



evidence-based policy in development network



Research-based evidence in African policy debates

Case study 2
Uganda's HIV/AIDS Prevention and Control Bill

Emma Broadbent

June 2012

Acknowledgements

The author would like to thank Development Research Training for their help during the research process in Kampala, as well as the Evidence-based Policy Development Network and the Research and Policy in Development programme at the Overseas Development Institute for their ongoing support.

Contents

Contents	i
Abbreviations	ii
About this study	1
Introduction	2
Key findings	2
Methodology	3
1 Setting the scene	5
1.1 HIV/AIDS in Uganda	5
1.2 The HIV/AIDS response: the socio-political backdrop	6
1.3 HIV/AIDS and research-based evidence	9
1.4 The HIV/AIDS Prevention and Control Bill 2010	10
2 Arguments and evidence: the government of Uganda	11
2.1 Who supports the Bill?	11
2.2 Rationale for HIV/AIDS legislation	12
2.3 Explaining the Bill's provisions	13
3 Arguments and evidence II: NGOs and civil society	16
3.1 Criticisms of the Bill: overview	16
3.2 Human rights, discrimination and stigmatisation	18
3.3 Provisions in the Bill	19
3.4 Effect on the HIV rate	21
3.5 Omissions and alternatives	22
3.6 The Committee's response	22
4 The role of donors, researchers and the media	23
4.1 Donors	23
4.2 The research community	24
4.3 Media	25
5 Characterising the role of research-based evidence in the debate	26
5.1 Lack of communication of research-based evidence	26
5.2 Perceived lack of evidence base	27
5.3 Difficulties in using evidence to influence and persuade	28
5.4 What constitutes 'research' and 'evidence': public opinion as evidence?	28
5.5 Prominence of the (international) human rights discourse	29
5.6 The indirect role of research-based evidence	30
5.7 Missed opportunities by the research community and the media	30
6 What can be concluded from this case study?	32
7 Bibliography	34
Annexe: List of interviewees	37

Abbreviations

AIC	AIDS Information Centre
AIDS	Acquired Immune Deficiency Syndrome
ARV	Anti Retroviral
CBO	Community-based Organisation
CEDAW	Convention for the Elimination of All Forms of Violence against Women
CSO	Civil Society Organisation
EBPDN	Evidence-based Policy in Development Network
HIV	Human Immunodeficiency Virus
IDI	Infectious Diseases Institute
JCRC	Joint Clinical Research Centre
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MP	Member of Parliament
MSM	Men Who Have Sex with Men
MSPH	Makerere University School of Public Health
NACWOLA	National Coalition of Women Living with HIV/AIDS
NAFOPHANU	Network of People Living with HIV in Uganda
NDP	National Development Plan
NGO	Non-governmental Organisation
NRM	National Resistance Movement
OSI	Open Society Initiative
PEPFAR	President's Emergency Plan for AIDS Relief
PLWHA	Persons Living with HIV/AIDS

About this study

The link between research and policy, which is increasingly occupying the interest of researchers, policymakers and practitioners alike, is a complex one. Policy is framed by the discursive context in which it is made: the wider debate in which a policy is positioned effectively determines it. In order to probe this discursive context and the role of research-based evidence in informing it, the Politics of Research-based Uptake in African Policy Debates research project, jointly funded by the Mwananchi programme and the Evidence-based Policy in Development Network (EBPDN) at the Overseas Development Institute (ODI), investigates the role of research-based evidence in four policy debates in Africa. The exploratory research is based on information gathered on four policy debates in four case study countries – Ghana, Sierra Leone, Uganda and Zambia – during the period October 2010–November 2011.

Policy debates offer an entry point into the wider discursive practices at play within policymaking, and therefore a wider analytical snapshot than is made possible by focusing on the impact of a particular piece of research or tracing the formation of a particular policy, as other studies have done. Each case study aims to probe the 'politics' behind the role of research-based evidence in policy debates in Africa by posing the question: What factors affect the use of research-based evidence in African policy debates? It is not, however, the aim of this research to arrive at an explanatory model of research uptake in Africa; rather, the study is explorative and aims to provide an initial attempt to conceptualise 1) the role of research-based evidence in African policy debates; and 2) factors that account for or help to explain this role. Any answers will need to integrate initial reflections on how policy debates in Africa can themselves be characterised.

This study is informed by the Research and Policy in Development (RAPID) programme's work over the past 10 years. RAPID has systematically tried to identify how best to support and promote research-based evidence approaches for civil society actors to influence the policy process, guided by the belief that a policy informed by research-based evidence is better – and more effective – than one which is not. One of the central tenets of RAPID's approach to policy influence is the recognition that political context matters when it comes to policymaking and, subsequently, so does whether, which ('whose?') and how research-based evidence is used. The RAPID approach holds that attempts to influence policy using research-based evidence must incorporate this insight in order to be able to best tailor their strategies to political realities.

This study is conceived of as a way of formulating action in Africa based on the realities of how policy debates are conducted and the role of research-based evidence in these, by potentially 'going with the grain' to support policy influence for pro-poor outcomes in the African contexts described. An understanding of the current state of policy debates in Africa is important, as it reflects national capacity to engage in deliberative dialogue, to construct logical arguments and to gather and use relevant and credible information to employ in critical analysis. In Africa, where political institutions do not enjoy the precedent they do in many western countries, and where educational levels are low, the notion and practice of policy 'debate' is likely to face challenges. Policy debates do not occur in isolation from the policy process: they provide a window into the 'politics' of policymaking.

Introduction

This paper presents the findings of the second EBPDN case study investigating the role of research-based evidence in policy debates in Africa. Overall, the research project is designed to inform subsequent thinking on how best to support evidence-based approaches in developing countries by 'going with the grain' with the reality of policymaking in Africa, rather than seeking to change the existing system from the outset.¹ The first task in this, however, is to establish what the 'grain' is in the context of evidence use and presentation in a policy debate.

This case study considers the debate surrounding Uganda's HIV/AIDS Control and Prevention Bill, a Private Members Bill (PMB) tabled in Parliament in May 2010. The debate is therefore a legislative one, primarily concerning parliamentarians and their engagement with civil society organisations which largely oppose the Bill on human rights grounds.

The case study is organised in seven sections. Section 1 offers an overview of the legislative debate under consideration and a description of the HIV/AIDS Prevention and Control Bill 2010, as well as brief introduction to HIV/AIDS in Uganda, the government of Uganda's response and the status of research in the HIV/AIDS sector. Sections 2 and 3 present the arguments of the main protagonists in the debate – the HIV/AIDS and Related Matters Committee and the numerous civil society groups that oppose parts of the Bill. Section 4 considers the arguably limited direct role in the debate of donors and the wider international community, the research community in Uganda and the media. Through an analysis of publicly and privately articulated arguments offered by the principal protagonists, Section 5 attempts to characterise the role of research-based evidence in the debate, and Section 6 endeavours to capture the dynamics of the debate in order to explain this role with reference to the actors discussed in Section 4. Section 7 presents the conclusions to be drawn from this case study.

Key findings

The debate surrounding the HIV/AIDS Bill must be understood as firmly embedded in the wider engagement of the National Resistance Movement (NRM) with HIV/AIDS as a national policy health issue and the subsequent politicisation of its response, which also entails the instrumental use of evidence from the numerous bodies responsible for data collection and analysis. Importantly, the debate is framed by a concern for 'evidence', with parties keen to establish the legitimacy of their arguments by emphasising evidence and research. Non-governmental organisations (NGOs) in particular – perhaps informed by donor research on policy influence – have structured their approach to advocacy in order to communicate their arguments in what is thought to be a palatable way for their target audience – principally the HIV/AIDS and Related Matters Committee and the Social Services Committee.

This case study concludes that the following factors account for the role of research-based evidence in this debate:

First, *different policy objectives* have affected how and what evidence is used: the prevention emphasis has led to appeals to evidence that are different to those arising from the human rights-focused objectives of some NGOs. This has led to the use of arguments and supporting evidence which are arguably not 'like-for-like'. The quality of the debate and the use of research-based evidence would no doubt improve with the involvement of an external arbiter to ensure the debate did not stall.

Second, there is arguably a tendency among some actors in the debate to refrain from communicating evidence as a result of the *perception that some positions are immovable*. Indeed, arguments in the debate may well be characterised by 'position-based evidence

¹ See Kelsall (2008) for a detailed discussion of 'going with the grain' in African development.

making' which is subject to considerable influence from political and financial incentives. While research has informed the diagnosis of problems (e.g. HIV rates among commercial sex workers), it has been far more limited with regard to informing solutions. Civil society's opposition focuses on advocating for human rights, which can be attributed to the influence of donors and the wider international community. Meanwhile, the HIV/AIDS and Related Matters Committee too seems to be subject to the need to 'toe' a particular donor 'line': the US Global AIDS Act requires that organisations receiving US anti-AIDS funding have a policy to explicitly oppose and bar the use of funds to promote or advocate the legalisation or practice of prostitution. In addition, the Bill itself could be said to be an attempt to attract and secure HIV/AIDS funding from the US. These issues also relate to the perceived role of discriminatory attitudes, assumptions, beliefs and cultural values which shape perceptions of persons living with HIV/AIDS (PLWHA), particularly sex workers.

The third factor is *limited capacity and resources to communicate evidence*. A major question relates to why the HIV/AIDS and Related Matters Committee has not presented its evidence or arguments in a more proactive, systematic way. This case study cannot explain definitively the absence of any comprehensive statement presenting the Committee's evidence, or overall justification, for the Bill. One explanation – offered by the Committee chair – is that it lacks the resources to do so. While this is not a particularly enlightening explanation, it does point to the related issue of the limited research capacity of parliamentary committees, which are not accustomed to commissioning or using evidence 'outside' the confines of Parliament. It can also be explained by a perceived need to keep arguments 'simple' (e.g. Carden, 2009) owing to a perceived lack of capacity in the country to understand evidence – whether this is accurate or not. This arguably leads to a 'dumbing down' (Mendizabal, 2010) of the debate, leading to only cursory references to research-based evidence.

Given the lack of communication from the Committee regarding the Bill's rationale, the fourth factor is the subsequent *lack of scope for civil society to scrutinise or critically engage with evidence*. The Committee's failure to communicate its evidence – despite possessing a number of internal documents – has meant civil society has had little opportunity to scrutinise or analyse anything other than the Bill itself. Unless the Committee produces its evidence for public consumption, the content of research-based evidence in the public discourse surrounding the HIV/AIDS Bill will remain patchy.

The final factor used to explain the role of research-based evidence in the debate concerns one *type of evidence* which plays an instrumental role in the arguments of both the supporters and the opponents of the Bill: the value placed on public participation and opinion. In terms of gathering what is thought to be research-based evidence, the role of public opinion and public voice is valued highly, particularly by the government, which (at least nominally) views the use of public opinion as a way of creating a 'Ugandan' law. Indeed, donors and the wider international community favour activities which promote participation and increase voice; the question is whether this is an effective way of ensuring a debate is evidence based. Further, as with all participatory approaches, we need to ask 'whose opinion counts?'

Methodology

The purpose of this case study is to generate evidence on the role of research-based evidence by pursuing an innovative line of enquiry which considers a polarised policy debate and asks the following questions:

- 1 What arguments are being made and by whom, and how they are communicated?
- 2 How can the role of research-based evidence – or other forms of evidence – be accounted for in these arguments?

In Uganda, the debate surrounding the HIV/AIDS Prevention and Control Bill was selected for case study because of its highly controversial nature, the attention given to it in the national and international media and its direct involvement of parliamentarians. In addition, the bulk of

the research was conducted immediately prior to the national elections in 2011 and in the midst of a controversy regarding the proposed 'Anti-Homosexuality' Bill. This gave the debate on the HIV/AIDS Bill added political charge.

The manner in which the case study was undertaken is explorative: there is no existing theory this research is attempting to prove or disprove (see Thomas and James, 2006). The findings are therefore presented tentatively, based on recognition that there is much in this paper that may require revision, further reflection and greater input from the parties concerned. Every effort was made to contact relevant parties, but inevitably the research process contained gaps.

The research undertaken for this case study occurred during the period October 2011–January 2011, including a 3-week trip to Kampala in December. The research methodology consisted of the following:

Review of media items

Media articles appearing between September 2007 and January 2011 were collected online and in hard copy during the period October–January 2011, with searches focusing largely on Uganda's most prominent newspapers – The Monitor, New Vision and The Observer. Searches were undertaken for media items relating to the following:

- 1 The HIV/AIDS Bill;
- 2 The HIV/AIDS situation in Uganda;
- 3 Political developments and political commentary (e.g. policy commitments, party politics);
- 4 Research entities, tertiary education (e.g. Makerere University).

Review of literature

The following literature was collected and reviewed (in order of importance):

- 1 Statements of positions regarding the HIV/AIDS Bill (including drafts of the Bill, published and unpublished literature);
- 2 Published literature on the political economy of HIV/AIDS in Uganda;
- 3 Literature on the relation between research and policy in Uganda;
- 4 Literature on the HIV/AIDS situation in Uganda.

Interviewees and informants

The research was informed by 28 individuals in total. Formal face-to-face interviews were conducted with 24 interviewees in Kampala (22) and London (2). A further 2 interviews were conducted by phone, with the remaining 3 individuals providing information via email. The majority of interviews (19) were semi-structured, with the remaining 6 unstructured. Email responses were obtained through a set of structured questions. Of the total, 15 preferred to remain anonymous. In a number of other instances, interviewees asked that particular comments not be attributed to them.

Interviewees and informants fell into the following categories: international/national NGOs (8); research community (6); government (politician/civil servant); (3); PLWHA (4); media (2); lawyers (2); doctors (2); and donor representatives (1).

Given the nature of the research and the key informants, the majority of interviews (19) were conducted in naturalised working environments (offices, hospitals). There is therefore a strong element of naturalistic observation incorporated into the case study.

1 Setting the scene

1.1 HIV/AIDS in Uganda

The fight against HIV/AIDS has been a hallmark of the NRM party, which governs Uganda as a de facto one-party state. This section examines the links between the government's narrative and HIV/AIDS, as well as introducing the Bill itself.

The African success story

Uganda is heralded as the archetypal African 'success story' in tackling the HIV/AIDS epidemic (Mohiddin and Johnston, 2006; Youde, 2007), as a result of the government's ability to set clear goals for itself, ensure cross-government commitment to the eradication of the virus and adapt health strategies according to capacity gaps. A major characteristic of Uganda's fight against HIV/AIDS, and a hallmark of President Museveni's government, has been to attract and secure donors into what has been deemed a 'vision' (Mohiddin and Johnston, 2006).

Since the first reported AIDS cases on the shores of Lake Victoria in the early 1980s, where it had been known in villages as 'Slim' (Serwadda et al., 1985), HIV/AIDS has proved to be one of Uganda's most significant development challenges. The NRM government's response to the epidemic is characterised by an emphasis on prevention, which has primarily consisted of numerous communication and behaviour change campaigns, such as the 'zero-grazing' message which promoted monogamy within relationships; counselling for PLWHA in order to reduce the risk of transmission; and the promotion of condom use, despite a significant amount of resistance from religious groups, which have preferred to support abstinence.

The received wisdom on Uganda's successful handling of the epidemic suggests a decrease in national prevalence levels from 21.1% to 9.7% in the period 1991–8 across 15 antenatal clinic sites (Low-Beer and Stoneburner, 2004). However, despite well-cited evidence suggesting that the rate had declined even further by 2002, recent indications by the Uganda AIDS Commission (UAC) suggest HIV prevalence has stagnated over the past five to nine years at a rate of between 6.1% and 6.5% and may be rising in some parts of the country or specific population groups, with rates as high as 10% in urban locations (UAC, 2009a) and highest for women aged 30–4 (Wabwire-Mangen et al., 2009). However, note that HIV/AIDS statistics have been seen as a tool used by the government to gain donor favour (see Section 1.3).

Research into modes of transmission

Research undertaken by the UAC, such as the influential UAC-commissioned Modes of Transmission studies, is a vital source of information on the status of HIV/AIDS in Uganda. Current indications suggest sexual transmission is the main transmission mechanism of HIV, accounting for 76% of new infections (UAC, 2009a). The UAC has sought to explain this, as well as the apparent stagnation in the HIV rate, by referring to three principal factors which hamper prevention efforts:

Complacency

There is reportedly a 'complacency' among the population resulting from both a belief that anti-retrovirals (ARVs) can cure HIV/AIDS and the 'normalization' of HIV/AIDS in some communities. This is thought to have led to a level of disengagement from preventative behaviour (Wabwire-Mangen et al, 2009), such as condom use. In general, available evidence suggests consistent condom use is very low among Ugandans. For instance, although condom use at last sex with casual sex partners increased from 39% to 48% among women between 2001 and 2005, it decreased from 61% to 53% among men (Wabwire-Mangen et al, 2009).

Commercial sex workers

The 2009 Modes of Transmission report (Wabwire-Mangen et al., 2009) suggests commercial sex workers, their clients and the partners of clients account for 9% of new infections. While sex workers (0.3% of the population) account for less than 1% of total infections in Uganda, the rate for clients of sex workers (1.5%) is predictably higher, at 7%. Given that these two represent very small population groups, their contribution to the overall HIV/AIDS rate is considered high.

Transmission within couples

The high rate of HIV transmission within couples has received a significant amount of attention and is thought to be a priority prevention concern. Incidence modelling has revealed that, of all new HIV infections in adults (15–49 years) in 2008, 43% were among people in discordant monogamous relationships² in the past 12 months, and 46% were among persons reporting multiple partnerships and their partners (Wabwire-Mangen et al., 2009). Of overall infections, 37% have been attributed to multiple partnerships and 35% within discordant monogamous couples (ibid.). A concurrent concern is therefore about disclosure to partners, supported by evidence that the number of spouses in discordant relationships who are aware of their spouse's HIV status is extremely low: a secondary analysis of the 2004/05 Uganda HIV Sero-behavioural Survey suggested a figure of only 9% (Bunnell et al., 2006); a study at Mulago Hospital, Kampala, suggested a slightly higher figure of 12% (Baingana et al., 1995). Other perceived risk factors include an uncircumcised foreskin, engaging in cross-generational sex, mother-to-child transmission and alcohol and drug use (Wabwire-Mangen et al., 2009).

1.2 The HIV/AIDS response: the socio-political backdrop

Understanding the nature of Uganda's political arrangements is central to an understanding of the HIV/AIDS discourse in the country. Uganda is a highly differentiated society with numerous linguistic groupings,³ religious affiliations and regional differences. HIV/AIDS has been used – at least inadvertently – as a tool of national reconciliation following years of divisive conflict and dictatorships. The NRM government evolved from the National Resistance Army, a group of bush fighters who overthrew President Milton Obote in 1986 following five years of civil war. In the 25 years that followed, Museveni has presided over a 'presidentialist' (Rubongoya, 2007) form of government in which national reconciliation and development have been cast in terms of national security. It is from this rhetoric that Museveni largely derives his legitimacy.

The NRM party is, famously, a 'non-party': all Ugandan citizens are members of 'the movement', and parties which oppose the president are deemed unpatriotic and a threat to stability. Historically, opposition parties have been weak, and multi-partyism was permitted by Museveni only in 2005 after a feared wane in the NRM's popularity and its grip on power (Makara, 2010). During the period in which the fieldwork for this paper was undertaken, Uganda had been preparing for the 2011 elections, which saw the NRM maintain its grip on power through an electoral process thought to have not been free and fair.

Uganda is also known for its relatively free press and dynamic political debate (Piron, 2004), its commitment to the empowerment of women and its active support to popular local democracy evidenced through the introduction of a decentralised system of government throughout the country. This has meant that country possesses a relatively strong civil society (see Oloka-Onyango and Barya, 1997), despite extensive involvement of the government which – for instance – owns one of Uganda's major news publications, New Vision.

² According to the Infectious Diseases Institute (IDI) at Makerere University, this refers to a situation where 'one member of a couple is HIV negative while the other is HIV positive'.
See http://www.idi.ac.ug/index.php?option=com_content&view=article&id=140&Itemid=44 (accessed 26 January 2011)

³ See Moncrieffe (2004): 'Bantu ethnic groups are concentrated in the South and include the Ganda, Soga, Ankole, Nyoro, and Toro. Western Nilotic speakers (Acholi, Lango and Alur) live in the North; Eastern Nilotic speakers (Karamojong, Teso, and Turkana) live in the Northeast and Sudanic speakers (the Lugbara) in the northwest.'

'One party; one nation; one people': the NRM and Uganda's HIV/AIDS response

Interest in the 'politics' of HIV/AIDS has grown in significance over the past 10 years, with the Ugandan response to the epidemic a favoured area of enquiry. While Uganda's response to HIV/AIDS is undoubtedly framed and guided by the international community in and outside the country, it is important to appreciate how the NRM's broader political 'philosophy' has shaped it. Briefly, this can be characterised as the following:

National unity

In keeping with the government's dislike – until 2005 – of political parties thought to function to accentuate and perpetuate divisions between Ugandans and its mandate to lead the country in a process of national reconciliation, the response to HIV/AIDS has been an inclusive one. Under the slogan 'One party; one nation; one people', Museveni's belief that all Ugandans are members of the same 'class' seems to have played a large part in determining how HIV/AIDS is framed in the country. Unlike other African countries with highly levels of ethnic differentiation, Uganda's policies have not been discriminatory, or used to blame one section of the population for spreading the virus. And unlike other countries with high rates of infection, such as South Africa, it has been argued that the government of Uganda has not engaged in a damaging process of 'othering' in order to exploit ethnic differences: HIV/AIDS has the potential to affect everyone (Lieberman, 2005; Youde, 2007).

The 'open approach'

In spite of criticisms levelled at the NRM for curtailing political freedoms and engaging in dubious electoral practices in the name of national stability, Tumushabe (2006) argues that, in accordance with the NRM's wider philosophy of popular participation, the government has adopted an 'open approach' to HIV/AIDS. This has meant that HIV/AIDS-related issues have enjoyed wide public debate in which citizens are allowed the space to generate a 'broad-based consensus on how to proceed' (ibid.). While there may be underlying political motives for allowing open discussion – particularly in the media – it has still meant there is a relatively high level of debate, largely among educated, urban Ugandans. This is furnished by efforts by the government to provide 'local' solutions to HIV/AIDS by crafting policy responses which use local knowledge and local systems, such as decentralised government authorities.

HIV/AIDS as a threat to national development

In keeping with the government's success in providing stability and – it is assumed – the basis for economic growth and poverty reduction, HIV/AIDS has been cast as a threat to national development and therefore a problem which requires an almost militant solution. In a famous 1991 address to the AIDS Congress in East and Central Africa, Museveni declared that 'AIDS is fast becoming one of the many developmentally linked infectious diseases; it is becoming a disease of backwardness, like all the other disease we have'. Overcoming the epidemic therefore became the litmus test of Museveni's authority and capacity to govern: if the country failed to address it with success, its national development aspirations would be ruined and his authority in doubt.

Relations with the international community

These three key elements of the government of Uganda's response – an emphasis on national unity, the open approach and the linking of HIV/AIDS with national development – resonated with the international community's own development narrative of inclusion and non-discrimination, national stability, pro-poor growth and a strong commitment to fighting the spread of HIV/AIDS through participatory solutions. While they – and here we are largely referring to the US – needed a strong and influential ally in the region, the government of Uganda required external assistance if its HIV/AIDS response was to be a reality.

Since the first donor HIV/AIDS programme was launched by the World Health Organization (WHO) in Uganda in 1986, the international community has played a large – some would say too large – role in Uganda's efforts to reduce HIV transmission. Museveni's subsequent

'courting' of international donors is no secret, and has yielded significant results: Uganda was, for instance, the largest recipient of the *President's Emergency Plan for AIDS Relief* (PEPFAR), at \$300 million dollars (Livingston et al., 2009). The bulk of Uganda's donor funding, including that through the World Bank Multi-Country HIV/AIDS Program for Africa; the Global Fund to Fight AIDS, Tuberculosis and Malaria; the Great Lakes Initiative on AIDS; UN agencies; and bilateral resources are channelled through the government (Tumushabe, 2006). Significant amount of funding are also given to international and local NGOs and faith-based organisations.

The involvement of the international community in Ugandan affairs has not gone without criticism. The reliance on external funding is thought to be a huge problem, and Ugandans fear that this creates dependency on foreign powers – and this perception has eroded the government's legitimacy somewhat. The government is also thought to be highly vulnerable to fluctuations in donor funds, and with little in the way of revenue-raising alternatives. Those working in the HIV/AIDS sector in Uganda are fearful of the impact of the global economic crisis, and predict a huge fold in funding. PEPFAR announced in 2010 that it would be providing \$25 million in funding over the next five years, which is a dramatic cut from previous allocations (Musiga, 2010). Other commentators believe the government's responsibility to 'perform' for donors precludes alternate policy options and means it is accountable first and foremost to external actors rather than to the electorate (Hickey, 2003), thus undermining Uganda's democracy. However, Moncrieffe's (2004) analysis finds Uganda's policies not to be donor driven, despite the latter's clearly influential role.

A major consequence of donor engagement in Uganda's HIV/AIDS response has been the proliferation of civil society organisations (CSOs) and NGOs dedicated largely to service provision and advocacy that receive funding from international sources. In 2006, The Aids Service Organisation (TASO) estimated there were over 2,000 NGOs and community-based organisations (CBOs) working on HIV/AIDS issues around the country (Tumushabe, 2006).

The democratic merit of a largely donor-funded civil society 'sphere' and the like in Africa (Chabal and Daloz, 1999) and in Uganda particularly (Oloka-Onyango and Barya, 2007) has been cast into doubt over the years, as the 'flowering' of civil society is viewed less as an organic response to the creation of participatory spaces and more as a mechanised process created and managed by – and for – donors. NGOs, CBOs and CSOs dealing with HIV/AIDS are increasingly being met with suspicion by governmental actors, who view them as champions of an externally imposed donor agenda, characterised by an emphasis on human rights. These organisations tend to compete for funding and have been seen to lead to a fragmentation of Uganda's HIV/AIDS response, according to James Hughes, a law and human rights consultant, although the participation of non-governmental actors is arguably in keeping with the NRM's commitment to grassroots democracy.

The politics of HIV/AIDS statistics

Museveni's need to demonstrate that Uganda was suffering an epidemic, and that the epidemic was being tackled, in order to obtain funds has been a subject of discussion among HIV/AIDS commentators. This line of enquiry leads to a questioning of the much-heralded statistics showing Uganda's declining HIV rate, referred to by Museveni on two well-known occasions: the African Development Forum 2000 in Addis Ababa and the Commonwealth Heads of Government Meeting in Coolumb, Australia, where it was again reported that Uganda's HIV levels had fallen from 30% to just over 6% within seven years.

These data are disputed. Primarily, there are doubts that Uganda's HIV rates were ever as high as 30%. According to Tumushabe (2006), all reliable data indicate that the *national* HIV rate was never higher than 15%, and that the higher rates (over 20%) were found only in four antenatal sites in the areas surrounding Kampala and Jinja, both highly urbanised cities. Tumushabe claims that in rural areas, where the majority of the population resides, HIV rates were actually less than 5% in the 1990s. Caution with respect to Uganda's rapid decline in HIV

levels is also offered with respect to the field data – gathered from two sites, Rakai and Masaka – which are not thought to be representative of the national situation, particularly given that very little work has been done to ascertain HIV/AIDS levels in the north of the country (Allen and Heald, 2004; Schoepf, 2003).

The statistics worked for both the government of Uganda and donors. Says Tumushabe (2006),

'In selling the success story, the Ugandan government exploited a ripe situation for which the donor agents on the ground were under pressure from Western capitals to demonstrate accountability for resource allocation to fight AIDS, a sizeable amount of which had been wasted on allowances to technical advisors, purchasing vehicles and endless seminars and workshops for the elite. Thus, a dramatic success story provided the necessary rationalization and justified increasing donor funding, not only to Uganda, but also to other countries, especially in Southern Africa where infection was rapidly rising.'

Quantitative data on HIV/AIDS are therefore not inevitably 'objective': the motivations and interests of those who use it require a broader appreciation.

1.3 HIV/AIDS and research-based evidence

Currently, the Ugandan government does not operate under a comprehensive national HIV/AIDS policy, despite efforts to draft one in 2004, which were later abandoned. The closest the country has to a guiding document is the HIV Prevention Strategy outlined in the Health Sector Strategic Plan 2006–10, the National Health Policy 2010/11–14/15 and the National HIV/AIDS Strategic Plan 2007/08–11/12. The UAC – the country's coordinating mechanism for the Global Fund to Fight AIDS, Tuberculosis and Malaria – is responsible for Uganda's HIV/AIDS response and leads on the designing, implementing and monitoring of the strategy. The UAC admits it is constrained by the lack of an overarching policy framework to guide the various governmental, quasi-governmental and non-governmental bodies involved in Uganda's HIV/AIDS sector.

Overall, health research is overseen by the Uganda National Health Research Organisation (UNHRO), created in 2009. However, according to the Ministry of Health, the body's functions have been seriously hampered by a 'lack of policy framework, an uncoordinated priority setting of the research agenda, inadequate funding, shortage of human resource and inadequate logistics' (Ministry of Health, 2010). As signatories to the Algiers Declaration, Uganda has officially committed itself to allocating 2% of the Ministry of Health budget and 4% of its donor funds to research but, given that the overall budget allocation to the health sector was 9.6% of the total government budget in 2007/08 (ibid.) – well below the 15% allocation as part of the government's commitment to the Abuja Declaration in 2000 – it is unlikely that these research targets are being met. Further, although research bodies specialising in public health – such as the Joint Clinical Research Centre (JCRC) and the Makerere University School of Public Health (MUSPH) – do exist, research and training organisations only accounted for 1.2% of all organisations working on HIV/AIDS identified by a UAC stakeholder inventory in 2009 (UAC, 2009b).

However, there is thought to be a serious disconnect between health research undertaken by non-governmental actors and policy, and any notion of 'any continuum between them is not sustainable', according to one interviewee. Research uptake within the Ministry of Health tends to be limited to government studies undertaken by entities such as the UAC. Further, there is little in the way of formal information-sharing systems between the ministry, the UAC and both the HIV/AIDS and Related Matters Committee and the Social Services Committee, according to Watuwa Muniru, a researcher on the former.

Research and research-based evidence are recognised as important elements of the country's development. For instance, the National Development Plan (NDP) privileges it as an important aspect of the country's development of expertise in science, technology and innovation, although the emphasis on investing in research appears to be more about encouraging economic growth and accelerating the adoption of new technologies in agriculture than applying research findings to the health sector. Interestingly, however, the NDP states that the government supports 'independent research on key policy issues' (Government of Uganda, 2010), suggesting there is – at least in theory – room for the research community to influence decisions which are currently the subject of policy consideration.

Indeed, although some have cast doubt on the evidence base of the government's 'ABC' ('Abstain, Be Faithful, Use a Condom') prevention strategy (e.g. Tumushabe, 2006), the draft National Health Policy articulates quite clearly a commitment to implementing 'evidence-based' HIV prevention strategies (Ministry of Health, 2009). The evidence-based policy discourse has penetrated the policy sphere, with importance being placed on an evidence-based approach in the national sector health plan (NSP). Evidence has also been influential in the formulation of the new Circumcision Policy, according to David Serwadda of the MUSPH, and the recently passed PMB on Female Genital Mutilation, both of which bear a direct relation to HIV/AIDS prevention.

1.4 The HIV/AIDS Prevention and Control Bill 2010

The HIV/AIDS Prevention and Control Bill 2010 is a PMB, tabled in Parliament by Head of the HIV/AIDS and Related Matters Committee Beatrice Rwakimari on 19 May 2010. It was subsequently committed to the Social Services Committee for parliamentary scrutiny (Hansard, 2010a) prior to the 2011 elections and remained with this committee (of which Rwakimari is also a member) during the elections in February, where in theory it was subject to a review of relevant law and documentation and consultation with the relevant ministry and civil society actors, to contribute ultimately to a report with proposed amendments. Normally, a Bill would then be taken to the plenary for a parliamentary vote and subsequently referred to the Committee of the Whole House before it can become law. However, because of the commencement of Uganda's new Parliament, the Bill was reintroduced in order to face fresh scrutiny (African Activist, 2011a).⁴

The Bill comes under the remit of the HIV/AIDS and Related Matters Committee which, along with the Law Reform Commission, was responsible its drafting. It has generated a high level of opposition from human rights organisations and NGOs representing PLWHA, and this has been reflected in extensive media coverage of the Bill's passage and content. The Bill's principal objective is to provide 'for a legal framework that is geared towards the prevention and control of HIV' and reducing its transmission. It is predicated on the basis that all Ugandans have a duty to protect themselves and others from the transmission of HIV, particularly during sexual intercourse (Part II, Article 3). The most controversial parts are found in Parts III and VII, which include provisions to:

- Allow medical practitioners to undertake HIV tests without consent and *compulsory testing* of individuals convicted of drug abuse or possession of illegal substances and prostitution; as well as routine testing for victims of sexual offences, pregnant women and their partners, and newborn babies born to an HIV-positive mother (Part III);
- Authorise the overriding of test result confidentiality by providing for *mandatory disclosure* if an infected individual is thought to pose a risk to others (e.g. a partner) (Part III);

⁴ According to the Committee's new chair, Rosemary Najjemba Muyinda (NRM), quoted in Uganda's Daily Monitor in July 2011, many of the controversial points in the Bill have been dropped. The most recent draft has not been made available to the author, and therefore this paper bases its analysis on pre-July 2011 drafts (Nalugo, 2011)

- *Criminalise the attempted and/or wilful transmission of HIV/AIDS*, with a penalty of up to 10 years for intentional transmission (Part VII).

As a mechanism which is also designed to provide a framework to which subsequent governments can be held accountable, the Bill sets out preliminary state obligations to adopt a national public health strategy and plan of action for HIV, ensure the inclusion of PLWHA in government programmes and provide universal HIV treatment on a non-discriminatory basis (Part IV, Article 27). Other notable provisions include specific regulations relating to human biomedical research (Part V, Article 28), and provisions to legislate against the discrimination of PLWHA in areas such as employment, health, education and access to financial services (Part VI).

The Bill has evolved from an initial draft in 2007 which sought the death penalty for those found guilty of wilful transmission of the virus. The controversy which has met some of its aspects has certainly undermined Uganda's 'showcase' status in Africa as a country that worked successfully with the international community to reduce high levels of HIV/AIDS of the 1990s. Drafts of the Bill in 2009 and 2010 arrived at a time when Uganda was engulfed in internal debate and subject to international furore regarding the proposed Anti-Homosexuality Bill, a PMB proposed by David Buhati in 2009 which proposes the death penalty for individuals convicted of 'aggravated homosexuality'⁵ (Wambi, 2010). Like the HIV/AIDS Bill, the Anti-Homosexuality Bill has been criticised for encouraging stigmatisation and discrimination against homosexuals, as well as for damaging progress made in stemming the spread of the HIV/AIDS virus as people refrain from seeking treatment for fear of being reprimanded. It has increased fears concerning the implications of the HIV/AIDS Bill, resulting in both controversial Bills being categorised under the same 'discriminatory' label (e.g. UHPSA, 2011).

2 Arguments and evidence: the government of Uganda

How have those in the government of Uganda sought to explain the proposed legislation? The findings in this section suggest that, while the HIV/AIDS and Related Matters Committee frames its support to the Bill using evidence originating from its own research (Agiresaasi and Fiziwa, 2008), public consultations (HIV/AIDS and Related Matters Parliamentary Committee, 2009; 2010) and – assumedly – the UAC's Modes of Transmission studies, this evidence plays little or no role in *public* dialogue.

2.1 Who supports the Bill?

In order to be passed into Ugandan law, the Bill needs to acquire the support of the Social Services Committee, which is responsible for scrutinising it. It also requires support from the new intake of Members of Parliament (MPs), and particularly the incoming chair, who will form the next HIV/AIDS and Related Matters Committee. The latter's makeup has already changed considerably since the Bill was first proposed in 2007, which suggests there has been a significant amount of commitment and momentum from within it to ensure support for the Bill has continued (according to Josephine Wawira, a researcher with the committee). The Bill enjoys widespread support across the government, although some MPs have expressed concerns in dialogue with a coalition of NGOs who oppose parts of it (UGANET and ActionAid International, 2009). Early on in the debate, President Museveni was reasonably outspoken in his support for two measures that would later become cornerstones of the Bill – the criminalisation of HIV/AIDS transmission and mandatory disclosure of status – telling a

⁵ That is, where one of the participants is under the age of 16, disabled, a 'serial offender' or HIV positive.

gathering of human rights activists in February 2007 that *'People who infect others deliberately are killers – they are murderers [...] One should first declare that he is infected. I would treat someone who gets involved with another knowing that he has Aids harshly. We need to stiffen on this one'* (in Muyita and Mugumba, 2007).

Following Museveni's apparent legitimisation of criminalising transmission, other government figures have shown support for the Bill. In the course of the past two years, spanning both the 2009 and the 2010 drafts, senior officials such as Minister of Health Stephen Mallinga (an MP and member of the NRM) and Jesse Kagimba, the President's Senior Advisor on HIV/AIDS, have backed the proposed legislation (Plus News, 2009). Both the Ministry of Health and the Ministry of Gender have been consulted in the drafting of the Bill, and are thought to be behind the new legislation.

The Ministry of Health has raised some concerns, however, about the potential for part of the Bill to 'punish' people who have spread the disease, with State Minister for Health in Charge of General Duties Richard Nduhura (an MP and member of the NRM) arguing that the application of criminal law to HIV transmission would not achieve justice, nor halt the spread of the virus. In mid-2010, Nduhura reportedly 'made a U-Turn' on his previous comments and declared that he saw 'no danger about the Bill' criminalising the transmission of HIV (Nalugo, 2010). He is joined by other officials who have inadvertently backed the Bill by publicly supporting provisions made in it. This includes Resident District Commissioner for Kanungu Ben Rullonga, who announced that HIV tests should be made compulsory in response to the assertion by the district health officer that HIV prevalence rates in the area had risen in the past two years. The 'blame', he said, should be placed on those who refuse to take a test (New Vision, 2010).

Importantly, amid the ongoing debate and passage of the Bill, the Ugandan Human Rights Commission is said to have remained relatively silent on its implications for both human rights and HIV/AIDS.⁶

2.2 Rationale for HIV/AIDS legislation

The HIV/AIDS and Related Matters Committee has, to an extent, left itself open to criticism and opposition, given that no one document appears to exist – at least publicly – to outline either the Bill's overall or its 'secondary' rationale. This makes piecing together its underlying evidence an arduous task: while the Bill does possess an evidence base, this is not immediately obvious to those who oppose it, as it is rarely referred to in the debate itself. The evidence base for the Bill is documented in a number of internal documents: the results of a number of national consultations undertaken in 2010 and 2008; a study in fishing communities in Masaka and Mayuge districts undertaken by the Committee's research team in 2008 (Agiresaasi and Fiziwa, 2008); 'study tours' to Kenya, Tanzania and Zambia in 2009; and an initial literature review conducted by a Committee researcher. Of these, the literature review and study tour reports were not made available to the author. Numerous consultations 'upcountry' are alluded to, but the documentation relating to these is as yet unseen.

The principal format in which the Committee's 'argument' appears is the Bill itself. As indicated, no supplementary documentation to explain the reasoning behind the Bill has been issued. The main way in which the Committee's justification for the Bill reaches the public domain is through national consultations organised by the Committee and those organised by NGOs. These are often reported by the media, which does provide Committee members the opportunity to defend – or explain – the reasoning behind the Bill. Often this is reactive:

⁶ For instance, during a 2009 meeting of civil society members, the HIV/AIDS and Related Matters Committee and various MPs, the Human Rights Commission was invited to make a speech. Rather than articulate an official position on their understanding of the Bill in relation to human rights, representatives gave what was described as a 'neutral' speech which only went as far as broadly outlining the principles of human rights and their relationship with HIV/AIDS (according to Angela Asio, Communications Officer at the Uganda Network on Law, Ethics and HIV/AIDS (UGANET)).

Committee members are more often than not trying to stem the wide-ranging criticism the proposed legislation has generated.

The information presented here is based on a combination of internal documents and interviews with Beatrice Rwakimari and two members of the Committee's research team, Watuwa Muniru and Josephine Watera Ssemakula, as well as a number of public statements made by Rwakimari. Rwakimari in interview pointed to the following underlying rationale for establishing a legal framework:

Current legal provisions

These are deemed insufficient to ensure that those who intentionally transmit HIV/AIDS are brought to justice. For instance, a man cannot be tried for the rape of a woman to whom he transmits HIV if the sexual act is consensual. The current legal framework is thought to repeatedly fail women who are not in control of decisions regarding sexual intercourse yet cannot be said to have been raped.

Lack of HIV/AIDS policy

The formation of a comprehensive HIV/AIDS policy has not come to fruition, and therefore the legislation acts as a way of bringing the disparate parts of what is essentially the government of Uganda's HIV/AIDS policy – which is spread over a number of documents – into one.

Accountability

The proposed legislation is designed to serve as a means of holding the government of Uganda to account on commitments made on HIV/AIDS, particularly in relation to preventing its spread. A legal document is preferred to a policy document because it is legally binding on the government. This is a particular concern in the current election climate where the dynamics of the current government will change.

Resource mobilisation

This is also about ensuring that the government honours its financial commitments to HIV/AIDS efforts, particularly in the face of competing demands on its budget and the threat of donors withdrawing funds as a result of the global economic crisis and general 'donor fatigue'. These funds are currently used to finance 80% of the country's HIV/AIDS work, and in the event of their withdrawal there is a need to ensure the government is committed to bridging the funding gap. Further, having a legal framework in place also makes attracting donors and raising funds more likely. Currently, HIV/AIDS efforts are, according to research undertaken by the Committee, perceived to be under-funded (Agiresaasi and Fatiwa 2008).

2.3 Explaining the Bill's provisions

What is known about the Bill's 'secondary rationale' – that which is used to explain its actual provisions? Based on a reading of existing small number of the Committee documents and interviews, the following considers the reasoning behind the most controversial parts of the Bill. Rwakimari was adamant that, unlike opponents of the Bill, the Committee possesses 'ground-level evidence' relevant to the Ugandan context. However, what this brief analysis shows is that, although the Committee has both used and undertaken research in order to 'diagnose' a number of issues relating to HIV/AIDS transmission, its adoption of particular provisions (the 'treatment') seems to have lacked a consideration of the available evidence.⁷

⁷ Rwakimari admitted this to an extent, by acknowledging that the criminalisation of HIV is not yet a proven way of preventing the spread of HIV/AIDS.

The key issues concerning behaviour related to the transmission of HIV/AIDS identified by the Committee are presented below with the accompanying arguments or evidence cited and how the response to this evidence is found in the Bill's provisions.

Issue	Cited evidence/argument and provisions
<i>Laxity and complacency</i>	<p>Research indicates that Uganda's efforts to prevent HIV/AIDS are being thwarted by increasingly lax and complacent attitudes towards HIV/AIDS owing to the availability of ARVs, leading to an increase in risk-taking behaviour arising from a belief that HIV/AIDS is curable.⁸</p> <p>This is combined with evidence that people 'feel safe' after taking their ARVs because their viral load is low and therefore they engage in risk-taking behaviour, potentially infecting large numbers of people (interview with Josephine Wutiwa). The Committee's own early research before the 2009 draft contained reports by health professionals working in the fishing communities of Masaka and Mayuge districts who claimed that some clients on ARVs indicated to them that their 'libido doubles' after taking their drugs – 'implying they get more partners' (Agiresaasi and Faziira, 2008).</p> <p><i>Provisions</i></p> <ul style="list-style-type: none"> ✓ Criminalising the transmission of HIV/AIDS (Clause 41) ✓ Mandatory disclosure to those thought to be at risk of infection (Clause 23) <p>These are both seen as ways of 1) combating attitudes demonstrating laxity and complacency and 2) mitigating the risk of transmission from an infected partner.</p>
<i>Role of particular groups</i>	<p>'Evidence' has shown that commercial sex workers and drug users account for a significant proportion of new infections in Uganda and are putting large number of people at risk by not taking adequate precautions to prevent transmission.⁹</p> <p>This is supported by the Committee's own research in Masaka and Mayuge, where qualitative evidence from both health professionals and community members suggested that having a disposable income combined with a large amount of commercial sex workers in the area was perceived to be a significant driver in the spread of HIV/AIDS. Recommendations made to the research team included one to 'target smaller segments of society, e.g. commercial sex workers, drug addicts' (Agiresaasi and Faziira, 2008).</p> <p><i>Provisions</i></p> <ul style="list-style-type: none"> ✓ Mandatory testing of particular groups (Clauses 12–15) such as commercial sex workers and drug users ✓ Mandatory disclosure to those at risk of infection (Clause 23) ✓ Mechanism to prosecute in the event of wilful transmission (where one party knows their status and does not take the correct precautions to prevent the transmission of HIV to a partner) (Clause 41) ✓ Clauses 4–10, which concern counselling for those tested, are also relevant
<i>Wilful transmission</i>	<p>The Committee's research in Masaka and Mayuge, engagement with MPs and national-level consultations have provided testimonies on what is increasingly becoming seen as a widespread problem in Uganda: the intentional spread of</p>

⁸ This is an indirect reference to the UAC's Modes of Transmission studies (2008; Wabwire-Mangen et al., 2009).

⁹ The 2009 Modes of Transmission Study 2009 (Wabwire-Mangen et al., 2009) is being referred to here: this study indicates that whilst commercial sex workers account for less than 1 percent of the overall incidence rate, but contributed to nearly 10 percent of new infections. Drug users are statistically less significant, although 30 percent of injecting drug users were found to be HIV positive.

	<p>HIV by individuals acting out of revenge (Agiresaasi and Fatiwa, 2008) or malice.</p> <p>Anecdotal evidence from a number of MPs in their constituencies suggests they are privy to many complaints regarding sexual abuse and HIV transmission, including that of one man in Eastern Uganda, who was thought to have infected up to 90% of the women in his community after offering free maize grinding in exchange for sexual intercourse.¹⁰ These kinds of occurrences are not thought to be anomalies but, according to the Committee, are indicative of a much wider problem often driven by women's vulnerabilities, according to Rwakimari.</p> <p><i>Provisions</i></p> <ul style="list-style-type: none"> ✓ Criminalisation of the intentional transmission of HIV/AIDS (Clause 41) as a direct response to evidence indicating wilful transmission as a significant problem ✓ Provisions made for counselling (Clauses 4–10) for victims of wilful transmission
<i>Transmission within couples</i>	<p>National-level 'evidence' has shown that a significant proportion of the overall incidence rate can be attributed to transmission within couples, accounting for nearly 50% of new infections (interview with Josephine Wawira).¹¹</p> <p><i>Provisions</i></p> <ul style="list-style-type: none"> ✓ Mandatory disclosure to partners of PLWHA, as well as counselling services (Cause 23) ✓ The wilful transmission of HIV without taking adequate precautions is an offence (Clause 41) ✓ Clauses 12–15 ensure that individuals most at risk of transmitting HIV are tested and made aware of their status ✓ The Bill also makes clear that discordant couples have a responsibility to prevent transmission to the HIV-negative spouse (Clause 2)

The key points to make about the Committee's arguments and use of evidence are as follows:

- There is a *disjuncture* between publicly made arguments and the existence of internal research. Why do Committee members not refer more specifically to internal research? Why is there a clear use of the UAC's Modes of Transmission studies but no public reference to them?
- The Committee has *not produced a statement* of its rationale for the Bill, or its evidence base.
- There is a *strong use of and value* placed on 'research' into public opinion and voice, as well as on 'ground-level' evidence.
- The *'evidence' base is tantamount to the identification of the 'problem'* (e.g. transmission within couples) but there is no inevitable connection between problems identified and the 'solution' (provisions in the Bill).

¹⁰ Interestingly, however, it was difficult to prove that this individual was the source of infections.

¹¹ This refers indirectly to the UAC's Modes of Transmission studies (2008; Wabwire-Mangen et al., 2009).

3 Arguments and evidence II: NGOs and civil society¹²

The main parties constituting the opposition to the Bill are a (fluid) group of NGOs or CSOs loosely called the 'coalition' of civil society. Originally mobilised by TASO, the coalition is now led by UGANET, with the National Coalition of Women Living with HIV/AIDS (NACWOLA), the Network of People Living with HIV in Uganda (NAFOPHANU), the International Health Alliance and ActionAid all prominent players. Over 30 organisations align themselves with the coalition, including the Uganda Health Science and Press Association (UHSPA),¹³ which recently launched a Joint Statement after consultations with lesbian, gay, bisexual, transgender and intersex (LGBTI) persons (UHPSA, 2011). Human Rights Watch is also a major opponent of the Bill but is not formally aligned with the coalition. A number of other individuals have expressed their opposition from both a legal and a public health perspective.¹⁴

This section refers largely to documentation produced by organisations in the coalition and a 10-page analysis of the Bill published by Human Rights Watch (2010). The former documents include an official statement outlining the coalition's position (UGANET, 2009a) and a number of reports detailing the content of meetings with the HIV/AIDS and Related Matters Committee and the Social Services Committee and regional consultations on the public reaction to the Bill (e.g. UGANET 2009b; 2010; UGANET and ActionAid International, 2009). These documents do not seem to be readily available in the public domain, however.

The various argument presented by the civil society coalition and Human Rights Watch are based on – and explicitly framed by – a number of forms of research-based evidence: existing medical evidence, case studies and the results of regional consultations. While opponents of the Bill have communicated the basis for their arguments far more clearly than the HIV/AIDS and Related Matters Committee, references to evidence and/or research are often vague and lack a direct citation.

3.1 Criticisms of the Bill: overview

The opposition present two principal lines of argument: first and foremost, certain parts of the Bill contravene the human rights of PLWHA as enshrined in both national and international legislation; and, second, the provisions contained in the Bill are not effective in reducing the spread of HIV and could actually have a negative effect on existing prevention efforts. These two arguments are not delivered separately, however: an effective reduction in HIV is understood by these groups to constitute a rights-based approach to HIV/AIDS. On the basis of these two lines of argument, opponents have also argued that the Bill contains serious omissions, and have therefore suggested alternative or added provisions.

The Bill is not opposed unequivocally, however, and there is a general recognition among opponents that the proposed legislation contains welcome provisions, as well as representing an attempt to ensure the government of Uganda can be held accountable to its commitments on HIV/AIDS. Other welcome provisions include:

- The importance of personal responsibility and care in HIV prevention (Article 3) (NACWOLA, 2010b);
-

¹² It should be noted that Human Rights Watch and ActionAid are both categorised as NGOs rather than donors in this paper, given 1) the paper's focus on multilateral HIV/AIDS-related or bilateral donors; and 2) their close affinity with 'local' civil society groups and NGOs.

¹³ The UHPSA works to 'promote health rights of vulnerable and minority groups, put an end to homophobia, as well as stream line minority concerns in all Uganda's public health policies and laws' (UHPSA, 2011).

¹⁴ In the time available, it was not possible to interview religious groups, although they doubtless have a perspective on the Bill. However, they do not seem to have played a large role in publicly opposing it.

- Pre- and post-test counselling (Part III);
- Protection of the rights of PLWHA through the prohibition of all forms of discrimination against them (Articles 31–7);
- The articulation of the state's responsibilities (UGANET, 2009).

The principal problem with the Bill, according to its opponents, is that it proposes to introduce criminal law to penalise those who intentionally transmit – or attempt to transmit – HIV. This is seen to ignore the vulnerabilities of PLWHA and rather to view them as a 'threat to the community' (UGANET, 2010). Proceeding from this central concern, criticisms of the Bill are focused largely on provisions relating to the disincentives criminalisation poses for both mandatory testing and disclosure to third parties, thereby increasing the risk of HIV transmission.

The arguments against these provisions fall under the two categories constituting wider objections to the Bill – human rights and the effect on HIV levels. However, there are further criticisms which cannot be readily subsumed into one of these categories:

Government capacity to meet its obligations and enforce the Bill

Questions have arisen about the government's overall capacity to enforce the legislation, particularly with regard to Section 27 of the Bill, which outlines the state's obligations (NACWOLA, 2010a). This doubt is also expressed in relation to the provision of counselling and treatment services (*ibid.*), and the capacity of the judicial system to cope with those thought to have contravened the law (according to one law and human rights consultant).

Adequacy of existing laws

Others, such as Busingye Bugumba of the Law Faculty at Makerere University, have questioned whether there is a need to criminalise attempted and wilful transmission (Clauses 39 and 41) through penal clauses when existing criminal law – in the form of the Penal Code Act – is sufficient. This is further exemplified using examples of Ugandans who have been charged under existing criminal law for sexual assault, grievous bodily harm and murder (UGANET and ActionAid International, 2009). Both UGANET (2009) and NACWOLA (2010a) have said that existing law, such as the Sexually Transmitted Diseases Act, could be used.

Problems relating to proof

There is a general consensus among both supporters and opponents of the Bill that the criminalisation of HIV transmission presents serious difficulties with regard to proving either intent to transmit HIV or who transmitted the virus.¹⁵ Medical doctor Steven Watiti, chair of the National Forum of People Living with HIV/AIDS Networks, has said that proving which partner affected another is difficult (Kalibbala, 2010); Human Rights Watch (2010) quotes research by Burris (2007) to argue that it is difficult – if not impossible – to establish in court who of two partners was infected first. Busingye Kabumba further elucidated the problem by explaining to a gathering of MPs that the Bill had 'failed to conceptualize' medical evidence (in UGANET and Action Aid International, 2009), indicating that viral load is a relevant factor in the ability to transmit HIV and pointing to medical developments in the area of pre- and post-exposure prophylaxis and the 'peculiar circumstances' of discordant couples and HIV-positive mothers who may be subject to penal laws. For example, a man convicted of attempting to transmit HIV had his sentence overturned as a result of the intervention of Professor Bernard Hirschel of the Swiss Federal Commission for HIV/AIDS, who argued that an undetectable viral load – because of effective ARV treatment – minimised the risk of onward transmission during unprotected sex to one in 100,000.

¹⁵ According to Erias Lukwago, a Ugandan lawyer, 'the key element of intention is what we call evil mind. It is difficult to criminalise one's mind and start judging somebody by mind. The implementation will be very hard and in law where there are consenting adults is what we call one word against another' (Nalugo, 2010 b).

3.2 Human rights, discrimination and stigmatisation

That certain provisions in the Bill violate human rights while discriminating against and stigmatising particular groups is the central tenet of the opposition's overall argument. This is expressed both in general terms, in which the need for a rights-based approach to HIV/AIDS prevention is advocated, and with reference to certain provisions and groups the Bill is thought to target. The reference point is therefore human rights in both a normative and a descriptive sense by both advocating a greater respect for human rights and using Uganda's existing national and international commitments to human rights to analyse the Bill's shortcomings.

A widely held sentiment is that 'AIDS is no longer just a disease but a human rights issue. The law should be carefully crafted to find the right balance between promoting public health while safeguarding and promoting human rights' (Dora Musinguzi, Executive Director of UGANET, in Lirri and Nalugo, 2009).

The starting point for the rights-based approach shared by the opposition is that the Bill 'contains numerous provisions that contravene the right to equal protection and non-discrimination under Uganda's constitution and Uganda's obligations under international human rights law' (Human Rights Watch, 2010). For instance, the Ugandan Constitution states that,

'All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law [...] [A] person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability' (Section 21).

Further, the International Covenant on Civil and Political Rights is predicated on the right to liberty and security of the person and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. More specifically, the Committee on Economic, Social and Cultural Rights commits the government of Uganda to ensuring that 'all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned' (Paragraph 12 [c]). Overall, therefore, the Bill is thought to threaten a wide array of human rights.¹⁶

Rather, the task of the law, it is argued, is to find an,

'[...] informed and evidence-based balance between human rights i.e. the set of universal entitlements that individuals enjoy irrespective of sex, nationality, religion, culture or other status, inherent to human beings and proclaimed and protected by international law and public health which is concerned with taking collective steps to ensure the health of all' (UGANET, 2009a) (Author's italics).

Evidence-based approaches are therefore supported, and seen to bridge, both human rights and effective public policy. UGANET (2009b) substantiates this by referring to an analysis by Dhaliwal (2005), who argues that public health programmes are more effective when human rights are respected.

¹⁶ Including the rights to non-discrimination, equal protection and equality before the law; life; the highest attainable standard of physical and mental health; liberty and security of the person; freedom of movement; work; property; marry and found a family; equal access to education; seek and enjoy asylum; privacy; freedom of opinion and expression; freely receive and impart information; equal access to education; freedom of association; an adequate standard of living; social security, assistance and welfare; sharing in scientific advancement and its benefits; participate in public and cultural life; and freedom from torture and cruel, inhuman or degrading treatment or punishment (Civil Society Coalition, 2010).

Whether or not these rights are already being contravened, the opposition believes the proposed legislation would signal a backward move in Uganda's approach to HIV/AIDS prevention. Given its perceived 'discriminatory [and] punitive' provisions which reflect 'intolerance and bias' rather than 'common-sense approaches' (Amon, 2010), the Bill is presented in an often alarmist tone, which the presence of the even more controversial Anti-Homosexuality Bill no doubt exacerbates.

3.3 Provisions in the Bill

Initially, the naming of the Bill presented a problem for some organisations, which argued that to talk of 'control' was dehumanising, suggesting the domination and subjection of PLWHA (UGANET, 2010). The alternative wording of 'management' was proposed, although there are now indications that the opposition is set to accept the wording of the proposed legislation to focus on more substantive issues regarding the Bill's content. The problem remains, however, that the Bill is regarded as an 'oppressive and coercive tool' which lacks both neutrality and legitimacy (UGANET, 2009a). Mandatory testing, mandatory disclosure to third parties and partners and the criminalisation of wilful and attempted HIV transmission are all subject to criticism on this basis. The arguments can be summarised as follows.

Mandatory testing

By allowing mandatory testing for drug users and prostitutes, the Bill is thought to give these groups a 'double punishment' by victimising people who are already living with HIV/AIDS (UGANET, 2010). International standards for HIV testing have been referred to by opponents, but are directly cited by Human Rights Watch (2010), which uses the Joint UN Programme on HIV/AIDS (UNAIDS)/WHO (2004) policy statement on HIV testing to declare that the Bill contravenes guidelines which advise that testing should be confidential, accompanied by counselling and undertaken with consent. Such explicit targeting, it is argued, would turn Uganda's health care system from one operating on the basis of 'treatment and care' to one of 'prejudice', which in turn acts as a barrier to treatment. The provisions on mandatory testing are described as treating HIV as a 'medical emergency' when this is not the case (Human Rights Watch, 2010). Further, there is no reason why testing cannot occur with the consent of persons. In the event that consent is withheld, a relevant order granting the authority to test may be obtained when reasonable (UGANET, 2009a).

Mandatory disclosure

As well as 'destroying doctor-patient trust', the provisions relating to mandatory (or unauthorised) disclosure are thought to further turn the health care system into an instrument of stigmatisation, potentially affecting those who are likely to know their HIV status earlier than others (such as pregnant women) by increasing societal discrimination against them and putting them in danger of domestic violence (UGANET, 2009). Human Rights Watch (2010) refers to legal mechanisms the Bill's provisions contravene, such as the right to privacy in health matters,¹⁷ and international guidelines on partner notification, which recommend that this be undertaken voluntarily (although it allows for certain circumstances in which disclosure by a third party is, in fact, permissible) (OHCHR and UNAIDS, 1998). At base, it is felt that disclosure to partners should not be done under coercion or by a third party.

A major concern therefore relates to who the Bill is thought to discriminate against. This is framed in terms of those with existing vulnerabilities – predominantly women, commercial sex workers and LGBTIs: concerns voiced about these 'groups' have taken centre stage in the debate. According to the Bill's critics,

¹⁷ The Committee on Economic, Social and Cultural Rights states that 'all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned' (General Comment 14, Paragraph 12[c]),

- 'Studies conducted by various organisations' indicate that the disclosure of a woman's HIV status by a third party has led to *gender-based violence* in the home (a human rights violation) and increased stigmatisation and discrimination in the domestic setting (UGANET, 2010).¹⁸
- Women are more likely to be tested for HIV than men owing to their 'health-seeking behaviour' (NACWOLA, 2010a); under the proposed legislation, women (e.g. pregnant women, new mothers) would therefore be *disproportionately prosecuted* as a result of knowledge of their status. Following UNAIDS guidance, it is also asserted that women are already blamed for bringing HIV into a relationship and the Bill – which would make it mandatory for a woman to disclose her status to her partner – therefore exacerbates an already undesirable situation. This is certainly the case in Uganda, opponents observe, where women are often scapegoated for introducing HIV into a family (Stella Mukasa, NCG Uganda Limited, in UGANET and ActionAid International, 2009).
- *Women are often not able to negotiate for safe sex behaviour* with partners (e.g. condom use) and, if infected, would not have the capacity to follow up legally under the proposed legislation, as they would have failed to take 'all possible measures' to protect themselves, as stated in the Bill. Another issue to be highlighted is that of polygamy: in Uganda, it is still common for a man to marry a number of women; in the case of HIV infection within the family, one of the women may be blamed and penalised under criminal law. Women who have been forcibly abducted may also be prosecuted for wilful or attempted transmission of HIV. Other such cultural practices include abduction of women for marriage leading to higher HIV prevalence. Without a system that can take these gendered power relations and their consequences into account, already vulnerable women will be scapegoated and punished (NACWOLA, 2010a).

The language encapsulated by the Bill is thought to reflect wider cultural attitudes towards women in Uganda, by granting a legal basis for placing the blame on the least powerful partner within a sexual exchange. Not taking this into account is described as 'not scientific' and 'not ethical', relying instead on discriminatory attitudes, according to MacKlean Kyoma of the Women's Organization for Human Rights Advocacy (WONETHA).

One group of women who feel they are being – advertently – targeted by the Bill are commercial sex workers, represented by WONETHA. They argue that the government of Uganda already treats them inhumanely by not recognising their work as legal and by not making provisions for them in HIV/AIDS prevention and treatment programmes. In their opinion, the Bill targets them and paves the way for increased stigmatisation and scapegoating by blaming them for transmitting HIV (WONETHA, 2010). The Bill is thought to be a conscious attempt to introduce criminal charges against sex workers instead of supporting more positive HIV prevention methods such as ARV treatment or the provision of condoms or preventing the need for commercial sex work itself, according to MacKlean Kyoma. LGBTIs also feel needlessly targeted as a discrete group, contrary to evidence which suggests that men who have sex with men (MSM) often live with a female partner or have sexual intercourse with women.¹⁹ Rather than presenting the issue as an overtly moralised one based on dichotomies between heterosexuals and non-heterosexuals, the government of Uganda should recognise the simple fact that, in the case of MSM, 'like it or not, there are men who are having sex with men in Uganda, and these men are also having sex with women' (UHPSA, 2011).

¹⁸ No citation for the 'studies' is given.

¹⁹ The UHPSA (2011) cites the Crane Report which presents findings from a study conducted by the University of Makerere which found that, of the population of MSM surveyed, 31% had been married and 20% of them were currently married; 78% had had sex with a woman; 44% had lived with a female sex partner; 16% were currently living with a female sex partner; and 29% had fathered children.

3.4 Effect on the HIV rate

Although civil society opposition to the Bill has been characterised by the HIV/AIDS and Related Matters Committee as focused largely on defending human rights rather than engaging with the objective of the Bill itself – preventing and controlling the rate of HIV/AIDS – a number of documents contain a surprising amount of references to how the Bill's most contested provisions will not reduce HIV levels and could, potentially, exacerbate them (e.g. Human Rights Watch, 2010; UGANET, 2009a). These statements refer directly to 'evidence', 'proof' and 'demonstration', but direct references to the sources of this evidence, or the evidence itself, are lacking.

The main line of argument here is that experience in other countries has not shown that the criminalisation of HIV transmission has reduced its spread. There is 'no evidence' to show that criminalisation is an effective way of fighting HIV in Uganda (Civil Society Coalition, 2010; UGANET, 2009a; UGANET and ActionAid International, 2009). Instead, it serves to undermine existing HIV/AIDS prevention efforts, because it discourages people from voluntary testing. The Bill is seen to perpetuate the large numbers of people who do not know their status because a lack of knowledge could be the only line of defence for those accused of transmitting or attempting to transmit HIV (NACWOLA, 2010a). This is already the case in areas with 'HIV-specific' laws (UGANET, 2009a), where it has already been shown that criminalisation has no effect on HIV levels (Human Rights Watch, 2010).

On this note, one lawyer privately commented on the Committee's use of one widely cited statistic (including by the coalition) which indicates that only 20% of Ugandans are aware of their HIV status. HIV/AIDS and Related Matters Committee member Chris Baryomunsi's reference to this figure (in Womakyu, 2008) privately prompted questions about whether the Bill actually went far enough:

If they [the Committee] accept that 80% or so Ugandans are unaware of their status, and are using it, why are they proposing to make testing mandatory only for select groups? I do not understand, if you accept that figure – which may be correct, or not, who knows – how you can decide to concentrate only on those people. No, the tragedy is not discrimination; the tragedy is the lack of appropriate measures for what looks on paper to be a major, major issue.

Criminalising transmission is also thought to have a negative effect on people's propensity to positively disclose their status for fear of prosecution (NACWOLA, 2010a), which in turn puts more people at risk of contracting HIV (Human Rights Watch, 2010). This line of argument therefore suggests not only that the Bill does not reduce HIV levels, but also that it would lead to greater rates of transmission. This is made clear by Human Rights Watch (2010), which refers to the work of Burris et al. (2007) in Arizona in the US to make the claim that criminalising HIV transmission could actually cause harm.

The Bill's opponents have concurred that the Committee does not intend to have a negative effect on HIV prevention and control efforts, but argue that 'some outcomes are different from the intentions' (UGANET, 2010). The coalition therefore sees its role as communicating to the Committee that the Bill is potentially harmful, discredited and 'out of step with the recommendations of global health and AIDS organisations' (Amon, 2010). The point that criminalisation is against the advice of international organisations such as UNAIDS and WHO is one particularly highlighted by Human Rights Watch, whose health and human rights director is at pains to emphasise the 'misguided, ideological' nature of the Bill (in Biya Masr, 2010).

3.5 Omissions and alternatives

Given that the Bill is supposed to outline the government of Uganda's commitments to prevent and control the HIV epidemic, some critics have focused on what it fails to include. Key omissions highlighted by members of the civil society coalition include the following:

- Clearly articulated provisions for *gender-responsive* counselling and support services (according to Meya Bertsch of NACWOLA);
- The provision of *legal aid* to those accused of breaking the law (according to an anonymous interviewee);
- Provisions that support *positive disclosure* through psychosocial support rather than mandatory disclosure, the latter of which represents a move backward on the gains made through the promotion of positive disclosure (NACWOLA, 2010a). Such provisions are thought to be a much more thorough and effective way of encouraging both HIV testing and disclosure (UGANET, 2009a);
- Provisions to ensure *equitable access to treatment* – particularly for at-risk groups such as commercial sex workers (according to MacKlean Kyoma of WONETHA) and survivors of sexual violence, rape and defilement (NACWOLA, 2010a). This includes counselling to partners of PLWHA (Rubaramira Ruranga, National Guidance and Empowerment Network of People Living with HIV/AIDS, in Kalibbala, 2010).
- Indication of *client culpability* when HIV has been transmitted to a commercial sex worker during transactional sex (according to one medical doctor);
- A commitment to *continue with public awareness campaigns*, which have proved to be an effective prevention strategy in the past (UGANET, 2009a);
- A statement compelling the *government of Uganda to commit a percentage of its health budget* to HIV/AIDS (according to one anonymous donor representative).

In relation to the Bill's perceived omissions, NGO actors and PLWHA implicitly and explicitly suggested alternative options for its content. The principal approach suggested was to focus on poverty reduction as a prevention mechanism rather than relying on a legal deterrent: the criminalisation of wilful HIV transmission is thought to focus on the social symptoms rather than the social causes (e.g. poverty) of HIV transmission, according to James Hughes and MacKlean Kyoma. This line of argument is largely propagated by commercial sex workers, who lament the lack of government funding being used to understand the causes of sex work (UGANET, 2010) and the absence of policies to enable sex workers to receive free condoms, treatment, counselling or financial support (interview with Maclean Kyoma).

Overall, therefore, there are strong concerns that the Bill's provisions are silent on a number of issues, to the detriment of the human right aspect of the prevention and control of HIV, prevention efforts and the HIV rate itself.

3.6 The Committee's response

In defending the Bill, which is seemingly the Committee's primary modus operandi with regard to communicating the rationale behind the proposed legislation, a common refrain from the Committee is that the Bill's critics are focusing on a relatively small part of it and ignoring what should be a landmark in Uganda's legal history: 'People are ignoring the content of the Bill and are focusing on one clause but for 20 years of HIV epidemic, there has been no legal framework to address HIV transmission' (Nalugo, 2010b).

Indeed, the chair believes that the Bill will ultimately achieve a consensus: in a 2010 meeting with civil society activists, Rwakimari highlighted that, of the 49 clauses contained in the Bill, only 3 were being disputed. Thus, the focus of the debate has been weighted towards a small portion of the legislation, while other aspects remain relatively unexamined. The Committee is

also at pains to emphasise that the rest of the Bill is designed to protect human rights and actively prevent discrimination against PLWHA by outlawing discriminatory practices in health, education and employment (NACWOLA, 2010b). However, the concern for human rights needs to be understood in relation to the Bill's objectives: in interview, Rwakimari noted that the aim of the Bill was the prevention and control of HIV/AIDS and that it should be assessed against this aim, and not any others. Critics of the Bill are thought to have focused exclusively on the human rights aspect of the legislation and therefore to possess different policy objectives from those under which the Committee is operating.

4 The role of donors, researchers and the media

Having considered the main protagonists in the debate, this section considers the role of three other (not necessarily discrete) groups – donors, the research community and the media – with a view to articulating their perspective on and influence over the Bill.

4.1 Donors

The Bill puts donors, such as the US, WHO and UNAIDS, in a curious position. Having supported 'home-grown' solutions to HIV/AIDS in Africa, the Bill – an arguably 'Ugandan' attempt to address HIV/AIDS – has largely been seen as unwelcome on the basis that it goes against what is thought to be international best practice, instead adopting a misguided approach to reducing HIV/AIDS by prioritising the 'isolation' of the virus over respect for the dignity of PLWHA. While the donor community seems not to have decided to take a coordinated response on the issue, a number of members have expressed concerns over the Bill's content.

The most comprehensive statement of opposition has been offered by UNAIDS (UNAIDS, 2008)²⁰ in response to earlier drafts of the Bill, with later concerns raised by Elizabeth Mataka, the UN Special Envoy on HIV in Africa, during a meeting in Kampala, where she emphasised the need for Africans to create 'a social environment conducive for HIV prevention and to refrain from laws that criminalize the transmission of HIV and stigmatize certain groups in the population' (Plus News, 2009) in order to avoid undermining efforts to combat the epidemic. More recently, British Ambassador to Uganda Martin Shearman voiced his concern about the Bill 'stigmatizing' PLWHA, describing it as 'counter-productive in Uganda's fight against HIV/AIDS' (Lirri, 2010b). Interestingly, however, the Convention for the Elimination of All Forms of Violence against Women (CEDAW) Committee for Uganda has called on the government of Uganda to 'ensure the expeditious passage' of the Bill, without citing any criticism or concern over its provisions (CEDAW Committee, 2010).

Unsurprisingly, the international community has been involved in funding a number of projects which have direct bearing on the debate. For example, Panos commissioned a journalist to provide a commentary on the 2009 draft, according to Kakaire Kirunda of the MUSPH, and the Open Society Initiative (OSI) East Africa funded the one-year Advocacy Project to Promote an Appropriate HIV/AIDS Prevention and Control Bill in Uganda, which ended in January 2010. On a more general level, a number of interviewees reported that the NGOs opposing parts of the Bill were doing the work of international donors by promoting a rights-based approach, seen as something of a 'Western import' which has served to mask 'ground-level evidence' of what Ugandans perceive to be barriers to an effective response to HIV/AIDS.²¹ In turn, these NGOs are viewed as maintaining their existence through the donor funding made available to them

²⁰ The author was unable to access this report.

²¹ These interviewees included Beatrice Rwakimari and Josephine Watera Ssemalkula of the HIV/AIDS and Related Matters Committee; an anonymous Ugandan lawyer; and two anonymous medical doctors.

for this purpose (the general propagation of human rights), which in itself is not an inaccurate observation.

The more contentious implication of this claim – that opposing the Bill is a way of obtaining funding from donors – is difficult to disentangle from what may be a genuine conflation of a commitment to respecting the rights of PLWHA. Certainly, a significant amount of funding is offered to NGOs for a variety of HIV/AIDS projects and programmes in circulation; and international donors are firm fans of rights-based approaches and quite evidently contribute to the promotion of the human rights discourse in Uganda. For now, it can be asserted that the framing of the debate in terms of human rights indicates that the international community has had a role (direct or indirect) in shaping the debate. This issue is discussed in more detail in Section 6, which analyses the influence of donors on the main protagonists in the debate (the Bill's supporters and opponents).

4.2 The research community

The research community involved in HIV/AIDS research spans a number of research entities containing both medical and public health experts, the majority – if not all – of whom receive government funding. Prominent actors in this category include the AIDS Information Centre (AIC); the MUSPH and the IDI, both based at the University of Makerere; the JCRC; and the Virus Research Institute. In general, there has been little in the way of formal engagement between these institutions and the Committee, or with the debate itself.

It would also seem there is no 'official' position on the Bill being taken by these respective entities at institutional level, although the AIC is apparently in support of it.²² However, perspectives on the Bill are likely among individual researchers who do not necessarily represent an institutional 'line'. For instance, while the MUSPH has not offered either support or opposition to the Bill, the University of Makerere's former Deputy Dean and Current Associate Professor of Medicine Elly Katabira has expressed his personal doubt with regard to the ability of legislation to actually prevent HIV transmission, further arguing that current laws are sufficient to bring those who forcibly transmit the virus to justice (Womakuyu, 2008). Research institutes have also indirectly participated in the debate by provided platforms for concerns about the Bill: one example is that of Ambassador Shearman, who delivered his input into the debate while addressing those gathered at the 20th Anniversary of the Medical Research Centre/Uganda Virus Research Institute Unit in Entebbe (Lirri, 2010b).

To the best of their knowledge, those interviewed said their respective institutions had not been approached formally by any government actor to undertake research to inform the Bill, nor had they themselves sought to influence the passage of the Bill on the basis of particular research. Little was known about the contributions of individual researchers to the Bill, and it was assumed that the director had had some level of involvement in the process – although what this entailed was deemed to be a private matter between the relevant government actor and the director.²³ Rather than have a role in the debate through influencing, researching or publicly supporting any one 'side' of the argument, the research community's role seems to relate directly to technical aspects of the Bill's drafting only. According to Josephine Watera Ssemakula of the HIV/AIDS and Related Matters Committee, both the IDI and the research section of TASO had been called on by the Law Reform Commission to provide medical definitions for the Bill.

²² According to David Serwadda at the MUSPH, Francis Kiweewa at the JCRC and Henry Kagamba at the AIC.

²³ According to Francis Kiweewa and Henry Kagamba.

4.3 Media

Unsurprisingly, Uganda's print, audio and visual media have been a major source of information concerning the Bill. The print media in particular has chronicled the Bill's passage, reporting on particular events relating to the debate such as the Committee's civil society consultations and the Bill's tabling in May 2010. However, the language used is largely neutral and the media's position regarding the Bill and influence over any particular argument are difficult to discern. While the very existence of reporting on the proposed legislation is significant in itself, the reporting in general lacks analysis of the factors driving it, which would serve to 'join the dots' between argument and arguer. In sum, newspapers such as The Monitor and New Vision may be commended for their frequent and objective reporting on the Bill but, given the prominence of the media in communicating and shaping Ugandan society, there is a strong sense of this being a missed opportunity to critically analyse the evidence from both sides of the debate, according to Kakaire Kirunda of the MUSPH.

Research-based evidence is not absent in media reports: it is used to contextualise the Bill with reference to the country's wider HIV/AIDS situation (e.g. Lirri, 2010a) and has been discussed – in general terms – in a special report questioning the relationship between criminalisation and reduced rates of HIV (e.g. Lirri, 2010a; Nalugo, 2010b). However, this evidence is often found in quotations from individuals rather than being woven into an analytical prose. While the gathering of perspectives from members of the public, including key figures in the debate, is a form of research, and what appears in the report is a form of evidence, there is a perceived lack of capacity within the media to probe public health issues in a way that goes beyond reporting on events and quoting other people.²⁴ On occasion, the contents of the Bill have been misquoted, with the death penalty provision (a remnant of the 2007 draft) still appearing in the description (e.g. Lirri, 2010a; 2010b). This has been picked up quickly by an outraged international media – and in particular blogs (e.g. Rod 2.0: Beta, 2010).

This is not to say that presenting the views of those interested in the Bill is of little value. In fact, the media has been surprisingly good at presenting a wide variety of arguments, and not just that of the Committee. The government-owned New Vision, significantly, has given a platform to those critical of the Bill (e.g. Kalibbala, 2010), and leading figures in the opposition camp such as Joseph Amon (Human Rights Watch) and Dorah Musinguzi (UGANET) have featured as guest writers in The Observer and The Monitor, respectively (Amon, 2010; Musinguzi, 2010). The print media is also a popular way for politicians to articulate their 'open' and 'democratic' credentials, according to one PLWHA interviewee. One example is that of the Social Services Committee, which used New Vision to announce that it was inviting memoranda and petitions from the general public on the subject of the Bill in September 2010 as part of the parliamentary scrutiny process. Overall, it is clear that the media has had a role in communicating basic information to those directly engaged in the debate, as well as the general public.

However, in terms of probing these arguments – or playing 'devil's advocate' – the media seems to have missed an opportunity to go beyond what is a fairly passive role. For instance, a series of talk shows broadcast on Ugandan television during 2009 enabled the HIV/AIDS and Related Matters Committee to engage with MPs and civil society representatives to discuss the issues raised by the Bill – primarily mandatory testing, disclosure and criminalisation. While the preparedness of the Committee to engage in these talks on national television is thought to be positive, it was also described (by Angela Asio of UGANET) as,

[...] a way of giving public attention to civil society, pretending their views were being taken on board, and then going on as usual [...] a TV talk shop.

²⁴ This is partly being addressed through the MUSPH Fellowship Scheme, which has sought to train journalists in how to report and communicate on public health issues. Fellows include Kakaire Kirunda, a former journalist with The Monitor, and Milly Natimba, the MUSPH's Communications Officer.

Again, the media is seen to have colluded in an attempt to showcase Uganda's open society while the exercise itself is perceived to have little bearing on the Committee's position. The same interviewee felt the talk shows were limited by the debate itself, which does not address,

[...] a united objective [...] everyone is going in different directions with no one aim. Sometimes it is freedom, respect, fulfilment; sometimes about the rate of HIV. They do not always meet. The debate needs a chairperson, because these people are going around in circles.

The media has a role, therefore, but not the role it could – to the detriment of the debate itself. This point will be further exemplified in the following section, which characterises the role of research-based evidence in the debate.

5 Characterising the role of research-based evidence in the debate

This section briefly describes how the role of research-based evidence can be characterised. In turn, these characteristics elucidate the nature of the debate itself. Some have already been highlighted in the course of the discussion and therefore may seem quite obvious.

As has been indicated in the discussion thus far, the arguments of the two main sides in the debate fall into one of two categories: 1) public pronouncements documented in public information sources and/or made in public meetings; and 2) private pronouncements made during interviews which may or may not have been documented in unseen documents. When discussing the arguments made in the debate, there has been a conflation between the two. There is, however, an important distinction between arguments made publicly and those made privately, particularly when we are talking about the use and visibility of research-based evidence, which itself is subject to being used in a 'public' or 'internal' manner.

The types of research-based evidence that have been used in the debate are 1) qualitative findings obtained through meetings/consultations with members of the public; 2) qualitative studies undertaken by the principal actors themselves; 3) references to legal case studies from other countries; and 4) existing evidence from both national and international sources. While the first two represent research undertaken by actors in the debate themselves – although in practice may be difficult to distinguish – the second two constitute research 'uptake' – that is, research findings have been communicated to the actors in the debate and subsequently used to form and/or communicate an argument.

These two themes are to be found in a further seven key characteristics of the role of research-based evidence in the debate.

5.1 Lack of communication of research-based evidence

Both sides have not communicated their respective evidence bases well. The distinction between arguments presented in public and the rationale used to justify a position on the Bill in private is important here, as one of the most significant findings is that an awareness, use or undertaking of research-based evidence may exist for the principal actors in the debate – both in internal documentation and with individuals – but is often not communicated in public. Both sides suffer deficiencies in their public use of research-based evidence, which has repercussions for how their arguments are viewed.

This appears in different ways. This case study shows that the Committee has undertaken research (e.g. regional consultations, study tours to other East African countries, study on modes of transmission in fishing communities, literature reviews) but references to these do not seem to appear in any documentation relating to the debate. This problem is compounded by the lack of a single document to explain the Committee's rationale: while the UAC's Modes of Transmission studies in 2008 and 2009 appear (at least orally) to have formed the basis for the Committee's argument, the original thinking behind the Bill (first presented in 2007) is unclear.²⁵

The civil society opposition to the Bill has been more diligent in documenting its arguments, making an analysis of its evidence base far less arduous than that of the Committee's. However, there is a tendency to refer to research-based evidence in vague terms, relying on an appeal to the abstract existence of research and/or evidence rather than being explicit. While there are some notable examples of research-based evidence being used and clearly presented in public arguments (e.g. Human Rights Watch, 2010; Kabumba, in UGANET and ActionAid International, 2009), there seems to be an assumption that an appeal to the *existence* of research-based evidence – without further elaboration – is sufficient.

5.2 Perceived lack of evidence base

But is it? Seemingly, both the Committee and the civil society opposition feel that they possess an adequate evidence base for their arguments. As demonstrated, the opposition has framed its response to the proposed legislation with suggestions that the Bill is nonsensical (e.g. against international guidelines) and lacks an appreciation of the HIV/AIDS situation in Uganda. A number of NGO workers have cast doubt as to whether an evidence base even exists.²⁶ Concurrently, opponents of the Bill – who promote a human rights-based approach – were described by the Committee's chair as having adopted an approach at odds with one based on 'evidence on the ground', and are instead promoting an approach understood only by the 'enlightened', not by 'ordinary Ugandans'.

Both parties believe they are operating on research-based evidence (both their own and that of external actors) but believe the other to be motivated by something other than evidence: the Committee is thought to be operationalising discriminatory attitudes, the opposition to be acting on a blind commitment to human rights with little appreciation of Uganda-specific problems.

Both, therefore, perceive the other to be operating with an entirely different policy objective: that of protecting the rights of PLWHA *versus* the prevention and control of HIV/AIDS through possibly draconian – but necessary – measures, respectively. What this has meant for the debate in practice, it would appear, is that there has been much talk of how to *approach* HIV/AIDS in Uganda, but little in the way of a debate on the technical side of the issues. This is not to say that no proclamations have been made in this regard – the statements from the Civil Society Coalition and Human Rights Watch are testament to this – but there is little to suggest that the two sides of the debate have engaged each other, or are at least perceived to engage one another, using research-based evidence which speaks the language of the other. This has not been helped by the fact that the Committee has found itself largely on the offensive in public debates with the opposition, or by the absence of any statement on the Committee's evidence base.

²⁵ For instance, Maya Bertsch (Human Rights Watch Uganda) said via email that she had not 'seen any of the HIV/AIDS Committee's evidence base for the Bill'.

²⁶ Interviewees/informants from Human Rights Watch, NACWOLA and UGANET expressed doubt with regard to the Bill's evidence base.

In practice, therefore, the view that the other side offers an entirely different approach has meant that neither side is perceived by the other as possessing a valid evidence base. In effect, this has discouraged the use of evidence in the debate in a like-for-like manner.

5.3 Difficulties in using evidence to influence and persuade

There is a lack of incentive for using evidence in a robust way given a further perception that the other side is beyond persuasion or influence: indeed, there are questions with regard to whether either side could even be persuaded or influenced by research-based evidence that goes against its own position. In theory, both sides say they would welcome such evidence. However, it seems that no amount of evidence could convince NGOs that their approach is not effective: any argument would have to demonstrate that the human rights of PLWHA would not be threatened or violated.

On the other hand, the Committee's chair argued that,

[...] if they say it will cause discrimination they need evidence [...] if we were presented with this evidence then YES of course we would listen [...] that is what this whole process has been about, to give a chance for people to bring their evidence. Our objective is to make the law relevant for Ugandans.

On this basis, it seems that the Committee could be influenced by evidence of, for instance, the Bill's likely impacts. However, NGOs were doubtful that any evidence could persuade the Committee to change its approach, with one interviewee saying,

We have presented them with evidence but the fact is they have made up their minds.

According to the same interviewee, the changes made to the Bill during its three-year evolution are the result of public pressure and fear of public revolt rather than evidence. The Committee, meanwhile, said that evidence had indeed been influential in changing some of the provisions in the Bill – 'evidence of public opinion'. This is more instructive, as it enables one major point to be made here, that of the primacy of public opinion as the preferred source and/or type of research-based evidence for the Committee.

5.4 What constitutes 'research' and 'evidence': public opinion as evidence?

Both sides appeal to public opinion as evidence, and its soliciting as research. Is there a difference, then, between evidence of public opinion and public pressure, where it is not counted as evidence? It seems there is something to say here about the types of research-based evidence being referred to (see Jones, 2011). These are used to different degrees by the Committee and the civil society opposition. Both sides hold that they have undertaken their own 'ground-level' research – the Committee through consultations and a qualitative study into modes of transmission in fishing communities; the CSOs through consultations – as well as basing their arguments on existing research. There are a number of major points to make in relation to public opinion as a valid source of evidence, whose opinion counts and influence over the Committee.

First, both sides take the garnering of public opinion, perspectives and inputs through consultations to mean 'research', and the fruits of this to mean 'evidence'. However, both sides criticise each other's approaches: for the Committee, the Bill's opponents have spoken only to a select number of people who are keen to do their bidding, and are therefore out of touch with the reality of HIV/AIDS in communities; meanwhile, the Committee's evidence base is – as we have seen – unknown (uncommunicated), but is also thought not to have been properly

considered before a response was formulated (i.e. the Bill's provisions were not the only responses available).

Second, and crucially, if public opinion is to be counted as research-based evidence, the question of *whose* opinion becomes paramount: 'the voice of the people', 'community members' and 'citizens' are not neutral, nor are do they constitute a homogenous, informed opinion. Even by surveying the most vociferous participants in the opposition to the Bill, we see that commercial sex workers (represented by WONETHA) have gained considerable (some may say disproportionate) attention and space. Indeed, the conflation between public opinion, public participation, research-based evidence and the Bill's opposition has skewed the debate somewhat and led to a sensationalisation of some of the issues involved.

This conflation is also present in the Committee's approach to its evidence base. In a telling comment, the chair suggests that persuading the Committee to remove criminalisation from the Bill is a matter for the Ugandan people to decide, not the Bill's civil society opponents:

'The Bill was committed to the Social Services Committee and is open for discussion. Let all people with issues forward them before the committee. If the people so wish that the clause criminalising the spread be deleted, we shall do that but it should come from the people of Uganda and not the human rights activists' (in Nalugo, 2010b).

Finally, influence over the Committee, then, comes from the ground-level evidence presented by community members. It is not immediately obvious, however, how the Committee distinguishes between human rights activists and 'the people'. The chair has also, interestingly, aligned evidence-based approaches with democracy, even though it is unclear whose job it is to arbitrate on the evidence presented by 'the people'. What is clear is that the Committee is indeed interested to move the debate beyond that dictated by human rights activists, who are seen to have 'taken over' the voice of civil society, as Josephine Watera Ssemakula, a Committee researcher suggested.

5.5 Prominence of the (international) human rights discourse

As far as the Committee is concerned, opponents of the Bill are influenced by a donor- or internationally driven human rights agenda, and this has in turn meant that the opposition is not presenting valid ('ground-level') evidence, nor is it supporting its forecasting of the Bill's impacts with concrete evidence. This suspicion of the opposition lessens the Committee's propensity to listen to it and – ultimately – take its arguments seriously. The alignment of the civil society opposition – in the form of both ideological bent and funding sources – has therefore inadvertently weakened its influencing power over the Committee.²⁷

Further, donors and the wider international community may also be said to have actively contributed to the sensationalisation of the Bill in and outside of Uganda by establishing an association between the HIV/AIDS legislation and the Anti-Homosexuality Bill.²⁸ According to the chair of the Committee, the Bill has failed to gain a fair hearing by CSOS because of links made between the two Bills. In turn, the case study findings suggest this has meant the Committee is consigned to a 'defensive' position which – according to the chair – has left it little opportunity to present its case using research-based evidence.

²⁷ According to one Committee researcher, many of the people working for the organisations that oppose the Bill are aware there is a need for legislation to criminalise the wilful transmission of HIV but, given the need for international funding, have 'toed the line' on human rights.

²⁸ Champions for an AIDS-Free Generation, for example, conflated the two when the group – consisting of a number of former African presidents and other influential personalities – delivered a letter to President Museveni expressing its concerns and urging him to stop the passage of both laws (Plus News, 2009).

The implication of this argument is that the Committee's space to communicate its own evidence has been limited by the need to stem vehement criticism. While this admittedly does not entirely account for the Committee's limited use of its own research-based evidence in the public discourse, it offers a new perspective on how the sensation and controversy surrounding the Bill has left its proponents with little room to operate.

5.6 The indirect role of research-based evidence

As Section 1 suggested, there is indeed an existing evidence base to which the debate's actors can refer, and the discussion can be seen as ultimately framed by a concern with 'the evidence'. First, however, there are clear gaps in the evidence base: Angela Asio from UGANET, for instance, admitted that civil society lacks direct evidence linking criminalisation with negative impacts on HIV prevention efforts, whereas the Committee's chair called this argument an 'assumption' for which the coalition has been unable to produce evidence.

Second, the appeal to evidence is often done with little in the way of direct citation, and in this regard fits into Weiss (1977)'s 'enlightenment' function of research. The Committee refers to existing evidence (assumedly the UAC's Modes of Transmission studies) to justify particular provisions which deal with problems identified in the studies and, though the existence of a literature review undertaken prior to the Bill's first draft suggests a survey of existing evidence was alluded to, the Committee does not demonstrate its use of existing research-based evidence through direct citation or – as mentioned – by making its research known to the public.

As already suggested, this is not to say that directly citing or communicating this evidence would alter the stance of the civil society opposition. The approach the coalition adopts is based on international and national human rights commitments, and references to these are described as evidence because, according to one NGO worker, *'we **assume** all of these provisions for rights are based on evidence in the first place'* (author's emphasis). In addition, a number of indirect references to evidence emerging from research are made – principally Human Rights Watch (2010) and Besingye Kabumba (in UGANET/ActionAid International, 2009). However, these are vague, making it impossible to trace what is being used and where it came from.

Nevertheless, it is important to note that, even though evidence – and the capacity to use and communicate it – may be lacking, there is a strong concern with ensuring that it is referred to. Such appeals indicate that research-based evidence has, to some degree, been considered nonetheless and the language of research and evidence has made its way into the public domain.

5.7 Missed opportunities by the research community and the media

The research community seems to have very little direct involvement in the debate, owing to both little demand and even more limited supply. While research, largely in the form of the UAC's Modes of Transmission studies, has had an influence in terms of framing the debate, the research community has not supplied specific products to the Committee, nor to the civil society opposition.

This lack of involvement can be attributed in part to the perception that neither side of the debate is using evidence in a systematic way in the public discourse. This perceived lack of evidence begets limited interest in the debate on the part of the research community, which sees little incentive to produce relevant research or try to influence it. In turn, this influences the availability of research-based evidence which could – potentially – influence the debate.

As suggested, research entities appear to have limited interest in tracing – or limited mechanisms through which they are able to trace – the influence of their existing research. Individuals in charge of research in both the AIC and the JCRC reported having ‘no idea’ what role their respective organisations had played in the debate, but surmised that their directors were likely to have been consulted. That their research has been consulted by the relevant actors involved in the debate – particularly that of the two committees – is assumed. The presupposed knowledge-driven system of research uptake, combined with the institutionalised disjuncture between research on the one hand and influence (in the form of the executive director) on the other is an interesting point, further giving credence to the view purported here that the research community has been relatively passive in the debate.

The role of the research community is diminished by the existence of parliamentary researchers and resource centres which have been responsible for gathering data for the Committee’s internal use. Problems relating to their limited role are compounded by the nature of the debate, which directly involves MPs rather than policymakers from the Ministry of Health with whom researchers are more accustomed to engaging. Further, MPs in the committees in Parliament are not experienced in commissioning research – meaning there is little scope for the research community to be approached by the Committee for substantive (paid) input. The research community seems to know this, and feels there is little incentive in trying to involve itself in the debate, as one researcher said:

In an ideal world then yes, we would be out there [...] maybe lobbying [...] maybe knocking on doors [...] the fact is that we do not have time [...] we need to raise a certain amount of funds, and no one is going to pay us to write about this Bill.

With respect to their relationship with the government, a number of interviewees alluded to an added disincentive to undertake policy-relevant research involving policymakers (in general) as policymakers expected to be paid. This practice is thought to be widespread, and has led to researchers being reluctant to undertake research involving policymakers unless they have been approached and commissioned by the government. In turn, this affects the supply of relevant research that the Committee can use. The net result is that the research community feels there is no space for it in this debate, and no incentives to involve itself.

Similarly, the media is thought to have failed to make the most of an opportunity to deliver evidence-based analysis. As discussed, the media is thought to lack the capacity to engage with, scrutinise and probe the issues presented by the debate’s protagonists, instead offering reports which – perhaps intentionally – lack engagement with both evidence and the arguments put forward. This has meant that, where there is both a lack of engagement by the research community and a tendency for the Committee to refrain from communicating its evidence, the media has not been able to remedy the situation. Further, the media has not been able to act as a public arbiter in a debate in which the principal sides do not see each other as operating with – and talking the same language of – the same policy objective.

Thus far, the research community and the media have not fulfilled the opportunity to engage directly with the Committee or the civil society opposition to critically assess their respective arguments and act as arbiters in the debate. Nor, it must be said, have they engaged with each other on the issue – although David Serwadda of the MUSPH acknowledged a failure to play the ‘third arm’ between research and policy and said that the institute was thus taking the media far more seriously as a communication and dissemination mechanism.

This is not to say that these actors even possess the freedom, interest or resources for these activities. The Bill may, quite simply, hold little interest – or at least incentives – for them to put time and energy into activities with little or no financial yield. This is where donor funding could play, and has not played, an instrumental role. Thus far, only a selected number of international organisations have put resources into advocating against the Bill or funding others to do so (e.g. OSI East Africa, Human Rights Watch). Donor money has been concentrated in advocacy activities and not in the various parties to support the production of

timely research which is specific and relevant to the debate. It has also not supported the principal protagonists to present their evidence in a way which would make for a more informed, less heated debate.

6 What can be concluded from this case study?

The debate surrounding the HIV/AIDS Prevention and Control Bill must be understood as firmly embedded in the wider picture of the NRM's engagement with HIV/AIDS as a national policy health issue and the subsequent politicisation of its response, which also entails the instrumental use of evidence from the numerous bodies responsible for data collection and analysis. Importantly, the debate is framed by a concern with evidence, with parties keen to establish the legitimacy of their arguments by emphasising evidence and research. NGOs in particular – perhaps informed by donor research on policy influence – have structured their approach to advocacy to communicate their arguments in what is thought to be a way palatable for their target audience – principally the HIV/AIDS and Related Matters Committee and the Social Services Committee. The furore surrounding the proposed Anti-Homosexuality Bill, and the role of the international community in sensationalising both Bills, has also acted to charge the debate with added controversy and connotations.

In terms of factors which account for the role of research-based evidence in this debate, the case study concludes the following.

First, the lack of trust between principal actors in the debate – the Committee and civil society opponents of the Bill – manifests in a belief not only that neither side has sufficient evidence but also that both sides are working towards different policy objectives (e.g. human rights vs. effective HIV prevention and control); in addition, neither side is likely to convince, influence or persuade the other as a result of what are perceived to be staunchly held positions based on values, beliefs and power-based incentives.

These beliefs are not without grounds, and not only help in illuminating how the debate is perceived but also offer two explanations of the role of research-based evidence in the debate: 1) *different policy objectives* have affected how and what evidence is used, with an emphasis on prevention leading to different appeals to evidence than the human rights-focused objectives of some NGOs. This has led to the use of arguments, and supporting evidence, which is arguably not like-for-like. The quality of the debate and the use of research-based evidence would no doubt improve with the involvement of an external arbiter to ensure the debate does not stall; and 2) there is arguably a tendency among some actors in the debate to refrain from communicating evidence because of a *perception that some positions are immovable*. Indeed, there is considerable scope to suggest that arguments in the debate are characterised by 'position-based evidence making' which is subject to considerable influence by financial incentives. While research has informed the diagnosis of problems (e.g. HIV rates among commercial sex workers), it has been more limited in terms of informing the solution. The level of probing on these questions by either side is lacking, and this is not helped by the seemingly low input from the research community.

Second, civil society opposition's focus on advocating for human rights might be attributed to the influence of donors and the wider international community, but the Committee too may be 'toeing' a particular donor 'line': the US Global AIDS Act requires that organisations receiving US anti-AIDS funding have a policy of explicitly opposing and barring the use of funds to promote or advocate the legalisation or practice of prostitution – and the Bill itself could be said to be an attempt to attract and secure HIV/AIDS funding from the US. These issues also relate to the perceived role of discriminatory attitudes, assumptions, beliefs and cultural values which shape perceptions of PLWHA and particularly sex workers. The implication here is that

the Bill is informed by and representative of discriminatory attitudes and ideas found within Ugandan society, and fragmented appeals to evidence come second.

The third factor, already touched on, is the limited capacity and resources to communicate evidence. A major question to ask of the debate is why the Committee has not presented its evidence or arguments in a more proactive, systematic way. The absence of any comprehensive statement presenting the Committee's evidence, or overall justification, for the Bill cannot be explained definitively in this case study. One explanation – offered by the Committee chair – is that it lacks the resources to do so. While this is not a particularly enlightening explanation, it does pertain to the related issue of the limited research capacity of Parliamentary committees which are not accustomed to commissioning or using evidence 'outside' the confines of Parliament. Supporting the research community to penetrate Parliament – and to see value in doing so – requires a financial incentive. However, there is a perceived need to keep arguments simple (e.g. Carden, 2009) because of a perceived lack of capacity in the country to understand evidence, whether this is accurate or not. This could arguably lead to a 'dumbing down' (Mendizabal, 2010) of the debate, with only cursory references to research-based evidence.

The lack of communication from the Committee regarding the Bill's rationale means there is a lack of scope for the civil society opposition to scrutinise or critically engage with evidence. The Committee's failure to communicate its evidence – despite possessing a number of internal documents – has meant that the opposition has had little to scrutinise or analyse other than the Bill itself. Unless the Committee produces its evidence for public consumption, the content of research-based evidence in the public discourse surrounding the Bill will remain patchy.

The final factor used to explain the role of research-based evidence in the debate concerns the value placed on one type of evidence which plays an instrumental role in the arguments of both the supporters and the opponents of the Bill: public participation and opinion. In terms of gathering what is thought to be research-based evidence, the role of public opinion and public voice is valued highly, particularly by the government, which (nominally at least) views the use of public opinion as a way of creating a 'Ugandan' law. This offers a degree of irony, given the emphasis placed on 'domestic' solutions to HIV/AIDS by donors, who are now unlikely to support the Bill, which is seen as somewhat illogical and going against international guidelines. Meanwhile, civil society has encouraged participation in the debate by PLWHA and also held regional consultations in order to elicit the views of community members. Indeed, activities which promote participation and increase voice are favoured by donors and the wider international community; the question is whether this is an effective way of ensuring a debate is evidence based. Further, as with all participatory approaches, we need to ask 'whose opinion counts'?

7 Bibliography

- African Activist (2011) 'Uganda's Draft HIV and AIDS Prevention Bill Reintroduced, UHSPA – Uganda Appointment Critical'. African Activist Blog, 22 July.
- Agapa, A. (2009) 'Funding the Promise: Monitoring Uganda's Health Sector Financing from an HIV/AIDS Perspective'. *African Health Sciences* 9(S2): S81–5.
- Agiresaasi, A. and Fiziwa, N. (2008) 'Reasons for Higher Prevalence of HIV/AIDS in Fishing Communities (Masaka and Mayuge) Districts'. Kampala: Parliament of Uganda Research Service.
- Allen, T. and Heald, S. (2004) 'HIV/AIDS Policy In Uganda: What Has Worked in Uganda and What Has Failed in Botswana?' *Journal of International Development* 16: 1141–54.
- Amon, J. (2006) 'Preventing the Further Spread of HIV/AIDS: The Essential Role of Human Rights', in Human Rights Watch *World Report 2006*. New York: Human Rights Watch.
- Amon, J. (2010) 'Uganda AIDS Policy: From Exemplary to Ineffective'. *The Observer*, 23 June. http://www.observer.ug/index.php?option=com_content&task=view&id=9011&Itemid=66
- Ayiko, R. (2010) 'Time to Define More HIV Prevention Strategies', *The Monitor*, 24 June. <http://www.monitor.co.ug/OpEd/Commentary/-/689364/945252/-/a0dwi4z/-/index.html>
- Baingana, G., Choi, K.H. et al. (1995) 'Female Partners of AIDS Patients in Uganda: Reported Knowledge, Perceptions and Plans'. *AIDS* 9 (Suppl 1): S15–19.
- Biya Masr (2010) 'Uganda: Protect, Don't Punish, People with HIV'. 23 May. <http://bikyamasr.com/wordpress/?p=12958>
- Bunnell, R., Ekwaru, J.P. et al. (2006) 'Changes in Sexual Behavior and Risk of HIV Transmission after Antiretroviral Therapy and Prevention Interventions in Rural Uganda'. *AIDS* 20(1): 85–92.
- Carden, F. (2009) 'Knowledge to Policy: Making the Most of Development Research'. Ottawa: International Development Research Centre.
- Chabal, P. and Daloz, J.P. (1999) *Africa Works: Disorder as a Political Instrument*. African Issues. Indiana/Oxford: International Africa Institute/Indiana University Press/James Currey.
- Civil Society Coalition (2010) 'Memoranda on the HIV/AIDS Prevention and Control Bill'. Report submitted to the Parliamentary Social Services Committee. Kampala: UGANET.
- Convention for the Elimination of All Forms of Violence against Women (CEDAW) Committee (2010) 'Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Uganda'. CEDAW/C/UGA/CO/7. New York: UN.
- Dhaliwal, M. (2005) 'HIV and Human Rights: Testing Times'. Presentation at the Overseas Development Institute, London, 7 February.
- Fischer, F. and Forester, F. (eds) (1993) 'The Argumentative Turn in Policy Analysis and Planning'. Durham, Newcastle and London: Duke University Press.
- Government of Uganda (2010) 'National Development Plan 2010/11–14/15'. Kampala: Government of Uganda.
- Hansard (2010) '11727 Parliamentary Debates, Official Report: Fourth Session – Third Meeting'. 19 May.
- Hickey S. (2003) *The Politics of Staying Poor*, Uganda Chronic Poverty Research Centre Working Paper, No. 37. Manchester: Chronic Poverty Research Centre.
- HIV/AIDS and Related Matters Committee (2008) 'Proposals and Recommendations on the HIV and AIDS Prevention and Control Bill, 2008'. National Consensus Building Workshops on the HIV and AIDS Prevention Bill, Kampala.
- HIV/AIDS and Related Matters Committee (2009) 'Discussion of the Gaps in the HIV/AIDS Bill 2009 and CSO/Individual Submissions to the Bill'. Consultations in Lukiko Hall, Masaka, Kalangala, Kampala.
- HIV/AIDS and Related Matters Committee (2010) 'HIV and AIDS Prevention and Control Bill (Bill No. 5)'. Bills Supplement 4, Uganda Gazette 24, CIII, 30 April.
- Human Rights Watch (2010) 'Comments to Uganda's Parliamentary Committee on HIV/AIDS and Related Matters about the HIV/AIDS Prevention and Control Bill'. New York: Human Rights Watch.
- Joint UN Programme on HIV/AIDS (2008) 'UNAIDS Comments on the Republic of Uganda's Draft Legislation – The HIV and Aids Prevention and Control Bill 2008'. Geneva: UNAIDS.
- Jones, H., 2009, 'Policymaking as Discourse: A Review of Recent Knowledge-to-Policy Literature', Joint Working Paper No. 5, IKM Emergent/Overseas Development Institute, London
- Kalibbala, G. (2010) 'HIV/AIDS: Activists Challenge Bill'. *New Vision*, 27 June. <http://www.newvision.co.ug/D/9/34/724106>
- Karugaba, M. and Olupot, M. (2010) 'HIV Bill Tabled in Parliament'. *New Vision*, 19 May. <http://www.newvision.co.ug/D/8/13/720055>
- Karugonjo-Segawa, R. (2010) 'Final Report of the Consultancy to Draft NACWOLA's Position Paper on the HIV/AIDS Prevention and Control Bill, 2010'. Kampala.
- Keeley, J. and Scoones, I. (1999) 'Understanding Environmental Policy Processes: A Review'. Working Paper 89. Brighton: Institute of Development Studies.
- Kelsall, T. (2008) 'Going with the Grain in African Development?' *Development Policy Review* 26(6): 627–55.
- Kirland, J., Mouten, J. and Coates, J. (2010) 'Communicating Research for Utilisation (CRU): Specialist Professional and Institutional Capacity Building in Sub Saharan Africa'. Final Report of the CRU Scoping Study submitted to DFID.
- Kapi, E.A. (2010) 'Inside the Tough World of Sex Work', *The Observer*, 16 December.
- Koenig, S. and Atim, B. (2010) 'Health Spending in Uganda: Impact of Current Aid Structures and Aid Effectiveness'. EU Health ODA and Aid Effectiveness Country Briefing 1. Brussels: Action for Global Health/DSW.
- Lieberman, E. (2005) 'Politics in Really Hard Times: Ethnicity, Public Goods, and Government Responses to HIV/AIDS in Africa'. Unpublished Paper.
- Lirri, E. (2010a) 'Stigma Slowing Fight Against HIV/AIDS, Says Health Expert'. *The Monitor*, 2 January.

- Lirri, E. (2010b) 'UK Criticises Uganda's AIDS Bill'. *The Monitor*, 4 February. <http://www.monitor.co.ug/News/National/-/688334/855180/-/whyaw6/-/index.html>
- Lirri, E. and Nalugo, M. (2009) 'UN Envoy, Activists Criticise AIDS Law'. *Daily Monitor*, 3 December. <http://www.monitor.co.ug/News/National/-/688334/816902/-/wfj0pp/-/index.html>
- Livingston, I.L., Johnson, M., Lyons, N., Smiley, S. and Livingston, S.L. (2009) 'The Epidemic of HIV/AIDS in Sub-Saharan Africa and Selected Consequences: The Impact of Globalization'. 18th Annual Conference of the Global Awareness Society International, Washington, DC, 23 May.
- Low-Beer, D. and Stoneburner, R. (2004) 'Chapter 10: Uganda and the Challenge of HIV/AIDS', in Poku, N.K. and Whiteside, A. (eds) *The Political Economy of AIDS in Africa*. Aldershot and Burlington, CA: Ashgate.
- Majone, G. (1989) *Evidence, Argument and Persuasion in the Policy Process*. New Haven, CT: Yale University Press.
- Matovu, J. (2010) 'HIV Funding Should be a National Priority', *New Vision*, 27 June. <http://allafrica.com/stories/201006281160.html>
- Makara, S. (2010) 'Deepening Democracy through Multipartyism: The Bumpy Road to Uganda's 2011 Election'. *Africa Spectrum* 45(2): 81–94.
- Mendizabal, E. (2010). 'Dumbing down the audience?' ODI Blogspot, July 5th 2010.
- Ministry of Health (2007) 'National Strategic Plan for HIV&AIDS, 2007/08-2011/12'. Kampala: Government of Uganda.
- Ministry of Health (2009), Draft Health Policy. Kampala: Government of Uganda.
- Ministry of Health (2010) 'Health Sector Strategic Plan 2010/11–14/15'. Kampala : Ministry of Health.
- Mohiddin, A. and Johnston, D. (2006) 'HIV/AIDS Mitigation Strategies and the State in Sub-Saharan Africa – the Missing Link?' *Globalization and Health* 2(1).
- Moncrieffe, J. (2004) 'Uganda's Political Economy: A Synthesis of Major Thought'. Report for DFID Uganda. London: Overseas Development Institute.
- Museveni, Y. (1991 [2000]) 'AIDS is a Socioeconomic Disease: Address to the First AIDS Congress in East and Central Africa, Kampala,' in Kanyogonya, E. (ed.) *What is Africa's Problem?* Minneapolis, MN: University of Minnesota Press.
- Musiga, A. (2010) 'Uganda Gets Sh566b for HIV'. *New Vision*, 24 October.
- Musinguzi, D. (2010) 'HIV Transmission Criminal Liability Counter Productive'. *The Monitor*, 9 June. <http://www.monitor.co.ug/OpEd/Commentary/-/689364/934840/-/a1111sz/-/index.html>
- Muyita, S. and Muyumba, T. (2007) 'Law on HIV Spread in Offing – Dr Otalala'. *The Monitor*, 23 September. <http://www.monitor.co.ug/News/Education/-/688336/780034/-/10i01cs/-/index.html>
- Nalugo, M. (2011). 'Lawmakers okay HIV/AIDS Bill', *Daily Monitor*, July 13th 2011.
- Nalugo, M. (2010a) 'Government Backs HIV/AIDS Bill'. *The Monitor*, 10 May. <http://www.monitor.co.ug/News/National/-/688334/915268/-/wykvsk/-/index.html>
- Nalugo, M. (2010b) 'Can Criminalising HIV Spread Reduce the Infection Rate?' *The Monitor*, 12 June. <http://www.monitor.co.ug/SpecialReports/-/688342/936784/-/fwyxui/-/index.html>
- National Coalition of Women Living with HIV/AIDS (NACWOLA) (2010a) 'Report on the Roundtable Discussion on HIV and AIDS Prevention and Control Bill, 2010 between Members of Parliament and Civil Society Organisations'. Kampala, 8 July.
- National Coalition of Women Living with HIV/AIDS (NACWOLA) (2010b) 'Draft Position Paper on the HIV and AIDS Prevention and Control Bill'. Kampala: NACWOLA (not to be cited without NACWOLA's permission).
- Ndegwa, S.N. (1996) *The Two Faces of Civil Society: NGOs and Politics in Africa*. Hartford, CT: Kumarian Press.
- Network of People Living with HIV in Uganda (NAFOPHANU) (2010) 'Advocacy Strategy 2010-2012'. Kampala: NAFOPHANU.
- New Vision (2010) 'Make HIV Tests Compulsory'. 10 December. <http://allafrica.com/stories/201012130265.html>
- Office of the UN High Commissioner for Human Rights (OHCHR) and the Joint UN Programme on HIV/AIDS (UNAIDS) (1999b) 'HIV/AIDS and Human Rights International Guidelines'. UN Doc. HR/PUB/98/1.
- Ogware, S. (2009) 'Health Research in Uganda: A Critical Role'. UNACOH Annual Scientific Conference, 24 September.
- Oloka-Onyango, J. and Barya, J.J. (1997) 'Civil Society and the Political Economy of Foreign Aid in Uganda'. *Democratization* 4(2): 113–38.
- Parikh, S. (2007) 'The Political Economy of Marriage and HIV: The ABC Approach, "Safe" Infidelity, and Managing Moral Risk in Uganda'. *American Journal of Public Health* 97(7): 1198–208.
- Parkhurst, J. (2001) 'The Crisis of AIDS and the Politics of Response: The case of Uganda'. *International Relations* 15(6): 69–87.
- Piron, L.-H., with Norton, A. (2004) 'Politics and the PSRP Approach: Uganda Case Study'. Working Paper 240. London: Overseas Development Institute.
- Plus News (2009) 'Uganda: International Pressure Mounts Against 'Harmful' HIV/AIDS Bill'. <http://www.plusnews.org/Report.aspx?ReportId=87310>
- Putzel, J. (2003) 'Institutionalising an Emergency Response: HIV/AIDS and Governance in Uganda and Senegal'. Report submitted to DFID.
- Robinson, M. (2005) 'The Political Economy of Turnaround in Uganda'. Report for the World Bank's LICUS Initiative.
- Rod 2.0: Beta (2010) 'HIV/AIDS Bill Mandates Testing and Death Penalty'. 20 May. <http://rodonline.typepad.com/rodonline/2010/05/uganda-hiv-aids-bill-mandates-testing-and-death-penalty.html>
- Rubongoya, J.B. (2007) *Regime Hegemony in Museveni's Uganda: Pax Mesevenica*. New York: Palgrave MacMillan.
- Schoepf, B.G. (2003) 'Uganda: Lessons for AIDS Control in Africa'. *Review of African Political Economy* 30(98): 553–72.
- Serwadda, D., Mugerwa, R.D. et al. (1985) 'Slim Disease: A New Disease in Uganda and Its Association with HTLV-III Infection'. *The Lancet* 2(8460): 849–52.
- Ssengooba, F., Ekirapa, E., Kiwanuka, S. and Baine, S. (2009) 'Effectiveness of Donor Aid: The Case of Uganda'. Kampala: CGD/Makerere University School of Public Health.
- Sutton, R. (1999) 'The Policy Process: An Overview'. London: Overseas Development Institute.

- Tebajjukira, M. (2009) 'New Bill to Protect People with HIV', *New Vision*, 4 October. <http://www.newvision.co.ug/D/8/13/696792>
- Tembo, F. (2010) 'Strengthening Citizen Demand for Good Governance in the African Context'. Mwananchi Discussion Paper 1. London: Overseas Development Institute.
- The AIDS Service Organisation (TASO) (2009) 'TASO Annual Report 2'. Kampala: TASO.
- Thomas, G. and James, D. (2006) 'Re-inventing Grounded Theory: Some Questions about Theory, Ground and Discovery'. *British Educational Research Journal* 32(6): 767–95.
- Tumushabe, J. (2006) 'The Politics of HIV/AIDS in Uganda'. Social Policy and Development Programme Paper 28. Geneva: UNRISD.
- Uganda AIDS Commission (UAC) (2009a) 'Status of HIV & AIDS Prevention, Care and Treatment in Uganda'. Kampala: UAC.
- Uganda AIDS Commission (UAC) (2009b) 'National HIV/AIDS Stakeholders and Services Mapping'. Kampala: UAC.
- Uganda Health and Science Press Association (2011). Memorandum Against HIV/AIDS Prevention and Control Bill, July 2011.
- Uganda Network on Law, Ethics and HIV/AIDS (UGANET) (2009a) 'Joint Civil Society Statement on Draft HIV/AIDS Prevention and Control Bill, Harmonised Position Paper'. Kampala: UGANET.
- Uganda Network on Law, Ethics and HIV/AIDS (UGANET) (2009b) 'Report on Public Dialogues on the HIV Prevention and Control Bill 2009 in Six Districts of Bugiri, Amuru, Gulu, Kaberamaido, Amuria and Ntungamo'. Kampala: UGANET.
- Uganda Network on Law, Ethics and HIV/AIDS (UGANET) (2010) 'Report on the HIV/AIDS Bill Coalition Meeting with the Social Services Committee of Parliament'. 27 October.
- Uganda Network on Law, Ethics and HIV/AIDS (UGANET) and ActionAid International (2009) 'Report on MPs Dialogue on the HIV and AIDS Control and Prevention Bill 2009'. 25 November.
- Wabwire-Mangen, F., Odiit, M., Kirungi, W., Kisitu, D.K. and Wanyama, J.O. (2009) 'Uganda HIV Prevention Response and Modes of Transmission Analysis'. Kampala: UAC.
- Wambi, M. (2010) 'Uganda's Anti-Gay Law Threatens HIV/AIDS Fight'. *African Interest Online*, 3 April. http://www.africaninterest.com/africa/uganda_percentE2_percent80_percent99s-anti-gay-law-threatens-hiv-aids-fights/
- Weiss, C.H. (1977) 'Research for Policy's Sake: The Enlightenment Function of Social Research'. *Policy Analysis* 3(4): 531–45.
- Weiss, C.H. (1979) 'The Many Meanings of Research Utilization'. *Public Administration Review* 39(5): 426–31.
- Womakuyu, F. (2008) 'Implications of Laws on HIV', *New Vision*, 14 December. <http://www.newvision.co.ug/D/9/34/664550>
- Women's Organization for Human Rights Advocacy (WONETHA) (2010) 'Petition and Memorandum on the HIV/AIDS Prevention and Control Bill, 2010'. Letter to the Speaker of the Parliament of Uganda, Kampala, 28 October.
- Youde, J. (2007) 'Ideology's Role in AIDS Policies in Uganda and South Africa'. *Global Health Governance* 1(1).
- Young, J. and Mendizabal, E. (2009) 'Helping Researchers Become Policy Entrepreneurs'. Briefing Paper 53. London: Overseas Development Institute.
- Young, J. (2005) 'Bridging Research and Policy: The RAPID Approach'. International Conference on African Economic Research Institutions and Policy Development: Opportunities and Challenges, Dakar, 28–9 January.

Annexe: List of interviewees

Name	Position	Organisation and location
Dr. Henry Kagamba	Monitoring and Evaluation Manager	AIC, Kampala
Anonymous	Official	Donor organisation, Kampala
Watuwa M. Muniru	Researcher	HIV/AIDS and Related Matters Committee, Parliament of Uganda, Kampala
Josephine Watera Ssemakula	Researcher	HIV/AIDS and Related Matters Committee/Social Services Committee, Parliament of Uganda, Kampala
Maria Burnett	Senior Researcher	Human Rights Watch, Kampala
Anonymous	PLWHA	Jinja
Anonymous	PLWHA	Jinja
Dr. Francis Kiweewa	Director of Research	JCRC
Anonymous	PLWHA	Kampala
Anonymous	Lawyer	London
Anonymous	Journalist	Kampala
Anonymous	PLWHA	Kampala
Anonymous	Researcher	Kampala
Anonymous	Researcher	Kampala
Anonymous	Former NGO worker	Kampala
Anonymous	NGO worker	Kampala
Anonymous	NGO worker	Kampala
Anonymous	Doctor	Kampala
Anonymous	Doctor	Kampala
Anonymous	Official	Ministry of Health, Kampala
Maya Bertsch	Technical Programme Advisor	NACWOLA, Kampala
Hon. Beatrice Rwakimari	MP, Chair of HIV/AIDS and Related Matters Committee, Member of Social Services Committee	Parliament of Uganda, Kampala
Kakaire A. Kirunda	Fellow, CDC-MUSPH Fellowship Scheme	MUSPH
Professor David Serwadda	Former Dean and Programme Director, MUSPH-CDC Fellowship Scheme	MUSPH
Stephen Malinzi Malago	Research Coordinator/Information Manager	TASO, Kampala
Asio Angela	Programme Officer – Advocacy and Documentation	UGANET
James Hughes	Independent consultant on law and human rights	UK
MacKlean Kyoma	Executive Director	WONETHA