests for job applicants and employees without the knowledge of the person concerned as part of the process selection for employment, training and promotion.<sup>23</sup>

It is worth nothing that the legislation in Uganda is still inadequate to approximately address the legal issues of employment and to ensure protection of the human rights of HIV/AIDS infected employees.<sup>24</sup>

Legal issues arising in the employment sector as a result of the AIDS pandemic include discrimination and stigmatization of HIV/AIDS infected employees, the right to mandatory HIV/AIDS testing, the right to informed consent, right to privacy and confidentiality. Some employees are denied promotion and are usually terminated on

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<sup>21</sup> Employment act 2006

<sup>22</sup> Senabulya R.N:HIV/AIDS at the Workplace: The Federation Of Uganda Employer's Experience (FUL) Kampala(2004) pg6

<sup>23</sup> Ibid note 20

<sup>24</sup> Uganda Human Rights Commission 6<sup>th</sup> Annual Report 2004

the basis of HIV/AIDS, whereas others are faced unequal privileges at work for example training, access to scholarship and denial of insurance cover among others.<sup>25</sup>

The specific legislations that provide for workers' rights generally include; The 1995 Constitution of the Republic of Uganda., The Employment Act 2006<sup>26</sup>, Factories Act cap (2000)<sup>27</sup>, The workers compensation Act<sup>28</sup>, and the National Social Security Fund Act<sup>29</sup> and the various international instruments that were ratified by Uganda.

The research analyses the various legal rights of employees living with HIV/AIDS and shows whether it is adequate in protecting them in private sector. The researcher will examine the rights enjoyed by the employees in the Ugandan private sector and the extent to which the rights of PLWHA are being observed or violated by their private employers and employees.

## **STATEMENT OF THE PROBLEM**

Article 40 of the constitution<sup>30</sup>, provides that the laws enacted shall provide the right of persons to work under satisfactory safe and healthy conditions and ensure equal payment for equal work without discrimination.

Employment means work, especially when is done to earn money. Section 2 of the employment Act No. 1/ 2006<sup>31</sup>, defines an employee to mean any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by government of Uganda, including the Uganda public service, a local authority or a parastatal organization but excludes a member of the Uganda peoples defense forces .

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<sup>25</sup> Ibid note 23

<sup>26</sup> Act no 1/ (2006)

<sup>27</sup> Factories act 1964

<sup>28</sup> Worker compensation Act (200)

<sup>29</sup> NSSF Cap 222

<sup>30</sup> Constitution of the republic of Uganda 1995

<sup>31</sup> Employment Act 2006 No.1

Section 2 of the employment Act No1/ 2006, defines employer as any person or group of persons, including a company or corporation, a public, religion or local authority, a governing body of an unincorporated association, a partnership organization or other institution or organization whatsoever, for whom an employee works or has worked. An employer<sup>32</sup> is a person or company that pays people to work for them.

The word AIDS is an abbreviation that stands for Acquired immune Deficiency Syndrome<sup>33</sup> which is an illness which attacks the body's ability to resist infection and which usually causes death. It is usually caused by an HIV (Human Immune virus) infection which kills the person's body cells which helps a person fight infections and diseases, thus breaking the body's entire system giving way to other infections that can eventually result into death.<sup>34</sup>

Section 33(3) of the Employment act No1 /2006, where a medical examination required under this section the results of the examination shall be confidential by the person who is the subject of the medical examination, without than the person who is the subject of the medical examination, without that person's consent.

The international Bill of Human Rights, which includes the Universal Declaration of Human Rights<sup>35</sup> (UDHR), the International Covenant on Civil and Political Rights<sup>36</sup>(ICCPR), and the international conventions on economic, social and cultural rights<sup>37</sup> (ICESCR) law framework that spells out the rights in question.

These are legal norms that provide a legally binding foundation to address the societal basis of vulnerability and implement change which is this body of laws developed since 1945<sup>38</sup>. It affirms and protects abroad range of civil, political, economic, social, and

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<sup>32</sup> Oxford university, oxford advanced dictionary 8<sup>th</sup> edition pg 207

<sup>33</sup> Oxford Advanced Dictionary, 8<sup>th</sup> Edition

<sup>34</sup> WHO 1994, AIDS Images Of The Epidemic, WHO Geneva 1994 pg3

<sup>35</sup> UNDHR report on HV/AIDS 2008

<sup>36</sup> ICCPR report on HIV/AIDS 1979

<sup>37</sup> ICESIR Report on HIV/AIDS 1976

<sup>38</sup> Uganda human rights commission 6<sup>th</sup> Annual Report 2004

cultural rights. The rights apply to anyone without distinction of any kind. Meaning, all persons including infected with HIV/AIDS are protected against discrimination.

The said instruments spell out the following rights which would be of particular significance to PLWH the rights to life, liberty, security, to fair treatment, right to privacy right to work and the right to non-discrimination.

The biggest challenge faced by employees living with HIV/AIDS at their work places is the violation of their rights. It's true that both national and international laws have been put in place to protect and promoting the rights of PLWHIVA.

However the laws in place are not effectively enforced, employers are bound to respect the laws put in place to protect their workers. Therefore it's the duty of the government to protect and promote rights of people living with HIV/AIDS at their work places

## **OBJECTIVES OF THE STUDY**

The overall objective of the research is to analyze the human rights issues posed by HIV/AIDS at the workplace<sup>39</sup>. The research was however devoted to achieving the following;

- a) To establish and examine the causes of human rights violations of PLWHA in the employment sector
- b) To examine the extent to which international and national laws protect human rights and the challenges faced in enforcing them.
- c) To examine the extent to which the policies of Uganda do protect the rights of employees living with HIV/AIDS
- d) To advance findings, recommendations and conclusions and measures that can be put in place to up light the human rights of people living HIV/AIDS

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<sup>39</sup> Uganda human rights commission 6<sup>th</sup> annual report 2004

## **RESEARCH QUESTIONS**

- i. What are the causes of the violations of Human Rights of employees living with HIV/AIDS in the employment sector?
- ii. What are the rights of employees and to what extent such rights of people living with HIV/AIDS are protected
- iii. To what extent does the law protect employees living with HIV/AIDS?
- iv. What are the available recommendations for the protection of the rights of PLWHA at the workplace?

## **PURPOSE OF THE STUDY**

The study mainly concerned with the treatment of ELWHIV/AIDS are treated at their work places and taking into account the rights and freedoms of employees in their respective working environment and if the laws put in place protect their rights.

## **SCOPE OF THE STUDY**

### **Subject scope**

The study focused on discrimination and exploitation of employees living with HIV/AIDS in the private sector. The research laid emphasis on the treatment of PLWHA at workplace by both their employers and their fellow employees who are not infected by HIV/AIDS.

## **TIME SCOPE**

The research covers a period of ten (10) years ranging from 2001 – 2010. The activities carried out during this time frame were the main concern of the research.

## **GEOGRAPHICAL SCOPE**

The research covered the areas of Kampala District, Rubaga Division which has a large number of work places with employees living with HIV/AIDS. such, information from the respondents falling therein can easily be obtained.

## **SIGNIFICANCE OF THE STUDY**

It is hoped that the study will help legislators in passing or enacting laws that will reconcile the interests of employees with the urge to protect the dignity of PLWHA and the employers. This will most likely change the values, attitudes, benefits and practices shape a biased perception of employees living with HIV/AIDS. Though the cure may not be around the corner but the suffering of the affected persons in this regard will greatly be alleviated through this volume.

a) The research findings about the area of research will add on the existing literature regarding the rights of employees infected with HIV/AIDS<sup>40</sup> at their workplace. This will alleviate their status and productivity at workplace. It will show cause for the fair treatment of the persons living with HIV/AIDS and how they can be afforded help by persons around them.

b) The research study will benefit the researcher in getting equipped with research skills and get experience in the field of research. Since the research paper is also examinable, the researcher will be, on completion of the research, in a position to get awarded with a Bachelor's Degree in Laws, by getting marks.

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<sup>40</sup> UNGA Report on HIV/AIDS in Uganda 2010

## **METHODOLOGY**

The method used in this research is qualitative and quantitative there are based on basic data was based on both primary and secondary data. Primary data is one obtained directly from the respondents whereas secondary data relates to the already written material in regard to the research topic. Contained in text books, journals, magazines, tabloids, parliamentary enactments, international instruments, laws and by-laws, among others. Whereas secondary data contains the above, primary data was extracted from the respondents using various research techniques. This related specifically on the rights of PLWHA and their treatment at the work place under the private sector.

## **LITERATURE REVIEW**

There is limited literature on human rights challenges posed by HIV/AIDS<sup>41</sup> at the workplace. The challenges faced by employees infected by HIV/AIDS in particular have been addressed the least. Even the little that has been established in that regard is restrained by lack of verifiable empirical sources.

Most of the literature concerning the employment aspects of the disease reflects the views and opinions of the respective authors than independent empirical findings. Only under a few instances was the literature based on the personal experience of persons infected with HIV/AIDS. Even therein, such instances lack objectivity that could only be tested through empirical research. The few empirical studies that were reviewed like that conducted by TASO, MoH, World Bank<sup>42</sup> among other institutions do not address the employees' questions arising from HIV/AIDS. The TASO report in particular based on data empirically obtained from clients, counselors, and community representatives, key informants and TASO records.

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<sup>41</sup> TASO report on the HIV/AIDS perseverance rate 2010

<sup>42</sup> UNGA report on the global AIDS epidemic 2008



**Samuel Tindifa** In this case of exploring the legal and policy responses of HIV/AIDS to the workplace in Uganda,<sup>43</sup> identifies the problem areas that will require response like discrimination, and compulsory testing among others. He argues that HIV/AIDS has created an environment in which the violation of the rights of people living with HIV/AIDS is rampant. He also argues that there are many social and risk behaviors for accelerating the spread of HIV/AIDS which require legal intervention. He emphasizes the role of the law in promoting behavior change and protecting the rights of those affected or infected by HIV/AIDS. This research paper widely looks at Human Rights of employees living with HIV/AIDS. It especially looks at the human rights of employees living with HIV/AIDS and the extent at which the law in Uganda has protected them. However, looking at Tindifa's works,<sup>44</sup> he does not address what can suffice as laws that can protect the persons employed under the private sector.

**Justice Micheal Kibly,**<sup>45</sup> extends the same line of argument by asserting that HIV/AIDS presents an enormous challenge to and a great opportunity for the law. He contends that though the cure may not be existent, or may never be availed, the law can reduce the burden of injustices and discrimination against PLWHA on the rights of employees. It can prevent the second epidemic of prejudice, irrational fear and unfair treatment which unjustly adds to the burden of PLWHA, their families and their careers.

**Kibly**<sup>46</sup> further highlighted certain provisions that could be invoked to remedy the social ejection, discrimination and stigmatization of PLWHA face. He paid attention to issues concerning the right to life, health, liberty, work and education. The reviewed work predominantly acknowledge the need for legal, ethical, and human rights principles or framework, as a foundation all HIV policy and practice.<sup>47</sup> The authors work however is silent about discrimination on the ground of confidentiality and privacy as a fundamental breach of the rights of the PLWHA.

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<sup>43</sup> "The summary of Human Rights and Ethical Issues For Law Reform" 2006

<sup>44</sup> The summary of human rights and ethical issues for law reform 15<sup>th</sup> edition vol 3 (2003) pg 78

<sup>45</sup> "AIDS and the Law; A new challenge for Human rights Common Wealth Law Bulletin Vol. 20, No.4 (Oct. 1994) Pg 1457

<sup>46</sup> Ibid

<sup>47</sup> Musingzi, 'surveillance of HIV/AIDS in Uganda 1<sup>st</sup> edition vol 1 2003 pg17

**The International Labor Organization Report**<sup>48</sup> established that among countries like Uganda, South Africa where the research was conducted, there is an issue of discrimination of workers who have HIV/AIDS, screening of the employees among other vices in the employment sector, hence the need to protect such workers. The report also brings out that there are no binding international standards addressing the specific problem rose by HIV/AIDS in reaction to work but is- silent about the need to educate people about human rights. The study will seek to eliminate dangers of such positions as far as legislative intervention as a measure is concerned.

**Kagimu**<sup>49</sup> emphasize the need to reform laws like Public Health Act<sup>50</sup> the rational for the reformation was to also give attention to disease like HIV/AIDS which have no cure than concentrating on diseases like malaria that can be treated. The Public Health Act does not cover PLWHA.

They also stresses the problem of continuous conflicts between public and private interests, which leads to the unequal relationship between employees and employers. They do not show however how the loopholes should be filled up and show how the conflict can be reconciled up and the research will look forward to filling this and come up with a clear picture of the law.

**J. Musinguzi**<sup>51</sup> also argues that employees should not have a positive legal duty to disclose their HIV/AIDS status. HIV/AIDS testing should not be part of the routine of examination and medical information should be treated with rules of confidentiality. He asserts further that there is need for PLWHA to retain the right to participate in community activities without discrimination and thus equal entitlement to rights of appropriate healthcare support and community services.

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<sup>48</sup> International Labor Organization: "The Impact of HIV/AIDS on the productive labour force in Africa".

<sup>49</sup> Kagimu M & Mariam E.etal (1996) "preview of AIDS prevention and control activities in Uganda, Kampala"

<sup>50</sup> Laws of Uganda

<sup>51</sup> Musinguzi, "Surveillance of HIV/AIDS in Uganda, STDS/AIDS control program, MOH 1998 pg16

**Musinguzi**<sup>52</sup> further recommends that Uganda ever since the appearance of the epidemic has no specific legislation covering employment related AIDS issues such as HIV screening confidentiality of medical information, access to medical insurance and pensions for HIV/AIDS positive employees. His notion lacks the implementation of the enacted laws in response to the treatment of the HIV/AIDS positive employees.

**B. Ssensasi**<sup>53</sup> established that there are two basic human and ethical problems that arise in the employment sector that is; discrimination of HIV/AIDS infected employees and violation of privacy, which are unconstitutional. The writer further points out that although the 1995 constitution of Uganda does prohibit discrimination under Cap 4 therein, there still remains a problem of implementation. People have lost jobs and others even denied employment in the first place on the basis of their HIV status. He further noted that the private law that governs the employment transactions is very insensitive for it requires an individual to undergo compulsory HIV testing. He further establishes that the Employment Decree (now the Employment Act) or is silent about these ethical codes and thus employees may comply only if it is a statutory duty.

By analyzing the above literature, it is evident that Uganda is faced with a real dilemma in terms of how the interest of the employer can be reconciled with that of the individual employee. In dealing with such a dilemma, it is important to determine what benefits would be availed to the victims to undergo compulsory HIV testing. So this paper will try to find a way of reconciling the two interests which was not done by the writer.

According to **SAF AIDS News Letter**,<sup>54</sup> it was noted that despite of the wide consensus against it, many employers enforce pre-employment HIV/AIDS testing. This is not merely the exercise of legal power by an employer to choose whom to employ. It

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<sup>52</sup> ibid

<sup>53</sup> Questions and Answers for AIDS educators, 2<sup>nd</sup> edition, STD/AIDS control program, Entebbe 1998 pg 74

<sup>54</sup> SAF AIDS News Letter "Southern Africa Information Dissemination serving news bulletin Vol. 5 No.3 1999 pg67

closes a job market to the persons with AIDS thus depriving of the means to earn their living and achieve success through an apocoptation. This violates the constitutional provision which provides for fundamental rights to work. <sup>55</sup>Its social economic effects are severe, job applicants are still not covered by any of the legislation enforcing rights of the employees.

A paper presented by **Twinomugisha**<sup>56</sup> indicated that it's now widely recognized that HIV/AIDS is one of the leading and mostly challenging public health problems of the 21<sup>st</sup> century. Though Uganda has registered success in the area of HIV/AIDS prevention, challenges with regard to human rights of PLWHA remain. There exists a lot of discrimination and stigma in many areas including employment sector. However, this paper only reflects upon the rights of the employees.

According to **N. Nsigirwe & Kyomuhendo**<sup>57</sup> there is need to review and update the existing policy guidelines to make them consistent and relevant to the current policies on HIV/AIDS. They further contended that though some guidelines have been implemented, others have not been adopted as policies by the respective sectors and the employment sector is presented as one of the sectors that have not responded fully in adopting national policy guidelines.

Frankly<sup>58</sup> lists that HIV/AIDS has become a threat to employment objectives and labour market efficiency. He further states that the loss of workers and workdays due to AIDS related illnesses or the demands of caring can result into insignificant declines in productivity, loss of earnings and attrition in skills and experience.

This research paper presents the conflict between the interests of the employer on the one hand and those of the employees affected by the HIV/AIDS on the other hand. However, it provides no possible ways through which these interests can be reconciled.

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<sup>55</sup> Ibid

<sup>56</sup> Paper presented at the National Training workshop for judicial officers on HIV/AIDS and the law held at hotel Equatorial 2010 pg 11

<sup>57</sup> Paper presented at the National Training workshop for Judicial Officers on HIV/AIDS and the law held at Hotel Equatorial 2008 pg 20

<sup>58</sup> Ibid

It is for this that the research will be undertaken to analyze the current law in Uganda, and show whether it can be used as a means of reconciling these interests hence paving way for the means through which the rights of the employees living with HIV/AIDS best be protected.

## **CHAPTER TWO**

### **CAUSES OF HUMAN RIGHTS VIOLATIONS OF ELWHA AT WORKPLACES**

#### **2.0 INTRODUCTION:**

Very often the employees face different challenges while at work. These have not been justified but these challenges have continued to pose an eminent impact upon the lives of such employees. Therefore this chapter deals various causes of human rights violations at their work places, possible solutions for example my research covers the state of affairs there is need to establish the legal framework both national and international.

#### **2.1 CAUSES OF HUMAN RIGHTS VIOLATIONS AT WORKPLACES:**

##### **I. IGNORANCE OF THE LAW**

Lack of knowledge is the leading cause of violence of human rights of PLWHA in the employment sector, yet ignorance of the law is does not amount to a defense.<sup>59</sup> Although the literacy rate in Uganda has improved in the last ten years, people do not know the state of the law in regard to their rights.

Employers are more concerned about their profits than the concerns of the employees. David Logan commented that "Business people still lack information on the issues surrounding the disease. The business is business not HIV/AIDS and few in the business have focused on the issue in depth..."<sup>60</sup> why mandatory HIKV testing is done to avoid recruiting PLWHA because the process is costly and employers think such persons are not capable of doing quality work yet disability does not mean inability. In Uganda, writers observed it that despite the available information about HIV/AIDS, people everywhere are gripped with fear and ignorance of the epidemic and this has led to increased discrimination and rejection.

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<sup>59</sup> Section 6 of the Penal Code Act Cap 120, Laws of Uganda

<sup>60</sup> D. Logan, UNAIDS Report 2004, The Business response to HIV/AIDS innovations and partnership.

## **ii. INADEQUACY OF THE LAW**

The role of the law is to protect the rights and interests of the people but the law in Uganda relating to the employment is inadequate thus leading to the violation of the rights of the ELWHA at their workplaces.

The Employment Act,<sup>61</sup> the Venereal Diseases Act<sup>62</sup> and other legislations do not specifically address the rights of the ELWHA leaving such vulnerable persons at the mercy of their employers. In comparisons with other countries like South Africa, the level of the violation of the rights of the ELWHA is quite limited as the matter is dealt with clarity under their laws.<sup>63</sup>

## **iii. INEFFECTIVE ENFORCEMENT BODIES**

Representative bodies of the workers and employers play a big role in ensuring equality of treatment and opportunities at work.<sup>64</sup> The state in Uganda is quite different as the trade unions charged with the duty of prying the labor concerns and have likewise not educated the union members about their rights.

Enforcement bodies like the police force is ineffective in a sense that cases are reported and the employers responsible bribe police men to ignore the issues raised by the respective employees whose rights have been violated

The employees have found themselves in a helpless state as they have nowhere to seek for help to have their concerns dealt with. Even the state has been reluctant to deal with the foreign investors that mercilessly terrorize the rights of the employees while under contract with them.

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<sup>61</sup> Employment act No1/ 2006, Laws of Uganda

<sup>62</sup> Venereal Diseases Act

<sup>63</sup> Employment Equipment of South Africa, 1998, Cap214

<sup>64</sup> ILO global report , Labor issues at the workplaces(Time for Equality at work) (2010)

#### **iv. LACK OF INFRASTRUCTURAL POLICIES**

David Patterson<sup>65</sup> lamented that *“as long as ignorance regarding the virus persists, discrimination based on irrational fears of transmission will continue.”* Things like education, HIV testing, counseling should be provided for adequately. However, majority of the companies do not provide these services adequately because of the high costs incurred in their provision.

#### **v. INEFFECTIVE GRIEVANCE HANDLING PROCEDURES**

Employers have the obligation or duty to provide grievance handling procedure so that when an employee has a problem at work, the problem can be forwarded to the respective department to be dealt with. Many companies have the procedures that are ineffective, inadequate, time consuming and cannot be welcomed by ELWHA. As such, ELWHA find themselves are in a risky position where they cannot have their problems dealt with thus jeopardizing their lives because of work.

Basing on the above challenges that prevail in societies, ELWHA find themselves in a compromised position where they cannot object to face a number of problems while at workplaces. Among the problems they face are adequately dealt with below;

#### **2.2 PROBLEMS FACED BY ELWHA AT WORKPLACES**

The problems faced by the ELWHA are not only the social problems but those that emanate from all the spheres of life as noted by Pickering H, & O. Kango M<sup>66</sup> who noted that the problems they face are those that undermine their dignity. These include the following;

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<sup>65</sup> D. Logan UNAIDS report, the business response to HIV/AIDS innovation and partnership 2004 pg 78

<sup>66</sup> Pickering H. O. Kango M; sexual Network in Uganda, casual and commercial sex in trading AIDS care, Vol.9 No.2 Pgs 199-207 (2007)



## **COMPULSORY HIV TESTING**

The employees are often subjected to compulsory HIV testing and those that are found HIV positive are at times compelled to resign from work or are discharged from work without any recourse. Even the laws that are meant to protect them confer powers to the employers to dismiss employees found unfit for work yet disability is not inability. With the compulsory HIV testing, <sup>67</sup>the employees are at risk of losing their jobs whenever deemed so by the employer.

## **CONSENT AND THE RIGHT TO PRIVACY**

The patients should be given chance to have an informed consent and consent is defined as a voluntary decision made by an autonomous or sufficiently competent person after deliberation adequate information given by the doctor. Consent to medical examination for employment may be implied express or informed consent.

Section 33(3) of the employment act 2006, where a medical examination required under this section the results of the examination shall be confidential by the person who is the subject of the medical examination, without than the person who is the subject of the medical examination, without that person's consent.

## **EXPRESS CONSENT**

This means a person expressly consents that any information relating to his HIV status should be disclosed. It may be oral or written consent. In *Jansen Van & Anor Vs Kruger*,<sup>68</sup> The appellant Division or South African court held that HIV related information was personal and private and could not in the absence of an overriding legal duty be disclosed without the express consent of an individual.

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<sup>67</sup> HIV/AIDS at the workplaces , the federation of Uganda employers experience kampala

<sup>68</sup> South Africa ,Annals reports[1993]2 All SA 619 (A) (28<sup>th</sup> September 1993)

## **INFORMED CONSENT**

This is very important where consent is oral or written. It requires a person to be informed of the kind of treatment to be administered on him. Doctor must first assess the patient's ability to understand explanation given to him. Unfortunately in Uganda this has been violated. In *C V. minister of correctional services*<sup>69</sup>, Justice Kirk Cohen stated that it is axiomatic that there can only be consent if the person appreciate and understands what the object and purpose of the test is what an HIV test positive results entails and what the probability of AIDS occurring thereafter is. The requirement of counseling is a further step in establishing informed consent.

## **IMPLIED CONSENT**

Implied consent is the most common in both general and hospital practice. The fact that a patient present himself to the clinic is held that he has agreed to medical examination this is for simple surface examination before for others.

Examination such as rectal, vaginal and the withdrawal of blood for chagostic purposes, consent should be obtained since HIV test falls under blood withdrawal implied consent by virtue of presence at the clinic not enough to establish their consent to the procedure.

## **LACK OF SPECIFIC LEGISLATION**

Since the outbreak of the disease, no specific legislation has been implemented to deal with various legal human rights issues that are continuously being exploited for example, the Venereal Diseases Act 1977<sup>70</sup> was enacted before HIV struck this country and no such amendments have been made to address the problem of HIV/AIDS that has become a key concern the world over. Even the laws that tempt to provide a solution to discrimination lack provisions that penalize the offenders.<sup>71</sup>

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<sup>69</sup> UHRC report 2010 pg 115

<sup>70</sup> Venereal diseases Cap 284, Laws of Uganda

<sup>71</sup> The Constitution of the Republic of Uganda 1995

## **LACK OF JOB SECURITY**

It is quite worrying that in the world of work many employees have lost their jobs because of their stereo status.<sup>72</sup> Even when not proved, whenever an employee falls ill for longer than expected, it is presumed that the person is HIV positive and any chances of promotion that might be in the sight of that person tend to move far away due to the fear that the person might die soon. With the employers having the discretion of when to hire and fire the employees, the employee's maintaining the position at the work place is at the mercy of the employer. With this lack of the job security, the employees give up their rights to maintain their positions at the workplaces.

## **UNFAIR INSURANCE POLICIES**

The PLWHA are denied credit facilities because they are referred to as '*living corpses*'.<sup>73</sup> Insurance companies believe they are dying any time and can cause financial losses to the companies. Even when they accept to provide insurance services to them, they charge them very high premiums compared to those charged upon persons who are HIV negative. They bind them to disclose their HIV status in case they are intending to have life assurance which is quite discriminatory.

## **POSSIBLE SOLUTIONS;**

In order to curb the problems and violations faced by people living with HIV/AIDS at their work places, given the current state of affair, there is need to establish the legal issues that are raised under the private sector in relation to the rights of PLWHA and the extent of protection conferred on them by both national and international laws.

This is the national laws that govern the state, the fact that most of the provisions embodied in the international human rights instrument have been incorporated into the

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<sup>72</sup> UHRC report 2010, pg 149

<sup>73</sup> Senabulya R. (1996): HIV/AIDS at the workplace, The federation of Uganda employers experience, Kampala

country's constitution<sup>74</sup>. This implies that Uganda is bound to respect and implement its treaty obligations.

### **2.3 CONCLUSION:**

Basing on the above problems and challenges faced by ELWHA at workplaces, together with the causes of the violation of their rights, it is quite important to examine the state of the law in regard to the protection of the ELWHA in Uganda.

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<sup>74</sup> The constitution of republic of Uganda 1995

## CHAPTER THREE

### THE LEGAL AND POLICY FRAMEWORK IN UGANDA THAT GOVERNS THE RIGHTS OF PLWHIV AND THE CHALLENGES IN ENFORCING THE LAWS AND POLICIES

#### 3.0 INTRODUCTION:

AIDS is a war against humanity. We need to break the silence, banish stigma and discrimination and ensure total inclusiveness within the struggle against AIDS. If we discard the people living with HIV/AIDS we can no longer call ourselves humans.<sup>75</sup>

Today, HIV/AIDS poses the biggest threat to the rights of employees at work. PLWHA are subjected to discrimination stigmatization, their rights to privacy is breached and are denied benefits that accrue to them at work. These issue raised by HIV/AIDS are very complex in their resolution as they demand a meeting of minds over difficult choices which often involve competing interested among individuals, institutions (both private and governmental) and the civil society as a whole. Individual who lack human rights protection are more vulnerable to becoming infected and less able to cope with the burdens of HIV/ADS. It is therefore important to protect the rights of P.L.W.H.A in employment so as to reduce on the impact of the disease both to the employer and employee in considering the assistance as they provide a frame work for considering these claims.

Therefor under this chapter the legal and policy frame work, that govern the rights of people living with HIV/AIDS will be examined to show the extent to which these laws and policies have been implimeted.

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<sup>75</sup> Statement by Nelson Mandela on the World AIDS Day, 2004

### **3.1 ETHICAL PRINCIPLES**

Ethics covers a set of principles of right conduct such as those governing the actions of an individual or professional group which should guide the policies and actions of employers, official bodies and corporation.<sup>76</sup>

### **3.2 HUMAN RIGHTS PRINCIPLES**

These refer to tools that direct government agencies, individuals and institutions towards the appropriate shaping of their own policies and practices of others. Protection of human rights and the dignity of HIV/AIDS infected person is essential to the prevention and control of HIV/AIDS the most prevention and control of HIV/AIDS. The most important tool to do so is the law. It empowers people to protect their own human dignity and that of those with whom they live and interact in community. Accordingly hard law has an immediate and self-evident impact on HIV epidemic. It determines rights and duties of individual and other members of the community and as between individual and the state.<sup>77</sup>The law can contribute to the desired enabling environment on both a practical and symbolic level; the law will determine whether P.L.H.A or those at risk of infection are subject to purgative measures such as compulsory against discrimination or breach of confidentiality. Therefore there is a need to establish protective and supportive legal frame work for those that infected and those affected by the epidemic.

There is no specific legislation in Uganda that was enacted to directly deal with HIV/AIDS and its scientific or social nature. One of the factors contributed to that situation is the recent nature of the disease which Kirby describes as a new pandemic of enormous and size and frightening potential. The fresh consideration and challenges that HIV/AIDS poses may not have gained enough momentum to justify specific legislation. In Uganda, there are two branches (types) of law regulating human rights that is international law and municipal law.

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<sup>76</sup> Julian Husscruman: rights and human presentations at the west African health meeting in Lagos Nigeria, 1989, pg 98

<sup>77</sup> Human rights report on HIV/AIDS 2011

## **MUNICIPAL LAW**

This is the internal laws that governs the state. Example the Constitution of the Republic of Uganda. The fact that most of the provisions embodied in the international human rights instrument have been incorporated into the country's constitution. This implies that Uganda is bound to respect and implement its treaty obligations. The state of the law protecting ELWHA is quite varied in many jurisdictions but most of them are centered at non-discrimination, equality in treatment, stigmatization, among others just as are the key concerns under the Ugandan legal framework.

## **THE CONSTITUTION OF REPUBLIC OF UGANDA 1995**

Article 40 of the constitution of the republic of Uganda,(1995) The constitution is the supreme law on land and makes reference to right to privacy. it's provided that "No person shall be subjected to interference with privacy of that person's home, correspondence communications or other property."<sup>78</sup>

It provides for privacy. This is a fundamental human right that should be relished by workers at their work places.

## **EMPLOYMENT ACT NO.1/2006**

Section 33(3) of the employment act<sup>79</sup> (2006), where a medical examination required under this section the results of the examination shall be confidential by the person who is the subject of the medical examination, without than the person who is the subject of the medical examination, without that person's consent.

Section 6 of the Employment Act no.1 2006 discrimination in employment shall be unlawful and the purposes of this act, discrimination includes sex, religion, political opinion national extraction, social origin, the HIV status or disability which has effect of

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<sup>78</sup> Article 27 of the 1995 Constitution of the Republic of Uganda

<sup>79</sup> Employment Act No1/ 2006

nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.

Employment Act Section 55 (a) for the month absence from work he or she is entitled to full wage and every other benefit whether for his or her family or himself stipulated in the contract of service

### **Workers Compensation Act (2000)**

**Section 39**<sup>80</sup> provides for that all worker are entitled to privacy, the right to work without discrimination, many employees have been discriminated against because of the stereo type and their status.

**Section 11 (2)**, the worker shall be entitled to have his or her own medical practitioner but the attendance shall be the employers expense. That is it's the duty and obligation of the employer to cater for his/her employees

**Section 24 (2)** the court may, when determining any dispute in respect of the compensation or upon the application of any interested person, order the payment of any of the payment of any of the expense referred in this section to the person entitled to receive it.

Employment discrimination against people living with HIV may take the form of bias in hiring, refusal to grant workplace modifications to accommodate medical conditions, or unjustified termination. Moreover, practice and licensing restrictions imposed on HIV-positive individuals, such as health care professionals, fuels stigma that keeps many people with HIV closeted about their status.

The ADA also prohibits discrimination in places of public accommodation. This means that businesses such as restaurants and hotels may not deny goods or services to a person believed to have HIV or AIDS.

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<sup>80</sup> Worker Compensation Act 2006



Many states and local jurisdictions have passed laws similar to those on the federal level, prohibiting discrimination against people with disabilities. A majority of these laws also include people who have tested positive for HIV/AIDS within the definition of "disabled." For example, in Minnesota a dentist was found to have violated the state's Human Rights Act (similar to the ADA) for refusing to treat a patient who had tested positive for HIV.

Basing on the above, it's justified to note that the status of the protection of the rights of ELWHA in the USA is at a certain level too great as compared to the Ugandan legal context.

There are mixed views on the protection of the ELWHA in Uganda as many people do feel it's appropriate to take legal reforms to revise the legal framework to ensure that ELWHA are given adequate protection.

### **Public Health Act Cap 281**

This covers numerous diseases but it does not provide for HIV/AIDS thus being detrimental to the rights of PLWHA while at workplaces. Whereas the Act provides that "...shall apply to small pox, plague, asthma, cholera, yellow fever, cerebrospinal meningitis, the phus, sleeping sickness, human trypanosomiasis, and any other disease which the minister may by statutory order declare to be a formidable epidemic disease..."<sup>81</sup> however, the fact that HIV/AIDS is not covered under the Act, it can rightly be put that AIDS epidemic falls within the category of "any other diseases" meaning that the HIV status would have to be disclosed to the health authority thus violation of the right to privacy.

In summary, the current legislation in Uganda does not cover the HIV/AIDS epidemic and their right. HIV people are discriminated at work. PLWHA have not been protected under the law which has led to the violation of the rights of PLWHA in the employment sector. Some institutions in private sector are in the making HIV/AIDS policy in the

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<sup>81</sup> Public Health Act Cap 281

world of work so as to ensure that ELWHA are protected at the place of work. Unfortunately, the policies lack a legislative backing and therefore cannot be enforced.

### **NATIONAL POLICY ON HIV/AIDS AND THE WORLD OF WORK (2007)**

This policy forms part of the national law regulating the treatment of the HIV/AIDS employees while at the workplaces and brings out how best the employers can accommodate the PLWHA and the measures they have to undertake to handle the scourge. The policy requires that each employer formulates a sound HIV/AIDS policy at their respective places of employment. The policy so formulated should however address the following;-

- i. The notion of no-discrimination, equality of all employees, confidentiality, care and support and social dialogue for ELWHA at such workplaces.
- ii. Protection of such other rights that accrue to ELWHA
- iii. Identifying the factors that influence HIV/AIDS transmission
- iv. Training about HIV/AIDS for new entrants
- v. Prevention and care programs designed to protect not only infected persons but also to account for the rights and problems faced by those living with HIV/AIDS
- vi. To cater for safe working environment without even the risk of occupational transmission
- vii. Remedies for the breach of the rights of ELWHA
- viii. Provisions of healthcare

However, many institutions are reluctant to formulate such policies since the employment of ELWHA is not a priority with many of them having their contracts terminated at the very moment of discovery that one is HIV positive. This tendency is likewise attributed to the very low level of supervision from the responsible agencies

and bodies which have to establish that the requirements of the policy are truly met by the employer.

## **THE HIV/AIDS PREVENTION AND CONTROL BILL OF 2010**

This proposed Bill by the Ugandan Government states:<sup>82</sup> “The following persons shall be subjected to HIV tests for purposes of criminal investigation.” This implies that the test taker does not have the right to retract or give their consent for the testing and goes against the international approach to AIDS, known as the three C’s - Confidentiality, Counseling and Consent. The WHO and UNAIDS have strict guidelines against mandatory and/or compulsory HIV testing, instead promoting voluntary HIV testing to prevent the individual loss of human rights.

The new Bill seems to target already marginalized, criminalized and vulnerable groups in society stating that sex workers, pregnant women, drug users and victims of sexual assault “shall be subjected” to HIV tests. Such inclusions make the health system appear to be prejudiced and discriminatory, and create major obstructions for the fight against and treatment for HIV and AIDS. By implementing obligatory testing for sexual assault victims, the Bill threatens the victim’s rights and might also harm them indirectly, since not only the source of the infection will be investigated but their sexual history as well. Pregnant women and girls lose their own personal right of decision making, also going against ethical guidelines of the health systems. By specifically targeting and naming certain groups/individuals in the Bill, the Ugandan Government opens the door for stigma and discrimination against these groups, and especially women, who are already subjected to more HIV testing due to pre and post-natal medical care.

Other issues regarding the Bill include the provision of consent, which is, according to the Bill, unnecessary when it is unreasonably withheld or for medical or psychological reasons, the practitioner believes that such a test is clinically important for the patient. The category for giving consent is too broad and infringes on the individuals privacy

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<sup>82</sup> National Policy on HIV/AIDS 2007

when consent can so easily be overwritten due to a law that is clearly unspecific. Overwriting consent when a medical practitioner believes that it is important for the patient is unnecessary, since HIV is not an emergency condition and a person can live with this disease for a long period of time, this approach is excessive and unwarranted.

Clause 21 in the Bill states that an HIV<sup>83</sup> infected person should inform their sexual partner about their positive status or face criminal charges. Similarly, this inclusion is also ethically questionable from a number of perspectives. Firstly, this clause impinges on the individual's right to confidentiality and privacy, and once again may promote stigmatization and discrimination towards people living with HIV and AIDS. Secondly, the criminalization of not informing a sexual partner of one's HIV status promotes abusive prosecutions of individuals. The Bill also permits the disclosure of HIV status without the individual's consent, if certain conditions are met. These conditions are once again broad, unnecessarily sloppy and can easily be interpreted incorrectly, consequently having a negative influence on the HIV positive individual's right to privacy and confidentiality.

The Bill also criminalizes the "intentional transmission" of the virus to another person. Although recognition must be given to the fact that the deliberate transmission of the virus with the aim of infecting another person is wrong, the manner in which the Bill criminalizes this transgression goes against existing laws in Uganda and international guidelines regarding HIV and human rights.

### **INTERNATIONAL LAW:**

These are legal norms that provide a legally binding foundation to address the societal basis of vulnerability and implement change which is this body of laws developed since 1945. It affirms and protects a broad range of civil, political, economical, social, and cultural rights. The rights apply to anyone without distinction of any kind. Meaning, all persons including infected with HIV/AIDS are protected against discrimination.

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<sup>83</sup> The HIV/AIDS Prevention Bill of 2010

The international Bill of Human Rights, which includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the international (ICESIR) avail agencies international human rights law framework that spells out the rights in question. The said instruments spell out the following rights which would be of particular significance to PLWH the rights to life, liberty, security, to fair treatment, right to privacy right to work and the right to non-discrimination.

### **3.7.2 INTERNATIONAL LAW ON DISCRIMINATION AGAINST ELWHA/PLWHA**

There prevail a number of international laws promulgated and ratified by Uganda that embed the protection of the rights of ELWHA/PLWHA and in particular the right to equal treatment without being subjected to any form of discrimination of any kind or on the ground of the person's HIV status. These are as discussed herein below;-

#### **A] AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS (ACHPR) 1986**

The ACPR expressly contains provisions protecting the PLWHA in Africa. It puts forward the African Commission on Human and People's rights<sup>84</sup> wherein the commissioned with the tasks of protecting the rights of vulnerable people of society from having their rights violated. One of the key challenges identified by the commission<sup>85</sup> includes discrimination n of PLWHA in employment and health services.

#### **B] INTERNATIONAL CONVENTIONS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) 1966**

It requires that HIV positive persons should have some degree of priority consideration in the allocation of housing and access to health facilities. It further requires the implementation of laws and policies to eliminate all systemic discrimination, including where the victims are PLWHA. States are to enact or strengthen laws that protect the vulnerable people like PLWHA in public and private sectors. The Human Rights

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<sup>84</sup> ACHPR report October 1986

<sup>85</sup> According to the commission report of 2011

committee in *Toonen V. Australia communication*<sup>86</sup> stated that “the criminalization of homosexual practices cannot be considered a reasonable means or appropriate measures to achieve the aim of preventing the spread of HIV/AIDS... by driving underground, many people are at the risk of infection [it] would appear to run counter to the implementation of effective education programs in respect of HIV/AIDS prevention.”

While in *D. V. The United Kingdom*<sup>87</sup> the case concerned the expulsion order of the man suffering from advanced AIDS and the European court established that withdrawing medical treatment from the applicant would hasten his death. The court ruled that expelling the applicant to Saint Kitts and Nevis where there were no facilities to treat his illness would amount to inhuman treatment by the respondent state. This position was however altered in the case of *N. V. The United Kingdom*<sup>88</sup> involving an HIV positive woman who sought to stay in the UK and the court held that while treatment may be inaccessible in Uganda, the humanitarian grounds against removal were not compelling enough to find that her removal would constitute inhuman or degrading treatment.

In *Khudobin V. Russia*,<sup>89</sup> court held that the absence of medical assistance to an HIV positive prisoner amounted to inhuman treatment.

## **CJ UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) 1948**

The UNGA has in several resolutions emphasized the need to combat discrimination and to respect the human rights of PLWHA. A special UNGA session on HIV/AIDS in 2001 adopted the 'declaration on commitment of HIV/AIDS' which although not legally binding presents important milestones to protect the rights of PLWHA. The declaration recognizes that without human rights, many of even the best improvements in programs and policies will fail. Stigma, silence, discrimination, denial and even lack of

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<sup>86</sup> No.488/1992

<sup>87</sup> 146/1996/767/964

<sup>88</sup> 2008 judgment by the European Court of Human Rights

<sup>89</sup> UDHR December report (2006)

confidentiality undermine HIV prevention, care or even treatment and increase the impact of the epidemic on individuals.

There are a number of UN specialized agencies and bodies that address the challenges posed by the pandemic like the UNAIDS, ILO among others that have adopted programs through their works geared at increasing awareness against the challenges posed by the pandemic but the most rationale is the code of practice adopted by ILO dubbed "Code of practice on HIV/AIDS and the world of work". There is also a number of ILO conventions and recommendations that are relevant in combating the challenges posed by HIV/AIDS such as instruments concerning discrimination in employment, termination of employment, protection of workers' privacy and safety and health at work.

The UNAIDS and the UN High Commissioner on Human Rights developed guidelines to assist states in implementing human rights norms in the context of HIV/AIDS "the international guidelines on HIV/AIDS and human rights"<sup>90</sup> (1998) and its revised guideline 6: Access to prevention, treatment, care and support, 2002.

Basing on the above legal protection, the national legal framework is not comprehensive enough to properly guarantee the protection of the rights of the ELWHA as there exists a lot of disparity between the national laws and the international law encompassing the same. Reforms ought to be undertaken to harmonize the national and the international laws to ensure the adequate protection of the rights of the PLWHA/ELWHA in Uganda.

## **CONCLUSION**

Therefore from the above chapter covered the challenges in enforcing legal and policy frame work, that governs the rights of people living with HIV/AIDS has been examined to show the extent to which these laws and policies have been implemented to afford protection and promotion of PLWHA. The role of both national laws and The

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<sup>90</sup> Judgment in the European Court of Human Rights 2008

international laws and policies have been domesticated to protect individuals who lack human rights protection and are vulnerable to reduce the risk of HIV/AIDS



## CHAPTER FOUR

### TO EXAMINE THE EXTENT TO WHICH THE POLICES OF UGANDA PROTECT THE RIGHTS OF EMPLOYEES LVNG WITH HIV/AIDS

#### 4.0 INTRODUCTION

This chapter shall present the information obtained from the respondents as regarding the state of affair of the promotion and protection of the rights of employees infected with HIV/AIDS at their workplaces. .

#### RIGHT TO NON-DISCRIMINATION

Discrimination means denying people of the right to be treated equally in a fair manner as any other member of the society. "*Freedom from discrimination is a fundamental human right founded on the principles of natural justice that are universal and perpetual.*"<sup>91</sup> People who have been diagnosed as HIV patients are being discriminated against in the employment sector.<sup>92</sup>

Employers and fellow employees discriminate against PLWHA through discriminatory living, promotion practices, and limited benefits packages for HIV positive. Discrimination in the employment sector has cut across people's HIV/AIDS status and with this regard, HIV/AIDS victims are discriminated against not only by their fellow employees but by their employers.

#### NATIONAL LAW ON DISCRIMINATION AGAINST ELWHA/PLWHA

There are a number of national laws that contain the legal framework for the protection of ELWHA/PLWHA in Uganda. These are discussed herein below;-

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<sup>91</sup> U.H.R.C Chapter 15 2003

<sup>92</sup> SAAA Constitution of South Africa case

The constitution of the republic of Uganda 1995 protects and promotes the fundamental and other human rights and freedoms are extensively enshrined in the Constitution. The rights of People Living with HIV/AIDS are however not clearly spelt out therein. The Constitution highlights and points out the right to health, rights of the minority and the right of protection from discrimination.<sup>93</sup> These rights do apply universally to everyone including the ELWHA. Given the fact that the Constitutional provisions seem to be insufficient, they have been supplemented by the Acts of Parliament to ensure that the identified rights are taken care of.

The Employment Act (2006) <sup>94</sup>provides the operational framework for the above constitutional provisions. The Act forms and consolidates the laws relating to employment of all men and women. Most important, it imposes a duty on various stakeholders to give everybody including PLWHA the right to employment and to be paid a salary and other benefits. The Act emphasizes that any contravention should be reported to the relevant authorities for any action to be taken against them. Even then, it is one thing to have the law in place but it is another to have it implemented. That is why the question of the Rights of PLWHA in Uganda has been given uttermost attention in this research.

Uganda Human Rights Commission (UHRC) 2003 has conducted some education, information dissemination, sensitization, research, complainant's management, and the monitoring of compliance with International Human Rights Standards on HIV/AIDS. It has organized a series of workshops bringing together PLWHA and all stakeholders (including bodies and organizations) working with people living with HIV/AIDS to discuss issues of human rights and HIV/AIDS.<sup>95</sup> This was all about ensuring the rights for the PLWHA in Uganda.

There is a strong link between HIV/AIDS with lack of enjoyment of human rights. By very nature, the disease whose vaccine or drug is not yet in sight is a debilitating one.

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<sup>93</sup> Article 21 of the 1995 constitution

<sup>94</sup> EMPLOYMENT ACT

<sup>95</sup> UHRC, 6<sup>th</sup> Annual Report (2003), p.146

The impact of HIV/AIDS on social and economic livelihood in Uganda has been immense and accounts for the minimized realization of human rights<sup>96</sup>

It is the general mandate (Article 52 of the Constitution) of the Uganda Human Rights Commission that HIV/AIDS is addressed. The Commission's major interventions derived from its mandate to address HIV/AIDS concerns are investigating complaints relating to HIV/AIDS and human rights, information and education about HIV/AIDS; presenting recommendations to Parliament; and also monitoring government's compliance with international human rights treaty obligations specifically on the right to health.<sup>97</sup>

In respect to the above and elaborating on the role of the Government in the promotion and protection of the rights of the people living with HIV/AIDS, Helen Jackson has this to say:

***Governments need to set legal and policy frameworks to orientate and coordinate the response to HIV/AIDS, and to ensure resources are mobilized from internal and international sources. Policies need to balance conflicting human rights in an equitable way and to mandate top level-action in divers sectors to prevent HIV infection, assist coping and plan for the long-term impacts of the epidemic.***<sup>98</sup>

A report on a two – day workshop on the rights of people living with HIV/AIDS by the Uganda Human Rights Commission (UHRC) held at the school of Clinical Services, Fort portal on 10<sup>th</sup> -11<sup>th</sup> September 2003, has this to add:

***Ensuring rights for PLWHAs remains a challenge in Uganda but the Government has done commendably well in addressing some of the***

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<sup>96</sup> Constitution of Uganda 1995

<sup>97</sup>UHRC, 2003, p. 146

<sup>98</sup> UHRC: A report on a two – day workshop on HIV/AIDS & Human rights, Fort portal 9th to 12<sup>th</sup> September 2003, p.50.

***issues. What is left is perhaps a proper legal framework that addresses some of the problems which arise out of discrimination***<sup>99</sup>

It has however been observed that fundamental rights of people living with HIV/AIDS continue to be violated particularly in the areas of the right to non-discrimination, equal protection and equality before the law, to privacy, to liberty of movement, to work, to equal access to education, health care, social security and welfare.

National policy on HIV/AIDS and the world of work (2007), this policy forms part of the national law regulating the treatment of the HIV/AIDS employees while at the workplaces and brings out how best the employers can accommodate the PLWHA and the measures they have to undertake to handle the scourge. The policy requires that each employer formulates a sound HIV/AIDS policy at their respective places of employment. The policy so formulated should however address the following;-

- i. The notion of no-discrimination, equality of all employees, confidentiality, care and support and social dialogue for ELWHA at such workplaces.
- ii. Protection of such other rights that accrue to ELWHA
- iii. Identifying the factors that influence HIV/AIDS transmission
- iv. Training about HIV/AIDS for new entrants
- v. Prevention and care programs designed to protect not only infected persons but also to account for the rights and problems faced by those living with HIV/AIDS
- vi. Vi To cater for safe working environment without even the risk of occupational transmission
- vii. Remedies for the breach of the rights of ELWHA
- viii. Provisions of healthcare

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<sup>99</sup> UHRC: A report on a two – day workshop on HIV/AIDS & Human rights, For portal 9th to 12<sup>th</sup> September 2003, p.50.

However, many institutions are reluctant to formulate such policies since the employment of ELWHA is not a priority with many of them having their contracts terminated at the very moment of discovery that one is HIV positive. This tendency is likewise attributed to the very low level of supervision from the responsible agencies and bodies which have to establish that the requirements of the policy are truly met by the employer.

The HIV/AIDS prevention and control bill of 2010, this proposed Bill by the Ugandan Government states:<sup>100</sup> "The following persons shall be subjected to HIV tests for purposes of criminal investigation." This implies that the test taker does not have the right to retract or give their consent for the testing and goes against the international approach to AIDS, known as the three C's - Confidentiality, Counseling and Consent. The WHO and UNAIDS have strict guidelines against mandatory and/or compulsory HIV testing, instead promoting voluntary HIV testing to prevent the individual loss of human rights.

The new Bill seems to target already marginalized, criminalized and vulnerable groups in society stating that sex workers, pregnant women, drug users and victims of sexual assault "shall be subjected" to HIV tests. Such inclusions make the health system appear to be prejudiced and discriminatory, and create major obstructions for the fight against and treatment for HIV and AIDS. By implementing obligatory testing for sexual assault victims, the Bill threatens the victim's rights and might also harm them indirectly, since not only the source of the infection will be investigated but their sexual history as well. Pregnant women and girls lose their own personal right of decision making, also going against ethical guidelines of the health systems. By specifically targeting and naming certain groups/individuals in the Bill, the Ugandan Government opens the door for stigma and discrimination against these groups, and especially women, who are already subjected to more HIV testing due to pre and post-natal medical care.

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<sup>100</sup> National policy on HIV/AIDS 2007

Other issues regarding the Bill include the provision of consent, which is, according to the Bill, unnecessary when it is unreasonably withheld or for medical or psychological reasons, the practitioner believes that such a test is clinically important for the patient. The category for giving consent is too broad and infringes on the individuals privacy when consent can so easily be overwritten due to a law that is clearly unspecific. Overwriting consent when a medical practitioner believes that it is important for the patient is unnecessary, since HIV is not an emergency condition and a person can live with this disease for a long period of time, this approach is excessive and unwarranted.

Clause 21 in the Bill states that an HIV <sup>101</sup>infected person should inform their sexual partner about their positive status or face criminal charges. Similarly, this inclusion is also ethically questionable from a number of perspectives. Firstly, this clause impinges on the individual's right to confidentiality and privacy, and once again may promote stigmatization and discrimination towards people living with HIV and AIDS. Secondly, the criminalization of not informing a sexual partner of one's HIV status promotes abusive prosecutions of individuals. The Bill also permits the disclosure of HIV status without the individual's consent, if certain conditions are met. These conditions are once again broad, unnecessarily sloppy and can easily be interpreted incorrectly, consequently having a negative influence on the HIV positive individual's right to privacy and confidentiality.

The Bill also criminalizes the "intentional transmission" of the virus to another person. Although recognition must be given to the fact that the deliberate transmission of the virus with the aim of infecting another person is wrong, the manner in which the Bill criminalizes this transgression goes against existing laws in Uganda and international guidelines regarding HIV and human rights.

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<sup>101</sup> The HIV/AIDS prevention bill of 2010

### 3.7.2 INTERNATIONAL LAW ON DISCRIMINATION AGAINST ELWHA/PLWHA

There prevail a number of international laws promulgated and ratified by Uganda that embed the protection of the rights of ELWHA/PLWHA and in particular the right to equal treatment without being subjected to any form of discrimination of any kind or on the ground of the person's HIV status. These are as discussed herein below;-

African charter on human and people's rights (achpr) 1986, The ACPR expressly contains provisions protecting the PLWHA in Africa. It puts forward the African Commission on Human and People's rights <sup>102</sup>wherein the commissioned with the tasks of protecting the rights of vulnerable people of society from having their rights violated. One of the key challenges identified by the commission<sup>103</sup> includes discrimination n of PLWHA in employment and health services.

International conventions on economic, social and cultural rights (ICESCR) 1966, It requires that HIV positive persons should have some degree of priority consideration in the allocation of housing and access to health facilities. It further requires the implementation of laws and policies to eliminate all systemic discrimination, including where the victims are PLWHA. States are to enact or strengthen laws that protect the vulnerable people like PLWHA in public and private sectors. The Human Rights committee in ***Toonen V. Australia communication***<sup>104</sup> stated that "the criminalization of homosexual practices cannot be considered a reasonable means or appropriate measures to achieve the aim of preventing the spread of HIV/AIDS... by driving underground, many people are at the risk of infection [it] would appear to run counter to the implementation of effective education programs in respect of HIV/AIDS prevention."

While in ***D. V. The United Kingdom***<sup>105</sup> the case concerned the expulsion order of the man suffering from advanced AIDS and the European court established that

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<sup>102</sup> ACHPR report October 1986

<sup>103</sup> According to the commission report of 2011

<sup>104</sup> No.488/1992

<sup>105</sup> 146/1996/767/964

withdrawing medical treatment from the applicant would hasten his death. The court ruled that expelling the applicant to Saint Kitts and Nevis where there were no facilities to treat his illness would amount to inhuman treatment by the respondent state. This position was however altered in the case of *N. V. The United Kingdom*<sup>106</sup> involving an HIV positive woman who sought to stay in the UK and the court held that while treatment may be inaccessible in Uganda, the humanitarian grounds against removal were not compelling enough to find that her removal would constitute inhuman or degrading treatment.

In *Khudobin V. Russia*,<sup>107</sup> court held that the absence of medical assistance to an HIV positive prisoner amounted to inhuman treatment.

Universal Declaration of Human Rights (UDHR) 1948 has in several resolutions emphasized the need to combat discrimination and to respect the human rights of PLWHA. A special UNGA session on HIV/AIDS in 2001 adopted the 'declaration on commitment of HIV/AIDS' which although not legally binding presents important milestones to protect the rights of PLWHA. The declaration recognizes that without human rights, many of even the best improvements in programs and policies will fail. Stigma, silence, discrimination, denial and even lack of confidentiality undermine HIV prevention, care or even treatment and increase the impact of the epidemic on individuals.

There are a number of UN specialized agencies and bodies that address the challenges posed by the pandemic like the UNAIDS, ILO among others that have adopted programs through their works geared at increasing awareness against the challenges posed by the pandemic but the most rationale is the code of practice adopted by ILO dubbed "Code of practice on HIV/AIDS and the world of work". There is also a number of ILO conventions and recommendations that are relevant in combating the challenges posed by HIV/AIDS such as instruments concerning discrimination in employment,

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<sup>106</sup> 2008 judgment by the European Court of Human Rights

<sup>107</sup> UDHR December report (2006)



termination of employment, protection of workers' privacy and safety and health at work.

The UNAIDS and the UN High Commissioner on Human Rights developed guidelines to assist states in implementing human rights norms in the context of HIV/AIDS "the international guidelines on HIV/AIDS and human rights"<sup>108</sup> (1998) and its revised guideline 6: Access to prevention, treatment, care and support, 2002.

Basing on the above legal protection, the national legal framework is not comprehensive enough to properly guarantee the protection of the rights of the ELWHA as there exists a lot of disparity between the national laws and the international law encompassing the same. Reforms ought to be undertaken to harmonize the national and the international laws to ensure the adequate protection of the rights of the PLWHA/ELWHA in Uganda.

## **INTERNATIONAL LAW GOVERNING THE RIGHT TO PRIVACY AND CONFIDENTIALITY**

Uganda like any other country has no laws specially covering employment related HIV/AIDS issues such as HIV <sup>109</sup>screening, confidentiality of medical extermination, medical insurance and pensions for employees who HIV positive before reaching the age 50. However government endorses the policies recommended by WHO/ILO, and under the guidelines "pre-employees HIV/AIDS screening as part of the men of future to work is unnecessary and should not be required." Because screening of this kind refers to direct methods of HIV testing.

On confidentiality it provide confidentiality regarding all medical examination including HIV/AIDS status must be maintained and no obligation for the employee to inform the employer regarding his HIV/AIDS status.

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<sup>108</sup> Judgment n the European court of human rights 2008

<sup>109</sup> WHO reports on HIV/AIDS 2011

Despite such compelling guideline some employers continue to breach medical examination in regard to results of HIV testing. The fact that these policies have no legal force becomes a problem in the enforceability. They may be complied with if it's a statutory obligation not force workers into HIV testing.

However this causes a real dilemma how interests of the employers in regarding to maximization of profits by employing physically person can be reconciled by those of individual employee? In dealing with such, Sam Tindifa suggested that it's important to determine what the benefits would be for the public in encroaching upon their rights to require them undergo compulsory HIV testing. It is in public interest and an international obligation that the dignity of people must be upheld as a basis for peace and development.

### **Right of privacy under UDHR and ICCRS**

UDHR recognized privacy and interests. It provides No one shall be subjected to arbitrary interference with a person's privacy<sup>110</sup>. Everyone has a right to protections of law against such intolerance or attacks.

Of the ICCPR proclaims a right to the protection of the law from arbitrary inference with person's privacy. The human rights committee issued a note in 1988 on duties incurred under this article and said state parties are under a duty themselves not engage in interference with and provide legislative framework prohibiting such as by national or legal person.

Uganda was okay with thus treaty but legislative formwork is lacking. Uganda is under a duty to pass laws for instance covering legal person such as compressive prohibiting them from abusing a right of privacy of persons suffering from HIV/AIDs without any legal justification. It is not enough to draw up policies because these often have no building legal force.

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<sup>110</sup> UDHR reports on HV/AIDS preverance

The right to privacy and the African charter has been proclaimed in the regional convention in Europe and the American. However when it comes to African on human and people rights no direct mention is made on the right to privacy. Some writers have offered no explanation that the distinctive features of African charter derive from African values fundamental to the continents. A preamble acknowledge the UDHR and the most African countries today are parties to one or both of the convene ants in international Bills of Human Rights which consist of UDHR, <sup>111</sup>ICESCR and ICCPR

However, his argument can be misleading because the fact that the charter makes reference to human rights means they are individual human rights such as privacy are indirectly covered, provides every individual shall have a right to the respect of the dignity inherent in human being and to the recognition of his legal status which is interpreted to induce the right to privacy.

**Challenges in** enforcing these laws are the fact that there is little or no implementation of these laws.

## **Conclusion**

This chapter presented the information obtained from the respondents as regarding the state of affair of the promotion and protection of the rights of employees infected with HIV/AIDS showing the extent to which the rights and extent to which they have been promoted.

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<sup>111</sup> ICCPR the schedule to the act 1987

## **CHAPTER FIVE**

### **FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

#### **Introduction**

This chapter shall present the informant obtained from the respondents as regarding the state of affairs of the promotion and protection of the rights of employees infected with HIV/AIDS at their workplaces<sup>112</sup>. The respondents that were interviewed questioned and that were part of the FGDs respondents on the state of affairs regarding the treatment of such persons in the private sector.

The information given was taken to be a representation for the whole population and the sample size was 100 persons from Rubaga division and the respondents were randomly selected but were all persons of majority age. Their responses are as discussed and represented below;

#### **Characteristics of the respondents**

### **FINDINGS**

#### **Sex and age distribution of the respondents**

Of the total number of the respondents, 40% were females as 60% were males. The respondents that were interviewed, questioned and those who participated in the FGDs were all of majority age (18 years and above) since they were presumed to be in the employment sector and were the most vulnerable persons to the scourge of HIV/AIDS. The sex and age distribution of the respondents were as summarized as shown in the table below;-

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<sup>112</sup> Senabulya .N.R report on HIV/AIDS at work places

**TABLE 5:0 TABLE SHOWING AGE DISTRIBUTION OF THE RESPONDENTS;**

<b>Age</b>	<b>Males (%)</b>	<b>Females (%)</b>	<b>Total (%)</b>
<b>18-27</b>	13	11	<b>24</b>
<b>28-37</b>	24	15	<b>39</b>
<b>38-47</b>	15	8	<b>23</b>
<b>49-Above</b>	8	6	<b>14</b>
<b>Total</b>	<b>60</b>	<b>40</b>	<b>100</b>

Basing on the above, it can be realized that on the sex distribution, there are more males in the employment sector than the females. On the age distribution of the respondents, majority of the respondents fell in the age bracket of 28-37 years. The least of all the respondents fell in the age bracket of 49 years and above.

#### **Education background of the respondents**

The respondents' education background was ascertained to establish their knowledge on the individual rights and how the person's education level impacts on the promotion and protection of individual rights. Summaries of the respondents' education status were statistically organized in the table below;-

**TABLE 5:1 TABLE SHOWING RESPONDENTS' EDUCATIONAL LEVELS**

<b>Educational level</b>	<b>Respondents (%)</b>
Primary level	10
Ordinary-level	6
Diploma	8
Bachelors Degree	60
Masters	15
Others	1
<b>Total</b>	<b>100</b>

The statistics show that majority of the respondents had attained a certain degree of education but most of the respondents were holders of at least a Bachelor's degree.

#### **RESPONDENTS' KNOWLEDGE ON HIV/AIDS IN UGANDA**

It was noted that majority of the respondents knew about the existence of HIV/AIDS and had adequate knowledge on the causes of HIV/AIDS, its spread, prevalence in Uganda as well as its impact on the employment sector in Uganda. They attributed such knowledge on the wide massive campaigns against the scourge that has enabled the whole population in the productive age to know about the virus. They however had mixed views, notion and ideas as relates the protection and promotion of the rights of ELWHA at their work places. These are as discussed herein below;-

## RESPONDENTS' KNOWLEDGE ON THE STATE OF LAW PROTECTING ELWHA

Though many Ugandans know that the supreme law of the land is the Constitution, very few do know that the very same Constitution of 1995 of the Republic of Uganda is the foundation stone for the protection and promotion of their rights. This was believed to be true after a respondent in FGDs said that<sup>113</sup> *"the constitution is there to provide for the powers and obligations of the rulers. There is no way how the constitution comes in to protect the rights of the employees living with HIV/AIDS;"* 30% of the respondents could however identify the Constitution as a legal instrument for the promotion of the rights of the ELWHA. When compared to the 70% respondents who do not acknowledge the constitution as a law protecting PLWHA or ELWHA, then, there is too little knowledge on the state of the law in Uganda. The statistics of their responses are as shown in the table below;-

**TABLE 5.2 TABLE SHOWING RESPONDENTS' KNOWLEDGE ON THE STATE OF THE LAW PROTECTING THE RIGHTS OF ELWHA IN UGANDA**

LAW	KNOW (%)	DON'T KNOW (%)	NOT SURE (%)	TOTAL (%)
Constitution	56	24	20	100
Acts of Parliament	27	43	30	100
HIV/AIDS Bill 2010	78	12	10	100

<sup>113</sup> The constitution of Uganda 1995

<b>HIV/AIDS Policy</b>	<b>17</b>	<b>71</b>	<b>22</b>	<b>100</b>
<b>International law</b>	<b>32</b>	<b>58</b>	<b>10</b>	<b>100</b>

### **RESPONDENTS' KNOWLEDGE ON OTHER NATIONAL LAWS PROTECTING THE ELWHA**

Although there was a majority of the respondents who had knowledge about the HIV/AIDS prevention and Control Bill of 2010, as regards other laws like the Employment Act, Public Health Act, HIV/AIDS<sup>114</sup> Policy among others, the state of affair wants a lot to be desired. Very few have heard about the existence of such laws as a basis for the promotion and protection of the rights of ELWHA. Although 65% of the respondents had a positive knowledge on the HIV/AIDS prevention and Control Bill 2010, 18% knew the legal protection embedded in the Employment Act, 6% knew of the Public Health Act forming part of the laws in Uganda, as 3.5% knew of the HIV/AIDS policy at all. Basing on the above, it can be relentlessly believed that knowledge on the state of the law in Uganda is too low not only in the rural population but also among the urban elites class. A respondent to this said, "***I don't have to know the laws for as long as I can afford to hire the services of a lawyer...***" Basing on the above, it can rightly be said that ignorance of the law has enabled the violation of the rights of PLWHA at their workplaces.

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<sup>114</sup> Laws of Uganda



## **RESPONDENTS' KNOWLEDGE ON THE INTERNATIONAL INSTRUMENTS PROTECTING THE RIGHTS OF ELWHA**

There is no doubt that very many Ugandans are quite ignorant about the state of international laws that are ratified and are codified into the national laws to protect the ELWHA in Uganda. When asked whether they knew any international instruments protecting the rights of ELWHA or PLWHA, a respondent said **"...if there is any international instrument, to that effect, its only known by the concerned persons like human rights organizations..."** Majority of the Ugandans believe that the human rights organizations are superimposing international laws on the Ugandans and yet they have minimal applicability in the Ugandan context.

It was also noted that the respondents believe that the international instruments are mere guidelines for the national laws as to the enforcement of the rights of people in the countries that ratify them.

## **RESPONDENTS KNOWLEDGE ON THE CAUSES OF VIOLATIONS OF THE RIGHTS OF PLWHA/ELWHA IN UGANDA**

The respondents had mixed notions on the causes of violation of the rights of PLWHA/ELWHA at their workplaces. However, majority of 80% unanimously noted the following as the main causes of the violation of the rights of such persons and among them includes the following;-

- I. Absence of strong national laws protecting the rights of ELWHA which do not bring the culprits before justice.
- II. Increased costs of medication on ELWHA by the companies which compels the companies to terminate their employment contracts.
- III. Reduced labour productivity as the HIV/AIDS victims cannot render optimum output as a result of their ill-health and vulnerability.

IV. Lack of law enforcing bodies in the employment sector to handle the people who do violate the laws protecting the rights of ELWHA in Uganda.

- i. Ignorance of the ELWHA about their rights that they cannot be in a position to pursue the persons who violate their rights.
- ii. Lack of job security that even the victims of violation of such rights do fear pursuing their rights for fear of having their employment contracts terminated.

Basing on the above, it can rightly be established that the rights of the ELWHA are mostly violated because of the weaknesses of the implementation of the laws and the inadequate state of the law that embeds the same protection and promotion.

#### **RESPONDENTS' KNOWLEDGE ON THE PROBLEMS FACED BY ELWHA AT WORKPLACES**

Of the respondents interviewed, the responses to the problems faced by the ELWHA at their work places of, were varied and they can be discussed as below;-

- i. Discrimination by fellow employees
- ii. Termination of employment contracts
- iii. Denial of employment benefits
- iv. Stigmatization by fellow employees
- v. Compulsory testing for HIV/AIDS
- vi. Violation of the right to privacy and confidentiality

However, the respondents' views on the extent to which such problems manifest at work places were as shown in the table below;-

**TABLE 5.3 TABLE SHOWING RESPONDENTS' VIEWS ON THE EXTENT OF VIOLATION OF RIGHTS OF ELWHA**

<b>PROBLEM</b>	<b>EXTENT OF VIOLATION</b>	<b>MALES (%)</b>	<b>FEMALES (%)</b>	<b>TOTAL (%)</b>
Discrimination	Very high	55	30	85
Termination of employment contracts	Relatively high	40	38	78
Violation of the right to privacy and confidentiality	Commonly high	32	35	67
Denial of employment benefits	Very high	57	34	91
Compulsory HIV testing	High	28	25	53
Stigmatization by fellow employees	Relatively high	42	30	72

Basing on the above table, it was established that majority of the ELWHA are a victim of discrimination, denial of employment benefits, compulsory HIV testing among others.

### **CONCLUSIONS**

The rights of ELWHA in Uganda are facing great challenges especially with the HIV/AIDS Bill which subjects them to discrimination, compulsory HIV testing, criminalization of the infection of another person and most of all subjecting the tested persons to disclose their status to the public. Much as the bill has received international criticism with national human rights NGOs coming up to contest against a number of the provisions of the bill, which in my view needs urgent research about and reformed to provide a lasting solution to PLWHA in Uganda.

It was likewise realized that the ELWHA are faced with numerous challenges but the outstanding challenge is discrimination that hinders them from working yet they are like other members of the society. Because of the discrimination faced, they fear opening up to other people willfully about their HIV status that increases infection in society. For as long as being HIV positive continues being viewed as a disgrace in society, stigma shall prevail and such victims shall continue have a low self esteem.

The compulsory HIV testing has also impacted upon employees and that would not be bad if such results are kept confidential. Many respondents do not concur to employees being recruited on the basis of their HIV status and after being subjected to compulsory HIV testing. With the compulsory HIV testing, ELWHA at workplaces shall continue facing challenges in Uganda and have their rights subjected to inhuman treatment.

## **5.2 RECOMMENDATIONS**

There is a lot that has to be done to reverse the trend of affair prevailing in Uganda and as such, some reforms have to be undertaken to ensure that the rights of ELWHA are having their rights protected and promoted. Among the recommendations brought forward include the following;-

The HIV/AIDS Bill 2010 should be revived to ensure that the position of ELWHA at their workplaces is protected from violations. This is because it poses a bigger challenge to the protection of the rights of PLWHA and its enactment, if not revised, shall only catalyze the violation and only worsen the devastating state of the violation of the rights of PLWHA/ELWHA in Uganda.

The International law encompassing the rights of the PLWHA should be revised to put in consideration the local circumstances surrounding PLWHA especially under the employment sector. Enacted during the initial stages of the disease, majority of the international laws majorly concentrated on the spread and transmittion of the scourge but times have changed and there is even more need to protect the infected persons' lives by embedding their rights under the legal instruments.

the national laws should put forward a company policy that spells out clearly the rights of ELWHA that are protected by the companies. Many of the PLWHA are in the productive ages and lest there is a properly laid down plan ensuring the protection of the HIV/AIDS victims, the employment sector stands to lose massively on the labour force of PLWHA in Uganda.

The ELWHA should form umbrella bodies that should ensure the utmost protection and promotion of their rights in their lines of works. The umbrella bodies should strengthen the protection and promotion of the rights of the individual members.

There is an urgent need to reform the international laws to have a proper address to the rights of the HIV/AIDS victims. Most of such laws were enacted during the infant stages of the spread of the virus and challenges at their workplaces were not a main concern.

There is an urgent need for the compulsory medication scheme for all the employees to ensure that even the vulnerable persons under the employment sector infected with HIV/AIDS have access to medical care. This shall improve the protection of the ELWHA in Uganda.

Basing on the above, it can rightly be affirmed that the right of ELWHA have to be dealt with a proper and effective manner to ensure equality as spelt out under the 1995 Constitution. Though not a main concern for the government, that is at the focal point of minimizing the spread but rather protection of the rights of the ELWHA at the workplaces, such concerns should be put in regard.

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## APPENDIX A

### QUESTIONNAIRE FOR RESPONDENTS

#### 1.0 Introduction;

Dear respondent,

I am **CHARITY MARIA O** of **KAMPALA INTERNATIONAL UNIVERSITY** pursuing a Bachelor's Degree in Laws. I am conducting a research on the "**INVESTIGATING THE PROMOTION AND PROTECTION OF THE RIGHTS OF EMPLOYEES LIVING WITH HIV/AIDS AT WORKPLACES**" CASE STUDY, **RUBAGA DIVISION-KAMPALA DISTRICT, UGANDA**. I acknowledge that I shall observe the highest degree of confidentiality possible and the information shall only be used for research purposes. Please answer the following by filling in where appropriate.

#### 1.1 Background information of the respondent

- a) Sex of the respondent.....
- b) Age of the respondent.....
- c) Level of education.....
- d) Type of employment..... (Formal/informal)
- e) Years spent in employment.....

#### 1.2 Company employment policies

- a) Is there an employment policy in your company?.....(Yes/No)
- b) Does your company has a body for the employees?.....(Yes/No)
- c) Are the rights of the employees fully protected by the policy and the employees body?.....(Yes/No)

c) To what extent do the laws mentioned in b) above guarantee such protection?

.....

d) Do you know of any international instrument protecting the rights of Employees living with HIV/AIDS in Uganda? .....(Yes/No)

e) If yes, list some of the international instruments

.....

.....

.....

***Thank you for the participation.***