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**HEALTH POLICY
INITIATIVE**



In February 2008, members of Tanzania’s Parliament unanimously passed the HIV and AIDS (Prevention and Control) Act. The act, signed into law by the president on April 4, provides for HIV prevention, care,

and treatment and protects the rights of people living with HIV (PLHIV). It also defines the roles and responsibilities of all sectors in addressing HIV. The proposed bill moved through Parliament swiftly, having had its first reading in November 2007. Because of the sensitive issues addressed in the proposed bill, it had the potential to be delayed in Parliament for months, if not years. Therefore,

considered international best practices and human rights principles, supported reviews by legal experts, and fostered civil society engagement. The final content of the law, however, is determined by the government and key in-country decisionmakers.

The law represents a step forward in the national response, especially by prohibiting discrimination against HIV-positive people and by establishing a legal framework for a coordinated, multisectoral HIV response.

Tanzania Adopts HIV Law

USAID Assistance
Culminates in Law
Prohibiting Discrimination
Against PLHIV

Understanding the Environment

Women lawyers assess gaps in existing laws, make recommendations

In 2001, Tanzania took steps to foster a multisectoral HIV response by adopting the country’s first ever National HIV/AIDS Policy and establishing the Tanzania Commission for AIDS (TACAIDS). However, while policies outline overarching principles and objectives, laws and regulations are needed to determine how policies will be put into practice. Thus, the national policy called for creating a supportive legal framework to establish a multisectoral response and address relevant legal and ethical issues.

With direction from the Ministry of Justice and Constitutional Affairs (MOJCA), the USAID-funded POLICY Project provided the technical and financial assistance needed to undertake a review of the legal environment for HIV. The Tanzania Women Lawyers’ Association (TAWLA) was selected to carry out the review, which helped to build local capacity and strengthen in-country ownership of the process and findings. TAWLA analyzed existing laws and regulations, as well as sought input from government and nongovernmental

the unanimous passage of the act on its second reading in February 2008 is a significant feat.

The U.S. Agency for International Development (USAID) has a long history of supporting efforts to strengthen the legal and policy environment for effective HIV programs in Tanzania—through the POLICY Project (2000–2006) and then the USAID | Health Policy Initiative, Task Order 1, which began in 2005. In fact, the relative speed that characterized the law’s passage is a testament to extensive assistance that helped to identify gaps in existing laws, build HIV-related capacity of key players, encourage participation, and mobilize political support.

Throughout the process, the POLICY Project, Health Policy Initiative, and their partners

Tanzania

AUGUST 2008

“Every person, institution, and organization living, registered, or operating in Tanzania shall be under general duty to ... reduce the spread of HIV ... [and] increase access, care, and support to persons living with HIV and AIDS ...”

—Excerpt from the HIV and AIDS (Prevention and Control) Act of 2008, Section 4, General Duties

stakeholders. TAWLA incorporated suggestions and recommendations from the various stakeholders into the final report, which was submitted to and approved by MOJCA in November 2003.

The TAWLA report recognized that Tanzania is characterized by a pluralistic legal system whereby statutory, Islamic, Hindu, and customary law operate side by side—highlighting one of the major challenges to enacting and enforcing legal reforms to address HIV. The report considered various components, including laws affecting goods and services; women and children; PLHIV and persons with disabilities; the criminal justice and correctional system; and the media and public education. In particular, TAWLA identified four priorities for legislative review within the next two years and additional priorities for the next five years. The four short-term priorities included:

- Promoting voluntary counseling and testing (VCT), including the need for guidelines on proper counseling and confidentiality;
- Abolishing customs and traditional practices that increase risk of HIV transmission;
- Prohibiting stigma and discrimination against PLHIV, especially in the workplace; and

- Protecting the rights of women, children, and other vulnerable groups, including provision of orphan support.

With these recommendations in hand, the next question centered on whether to draft a single, overarching HIV law or to amend the existing laws to incorporate HIV issues. After discussions with key stakeholders, MOJCA decided to draft an omnibus law that could address several of the gaps identified in the TAWLA report. Once completed, efforts could then focus on amending existing laws that might serve as barriers to implementation of the HIV-specific law. Accordingly, MOJCA and POLICY finalized a plan of action for moving forward with the formulation of an omnibus HIV law.

Learning from Others

Task force seeks guidance from international best practices and experiences

To draft the law, in 2004, MOJCA appointed a seven-member task force that included representatives from the Ministry of Health, MOJCA, and TACAIDS, as well as the chief parliamentary draftsman. While the members of the task force were lawyers and legal experts in their own right, they did not necessarily possess expertise in HIV and related legal issues. Thus, POLICY organized activities to strengthen the HIV-related capacity of the drafting team.

To begin with, POLICY conducted a two-week training workshop in Washington, DC, in 2004 that featured American and international HIV legal experts. The workshop began with an overview of the global HIV pandemic and national responses, followed by more detailed exploration of HIV in Tanzania and international best practices for addressing HIV legal issues. Some of the topics covered included: VCT, disclosure, and confidentiality;

orphan support; HIV treatment; surveillance and ethical research; HIV and most at-risk groups; legal services for PLHIV; and human rights, stigma, and discrimination. The workshop also allowed time for working sessions.

“At the end of the two weeks, we had the ‘zero draft’ of the bill. We thought this was quite an achievement, because now what was left was to input some additional issues and make improvements on the draft, and I hope that is what we did,” explains Sam Komba, Legal Officer for TACAIDS.

Next, POLICY supported a study tour for the drafting team to Philippines and Vietnam in 2005. These two countries were chosen because they had experience in drafting and implementing HIV laws and ordinances. To gain broad perspectives on formulating and operationalizing HIV laws, the task force met with government officials, healthcare workers, NGOs, human rights groups, PLHIV, trade unions, community-based organizations, and local leaders.

“The world is a village and there are a lot of things happening in the world that we need to look at and coordinate with as we are implementing the law ... In particular, we need to keep focused on the assurance of human rights in the implementation of the law,” Komba says.

The study tour provided several insights, especially regarding the challenges to implementing national laws and the need for participation of PLHIV in the decisionmaking process. The visit also identified some successes, such as the approach taken by officials in Quezon City in the Philippines. In Quezon, local officials supplemented the national law with local provisions, established a local HIV/AIDS council, and strengthened health services.

At the end of the study tour, the drafting team held a de-brief session to capture observations and lessons learned for use in devising the next draft of the HIV bill.

Getting into the Debate

Civil society policy champions advocate for change

With revisions of the draft bill underway at the conclusion of the POLICY Project in 2006, the follow-on Health Policy Initiative turned attention to fostering civil society engagement in the legislative process. These efforts focused on four main strategies: mobilizing the media, training policy champions, involving youth advocates, and analyzing gender issues.

Media. In 2006, in collaboration with the Association of Journalists Against AIDS in Tanzania (AJAAT) (see Box 1), the Health Policy Initiative conducted a series of trainings that reached about 90 journalists. The trainings covered a range of topics, including the legislative process, the proposed HIV bill, and best practices for HIV-related reporting. The aim was to improve and increase coverage of HIV issues, to combat stigmatizing portrayals of PLHIV, and to raise public awareness of the HIV bill.

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—Sam Komba,
Legal Officer,
Tanzania Commission for AIDS

The training also incorporated a hands-on, practical component. About 30 trained journalists were sent to regions highly affected by HIV to research and compile stories. To share the stories with media outlets, AJAAT launched a free HIV Feature Service. By early 2007, media outlets had used nearly 70 news stories, feature articles, and radio programs. The Feature Service fills an important gap because many media outlets, which are based

in Dar es Salaam, do not have the resources to send journalists to cover HIV issues in the most-affected and hard-to-reach regions.

Policy Champions. MOJCA’s plan of action on the formulation of the HIV bill called for holding five zonal meetings to gather input from local stakeholders. To promote civil society participation in the meetings, the Health Policy Initiative identified 12 individuals to serve as policy champions for passage of the HIV bill. These individuals were selected for their demonstrated leadership qualities that became evident during other project-supported activities. The policy champions included HIV-positive people, youth advocates, and members of NGOs and community-based groups.

In November 2006, the project organized a workshop to orient the policy champions to the legislative process and the proposed bill, to build advocacy and policy dialogue skills, and to plan a course of action for involvement in the meetings. During the zonal meetings in 2007, the policy champions advocated for strong leadership commitment, mobilization of resources, increased PLHIV participation, and stigma reduction as essential components of the national response.

Youth Advocates. Youth are critical to Tanzania’s response to the HIV epidemic. Young people are increasingly vulnerable to HIV, and it is by changing the attitudes and behavior of young people that the country will be able to avert future infections and eliminate HIV-related stigma. To date, the Health Policy Initiative has conducted trainings for 175 youth, culminating in the formation of a Youth Coalition composed of 12 youth-serving organizations and networks. In addition, the project provided an orientation for 48 youth leaders on legal and policy processes to enable them to participate in the zonal meetings and ensure the inclusion of youth voices throughout the process.

Gender Analysis. The need to address gender issues to combat the spread of HIV had been

highlighted years earlier in the TAWLA legal assessment. In 2007, the Health Policy Initiative supported the Women and Legal Aid Center to identify gender gaps in the proposed HIV bill. Some of the problematic issues the analysis identified included the need to promote safe partner disclosure, ensure access to post-exposure prophylaxis, provide free treatment and nutritional support, and adequately define “intentional” transmission of HIV. This latter provision in the bill, for example, is intended to address issues such as rape and sexual assault but could be misused to infringe on the rights of HIV-positive women who wish to have children or who, due to gender inequality, cannot negotiate safe sex practices. The Women and Legal Aid Center shared their recommendations with MOJCA, TACAIDS, and the drafting team.

Together, these strategies enabled diverse groups and perspectives to influence the development of the HIV bill and kept its passage high on the political agenda.

Targeting the Decisionmakers

Sensitization efforts reach out to political leaders from the national to district levels

While fostering demand from the grassroots up, the Health Policy Initiative also targeted the decisionmakers who, ultimately, would be responsible for finalizing and approving the HIV bill. The project sought to strengthen commitment from political leaders at all levels and involved a long-time partner in this process (see Box 1).

At the national level, the Health Policy Initiative sensitized Members of Parliament (MPs) in collaboration with the Tanzanian Parliamentarians AIDS Coalition (TAPAC). Sensitization efforts highlighted the key concepts in the proposed HIV bill and

USAID Investment in Local Institutions Reaps Rewards

Building the capacity of sustainable local institutions has been a major goal of the POLICY Project and Health Policy Initiative. Two organizations that were founded and strengthened with assistance from POLICY—and continue to collaborate with the Health Policy Initiative—are the Tanzanian Parliamentarians AIDS Coalition (TAPAC) and the Association of Journalists Against AIDS in Tanzania (AJAAT). Both groups have been instrumental in keeping HIV high on the political and public agenda.

Tanzanian Parliamentarians AIDS Coalition. TAPAC is the brainchild of Lediania Mafuru Mng’ong’o, an HIV activist and MP representing Iringa, now in her second term. Mng’ong’o, on a visit to the United States in 2001, met with members of the Congressional Task Force on International HIV/AIDS Issues and decided Tanzania needed a similar mechanism for mobilizing its parliamentarians. POLICY assisted Mng’ong’o in her efforts to create TAPAC, which had its official launch in November 2001 along with the National HIV/AIDS Policy. The POLICY Project continued to support TAPAC through HIV-related

sensitization workshops, study tours, creation of a strategic workplan, organizational development, and other assistance.

“The fight against HIV is an enduring challenge that requires constant education to address it,” says Mng’ong’o. “The fight against HIV is everyone’s fight; therefore Members of Parliament should be at the forefront of the struggle.”

Today, TAPAC has 270 members out of 317 MPs, including the Prime Minister. The coalition proved to be a valuable forum for reaching MPs about the importance of the HIV bill, even before its first reading in Parliament. TAPAC’s successful advocacy efforts not only helped in the passage of the HIV bill, they also culminated in the creation of a Permanent Parliamentary Committee on HIV and AIDS, led by Mng’ong’o. This body will address HIV as a crosscutting issue across all parliamentary committees and activities. In addition, the Health Policy Initiative and TAPAC plan to establish a resource center on the grounds of the Parliament complex to provide MPs with easy access to the latest HIV information.

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Tanzanian Parliamentarians AIDS Coalition

Association of Journalists Against AIDS in Tanzania. POLICY had previous experience mobilizing journalists to combat HIV. For example, in 2001, POLICY assisted the Journalists Against AIDS (JAAIDS) in Nigeria to establish an HIV-related media training and resource center, as well as a website to provide access to up-to-date HIV information. Seeing the successes of JAAIDS, journalists in Tanzania came together in 2003 to form AJAAT.

AJAAT has grown from 10 founding members in 2003 to about 125 members across the country today. With support from the POLICY Project and Health Policy Initiative, AJAAT has organized HIV media writing contests, created a list-serv called ONGEA (or “talk”) to facilitate dialogue on HIV issues, launched a website (www.ajaat.or.tz), and established an HIV Feature Service to improve and increase HIV reporting.

“We dispatch journalists to rural areas, such as in Morogoro and Dodoma, to explore specific issues on HIV, such as living positively, church involvement in HIV, stigma and discrimination, and orphan issues,” explains Simon Kivamwo, AJAAT Executive Chairperson. “Since we started the Feature Service, media houses have come to us requesting more and more features.”

As a next step, AJAAT has prepared a strategic plan for 2008–2011 to guide its efforts in training and capacity development for journalists; enhancing media coverage of HIV; promoting advocacy and fundraising; and establishing a monitoring system.

the benefits of enacting an HIV law. One orientation organized by the project was attended by 275 MPs (out of 317) and provided an opportunity to inform MPs about the proposed bill as well as programs supported by the U.S. President's Emergency Plan for AIDS Relief. The project and TAPAC also engaged in discussions with smaller groups and one-on-one meetings to encourage political support among MPs.

At the local level, in 2006/07, the Health Policy Initiative and State University of New York oriented more than 375 women councilors from Kagera, Lindi, Mtwara, and Ruvuma Regions. As a result, the councilors pledged to mobilize community participation through the zonal meetings on the HIV bill and to educate their constituents on issues addressed by the bill.

“The law will not be effective unless people are sensitized to understand that the law is a combination of public health issues, human rights issues, gender responsiveness, and crosscutting issues put together for a common purpose.”

—Sam Komba,
Legal Officer,
Tanzania Commission for AIDS

Finally, in January 2008 (between the first and second readings of the HIV bill), the Health Policy Initiative, MOJCA, and TACAIDS organized a multisectoral stakeholders' forum to provide additional input into the final version of the proposed bill. The forum included 80 representatives from NGOs, community-based organizations, and government agencies, whose comments on the bill were compiled and shared at a meeting with the Permanent Parliamentary Committee on Social Welfare.

In the sensitization and advocacy sessions, MPs and local councilors expressed their enthusiasm for the HIV bill and eagerness and commitment for putting the law into practice. These sessions underscored the urgent need for an HIV law, provided a platform for political leaders to contribute to the bill, and created a favorable environment for its passage.

The Way Forward

The HIV and AIDS (Prevention and Control) Act of 2008 establishes the HIV Law and provides a legal basis for protecting the rights of PLHIV (see Box 2). It includes provisions outlining the roles of the government, health sector, NGOs, faith-based groups, and the private sector in the national HIV response. Moreover, it calls for stepping up efforts to meet the needs of orphans and vulnerable children.

The law represents a step forward in Tanzania's national response that came about by a process led by in-country stakeholders. But, as with many legal documents, the law does have its shortcomings. Stakeholders familiar with HIV laws warn that some people see them as a “magic bullet” in the prevention and control of HIV. However, much work needs to be done to clarify, disseminate, implement, and enforce such laws. Essential next steps in Tanzania include:

- Disseminating the law and sensitizing the law's enforcers (e.g., judiciary, police, corrections system staff, employers, medical facility supervisors, and others) on its contents and provisions.
- Training the law's implementers (e.g., human resources personnel, healthcare providers, legal resource clinics) on reforms included in the law.
- Raising public awareness of the rights and guarantees included in the law, especially for PLHIV, and establishing mechanisms for legal redress and monitoring.

- Harmonizing the law and National HIV/AIDS Policy with other legal provisions, especially those relating to the most at-risk groups, including sex workers, injecting drug users, and men who have sex with men.
- Developing regulations and guidelines to operationalize provisions in the law (the Ministry of Health has begun the process to address changes called for in the health sector).
- Mobilizing complementary, community-based activities to enhance compliance with the spirit of the law—especially regarding the empowerment of women and girls, facilitation of safe partner disclosure, elimination of cultural practices that increase vulnerability to HIV, and reduction of stigmatizing attitudes.
- Ensuring that training, guidelines, and enforcement measures clearly discourage

misuse or misinterpretation of any provisions that could infringe on the rights of PLHIV.

Moving forward, the country must continue to refine and supplement its legal framework based on human rights and international best practices for addressing HIV challenges and meeting the needs people living with and affected by HIV. In the coming months, the Health Policy Initiative will continue to foster legal and policy reform and implementation in Tanzania. For example, the project is supporting the Women and Legal Aid Center to conduct advocacy with policymakers to address gender-based violence and to provide input towards the amendment of the Inheritance Act. The project is also collaborating with TACAIDS, UNDP, the Legal and Human Rights Center, and others to identify areas of the HIV Law requiring corresponding guidelines and regulations for implementation.

BOX 2

Key Provisions of the HIV Law

The Government, political, religious, and traditional leaders and employers in the private sector shall advocate against stigma and discrimination of people living with HIV and AIDS (4.2-b)

A person shall not be compelled to undergo HIV testing (15.3)

The Ministry [of Health] shall, where resources allow, take necessary steps to ensure the availability of antiretrovirals and other healthcare services and medicines ... (24.2)

A person shall not formulate a policy, enact a law or act in a manner that discriminates directly or by its implication persons living with HIV and AIDS, orphans, or their families (28)

A person shall not stigmatize or discriminate in any manner any other person on the grounds of such person's actual, perceived, or suspected HIV and AIDS status (31)

Any person living with HIV and AIDS shall, using available resources, have a right to the highest attainable standard of physical and mental health (33.1-a)

Every local government authority shall design, formulate, establish, and coordinate mechanisms and strategic plans for ensuring that the most vulnerable children within its respective area are afforded means to access education, basic healthcare, and livelihood services (34.1)

This brief was produced for review by the U.S. Agency for International Development (USAID). It was prepared by staff of Task Order I of the USAID | Health Policy Initiative. The authors' views do not necessarily represent those of USAID or the U.S. Government. Task Order I is funded by USAID under Contract No. GPO-I-01-05-00040-00, beginning September 30, 2005. The project's HIV activities are supported by the U.S. President's Emergency Plan for AIDS Relief (PEPFAR). Task Order I is implemented by Constella Futures, in collaboration with the Centre for Development and Population Activities (CEDPA), White Ribbon Alliance for Safe Motherhood (WRA), Futures Institute, and Religions for Peace. For information about the project's work in Tanzania, please contact:

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