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THE HIV AND AIDS PREVENTION AND CONTROL ACT

CHAPTER 246A

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CHAPTER 246A

HIV AND AIDS PREVENTION AND CONTROL ACT

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CHAPTER 246A

HIV AND AIDS PREVENTION AND CONTROL ACT

[Date of assent: 30th December, 2006.]

There are multiple commencements:

Provisions

Part I (section 1–3); Part II (section 4–8); Part III (section 9–12); Part IV, section 13, section 15–17, section 19; Part V, section 20–21, section 23; Part VI (in part); Part VII (section 25–30); Part VIII (section 31–38); Part IX, section 40–42; Part X (section 43–46)
Part IV, section 14, section 18; Part V, section 22; Part VI, section 24; Part IX, section 39

Status

commenced on 30th March, 2009 by Legal Notice 34 of 2009.

commenced on 1st December, 2010 by Legal Notice 180 of 2010.

An Act of Parliament to provide measures for the prevention, management and control of HIV and AIDS, to provide for the protection and promotion of public health and for the appropriate treatment, counseling, support and care of persons infected or at risk of HIV and AIDS infection, and for connected purposes

[Act No. 14 of 2006, Legal Notice 34 of 2009, Act No. 6 of 2009, Legal Notice 180 of 2010.]

PART I – PRELIMINARY

1. Short title

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

2. Interpretation

In this Act unless the context otherwise requires—

"Acquired Immune Deficiency Syndrome (AIDS)" means a condition characterized by a combination of signs and symptoms, resulting from depletion of the immune system caused by infection with the Human Immuno-deficiency Virus (HIV);

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

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to HIV and AIDS and "Ministry" shall be construed accordingly;

"child" has the meaning assigned to it in the Children Act (Cap. 141);

"compel", in relation to HIV testing, refers to an HIV test imposed upon a person characterized by the lack of consent, use of physical force, intimidation or any other form of compulsion;

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

"guardian", in relation to a child or a person with disability, means any person having custody of such child or person with disability by reason of the death, illness, absence or inability of the parent of such child or person, or for any other cause;

"Health institution" means a hospital, nursing home, maternity home, health centre, dispensary, pharmacy or other institution, whether private or public, where healthcare services are rendered;

"health maintenance organization" means a limited liability company established for the purpose of operating and managing healthcare funding and managed healthcare systems through membership administration schemes or pools, or healthcare benefits schemes, and which offers hospital and clinical services supported by a contracted healthcare service provider network of doctors, other healthcare professionals, and which, in addition, may offer ambulance or rescue services and undertake franchise arrangements in the management of health institutions;

"healthcare provider" means—

- (a) a medical practitioner or dentist registered under the Medical Practitioners and Dentists Act (Cap. 253);
- (b) a pharmacist or a pharmaceutical technologist registered or enrolled under the Pharmacy and Poisons Act (Cap. 244);
- (c) a nurse registered and licensed under the Nurses and Midwives Act (Cap. 257);
- (d) a clinical officer registered and licensed under the Clinical Officers (Training Registration and Licensing) Act (Cap. 260);
- (e) a laboratory technician or technologist registered and licensed under the Medical Laboratory Technicians and Technologist Act (Cap. 253);
- (f) counsellors who have completed training as approved by the Cabinet Secretary for the time being responsible for matters relating to health:

and includes any other person approved by the Cabinet Secretary under section 16;

"healthcare service" rendered to a person 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 or 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, deficiency or pregnancy;
- (f) X-ray, laboratory and other investigative and diagnostic procedures;
- (g) physiotherapy, speech therapy, occupational therapy and other types and variations of similar rehabilitative treatment;

- (h) 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 and experienced nurses and midwives;
- (i) 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 are performed, provided that such accommodation is necessitated by any physical or mental defect, illness, deficiency or a pregnancy;
- (j) the provision of pre-test or post-test counseling services;

"HIV test" means a prescribed test or a series of tests which determines whether a person is infected with HIV;

"human biomedical research" means—

- (a) any research that involves 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) any research programme that involves 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) any research that involves the trial or use of a medical device on a human subject;
- (d) any research that involves 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;
- (e) any research involving 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;

"Human Immunodeficiency Virus (HIV)" means the virus which causes AIDS;

"medical insurance provider" has the meaning assigned to it in section 2 of the Insurance Act (Cap. 487);

"medical practitioner" includes a dentist;

"partner" means a spouse or a person with whom another person is living in a domestic and sexual relationship;

"person with HIV and AIDS" means a person whose HIV test indicates, directly or indirectly, that he is infected with HIV and AIDS;

"positive", in relation to the result of an HIV test, means a result which shows that the person who is tested is infected with HIV or which shows evidence of such infection;

"post exposure prophylaxis" means the administration of one or a combination of anti-retroviral drugs after probable exposure to HIV, for the purpose of preventing transmission;

"post-test counselling" refers to the process of providing a person who submitted themselves for an HIV test with risk-reduction information and emotional support at the time the test result is released;

"pre-test counselling" means the process of providing a person, before such person undergoes an HIV test, with information on the biomedical aspects of HIV and AIDS and emotional support with respect to the psychological implications of undergoing an HIV test;

"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, which determine whether a person is infected with HIV;

"testing centre" means a testing centre approved by the Cabinet Secretary under section 16;

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

"Tribunal" means the HIV and AIDS Tribunal established by section 25.

[Act No. 6 of 2009, Sch.]

3. Object and purpose of Act

The object and purpose of this Act is to—

- (a) promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS;
- (b) extend to every person suspected or known to be infected with HIV and AIDS full protection of his human rights and civil liberties by—
 - (i) prohibiting compulsory HIV testing save as provided in this Act;
 - (ii) guaranteeing the right to privacy of the individual;
 - (iii) outlawing discrimination in all its forms and subtleties against persons with or persons perceived or suspected of having HIV and AIDS;
 - (iv) ensuring the provision of basic healthcare and social services for persons infected with HIV and AIDS;
- (c) promote utmost safety and universal precautions in practices and procedures that carry the risk of HIV transmission; and
- (d) positively address and seek to eradicate conditions that aggravate the spread of HIV infection.

PART II – HIV AND AIDS EDUCATION AND INFORMATION

4. HIV and AIDS education and information

(1) The Government shall promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign conducted by the Government through its various Ministries, Departments, authorities and other agencies.

(2) The educational and information campaign referred to in subsection (1) shall—

- (a) employ scientifically proven approaches;

- (b) focus on the family as the basic social unit;
- (c) encourage testing of individuals; and
- (d) be carried out in schools and other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities throughout Kenya.

(3) In conducting the educational and information campaign referred to in this section, the Government shall collaborate with relevant stakeholders to ensure the involvement and participation of individuals and groups infected and affected by HIV and AIDS, including persons with disabilities.

5. HIV and AIDS education in institutions of learning

(1) The Ministry responsible for education, utilizing official information provided by the Ministry, shall integrate instruction on the causes, modes of transmission and ways of preventing HIV and AIDS and other sexually transmitted diseases in subjects taught in public and private schools at primary, secondary and tertiary levels, including informal, non formal and indigenous learning systems:

Provided that—

- (a) where the integration of HIV and AIDS education is not appropriate or feasible at any level, the Ministry responsible for education shall design modules of HIV and AIDS prevention and control;
- (b) such integration shall not be used for the sale or distribution of birth control devices;
- (c) the formulation and adoption of the appropriate course content, scope and methodology at each educational level shall be determined after consultation with the relevant stakeholders.

(2) The Ministry responsible for education, in consultation with the Ministry, shall ensure that every teacher or instructor of an HIV and AIDS prevention and control course under this section is adequately trained and duly qualified to teach such course.

6. HIV and AIDS education as a healthcare service

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

(2) For the purposes of subsection (1), the Government shall ensure training of healthcare providers on proper information dissemination and education on HIV and AIDS, including post-exposure prophylaxis for prevention of transmission.

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

(4) The Cabinet Secretary for the time being responsible for matters relating to health shall, in collaboration with relevant stakeholders, provide guidelines for post exposure prophylaxis.

7. HIV and AIDS education in the workplace

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

- (a) employees of all Government Ministries, Departments, authorities and other agencies; and

(b) employees of private and informal sectors.

(2) The information provided under this section shall cover issues such as confidentiality in the work-place and attitudes towards infected employees and workers.

8. HIV and AIDS information in communities

Every local authority, in collaboration with the Ministry, shall conduct an educational and information campaign on HIV and AIDS within its area of jurisdiction.

PART III – SAFE PRACTICES AND PROCEDURES

9. Testing of donated tissue

(1) A person who offers to donate any tissue shall, immediately before such donation, undergo an HIV test.

(2) No health institution shall accept a donation of any tissue unless the donor thereof has undergone an HIV test pursuant to subsection (1) and the result thereof is negative.

(3) Notwithstanding the provisions of subsections (1) and (2), the proposed recipient of donated tissue or his immediate relatives shall have the right to demand a second HIV test on such tissue before a transplant or other use of the tissue and such test shall, except in the case of emergencies, be carried out.

10. Testing of donated blood

(1) All donated blood shall, as soon as reasonably practicable after donation, be subjected to an HIV test.

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

11. Guidelines on surgical and similar procedures

(1) The Cabinet Secretary shall, in consultation with registered professional associations of healthcare providers, prescribe guidelines on—

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

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

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

(4) In this section, "Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to health.

12. Penalty for unsafe practices or procedures

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

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

PART IV – TESTING, SCREENING AND ACCESS TO HEALTHCARE SERVICES

13. Prohibition against compulsory testing

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

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

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

(3) Notwithstanding the provisions of subsection (1), a person charged with an offence of a sexual nature under the Sexual Offences Act (Cap. 63A) may be compelled to undergo an HIV test.

(4) A person who contravenes any of the provisions of this section commits an offence.

14. Consent to HIV testing

(1) Subject to subsection (2), no person shall undertake an HIV test in respect of another person except—

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

Provided that any child who is pregnant, married, a parent or is engaged in behaviour which puts him or her at risk of contracting HIV may, in writing, directly consent to an HIV test;

- (c) if, in the opinion of the medical practitioner who wishes to undertake the HIV test, the other person has a disability by reason of which he appears incapable of giving consent, with the consent of—
 - (i) a guardian of that person;
 - (ii) a partner of that person;
 - (iii) a parent of that person; or
 - (iv) an adult offspring of that person:

Provided that a medical practitioner may undertake the HIV test if the persons referred to in paragraphs (i), (ii), (iii) and (iv) are either absent or are unwilling to give consent;

(d) where the person is required to undergo an HIV test under the provisions of this Act or any other written law.

(2) Notwithstanding the provisions of subsection (1)—

(a) a person who offers to donate any tissue shall be deemed to have consented to the HIV test required under section 9;

(b) a person who offers to donate blood shall be deemed to have consented to the HIV test required in respect of such blood under section 10;

(c) a medical practitioner responsible for the treatment of a person may undertake an HIV test in respect of that person without the consent of the person if—

(i) the person is unconscious and unable to give consent; and

(ii) the medical practitioner reasonably believes that such a test is clinically necessary or desirable in the interest of that person.

(3) Subject to section 17, a medical practitioner who undertakes an HIV test on a person under this section shall, if the person so requires, disclose the results of the HIV test to that person.

(4) A person who contravenes the provisions of this section commits an offence.

[Act No. 6 of 2009, Sch.]

15. Provision of testing facilities

The Cabinet Secretary shall ensure that facilities for HIV testing are made available to persons who—

(a) voluntarily request an HIV test in respect of themselves; or

(b) are required under the provisions of this Act or any other written law to undergo an HIV test.

16. Testing centres

(1) No person shall carry out an HIV test except in a testing centre approved by the Cabinet Secretary under this section or in the manner specified under paragraph (d) of subsection (4).

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

(3) No person shall provide pre-test or post-test counselling for the purposes of section 17 unless such person is approved by the Cabinet Secretary under this section.

(4) The Cabinet Secretary shall, in regulations, prescribe—

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

(b) the standards and the procedure for the approval of healthcare providers for the purposes of subsection (2);

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

(d) guidelines for self testing.

(5) A person who contravenes the provisions of this section or of any regulations made hereunder commits an offence.

(6) In this section, "Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to health.

17. Pre-test and post-test counseling

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

(2) The Ministry responsible for matters relating to health shall enhance the capacities of testing centres by ensuring the training of competent personnel to provide the services required by this Act to be provided at such centres.

18. Results of HIV test

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

- (a) to the tested person;
- (b) in the case of a child, to a parent or legal guardian of such child:

Provided that where any such child consents to an HIV test directly under section 14(1)(b), the results thereof shall be released to the child; or

- (c) in the case of a person with a disability which, in the opinion of the medical practitioner undertaking the test, renders him incapable of comprehending such result to—
 - (i) the guardian of that person;
 - (ii) a partner of that person;
 - (iii) a parent of that person; or
 - (iv) an adult offspring of that person.

[Act No. 6 of 2009, Sch.]

19. Access to healthcare services

(1) Every 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.

(2) The Government shall, to the maximum of its available resources, take the steps necessary to ensure the access to essential healthcare services, including the access to essential medicines at affordable prices by persons with HIV or AIDS and those exposed to the risk of HIV infection.

PART V – CONFIDENTIALITY

20. Privacy guidelines

(1) The Cabinet Secretary for the time being responsible for matters relating to health may, in regulations, prescribe privacy guidelines, including the use of an identifying code, relating to the recording, collecting, storing and security of information, records or forms used in respect of HIV tests and related medical assessments.

(2) No person shall record, collect, transmit or store records, information or forms in respect of HIV tests or related medical assessments of another person

otherwise than in accordance with the privacy guidelines prescribed under this section.

[Act No. 6 of 2009, Sch.]

21. Confidentiality of records

No person shall, in any records or forms used in relation to—

- (a) a request for an HIV test by persons in respect of themselves;
- (b) an instruction by a medical practitioner to a laboratory for an HIV test to be conducted;
- (c) the laboratory testing for HIV or HIV antibodies; or
- (d) the notification to the medical practitioner of the result of the HIV test,

include any information which directly or indirectly identifies the person to whom an HIV test relates, except in accordance with the privacy guidelines prescribed under section 20.

22. Disclosure of information

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

- (a) with the written consent of that person;
- (b) if that person has died, with the written consent of that person's partner, personal representative, administrator or executor;
- (c) if that person is a child with the written consent of a parent or legal guardian of that child:

Provided that any child who is pregnant, married, a parent or is engaged in behaviour which puts other persons at risk of contracting HIV may in writing directly consent to such disclosure;

- (d) if that person is unable to give written consent, with the oral consent of that person or with the written consent of the person with power of attorney for that person;
- (e) if, in the opinion of the medical practitioner who undertook the HIV test, that person has a disability by reason of which the person appears incapable of giving consent, with the written consent, in order, of—
 - (i) a guardian of that person;
 - (ii) a partner of that person;
 - (iii) a parent of that person; or
 - (iv) an adult offspring of that person;
- (f) to a person, being a person approved by the Cabinet Secretary under section 16, who is directly involved in the treatment or counselling of that person;
- (g) for the purpose of an epidemiological study or research authorized by the Cabinet Secretary;
- (h) to a court where the information contained in medical records is directly relevant to the proceedings before the court or tribunal;
- (i) if the person to whom the information relates dies, to the registrar of births and deaths pursuant to section 18 of the Births and Deaths Registration Act (Cap. 149); or

- (j) if authorized or required to do so under this Act or under any other written law.

(2) Subsection (1) shall not apply to a disclosure of statistical or other information that could not reasonably be expected to lead to the identification of the person to whom it relates.

[Act No. 6 of 2009, Sch.]

23. Penalty for breach of confidentiality

A person who contravenes any of the provisions of this Part or of any guidelines prescribed hereunder commits an offence.

PART VI – TRANSMISSION OF HIV

24. Prevention of transmission

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

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

(2) A person who is and is aware of being infected with HIV or who is carrying and is aware of carrying HIV shall not, knowingly and recklessly, place another person at risk of becoming infected with HIV unless that other person knew that fact and voluntarily accepted the risk of being infected.

(3) A person who contravenes the provisions subsection (1) or (2) commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

(4) A person referred to in subsection (1) or (2) may request any medical practitioner or any person approved by the Cabinet Secretary under section 16 to inform and counsel a sexual contact of the HIV status of that person.

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

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

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

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

may inform any sexual contact of that person of the HIV status of that person.

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

PART VII – THE HIV AND AIDS TRIBUNAL

25. Establishment of the Tribunal

(1) There is hereby established a Tribunal to be known as the HIV and AIDS Tribunal which shall consist of members appointed by the Attorney General as follows—

- (a) a Chairperson who shall be an advocate of the High Court of not less than seven years' standing;
- (b) two advocates of the High Court of not less than five years' standing;
- (c) two medical practitioners recognized by the Medical Practitioners and Dentists Board as specialists under the Medical Practitioners and Dentists Act (Cap. 253); and
- (d) two persons having such specialized skill or knowledge necessary for the discharge of the functions of the Tribunal.

(2) At least two of the persons appointed under subsection (1)(a), (b) and (c) shall be women.

(3) The quorum for a meeting of the Tribunal shall be the Chairperson and four other members.

(4) All matters before the Tribunal shall be decided by the votes of a majority of the members present.

(5) There shall be paid to the members of the Tribunal such remuneration and allowances as the Cabinet Secretary may in consultation with the Treasury determine.

(6) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of three years from the date of his appointment;
- (b) if he ceases by any reason to be such advocate or medical practitioner as referred to in subsection (1);
- (c) if he is removed from membership of the Tribunal by the Attorney-General for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; and
- (d) if he resigns the office of member of the Tribunal.

26. Jurisdiction of the Tribunal

(1) The Tribunal shall have jurisdiction—

- (a) to hear and determine complaints arising out of any breach of the provisions of this Act;
- (b) to hear and determine any matter or appeal as may be made to it pursuant to the provisions of this Act; and
- (c) to perform such other functions as may be conferred upon it by this Act or by any other written law being in force.

(2) The jurisdiction conferred upon the Tribunal under subsection (1) excludes criminal jurisdiction.

27. Powers of the Tribunal

(1) On the hearing of a complaint or an appeal made pursuant to section 26, the Tribunal shall have all the powers of a subordinate court of the first class to

summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

(2) Where the Tribunal considers it desirable for the purpose of minimizing expense or avoiding delay or for any other special reason, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.

(3) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of the matter before it, notwithstanding that the evidence would not otherwise be admissible under the Evidence Act (Cap. 80).

(4) The Tribunal shall have power to summon expert evidence as may be necessary for the discharge of its functions under this Act.

(5) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(6) All summons, notices or other documents issued under the hand of the Chairperson or the Tribunal shall be deemed to be issued by the Tribunal.

(7) Upon any complaint or appeal being made to the Tribunal under this Act, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) make such other order as may be appropriate in the circumstances;
- (c) without prejudice to the generality of paragraph (b), make an order—
 - (i) for the payment of damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering or emotional and psychological suffering as a result of the discrimination in question;
 - (ii) directing that specific steps be taken to stop the discriminatory practice;
 - (iii) for the maintenance of the *status quo* of any matter or activity which is the subject of the complaint or appeal until the complaint or appeal is determined;
 - (iv) requiring the respondent to make regular progress reports to the Tribunal regarding the implementation of the Tribunal's order.

(8) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may, in its discretion, admit to be heard on behalf of the party.

28. Disobedience of summons to give evidence, etc.

Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements, or other documents or required to answer interrogatories and who, without sufficient cause—

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him;

- (b) refuses or fails to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions lawfully put to him by or with the concurrence of the Tribunal; or
- (c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control mentioned or referred to in any summons served on him,

commits an offence and shall be liable upon conviction to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding two years, or to both.

29. Enforcement of orders for damages and costs

(1) Where the Tribunal awards damages or costs in any matter before it, it shall, on application by the person in whose favour the damages or costs are awarded, issue to him a certificate stating the amount of the damages or costs.

(2) Every certificate issued under subsection (1) may be filed in the High Court by the person in whose favour the damages or costs have been awarded and, upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

30. Rules

Except as otherwise provided in this Act, the Chief Justice may in consultation with the Chairperson of the Tribunal, and by Notice in the *Gazette* make rules governing the practice and procedure of the Tribunal having regard to the objectives of this Act.

PART VIII – DISCRIMINATORY ACTS AND POLICIES

31. Discrimination in the workplace

- (1) Subject to subsection (2), no person shall be—
- (a) denied access to any employment for which he is qualified; or
 - (b) transferred, denied promotion or have his employment terminated,
- on the grounds only of his actual, perceived or suspected HIV status.

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

32. Discrimination in schools

No educational institution shall 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 only of the person's actual, perceived or suspected HIV status.

33. Restriction on travel and habitation

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

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

34. Inhibition from public service

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

35. Exclusion from credit and insurance services

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

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

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

(4) Where a proposer elects to undergo an HIV test pursuant to subsection (3) and the results thereof are positive—

- (a) the proposer shall, at his own expense, enter into such agreed treatment programme with the insurer as may be prescribed by the Cabinet Secretary in consultation with Commissioner for Insurance; or
- (b) the insurer may impose a reasonable additional premium or lien to the benefits ordinarily purchased; or
- (c) the insurer may decline granting the cover being sought.

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

(6) A person aggrieved by a determination made under subsection (5) may appeal within thirty days to the Tribunal and the decision of the Tribunal shall be final.

36. Discrimination in health institutions

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

37. Denial of burial services

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

38. Penalty for discriminatory acts and practices

A person who contravenes any of the provisions of this Part commits an offence.

PART IX – RESEARCH

39. Requirements for research

No person shall undertake HIV or AIDS related human biomedical research on another person, or on any tissue or blood removed from such person unless such research conforms to the requirements under the Science and Technology Act (Cap. 250) or any other written law for the time in force.

40. Consent to research

(1) No person shall undertake HIV or AIDS related human biomedical 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, with the written informed consent of a parent or legal guardian of the child.

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

41. Anonymous testing

(1) Notwithstanding anything to the contrary in this Act, the Cabinet Secretary for the time being responsible for matters relating to health may prescribe guidelines under which anonymous testing for HIV may be carried out.

(2) Any anonymous testing conducted pursuant to this section shall only be for the purposes of public health.

42. Penalty for unlawful research

A person who contravenes any of the provisions of this Part commits an offence.

PART X – MISCELLANEOUS PROVISIONS

43. General penalty

A person convicted of an offence under this Act for which no other penalty is provided shall be liable for imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand shillings or to both.

44. Cognizable offences

All offences under this Act shall be cognizable to the police.

45. Regulations

Subject to this Act, the Cabinet Secretary may make regulations—

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

46. Act to supersede other Acts

Where the provisions of this Act or any regulations made hereunder are inconsistent with the provisions of any other written law, the provision of this Act or of such regulations shall prevail.
