Law # of ... 2004 on HIV/AIDS Prevention and Control

Considering the Universal Declaration on Human Rights.
Considering international conventions on civil and political rights as well as economic, social and cultural rights.
Considering the African Charter of human rights and the rights of people;
Considering the convention on the elimination of all forms of discrimination against women.
Considering the Convention on the rights of the child.
Considering the African charter on the rights and well-being of children.
Considering the International convention on the protection of all migrant workers and members of their families.
Considering the Abuja declaration
Considering the Declaration of Commitment on HIV/AIDS.
Considering the Constitution.

Article 1: Definition of Terms
In accordance with the law, the terms and expressions used in the first article of this convention shall be understood as follows, unless otherwise defined by the context:

- Acquired Immune Deficiency Syndrome AIDS: a condition characterized by a 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 Screening Test: a sensitive procedure whereby the individual tested does not reveal his/her true identity. An identification number or symbol is 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 number or symbol.
- Compulsory Screening Test: HIV screening test imposed on a person [without]his/her consent or with his/her vitiated consent obtained through the use of force, intimidation or any form of extortion.
- Contact Tracing: a method used to trace and care for the sexual partner of a person who has been diagnosed as suffering from a sexually transmitted disease.
- Human Immunodeficiency Virus (HIV): The virus that causes AIDS.
- HIV/AIDS Monitoring: documentation and analysis of the number of HIV/AIDS infections
- HIV/AIDS Prevention and Control: measures aimed at preventing non-infected persons from contracting the disease and minimize the impact of the disease on PLWHA.
- HIV Positive: result of a screening test revealing the presence of HIV or HIV antibodies in the person tested.
- HIV Negative: the absence of HIV or HIV antibodies in persons tested.
- HIV Screening Test: A laboratory test conducted on an individual to determine the presence or the absence [of] HIV infection.
- HIV Transmission: infection of a person by another who is already infected. Infection usually occurs through sexual intercourse, blood transfusion or the
sharing of intravenous needle[s], skin-piercing instruments or through mother-to-child transmission.

- Willful Transmission: transmission of HIV through any means by a person with full knowledge of his/her HIV/AIDS status to another person.
- HIV Risk Behaviour: frequent participation of a person in activities that increase the risk of transmission or acquisition of HIV.
- Free and Informed Consent: a voluntary agreement of a person who accepts to undergo a procedure based on complete information, whether this agreement is written, verbal or implied.
- Medical Confidentiality: a relationship of trust existing or which should exist between a patient in general and PLWHA in particular and his/her doctor or any health agent, paramedical staff, health worker, laboratories, pharmacies or people of similar status, as well as any person whose professional or official prerogatives allows him/her to have access to such information.
- Persons Living with HIV: a person, whose screening test, directly or indirectly, reveals that he/she is infected by HIV.
- Pre-test Counselling: information given to a person on the biomedical, social and behavioural aspects of HIV/AIDS and on the results of the test as well as the counseling needed before he/she undergoes the screening test.
- Post-test Counselling: information given to a person who has undergone an HIV screening test as well as counseling when he/she is given the results of the test.
- Prophylaxis: any agent or instrument, which serves to prevent the disease.
- Voluntary HIV Test: refers to an individual who, after a pre-test counseling, willingly undergoes a screening test.
- PLWHA: persons living with HIV/AIDS.
- Public Media Broadcast: Radio broadcasting, TV, cinema, the press, posters, exhibits, hand bills, flyers, other written documents or pictures of any kind; speeches, songs and generally any information aimed at reaching the public.

CHAPTER I - Education and Information

Article 2: Education and Information on HIV/AIDS in Schools

Based on official data provided by the Ministries of Health, the Ministries of Education, Youth, Sports and Culture shall integrate programs on the causes, modes of transmission and prevention of HIV/AIDS and sexually transmitted infections in the curriculum of the basic, secondary and tertiary levels of public and private schools and in the traditional school system.

If for any reason, the integration of these programs into the curricula is considered inappropriate, the aforementioned ministries shall develop special teaching modules on HIV/AIDS prevention and control.

The content of the teaching modules, its formulation, the methodology used and its adoption shall be adapted to each level of instruction, after consultation with Parent-Teacher associations, associations of private schools and community groups, traditional and religious leaders, PLWHA, and related groups.

It is strictly forbidden to teach courses such as the one provided for in this article to minors without prior consultation with parents whose approval is required both for the content and the materials used for such courses.
Prior to the authorization to teach lessons on HIV/AIDS, teachers, instructors and any other person involved in programs and teaching modules provided for in the first and second paragraphs of this article shall be trained on HIV/AIDS prevention and control, under the supervision of the Ministry of Health.

Article 3: Information on HIV/AIDS as a Health Service
Education and information on HIV/AIDS must form part of the health services administered by doctors and health personnel. The knowledge and capacity of employees to appropriately disseminate information and education on HIV/AIDS shall be improved.
Doctors working in the private and public sector shall make available to their patients, information needed for controlling the spread of HIV/AIDS and those which help counteract pre-conceived ideas on the disease.
The Training of health personnel shall include discussions on issues related to ethics within the context of HIV/AIDS, confidentiality, informed consent and obligation to provide treatment.

Article 4: Sensitization of HIV/AIDS in the Workplace
All employees of the public and private sector, formal or informal, whatever their position in the hierarchy, members of the armed forces and security services shall receive a standardized basic training in HIV/AIDS, which will include themes on confidentiality at the workplace and behaviour towards workers infected or affected by HIV/AIDS.
The National AIDS Commission in collaboration with the Ministry of health, civil society and labour organizations shall launch awareness campaigns in all enterprises (both public and private) while the directorates of the security services including the armed forces shall be responsible for the enforcement of the provisions in the preceding paragraph of this article in their respective structures.

Article 5: Education on HIV/AIDS within Communities
The National AIDS Commission in collaboration with the Ministry of Health, government services, municipal assemblies and civil societies, shall launch an education and information campaign on HIV/AIDS.
Local authorities and other decentralized institutions of government shall coordinate this campaign, which will involve the various government bodies, NGOs as well as traditional and religious associations.

Article 6: Education of Nationals Working Abroad on HIV/AIDS
The government shall train all its personnel appointed to work abroad on the causes, prevention and the effect of HIV/AIDS prior to official confirmation of their appointment.
The Ministries of Health in collaboration with the Ministries of Employment, Foreign Affairs, Tourism, Justice and Immigration shall be responsible for enforcing the provisions of the preceding paragraph of this article.
The Ministry of Transport will include in its test for the issuance of driving licenses for public transport, knowledge of transmission modes, prevention and the consequences of HIV/AIDS.
Sailors shall not be allowed to embark on fishing or passenger boats, except on provision of a document issued by the port authorities and testifying that they have received training in the causes, prevention and consequences of HIV/AIDS.
Airline companies shall train all their technical and commercial flight personnel in the causes, prevention and consequences of HIV/AIDS.

**Article 7: Information for Tourists and Passengers in Transit**
Information material on the causes, modes of transmission, prevention and consequences of HIV infection shall be provided in the appropriate manner at all international entry and exit points and major tourist sites.
The Ministry of Health in collaboration with the National AIDS Commission and the Ministries of Tourism, Foreign Affairs, Justice and Immigration shall be in charge of enforcing the provisions of the preceding paragraph of this article.

**Article 8: Information in Prisons**
Information material on the causes, modes of transmission, prevention and consequences of HIV infection shall be provided in the most appropriate way at all Prison and detention institutions.
The Ministries of Justice and Health shall be responsible for enforcing the provisions of the preceding paragraph of this article.

**Article 9: Information on Drugs**
Appropriate information shall be clearly written on the packaging of all drugs intended for sale or free distribution.
Information contained in the preceding paragraph of this article shall be printed in one of the widely spoken languages in the country. They shall contain information on the appropriate use of the device or agent, its effectiveness against the HIV infection and sexually transmitted diseases.
The Ministry of Health or its accredited agency shall ensure the quality and efficacy of all drugs brought into the country prior to their sale and consumption.

**Article 10: Dissemination of Erroneous or False Information on HIV**
Any person found guilty of dissemination of information on HIV/AIDS prevention using erroneous and false publicity and solicitations through whatever means of communication, and the commercial promotion of drugs, materials, agents and procedures without any medical and scientific basis and without the prior authorization of the Ministry of Health or its accredited agencies, as well as inscriptions and indications on the packaging of drugs, materials or agents that are intended to cure HIV/AIDS or protect against the disease, is punishable by a term of imprisonment not exceeding xxxx to xxxx months/year or to a fine not exceeding xxxxx francs.

**CHAPTER II – Secure Practices and Procedures**

**Article 11: Requirements Related to Blood, Tissues or Organ Donation**
All human blood, blood related products, tissues and organs to be donated shall be tested for HIV. Laboratories or related institutions are not allowed to accept for use or keep donated blood, tissues and organs, unless the sample of the donor’s blood, tissue or organ has tested HIV negative.
The beneficiary of donated blood, tissues or organs may demand a second test prior to blood transfusion or transplantation of the tissues or organs into him or her.
Blood, tissues and organs infected with the HIV shall be immediately disposed of in a safe manner.
Article 12: Guidelines Concerning Surgical Interventions and Other Related Procedures

The Ministry of Health shall take the necessary measures to guarantee that precautions are taken to avoid HIV transmission during surgical intervention, dental care, embalming, tattooing and other related procedures.

The Ministry of Health must also develop general guidelines and regulations for the handling and disposal of bodies and body parts of persons known or suspected of being HIV positive who died.

The necessary protective equipment, i.e. gloves, protective glasses and coats shall be made available to all doctors and other health procedures in particular those taking care of AIDS patients.

The implementation of the above provisions in this article shall be fixed by decree.

Article 13: Sanctions for Risky Practices and Procedures

Any person who through clumsiness, negligence, carelessness, recklessness or non-compliance with the regulations and the protection guidelines certified in the preceding article infects another with HIV, shall be guilty of intentionally infecting another person with HIV in the fulfillment of his profession, and shall be sentenced to imprisonment for a period not exceeding 12 months.

When the offence is committed in a hospital institution or private clinic, the license of the institution shall be suspended for a period not exceeding 12 months.

CHAPTER III - Traditional Medicine

Article 14: Commission on Traditional Medicine

A Commission on Traditional Medicine shall be established and be responsible for the registration, accreditation and suspension of traditional medicine practitioners in the country.

The composition of the commission, its roles and functions and the conditions of issuance, suspension and withdrawal of traditional medicine practitioners’ licence shall be established by decree.

Article 15: Practice of Traditional Medicine

All traditional medicine practitioners shall be required to register with the Commission as stated in Article 14 prior to being issued with an operating license authorizing them to practice, sell or advertise their products.

The Commission shall make regulations regarding the licensing of the operations of all traditional medicine practitioners. Traditional medicine who violate this provision shall be sanctioned by a imprisonment for a period not exceeding xxxx months/year or a fine not exceeding xxxx.

Article 16: Public Media Broadcasting

The dissemination of information relative to the control and prevention of HIV/AIDS through advertisement, solicitation, or whatever means, and the marketing of medical products, equipment, agents and procedures, without the prior authorization of the traditional medicine commission, and the indication that the above stated items can cure or protect against HIV/AIDS, shall be punished by an imprisonment of a period ranging from xxxx to xxxx months/year.
The broadcasting institution, which helped in disseminating such information, shall be liable to a fine ranging between 500 000 CFA to 2 000 000 CFA francs.

CHAPTER IV - Voluntary Counselling and Testing (VCT)

Article 17: Consent to Undergo [an] HIV Test
No one shall be compelled to undergo an HIV test without his/her written consent. Such consent must be free and informed and written. It shall be required of the person concerned if s/he is of age or by his/her parent or guardians if the person is a minor or is mentally challenged.
The Government shall take all the necessary measures to ensure the provision of VCT services and encourage their use by all individuals at a high risk of HIV infection.
In the event of donations of organs, cells or blood, the consent to undergo [an] HIV test is legally assumed when a person willingly or freely agrees to give his blood, organ or cell for transfusion, transplant or research.

Article 18: Prohibition of the Requirement to Undergo [an] HIV Test
HIV testing shall not be a requirement for the following: securing a job, admission to school or universities, access to accommodation, right to entry/residence in a country, or as a precondition to travel, access to medical care or any other services.
The state shall encourage future spouses to undergo screening test[s] prior to marriage.
This prohibition however is revoked in the following cases:
   a) where a person is indicted for infecting or attempting to infect another person with HIV by whatever means;
   b) where a person is indicted for rape;
   c) where the determination of the HIV status is necessary to solve a matrimonial conflict;
   d) in cases anticipated in article 17 paragraphs 3 of the present law.

Article 19: Testing Centers and Voluntary Testing
The Government shall develop a system of anonymous HIV screening which shall guarantee anonymity and medical confidentiality when undertaking such tests.
In order to carry out operations, all centers, hospitals, clinics and laboratories providing HIV testing services shall be required to obtain authorization from the relevant government departments of health.
All centres, clinics or laboratories, carrying out [an] HIV test, shall provide pre and post test counseling to the clients to whom VCT is being offered. However, counseling services shall only be provided by trained personnel who meet the standards of the health departments.
The Ministry of Health shall build the HIV testing capacities of hospitals, clinics, and laboratories and other testing centres by providing training to personnel providing such services.

CHAPTER V - Health and Counseling Services

Article 20: Services in the Health Centers
Persons living with HIV shall receive basic health care in all institutions (private and public) including optional medical care provided in the hospitals and institutions specialized in the treatment of AIDS.

**Article 21: Communities Services**
Specialised government institutions in collaboration with NGOs, persons living with HIV/AIDS and groups that are highly exposed to the risk of HIV infection shall undertake preventive activities as well as psychosocial responsibility within the communities.

**Article 22: Outreach and Training of PLWHA**
PLWHA Groups shall be provided with adequate training programs, the objective of which shall be towards self-reliance and mutual self-assistance. No one has the right to deny access to the full participation of persons living with HIV/AIDS in outreach activities and self-help programs designed to further their training capacities by virtue of their HIV/AIDS status.

**Article 23: Treatment of Sexually Transmitted Diseases**
The [Ministry of Health] in collaboration with relevant government 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.

**CHAPTER VI - Confidentiality**

**Article 24: Medical Confidentiality**
The medical and other support staff in health facilities, employment agencies, insurance companies, computer operators or all other persons having access to patient medical records or the identity or HIV status of persons living with HIV are bound by professional ethics not to disclose such information. Public or private health institutions shall guarantee the confidentiality of the medical, financial or administrative information it has on hospitalized PLWHA. Access to confidential medical information can only be authorized by the PLWHA, except in legal cases carried out under required legal norms without violating the anonymity guaranteed by the law.

However, the medical confidentiality referred to in the preceding paragraph of the present article will not be considered to have been violated:

- when the authorities of a health institution comply with the epidemiological requirements specified by the public health code.
- When the health personnel directly or indirectly involved in the treatment or care of a PLWHA is informed; in such a case, the person will bear the responsibility of the professional secret.
- When the health personnel is called to testify upon the request of a court of competent jurisdiction in the case of a lawsuit in which the determination of HIV/AIDS is an important element in the case. In such a case, the testimony shall be made in writing in a sealed envelope and shall only be accessibly by the competent legal authority.
Article 25: HIV Test Results
All HIV/AIDS screening test results shall be confidential and will only be handed to the following people:
- The person who took the test;
- One or either of parent of a tested under aged child;
- The parent/guardian in the case of a mentally challenged person or an orphan; and
- The legal authority which legally requested the test.

Article 26: Revelation to Spouses and Sexual Partners
Any person who has been tested positive for HIV is bound to reveal his/her HIV status to his/her spouse or regular sexual partner as soon as possible provided that the period does not exceed six (6) full weeks, starting from the date he/she was notified of his/her HIV status.
Care service providers shall provide all the necessary psychological support to facilitate the disclosure of the HIV test result to his/her spouse or sexual partners. The hospital institution must ensure that this announcement is made and done in such a way as to take into account possible communication and comprehension problems of the patient and his/her spouse or sexual partners.
If the person whose HIV status has just been determined does not proceed to voluntary revelation as provided for in the preceding paragraph within the prescribed period, the doctor or any other qualified paramedical official of the hospital or health institution concerned after having informed the person whose HIV status is known, can proceed to disclose the information to the spouse or sexual partners, without infringing on the provisions relating to medical confidentiality provided for by existing laws.

Article 27: Disclosure to Minors, and the Mentally and Physically Challenged
A child shall be entitled to information regarding his/her HIV/AIDS status, laboratory results and necessary actions with respect to his state of health, according to his age and capacity to understand the information. 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.
The doctors or paramedical staff shall take the same measure in making the disclosure to the minor’s schoolteacher, parents or any other person involved in his/her education/training or care.
Physically and/or mentally challenged persons shall benefit from appropriate information. The doctor or paramedical staff having access to his/her test result shall disclose the status of the mentally challenged person to the family and to his/her care-givers using appropriate measures to facilitate understanding and acceptance.
The persons mentioned in the preceding paragraph are obliged to maintain confidentiality. However, for legitimate and exceptional reasons, a minor or physically and/or mentally challenged person who is HIV positive may be left uninformed of his/her status as long as the doctor or paramedical staff deem it necessary and as long as this situation does not create any risk for the minor, physically and/or mentally challenged person and for other persons.
Article 28: Sanctions for Violating Confidentiality
The violations of the provisions of article[s] 26 and 27 of the present law by all moral and physical persons shall be sanctioned by an imprisonment not exceeding xxxx months or a fine not exceeding xxxx years.
In addition, the court may order the suspension or withdrawal of the person’s professional license or the operating permit of the facility if it is established that the hospital/laboratory or clinic is also involved.

CHAPTER VII – Discriminatory Acts

Article 29: Discrimination at Workplaces
Discrimination under any form against a person whose HIV status is real or suspected, with respect to hiring, promotion, dismissal and retirement is strictly forbidden.
Consequently any dismissal of an employee based on a real or suspected HIV status is illegal.

Article 30: Discrimination in School and Educational Institutions
No educational or training institution shall refuse enrolment or other educational services or expel a student, pupil, trainee or applicant on the basis of his/her real, or suspected HIV status.

Article 31: Violation of the Right to Travel and Accommodation
No one shall interfere in any form with the right to travel or to accommodation based on one’s real or suspected HIV status.
No person shall be quarantined, isolated, or barred from entry into a country or deported on the basis of his/her real or suspected HIV status.

Article 32: Access to Public or Elected Office
No one shall be deprived of his/her right to an elected or appointed public office or admission to a public function on the basis of his/her real or suspected HIV status.

Article 33: Access to Credit and Insurance Services
No one shall be denied access to credit, loans and insurance services on the basis of his/her real or suspected HIV status so long as the person has not hidden his/her HIV status from the insurance company.
The continuation or extension of the credit and insurance policy shall not be denied solely on the basis of the HIV status of the individual.

Article 34: Discrimination in Hospitals and Health Institutions
No one shall be denied access to services in hospitals or private or public health institutions nor will any one receive a bill which is higher than normal because of his/her HIV status.

Article 35: Sanction against Discriminatory Acts
Any discriminatory act anticipated in Chapter VII of the present law shall be sanctioned with a term of imprisonment ranging from xxxx to xxxx or the withdrawal of the license.