

THE PREVENTION AND CONTROL OF
HIV AND AIDS ACT, 2007

A bridged and Simplified Version of the Act

NOVEMBER, 2008

The Lawyers Centre for Legal Assistance
LAWCLA
Sierra Leone

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FOREWORD

As a lead Human Rights Institution, the **Lawyers Centre for Legal Assistance** firstly thank the **DOEN FOUNDATION**, for its support and funds, that have significantly contributed in making it possible, for this institution to singularly undertake such a challenging task of producing a handbook, in a reader friendly nature.

We also give our appreciation to the people and Government of Sierra Leone for making into law, some of the growing concerns of human rights and the amendments of those laws that were discriminatory, particularly against women.

It is our expectation that this hand book would be used as a quick guide in looking at fundamental issues, on human rights abuses and violations.

We wish you a rewarding reading.

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PREFACE

The purpose of this handbook is to make the law accessible to everyone, in order for everybody to be conscious of their rights and to respect the rights of others.

LAWCLA's main mission is to protect and to promote the development of Human Rights all over the country through the law.

Now that the gender reform has been initiated and a new Act on the Prevention and Control of HIV and AIDS has been passed and promulgated, LAWCLA wants it to be accessible to every Sierra Leonean, so as to make the new prescriptions effective. People have to be aware of their own rights, in a bid to be able to enjoy them.

Similarly, law enforcers, even in the local community have to know about their rights as citizens' in order to enforce them.

Therefore, the mission of LAWCLA does not stop after the promulgation of a new law to improve people's rights, but goes on by diffusing those new rights throughout the country.

This handbook aims at creating a wide dissemination of the provisions of the Prevention and Control of HIV and AIDS Act, 2007 with the cooperation of all the addresses of the book, to diffuse its contents to all and sundry.

If the addresses need more precisions about the Act, they should directly refer to the text (*The Prevention and control of HIV and AIDS Act, 13 July 2007 Supplement to the Sierra Leone Gazette Extraordinary Vol. CXXXVIII No 44 dated 5 September, 2007*).

GLOSSARY

The words defined in the glossary are written in *italic* in the document.

A Donor of Tissue: someone who voluntarily gives a part of his own tissue in order to help another person that needs it.

A Transplant: the fact of putting the donor's tissue into the patient's body.

An Offender: someone who commits an offence, who has an unlawful behaviour. It may be an individual or an institution.

To Infringe, to Break, to be in Breach, to Contravene: to do something contrary/opposing to the law.

Donated Blood: blood given by a person, in order to provide people in need.

Medical Wastes: human wastes after surgical intervention.

Prophylaxis: a preventive medicine.

Knowingly: when someone is aware of what he does, willingly.

Negligently: when someone deliberately does not pay attention to what he is doing.

Counselling: to give advice, professional and psychological help.

PART 1 - PRELIMINARY

The lawmaker has defined the main terms employed in the act in order to be interpreted by everyone on the same meaning:

Acquired Immune Deficiency Syndrome (AIDS): 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: 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: 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 approval, by use of force, threat or any other form of pressure.

Consent: approval without any force, fraud or threat and with full knowledge and understanding of the medical and social cost of the matter, to which the approval relates.

Health Institution : a hospital, nursing home, maternity home, dispensary, laboratory, pharmacy or other public or private institution where healthcare services are provided.

Healthcare Providers:

-a medical doctor or dental doctor registered under the Medical Practitioners and Dental Surgeons Act, 1994.
-a pharmacist or pharmacy technician registered under the Pharmacy and Drugs Act, 2001
-a nurse registered under the Nurses Act
-a midwife registered under the Midwives Act
-a laboratory technician
-a community health officer
-and any other person approved by the minister under section 13.

Healthcare Service: rendered to a person means:

-physical and mental examination of that person
-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 and other medical procedures are performed in relation to any physical; or mental defect, illness, deficiency or pregnancy
-provision of pre-test or post-test counselling services.

HIV: Human Immunodeficiency Virus that weakens the resistant system, ultimately leading to AIDS.

HIV Test: a test which finds out whether a person is infected with HIV.

Local Council: a subordinate government body established under the Local Government Act, 2004.

Medical Insurance: a health insurance taken under the Insurance Act, 2000.

Medical Practitioner: includes dentists.

Minister: the Minister of Health and Ministry shall be interpreted accordingly.

NAS: National AIDS Secretariat.

Partner: a spouse or other person with whom another person is in a domestic or sexual relationship.

Person Living with HIV and AIDS: 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 results of an HIV test, means a result which confirms that the person who is tested is infected with HIV.

Post-Test Counselling: a process of providing a person who agrees to undertake an HIV test, with risk reduction information and emotional support at the time the result is released.

Pre-Test Counselling: the process of providing a person, before he undergoes an HIV test, with information on the biomedical aspects of HIV and AIDS, and an emotional support with respect to the psychological implication of undergoing an HIV test.

Medical Insurance: a health insurance taken under the Insurance Act, 2000.

Medical Practitioner: includes dentists.

Minister: the Minister of Health and Ministry shall be interpreted accordingly.

NAS: National AIDS Secretariat.

Partner: a spouse or other person with whom another person is in a domestic or sexual relationship.

Person Living with HIV and AIDS: 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 results of an HIV test, means a result which confirms that the person who is tested is infected with HIV.

PART 2 - EDUCATION AND FORMATION ON HIV AND AIDS

1. Educational and Informative Campaign on HIV and AIDS

The government promotes the information of the public on the causes, modes of transmission, consequences of transmission, means of prevention and control of HIV and AIDS, through a national sensitization campaign.

The educational and informative campaign uses scientific methods, and focuses on the family as the basic social unit. It is carried out in all schools and educational institutions; in prisons and other places of confinement; among uniformed forces and in all places of work and communities in Sierra Leone. Affected persons are involved in the sensitization campaign.

2. Sensitization at School

The ministry integrates the sensitization to subjects taught in public and private schools appropriated to primary, secondary and tertiary levels. The instruction includes the causes, the modes of transmission, the prevention and protection against HIV and AIDS and other sexually transmitted infections.

3. Sensitization in Healthcare Services

Education and information on HIV and AIDS are provided by healthcare services. The training of healthcare providers includes moral issues such as privacy, informed approval and the duty to provide the treatment and support.

4. Sensitization in Work Places

Employees of all government Ministries, Departments and Agencies (MDAs), and local issues are provided a basic information and instruction on HIV and AIDS prevention and control, including confidentiality/privacy, stigma and discrimination/bias issues.

5. Sensitization in Localities

Every local council organizes the awareness raising campaign within its administrative/governmental area, in partnership with the District HIV/ AIDS Committees.

PART 3 - SAFE PRACTICES AND PROCEDURES

6. Testing of Donated Tissue

Every donor/giver of any tissue must undergo an HIV test before the donation; and no health institution should accept a donation, unless the donor/giver has been tested negative.

Also, the patient or his close relatives have the right to ask for a second test, on the tissue before the transplant of the tissue, except in the case of emergency/urgent situation or life threatening situations.

7. Testing of Donated Blood

All donated blood must be HIV tested twice, in a minimum interval/period of 6 weeks. The positive tested blood must be destroyed in accordance with the guidelines on the disposal/clearance of medical waste.

8. Guidelines on Medical Acts and Wastes

The minister must recommend rules about the safety methods against HIV transmission during medical acts and the handling and disposal of cadavers/dead bodies; body fluids and wastes of infected persons.

The minister must also ensure the provision of protective equipments (gloves, goggles and gowns) and post exposure *prophylaxis*, to every personnel exposed to the risk of HIV infection.

9. Penalty for Unsafe Behaviour

Any person or organization who, in the course of his professional practice, *knowingly/consciously* or *negligently/carelessly*, causes another person to be infected with HIV, through unsafe or unsanitary behaviour contrary to the Act, and any prescribed guidelines commits a crime.

In addition to the sentence, the court may order the cancellation or suspension of any business authorization.

PART 4 - TESTING, SCREENING AND ACCESS TO HEALTHCARE AND SUPPORT SERVICES

10. Prohibition against Compulsory Testing

No person may force another to undergo an HIV test. Undergoing an HIV test may not be a qualification to employment, marriage, admission into any educational institution, entry into or travel out of the country; or the provision of healthcare, insurance cover or any other service.

Any person who *disobeys* this ban commits a crime.

However, the advice or recommendation to do an HIV test must not be considered as forcing a person.

11. Consent/Approval to HIV Test

No HIV test may be done without the approval of the patient. The approval must be written or otherwise.

The *violation* of this principle is a crime, except for the following exceptions:

- if the patient is a child, the approval of a parent or his guardian is needed; except if the child is pregnant, married, is a parent, or is in any other risky situation; he/she can directly approve to an HIV test.
- if the patient has a disability that makes him unable to give his approval according to the medical practitioner, the permission of one of his relatives is necessary (legal guardian, partner, adult offspring).
- an HIV test may be done if the person is required to undergo it under this Act, or any other law.

A person who offers to give any tissue or blood has to approve to an HIV test.

A medical doctor may undertake an HIV test, without the approval of his patient, if the person is unconscious, or unable to give permission, and, if the medical doctor thinks that it is necessary in the interest of that person.

The patient may ask for not being informed of the results of his own HIV test.

The government encourages voluntary testing by individuals, while conducting its sensitization campaign and provides a method for secret HIV testing.

12. HIV Counselling

HIV testing and pre-test or post-test *counselling* must be carried out by healthcare providers, in centres approved by the minister. The violation of this rule is a crime.

13. Pre-Test and Post-Test Counselling

In every test centre, pre-test and post-test *counselling* is provided to the persons undergoing an HIV test, and to any other person that may be affected by the results of a test.

The minister ensures the training of experienced staff, to provide such *counselling*.

14. Confidentiality/Privacy

The results of an HIV test are secret and may only be released to:

- the tested person,

- a parent or legal guardian of a tested child,
- the child, if he can directly approve to an HIV test,
- the legal guardian of a disabled tested, his partner, parent or an adult offspring of that person.

15. Access to Healthcare Services

Every health institution, health management organisation or medical insurance provider must make possible healthcare services to persons living with HIV, without any bias.

The government ensures the access to essential healthcare services and medicines at affordable prices, to infected persons and those who are exposed to the risk of HIV infection; including reproductive healthcare services and medicines.

16. Local Councils Services

Local councils must provide community based HIV prevention and care services, in partnership with other stakeholders (such as governmental agencies, NGOs, infected persons and groups most at risk of HIV infection).

17. Consent to Revelation of Results

No person may reveal any information relating to the results of an HIV test to any other person than the tested patient, except:

- with his written approval
- with the written approval of one of his relatives, if he is dead

- with the written permission of a parent or legal guardian, if he is a child; except if the child may directly approve to such disclosure (if pregnant, married, parent or engaged in other risky behaviour),
- with the oral consent of a disabled tested or with the written consent of the person with power of attorney for that purpose, his legal guardian, his partner, his parent or an adult offspring of that person,
- to an approved person who is involved in the treatment and counselling of the patient,
- for the purpose of an epidemiological study or research authorised by the Minister,
- to a court when it is directly relevant to the proceedings before the court,
- to the Register of Births and Deaths if the person is dead.

18. Livelihood Programmes

Livelihood, self-help and co-operative programmes must be made accessible and available to infected persons.

19. Insurance for Persons with HIV

A study is conducted to implement an insurance coverage programme for persons infected with HIV. This study is guided by the principle that the access to health insurance is a part of the right to health and thus it is the responsibility of the State and of the whole society

PART 5 - TRANSMISSION OF HIV

20. Prevention of Transmission of HIV

A person who is aware of being infected or carrying the virus must take safety measures to prevent the transmission of HIV to others, and must inform any sexual partner of the infection.

Any infected person must not place another person at risk of being infected with HIV, unless the other person knew that fact and willingly accepted the risk of being affected.

These duties are also applicable to pregnant women for the protection of the foetus.

The breaking of these instructions is a crime and the person may be condemned to pay a fine not exceeding 5 million Leones, or sentenced to a maximum of 7 years imprisonment, or to both.

Any infected person may ask for, in the approved form, any medical doctor or person approved by the minister, to inform and counsel a sexual partner of his HIV status. The practitioner requested must, whenever possible, comply with the request in person.

A medical doctor who becomes aware that his patient has not complied with his obligations may inform any sexual partner of this person, without being in breach with the obligation of confidentiality.

PART 6 - MONITORING ON THE PREVALENCE OF HIV

21. Monitoring of the Prevalence of HIV

A department responsible for the monitoring of HIV is established. The department has to decide the level and progression of the infection in Sierra Leone, and to assess the sufficiency and effectiveness of the methods employed to combat the spread of HIV.

PART 7 DISCRIMINATION ACTS AND POLICIES

22. Discrimination in Workplace

It is forbidden to deny a person access to any employment for which he is qualified or, to transfer, deny promotion or fires him on the grounds only of actual, perceived or suspected HIV status; except if the employer proves that the employment requires a particular state of health or medical or clinical condition.

23. Discrimination at School

It is not allowed to deny admission, expel, discipline, set aside, deny participation in any activity or deny any benefits or services to a pupil or student on the grounds only of actual, perceived or suspected HIV status.

24. Restrictions on Travel and Habitation

No one may be denied or restricted of his freedom of abode, lodging or travel within or outside the country, on the grounds only of actual, perceived or suspected HIV status. Similarly, no one should be quarantined, placed in isolation, refused lawful entry or deported from Sierra Leone on the same grounds.

25. Inhibition from Public Service

No person should be denied the right to seek a public office on the reasons only of actual, perceived or suspected HIV status.

26. Exclusion from Credit or Insurance Services

No person should be forced to undergo an HIV test or to disclose his HIV status in order to gaining access to credit or insurance services.

In the case of life or healthcare services insurance, the insurer has to set a reasonable limit of cover, for which an HIV test is not required.

If the person wants an exceeding cover, he can be required by the insurer to undergo an HIV test. In this case, if the result of the test is positive, the insurer may charge the customer with a reasonable additional amount.

27. Discrimination in Health Institutions

No person should be denied access to healthcare or be charged a higher fee for any services on the reasons only of actual, perceived or suspected HIV status.

28. Denial of Burial Services

No deceased person should be denied access to any burial services on the reasons only of his health status.

39. Crime

Any violation to the provisions, on the discrimination against HIV infected people, is considered as a crime.

PART 8 - RESEARCH

30. Research/Investigate

Research about HIV or AIDS on persons or on tissues or blood must conform to the guidelines issued by the minister.

31. Consent to Research

Research/Investigate on a person or on any tissue or blood is unlawful, except if the person gives his written and informed permission, or with the written and informed approval of a parent, if the person is a child.

The person is informed of the aims, methods, expected benefits and possible dangers and discomforts of the research/investigation.

32. Crime/Offence

Any person who disobeys any of these laws commits a crime.

PART 9 - MISCELLANEOUS

33. Penalty/Punishment

When no punishment has been provided, a person convicted/found guilty of an offence under this act is liable to a fine not exceeding 3 million Leones, or to a term of imprisonment not exceeding 2 years or to both.

34. Regulations/Policies

The minister will make regulations/set of laws to prescribe anything required by the Act and to carry out its purposes.

THE MAIN RIGHTS AND DUTIES PRESCRIBED BY THE PREVENTION AND CONTROL OF HIV AND AIDS ACT, 2007

The State's main Duties:

- to ensure a national information and education campaign about HIV and AIDS, throughout the country (schools, tertiary institutions, prisons, state employees).
- to ensure any facilities for sick persons.
- to take any procedure to implement the provisions of the Act.

Sick Persons' main Rights:

- to be involved in the sensitization campaign
- secret testing
- privacy about their illness
- not to be discriminated against because of their illness in any of the following areas:
 - healthcare services
 - workplace
 - school
 - travel and housing
 - public service
 - credit or insurance services
 - burial services

Sick Persons' main Duties when Aware of the Infection:

- to take measures to avoid the transmission to anybody.

- to inform their sexual partners of their infection and of
- the risk of contamination before any sexual contact.
- contravention to the obligation of information, when the partner has been infected could amount to a maximum of 5 million Leones fine, or 7 years' imprisonment or both.

Donation of Blood and Tissue:

- compulsory testing of the donor/giver of tissue
- possibility for the patient who receives the tissue to ask for a second test
- two tests on donated blood
- guidelines about the treatment of medical wastes and during medical acts, in order to avoid HIV transmissions
- protective equipment and prophylaxis provided to the medical staff

Consent to HIV Test:

- prohibition of compulsory testing
- encouragement of voluntary testing
- anonymous HIV testing
- privacy
- counselling provided to persons undergoing HIV test and to relatives

