GENDER, HIV AND THE LAW

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Summary

• Attributes of men & women in society
• Customary law
• Civil law, Gender HIV/AIDS.
• Family law & HIV/AIDS
• Criminal Law & HIV/AIDS
• Conclusion
Define: The socially constructed roles of and relations between men and women

Attributes to roles of men in society:

• Heads of house holds
• Bread winners
• Final decision makers
• Security of the family.
• Financial controller.
• Strongest men in the family
• Owners of the children.
• Proposes for marriage.
• Wisest in the home.
• Religious leader.
• Political leader.
• Clan leader.
• Commander in chief
• Head of the state.
Attributes/roles of women in society:

- Care taker.
- Home manager
- Subordinate
- Servant of the men
- Child bearer
- Bad omen
The analysis demonstrates the reality that women’s status was lower than that of men in society.

What does the law provide?

In Uganda, we base our practices and ethic on customary law. In relation to Gender, customary Law is applied in marriage;

• A man proposes, pays bride price and takes the women.
• He controls her as a property or a subordinate.
• Has a room to have multiple partners i.e. polygamy while a woman cannot have inheritance rights - women are commonly denied inheritance especially in regard to property.
• Customary practices and beliefs.
  ✓ They accord men different treatment from women or boys from girls.
Customary Law

- Customary marriages i.e. polygamy – multiple sexual partners.
- Inheritance rights
- Property rights – boys verse girls.
- Customary practices & beliefs e.g. widow inheritances.
Civil law, Gender & HIV/AIDS

• Applied generally & based on Ugandan constitution, does not bear specific articles that relate to HIV.
• Its Gender blind & reinforces discrimination between men and women yet it pronounces the principle of equality for all before the law. E.g. contradicts itself when it comes to issues of marriage and consent to sex.
• It is silent on marital rape which is a key driver of HIV & Gender based Violence (GBV). One questions the rising infections among married couples.
• Its not adequate enough to address the dynamic issues raised by HIV e.g. discordance and PMTCT. For instance the public health act (PHA) and the venereal disease decree bear 3 questionable elements that raise controversy:
  ✓ Quarantine and isolation on short term basis under Act 23(1) of the constitution,
  ✓ Depends on extent a disease has spread in the population and mode of transmission
• This has the effect of stigmatization and discrimination which renders this law out dated. Given the generalized nature of our epidemic application of this measure would not be cost effective.

• Under the same act (PHA) the minister of Health has authority to declare by statutory instruments, a notifiable disease. Though HIV is medically infectious, it is legally not and has not been declared notifiable.
Family Law & HIV/AIDS

- Polygamy:
  - one spouse (male) is permitted by law to have unlimited sexual partners. Defeats current prevention approaches – ABC+
  - The law is limited as it does not provide women with a right to objection or divorce even with the threat of HIV.

- Cohabitation:
  - Issues of children and property rights are not reorganized by law. Women normally stay in these relationships due to lack of financial alternatives and fear to lose property even when they may suspect that their partners are exposing them to HIV infection.
• Property Ownership and vulnerability of women and children:
  - the constitution reorganizes equality for men and women but there is no specific law governing ownership of matrimonial property in general.

• Divorce:
  - A man requires one ground – adultery
  - A woman requires a couple of grounds this poses a problem for wives high risk marriage. Defeats ABC+
Criminal Law and HIV/AIDS

• Discrimination: the constitution under Article 21 (2) prohibits discrimination based on disability among others. However the penal code lacks a specific provision on discrimination.

• Sexual harassment and marital rape: the penal code act does not criminalize sexual harassment and marital rape yet these are common practices in work places, schools where men and women use their power to extort sex from their subordinate.

• Marital sex is not an offence in Uganda. This is because under the penal code the term “in lawful” means a wife cannot be raped by her husband. Sex in marriage is assumed consensual. Yet it is in marriage that Uganda is experiencing high infection rates today due to unsafe sex.

• Women in particular are vulnerable because they are controlled by men who control sexual relations within marriage.
HIV/AIDS, Gender Marginalized population & the Law.

- Sex worker
- Young people
- Prisoners
- MSM

These groups are generally marginalized from accessing services.

Sex worker, Prisoners and MSM are perceived as social deviates.

Our culture is driven by moral beliefs and values.
Assumptions that sex must only occur in marriage. Young people who engage in pre-marital sex also perceived as social deviates sex work and MSM is criminal in Uganda.

In this context, those groups are excluded from policy interventions and often suffer stigma, isolations and discrimination.

From a human rights perspective and internationally agreed standards all human beings must be treated equally.

In the context of HIV/AIDS it is critical to reorganize that we are faced with generalized epidemic that calls for access to information on HIV/AIDS, treatment and, to be tortured and the right to dignity. Sex orientation and gender must not be a stand in the way of service delivery
It would cause humiliating effects through stigma and discrimination. If it were declared notifiable a PLHA would be required by duty under sector 21 of the (PHA) to notify even a driver of a vehicle he were traveling in.

This law indeed violates agreed international human rights standards on HIV/AIDS and should be repealed. It is unrealistic, not enforceable and would greatly violate the rights of PLHAs or those suspected to be HIV positive.
Rules of confidentiality

This principle can be waved if a disease is declared by the minister of Health under (PLHA) or the venereal Disease Decree, as infectious and notifiable.

However, existing ethical principles require that information concerning a patient must be kept confidential. Medical practitioners and counselors are trapped in this problem of maintaining confidentiality of their clients.

Thus in situation of discordance, it becomes a serious challenge.
Routine Testing and Counseling (RTC)

The underpinning principle here is informed consent. However, situation of violations in this practice exist as far as practitioners roll out the guidelines. E.g. during ANC clinics, women share experience of less time (less than 15 minutes) allocated to education talks, being conditioned to bring their spouses before accessing PMTCT services, GBV experience once they disclosed and harsh treatment by service providers.
HIV/AIDS the law and labour

The employment decree and common law provide very wide powers to an employer. The decree does not especially mention HIV, but employers sometimes may require a prospecting employee to take an HIV test. This render PLHAs vulnerable to dismissal from work and loss of benefits.
CONCLUSION

• Gender grossly distorts human rights because it ascribes more rights and power to men (boys) than to women (girls). Gender is the critical aspects that complicate the spread of HIV/AIDS because it allows men to have multiple partners.

• The law is a key tool in enabling vulnerable population i.e. women, girls, PWDs, PLHAs, demand for their human rights. However the current law in Uganda is inadequate and cannot effectively address the challenges posed by HIV/AIDS, gender and context specific issues faced by vulnerable populations.

• Advocacy for a stronger legal and ethical framework that will adequately respond to the gender dynamic posed by HIV/AIDS especially among vulnerable populations.

• Mainstream gender and RBA in HIV/AIDS programmes so as to begin to challenge concepts of masculinity and femininity so as to reduce harmful and unfair practices that exacerbate the spread of HIV. = A new paradigm in our work.

The struggle continues.
Thank you