

HIV AND AIDS PREVENTION AND CONTROL ACT, 2015

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HIV and AIDS Prevention and Control Act, 2015



THE GAMBIA
NO. 04 OF 2015

Assented to by The President,
this 2nd day of April 2015



YAHYA A. J. J. JAMMEH
President



AN ACT to provide for HIV and AIDS prevention, implementation and control measures; the care, treatment and support for HIV and AIDS infected people and for connected matters.

ENACTED by the President and the National Assembly.

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PART I – PRELIMINARY

1. Short title

This Act may be cited as the HIV and AIDS Prevention and Control Act, 2015.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

“accommodation” includes residential, office and business premises as well as temporary shelter;

“Acquired Immune Deficiency Syndrome” or its abbreviation “AIDS” means a condition characterized by the combination of signs and symptoms caused by HIV, which attacks and weakens the body's immune system, exposing the affected individual to other potentially fatal infections;

“anonymous HIV screening” means a sensitive procedure whereby the individual tested does not reveal his or her true identity, but by identification numbers or symbols or the combination of both numbers and symbols are used to replace the person's name, thus allowing the laboratory conducting the test and the person undergoing the test to match the results of the analysis with the identification numbers or symbols or the combination of both;

“associate of a person” means any person with whom the person associates with, whether socially or in business or commerce, or otherwise, and includes any person who is a member of the person's family or household;

“Director” means the Director of Health Services;

“employment” includes formal and informal employment, including part-time and temporary employment and work signed under a contract of services;

"gender" means the economic, social and cultural attributes and opportunities associated with being male or female;

"health care provider" means a person entitled to provide health services under the Laws of The Gambia, and includes accredited physicians, registered nurses, paramedical staff and other trained medical staff;

"health care" means services provided by health care providers in the formal health system for prevention or treatment of mental or physical diseases or conditions;

"Hepatitis C virus" and its abbreviation "HCV" is a blood-borne virus that affects the liver adversely;

"HIV Negative" means the absence of HIV or HIV antibodies in the system of the persons tested;

"HIV Positive" means the result of a screening test revealing the presence of HIV or HIV antibodies in the system of the person tested;

"HIV Screening Test" means any validated, medically recognised and virally sensitive test conducted on an individual;

"HIV Transmission" means the infection of a person with HIV, such transmission usually occurring through sexual intercourse, blood transfusion or the sharing of intravenous needle, skin-piercing instruments or through mother-to-child transmission;

"HIV and AIDS prevention and control" means the measures aimed at preventing non-infected persons from contracting the disease and minimize the spread and impact of the disease on PLHIV;

"Human Immunodeficiency Virus" or its abbreviation "HIV" means the virus that causes the acquired immune deficiency syndrome in humans, causing the body to lose the ability to fight disease-causing agents;

"medical confidentiality" means a relationship of trust existing or which should exist between a patient and his or her doctor or any health agent, paramedical staff, health worker, laboratory staff, pharmacy staff or people of similar status, as well as any person whose profession or official prerogatives allows him or her to have access to such information;

"medical facility" includes a hospital, clinic, laboratory or other place where the provision of medical treatment is provided;

"Minister" means the Minister responsible for health;

"Person Living with HIV" means a person, whose screening test, directly or indirectly, reveals that he or she is infected with HIV;

"post-test counseling", in relation to a HIV test, includes—

- (a) where the HIV test result is negative, and -
 - (i) the test result, including information about the window period for the appearance of HIV-antibodies and a recommendation to repeat the test in case of a recent exposure,
 - (ii) basic advice on methods to prevent HIV transmission, or
- (b) where the HIV test result is positive, counselling by health care providers which should—
 - (i) inform the patient of the result simply and clearly, and give the patient time to consider it,
 - (ii) ensure that the patient understands the result,
 - (iii) allow the patient to ask questions,
 - (iv) help the patient to cope with emotions rising from the test result,
 - (v) discuss any immediate concerns and assist the patient to determine who in his or her social network may be available and acceptable to offer immediate support,
 - (vi) describe follow-up services that are available in health facilities and in the communities, with special attention to the available treatment, the Prevention of Mother To Child Transmission (PMTCT) and care and support services,
 - (vii) provide information on how to prevent transmission of HIV, including provision of male and female condoms and guidance on their use,
 - (viii) provide information on other relevant preventive health care measures, as appropriate,

- (ix) discuss possible disclosure of the result, when and how this may happen and to whom,
- (x) encourage and offer referral for testing and counseling of couples and children,
- (xi) assess the risk of violence or suicide and discuss possible steps to ensure the physical safety of patients, particularly women,
- (xii) arrange a specific date and time for follow up visits or referrals for treatment, care, counseling, support and other services as appropriate,

(c) access to health services,

(d) stigma and discrimination, and

(e) adherence to treatment;

"pre-test information", in relation to a HIV test, shall include, the following information -

- (a) the nature of HIV and of AIDS,
- (b) the nature and purpose of a 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 a HIV-negative or a HIV-positive test result, including whether antiretroviral treatment is available,
- (e) the fact that the test result will be treated confidentially and will not be shared with anyone other than health care providers directly involved in providing services to the patient -
 - (i) the fact that the patient has the right to decline the test,
 - (ii) the fact that declining a HIV test will not affect the patient's access to services that do not depend upon knowledge of HIV status,

(iii) in the event of a HIV-positive test result, encouragement of disclosure to other persons who may be at risk of exposure to HIV,

(iv) an opportunity to ask the health care provider questions;

"prisoner" includes -

(a) a person who is in a prison pursuant to a sentence for an offence; or who has been convicted of an offence and is awaiting imposition of a sentence; or who is in prison because of a condition imposed by the relevant authority in connection with parole or statutory release,

(b) a person who, having been sentenced, committed or transferred to prison, is temporarily outside prison by reason of a temporary absence or work release authorized under relevant legislation; or is temporarily outside prison for reasons other than a temporary absence, work release, parole or statutory release, but is under the direction or supervision of a staff member or of a person authorized by the relevant authority,

(c) a person who is in prison awaiting trial;

"prophylaxis" means any agent or instrument, which serves to prevent disease;

"public act" includes -

(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded materials,

(b) any other conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and

(c) the distribution or dissemination of any matter to the public;

"sex" means the biological characteristics which define human beings as female and male;

"VCT" means voluntary counseling and testing;

"Voluntary HIV Test" refers to an individual who, after a pre-test counseling, willingly undergoes a HIV screening test;

"voluntary informed consent", in relation to a HIV test, means consent specifically related to the performance of a HIV test, freely given, without threat, coercion, duress, fraud, undue influence, mistake or misrepresentation and obtained after providing pre-test information and, in a language and manner understood by such person, and to be followed by post-test counseling;

"vulnerable groups" includes women, children, those living in poverty, minorities, migrants, refugees, orphans, internally displaced persons, people with disabilities, prisoners, sex workers, men who have sex with men and people who inject drugs;

"wilful transmission" means transmission of HIV that occurs through an act done with the deliberate purpose of transmitting HIV;

(2) A person discriminates against another person on the ground of his or her HIV status if, by reason of -

- (a) the aggrieved person's real or perceived HIV status; and
- (b) the real or perceived HIV status of a relative or associate of the aggrieved person;

the discriminator -

- (i) treats the aggrieved person less favourably than the discriminator treats or would treat a person without HIV, in circumstances that are the same or are not materially different; or
- (ii) disadvantages the aggrieved person by requiring the aggrieved person to comply with a provision, criterion or practice that is or would be disproportionate to the detriment of people living with HIV; and said conduct is not reasonable and *bona fide* in the circumstances.

PART II - EDUCATION AND INFORMATION

3. Education on HIV and AIDS in learning institutions

(1) The Ministries responsible for Basic and Secondary Education, Higher Education and Health shall ensure that students are educated on HIV and

AIDS in public and private schools at basic, secondary and higher levels, including formal, non-formal and indigenous learning systems.

(2) The Ministries responsible for Basic and Secondary Education, Higher Education and Health shall ensure that -

- (a) education and training courses cover the modes of transmission of, and ways of preventing, HIV and other sexually transmitted infections, as well as the human rights of the people living with HIV and vulnerable groups;
- (b) lessons and activities are provided to -
 - (i) promote equality between males and females,
 - (ii) advocate zero tolerance for any form of violence against women and girls
 - (iii) against any form of sexual exploitation against children,
 - (iv) to enhance the capacity of all persons to negotiate their sexual and other relationships so as to protect themselves and others by reducing or eliminating the risk of HIV transmission and being able to avoid sexual violence and coercion, as well as self-esteem and other life skills; and
- (c) the content of such education is scientifically accurate, age-specific and, as appropriate, in local languages.

(3) The Ministries responsible for Basic and Secondary Education, Higher Education, and Health shall ensure that adequate training and educational materials are provided for those who provide such education.

(4) The Ministries responsible for Basic and Secondary Education, Higher Education, and Health shall ensure that all educational institutions (public and private schools at primary, secondary and tertiary levels, including formal, non-formal and indigenous learning systems) are free from sexual violence and sexual exploitation by administrators, teachers, students or others.

4. Information on HIV and AIDS as a Health Service

(1) All health care personnel shall ensure that education and information on HIV and AIDS form part of the health services that they render to their patients.

(2) The Ministry responsible for health shall ensure that health care personnel are appropriately trained on providing information and education on HIV and AIDS.

(3) All health care personnel shall make available to their patients, information on the causes, modes of transmission and prevention of HIV as well as information challenging or correcting misconceptions and erroneous ideas about HIV and people living with HIV.

(4) The training of health personnel shall include modules on issues related to ethics within the context of HIV and AIDS, confidentiality, informed consent and obligation to provide treatment.

5. Sensitization of HIV and AIDS in the work place

(1) All employees, members of the armed forces and security services shall receive a standardised HIV and AIDS education, which shall include themes on the causes, modes of transmission and prevention of HIV, and on confidentiality at the work place and the acceptance of workers living with HIV.

(2) The National AIDS Secretariat in collaboration with the Ministry responsible for Health, civil society and labour organisations shall launch awareness campaigns in all enterprises (both public and private).

(3) The commands of the security services including the armed forces shall be responsible for the enforcement of the provisions in sub-section (1) and (2) respective structures.

6. Education on HIV and AIDS within communities

(1) The National AIDS Secretariat in collaboration with the Ministry responsible for Health, local government council and civil society, shall launch an education and information campaign on HIV and AIDS.

(2) Local government authorities and other decentralised institutions of government shall launch an education and information campaign on HIV and AIDS, in collaboration with the various government bodies, NGOs as well as traditional and religious associations.

7. Education of nationals working abroad on HIV and AIDS

(1) The Government shall promote public awareness about the nature, causes, modes of transmission, consequences and means of prevention and management of HIV and AIDS for all, through a comprehensive nationwide education and information campaign conducted through the Ministry responsible for Health, Education, Foreign Affairs, Tourism, gender and women affairs and all other relevant government institutions.

(2) The education and information campaign referred to in sub-section (1) shall –

(a) use evidence-based approaches that have proven successful;

(b) be adapted to the age, gender, nature of activities and sexual orientation of target groups and address social and cultural constructs including masculinities and unequal gender relations;

(c) be carried out in schools and other institutions for learning, prisons and places of detention, work places, places of entertainment, tourist sites and in rural and urban communities;

(d) be guided by evidence on potential opportunities for and barriers to behavioural change and include effective measures to ensure that information, education and communication translate into behavioural changes;

(e) challenge stigma and discrimination, and address misinformation about HIV, people living with HIV and members of vulnerable groups; and

(f) promote the acceptance of people living with HIV and members of vulnerable groups.

(3) In conducting the education and information campaign referred to in this section, the Government shall collaborate with relevant public and private stakeholders and ensure the meaningful involvement and participation of people living with HIV.

8. Information for tourists and passengers in transit

(1) The Ministries responsible for Interior and Tourism shall ensure that Information materials on the causes, modes of transmission, prevention and consequences of HIV infection shall be provided for in the appropriate manner at all international entry and exit points and major tourist sites.

(2) The Ministry responsible for Health in collaboration with the National AIDS Secretariat, and the Ministries responsible for Tourism, Foreign Affairs, and Justice shall be in charge of enforcing the provisions of the sub-section (1).

9. Information on drugs

(1) A person shall not sell, give or distribute any drug for the treatment of HIV infection and other sexually transmitted diseases unless information is clearly written on the packaging of the drug containing information on the appropriate use of the device or agent, its effectiveness against the HIV infection and sexually transmitted diseases.

(2) The Ministry responsible for Health or any of its accredited agencies shall ensure the quality and efficacy of all drugs brought into the country prior to their sale and consumption.

10. Dissemination of erroneous or false information on HIV

A person who-

- (a) disseminates false or erroneous information on HIV and AIDS prevention;
- (b) promotes drugs, materials, agents or procedures without any medical and scientific basis and without the prior authorisation of the Ministry responsible for Health or its accredited agencies; or
- (c) provides packaging of drugs, materials or agents that are stated or intended to cure HIV, AIDS or protect against the disease knowing or having reason to believe that the inscription on the packaging is false or not true,

commits an offence and is liable on conviction to a fine not less than twenty five thousand dalasis or to imprisonment for one year to both.

PART III - SECURE PRACTICES AND PROCEDURES**11. Requirements related to blood, tissues or organ donation**

(1) A medical facility shall test all human blood, blood related products, tissues and organs donated or sold to it for HIV and other blood-borne pathogens.

(2) A laboratory or medical facility shall not accept for use or to keep donated blood, tissues or organs, unless the sample of the donor's blood, tissue or organ has tested HIV negative.

(3) Where the donor's blood, tissue or organ has tested positive for HIV then the blood, tissue or organ shall be discarded and destroyed in a safe manner.

(4) The beneficiary of donated blood, tissues or organs may demand, and be provided with, a second test by the medical facility, prior to blood transfusion or transplantation of the tissues or organs into him or her.

(5) A person who is in possession of blood, tissues or organs, extracted from his or her body or another person's body, that he or she knows to be infected with HIV, shall immediately and safely discard and destroy it.

12. Blood donation and other acts by person with HIV or AIDS Infection

(1) A person who has tested positive for HIV or AIDS shall not donate blood at any blood bank in The Gambia.

(2) For the purposes of this section, a person shall be deemed to know that he or she has AIDS or HIV Infection if a serological test or any other prescribed test for the purpose of ascertaining the presence of HIV Infection carried out on him or her has given a positive result and the result was communicated to him or her.

(3) A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine of hundred thousand dalasis or to imprisonment for not less than two years or both.

13. Guidelines concerning surgical interventions and other related procedures

(1) A medical or other facility shall take the necessary measures to ensure that precautions are taken to avoid HIV transmission during surgical intervention, dental care, embalming, tattooing and other related procedures.

(2) A medical or other facility shall provide necessary protective equipment such as gloves, protective glasses and coats to all medical doctors and other health providers.

PART IV - VOLUNTARY COUNSELLING AND TESTING (VCT)**14. Consent to undergo HIV Test**

(1) A person shall not perform a HIV test on another person except -

- (a) with the consent of the person to be tested; and
 - (i) after pre-test information has preceded the test;

(ii) the results of the test shall be provided to the person tested, and

(iii) the person responsible for causing the test to be performed offers post-test counseling after the tested person has received their test results;

(b) where the person to be tested is aged sixteen years or less and is in the opinion of the person providing the pre-test information, incapable of understanding the meaning and consequences of a HIV test, with consent of a parent or other legal guardian of that person; or

(c) where the person to be tested has a disability which in the opinion of the person providing the pre-test information renders the person incapable of understanding the meaning and consequences of a HIV test, with the consent of one of the following persons, shall be sought in the order in which they are listed -

(i) a legal guardian of that person;

(ii) a partner of that person; or

(iii) a parent or guardian of a child under the age of 16 years who is to be tested

(2) A person who contravenes sub-section (1) commits an offence and is liable on conviction to imprisonment for one year or to a fine not exceeding fifty thousand dalasis or both.

(3) The Government shall take all necessary measures to ensure the provision of VCT services and encourage their use by all individuals.

(4) In the event of donations of organs, cells or blood, the consent to undergo HIV test is legally presumed when a person willingly or freely agrees to give his or her blood, organ or cell for transfusion, transplant or research.

15. Prohibition of the requirement to undergo HIV Test for certain benefits

(1) A person shall not impose a requirement on another person to take a HIV test for the following-

(a) securing, maintaining or being promoted in a job;

(b) admission to school or universities;

(c) access to accommodation;

(d) right to entry or residence in The Gambia;

(e) as a precondition to travel;

(f) access to medical care;

(g) as a precondition of becoming a treatment supporter; or

(h) access to any other services.

(2) A person who contravenes sub-section (1) commits an offence and is liable on conviction to imprisonment for one year or to a fine not exceeding fifty thousand dalasis or both.

16. Testing centres and voluntary testing

(1) The Government and medical facilities shall develop a system of anonymous HIV screening which shall guarantee anonymity and medical confidentiality.

(2) In order to carry out operations, all persons, medical facilities, laboratories and centres, providing HIV testing services shall be required to obtain the authorization from the Ministry for health to carry out the testing of HIV.

(3) All persons, medical facilities and centres, carrying out HIV testing, shall provide pre-counselling and post test counselling to each clients to whom VCT is being offered.

(4) Counseling services shall only be provided by trained personnel who meet the standards set out by the Ministry responsible for Health.

(5) The Ministry responsible for Health shall build the HIV testing capacities medical facilities and other testing centres by providing training to personnel providing such services.

PART V – TREATMENT, CARE AND SUPPORT SERVICES**17. Services in the health centres**

(1) A person living with HIV shall receive free basic health care from the Government, including access to high quality anti-retroviral therapy and prophylaxis, to treat or prevent HIV or opportunistic infections such as tuberculosis, palliative treatment and care to address pain and other symptoms associated with AIDS.

(2) The criteria for access to ARV or ART shall be the relevant clinical stages of AIDS or the level of immune suppression provided under national and international treatment guidelines and whilst the availability of a treatment supporter may be encouraged, the absence of such a treatment supporter shall not be invoked or used as a basis for denying access to Antiretroviral Therapy (ART) or Antiretroviral drugs (ARV).

18. Communities Services

The Ministries responsible for Local Government and Health and any other specialised government institutions concerned with HIV and AIDS prevention and control, in collaboration with NGOs, the private sector, persons or associations of persons living with HIV and AIDS and vulnerable groups shall undertake preventive activities as well as care and support activities within the communities.

19. Out reach and training of people living with HIV and AIDS

(1) The Government shall provide adequate training programs for persons living with HIV to promote self-reliance and mutual self-assistance.

(2) A person or an institution shall not deny access to the full participation of persons living with HIV in out-reach activities and self-help programs designed to further their training capacities.

20. Treatment of sexually transmitted diseases

The Ministry responsible for health in collaboration with relevant government Ministries and agencies, NGOs, and the private and the traditional sector shall take all necessary steps to strengthen the preventive measures, care, and control of sexually transmissible infections to fight against the spread of HIV infection.

PART VI - CONFIDENTIALITY**21. Medical confidentiality of HIV status**

(1) A person shall not disclose any information concerning a person's HIV status to any other person, except –

- (a) with the written consent of that person, his or her parents, guardian or partner as applicable;
- (b) to a health care provider who is directly involved in providing health care to that person, where knowledge of the patient's diagnosis of HIV infection or AIDS is necessary or relevant 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; or
- (d) upon an order of a court, where the information contained in the medical file is directly relevant to the proceedings before the court.

(2) A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for one year or both.

22. Confidentiality of HIV test results

(1) A HIV test and the results of the test shall be confidential.

(2) A person who has performed, or caused to be performed, a HIV test shall not divulge information about the result of that test except –

- (a) to the person who has been tested or to another person with the express written consent of the person who has been tested;
- (b) where another person legitimately gave the consent to the test of a person under the age of sixteen or person with a disability in accordance with section 14 (1) of this Act; or
- (c) with the consent of the person who gave the consent, to a person who is directly involved in

providing care to, or treatment or counseling of, the person tested, where the information is required in connection with providing the care, treatment or counseling.

(3) A person who contravenes sub-section (2) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or to imprisonment for one year or both.

23. Partner notification

A health care provider providing treatment, care or counseling service to a person infected with HIV may notify a sexual partner of the person living with HIV of the HIV status of his or her partner if –

- (a) in the opinion of the health care provider, there is a significant risk of transmission of HIV by the person living with HIV to the sexual partner;
- (b) counseling of the person living with HIV has failed to achieve a change in behavior necessary to reduce sufficiently the risk of HIV transmission to the sexual partner such that it is no longer significant;
- (c) the person living with HIV has refused to notify, or give consent to the notification of, the sexual partner;
- (d) the health care provider gives the person living with HIV advance notice for a period that is reasonable in the circumstances; and
- (e) in the opinion of the health care provider the person living with HIV is not at risk of serious harm as a consequence of any notification to the sexual partner; or
- (f) the person infected 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.

24. Disclosure to minors and the mentally and challenged persons

(1) A minor or child and the mentally and physically challenged persons shall be entitled to information regarding his or her HIV or AIDS status,

laboratory results and necessary actions with respect to his or her state of health, according to his or her age and capacity to understand the information.

(2) The doctor or paramedical staff shall ensure that the disclosure is made using means that are appropriately adapted to facilitate acceptance and understanding of their status.

PART VII - DISCRIMINATORY ACTS

25. Discrimination at work places

(1) An employer shall not discriminate against a person because of that person's real or perceived HIV status with respect to hiring, promotion, dismissal or retirement.

(2) An employer who contravenes sub-section (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis and not exceeding two hundred and fifty thousand dalasis or to imprisonment of not exceeding five years or both.

26. Discrimination in school and educational institutions

An educational or a training institution shall not refuse enrolment or other educational services or expel a student, pupil, trainee or applicant on the basis of his or her real or perceived HIV status.

27. Violation of the right to travel and accommodation

(1) A person shall not interfere in any way with another person's right to travel or to accommodation based on his or her real or perceived HIV status.

(2) A person shall not be quarantined, isolated, or barred from entry into The Gambia or deported from The Gambia on the basis of that person's real or perceived HIV status.

28. Access to public or elected office

A person shall not be deprived of his or her right to be elected or appointed as a public office or admission to a public function on the basis of his or her real or perceived HIV status.

29. Access to credit and insurance services

(1) A person shall not be denied access to credit, loans and insurance services on the basis of his or her real or perceived HIV status so long

as the person has not hidden his or her HIV status from the insurance company.

(2) A person shall not deny the continuation or extension of the credit and insurance services solely on the basis of the HIV status of an individual seeking it.

(3) A person who contravenes sub-section (1) or (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis or imprisonment for two years or both.

30. Discrimination in hospitals and health institutions

A person shall not be denied access to services in hospitals or private or public health institutions or charged a bill which is higher than normal because of his or her HIV status.

31. Prohibition of discrimination on the grounds of HIV status

A person shall not discriminate against another person, or a relative or associate of that other person, on the grounds of that other person's real or perceived HIV status, which include –

- (a) services, goods and facilities;
- (b) the provision or occupancy, accommodation housing, or lodging”;
- (c) employment;
- (d) the capacity to contract;
- (e) education and training;
- (f) membership in any trade union, trade or occupational association or self-governing profession;
- (g) ownership of property (movable and immovable);
- (h) division of property upon death or divorce;
- (i) custody of children; and
- (j) inheritance.

32. Prohibition of vilification or hate speech

(1) A person shall not, incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground that the person is, or members of the group are, living with HIV or perceived to be living with HIV.

(2) Nothing in this sub-section renders as unlawful –

- (a) a fair report of a public act referred to in section (1); or
- (b) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes, or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

(3) A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis or imprisonment for two years or both.

33. Special measures intended to achieve equality

A person does not discriminate against another person under this Act by taking special measures for the purpose of achieving substantive equality between people of different HIV status.

34. Sanction for discriminatory acts

A person who contravenes this Part is liable on conviction unless a penalty is otherwise provided, to a fine not exceeding one hundred and fifty thousand dalasis or imprisonment for three years or both.

PART VIII - WILFUL TRANSMISSION OF HIV

35. Wilful transmission of HIV

(1) A person who knows that he or she is living with HIV or that an object in his or her possession is contaminated with HIV, wilfully infects another person commits an offence.

(2) A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine of five hundred thousand dalasis or to imprisonment of not less than five years both.

36. Limitations on criminal responsibility

A person shall not be held criminally liable under this Act for transmitting HIV where such transmission or exposure to the risk of HIV infection, arises out of or relates to –

- (a) an act that poses no significant risk of HIV infection;
- (b) a person living with HIV who –
 - (i) was unaware of his or her HIV infection at the time of the alleged offence;
 - (ii) lacked understanding of how HIV is transmitted at the time of the alleged offence;
 - (iii) practiced safe sex, including using a condom; or
 - (iv) disclosed his or her HIV-positive status to the sexual partner or other person before any act posing a significant risk of transmission;
 - (v) did not disclose his or her HIV status because of a well-founded fear of serious harm by the other person; or
- (c) a situation in which the sexual partner or other person was in some other way aware of the person's HIV-positive status;
- (d) the possibility of transmission of HIV from a woman to her child before or during the birth of the child, or through breast feeding of a child.

PART IX - GENDER AND REPRODUCTIVE HEALTH RIGHTS**37. Sex and gender sensitivity in providing the services authorised by this Act**

The Director shall ensure that in the provision of education, information, training, pre-test counseling and post-test counseling, notification of HIV test results, health care and other HIV-related services as authorised in this Act, the provision of such services shall take into account differences in sex and gender.

38. National strategies, regarding HIV among women and girls

- (1) The Director, in consultation with the relevant Ministries and 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 the HIV epidemic.
- (2) The strategies, policies and programmes referred to in sub-section (1) shall address issues such as –
 - (a) the equality of women and girls at home and in public life;
 - (b) the sexual and reproductive rights and responsibilities of women and men, including a person's right to refuse sex, the right and ability to negotiate safer sex and access health and reproductive services independently; and men's responsibilities to take equal responsibility for sexual and reproductive health and outcomes; to avoid rape, sexual assault and domestic violence inside and outside marriage; and to avoid sexual relations with a minor;
 - (c) strategies for increasing educational, economic, employment and leadership opportunities for women;
 - (d) sensitising service deliverers and improving health care and social support services for women;
 - (e) strategies for reducing inequalities found in formal and customary laws with respect to marriage, divorce, property, custody of children, inheritance and others; and
 - (f) the impact of religious and cultural traditions on women and girls with the aim of promoting the full enjoyment by women and girls of their human rights.

39. People living with HIV

- (1) People living with HIV and AIDS have the same right to marry and found a family as those who are not infected with HIV and AIDS.
- (2) The Director shall, in consultation with the relevant Ministries and key stakeholders, develop and implement national regulations regarding all matters which are to be followed by all health care providers and any other relevant persons when providing health care to women living with HIV who are pregnant.

(3) The national instructions referred to in sub-section (2) shall ensure that any woman living with HIV who is pregnant or plans to become pregnant has such counselling, information and services as to enable her to make a fully informed and voluntary decisions in matters affecting her health and pregnancy, including –

- (a) HIV testing, including pre- and post- test counselling;
- (b) options for protecting her health as a woman living with HIV; and
- (c) options for preventing transmission of HIV to her child before, during and after the birth of the child.

40. National regulations and directives regarding rape, sexual assault and domestic violence

(1) The Director shall, in consultation with the relevant Ministries and key stakeholders, develop and implement national instructions and directives regarding all matters which are to be followed by all health care providers and any other relevant persons when dealing with rape, sexual assault and domestic violence cases, with particular reference, among other things, to -

- (a) the offer and administration of post-exposure prophylaxis to reduce the likelihood of HIV infection as a result of an assault;
- (b) the manner in which HIV test results shall be dealt with in order to ensure confidentiality;
- (c) the manner in which the reporting of an alleged case of rape, sexual assault or domestic violence is to be dealt with if the case is reported to a public health establishment; and
- (d) the manner in which assistance to a complainant in the investigation and prosecution of rape, sexual assault or domestic violence, generally, must be provided in order to fully protect the rights and health of women victims of such rape, sexual assault or violence.

(2) The Director shall, in consultation with the relevant Ministries and key stakeholders, develop and implement training courses for health care providers, which-

- (a) include training on the national instructions and directives referred to in section (1);
- (b) include social context training in respect of rape, sexual assault and domestic violence; and
- (c) provide for and promote the use of uniform norms, standards and procedures, to ensure that health care providers and any other relevant persons are able to deal with rape, sexual assault and domestic violence cases consistently in an appropriate, efficient and sensitive manner.

(3) The Inspector General of Police shall, in consultation with the relevant Ministries and key stakeholders, develop and implement national instructions regarding all matters which must be followed by all police officials who are tasked with receiving reports of and the investigation of rape, sexual assault and domestic violence, including the following-

- (a) the manner in which the reporting of an alleged case of rape, sexual assault and domestic violence is to be dealt with by police officials; and
- (b) the manner in which rape, sexual assault and domestic violence cases are to be investigated by police officers, including the circumstances in which an investigation in respect of a rape, sexual assault and domestic violence case may be discontinued in order to fully protect the rights and health of women and men who are victims of violence.

(4) The Inspector General of Police shall, in consultation with the relevant Ministries and key stakeholders, develop and implement a training course for police officers which shall –

- (a) include training on the national instructions referred to in sub-section (3);
- (b) include social context training in respect of rape, sexual assault and domestic violence; and
- (c) provide for and promote the use of uniform norms, standards and procedures, with a view to ensuring that as

many police officers as possible are able to deal with rape, sexual assault and domestic violence cases in an appropriate, efficient and sensitive manner.

(5) The Attorney General shall, in consultation with the relevant Ministries develop and implement directives regarding all matters which are to be followed by all prosecuting counsel and police prosecutors who are tasked with conducting prosecutions of rape, sexual assault and domestic violence cases, including the following-

- (a) the manner in which rape, sexual assault and domestic violence cases should be dealt with in general, including the circumstances in which a charge may be withdrawn or;
- (b) the circumstances in which the prosecution must request the court to consider directing that the proceedings not take place in open court and in which the court should consider prohibiting the publication of the identity of the complainant; and
- (c) the information to be placed before the court during sentencing, including pre-sentence reports in order to fully protect the rights and health of women and men who are victims of violence.

(6) The Attorney General shall, in consultation with the relevant Ministries and key stakeholders, develop and implement training courses for Public Prosecutors which shall-

- (a) include training on the directives referred to in sub-section (5);
- (b) include social context training in respect of rape, sexual assault and domestic violence; and
- (c) provide for and promote the use of uniform norms, standards and procedures, with a view to ensuring that as many prosecutors as possible are able to deal with rape, sexual assault and domestic violence cases in an appropriate, efficient, and sensitive manner.

PART X – PRISONERS

41. Information on HIV in prisons

(1) The Director General of Prisons shall ensure that information material on the causes, modes of transmission, prevention and consequences of HIV infection is provided in the most appropriate way at all prisons or detention institutions.

(2) The Ministries responsible for Justice and Health shall be responsible for enforcing the provisions of sub-section (1).

42. Voluntary counseling and testing for prisoners

(1) A prisoner is entitled to free confidential testing for infection with HIV and other blood-borne viruses and to pre-test information and post-test counselling in connection with such testing.

(2) A person shall not undertake a test for HIV or other blood-borne disease except with the consent in writing of the prisoner and only in order to provide treatment, care and support.

(3) All prisoners presenting themselves for testing shall be offered pre-test information and post-test counseling by a health care provider, in accordance with the professional standards.

(4) All prisoners who are tested for HIV status shall be offered their test results in the context of post-test counseling.

43. Confidentiality for prisoners

(1) All information on the health status and health care of a prisoner is confidential and all health care procedures shall be designed so as to preserve the confidentiality of prisoners.

(2) Information referred to in sub-section (1) shall be recorded in files available only to health care providers and not to non-health care prison staff.

(3) No mark, label, stamp or other visible sign shall be placed on prisoner's files, cells or papers to indicate his or her HIV status, other than necessary notations inside the medical file in accordance with standard professional practice for recording clinically relevant information about a patient.

(4) Information referred to in sub-section (1) may only be disclosed-

- (a) with the prisoner's consent; or
- (b) where necessary to ensure the safety of other prisoners or

staff.

44. No discrimination against prisoners on the basis of HIV or HCV status

(1) In all prison facilities and detention facilities, a person shall not discriminate against a prisoner on the basis of his or her infection with HIV or diagnosis of AIDS, hepatitis C (HCV) or other contagious disease on the basis of his or her health status.

(2) Prisoners living with HIV or HCV shall –

- (a) be housed with the general prisoner population, unless they require a level of health care which cannot be provided in such a setting or unless separate housing is necessary for their protection from other prisoners;
- (b) be offered the same opportunities as other prisoners to participate in educational, job, vocational or other programs, except where limitations to a specific assignment are clinically indicated; and
- (c) have access to the full range of available institutional counseling and support services and, treatment care and support to the greatest extent possible, to local community counseling and support services.

45. Information and education for prisoners

(1) The Ministry responsible for Health, in collaboration with other relevant ministries, shall develop and implement information and education programmes in every prison to help prevent the spread of HIV, other blood-borne diseases, and to address drug dependence among prisoners.

(2) In developing the programmes referred to in sub-section (1), the Ministry responsible for Health –

- (a) shall use materials that are likely to be effective in reducing transmission of blood-borne diseases within prisons and outside prison following the release of prisoners, as well as providing information on treatment, care and support.
- (b) may include peer education and use of prison and non-prison personnel, including delivery of these programs by

community-based organizations.

(3) Materials shall, as much as possible, be made available in the languages of the prisoners and shall –

- (a) take into account the literacy level of the relevant prisoner populations; and
- (b) be sensitive to the social and cultural needs of the relevant populations.

PART XI - VULNERABLE GROUPS

46. National strategies, regarding HIV among vulnerable groups

The Director, in consultation with the National Aids Secretariat, relevant Ministries and key stakeholders, shall develop and implement strategies, policies and programmes to promote and protect the health of those vulnerable groups which currently have high or increasing rates of HIV infection or which public health information indicates are most vulnerable to new infection as indicated by such factors as the local history of the epidemic, poverty, sexual practices, drug-using behavior, livelihood, institutional location, disrupted social structures and population movements forced or otherwise.

47. Protection of vulnerable groups

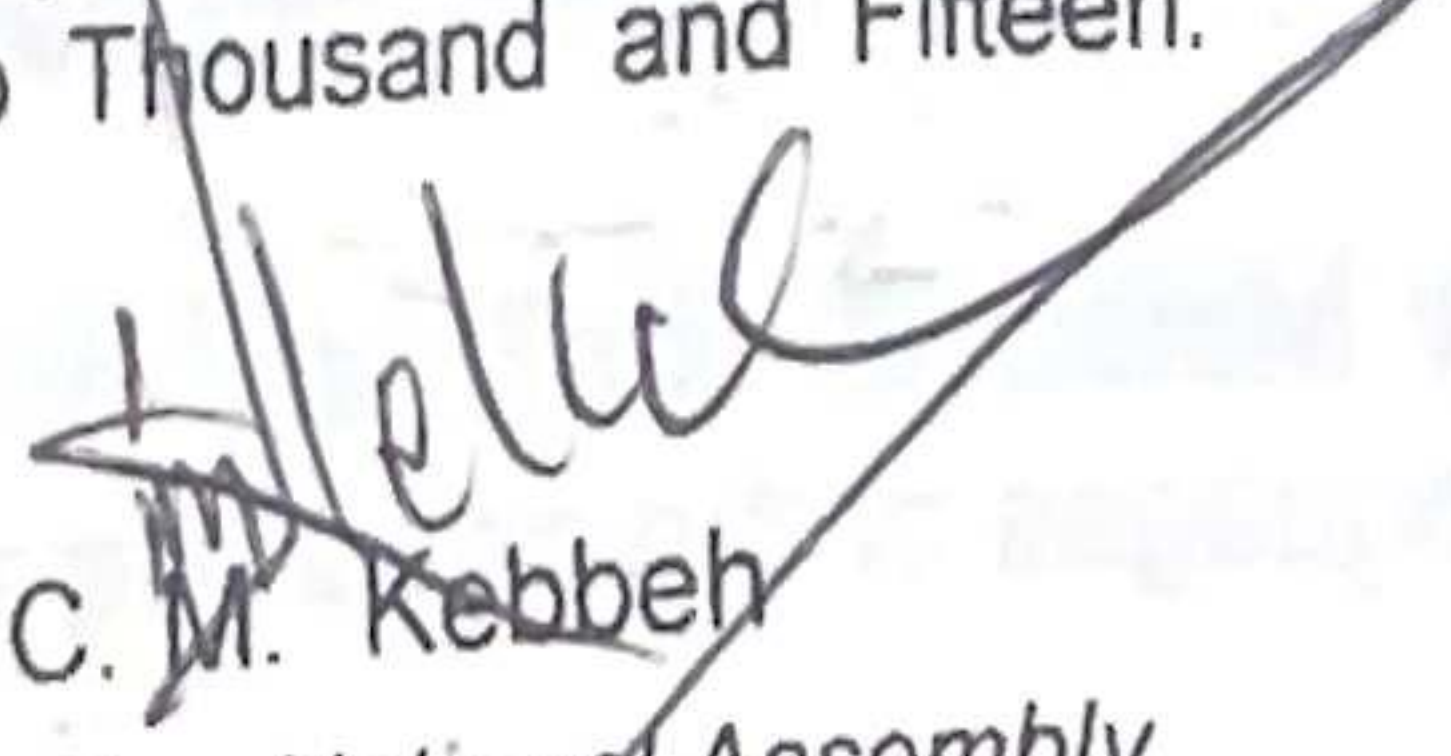
The Ministries responsible for Health and Interior shall make provision to protect vulnerable groups from discrimination, violence and lack of due process.

48. Regulations

The Minister has power to make regulations for the better carrying into effect of this Act.

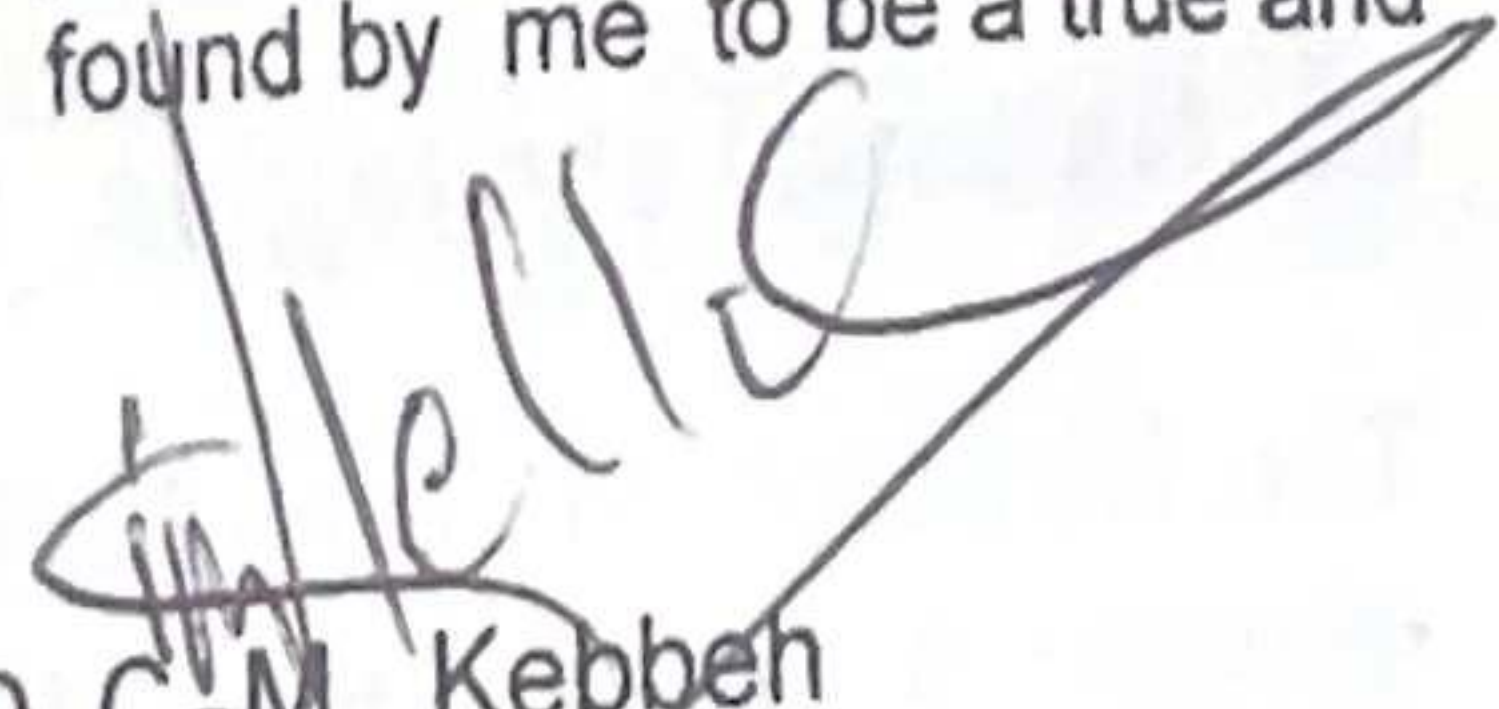
HIV and AIDS Prevention and Control Act, 2015

PASSED in the National Assembly this Eighteenth day of March in the year of Our Lord Two Thousand and Fifteen.



D. C. M. Kebbeh
Clerk of the National Assembly.

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



D. C. M. Kebbeh
Clerk of the National Assembly.