



REPUBLIC OF KENYA



**OFFICE OF THE PRIME MINISTER  
MINISTRY OF STATE FOR PUBLIC SERVICE**



**PUBLIC SECTOR WORKPLACE POLICY  
ON  
HIV AND AIDS**

Revised May 2010

Ministry of State for Public Service

**Public Sector Workplace Policy**

on

**HIV and AIDS**

## TABLE OF CONTENTS

FOREWORD.....	v
PREFACE .....	vi
GLOSSARY OF TERMS AND CONCEPTS.....	viii
ACRONYMS AND ABBREVIATIONS.....	xi
1.0 Introduction.....	1
2.0 Rationale.....	3
3.0 Guiding Principles.....	4
3.1 Recognition of HIV and AIDS as a workplace issue.....	4
3.2 Zero tolerance to stigma and discrimination.....	4
3.3 Attention to Gender issues.....	4
3.4 Safe and Healthy Work Environment.....	4
3.5 Social Dialogue.....	5
3.6 Screening for purpose of Employment/Recruitment.....	5
3.7 Confidentiality.....	5
3.8 Continuation of Employment Relationship.....	5
3.9 Prevention.....	5
3.10 Care, Support and Treatment.....	6
3.11 Management Responsibility.....	6
3.12 Partnerships.....	6
3.13 Fair Labour Practices.....	6
3.14 Workplace Ethics.....	6
3.15 Greater involvement of People Living with HIV and AIDS (GIPA).....	6
4.0 POLICY GOAL, OBJECTIVES AND SCOPE.....	7
4.1 Goal.....	7
4.2 Objectives.....	7
4.3 Scope.....	7
5.0 LEGAL AND REGULATORY FRAMEWORK.....	8
5.1 The Constitution of Kenya.....	8
5.2 Service Commissions Act Cap 185 (1985 Revised).....	8

5.3	The Employment Act, 2007.....	9
5.4	HIV and AIDS Prevention and Control Act (2006).....	10
5.5	The Occupational Safety and Health Act, 2007.....	10
6.0	MANAGEMENT OF HUMAN RESOURCE.....	11
6.1	Recruitment and Promotion.....	12
6.2	Sick Leave.....	12
6.3	Working Hours.....	12
6.4	Counselling Services.....	12
6.5	Termination of Employment.....	12
6.6	Medical Privileges.....	13
6.7	Deployment and Transfers.....	13
6.8	Relief Services.....	13
6.9	Housing and Accommodation.....	13
6.10	Training and Development.....	14
6.11	Sexual Harassment, Abuse and Exploitation.....	14
6.12	Gender Responsiveness.....	14
6.13	Exposure at the Workplace.....	14
6.14	Retirement on Medical Grounds.....	15
6.15	Terminal Benefits.....	15
6.16	Confidentiality and Disclosure.....	15
6.17	Stigma and Discrimination.....	15
6.18	Grievances and Concerns.....	16
6.19	Management Responsibility.....	16
6.20	Employee Responsibility.....	16
7.0	HIV AND AIDS PROGRAMMES IN THE WORKPLACE.....	17
7.1	Prevention and Advocacy.....	17
7.2	Treatment, Care and Support of the Infected and Affected.....	17
7.3	Social Protection Programmes.....	18
8.0	IMPLEMENTATION.....	18
8.1	Institutional Framework.....	19
8.2	Roles, Responsibilities and Accountability.....	20
8.2.1	Role of NACC.....	20

8.2.2	Role of Permanent Secretary, Ministry of Public Service.....	21
8.2.3	Role of Permanent Secretaries/CEOs/HODs.....	21
8.2.4	Role of HIV and AIDS Secretariat in the Ministry of Public Service	21
8.2.5	Role of AIDS Control Units.....	22
9.0	MONITORING, EVALUATION AND RESEARCH.....	23
	ANNEX 1:.....	24
	ANNEX 2:.....	25

## FOREWORD

HIV/ AIDS remains a major challenge in the Public Service. The impact of the epidemic continues to adversely affect service delivery. It is against this background that the government adopted a coordinated approach in the fight against the pandemic in the public sector by developing a Public Sector Workplace Policy on HIV and AIDS in 2005.

During the implementation of the policy various challenges have been experienced necessitating the review of the policy to incorporate the emerging issues in the management of HIV and AIDS. Consequently, the Ministry of State for Public Service, in collaboration with key stakeholders undertook the review of the Public sector Work Place Policy on HIV and AIDS (2005).

The purpose of this policy is to provide a national framework to address HIV/AIDS in the public sector. It will also ensure the Government, in collaboration with other stakeholders, is able to sustain the provision of adequate quality services. This policy is aligned with pillar II of the Kenya National AIDS Strategic Plan III (KNASP III), which focuses on mainstreaming HIV/AIDS issues in sectoral programmes.

It has been observed that performance contracting in the public service is a vital tool in the fight against HIV/AIDS. Consequently, targets relating to aspects of HIV/AIDS have been incorporated in the performance objectives of public service institutions. However, this calls for expanding of targets of HIV/AIDS in Performance Contracts of Ministries/Departments/ Agencies (MDAs) to include areas that have a direct and positive impact on the lives of the affected and the infected.

The policy will assist public sector institutions in mainstreaming of HIV/AIDS in their core functions. It will guide each sector on implementing workplace programmes to facilitate effective and appropriate response to the management and prevention of HIV and AIDS at the workplace. This reviewed policy is an affirmation of the Government's commitment to intensify its campaign against the spread of HIV, and ensure a harmonised response in the Public Service.

The ultimate goal of this policy is to have a healthy, productive and cost effective workforce that will provide adequate and quality services to the citizenry. This will lead to improved livelihoods for the public servants and their dependants.

I wish to thank the HIV/ AIDS Secretariat in the Ministry of State for Public Service for their effort and commitment in the review of this policy. I also wish to thank all the stakeholders who participated in one way or another in the review process.

A handwritten signature in black ink, appearing to read 'Dalmas Otieno Anyango', with a long horizontal flourish extending to the right.

**Hon. Dalmas Otieno Anyango, EGH**  
Minister of State for Public Service

## PREFACE

Challenges and changes experienced in the implementation of the Workplace Policy on HIV and AIDS 2005 have made it necessary to revise this policy. Despite the significant gains achieved from its implementation, the HIV/AIDS pandemic continues to impact negatively with profound socio-cultural and economic consequences. Some of these challenges include: changes in the legislative environment, spread of new infections, need to deliver adequate integrated quality services to the affected and infected, among others.

The government has demonstrated both concern and commitment by taking concrete steps in the management of the pandemic and providing guidance in the development of sector specific programmes. Towards this end, the government has enacted various legal and regulatory acts desired to fight the HIV/AIDS pandemic. These include the Sexual Offences Act 2006, the HIV/AIDS Prevention and Control Act 2006, Employment Act 2007 and the Occupational Safety and Health Act of 2007, among others. Further, the government has enhanced provision of adequate care and support services to the infected and affected.

To realise Kenya's Vision 2030 and combat HIV/AIDS (under Millennium Development goal six), the government is committed and determined to implement this policy. The policy is intended to address human resource issues in the workplace that arise from HIV/AIDS such as prevention, stigma, discrimination and gender disparities. It engenders safe and healthy work environment and fair labour practices. In addition, it lays down the institutional framework in the implementation, monitoring and evaluation of the policy.

This policy will be reviewed from time to time to guarantee its relevance to the needs of the public sector and the national goals regarding the fight against HIV/AIDS. Individual sectors are expected to mainstream this policy and align it to sector specific mandates and programmes.

The policy focuses on improving productivity, reducing stigma and discrimination and enhancing the quality of employees.

By implementing this policy, the government will have substantially mitigated the impact of the pandemic in the Public Service.



**Titus M, Ndambuki, CBS**

Permanent Secretary, Ministry of State for Public Service



## GLOSSARY OF TERMS AND CONCEPTS

<b>Affected</b>	A person who is feeling the impact of HIV/AIDS through sickness or loss of relatives, friends or colleagues or a person whose life is changed in any way by HIV/AIDS due to the broader impact of the epidemic.
<b>AIDS</b>	Acquired Immune Deficiency Syndrome: a cluster of medical conditions often referred to as opportunistic infections.
<b>Care</b>	Promotion of a person's well-being through medical, physical, psychosocial, spiritual and other means.
<b>Comprehensive Care</b>	A range of services offered to HIV-positive persons including, treatment, clinical, physical, nutritional and psychosocial support.
<b>Counselling</b>	A session where a person with difficulties is assisted to think through the problem(s) to find a possible solution.
<b>Confidentiality</b>	The right of every person, employee or job applicant to have his/her medical/ other information, including HIV status kept secret.
<b>Evaluation</b>	The assessment of the impact of a programme at a particular point in time.
<b>HIV</b>	Human Immunodeficiency Virus: a virus that weakens the body's immune system, ultimately causing AIDS.
<b>HIV Screening</b>	A medical test to determine a person's sero-status.

<b>Infected</b>	A person who is living with the virus that causes AIDS.
<b>Manager</b>	A person who is in charge of staff and other resources.
<b>Monitoring</b>	Continuous assessment of a programme.
<b>Pandemic</b>	An epidemic occurring simultaneously over a wide area and affecting many people.
<b>Policy</b>	A statement setting out a department's or organisation's position on a particular issue.
<b>Post Exposure Prophylaxis</b>	Immediate treatment given to a person who is presumed to have been exposed to HIV.
<b>Prevalence of HIV</b>	The number of people with HIV at a particular point in time, often expressed as a percentage of the total population.
<b>Prevention</b>	A programme designed to combat HIV infection and transmission.
<b>Programme</b>	A plan of action that includes planning, resource allocation, implementation, monitoring and evaluation.
<b>Sexual Harassment</b>	The act of persistently making unwelcome sexual advances or requests against the wishes of a person.

<b>Support</b>	Services and assistance that are provided to help a person cope with difficult situations and challenges.
<b>Treatment</b>	A medical term describing the steps taken to manage an illness.
<b>Voluntary Counselling and Testing</b>	A process that enables people to willingly undergo a medical test to know their sero-status to help them plan their lives and make informed decisions.
<b>Workplace</b>	Occupational settings, stations and places where workers spend time for gainful employment.
<b>Workplace Programme</b>	An intervention to address a specific issue within the workplace.

## **ACRONYMS AND ABBREVIATIONS**

<b>ACU</b>	Aids Control Unit
<b>AIDS</b>	Acquired Immunodeficiency Syndrome
<b>ARVs</b>	Antiretrovirals
<b>CEO</b>	Chief Executive Officer
<b>DPM</b>	Directorate of Personnel Management
<b>GIPA</b>	Greater Involvement of People Living with HIV/AIDS
<b>HAPC</b>	HIV/AIDS Prevention and Control
<b>HBHTC</b>	Home Based HIV Testing and Counselling
<b>HIV</b>	Human Immunodeficiency Virus
<b>HOD</b>	Head of Department
<b>IEC</b>	Information, Education and Communication
<b>ILO</b>	International Labour Organisation
<b>KAIS</b>	Kenya AIDS Indicator Survey
<b>KNASP</b>	Kenya National AIDS Strategic Plan
<b>MDGs</b>	Millennium Development Goals
<b>M&amp;E</b>	Monitoring and Evaluation
<b>MIR</b>	Minimum Internal Requirements
<b>MSPS</b>	Ministry of State for Public Service
<b>MTEF</b>	Medium Term Expenditure Framework
<b>NACC</b>	National AIDS Control Council
<b>PEP</b>	Post-Exposure Prophylaxis
<b>PLWHA</b>	People Living with HIV/AIDS
<b>PITC</b>	Provider Initiated Testing and Counselling

<b>PMTCT</b>	Prevention of Mother to Child Transmission
<b>PS</b>	Permanent Secretary
<b>PSCK</b>	Public Service Commission of Kenya
<b>RBM</b>	Results-Based Management
<b>STIs</b>	Sexually Transmitted Infections
<b>TB</b>	Tuberculosis
<b>TOR</b>	Terms of Reference
<b>VCT</b>	Voluntary Counselling and Testing

## 1.0 INTRODUCTION

Since the Kenyan Government adopted a multi-sectoral strategy to address HIV/AIDS and declared the pandemic a national disaster in 1999, substantial progress has been achieved. New infections have been prevented and the annual number of AIDS-related deaths reduced. However, the pandemic continues to be a global health priority and constitutes one of the most formidable challenges to development and social progress. It continues to have an enormous impact in households, communities, businesses, public services and national economies. It is eroding decades of development gains, undermining economies, threatening security and destabilising societies. The number of people living with HIV/AIDS worldwide continued to grow in 2008, reaching an estimated 33.4 million. The total number of people living with the virus in 2008 was 20% higher than in 2000, and the prevalence was roughly threefold that of 1990. Sub-Saharan Africa remains the most heavily affected by HIV, with the total number of people living with HIV increasing from 19.7 million in 2001 to 22.4 million in 2008.

In Kenya, HIV/AIDS has profoundly disrupted the economic and social bases of families. It mainly affects people in their prime years of life, the hardest hit being those in the productive ages of between 15 and 49 years. The 2007 Kenya AIDS Indicator Survey (KAIS, 2007) estimated the national HIV prevalence rate for adults aged 15-49 to be 7.4% and at 7.1% in the age group 15-64 years, which is equivalent to 1.4 million Kenyans. HIV/AIDS is also affecting the fundamental rights at the workplace, particularly with respect to discrimination and stigmatisation of people living with and affected by the pandemic.

The KAIS report also showed variation in prevalence rate by regions, with Nyanza province having the highest (14.9%), Nairobi (8.8%) and Coast (8.1%). The prevalence rate among the urban population is 8.4% compared to 6.7% in the rural population. The report also estimated that 70% of people infected with HIV live in rural areas.

The illness and subsequent deaths of workers resulting from HIV and AIDS has an enormous impact on national productivity and earnings. For instance, labour productivity drops, the benefits of education are lost and resources that would have been used for

wealth creation and poverty reduction are diverted to treatment, care and support. Similarly, savings are declining and low participation and/or loss of human capital is affecting production and quality of life. The sum total of these has a negative impact on the National Gross Domestic Product.

Through Sessional Paper No. 4 of 1997 on AIDS in Kenya, the Government put in place a national policy and defined an institutional framework to strengthen intervention measures for prevention, management, control and mitigation of impacts of HIV/AIDS. It was within this framework that the National AIDS Control Council (NACC) was set up in 1999 and charged with the responsibility of resource mobilisation, policy development and co-ordination of multi-sectoral HIV/ AIDS response campaign. In addition, the Government has established a Cabinet Committee on National Campaign against HIV/ AIDS under the chairmanship of His Excellency the President.

The review of the Public Sector Workplace Policy on HIV and AIDS was necessitated by the changes that have taken place since it's development in 2005. For example, in 2006, the HIV and AIDS Prevention and Control Act was enacted, giving rise to the need to revise the public sector workplace policy to align it with the Act. At the same time, the country's new long-term development plan - Vision 2030 - has HIV (under its Social Pillar) as a critical factor in the population that must be addressed to ensure a healthy population which is key to economic development.

The Policy aims to provide guidance for the management of employees in the public sector who are infected and affected by HIV/AIDS and prevention of new infections. It also defines the public sector's position and practices for the multi-sectoral response to HIV/AIDS pandemic, and particularly addressing itself to Pillar 2 of the KNASP III on sectoral mainstreaming of HIV. To this end, this policy provides guidance for comprehensive integration of HIV prevention, treatment and socio-economic protection interventions in the public sector. In addition, it provides guidance for those who deal with the day-to-day HIV/AIDS related issues and problems that arise within the workplace and outlines employees' rights, responsibilities and expected behaviour in the workplace. The policy will also guide HIV interventions for achieving MDG Goal Six.

The policy covers key areas such as legal and regulatory framework, guiding principles, management of human resource HIV/AIDS programmes in the workplace and implementation.

## 2.0 RATIONALE

HIV/AIDS present the greatest challenge to the development of this country and has put immense pressure in the workplace. It has led to loss of skilled, high-level professionals and experienced workers, loss of man hours due to prolonged illnesses, absenteeism, high employee healthcare costs, reduced performance, increased stress, and stigma. It has also caused discrimination and loss of institutional memories, high training and replacement costs, among others. Consequently, the country suffers economic loss due to decreased productivity and increase in health care costs.

As a result of the negative impact of HIV/AIDS in the workplace, the Government of Kenya, being a major employer, recognised that a workplace policy framework on the pandemic is central to putting in place and implementing effective workplace programmes. Such a policy framework for action was formulated in 2005, thereby demonstrating the Government's concern and commitment in taking concrete steps in the management of HIV/AIDS pandemic and providing guidance on the development of sector-specific workplace policies. However, because several issues have emerged, including the enactment of the HIV/AIDS Act in 2006, the Government, through the Ministry of State for Public Service, undertook to review the 2005 policy to incorporate the emerging policy issues as well as align it with the newly enacted and/or revised employment-related laws and regulations. These include the Employment Act 2007, Sexual Offences Act 2006, the Persons with Disability Act, Occupational Safety and Health Act of 2007 and the Revised Code of Regulations, among others. At the same time, it is anticipated that the implementation of this policy will demonstrate the Government's commitment to effective and sustainable programming and align the efforts with the national long-term development strategy as spelt out in the country's Vision 2030.



### 3.0 GUIDING PRINCIPLES

The principles that guide this policy are in accordance with international conventions, national laws, policies, guidelines and regulations. These principles are:

#### 3.1 Recognition of HIV and AIDS as a workplace issue

HIV and AIDS is a workplace issue and should be treated like any other serious illness/condition in the workplace. This is necessary because it affects the workforce and the workplace. Furthermore, the workforce, being part of the local community, has a role to play in the wider struggle to mitigate the effects of the pandemic.

#### 3.2 Fighting stigma and discrimination

HIV and AIDS affects the fundamental human rights at work, especially with regards to stigma and discrimination of workers living with the virus and those affected. There should be no discrimination and/or stigmatisation of workers on the basis of real or perceived HIV status. Avoidance of stigma and discrimination in relation to workers living with HIV/AIDS is key to the success of efforts aimed at promoting HIV prevention.

#### 3.3 Attention to Gender issues

The gender dimensions of HIV/AIDS should be recognised. Women are most likely to become infected and are more often adversely affected by the HIV/AIDS pandemic than men due to biological, socio-cultural and economic reasons. The greater the discrimination of women and the lower their position/status in societies, the more negatively they are affected by HIV. Therefore, equal gender relations and the empowerment of women are vital to successful prevention of the spread of HIV infection and are pillars for strengthening women's ability to cope with HIV/AIDS.

#### 3.4 Safe and Healthy Work Environment

The work environment should be healthy and safe and adapted to the state of health and capabilities of workers, HIV-infected or not. All managers have a responsibility to minimise the risk of HIV

transmission by adopting appropriate First Aid/Universal infection control precautions at the workplace.

### 3.5 Social Dialogue

A successful HIV/AIDS policy requires co-operation, willingness and trust between employers, employees, Government and other stakeholders, cultivated through dialogue among the parties concerned.

### 3.6 Screening for purpose of Employment/Recruitment

HIV and AIDS screening should not be a requirement for job seekers, recruitment or persons in employment. Testing for HIV should not be carried out at the workplace except as specified in the HIV and AIDS Prevention and Control Act with regards to HIV testing and screening.

### 3.7 Confidentiality

Access to personal data relating to a worker's HIV status shall be bound by the rules of confidentiality consistent with existing International Labour Organisation (ILO) Code of Practice on HIV/AIDS and medical ethics.

### 3.8 Continuation of Employment Relationship

HIV infection is by itself not associated with any limitation in fitness to work and should, therefore, not be a cause for termination of employment. Persons with HIV-related illnesses should be allowed to work for as long as deemed medically fit for any available and appropriate work. If fitness is impaired by HIV-related illness, reasonable alternative working arrangements should be made for the infected employees.

### 3.9 Prevention

Infection of HIV is preventable. Prevention of all means of transmission can be achieved through behaviour change, knowledge, treatment and the creation of a stigma-free and non-discriminatory environment. Social partners are in a unique position to promote

prevention efforts, particularly in relation to changing attitudes and behaviour through the provision of information and education and in addressing socio-economic factors that fuel HIV infection.

### 3.10 Care, Support and Treatment

Solidarity, care and support should guide the response to HIV/AIDS at the workplace. All workers, including spouses and children, are entitled to affordable health services and to benefits from statutory and occupational schemes.

### 3.11 Management Responsibility

The Government will ensure the highest-level of leadership and commitment in the national campaign against the pandemic.

### 3.12 Partnerships

The Government will be responsible and accountable for implementation of this policy and will, at all times, develop and/or strengthen partnerships to ensure success of its implementation.

### 3.13 Fair Labour Practices

Every person, whether infected or affected, has the right to fair labour practices in terms of recruitment, appointment and continued enjoyment of employment, promotion, training and benefits. No employee shall be compelled to undergo an HIV test as a requirement for any of the above. Labour practices should also be in accordance with the HIV/AIDS Prevention and Control Act 2006 and other existing labour laws.

### 3.14 Workplace Ethics

There will be zero tolerance to sexual harassment, abuse and exploitation.

### 3.15 Greater involvement of People Living with HIV and AIDS (GIPA)

The involvement of people living with HIV/AIDS in decision making, formulation and implementation of public policies in

educating and informing other workers shall be promoted at all levels of the public sector and in line with GIPA principles as spelt out in GIPA Guidelines.

#### **4.0 POLICY GOAL, OBJECTIVES AND SCOPE**

##### **4.1 Goal**

The goal of this policy is to provide a national framework for addressing HIV/AIDS in the public sector and ensuring that the Public Service is able to sustain the provision of adequate quality services despite the challenges posed by HIV/AIDS.

##### **4.2 Objectives**

Specifically, the policy aims at providing a framework for:

- Contributing to national efforts aimed at improving the quality of life of Kenyans by minimising the spread and assuage the impact of HIV/AIDS;
- Setting Minimum Internal Requirements (MIR) for managing HIV/AIDS in the public sector;
- Establishing structures and promoting programmes to ensure zero-tolerance to HIV and AIDS-related stigma and discrimination in the workplace;
- Ensuring adequate allocation of resources to HIV and AIDS interventions;
- Guiding employers, managers and employees on their rights and obligations regarding HIV/AIDS; and
- Mainstreaming this policy in specific public sector workplaces.

##### **4.3 Scope**

This policy sets standards for managing HIV/AIDS for workplace programmes. It applies to all employers and employees, including: applicants for work in the public sector - ministries and departments, statutory bodies, parastatals/state corporations, local authorities, the Teaching Service Commission and Disciplined and Uniformed Services.

## 5.0 LEGAL AND REGULATORY FRAMEWORK

It is recognised that an enabling legal and regulatory environment is imperative to create the desired impact in the fight against HIV/ AIDS pandemic. Kenya has a number of statutes that (either explicitly or implicitly) responds to HIV/AIDS related issues in the workplace. The current HIV/ AIDS Prevention and Control Act (2006) specifically addresses itself to discriminatory acts and policies in the workplace in its Part VIII, Section 31. The Sexual Offences Act (2006), while not specific to HIV/AIDS, also addresses itself to the pandemic in Section 26. Other legislation include People with Disabilities Act (2003), Public Officers, Ethics Act (2003), Children and Young Peoples Act, and Drugs and Substance Abuse Act. It is, therefore, clear that the Government remains committed to the fight against the pandemic as evidenced by the above legislative reforms, which are responsive to the needs of HIV/AIDS infected and affected persons. This is in line with international obligations, including the ILO Code of Practice on HIV and AIDS and World of Work (2001). At the same time, this workplace policy on HIV/AIDS shall be implemented within the framework of the Constitution of Kenya and any other relevant legislation in place or to be enacted later. Such legal frameworks within which this policy will be implemented include, but are not limited to the following:

### 5.1 The Constitution of Kenya

The Constitution of the Republic of Kenya is the supreme Law of Kenya and all other laws must comply with it. The fundamental rights in the Constitution provide every person with the right to equality and non-discrimination.

### 5.2 Service Commissions Act Cap 185 (Revised 1985)

The Act prohibits discrimination in appointment, promotion and transfer of public servants. In particular, the Act provides in Regulation 13 of the Public Service Commission (PSC) Regulations that the appointment, promotion and transfer of a public officer shall take into account only the merit, ability, seniority, experience and official qualifications of the candidate.

Under Regulation 19, the Act provides that if a public officer is incapable by reason of any infirmity of mind or body of discharging the functions of his public office, he/she may present himself/herself before a Medical Board with a view to it being ascertained whether or not he/she is incapable as aforesaid.

Any employee who is ill should seek and obtain permission from the relevant authority for absence from the workplace on account of the ill health. Absence from duty without permission is actionable in accordance with Service Regulations.

Further, under Part IV of the PSC Regulations, an officer must be informed and given a chance to respond and appeal to the PSC in accordance with the provisions laid down in the Regulations in respect of disciplinary proceedings or any termination of employment. No punishment shall be inflicted on any public officer, which would be contrary to any law.

These provisions cover other public officers under their respective service commissions in accordance with the relevant regulations.

This implies that no employee should be discriminated against on the basis of his/her actual or perceived HIV status.

### 5.3 The Employment Act, 2007

The Employment Act sets out the minimum standards applicable for conditions of employment, relating to wages, leave, health and contracts of service including termination of the contract. Under this Act, no employer shall discriminate directly or indirectly against an employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. The employer shall provide proper healthcare for his/her employees during serious illness. The employer can only discharge this function if the employee notifies the employer of the illness. The Act implies that there should be no discrimination on the grounds of HIV/AIDS status, and states in Section 46 (g) that HIV/AIDS does not constitute a fair reason for dismissal or for imposition of disciplinary penalty on an employee.

## 5.4 HIV and AIDS Prevention and Control Act (2006)

The HIV and AIDS Prevention and Control (HAPC) Act was gazetted in January 2007 and greatly guided the review of this policy. The KNASP III observes that the enactment of this Act was an important step in strengthening the human rights framework necessary to support universal access to services. The Act makes specific reference to HIV/AIDS in relation to provision of education and information in the workplace, discrimination, privacy, confidentiality and personal rights. Specifically the Act provides that:-

- Under sections 4 and 7, the government – through its various ministries, departments, authorities and other agencies - shall promote public awareness about the causes, means of transmission, consequences and means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign at all places of work and ensure the provision of basic information and instructions on HIV/AIDS prevention and control to all public sector employees. Section 7 further notes that such information to be provided shall cover issues of confidentiality in the workplace and attitudes towards infected employees and workers;
- Under section 13, no person shall compel another to undergo an HIV test save where a person is charged with an offence of a sexual nature under the Sexual Offences Act (2006);
- Section 22 prohibits the disclosure of an HIV test result or any related assessment result of another person without his/her written consent; and
- In Part VIII, the Act makes it an offence for any person to be discriminated against on the grounds of actual, perceived or suspected HIV status, in relation to employment, access to education, credit, insurance, healthcare, travel, habitation or seeking public office.

## 5.5 The Occupational Safety and Health Act, 2007

The Government enacted the Occupational Safety and Health Act in October 2007 with the aim of providing for the safety, health and welfare of workers and all persons lawfully present at workplaces and for matters connected therewith.

The Act requires of the occupier and employer to ensure the safety, health and welfare at work of all persons in the workplace. Section 16 (1) prohibits persons from engaging in any improper activity or behaviour at the workplace, which might create or constitute a hazard to that person or any other person. The implication of this Act, with regards to HIV, is that the employer must ensure the safety of the workplace so that employees are not at risk of infection at the workplace.

## **6.0 MANAGEMENT OF HUMAN RESOURCE**

The human resource is the most important factor of production in any organisation as it controls all the other resources. Success or failure of an organisation depends largely on the work force and there is, therefore, need to examine the issues that affect it. According to the ILO, beyond the suffering it imposes on individuals and families and the profound effects it has on the socio-economic fabric of societies, HIV/AIDS is a major threat to the world of work because it affects the most productive segment of the labour force. It is imposing huge costs on enterprises in all sectors through declining productivity and earnings, increasing labour costs and loss of skills and experience. It has also led to high staff turnover, high costs in training and replacement, high health care and employee welfare costs including funeral expenses.

In this regard, managers in the public sector have a particularly important role to play in an organisation's response to HIV/AIDS. It is their responsibility to address the problems caused by HIV/AIDS in the workplace at both organisational and individual levels. The dichotomy between organisational requirements and those of individuals living with or affected by HIV/AIDS makes this a challenging task.

This policy also addresses the gaps identified during the implementation of the previous policy developed in 2005. Besides, it guides the management of HIV/AIDS in the workplace and provides a coherent approach in addressing the issues associated with the pandemic. It provides consistency in an organisation's dealings with employees through programmes, procedures and rules that flow from the policy.



The policy also provides the framework for ensuring that the responses put in place are aligned to the national strategic direction and plans, thereby contributing to the attainment of the country's national goals and aspirations regarding the fight against the pandemic.

To this extent, therefore, the policy addresses the following human resource management rights and issues:

#### 6.1 Recruitment and Promotion

Screening of people for HIV should not be a requirement for staff recruitment and/or promotion.

#### 6.2 Sick Leave

Sick leave will be provided for as stipulated in the relevant service regulations. However, additional sick leave days will be decided by the employer on a case-by-case basis at the discretion of the authorised officers/chief executives.

#### 6.3 Working Hours

Normal working hours will continue to apply for all employees, as stipulated in the relevant service regulations. However, a more flexible approach will be applied for those who are infected or affected.

#### 6.4 Counselling Services

The Government will ensure that each ministry/department /state corporation has a pool of skilled counsellors trained from among the staff to provide counselling and referral services.

#### 6.5 Termination of Employment

The policies and service regulations and procedures pertaining to termination of services will apply equally to all employees. No employee shall be dismissed or have employment terminated based solely on perceived or actual HIV status.

## 6.6 Medical Privileges

The normal provision of medical privileges will continue to apply. However, to reduce the negative effects of illness and incapacity on employees living with HIV/AIDS, the Government will take steps to improve access to comprehensive care.

## 6.7 Deployment and Transfers

The Government shall continue to review current policies, codes and deployment and transfer practices of employees. In particular, the Government shall ensure that:

- As much as possible, partners and spouses are not separated to minimise vulnerability;
- Where employees are deployed in remote areas, the period served in such areas is limited to three years. Employees in these areas will also be allowed to make frequent visits to their families;
- Staff requiring access to family support or medical care are deployed appropriately; and
- Where fitness to work is impaired by illness, reasonable alternative working arrangements are made.

## 6.8 Relief Services

The Government shall introduce workforce programmes to offer relief services in essential sectors. Where an employee is temporarily unable to perform essential duties, reasonable alternatives through employee relief services shall be made. Further, special consideration will be given to employees with prolonged illness, especially during performance contracting evaluation.

## 6.9 Housing and Accommodation

The prevailing Government policy on housing will continue to apply. Suitable accommodation for employees requiring institutional housing will be provided and, where this is not possible, employees will be allowed to reside outside the institutions and be provided with house allowance.

## 6.10 Training and Development

The Government will:

- Educate and sensitise all its employees on HIV/ AIDS related issues;
- Monitor and evaluate human resource so that there is adequate supply of appropriately skilled manpower to meet the needs for service delivery;
- Mainstream HIV/ AIDS in all training institutions' curricula and undertake regular updates to respond to the dynamics of HIV/ AIDS; and
- Ensure there is appropriate recognition of HIV/ AIDS-related training and development of career paths that encourage staff to work and remain in HIV/ AIDS-related fields.

## 6.11 Sexual Harassment, Abuse and Exploitation

There shall be zero tolerance to sexual harassment, abuse and exploitation in the workplace. Involvement in these vices shall be treated as gross misconduct and where proven, shall lead to disciplinary action.

## 6.12 Gender Responsiveness

HIV/ AIDS affects and impacts on women and men differently due to their biological, social, cultural and economic circumstances. Application of this policy should be responsive to their different and specific needs. With the knowledge that women are at a greater risk of infection than men and carry greater burden, special consideration should be provided for prevention and impact mitigation services that target women.

## 6.13 Exposure at the Workplace

Employees who accidentally get exposed to HIV in the course of their duties shall be entitled to immediate Post-Exposure Prophylaxis (PEP) and follow up in the form of treatment in case of infection. All employees shall be educated on the concept of PEP including emergency measures to take if an employee has been raped or accidentally exposed to HIV.

Provision shall be made to ensure safety and absence of risk to

health, arising from the use, handling, storage and transport of articles and substances.

#### 6.14 Retirement on Medical Grounds

HIV and AIDS is not a cause for termination of employment. As with many other illnesses, persons with HIV-related illnesses should be able to work as long as they are medically fit for available and appropriate work or until declared unfit to work by a medical board. Where an employee is medically unfit to continue working, the Government will hasten the retirement process.

#### 6.15 Terminal Benefits

Whenever an employee retires or dies due to HIV/AIDS or other reasons, the Government will facilitate speedy processing of terminal benefits. Accordingly, it will be necessary for both the employers and employees to ensure the next of kin records are updated regularly.

#### 6.16 Confidentiality and Disclosure

- Disciplinary action, consistent with relevant legislation and regulations, will be taken against any employee who discloses a fellow employee's HIV zero status without consent.
- Creating a climate of openness about HIV/AIDS is an effective prevention and care strategy. To this end, the Government shall create a working environment in which employees can feel safe to disclose their HIV status.

#### 6.17 Stigma and Discrimination

- All employees have the same rights and obligations as stipulated in the terms and conditions of service.
- No employee or job applicant shall be discriminated against in access to or continued employment, training, promotion and employee benefits on the basis of their actual or perceived HIV status.
- Employees shall not refuse to work or interact with fellow colleagues on the grounds that the latter are infected or perceived to be infected. Such refusal shall constitute misconduct.
- Public sector institutions will be expected to actively seek to

reduce and address the stigma associated with HIV/AIDs through intensive awareness creation.

#### 6.18 Grievances, Concerns, Care and Support

All Authorised officers/ chief executives shall establish and maintain communication channels and fora for employees to raise concerns and grievances and access care and support relating to HIV/ AIDS.

#### 6.19 Management Responsibility

A manager has an obligation and a responsibility to:

- Show leadership as part of the national campaign to address the pandemic;
- Be educated and informed about the pandemic including new information and developments in respect of prevention and treatment;
- Implement this policy.
- Continuously disseminate information about HIV/ AIDS to all employees; and
- Mainstream HIV/ AIDS workplace issues in the organisation's Strategic Plan and other operational documents.

#### 6.20 Employee Responsibility

- It is the responsibility of an employee to take appropriate action on being informed about HIV/ AIDS, to protect him/ herself and the family from infection and seek guidance and counselling where necessary.
- All employees must comply with the HIV/ AIDS workplace policy. In addition, all employees are required to attend, lend support to and participate in all activities aimed at combating HIV/ AIDS.
- It is the moral responsibility of every employee to know their HIV status.

## 7.0 HIV AND AIDS PROGRAMMES IN THE WORKPLACE

The main thrust of this policy revolves around initiating and carrying out appropriate HIV/ AIDS programmes in the workplace, within the public sector. Due consideration will be given to people living with disabilities during the implementation of the policy and programming. The programmes will include, but will not be limited to, the following:

### 7.1 Prevention and Advocacy

The programmes will be sector-specific and will involve provision of information, creation of HIV/AIDS awareness and promotion of positive cultural and behaviour change among employees. Some of these are:

- Promotion of HIV testing and counselling and support programmes in the workplace including PMTCT, HBHTC and PITC.
- Provision of information on safe sex practices;
- Promotion of attitude and behaviour change;
- Establishment of HIV/AIDS resource centres and CT facilities.
- Incorporation of HIV/AIDS education curricula in training institutions;
- HIV/AIDS peer education and counselling programmes at the workplace;
- Creating a pool of resource persons on HIV/AIDS intervention programmes;
- Promotion of voluntary medical male circumcision;
- Sensitisation on PEP;
- Promotion of TB screening and treatment;
- Continuous education for service providers from various intervention programmes; and
- Prevention with positives.

### 7.2 Treatment, Care and Support of the Infected and Affected People

Comprehensive care of the infected and affected people calls for collaborative approaches involving various stakeholders. This will also help mitigate the negative socio-economic impact. Some of the critical components include:

- Establishment of appropriate linkages, networks and

referral systems for treatment and comprehensive care and support, including access to ARVs; and TB treatment and management;

- Setting up and strengthening of social support structures at the workplace;
- Linking infected employees to support groups and/or formation of such groups where possible;
- Strengthening institutional health facilities where available;
- Provision of counselling and other support services at the workplace;
- Provision of drugs for opportunistic infections and food supplements.

### 7.3 Social Protection Programmes

The programmes will address the plight of people with special needs including most at risk populations and people with disabilities. This will include, but will not be limited, to:

- 1) Social Support to people living with HIV.
- 2) Post-exposure prophylaxis services.
- 3) Support to survivors of sexual violence.
- 4) Social or cash transfer especially to Orphans and Vulnerable Children (OVC).
- 5) Addressing human rights issues such as right to property ownership by PLWHA.
- 6) Stigma and discrimination reduction programmes.
- 7) Seeking legal redress especially by PLWHA whose rights have been violated.

## 8.0 IMPLEMENTATION OF THE POLICY

The ultimate goal of this policy is to ensure that the public service is able to sustain the provision of adequate quality services in spite of the challenges posed by HIV/AIDS. The success of this policy will, therefore, depend on its effective implementation and a coordinated effort of stakeholders. All authorised officers/ chief executives are responsible and accountable for implementing this policy and development of appropriate HIV/AIDS programmes and practices in their workplaces. They shall also take immediate and appropriate corrective action when provisions of this policy are violated.

The following components will form the implementation modalities:

## 8.1 Institutional Framework

An Institutional Framework is necessary for the implementation of the workplace policy particularly with respect to human and financial resource management. This calls for high level commitment by Permanent Secretaries/Accounting Officers and Chief Executives in terms of allocation of adequate resources for HIV/AIDS under the Medium Term Expenditure Framework (MTEF) to facilitate effective implementation of this policy. A HIV/AIDS Secretariat will be established at the Ministry of State for Public Service, while the Aids Control Units (ACUs) in ministries and other public sector organisations will need to be strengthened and sustained by designating officers on full time basis to coordinate HIV/AIDS activities and policy implementation.

The previous policy (2005) stipulated that the HIV/AIDS Secretariat be manned by three (3) senior officers. However, this policy recognises that optimal staffing and its stability is central to the success of policy and programme implementation at the institutional levels. The Ministries/Departments/Organisations, through their Permanent Secretaries, Heads of Departments and Chief Executive Officers will, therefore, have to deploy adequate staff in both the Secretariat and ACUs for effective implementation of the policy and related programmes in the public sector. The Secretariat will report to the Permanent Secretary of the Ministry of State for Public Service regarding the formulation and review of HIV/AIDS workplace policies in the public sector. It will advise ACUs in all public sector organisations with regard to implementing HIV/AIDS human resource workplace policies in liaison with NACC.

According to the 2010 NACC's Terms of Reference (TOR) for ACUs and Sub-ACUs, the ACU structure should:

- a) Be a full-fledged unit/section under the Permanent Secretary/Accounting Officer
- b) Be headed by a senior officer, preferably at Job Group 'M' and above or its equivalent, who is committed to HIV/AIDS issues
- c) Have its head and members appointed in person by the Permanent Secretary/Accounting Officer



- d) Be assigned a minimum number of at least five efficient, consistent and full-time team members depending on the size and coverage of the public institution and in line with the requirements of the Unit. The team should have a strong and consistent representation from the following Ministerial/Institutional departments for efficiency, continuity, ownership and commitment purposes:
- i) Human Resources and Administration
  - ii) Finance and Accounts
  - iii) Central Programme Planning and Monitoring Units
  - iv) Technical Services/Programmes.

## 8.2 Roles, Responsibilities and Accountability

The institutions and officers responsible for implementing this policy are: NACC, Permanent Secretaries, Heads of Departments, ACUs and Sub-ACUs as detailed in the sections below. Resource mobilisation will be a cross-cutting responsibility for all the policy implementing institutions.

### 8.2.1 Role of NACC

The NACC was established under a Legal Notice No. 170 of September, 1999 to mobilise resources and co-ordinate the multi-sectoral response to the pandemic in Kenya. Its main responsibilities are:

- Mobilise resources;
- Co-ordinate HIV/AIDS intervention in all sectors;
- Develop policies, strategies and guidelines;
- Support the development of sector specific programmes;
- Develop national Management Information Systems (MIS) for monitoring control of HIV/AIDS interventions;
- Collaborate with local and international agencies;
- Develop mechanisms and guidelines for implementing agencies on prioritisation and selection of activities and monitoring and evaluation of activities; and
- Play a leadership role in advocacy for the HIV infection, prevention of spread and provision of treatment, care and support to those infected and affected.

## 8.2.2 Role of Permanent Secretary, Ministry of State for Public Service

- Guide the process and ensure the strengthening of the HIV/AIDS Secretariat within the ministry
- Ensure HIV/AIDS workplace policy is implemented in the public sector;
- Formulate and review HIV/AIDS workplace policies in the public sector;
- Build capacity in ACUs to implement workplace policies; and
- Monitor and evaluate implementation of workplace policies.

## 8.2.3 Role of Permanent Secretaries/CEOs/HODs

- Develop, implement and review sector-specific programmes and strategies;
- Advocate for and ensure the inclusion of HIV/AIDS issues in decision-making at all levels;
- Ensure allocation of resources and evidence-based budgeting;
- Monitor and evaluate the implementation of the policy;
- Strengthen and ensure commitment at all levels of management;
- Create partnerships with and across ministries/departments, development partners and stakeholders;
- Provide both technical and moral support to ACUs;
- Link HIV/AIDS to the MTEF budgeting process;
- Chair Ministerial HIV/AIDS committees; and
- Mobilise resources.

## 8.2.4 Role of HIV and AIDS Secretariat in the Ministry of State for Public Service

- Co-ordinate implementation of the HIV/AIDS workplace policy in the public sector;
- Identify training needs and build capacity in ACUs in the Ministries/Departments/Organisations for effective implementation of the HIV/AIDS policy in the public sector;
- Advise ACUs on Human Resource issues as they relate to HIV/AIDS;

- Lead and guide the development and/or review of HIV/AIDS workplace policy in the public sector;
- Strengthen and maintain linkages with ACUs;
- Organise bi-annual consultative meetings for public sector organisations and other stakeholders to review progress in the implementation of the workplace policy;
- Establish and maintain HIV/AIDS human resource related data base for the public sector.

### 8.2.5 Role of AIDS Control Units

The Terms of Reference (TOR) for the ACUs was revised by NACC in February 2010 and spells out the ACUs main role as:

To facilitate and co-ordinate internal and external mainstreaming of HIV/AIDS into the core functions of the public sector institutions in line with the current KNASP.

The specific functions of the ACUs will be to:

- a) Establish, operationalise and strengthen sub-ACUs at the decentralised levels and in Semi-Autonomous Agencies (SAGAs) affiliated to the Government Ministries/Departments/Public institutions.
- b) Develop and implement Ministerial/Institutional HIV/AIDS strategic objectives, performance contract indicators and targets, work plans and activities in line with the existing policies.
- c) Effectively mobilise, allocate and utilise resources/line budgets through the MTEF planning and budgeting for implementation of sector/ministry-specific HIV/AIDS programmes, including participation in the MTEF sector hearings
- d) Monitor and evaluate the implementation of HIV/AIDS programmes in line with the current KNASP M&E Framework.
- e) Promote collaboration, partnerships and networking with key stakeholders to ensure advocacy and implementation of HIV/AIDS activities are mainstreamed into the core functions.
- f) Provide quarterly reports to Permanent Secretary/Chief Executive Officers and send copies to NACC using the sectoral HIV mainstreaming reporting tool.

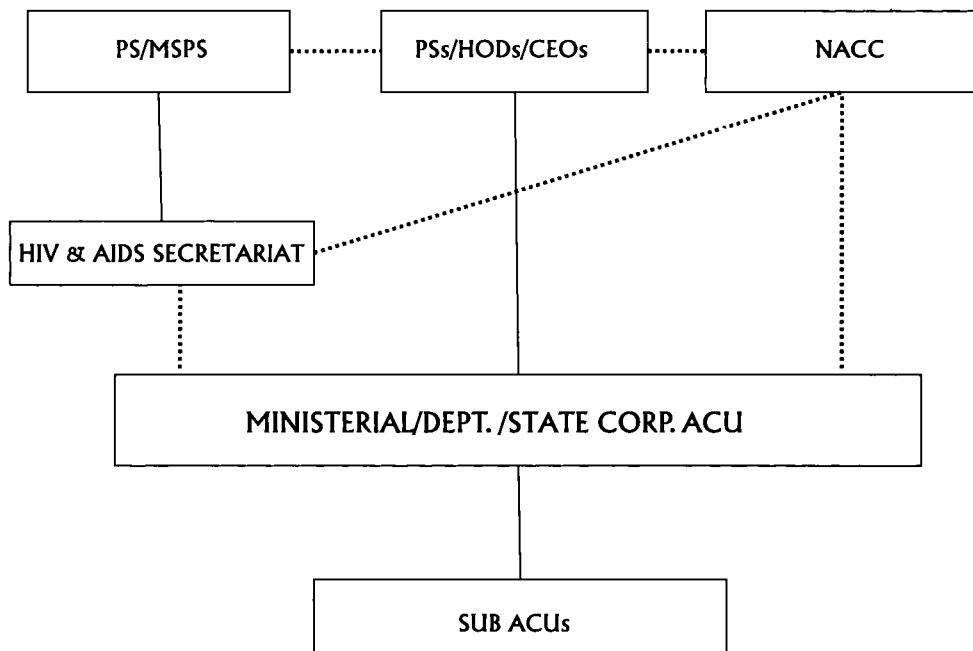
## 9.0 MONITORING, EVALUATION AND RESEARCH

Each sector shall generate and maintain a database of information on staff welfare and service delivery through monitoring, evaluation and research for planning, decision-making, resource allocation and managing the sector's response to HIV/AIDS. The sectors will be encouraged to undertake HIV/AIDS-related baseline surveys to inform sector-specific HIV programmes and facilitate the generation of benchmark indicators for monitoring and evaluating the programmes. The HIV/AIDS Secretariat at the MSPS, the Permanent Secretaries, HODs, CEOs, ACUs and Sub-ACUs will ensure that implementation of this policy contributes and adheres to the country's RBM logic-chain approach as stipulated in the national Results Framework.

This policy will be reviewed from time to time to ensure it remains relevant to the needs of the public sector and the national goals regarding the fight against HIV/AIDS. Individual sectors will develop programmes in line with this policy to reflect sector-specific mandates and needs.

## ANNEX 1:

### INSTITUTIONAL FRAMEWORK FOR PUBLIC SECTOR WORKPLACE POLICY ON HIV AND AIDS



#### KEY:

- PS/MSPS - Permanent Secretary/Ministry of State for Public Service
- PSs - Permanent Secretaries
- HODs - Heads of Department
- CEOs - Chief Executive Officers
- NACC - National AIDS Control Council
- ACUs - AIDS Control Units

Source: KNASP III, 2009/10-2012/13

## ANNEX 2:

### MINIMUM INTERNAL REQUIREMENTS

Each public sector organisation will be responsible for mainstreaming the HIV/ AIDS Workplace Policy and developing an annual HIV/ AIDS Work Plan that addresses both the internal and workplace domain clientele. The aspects of the work plan that address the external domain will differ in focus and intensity across sectors. The internal aspects of the plan will be built upon the foundation of Minimum Internal Requirements (MIR) to be implemented by each public sector organisation. Additional activities can be planned and implemented based on each sector's mandate and needs, but all sectors will be responsible for developing and implementing appropriate activities based on the key areas outlined in the Minimum Internal Requirements below:

- a) Introduce and intensify appropriate education, awareness and prevention programmes on HIV/AIDS and where possible, integrate those programmes with others that promote the health and well-being of employees;
- b) Create mechanisms within the workplace to encourage openness, acceptance, care and support for HIV-positive employees;
- c) Designate an officer or officers with adequate skills, seniority and support to implement provisions of this policy and ensure that the officer(s) so designated is/are held accountable by means of performance indicators in the implementation of the policy;
- d) Form partnerships with other departments, organisations and individuals who are able to assist with health promotion programmes;
- e) Establish a HIV/AIDS committee in each Ministry/ Department/Organisation with adequate representation from all the departments and support from all relevant stakeholders;
- f) Ensure that all programmes include an effective internal communication strategy;
- g) Collect and disseminate routine information on absenteeism, morbidity and mortality for purposes of Human Resource Planning;

- h) Provide guidance and counselling services;
- i) Mainstream HIV/AIDS into the organisation's overall strategic plans;
- j) Develop and enforce workplace policies;
- k) Allocate adequate human and financial resources to implement the policy and establish a sector budget line for HIV/AIDS programmes; and
- l) Monitor and evaluate the impact of HIV/AIDS and intervention programmes.





