

**The HIV/AIDS MANAGEMENT & PREVENTION ACT 2003
(HAMP ACT)**

Hitelai Polume-Kiele, Acting Attorney General, PNG.

1. Purpose

The HIV/AIDS Management and Prevention Act 2003 was passed in 2003; its main purpose is to manage and provide avenues towards prevention and spread of HIV/AIDS.

Its main emphasis is that People living with HIV/AIDS) PLWHA have the same rights as everyone else and therefore need protection.

2. Objective of Act

- protect the privacy; liberty and mobility rights of persons infected or affected by HIV/AIDS;
- provide an atmosphere where persons are encouraged to go in for voluntary testing and post-test counseling and support services; (Section 1);
- prevents mandatory HIV testing;
- safeguards confidentiality;
- empowers an affected person to seek redress from the Courts;
- allows for penalties to be imposed by the Courts either through a monetary fine, a jail term or both.

3. Enforcement of Rights under the Act

- Section 6 prohibits discrimination against PLWHA (e.g. employment, partnership, education etc). In situations where discrimination has occurred.
- Section 28 provides for specific remedies that are available to a PLWHA should they apply to the Courts. Relief that can be granted by the Courts fall in the following:-
 - Declaration that the form of discrimination complained is unlawful and should repeated or to be continued;

- Ordering that an apology be made to the person discriminated against;
- Make an award for Damages for losses incurred and/or pain and suffering;
- Make an order for restoration of access or admission to the place from which the person has been excluded.
- Impose a fine or jail term or both

4. **Obligations**

The Act places an obligation on persons dealing with affected persons to do the following:-

- Maintain confidentiality
 - Refrain from forcing persons seeking employment, accommodation, education or other circumstances to take an HIV test.
 - Refrain from insisting that a person provide proof that one is not infected
 - Empowers ONLY a medical practitioner is to request or conduct an HIV test.
 - Declares that an HIV test can only be done on a person with their *voluntary informed* consent.
 - Declares that there is a need to notify a partner of the circumstances of a PLWHA, ***it can only be done with the consent*** of the PLWHA or in circumstances of death or a real risk of transmission of HIV.
 - Declares that disclosure can occurred in limited circumstances, e.g. in the interests of public safety
 - Makes it mandatory to ensure that a person have access to a “means of protection” of himself or another from HIV. This places an obligation on the State to provide awareness materials (e.g. use of condom, syringes).
 - Declares that failure to allow access to any of the protection referred to above can result in penalties being imposed by the Courts.

5. **Other applicable legislation**

- Criminal Code 1974

The issue of “intent” determines guilt on the part of a person’s fault. The intent can either be reckless or negligent. Intentionally transmitting or attempting to transmit HIV to another person amounts to an “assault causing bodily harm” within the meaning of the *Criminal Code, 1974*.

Intentional transmission amounts to an “unlawful killing” within the meaning of the *Code*. However it is a defence to this charge if the other person (the ‘victim’) was aware of the risk of infection and voluntarily accepted the risk; or if already infected with HIV; or where in the case of transmission through sexual intercourse, a condom was used; or if the accused person was not aware of being infected with HIV.

The transmission of HIV by a woman to her child before, during or after the birth of a child not included and therefore does not come within the meaning of the *Criminal Code*.

The Criminal Code provides for specific procedures for bringing “unlawful acts” within the meaning of the legislation to court where a penalty for an unlawful act is a fine of K5000.00, imprisonment for a term not exceeding 3 years or both, (Section 286 of Papua New Guinea’s *Criminal Code, 1974*)

In a situation where a corporation is involved, a fine of up to K10000.00 can be imposed.

6. **The Law of Negligence – Wrongs (Miscellaneous) Provisions Act – Claims By and Against the State Act 1996.**

This Act also deals with:-

- (i) negligent transmission of HIV and the notion of “duty of care”. In that a person is considered “negligent” when there is failure to exercise “reasonable care”.

(Section 1, Wrongs Act relates to the “General Liability of State, in terms of servants and/or agents of State; e.g. doctors and health care workers were negligent in the disclosure of the identity of an HIV+)

- (ii) Imposition of a duty on a person to practice safe sex and to disclose their HIV status to all intended sexual partners.

- (iii) In a situation where a PLWHA behaviour exposes others to a significant risk of infection
- (iv) Penalties that can be imposed should there be “failure” to adhere to the duties of an affected person.

7 **Conclusion**

The Act provides an enabling and supportive environment for people living with HIV. It is meant to create a friendly environment where persons are encouraged to go in for voluntary testing and post-test counseling and support services. It prevents mandatory HIV testing and ensures that confidentiality is maintained. It further prevents disclosure of information to third parties except in limited circumstances, e.g. clinically necessary.

The Act imposes a duty of “reasonable care” on the part of a PLWHA and the duty to disclose one’s HIV positive status to all intended sexual partners. It is an offence to discriminate against or stigmatize a person infected or affected by HIV/AIDS whether in terms of employment, partnerships, professional or sporting organizations, education, provision of accommodation or housing and provision of or access to goods, services and public facilities. And finally where there are instances of any form of discrimination or failure to exercise “reasonable care” in disclosure of one’s status, it empowers the Court to impose penalties where appropriate.

Finally, the Act recognizes and deals with situations and circumstances of an affected person in a humane and protective manner and at the time places a duty on all affected persons to be responsible for their behaviours when dealing with other members of the community.