

**THE EAST AFRICAN COMMUNITY HIV AND AIDS PREVENTION AND
MANAGEMENT BILL, 2010**

ARRANGEMENT OF CLAUSES

Clause

PART I-PRELIMINARY

- 1-Short title.
- 2-Interpretation.
- 3-Application.
- 4- Objects and purposes of Act.
- 5- General duty of the Government.
- 6- General duty of persons.

PART II – HIV AND AIDS INFORMATION, EDUCATION AND COMMUNICATION

- 7- HIV and AIDS education and information.
- 8- HIV and AIDS education in learning institutions.
- 9- HIV and AIDS education and information as a health care service.
- 10- HIV and AIDS education and information at the work place.
- 11- HIV and AIDS education and information and the media.
- 12- HIV and AIDS education and information in communities.

**PART III – HIV AND AIDS PREVENTION MEASURES, PRACTICES AND
PROCEDURES**

- 13- Prevention measures by Government.
- 14- Testing of donated bodily products.
- 15- Prevention of mother-to-child transmission.
- 16- Guidelines on surgical and similar procedures.

PART IV - HIV AND AIDS COUNSELLING AND TESTING

- 17- Pre-test and post-test HIV counselling.
- 18- Contents of pre-test HIV counselling.
- 19- Contents of post-test counselling.
- 20- Testing for HIV.
- 21- Provision of testing facilities.
- 22- Prohibition of compulsory testing.
- 23- Consent to testing.
- 24- HIV test results.

PART V: GENERAL PROTECTION OF THE RIGHTS OF PERSONS

LIVING WITH OR AFFECTED BY HIV

- 25- General prohibition of discrimination.
- 26- Privacy and confidentiality of HIV status.
- 27- Discrimination in employment.
- 28- Discrimination in educational institutions.
- 29- Restriction on travel and habitation.
- 30- Inhibition from public service.
- 31- Exclusion from credit and insurance services.
- 32- Discrimination in health institutions.
- 33- Access to healthcare services.

PART VI: PROTECTION OF VULNERABLE GROUPS AND MOST AT RISK POPULATIONS

- 34- Children living with or affected by HIV.
- 35- Women and girls.
- 36- Persons with disabilities.
- 37- Prisoners.
- 38- Other vulnerable groups.

PART VII - HIV AND AIDS RELATED HUMAN BIOMEDICAL RESEARCH

- 39- Research and clinical trials.
- 40- Consent to research.
- 41- Ethical research body.
- 42- Unlawful research.

PART VIII – MISCELLANEOUS PROVISIONS

- 43- Support to organisations of persons living with or affected by HIV.
- 44- Support of community and home-based caregivers.
- 45- Jurisdiction of the High Court.
- 46- Penalties.
- 47-Regulations.
- 48-Superecession of inconsistent laws.

**THE EAST AFRICAN COMMUNITY HIV AND AIDS PREVENTION AND
MANAGEMENT BILL, 2010.**

A Bill for

AN ACT of the Community to provide for the prevention and management of HIV and AIDS and for the protection and promotion of the human rights of persons living with or affected by HIV and AIDS and for related matters.

ENACTED by the East African Community and assented to by the Heads of State as follows:

PART I – PRELIMINARY

Short title.

1. This Act may be cited as the East African Community HIV and AIDS Prevention and Management Act, 2010.

Interpretation.

2. In this Act, unless the context otherwise requires -

“AIDS” means the Acquired Immunodeficiency Syndrome;

“affected” in relation to HIV and AIDS includes a person who-

(a) is related to, or is associated with, a person who is, or is perceived to be, living with HIV; or

(b) is, or is perceived to be, a member of or associated with a group, activity or occupation, which is commonly associated with, or perceived to be associated with, infection with, or transmission of, HIV;

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

“community and home-based care” means the range of care and support services provided to persons living with HIV by family members within the home and by care providers from community and home-based programmes including prevention education, psychosocial support, palliative care, nursing care, administration of remedies and treatments, and guidance on social, economic, legal and human rights issues;

“compel”, includes the imposition of an action upon a person

characterized by the lack of consent, undue influence, use of physical force, intimidation, coercion or any other form of compulsion;

“disability” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, whether arising from natural or artificial causes, which impacts adversely on a person’s capacity to participate in social, economic, cultural or political activities;

“discrimination” means a distinction, exclusion or restriction, whether direct or indirect, made on the basis of the actual or perceived HIV status of a person living with or affected by HIV which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by that person on a basis of equality with other members of the community, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field;

“employee” means a person employed for wages or a salary and includes a temporary employee, a casual worker, an apprentice, an indentured learner and a volunteer;

“Government” means the Government of a Partner State;

“harmful cultural practices” includes behaviour, attitudes or practices which negatively affect the health or rights of persons or groups of persons in society and increase the risk of HIV infection;

“healthcare provider” means a hospital, nursing home, maternity home, health centre, dispensary, pharmacy or other institution, whether private or public, where healthcare services are rendered and includes the persons rendering healthcare services in these institutions;

"healthcare service" means –

- (a) the physical or mental examination of that person;
- (b) the treatment or prevention of any physical or mental defect, illness or deficiency and the giving of advice in relation to that defect, illness or deficiency;
- (c) the performing of any surgical or other invasive procedure;
- (d) the giving of advice in relation to treatment of any condition arising out of a pregnancy;
- (e) the prescribing, dispensing, supplying or applying of any medicine, appliance or apparatus in relation to any defect, illness or pregnancy; X-ray, laboratory and other investigative and diagnostic procedures;
- (f) physiotherapy, speech therapy, occupational therapy and other

- types and variations of similar rehabilitative treatment;
- (g) nursing or midwifery in health institutions and other places where nursing and midwifery services may be rendered, including home-based nursing and midwifery services by duly qualified registered nurses and midwives;
 - (h) the supply of accommodation in any institution established or registered in terms of any law as a health institution or any other institution or place where surgical or other medical procedures necessitated by any physical or mental defect, illness, deficiency or a pregnancy are performed; and
 - (i) the provision of pre-test or post-test counselling services;

“HIV” means the Human Immunodeficiency Virus;

“HIV test” means a validated, medically recognised and virally sensitive test for determining the presence or absence of HIV or HIV antibodies in a person;

“human biomedical research” includes any research that involves-

- (a) direct interference or interaction with the physical body of a human subject and that involves a concomitant risk of physical injury or harm however remote;
- (b) the administration of any drug on a human subject whether it is for the purpose of testing the effects or efficacy of the drug, or whether as a means for establishing any other objective of the research programme;
- (c) the trial or use of a medical device on a human subject;
- (d) carrying out a test on a human subject's physiological, emotional or mental responses, such test not being conducted for diagnostic purposes with a view to the therapeutic management of the human subject; and
- (e) human tissue, or medical, personal or genetic information relating to both identifiable and anonymous human subjects for the purpose of generating data about medical, genetic or biological processes, diseases or conditions in human subjects;

“medical practitioner” means a person entitled to practise as a medical practitioner under the laws of a Partner State;

“Minister” means the Minister responsible for matters relating to HIV and AIDS in a Partner State;

“Ministry” means the Ministry responsible for matters relating to HIV and AIDS in a Partner State;

“most at risk populations” means any groups of persons who because of their particular personal, behavioural, situational or environmental characteristics are, or perceived to be at an increased level of risk of exposure to infection with HIV;

“person living with HIV” refers to a person whose HIV test results reveal the presence of HIV or HIV antibodies;

“post-exposure prophylaxis” means the administration of antiretroviral drugs to a person after a high-risk exposure in order to help prevent HIV infection in that person;

“post-test counselling” means the process of providing risk-reduction information and emotional support to a person to whom a test result is released;

“pre-test counselling” means the process of providing information to a person on the biomedical and other aspects of HIV and AIDS before the person is subjected to a HIV test and includes emotional support to the person on the psychological implications of undergoing HIV testing and receiving the test results.

“prevention of mother-to-child transmission” refers to all medically proven strategies and practices that aim at reducing the likelihood of HIV transmission from a mother living with HIV to her child during pregnancy, labour or thereafter.

“prisoner” includes a person who is in custody awaiting charge, trial or sentence;

“reasonable accommodation” means any modification or adjustment to a job or to the workplace that is reasonably practicable to enable a person living with HIV to have access to, participate or advance in the person’s employment;

“self testing” in relation to HIV infection, means a prescribed test or series of tests carried out entirely by a person on self without the involvement of another person;

“vulnerable group” means any group whose members may have special needs or may experience poorer outcomes or be at higher risk of exposure to infection with HIV if their needs are not specially addressed, and includes persons with disabilities, children, women and girls, older persons, refugees, internally displaced persons and

prisoners.

Application.

3. This Act shall apply in the Partner States of the East African Community.

Objects and purposes of Act.

4. (1) The objects and purposes of this Act are to -

- (a) promote a rights based approach to dealing with all matters relating to HIV and AIDS;
- (b) promote public awareness about the causes, modes of transmission, means of prevention and management and consequences of HIV and AIDS;
- (c) extend to every person living with or affected by HIV, the full protection of the person's human rights by-
 - (i) providing HIV related services as provided for in this Act;
 - (ii) guaranteeing the right to privacy of the individual;
 - (iii) prohibiting HIV related discrimination.;
 - (iv) ensuring the provision of quality health care and social services for persons living with HIV and their care-givers;
- (d) promote utmost safety and universal precautions in practices and procedures that carry the risk of HIV transmission; and
- (e) positively address and seek to eradicate the conditions that aggravate the spread of HIV infection.

(2) A person applying this Act shall interpret its provisions so as to give effect to-

- (a) the letter and spirit of the Treaty;
- (b) compliance with international obligations; and
- (c) the objects and purposes set out in subsection (1).

General duty of the Government.

5. The Government shall take appropriate measures to-

- (a) inform and educate all population groups including persons with disabilities in their jurisdictions about HIV, including its modes of transmission and means of prevention;
- (b) prevent and control HIV transmission adopt and implement a national HIV prevention, treatment and management strategy,
- (c) promote and protect the rights of persons living with or affected by, HIV;
- (d) ensure, in relation to HIV and AIDS, equitable access to relevant information, goods and services including essential medicines without discrimination;
- (e) provide HIV and AIDS prevention, treatment, care and support

- without discrimination;
- (f) promote awareness of the rights and duties imposed on persons under this Act;
- (g) ensure the involvement of persons living with HIV in HIV and AIDS related campaigns ,programmes and decisions;
- (h) create an institutional framework for an integrated and multi-sectoral approach to the prevention and management of HIV and AIDS;
- (i) strengthen institutions working with persons living with or affected by HIV;
- (j) undertake, coordinate and regulate research on HIV and AIDS;
- (k) mainstream HIV and AIDS programmes in all Government sectors;
- (l) make budgetary provisions to avail adequate funding for HIV and AIDS programmes
- (m) provide care and support to persons living with HIV; and
- (n) generally facilitate implementation of this Act.

General duty of persons

- 6.** A person living, registered, operating in, or otherwise present within the East African Community, has a duty to -
- (a) take the reasonable steps to know the person's HIV status;
 - (b) take reasonable steps and precautions to protect themselves and other persons from HIV infection and in particular to use recognized protective measures to protect themselves and others from infection with HIV during sexual intercourse or other activities; and
 - (c) refrain from harmful cultural practices and negative traditions and usages which may enhance the spread of HIV.

PART II – HIV AND AIDS INFORMATION, EDUCATION AND COMMUNICATION

HIV and AIDS education and information.

- 7.** (1) The Government shall promote public awareness about the nature, causes, modes of transmission, consequences and means of prevention, control and management of HIV and AIDS for all persons and groups.

- (2) The education and information campaigns referred to in subsection (1) shall -
- (a) employ scientifically proven and evidence-based approaches;
 - (b) encourage the voluntary testing of individuals;
 - (c) be adapted to the age, gender, disability, nature of activities and sexual practices of target groups;

- (d) address social, religious and cultural attitudes, beliefs and practices and unequal gender relations and specially sensitize men on HIV prevention, gender-based violence and gender inequality and challenge traditional dominant conceptions of masculinity;
- (e) be carried out in schools and other institutions of learning, prisons and places of detention, in places of worship, workplaces, amongst the police and military forces and in rural and urban communities;
- (f) be guided by evidence on potential opportunities for and barriers to behaviour change;
- (g) include effective measures to ensure that information, education and communication translate into behaviour change;
- (h) challenge stigma and discrimination and address misinformation about HIV and AIDS, persons living with HIV and members of vulnerable groups and most at risk populations;
- (i) promote the acceptance of persons living with HIV and members of vulnerable groups and most at risk populations;
- (j) present messages in formats that facilitate the inclusion of the different categories of persons with disabilities.

(3) In conducting the education and information campaigns referred to in this section, the Government shall collaborate with relevant public, civil society, community based and private sector stakeholders and ensure the effective involvement and participation of all categories of persons living with HIV.

HIV and AIDS
education in learning
institutions.

8. (1) The Ministry responsible for education shall, after consultation with relevant stakeholders and utilizing an official curriculum developed by the Ministry, include instruction on the nature, causes, modes of transmission, means of prevention, and management of HIV and AIDS and other sexually transmitted infections, in public and private institutions at primary, secondary, and tertiary levels, including, in specialized training institutions focusing on persons with disabilities and in non-formal, vocational and cultural learning systems.

(2) In realizing the provisions of subsection (1), the Ministry responsible for education shall ensure that -

- (a) the content, scope and methodology of HIV and AIDS prevention and management courses at each educational level are based on age appropriate, scientifically accurate, evidence-informed and rights based information; and
- (b) every teacher or instructor of an HIV and AIDS prevention,

control and management course referred to in paragraph (a) is adequately trained and updated and duly qualified to teach such course.

HIV and AIDS education and information as a health care service.

9. (1) The provision of HIV and AIDS education and information shall form part of the delivery of health care services by all health care providers at public and private health care facilities.

(2) For the purposes of subsection (1), the Government shall ensure that all health care providers are trained on providing information and education on HIV and AIDS.

(3) The training of health care providers under subsection (2) shall include education on HIV and AIDS related ethical and human rights issues including confidentiality, attitudes towards persons living with or affected by HIV and informed consent and the duty to provide treatment.

HIV and AIDS education and information at the work place.

10. (1) The Government shall ensure that HIV and AIDS education and information and instruction on HIV and AIDS prevention, and management is provided to-

- (a) all employees of the Government or of any of the Government's Departments or agencies; and
- (b) employees of private and informal sectors and civil society.

(2) The information provided under subsection (1) shall cover such issues as non-discrimination, reasonable accommodation, confidentiality in the work-place and attitudes towards employees living with HIV.

HIV and AIDS education and information and the media

11. The Government shall promote and encourage the development by relevant institutions, of policies and codes of conduct for the media and the advertising industry, that –

- (a) increase sensitivity to HIV and AIDS as human rights issues;
- (b) challenge gender inequality, gender-based violence and attitudes of discrimination and stigmatization against persons living with or affected by HIV;
- (c) prevent the sensationalization of HIV and AIDS-related issues;
- (d) prevent the use of inappropriate language and stereotypes in reporting and advertising, especially in relation to persons living with HIV and members of vulnerable groups and most at risk populations; and
- (e) promote the transmission of information in formats accessible

to persons with disabilities.

HIV and AIDS education and information in communities.

12. (1) The Government, in partnership with relevant stakeholders, including civil society and religious, cultural and other community leaders, shall sensitize communities to the dangers cultural practices that are harmful to health and contribute to HIV transmission, such as child marriage, female genital mutilation and widow inheritance, and shall take steps, including working with cultural structures to eradicate or transform these practices in the affected communities.

(2) Pursuant to subsection (1), every local authority, in collaboration with the Ministry, shall conduct education and information campaigns on HIV and AIDS targeting all persons in local grassroots communities within its area of jurisdiction.

PART III – HIV AND AIDS PREVENTION MEASURES, PRACTICES AND PROCEDURES

Prevention measures by Government.

13. The Government shall take measures and promote practices and procedures that prevent, or reduce the risk of, HIV transmission and shall, in particular –

- (a) provide clear policy guidelines to all public and private healthcare institutions to ensure total protection from facility based HIV transmission in matters relating to blood transfusion, tissue, organ or other transplant, and universal protection measures;
- (b) ensure that recognized protective methods and devices, including quality female and male condoms, are available, accessible and affordable to the population, and in particular to members of vulnerable groups and most at risk populations;
- (c) take appropriate measures to protect health care workers against any risk of infection in the course of performing their duties including measures related to the use of universal precautions, and ensuring timely and free access to post-exposure prophylaxis in the event of an occupational exposure;
- (d) ensure access to effective and proven harm reduction programmes for drug users to minimize HIV infection; and
- (e) promote any other scientifically-proven measures or practices that have been shown to be effective in reducing or eliminating transmission of HIV.

Testing of donated bodily products.

14. (1) A person who offers to donate any tissue or organ shall-

- (a) before such donation, be requested to provide informed

- consent to an HIV test; and
 - (b) if the person consents to undergo an HIV test, be provided with pre-test and post-test counselling.
- (2) A health institution or medical practitioner shall not accept or use any blood or other bodily fluid or product unless -
- (a) the donor has undergone an HIV test pursuant to subsection (1) and has tested HIV negative; or
 - (b) in the case of blood or other bodily fluid, it has been subjected to an HIV test and the result of such test is negative.
- (3) The HIV test result of a potential donor of any blood or bodily fluid or product shall be confidential and shall not be communicated to the proposed recipient of the bodily fluid or product.
- (4) The proposed recipient of any bodily fluid or product has a right to demand an HIV test on the bodily fluid or product before a transfusion, transplant or other use.
- (5) Where any bodily fluid or product is tested under subsection (1) or (2) and found to be HIV positive –
- (a) the bodily fluid or product shall be disposed of in accordance with the prescribed guidelines on the disposal of medical waste; and
 - (b) a potential recipient shall be informed only that the bodily fluid or product was not suitable for transfusion or transplant.
- (6) A person who contravenes subsection (2) (3) or (5) commits an offence.

Prevention of
mother-to child
transmission.

15. In order to prevent or reduce the risk of mother-to-child transmission of HIV, the Minister shall ensure that-

- (a) comprehensive information and education on mother-to child-transmission of HIV is provided to all men and women and specially targeted to persons of reproductive age and their communities;
- (b) HIV counselling and testing is made available and offered to all pregnant women and their partners, as part of ante-natal care services;
- (c) women living with HIV have access to counselling, information and education services to enable them to make

informed and voluntary choices in matters affecting their health and reproduction and the health of their children;

- (d) programmes on the prevention of mother-to-child transmission of HIV are integrated into reproductive health services and are made available to all pregnant women living with HIV and mothers living with HIV and that such programmes include the administration of antiretroviral drugs, psychosocial support, follow-up services and nutritional support for the needy;
- (e) pregnant women living with HIV are provided with relevant and scientifically proven information regarding breastfeeding and alternatives to breastfeeding; and
- (f) a child born of a woman living with HIV receives all relevant scientifically proven services for the prevention of HIV transmission in accordance with relevant national and international guidelines for the prevention of HIV transmission in infants.

Guidelines on surgical and similar procedures

16. (1) The Minister shall, in consultation with registered professional associations of healthcare providers, prescribe guidelines on-

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

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

(3) A person who, in the course of professional practice or otherwise, knowingly or negligently causes another to be infected with HIV through unsafe or unsanitary practices or procedures or contrary to any guidelines prescribed in accordance with this section commits an offence.

PART IV - HIV AND AIDS COUNSELLING AND TESTING

Pre-test and post-test HIV counselling.

17. (1) A testing facility or a person carrying out an HIV test shall in all cases provide pre-test and post-test counselling to a person undergoing an HIV test, or in the case of a child or a person with a disability which renders the person incapable of understanding the meaning or consequences of the test result, to the parents or the guardian of that child or that person, and with the informed consent of that person or the parent or guardian of that child or that person, to any other person who is likely to be affected by the results of the test.

(2) For the purposes of subsection (1) any person who is the owner, manager or otherwise in charge of a testing facility shall ensure that-

- (a) there are trained and authorized personnel to provide pre-test and post-test HIV test counselling; and
- (b) arrangements are made to meet the special needs of persons with disabilities.

Contents of pre-test HIV counselling.

18. The pre-test counselling required under section 17 shall, at a minimum, include, information on-

- (a) the nature of HIV and of AIDS;
- (b) the nature and purpose of an HIV test;
- (c) the clinical and prevention benefits of testing, and the potential risks, such as discrimination, abandonment or violence;
- (d) the services that are available in the case of either an HIV-negative or an HIV positive test result;
- (e) the fact that the test result shall be treated confidentially and shall not be disclosed contrary to the provisions of this Act;
- (f) the fact that the patient has the right to decline the test or to decline to receive the test result;
- (g) the fact that declining an HIV test shall not affect the patient's access to services that do not depend upon knowledge of HIV status;
- (h) the importance of disclosure of an HIV-positive test result to other persons who may be at risk of exposure to HIV transmission; and
- (i) the opportunity to ask the health care provider questions.

Contents of post-test counselling.

19. (1) The post-test counselling required under section 17 shall be provided after every HIV test.

(2) Where the result of a test is HIV negative, a counsellor shall provide post-test counselling which shall include at a minimum-

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

(3) Where the result of a test is HIV positive, a counsellor shall-

- (a) provide post-test counselling to which shall include at a minimum-
 - (i) the medical consequences of living with HIV;
 - (ii) the modes of prevention and transmission of HIV and

- other opportunistic infections;
- (iii) the importance of disclosure of the person's status to the person's spouse or spouses or sexual partner or partners;
- (iv) the medical treatment and other social facilities available;
- (v) the need to continuously seek professional services relating to HIV; and

(b) refer the tested person to an appropriate health service provider for follow up testing or treatment.

(4) A testing facility or a person carrying out an HIV test shall, where the result of a test is HIV positive, offer to the tested person, continuous counselling sessions in order to help such person to effectively cope with the condition.

Testing for HIV

20. (1) A person shall not carry out an HIV test on another person unless the person carrying out the test is a healthcare provider approved by the Minister for that purpose..

(2) A person shall not provide pre-test or post-test counselling for the purposes of section 17 unless such person is approved by the Minister.

(3) A person who contravenes subsections (1) or (2) commits an offence.

Provision of testing facilities

21. The Minister shall ensure that facilities for HIV testing are made available-

- (a) free of charge, to persons who voluntarily request an HIV test in respect of themselves; and
- (b) to persons who are required to undergo an HIV test under this Act or any other written law.

Prohibition of compulsory testing.

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

(2) Unless otherwise provided under this Act, every HIV test shall be confidential.

(3) Without prejudice to the generality of subsections (1) and (2), no

person shall compel another to undergo an HIV test as a precondition to, or for continued enjoyment of-

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

Consent to testing.

23.(1) Unless otherwise provided under this Act, the informed consent of the person to be tested shall be obtained prior to any HIV test.

(2) Subject to subsection (3), the informed consent to an HIV test to be performed on a child or a person with a disability which renders the person incapable of giving informed consent to the test, shall be the informed consent of the parents or the guardian of the child or of that person.

(3) In determining the guardian of a child for the purposes of subsection (2), the system of adoption and foster care under any customary law to which the child may be subject shall be taken into account.

(4) When, in the opinion of a medical practitioner or of a court the best interests of a child so require and the consent of a parent or guardian has been unreasonably withheld, the absence of the consent of the parent or guardian shall not constitute an obstacle to testing and counselling.

(5) Where special circumstances so require, a child may, subject to subsection (6) be tested without the consent or notification of a parent or guardian.

(6) A child may be tested in terms of subsection (4) if the person testing is satisfied for reasons to be stated in writing that-

- (a) there are reasonable and sufficient grounds for the test to be undertaken;
- (b) the child understands the implications of the test and is capable of making informed choices on matters relating to the results of the test;
- (c) the child has been appropriately counselled in accordance with this Act;

- (d) the child has voluntarily consented to undergo the test; and
- (e) it is in the best interests of the child to undergo the test.

HIV test results

24. (1) Subject to subsection (3), and (4), the result of an HIV test shall be confidentially and directly communicated to the person concerned or if the person is a child or a person with a disability which renders the person incapable of understanding the meaning or consequences of the test result, to the parents or the guardian of that child or of that person.

(2) A person providing treatment, care or counselling services to a person living with HIV shall encourage that person to inform the person's spouse or spouses or sexual partner or partners or any other third party who is at significant risk of HIV transmission from the person living with HIV, of the person's HIV status.

(3) Except where subsection (4) is applicable, a person providing treatment, care or counselling services to a person living with HIV may notify a third party of the HIV status of that person only where the notifying person is requested by the person living with HIV to do so.

(4) A person providing treatment, care or counselling services to a person living with HIV may notify a third party of the HIV status of that person if-

- (a) in the opinion of the person providing treatment, care or counselling services, after discussion of the matter with the person living with HIV, that person is not at risk of serious harm from the third party or from other persons as a consequence of such notification;
- (b) the third party to be notified is at significant risk of HIV transmission from the person living with HIV;
- (c) the person living with HIV, after appropriate counselling, does not personally inform the third party at risk of HIV transmission; and
- (d) the person providing treatment, care or counselling services has informed the person living with HIV of the intention to notify the third party;
- or
- (e) the person living with HIV is dead, unconscious or otherwise unable to give consent to the notification and is unlikely to regain consciousness or the ability to give consent; and
- (f) in the opinion of the person providing treatment, care or

counselling services, there was a significant risk of transmission of HIV by the person living with HIV to the third party.

PART V: GENERAL PROTECTION OF THE RIGHTS OF PERSONS LIVING WITH OR AFFECTED BY HIV

General prohibition of discrimination.

25. (1) Persons living with or affected by HIV are entitled to enjoy all human rights, without any form of discrimination.

(2) No person may directly or indirectly discriminate against a person living with or affected by HIV on the basis of that person's actual or perceived HIV status.

(3) A person who suffers an act of discrimination based on the person's actual or perceived HIV status or that of another person may institute legal proceedings against the person who committed the discriminatory act to claim damages.

Privacy and confidentiality of HIV status

26. (1) Every person is entitled to privacy and confidentiality regarding the person's HIV status.

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

(3) No person shall disclose any information concerning a person's HIV status to another person, except-

- (a) in the cases provided for under section 24 of this Act ;
- (b) to a health care provider who is directly involved in providing health care to that person, where knowledge of the patient's HIV infection is necessary to making clinical decisions in the best interests of the person;
- (c) for the purpose of an epidemiological study, where the release of information cannot be expected to identify the person to whom it relates;
- (d) upon an order of a court, where the information is directly relevant to the proceedings before the court.

(4) In legal proceedings commenced under section 25 (3), a court

shall on the request of the person living with or perceived to be living with HIV order that the case be conducted *in camera* and where a court so orders, the reporting of such a case shall be done anonymously and no identifying facts related to the parties shall be revealed.

(5) A person who contravenes subsections (2) or (3) commits an offence.

Discrimination in
employment

27. (1) Subject to subsection (2), no person shall be-

- (a) denied access to any employment for which the person is qualified; or
- (b) transferred, denied promotion or have the person's employment terminated, on the ground of the person's actual, perceived or suspected HIV status.

(2) It is a disciplinary breach for which an employer shall initiate disciplinary procedures for an employee to discriminate against another employee on the basis of that other employee's actual, perceived or suspected HIV status.

(3) Every employer shall take all necessary measures to reduce the risk of HIV infection through accidental exposure to HIV in the workplace and in the event of such accidental exposure to HIV infection occurring in the workplace, the employer shall ensure free access to post-exposure prophylaxis and counselling for the affected employee in accordance with such guidelines as the Minister may prescribe.

(4) Every employer shall, in consultation with the employee take measures, including rearrangement of working time and provision of special equipment, opportunities for rest breaks and time off for medical appointments, in order to reasonably accommodate employees with AIDS-related illnesses.

(5) An employee living with HIV who, on account of an AIDS-related illness, is medically certified as no longer able to fulfill the employment duties is entitled to all benefits accruing to employees who retire on grounds of ill health.

Discrimination in educational institutions.

28. (1) An educational institution shall not deny admission or 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, perceived or suspected HIV status.

(2) The administration of an educational institution shall keep confidential the HIV status of a learner or that of a learner's parents or close relatives if it becomes aware of such information.

Restriction on travel and habitation

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

Inhibition from public service

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

Exclusion from credit and insurance services

31. (1) Subject to this Act, no person shall be compelled to undergo a HIV test or to disclose the person's HIV status for the purpose of gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.

(2) The actual or perceived HIV status of a person shall not constitute a reason to deny or exclude a person from gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.

Discrimination in health institutions.

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

Access to healthcare services.

33. (1) Persons living with HIV have the right of access to health care services.

(2) The Government shall take appropriate measures to provide sustainable treatment, care and support to persons living with HIV, including access to affordable, anti-retroviral therapy and other

essential medicines and prophylaxis to treat HIV or prevent opportunistic infections.

- (3) The measures referred to in subsection (2) shall include-
- (a) the use of all flexibilities under the Agreement on World Trade Organization Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) as well as measures to encourage the local production of medicines;
 - (b) entering into arrangements with other Partners States and others in order to benefit from pool procurement of HIV and AIDS related medicines, diagnostics and supplies;
 - (c) ensuring wide access to accurate information regarding HIV treatment and access to information on where and how to access treatment, care and support;
 - (d) ensuring the protection of the population against fake and counterfeit medicines and treatments; and
 - (e) ensuring the active participation of persons living with HIV and members of vulnerable groups and most at risk populations in the design, development and implementation of a national plan for the realization of universal access to treatment, care and support services.
- (4) A health institution, whether public or private, and every health management organization or medical insurance provider shall facilitate access to healthcare services to persons with HIV without discrimination on the basis of HIV status.

PART VI: PROTECTION OF VULNERABLE GROUPS AND MOST AT RISK POPULATIONS

Children living with or affected by HIV.

- 34.** (1) A child living with or affected by HIV shall enjoy all the rights under the law.
- (2) The Government shall make all efforts to enable a child whose natural parents are living with HIV to continue to live with them by ensuring access by the parents to appropriate treatment and health care so that the parent survive and protect the family.
- (3) A child shall not be subjected to any discrimination on account of the child's actual or perceived HIV status or the actual or perceived status of the child's parents, guardians or relatives.

(4) A child shall not be denied access to, excluded from, discriminated against or stigmatized when exercising the right to education, treatment, services, justice or from any programme or institution on account of the child's actual or perceived HIV status or the actual or perceived status of the child's parents, guardians or relatives.

(5) The Government shall take specific measures to ensure the protection and best interests of children living with or affected by HIV against all forms of abuse, violence and exploitation including-

- (a) appropriate care and treatment of parents living with HIV;
- (b) adoption of measures to safeguard the inheritance and property rights for such children;
- (c) ensuring that orphaned and vulnerable children are given appropriate care including alternative care, through community based foster care or adoption or where these are not available, are cared for in public or private institutions registered with and regulated by the Government; and
- (d) ensuring that children living in child-headed households receive assistance and support by way of access to health care, education and access other available social assistance schemes and are protected from all forms of abuse, violence or exploitation.

(6) Notwithstanding any other provision of this Act, a child who is living with or affected by HIV has the right to-

- (a) access all the services contained in this Act including the right to comprehensive and age appropriate information and education on HIV prevention and treatment; and
- (b) know of decisions affecting the child, and to express an opinion and have that opinion taken into account in these decisions, taking into consideration the age and maturity and evolving capacities of the child and the nature of the decision.

Women and girls.

35. (1) Notwithstanding the generality of other provisions of this Act, the Government shall ensure that women and girls, regardless of their marital status, -

- (a) have equal access to adequate and gender sensitive HIV-related information and education programmes, means of prevention and health services including women-specific and youth-friendly sexual and reproductive health services for all women of reproductive age and women living with HIV;
- (b) are protected against all forms of violence, including sexual

violence, rape and other forms of coerced sex, sexual and economic exploitation and traditional practices that may negatively affect their health;

- (c) have equal legal rights in all areas including in matters such as marriage, divorce, inheritance, child custody, property and employment, and are not discriminated against on the ground of their sex or genders, or their actual, perceived or suspected HIV status.

(2) The Ministries responsible for matters relating to gender and health and HIV in collaboration with key stakeholders, shall develop and implement strategies, policies and programmes that respect, protect and fulfill the human rights of women and girls in the context of HIV and that address, in particular-

- (a) the equality of women and men, and girls and boys in all aspects of public and private life;
- (b) the sexual and reproductive rights and responsibilities of women and men, including women's right to refuse sex and the right and ability to negotiate safer sex and the right to access health and reproductive services independently;
- (c) men's responsibilities to take equal responsibility for sexual and reproductive health and outcomes and to avoid rape, sexual assault and domestic violence, inside and outside marriage;
- (d) strategies for increasing educational, economic, employment and leadership opportunities for women;
- (e) sensitizing service providers and improving health care and social support services for women; and
- (f) strategies for reducing inequalities entrenched in formal, customary and personal laws and customs with respect to marriage, divorce, property, custody of children, inheritance and others.

Persons with disabilities

36. (1) Notwithstanding the generality of other provisions of this Act, the Government shall ensure that persons with disabilities living with or affected by HIV are protected from all forms of discrimination and are provided with appropriate support, care and treatment.

(2) The Minister, in consultation with relevant stakeholders shall develop and implement strategies, policies and programmes to promote and protect the health of persons with disabilities living with or affected by HIV including-

- (a) increasing access by persons with disabilities to reproductive health information, programmes and services;

- (b) recognizing the different types of disabilities and their different requirements as pertains to HIV related information, prevention, treatment, care and support services
- (c) adopting a framework, policies and strategies to support persons with disabilities to ensure respect for their human rights and access to quality HIV and AIDS information services, social protection and livelihood programmes;
- (d) ensuring the active participation of persons with disabilities in the design, development, implementation and review of HIV and AIDS programmes and services;
- (e) maintaining up to date gender and age disaggregated data on persons with disabilities in order to adequately plan for them; and
- (f) putting in place measures that challenge negative concepts and attitudes about disability and working to eradicate the marginalization of persons with disabilities.

Prisoners

37. (1) Notwithstanding the generality of other provisions of this Act-

- (a) every prisoner shall be protected from all forms of violence, including sexual violence;
- (b) no prisoner may be subjected to compulsory HIV testing;
- (c) the rules related to informed consent and pre-test and post-test counselling in this Act apply equally to prisoners;
- (d) prison authorities shall ensure access by all prisoners to information and education about the causes, modes of transmission, means of prevention and management of HIV and AIDS;
- (e) a prisoner living with HIV shall enjoy the same rights recognised to prisoners living with other illnesses and shall receive free health care services including antiretroviral therapy and medication for the management of opportunistic infections;
- (f) all information on the health status and health care of a prisoner shall be confidential and may be disclosed only in accordance with this Act;
- (g) no prisoner may be isolated from other prisoners on the ground of that prisoner's actual or perceived HIV status.

(2) The Ministries responsible for matters relating to health and prisons shall formulate and ensure the effective implementation of policies and guidelines to address HIV in prisons in accordance with this Act.

Other vulnerable groups.

38. (1) The Government, in consultation with relevant stakeholders shall develop and implement strategies, policies and programmes to

promote and protect the health of vulnerable groups and most at risk populations not specifically mentioned in this Part.

(2) Subsection (1) shall apply to any group which for the time being has high or increasing rates of HIV infection or which from available public health information, is more vulnerable or at higher risk to new infection on account of such factors as poverty, livelihood, sexual practices, disrupted social structures or population movements.

PART VII - HIV AND AIDS RELATED HUMAN BIOMEDICAL RESEARCH

Research and clinical trials

39. No person shall undertake HIV related human biomedical, clinical, social or other research on another person or on any tissue or blood removed from such person unless such research conforms to the requirements under this Act and any other written law for the time being in force.

Consent to research

40. (1) No person shall undertake HIV related human biomedical, clinical, social or other research on another person or on any tissue or blood removed from such person except-

- (a) with the written informed consent of that other person; or
- (b) if that other person is a child or a person with a disability which renders the person incapable of giving informed consent, with the written informed consent of a parent or the guardian of the child or that person.

(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 risks and discomforts of the research.

Ethical research body

41. (1) The Minister shall establish or designate an appropriate body to be responsible for ethical research for the purposes of this Act.

(2) The ethical research body established or designated under subsection (1) shall be constituted of, among others, persons with relevant expertise and experience in the field of human biomedical, social and clinical research and shall be responsible for reviewing and approving applications and protocols for conducting HIV-related human biomedical research or clinical trials on persons, or on any

tissue or blood removed from persons.

(3) When reviewing applications under subsection (2), the ethical research body shall-

- (a) observe the provisions of this Act and other relevant laws, as well as international human rights and ethical norms and principles applicable to human biomedical research or clinical trials; and
- (b) at a minimum, approve the informed consent process, and ensure the confidentiality of the research subjects and their health information and the equitable access of participants to information and benefits deriving from the research.

Unlawful research

42. A person who undertakes research or clinical trials in contravention of the provisions of this Part commits an offence.

PART VIII – MISCELLANEOUS PROVISIONS

Support to organisations of persons living with or affected by HIV

43. (1) In support of organizations of persons living with or affected by HIV, the Government shall-

- (c) encourage and support the creation and functioning of support groups, community and home-based care groups and other organisations of persons living with or affected by HIV; and
- (d) ensure the meaningful involvement of persons living with HIV in the design and implementation of HIV-related legislation, programmes and policies at both national and local levels.

Support of community and home-based caregivers

44. The Minister shall take measures to promote and support community and home-based care, and shall in particular-

- (a) develop a framework for the regulation and support of community and home-based programmes to ensure the respect of human rights and the provision of quality services;
- (b) ensure the active participation of care providers in the design, development, implementation and review of community and home-based care programmes; and
- (c) promote collaboration, including cross referral services, between traditional health practitioners and conventional healthcare providers in responses to prevention and management of HIV and AIDS.

Jurisdiction of the High Court.

45. Notwithstanding the jurisdiction vested in other lower courts to hear matters arising under this Act, the High Court of a Partner State or a court equivalent to the High Court, shall hear and determine, in the

first instance, any matter in which a violation of the provisions of this Act is alleged.

Penalties

46. (1) A person convicted of an offence under this Act is liable to imprisonment for a term not exceeding five years or to a fine not exceeding the equivalent in local currency of fifteen thousand American dollars or to both.

(2) Notwithstanding the provisions of any other written law for the time being in force, a court may, in addition to any penalty imposed on a person convicted under subsection (1) -

(a) in the case of an institution, order the revocation of any business permit or license in respect thereof; or

(b) in the case of a natural person, order the revocation of a licence to practice such person's profession.

(3) No provision of this Act shall be construed as relieving any person of the civil liability that the person's wrongful act or omission would attract under any law or as requiring an aggrieved person to forego any claim for damages.

Regulations

47. (1) The Council may make Regulations generally for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Council , may in regulations, prescribe-

(a) the standards and the procedure for the approval of testing facilities for the purposes of this Act;

(b) the standards and the procedure for the approval of healthcare providers;

(c) guidelines for-

(i) the training of any persons who may have responsibilities under this Act;

(ii) the privacy of information in HIV related records;

(iii) the provision of pre-test and post-test counselling services at testing facilities, including the standards and the procedure for approval of persons qualified to provide such services;

(iv) anonymous testing and the ethical use of the results

obtained to assist the subjects of such testing; and

(v) self testing.

(3) A person who contravenes Regulations made under this section commits an offence.

Supersession of
inconsistent laws.

48. Where in any matter relating to HIV and AIDS, the provisions of any other law are inconsistent with the provisions of this Act or any Regulations made under this Act, the provisions of this Act or such Regulations shall prevail.

DRAFT