



LEGAL AUDIT UPDATE ON HIV LAW AND POLICY IN GHANA

A Summary of Developments in Ghanaian HIV and Human Rights Law Since 2010



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Abbreviations

AIDS	acquired immune deficiency syndrome
CHRAJ	Commission on Human Rights and Administrative Justice
GAC	Ghana AIDS Commission
GOG	Government of Ghana
HIV	human immunodeficiency virus
HP+	Health Policy Plus
KP	key population
LEA	legal environment assessment
PEPFAR	U.S. President's Emergency Plan for AIDS Relief
PLHIV/PLWHA	people living with HIV/people living with HIV and AIDS
PMTCT	prevention of mother-to-child transmission
STI	sexually transmitted infection
UNAIDS	Joint United Nations Programme on HIV/AIDS
USAID	U.S. Agency for International Development

Introduction

This brief summarizes developments in Ghanaian law and policy related to HIV that have occurred since the last comprehensive legislative audit was conducted seven years ago by the Human Rights Advocacy Centre on behalf of the Ghana AIDS Commission (Lithur, 2010). The 2010 audit report included lists of recommendations to address laws and policies that affect HIV-related services and human rights. The recommendations referenced policies and laws from various sectors, including public health, at risk populations, gender equality, cultural practices, employment, and housing. A list of recommendations for legislative and policy reform was included for each category assessed.

Since 2010, Ghana has made significant gains in ensuring that HIV policy reflects clinical advances and heightened standards for human rights protections. The recent passage of the Ghana AIDS Commission Act (2016) and the adoption of the 2016 National Antiretroviral Guidelines are major milestones that reflect national commitment to providing quality HIV services to the Ghanaian people. Despite these advancements, it is necessary to examine existing gaps in policy in order to continue making progress. This brief provides an overview of recent advances and identifies areas where further reform is needed.

Methods

To identify changes in law and policy, the study team held discussions and workshops with key informants from February 6–17, 2017 in Accra, Ghana, and systematically reviewed Ghanaian laws and policies developed since 2010.

We analyzed a subset of the roughly 100 recommendations that comprise the 2010 legislative audit.¹ To fit within the scope of this brief, we excluded recommendations that did not explicitly call for changes to legislation or policy related to reform or implementation of HIV programs. Using these criteria, we reduced the list of 100 recommendations to the 29 found in this brief. Recommendations are organized according to the categories used in the UNAIDS and Human Rights Advocacy Centre 2010 legislative audit.

To provide a summary view of policy reform, we rated each recommendation as “fully addressed,” “partially addressed,” or “not addressed.” In some instances, the 2010 recommendations for reform still apply. For others, policy implementation has prompted a need for additional work to take place in order to fulfil the original policy recommendation. In several instances, recommendations have been partially addressed through new laws or policies, but further reform is needed. We considered any recommendation that called for a new act or law of Parliament to be “fully addressed” if national policies or guidelines that address the recommendation were established.

¹ In 2010, an assessment was conducted by the Health Policy Initiative titled “Legal and Regulatory Framework Affecting Treatment and Services for Most-at-Risk Populations in Ghana.” HP+ authors reviewed this assessment but did not include the report’s recommendations as the primary focus of this review are barriers to programme implementation and non-HIV-related technical areas.

Limitations

This brief has three main limitations: narrow selection criteria, sole reliance on the 2010 legislative audit as a baseline, and dependence on key informants. The selection criteria, identified in the “Methods” section above, require a focus on recommendations with policy implications. As a result, this brief does not address many important recommendations because they do not call for policy change. In addition, the team relied on the 2010 legislative audit to identify legal and policy challenges; as a result, challenges that are either new or not addressed by the legislative audit were not factored in. Finally, information related to policy implementation was gathered ad hoc by key informants. Additional policy implementation concerns not addressed by this report may exist.

Policy Recommendations from 2010 Legal Environment Assessment

With the revision of its *National HIV Antiretroviral Therapy (ART) Guidelines* in August 2016, the Ghanaian government adopted international standards of treatment guidance whereby anyone testing positive for HIV is initiated on ART regardless of CD4 cell count or disease stage. Despite these guidelines existing, it is crucial to ensure that that each person living with HIV is located, initiated into, and stays on treatment. To help reach more people, the country must ensure that policies regarding self-testing are incorporated into guidelines and fully implemented. (GAC, 2016). The *Ghana AIDS Commission Act* and *National HIV Strategic Plan 2016-2020* have addressed numerous human rights challenges within the country’s HIV response, particularly in the areas of confidentiality, access to education, and workplace protections. The government of Ghana can continue this momentum by developing policies and guidelines for harm reduction amongst drug users, sex workers, and men who have sex with men.

According to government stakeholders, while guidance has been developed, dissemination remains a challenge, which has resulted in low rates of comprehension and implementation with regard to policy.

This report focuses on legislative and policy advancements in the areas of human rights, gender, and gender-based violence. Future analyses should include care and treatment-related policies and guidelines which intersect with broader human rights-based policies. As the Government of Ghana continues to analyse and monitor its prevention and treatment cascade activities, continued focus on policy and guideline gaps can help strengthen the response and fully address challenges within the cascade to ensure that all people have the right to equitable and efficient health care.

The following table includes the policy recommendations as stated in the 2010 legal environment assessment. The categorization of each recommendation as “fully,” “partially,” or “not” addressed has been determined by the authors of this report.

Status of 2010 Legal Environment Assessment Policy Recommendations

Policy Recommendation	Addressed	Explanation	Source
Topic: Discrimination			
The current anti-discrimination laws in Ghana lack the specificity to deal with HIV/AIDS discrimination. Whilst the current provisions are broad enough to cover discrimination against persons with a disability, the laws and policies need to address the particular issue of discrimination based on HIV status.	Fully	The Ghana AIDS Commission Act (2016) includes a section dedicated to non-discrimination towards persons living with or affected by HIV or AIDS and calls for full enjoyment of the rights and freedoms enshrined in the Constitution. The act notes that persons shall not directly or indirectly discriminate against individuals living with or affected by HIV or AIDS, and allows for legal proceedings to claim damages.	Ghana AIDS Commission Act, 2016 ACT 938.
Laws and policies governing the workplace, accommodation, healthcare and education sectors need specific policies to ensure the effective implementation of anti-discrimination provisions.	Partially	Unlike in 2010, people living with HIV are now guaranteed civil and political rights under the Ghana AIDS Commission Act (2016). Anti-discrimination in the workplace is enforced by Article 32 (1-8), which guarantees all people living with HIV the right to be employed and free from discrimination in the workplace. Additional guidance is provided by the 2012 National HIV Workplace Policy developed by the National Tripartite Committee and Ghana AIDS Commission. Article 33 (1, 2) guarantees people living with HIV the right to education. The right to accommodation is enshrined in the 2016 Ghana AIDS Commission Act.	Ghana AIDS Commission Act, 2016 ACT 938. Ghana AIDS Commission. 2012. National HIV Workplace Policy.

Policy Recommendation	Addressed	Explanation	Source
<p>Laws and policies need to address ostracised groups, including men who have sex with men and certain professions such as sex work.</p>	<p>Partially</p>	<p>Sex between people of the same sex, drug use, and sex work are illegal in Ghana. Ghana’s 2013 National HIV and AIDS, STI Policy, however, includes key populations in the national HIV response and calls for non-custodial sentencing of offences, preventing key and vulnerable populations from entering prisons and being exposed to a high risk of HIV. Ghana’s National HIV and AIDS Strategic Plan identifies key populations as a focus for high-impact interventions. The strategy aims to “accelerate HIV programming for key populations in hotspots and high burden areas nationwide” and “expand HIV testing services among general population especially high risk groups and vulnerable populations” (GAC, 2016, p.26).</p>	<p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy. Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020.</p>
<p>Policy should introduce harm reduction programs to treat addicted drug-users, and to prevent the contraction and spread of HIV amongst intravenous drug users. Such programs should include the diversion of suffering or infected drug users from criminal justice, and the permitting of (or even contribution to) clean needle/syringe exchange and distribution programs under the law.</p>	<p>Partially</p>	<p>Per Ghana’s National HIV and AIDS Strategic Plan, “injecting drug use is thought to be low and the country’s harm reduction interventions presently do not include needle exchange programmes” (GAC, 2016, p. 28). The plan states the need for size estimation and determination of HIV vulnerabilities of persons who inject drugs. Activities include carrying out studies and determining HIV programming based on data collected. As such, behavioural change interventions outlined in the plan do not specifically target people who inject drugs with clean needle/syringe exchange programming. Policy does not provide for criminal justice diversion programs for people who inject drugs.</p>	<p>Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020.</p>

Policy Recommendation	Addressed	Explanation	Source
<p>A policy should be adopted to regulate the commercial sex industry, with focus on protecting the rights and welfare of sex workers. Measures should focus on policing abuse against sex workers from clients and exploitation from managers, pimps and security services rather than policing against the sex workers themselves.</p>	<p>Partially</p>	<p>Although Ghana’s criminal code criminalizes sex work, precluding any supportive regulations, the 2013 National HIV and AIDS, STI Policy specifically calls for police to stop using “condoms or other harm reduction, safer sex, or educational materials” as evidence of sex work (GAC, 2013, p. 12). The policy also prohibits police from collecting evidence of criminal activity, including sex work, when sex workers report “blackmail, bribery, coercion, extortion and harassment” (ibid). The 2015 National Gender Policy calls for the Ministry of Gender, Children and Social Protection to “equip agencies... to deal [with] gender based violence, abuses of women’s right[s],” and “trafficking of women,” which implicitly, but not explicitly, includes the exploitation of sex workers (Ministry of Gender, Children, and Social Protection, 2015, p. 28).</p>	<p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy. Ministry of Gender, Children, and Social Protection. 2015. National Gender Policy.</p>

Policy Recommendation	Addressed	Explanation	Source
<p>The government must develop laws and policies to ensure the protection of other key populations at higher risk of HIV exposure, particularly with regard to the privacy of their HIV status as well as their personal circumstances, including their choice of profession or sexual orientation.</p>	<p>Partially</p>	<p>Since 2010, there have been no changes to the laws criminalizing men who have sex with men, sex workers, or people who inject drugs. However, national policies do recognize the vulnerabilities of key populations (KPs) to HIV and recommend “self-testing and peer-led testing” to improve privacy, and require activities to “protect and promote the right of KPs to access HIV services without fear, stigma, or discrimination” (GOG, 2016, p. 95). Ghana’s 2013 National HIV and AIDS, STI Policy reinforces these activities by stating that “government should ensure... non-discrimination of persons living with HIV and STIs, as well as key and vulnerable populations” (GAC, 2013, p. 27).</p> <p>The 2016 Ghana AIDS Commission Act requires privacy and confidentiality protections for people living with HIV, but does not include privacy concerns specifically for key population status. Article 30 (1) of the Act states, “every person shall enjoy a right to privacy and confidentiality as regards the HIV status of that person” (GOG, 2016, pg. 14). Article 30 (2) further states, “a person shall not disclose any information that concerns the HIV status of another person” (GOG, 2016, pg. 14).</p>	<p>Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020.</p> <p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p>

Policy Recommendation	Addressed	Explanation	Source
<p>The government should develop a clear policy that regulates the pre-employment screening of members of the public services, security agencies and armed forces. The policy must prescribe the circumstances where mandatory screening is sanctioned.</p>	<p>Partially</p>	<p>The 2013 National HIV and AIDS, STI Policy prohibits public institutions and private companies from conducting pre-employment tests for HIV, including “enlistment into the security services” (GAC, 2013, p. 11). Additionally, the Ghana AIDS Commission Act prevents mandatory pre-employment screening for HIV, noting that “an applicant for employment shall not be tested to ascertain the HIV status (GOG, 2016, pg. 15). Interviewees noted that security agencies and the armed forces continue to impose mandatory screening for prospective employees, using the Labour Act, which does allow for pre-employment screening, as a pretext (GOG, 2003). This practice and the Labour Act directly contradict the Ghana AIDS Commission Act as well as the National HIV Workplace Policy.</p>	<p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy. Ghana AIDS Commission Act, 2016 ACT 938. Government of Ghana. 2003. Labour Act 651. Ghana AIDS Commission. 2012. National HIV Workplace Policy.</p>

Policy Recommendation	Addressed	Explanation	Source
<p>A national policy should include a human rights complaints mechanism with the discretion to extend time limits based on terminal illness.</p>	<p>Partially</p>	<p>The 2013 National HIV and AIDS, STI Policy states, “the Government should ensure that existing laws and policies provide protection against HIV-related stigma and discrimination. The general population should be educated on their rights. Systems should also be established to provide redress when rights are abused” (GAC, 2013, p. 27). The Ghana AIDS Commission Act also guarantees that “a person who suffers an act of discrimination based on the actual or perceived HIV status... may institute legal proceedings to claim damages” (GOG, 2016, p. 13).</p> <p>In 2012, the Commission on Human Rights and Administrative Justice and the Ghana AIDS Commission developed a reporting system for HIV-related discrimination. Their Policy on Privacy and Confidentiality highlights the specific needs of people living with HIV, noting that “confidentiality became even more crucial in the wake of the Commission’s strategic focus on vulnerable populations, especially people living with HIV (PLHIV)” and vows to “set out in detail what ordinary Ghanaians [including PLHIV] who seek services from the Commission should expect from Commissioners and staff” (CHRAJ, 2015, p. 2). Yet current guidelines reviewed do not stipulate extending time limits based in terminal illness.</p>	<p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p> <p>Ghana AIDS Commission Act, 2016 ACT 938.</p> <p>Commission on Human Rights and Administrative Justice. 2015. Policy on Privacy and Confidentiality.</p>

Policy Recommendation	Addressed	Explanation	Source
<p>Any national policy on HIV/AIDS should also further sensitize PLWHA to their rights and strengthen their advocacy skills.</p>	<p>Fully</p>	<p>The Ghana AIDS Commission Act (2016) requires national educational strategies to inform the public and people living with HIV about human rights protections. Ghana’s 2016 90-90-90 Roadmap includes strategies for expanding peer education programs to promote understanding of human rights and advocacy among people living with HIV.</p> <p>Interviewees noted that the Models of Hope peer education training curriculum, developed by the Ghana Health Services and the National AIDS Control Programme, includes an educational component on human rights and the law. This national peer education program serves people living with HIV, training peer educators in basic constitutional provisions that protect individuals from discrimination.</p>	<p>Ghana AIDS Commission Act, 2016 ACT 938. National AIDS Control Programme. July 2016. Locate, Test, Treat, and Retain (L2TR) Ghana Campaign 90-90-90 Roadmap: Ending the AID Epidemic by 2030. GHS, NACP. 2013. Models of Hope: Facilitators' Training Manual.</p>
<p>There is a lack of legal requirements relating to safer sex practices education and quality assurance standards. To ensure effective implementation, a law reflecting the policies in this area must be enacted.</p>	<p>Partially</p>	<p>According to the 2016 National Strategic Plan, the Ministry of Education is responsible for implementing the Education HIV Sector Policy, which incorporates HIV education into the curriculum of teachers country-wide. While a number of strategies, policies, and programs to promote safe sex are in place, no law exists that requires dissemination of or quality assurance standards related to safe sex education.</p>	<p>Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020.</p>
<p>The government must develop a policy that facilitates the development of specific programs designed to inform children about the prevention of HIV transmission in schools.</p>	<p>Fully</p>	<p>Under the thematic area “Prevention of New Infections,” the Ministry of Education’s 2014 HIV and AIDS Policy includes the promotion of comprehensive education on HIV and AIDS, other STIs, and tuberculosis at all levels of the education system.</p>	<p>Ministry of Education. 2014. "HIV and AIDS Policy."</p>

Policy Recommendation	Addressed	Explanation	Source
Topic: Privacy and Confidentiality			
<p>There are no specific laws regarding the maintenance of privacy and confidentiality of HIV/AIDS status in Ghana. More specificity is required.</p>	Fully	<p>The Ghana AIDS Commission Act (2016) establishes the right to privacy for all people living with HIV, noting that “every person shall enjoy a right to privacy and confidentiality as regards the HIV status of that person” and protects against unwanted disclosure of HIV status (GOG, 2016, p. 14). According to the Act, written consent of the affected person is required for disclosure of HIV status with few exceptions. This language is similar to that of the 2013 National HIV and AIDS, STI Policy.</p>	<p>Ghana AIDS Commission Act, 2016 ACT 938. Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p>
<p>There are inadequate provisions to deal with the disclosure of HIV status to sexual partners and/or needle sharers where these persons show reluctance to attend counselling sessions or voluntarily disclose.</p>	Fully	<p>Ghana’s 2013 National HIV and AIDS, STI Policy and the 2016 Ghana AIDS Commission Act include similar language on disclosure of HIV status. They detail the circumstances in which a medical provider can disclose an individual’s status: where provided by law; to a healthcare provider who is providing healthcare to that person; for an epidemiological study, using non-identifiable data; and/or in a court order.</p> <p>In addition to those four circumstances, the National HIV and AIDS, STI Policy also notes that health providers may only disclose someone’s HIV status to their sexual partner if all of the following criteria are met: 1. the healthcare provider reasonably believes in good faith that the partner is at significant risk of transmission of HIV from the person; 2. the healthcare provider is satisfied that the PLHIV will not inform the partner; 3. the healthcare provider has informed the PLHIV of the intention to disclose their HIV positive status to the partner; and 4. the disclosure to the partner is made in person and with appropriate counselling or referrals for counselling.</p>	<p>Ghana AIDS Commission Act, 2016 ACT 938. Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p>

Policy Recommendation	Addressed	Explanation	Source
<p>The government must invest more in the education of the public to ensure that they understand the importance of confidentiality in communications. PLWHA must also be made aware of their rights to confidential proceedings and complaint mechanisms.</p>	<p>Partially</p>	<p>The Ghana AIDS Commission Act (2016) does not include measures to advance awareness of privacy and confidentiality protections related to HIV on behalf of the public or people living with HIV. Policy does, however, include awareness and education provisions for public sector employees—Ghana’s National HIV and AIDS, STI Policy recommending that government “ensure that training curricula for law enforcement, the judicial service, the Prison Service and teachers are strengthened” (GAC, 2013, p. 31). The same policy includes training on ethics and human rights, including consent and confidentiality for key populations. The Commission on Human Rights and Administrative Justice’s Policy on Privacy and Confidentiality also notes that “confidentiality and privacy issues will form part of staff training/induction programmes” (CHRAJ, 2015, p. 4).</p> <p>As noted above, the Ghana AIDS Commission Act requires national educational strategies to inform the public and people living with HIV about human rights protections, including confidentiality. Ghana’s 90-90-90 Roadmap (2016) includes strategies for expanding peer education programs to promote understanding of human rights among people living with HIV.</p>	<p>Ghana AIDS Commission Act, 2016 ACT 938. Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy. Commission on Human Rights and Administrative Justice. 2015. Policy on Privacy and Confidentiality. National AIDS Control Programme. July 2016. Locate, Test, Treat, and Retain (L2TR) Ghana Campaign 90-90-90 Roadmap: Ending the AID Epidemic by 2030.</p>
<p>The government must review its laws criminalising homosexuality so that this vulnerable group can also be protected by privacy laws.</p>	<p>Not addressed</p>	<p>While a number of national plans and strategies call for the protection and health programming of marginalized persons, including men who have sex with men, homosexuality remains criminalized in the penal code. Recent policies call for the protection and confidentiality of including men who have sex with men.</p>	<p>Government of Ghana. 1960. Criminal Offences Act 29. Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p>

Policy Recommendation	Addressed	Explanation	Source
<p>The government must develop more appropriate legal mechanisms to deal with breaches of confidentiality by healthcare professionals.</p>	<p>Fully</p>	<p>The Ghana AIDS Commission Act establishes that “an authorised officer... shall not (a) disclose HIV information to an unauthorised person; or (b) disclose the personal details of a person to a third party” (GOG, 2016, p. 14). In this context, an “officer” is anyone who provides healthcare or health-related services. The Act also outlines penalties in Article 39 for disclosure of health information. These penalties are enforceable through court orders and legal proceedings can be brought by public or private organizations on behalf of people living with HIV. As noted above, the Commission on Human Rights and Administrative Justice and the Ghana AIDS Commission have developed a reporting system for discrimination against people living with HIV; this system includes reports of confidentiality breaches by health providers.</p>	<p>Ghana AIDS Commission Act, 2016 ACT 938. Commission on Human Rights and Administrative Justice. 2015. Policy on Privacy and Confidentiality.</p>

Policy Recommendation	Addressed	Explanation	Source
Sexual and Wilful Transmission			
<p>A law should be passed on transmission that is both wilful and consensual (i.e. if someone engages with a people living with HIV and AIDS (PLWHA)² and is aware of their infection) – to ensure that PLWHA’s who take the necessary steps to precaution their partners are not penalized in the event of a transmission.</p>	Fully	<p>No new laws on HIV transmission have been developed since 2010. However, the 2013 National HIV and AIDS, STI Policy supports the application of existing standards of evidence, international best practice standards, and the range of standards included in the 1960 Criminal Offences Act (Act 29) and the 2007 Domestic Violence Act (Act 732) “to prosecute offenders for the wilful transmission of HIV” (GAC, 2013, p. 12). The policy notes that criminal law should not be applied to transmission in the following instances: “When there is no transmission or significant risk of transmission; when the alleged perpetrator does not know if he or she is living with HIV; when the person involved does not understand HIV transmission; when the person disclosed his or her HIV positive status to his or her sex partner, or has reason to believe in good faith that his or her status is already known to the partner; In the case of nondisclosure of HIV status because of fear of violence or other negative consequences of disclosure; when reasonable measures have been taken to reduce the risk of transmission, such as condom use; and when the parties involved previously agreed on a level of mutually acceptable risk” (GAC, 2013, p. 12).</p> <p>These guidelines are intended to protect people living with HIV who unintentionally infect their partners despite having taken precautions.</p>	<p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p> <p>Government of Ghana. 1960. Criminal Offences Act 29.</p> <p>Government of Ghana. 2007. Domestic Violence Act 732.</p>

² This term is taken from the 2010 legal environment assessment report’s recommendations. It is synonymous with people living with HIV (PLHIV).

Policy Recommendation	Addressed	Explanation	Source
<p>The law must be clearer regarding criminal offences, particularly wilful transmission and where consent to harm may be justified. The prison and correctional laws also suffer from a lack of certainty.</p>	<p>Partially</p>	<p>As noted in the 2010 legislative audit, Ghana’s Domestic Violence Act criminalizes wilful sexual transmission of HIV and other STIs (2007). Within prisons, Ghana’s National HIV and AIDS, STI policy notes, “the full range of HIV services should be provided to infected and non-infected persons who are incarcerated” but allows prisons to determine the full range of services to offer (GAC, 2013, p. 12). The National HIV and AIDS Strategic Plan notes that “laws and policies do not address the prevention of transmission of the virus between prisoners through the provision of condoms” (GAC, 2016, p. 14). This responsibility falls on the Ministry of the Interior.</p>	<p>Government of Ghana. 2007. Domestic Violence Act 732. Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy. Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020.</p>
<p>The policy should ensure the continued engagement with traditional and customary groups to ensure that cultural practices do not infringe on the rights of individuals.</p>	<p>Fully</p>	<p>Ghana’s National HIV and AIDS, STI Policy urges the Government of Ghana to “take steps to engage traditional authorities and relevant stakeholders to reform customary practices and acts of stigma and discrimination that lead to gender inequality or exacerbate HIV risk, such as female genital mutilation and scarification” (GAC, 2013, p. 12). The National HIV and AIDS Strategic Plan advances this policy by promoting “anti-stigma and discrimination campaigns... with traditional authorities and religious leaders to reduce HIV and AIDS stigma and discrimination” (GAC, 2016, p. 71). Ghana’s National Gender Policy (2015) also identifies areas of engagement with traditional and customary leaders to ensure gender inclusive and equitable HIV responses. The policy recognizes local customary leadership and seeks to achieve gender equity within customary and parliamentary systems.</p>	<p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy. Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020. Ministry of Gender, Children, and Social Protection. 2015. National Gender Policy.</p>

Policy Recommendation	Addressed	Explanation	Source
Criminalization			
<p>The law should ensure that no one, including people who are accused, charged, convicted, or guilty (but undiscovered) of a criminal offence, is prevented from gaining access to healthcare to treat an HIV infection. Those who have contracted HIV through a prohibited act should be able to seek help without fear of being reported, so a strict confidentiality policy should be enforced to ensure that any information obtained by a medical practitioner or counsellor relating to an offence cannot be used against the PLWHA to initiate criminal proceedings.</p>	Fully	<p>The Ghana AIDS Commission Act protects people living with HIV from being turned away from health services, prohibits health facilities from reporting patients for criminal activities, defines rights to non-discrimination, and guarantees that people living with HIV and key populations “shall enjoy the fundamental human rights and freedoms enshrined in the Constitution” (GOG, 2016, p. 13). The Act also guarantees that “a person shall not... discriminate against a person infected or affected by HIV or AIDS” (GOG, 2016, p. 13). These provisions provide legal guidance to reduce discrimination against people living with HIV and key populations in accessing health services—an initiative that is of particular importance considering the penalties outlined in Article 39. Confidentiality protections outlined above also apply.</p> <p>In addition, the National HIV and AIDS, STI Policy states that people who “have been infected with HIV through conduct considered or perceived to be illegal should be able to seek healthcare without fear of being reported to a law enforcement agency or official” (GAC, 2013, p. 9).</p>	<p>Ghana AIDS Commission Act, 2016 ACT 938. Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p>
Employment and the Workplace			
<p>There needs to be a clarification of whether pre-employment screening is sanctioned for the public services and private bodies.</p>	Partially	<p>As noted above, the 2013 National HIV and AIDS, STI Policy and the 2016 Ghana AIDS Commission Act prohibit public services or private bodies from requiring prospective employees to undergo pre-employment screening for HIV. In practice, however, the military and police continue to carry out pre-employment screening and testing. The Ghana AIDS Commission Act prohibits any employer from denying employment or terminating an employee based on HIV status.</p>	<p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy. Ghana AIDS Commission Act, 2016 ACT 938.</p>

Policy Recommendation	Addressed	Explanation	Source
The Labour Act needs to deal specifically with HIV/AIDS issues i.e., provision of a safe working environment.	Not addressed	The Labour Act has not been amended since it became law in 2003. It does not specifically address HIV.	Government of Ghana. 2003. Labour Act 651.
Public Health			
Policy should ensure that condoms are not merely affordable, but available and accessible to the poorest members of the population and key populations at higher risk of HIV exposure.	Fully	The goal of the National Condom and Lubricant Strategy (2016) is to ensure that condoms that meet quality-control standards are available when needed to all populations that are sexually active. This applies to the general population, those at greater risk for HIV, and key populations.	Government of Ghana. 2016. National Condom and Lubricant Strategy 2016-2020.
The law or policy should mandate that victims of sexual abuse have access to post-exposure prophylaxis nationwide.	Fully	The 2016 Guidelines for Antiretroviral Therapy in Ghana include the provision that all victims of sexual abuse, regardless of age or sex, should be offered post-exposure prophylaxis.	National AIDS Control Programme. 2016. "Guidelines for Antiretroviral Therapy in Ghana."
The law or policy should encourage the education of the general population on issues specifically relating to HIV/AIDS.	Fully	Current legislation does not specifically encourage HIV-related public education. Ghana's National HIV and AIDS Strategic Plan (2016), however, provides guidance on behaviour change interventions to improve knowledge about HIV among the general population. These activities include developing factsheets and gender-specific messaging. The strategic plan also calls for targeting secondary school students, teachers, and staff in HIV awareness and prevention efforts. Ghana's Sexual and Reproductive Health Policy for Young People also includes strategies for providing young people with "responsive information" related to HIV (GOG, 2017, p. 22).	Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020. Government of Ghana. 2017. Sexual and Reproductive Health Policy for Young People in Ghana.

Policy Recommendation	Addressed	Explanation	Source
<p>There needs to be a law that ensures people undergoing HIV testing are informed as to its consequences.</p>	<p>Fully</p>	<p>Ghana's National HIV and AIDS, STI Policy (2013) and the 2008 National Guidelines for the Implementation of HIV Counselling and Testing require informed consent for any medical intervention. The National HIV and AIDS, STI Policy states that informed consent must "provide full information on the medical intervention; include the right of a person to refuse or withdraw from a medical intervention at any time; relate specifically to the treatment or intervention required; be given voluntarily; be either verbal or written; and not be obtained through misrepresentation, coercion, or fraud" (GAC, 2013, p. 10).</p> <p>For adolescents, the policy requires that "medical consent for a child... must be obtained through a legal guardian, parent, partner, or next of kin. Where... a child is between the ages of 16 and 18 years, a medical practitioner may institute the necessary care and intervention in the best interest of the individual" (GAC, 2013, p. 11).</p>	<p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy. Government of Ghana. 2008. "National Guidelines for the Implementation of HIV Counselling and Testing in Ghana."</p>

Policy Recommendation	Addressed	Explanation	Source
<p>In order for persons to be made aware of their rights, those rights must be clearly delineated and accessible. There is some confusion surrounding the application of various laws and policies which inhibits their application. For example, there is inadequate reconciliation between the right of an individual not to have his sero-status disclosed, as it is a confidential communication, and the right of a person, such as a sexual partner, not to have harm inflicted upon him or her.</p>	<p>Fully</p>	<p>The Ghana AIDS Commission Act (2016) clarifies that people living with HIV have the right to a reasonable standard of health, informed consent, non-disclosure, privacy and confidentiality, insurance, retirement benefits, employment, education, stand for public office, vote, sexual and reproductive health, a family, marry, and bear children.</p> <p>As noted above, the Act outlines four circumstances in which an individual's HIV status can be disclosed: where provided by law; to a healthcare provider who is providing healthcare to that person; for an epidemiological study, using non-identifiable data; and/or in a court order.</p> <p>See the "Sexual and Wilful Transmission" section above for a list of circumstances in which criminal law should not be applied to cases of HIV transmission. These guidelines ensure that people living with HIV are not accused of wilful transmission if they unintentionally infect their partners despite having taken precautions.</p>	<p>Ghana AIDS Commission Act, 2016 ACT 938.</p>

Policy Recommendation	Addressed	Explanation	Source
Gender			
<p>The government must develop a law that mandates acts relating to prevention of mother-to-child transmission.</p>	<p>Fully</p>	<p>The government of Ghana does have national guidelines for prevention of mother-to-child transmission (PMTCT) that provide a family-centred curriculum and the 2016 Ghana AIDS Commission Act provides broad human rights protections and service mandates to women living with HIV, which implicitly includes pregnant women. Ghana's National HIV and AIDS, STI Policy also includes guidelines for the Government of Ghana to ensure that PMTCT programmes are integrated into routine antenatal services. The policy also recommends integration of psycho-social support, follow-up services, and nutritional support in PMTCT programming.</p> <p>The National HIV and AIDS Strategic Plan 2016-2020 further defines an integration strategy by outlining a four-part strategy for prevention of mother-to-child transmission of HIV. The strategy includes HIV and family planning integration; the provision for HIV testing services in all antenatal care facilities and outreach sites; on-site services or referral for treatment for HIV-positive pregnant women; and providing care and support for HIV-exposed infants.</p>	<p>Government of Ghana. 2014. National Guidelines for Prevention of Mother to Child Transmission.</p> <p>Ghana AIDS Commission Act, 2016 ACT 938.</p> <p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p> <p>Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020.</p>

Policy Recommendation	Addressed	Explanation	Source
<p>In order to protect women from HIV infection, an HIV/AIDS-specific law is required.</p>	<p>Fully</p>	<p>Though the Ghana AIDS Commission Act (2016) does not specifically mention women, it does extend civil and political rights to all people living with HIV, including women. The National HIV and AIDS, STI Policy does, however, recognize that gender inequalities undermine a national HIV response. It states, “unequal gender relations... call for a holistic approach for change in the nature of development” and calls for programs to “address barriers presented by masculine and feminine gender norms and stereotypes” (GAC, 2013, p. 26). The policy further asserts that “women have the right to HIV-related services that are non-coercive and respectful of privacy, confidentiality and autonomy—including the right to consent or refuse services without being required to consult any other person or family member” (GAC, 2013, p. 10).</p> <p>Ghana’s National HIV and AIDS Strategic Plan 2016-2020 notes that 60 percent of people living with HIV in Ghana are women, and that transactional sex, intergenerational sex, and multiple concurrent partnerships are common (GAC, 2016, p. 22). To mitigate these inequities, the strategic plan calls for focusing HIV testing services efforts and “Know Your Status” campaigns on young women.</p>	<p>Ghana AIDS Commission Act, 2016 ACT 938.</p> <p>Ghana AIDS Commission. 2013. National HIV and AIDS, STI Policy.</p> <p>Ghana AIDS Commission. 2016. National HIV and AIDS Strategic Plan 2016-2020.</p>

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Annex: Ghana AIDS Commission Acting Director of Policy and Planning Interview Brief

In 2017, HP+ conducted a follow-up assessment on the legal environment comparing the current environment with a 2010 legal environment assessment (LEA) conducted by the Human Rights Advocacy Centre. Its findings showed that since 2010, many of the policy and legal reforms recommended by the assessment were addressed by the Government of Ghana through the 2016 Ghana AIDS Commission Act. This act provides an updated charter to the Ghana AIDS Commission and includes components on privacy and non-discrimination for persons living with or perceived to have HIV.

Given this substantial change in the policy environment due to one law, HP+ interviewed Kwaku Osei, acting Director of Policy and Planning of the Ghana AIDS Commission, to gather information on how the 2010 LEA was used in the development of the 2016 Ghana AIDS Commission Act and what steps were taken by the Ghana AIDS Commission to achieve passage of the act. The following areas were highlighted in the interview.

To initiate the development of the 2016 Ghana AIDS Commission Act, the Ghana AIDS Commission organized advocacy meetings with the Ghanaian Parliament. These meetings were intended to discuss the 2010 LEA report's findings as well as commission recommendations for inclusion in the forthcoming act. The 2010 LEA report identified specific gaps in law and provided the needed evidence for a policy dialogue focused on the need for laws that specifically address the HIV epidemic.

When the decision was made to develop the 2016 Ghana AIDS Commission Act, the Ghana AIDS Commission planned and organized several consultation meetings with stakeholders including a 2014 partnership forum in which the draft law was presented for feedback. Civil society organizations and leaders within key populations and organizations of persons living with HIV were included in the forums. These meetings led to the Ghana AIDS Commission Act specifying the need for a national HIV fund, including rules specific to stigma and discrimination, and restructuring of the Ghana AIDS Commission board.

Throughout this process, the Ghana AIDS Commission noted how the 2010 LEA provided needed evidence for advocacy efforts. The commission noted that diverse stakeholders, including people living with HIV, need to be identified and engaged in developing effective law. They also learned that advocacy is a continuous process—Parliament needed to be continuously engaged to inform decision making and move passage of the act forward.

The interview with the Ghana AIDS Commission shows how LEAs can be used for advocacy and provide the necessary data for policy change, especially with regard to stigma and non-discrimination. Further assessments will need to be done to support ongoing policy implementation and development in the years to come.

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