

# Madagascar: Law 2005-040 on the Fight against HIV/AIDS and the Protection of Rights of People Living with HIV (2005)

Following its approval by the National Assembly on 16 November 2005 and by the Senate on 15 December 2005 and after its consideration by the High Constitutional Court on 15 February 2006, this Law was promulgated by the President on 20 February 2006. Its full title, in French, is *Loi n°2005-040 sur la lutte contre le VIH/SIDA et la protection des personnes vivant avec le VIH/SIDA*. Among other things, the law addresses issues of stigmatisation and discrimination against people living with HIV.

## TITLE I - General provisions

### CHAPTER I - Definition and scope of application

#### Article 1

This legislation has the following objectives

to fight the spread of infections due to the Human Immunodeficiency Virus (HIV), which causes the weakening and loss of immune protections of the body, resulting in the Acquired Immunodeficiency Syndrome (AIDS);

to protect persons living with HIV against all forms of discrimination or stigmatisation;

to reaffirm their rights and fundamental freedoms in accordance with international human rights instruments.

In addition, it spells out measures to be taken to protect the rights of persons living with HIV, their partner(s) and close relatives against all forms of discrimination and stigmatisation.

#### Article 2

Any difference in treatment, any distinction, restriction, exclusion of a person living with HIV or his or her partner(s) and/or his or her close relatives on the ground of his real or presumed HIV status, that aim to undermine the recognition, the enjoyment or the exercise of their rights or fundamental liberties shall be considered an act of discrimination.

Any behaviour aiming to discredit, despise or ridicule a person living with HIV or his or her partner(s) and/or his or her close relatives on the ground of his or her real or presumed HIV status shall be considered an act of stigmatisation.

#### Article 3

A National Strategic Plan shall be formulated and implemented to guide the actions of fight against HIV/AIDS.

#### Article 4

A national body established under the office of the President of the Republic, shall be responsible for the promotion, coordination and supervision of the different activities conducted for the prevention and fight against the pandemic at the national, provincial and local levels.

## **CHAPTER II: HIV testing**

### **Article 5**

HIV testing is voluntary, anonymous and confidential. The informed consent of the person to be tested shall accompany any HIV test. HIV tests performed on children shall, as far as possible, be conducted with the consent of one of his or her parents at least or a person who has authority over the child, unless the best interest of the child requires otherwise or if the child is an emancipated minor, although the absence of consent shall not constitute an obstacle to testing and counselling. In the event of a dispute, the children's judge has jurisdiction to decide. However, HIV testing is compulsory in the event of blood donation, tissues donation, donation of human organs and donation of germinal cells.

### **Article 6**

HIV testing shall be preceded and followed by counselling.

### **Article 7**

HIV testing shall be free of charge in testing centres run by the public sector and established at the level of health districts.

### **Article 8**

The results of an HIV test shall be hand-delivered, confidentially and directly to the person concerned. However, the results of a test conducted on a child shall be given, as far as possible, in the presence of one of his parents at least or a person who has authority over him or her unless the best interest of the child requires otherwise or if the child is an emancipated minor. In the event of a dispute, the children's judge has jurisdiction to decide.

### **Article 9**

This information may only be revealed to third parties with the explicit consent of the person concerned or by court order, or when there are imperative and justifiable reasons related to the health of the patient or the health of the community.

### **Article 10**

Any person who is aware of his or her HIV status shall be encouraged to inform his or her partner of his or her HIV status. That person shall, as far as possible, enjoy, with his or her partner(s) and close relatives, psychological support.

### **Article 11**

HIV testing shall not be conducted in the workplace or in schools.

## **CHAPTER III: Care and treatment**

### **Article 12**

Persons living with HIV shall enjoy the same right to care as other patients.

### **Article 13**

Care and treatment for children shall be administered, as much as possible, with the consent of one of his parents at least or a person who has authority over the child unless the best interest of the child requires otherwise or if the child is an emancipated minor, although the absence of consent shall not constitute an

obstacle to testing and counselling. In the event of a dispute, the children's judge has jurisdiction to decide.

**Article 14**

Care and antiretroviral treatments shall be provided to persons living with HIV free of charge in public health care facilities.

**Article 15**

The manufacture, importation, exportation and sale of generic medications to treat AIDS, including medications to treat opportunistic infections, active ingredients necessary to their manufacture and products essential to their use shall be permitted. Generic medications shall be subjected to the same standards of quality as patented medications.

**Article 16**

As part of the medical and psycho-social support of persons living with HIV, a policy shall define the measures to be taken in order to ensure equality of access to care and treatments.

**TITLE II - Prevention**

**CHAPTER I - Prevention through information, education and communication**

**Article 17**

The State shall be first accountable for actions of prevention, which is the pillar of the fight against HIV/AIDS. In order to fight HIV/AIDS-related discrimination and stigmatisation as well as promote behavioural change, programmes on information, education and communication adapted to the age, sex, nature of activities, and, where applicable, the sexual orientation of targeted groups shall be elaborated and disseminated across the national territory by the competent organs.

**Article 18**

Free and regular airtime shall be allocated to the prevention of HIV/AIDS on national public broadcasting networks according to the conditions defined by the competent communication authorities.

**Article 19**

A committee of ethics responsible for communication comprising at least one representative of persons living with HIV and one representative of the youth, shall be created.

**CHAPTER II - Prevention of mother to child transmission through blood**

**Article 20**

HIV testing shall be systematically offered to pregnant women during antenatal consultations.

**Article 21**

Programmes on the prevention of transmission of the virus from an HIV positive mother to her child shall be implemented for a better ante- and post- natal support. Psychosocial support and follow-up shall be included in such programmes.

### **CHAPTER III - Epidemiological surveillance**

#### **Article 22**

In order to better fight the propagation of HIV/AIDS, a regular follow-up of HIV prevalence rates at the national level shall be institutionalised.

#### **Article 23**

Local health authorities shall notify the authority so mandated by the Ministry of Health and by way of coded information confirmed cases of HIV and AIDS recorded by all public and private health care institutions operating within their locality.

#### **Article 24**

Special measures of surveillance shall be taken for vulnerable groups.

### **CHAPTER IV - Particular ways and means of prevention**

#### **Article 25**

Condoms shall be made available to the public in highly frequented places and for free in prisons.

#### **Article 26**

Special measures shall be taken to ensure sufficient protection against the transmission of HIV amongst vulnerable groups, in particular, sex workers, youth, women and children, drug users, men who have sex with men and mobile populations.

#### **Article 27**

Specific and appropriate means and measures shall be taken by the Ministry of Health to protect health professionals against any risk of contamination in the course of performing their duties.

### **TITLE III - Protection of the rights of persons living with HIV, their partner(s) and close relatives**

#### **CHAPTER I - Rights of persons living with HIV, their partner(s) and close relative(s)**

#### **Article 28**

Persons living with HIV shall have full and entire legal capacity and shall enjoy all citizens' rights in the Constitution and in international instruments. Any discrimination and stigmatisation against persons living with HIV, their partner(s) and close relative(s) when exercising their rights shall be prohibited.

#### **Article 29**

Persons living with HIV shall have the right to marry and procreate. Their HIV status shall not constitute a valid reason to oppose their marriage nor a cause of divorce, except in the event of misrepresentation.

#### **Article 30**

An HIV positive woman shall have the right to motherhood. She shall benefit from all measures implemented by the State within the framework of the programme on the prevention of mother-to-child-transmission of the virus and the policy on reproductive health.

**Article 31**

The real or presumed HIV status of a person shall not constitute a reason to deny or exclude him or her from the benefits of or terminate a contract of health insurance, nor exclude him or her from entering into a life insurance contract or exclude him or her from the enjoyment of any other right he may claim. Such a protection extends to his or her partner(s) or any of his or her close relatives.

**Article 32**

Some groups such as health workers, prison authorities, law enforcement agents, employers, educators shall include in their codes of ethics the principles guaranteeing the fundamental rights of persons living with HIV.

**Article 33**

In addition to the circumstances described in article 44, any person who suffers an act of discrimination or stigmatisation or who suffers from the consequences of the disclosure of his real or presumed HIV status or the disclosure of his partners' or close relatives' HIV status may institute legal proceedings to claim damages. Associations shall have the capacity and right to institute legal proceedings for and on behalf of persons living with HIV, their partners or close relatives even if the person with real or presumed HIV status is not a member of those associations.

**Article 34**

Legal proceedings on discrimination or stigmatisation involving a person living with HIV shall be held in camera at the request of one of the parties.

**Article 35**

Any research related to HIV/AIDS shall be authorised by the national committee of ethics.

**CHAPTER II - Rights pertaining to children affected and infected by HIV/AIDS****Article 36**

Children infected and affected by HIV/AIDS, including orphans, shall enjoy all rights in the Constitution and in international instruments pertaining to children, in particular the Convention on the Rights of the Child. Special measures of protection, including measures against abuse and exploitation, as well as specific measures with respect to inheritance rights, land tenure and property in general, shall be adopted when necessary.

When exercising his rights, the child shall not be subjected to any discrimination or stigmatisation on the account of his real or presumed HIV status, the status of his partners, parents or legal guardians or close relatives.

**Article 37**

Notwithstanding the provisions contained in Title III chapter III on education, no child shall be refused access to, excluded from, discriminated against, stigmatised when exercising his right to education or from any programme, institution targeted at children on the account of his real or presumed HIV status, the status of his partners, parents or legal guardians or close relatives, under pain of a claim for damages.

**Article 38**

The surviving children of persons deceased due to AIDS shall be taken care of by their families, communities of origin including foster families or, if these are not available, by public or private institutions for a period as short as possible. Adequate measures, namely in respect of the periodic review of the decision of placement of the child, shall be taken by the State to support these children.

**CHAPTER III - Protection of persons living with HIV, their partner(s) and their close relatives at school****Article 39**

The real or presumed HIV status of a person, of his partners and close relatives shall not constitute an obstacle to the access to education and the enjoyment of the right to education.

**Article 40**

Medical check-ups conducted in schools in view of admission or allocation of bursaries shall not include an HIV test.

**Article 41**

The administration of any institution taking care of children, schools, universities and any other educational programmes has the obligation to keep confidential the HIV status of a child, a learner, a student, a teacher or the beneficiary of an educational programme, of any other staff or their partner(s), parents or close relatives if it receives such information. Enquiries and investigations initiated by the administration in this respect shall be prohibited.

**Article 42**

Any isolation, exclusion or suspension of a person as mentioned in the previous article on the account of his real or presumed HIV status or the real or presumed HIV status of his partners and close relatives shall constitute an act of discrimination.

**Article 43**

The ministries in charge of education are under the obligation to frame an educational programme that includes HIV/AIDS and according to which teachers shall inform, educate and sensitise children, learners and students on the prevention and fight against HIV/AIDS taking into account the evolution of scientific research, beliefs, cultures and the system of traditional values.

**CHAPTER IV - Protection of persons living with HIV, their partner(s) and close relatives in the workplace****Article 44**

Any form of discrimination or stigmatisation against a person, his partner(s) or close relatives on the account of his real or presumed HIV status shall be prohibited in the workplace.

The employer shall take the initiative of a disciplinary procedure against any employee who discriminates against another employee on the account of the latter's real or presumed HIV status; legal proceedings may as well be undertaken against that employee by the person who suffered discrimination.

**Article 45**

The employer shall take the necessary measures to avoid any contamination and respect the conditions of hygiene in the workplace.

The employer shall set up a committee of hygiene, security and environment responsible of informing and educating workers on HIV/AIDS.

**Article 46**

A person's HIV status, the status of his or her partners, or that of his close relatives shall not under any circumstances constitute a direct or indirect cause of refusal of employment or termination of employment.

HIV testing shall not be required for medical fitness tests and systematic medical check-ups.

**Article 47**

No employer shall subject anyone to an HIV test prior to recruitment, promotion, training or the allocation of any employment benefit.

**Article 48**

Employees do not have any obligation to inform their employers of their HIV status or the status of their partner(s) or close relatives.

**Article 49**

The employer and other staff members shall be bound to respect confidentiality if they are aware of the HIV status of one of their employees or co-workers, or the latter's partner(s) or any of the latter's close relatives.

**Article 50**

Any worker living with HIV shall be permitted to continue his employment and shall enjoy all usual opportunities for promotion.

**Article 51**

When employees living with HIV are no longer able to fulfil their duties on the account of poor health, they shall benefit from rights pertaining to workers affected by a long term illness.

**Article 52**

No retirement and incapacity insurance scheme shall contain any restrictive clause related to a person's real or presumed HIV status.

**Article 53**

In the event of suspected contamination to HIV in the course of employment, the employee shall be entitled to counselling and to an HIV test at the expense of the employer.

**Article 54**

Any person infected with HIV in the course of his employment shall have the right to institute legal proceedings to claim damages under the rules of ordinary law.

**Article 55**

Any dispute related to an act of discrimination or stigmatisation against a person living with HIV, his partner(s) or his close relatives on the account of his real or presumed HIV status in the workplace shall follow the same procedure as in social matters.

## **CHAPTER V - Protection of persons living with HIV in prison**

### **Article 56**

Notwithstanding the provisions of article 22, all means of protection against the risk of HIV infection shall be made available to detainees and prison authorities in prisons and rehabilitation centres.

### **Article 57**

No detainee shall be subjected to compulsory HIV testing. The rules in Title I chapter II, shall be equally applicable in prisons.

### **Article 58**

A detainee living with HIV shall enjoy the same rights pertaining to other sick detainees.

The person infected with HIV shall subject himself to a regular check-up performed by the health authorities of the prison for a medical follow-up.

### **Article 59**

No detainee shall be isolated from the other detainees on the account of his real or her presumed HIV status.

The above rule shall not apply in the event of an attempt to wilfully transmit the virus or sexual abuse. The decision by the Chief Warden to temporarily isolate a detainee must be confirmed by the competent judicial authority within a period of 48 hours, failing which the measure of isolation shall be lifted.

### **Article 60**

Any detainee or person placed in a rehabilitation centre shall be entitled to the right to be protected against any malpractice, violence - including sexual violence - and shall retain his or her right to institute legal proceedings, notwithstanding disciplinary sanctions against the author of the act of malpractice or violence. The competent authorities shall ensure that the necessary measures are taken to that end.

### **Article 61**

The Ministries of Justice and of Health shall be responsible for the formulation of a joint policy for the fight against HIV/AIDS in prisons.

## **CHAPTER VI - Obligations of health professionals**

### **Article 62**

Any form of discrimination or stigmatisation against any patient on the account of the latter's real or presumed HIV status, or the status of the latter's partner(s) or close relatives shall be strictly prohibited in any health care facility. Such discrimination or stigmatisation shall be punishable by disciplinary sanctions, notwithstanding possible civil or criminal proceedings.

### **Article 63**

The doctor shall have the obligation to inform the patient of his HIV status, which shall remain confidential. Exceptionally, and in conformity with the rules of professional ethics, the doctor may, where a partner is in danger of being infected and without violating confidentiality rules, disclose a patient's HIV status to his or her partner if the patient fails to disclose the same to that partner.



## **CHAPTER VII - Penal provisions**

### **Article 64**

Any act of discrimination or stigmatisation against a person, his partner(s) or close relatives on the account of his real or presumed HIV status shall be punished with a fine of from 100 000 ariary to 400 000 ariary.

### **Article 65**

The disclosure of a person's real or presumed HIV status by another person bound by confidentiality shall be punished with a fine of from 200 000 ariary to 1 000 000 ariary.

### **Article 66**

Any misleading advertisement on medications, care products for the treatment or prevention of HIV/AIDS shall be punished with a fine from 1 000 000 ariary to 2 000 000 ariary.

### **Article 67**

In the event of transmission of HIV by recklessness, carelessness, inattentiveness, negligence or in violation of regulations, the offender shall be punished with imprisonment from 6 months to 2 years and a fine of from 100 000 ariary to 400 000 ariary. The penalty shall be doubled if the act was committed by a health worker or a traditional healer.

## **TITLE IV – Final provisions**

### **Article 68**

Regulatory instruments shall be enacted when need be for the implementation of this law.

### **Article 69**

All provisions contrary to this law are hereby repealed.

### **Article 70**

This law shall be advertised in the Official Gazette of the Republic of Madagascar. It shall be enforced as law of the State.