



**THE PUBLIC HEALTH (AMENDMENT) BILL 2021 AND ITS IMPLICATIONS ON
THE HUMAN RIGHTS OF LGBT PERSONS, SEX WORKERS AND PERSONS
WHO INJECT/USE DRUGS**

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1. Introduction

On 2nd December 2021, the Minister of Health, Hon. Dr. Jane Ruth Aceng, tabled the Public Health (Amendment) Bill, 2021 before the Parliament of Uganda. The Bill seeks to make amendments to The Public Health Act, Cap 281. The proposal in the Bill that has perhaps attracted the most attention is the one for mandatory vaccination of all persons or specific categories of persons, refusal of which is punishable by imprisonment for six months or a fine of up to four million shillings or both punishments. However, there are a number of other provisions in the Act that make it problematic for all persons in general and specifically for LGBT persons, sex workers and people who use/inject drugs. This analysis focuses on the impact of the proposed legislation on these groups. It analyses the proposed amendments in the Bill, considers their potential implications on the human rights of LGBT persons, sex workers and people who use drugs, and then makes suggestions for improvement of the Bill.

2. Main features of the Bill

The Bill is divided into 18 parts, seeking to overhaul the Public Health Act. The Bill's provisions seek to amend sections of the Public Health Act, and in some cases entire sections of the law are sought to be repealed. In addition, the Bill proposes to repeal the Venereal Diseases Act and the Immunisation Act, 2017. The key features of the Bill are:

- i. **Giving the state more powers to combat epidemic diseases:** This is specifically in Clauses 19, 20 and 22. Under Clause 19, section 27 of the Act is proposed to be amended by expanding on the powers of the Minister to make rules in respect to the prevention and management of any infectious disease to cover an open ended list of diseases. Clause 20 seeks to introduce a new section 27A of the Public Health Act, which places responsibility on government to control and manage epidemics. Under Clause 22 of the Bill, the minister's powers to make rules for prevention of disease are enhanced by providing a penalty for contravening any order under the section, which is a fine not exceeding three million shillings or imprisonment not exceeding twelve months or both, up from a fine not exceeding one thousand shillings or imprisonment not exceeding 6 months. Section 36 of the principal Act is sought to be amended to add a further duty to the Minister to regulate the inspection, isolation, quarantine and decontamination of any animal, article or thing to be brought into the country that is suspected to be contaminated with an infectious disease.
- ii. **Compulsory vaccination:** The Bill proposes to amend section 38 of the Act by making it mandatory for all children to be vaccinated within 12 months of birth against all diseases that may be declared immunisable by the Minister.¹ Clause 39 requires mass vaccination or revaccination for any disease as required by the government. Failure to comply would attract a fine of four million shillings or imprisonment for six months or both punishments.

¹ The Public Health Amendment Bill, clause 31.

- iii. **Repeal of the Venereal Diseases Act and the Immunisation Act:** Clause 93 of the Bill proposes to repeal, in its entirety, the Venereal Diseases Act Cap 284, which concerns the examination and treatment of persons with venereal diseases; and the Immunisation Act, 2017 which governs immunisation in the country.
- iv. **Destruction of exposed property based on a court order:** Clause 11 of the Bill proposes to destroy buildings, beddings or clothing or other articles which have been exposed to any infectious disease after obtaining a court order. The owners of such property are to be compensated and persons aggrieved by the compensation awarded have the right to appeal to court.
- v. **The express penalty scheme:** Clause 87 of the Bill proposes to empower the Minister to introduce an express penalty scheme where punishments are given without prosecution, provided one opts for that.
- vi. **Forced treatment:** The Bill in clauses 13(a) and (b) proposes to amend section 19 of the Act to provide for the mandatory removal of a person certified to be suffering from an infectious disease by the medical officer, which disease can only be treated at the hospital to safeguard the public health, to a hospital or detention centre, and for the person to be confined until they are declared to no longer be a danger to the public.
- vii. **Forced disclosure of personal information:** Clause 19(i) of the Bill seeks to amend the Act by providing a compulsory requirement for persons to give *any* information required for purposes of tracing another person to identify the source or avoid the spread of an infectious disease. Failing to heed to this requirement is a criminal act punishable with a penalty of up to three million shillings or imprisonment not exceeding 12 months, or both such imprisonment and fine.
- viii. **Criminal law approach as opposed to public health approach:** The Bill makes any failure to live up to what the law requires a criminal offence, punishable with a heavy fine or imprisonment or both punishments.
- ix. **Protecting government officials from liability in case of violations done in good faith:** Clause 85 of the Bill seeks to protect staff of Kampala Capital City Authority (KCCA) or a local government from liability for any actions done in 'good faith' for the purpose of executing the provisions of the Act.

3. Positive provisions protecting the rights of criminalised minorities

LGBT persons, sex workers and people who use and/inject drugs (PWUIDs) face stigma and discrimination that arises from criminalisation of same-sex sexual conduct under section 145 of the Penal Code, sex work under section 136 of the Penal Code and individual use of drugs under the Narcotic Drugs and Psychotropic Substances Control Act, respectively. For this and

other reasons, they are also Key Populations in the fight against HIV/AIDS.² Criminalisation also implies that they are often left out when designing legislative solutions, including in the Public Health sector. They will jointly be referred to in this analysis as ‘criminalised minorities.’ It is important to note that there are a number of provisions in the Bill that are positive and which will potentially have a positive impact on the rights of these criminalised minorities. These are:

3.1 The state being more involved in combating infectious diseases protects the right to health for all including criminalised minorities

The Bill clearly articulates the responsibility of the state in preventing outbreaks and managing the spread of epidemics and infectious disease, which is not currently the case in the Public Health Act. By the state taking charge of combating diseases, it is living up to its commitments under international human rights law regarding the right to health for all persons, including criminalised minorities. The right to health is protected under article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR) as the right to the ‘highest attainable standard of physical and mental health’ and in article 16 of the African Charter on Human and Peoples’ Rights (African Charter) as the right to the ‘best attainable state of physical and mental health.’ The right is also protected in Uganda’s Constitution in accordance with Article 8A of the Constitution and the National Objectives and Directive Principles of State Policy (NODPSP) as was affirmed by the Constitutional Court in *Centre for Health Human Rights and Development (CEHURD) & 3 others v Attorney General*.³ The Constitution imposes obligations on the state to fulfil the right to health. This would require the state to take concrete steps for the realisation of this right, and the state taking charge in preventing outbreaks and managing pandemics and epidemics would fit more into this scheme. Such steps would also help criminalised minorities to realise their right to health.

3.2 Provisions extending vaccination to all persons, including targeting specific groups

Clause 39, which provides for mandatory vaccination, is important as it ensures that all persons are reached through vaccination. Indeed, clause 39(1) foresees that vaccination can be required for ‘a specified category of residents.’ Although these are not specified, it can also be interpreted to mean categories such as LGBT persons, sex workers, or PWUIDs, depending on the impact of the specific disease on these groups. This therefore potentially makes provision for reaching out to these minorities with essential vaccines.

² The Uganda AIDS Commission, Republic of Uganda, The National HIV and AIDS Priority Action Plan 2015/2016- 2017/2018 (2015). See also the Global Fund, Key Population Action Plan 2014 – 2017 https://www.theglobalfund.org/media/1270/publication_keypopulations_actionplan_en.pdf (accessed 22 March 2022).

³ *Centre for Health Human Rights and Development (CEHURD) & 3 others v Attorney General*, Constitutional Petition No. 16 of 2011.

3.3 Provisions seeking a repeal of discriminatory provisions of the Venereal Diseases Act

The proposal to repeal the Venereal Diseases Act in its entirety is a welcome relief to criminalised minorities. The Venereal Diseases Act provides for the ‘examination and treatment of persons with venereal diseases and for other matters connected therewith.’ However, the Act uses moralistic rather than legal language in defining such ‘venereal’ diseases and in some of its provisions in relation with persons suffering from such diseases. It also requires mandatory treatment of persons with such diseases,⁴ including detention of patients,⁵ and a requirement to name persons who infected others, on pain of criminal sanctions.⁶ All these provisions promote stigma against people with sexually transmitted infections, including HIV/ AIDS, and against persons more at risk of contracting such sexually transmitted diseases. It also limits access to care for fear of condemnation, and this also affects LGBT persons, sex workers and people who use/inject drugs. This position of the law is out of keeping with Uganda’s HIV/AIDS Prevention and Control Act, public policy on prevention and treatment of HIV/ AIDS and other sexually transmitted infections as well as the state’s obligations to ensure access to discriminatory-free health services for all persons.

3.4 The express penalty scheme would reduce on unwarranted detention of criminalised minorities

Clause 87 of the Bill proposes to empower the Minister to introduce an express penalty scheme where punishments are given instantaneously without prosecution, provided a person makes the choice to take that option. Criminalised minorities are usually detained without cause simply because of who they are, or based on their appearance as they are usually seen by the authorities as unapprehended criminals. At the same time, detention affects marginalised communities more than the general population because of the mistreatment that they are usually subjected to while in detention for various reasons related to their identity,⁷ and thus the option to avoid detention at the option of the accused person for petty offences under the Act would be a welcome relief.

⁴ Venereal Diseases Act, Cap 284, section 3(2).

⁵ Above, section 3(3).

⁶ Above, section 4(1).

⁷ See generally: Human Rights Awareness and Promotion Forum *The treatment of persons who use and inject drugs within the criminal justice system in Uganda* 2020 <https://hrapf.org/index.php/resources/research-reports/113-the-treatment-of-pwuids-in-the-criminal-justice-system-in-uganda/file> (accessed 22 March 2022); Human Rights Awareness and Promotion Forum *Human rights violations against lesbian, gay, bisexual and transgender (LGBT) persons in detention and in prisons in Uganda: A case study of Kampala*, 2020 <https://hrapf.org/index.php/resources/research-reports/119-human-rights-violations-against-lgbti-persons-in-detention-in-uganda/file> (accessed 22 March 2022); Human Rights Awareness and Promotion Forum *The impact of the legal and policy framework on access to justice for transgender persons in Uganda*, 2019, 45 <https://hrapf.org/index.php/resources/research-reports/156-the-impact-of-the-legal-and-policy-framework-on-access-to-justice-for-transgender-persons-in-uganda/file> (accessed 22 March 2022).

4. Provisions likely to affect the human rights of criminalised minorities negatively

Despite the above positive provisions of the Bill, there are a number of provisions that are likely to harm the human rights of LGBT persons, sex workers and PWUIDs more, and these are: .

4.1 Giving more powers to the state to combat epidemic disease may lead to more violations of the human rights of criminalised minorities

During the COVID-19 pandemic, a lock down was imposed on the country which saw mass arrests and violations of human rights on the basis of violation of rules put in place by the Minister of Health as well as presidential directives. The enforcement of the regulations was characterised by increased and targeted violations against minorities at the hands of the military authorities, police and other state actors.⁸ During the period, LGBT persons, sex workers and people who use/ inject drugs were targeted for arrest and harassment for allegedly 'doing a negligent act likely to spread infection of disease' contrary to section 171 of the Penal Code Act for innocuous acts like staying at LGBT crisis shelters, lodges/ brothels or in slum areas respectively, which are places where many persons under these categories of persons ordinarily reside.⁹ The economic impact of COVID-19 on these populations was also devastating as they were mostly prevented from working to earn a living in any way throughout the period, and had to constantly risk either imprisonment or starvation.¹⁰ Most of the harassment occurred in the guise of enforcing the rules put in place by the Minister of Health under the Public Health Act and Presidential directives and as such, giving more powers to the Minister, the Authority and local governments to combat pandemics also implies allowing these institutions to pass regulations that may not respect the human rights of criminalised minorities, as well as enforcement in a way that violates human rights of such already marginalised groups.

4.2 Mass vaccination may exclude criminalised minorities

The Bill seeks to introduce mass vaccination and revaccination of citizens where there is a threatened outbreak of any disease in any local government for all local residents, and the instances where they are required to be revaccinated. The Bill also provides that certain sections of the population may be required to be mandatorily vaccinated. Although generally this implies that members of marginalised groups may be required to be vaccinated if there are circumstances that make it necessary for them to be vaccinated, there being no specific mention of these groups in the Bill means that less priority will be given to them as they are regarded as criminals and therefore of less significance.

⁸ See generally, Human Rights Awareness and Promotion Forum (HRAPF) The Impact of COVID-19 Restrictions on access to justice for key populations in Uganda, 2020. <https://hrapf.org/index.php/resources/research-reports/202-report-on-the-impact-of-covid-19-restrictions-on-access-to-justice-for-key-populations-in-uganda-a-case-study-of-lgbt-persons-and-sex-workers-in-kampala-and-wakiso-districts/file> (accessed 22 March 2022).

⁹ As Above.

¹⁰ As Above.

4.3 Compulsory vaccination may lead to forced vaccination of criminalised minorities

Although compulsory vaccination would lead to more coverage of vaccination in the country, forced vaccination is fundamentally flawed from a human rights perspective as it violates the right to freedom from inhuman and degrading punishment, which is protected under article 24 of Uganda's Constitution. For instance, during the COVID-19 pandemic, sex workers were specifically pointed out and targeted by the Ministry of health as vectors of the virus and they faced discrimination as a result.¹¹ As such, in the same spirit, these groups may be forced to undergo mandatory vaccination as a way of 'protecting' the rest of the population. This would be a violation of the rights of these groups.

4.4 Maintaining spitting in public as an offence emphasises petty offences existing in the law

The Bill seeks to amend the provision on public spitting in the Act by removing the exception that allows spitting in receptacles placed for that purpose.¹² Under clause 19 of the Bill, a person who violates any of the rules made under Section 27 of the Act is liable to a fine not exceeding three million shillings and or imprisonment not exceeding 12 months. Spitting in a public place will therefore be a criminal offence without exception, yet this is one of those acts that are regarded as petty offences. The African Commission on Human Rights in its Principles on the Decriminalisation and Declassification of Petty Offences in Africa defines petty offences as 'minor offences for which the punishment is prescribed by law to carry a warning, community service, a low-value fine or short term of imprisonment, often for failure to pay the fine.'¹³ The Principles call upon states to decriminalise such petty offences.¹⁴ Entrenching their criminalisation is contrary to the stated position of the African Commission on the matter.

4.5 The provisions on nuisances are likely to prejudice dwellings commonly used by criminalised minorities

The Bill in clause 44 seeks to amend Section 57, which defines nuisances. Section 57(p) on buildings is sought to be amended by deleting the word 'constructed' in it. The provision currently reads that 'any public or other building which is so situated, constructed, used or kept as to be unsafe or injurious or dangerous to health', and so merely removing the word 'constructed' would substantially keep it the same. In essence, the provision can be used to target houses which are often used to house criminalised minorities as these can easily be classified as nuisances due to the nature of the people that they host. During the COVID-19 pandemic, for instance, an LGBT shelter was raided and occupants arrested for 'doing a negligent ting likely to spread infection of disease'¹⁵ and many brothels housing sex workers

¹¹ HRAPF, n 8 above, 29 -30.

¹² Clause 19(f) of the Bill, which seeks to amend section 27(n) of the Public Health Act.

¹³ The African Commission on Human and Peoples' Rights 'Principles on the decriminalisation and declassification of petty offences in Africa' 2017.

¹⁴ As above.

¹⁵ Human Rights Awareness and Promotion Forum and Children of the Sun Foundation, 'High Court declares denial of detained LGBT persons access to their lawyers during covid-19 a violation of human rights'

were also raided.¹⁶

4.6 Forced disclosure of personal information of others puts criminalised minorities at risk and violates the right to privacy

The provision seeking to make it mandatory for persons to reveal personal information for purposes of tracing another person who is suspected of having an infectious disease is dangerous to criminalised minorities as personal information concerning their sexuality, their work, or drug use may be revealed, subjecting them to criminal sanctions that have nothing to do with infectious diseases. It also subjects them to stigma and further discrimination. This provision is contrary to the Data Protection and Privacy Act, which requires personal information to be protected from disclosure, and is also a violation of Article 27 of the Constitution on the right to Privacy.

4.7 The criminal law approach makes criminalised minorities harder to reach as regards public health initiative

Finally, the overall criminalisation approach taken by the Bill makes reaching out to criminalized minorities more complicated. This is because it pushes them further underground in order to avoid the criminal sanctions, and makes them more vulnerable to contracting infectious diseases, including HIV.¹⁷ It is therefore counterproductive and makes vulnerable groups more vulnerable to pandemics and other infectious diseases.

4.8 Limiting liability of state officials leaves criminalised minorities open to abuse without recourse

The Bill proposes a lot of powers to state officials in implementing provisions of the law, including forcefully treating people or confining them, and then takes away any liability for them misusing their powers provided they do this in 'good faith.' Good faith is not defined in the Bill, but for criminalised minorities, due to stigma, discrimination and marginalisation, acts of abuse are done to them in supposed 'good faith' by the perpetrators, who in their opinion are doing good to these groups and to society. The law should therefore not limit liability for abuses done by state officials in enforcing the Public Health Act. They should be individually liable for human rights violations committed in the process of enforcing the Act beyond what is provided for by the law. The provision would also run counter to the Human Rights (Enforcement) Act, which imposes personal liability on state officials who violate human rights.¹⁸

5. Recommendations

Generally, the Public Health Act is a necessary law for the prevention of serious outbreaks and the protection of the right to health for the general public in Uganda, and the Public Health

<https://www.hrapf.org/index.php/resources/other-publications/154-20-06-16-hrapf-and-cosf-press-statement-on-judgement-in-the-cosf-19-case-final-1/file> (accessed 25 March 2022)

¹⁶ HRAFP, n 8 above.

¹⁷ The Global Commission on Law on HIV and the Law 'HIV and the Law: Risks, Rights & Health' 2012, 7.

¹⁸ Human Rights (Enforcement) Act, 2019, section 10.

(Amendment) Bill, 2021 is a necessary step in light of the recent inadequate public health response to the COVID-19 crisis. However, as with many other laws, the major defect of the Public Health Act (and the proposed amendments) lies more in what it fails to say than in what it specifically says: without a deliberate and conscious effort to include LGBT persons, sex workers and PWUIDs in legislation, policy and in planning, they are invariably left out of the process altogether, and the inclusion of vaguely worded provisions prohibiting or condemning 'unacceptable' or 'undesirable' or 'offensive' behaviour are then used to target and harass and further marginalise these communities. In order to fit within internationally accepted best practice standards, there is need to consider the following recommendations in the process of amending the Public Health Act:

- 1) The provisions on mandatory vaccination in Clause 39 of the Bill should be replaced with a clause allowing for informed consent to vaccination.
- 2) Clauses 13(a) and (b) on forced treatment should be removed from the Bill and instead those providing for informed consent to treatment substituted.
- 3) Clause 19 of the Bill should entirely eliminate section 27(n) of the Public Health Act on spitting in public as this is a petty offence, and instead make provision for sanitary facilities in public places.
- 4) Clause 19(1) of the Bill on forced disclosure of personal information should be amended to provide for informed consent.
- 5) Clause 85 of Bill the limiting liability of state actors for actions that violate human rights as long as they are done in 'good faith' should be dropped.
- 6) Replace provisions on criminalisation with those aimed at rewarding compliance: Criminalisation rarely works to ensure public health outcomes, and instead usually puts more people at risk of contracting diseases as was seen with the congestion in prisons during the COVID-19 pandemic. As such, the state should consider adopting measures to reward compliance with the laws, for example giving meal vouchers to those who are vaccinated or allowing privileges such as accessing entertainment venues to only those who are vaccinated.
- 7) The Bill should prioritise the human rights based approach as well as the public health approach as opposed to the criminalisation approach in order to ensure adherence to laws and to avoid further criminalisation, which pushes criminalised individuals underground.
- 8) The Bill should ensure zero discrimination by specifically providing for key populations and criminalised minorities.

6. Conclusion

The Public Health Amendment Bill seeks to strengthen the provisions of the Public Health Act by providing for the duties of different persons in the management of epidemics and infectious diseases, and establishing rules for the prevention of the spread of such epidemics. However, the law as is and the proposed amendment both continue to exclude LGBT persons, sex workers and PWUIDs, which is likely to lead to further exclusion of these criminalised minorities. It is important that an effort is made to consider the implications and the unique needs of criminalised minorities in the framing and development of new laws, and to create a more human rights based law that ensures effective participation of key populations in determining and responding to their health needs.