

ACTS

THE PREVENTION AND CONTROL OF HIV AND AIDS ACT, 2007

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SIGNED this 13th day of July, 2007

ALHAJI AHMAD TEJAN KABBAH,
President.



No. 8



2007

Sierra Leone

The Prevention and Control of HIV and AIDS Act, 2007. Short title.

Being an Act to provide for the prevention, management and control of HIV and AIDS, for the treatment, counseling, support and care of persons infected with, affected by or at risk of HIV and AIDS infection and for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART 1—PRELIMINARY

Interpre-
tation.

1. In this Act unless the context otherwise requires—

“Acquired Immune Deficiency Syndrome (AIDS)” means a condition characterised by a combination of signs and symptoms caused by HIV which attacks and weakens the body’s immune system making the afflicted person susceptible to other life – threatening infections;

“anonymous testing” means an HIV testing procedure whereby the person being tested does not reveal his true identity but instead, an identifying number or symbol is used which allows the testing centre and tested person to match the tested results with the identifying number or symbol;

“child” means a person below the age of eighteen years;

“compel” in relation to HIV testing, refers to an HIV test imposed upon a person without his consent, by use of force, intimidation or any other form of compulsion;

“consent” means consent given without any force, fraud or threat and with full knowledge and understanding of the medical and social consequences of the matter to which the consent relates;

“health institution” means a hospital, nursing home, maternity home, health centre, dispensary, laboratory, pharmacy or other public or private institution where healthcare services are provided;

“health care provider” means—

- Act. No. 12 of 1994. (a) a medical practitioner or dental surgeon registered under the Medical Practitioners and Dental Surgeons Act, 1994;
- Act. No. 12 of 2001. (b) a pharmacist or pharmacy technician registered under the Pharmacy and Drugs Act, 2001;
- Cap 152 (c) a nurse registered under the Nurses Act;
- Cap 153 (d) a midwife registered under the Midwives Act;
- (e) a laboratory technician;
- (f) a community health officer;

and any other person approved by the Minister under section 13.

“healthcare service” rendered to a person means—

- (a) physical or mental examination of that person;
- (b) treatment or prevention of any physical or mental defect, illness or deficiency and the giving of advice to that defect, illness or deficiency, in a health institution or any other institution or place where surgical or other medical procedures are performed in relation to any physical or mental defect, illness, deficiency or pregnancy;

(c) provision of pre-test or post-test counseling services;

“HIV” means Human Immunodeficiency Virus, that weakens the immune system ultimately leading to AIDS;

“HIV test” means a test which determines whether a person is infected with HIV;

Act No. 1
of 2004.

“local council” means a local council established under the Local Government Act, 2004.

Act No. 5
of 2000.

“medical insurance” means a health insurance taken under the Insurance Act, 2000;

“medical practitioner” includes a dentist;

“Minister” means the Minister of Health and Ministry shall be construed accordingly;

“NAS” means the National AIDS Secretariat;

“partner” means a spouse or other person with whom another person is in a domestic or sexual relationship;

“person living with HIV and AIDS” means a person whose HIV test indicates that he is infected with HIV, but may or may not have developed AIDS;

“positive” in relation to the result of an HIV test, means a result which confirms that the person who is tested is infected with HIV;

“post-test counseling” means a process of providing a person who submits himself for an HIV test with risk – reduction information and emotional support at the time the result is released;

“pre-test counseling” means the process of providing a person, before he undergoes an HIV test, with information on the biomedical aspects of HIV and AIDS and emotional support with respect to the psychological implications of undergoing an HIV tests;

“testing centre” means a testing centre approved by the Minister under section 13;

“tissue” includes an organ or part of a human body, semen, breast milk and any other substance, secretion other than blood extracted from the human body or from a part of the human body;

“uniformed force” means the Sierra Leone Armed Forces, the Sierra Leone Police Force, the Sierra Leone Prisons and the National Fire Force;

PART II – EDUCATION AND INFORMATION ON HIV AND AIDS

2. (1) The Government shall endeavour to promote public awareness about the causes, modes of transmission, transmission, consequences, means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign through its various Ministries, Departments and Agencies.

Government to promote education and information on HIV and AIDS.

(2) The educational and information campaign shall employ scientifically proven methods, focus on the family as the basic social unit and shall be carried out –

- (a) in all schools and other educational institutions;
- (b) in prisons, remand homes and other places of confinement;
- (c) among the uniformed forces; and
- (d) at all places of work and in all communities in Sierra Leone.

(3) In conducting the educational and information campaign, the Government shall ensure the involvement and participation of persons and groups or bodies affected by HIV and AIDS, including persons living with HIV and AIDS.

HIV and AIDS to be in curriculum of educational institutions.

3. (1) The Ministry responsible for education, utilizing official information provided by the Ministry, shall integrate instructions on the causes, modes of transmission, prevention and protection against HIV and AIDS and other sexually transmitted infections in subjects taught in public and private schools at primary, secondary and tertiary levels, including formal and non-formal systems, but such integration shall not be used for the sale or distribution of birth control devices.

(2) The formulation and adoption of the appropriate course content, scope and methodology at each educational level shall be determined after consultation with the relevant stakeholders.

(3) Where the integration of HIV and AIDS education is not feasible or appropriate at any level, the Ministry responsible for education shall design modules of HIV and AIDS and AIDS prevention and control including life skills education.

(4) The Ministry responsible for education, after consulting NAS and the Ministry, shall ensure that every teacher or instructor of an HIV and AIDS prevention and control course is adequately trained and duly qualified to teach the course.

4. (1) HIV and AIDS education and information dissemination shall form part of the delivery of healthcare services by healthcare providers. HIV and AIDS education as healthcare service.

(2) The training of healthcare providers shall include education on HIV-related ethical issues such as confidentiality, informed consent and the duty to provide treatment and support.

5. (1) The Government shall ensure the provision of basic information and instruction on HIV and AIDS prevention and control to— HIV and AIDS education in workplaces.

- (a) employees of all Government Ministries, Departments, Agencies and local councils;
- (b) employees of private and informal sectors.

(2) The information provided under subsection (1) shall cover issues such as confidentiality in the workplace and towards infected employees and workers stigma and discrimination .

6. Every local council, in collaboration with the District HIV/AIDS Committees shall coordinate educational and information campaigns on HIV within its administrative area. HIV and AIDS information in localities.

PART III—SAFE PRACTICES AND PROCEDURES

7. (1) Any person who offers to donate any tissue shall, immediately before the donation undergo an HIV test. Testing of donated tissue.

(2) No health institution shall accept a donation of any tissue unless the donor has undergone an HIV test and the result is negative.

(3) Notwithstanding the provisions of subsection (1) and (2), the proposed recipient of donated tissue or his immediate relatives shall have the right to demand a second HIV test on such tissue

before a transplant or other use of the tissue and the test shall, except in the case of emergencies or life threatening situations, be carried out.

Testing of donated blood.

8. (1) All donated blood shall, as soon as practicable after donation, be subjected to two HIV tests with an interval of a minimum of 6 weeks between the tests.

(2) Any blood tested under subsection (1) which is found to be HIV positive shall be disposed of in accordance with the prescribed guidelines on the disposal of medical waste as soon as reasonably practical .

Guidelines on surgical and similar procedures.

9. (1) The Minister shall, after consultation with the relevant registered professional associations of healthcare providers prescribe guidelines on—

- (a) precautions against HIV transmission during surgical, dental, delivery, embalming and similar procedures; and
- (b) the handling and disposal of cadavers, body fluids or wastes of persons with HIV.

(2) The Minister shall at all times ensure the provision of protective equipment such as gloves, goggles and gowns to all healthcare providers in public health institutions and other personnel exposed to the risk of HIV infection.

(3) The Minister shall at all times ensure the provision of post exposure prophylaxis to healthcare providers and other personnel exposed to the risk of HIV infection.

Penalty for unsafe practices and procedures.

10. (1) Any person or institution who, in the course of his professional practice, knowingly or negligently causes another person to be infected with HIV through unsafe or unsanitary practices or procedures contrary to this Act or any prescribed guidelines commits an offence.

(2) Notwithstanding the provisions of any enactment to the contrary, a court may, in addition to any penalty imposed for an offence under subsection (1)—

- (a) in the case of an institution, order the revocation or suspension of any business permit or licence in respect of the business of the institution; or
- (b) in the case of an individual, order the cancellation of the registration of the person in respect of his profession.

PART IV—TESTING, SCREENING AND ACCESS TO HEALTHCARE AND SUPPORT SERVICES

11. (1) Subject to this Act, no person shall compel another person to undergo an HIV test.

Prohibition against compulsory testing.

(2) Without prejudice to the generality of subsection (1), no person shall compel another person to undergo an HIV test as a precondition to or for the continued enjoyment of—

- (a) employment;
- (b) marriage;
- (c) admission into any educational institution;
- (d) entry into or travel out of the country; or
- (e) the provision of healthcare, insurance cover or any other service.

(3) Any person who contravenes subsection (1) commits an offence.

(4) Notwithstanding the provisions of this section, recommending or advising a person to do the HIV test shall not be construed as compelling a person under subsection (2).

Consent to HIV test.

12. (1) Subject to subsection (2), no person shall perform an HIV test on another person except—

- (a) with the consent written or otherwise, of that other person;
- (b) if that person is a child, with the consent, written or otherwise, of a parent or legal guardian of the child; but a child who is pregnant, married, a parent or is in a situation which puts her at risk of contracting HIV may in writing or otherwise, directly consent to an HIV test;
- (c) if, in the opinion of the medical practitioner who wishes to undertake the HIV test, the other person has a disability by reason of which he appears incapable of giving consent, with the consent of-
 - (i) a legal guardian of that person;
 - (ii) a partner of that person;
 - (iii) an adult offspring of that person;
- (d) where the person is required to undergo an HIV test under this Act or any other enactment.

(2) Notwithstanding subsection (1)—

- (a) a person who offers to donate any tissue shall be deemed to have consented to the HIV test required under section 7;
- (b) a person who offers to donate blood shall be deemed to have consented to the HIV test required in respect of such blood under section 8;
- (c) a medical practitioner responsible for the treatment of a person may undertake an HIV test on that person without the consent of that person if-
 - (i) the person is unconscious and unable to give consent; and
 - (ii) the medical practitioner reasonably believes that such a test is clinically necessary or desirable in the interest of that person.

(3) A medical practitioner who undertakes an HIV test on a person under this section shall, if the person so requires, disclose the results of the test to that person.

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

(5) The Government shall—

- (a) through the educational or information campaign conducted pursuant to section 2 encourage voluntary testing by individuals;

- (b) provide a mechanism for anonymous HIV testing and guarantee anonymity and confidentiality in the conduct of such tests.

HIV testing centres etc.

13. (1) No person shall carry out an HIV test except in a testing centre approved by the Minister under this section.

(2) No person shall carry out an HIV test unless the person is a healthcare provider approved by the Minister for that purpose.

(3) No person shall provide pre-test or post-test counseling for the purposes of section 14 unless the person is approved by the Minister under this section.

(4) The Minister may, by statutory instrument make regulations prescribing—

- (a) the standards and procedures for the approval of testing centres for the purposes of this Act;
- (b) the standards and procedures for the approval of healthcare providers for the purposes of subsection (2); and
- (c) guidelines for the provision of pre-test and post-test counseling services at such centres, including the standards and procedures for approval of persons qualified to provide such services.

(2) Any person who contravenes any provision of this section or any regulations made under it commits an offence.

Pre-test and post-test counseling.

14. (1) Every testing centre shall provide pre-test and post-test counseling to a person undergoing an HIV test and any other person likely to be affected by the results of such test.

(2) The Minister shall enhance the capacity of testing centres by ensuring the training of competent personnel to provide the services required by this Act to be provided at such centres.

15. The results of an HIV test shall be confidential and shall only be released—

Confidentiality of HIV tests.

- (a) to the tested person;
- (b) in the case of a child, to a parent or legal guardian of the child; but where the child consents to an HIV test directly under paragraph (b) of subsection (1) of section 12, the results shall be released to the child; or
- (c) in the case of a person with a disability, which in the opinion of the medical practitioner undertaking the test, renders him incapable of comprehending the result, to—
 - (i) the legal guardian of that person;
 - (ii) a partner of that person;
 - (iii) a parent of that person; or
 - (iv) an adult offspring of that person.

16. (1) Every health institution, whether public or private and every health management organization or medical insurance provider shall facilitate healthcare services to persons living with HIV without discrimination on the basis of HIV status.

Access to healthcare services.

(2) The Government shall, to the maximum of its available resources, take the steps necessary to ensure the access to essential healthcare services including reproductive health services and access

to essential medicines including reproductive health medicines, at affordable prices by persons living with HIV and those exposed to the risk of HIV infection.

Community-based services.

17. Local councils shall provide community based HIV prevention and care services in collaboration with governmental agencies, non-governmental organizations, persons with HIV and groups most at risk of HIV infection.

Disclosure of information.

18. (1) No person shall disclose any information relating to the result of an HIV test or any related assessments to any other person except—

- (a) with the written consent of that person;
- (b) if that person has died, with the written consent of that person’s partner, personal representative, administrator or executor;
- (c) if that person is a child, with the written consent of a parent or legal guardian; but any child who is pregnant, married, a parent or is engaged in behaviour with a risk of contracting HIV may, in writing directly consent to such disclosure;
- (d) if that person is unable to give written consent, with the oral consent of that person or with the written consent of the person with power of attorney for that purpose;
- (e) if in the opinion of the medical practitioner who undertook the test, that person has a disability by reason of which he appears incapable of giving the consent, with the written consent, in order, of—

(i) a legal guardian of that person;

(ii) a partner of that person;

(iii) a parent of that person; or

(iv) an adult offspring of that person;

(f) to a person approved, by the Minister under section 13, who is directly involved in the treatment or counseling of that person;

(g) for the purpose of an epidemiological study or research authorised by the Minister;

(h) to a court, where the information contained in the medical records is directly relevant to the proceedings before the court;

(i) if the person to whom the information relates dies, to the Registrar of Births and Deaths appointed under the Births and Deaths Registration Act, 1983.

Act No. 11 of 1983.

19. The Government shall make livelihood, self-help and co-operative programmes accessible and available to persons living with HIV and such persons shall not be deprived of participation in any livelihood, self-help or cooperative programme because of their HIV status. Livelihood programmes.

20. (1) The Minister, in collaboration with the Commissioner of Insurance and other public and private insurance agencies, shall conduct a study on the feasibility and viability of setting up a package of insurance benefits, and should the study warrant it, implement an insurance coverage programme for persons infected with HIV. Insurance of persons with HIV.

(2) The study shall be guided by the principle that access to health insurance is part of a person's right to health and is the responsibility of the State and society as a whole.

PART V—TRANSMISSION OF HIV

Prevention of transmission of HIV.

21. (1) A person who is and who is aware of being infected with HIV or is carrying and is aware of carrying the virus shall—

- (a) take all reasonable measures and precautions to prevent the transmission of HIV to others and in the case of a pregnant woman, the foetus; and
- (b) inform, in advance, any sexual contact or person with whom needles are shared, of that fact.

(2) Any person who is and is aware of being infected with HIV or is carrying and is aware of carrying HIV antibodies shall not knowingly or recklessly place another person, and in the case of a pregnant woman, the foetus, at risk of becoming infected with HIV, unless that other person knew that fact and voluntarily accepted the risk of being infected with HIV.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding five million leones or to a term of imprisonment not exceeding seven years or to both the fine and imprisonment.

(4) A person referred to in subsection (1) or (2) may request any medical practitioner or any other person approved by the Minister under section 13, to inform and counsel a sexual partner of the HIV status of the person.

(5) A request under subsection (4) shall be in the prescribed form.

(6) On receipt of a request made under subsection (4), the medical practitioner or approved person shall, whenever possible, comply with the request in person.

(7) A medical practitioner who is responsible for the treatment of a person and who becomes aware that the person has not, after reasonable opportunity to do so—

- (a) complied with subsection (1) or (2); or
- (b) made a request under subsection (4),

may inform any sexual partner of that person, of the HIV status of that person.

(8) Any medical practitioner or approved person who informs a sexual partner as provided in subsection (6) or (7) shall not, by reason only of that action, be in breach of this Act.

PART VI—MONITORING OF PREVALENCE OF HIV

22. (1) The Ministry shall establish a department which shall be responsible for monitoring HIV to determine the magnitude and progression of HIV infection in Sierra Leone and for this purpose, of evaluating the adequacy and efficacy of the counter-measures being employed to combat the spread of HIV.

Monitoring of prevalence of HIV.

PART VII—DISCRIMINATORY ACTS AND POLICIES

23. (1) Subject to subsection (2), no person shall be—

- (a) denied access to any employment for which he is qualified; or

Discrimination in the workplace.

- (b) transferred, denied promotion or have his employment terminated,

on the grounds only of his actual, perceived or suspected HIV status.

(2) Subsection (1) does not apply in any case where an employer proves, on application to a court that the requirements of the employment in question are that a person must be in a particular state of health or medical or clinical condition.

Discrimination in schools.

24. No educational institution shall deny admission, expel, discipline, segregate, deny participation in any event or activity or deny any benefits or services to a person on the grounds of the person's actual or perceived or suspected HIV status.

Restriction on travel and habitation.

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

(2) No person shall be quarantined, placed in isolation, refused lawful entry or deported from Sierra Leone on the grounds only of the person's actual, perceived or suspected HIV status.

Inhibition from public service.

26. No person shall be denied the right to seek an elective or other public office on the grounds only of the person's actual, perceived or suspected HIV status.

Exclusion from credit or insurance services.

27. (1) Subject to this Act, no person shall be compelled to undergo an HIV test or to disclose his HIV status for the purpose only of gaining access to credit or insurance or the extension or continuation of such service.

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

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

(4) Where a proposer elects to undergo an HIV test pursuant to subsection (3) and the results are positive, the insurer or re-insurer may impose a reasonable additional sum to the premium ordinarily levied for the cover sought.

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

(6) A person aggrieved by a determination made under subsection (5) may appeal within thirty days to the court.

28. No person shall be denied access to healthcare services in any health institution or be charged a higher fee for any services, on the grounds only of the person's actual, perceived or suspected HIV status. Discrimination in health institutions.

29. A deceased person who had AIDS or was known, suspected or perceived to be HIV-positive shall not be denied access to any burial services on the grounds only of the deceased person's health status. Denial of burial services.

30. Any person who contravenes any of the provisions of this Part commits an offence. Offence.

PART VIII—RESEARCH

31. Subject to section 32, no person shall undertake HIV or AIDS related biomedical research on another person or on any tissue or blood removed from the person unless the research conforms to such guidelines as the Minister may issue. Research.

Consent to research.

32. (1) No person shall undertake HIV or AIDS related biomedical research on another person or on any tissue or blood removed from the person except—

- (a) with the written informed consent of that other person; or
- (b) if that other person is a child, with the written informed consent of a parent or legal guardian of the child.

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

Offence.

33. Any person who contravenes any of the provisions of section 32 commits an offence.

PART IX—MISCELLANEOUS

Penalty.

34. A person convicted of an offence under this Act for which no penalty has been provided shall be liable to a fine not exceeding three million leones or to a term of imprisonment not exceeding two years or to both the fine and imprisonment.

Regulations.

35. The Minister may, by statutory instrument make regulations—

- (a) for prescribing anything required by this Act to be prescribed; or
- (b) generally for carrying out the purposes of this Act.

Passed in Parliament this 15th day of June, in the year of our Lord two thousand and seven.

A. A. KEMOKAI,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

A. A. KEMOKAI,
Clerk of Parliament.