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**THE HIV AND AIDS PREVENTION AND CONTROL
(AMENDMENT) BILL, 2015**

A Bill for

**AN ACT of Parliament to amend the HIV and
AIDS Prevention and Control Act and for
connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the HIV and AIDS Prevention and Control (Amendment) Act, 2015.

Short title.

2. Section 2 of the HIV and AIDS Prevention and Control Act, hereinafter referred to as the “principal Act”, is amended by inserting the following new definition immediately after the definition of the word “consent” –

Amendment of
section 2 of No. 14
of 2006.

“county executive committee member” means the county executive committee member for the time being responsible for matters relating to health;

“Council” means the National Aids Control Council established under Legal Notice No. 170 of 1999 pursuant to section 3 of the State Corporations Act.

Cap 446.

3. Section 4 of the principal Act is amended—

Amendment of
section 4 of No. 14
of 2006.

(a) by deleting subsection (1) and substituting therefor the following new sub-section—

(1) The national and county governments shall promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS through a comprehensive countywide educational and information campaign conducted by the governments through their ministries, departments, authorities and other agencies.

(b) in subsection(3) by deleting the words “the Government” appearing immediately after the words “in this section” and substituting therefor the words “the national and county governments.”

4. Section 11 of the principal Act is amended in subsection (1) by inserting the words “and county executive

Amendment of
section 11 of No. 14
of 2006.

committee members” immediately after the words “professional associations of healthcare providers.”

5. The principal Act is amended by inserting the following new Part immediately after Part II —

Insertion of new Part
IIA in No. 14 of
2006.

PART IIA—COUNTY AIDS CONTROL COMMITTEES

Establishment of County
HIV and AIDS
prevention and control
committees.

12A (1) There is established in each county, a county HIV and AIDS prevention and control committee which shall be a committee within the department responsible for health within the county.

(2) The county HIV and AIDS prevention and control committee shall consist of—

- (a) one person with knowledge and experience in matters relating to HIV and AIDS prevention and control appointed by the county governor and who shall be the chairperson to the committee;
- (b) one person nominated by the county executive officer in charge of health in the county who shall be the secretary to the committee;
- (c) one man and one woman with knowledge and experience in matters relating to health within the county nominated by the Council; and
- (d) one man and one woman appointed by the county governor to represent such special interests within the county as the governor shall determine.

Terms and conditions of
service

12B (1) The persons under subsection (1)(a) and (d) shall be competitively recruited by the county public service and appointed by the county governor by notice in the county gazette for a term of three

years renewable for one further term of three years.

(2) The members of the Committee shall be paid such allowances as the county executive committee member shall determine in consultation with the Salaries and Remuneration Commission.

Functions of the County
HIV and AIDS
prevention and control
committees.

12C (1) The functions of the county HIV and AIDS prevention and control committees shall be to—

- (a) implement the policies, guidelines and strategies developed by the Council in the prevention and control of HIV and AIDS;
- (b) carry out activities to improve the education, training and skills of health professionals involved in the prevention, detection and control of HIV and AIDS within the county;
- (c) collaborate with the Council in the implementation of HIV and AIDS prevention initiatives, including research, education and public policy development and implementation within the county;
- (d) initiate, undertake and participate in the collection, preparation, production and dissemination of data that is useful in the prevention and control of HIV and AIDS within the county;
- (e) develop and disseminate findings derived through evaluations and the collection of data under paragraph (d);
- (f) collaborate with the Council in the establishment of counseling centres and support group centres for persons affected by HIV and AIDS;
- (g) ensure that issues concerning HIV and AIDS prevention and control

are incorporated into the programmes and strategies of the county;

- (h) monitor and evaluate the performance of the county in the implementation of policies, initiatives and plans on health and in particular, HIV and AIDS prevention and control, formulated by the National government;
- (i) develop and disseminate public information and education programs for the prevention, detection, and control of HIV and AIDS within the county;
- (j) collaborate with the Council and relevant agencies in the county in establishing a co-ordinated approach in facilitating the access to health care facilities and treatment within the county;
- (k) establish linkages and networks with local, international and research institutions and development partners in mobilising and sourcing for funding and other resources for the prevention and control of HIV and AIDS within the county; and
- (l) advise the Council on the activities of the committee regarding the implementation of interventions in the county and their impacts in the control, care and treatment of persons with HIV and AIDS within the county.

(2) The county HIV and AIDS prevention and control committees shall—

- (a) be under the control and direction of the county governor in the implementation of its functions in

accordance with the policies of the National government; and

- (b) shall collaborate with the Council in the carrying out of its functions under subsection (1).

Secretariat to the Committee.

12D The county chief officer in each county shall designate such officers within the department responsible for health as he or she may consider necessary to serve as the secretariat to the county HIV and AIDS prevention and control committee for the proper and efficient exercise of the functions of the committee under this Act.

Vacancy.

12E (1) The office of a member of the Committee appointed under section 12A shall become vacant if the member—

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Committee;
- (e) resigns in writing addressed to the county governor;
- (f) is removed from office by the county governor for—
 - (i) being unable to perform the functions of his office by reason of mental or physical infirmity; or
 - (ii) failing to declare his interest in any matter being considered or to be considered by the Committee; or

(g) dies.

(2) Before the removal of a member under subsection (1)(f), the county governor shall request the Committee to—

- (a) investigate the circumstances giving rise to the proposed removal; and
- (b) make recommendations on whether or not the member should be removed from office.

Reports of the County
HIV and AIDS
prevention and control
committees.

12F (1) Every county HIV and AIDS prevention and control committee shall submit—

- (a) a quarterly report of its activities under this Act and its financial records to the county executive committee member; and
- (b) an annual report of its activities under this Act to the Council,

in such manner as the county executive committee member shall, in consultation with the Council, specify.

Non-money Bill status of
this Part.

12G (1) For the avoidance of doubt, nothing in this Part is intended to or may be construed as providing for or dealing with—

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.

(2) There may be established a fund which shall consist of the monies specified under subsection (3).

(3) Any expenses that may be occasioned in the implementation of this Act shall be provided from –

- (a) such gifts, grants or donations as may be given;
- (b) such monies as may, in the future, be provided by the County Assembly for defraying the expenses incurred in the implementation of this Act; and
- (c) such other monies that may lawfully accrue in the discharge of the functions under this Act, not being monies accruing pursuant to Article 114 of the Constitution.

6. Section 45 of the principal Act is amended by inserting the words “in consultation with county executive committee members” immediately after the words “the Minister.”

Amendment of
section 45 of No. 14
of 2006.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

This Bill seeks to amend the HIV and AIDS Prevention and Control Act to ensure the participation of County Governments in the management, prevention and control of HIV and AIDS as health issue which is a devolved function under the Constitution.

The Bill seeks to also include the participation of county governments in the formulation and implementation of policies and strategies formulated by the National AIDS Control Council for the prevention and control of HIV and AIDS in the counties.

The Bill also seeks to provide for the establishment of County HIV and AIDS Prevention and Control Committees at the county level of government. Given the fact that the infection rate is yet to be brought under control and the fact that access to health facilities and medication for the management of HIV and AIDS in Kenya continues to be a challenge, it would be necessary to step up the fight against the pandemic at the county level of government. This would require the establishment of the necessary mechanisms and infrastructure which would serve as a vehicle through which county governments can bring HIV and AIDS under control and work towards having an AIDS free society in Kenya.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that affect the functions and powers of the County Governments as set out in Part II of the Fourth Schedule to the Constitution. Far from health being a devolved function under the constitution, HIV and AIDS has a direct impact on the functioning of the County Governments as it affects the allocation of financial and human resources in the management and control of HIV and AIDS and affects the socio-economic progression of a county. The counties are therefore directly involved in ensuring the control and prevention of HIV and AIDS at the county level.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The proposed amendment under clause 5 to insert section 12G into the Act specifically removes the Bill from the ambit of the matters listed under Article 114 of the Constitution. The clause further provides that any expenses that may be occasioned by the implementation of the Act are to be provided from such gifts, grants or donations as may be given or from such monies as the National Assembly may, in the future, provide for the

defraying of such expenses. The Bill also provides that a fund may be established for the purposes of the custody of such funds. The Bill does not therefore appropriate funds for the implementation of the Act; any appropriation would be effected through separate legislation which would be introduced and enacted in terms of Article 114 of the Constitution. This Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 26th March, 2015.

WILFRED MACHAGE,
Senator.

Section 4 of CAP 246A which it is proposed to amend—

4. HIV and AIDS education and information

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

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

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

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

Section 11 of CAP 246A which it is proposed to amend—

11. Guidelines on surgical and similar procedures

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

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

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

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

(4) In this section, “Minister” means the Minister for the time being responsible for matters relating to health.

Section 45 of CAP 246A which it is proposed to amend—

45. Regulations

Subject to this Act, the Minister may make regulations—

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