

USAID AMPATH Uzima



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Stigma & Discrimination Policy (SOP)

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Introduction

Stigma is a powerful social process of devaluing people or groups based on a real or perceived difference—such as gender, age, sexual orientation, class, race, ethnicity, or behavior. Stigma is used by dominant groups to create, legitimize, and perpetuate social inequalities and exclusion (Ogden and Nyblade, 2005). Stigma often leads to discrimination, which is the unfair and unjust treatment of an individual based on that socially identified status.

Stigma and discrimination (S&D) are central issues in the fight against HIV because key populations—such as people living with HIV (PLHIV), men who have sex with men (MSM), sex workers (SWs), and people who inject drugs (PWID)—often face social judgment and isolation, violence, loss of employment, and limited access to services as a result of their HIV status, behavior, or perceived differences. Furthermore, stigma or the fear of stigma can discourage people from seeking HIV prevention information, testing, and treatment, thereby contributing to new infections and ultimately poor health outcomes. Stigma and discrimination also play a role in addressing other sexual and reproductive health issues. For instance, S&D can limit adolescents' access to contraception services, particularly unmarried youth, and may deter or delay clients from seeking care related to infertility, fistula, or spontaneous/induced abortion.

USAID AMPATH Uzima program is committed to a policy and practice shall not Stigmatize or discriminate any staff or client on the basis of race, color, sex, sexual orientation, gender identity, religion, ethnic origin, age, marital status, disability, HIV status or any other characteristic that is protected under the laws of Kenya

KEY DEFINITIONS

Stigma: unfavorable attitudes and beliefs directed towards someone or something. It may be in internal-self stigma or external – From others

HIV-related stigma: unfavorable attitudes and beliefs directed towards people living with HIV, their families and friends, social groups, and communities

Discrimination: the treatment of an individual or group based on prejudice or bias

- ✓ Includes the denial of basic human rights such as health care, employment, legal services and social welfare benefits
- **Human** – a human being regardless of sex or gender
- **Rights** - things to which you are entitled or allowed; freedoms that are guaranteed
- Human rights - the rights you have simply because you are human
- **Human Rights is**These are rights and freedoms that are inherent to the human being
- **Staff:** Those employees on a contract of employment, volunteers, temporary staff. The term will be used interchangeably with 'employees' in this document.
- **Associates:** People who do business with AMPATH, including Board members, contractors, partner organizations, visitors to AMPATH premises, and all who come into contact with children in the context of a relationship with AMPATH
- **Policy** - A document setting out an organization's position and guidelines on a particular issue set within the ambit of the law.

Stigma and Discrimination in Health Care Settings

- The following are types of stigma and discrimination that can occur:
 - ✓ Refusing to provide treatment, care, support to PLHIV
 - ✓ Providing poor quality of care for PLHIV
 - ✓ Breaking confidentiality
 - ✓ Providing care in specialized settings *e.g., CCC can further stigmatize, segregate PLHIV*
 - ✓ Using infection control procedures (e.g., gloves) only with clients thought to be HIV-infected, rather than with *all clients*
 - ✓ Advising or insisting PLHIV undergo procedures, (e.g., abortion or sterilization) not routinely suggested for women who are not HIV-infected

Impact of stigma on services

The consequences of stigma and discrimination are wide-ranging, and these limit access to HIV testing, treatment uptakes and other access to other HIV services. HIV related stigma and discrimination do not only hinder the chances to prevention options- for early detection and treatment; it increases vulnerability to exposure and possibly death in most cases of concealments of HIV positive status. In summary, it deters disclosure and limits access to services, Fuels new HIV infections, can lead to social isolation, Women may avoid use of ANC services, HIV testing, disclosure and accepting PMTCT interventions as a result of stigma

USAID AMPTH Uzima program will focus on the following strategies in order to reduce stigma and discrimination, Increase Demand for, Access to, and Use of Services

Guiding Principles

When implementing a case management process within an OVC program, the following principles should guide the practice of all actors engaged in the process and be reflected within all decisions made about a case.

- **Do no harm.** Give thoughtful consideration to how your actions will affect the children and households that you serve.
- **Prioritize the best interests of the child.** Within OVC programming it is good practice and also reflects international and national rights-based legal and policy frameworks to have all decisions and related actions involving the child's welfare be guided by the best interests of the child.
- **Do not discriminate.** All individuals regardless of race, sex, religion, sexual orientation, or health status should be treated with respect, recognizing the dignity and worth inherent in all humans.
- **Foster trust and privacy within the client-Case Worker relationship.** The alliance between clients and Case Workers is critical for clients to achieve their goals. Both case managers and Case Workers should be sensitive to issues that may lead to stigma (e.g. HIV status, single mother, child bride) and respect their privileged relationship with clients by keeping all information confidential.

Policy Statement

AMPATH is a leading local agency dedicated to the provision of care and support for orphans and vulnerable children in parts of Nyanza, Western, and North Rift regions of Kenya. In all matters regarding children and their families, USAID AMPATH Uzima program is committed to upholding a policy and practice that it shall not stigmatize or discriminate any staff or client on the basis of race, color, sex, sexual orientation, gender identity, religion, ethnic origin, age, marital status, disability, HIV status or any other characteristic that is protected under the laws of Kenya

AMPATH recognizes that stigma and discrimination free environment is every employee's responsibility and takes every possible precautionary measure to ensure this happens.

Policy Goal/Scope

Policy Goal

The overall goal of this Policy is to reduce stigma and discrimination, increase demand for, Access to, and use of services

Scope of Application

This Stigma and Discrimination Policy applies to all staff and program associates.

- a) Staff includes -
 - All current and prospective staff,
 - Job applicants,
 - Interns,
 - Apprentices and volunteers,
 - Casual and seasonal workers in all workplaces
- b) Associates include:
 - All contractors, e.g., consultants,
 - All Board Members,

- All partners including local community-based partners and
- All Guests and Visitors

Overall strategies of dealing with stigma and discrimination

The program will focus on stigma and discrimination -free health facilities/ service delivery points, including:

- Routine training and support for all staff on the provision of stigma and discrimination -free services
- Protecting client confidentiality -Protection of client/beneficiary rights related to informed consent and non-disclosure
- Integrating of services to avoid unnecessary stigma.
- Involving PLHIV in service provision-e.g. Peers
- Encouraging male involvement
- Engaging peer and community support through outreaches, defaulter tracing and support groups
- Improve access to legal and social justice and protection from stigma and discrimination
- Implement legal/human rights literacy programs for PLHIV that include HIV-related legal services & alternative forms of dispute resolution

Strategies for Individual Health Care Workers/service providers

- Serve as role models
- Identify local HIV-related stereotypes and discrimination and address misconceptions at appropriate times during service delivery
- Advocate for client's rights (healthcare and support)
- Provide counselling and education for PLHIV

3. Strategies at Community level

a) 1.HIV education

- ✓ Educate communities about HIV interventions
- ✓ Create demand of service through referral systems

b) Community awareness

- ✓ Role of men and women in PMTCT /Care and treatment
- ✓ Role of the Greater community

c) Community Partnerships

- ✓ Build partnerships with religious, educational, social, civic organizations and other stakeholders to support prevent and address stigma issues.

PATIENT/CLIENTS RIGHTS

The key client /patient rights include:

1. Right to access to health care and to receive emergency/ first aid treatment in any hospital.

- In case of emergency situations, irrespective of whether the patient is able to foot the bill or not, the health care professionals/providers should administer first aid treatment so as to manage and/or restore the health of the patient, pending further and/or specialized medical attention.

2. 16. Right to be respected and protected from discrimination

- Every patient has a right to receive treatment from a health professional/worker or health provider of one's choice and not to be discriminated on the basis of one's race, pregnancy, marital status, health status, culture, customs, ethnic or social origin, colour, disability, religion, conscience, belief, culture, dress, language, sex, age or birth

3. Right to choose a health care provider.

- Every adult person of sound mind is entitled to a health care provider of one's choice who is registered, identifiable and qualified to provide treatment for the particular ailment or illness as long as that choice is acceptable in medical and ethical standards.

6. Right to receive affordable palliative care for especially for the terminally ill.

- Every person suffering from any terminal illness or any incurable disease has a right to receive affordable, effective and pocket friendly palliative care and services

7. Right to confidentiality of treatment information.

- All clients **have** right to privacy, confidentiality and the right to the highest attainable standard of health which includes the right to health care services.

8. Right to be provided for with high standard of rehabilitation services.

- Every adult person of sound mind [or if the person is under the age of 18 (a minor), the minor **MUST** be accompanied by an adult member of the family] has the right to receive treatment and undergo rehabilitation which must be expressly explained to, by the health care professional in a language that the person understands, to enable the person to understand the procedure, the expectations of the rehabilitation and also the resultant consequences.

9. Right to receive and to be provided for dignified treatment

- Displayed by health care professionals/workers/services of one's choice who should exercise patience, empathy and tolerance while according dignified treatment to the patient.

10. Right to seek a second medical opinion.

- Every adult person, patient or client has the right to seek a second medical opinion regarding his diagnosis, procedures, treatment and/or medication from any other qualified health professional of one's choice, who should be qualified in the respective field and have more years of experience than the previous health professional. The person must inform the previous doctor in writing of his intention to seek the second opinion for purposes of facilitating the patient's records to the receiving doctor.

11. Right of a health care provider to provide continuous treatment.

- Where a patient has been transferred from one hospital to another for advanced treatment or for whichever other reason to be provided in writing, the receiving hospital must accord the patient the treatment, surgery, rehabilitation and/or counseling that is of high and acceptable medical standards.

13. Right to lodge a complaint about health care professional/services.

- In a situation where, one is dissatisfied with the medical services offered, an avenue of having the complaint fully investigated and the investigation report should be made available.

14. Right to be provided for with counseling services

- Every person shall have the right to receive counseling without any sort of discrimination whatsoever, coercion or deceit in all areas relating to one's health including but not limited to matters of reproductive health, rehabilitation centres, terminal illness, HIV or AIDS, nutrition and teenage pregnancies

15. Right to be accorded special treatment

- In addition to the right of health care services, a provision of persons with special needs who require special treatment shall be provided and the special needs are in the cases of new born babies, children, maternal and reproductive health care, pregnant women, the mentally incapacitated and mentally handicapped, the vulnerable groups (e.g. the uneducated and ignorant), disabled, HIV and AIDS patients and terminally ill patients.

Legal and regulatory framework

This policy is founded on a number of existing legal, regulatory and policy frameworks. These legal and policy frameworks will support the implementation of this policy. They include both national statutes and international instruments. In Particular, the policy is anchored in the following:

- Constitution of Kenya 2010,
- Occupational safety and health act 2009,
- Access to Information Act,
- The Occupational Safety and Health Act, 2009.
- The Work Injury Benefits Act,
- 2007, HIV & AIDS Prevention and Control Act, 2006,
- Sexual Offences Act,
- Children Act 2001,
- The National Policy on Orphans and Vulnerable Children
- Persons with Disabilities Act
- The Basic Education Act, 2013
- The Industrial Property Act,
- Health Act, 2017,
- The PUBLIC HEALTH ACT, 2017
- The Basic Education Act, 2013

- African Charter on Human and Peoples Rights (ACHPR)
- African Charter on the Rights and welfare of the Child (ACRWC)
- United Nation Convention on the Rights of the Child, 1989

The Constitution of Kenya

The Constitution of the Republic of Kenya is the supreme law of Kenya and lays the foundation for all other national laws. It addresses matters relating to equality, freedom from discrimination and universal access to services as below:

- a) Chapter 4 on the Bill of Rights, Article 27 provides for equality before the law, right to equal protection and equal benefit. The state shall not discriminate directly or indirectly against any person on any grounds, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- b) Article 31 and 43 on the right to privacy, confidentiality and the right to the highest attainable standard of health which includes the right to health care services.
- c) 6 (3) provides for national state organs to ensure reasonable access to its services in all parts of the Republic. This implies that all public servants working at National Government and County Governments workplaces need to have access to HIV related services.
- d) Fourth Schedule, Article 185(2), 186(1) and 187(2) on distribution of functions between the National Government and County Governments.

PUBLIC HEALTH ACT, 2017

- Act seeks to protect, respect, promote and fulfill the health rights of all persons in Kenya to the progressive realization of their right to the highest attainable standard of health, including reproductive health care and the right to emergency medical treatment.
- The Act seeks to protect, respect, promote and fulfill the rights of children to basic nutrition and health care services contemplated in Articles 43(1) (c) and 53(1) (c) of the Constitution, and Third, that it seeks to protect, respect, promote and fulfill the rights of vulnerable groups as defined in Article 21 of the Constitution in all matters regarding health
- The act mandates that every person who knows or believes that they suffer from a venereal disease to seek for medical attention and treatment so as to prevent transmission to unborn children.

CHILDRENS ACT 2001

- The Act makes provisions for the rights of the children.
- Some of the important rights that are relevant to HIV include right to non-discrimination, right to parental care, right to education, right to health care, protection from child labour, protection from harmful cultural rites, protection from sexual exploitation, right to privacy and best interest of the child.
- **Section 4 /4** – In matters of procedures affecting the child, the child shall be accorded an opportunity to express his/her own opinion and that opinion shall be taken into account as may be appropriate taking into account the child's age and level of maturity.

- **Penalties for Defilement** – Less than 11years – life imprisonment. 12 – 14 years – not less than 20years imprisonment. 15 – 18 years – not less than 15years imprisonment

The National Policy on Orphans and Vulnerable Children

- The National Policy on Orphans and Vulnerable Children seeks to *inter alia* protect orphans and vulnerable children from all forms of abuse, exploitation and discrimination. It expressly recognizes the need for gender sensitivity and inclusiveness in the development and implementation of all responses to orphans and vulnerable children. The policy acknowledges that the girl child is more vulnerable and susceptible to abuse and to address this, the policy underscores the need to adopt deliberate affirmative action measures aimed at enhancing protection to the girl child.

The Basic Education Act 2013

- This is an Act of Parliament to give effect to Article 53 of the Constitution of Kenya, 2010 and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes. Section 18(l) of the Basic Education Act, 2013 provides that it is the responsibility of the Government to coordinate with all relevant agencies to ensure that all the barriers to the right to quality education are removed and to facilitate realization of the right to education within the county; It adds under Section 18(m) to put measures in place to ensure all children and youth of school going age within the county attend and stay in to complete basic education. The Cabinet Secretary is responsible and shall implement the right of every child to free and compulsory basic education.

Persons with Disabilities Act

- This is an Act of Parliament to give to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the National Council for Persons with Disabilities; and for connected purposes

Data Protection Act, 2019

- Act was enacted so as to give effect to Article 31 (c) and (d) of the constitution as well as establishing the office of the data protection commissioner
- The Act regulates the collection and processing of data in Kenya. It also introduces a fine for persons who collect and process data in case of an infringement. This act ensures that the data relating to PLHIV are well protected so as to ensure confidentiality.

Sexual Offenses Act, 2003

- This Act makes provision for sexual offences rape, sexual assault, defilement, child pornography and incest.
- Address penalties for defilements too.

Prevention against Domestic Violence Act, 2015

- The Act gives provision for protection of women and children against domestic violence. It ensures that expectant mothers, WLHIV and children are protected from any form of domestic violence that may endanger their lives.

HIV/AIDS Prevention and Control Act, 2006

- This is a HIV-specific legislation that ensures the rights of PLHIV and those affected by HIV are protected
- The legislation provides for measures for the prevention, management and control of HIV and AIDS; protection and promotion of public health and for the appropriate treatment, counseling, support and care of persons living with or affected by HIV or at risk of HIV. The Act makes provisions that include (among others):
- HIV and AIDS education and information where the Government is required to promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign
- Prohibition against compulsory testing where the Act prohibits and makes it an offence to compel another person to undergo an HIV test. Further, the Act prohibits compulsion to undergo an HIV test as a precondition (or for the continued enjoyment of) employment; marriage; admission to school; entry or travel out of the country; provision of health care, insurance cover or any other services. **Section 14**
- Provision for informed consent prior to HIV testing as provided for **under section 14** of the Act.
- Pre-test and post-test counseling where every testing center is required to provide pre-test and post-test counselling to a person undergoing an HIV test and any other person likely to be affected by the results of such test. **Section 18**
- Provision for protection of HIV test results as provided for **under section 18 of the Act.**
- Provisions for privacy and confidentiality as provided for under **sections 20 – 23 of the Act.**
- Provisions prohibiting discriminatory practices at the workplace, school, insurance, travel, burial, health institutions, among others.
- **Section 32** of the Act provides that no educational institution shall deny admission or expel, discipline, segregate, deny participation in any event or activity, or deny any benefits or services to a person/child on the grounds only of the person's actual, perceived or suspected HIV status.
- Provisions regulating HIV-related research as provided for under **sections 39 – 42 of the Act.**

The Employment Act, 2007

- This is an Act of Parliament that declares and defines the fundamental rights of employees, provides for basic conditions of employment of children, and to provide for matters connected with the foregoing. The Employment Act provides for the nature and conditions under which children can work. Section 56 prohibits employment for a child aged below 13 years, while recognizing that children aged between 13 and 16 years can be employed to do light work in as long as the work is not harmful to their health or prejudice the child from attending school or education training programs. But they cannot have a written contract or attend to any machinery.