

ACTS SUPPLEMENT

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Act 1 *HIV and AIDS Prevention and Control Act* **2015**

THE HIV AND AIDS PREVENTION AND CONTROL ACT, 2015

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**THE HIV AND AIDS PREVENTION AND CONTROL
ACT, 2015**

AN ACT to provide for the prevention and control of HIV and AIDS, including protection, counselling, testing, care of persons living with and affected by HIV and AIDS, rights and obligations of persons living with and affected by HIV and AIDS; to establish the HIV and AIDS Trust Fund; and for other related matters.

DATE OF ASSENT: 31st July, 2014.

Date of Commencement: 13th February, 2015.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Interpretation.

In this Act, unless the context otherwise requires—

“Acquired Immuno Deficiency Syndrome (AIDS)” means a condition characterised by a combination of signs and symptoms, resulting from suppression of the immune system caused by infection with the Human Immuno-deficiency Virus (HIV);

“anonymous testing” refers to an HIV testing procedure where by the individual being tested does not reveal his or her true identity and an identifying number or symbol is used to substitute for the name and allows the laboratory conducting the test and the person on whom the test is conducted to match the test result with the identifying number or symbol;

“ART” means antiretroviral therapy;

“ARVs” means anti-retroviral drugs that suppress HIV multiplication in the body of a person living with HIV;

“biomedical research means”—

- (a) the study of specific diseases and conditions (mental or physical), including detection, cause, prophylaxis, treatment and rehabilitation of persons;
- (b) the design of methods, drugs and devices used to diagnose, support and maintain the individual during and after treatment for specific diseases or conditions; or
- (c) the scientific investigation required to understand the underlying life processes which affect disease and human well-being, including such areas as cellular and molecular bases of diseases, genetics, immunology;

“counsellor” means a person who has undergone an HIV and AIDS counselling course approved by the Minister;

“court” means a Chief Magistrate or Magistrate Grade I court;

“disclosure” means the act or process of making known something that was previously unknown, a revelation of facts;

“discordance” means a situation where one of the partners in a sexual relationship is HIV positive and the other is HIV negative;

“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 and AIDS or has a close relationship with a person living with HIV-living or suspected HIV-living person;

“essential and non essential drugs” shall be as determined by the Minister;

“Fund” means the HIV and AIDS Trust Fund established under section 25;

“guardian” means a person who has the legal responsibility for providing the care and management of a person who is incapable, either due to age, or to some other physical, mental or emotional impairment, of administering his or her own affairs;

“health institution” includes a public or private hospital, clinic, nursing home, maternity centre, medical laboratory, blood bank or other specialized establishment of the same nature;

“health practitioner” includes medical practitioner, other qualified officer or counsellor;

“health unit” includes a public or private hospital, health centre, clinic, nursing home, maternity centre, or other specialized establishment of the same nature;

“HIV testing” means the application of medical professional techniques to determine the status of HIV infection in samples of blood or other fluid or tissue from a human body;

“Human Immunodeficiency Virus (HIV)” is the virus that causes immune deficiency syndrome in humans;

“informed consent” means consent given specifically to a proposed intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation and obtained after disclosing to the person giving consent, adequate information including risks and benefits of and alternatives to the proposed intervention in a language and manner understood by the person;

“medical practitioner” means a person registered under the Medical and Dental Practitioners Act to practice medicine, surgery or dentistry;

“Minister” means the Minister responsible for health;

“minor” means a person who is below the age of 12 years;

“other qualified officer” includes an allied health professional registered under the Allied Health Professionals Act, nurse or midwife registered or enrolled under the Nurses and Midwives Act or any other person as the Minister may by statutory instrument prescribe;

“partner” means a spouse or a person with whom a person is having a sexual relationship;

“sexual offence” includes rape, defilement or incest;

“skin penetrative instrument” includes any sharp object, razor-blade, safety pin, syringe, tattooing equipment or any surgical tool.

PART II—PREVENTION OF HIV.

2. Reasonable care to be taken to avoid transmission of HIV.

(1) A person shall take reasonable steps and precaution to protect him or her self and others from HIV infection.

(2) A person shall use protective measures to protect him or herself and others from infection with HIV during sexual intercourse.

3. Pre and post-test HIV counselling.

(1) A health unit which carries out an HIV test shall in all cases provide pre and post-test counselling to a person undergoing an HIV test.

(2) A health unit may where necessary and with the consent of the person tested require the attendance of any other person likely to be affected by the results of such test.

4. Counselling to be conducted by trained HIV counsellors.

Counselling of any person under this Act shall only be conducted by a medical practitioner, other qualified officer or counsellor.

5. Nature of pre-test counselling.

A counsellor shall provide pre-test counselling to a person who has consented to be tested for HIV which shall include—

- (a) information pertaining to the nature of HIV transmission;
- (b) the importance of having an HIV test;
- (c) an explanation of the informed consent form;
- (d) client-centred information tailored to the behaviour, circumstances and special needs of the person to be tested;
- (e) personalized risk assessment;
- (f) possible results and how to handle the situation to reduce transmission; and
- (g) such other relevant information as the counsellor may deem necessary.

6. Nature of post-test counselling.

(1) A counsellor shall provide post-test counselling to a person getting negative HIV test results which shall include—

- (a) the test results and their implications;
- (b) importance of further testing; and
- (c) continuing necessity of taking protective measures to avoid contracting HIV.

(2) A counsellor shall as soon as practicable provide counselling to a person getting positive HIV test results which shall include—

- (a) test results and their implications;
- (b) the infectious nature of the virus and types of the disease and measures to prevent transmission;
- (c) referral to medical and social services;
- (d) the importance of notifying his or her partner;
- (e) the importance of notifying persons in close or continuous contact posing danger of infection;
- (f) continuing necessity of taking protective measures to avoid contracting other types of infection; and
- (g) such other information as the counsellor may deem necessary.

7. Continuous counselling.

A health unit shall, after the post-test counselling, offer continuous counselling sessions to a person whose test results are HIV positive to enable the person to effectively cope with his or her HIV status.

8. HIV testing services.

(1) A health unit may offer HIV testing services to a person.

(2) The identity of a person tested under subsection (1) shall be maintained at the health unit and shall not be disclosed or released to any person except in accordance with the law and medical standards of disclosing or releasing personal medical information.

(3) The performance of a test shall be carried out by a medical practitioner or other qualified officer.

(4) A person who contravenes this section commits an offence.

9. Voluntary HIV testing.

A person may take a voluntary HIV test if he or she gives his or her informed consent.

10. Persons incapable of giving informed consent to HIV testing.

(1) A person incapable of giving informed consent under section 9 may be tested for HIV if his or her parent, guardian, next of kin, caretaker or agent gives informed consent.

(2) For purposes of subsection (1), a person is incapable of giving informed consent if he or she is—

- (a) unconscious;
- (b) of unsound mind;
- (c) a minor;
- (d) suffering from any impairment rendering him or her incapable of giving his or her informed consent.

(3) The informed consent shall be in the form specified in the Third Schedule to this Act.

11. Consent to test for HIV may be dispensed with.

Consent to HIV test under section 9 and 10 may be dispensed with where—

- (a) it is unreasonably withheld; or
- (b) in an emergency due to grave medical or psychiatric condition,

and the medical practitioner or other qualified officer reasonably believes that such a test is clinically necessary or desirable in the interest of that person.

12. HIV testing of persons charged with sexual offences.

A person who is apprehended for a sexual offence shall be subjected to HIV testing for purposes of criminal proceedings and investigations.

13. Routine HIV testing.

The following persons shall be subjected to routine HIV test for purposes of prevention of HIV transmission—

- (a) the victim of a sexual offence;
- (b) a pregnant woman;
- (c) a partner of a pregnant woman;

14. HIV testing under a court order.

Notwithstanding section 9, a person may be subjected to an HIV test under a court order.

15. Provision of appropriate treatment to HIV positive pregnant woman.

(1) A pregnant woman who is tested and found to be HIV positive under section 13 shall be entitled to treatment, care and support, and routine medication to prevent transmission of HIV to the child.

(2) Treatment, care, support or routine medication shall be given to the partner of a pregnant woman.

(3) A child who is born to an HIV positive mother shall be given immediate treatment, care and support and routine medication.

16. Testing of the new born child exposed to HIV.

(1) A child born of a mother who is HIV positive shall be tested for HIV as soon as it is medically practical.

(2) A child who tests HIV positive under subsection (1) shall be given HIV treatment, care and support.

17. Efficiency to be ensured in testing.

(1) A health unit, medical practitioner or other qualified officer involved in HIV testing shall take reasonable measures to ensure that the testing process is carried out efficiently in accordance with standards prescribed by the Minister.

(2) A person who contravenes subsection (1) shall be liable to a civil wrong.

(3) Notwithstanding subsection (2), a person may be charged with a criminal offence.

18. Disclosure or release of HIV test results.

(1) The results of an HIV test shall be confidential and shall only be disclosed or released by a medical practitioner or other qualified officer to the person tested.

(2) Notwithstanding sub-section (1), the results of an HIV test may be disclosed or released to—

- (a) a parent or guardian of a minor;
- (b) a parent or guardian of a person of unsound mind;
- (c) a legal administrator or guardian, with the written consent of the person tested;
- (d) a medical practitioner or other qualified officer who is directly involved in the treatment or counselling of that person, where the HIV status is clinically relevant;

- (e) any other person with whom an HIV infected person is in close or continuous contact including a sexual partner, if the nature of contact, in the opinion of the medical practitioner or other qualified officer, poses a clear and present danger of HIV transmission to that person;
- (f) a person authorized by this Act or any other law; or
- (g) any other person as may be authorised by a court;
- (h) any person exposed to blood or body fluid of a person tested.

(3) Subject to subsection (4), a parent or guardian of a minor shall inform the minor who tests HIV positive of his or her status as soon as it is practical.

(4) A parent or guardian of a minor shall ensure that before the minor is informed of his or her HIV positive results, he or she receives counselling.

(5) Nothing in this section shall prevent disclosure of statistical information in relation to HIV test results.

(6) Subsection (1) (e) shall not apply where a partner of a pregnant woman refuses to go for HIV testing.

19. Confidentiality of test results and counselling information.

(1) A person in possession of information relating to the HIV status of any person shall observe confidentiality in handling that information.

(2) A person who contravenes sub section (1) commits an offence.

20. Person tested to be notified on disclosure.

The medical practitioner or other qualified officer giving the results of an HIV test to any person shall, except in the case of other professionals involved in the treatment or care of the person tested, inform the person tested of the disclosure giving—

- (a) the nature and purpose of disclosure;
- (b) date of disclosure; and
- (c) the recipient of the information.

21. Organ, tissue, body fluid or part of the body to be identified with test results.

A person donating any organ, tissue, body fluid or part of his or her body for the treatment of another person or insemination of sperm, shall be subjected to HIV testing.

22. Testing of donated blood

(1) Donated blood shall as soon as reasonably practicable be subjected to an HIV test.

(2) Blood tested under subsection (1) if found to contain HIV shall be disposed of in accordance with prescribed guidelines on the disposal of medical waste.

(3) A person whose blood has been tested may be counselled and informed of the results as soon as possible.

23. Testing centres to maintain health standards.

A health unit carrying out HIV testing shall maintain good health standards as may be prescribed by the Minister.

PART IV—STATE RESPONSIBILITY IN HIV CONTROL

24. State obligations.

(1) The government shall devise measures to—

- (a) ensure the right of access to equitable distribution of health facilities, goods and services including essential medicines on a non-discriminatory basis;
- (b) provide universal HIV treatment to all persons on a non-discriminatory basis;

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- (c) develop and implement a national public health strategy and plan of action for HIV;
- (d) prevent and control HIV transmission;
- (e) promote awareness of the rights of persons living with HIV and duties imposed on persons under this Act;
- (f) promote and ensure non-discriminatory participation of people living with HIV and AIDS in government programmes;
- (g) promote and ensure involvement of people living with HIV in participating in government programmes;
- (h) mainstream HIV and AIDS programmes in all government sectors;
- (i) provide care and support to persons living with HIV and AIDS as appropriate;
- (j) provide adequate funding for HIV and AIDS programmes;
- (k) give priority to most at risk population.

(2) For purposes of this section, “most at risk population” include fishing communities, prisons, migrant populations or other areas as may be determined by the Minister from time to time.

PART V—HIV AND AIDS TRUST FUND

25. Establishment of the Fund.

There is established a Fund to be known as the HIV and AIDS Trust Fund.

26. Object of the Fund.

The object of the Fund is to secure a predictable and sustainable means of procuring goods and services for HIV and AIDS counselling, testing and treatment.

27. Source of moneys of the Fund.

(1) The monies of the Fund shall consist of—

- (a) two percent of the total tax revenue collected from levies on beers, spirits or *waragi*, soft drinks and bottled water;
- (b) tax revenue from any other taxable item as may be identified by the Minister responsible for finance from time to time;
- (c) grants, monies or assets donated to the Fund through the Minister responsible for finance or assets donated to the Fund by any foreign government, international agency or other external body of persons, corporate or unincorporated; or
- (d) money received by the Fund by way of voluntary contributions.

(2) The tax revenue referred to in subsection (1) (a) shall be remitted directly to the Fund on a quarterly basis.

28. Administration of the Fund.

(1) The Fund shall be administered by the Minister responsible for health in consultation with the Minister responsible for finance.

(2) The Minister shall, within six months of commencement of this Act, make regulations to provide for the management of the Fund.

(3) The regulations made under sub-section (2) shall be laid before Parliament for approval.

PART VI—HIV AND AIDS RELATED HUMAN BIOMEDICAL RESEARCH

29. Requirements for research.

(1) The Minister in collaboration with the relevant institutions may institute trials on HIV and AIDS vaccines, medicines and other related bio-products within the country, provided that such trials shall not endanger the health of persons undergoing such trials.

(2) Subject to subsection (1), research shall be carried out in conformity with requirements under the Uganda National Council for Science and Technology Act or any other written law for the time being in force.

30. Consent to research.

(1) A person shall not undertake HIV and AIDS related human biomedical research on another person or on any tissue or blood removed from such person except—

- (a) with the written informed consent of a person on whom research is to be carried out;
- (b) where that person is a minor or is incapable of giving consent, with the written informed consent of a parent or legal guardian of the child or other person.

(2) A person whose consent is sought to be obtained under subsection (1) shall be adequately informed of the aims, methods, anticipated benefits and the potential hazards and discomforts of the research.

(3) A person who is the subject of the research shall be provided with research facilitations in conformity with the provisions of the Uganda National Health Research Organisation and the Uganda National Council for Science and Technology.

31. Anonymous testing.

(1) Any person who consents to anonymous HIV testing shall not be required to provide a name, age, address or any other information that may potentially identify him or her.

(2) In the case of voluntary anonymous HIV testing, an identifying symbol is substituted for the person’s true name or identity.

PART VII—DISCRIMINATION ON GROUNDS OF HIV STATUS

32. Discrimination in the workplace.

- (1) A person shall not be—
 - (a) denied access to any employment for which he or she is qualified; or

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(b) transferred, denied promotion or have his or her employment terminated on the ground of his or her actual, perceived or suspected HIV status.

(2) Subsection (1) shall not apply where an employer can prove that—

(a) the requirements of the employment in question are not met;

(b) a person is in a particular state of health or medical or clinical condition that renders him or her incapable of performing his or her work.

(3) A health institution shall provide free of costs—

(a) international guidelines to all persons working or present in health institutions who may be occupationally exposed to HIV, with appropriate training for the use of the universal precautions provided in the Second Schedule; and

(b) post exposure prophylaxis to persons exposed to HIV, with appropriate counseling services.

(4) Subject to subsection (3), a health institution shall assist the person who acquires HIV to access HIV related treatment.

(5) Every health institution shall, within sixty days of the commencement of this Act ensure that the universal precautions on post exposure prophylaxis in accordance with the regulations are complied with.

(6) Notwithstanding the provisions of this Act, a policy introduced by an employer shall not require mandatory HIV testing including pre- employment testing.

(7) A health care provider or a person who may be occupationally exposed or may occupationally transmit HIV shall use universal precautions in accordance with the regulations in the course of their work.

(8) An institution providing health care services shall ensure basic cleanliness and hygiene and the implementation of infection control measures in accordance with the regulations and any other law for the time being in force.

33. Discrimination in schools.

An educational institution shall not deny admission or expel, punish, segregate, deny participation in any event or activity, or deny any benefits or services to a person on the grounds only of the person's actual, perceived or suspected HIV status.

34. Restriction on travel and habitation.

(1) A person's freedom of abode, lodging, or travel, within or outside Uganda, shall not be denied or restricted on the grounds only of the person's actual, perceived or suspected HIV status.

(2) A person shall not be quarantined, placed in isolation, refused lawful entry or deported from Uganda on the grounds only of the person's actual, perceived or suspected HIV status.

35. Prohibition from public service.

A person shall not be denied the right to seek an elective or other public office on the grounds only of the person's actual, perceived or suspected HIV status.

36. Exclusion from credit and insurance services.

(1) Subject to this Act, a person shall not be compelled to undergo an HIV test or to disclose his or her HIV status for the purpose of gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.

(2) Notwithstanding the provisions of subsection (1), an insurer, re-insurer or health maintenance organization shall, in the case of life and healthcare service insurance cover, devise a reasonable limit of cover for which disclosure of a person's HIV status shall not be required.

(3) Where one seeks a cover exceeding the no test limit prescribed under subsection (2) the insurer, reinsurer or health maintenance organization may, subject to this Act, require the applicant to undergo an HIV test.

(4) Where an applicant elects to undergo an HIV test pursuant to subsection (3) and the results thereof are positive—

- (a) the applicant shall, at his or her own expense, enter into such agreed treatment programme with the insurer as may be prescribed by the Minister in consultation with Insurance Regulatory Authority; or
- (b) the insurer may impose a reasonable additional premium or lien to the benefits ordinarily purchased; or
- (c) the insurer may decline granting the cover being sought.

(5) A person aggrieved by a determination as to what is reasonable for the purposes of this section may appeal to the Insurance Regulatory Authority in accordance with such procedure as may be prescribed in regulations and the Insurance Regulatory Authority shall make a determination on the basis of statistical and actuarial principles and other relevant considerations.

(6) A person aggrieved by a determination made under subsection (5) may apply within thirty days to court for review of the decision.

37. Discrimination in health institutions.

A person shall not be denied access to healthcare services in any health institution, or be charged a higher fee for any such services, on the grounds only of the person's actual, perceived or suspected HIV status.

38. Protection of children living with HIV against discrimination.

A parent, guardian or a person having custody of a minor shall not discriminate against him or her on the grounds of the minor's actual, perceived or suspected HIV status.

39. Access to healthcare services.

A health institution, whether public or private, and health management organization or medical insurance provider shall facilitate access to healthcare services to persons with HIV without discrimination on the basis of HIV status.

40. Liability for discriminatory acts and practices.

A person who contravenes any of the provisions of this part shall be liable to a civil wrong.

PART VIII—OFFENCES AND PENALTIES

41. Attempted transmission of HIV.

A person who attempts to transmit HIV to another person commits a felony and shall on conviction be liable to a fine of not more than twelve currency points or imprisonment of not more than five years or both.

42. Offences relating to breach of confidentiality.

(1) A health practitioner or a person referred to under sections 16 and 17 who—

(a) breaches medical confidentiality; or

(b) unlawfully discloses information regarding the HIV status of any person,

commits an offence, and on conviction shall be liable to a fine of not more than two hundred and forty currency points or to imprisonment for a term of not more than five years or to both.

43. Intentional transmission of HIV.

(1) A person who wilfully and intentionally transmits HIV to another person commits an offence, and on conviction shall be liable to a fine of not more than one hundred and twenty currency points or to imprisonment for a term of not more than ten years or to both.

(2) A person shall not be convicted of an offence under subsection (1) if—

- (a) the person was aware of the HIV status of the accused and the risk of infection and he or she voluntarily accepted the risk;
- (b) the alleged transmission was through sexual intercourse and protective measures were used during penetration.

44. Penalty for offence relating to obstruction.

A person who obstructs or prevents any activity related to implementation of provisions of this Act in any manner commits an offence and shall be liable to a fine of not more than two hundred and forty currency points or to imprisonment for a term of not more than ten years or to both.

45. Misleading information or statement.

(1) All statements or information regarding the cure, prevention and control of HIV infection shall be subjected to scientific verification.

(2) Publication of statements or information referred to under subsection (1) shall be attached with both evidence of pre- and post-cure HIV test results

(3) A person who makes, causes to be made or publishes any misleading statements or information regarding cure, prevention or control of HIV contrary to this section commits an offence and shall be liable on conviction to a fine of not more than two hundred and forty currency points or to imprisonment for a term of not more than ten years or to both.

46. General penalty.

A person who contravenes the provisions of this Act, where no specific punishment is prescribed shall be liable on conviction to a fine of not more than two hundred and forty currency points or to imprisonment for a term of not more than ten years or to both.

47. Exemption to creation of risk.

Sections 41 and 43 shall not apply to any transmission of HIV by a mother to her child before or during the birth of the child or through breastfeeding.

PART IX—MISCELLANEOUS PROVISIONS

48. Laboratory analysis.

(1) A medical practitioner or other qualified officer who takes biological samples of specimens from persons in discordant relationships or from a person who tests positive initially and later tests negative shall forward a sample to the Ministry of Health Laboratory for authoritative confirmation.

(2) The samples or specimens forwarded to the Ministry of Health laboratory shall not include names identified with them or any information which would identify the person tested.

49. Regulations.

The Minister may make regulations for the better carrying out of the provisions of this Act.

50. Minister to issue technical guidelines on surgical, dental and other procedures or treatments.

The Minister may—

- (a) issue technical guidelines on precautions against HIV transmission during surgical, dental, embalming, tattooing or similar procedures;
- (b) issue guidelines on the handling and disposal of cadavers, body fluids, or waste of persons known to be living with HIV.

FIRST SCHEDULE

Currency point

One currency point shall be equivalent to twenty thousand shillings.

SECOND SCHEDULE

*Section 32(3)***Universal precautions**

(1) Universal precautions are the basic standard of infection control. The underlying principle is to assume that all patients and staff are potentially infected with blood-borne pathogens such as HIV and hepatitis B virus. Universal precautions is intended to prevent transmission of infection from patient to staff, staff to patient, staff to staff, and patient to patient.

- (2) The procedures for universal precautions shall include—
- (a) standard hygiene procedures, especially hand washing, should be followed at all times;
 - (b) hospitals or medical centre guidelines for disinfection and sterilisation should be consulted and followed faithfully;
 - (c) any skin disease or injury should be adequately protected with gloves or impermeable dressing to avoid contamination with a patient's body fluids;
 - (d) any spill of blood or other potentially contaminated material should be liberally covered with household bleach (dilution of 1 to 10), left for 30 minutes then carefully wiped off by personnel wearing gloves;
 - (e) gowns, gloves, masks and protective eyewear should be worn, if possible, during surgery, childbirth and other procedures where contact with blood or body fluid is likely;
 - (f) needles and sharp objects should be discarded immediately after use in puncture-proof containers marked biohazard. Needles should not be bent or broken by hand and should not be recapped;
 - (g) reusable needles and syringes should be handled with extreme care and safely stored prior to cleaning and sterilisation or disinfection linen soiled with blood or other body fluids should be handled as little as possible. gloves and a protective apron should be worn while handling soiled linen.

THIRD SCHEDULE

INFORMED CONSENT FORM

(Section 10(3))

(Form to be filled by person to be tested or other authorised person*)

- 1. Name of person to be tested _____
- 2. Physical and postal address _____
- 3. Age of person to be tested _____
- 4. Sex of person to be tested _____
- 5. Marital status of person to be tested _____
- 6. Nature of medical complaint _____
- 7. Test required _____
- 8. Reasons for conducting test _____
- 9. Date of discussion with medical practitioner or other qualified officer

- 10. If third party requesting for the test state service required from third party _____
- 11. Person giving consent other than person being tested _____
- 12. Capacity in which the person is giving consent _____

Date _____

Signed

Doctor

Patient/Guardian/Agent/Next of kin

*Delete whichever is inapplicable

Cross references

Allied Health Professionals Act, Cap. 268.

Medical and Dental Practitioners Act, Cap. 272.

Nurses and Midwives Act, Cap. 274.

Uganda National Council for Science and Technology Act, 2009.

Uganda National Health Research Organisation Act, Cap. 209.