

Angola: Law 8/04 on HIV and AIDS (2004)

Adopted by the National Assembly on 1 November 2004. Its full title, in Portuguese, is *Lei nº8/04 sobre o Vírus da Imunodeficiência Humana (VIH) e a Síndrome de Imunodeficiência Adquirida (SIDA)*. It protects the rights of persons living with HIV, in particular the right to employment, free public health care, and confidentiality.

Excerpts

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The Acquired Immunodeficiency Syndrome (AIDS) is currently an incurable and deadly disease that has brought the demise of thousands of people all over the world, with a tendency of accelerated spread which constitutes a threat to the socio-economic development of humanity.

The fight against the AIDS epidemic requires the adoption of urgent and efficient measures, with the establishment of norms, on the one hand, aimed at controlling and preventing of infection with Human Immunodeficiency Virus (HIV) and AIDS and, on the other hand, promoting the protection of infected persons.

In these terms, under section 88(b) of the Constitution, the National Assembly approves the following

Chapter 1 - General provisions

Section 1 - Purpose

The present Act aims at

- a) guaranteeing the protection and promotion of the fundamental health of the people through the adoption of necessary measures for the prevention, control, treatment and investigation of HIV/AIDS;
- b) establishing the rights and duties of persons infected with HIV or AIDS patients, health personnel and others in state of risk or contamination, as well as the general population.

Section 2 - Definitions

For the purposes of the present Act, the following shall mean

- a) Anti-retroviral (ARV) - medicine which decreases the aggressive capacity of the HIV virus by retarding the progress of the immunodeficiency and/or restoring, as much as possible, the immunity by increasing the time and quality of life of the person infected;
- b) Antibodies - substances, that form part of the organism, which recognise or detect foreign agents (antigens) that penetrate the organism;
- c) Biosecurity - set of preventive measures designed to maintain control of labour risk factors originating from biological, physical or chemical agents that can put at risk the security of employees, patients, visitors or the environment;
- d) National Commission for the Fight Against AIDS (CNLS) - multi-sectional and multidisciplinary organism created to coordinate and guide the fight

- against HIV/AIDS as well as establishing the necessary articulation at an international level;
- e) Diagnosis - determining a disease through suggestive symptoms that an individual presents and laboratorial and/or imagery confirmation;
 - f) Chronic evolution - set of transformations that progress in character over a long time during the course of the disease;
 - g) Blood Condition - status in which plasma or blood of a healthy or ill individual is found;
 - h) Evolution of the illness - sequence of slow or fast transformations that occur during an illness;
 - i) Infected - individual that finds himself exposed to an infectious agent who either does or does not present signs of illness;
 - j) Infectious - that which produces infection (contagious or transmissible);
 - k) Infection - action originated by pathogenic agents inside a living organism;
 - l) Sexual Transmitted Infections (STI) - infections or diseases that are transmitted through unprotected sexual intercourse, that is, without using a condom;
 - m) HIV - Human Immunodeficiency Virus
 - n) Opportunistic Infections (OI) - infections that take advantage of the presence of an organism which allows disabling diseases to accommodate and manifest themselves;
 - o) HIV positive - individual's condition, as diagnosed with blood or plasma which tests positive for the presence of HIV;
 - p) HIV positive individual - individual infected with HIV who is not yet ill, also referred to as HIV carrier;
 - q) Cutting and perforating material - set of objects used to cut or perforate something. eg razor blades, needles, drills et cetera;
 - r) Biological material - any product coming from a living thing that can be manipulated and that contains contagious material which can cause infection or sickness;
 - s) Prescription - medical prescription;
 - t) Therapy - treatment;
 - u) AIDS - Acquired Immunodeficiency Syndrome;
 - v) Epidemiological surveillance - mechanism through which disease evaluation and evolution is controlled over a determined period of time.

Section 3 - State responsibility

1. In the fight against HIV/AIDS the State is obliged to do with the following
 - a) to accept, through the Government, the fight against HIV/AIDS as a national interest, understood in the aspects of prevention and control of its spread, and consider information, education, treatment, infection investigation and protection of the general population, with respect for the rights and duties of HIV infected persons and AIDS patients as fundamental areas;
 - b) to include in the budget funds destined to prevention and control of OI, STI and HIV/AIDS;
 - c) to formulate and execute socio-economic policies aimed at reducing the risk of infection and the worsening of infected and ill persons;

- d) to improve the health system by guaranteeing the institutional reinforcement of human and financial resources and the purchase and distribution of medicine for OI and ARV to meet the needs in the prevention and treatment of STI's and HIV/AIDS;
 - e) to guarantee public health services and actions towards prevention, treatment and control of OI, STI and HIV/AIDS based on the principle of equal and universal access to all;
 - f) to guarantee the promotion and protection of rights of children that are infected, sick or affected by HIV;
 - g) to guarantee safe blood by being obliged to indemnify persons who are eventually contaminated by blood and/or anything deriving from it that had not been previously tested;
2. The provisions above apply equally to private entities.

Section 4 - Coordination

1. It is the duty of the National Commission for the Fight Against AIDS to coordinate and guide the actions taken in the fight against AIDS.
2. The structure and functioning of the National Commission for the Fight Against AIDS, as well other willing organs, are governed by their own regulation.

Chapter 2 - Rights and duties of persons infected by HIV

Part 1 - Rights of infected persons

Section 5 - Rights

Every person infected with HIV has the right to

- a) guaranteed public health assistance and antiretroviral medicine;
- b) information regarding the evolution of the illness and the options and treatment programmes, as well as the ability to make decisions about the presented options;
- c) be informed about the network and psycho-social support programmes and counselling available;
- d) be introduced into the community without being discriminated against;
- e) work, receive employment and professional training;
- f) confidentiality regarding information referring to his health status;
- g) access to the education system without discrimination;
- h) privacy regarding his life;
- i) free circulation and remain in public places; and
- j) protection by competent organs when they find themselves in situations that put their physical integrity in danger.

Section 6 - Rights of persons deprived of freedom

1. Persons deprived of freedom must not be subjected to compulsory tests to detect HIV infection, except for those persons whose judicial process or medical condition so demands, nevertheless the confidentiality of the analysis and its results must be kept.
2. Persons deprived of freedom who are infected with HIV or suffering from AIDS have the right to receive medical assistance that is immediately

required under conditions which do not lessen their dignity or render treatment inaccessible.

3. A violation of any provision of this section is punishable in terms to be defined by regulation.

Section 7 - Rights of the employee

1. No employee may see his labour status prejudiced due to his health status in relation to HIV/AIDS.

2. In terms of a medical decision on his health status an employee may have his labour status altered, but with respect to his right to equal opportunity, merit and capacity to execute his job, and without changing his salary and other social benefits.

3. The employer is obliged to educate, inform, train and sensitize his employees on HIV/AIDS.

4. A violation of any provision of this section is punishable in terms to be defined by regulation.

Section 8 - Justifiable absence

1. The absence of an employee infected with HIV in the workplace for the purposes of receiving medical assistance for a period not exceeding 120 days, is considered justifiable for reason of illness in terms of legislation currently in place.

2. The employee who finds himself in the conditions referred to above is protected from dismissal, reduction in salary or any other form of labour discrimination.

3. An employee suffering of AIDS who is absent from the workplace for 180 days whether consecutive or not, has the right to receive his full salary as long as the absence is justified by a medical document.

Section 9 - Presentation of the test

The presentation of an HIV test shall not constitute a pre-requisite for applying for employment, bank loan and maintenance of a labour-legal relationship, not even for enrollment in defence and security organs.

Section 10 - Blood condition

Health professionals who become aware of the HIV positive status of a patient have the duty to inform that patient of the infectious nature of the disease as well as the duty to inform that patient of the means of transmission and prevention of HIV.

Section 11 - Occupational exposure

1. Transmission of HIV resulting from the exercise of professional activity duly approved by the competent entities is considered a professional illness of serious chronic evolution in terms of the legislation currently in place.

2. Any employee who, in the course of exercising his function, gets infected with HIV has the right to claim reparation in terms to be fixed by regulation.

Section 12 - Confidentiality

1. Health professionals and others who are aware of the status of a patient or treat a person infected with HIV are obliged to keep secrecy regarding the consultation, diagnosis and progress, except in the case of minors where the persons exercising parental authority need to be informed.
2. Confidentiality may not be invoked in the case of information that is not nominal to the detected cases.

Section 13 - Violation of professional secrecy

1. A person who, by reason of his employment or profession, discloses the HIV positive status of another person except in circumstances provided in the present act, is punished in terms of section 290 of the Penal Code.
2. The breach of secrecy is only permitted in the following cases
 - a) when there is authorisation from the patient or by legal duty, namely notification to health authorities and completion of a death certificate;
 - b) when there is valid reason for the protection of the life of a third person, namely the spouse, sexual partner or the members of a group of drug users, in case where the patient refuses to furnish information regarding the condition of the infection.

Part 2 - Duties of infected persons

Section 14 - Duties

Persons infected with HIV shall

- a) adopt a responsible sexual behaviour;
- b) adopt habits and behaviour which limits the possibility of infecting others;
- c) use condoms when having sexual relations;
- d) inform the persons with whom they have or intend to have sexual relations of their status;
- e) inform the health personnel who attend to them of their situation so that services are administered adequately and appropriate biosecurity measures are taken;
- f) inform their spouses or sexual partners about their status.

Section 15- Transmitting

1. The intentional transmission of HIV constitutes a crime and is punishable in terms of section 353 of the Penal Code.
2. A person who, through negligence, inconsideration or failure to observe regulations, infects another, is punished in terms of section 368 of the Penal Code.

Chapter 3 - Information, education and investigation

Section 16 - Social communication organs

Public and private social communication organs shall secure the issuing of free information about HIV/AIDS.

Section 17 - Information

The population must

- a) be informed and educated about aspects relating to HIV/AIDS in line with the directives formulated by the National Commission for the Fight Against AIDS;
- b) be informed and educated against the discrimination and stigmatisation of persons with HIV.

Section 18 - Education

1. The Ministry of Education shall proceed to introduce contents referring to sexuality and HIV/AIDS in all school curricula.
2. Learning institutions and workplaces shall adopt norms that aim to inform and educate about HIV/AIDS.
3. State organs of inspection and supervision shall keep watch for adherence to the provisions above.
4. Failure to adhere to the provisions in subsection 3 is punishable by a fine to be defined by self regulation.
5. The revenue from the fines is destined to the Fund for the Fight Against AIDS.

Section 19 - Notion of experimental research

Experimental research refers to activities aimed at producing knowledge and technologies in the applicable field, operational and of basic science, scientifically recognised by its methods of observation, techniques and interferences.

Section 20 - Experimental research on human beings

All investigations that involve human beings, whether individual or group of individuals shall be submitted in specific research protocol in the Portuguese language to the National Ethics and Research Commission.

Section 21 - National Ethics and Research Commission

The Ministry of Health must, within 90 days after this Act comes into force, create the National Ethics and Research Commission which shall establish special provisions to be observed in relation to investigation, vaccine tests, use of placebos, informed consent among other ethical aspects inherent to research on human beings.

Chapter 4 - Prevention, control and treatment

Part 1 - Prevention and control

Section 22 - Tests for the detection of anti-HIV antibodies

1. It is prohibited to realize compulsory tests for the diagnosis of HIV infection, except in the following cases
 - a) when, in terms of medical consideration to which a clinical process must be conducted, there exists a need to conduct a test for the exclusive purposes of finding the best suitable treatment for the patient;
 - b) when dealing with the donation of blood, breast milk, semen, organs and human tissue;
 - c) when required by criminal procedure confirmed by the competent judicial authority; and

d) HIV tests on minors can only be realised with permission from parents or legal guardians of the minor who must be informed of the need for the test and must express their consent in writing for the realisation of the test, save for the exceptions provided in the present Act and the legislation currently in place; while respecting the best interest of the child at all times.

Part 2 - Treatment and biosecurity

Section 23 - Safe blood

1. It is the duty of the State to guarantee safe blood. It has the duty to provide reparation to a person who has been infected by blood which was not previously tested in public hospitals.
2. Blood products for transfusion must meet the norms of the National Blood Centre.
3. The act of transfusing unsafe blood that does not comply with the above provisions is punishable in terms subsection 2 of section 15 of the present act.

Section 24 - Blood and organ donation

1. Persons infected with HIV cannot donate blood, breast milk, organs or tissue for therapeutic use, except in the scope of experimental research.
2. A violation of the above provision is punishable in terms subsection 1 of section 15 of the present Act.

Section 25 - Monitoring and control mechanisms

The Ministry of Health shall establish uniform mechanisms for control and registration appropriate for epidemiologic surveillance which guarantee the anonymous and other exceptional situations predicted by law and/or to be defined according to the guidelines of World Health Organisation.

Section 26 - Laboratories

Laboratories or blood banks where tests for the diagnosis of HIV are conducted shall be properly registered at the National Board of Public Health and are obliged to maintain an up-to-date system of registration and information of health authorities.

Section 27 - Medicine

1. It is the duty of the Minister of Health to sponsor antiretrovirals to be used at each stage of the infection as well as regulate their commercialisation.
2. The provision of antiretroviral medicine is financed by the State.
3. Marketing of medicine and treatment for AIDS must meet the norms established by the Minister of Health.

Section 28 - Hospital waste

The State must create mechanisms for the treatment of hospital waste and biological material in accordance with the norms established by the World Health Organisation.

Section 29 - Exemptions

Reagents, antiretroviral medicine, treatment of opportunistic infections, as well as other material acquired by the State directed at and exclusively used in the scope of fighting HIV/AIDS, are exempt from any form of tax or custom tariffs.

Chapter 5 - Final provisions**Section 30 - Sanctions**

A violation of the provisions of the present act is punishable by disciplinary civil and criminal sanctions in terms of the applicable legislation.

Section 31 - Doubts and omissions

Doubts and omissions resulting from the interpretation and application of the present act shall be resolved by the National Assembly.

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