

Imprimer

## OFFICIAL GAZETTE OF SENEGAL

ACT **THIS TRANSLATION IS AN UNOFFICIAL TRANSLATION,  
TRANSLATED WITH DEEPL.COM****Law No. 2010-03 of 9 April 2010**

Law No. 2010-03 of 9 April 2010 on HIV/AIDS.

**EXPLANATORY MEMORANDUM**

From the late 1980s onwards, aware of the threat that the HIV/AIDS epidemic posed to the country's economic and social development, the Government of Senegal drew up a nationwide strategy to combat this scourge.

However, it must be acknowledged that, despite this wide-ranging response, there is no specific legislation governing the prevention, care, protection and promotion of the rights of those infected, those affected, recognised vulnerable groups and the general population.

However, at the African Summit on HIV/AIDS, Tuberculosis and Malaria held in Abuja in April 2001, African heads of state declared that AIDS is a public health emergency on the continent. Thus, at the United Nations Special Session on HIV/AIDS held in June 2001, Senegal undertook to enact legislation to eliminate all forms of discrimination against people living with HIV/AIDS and to ensure that they fully enjoy all their fundamental rights and freedoms, amongst other objectives. In September 2004, the Forum of African and Arab Parliamentarians for Population and Development (FAAPPD), meeting in N'Djamena, proposed a 'model law on the prevention, care and control of HIV/AIDS' to be adapted by each country.

With an estimated population of over 10 million in 2005, of whom nearly 64% were under the age of 25, Senegal is experiencing a concentrated epidemic characterised by a relatively low prevalence in the general population and a particularly high prevalence in certain high-risk groups such as sex workers and men who have sex with men, according to the 2005 Epidemiological Bulletin. In 2004, approximately 54% of people infected with HIV were women and 7% were children under the age of 15, according to the same source.

That is why it is necessary to refer to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child in order to safeguard their rights and dignity.

In order to safeguard human dignity in the context of HIV/AIDS and to ensure that effective measures are taken that respect human rights, it is essential to protect human rights, the most important of which is the 'right to life, physical integrity and personal safety'.

Accordingly, the purpose of this Bill is to:

- ▶ fill a legal vacuum;
- ▶ to establish the legal framework for combating HIV/AIDS in the areas of comprehensive care for those infected or affected by the virus and in the area of prevention, with a view to curbing the spread of HIV/AIDS;
- ▶ eliminate all forms of stigma and discrimination against people infected with or affected by HIV/AIDS and promote positive attitudes towards them;
- ▶ encourage them to fulfil their responsibilities towards those who are not infected;
- ▶ protect women, children, other vulnerable groups and medical staff;
- ▶ establish the legal framework for HIV/AIDS research;
- ▶ criminalise and impose penalties for reprehensible acts and behaviour. In this regard:

The relevant institutions and services shall ensure that basic health and social services are made available to people living with HIV and shall take the necessary measures to meet the specific needs of the most vulnerable.

Women, and in particular pregnant women, children living with HIV and affected children, and orphaned children, must be specifically taken into account in all prevention and care policies, strategies and programmes.

When providing care, health institutions shall take all necessary safety and prevention measures to avoid practices and procedures that may facilitate the transmission of HIV.

People living with HIV enjoy all the rights inherent to the human person.

Any infringement of any of these rights on the grounds of a person's HIV-positive status is prohibited. Any form of discrimination against persons who are known or presumed to be HIV-positive is prohibited.

No one may be subjected to isolation, detention or quarantine on the grounds of their HIV status.

HIV testing is voluntary except where the law provides otherwise.

The right to confidentiality regarding the HIV status of people living with HIV (PLHIV) is guaranteed by this Act and must be respected by all those who have knowledge of it.

People living with HIV can play a role in providing psychosocial support to those affected by HIV/AIDS, share their experiences to raise public awareness of the disease, and help disseminate vital information and educational messages relating to HIV/AIDS.

This Act is structured around the ten chapters listed below. The introductory chapter is devoted to terminology.

Chapter 1 deals with the dissemination of information, education and training.

Chapter 2 relates to safe practices and procedures concerning blood transfusions, tissue or organ transplants and surgical procedures.

Chapter 3 focuses on the organisation of screening, counselling and capacity-building in hospitals, specialist centres, clinics and laboratories.

Chapter 4 deals with the obligations of public and private health services towards people living with HIV/AIDS in terms of their care.

Chapter 5 deals with confidentiality.

Chapter 6 deals with acts of discrimination and stigmatisation. Chapter

7 deals with research into HIV/AIDS.

Chapter 8 is devoted to criminal provisions. Chapter 9 is devoted to final provisions. This is the structure of the present bill.

The National Assembly passed, at its sitting on Tuesday 16 February

2010; The Senate passed, at its sitting on Monday 29 March 2010;

The President of the Republic hereby promulgates the following Act:

#### **INTRODUCTORY CHAPTER: TERMINOLOGY.**

In this Act, the terms and expressions shall have the following meanings:

Pre-test psychosocial support: information about HIV and AIDS provided to an individual to prepare them for the screening test and to help them accept the test result, as well as the necessary psychological and social support;

Post-test psychological support: information and support provided to the person who has undergone an HIV test, both at the time the results are given and afterwards, Confidentiality: the principle of not disclosing information obtained on the basis of the relationship of trust that exists or should prevail between a person living with HIV (PLHIV) and their doctor, all healthcare staff, laboratory personnel, pharmacists, community workers and any person who, by virtue of their professional status or official duties, may have access to such information;

Counselling: a helping relationship between a 'counsellor' and a 'client' aimed at providing the latter with psychological support and personalised guidance to improve their mental and social well-being and to facilitate decision-making;

Free and informed consent: the voluntary agreement of a person who, having been duly informed, agrees to undergo the screening test, whether such agreement is written, verbal or implied;

Discrimination: discrimination means any distinction, exclusion or restriction based on a person's actual or presumed HIV status which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by that person, on an equal footing with other members of the community, of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres, or in any other sphere;

Ways in which HIV is transmitted: HIV is transmitted in the following ways: sexual intercourse, blood transfusions or transfusions of blood products, organ transplants, the injection of substances infected with HIV, contaminated objects, and from mother to child;

Means of public dissemination: radio broadcasting, television, cinema, the press, theatre, preaching, sermons, posters, exhibitions, the distribution of written material or images of any kind, speeches, songs and, generally, any method intended to reach the public;

OEV: Orphans and Vulnerable Children;

1. Affected person: a person who is not infected with HIV but whose life is negatively affected by HIV and AIDS;

2. Person infected with HIV or Person Living with HIV (PLHIV): a person who has tested positive for HIV;

2. Vulnerable populations: any group of people with a high prevalence of HIV infection or any group of people identified by public health data as being more vulnerable to HIV/AIDS infection.

Vulnerable groups include, in particular: children, women and girls, the destitute, migrants, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, mobile populations, women who have sex with men, and people who inject drugs;

4. High-risk practices: acts that increase the likelihood of becoming infected with or transmitting HIV. People at risk are those who engage in these practices.

5. HIV and AIDS prevention: measures aimed at protecting people who are not infected with HIV and minimising the impact of the disease on people living with HIV;

6. Prophylaxis: all measures aimed at preventing HIV infection; HIV: Human Immunodeficiency Virus: this is the causative agent of AIDS.

This virus gradually weakens a person's immune system. It invades certain white blood cells, particularly T4 lymphocytes, and destroys them.

Seropositivity: the status of a person who has tested positive for HIV or HIV antibodies; AIDS: Acquired Immunodeficiency Syndrome:

- ▶ Syndrome: a set of symptoms or signs;
- ▶ Immune (from immune): the body's defence system;
- ▶ Deficiency: no longer effective because it is insufficient;
- ▶ Acquired: not hereditary.

AIDS is the result of the failure of the immune system during HIV infection. It is the most serious stage of the disease. Stigmatisation: the act of singling out, blaming, demeaning or rejecting a person because of their actual or presumed HIV-positive status;

Anonymous testing: a procedure in which the person being tested does not disclose their identity. The person's name is replaced by a number or symbol used to identify them;

HIV screening test: a test carried out on an individual to detect HIV or its antibodies;

Voluntary HIV screening test: a test carried out on a person who has voluntarily agreed to be screened;

Deliberate transmission of HIV: the act of deliberately transmitting HIV to a healthy person or someone presumed to be healthy.

## **CHAPTER I: INFORMATION, EDUCATION AND TRAINING ON HIV AND AIDS.**

### *Article 1. Public information on HIV and AIDS.*

Information on HIV and AIDS is a service provided by healthcare workers and all persons trained for this purpose.

All government departments, local authorities, private companies and civil society organisations – in particular associations of religious leaders and those of people living with HIV – as well as the media, in collaboration with the body responsible for coordinating the fight against HIV and AIDS, are tasked with carrying out specific information, education and communication activities on HIV and AIDS aimed at the general public.

### *Article 2. – Information on HIV and AIDS as a health service.*

All healthcare providers must make available to patients the necessary information on the modes of transmission, prevention and consequences of HIV infection.

antenatal clinics must provide pregnant women with relevant information on HIV infection, access to voluntary testing and appropriate care.

Doctors, pharmacists, dentists and other healthcare staff shall provide their patients with the training necessary to control the spread of HIV and AIDS.

The knowledge and capacity of healthcare professionals are strengthened to ensure the appropriate dissemination of information and education on HIV and AIDS.

### *Article 3. – Information on HIV and AIDS for travellers.*

Government departments, in particular those responsible for Tourism, Foreign Affairs, the Home Office, Emigrants and Communications, in collaboration with the Department of Health, ensure that information materials on HIV and AIDS, including how it is transmitted and how to prevent it, as well as details of support services, are available at all points of entry into the country and at tourist sites.

These departments shall ensure that people travelling abroad receive the same information on the modes of transmission, prevention and consequences of HIV infection.

### *Article 4. – Information, Prevention and Protection regarding HIV and AIDS in prisons and rehabilitation centres.*

Persons in prison shall not be subject to compulsory HIV testing, unless ordered by a judicial authority. Any such measure shall be taken in accordance with confidentiality requirements.

The relevant ministries must provide, in all prisons and rehabilitation centres,

rehabilitation centres, the necessary and appropriate means of HIV and AIDS prevention, in accordance with the risks faced by the prison population.

The relevant ministries must provide all prisons and rehabilitation centres with the means to ensure the protection of prisoners against all forms of violence, including sexual violence: Prison authorities must investigate allegations of rape and other forms of sexual violence in prisons and rehabilitation centres.

*Article 5. – Information on medicines.*

The Ministry of Health shall take all necessary measures to ensure the quality and efficacy of medicines intended for the treatment of HIV infection are verified before they are placed on the market. It shall also ensure that all information concerning these medicines, whether intended for sale or donation, is clearly stated on the package leaflets.

*Article 6. – Information in the workplace.*

As part of their companies' occupational health, safety and welfare initiatives, employers must provide information programmes for their employees on the causes, modes of transmission and methods of prevention of HIV and AIDS, as well as on testing and care services.

The authority responsible for coordinating the fight against HIV and AIDS and the Ministry of Labour must ensure that regular information and prevention campaigns on HIV and sexually transmitted infections are organised in all workplaces.

*Article 7. – Information for those working in the transport sector.*

The authorities responsible for the transport sector, and the organisations and bodies operating within that sector, must provide their staff and members with information on the modes of transmission, prevention and the impacts of HIV and AIDS.

*Article 8. – HIV and AIDS education in formal and non-formal educational institutions.*

All government departments responsible for education and training institutions must incorporate modules on the modes of transmission and means of prevention of HIV and AIDS and sexually transmitted infections into their education and training programmes.

Before being authorised to teach about HIV and AIDS, teachers, instructors and all other staff involved in courses and teaching modules shall receive appropriate training.

*Article 9. – Training on HIV and AIDS.*

The State and local authorities must ensure that all public service staff and community workers are made aware of HIV and AIDS.

Training for healthcare staff shall focus, amongst other things, on issues relating to ethics in the context of HIV and AIDS, confidentiality, informed consent, prevention and care.

Employers must provide awareness-raising and training programmes on the prevention and management of HIV and AIDS in the workplace. The authority responsible for coordinating the fight against HIV and AIDS shall, where necessary, provide impetus for and oversee such initiatives.

The authority responsible for coordinating the fight against HIV and AIDS shall facilitate and support the implementation of appropriate training for civil society actors, and in particular for people living with HIV; the aim of such training is to implement programmes for outreach, mutual support and cooperation.

The full and active participation of people living with HIV/AIDS who have undergone the necessary training in outreach, mutual support and cooperation programmes must be encouraged, promoted and supported. Any refusal to admit them to these programmes must be duly justified.

**CHAPTER II SAFE PRACTICES AND PROCEDURES.**

Article 10. – Safe practices and procedures relating to the donation of blood and blood products, tissues or organs.

Blood and blood products, tissues or organs donated for transfusion or implantation must be safe and guaranteed to be free from HIV contamination.

In this regard, laboratories or similar institutions are prohibited from accepting or storing a donation of blood, tissue or organs intended for transfusion or implantation unless a sample of the blood, tissue or organs has tested negative for HIV.

The recipient of a blood, tissue or organ donation may request a second test before the blood is transfused or the tissues and organs are transplanted. In such cases, their request shall be granted.

If the recipient of the donation is unable to make this request, their father, mother, guardian, spouse or the person responsible for their care may request that this second test be carried out.

Where blood, tissues or organs donated for transfusion or transplantation are infected, they shall be destroyed immediately. Article 11. – Provision of high-quality and safe services.

The Ministry of Health must put in place the infrastructure and equipment necessary for the implementation of infection prevention (IP) measures and the management of biomedical waste.

It shall determine, by decree, the appropriate measures for both healthcare staff and the public; these measures relate in particular to:

- ▶ ensuring minimum biosafety measures for healthcare providers handling

biological material of human origin;

- ▶ safety standards concerning blood and blood product transfusions;
- ▶ the health and safety standards applicable to staff and establishments carrying out procedures that involve or may involve breaking the skin, such as hairdressing, beauty treatments, acupuncture, tattooing, piercing and others.

The said Ministry shall take all appropriate measures and issue the necessary guidelines to ensure that healthcare facilities are required to provide high-quality services with minimal risk.

Managers of healthcare facilities and other establishments shall provide the equipment necessary for the effective implementation of infection prevention measures and ensure that all categories of staff strictly adhere to the relevant standards within Service Delivery Points (SDPs) and their immediate surroundings.

Managers of healthcare facilities must take all necessary safety measures regarding the handling of bodies and bodily waste, in accordance with universal precaution guidelines.

During surgical procedures, dental treatment, circumcision, body piercing, tattooing and other high-risk practices, healthcare providers must take all necessary precautions and measures to prevent the transmission of HIV.

In facilities offering these services, the necessary protective equipment, including gloves, goggles and gowns, shall be provided to all healthcare staff and service providers, in accordance with universal precaution standards.

The Ministry of Health must ensure the provision of post-exposure prophylaxis to healthcare workers at risk of HIV transmission. Healthcare workers who are exposed to, or infected by, HIV whilst providing healthcare services to a person living with HIV are entitled to:

- a) to post-exposure prophylaxis;
- b) to treatment or access to care in the event of a positive HIV diagnosis.

This provision also applies to all workers who have been accidentally exposed to HIV, as well as to victims of rape.

### **CHAPTER III ON TESTING AND COUNSELLING.**

#### *Art. 12. – Consent to HIV testing.*

Testing is voluntary and must be subject to prior, free and informed consent.

All testing centres, clinics or laboratories that carry out HIV tests are required to provide free counselling services before and after each HIV test.

Anyone aged 15 or over has the right to be tested for HIV.

Compulsory testing is prohibited except at the request of a judicial authority, in accordance with the laws and regulations in force. Any obstruction of voluntary HIV testing is punishable by law.

“For persons under the age of 15 or unable to give consent, the consent of the parents or legal guardian is required.”

The best interests of the child and of the adult lacking capacity must always take precedence if they are to undergo the test.

When a person voluntarily and freely agrees, after receiving all relevant information about HIV and AIDS, to donate blood, tissues or organs, consent to the screening test is deemed to have been given.

Health authorities and those involved in the fight against AIDS shall take all necessary measures to encourage people at risk of HIV infection to undergo testing.

The civil, traditional and religious authorities with jurisdiction over matrimonial matters systematically encourage prospective spouses to undergo screening tests before entering into marriage.

The health authorities and those involved in the fight against HIV and AIDS shall take all necessary measures to ensure the training and capacity-building of the civil, customary and religious authorities responsible for matrimonial matters.

#### *Article 13. – Prohibition on requiring HIV testing.*

No one may require an HIV test as a precondition for admission to schools or universities, or for the exercise of fundamental human rights, including the right to work or seek employment, to housing, or to travel.

#### *Article 14. – Screening facilities and anonymous testing.*

The Ministry of Health is establishing facilities for anonymous HIV testing, in accordance with applicable standards and protocols. It also oversees the development and strengthening of HIV testing capacity in hospitals, clinics, laboratories and other testing centres, by providing training and supervision for the staff delivering these services.

In order to carry out HIV testing activities, all centres, hospitals, clinics and laboratories offering these services are required to strictly comply with the standards and protocols in force.

The screening test should be routinely offered to pregnant women at their antenatal check-up, as well as to their partner.

### **CHAPTER IV: CARE.**

**Article 15. – Policies, strategies and programmes.**

Policies, strategic plans and action programmes at national, regional and local levels set out the arrangements for the care of people infected with or affected by HIV and AIDS. This care must be comprehensive, i.e. medical, psychosocial and nutritional, and must specifically take into account vulnerable populations, in particular women, young people, children living with HIV, orphans and vulnerable children (OVC). All pregnant women benefit from the measures implemented by the State under the programme to prevent mother-to-child transmission of HIV and as part of the reproductive health policy.

Women living with HIV have the right to motherhood.

A programme for all children of HIV-positive parents will be developed and implemented throughout the country.

**Article 16. – Care in healthcare facilities.**

Public and private healthcare facilities shall provide persons infected with or affected by HIV with the best possible medical care and support.

The availability of and free access to antiretroviral drugs must be guaranteed for all people living with HIV who are eligible for such treatment, particularly children. The same applies to the treatment of opportunistic infections.

**Article 17. – Care at community level.**

The authority responsible for coordinating the fight against HIV and AIDS encourages and supports civil society organisations, in particular those representing people living with HIV and AIDS and groups most at risk of HIV infection, to develop and implement psychosocial care programmes within communities.

**Article 18. – Care for sexually transmitted infections.**

The competent authorities, in collaboration with civil society organisations, shall take all necessary measures to strengthen the management and control of sexually transmitted infections.

**Article 19. – Care in prisons and rehabilitation centres.**

People living with HIV in prisons and rehabilitation centres must receive the psychosocial and medical care required by their condition.

**CHAPTER V. CONFIDENTIALITY.****Article 20. – Confidentiality.**

Any person referred to in Article 363 of the Criminal Code and any other person with access to medical records, screening test results or related medical information—in particular, regarding the identity and HIV status of people living with HIV—is bound by a duty of confidentiality.

Unless the person concerned has given their consent, no one may access information relating to their serological status or any other medical information concerning them.

However, there is no breach of the duty of confidentiality referred to in the preceding paragraph of this Article:

- ▶ when the management of a healthcare facility complies with epidemiological requirements;
- ▶ where healthcare staff are required to provide an opinion by the competent judicial authority in the course of legal proceedings in which the determination of serological status is a fundamental issue for resolving the dispute. This opinion shall be provided in writing.

**Article 21. – Test results.**

Any result of an HIV/AIDS screening test is confidential and may only be disclosed by the authorised person to the following:

- ▶ the person who underwent the test;
- ▶ the legal representative of a minor or an adult lacking legal capacity who has undergone the test;
- ▶ the competent authority that requested the test;

the person authorised by the person who underwent the test.

**Article 22. – Disclosure to one's spouse or sexual partner(s).**

Care services must provide all necessary psychosocial support to assist and help the person infected with HIV to disclose their status to their spouse(s) or sexual partner(s).

The healthcare provider consulted by the person who has undergone the test must provide psychological support and guidance to help them disclose their HIV status to their spouse(s) or sexual partner(s) as soon as possible

In the event that the person who has tested positive is unable to disclose their status personally, the doctor or any other qualified member of the healthcare team or the relevant facility, in agreement with the infected person, may disclose the information to their spouse(s) or sexual partner(s), without breaching the confidentiality provisions laid down by the laws in force.

Finally, where a person who is HIV-positive has received all appropriate advice and support but refuses to allow the disclosure to be made, even though there is a real risk of HIV transmission, the doctor or any other qualified person authorised to do so within the healthcare facility or relevant organisation may disclose the information to their spouse or sexual partner(s), in accordance with ethical principles,

without breaching the confidentiality provisions laid down by the laws in force.

The timing and circumstances of the disclosure are left to the discretion of the person authorised to make the disclosure.

In the event of the death of a person infected with HIV, the doctor or any other qualified healthcare professional at the relevant healthcare facility may inform the person's spouse(s) or sexual partner(s).

In all cases, the spouse(s) or sexual partner(s) informed of the positive HIV status shall be encouraged to undergo testing and, where necessary, receive care.

**Article 23. – Disclosure to minors and adults lacking legal capacity.**

A minor shall be informed of their serological status, of the procedures and tests necessary for their state of health, taking into account their age, their capacity to understand, and more generally of anything that may affect them.

An adult who lacks capacity must be provided with appropriate information. The person legally authorised or the person caring for the patient must be informed.

The doctor or qualified person shall ensure, in particular, that this information is provided and that the methods used are adapted to any difficulties the person receiving the information may have in communicating or understanding.

**CHAPTER VI. DISCRIMINATORY ACTS.**

**Article 24. – Discrimination in the workplace.**

Any discrimination, in whatever form, against a person who is actually or presumed to be HIV-positive, particularly in relation to job offers, recruitment, promotion and retirement, is prohibited.

No employee may be required to undergo an HIV test as a condition for receiving a promotion, training or any other benefits.

No worker may be disciplined or dismissed solely on the grounds of their positive HIV status, whether actual or presumed.

In the event of incapacity confirmed by an approved medical board, the worker shall be entitled to the benefits provided for by the laws in force relating to employment and social protection.

Under labour legislation, any person infected with HIV/AIDS must be regarded and treated in the same way as any other person with a chronic illness and, as such, must be entitled to all the safeguards and treatments provided for by the laws and regulations in force, without any discrimination.

Every employee is obliged to ensure that the workplace maintains an atmosphere that prevents the rejection or humiliation of people living with HIV.

**Article 25. – Discrimination in formal and non-formal educational establishments.**

No educational or vocational institution may refuse/exclude, penalise or deny access to its facilities and services to any student, pupil, or prospective student, pupil or trainee who is infected with or affected by HIV.

**Article 26. – Violations of the right to travel and housing.**

No one may infringe upon a person's right to travel or to accommodation, in any form whatsoever, on the basis of their actual or presumed HIV status.

No one may be placed in quarantine or isolation on the basis of their actual or presumed HIV status.

**Article 27. – Discrimination in access to public office or elected office.**

A person's HIV status shall not constitute grounds for ineligibility or an obstacle to access to public office.

**Article 28. – Discrimination in access to credit and insurance services**

Access to credit and loans may not be refused to a person on the grounds of their actual or presumed HIV-positive status.

Health, accident and life insurance providers may not refuse to provide their services to an infected person, provided that the person has not concealed their HIV status from them.

Where the insurer is aware of the insured person's positive HIV test result, it must treat this information as confidential.

The renewal or extension of credit and the insurance policy may not be refused solely on the basis of the person's actual or presumed HIV status.

**Article 29. – Discrimination in healthcare facilities.**

No person may be denied access to services provided in public or private healthcare facilities, nor may they be charged more than the standard rate for their care, on the grounds of their actual or presumed HIV status or their professional activity.

**Article 30. – Discrimination in prisons and rehabilitation centres.**

Any discrimination against a person living with HIV in prisons and rehabilitation centres is prohibited. Where such discrimination is perpetrated by prison staff, it is punishable by law.

## CHAPTER VII. RESEARCH INTO AIDS.

*Article 31. – Compliance with ethical standards.* All research on AIDS in the fields of biomedical sciences, epidemiology, traditional medicine, social sciences and the humanities shall be conducted in accordance with national rules and international standards, in compliance with the general provisions in force in Senegal governing health research, and after obtaining authorisation from the body responsible for ethical review. No research may be carried out until the participants have been informed in advance of the risks and benefits involved and their free and informed consent has been obtained. The consent of the person participating in the research must be obtained in writing in advance.

*Article 32. – Confidentiality and the sharing of research findings.*

In all AIDS research, researchers and their teams shall take particular care to ensure the confidentiality of data and the sharing of results. They shall ensure that those who have taken part in the research benefit from the results of that research.

*Article 33. – Research involving vulnerable individuals and populations.*

Research involving vulnerable individuals and groups, in particular children, adults lacking legal capacity, sex workers and prisoners, may only be undertaken where necessary and without coercion, with particular attention paid to complying with international recommendations on obtaining consent, confidentiality and the sharing of benefits. Any breach of these provisions shall be punished in accordance with the laws in force.

*Article 34. – Research involving children.*

Any research involving children must be subject to the prior consent of the parents, guardian or legal representative. It must aim to improve treatment and care. It shall take into account specific issues relating to the age of the children invited to participate in the research, provide age-appropriate information, and always seek the opinion of the child where the child is capable of giving it. In all circumstances, respect for the principle of the best interests of the child shall always be paramount.

Any breach of these provisions shall be punished in accordance with the laws in force.

## CHAPTER VIII. PENAL PROVISIONS

*Article 35. – Penalties for discriminatory acts.* Any person found guilty of the discriminatory acts set out in Chapter VI of this Act shall be liable to imprisonment for a term of one to five years and a fine of 100,000 to 1,000,000 CFA francs or one of these penalties alone. Where the discriminatory act is committed by a person working in the field of healthcare or HIV and AIDS prevention, the penalties provided for in the preceding paragraph shall be doubled.

*Article 36. – Penalties for persons who intentionally transmit HIV.*

Any person who, knowing that they are HIV-positive and being aware of the modes of HIV transmission, engages in unprotected sexual intercourse with the intention of transmitting the virus to another person shall be liable to imprisonment for a term of five to ten years and a fine of 2,000,000 to 5,000,000 CFA francs.

No person shall be prosecuted or tried under this Act for the transmission of HIV, or for exposure to HIV, where such transmission or exposure occurs in any of the following circumstances:

- ▶ the transmission of HIV from mother to child before the child's birth, during childbirth or whilst breastfeeding;
- ▶ an act that poses no significant risk of HIV transmission;
- ▶ the person living with HIV was unaware of their positive HIV status at the time of the act;
- ▶ the person living with HIV engaged in safe sex, including the use of a condom.

*Article 37. – Penalties for the dissemination of incorrect or misleading information regarding HIV and AIDS.*

Any person found guilty of disseminating false or misleading information relating to HIV/AIDS shall be liable to imprisonment for a term of six months to two years and a fine of between 500,000 and 2,000,000 CFA francs, or to either of these penalties alone.

The person in charge of the public medium used to disseminate such information shall be liable to the same penalties.

*Article 38. – Penalties for breach of the duty of confidentiality.*

Any person who, except where required by law, discloses the HIV status of a person infected with HIV shall be liable to imprisonment for a term of six months to two years and a fine of between 50,000 and 300,000 CFA francs.

Proceedings for such an offence may only be brought upon complaint by the victim, their legal representative or their next of kin. In addition to the penalties provided for in Article 363 of the Criminal Code, the court hearing the case may order the suspension or revocation of the offender's licence to practise or the withdrawal of the authorisation granted to the establishment where the latter is held liable.

*Article 39. – Penalties for compulsory testing and obstruction of voluntary testing.*

Inciting compulsory HIV testing or obstructing voluntary HIV testing is punishable by imprisonment for a term of one to five years and a fine of 100,000 CFA francs, or by either of these penalties alone.

**Article 40.** – Penalties for failure to comply with a court order.

Any person who refuses to undergo the screening test ordered by the competent judge shall be liable to imprisonment for a term of one month to three years.

**CHAPTER IX. FINAL PROVISIONS.**

*Article 41.*

Decrees shall, where necessary, lay down the detailed rules for the implementation of this Act.

This Act shall be enforced as a law of the State.

Done at Dakar on 9 April 2010.

Abdoulaye WADE.

By the President of the Republic:

The Prime Minister,

Souleymane Ndéné NDIAYE.

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