



Kampala,

27th January 2023

**CLARIFICATION ON THE ISSUES RAISED BY THE DEPUTY SPEAKER OF
PARLIAMENT CONCERNING HRAPF'S CONTRIBUTION TO A PROPOSED BY-LAW
FOR IMPROVING ACCESS TO HIV AND TB SERVICES IN KASESE**

On 25th January 2023, during a Parliamentary session that was telecast live on NBS Television, the Deputy Speaker of Parliament, Hon. Thomas Tayebwa, made certain statements about Human Rights Awareness and Promotion Forum (HRAPF)'s contribution to developing a proposed by-law on access to HIV services in Kasese. He later repeated these comments on his Twitter handle.

The Deputy Speaker informed Parliament that,

'... Kasese Municipal Council made an attempt to pass a by-law that recognises homosexuals and transgender people as minorities ... I have gotten information that the Council was being facilitated by an NGO called Human Rights Promotion Awareness Forum and they are going around the whole country ... now they are using local governments. The motion was sponsored by a group calling themselves Human Rights Awareness Promotion Forum ... and it was moving at a terrible speed... I want the Minister for Internal Affairs to take up this matter seriously with this NGO and you follow the due process.'

Human Rights Awareness and Promotion Forum (HRAPF) believes that it is the specific NGO referred to by the Deputy Speaker, and therefore wishes to make the record clear as follows:

1. HRAPF is a registered Non-Governmental Organisation and holds a valid permit from the National Bureau for Non-Governmental Organisations (NGO Bureau). We are in compliance with all the laws of Uganda as laid down and are not involved in any illegality.
2. We are a group of lawyers providing legal aid services to marginalised persons, who include key populations. As part of our legal work, we also engage in advocacy for a better legal and policy environment for Key Populations in Uganda, whom research has established face challenges in accessing health services regarding HIV, Tuberculosis and Malaria.

3. Our work aligns with the National Development Plan and with the Constitution of the Republic of Uganda, 1995. Article 29(1)(e) of the Constitution protects the right to freedom of association, and article 38(2) gives the right to every Ugandan to participate in peaceful activities to influence the policies of government through civic organisations.
4. With respect to the proposed Kasese by-law, HRAPF engaged a consultant to reach out to Kasese Municipal Council as part of work coordinated under the *'Leave No One Behind: A National Plan for Achieving Equality in Access to HIV, TB and Malaria Services in Uganda 2020-2024'* (Equity Plan). The plan was developed by a broad and inclusive process during 2019 and subsequently endorsed by the Minister of Health. As one of its main results areas, the plan seeks to create an enabling environment for key and vulnerable populations in Uganda to freely access HIV, TB and malaria services. One of the activities linked to this results area is to work with local councils to improve legal and policy related instruments that can remove barriers for these affected populations. This work is monitored by a multi-sectoral Equity Plan Steering Committee. HRAPF is a member of this Steering Committee and routinely reports to the Committee on its work, and is amongst a number of national and local level stakeholders who work to implement the plan.
5. The consultant engaged in a consultative process with Kasese Municipal Council members and other stakeholders to assess barriers to access to HIV and TB services that existed, and to deliberate on ways that such barriers might be reduced or removed. It was agreed that developing a by-law would be one way to re-enforce the right of all Ugandans, including key populations, to freely access health services, including those related to HIV and TB. Through the consultative sessions, Council members were guided to come up with different drafts of a proposed by-law that would achieve this goal while respecting the various laws of Uganda.
6. At every stage, applying our considerable expertise in health law and human rights, HRAPF reviewed the different drafts to ensure that the proposed provisions were fully aligned with relevant laws and policies and the Constitution of Uganda. HRAPF has noted that the version of the by-law currently circulating in the media is not the one that HRAPF reviewed. The correct version is included at the end of this statement.
7. HRAPF's role stops at the consultation level, and the finalisation of the by-law (if at all) rests entirely with the members of the Municipal Council. HRAPF fully respects the autonomy of the Council to make any changes as they so wish. HRAPF cannot be a 'sponsor' of a motion before Kasese Municipal Council (or any other Municipal Council) as it has no legal standing in this regard under the Laws of Uganda.
8. HRAPF notes that it has been suggested that the proposed by-law may contravene the laws of Uganda. On this point we would want to respectfully disagree. The Constitution of the Republic of Uganda in Article 21(1) guarantees equality and nondiscrimination for all persons 'before and under the law in all spheres of political, economic, social and cultural life and in every other respect,' and guarantees equal protection of the law to all persons. As such, a proposed law that seeks equal access to HIV services for all persons, including key populations, cannot be said to be against the Constitution.

9. Further, the proposed by-law is in line with Section 24 of the HIV and AIDS Prevention and Control Act, 2015 which enjoins the state to ensure the right of access to equitable distribution of health facilities, goods and services, including essential medicines, on a non-discriminatory basis, and to give priority to key populations. The National Strategic Plan (NSP) for HIV & AIDS 2020/21 – 2024/25 also recognises key populations.
10. Finally, the proposed by-law is in line with the Minister of Health's June 2014 Ministerial Directive on Access to Health Services without Discrimination, whose purpose is 'to reaffirm the government's commitment to provision of health services based on the key principles of non-discrimination, privacy and confidentiality and to promote adherence to existing ethical and professional code(s) of conduct.' It provides that 'No health facility or health care provider shall discriminate patients on grounds of disease, religion, political affiliation, disability, race, sex, age, social status, sexual orientation, ethnicity, nationality, and country of birth or other such grounds.'
11. Based on the above, we firmly believe that ensuring access to HIV services to key populations is not against the laws of Uganda, and neither is engaging local governments towards this end.
12. HRAPF remains committed to its mandate of protecting and promoting the human rights of all Ugandans, in all their diversities, including to freely access HIV and TB services for their health and for the health of all Ugandans.

Taking human rights to all

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**THE LOCAL GOVERNMENT (KASESE MUNICIPALITY) ACCESS TO HIV/TB
SERVICES FOR KEY POPULATIONS BYELAWS, 2022**

ARRANGEMENT OF SECTIONS

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**THE LOCAL GOVERNMENT (KASESE MUNICIPALITY) ACCESS TO HIV/TB
SERVICES FOR KEY POPULATIONS BYELAWS, 2022.**

(Made under Section 38 of the Local Government Act Cap 243)

An Ordinance to increase access to TB/HIV prevention and care services in Kasese Municipality

BE It Ordered by the Kasese Municipal Council as follows:

PART I: PRELIMINARY

1. Title

This Ordinance may be cited as the Local Government (Kasese Municipality) Access to HIV/TB services for Key Populations bye laws, 2022

2. Interpretation

In this Bye law, unless otherwise the context requires,

- (a) “**Municipal Council**” means the Kasese Municipal Council;
- (b) “**currency Points**” is equivalent to Twenty Thousand Shillings;
- (c) “**committee**” refers to the Municipality Coordination Committee for TB/HIV (CCC-TB/HIV)
- (d) “**council**” includes all councils referred to under sections 3 and 45 of the Local Governments Act;
- (e) “**court**” means a court of competent jurisdiction
- (f) “**discrimination**” means an act of alienation, refusal, isolation, maltreatment, disgrace, prejudice or restriction of rights towards another person because of the awareness or suspicion that such person is living with HIV/AIDS and TB or has a close relationship with a person living with HIV/TB-living or suspected HIV/TB-living person;
- (g) “**electoral area**” means one of the areas into which a district, city, municipality; town, division or sub county is divided for the purpose of elections and representation;
- (h) “**HIV**” means human immunodeficiency virus
- (i) “**key populations**” “means all persons described as such by the ministry of health as it shall be known from time to time.
- (j) “**ordinance**” means the law made or passed by the district council under section 38 of the Local Government Act.
- (k) “**TB**” means tuberculosis

3. Application

This ordinance shall apply to Kasese Municipal Council.

4. Objectives

The Objectives of the ordinance is to:

- (a) to increase access to TB/HIV prevention and care services among the Key Populations in Kasese Municipality.
- (b) to provide for the functions, powers, responsibilities and services at all levels of local governments;
- (c) to regulate health service delivery by health facilities in the Municipality.

PART II: MUNICIPALITY COORDINATION COMMITTEE FOR TB/HIV (CCC-TB/HIV)

5. Establishment of the Municipality Coordination Committee for TB/HIV

There shall be in place a Municipality Coordination Committee for TB/HIV (CCC-TB/HIV) appointed by the Municipal Council from time to time, which shall consist of;

- (a) the Municipal Health Officer;
- (b) the health in charges of the division health centers;
- (c) councilor responsible for health;
- (d) District police commander;
- (e) and at least 2 representative from private health service providers
- (f) At least two civil society organisation with interventions in relation to TB/HIV prevention and care services including for key populations.

6. Functions of the committee

- (a) Overall coordination of TB/HIV collaborative activities in the Kasese Municipality
- (b) Ensure non discrimination in HIV/TB service provision
- (c) Establish the mechanisms for sharing information and collaboration in planning, implementation, monitoring and evaluation of tuberculosis and HIV/AIDS programs at all levels of health services
- (d) Developing, reviewing, and updating policy and guidelines on TB/HIV collaboration
- (e) Planning, monitoring and evaluation of interventions
- (f) Mobilization of resources for TB/HIV activities
- (g) Advocacy and social mobilization for collaboration

- (h) Coordination of stakeholder efforts on TB/HIV
- (i) Ensure that evidence from research and best practices is used to guide policy
- (j) In liaison with relevant Government Ministries, departments and agencies, ensure implementation of the ordinance
- (k) Co-ordinate with Municipal council and other administrative units to enforce the ordinance
- (l) Liaise with community leaders to and the Key Populations to mobilise and sensitize the communities about the importance of accessing TB/HIV health care and prevention services
- (m) Any other functions necessary to achieve the above functions

PART III: ROLE OF STAKEHOLDERS IN THE IMPLEMENTATION OF THE ORDINANCE

7. Powers of the Municipal Council

The Council shall:

- (a) Monitor and enforce the general implementation of the ordinance;
- (b) Supervise the Municipality Coordination Committee for TB/HIV in the performance of its functions and mandate;
- (c) Provide funds to facilitate the work of the Committee

8. Functions of the Health service providers;

A licensed health service provider within Kasese Municipality shall;

- (a) Comply with the requirements of operating a health facility under the Public Health Act Cap 281 and all other laws and policies regulating TB/HIV health service provision in Uganda;
- (b) Ensure the products they are dealing in are licensed and permitted by the Ministry of Health, well labelled and packaged with details of manufacture date, expiry date and application or use;

- (c) Provide equal and timely service deliver to all manner of persons irrespective of their social status, including key populations;

PART IV: OFFENCES AND PENALTIES

9. Discrimination of KPs in access services

Any person who practices discrimination of key populations in accessing any of the TB/HIV prevention and care services, commits an offence and on conviction, liable to pay a fine of not more than five currency points or six months community service or imprisonment or in case of a body corporate lose its licence in addition to the fine.

10. General Offences

Any person who contravenes any provision of this Ordinance for which no specific punishment is expressly provided for, commits an offence and is liable, on conviction to pay a fine of two currency point or three months community service or imprisonment for three months or in case of a body corporate lose its licence in addition to the fine.

CROSS REFERENCES

The Public Health Act Cap 281

The HIV Prevention and Control Act 2014

The Penal Act Cap 120 as Amended

The National Policy Guidelines for TB/HIV Collaborative Activities in Uganda, 2006.