Name: OMOWAMIWA KOLAWOLE

Student number: KLWOMO001

Degree Programme: LL.M. (General) by Coursework and dissertation

Dissertation title: PROVIDING AN EFFECTIVE LEGAL FRAMEWORK FOR THE PROTECTION OF PEOPLE LIVING WITH HIV AND AIDS IN NIGERIA

Supervisor: Prof. Dee Smythe

Word count: 23,497

University of Cape Town

Research dissertation presented for the approval of Senate in fulfillment of part of the requirements for the LL.M. degree in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of LL.M. dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

PLAGIARISM DECLARATION:

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the University of Cape Town (Law Faculty standard citation convention for citation and referencing. Each significant contribution to and quotation in this essay from the works of other people has been attributed and has been cited and referenced.
3. This dissertation is my own work. I have not allowed anyone to copy my work with the intention of passing it off as his or her own work.

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

University of Cape Town

ACKNOWLEDGEMENTS

I would like to that Prof Smythe for her guidance, support and encouragement. Her constantly open door and listening ear helped in writing this dissertation. I also would like to thank my family for their encouragement during the length of my LL.M. programme, and especially while writing this dissertation. Lastly, I would like to thank God for seeing me through.

CONTENTS

CHAPTER 1

INTRODUCTION 1

1. BACKGROUND 1

2. METHODOLOGY 2

3. CHAPTER SYNOPSIS 2

CHAPTER 2 4

A BACKGROUND TO HIV/AIDS IN NIGERIA 4

1. INTRODUCTION 4

2. HISTORY OF HIV/AIDS IN NIGERIA 4

3. MODES OF TRANSMISSION OF HIV/AIDS IN NIGERIA 7

   3.1. Heterosexual Sex 7

   3.2. Blood Transfusions 8

   3.3. Mother-to-Child Transmission 8

4. FACTORS THAT CONTRIBUTE TO THE SPREAD OF HIV/AIDS IN NIGERIA 9

   4.1. Widespread levels of poverty 10

   4.2. Limited or complete lack of education 11

   4.3. An ever increasing population 13

   4.4. A dynamic epidemic trend 13

   4.5. Female subjugation and abuse 14

   4.6. Military incursion 17

   4.7. Stigmatization of PLWHA 18

CHAPTER 3 21

STIGMATIZATION AND DISCRIMINATION AGAINST PEOPLE LIVING WITH HIV/AIDS 21

1. INTRODUCTION 21

2. A CULTURE OF FEAR OF HIV/AIDS 21

3. DISCRIMINATION AND STIGMATIZATION OF PLWHA 22

4. FORMS OF DISCRIMINATION AGAINST PLWHA 24
4.1. Lack of information or misinformation 24
4.2. Familial patterns and practices 25
4.3. Religious ideologies 27
5. MANIFESTATIONS OF DISCRIMINATION 28
5.1. In schools and institutions of learning 28
5.2. In places of work and in business dealings 29
5.3. In religious centres 30
6. EFFECTS OF DISCRIMINATION 31
7. THE DUE PROCESS FOR HIV TESTING 33
8. PUBLIC POLICY CONCERNS 34
8.1. Public health argument for mandatory testing 34
(a) Mandatory testing for expectant mothers. 36
(b) Mandatory testing of commercial sex workers. 38
(c) Mandatory testing of partners and intending couples. 38
8.2. The case for voluntary counselling and testing 40
9. THE WAY FORWARD 43

CHAPTER 4 44
THE POSITION OF THE LAW 44
1. INTRODUCTION 44
2. HUMAN RIGHTS ISSUES RAISED BY DISCRIMINATION AND MANDATORY TESTING 44
2.1. The right to dignity 45
2.2. The right to privacy 46
2.3. The right to healthcare 51
2.4. The right to freedom from discrimination 53
2.5. The right to work 55
2.6. The right to marry 56
3. LITIGATION FOR THE ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS ... 57

CHAPTER 5 60
LEGISLATION FOR THE PROTECTION OF PEOPLE LIVING WITH HIV/AIDS 60
1. INTRODUCTION 60
2. HISTORY OF THE ANTI-DISCRIMINATION BILL 61
2.1. Procedural history of the anti-discrimination bill. 62
3. OVERVIEW OF ANTI-DISCRIMINATION BILL 63
3.1. Analysis of key provisions of the anti-discrimination bill 63
3.2. Positive aspects of the bill 68
3.3. Deficiencies of the bill 68
4. NIGERIAN STATE LAWS 70
5. COMPARATIVE ANALYSIS OF ANTI DISCRIMINATION LEGISLATION OF OTHER JURISDICTIONS 73
5.1. United Kingdom 73
i. Observations and lessons from the Equality Act 75
5.2. Southern African Development Community 78
i. Observations and lessons from the Model Law 83

CHAPTER 6 82
CONCLUSION 82

CHAPTER 1

INTRODUCTION

1. BACKGROUND

Nigeria, like most countries around the world has been adversely affected by the human immunodeficiency virus (HIV), which causes the acquired immune deficiency syndrome (AIDS). The most affected by the spread of the disease have been those living with the virus, or perceived to be living with it as they suffer disparagement and stigmatization, with little recourse to an effective remedy; legal or otherwise.

While much attention has been paid to preventing and stemming the already wide spread of the virus by various State agencies and non-governmental organizations (NGOs), not much has been done to provide succour for those living HIV/AIDS. This is seen in the fact that a very small percentage of Nigerians living with the virus have access to anti-retroviral medication. In addition, there is no anti-discrimination legislation on HIV/AIDS in Nigeria and there is wide spread permissiveness to the prevalent stigma that is attached to the disease.

1. RESEARCH QUESTION AND PURPOSE.

This thesis seeks to address the question of how discriminatory practices operate against people living with HIV/AIDS (PLWHA), the effects of this discrimination on their lives and how they can be protected against such discrimination, by the law in Nigeria. In addressing this question, the legal ramifications of HIV/AIDS will be examined, from the detection and testing phase to the treatment of people known or perceived to be living with the virus and then to their legal rights, which protects them from discrimination and unfair treatment.

This issue is important, as it covers a subject matter that has received little attention from the relevant authorities in Nigeria. This work seeks to contextualize the problem of stigmatization and discrimination against PLWHA by raising issues that centre on the treatment that they

receive in society and how this treatment affects them, and the society at large. In addition, this question helps reveal the practices that have helped perpetuate a culture of fear, which has inadvertently contributed to the spread of HIV in Nigeria, while also depleting the number of people living with the virus. In sum, the dissertation seeks to help identify the underlying issues that drive discrimination against PLWHA and propose an effective legal framework to stem the tide, with its resultant positive gains.

2. METHODOLOGY

This thesis is conducted largely by desktop research. It involves a review of previously written materials and literature along with a systematic exposition of the relevant legislation and policies, with the aim of drawing logical conclusions and offering relevant solutions, where necessary. The research relies on primary and secondary sources, including constitutional provisions, international law, specific legislation and tentative bills. While much of the authorship referred to deals specifically with the Nigerian context, a good number of sources relied on either refer to other jurisdictions or have a generally broad international outlook, but with a direct correlation to the Nigerian situation. The research employs socio-economic analysis as well as empirical studies in expounding on the problems raised. It also adopts a comparative analysis of various jurisdictions, in order to distil a set of best practices for at effective solutions to the issues confronted in this thesis.

3. CHAPTER SYNOPSIS

The thesis will proceed as follows:

Chapter two will examine the nature of HIV/AIDS in Nigeria. This analysis will include an examination of the history of the virus in the country, the present statistics and the factors that encourage HIV prevalence in the country.

Chapter three will look at the problem of discrimination in Nigeria. This will be done by an analysis of the prevalent stigmatization practices that occur in various facets of the Nigerian

society. This discussion will lead to an exposition on the phenomenon of mandatory testing, which has arisen as a result of the various discriminatory practices. An examination of the resultant public health concerns around the issue of mandatory testing will then be juxtaposed against the concepts of voluntary counselling and testing (VCT). The merits of both sides will be looked into, in a bid to explore a possible middle ground where individual liberties are respected, without compromising on the public good and safety.

Chapter four will examine the resultant legal issues that arise from the discriminatory practices outlined in chapter two. There will then be an examination of the fundamental human rights to privacy, dignity, equality, health, work and marriage, with a consideration of whether or not the discriminatory practices outlined in Chapter three contravene the stated fundamental rights. The resultant implications of the breach of these human rights will also be expounded on.

Chapter five will look into the need for a definitive legal framework to proscribe discrimination and stigmatization of those infected with HIV/AIDS, in its various forms. It will then analyse the draft anti-discrimination bill presently in Nigeria's National House of Assembly. It considers the provisions of the bill and its ability to provide succour to those living with the virus. Relevant sections of the bill that seek to provide answers to the issues raised in earlier chapters will be looked at, with an evaluation of their likelihood of resolving the problems earlier raised. Also loopholes and flaws in the bill will be outlined, with possible improvements that can be made. Finally, there will be an examination of the anti-discrimination legislation of the United Kingdom and the Southern African Development Community (SADC), in a bid to show areas where the Nigerian legislation can be improved upon for increased efficiency.

Chapter six draws a conclusion; which seeks to posit a possible solution to the issue of discrimination against PLWHA in Nigeria through an effective legal framework that both protects PLWHA and provides an effective means of tackling the HIV/AIDS pandemic, going forward.

CHAPTER 2

A BACKGROUND TO HIV/AIDS IN NIGERIA

1. INTRODUCTION

HIV/AIDS has manifested in several ways across various parts of the globe, and the nature of its spread and subsequent State response to it has differed. Thus, the virus has gone through differing patterns of discovery, spread and reduction in various jurisdictions. This chapter explores the trajectory that the HIV pandemic has taken in Nigeria, by discussing the history of the virus in Nigeria, the modes of transmission that aid its spread, along with the factors that have led to the increase of its prevalence. This exposition is provided in order to provide the reader with a contextual understanding of the virus, along with its effect on Nigerian society.

2. HISTORY OF HIV/AIDS IN NIGERIA

HIV/AIDS was first detected in Nigeria in 1985 and was reported at an international AIDS conference in 1986.[1] As a response to the spread of the virus, the Federal Government of Nigeria set up the National Expert Advisory Committee on AIDS in 1987.[2] It was subsequently replaced by the National AIDS and STDs Control Program (NASCP), which was coordinated by the Federal Ministry of Health.[3] However, these bodies were largely ineffective and there was an unmitigated spread of the virus at an alarming rate.[4] This was to a large

---

[1] Michael Olatunji, 'John Dewey's pragmatic problem solving method and the HIV/AIDS scourge in Nigeria', *The African Symposium*, June 2012, available at *http://www.ncsu.edu/aern/TAS12.1/TAS12.1Olatunji.pdf*f, accessed on 12 July 2013.

[2] Phyllis Kanki and Olusoji Adeyi, 'Introduction' in AIDS in Nigeria: A nation on the threshold, edited by Phyllis J Kanki and Olusoji Adeyi, *Harvard Center for Population and Development Studies*, available at, *http://www.apin.harvard.edu/AIDS_in_Nigeria.html*, accessed on 12 July 2013.

[3] Ibid.

[4] Ibid.

extent seen as being due to the fact that like many other countries around the world, the spread of the epidemic was initially met with fear and denial.[5] By 2003, approximately 5 per cent of the population was infected with the virus, with over a million people having died from it and more than two million children made orphans.[6]

The most concerted efforts to address HIV/AIDS in Nigeria were made from 2002, when the State improved funding for the prevention and education on the virus.[7] The National Action Committee on AIDS (NACA) was created,[8] and the State initiated a three year HIV/AIDS Emergency Action Plan (HEAP).[9] In addition to these interventions, the State commenced what was at the time, an ambitious anti-retroviral (ARV) treatment program, with the aim of getting ten thousand adults and five thousand children on ARV treatment within the year.[10] Unfortunately, however, by 2004 several PLWHA on the program had died, as a result of a shortage of ARV's for up to three months which made it impossible for them to take the drugs during that time frame .[11]

In 2005 a renewed effort was made, with an announcement that PLWHA's would receive ARV's for free.[12] To kick start this intervention, a presidential mandate was made to place at least two hundred and fifty thousand PLWHA's on treatment before 2006.[13] This commitment was backed by increased funding, and concerted efforts by states and the Federal Ministry of Health. NACA launched an encompassing National Strategic Framework in 2010, which was

---

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] National Agency for the control of AIDS, 'History of NACA', available at *http://naca.gov.ng/history-naca*, accessed on 12 July 2013.

[9] Ibid.

[10] HIV/AIDS fact file, 'HIV/AIDS in Nigeria; the true story', available at, *http://www.nigeriahivinfo.com/hiv_aids_in_nigeria.php*, accessed on 12 July 2013.

[11] Ibid.

[12] Ibid.

[13] Ibid.

meant to span from 2010 to 2015.[14] An estimated ₦756 billion (about US $ 5 billion) was earmarked to implement the project. It set for itself the goal of reaching at least 80 per cent of sexually active adults in the country and 80 per cent of the most at risk population groups with HIV counselling and testing by 2015.[15] It also set out the plan to ensure that 80 per cent of eligible adults and 100 per cent of eligible children were receiving ARV treatment by 2015.[16] The effectiveness of this new scheme is yet to be seen. The most recent statistics place the HIV prevalence rate at 4.6 per cent, indicative of an increase of 0.2 per cent from the previously declining rates, which had peaked at 5.8 per cent in 2001.[17] It is estimated that about 3.4 million Nigerians are presently living with the virus,[18] with Nigeria accounting for 8 per cent of the global HIV/AIDS burden.[19] Sadly, even these high figures have been disputed in some quarters as being a deliberate attempt to downplay the debilitating effects of the disease on the population and the economy.[20] The country's underreporting, poor data collection, inadequate resources for HIV testing and missed diagnoses have been listed as factors which make the stated figures unreliable.[21]

---

[14] Ibid.

[15] Chinyere Amalu ‚NACA launches N756bn national HIV & AIDS response', *Vanguard Newspaper*, 30 March 2010, available at *http://www.vanguardngr.com/2010/03/naca-launches-n756bn-national-hiv-aids-response/,* accessed on 12 July 2013.

[16] Ibid.

[17] Global Network of People Living with HIV and AIDS in Nigeria, 'Country Assessment Report', *Global Criminalization Scan*, June 2010, available at *http://www.gnpplus.net/criminalisation/sites/default/files/Nigerian%20Criminalisation%20Scan%20Country%20Assessment.pdf*, accessed on 15 July 2013.

[18] UNAIDS, 'HIV and AIDS estimates 2011: Nigeria', available at *http://www.unaids.org/en/regionscountries/countries/nigeria/*, accessed on 16 July 2013.

[19] VA Wagbatsoma, OH Okojie, 'Knowledge of HIV/AIDS and sexual practices among adolescents in Benin City, Nigeria', (2006) *African Journal of Reproductive Health,* 10(3), 76-83.

Chijioke Okoli, Susan Cleary, 'Socioeconomic status and barriers to the use of free antiretroviral treatment for HIV/AIDS in Enugu State, south-eastern Nigeria', (2011) *African Journal of AIDS Research* 10(2),149–155.

[20] HIV fact file op cit (n10) 6.

[21] O Alubo, 'Breaking the wall of silence: AIDS policy and politics in Nigeria', (2002) *Inter J Health Serv*. 32(3), 551-556.

3. MODES OF TRANSMISSION OF HIV/AIDS IN NIGERIA

While the virus can be transmitted by various means, at present in Nigeria the virus is most predominantly spread through heterosexual intercourse, blood transfusions and mother to child transmission, each of which is discussed briefly below.

3.1. Heterosexual Sex

Approximately 80 per cent of HIV infections in Nigeria are through unprotected sex of members of the opposite sex.[22] This is as a result of low levels of education in many parts of the country on the ills of unprotected sex,[23] low levels of condom use even among those who are aware of the risks, due to cultural misconceptions;[24] and high rates of sexually transmitted diseases (STDs).[25] Women are more prone to this mode of transmission, as a result of their biological makeup which includes a larger mucosal surface, with a greater likelihood of small lesions in the vagina as a result of rough or 'dry' sex.[26] In addition to this, socio-cultural factors which subdue the woman's sexual will in Nigeria often mean that the woman is seldom in a position to determine her sexual activities independently and insist on sexual conduct that reduces her risk of HIV infection.[27]

---

[22] National Agency for the control of AIDS, 'Federal Republic of Nigeria, Global AIDS response; Country progress report', *Nigeria GARPR,* 2012, available at *http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/Nigeria%202012%20GARPR%20Report%20Revised.pdf,* accessed on 19 July 2013.

[23] Avert international HIV and AIDS charity, 'HIV and AIDS in Nigeria', available at *http://www.avert.org/aids-nigeria.htm*, accessed on 16 July 2013.

[24] Ibid.

[25] Kanki op cit (n2) 5.

[26] Gita Ramjee and Brodie Daniels, 'Women and HIV in Sub-Saharan Africa', (2013) *Aids Res Ther.*10(30).

[27] Nkoli I Aniekwu, 'Gender and Human Rights dimensions of HIV / AIDS in Nigeria', (2002), *Women's Health and Action Research Centre (WHARC), African Journal of Reproductive Health / La Revue Africaine de la SantéReproductive,* 6(3) ,30-37.

3.2. Blood Transfusions

Blood transfusions are the second largest source of HIV infection in the country.[28] A major contributing factor to this route of transmission is that a good number of Nigerian hospitals are ill equipped to properly screen blood, which increases the risk of using contaminated blood. [29]There is currently no legislation mandating the existence and use of a National Blood Bank. While the Federal Ministry of Health has developed a national protocol for proper blood screening,[30] gaps still exist in the enforcement of adherence to the protocol.[31]

3.3. Mother-to-Child Transmission

As an offshoot of the high numbers of female HIV infections and limited access to appropriate preventive treatment, there are an increasing number of children born with HIV. Current figures indicate that every year about seventy five thousand babies in Nigeria are born with HIV[32] and about 360,000 children are currently living with HIV, with a high percentage having been infected through their mothers.[33]

Other predominant modes of transmission include homosexual sexual relations and injected drug use, although not as prevalent as the above mentioned modes of transmission.[34] In the

---

[28] National Agency for the Control of AIDS op cit (n22) 8.

[29] Ibid.

[30] Abdulsalami Nasidi and Tekena O Harry, 'The epidemiology of HIV/AIDS in Nigeria", in AIDS in Nigeria: A nation on the threshold, edited by Phyllis J Kanki and Olusoji Adeyi, Harvard Center for Population and Development Studies, available at, *http://www.apin.harvard.edu/AIDS_in_Nigeria.html,* accessed on 12 July 2013.

[31] Ibid.

[32] UNAIDS, UNICEF, WHO, 'Global HIV/AIDS response; Epidemic update and health sector progress towards Universal Access', *Progress Report 2011*, 2011, available at *http://www.who.int/hiv/pub/progress_report2011/en/index.html,* accessed on 16 July 2013.

[33] UNAIDS, 'Global Report; UNAIDS report on the global AIDS epidemic'*, Joint United Nations Programme on HIV/AIDS,* 2010, available, at *http://www.unaids.org/globalreport/documents/20101123_GlobalReport_full_en.pdf*, accessed on 16 July 2013.

[34] National Agency for the Control of AIDS op cit (n22) 8.

case of homosexual sexual relations, it is difficult to have an accurate estimation of those infected via this mode of transmission as there is widespread stigmatization of homosexuals in Nigeria. Homosexual conduct is frowned upon as immoral and contrary to the cultures and religious affiliations of Nigerians.[35] Homosexual activity is criminalized in the country's criminal code[36] and more recently been comprehensively proscribed by the Same Sex Marriage Prohibition Law.[37] The law prohibits all same sex marriages and civil unions,[38] and penalises such unions with 14 years' imprisonment.[39] The law also proscribes any organization that advocates lesbian and gay people's rights and penalizes membership of such a body with 10 years' imprisonment.[40] This discrimination and criminalization of homosexual sexual activity has the tendency to drive same-sex sexual activity further underground, with the effect of making it difficult to monitor and contain the spread of HIV/AIDS amongst lesbians and homosexuals in Nigeria.

4. FACTORS THAT CONTRIBUTE TO THE SPREAD OF HIV/AIDS IN NIGERIA

A unique characteristic of HIV is that it is a social disease,[41] with its spread grounded in social and behavioural patterns of the people. The implication of this characteristic is that despite the

---

[35] Lanre AbassBolatito, 'The natural law theory of morality and the homosexuality debate in African culture', (2012) *Ogirisi: a new journal of African studies* 9, 182-214.

[36] Section 214(1) of the Criminal Code Act, Chapter 77 laws of the Federation of Nigeria, 1990 provides that any person who has carnal knowledge of any person against the nature of nature is guilty of a felony and is liable to imprisonment for fourteen years.

[37] Same Sex Marriage (Prohibition) Act, 2013.

[38] Section 1 of the Same Sex Marriage (Prohibition) Act, 2013.

[39] Section 5 of the Same Sex Marriage (Prohibition) Act, 2013.

[40] Section 5(2) of the Same Sex Marriage (Prohibition) Act, 2013

[41] UE Dibua, 'Socio-economic and socio-cultural predisposing risk factors to HIV/AIDS: case study of some locations in Eastern Nigeria', *The Internet Journal of Tropical Medicine*, available at *http://archive.ispub.com/journal/the-internet-journal-of-tropical-medicine/volume-6-number-2/socio-economic-and-socio-cultural-predisposing-risk-factors-to-hiv-aids-case-study-of-some-locations-in-eastern-nigeria.html#sthash.u6EngDrM.dpuf*, accessed on 20 July 2013.

increasingly widespread awareness generated by the media and some agencies of the State,[42] statistics show that there is a steady increase in HIV prevalence.[43] The discussion below deals with factors that have led to the continued spread and increase of the virus across the country, focusing on poverty, lack of education, rapid population growth, a dynamic epidemic trend, female subjugation and abuse, military incursion and the stigmatization of people living with HIV/AIDS.

4.1. Widespread levels of poverty

The latest statistics by the World Bank state that 62.6 per cent of Nigerians are living below the poverty line.[44] The full impact can better be felt when comparing this figure with the present population figures of the country, which stand at 167 million people.[45] The high levels of poverty are further aggravated by generally poor health indicators.[46]Large portions of the citizenry have little or no access to the already poor and inadequate health services. Unemployment is also continually on the increase,[47] which perpetuates the poverty of a large number of the population and increases vulnerability to the disease. When people have limited

---

[42] Joseph Keating, Dominique Meekers and Alfred Adewuyi, 'Assessing effects of a media campaign on HIV/AIDS awareness and prevention in Nigeria: results from the VISION Project', *BMC Public Health*, 2006, available at *http://www.biomedcentral.com/1471-2458/6/123*, accessed on 16 July 2013.

[43] Global Network of People Living with HIV and AIDS in Nigeria op cit (n17) 7.

[44] The World Bank, 'Data: Nigeria', available at *http://data.worldbank.org/country/nigeria*, accessed on 16 July 2013.

[45] National Population Commission, 'Nigeria over 167 million population: implications and challenges', available at *http://www.population.gov.ng/index.php/84-news/latest/106-nigeria-over-167-million-population-implications-and-challenges*, accessed on 19 July 2013.

[46] According to the National Human Development Report for Nigeria, Nigerians have a life expectancy of 52.3 years. See, UNDP, 'Human development report: Nigeria', *United Nations Development Programme,* 2012, available at http://hdrstats.undp.org/en/countries/profiles/NGA.html, accessed on 20 July 2013.

[47]According to National Bureau of Statistics, the rate of unemployment in Nigeria stood at 23.9 per cent in 2011, while urban unemployment was estimated at 29.5 per cent in 2013 and was set to rise by 2%. See, Thisday live, 'Nigeria's Unemployment Rate May Rise by 2%', 7 January 2014, available at *http://www.thisdaylive.com/articles/nigeria-s-unemployment-rate-may-rise-by-2-/168227/,* accessed on 7 January 2014.

earnings, their standard of living is affected and so is their ability to cater to their needs and health. As Ugwu put it, "Poverty creates an enabling environment for HIV/AIDS and conversely, HIV/AIDS can aggravate poverty".[48] The socio-cultural complexities of the country, which puts predominance on communal living and the subjection of personal fulfilment for the larger community,[49] coupled with the burden of caring for a family member living with HIV/AIDS places additional pressure on the already limited funds of most Nigerian homes.[50]

4.2. Limited or complete lack of education

Education has been defined as an empowerment right.[51] This is due to its ability to enlighten and to provide opportunities to improve on any innate talents or skills gathered in the process of getting educated. It is by the honing of the skills acquired that opportunities to have better earning power are created through increased demand for those acquired skills. Hence, education has the power to lift a people out of poverty. Unfortunately, the level of education among a large portion of the Nigerian population is staggeringly low. Literacy levels are as low as 14.5 per cent in some parts of the country.[52] Another sizable portion of the population

---

[48] Daniel Ugwu, 'Socio-economic impact of HIV/AIDS on farm women in Nigeria: evidence from Enugu State', (2009) *World Applied Sciences Journal* 6 (12), 1617-1624, ISSN 1818-4952.

[49] Dibua op cit (n41) 10.

[50] Ibid.

[51] Office of the High Commissioner for Human Rights, 'Special Rapporteur on the right to education', 2012, available at *http://www.ohchr.org/EN/issues/Education/SREducation/Pages/SREducationindex.aspx*, accessed on 12 July 2013.

Also see Committee on Economic, Social and Cultural Rights, 'General Comment No 13', *Economic and Social Council, United Nations twenty first session*, 15 November to 3 December 1999 , E/C.12/1999/10, available at *http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement*, accessed on 13 July 2013.

Also, Pimentel Caetano, 'The Human Right to education: freedom and empowerment", *Multicultural Education*, 2006, available at *http://files.eric.ed.gov/fulltext/EJ759633.pdf,* accessed on 13 July 2013.

[52] Borno State in the northern part of Nigeria is the lowest at 14.5 per cent, with states like Katsina and Jigawa also in the northern part of Nigeria, standing at 21.7 per cent and 24.2 per cent. See UNESCO, 'National Literacy Action Plan for 2012 – 2015: Nigeria', *High-Level International Round Table on Literacy*, 6 to 7 September 2012,

possesses only the most basic elementary education, with limited or no skills to avail them of job opportunities.[53] Due in part to the low level of skill acquisition, unemployment levels are high.[54] A large portion of the population is therefore unable to take steps to get themselves out of poverty. Many are left to resort to activities which can increase their exposure to HIV.[55] Lack of education has also meant that, while there may be a general level of awareness about the existence of HIV, a large portion of the population, especially those in the rural and peri-urban centres do not have a full understanding of the disease, its effects and the modes of transmission, apart from unprotected sexual intercourse.[56] Many still view HIV as the killer that affects the immoral who engage in unprotected sex with multiple sexual partners.[57]

---

available at *http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/Nigeria.pdf*, accessed on 16 July 2013.

[53] Simon Osezuah and CO Nwadiani, 'Technology skills, missing link on development in Nigeria', (2013) *Asian Journal of Management Sciences and Education* 2(1).

[54] According to the National Bureau of Statistics, the current rate of unemployment in Nigeria stands at 23.9 per cent. See, James Emejo, 'NBS puts Nigeria's unemployment rate at 23.9 per cent", *This Day Newspaper*, 09 May 2013, available at *http://www.thisdaylive.com/articles/nbs-puts-nigeria-s-unemployment-rate-at-23-9-per-cent/147135/*, accessed on 15 July 2013.

[55] A study conducted in Eastern region of Nigeria, showed strong correlation between prostitution and child labour with low levels of education with an HIV prevalence rate of 23 per cent and 16 per cent respectively. Also worthy of note, was the fact that all the street children interviewed had at one point in time gotten involved in high risk activities like unprotected sexual intercourse and injected drug use, in a bid to earn a living and survive. See Dibua op cit (n41) 10.

[56] In the study conducted in Eastern Nigeria, the majority of people interview still believed AIDS came as a result of poisoning or witchcraft. A few who were convinced that AIDS is caused by a viral infection expressed the misconceptions that the virus could be spread by mosquito bites, handshakes, sharing of sleeping space, or sharing of towels. See Dibua op cit (n41) 10.

[57] Ibid.

4.3. An ever increasing population

Nigeria is Africa's most populous nation.[58] According to the National Population Commission of Nigeria, the country's population increases every year, at the rate of about 3.2 per cent.[59] This increase is due, in part, to the fact that the country has been undergoing a demographic shift from a high-fertility and high-mortality rate to a high-fertility and low-mortality rate. This shift is matched by the fact that, a sizable proportion of that vast population is made up of young people. The median age in Nigeria is 17 and the 15 to 20 age group constitutes 20 per cent of the population.[60]

The implication of this population profile is that the most vulnerable age group, being adolescents and young adults, is steadily on the increase. In addition, the fact that there are limited opportunities for the majority of people in this age group to either be properly enlightened or to be empowered through education, increases the propensity for the spread of the virus.

4.4. A dynamic epidemic trend

Surveys conducted by Nigeria's Federal Ministry of Health have revealed that the spread of the virus cuts across all states, tribes and demographics in Nigeria.[61] This is indicative of the fact that the epidemic has a wide ranging prevalence that is not limited to a specific part of society. While some groups have a higher prevalence than others, no region is absolutely

---

[58] Ethiopia which has the second largest population in Africa, stands at 87 million people. See One World Nations Online, 'Current world population', available at *http://www.nationsonline.org/oneworld/world_population.htm*, accessed on 20 July, 2013.

[59] National Population Commission op cit (n 45) 11.

[60] Kanki op cit (n2) 5.

[61] Kola Oyediran, Olaronke Oladipo and Jennifer Anyanti, "HIV/AIDS Stigma and Discrimination in Nigeria", International Union for the Study of Population, 23 July 2005, available at *http://iussp2005.princeton.edu/papers/51685*, accessed on 20 July 2013.

immune from the spread of the virus. Therefore, what is being experienced is a "generalized" epidemic.[62]

The uneven variations in the various geopolitical zones, which cut across religious and ethnic ties, also make it increasingly difficult to categorically trace the origins of the disease in the country. It also complicates the process of monitoring the trajectory of the spread of the disease and, in effect, makes the planning of intervention measures all the more laborious.[63] The spread of the virus has defied more conventional patterns of distribution and it also does not follow the same course in the various sub-population groups.[64] The country's ethnic and cultural diversity has also made it increasingly difficult to implement up-to-date surveillance and monitoring systems, because a 'one size fits all' approach to the various cultural groups may not yield effective results and the alternative of specific methods for each ethnic group may prove prohibitive,[65] when considering that Nigeria about two hundred and fifty cultural groupings.[66]

4.5. Female subjugation and abuse

The majority of cultural practices that cut across Nigeria encourage some form of female subjugation. While some cultural practices are more harmful than others, a majority of these practices are detrimental to the health of women and girl children and place them in precarious positions, where they are unduly exposed to the transmission of the disease.[67] Practices that allow and sometimes encourage infidelity in men increase the risk of exposure for their wives and other sexual partners. This coupled with the fact that in Nigerian cultural contexts, a woman is not allowed to object to sexual relations with her husband, as she is viewed as

[62] Kanki op cit (n2)5.

[63] Ibid.

[64] Ibid.

[65] Ibid.

[66] High Commission of the Federal Republic of Nigeria, Ottowa, Canada, 'Cultures in Nigeria', available at *http://www.nigeriahcottawa.ca/nhc2/index.php/en/discover-nigeria/cultures-in-nigeria,* accessed on 20 September 2013.

[67] Aniekwu op cit (n27) 8.

chattel of the man and is seen to have given irrevocable consent to sexual intercourse upon payment of her bride price.[68] This consent cannot be revoked, even if the woman is fully aware of the infidelity of the husband and the attendant risks of having unprotected sex with him. It is estimated that in parts of Africa, between 60 to 80 per cent of women infected with HIV have only had one sexual partner.[69] This is reflective of the power imbalance and marital subjugation that is prevalent in Africa and Nigeria specifically. It is largely due to the fact that the woman is often unable to assert her desires and either insist on the use of a condom or absolute fidelity from her husband.[70] By and large, it is the man who determines the terms of the sexual intercourse. Female condoms are largely expensive and inaccessible in Nigeria. Therefore, women do not use condoms, but only negotiate their use.[71] According to Adekeye, there is a prevalent double sexual standard for males and females in Nigeria;[72] one which permits and even expects infidelity in males, but expects chastity from females.

Other social and cultural practices impact negatively on women and girl children. The practice of female circumcision which is prevalent in Nigeria,[73] for example, has the tendency to unduly expose girl children to HIV. This is because the practice is largely carried out in highly unsanitary and unregulated conditions and it involves the use of sharp objects that may be unsterilized.[74]

---

[68] This cultural position takes root in both African and common law principles, as per Hawkins J. In R v. Clarence (1889) 22 Q.B.D. 23 at 51. Also Sir Mathew Hale's legal treatise, 'Historia Placitorium Coronae' (History of the Pleas of the Crown) of 1736 which was well publicized and gave judicial boost to the theory. He there wrote that rape between husband and wife could not be recognized since the wife "hath up herself in this kind unto her husband, which she cannot retract".

[69] Aniekwu op cit (n27) 8.

[70] Ibid.

[71] Ibid.

[72] Shade Adekeye, 'The Impact of Human Immune Virus and Acquired Deficiency Syndrome (HIV/AIDS) on Nigerian Women', available at *http://www.unilorin.edu.ng/publications/adekeyeds/The%20Impact.htm*, accessed on 17 July 2013.

[73] Ibid.

[74] Margaret Brady, 'Female Genital Mutilation: Complications and Risk of HIV Transmission', (1999) *AIDS Patient Care and STDs*. 13(12), 709-716.

In some parts of the country with high poverty rates, many women who are otherwise uneducated and unskilled, due to the already existing poverty in their families and cultural notions that militate against education for the girl child may be left only with the option of prostitution as a means of subsistence.[75] The same lack of choices that have forced these women into prostitution may inhibit their ability to negotiate safe sex with their clients.

Human trafficking has been shown to have strong links to the spread of HIV/AIDS.[76] The problem of human trafficking is especially prominent in the Eastern part of Nigeria, where young women are taken from their homes and transported to various European countries for the purposes of prostitution and modern slavery.[77] A resultant effect is that some of these women become infected with HIV and whenever they are eventually found and deported back to the country may go on to spread the disease.[78] Customary practices of child marriage,[79] wife inheritance[80] and having children for the dead[81] have also been seen to increase the risk of

---

[75] Dibua op cit (n41) 10.

[76] Adekeye op cit (n72) 16.

[77]Dave Odigie, Chinenye Patience, 'Human Trafficking Trends in Nigeria and Strategies for Combating the Crime', (2008) *Peace Studies Journal* 1 (1).

[78] Ejiro Otive-Igbuzor,' Sexuality, Violence And HIV/AIDS In Nigeria', available at *http://www.gamji.com/article6000/NEWS6820.htm*, accessed on 26 September 2013.

[79] This practice is popular in many parts of northern Nigeria, where girls are married at a very young age to much older men who usually already have several other wives and sexual partners. For more on the ills of this, see, Dibua op cit (n41) 10.

[80] In a number of Nigerian tribes, widows are inherited along with their deceased husband's property by either the deceased's brothers or first born son. This phenomenon has been stated by human rights activists to be an infringement of the right of choice and inheritance rights of women. See, OO Fasoranti and JO Aruna, 'A cross-cultural comparison of practices relating to widowhood and widow inheritance among the Igbo and Yoruba in Nigeria', *Journal of World Anthropology: Occasional Papers*: 3(1) available at *http://wings.buffalo.edu/research/anthrogis/oldsite/JWA/V3N1/Fasoranti_Aruna-art.pdf* accessed on 20 July 2013. See also, Oluyemisi Bamgbose, 'Customary Law Practices and Violence against Women: The Position Under The Nigerian Legal System', available at *http://www.vanuatu.usp.ac.fj/sol_adobe_documents/usp%20only/customary%20law/Oluyemisi%20Bamgbose.htm*, accessed on 20 July 2013.
Also, Austin Ezejiofor, 'Patriarchy, Marriage and the Rights of Widows in Nigeria', (2011) *Unizik Journal of Arts and Humanities* 12(1), 139-157.

exposure to HIV/AIDS.[82] Women now account for 42 per cent of people living with HIV in Nigeria[83] and in Africa there are already six women with HIV for every five men.[84] These statistics are indicative of the increased vulnerability of women and girl children to the disease.

4.6. Military incursion

Research shows that there is a correlation between the movement of Nigerian military troops and the epidemiology of HIV infection.[85] The peace-keeping operations by Nigerian soldiers in Liberia, Sierra Leone, Côte d'Ivoire, the former Yugoslavia, and Somalia at various times have produced other distinct strands of net transfer of infection from these countries to Nigeria.[86] In peacetime, Sexually Transmitted Infection (STI) rates among members of the armed forces are generally two to five times higher than in comparable civilian populations and are higher in times of conflict.[87] An explanation given for this spike in infection rates is that when the troops go off on peace-keeping missions to other countries, they have sexual relations with prostitutes and sometimes rape the locals.[88] They then infect their sexual partners when they return to their bases.[89] Other research has shown that in military barracks

---

[81] Ibid.

[82] Dibua op cit (n41) 10.

[83] Aniekwu op cit (n27) 8.

[84] Ibid.

[85] UNAIDS, 'AIDS and the Military', *UNAIDS Best Practice Collection*, May 1998, available at *https://www.unaids.org/en/media/unaids/contentassets/dataimport/publications/irc-pub05/militarypv_en.pdf*, accessed on 19 July 2013.

[86] Ibid.

[87] Ibid.

[88] Elizabeth Defeis, 'U.N. Peacekeepers and sexual Abuse and exploitation: an end to impunity', (2008) *Washington University Global Studies Law Review* 7(2) 184-212.

[89] Lawrence Adeokun, 'Social and Cultural Factors Affecting the HIV Epidemic', in AIDS in Nigeria: A nation on the threshold, edited by Phyllis J Kanki and Olusoji Adeyi, *Harvard Center for Population and Development Studies*, available at, *http://www.apin.harvard.edu/AIDS_in_Nigeria.html*, accessed on 12 July 2013.

across Lagos State, there was an increase of HIV infection following the arrival of military personnel dealing with unrest situations.[90]

Even where there has been no mass movement of troops to war regions and back, research has shown that the sexual practices of military personnel make them especially prone to various STDs and HIV. Military personnel are generally more lax on the need for safe sexual practices; hence more readily have unprotected sex with multiple partners and commercial sex workers.[91] This is true in Nigeria where the military rank third among the various population groups with high levels of HIV infection.[92] There is multi-faceted interaction between the military and the civilian populace, which makes them a potential bridging group for disseminating HIV into the larger population.[93]

4.7. Stigmatization of PLWHA

There is a strong and widespread prevalence of stigmatization of PLWHA. It is both a by-product of infection and also a contributing factor to the increasing spread of the disease.[94] This is because many people do not want to undertake voluntary testing to verify their HIV/AIDS status. Many would rather live their lives unaware of their status based on the mistaken belief that "what one doesn't know can't kill one".[95] There is also the fatalist mind set among a large portion of the population which believes that one is destined to die at some point, by some means; therefore it is unwise to dwell on the possibility of being infected with HIV/AIDS.[96]

---

[90] Adekeye op cit (n72) 16.

[91] Ugboga Nwokoji and Ademola Ajuwon, 'Knowledge of AIDS and HIV risk-related sexual behaviour among Nigerian naval personnel', *BMC Public Health Research Article*, 21 June 2004, available at *http://www.biomedcentral.com/1471-2458/4/24/*, accessed on 20 July 2013.

[92] Ibid.

[93] Ibid.

[94] Saman Setareh-Shenas, John Gorski, Ryan Austerman and Arshia Noori, 'The effects of stigma associated with the diagnosis of HIV/AIDS: different cultural settings', *Global Studies Journal* 3(2), pp.317-326.

[95] Dibua op cit (n41) 10.

[96] Adeokun op cit (n89) 18.

Sadly this culture of escapism and distancing oneself from the disease is further encouraged by the major religious groups in the country to which most Nigerian's adhere to. Churches, Mosques and traditional religion practitioners propagate the message that HIV/AIDS is an unclean ailment that only visits the sinful and immoral.[97] Also, in the public space, PLWHA often lose their jobs and means of livelihood.[98] They are denied health care in many institutions and even healthcare practitioners, who ought to be better enlightened and more receptive, display strong disdain for PLWHA,[99] often insisting that they be kept separately from the other patients.[100] All these manifestations of discrimination propagate a culture of fear and hopelessness upon discovery of a sero-positive status. The implication is that only a small number of the population voluntarily tests for the disease[101] and so, it is possible for more people to carry on spreading the disease, completely unaware of their HIV/AIDS status. Research has also shown that among those who have tested and are aware of their positive HIV/AIDS status, a portion carry on to voluntarily and sometimes maliciously spread the virus.[102] This is due to the mind-set by some infected persons that as many as possible should also be condemned to a similar fate of rejection, stigma and ultimately death.[103] The effect of the apathy towards voluntary testing, along with the stigmatization and demonizing of the virus and people living with it has largely lead to a culture that supports compulsory testing,

---

[97] AIDS online, 'AIDS in Africa – Nigeria', available at *http://www.aidsonline.org/africa/nigeria.php*, accessed on 20 July 2013.

[98] Emmanuel Monjok, Andrea Smesny, and James Essien, 'HIV/AIDS - related stigma and discrimination in Nigeria: review of research studies and future directions for prevention strategies', (2009) *Afr. J Reprod. Health*. 13(3), 21–35.

[99] Chen Reis, Michele Heisler, Lynn Amowitz, Scott Moreland, Jerome Mafeni, Chukwuemeka Anyamele, and Vincent Iacopino, 'Discriminatory attitudes and Practices by Health Workers toward Patients with HIV/AIDS in Nigeria", (2005) *PLoS Med* 2(8), 246-256.

[100] Ibid.

[101] Clifford Odimegwu, Sunday Adedini and Dorothy Ononokpono, 'HIV/AIDS stigma and utilization of voluntary counselling and testing in Nigeria', *BMC Public Health*, 13 May 2013, available at *http://www.biomedcentral.com/1471-2458/13/465*, accessed on 16 August 2013.

[102] Dibua op cit (n41) 10.

[103] Ibid.

testing without prior consent and approval and various other unethical practices in relation to pre- and post- testing counselling.[104]

The HIV/AIDS pandemic has strong socio-economic undertones and implications.[105] It is thus not enough for government initiatives and media campaigns to be limited to enlightenment on the prevention of HIV/AIDS through abstinence and condom use. Concerted efforts must be made to deal with the underlying social factors that continually spur the spread of the deadly disease. As stated by Dibua[106], many still engage in acts that are detrimental and leave them vulnerable to the disease, as they view their economic survival to be more paramount. In Nigeria, poverty and cultural beliefs are inextricably linked to the spread of HIV. There is therefore a need for a more comprehensive approach to the problem of the spread of HIV/AIDS; one that also takes into consideration more effective ways to cater for and protect those already suffering from the virus, so that they do not view it as one other path to death among the many hunting their existence in their myriad of problems and perceived dead ends.

---

[104] Ibid.

[105] Monjok op cit (n98) 20.

[106] Dibua op cit (n41) 10.

CHAPTER 3

STIGMATIZATION AND DISCRIMINATION AGAINST PEOPLE LIVING WITH HIV/AIDS

1. INTRODUCTION

The nature of HIV/AIDS and its widespread devastation across Nigeria has resulted in a pervasive fear of the virus. This fear has often translated into avoidance of those who live with the virus. The approach of fear, avoidance and ultimately discrimination has resulted in a multifaceted moral and socioeconomic onslaught on PLWHA with various negative effects for all parties concerned. This Chapter examines the problem of stigmatization of PLWHA in Nigeria, and the forms it has taken. It also examines the growing trend of mandatory testing, with the attendant public health implications of this practice.

2. A CULTURE OF FEAR OF HIV/AIDS

As discussed in Chapter two, a wide range of socio-economic and political factors encourage the spread of HIV in Nigeria and the spread in turn increases fear of the disease. The result of this fear and ignorance is a steady and increasing culture of discrimination and stigmatization of PLWHA.[107] A major problem that has resulted is a generalized fear of getting tested.[108] There is the sense that ignorance is bliss and that awareness of the presence of the virus makes sickness and eventual death foreboding and inevitable.[109] This is due to a perception that it is the stigma attached to the knowledge of the disease that actually kills, even faster than the disease itself.[110] This belief is untrue and science has proven that early detection of HIV and

[107] Odimegwu op cit (n101) 20.

[108] Monjok op cit (n98) 20.

[109] D Skinner and S Mfecane, 'Stigma, discrimination and the implications for people living with HIV/AIDS in South Africa', (2004) *Sahara* 1(3), 157–164.

[110] Ibid.

proper management makes it possible for a PLWHA to live a normal and healthy life.[111] Failure to detect the virus, however, may lead to the onset of AIDS and eventual death.[112] Early detection on the other hand can help stem the spread of the virus by carriers who are otherwise unaware of their status.[113] Therefore, on a larger scale, early detection should help carriers make healthier life choices which will give them a longer and more productive life, while also limiting the spread of the disease.[114]

Unfortunately, voluntary testing is still very low in many parts of the federation.[115] A growing number of those diagnosed with the virus become aware of their status through mandatory tests, which they are made to undergo under varying circumstances for different purposes. These mandatory tests, while making people aware of their status raise various legal and ethical queries that shed light on the propriety of the widespread practice, which will be discussed further in this work.

3. DISCRIMINATION AND STIGMATIZATION OF PLWHA

The HIV spread in Nigeria traverses the various ethnic, cultural and language barriers across the country. As the burden increases within the various communities, individuals who have contracted the HI virus are faced with denial, stigma and discrimination.[116] According to Mann, the HIV epidemic has three phases; the HIV epidemic, the AIDS epidemic and the

---

[111] Saundra Young, 'HIV no longer considered death sentence', *CNN International edition* 1 December 2013, available at *edition.cnn.com/2013/12/01/health/hiv-today/,* accessed on 2 December 2013.

[112] IO Modo, FN Modo and PI Enang, 'Socio-cultural factors responsible for increasing rate of HIV/AIDS in Akwa Ibom State of Nigeria', (2011) *Ethno Med* 5(2),141-147.

[113] Young op cit (n111) 23.

[114] Peter Vanable, Michael Carey, Donald C Blair, and Rae Littlewood, 'Impact of HIV-related stigma on health behaviours and psychological adjustment among HIV-positive men and women', (2006) *AIDS and Behaviour* 10(5).

[115] LA Yahaya , AA Jimoh, OR Balogun, 'Factors hindering acceptance of HIV/AIDS voluntary counselling and testing (VCT) among youth in Kwara State, Nigeria', (2010) *Afr J Reprod Health 14*(3), 159-64.

[116] Oyediran op cit (n61) 14.

epidemic of Stigma, Discrimination and Denial (SDD)[117] and according to him; the third phase is the least understood phase.[118] Nigeria is currently between the full AIDS epidemic phase, and the epidemic of SDD.[119] This undermines efforts made at prevention, voluntary counselling and testing.[120] It also amplifies the impact the infection has on PLWHA, their relatives and their communities.

The stigma attached to being diagnosed with HIV/AIDS far exceeds that of any other disease.[121] This may be due to the history of its discovery and spread,[122] or the fact that the disease is predominantly spread by sexual intercourse;[123] so there is the tendency to link the disease to promiscuity.[124] However this approach is counterproductive.[125] While a sizable number of PLWHA may have contracted the virus through unprotected sexual intercourse, this is of little importance in determining the approach to take in relation to PLWHA. All PLWHA should be treated with respect and care, regardless of the mode of them contracting HIV.

---

[117] Abbreviation mine.

[118] Jonathan Mann, 'Statement at an informal briefing on AIDS to the 42nd Session of the United Nations General Assembly', *World Health Organization*, 20 October1987, available at *http://apps.who.int/iris/bitstream/10665/61546/1/WHO_SPA_INF_87.12.pdf,* accessed on 21 July 2013.

[119] Oyediran op cit (n61) 14.

[120] G Letamo, 'Prevalence of, and Factors Associated with, HIV/AIDS-related stigma and discriminatory attitudes in Botswana', (2003) *Journal of Health, Population and Nutrition* 4, 347-357.

See also, Federal Ministry of Health, Nigeria, 'National HIV/AIDS and reproductive health survey', (2003)*Federal Ministry of Health Abuja, Nigeria*, 2013(212).

[121] Oyediran op cit (n61) 14.

[122] Vanable op cit (n114) 23.

[123] In a survey conducted in Imo State, Nigeria, a majority of the participants believed that HIV/AIDS is transmitted via unprotected and multiple partner sexual intercourse. They believed that individuals who are sero-positive are responsible for their infection. As Stated by one discussant; "Sex is the sweet thing that is bitter. It is the infected person's irresponsible and promiscuous behaviour. If s/he is not loose, how did s/he come about the infection..?" See, Odimegwu op cit (n101) 20.

[124] Oyediran op cit (n61) 14.

[125] Ibid.

4. FORMS OF DISCRIMINATION AGAINST PLWHA

Discrimination associated with HIV/AIDS is manifested at two levels; societal and individual.[126] At the societal level, it manifests itself in discriminatory laws, policies, popular discourse and the social conditions of PLWHA. At the individual level, it is apparent in the thoughts and behaviour that indicate prejudice exhibited against PLWHA.[127] Societal discriminatory patterns have the ability to influence and mould individual feelings of prejudice. Conversely, individual mind-sets have a ripple effect which ultimately shapes societal notions.[128] There is need to examine the various mind-sets that create and perpetuate the culture of discrimination, in order to adequately combat them. The sections that follow look at the impact of lack of information and misinformation; familial patterns and practices; and religious ideologies.

4.1. Lack of information or misinformation

One primary source of discrimination against PLWHA is a limited understanding of the modes of transmission of HIV/AIDS. Socially learned biases and lack of proper information perpetuate false notions about the nature of the virus. In a survey conducted across Nigeria by the Federal Ministry of Health, in conjunction with the Society for Family Health and other development partners, 60 per cent of men and 50 per cent of women surveyed believed that they could contract the virus by sharing a meal with an HIV/AIDS patient.[129] A significant number of females believed that a person could get infected through witchcraft.[130] Also, many males and females believed that the virus could be transmitted via mosquito bites.[131]

---

[126] Odimegwu op cit (n101) 20.

[127] Ibid.

[128] Ibid.

[129] Oyediran op cit (n61) 14.

[130] Ibid.

[131] Ibid.

Of note is the fact that populations exposed to media messages were more likely to have positive attitudes towards PLWHA. While this shows the strong correlation between effective awareness and education with the reduction of stigma, it is by no means the final solution to the problem, as research showed similar if not higher levels of discrimination among educated professionals, than amongst those less educated.[132]

4.2. Familial patterns and practices

The family unit plays a primary role in stemming the tide of discrimination. It should be the first source of support and succour for those living with HIV/AIDS. This is because since families and communities are deeply intertwined, families can set the tone for the acceptance and fair treatment of PLWHA.[133] Sadly, this is not always the case. As seen in the survey by the Ministry of Health, many interviewees indicated that they would not reveal their status to their family members.[134] Similarly, many indicated that the HIV/AIDS status of a family member should not be disclosed.[135] This poses an especially difficult problem in light of the cultural context of the family in Nigeria. As in most other Sub-Saharan countries, the central role of the family in society cuts across the various ethnic groups in Nigeria. A lot of emphasis is placed on family reputation and esteem.[136] The individual is thus subsumed within the family unit and is by and large a reflection of his or her family.[137] Any action or state of affairs that puts the individual in a bad light reflects badly on the family. This reality inhibits open and honest communication and makes disclosure more difficult. The discrimination, judgment and segregation that often accompanies discovery of a person's HIV positive status, places sero-positive persons in a difficult position, as they are often left with no form of

[132] Ibid.

[133] Ibid.

[134] Ibid.

[135] Ibid.

[136] Vanable op cit (n114) 23.

[137] Ibid.

support from within and outside their immediate circle. This affects their capability and willingness to live with the disease.[138]

As seen from the national survey, even when there is no conscious stigmatization against PLWHA, family members would prefer not to know and have to deal with the discovery.[139] In another survey,[140] participants stated that they would not want an infected relative's name to be made public, so that the family name will not be "tarnished".[141] Curiously, this standpoint had marginal significance or correlation with levels of education or exposure to information about the disease,[142] nor was religious belief a differentiating factor.[143] The situation is particularly unfortunate in the light of the fact that in a separate survey conducted in Nigeria, 50 per cent of PLWHA claimed that they had been discriminated against by their spouses.[144] This shows the deep cultural bias that permeates the socio-cultural strata of Nigeria. There is the belief that those who have contracted the virus are without hope[145] and doomed to death. They are seen as economically unproductive even if they are physically fit.[146] It may then be deduced that they are seen as dead weight that will merely drag the rest of the family down or even infect others, and should consequently be cut off.

Families often endure the high cost of caring for relatives living with HIV/AIDS. As ARV's are still not readily and easily accessible to many PLWHA, their families often bear the burden of purchasing ARV's and other corollary healthcare procedures for their upkeep. In the Nigerian context, families are obligated to help, in which case, there is a huge strain on already

---

[138] Ibid.

[139] Oyediran op cit (n61) 14.

[140] Odimegwu op cit (n101) 20.

[141] Ibid.

[142] Ibid.

[143] Ibid.

[144] OE Johnson, 'Social impact of HIV/AIDS on clients attending a teaching hospital in Southern Nigeria', (2012) *Sahara J,* 9(2), 47–53.

[145] Oyediran op cit (n61) 14.

[146] Ibid.

limited resources.[147] Family members would thus rather not know and feel compelled to help out while also battling the feelings of disappointment, sorrow and disdain toward the PLWHA.[148] These multi layered levels of resentment inadvertently reinforce stigmatizing behaviour.[149] In extreme cases, members of society support coercive policies of legal isolation, mandatory testing and public labelling of infected individuals.[150]

4.3. Religious ideologies

Religious groups play a key role in the perpetuation of stigmatization. As earlier mentioned, HIV/AIDS is linked with strong moral sensibilities. These moral sensibilities are linked with religious affiliations. Many of the various predominant religions in Nigeria preach that iniquity is punished by death. Indeed, according to the Bible, the wages of sin is death.[151] HIV/AIDS is still largely seen as a death sentence. As one participant in a survey stated,

> "The disease disfigures the person. The person will eventually die… In fact you are actually seeing a living ghost. What scares us most is the fatal nature of the diseases. So when we hear that somebody is infected or we see one, we are afraid because the person will die sooner or later".[152]

Due to the poor treatment that most PLWHA get, sickness and eventual death are almost inevitable, hence the strong link between death and the virus.[153]

In other situations, the virus is ascribed with spiritual manifestation. It is seen as the product of witchcraft or demon possession.[154] All these further the stigmatization of PLWHA and casts

[147] Ibid.

[148] Ibid.

[149] Ibid.

[150] Odimegwu op cit (n101) 20.

[151] Romans 6 verse 23, The Holy Bible.

[152] Odimegwu op cit (n101) 20.

[153] Ibid.

them as unclean. According to Okechukwu, this is a form of symbolic stigmatization.[155] He argues that this form of stigmatization is manifested through political, religious, social or other values.[156] However, with better education, unfounded fears can be allayed. Here religious leaders play a fundamental role, as they are trusted and respected members of Nigerian society.[157] Their credibility and closeness to their communities make them major influencing factors in shaping the thoughts of their followers. Therefore a constant perpetuation of an "us and them" attitude towards PLWHA only further engrains the stigma.[158]

5. MANIFESTATIONS OF DISCRIMINATION

Discrimination is often manifested in schools, places of work, religious centres and even health centres. These avenues for the display of discrimination will here be examined.

5.1. In schools and institutions of learning

In the national survey,[159] the majority of the participants across the various states stated that they would not want their wards schooling with an infected child. Also, in a study conducted on the local government chairmen of Osun State in Nigeria, the majority stated that they would not allow an infected teacher or care-giver to remain in the employment of any of the schools

---

[154] Ngozi Mbonu, Bart Van den Borne, and Nanne De Vries, 'Stigma of People with HIV/AIDS in Sub-Saharan Africa: A Literature Review', (2009) *Journal of Tropical Medicine*, 2009(145891).

[155] K Okechukwu, 'The impact of stigma on the prevention of HIV/AIDS', (2007) *Benin Journal of Postgraduate Medicine*, 9(1) 64-66.

[156] Ibid.

[157] O Oluduro, 'The role of religious leaders in curbing the spread of HIV/AIDS in Nigeria', (2010) *PELJ* (13)3.

[158] Ibid.

[159] Oyediran op cit (n61) 14.

within their local government.[160] Due to these attitudes, research showed that many staff and students living with HIV/AIDS refuse to inform colleagues or authorities of their status.[161]

5.2. In places of work and in business dealings

Participants in the national survey[162] stated an unwillingness to work with colleagues who were HIV positive. As a matter of corporate policy, while some organizations openly have low tolerance for PLWHA, others have no policy on AIDS and adopt a management style of waiting to see how many workers have become infected and whether it has affected productivity. [163] While there has been anecdotal evidence of employment-related discrimination and stigmatization, individual cases have been couched in anonymity because of the need to protect the parties involved.[164] According to the People Living with HIV Stigma Index, about 45 per cent of PLWHA in Nigeria reported having lost their jobs due to their HIV status.[165]

There is also a limited desire to conduct business with PLWHA.[166] Participants in the national survey indicated an unwillingness to buy products from the owner of a neighbourhood grocery

---

[160] A Adelekan, E Edoni, 'Facilitating factors for HIV/AIDS stigma and discrimination, and political priority for its reduction among Local Government Chairmen in Osun State, Nigeria', (2012) *Journal Of Humanities And Social Science,* 3(6), 39-44.

[161] Ibid.

[162] Oyediran op cit (n61) 14.

[163] Clifford Odimegwu, 'Prevalence and predictors of HIV-related stigma and knowledge in Nigeria: implications for HIV/AIDS prevention initiatives', *Research Report submitted to the 2002/2003 Takemi Program in International Health, Harvard School of Public Health*, available at *https://www.hsph.harvard.edu/takemi/files/2012/10/RP210.pdf,* accessed on 23 July 2013.

[164] Oyediran op cit (n61) 14.

[165] The Global Network of People Living with HIV, ' Stigma and discrimination at work: evidence brief', *People living with HIV stigma index*, 23 July 2012, available at *http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/publication/wcms_185808.pdf,* accessed on 23 August 2013

[166] Odimegwu op cit (n163)30.

and a food vendor who is sero-positive.[167] It can be deduced that the levels of stigmatization against PLWHA are so high that not only will people not want to work with them, but will also not want to enable them to have some level of financial independence.

5.3. In religious centres

As stated above, messages that promotes the stereotyping of PLWHA as sinful and deserving of their fate, further the culture of discrimination and stigmatization. The resultant effect is that, upon discovery of a sero-positive status, many are ostracized from their places of worship.[168] They are largely ignored and avoided, while in extreme situations, are banned or excommunicated from their religious sects. In similar situations, clerics who are diagnosed as HIV positive usually have their employment terminated and are relieved of their duties.[169] This is due to a perception that lending a helping hand to PLWHA can be regarded as condoning the perceived sins that led to contracting the virus.[170] Even where there are no overt acts of discrimination, the "sin based" approach to the virus and those living with it, reinforces the feelings of guilt, unworthiness and lack of acceptance in a majority of PLWHA.[171] There is a need to appreciate that not all HIV infections are transmitted through perceived acts of immorality. Even when that is the case, there should be a greater emphasis on the principles of forgiveness of sin and readmission into the fold; which all the major religions in Nigeria preach, in one form or the other.[172]

There is also a belief among some religious leaders that the epidemic has not significantly affected their denominations; as such it is not their responsibility, resulting in attitudes that are at best passive.[173] Research has however shown that church going youth engage in risky sexual

---

[167] Ibid.

[168] Oluduro op cit (n157) 29.

[169] Ibid.

[170] Ibid.

[171] Ibid.

[172] Ibid.

[173] Ibid.

behaviour as do non church going youth.[174] Most of the young people who test positive to HIV are deeply religious.[175]

The Roman Catholic Church along with other minor religious sects oppose the use of condoms as they are regarded as immoral and a blunt and misguided weapon in the battle against HIV/AIDS.[176] There is rather an emphasis on encouraging abstinence and being faithful to one's partner; an approach that has not necessarily proven to be effective in curbing the spread of HIV/AIDS in Nigeria.[177] This standpoint on condoms has far reaching implications because a large portion of Christians in much of southern Nigeria and various parts of the northern part of Nigeria are of the Roman Catholic faith. The church therefore commands a large following and influence.

6. EFFECTS OF DISCRIMINATION

Stigma enhances secrecy and denial, which are catalysts for HIV transmission.[178] Due to the prevalent culture of unwillingness to test for the virus and pervading fear of it, there is the increase of mandatory testing. In many churches in Nigeria, couples must undergo mandatory HIV/AIDS tests and present HIV/AIDS free certificates to the religious authorities before they are joined as husband and wife.[179] These tests often do not occur with any pre-test or post-test counselling. Sadly, at times, the results of such tests are not confidential. In a number of Pentecostal churches in Nigeria, the intending couples are required to take the test under the supervision of a representative of the church marriage committee and the results are disclosed directly to the church officials, before notifying the couple.[180]

[174] Ibid.

[175] Ibid.

[176] Ibid.

[177] Ibid.

[178] WW Rankin, S Brennan, E Schell, J Laviwa, and SH Rankin, 'The stigma of being HIV-positive in Africa', (2005) *PLoS Medicine* 2(8),e247.

[179] Oluduro op cit (n157) 29.

[180] Ibid.

In the work place, mandatory tests are required before employment is given or promotion gotten.[181] As shown from the PLHIV Stigma index, PLWHA stand a high risk of losing their jobs due to their status; and this often regardless of their competence or proven track record.[182]

There has been a case of a private Christian university requiring mandatory HIV tests before admission is given and to undergo more mandatory HIV and pregnancy tests before graduation.[183] The university maintained that it was merely trying to help the students imbibe godly virtues and was in no way, discriminating against those who tested positive.[184] However, the Federal Government placed a ban on the procedure, ordering the school to desist.[185] According to NGOs and government officials, the government's issue was not with regard to what was done with the results, but the fact that mandatory testing was required as a prerequisite for graduation.[186]

Unfortunately, this stigmatization and avoidance of PLWHA is not limited to academic institutions. Medical personnel have been shown to exhibit discriminatory attitudes towards PLWHA.[187] These health care providers who are also members of society are likely to exhibit similar prejudicial and fearful reactions to HIV/AIDS as other members of society.[188] The result is poor patient management, and denial of needed treatment and support services. This can be particularly ostracizing for PLWHA as they can feel that even those who ought to be better informed and more understanding to their plight, are demonstrating discriminatory

---

[181] Monjok op cit (n98) 20.

[182] Ibid.

[183] BBC News, 'Nigeria probes HIV graduate test', *BBC News* 20 August, 2007, available at *http://news.bbc.co.uk/2/hi/africa/6955149.stm*, accessed on 23 August 2013.

[184] Ibid.

[185] Ibid.

[186] Ibid.

[187] S Adebajo, A Bamgbalata, M Oyedran, 'Attitudes of health care providers to Persons Living With HIV/AIDS in Lagos State, Nigeria, (2003) *African Journal of Reproductive Health / La Revue Africaine de la SantéReproductive* 7(1), 103-112.

[188] Ibid.

practices towards them. This feeling of rejection can affect their morale and hamper their desire to receive proper and adequate medical care.[189] However, in order to effectively protect PLWHA, extensive, competent and compassionate medical care is required for them.[190] There is thus need to pay attention to the attitudes and practices of medical personnel and nurses especially, who have more direct contact and spend more time with the patients.[191]

7. THE DUE PROCESS FOR HIV TESTING

In the light of the above observations, it is expedient to highlight the appropriate procedure for HIV testing. Firstly, the test must be undertaken voluntarily. Voluntary counselling and testing (VCT) has been defined as the process by which an individual undergoes counselling, enabling him or her to make an informed choice about being tested for HIV and how to live after the test.[192] It involves a process of pre- and post- test counselling. These two stages of counselling are fundamental in educating the individual on the nature of the virus, the implications of being sero-positive, acceptance of the test results, access to family planning, prevention of mother to child transmission, and various other information that are key to living a productive life, either as an HIV positive person or not.[193] As stated by the UNAIDS technical update, there is a greater need to evolve VCT best practices, especially as more countries are under pressure to curb their HIV/AIDS prevalence.[194]

---

[189] Ibid.

[190] Ibid.

[191] Ibid.

[192] UNAIDS, “HIV Voluntary Counselling and Testing: a gateway to prevention and care”, UNAIDS Case Study, June 2002, UNAIDS Best Practice Collection, available at http://www.unaids.org/en/media/unaids/contentassets/dataimport/publications/irc-pub02/jc729-vct-gateway-cs_en.pdf, accessed on 23 August 2013

[193] Ibid.

[194] Ibid.

Nigeria's VCT policy, as outlined in the "National Guidelines for HIV and AIDS treatment and care in adolescents and adults",[195] requires that all patients undergoing HIV testing must receive both pre- and post- test counselling and must give their consent before the test is performed on their specimen. The only exception to the rule is where the consent of the patient cannot be gotten or it is an emergency.[196]

8. PUBLIC POLICY CONCERNS

While VCT has been adopted by Nigeria and various other jurisdictions as the ideal method of HIV testing, there is still the argument for the use of mandatory testing in special circumstances. This has resulted in two often conflicting positions when dealing with the issues of discrimination and mandatory testing from a public policy and public health point of view. The merits of these two positions will here be examined.

8.1. Public health argument for mandatory testing

The major premise of the public health position is that compulsory HIV testing is required in certain situations, to reduce the spread of the virus.[197] A former President of the United States of America; President Bill Clinton has advocated for mandatory HIV testing in countries where the prevalence rate is 5 per cent or higher.[198] An argument for this approach may be that the virus is spreading faster than the process of empowerment and education can effectively stop it. Hence there is a need for mandatory testing as a measure to nip the spread, while education is being undergone. Even in developed countries like United States of America, which have a better grip on the disease, there is steady shift from the once inviolable sanctity

---

[195] Federal Ministry of Health, 'National guidelines for HIV and AIDS treatment and care in adolescents and adults', October 2010, available at *http://www.who.int/hiv/pub/guidelines/nigeria_art.pdf*, accessed on 23 August 2013.

[196] Paragraph 2.1. ibid.

[197] Ibid.

[198] AD Asante, 'Scaling up HIV prevention: why routine or mandatory testing is not feasible in Sub- Saharan Africa', (2007) *Bulletin of the World Health Organization* 85(8), 569-648.

of HIV information, to a more public health minded approach; which reinstates intrusive public health disease control measures as a means of managing the spread of the HI virus.[199]

Another justification may be that certain unique situations will dictate mandatory testing, as there is more than just the welfare of the party being tested at stake. This position advocates that personal liberties may sometimes have to be limited or put on hold for the health and safety of the general populace or a particularly vulnerable group.[200] It extrapolates this position to view failure to mandatorily test as an infringement on the rights and autonomy of the uninfected.[201] There is the position that HIV testing should be made a regular procedural test, such as any other blood test required for medical care, as a means to help curb the spread of the virus. Kass argues that such testing will help to demystify the disease and remove the cloud of secrecy that surrounds it.[202] It is claimed that it is the secrecy that breeds fear of the disease and subsequently, stigmatization of its sufferers.[203]

An addendum to this position is the argument that treatment should also be seen as a method of prevention.[204] In line with this reasoning, there will be the need to identify those living with the virus in order to treat them and consequently reduce the spread of the virus; both through the reduction of the carrier's viral load and anticipated more well-adjusted behaviour which reduces the risk of transmission. Proponents argue that it will aid early detection which has the ability to first help the carrier begin early treatment and then to also help the carrier desist from any further activity that can spread the virus; thus saving the carrier and other otherwise

---

[199] Kellie Lagitch, 'Mandatory HIV testing: an Orwellian proposition', (1998) *St. John's Law Review* 72 (1) Art. 4.

[200] Nancy Kass, 'An ethics framework for Public Health', (2001) *Am. J. Public Health.* 91(11), 1776-1782. See also, Kalle Grill, 'Individual liberty in public health – no trumping value', *Public health-ethical issues*, available at *http://www.academia.edu/980122/Individual_liberty_in_public_health_-_no_trumping_value*, accessed on 20 September 2013.

[201] Ibid.

[202] Ibid.

[203] Ibid.

[204] Adriaan Nel, 'Test and Treat Model: Feasibility for implementation in Africa', *Consultancy Africa Intelligence*, April 2010, available at *http://www.consultancyafrica.com.,* accessed on 30 September 2013.

likely victims.[205] All of these rationales have led to the clamour for and in some cases, the implementation of, mandatory HIV tests for certain classes of individuals, as will be discussed below.

(a) Mandatory testing for expectant mothers.

Mother to infant infection is one of the most common forms of transmission of the virus and unlike other forms of transmission, it is relatively easier to detect and stem.[206] The argument is made that an unborn child is entitled to protection from contracting the disease, and since it is not in a position to make any independent choices to avoid infection, it should be availed protection by the law in the form of mandatory testing for expectant mothers.[207] In line with this reasoning, where the baby is born and found to be HIV positive and the mother is told, she inadvertently becomes aware of her status. So, it is more beneficial for her to be made aware of her status when this information can still make a difference in the life of her child. In addition, the non-timely revelation of the status may have the eventual effect of being more traumatizing. It may then be a more effective technique to incorporate testing for HIV at the early stages of pregnancy and subsequently to incorporate counselling and medical care during the months of pregnancy in order to equip the expectant mother.

This argument may be countered by the position that a more inclusive method is to be preferred. This is because it allows the expectant mother to have a full evaluation of her position and the attendant risk to the unborn child, should she be found to be sero-positive, which is to be preferred to merely being informed of her status and being compelled to make necessary adjustments, which may prove difficult, due to the new revelation. Prenatal care should be placed as an ally to an expectant mother and her interests, and not as a foe, intending to scare, intimidate and even punish her for being sero-positive.[208] Identification alone is of

[205] Ibid.

[206] Erin Nicholson, 'Mandatory HIV testing of pregnant women: Public Health Policy considerations and alternatives', (2002) *Duke Journal of Gender law & Policy* 02/2002(9), 175-191.

[207] Ibid.

[208] Ibid.

little good without the trust of medical personnel and the willingness to go forward with care.[209]

As noted by Mcmillion, the nature of the patient-healthcare practitioner relationship should be one that facilitates and not enforces.[210] Thus, a system that sanctions or permits mandatory testing is counterproductive because it makes the health care provider the enforcer of a directive that will be largely seen as punitive and ultimately counterproductive.[211] This is more so in the case of high risk populations who are already on the fringes of the formal health care system.[212] In Nigeria, only 40 per cent of deliveries are attended to by skilled birth attendants in the structured and formal health care system.[213] This already places a large percentage of women at the risk of maternal and child mortality, due to lack of proper care. With Nigeria already having the tenth highest figures in the world for maternal and child mortality,[214] a system that calls into question the tenuous trust between expectant mothers and health care practitioners will not only have the effect of discouraging those willing to use the established systems, but also of dissuading those who are meant to be won over to use the formal health care systems. A spill over effect may then be an even increasing number of new HIV infections in mothers and children, through the unsanitary and sometimes, dangerous practices of the traditional birth attendants. Care must also be taken to ensure that mandatory testing programs do not result in the State placing itself between mother and child, by implying that

---

[209] Ibid.

[210] Evans Mcmillion, 'The case against mandatory HIV testing of pregnant women: the legal and public policy implications", (1998) *Duke Journal of Gender Law & Policy* 5(1), 227-243.

[211] Ibid.

[212] Ibid.

[213] OL Olusegun, IR Thomas, IM Micheal, 'Curbing maternal and child mortality: the Nigerian experience', (2012) *International Journal of Nursing and Midwifery* 4(3), 33-39.

[214] JG Cooke, F Tahir, 'Maternal Health in Nigeria; with leadership, progress is possible', *CSIS Global Health Policy Center, Center for Strategic and International Studies*, January 2013, available at *http://csis.org/files/publication/130111_Cooke_MaternalHealthNigeria_Web.pdf*, accessed on 30 September 2013.

the State is a better caretaker than the mother.[215] Excessive State intrusion sets a bad precedent, raising concerns about the State increasingly interfering in personal matters.[216]

Finally, there are fears that mandatory testing for pregnant women can and will most likely lead to increased domestic violence.[217] In a country like Nigeria, where women are often perceived as weaker and treated as such, they receive the blame and bear the consequences for a wide range of problems.[218] This will likely also be a contributory factor to the hesitance of many women to get tested for HIV.

(b) Mandatory testing of commercial sex workers.

Mandatory testing has been suggested for commercial sex workers as another way to curb the spread of new infections; especially via heterosexual sexual intercourse.[219] However, it would be logistically unrealizable to do so effectively, without a system which licenses prostitution and has up to date data. This would be impossible, in the case of Nigeria, where prostitution is illegal.[220]

(c) Mandatory testing of partners and intending couples.

As is presently practiced in the Nigerian context, mandatory testing of intending couples by many denominations has been defended as helping to curb the spread of the HI virus and helping intending couples make informed decisions on their choice of partner.[221] While the argument for 'public good' is often made,[222] care must be taken to ensure that the motives

---

[215] Nicholson op cit (n206) 37.

[216] Ibid.

[217] Ibid.

[218] Ibid.

[219] Nel op cit (204) 36.

[220] Chapter 21, Criminal Code Act, Chapter 77 of 1990.

[221] Tilahun Kassaye, 'Mandatory Premarital HIV/AIDS testing: A discussion paper', Dec 2011, available at *http://aigaforum.com/articles/Mandatory_PHT.pdf*, accessed on 22 September 2013.

[222] Ibid.

behind a drive for breaching internationally accepted procedures are altruistic or ethical and justifiable at best. To use resources merely to express social disapproval of lifestyle choices would be a gross violation of the principles of justice and respect for the individual.[223] Any method of mandatory testing to be used must be adequate for achieving its purpose.[224] In other words, any screening program that is intended to stop the spread of HIV/AIDS, but is designed in a way that precludes the achievement of this goal, is ineffective and also runs contrary to the principles of justice. Accordingly, the claim that mandatory testing is justifiable, as in the case of pre- marriage testing, is made on the basis that marriage, unlike donating blood, is a lifestyle choice that automatically exposes one to the risk of HIV transmission.[225] While true, the problem with this premise is that neither sexual intercourse nor child rearing is dependent on marriage in society. Hence, while it is admirable that couples voluntarily undergo HIV testing in order to make responsible choices, mandatory testing does not act as an effective filter. It can then be said that the role of religious groups is to inform and help educate their followers. Intending couples may be advised on the wisdom of getting tested before marriage, with the choice to go ahead solely left to them, as the decision to marry is between two consenting adults. A case for the adoption of mandatory HIV testing for intending couples who seek to be wedded by the State will also not be possible as it would be contrary to the State's already established position on VCT.[226]

Mandatory HIV testing is generally seen as reprehensible not merely because of the nature of the disease but also because of the ideology behind it. According to Bayer, Levine and Wolf, mandatory sickle cell testing on African Americans in the 1970's resulted in mass misinformation, stigmatization and discrimination.[227] History has shown such a system to be fundamentally flawed and counterproductive. In the same vein, mandatory testing for the work place is largely unjustifiable, since transmission is not casual. Hence, it merely provides

[223] Ibid.

[224] Ibid.

[225] Ibid.

[226] Federal Ministry of Health, 'National guidelines for HIV and AIDS treatment and care in adolescents and adults', October 2010, available at *http://www.who.int/hiv/pub/guidelines/nigeria_art.pdf*, accessed on 23 August 2013.

[227] Ana Dumois, 'The case against mandatory new-born screening for HIV antibodies', (1995) *Journal of Community Health* 20.

irrational grounds for discrimination.[228] The only justifiable grounds for mandatory tests are in health care services, involving contact with blood.[229]

It is argued that "HIV exceptionalism",[230] which treats HIV/AIDS different from other lethal or sexually transmitted disease (STD), has led to differences in the way the virus is tested for and investigated.[231] This method of testing restricts the tests to medical and prevention purposes due to the emphasis on informed consent and counselling.[232] Importantly, this approach differs from that of other infectious diseases and STDs like syphilis, where testing is by implicit consent by virtue of medical consultation, and diagnosis is in fact encouraged. In addition, many of the public health mechanisms used in the tracking, investigation and control of other diseases have seldom been used and have often been discouraged in the case of HIV/AIDS.[233] HIV exceptionalism has been identified as a factor that has led to the mismanagement of the pandemic, especially in its early days in Africa, and is still contributing to its spread.[234] While this assertion may be true, mandatory testing's present ethically reprehensible status make it less preferred.

8.2. The case for voluntary counselling and testing

On the other end of the spectrum is the position that supports VCT. It operates from the stand point that VCT is the mainstream and accepted HIV testing process. As explained above, VCT involves confidential dialogue between a person and a care provider, aimed at enabling the

---

[228] The Director General, ILO, 'Equality at work: tackling the challenges; global report under the follow-up to the ILO declaration on fundamental principles and Rights at Work', *International Labour Conference, 96th Session,* 2007, available at *www.ilo.org/declaration*, accessed on 20 September 2013.

[229] Ibid.

[230] R Bayer, 'Public health policy and the AIDS epidemic: an end to HIV exceptionalism?',(1991) *N Engl J Med* 324, 1500-1504.

[231] Ibid.

[232] KM De Cock, D Mbori-Ngacha, E Marum, 'Shadow on the continent: public health and HIV/AIDS in Africa in the 21st century', (2002) *The Lancet* 360, 67-72.

[233] Ibid.

[234] Ibid.

person cope with stress and make personal decisions related to HIV/AIDS.[235] Key to the VCT process is the concept of informed consent, which is the individual's right to make an informed, voluntary decision authorizing or refusing a medical intervention.[236] It has played an important role in VCT by ensuring independence, agency and support during HIV testing as well as during post-test results, revelation and decision making. Informed consent is especially important in many parts of Africa, and indeed Nigeria, where a large number of the populace is unaware of their basic rights,[237] hence making the expression of this right, empowering. While the technicalities of this method have been discussed above, the public policy justifications are here examined.

One public policy argument in support of VCT, in Africa and Nigeria specifically, is the widespread lack of basic infrastructure to adequately enforce mandatory testing.[238] The infrastructural deficit would mean that mandatory testing will not be as widespread and systematic as is needed in order to have any meaningful progress in curbing the spread of HIV/AIDS. The resultant effect may end up being an arbitrary testing process that unduly exposes some members of society, while not applying the same standards to other portions of society.

Another reason that VCT is preferred is the acceptance of current socio-economic realities which result in the lack of access to anti-retroviral treatment (ARV).[239] In many industrialized countries HIV has almost been eliminated as a public health issue. The advent of therapy through anti-retroviral treatment in these industrialized countries has been the primary driver of change in the prevalence of the disease.[240] Increased access to treatment has increased the desire in populations to voluntarily test for the virus and receive treatment. The accessibility of

---

[235] Katherine Evelyn, 'From voluntary to mandatory: the debates surrounding HIV testing in Africa', *Consultancy Africa Intelligence*, 18 July, 2011, available at *www.consultancyafrica.com*, accessed 30 September 2013.

[236] Ibid.

[237] Federal Republic of Nigeria, 'National Action Plan for the Promotion & Protection of Human Rights in Nigeria' 2006, available at *http://www.ohchr.org/Documents/Issues/NHRA/nigeria.pdf,* accessed on 30 September 2013.

[238] Evelyn op cit (n235) 42.

[239] Ibid.

[240] Ibid.

treatment has in turn helped reduce stigma and demystify the virus as the incurable, deadly virus.[241] It would thus seem that there is a strong nexus between availability of ARV's and the consequent reduction of the virus. In the light of this, mandatory testing is unlikely to provide solutions in Africa or Nigeria, as there are currently very limited resources to provide large scale ARV treatments.[242] Voluntary testing on the other hand provides the opportunity of having a more focused approach to stemming the virus, through a system that enjoins people to voluntarily know their status and consequently get help to deal with the outcome of such discovery and get necessary treatment. This can be considered a more effective use of limited ARV treatment. It is most likely more expedient to emphasize on increasing the desire of people to voluntarily test and in the process demystify HIV and the stigma attached to it.

VCT may also prove to be more effective because HIV/AIDS is a "behaviour –induced epidemic",[243] which must be treated through a multi-faceted approach that is not one sided or seemingly punitive, as with mandatory testing. Any viable long term solution will have to involve behavioural changes at the individual level and, given that behaviour change relies strongly on autonomy, education and consent, VCT would be a feasible long term solution.[244]

None the less, voluntary testing has been criticized as being ineffective because of its heavy reliance on free will and choice of the individuals involved. It allows people to delay a test, often until their choice not to test is pre-empted by severe illness, pregnancy or insurance requirements.[245] However, this seeming flaw may be countered by a concerted effort at increasing awareness and giving individuals more responsibility for their lives, along with the tools to make the right choices with this responsibility.

---

[241] Ibid.

[242] Ibid.

[243] Asante op cit (n198) 35.

[244] Ibid.

[245] Modupeoluwa Durojaiye, *Religious and gender dimension of HIV/AIDS risk among women in Nigeria,* LLM (Brandeis University) May 2012.

9. THE WAY FORWARD

Due to the limited amount of counselling or information, prior to or after a mandatory test is done, many wrong notions and misinformation that surround HIV/AIDS, remain. Those tested mandatorily are often not properly educated about the virus and are more likely to leave with whatever notions were brought in; whether true or false. Also, because the test is conducted in an atmosphere of fear and compulsion with foreboding implications, should the test prove positive, it is more likely to reinforce the feelings of fear and fatality that surround the virus.

The claim that mandatory testing helps those required to take the test know their status and take appropriate steps is not tenable as they may be in their window period when the test is taken.[246] This can be counterproductive, by creating a false sense of security and can prevent subsequent testing, due to the unpleasant nature of the mandatory test.

Although the VCT is not without its flaws, in that it may not yield immediate gains with regard to monitoring the spread of the virus, it is a more effective approach to stemming the tide of HIV/AIDS in the long term. It offers a chance at increased public health gains while also not comprising on best practices and due procedure. Mandatory testing on the other hand appears to be a stumbling block to progress in curbing the HIV/AIDS pandemic. This realisation, along with the fact that it is laden with a high risk of abuse makes it the least accepted approach to solving the problem. The discriminatory practices that encourage and emerge after such tests, also have human right implications, which need to be explored in order to appreciate their legal ramifications and make necessary adjustments.

---

[246] The window period refers to a time frame in which an individual who may be recently infected with HIV not yet have such infection showing in an HIV test. See Evelyn op cit (n235) 42.

CHAPTER 4

THE POSITION OF THE LAW

1. INTRODUCTION

Mandatory testing requirements are a contravention of laid out national guidelines[247] as they do not require the stipulated pre-test counselling, aimed at ensuring informed consent to testing. Mandatory tests vitiate an essential element of the testing procedure and deprive the patient of the right to decline to undergo the test upon full consideration of the facts. In addition, other discriminatory practices that are manifested by members of society raise various legal issues which border on the infringement of the rights of PLWHA. This chapter will discuss the human rights issues that arise from the discriminatory practices and the use of mandatory testing.

2. HUMAN RIGHTS ISSUES RAISED BY DISCRIMINATION AND MANDATORY TESTING

The principles of fundamental human rights provide an effective means of analysing the propriety of the various discriminatory practices earlier examined. Human rights are the most basic and intrinsic legal claim that can be made, as they are universal, indivisible, interdependent and interrelated.[248] In addition, as will be shown, the argument can be made that various aspects of the discriminatory practices manifested, are a breach of specific human rights, and thus are subject to legal recourse.[249] These rights are discussed below.

---

[247] Federal Ministry of Health op cit (n195) 35.

[248] Office of the High Commissioner of Human Rights, 'What are human rights?', *United Nations Human Rights: Office of the High Commissioner of Human Rights*, 2012, available at *http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx*, accessed on 19 September 2013.

[249] Articles 2, 3 and 8 of the African Charter on Human and People's Rights (Enforcement and Ratification) Chapter A9 LFN 2004. Art 2 provides that: "Every individual shall be entitled to the enjoyment of the rights and freedoms

2.1. The right to dignity

Human beings are primarily autonomous beings who have the right to control their own destinies.[250] This concept is the foundation upon which many human rights instruments are based[251] and it is the principle that binds all other human rights together. Article 1 of the Universal Declaration of Human Rights (UDHR)[252] provides that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should treat each other in a spirit of brotherhood".[253] Also, Article 5 of the UDHR provides that no one shall be subjected to "….inhuman or degrading treatment".[254] By implication, the right to dignity fundamentally includes the prohibition of all inhumane treatment. Thus, any action that purports to delimit a person's rights and privileges due to their HIV status can be referred to as degrading treatment. All forms of discrimination and stigmatization against PLWHA are a breach of their inherent right to dignity because it subjects them to ridicule, unfair treatment and a reduced sense of worth.

---

recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status". Art 3 provides that: "1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law". Art 18 provides that: "1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical, health and moral …"

[250] Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights', (2008) *Eur J Int Law* 19 (4), 655-724.

[251] The preamble of the Universal Declaration of Human Rights recognises the inherent dignity, equal and inalienable rights of all members of the human family. See Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR).

In the same vein, the preamble of the African Charter on Human and Peoples' Rights, stipulates that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African Peoples. African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

[252] Article 1, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

[253] Article 1, UDHR, ibid.

[254] Article 5, UDHR, ibid.

Article 5 of the African Charter on Human and Peoples' Rights (African Charter)[255] makes similar provision, by stating that every individual shall have the right to respect of their dignity as human beings and recognition of their legal status. This provision makes it clear that the dignity of each person accrues to them by virtue of being human and it is not subject to removal because of their station in life or status; which also applies to their HIV status.

At the domestic level, Section 34 of the Nigerian Constitution[256] states that every individual is entitled to respect of the dignity of their person. It can be deduced that mandatory testing is a contravention of the right to dignity of PLWHA because it gives no regard to the personal integrity of the person being subjected to the test. In the same vein, such mandatory testing without prior proper counselling amounts to degrading treatment and is a breach of the right to dignity.[257] In the same vein, refusal to notify an individual of their status, while using the same against them, without their knowledge is a breach of their right to dignity.

Dignity is the intrinsic value upon which other rights are derived. As such, any breach of it through discriminatory practices is significant as it calls to question the entire foundation upon which human rights are built. The breach of the right to dignity permeates all conduct and attitudes towards PLWHA, and it leads to the breach of other human rights that sero-positive people are entitled to.

2.2. The right to privacy

It can be said that the requirement of mandatory testing is an infringement on the right to privacy and bodily integrity which is guaranteed in Article 12 of the UDHR. It states that "no

---

[255] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter), Ratified and promulgated in the African Charter on Human and Peoples Rights (Enforcement and Ratification) Act Cap 10 Laws of the Federation 1990.

[256] Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria,2004.

[257] S Iwuagwu, E Durojaye, B Oyebola, B Oluduro, O Ayankogbe, 'HIV/AIDS and Human Rights in Nigeria', *Background Paper for HIV/AIDS Policy Review in Nigeria, Centre for the Right to Health for the POLICY Project*, September 2003, available at *http:/ /pdf.usaid.gov/pdf_docs/PNACX55.pdf* accessed on 29 September 2013.

one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation”.[258]

While the African Charter does not expressly provide for the right to privacy, Article 6 provides for the right to liberty and the security of person. This guarantees the individual’s sense of person and autonomy which is an integral part of the right to privacy.
At the national level, Section 37 of the Nigerian Constitution provides that,

> “The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”[259]

While there is no specific mention of circumstances surrounding mandatory HIV testing in Section 37, it can be inferred as ‘the privacy of citizens” can be read to include protection in circumstances that threaten their individual privacy. Any situation that unduly probes into an individual’s affairs and seeks to publish such matters without due consent can be read to be a breach of said privacy.

In Nigeria, the right to privacy of PLWHA is often violated through HIV tests that are conducted on them without their knowledge and prior consent. This is unfortunately a common practice in many public and private hospitals and health care centres.[260] In many hospitals there have been reports of physicians performing HIV tests on patients, by merely relying on implied consent to treatment and blood tests which are usually required. This is referred to as a “routine” HIV test.[261] In the event the patient refuses to have the HIV test done along with the other tests, they are turned away from the hospital. In research conducted on

---

[258] Article 12,Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).
[259] Section 37, Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria,2004.
[260] Iwuagwu op cit (n257) 47.
[261] Ibid.

breaches of human rights with regards to HIV in Nigeria,[262] an interviewee narrated her ordeal thus,

> "I have registered for antenatal in a private hospital near my house. I was told to do an HIV test as part of the routine test. I refused, and they bluntly told me they cannot take my delivery if I do not take the test. I went to a government health centre. They filled out a form for blood test; I read it but there was nothing indicating HIV test so I went for the test. During my next visit, I was worried when the midwife told me that I have to go to the teaching hospital for special management. She would not explain why, rather she gave me a letter. Out of curiosity I read it on my way home and learnt that I had tested HIV positive. My world crashed on my face. I locked myself up and cried for weeks. At the teaching hospital, the nurses kept on passing the letter from one person to another and eventually asked me to return in four weeks' time because the doctor who will attend to me is on leave. By this time I was already seven and half months pregnant. I fell into labour before the appointment date and had to go to a traditional birth attendant, who took my delivery. I did not tell her my HIV status because I was scared she would refuse to attend to me, too."[263]

There is not only a breach of privacy by conducting an HIV test without prior consent, but also in unduly sharing the information, where not required. This illegal practice of unpermitted testing is also widespread in pre-employment screenings. In other cases, employees are compelled to undergo the HIV test, with the eventual results often not treated as private and are circulated and used as grounds for termination of appointment.[264]

The right to confidentiality is also closely tied to the right to privacy. While they are often used interchangeably, they are not one and the same. While the right to privacy is concerned with the right to control access to one's self, confidentiality relates to the information about

[262] Ibid.

[263] Ibid.

[264] The Director General, ILO op cit (n228) 41.

one.[265] Confidentiality is the ethical principle that places a legal duty on various professionals not to disclose to anyone else without authorization, information given to or obtained by said professional in the context of their professional relationship with the client.[266] In the case of confidentiality with regards to HIV/AIDS, there is a duty on health care providers not to act in a manner that jeopardizes the private information of their clients. The legal duty of confidentiality obliges health care practitioners to protect their patients against inappropriate disclosure of personal health information.[267] This is because a person's HIV/AIDS status is a personal matter.[268] Thus, the process of undergoing the test as well as the disclosure of the final outcome is covered by the rules of confidentiality and any breach of confidentiality is a further breach of the right to privacy.

If it is established that sero-positive patients have a right to privacy and confidentiality, there is then the question of whether those against whom the right can be sought have merely a negative right not to disclose their status, or they also have a positive duty to 'guard' the victim's status and affirmatively prevent the status from being revealed. It can be argued that it is not sufficient to merely be silent on the HIV status of a person, but there may need to be a duty not to unduly disclose that information and to prevent anyone without the right to do so from accessing such information.[269] This has been held to be the case in some jurisdictions.[270] The exception to this rule in many parts of the world is where there is a serious risk for a partner of a PLWHA of contracting the disease and the PLWHA has refused to reveal their

---

[265] Australian Society for HIV Medicine (ASHM), 'Privacy and Confidentiality', Guide to Australian HIV Laws and policies for healthcare professionals, 5 December 2012, available at *www.ashm.org.au/HIVlegal/Default.asp?publicationID=2&SectionID=339,* accessed on 22 September 2013.

[266] Iwuagwu op cit (n257) 47.

[267] ASHM op cit (n265) 50.

[268] M Cichocki, J Imbriani, P Lam, J Lewis, B McIntyre, B Munk, M Paquette, T Patterson, S Pinkerton, J Simoni, J St De Lore, D Vance, JK Williams, 'How does disclosure affect HIV prevention', *Center for AIDS Prevention Studies, AIDS Research Institute, University of California, San Francisco,* available at *http://caps.ucsf.edu/uploads/pubs/FS/pdf/disclosureFS.pdf,* accessed on 20 September 2013.

[269] Iwuagwu op cit (n257) 47.

[270] ASHM op cit (n265) 50.

status to their partner. This exception is referred to as partner notification.[271] It involves the process of contacting sexual and or injecting partners of the HIV positive person, so that they are aware that they may be exposed to the HIV virus and to encourage them to seek HIV counselling and testing, and if need be, treatment.[272] Partner notification is in itself controversial, as there are divergent views as to if and when it is appropriate.[273] While some legal jurisdictions mandate or at least, encourage it,[274] most others encourage but do not necessarily mandate it.[275] There are varying views as regards how best the rights of a sero-positive person can be juxtaposed against the rights of their partner; especially when conscious steps are being taken by the sero-positive person to reduce their viral load and reduce their risks of infecting others.[276]

Another tier to the right to privacy is the implicit right to refuse treatment altogether.[277] A fundamental premise of mandatory testing, which is the eventual utility of such a test[278] would appear faulty. While it is expected that a person will seek to be in the best state of health possible, and will take steps to fulfil this desire, the onus to seek such good health is solely the preserve of the individual. By implication, the right to privacy includes the right to refuse

[271] Iwuagwu op cit (n257) 47.

[272] Ibid.

[273] Mizanie Tadesse, *A rights-based approach to HIV prevention, care, support and treatment: a review of its implementation in Ethiopia* PHD (The University of Alabama) 2012.

[274] Article 14 (1)(e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol). It states that a woman has — "the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices".

See also, UNAIDS, 'Opening up the HIV/AIDS epidemic; Guidance on encouraging beneficial disclosure, ethical partner counselling & appropriate use of HIV case-reporting', *UNAIDS best practice collection,* 2000, available at *http://www.who.int/hiv/pub/vct/en/Opening-E%5B1%5D.pdf,* accessed on 12 October 2013.

Gail Dolbear, Martha Wojtowycz,and Linda Newell, 'Named reporting and mandatory partner notification in New York State: the effect on consent for perinatal HIV testing', (2002) *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 79(2),238-244.

[275] Tadesse op cit (n273) 51.

[276] Ibid.

[277] Lagitch op cit (n199) 36.

[278] Ibid.

knowledge regarding one's HIV status.[279] An individual has the right to control his body and health, and conversely, the right to be free from coercive medical treatment, while also being entitled to relevant medical support if so desired. [280] This means that apart from making testing mandatory, any rule that makes it compulsory to reveal one's HIV status or unduly disclose the results of the test is a further breach of such a person's right to privacy and confidentiality, as it would require first knowing the status, which may be of no interest to the individual involved. A major prong of the campaign for increased voluntary testing around the world and in Nigeria specifically is the assurance of confidentiality and privacy.[281] It would then be counterproductive for the drive, if mandatory testing became the norm.

As stated by Muhammad,[282] breaches of patient confidentiality pose profound problems for the traditional relationship of trust between a patient and a counsellor. A patient is less likely to speak freely with his or her counsellor when confronted with the issue of trust and breach of his or her confidentiality. Such an action would prevent proper treatment and counselling in all capacities.[283] This may in turn translate into fewer people willing to undergo voluntary testing; for fear that their results will be unduly publicized and consequently they will be subjected to stigmatization. The observance of the right to privacy is thus key; both in keeping in line with international and domestic constitutional tenets, but also for the drive for voluntary counselling and testing.

2.3. The right to healthcare

Another right that can be said to be breached by virtue of discrimination against PLWHA, is the right to health care. While the Constitution of the Nigeria does not expressly provide for a

---

[279] Ibid.

[280] The Right to the Highest Attainable Standard of Health; UNCommittee on ESCR General Comment No 14, UNDoc E/C/12/2000/4.

[281] Federal Ministry of Health op cit (n195) 35.

[282] Adashima Muhammad, 'Mandatory HIV Notification: Bioethical Concerns vs. Public Health Concerns, Health and Medical Dilemmas', (2006) *The Journal of American Science* 2(1).

[283] ASHM op cit (n265) 50.

right to health care, it lists it as a directive principle of State policy in Section 17(3) (d) which provides that "the State shall direct its policy towards ensuring that-there are adequate medical and health facilities for all persons".[284] However, Section 17 is a part of Chapter 2 of the constitution, but which is non-justiciable.[285] It is however still a responsibility of the State, since Nigeria is a signatory to various international instruments which provide expressly for the right to health and which the State has duly ratified.

Article 25 of the UDHR guarantees the right of everyone to "a standard of health care that is adequate for an individual and their family".[286] In the same vein, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[287] provides that State parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. At the regional level, Article 16 of the African Charter provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.

In light of these commitments, mandatory testing can be said to be a contravention of the right to health as it circumvents the proper method of testing. It is tantamount to providing inadequate health services. In addition, the argument can be made that due to the stigmatization that often accompanies discovery of the patient's status, they are deprived of the ability to secure adequate medical assistance and, in extreme cases, denied all together.

By Article 16 of the African Charter providing that State parties take necessary measures to protect the health of their people, it creates a definite obligation on States to act for the good of

---

[284] Section 17(3)(d), Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria,2004.

[285] *Attorney General Ondo v. Attorney General Federation*, (2002) 9 NWLR (Pt 772), 222.

[286] Article 25(1),Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

See also, 'The Right to the Highest Attainable Standard of Health'; UN Committee on ESCR General Comment No 14, UNDoc E/C/12/2000/4.

[287] International Covenant on Economic, Social and Cultural Rights. *(G*.A. res. 2200A (XXI), 21 U.N.GAOR Supp (No. 16) at 49. U.N. Doc.

all their citizens and perhaps even more, citizens in more need of such protection. This means that State-run medical facilities should provide optimal care for PLWHA. Sadly, this is often not the case. Healthcare providers and professionals, even in Nigerian government hospitals conduct their activities in a manner that is disparaging of those who have contracted the HI virus.[288] This denial often translates into inability to get anti-retroviral and other adequate treatment that would otherwise ensure the good health and survival of PLWHA. Since anti-retroviral medication is relatively expensive to procure, the Federal Government makes orders from countries who manufacture cheaper generics[289] and then uses teaching hospitals as distribution mechanisms in the country.[290] This method has however not yielded the expected results as the attitude of staff has deterred the effective implementation of the anti-retroviral program.[291] Not only is this is a clear disregard of the rights of PLWHA, it is also a breach of professional codes of conduct.[292]

Importantly also, everyone is guaranteed the right to life,[293] and so should not be deprived of this right through the deprival of care. The deprival of care for PLWHA is a major area of human rights abuse, as PLWHA are often maltreated and segregated in various hospitals and health service centres. In extreme cases, they are denied care and service provision out rightly.[294]

2.4. The right to freedom from discrimination

Mandatory testing may also lead to a breach of the freedom from discrimination which is guaranteed in Section 42 of the Nigerian Constitution. It provides that

---

[288] AE Sadoh, AO Fawole, WE Sadoh, AO Oladimeji and OS Sotiloye, 'Attitude of health-care workers to HIV /AIDS", (2006) *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 10(1),39-46.

[289] Iwuagwu op cit (n188) 44.

[290] Ibid.

[291] Ibid.

[292] Ibid.

[293] Section 33 of the Nigerian Constitution, Article 4 of the African Charter and Article 3 of the UDHR.

[294] Reis op cit (n99)20.

"(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions".[295]

While Section 42 may not expressly provide for discrimination on the basis of one's HIV status, the expression 'particular community' may also be read to include groups and not just geographical groupings, in which case PLWHA would be a community. Also PLWHA are entitled to protection from discrimination because the requirement of mandatory testing is not only a manifestation of discriminatory practices, but also results in the perpetuation of discriminatory mind-sets and practices and degrading treatment. Furthermore, it contravenes Article 7 of the UDHR which provides that "no one be discriminated against by virtue of race, sex, religion, political belief or <u>other status</u>".[296]

Discrimination against PLWHA is rampant and wide spread, as PLWHA are often prevented from partaking in communal activities and deprived of their means of livelihood, especially in Nigeria, due to socio-cultural and religious tendencies of the people. The experience of stigma and discrimination within a specific minority community is often complicated by the fact that the community is already a minority in society as a whole and is often marginalised or discriminated against. This has implications for both the PLWHA and for the community. For the PLWHA, it may mean that there is nowhere else to go once one has been isolated within

---

[295] Section 42(1), Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria,2004.

[296] Emphasis mine.

one's own community. For the community, it means that it is difficult to address issues associated with vulnerability to HIV infection (such as sexual activity, homosexuality, and relations between men and women) and to support PLWHA.[297]

While stigmatization and discrimination against PLWHA is wide spread and in some places endemic, it is contrary to law and must be tackled not just as a social injustice, but as a contravention of law.

2.5. The right to work

Apart from the rights already mentioned, the argument can be made that the right to work which is guaranteed under Article 23 of the UDHR is also contravened by discrimination against PLWHA. It states that "(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".[298] By virtue of this commitment, any work conditions that require HIV testing is a breach of this right, because it places the worker under unfavourable conditions of work.[299] So also is any resultant stigmatization because of a refusal to undergo such testing or a sero-positive result, as is the termination of appointment of an HIV positive person, merely on those grounds.[300]

PLWHA should be allowed to work for as long as they are able and willing to and should be given adequate support and resources to remain productive.[301] This is not merely because of moral propriety, but also because of the large amount of the viable workforce that is living with the disease and can be lost, should they succumb to it. According to the International Labour Organization (ILO), 90 per cent of those living with HIV/AIDS are engaged in some

[297] Reis op cit (n99)20.

[298] Article 23(1),Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

[299] The Director General, ILO op cit (n163) 37.

[300] Ibid.

[301] Ibid.

sort of economic activity, with most being between the ages of 15 to 49; which is the most productive segment of the labour force.[302] About three million working-age people die every year because of HIV/AIDS; around 28 million workers were lost worldwide by 2005, and if current trends persist, 74 million would be lost by 2015.[303] This figures become more staggering, when considering that 95 per cent of new infections come from sub-Saharan Africa.[304] The right to work of PLWHA must thus be guarded fiercely and this includes both retaining PLWHA in gainfully employed jobs and also providing a conducive environment to perform maximally.

2.6. The right to marry

Article 16 of the UDHR protects the right to marry and start a family without any limitations. Article 18 of the African Charter protects the right to the family unit, and provides that "the family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral".[305] As marriage is a foundational block for the family, especially in the African context, it can be extrapolated that the right guaranteed extends to the protection of the right of individuals to marry and consequently raise families. The argument may be made that, since the State has a duty to take care of the family institution, the State has a duty to regulate the institution of marriage, as a gateway into the family unit. To this end, it can implement policies which it considers to be in the best interest of the family, such as ensuring that only HIV negative people are allowed to marry and raise a family, due to the risks of HIV infection. This however may not be the most accurate interpretation of the provision. This is because, in carrying out its duties, the State has an obligation to respect the individual rights of its citizenry. These individual rights include the

---

[302] Ibid.

[303] Ibid.

[304] UNAIDS, 'Core Slides: Global Summary of the AIDS Epidemic; 2013', 2013, available at *http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2013/gr2013/201309_epi_core_en.pdf*, accessed 2 January 2014.

[305] Article 18, African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

right to not be tested without prior consent and to be discriminated against by virtue of the results of such a test. In any case, the argument that it is unsafe for parties with HIV to marry and raise families, has long been laid to rest by virtue of medical interventions which reduce the probability of infection of either the spouse or the offspring of the sero-positive individual.[306]

The African Charter provides that the State has a duty to eliminate all forms of discrimination against women and children.[307] This protects expectant mothers, whether or not married. This is further indicative of the true intent of Article 18; which is to protect individual's right to marry and raise a family, without undue hindrance from any parties or the State. While the Nigerian Constitution has no express provision for the protection of the right to marry, Section 42(1)(a) of the constitution, states that "no one shall be made subject to any restrictions to which others are not made subject to".[308] While the practice of religious institutions to test couples as a prerequisite for marriage has been defended as a precautionary step,[309] it is in fact a violation of the rights of the intending couple. A denial of the couple from solemnizing their union, if both or one of them is HIV positive, is a further breach of the right to marry.

3. LITIGATION FOR THE ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS

Despite the various forms of breaches of fundamental human rights, there has been limited litigation. Where action has been instituted, the courts have themselves shown a limited understanding of the issues around discrimination and stigmatization. An example is the landmark case of *Georgina Ahamefule V. Imperial Medical Centre & Dr. Alex*

[306] Aluisio Cotrim, Vera Paiva, "Rights of HIV positive people to sexual and reproductive health: parenthood", (2007) *Reproductive Health Matters* 15(29), 27-45.

[307] Article 18(3), African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

[308] Section 42, Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria,2004.

[309] Oluduro op cit (n157) 29.

Molokwu,[310]brought by the Social and Economic Rights Action Centre (SERAC), for the plaintiff. The plaintiff held an appointment as an auxiliary nurse in the Imperial Medical Centre. Sometime in 1995, while pregnant, she developed boils on her skin and sought medical attention from her employer, the defendant. The defendant then carried out extensive tests on her without disclosing the nature or outcome of these tests to her. She was referred to a Doctor at the University of Lagos Teaching Hospital, along with a note in a sealed envelope. At the teaching hospital, further tests were carried out, without any disclosure being made to her about the nature or result of the tests. The plaintiff was subsequently informed that she was HIV positive, with no form of counselling provided before or after the tests were carried out. Her appointment at the hospital was promptly terminated by the defendant, based on her HIV positive status. The sudden news of her HIV status and subsequent loss of employment resulted in the plaintiff having a miscarriage. An action was brought before the Lagos State High Court.

During the trial, the then presiding judge, barred the plaintiff from entering the courtroom to give testimony because of her HIV positive status. According to the judge, satisfactory expert evidence had to be presented to the court to convince it that the judge and everyone else present would not become infected with the HI virus, by virtue of the plaintiff's presence in the court. This decision of the High Court judge was appealed at the Court of Appeal, which directed the High Court to hear the matter without any further hindrance. In 2012, over twelve years after the initial suit was brought before it, the Lagos State High Court, under the jurisdiction of a different judge, held that the purported termination of the Plaintiff's employment was illegal, unlawful and prompted by malice and extreme bad faith. It also found that the testing of the plaintiff without her prior informed consent constituted an unlawful battery on her. In addition, it was held that the defendant's action of denying the plaintiff medical care on the basis of her HIV positive status was a violation of the right to health guaranteed under the African Charter and the ICESCR. Consequently, an order for five million naira as general damages was ordered to be paid to the plaintiff for wrongful termination of

[310] Unreported, Suit No. ID/1627/2000.

employment, and two million naira for compensation for unlawful conduct of HIV testing without informed consent was made.[311]

This decision is instructive in that the courts have held the existence of a number of the above discussed rights in the affirmative. There is therefore recourse to remedies for those adversely affected by discriminatory practices that hinder or abuse their fundamental human rights. There are however concerns that legal remedies may sometimes be late in coming. As in the above case, cases in Nigerian courts often take a long time to be decided. Another concern that arises is that in determining the question of the breach of rights, judicial interpretation may be largely dependent on the personal views of presiding judges. As in the case of *Georgina*, an ignorant or prejudiced judge may make decisions that are detrimental to an individual's bid to obtain the proper recourse due when his or her rights have been breached; either by mandatory testing and/or discriminatory practices.

While it can only be hoped that there will be increased litigation for human right breaches in this area, with consequently similar decisions as the case above, there is a need for a more definitive and all inclusive set of laws to deal with the issues around discrimination on the basis of HIV status. This set of laws ought to categorically proscribe specific acts, while also defining the ambit of what is acceptable, in the treatment of PLWHA in society.

---

[311] SERAC, 'SERAC wins a landmark court judgment -holds that dismissal based on HIV-positive status is unlawful', *SERAC press statement,* October 9, 2012.

CHAPTER 5
LEGISLATION FOR THE PROTECTION OF PEOPLE LIVING WITH HIV/AIDS

1. INTRODUCTION

The lacuna in legislative provision for the care of PLWHA has allowed for discrimination against PLWHA by many sections of society. In a bid to stem the trend of stigmatization and discrimination, Nigeria's National Assembly has initiated a bill:

> **"**for an act to make provisions for the prevention of HIV discrimination and to protect the human rights and dignity of people living with HIV and affected by aids and other related matters"[312] (the anti-discrimination bill)

The purpose of the bill is to address the lingering injustice suffered by PLWHA and to provide a framework for the proper care and interaction with PLWHA.[313]

In this chapter, this bill will be examined in depth, in order to assess whether its provisions adequately meet the present challenges faced by PLWHA and to propose changes or additions to the bill, where necessary. This chapter will examine the history of the bill, after which it will examine relevant sections; highlighting how and where they provide solutions to the problems of discrimination and stigmatization. This chapter also critiques the bill and specific sections, in order to point out loopholes in the intended legal framework and advance possible additions and alterations that can make the bill better suited for its purpose. In all, this chapter seeks to expound on the bill's ability to answer the many questions that have been raised in previous chapters on the plight of PLWHA.

---

[312] Available at *www.nassnig.org*, accessed on 9 December 2013.

[313] Section 1 of the Anti-discrimination bill, available at *www.nassnig.org,* accessed on 9 December 2013.

2. HISTORY OF THE ANTI-DISCRIMINATION BILL

The present bill before both houses of the Nigeria's National Assembly is a variation on several prior bills, with the same intention of proscribing discrimination against PLWHA.
The first bill was *the "Bill for an Act to make it mandatory for public hospitals and clinic to provide treatment for patients infected with HIV or AIDS; and for connected purposes*, of 2002".[314] Then was the *"Bill for an act to establish the Nigerian national HIV/AIDS management and control commission so as to cater for the welfare of people living with HIV/AIDS and also to harness resources aimed at providing its cure and for related purposes"*,[315] also of 2002. The year 2004 saw the introduction of the *"Bill for an act for mandatory treatment of and non-discrimination against people with HIV/AIDS; and for connected purposes"*.[316] In 2008, another attempt was made, in the form of *"A bill for an act to prohibit and punish discrimination against persons living with HIV/AIDS in housing, employment, social, educational and health services and in all forms of social-economic life and for other connected matters*".[317] While these various bills got to different stages of the legislative process, none was passed into law.

It is not clear why so many bills, with a similar purpose were jettisoned and new ones initiated in their place especially those done in quick succession. Issues of internal politics, withdrawal of sponsorship and perceived deficiency in bill drafts may have played a role in the rapid rise and fall of proposed legislation on the subject matter of discrimination against PLWHA. However, this is speculative, as no official reasons were offered. A more apparent reason for the many unpassed bills may be the fact that, by virtue of the legislative practice of the National Assembly,[318] any bill that is yet to be passed, extinguishes along with the session of

---

[314] HB 180, available at *www.nassnig.org,* accessed on 9 December 2013.

[315] HB 163, available at *www.nassnig.org,* accessed on 9 December 2013.

[316] HB 64, available at *www.nassnig.org,* accessed on 9 December 2013.

[317] HB 148, available at *www.nassnig.org,* accessed on 9 December 2013.

[318] Section 60 of the Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria, 2004, empowers the Senate the House of Representatives to regulate their proceedings and set out their procedure.

the house that considered the bill in that legislative term.[319] This often means that bills that may have progressed to a significant stage, are completely abandoned, and then are replaced by new bills that will have to commence the legislative process all over again.

Since this legislative practice of the National Assembly poses a hindrance to the timely passage of important bills, the question may arise as to whether the inability of the National Assembly to then pass the bill within a single legislative term is an offshoot of the lack of political will by the National Assembly? While this may be so, political alliances in both houses of assembly, go a long way in determining what bills get to be passed. Also the bipartisan nature of the bill in question along with the political reception of the sponsor of the bill, also go a long way in determining the fate of a bill at the National Assembly. In addition to this, Nigeria's bicameral legislative structure[320] often makes it laborious to get a bill passed.[321]

2.1. Procedural history of the anti-discrimination bill.

The present bill is sponsored by Senator Ifeanyi Okowa at the Senate, and by Hon. Joseph Haruna Kigbu, at the House of Representatives, which is the lower house of parliament. The bill has undergone several amendments, primary of which includes the removal of an erstwhile Section 31 which purported to criminalize the deliberate transmission of the HI virus by a PLWHA.[322] The present version has scaled through the second reading of both houses of the National Assembly, and has been referred to the House Committee on Health for further

[319] Section 64(1) of the Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria, 2004 provides that The Senate and the House of Representatives shall each stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House.

[320] Section 47, the Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria, 2004.

[321] The procedure for the proper passage of a bill into law by the National Assembly is set out in Section 58, of the Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria, 2004.

[322] Network of People Living With HIV/AIDS in Nigeria, 'Nigeria: advocates successfully argue for the removal of HIV criminalisation clause from draft HIV and AIDS anti-discrimination act', 12 February 2013, available at *http://www.hivjustice.net/news/nigeria-advocates-successfully-argue-for-removal-of-hiv-criminalisation-clause-from-draft-hiv-and-aids-anti-discrimination-act/*, accessed on 6 December 2013.

legislative input.[323] On June 4 2013, there was a public hearing by the Senate committee on health, in order to get further input from stakeholders and members of the public with regards to the bill.[324] At the time of writing, the bill still needs to go through the third and final reading and then be passed as law after which it will be assented to by the president, and gazetted before becoming binding.[325]

3. OVERVIEW OF ANTI-DISCRIMINATION BILL

The present bill is broadly divided into four parts. Part one contains the purpose of the bill, its objectives and its application. Part two deals with provisions for the protection of the rights of PLWHA, from discrimination based on their HIV status. Part three provides for the general offences, with regard to the bill, and Part four outlines the monitoring and legal enforcement mechanisms for the bill. This division of the bill, helps to clearly outline the purpose of the proposed bill, set out in clear terms what it permits and proscribes, provide due punishment for its breach and establish systems to monitor its observance, and prosecute its disobedience.

3.1. Analysis of key provisions of the anti-discrimination bill

Section 1 of the bill states that its purpose is to protect the rights and dignity of people living with HIV and affected by AIDS by: "eliminating all forms of discrimination based on HIV status, creating a supportive structure for PLWHA to enable them continue to live their lives under normal conditions, balancing the rights and responsibilities of all citizens and importantly, giving effect to the rights guaranteed in the constitution".[326] Section 2 provides

---

[323] Umar Gobir, 'House bill to protect against HIV discrimination passes 2nd reading', *The Mace,* available at *http://www.themaceonline.com/house-of-reps-news/402-house-bill-to-protect-against-hiv-discrimination-passes-2nd-reading,* accessed on 6 December 2013.

[324] News Agency of Nigeria, 'Mark urges Nigerians to end discrimination against people living with AIDS', 4 June 2013, available at *http://www.nanngronline.com/section/politics/mark-urges-nigerians-to-end-discrimination-against-people-living-with-aids,* accessed on 6 December 2013.

[325] The procedure for the proper passage of a bill into law by the National Assembly is set out in Section 58, of the Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria, 2004.

[326] Section 1 of the Anti-discrimination bill, available at *www.nassnig.org*, accessed on 9 December 2013.

that the act shall apply to, but is not limited to all PLWHA and all employers of labour in both the public and private sector. This section sets the tone for the bill's heavy focus on discrimination against PLWHA in the context of the workplace.

Section 3(1) provides that PLWHA have a right to freedom from discrimination based on their HIV status, with regards to employment, health services, education and other social services. As an addendum, Section 5(1) states that no individual, community, employer or employee shall discriminate against anyone on the basis of their HIV status or perception of the same. In a bid to ensure the prohibition of discrimination, Section 5(3) provides that affirmative action shall be taken with regards to protecting the rights of PLWHA from discrimination. It states that measures must be in place to ensure that PLWHA who are suitably qualified have equal opportunities and barriers that adversely affect PLWHA are identified and eliminated.

Section 6 goes further to provide specific circumstances that can amount to discrimination against PLWHA. They include, denying or removing them from any treatment, medication or supporting and enabling facility for their functioning in the society, failure to remove, eliminate or ameliorate any obstacle that unfairly limits or restricts them from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such a person, refusal to admit them into school or not allowing them to continue in an educational institution, depriving them of their right to an elected or appointed public/private office or denying admission to a public/private function, denial of access to credit, loans and insurance services as long as the person affected has disclosed their status, where required, in utmost good faith, to the insurance company or financial institution, and any denial of access to any other place of human endeavour.[327]

With regards to compulsory disclosure of an individual's HIV status, Section 8 of the bill provides that "no such prior requirement shall be placed before granting access into a public or private establishment and neither before employment is given or any other opportunity is granted". In conjunction with this injunction, Section 9 provides that "no employer, body or individual shall require an HIV test as a precondition to the offer of employment or access to

[327] Section 6 of the Anti-discrimination bill, available at www.nassnig.org, accessed on 9 December 2013.

any services or opportunities”. The exception to this rule is where such a test is required because failure to take same will constitute a clear and present danger of HIV transmission to others. This section thus specifically proscribes the widespread practice of making HIV testing a prerequisite for employment, promotion and admission into institutions of learning.

The exception of permitted testing where it is to prevent a clear and present danger of HIV transmission may prove to be a loophole that may be unduly capitalized on. While it is foreseeable and expected that certain professionals, like health care practitioners who are in constant contact with blood are screened to prevent undue transmission, there may be an abuse of this screening process against such professionals, to unduly prevent them from working, even where there is no imminent danger involved in the nature of their activities. The exception may also be used to prevent even those whose jobs pose no danger of transmission of HIV from them to others. It is important that the operative phrase “clear and present danger” is always used as the litmus test, in order to prevent a flagrant abuse, by making tenuous and overstretched chains of causation, in a bid to stigmatize or discriminate against PLWHA.

Section 10 provides that an employer or any relevant body may provide an HIV test to an employee or anyone who requests for it, if such a test is undergone in compliance of the National Voluntary Counselling and Testing Guidelines and if the individual has requested for it. Section 10(2)(a) expressly provides that the test is carried out at the instance of the individual, who voluntarily requests for same. This is important, because it places the prerogative to test on the individual who has possibly being exposed, and also requires that even where such testing has been done at the behest of the individual, it complies with proper VCT procedure. This consequently serves to prevent compulsory testing, especially where carried out in a manner that is disregarding of the individual’s rights.

With regard to disclosure of test results, the bill provides in Section 11 that no one can disclose any information relating to the an individual’s HIV status without written consent from the said individual. The requirement of written consent is preferred as a means of providing consent as there is a presumption that the consent granted by this means was well thought out,

with a full evaluation of the facts. It is also more acceptable for purposes of proof, where the issue of the consent is in dispute. As provided by the bill, the consent granted does not extend to telling a third party, except where written consent has been given for such disclosure.[328]

The bill seeks to meet public policy aims by permitting anonymous, unlinked surveillance or epidemiological HIV testing, in Section 12. This is important, in order to help monitor the spread of the virus, so as to better understand it and take the necessary steps to stem it. As a shield against improper practices, Section 12(2) states that "testing will not be considered anonymous if there is a reasonable possibility that a person's name or identifying features can be linked to the test".[329] This is because it negates the statistical purpose for which the anonymous testing is carried out.

The right to privacy in the direct context of HIV testing and results is provided for in Section 13 of the bill. Section 13(1) states that "all PLWHA have a right to privacy to their health and medical records".[330] Section 13(2) proscribes any health care practitioner from revealing the health status of a PLWHA, whether done intentionally, carelessly or negligently. Any health worker who reveals such HIV status is liable to suspension or being relieved of their duties. The wide ambit of *mens rea* shows, that the emphasis is on the protection of the privacy and confidentiality of the PLWHA, and so any disclosure without consent, regardless of intention is punishable. Section 13(2) lays emphasis on health care providers, possibly because they are often the first in line to be exposed to such information, and how they handle the information goes a long way in either protecting or breaching the right to privacy and confidentiality of the PLWHA. This provision however, does not mean that it is only they, who can be liable for breach of privacy. Section 13(3) provides that "any person[331] who fails to observe and respect the right to privacy of PLWHA as provided for in Section 12, commits an offence and shall be liable to conviction and/or a fine".[332]

[328] Section 11(2) of the Anti-discrimination bill, available at www.nassnig.org, accessed on 9 December 2013.
[329] Section 12(2) of the Anti-discrimination bill, available at www.nassnig.org, accessed on 9 December 2013.
[330] Section 13(1) of the Anti-discrimination bill, available at www.nassnig.org, accessed on 9 December 2013.
[331] Emphasis mine
[332] Section 13(3) of the Anti-discrimination bill, available at www.nassnig.org, accessed on 9 December 2013.

Section 14 of the bill precludes an employer from getting access to an employee's HIV status, or from drawing any inference from the employee's refusal to take an HIV test, where the test is for a benefit scheme that is conditional upon an HIV test. It also provides that the conditions for the scheme shall be the same as those of comparable chronic conditions.

Sections 15 and 16 provide that every employer has a duty to make the workplace safe and risk free from HIV transmission and to put in place safety procedures, where there is an increased risk of HIV transmission. This should be done by increased training and awareness, the provision of appropriate equipment and monitoring of the systems in place and of possible exposure to the HIV virus. Section 18 of the bill mandates employers to provide support to employees who become infected at their work place. This support ought to span the various phases of the disease. This provision is important, as it places a duty on employers to ensure that they do not begin to discriminate against staff who become infected by HIV. Section 19 provides that an employee, who contracted the HIV virus in the course of his duties, shall be entitled to compensation from his employer; provided the infection was not as a result of wilful self-injury or gross negligence on the part of the employee.[333]

As a preventive measure, Section 21 of the bill provides that an employer shall, in consultation with the employees or their representatives, adopt a written Workplace Policy, which is consistent with the National HIV and AIDS workplace policy.[334] Any place of work that fails to do this is guilty of an offence and is liable to a fine. Section 22 criminalizes any threat to person, intimidation or inducement to facilitate discrimination against a person by virtue of their HIV status.

Section 24 empowers the Minister of Justice to ensure compliance with the act and to investigate allegations of contravention of the act. It also empowers the minister to commence criminal proceedings against anyone who contravenes the provisions of the act. Apart from the criminal sanctions provided for in the event of a breach of the act, the courts are empowered to

---

[333] Section 19 of the Anti-discrimination bill, available at www.nassnig.org, accessed on 9 December 2013.

[334] Federal Ministry of Health op cit (n195) 35.

make civil remedies to the affected parties. This is particularly helpful, as it both provides for punishment for breach of the law, and also provides support and compensation to the party that has been affected by the discriminatory practice. Section 28 states that an individual also has the right to institute proceedings for the breach of their right to freedom from discrimination, as provided for by Section 42 of the 1999 constitution.[335]

3.2. Positive aspects of the bill

An important inclusion in the bill is its express recognition and provision for the foundational rights of dignity and privacy, with regard to the treatment of PLWHA. This is vital because, respect and observance of the right to dignity and privacy are important to stopping stigmatization and discrimination. Most other breaches of the rights of PLWHA, initially stem from a breach of these rights.

The bill specifically mentions many of the practices that are often used to stigmatize PLWHA, including mandatory testing, requirements for testing before certain benefits are given and breaches of confidentiality by health care personnel. This serves to address the societal problems that are manifested and appropriately proscribe them. The bill also criminalizes acts that discriminate against and stigmatize PLWHA. This gives the bill legal teeth, by both proscribing the acts and providing appropriate punishment when the law has been breached. The fact that civil remedies are provided for, indicates that the protection of the rights of PLWHA is viewed as the ultimate purpose of the law.

3.3. Deficiencies of the bill

A striking feature of the bill is its concentration on discrimination and stigmatization in the workplace. The bill bears a strong resemblance to the already existing National Policy on

[335] Full text of the provisions of Section 42 quoted above at page 55.

HIV/AIDS in the workplace.[336] While discrimination at work has far-reaching effects on the sustenance of PLWHA, it is not the only avenue through which discrimination is practiced. This is especially in light of the fact that the demographic of PLWHA in Nigeria shows a significant number to be young people, many of whom are not working.[337] While there is mention of discrimination in schools, places of worship and communities generally, it is done sparingly.[338] There is a need for more widespread coverage of discriminatory practices and their manifestations, so as to adequately cover the field and provide as much protection to those affected by the HIV virus.

Certain aspects of the bill may be criticized as being aspirational and incapable of enforcement. Sections 3(2) and 7 for example, which provide that individuals and communities have a mutual responsibility to prevent discrimination and have a responsibility to provide “reasonable accommodation” to PLWHA are nebulous, in that they place a responsibility that is difficult to quantify or measure compliance with. Section 7 which provides for giving PLWHA reasonable accommodation is especially daunting since no accompanying provision is made to determine what is reasonable in the context of quality and quantity. Section 7 is also vague in the sense that, while it provides that there is a responsibility to provide reasonable accommodation, nothing is said about whether such a responsibility is actionable, in the event of limited resources to provide the accommodation. Also, no reference is made to when the responsibility to provide the accommodation is due and subsequently actionable for failure to meet the responsibility.

---

[336] Federal Ministry of Labour and Productivity, ‘The National Workplace Policy on HIV/AIDS’, March 2005, available at *http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/-ilo_aids/documents/legaldocument/wcms_127567.pdf*, accessed on 9 December 2013.

[337] National Agency for the Control of AIDS (NACA), ‘Global AIDS Response: Country Progress Report’, 2012, available at *http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/Nigeria%202012%20GARPR%20Report%20Revised.pdf,* accessed on 9 December 2013.

[338] Specific mention of discrimination against PLWHA in schools, places of worship and communal places is only made in Section 6 of the Anti-discrimination bill, available at *www.nassnig.org*, accessed on 9 December 2013.

There is also no clarity as to which of the groups mentioned bears initial responsibility. Does the employer have the primary duty to provide, after which the community has a responsibility, followed by the community, and then the individual, or vice versa? Or is it a collective responsibility by all parties; which then requires deliberation, consultation and collaboration? All these questions are not clarified by the bill. There is need for such clarification, if the duty to provide accommodation for PLWHA is to be one that individuals, communities and employers are to be held responsible for; especially in the harsh economic context of the Nigerian society.

This bill provides a good step in the right direction, hence it is hoped that, it will be passed in this legislative term, as there are legitimate concerns that it will go the way of similar bills before it. This is because, elections for a new legislative term are close,[339] and the legislators are more likely to become engulfed in politicking.

4. NIGERIAN STATE LAWS

While there is currently no federal law that protects PLWHA, two states, namely Lagos and Enugu, of the 36 states of the federation, have enacted anti-discrimination laws for those living with HIV/AIDS.[340]

While they only account for two states out of 36, they are densely populated areas and, as such, their legislation has an arguably wide jurisdiction, with a ripple effect of possibly inspiring other states to draft similar legislation, in order to fill the lacuna left by the lack of federal legislation on the matter.

---

[339] The next set of democratic elections are set to hold any time before May 2015, when a new term begins for elected officials.

[340] Lagos State has - A Law for the Protection of Persons Living with HIV and Affected by AIDS in Lagos State and for Other Connected Matters Law No 17of 2007, While Enugu has the - HIV/AIDS Anti-discrimination and Protection Law No 2, 2005.

Both laws cover a wider ambit than the federal bill. The Lagos State law for example forbids the following acts: "Refusal of landlord to accept as a tenant, person living with HIV and affected by AIDS; stigmatisation and denial of access to an infected patient by a health institution (be it public or private); denial of right of access into an educational institution; discrimination and stigmatisation in any social, religious or political gathering; and segregation, discrimination and stigmatisation at the place of employment, particularly with respect to nature of work, right to transportation, training and provision of other benefits, including but not exclusive to health and insurance; and compulsory and mandatory HIV test for all employees by employers of labour".[341] In the same vein, the law of Enugu provides that PLWHA have a right to marry anyone of their choice, who so voluntarily accepts.[342] However, both laws criminalize the wilful transmission of HIV/AIDS, where the PLWHA is aware of their status prior to infecting another. Section 18 of the Lagos State law provides for a fine, and or a sentence not exceeding ten years. Section 12(4) of Enugu's law states that any partner in a marriage has the right to secure divorce in a situation where he or she considers themselves at risk of being infected by an HIV positive partner, who refuses to consent to, or practice safer sex, especially the consistent use of condoms.

The criminalization of HIV transmission, even when wilful has been criticized as a form of legislative discrimination.[343] While there has been widespread use of this type of legislation, around the world,[344] there is a growing consensus, that such laws are a further infringement on

[341] Section 10, Law for the Protection of Persons Living with HIV and Affected by AIDS in Lagos State and for Other Connected Matters Law No 17A of 2007

[342] Section 12 (5), HIV/AIDS Anti-discrimination and Protection Law No 2, 2005

[343]Edwin Bernard, Sally Cameron , 'Advancing HIV justice: a progress report of achievements and challenges in global advocacy against HIV criminalization', *Global Network of People Living with HIV (GNP+) and HIV Justice Network*, June 2013, available at *http://www.hivjustice.net/wp-content/uploads/2013/05/Advancing-HIV-Justice-June-2013.pdf,* accessed on 6 December 2013.

[344] In a survey conducted by UNAIDS, fifty six countries were reported to have laws that specifically criminalize HIV transmission, while sixty three countries were reported not to have such laws. Also, ten were said to have contradictory information. See UNAIDS, 'Brief for parliamentarians on HIV and AIDS: making the law work for the response to HIV', *UNAIDS, UNDP, INTER-PARLIAMENTARY UNION*, 2011, available at *http://www.ipu.org/pdf/publications/aids12-e.pdf*, accessed on 6 December 2013.

the human rights of PLWHA.[345] According to UNAIDS, there is no evidence to suggest that the criminalization of HIV transmission is an effective method of combating the spread of the virus or achieving criminal justice.[346] The criminalization of HIV transmission has also been stated to help further the discrimination of women, who more often than not, are more easily exposed to the virus and are more likely to be made aware of their status, due to the likelihood of them accessing healthcare services more often than men.[347] So, there is a stronger tendency to accuse them of infecting others with the virus. In situations where there is no prior proof of the female's HIV status, there is a stronger likelihood that she will be blamed for the transmission of the virus, due to the gender power imbalance in many Nigerian societies.[348] Finally, criminalization of HIV transmission has been attacked as premised on faulty law, as it very difficult, if not almost impossible to determine the place, manner and individual responsible for an HIV infection.[349] As such, proving such an offence may be an evidential impossibility.

However, with the exception of the provisions that criminalize HIV infection, the existing state laws in Nigeria can provide a good template for the federal legislation. In all, the proposed federal bill provides a good step in the right direction, with regard to protecting PLWHA from discriminatory practices, by virtue of their HIV status. There is however, room for improvement on the legislation, especially in light of the fact that the bill is yet to be passed, and it is expected that it is the best version possible that is passed into law. Apart from the flaws already pointed out above, improvements can be made by examining the anti-

---

[345] Ibid.

[346] Ibid.

[347] Viola Onwulir and Oluwatoyin Jolayemi, 'Reaching vulnerable and high risk groups in Nigeria', in AIDS in Nigeria: A nation on the threshold, edited by Phyllis J Kanki and Olusoji Adeyi, *Harvard Center for Population and Development Studies*, available at, *http://www.apin.harvard.edu/AIDS_in_Nigeria.html*, accessed on 12 July 2013.

[348] Ibid.

[349] UNAIDS, 'Criminalization of HIV Non-Disclosure, exposure and transmission: scientific, medical, legal and Human Rights issues', *Revised version of background paper for the Expert Meeting on the Science and Law of Criminalization of HIV Non-Disclosure, Exposure and Transmission, Geneva Switzerland*, 2012, available at *http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/KeyScientificMedicalLegalIssuesCriminalisationHIV_final.pdf*, accessed on 12 December 2013.

discrimination laws in other jurisdictions and examining how they operate, in order to adopt them to the specific Nigerian context, for a more effective anti-discrimination law in Nigeria.

5. COMPARATIVE ANALYSIS OF ANTI DISCRIMINATION LEGISLATION OF OTHER JURISDICTIONS

A considerable number of jurisdictions the world over have legislation that directly or indirectly address HIV and the way and manner those infected by it are treated. In order to propose a more wholesome and effective federal law for the protection of PLWHA in Nigeria, This section will examine the laws of the United Kingdom and the Southern African Development Community (SADC) on discrimination against PLWHA.

5.1. United Kingdom

Discrimination against people with HIV is unlawful in the UK. PLWHA are protected primarily by the Equality Act of 2010.[350] Section 6 of the Equality Act covers issues of equality with regard to age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, sexual orientation. Protection for PLWHA is provided for under the provisions for equality for those who are disabled. Section 6 of the Equality Act states that,

> (1) A person (p) has a disability if –
> (a) P has a physical or mental impairment, and
> (b) The impairment has a substantial and long term adverse effect on P's ability to carry out normal activities.

By virtue of this definition, the impairment can be physical as in the case with HIV. Also, it must have substantial and long term effect, which is also the case with HIV, which is still without a known cure.

[350] The Equality Act 2010 c. 15.

Those with disabilities are afforded various rights and protections under the Equality Act. Part 2, Chapter 2 of the Equality Act lists prohibited conduct against those protected by the act, which include the disabled, and by extension PLWHA. The prohibited conduct includes acts of direct discrimination,[351] discrimination due to disability,[352] indirect discrimination,[353] and combined discrimination based on two of the protected characteristics by the Equality Act.[354] Sections 20 to 22 place a duty on parties who have dealings with the disabled to make reasonable adjustments based on the provisions of the Equality Act. The duties placed on such parties include taking reasonable steps to avoid any disadvantage that may befall those with disabilities. The act provides protection in the work place for PLWHA in Part 5 of the act. The chapters in part 5 cover various aspects of work, from employment,[355] to pension schemes.[356]

Part 6 of the Equality Act covers issues relating to education. It covers admission and treatment of PLWHA from elementary school to higher education.[357] Accessibility of resources for disabled students is also provided for.[358] Part 7 on the other hand deals with the rights that relate to associations.[359] Part 9 outlines the enforcement structure for the rights protected in the act; providing for civil court jurisdiction[360] and employment tribunals.[361] Part 11 makes provision for steps to advance equality by placing a duty on the public sector[362] and by the requirements of positive/affirmative action.[363]

---

[351] Section 13 of the Equality Act 2010 c. 15.

[352] Section 15 of the Equality Act 2010 c. 15.

[353] Section 19 of the Equality Act 2010 c. 15.

[354] Section 14 of the Equality Act 2010 c. 15.

[355] Chapter 1 of Part 5: Sections 39 to 60 of the Equality Act 2010 c. 15.

[356] Chapter 2 of Part 5: Sections 61 to 63 of the Equality Act 2010. c. 15.

[357] Sections 84 to 94 of the Equality Act 2010 c. 15.

[358] Section 88 of the Equality Act 2010 c. 15.

[359] Sections 100 to 107 of the Equality Act 2010 c. 15.

[360] Chapter 2 of Part 9: Sections 114 to 119 of the Equality Act 2010 c. 15.

[361] Chapter 3 of Part 9: Sections 120 to 126 of the Equality Act 2010 c. 15.

[362] Chapter 1 of Part 11: Sections 149 to 157 of the Equality Act 2010 c. 15.

[363] Chapter 2 of Part 11: Sections 158 and 159 of the Equality Act 2010 c. 15.

i. Observations and lessons from the Equality Act

A striking feature of the Equality Act is its all-encompassing mandate. There is a conscious effort on the part of the drafter to cover the field with regards to the issues of equality in the United Kingdom. The act thus makes provisions on a varying number of issues, and consequently hardly leaves much doubt as to the position of the law maker. This is very helpful in the case of PLWHA, where sometimes the acts of discrimination may not be clear cut. The clarity on a wide range of issues leaves little or no doubt as to what the law permits. This deliberate attempt to cover the field is important for Nigeria's anti-discrimination bill, which places much emphasis on discriminatory practices in the work place.

Another feature of note is the classification of HIV infection as a disability. By the definition of what a disability is, there is a clear indication of the nature of impediment suffered by those who fall within that category. Thus, a premise is laid upon which they should be considered for specific mention and expressly protected by the law. As indicated in the Equality Act, their mental and physical conditions make them unable to carry out their normal activities. Therefore by virtue of this limitation, they should be protected by the law. The argument may be made here that the definition of disability by the act should only apply to those whose disease has progressed into the stage of AIDS. This is because HIV positive people can still be healthy and active without any apparent physical impediment, provided they take adequate medical care of themselves, and so may not necessarily fall into the category of those with 'an impairment with a substantial and long-term adverse effect on their ability to carry out their day-to-day functions'. Also, the question may be asked, that if PLWHA are classified as having a disability, does that classification also apply to others who suffer various chronic ailments?

With regard to the stage at which a person living with HIV or AIDS may be rightly defined as disabled, Schedule 1, Part 1 of the Equality Act provides clarity as to when and at what stage, a state of affairs, may be considered a disability. As stated by Section 6, there has to be impairment. In the context of HIV and AIDS, Section 5, Part 1 of Schedule 1 provides that,

"(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if

(a) Measures are being taken to treat or correct it and

(b) But for that, it would be likely to have that effect".[364]

By virtue of this provision, HIV as well as AIDS count as disabilities, since an HIV positive person is required to be on medication to manage the spread of the virus; without which, it would likely mutate into AIDS and render the person living with the virus unable to carry out their day-to-day activities. More importantly, as an expansion of the import of Section 5, Part 1 of Schedule 1, Section 6 Part 1 of Schedule 1 expressly provides that cancer, HIV infection and multiple sclerosis are each a disability protected by the Equality Act.

As to the issue of whether or not other chronic ailments will qualify as disabilities, the above mentioned Section 6 of the first schedule of the Equality Act sheds more light. Importantly, in determining whether a chronic condition or a physical or mental state of affairs will constitute a disability, the effect[365] such a state of affairs has on the individual is the paramount determinant and not so much the seeming severity or lack of, of the condition or state of affairs.

This exposition is significant for breeding a better understanding and appreciation of the law and its purpose. It is to be expected that where there is a better understanding of the reason for a law, there is more wholesome and comprehensive observance of it. In the case of the anti-discrimination bill of Nigeria, no foundation is laid as to the unique nature of HIV/ AIDS as a disease and why those infected are entitled to protection. While the bill outlines the rights those infected with the virus are entitled to, there is no reason advanced as to why the rights are worthy of specific mention; especially in light of the fact that they are already guaranteed rights in the constitution. Unlike in the case of the Equality Act, no reason is advanced as to why a specific body of laws have been made for the protection of those living with HIV/AIDS.

---

[364] Section 5, Part 1 of Schedule 1, Equality Act 2010 c. 15.

[365] Emphasis mine.

An explanation of the need to protect PLWHA will more likely go a long way in ensuring understanding, acceptance and compliance by members of the public who may otherwise not understand or appreciate a law that specifically aims to shield PLWHA; people who many may still harbour resentment for, and feel that they deserve their fate. Merely stating the purpose of the bill as in Section 1 of the anti-discrimination bill does little to explain why the stated purpose is necessary.

The Equality Act also treats the issue of discrimination in the area of education specifically. It covers a wide range of areas in which discrimination may occur. In the same vein, the act makes provision for conduct within associations. As earlier noted, the anti-discrimination bill of Nigeria only mentions discrimination in the context of education in passing. It will be of great benefit if a more comprehensive capturing of the unique manifestations of discrimination against PLWHA within the education sector is done; especially if done within the specific Nigerian context and in a way that is reflective of local manifestations of stigmatization and discrimination.

In addition to the above, the Equality Act places a duty on the public sector to observe the provisions of the act. In essence, it places first responsibility of compliance on the public sector, so as to set a proper example for the private sector. An offshoot of this inclusion is that, there is a stronger likelihood of reviewing the law in line with the realities of practice. This way, the law is more likely to constantly evolve to meet ever changing demands. This is a particularly important lesson for the Nigerian situation; where there is need to lead by example. As such, merely stating that the proposed bill applies to the public sector as well as the private sector as in Section 2 of the bill, may not suffice, especially where there is need for strong affirmative action, as is the case with stemming discrimination against PLWHA.

The Equality Act further buttresses the protection of those often discriminated against, by providing protection for various other characteristics that often make those that possess them susceptible to discriminatory practices. Perhaps one of the most illustrative examples is in the protection provided on the basis of gender, age and also disability in the act. This provides multi-layered protection to individuals not just by virtue of their HIV/AIDS status but also on

the grounds of their gender and age, which may have previously put them at a disadvantage, and which combined with a sero-positive status, makes them targets for stigmatization.[366] Such level of protection is especially needed and necessary in a country like Nigeria, where a considerable number of PLWHA already fall within groups that are susceptible to abuse. This is especially true of women and children, who are often the victims of abuse, which usually becomes aggravated upon discovery of their HIV status.[367]

5.2. Southern African Development Community

In Africa, there are a number of domestic and regional legal frameworks that aim to provide a roadmap for the proper management of PLWHA. In Western Africa, there is the N'Djamena model HIV law.[368] Developed in 2004, this model law has been criticized for its adoption of punitive provisions on mandatory disclosure, testing and criminalization.[369] Hence, it is seen as a not so ideal model to imitate, especially in light of the fact that some countries have adopted this system to the detriment of their people.[370] Alternatively, there is the Southern

[366] The other protected characteristics in the Equality Act are age, gender, marriage and civil partnerships, race, religion or belief, sex and sexual orientation, which are provided for in Sections 5, 7, 8, 9, 10, 11 and 12 respectively. See Equality Act 2010 c. 15.

[367] Onwulir op cit (n347) 73.

See also, Janet Fleischman 'Fatal vulnerabilities: reducing the acute risk of HIV/AIDS among women and girls', *A report of the working group on women and girls, Center for Strategic and International Studies*, February 2003, available at *http://csis.org/images/stories/hivaids/0302_fatalvulnerabilities.pdf*, accessed on 10 December 2013.

[368] This model law was developed by the Action for West Africa Region- HIV/AIDS (AWARE-HIV/AODS) at a conference in N'Djamena, Chad. See Richard Pearshouse, ' A human rights analysis of the N'Djamena model legislation AIDS and HIV- specific legislation in Benin, Guinea, Guinea- Bissau, Mali, Niger, Sierra Leone and Togo , *Canadian HIV/AIDS legal Network*, September 2007, available at *http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1530*, accessed on 9 December 2013.

[369] John Godwin, 'Enabling legal environments for effective HIV responses: a leadership challenge for the Commonwealth', *International HIV/AIDS Alliance and Commonwealth HIV and AIDS Action Group*, 2010, available at *http://www.hivpolicy.org/Library/HPP001810.pdf,* accessed on 9 December 2013.

[370] Pearshouse op cit (n388) 79.

African Development Community (SADC) model HIV law,[371] which is aimed at providing a legal framework, which Southern African countries can adopt, for the management of HIV/AIDS in their respective countries. This model law is instructive to the Nigerian bill because firstly, it caters to an African population. While there are areas of divergence in economic and political structure, there are equally many similar socio-cultural, political and economic parallels, which make it a good model for adoption by a fellow African territory; in this case, Nigeria.

The SADC model law is also relevant to the Nigerian situation, in line with the fact that, Southern Africa is the only region in Africa with a higher rate of infection than Nigeria. Thus, the law provides guidance on how to deal with the disease in a manner that is responsive to its nature as a public health concern, but is also respectful of the rights of those affected by the virus. The model law aims to serve as a guide for member States of SADC. It is a piece of legislation that seeks to comprehensively address the issue HIV/AIDS and its multifaceted effects on society and those living with it. As stated in its preamble, it seeks to provide best practices, as a guide for legislative efforts on HIV-related issues.

In line with this mandate, Part II of the model law deals with mechanisms for the prevention of the spread of the HIV virus. Part III specifically deals with the protection afforded to those living with HIV/AIDS. It is broken down into chapters, with chapter one stating the general human rights PLWHA possess,[372] chapter two dealing with the protection of children living with or affected by the HIV virus, while chapter three covers the specific protection of women and girls and chapter four covers the protection afforded to prisoners. The model law makes provision for support structures for PLWHA, along with treatment and care for them.[373] The law goes a step further by providing for support for the organizations that cater to the needs of

---

[371] Adopted by the SADC Parliamentary forum on 24 November 2008, available at *http://www.justice.gov.za/vg/hiv/docs/2008_Model-Law-on-HIV-in-Southern-Africa.pdf*, accessed on 9 December 2013.

[372] These rights include the right to non-discrimination, confidentiality of personal data, sexual and reproductive health rights, right to family, right to access to health care, retirement, insurance and social security, right to education and the right to work. See Sections 17 to 23, Model law on HIV in Southern Africa.

[373] Section 36, Model law on HIV in Southern Africa.

PLWHA.[374] This is tantamount to State support, which is likely to yield more progress in the fight against the spread of the virus. Penalties for the breach of the offences created by the statutes are provided for in the model law,[375] along with the enforcement mechanisms.[376]

i. Observations and lessons from the model law

As pointed out above, the model law is a template for comprehensive legislation on HIV/AIDS. It is useful for States that have little or no legislation that address the issue of HIV and its resultant effects on carriers and the society at large. This is instructive for Nigeria, where there is no standard set of laws that address the issue of HIV/AIDS. It may thus be incisive to not only legislate on discrimination against PLWHA, but to make a comprehensive law that deals with the issues surrounding HIV/AIDS as a whole.

On the specific issue of legislation on the discrimination against PLWHA, the model law makes a conscious effort to first make sweeping provisions that deal with all PLWHA, and then proceeds to address the major categories of people that are affected by the virus, and specific ways in which they are to be protected by the law. This approach significantly does not only deal with the various scenarios in which the abuse can occur, but more importantly deals with the groups of people that it can occur to. Specific sets of provisions for women, children and prisoners, indicate willingness by the law to address the concerns of its most vulnerable; even among the generally vulnerable body of those living with HIV. Such an approach can be very helpful in the Nigerian situation. Legislation targeted at the vulnerable groups in Nigeria, such as women, children, intravenous drug users, sex workers, homosexuals and the youth may prove to be more impactful than general provisions that mostly affect PLWHA who work in structured working environments. This is especially since the most vulnerable groups do not fall within the category of those who can be protected by work place anti-discrimination policies and regulations.

---

[374] Part VII: sections 40 to 42, Model law on HIV in Southern Africa.

[375] Part VII: Sections 43 to 46, Model law on HIV in Southern Africa.

[376] Part IX: Sections 47 and 48 (options 1 and 2), Model law on HIV in Southern Africa.

Finally, the model law recognizes the need to support and encourage organizations that work with PLWHA and seek to reduce the spread of the pandemic.[377] This recognition is important, if much progress is to be made in reducing HIV prevalence and adequately protecting those affected by it. Nigeria's legislators can adopt such an approach, as this will lead to stronger collaboration with NGOs and in turn yield higher results in the fight against HIV.

The anti-discrimination bill is by and large a positive response to the yearnings of PLWHA. It offers some respite in the drive to dispel attitudes of discrimination and stigmatizing practices. However, a lot more can be done to further improve on its provisions, to ensure better protection and recognition of the rights of PLWHA. Examples can be drawn from jurisdictions such as the UK Equality Act and the SADC Model Law, to ensure that the best version of the law possible is passed. Most importantly, there is need for the political will to actually pass the bill, if and after the requisite changes have been made. This or any other bill, no matter how good, is of little or no good, until it is passed into law and has binding authority. It is therefore hoped that, this session of the National Assembly will pass the anti-discrimination bill, with the assent of the President, so as to avoid the pitfall of the bills before it.

[377] Part VII: sections 40 to 42, Model law on HIV in Southern Africa.

CHAPTER 6

CONCLUSION

HIV/AIDS has proven to be one of the greatest health challenges of this century. New methods have had to be adopted by States and International bodies alike in order to combat the spread of the virus. Concerted effort has been made to stem the spread of the virus and steadily reduce the rate of new infections. In addition to this, effort has been made in some quarters to cater for those who have been affected, in the wake of the virus. PLWHA have hitherto, suffered much stigmatization and ostracism with varying degrees depending on the societies where they live. In Nigeria, the plight of PLWHA has been particularly bad. Unfortunately, this has in turn stalled the expected levels of progress in the bid to curtail the spread of the disease.

The aim of this work has been to show the high levels of discrimination and stigmatization PLWHA suffer in the Nigerian society, with a view to exploring possible legal recourse for this largely marginalized group. This work has sought to answer the questions about the nature of stigmatization of those living with HIV/AIDS, the mind-sets that spur on the continued spread of discriminatory practices against PLWHA, how these discriminatory practices are manifested, and how the law can intervene to stem these discriminatory practices. In order to adequately resolve the queries raised, various chapters have dealt with the each of the questions and sought to provide solutions where needed.

Chapter two has given a general overview of the nature of HIV/AIDS, highlighting the history of the infection in the country and how it is currently being spread. Also the steps taken to stem the spread of the virus have also been examined. This has been necessary in order to have a contextual understanding of the nature and impact of HIV/AIDS on the Nigerian society. Chapter three has examined the attitudes and practices that have resulted in discriminatory treatment of those living with HIV. To this end, it has examined the ways in which these discriminatory practices are manifested in the Nigerian society, along with their resultant

effect on the PLWHA. Importantly also, it has examined the prevalent practice of mandatory testing, along with the proper VCT procedure. This is important in order to understand the nature and effects stigmatization has on PLWHA in particular and on the society as a whole. This exposition has shown the need for legal protection against stigmatizing practices. Chapter four has explored the legal protection that can be afforded to those whose human rights have been breached by the various discriminatory practices. Also, case law, where the veracity of the claims of human rights abuses have been tested have also been examined, to show that there are valid human rights claims, where discriminatory practices are manifested. As a further and more specific approach to examining how Nigerian law can curb discrimination against PLWHA, chapter five of this work has examined the proposed anti-discrimination bill of the National Assembly. The bill which seeks to provide definitive legal protection for PLWHA and to proscribe practices that encourage stigmatization such as mandatory testing is examined, in order to inquire into the possible effectiveness of the bill, if eventually passed into law. In a bid to strengthen the existing bill, various flaws and possible areas of improvement on the bill have been outlined, using both legislation from other jurisdictions and personal observations of the author. In all, an inclusive legal framework for the protection of PLWHA which will both be adequate and impactful has been proposed, as a way forward

This research is relevant to the discuss on HIV/AIDS because it provides an important nexus between the public health concerns surrounding the spread of the virus and the legal issues around the best way to handle the virus and care for those affected by it. First of all, it provides further insight into the manifestations of stigmatization of PLWHA and shows why exactly discriminatory practices against PLWHA are unhealthy and detrimental. In addition to this, it shows the flaws of mandatory testing and explains how VCT procedure is a more effective public health and human rights approach to curbing the spread of HIV/AIDS. This work is also pertinent because of its expansion and exposition of the human right implications of discriminatory practices against PLWHA, which is important for expanding the scope of understanding of the legal import of stigmatization of PLWHA beyond the context of just the labour law and unjust treatment issues that usually arise in the context of the work environment. Most importantly, this body of work explores the use of specific legislation as a

response to correcting a socio-economic malaise. It specifically deals with Nigeria's intended legislation by critiquing its provisions and posing possible alternatives to the existent flaws in the bill. This is important in helping to chart the course of discourse on ways to best capture the needs of those being marginalized on account of their sero-positive status, especially in Nigeria. The recommendations made, offer the chance to have a more effective legislation for the protection of PLWHA, hence providing an effective blue print for the actualization of a legal regime that adequately protects the rights of those affected by HIV/AIDS.

The discussion on the need to provide legal protection of PLWHA is pertinent not merely for academic discourse but also because of the practical impact it can have on society. It is important for establishing the recognition of the human rights that PLWHA have. The legal protection afforded to PLWHA in turn has the capacity to strengthen the campaign for increased testing and treatment. As shown in this work, the fear of stigmatization has a crippling effect on voluntary testing and by effect, the reduction of new infections. As very little attention has been paid to securing and protecting the rights of PLWHA, there has not been any unified codification of their rights. As such, they have had to rely on general constitutional provisions and international human rights instruments. This discussion is therefore important, in addressing the need for a singular codification of the protection the law provides for PLWHA. The pending anti-discrimination bill, offers the chance to have such a singular codification. While the bill is innovative in its recognition of the rights of PLWHA, it has several flaws which mitigate against its stated aim.

Going forward, changes should be made to the bill, so that it lays a proper premise on why PLWHA require the protection of the law. Stake holder input must be encouraged for a more robust law, which takes into consideration, all relevant stakeholders. Importantly also, there is need for widespread publicity on the bill, in order to create awareness and to educate the populace on the importance of jettisoning discriminatory practices, since lack of awareness plays a major role in the continuing stigmatization and victimization of PLWHA.

In all these, the most important singular factor that is likely to determine the ultimate success of the anti-discrimination bill is the political will to pass it into law. It is thus important for the legislature to understand the true impact of discrimination against PLWHA. It is this understanding that will translate into a renewed fervour to pass the bill in its most ideal format, and also spur on efforts to ensure compliance with the bill.

In the event the bill is indeed passed, as it is, further research will need to be done on the practical impact the new law has on the lives of those living with the HIV/AIDS. More importantly, the position of criminalization of HIV infection in some parts of Nigeria will require further examination. Further research on the human right and public health dimensions of such a legislative stance will have to be done at length. This is because, while the few state laws, which at present have legislated on HIV criminalize the wilful transmission of the virus; the intended federal law has no such provision. The legal issues surrounding criminalization of HIV transmission ought to be revisited and preferable tested in line with country's constitution, before a competent court of law.

Pending the passage of the anti-discrimination bill, the protection afforded PLWHA is largely dependent on the extrapolation of constitutionally guaranteed rights. In addition to this, the national policies on VCT and discrimination in the workplace provide guidance on best practices, albeit in a limited scope. With the exception of Lagos and Enugu States, the welfare of PLWHA and recourse to legal remedies is largely uncertain. Civil action in the courts is still the best source of recourse; recourse which has shown in the past to take long in coming, and may not even be guaranteed. In the meantime, there is need for increased litigation, where the rights of PLWHA are infringed on. Regardless of the passing of the anti-discrimination bill or the reliance on existing legal provisions, the law with regards to the specifics rights around mandatory testing and discrimination against PLWHA can only be developed by constantly testing the law and applying it to real life situations.

As such, PLWHA, along with other interest groups must constantly mobilize to monitor possible infringements, and to take up action where necessary. In the same vein, the general public must constantly be made aware of the need to treat PLWHA with care and dignity. Efforts should be made at adopting techniques to create widespread knowledge about the risks associated with HIV, and educating the populace on the ills of discriminating against PLWHA. This will help in the reduction of stigmatization of PLWHA out of fear of contracting the virus. In line with this, targeted campaigns aimed at increasing knowledge about life for PLWHA should also be embarked on, so as to help the general populace identify with PLWHA.

Finally, it must be noted that the fate of the efforts to combat the HIV virus in Nigeria rests on the ability of society and the law in particular to effectively protect those infected by HIV or perceived to be so affected. The reduction of stigmatizing notions and discriminatory practices against PLWHA will help in demystifying the HIV virus. This will in turn chart the course for re-integrating PLWHA into society, and encourage many more to take bold stops to ascertain their HIV status and seek care where necessary; unafraid of possible stigma and confident in the assurance of legal protection.

BIBLIOGRAPHY

PRIMARY SOURCES

Cases

Attorney General Ondo v. Attorney General Federation, (2002) 9 NWLR (Pt 772), 222

Georgina Ahamefule V. Imperial Medical Centre & Dr. Alex Molokwu, Unreported, Suit No. ID/1627/2000.

R v. Clarence (1889) 22 Q.B.D. 23 at 51

Statutes

A Law for the Protection of Persons Living with HIV and Affected by AIDS in Lagos State and for Other Connected Matters Law No 17of 2007

African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter), Ratified and promulgated in the African Charter on Human and Peoples Rights (Enforcement and Ratification) Act Cap 10 Laws of the Federation 1990.

Constitution of the Federal Republic of Nigeria, Act 35 of 1999, Laws of the Federation of Nigeria,2004.

Criminal Code Act, Chapter 77 laws of the Federation of Nigeria, 1990

HIV/AIDS Anti-discrimination and Protection Law 2005.

International Covenant on Economic, Social and Cultural Rights. (G.A. res. 2200A (XXI), 21 U.N.GAOR Supp (No. 16) at 49. U.N. Doc.

Model law on HIV in Southern Africa.

Same Sex Marriage (Prohibition) Act, 2013.

The Equality Act 2010 c. 15.

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR).

Bills

Bill for an act to make provisions for the prevention of HIV discrimination and to protect the human rights and dignity of people living with HIV and affected by aids and other related matters

Bill for an Act to make it mandatory for public hospitals and clinic to provide treatment for patients infected with HIV or AIDS; and for connected purposes, of 2002

Bill for an act to establish the Nigerian national HIV/AIDS management and control commission so as to cater for the welfare of people living with HIV/AIDS and also to harness resources aimed at providing its cure and for related purposes

Bill for an act for mandatory treatment of and non-discrimination against people with HIV/AIDS; and for connected purposes

Bill for an act to prohibit and punish discrimination against persons living with HIV/AIDS in housing, employment, social, educational and health services and in all forms of social-economic life and for other connected matters

SECONDARY SOURCES

AbassBolatito, Lanre, 'The natural law theory of morality and the homosexuality debate in African culture', (2012) *Ogirisi: a new journal of African studies* 9, 182-214.

Adebajo, S, Bamgbalata, A, Oyedran, M, 'Attitudes of health care providers to Persons Living With HIV/AIDS in Lagos State, Nigeria, (2003) *African Journal of Reproductive Health / La Revue Africaine de la SantéReproductive* 7(1), 103-112.

Adekeye, Shade, ‘The Impact of Human Immune Virus and Acquired Deficiency Syndrome (HIV/AIDS) on Nigerian Women’, available at *http://www.unilorin.edu.ng/publications/adekeyeds/The%20Impact.htm*, accessed on 17 July 2013.

Adelekan, A and Edoni, E ‘Facilitating factors for HIV/AIDS stigma and discrimination, and political priority for its reduction among Local Government Chairmen in Osun State, Nigeria’, (2012) *Journal Of Humanities And Social Science* 3(6), 39-44.

Adeokun, Lawrence, ‘Social and Cultural Factors Affecting the HIV Epidemic’, in AIDS in Nigeria: A nation on the threshold, edited by Phyllis J Kanki and Olusoji Adeyi, *Harvard Center for Population and Development Studies*, available at, *http://www.apin.harvard.edu/AIDS_in_Nigeria.html*, accessed on 12 July 2013.

Australian Society for HIV Medicine (ASHM), ‘Privacy and Confidentiality’, *Guide to Australian HIV Laws and policies for healthcare professionals*, 5 December 2012, available *at www.ashm.org.au/HIVlegal/Default.asp?publicationID=2&SectionID=339,* accessed on 22 September 2013.

AIDS online, ‘AIDS in Africa – Nigeria’, available at *http://www.aidsonline.org/africa/nigeria.php*, accessed on 20 July 2013.

Alubo, O, ‘Breaking the wall of silence: AIDS policy and politics in Nigeria’, (2002) *Inter J Health Serv* 32(3), 551-556.

Amalu, Chinyere, ‘NACA launches N756bn national HIV & AIDS response’, *Vanguard Newspaper,* 30 March 2010, available at *http://www.vanguardngr.com/2010/03/naca-launches-n756bn-national-hiv-aids-response/,* accessed on 12 July 2013.

Aniekwu, Nkoli I, ‘Gender and Human Rights dimensions of HIV / AIDS in Nigeria’, (2002), *Women's Health and Action Research Centre (WHARC), African Journal of Reproductive Health / La Revue Africaine de la SantéReproductive*, 6(3) ,30-37.

Asante, AD. ‘Scaling up HIV prevention: why routine or mandatory testing is not feasible in Sub- Saharan Africa’, (2007) *Bulletin of the World Health Organization* 85(8), 569-648.

Avert international HIV and AIDS charity, 'HIV and AIDS in Nigeria', available at *http://www.avert.org/aids-nigeria.htm,* accessed on 16 July 2013.

Bamgbose, Oluyemisi, 'Customary Law Practices and Violence against Women: The Position Under The Nigerian Legal System', available at *http://www.vanuatu.usp.ac.fj/sol_adobe_documents/usp%20only/customary%20law/Oluyemisi%20Bamgbose.htm*, accessed on 20 July 2013.

Bayer, R, 'Public health policy and the AIDS epidemic: an end to HIV exceptionalism?',(1991) *N Engl J Med* 324, 1500-1504.

BBC News, 'Nigeria probes HIV graduate test', *BBC News* 20 August, 2007, available at *http://news.bbc.co.uk/2/hi/africa/6955149.stm*, accessed on 23 August 2013.

Bernard, Edwin, Cameron , Sally , 'Advancing HIV justice: a progress report of achievements and challenges in global advocacy against HIV criminalization', *Global Network of People Living with HIV (GNP+) and HIV Justice Network*, June 2013, available at *http://www.hivjustice.net/wp-content/uploads/2013/05/Advancing-HIV-Justice-June-2013.pdf,* accessed on 6 December 2013.

Brady, Margaret, 'Female Genital Mutilation: Complications and Risk of HIV Transmission', (1999) *AIDS Patient Care and STDs* 13(12), 709-716.

Caetano, Pimentel, 'The Human Right to education: freedom and empowerment", *Multicultural Education,* 2006, available at *http://files.eric.ed.gov/fulltext/EJ759633.pdf*, accessed on 13 July 2013.

Cichocki, M, Imbriani, J, Lam, P, Lewis, J, McIntyre, B, Munk, B, Paquette, M, Patterson, T, Pinkerton, S Simoni, J, St De Lore, J, Vance, D, Williams, JK, 'How does disclosure affect HIV prevention', *Center for AIDS Prevention Studies, AIDS Research Institute, University of California, San Francisco,* available at *http://caps.ucsf.edu/uploads/pubs/FS/pdf/disclosureFS.pdf,* accessed on 20 September 2013.

Committee on Economic, Social and Cultural Rights, 'General Comment No 13', Economic and Social Council, United Nations twenty first session, 15 November to 3 December 1999 ,

E/C.12/1999/10*, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement*, accessed on 13 July 2013.

Cooke, JG, Tahir, F, 'Maternal Health in Nigeria; with leadership, progress is possible', *CSIS Global Health Policy Center, Center for Strategic and International Studies*, January 2013, available at *http://csis.org/files/publication/130111_Cooke_MaternalHealthNigeria_Web.pdf*, accessed on 30 September 2013.

Cotrim, Aluisio and Paiva, Vera ,"Rights of HIV positive people to sexual and reproductive health: parenthood", (2007) *Reproductive Health Matters* 15(29), 27-45.

De Cock, KM, Mbori-Ngacha, D, Marum, E, 'Shadow on the continent: public health and HIV/AIDS in Africa in the 21st century', (2002) *The Lancet* 360, 67-72.

Defeis, Elizabeth, 'U.N. Peacekeepers and sexual Abuse and exploitation: an end to impunity', (2008) *Washington University Global Studies Law Review* 7(2) 184-212.

Dibua, UE, 'Socio-economic and socio-cultural predisposing risk factors to HIV/AIDS: case study of some locations in Eastern Nigeria', *The Internet Journal of Tropical Medicine* available at *http://archive.ispub.com/journal/the-internet-journal-of-tropical-medicine/volume-6-number-2/socio-economic-and-socio-cultural-predisposing-risk-factors-to-hiv-aids-case-study-of-some-locations-in-eastern-nigeria.html#sthash.u6EngDrM.dpuf*, accessed on 20 July 2013.

Dolbear, Gail, Wojtowycz, Martha and Newell, Linda, 'Named reporting and mandatory partner notification in New York State: the effect on consent for perinatal HIV testing', (2002) *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 79(2),238-244.

Dumois, Ana, 'The case against mandatory new-born screening for HIV antibodies', (1995) *Journal of Community Health* 20.

Durojaiye, Modupeoluwa , *Religious and gender dimension of HIV/AIDS risk among women in Nigeria,* LLM (Brandeis University) May 2012.

Emejo, James, 'NBS puts Nigeria's unemployment rate at 23.9 per cent", *This Day Newspaper,* 09 May 2013, available at *http://www.thisdaylive.com/articles/nbs-puts-nigeria-s-unemployment-rate-at-23-9-per-cent/147135/,* accessed on 15 July 2013.

Evelyn, Katherine, 'From voluntary to mandatory: the debates surrounding HIV testing in Africa', *Consultancy Africa Intelligence*, 18 July, 2011, available at *www.consultancyafrica.com*, accessed 30 September 2013.

Ezejiofor, Austin, 'Patriarchy, Marriage and the Rights of Widows in Nigeria', (2011) *Unizik Journal of Arts and Humanities* 12(1), 139-157.

Fasoranti OO and Aruna, JO, 'A cross-cultural comparison of practices relating to widowhood and widow inheritance among the Igbo and Yoruba in Nigeria', *Journal of World Anthropology: Occasional Papers* 3(1) available at *http://wings.buffalo.edu/research/anthrogis/oldsite/JWA/V3N1/Fasoranti_Aruna-art.pdf* accessed on 20 July 2013.

Federal Ministry of Health, 'National guidelines for HIV and AIDS treatment and care in adolescents and adults', October 2010, available at *http://www.who.int/hiv/pub/guidelines/nigeria_art.pdf*, accessed on 23 August 2013.

Federal Ministry of Health, Nigeria, 'National HIV/AIDS and reproductive health survey', (2003)Federal Ministry of Health Abuja, Nigeria, 2013(212).

Federal Ministry of Labour and Productivity, 'The National Workplace Policy on HIV/AIDS', March 2005, available at *http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/-ilo_aids/documents/legaldocument/wcms_127567.pdf*, accessed on 9 December 2013.

Federal Republic Of Nigeria, 'National Action Plan For The Promotion & Protection Of Human Rights In Nigeria' 2006, Available At *Http://Www.Ohchr.Org/Documents/Issues/NHRA/Nigeria.Pdf,* Accessed On 30 September 2013.

Fleischman Janet 'Fatal vulnerabilities: reducing the acute risk of HIV/AIDS among women and girls', *A report of the working group on women and girls, Center for Strategic and International Studies*, February 2003, available at *http://csis.org/images/stories/hivaids/0302_fatalvulnerabilities.pdf*, accessed on 10 December 2013.

Global Network of People Living with HIV and AIDS in Nigeria, 'Country Assessment Report', *Global Criminalization Scan*, June 2010, available at *http://www.gnpplus.net/criminalisation/sites/default/files/Nigerian%20Criminalisation%20Scan%20Country%20Assessment.pdf*, accessed on 15 July 2013.

Global Network of People Living with HIV, ' Stigma and discrimination at work: evidence brief', *People living with HIV stigma index*, 23 July 2012, available at *http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/publication/wcms_185808.pdf*, accessed on 23 August 2013

Gobir, Umar, 'House bill to protect against HIV discrimination passes 2nd reading', *The Mace,* available at *http://www.themaceonline.com/house-of-reps-news/402-house-bill-to-protect-against-hiv-discrimination-passes-2nd-reading,* accessed on 6 December 2013.

Godwin, John, 'Enabling legal environments for effective HIV responses: a leadership challenge for the Commonwealth', *International HIV/AIDS Alliance and Commonwealth HIV and AIDS Action Group*, 2010, available at *http://www.hivpolicy.org/Library/HPP001810.pdf,* accessed on 9 December 2013.

Hale, Mathew, 'Historia Placitorium Coronae' (History of the Pleas of the Crown) of 1736

High Commission of the Federal Republic of Nigeria, Ottowa, Canada, 'Cultures in Nigeria', available at *http://www.nigeriahcottawa.ca/nhc2/index.php/en/discover-nigeria/cultures-in-nigeria,* accessed on 20 September 2013.

HIV/AIDS fact file, 'HIV/AIDS in Nigeria; the true story', available at, *http://www.nigeriahivinfo.com/hiv_aids_in_nigeria.php*, accessed on 12 July 2013.

Iwuagwu, S, Durojaye, E, Oyebola, B, Oluduro, B and Ayankogbe, O, 'HIV/AIDS and Human Rights in Nigeria', *Background Paper for HIV/AIDS Policy Review in Nigeria, Centre for the Right to Health for the POLICY Project*, September 2003, available at *http:/ /pdf.usaid.gov/pdf-_docs/PNACX55.pdf* accessed on 29 September 2013.

Johnson, OE 'Social impact of HIV/AIDS on clients attending a teaching hospital in Southern Nigeria', (2012) Sahara J, 9(2), 47–53.

Kanki, Phyllis and Adeyi, Olusoji, 'Introduction' in AIDS in Nigeria: A nation on the threshold, edited by Phyllis J. Kanki and Olusoji Adeyi, *Harvard Center for Population and Development Studies*, available at, *http://www.apin.harvard.edu/AIDS_in_Nigeria.html,* accessed on 12 July 2013.

Kass, Nancy, 'An ethics framework for Public Health', (2001) *Am. J. Public Health.* 91(11), 1776-1782. See also, Kalle Grill, 'Individual liberty in public health – no trumping value', *Public health-ethical issues*, available at *http://www.academia.edu/980122/Individual_liberty_in_public_health_-_no_trumping_value*, accessed on 20 September 2013.

Kassaye, Tilahun, 'Mandatory Premarital HIV/AIDS testing: A discussion paper', Dec 2011, available at *http://aigaforum.com/articles/Mandatory_PHT.pdf*, accessed on 22 September 2013.

Keating, Joseph, Meekers, Dominique and Adewuyi, Alfred, 'Assessing effects of a media campaign on HIV/AIDS awareness and prevention in Nigeria: results from the VISION Project', *BMC Public Health*, 2006, available at *http://www.biomedcentral.com/1471-2458/6/123,* accessed on 16 July 2013.

Lagitch, Kellie, 'Mandatory HIV testing: an Orwellian proposition', (1998) *St. John's Law Review* 72 (1) Art. 4.

Letamo, G, 'Prevalence of, and Factors Associated with, HIV/AIDS-related stigma and discriminatory attitudes in Botswana', (2003) *Journal of Health, Population and Nutrition* 4, 347-357.

Mann, Jonathan, 'Statement at an informal briefing on AIDS to the 42nd Session of the United Nations General Assembly', World Health Organization, 20 October1987, available at *http://apps.who.int/iris/bitstream/10665/61546/1/WHO_SPA_INF_87.12.pdf*, accessed on 21 July 2013.

McCrudden, Christopher, 'Human Dignity and Judicial Interpretation of Human Rights', (2008) *Eur J Int Law* 19 (4), 655-724.

Mcmillion, Evans, 'The case against mandatory HIV testing of pregnant women: the legal and public policy implications", (1998) *Duke Journal of Gender Law & Policy* 5(1), 227-243.

Mbonu, Ngozi, Van den Borne, Bart and De Vries, Nanne, 'Stigma of People with HIV/AIDS in Sub-Saharan Africa: A Literature Review', (2009) *Journal of Tropical Medicine,* 2009(145891).

Modo, IO, Modo FN and Enang, PI, 'Socio-cultural factors responsible for increasing rate of HIV/AIDS in Akwa Ibom State of Nigeria', (2011) *Ethno Med* 5(2),141-147.

Monjok, Emmanuel, Smesny, Andrea and Essien, James, 'HIV/AIDS - related stigma and discrimination in Nigeria: review of research studies and future directions for prevention strategies', (2009) *Afr. J Reprod. Health.* 13(3), 21–35.

Muhammad, Adashima, 'Mandatory HIV Notification: Bioethical Concerns vs. Public Health Concerns, Health and Medical Dilemmas', (2006) *The Journal of American Science* 2(1).

Nasidi, Abdulsalami and Harry, Tekena O, 'The epidemiology of HIV/AIDS in Nigeria", in AIDS in Nigeria: A nation on the threshold, edited by Phyllis J. Kanki and Olusoji Adeyi, *Harvard Center for Population and Development Studies*, available at, *http://www.apin.harvard.edu/AIDS_in_Nigeria.html*, accessed on 12 July 2013.

National Agency for the control of AIDS, 'Federal Republic of Nigeria, Global AIDS response; Country progress report', *Nigeria GARPR,* 2012, available at *http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/Nigeria%202012%20GARPR%20Report%20Revised.pdf*, accessed on 19 July 2013.

National Agency for the Control of AIDS (NACA), 'Global AIDS Response: Country Progress Report', 2012, available at *http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/Nigeria%202012%20GARPR%20Report%20Revised.pdf,* accessed on 9 December 2013.

National Agency for the control of AIDS, 'History of NACA', available at *http://naca.gov.ng/history-naca,* accessed on 12 July 2013.

National Population Commission, 'Nigeria over 167 million population: implications and challenges', available at *http://www.population.gov.ng/index.php/84-news/latest/106-nigeria-over-167-million-population-implications-and-challenges*, accessed on 19 July 2013.

Nel, Adriaan, 'Test and Treat Model: Feasibility for implementation in Africa', *Consultancy Africa Intelligence*, April 2010, available at *http://www.consultancyafrica.com.,* accessed on 30 September 2013.

Network of People Living With HIV/AIDS in Nigeria, 'Nigeria: advocates successfully argue for the removal of HIV criminalisation clause from draft HIV and AIDS anti-discrimination act', 12 February 2013, available at *http://www.hivjustice.net/news/nigeria-advocates-successfully-argue-for-removal-of-hiv-criminalisation-clause-from-draft-hiv-and-aids-anti-discrimination-act/*, accessed on 6 December 2013.

News Agency of Nigeria, 'Mark urges Nigerians to end discrimination against people living with AIDS', 4 June 2013, available at *http://www.nanngronline.com/section/politics/mark-urges-nigerians-to-end-discrimination-against-people-living-with-aids,* accessed on 6 December 2013.

Nicholson, Erin, 'Mandatory HIV testing of pregnant women: Public Health Policy considerations and alternatives', (2002) *Duke Journal of Gender law & Policy* 02/2002(9), 175-191.

Nwokoji, Ugboga and Ajuwon, Ademola, 'Knowledge of AIDS and HIV risk-related sexual behaviour among Nigerian naval personnel', *BMC Public Health Research Article,* 21 June 2004, available at h*ttp://www.biomedcentral.com/1471-2458/4/24/*, accessed on 20 July 2013.

Odigie, Dave, Patience, Chinenye, 'Human Trafficking Trends in Nigeria and Strategies for Combating the Crime', (2008) *Peace Studies Journal* 1 (1).

Odimegwu, Clifford, Adedini, Sunday and Ononokpono, Dorothy, 'HIV/AIDS stigma and utilization of voluntary counselling and testing in Nigeria', *BMC Public Health*, 13 May 2013, available at *http://www.biomedcentral.com/1471-2458/13/465*, accessed on 16 August 2013.

Odimegwu, Clifford, 'Prevalence and predictors of HIV-related stigma and knowledge in Nigeria: implications for HIV/AIDS prevention initiatives', *Research Report submitted to the 2002/2003 Takemi Program in International Health, Harvard School of Public Health*, available at *https://www.hsph.harvard.edu/takemi/files/2012/10/RP210.pdf*, accessed on 23 July 2013.

Office of the High Commissioner for Human Rights, 'Special Rapporteur on the right to education', 2012, available at *http://www.ohchr.org/EN/issues/Education/SREducation/Pages/SREducationindex.aspx*, accessed on 12 July 2013.

Office of the High Commissioner of Human Rights, 'What are human rights?'*, United Nations Human Rights: Office of the High Commissioner of Human Rights*, 2012, available at *http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx*, accessed on 19 September 2013.

Okechukwu, K, 'The impact of stigma on the prevention of HIV/AIDS', (2007) *Benin Journal of Postgraduate Medicine* 9(1) 64-66.

Okoli, Chijioke and Cleary, Susan ‘Socioeconomic status and barriers to the use of free antiretroviral treatment for HIV/AIDS in Enugu State, south-eastern Nigeria’, (2011) *African Journal of AIDS Research* 10(2),149–155.

Olatunji, Michael, ‘John Dewey’s pragmatic problem solving method and the HIV/AIDS scourge in Nigeria’, *The African Symposium*, June 2012, available at *http://www.ncsu.edu/aern/TAS12.1/TAS12.1Olatunji.pdf,* accessed on 12 July 2013.

Oluduro, O, ‘The role of religious leaders in curbing the spread of HIV/AIDS in Nigeria’, (2010) *PELJ* (13)3.

Olusegun, OL, Thomas, IR Micheal, IM, ‘Curbing maternal and child mortality: the Nigerian experience’, (2012) *International Journal of Nursing and Midwifery* 4(3), 33-39.
One World Nations Online, ‘Current world population’, available at *http://www.nationsonline.org/oneworld/world_population.htm*, accessed on 20 July, 2013.

Onwulir Viola and Jolayemi, Oluwatoyin, ‘Reaching vulnerable and high risk groups in Nigeria’, in AIDS in Nigeria: A nation on the threshold, edited by Phyllis J. Kanki and Olusoji Adeyi, *Harvard Center for Population and Development Studies*, available at, *http://www.apin.harvard.edu/AIDS_in_Nigeria.html*, accessed on 12 July 2013.

Osezuah, Simon and Nwadiani, CO, ‘Technology skills, missing link on development in Nigeria’, (2013) *Asian Journal of Management Sciences and Education* 2(1).

Otive-Igbuzor, Ejiro, ‘ Sexuality, Violence And HIV/AIDS In Nigeria’, available at *http://www.gamji.com/article6000/NEWS6820.htm*, accessed on 26 September 2013.

Oyediran, Kola, Oladipo, Olaronke and Anyanti, Jennifer ,“HIV/AIDS Stigma and Discrimination in Nigeria”, *International Union for the Study of Population*, 23 July 2005, available at *http://iussp2005.princeton.edu/papers/51685*, accessed on 20 July 2013.

Pearshouse, Richard, ‘ A human rights analysis of the N’Djamena model legislation AIDS and HIV- specific legislation in Benin, Guinea, Guinea- Bissau, Mali, Niger, Sierra Leone and Togo , *Canadian HIV/AIDS legal Network*, September 2007, available at

http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1530, accessed on 9 December 2013.

Ramjee, Gita and Daniels, Brodie, 'Women and HIV in Sub-Saharan Africa', (2013) *Aids Res Ther* 10(30).

Rankin, WW, Brennan, S, Schell, E, Laviwa, J and Rankin, SH 'The stigma of being HIV-positive in Africa', (2005) *PLoS Medicine* 2(8),e247.

Reis, Chen, Heisler, Michele, Amowitz, Lynn, Moreland, Scott, Mafeni, Jerome, Anyamele, Chukwuemeka and Iacopino, Vincent, 'Discriminatory attitudes and Practices by Health Workers toward Patients with HIV/AIDS in Nigeria", (2005) *PLoS Med* 2(8), 246-256.

Sadoh, AE, Fawole, AO, Sadoh, WE, Oladimeji AO and Sotiloye, OS 'Attitude of health-care workers to HIV /AIDS", (2006) *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 10(1),39-46.

SERAC, 'SERAC wins a landmark court judgment -holds that dismissal based on HIV-positive status is unlawful', *SERAC press statement,* October 9, 2012.

Setareh-Shenas, Saman , Gorski, John, Austerman, Ryan and Noori, Arshia, 'The effects of stigma associated with the diagnosis of HIV/AIDS: different cultural settings', *Global Studies Journal* 3(2), pp.317-326.

Skinner D and Mfecane, S, 'Stigma, discrimination and the implications for people living with HIV/AIDS in South Africa', (2004) *Sahara* 1(3), 157–164.

Tadesse, Mizanie , *A rights-based approach to HIV prevention, care, support and treatment: a review of its implementation in Ethiopia* PHD (The University of Alabama) 2012.

The Director General, ILO, 'Equality at work: tackling the challenges; global report under the follow-up to the ILO declaration on fundamental principles and Rights at Work', *International Labour Conference, 96th Session,* 2007, available at *www.ilo.org/declaration*, accessed on 20 September 2013.

The Holy Bible, Romans 6 verse 23,

The World Bank, 'Data: Nigeria', available at *http://data.worldbank.org/country/nigeria*, accessed on 16 July 2013.

Thisday live, 'Nigeria's Unemployment Rate May Rise by 2%', 7 January 2014, available at *http://www.thisdaylive.com/articles/nigeria-s-unemployment-rate-may-rise-by-2-/168227/,* accessed on 7 January 2014.

Ugwu, Daniel, 'Socio-economic impact of HIV/AIDS on farm women in Nigeria: evidence from Enugu State', (2009) *World Applied Sciences Journal* 6 (12), 1617-1624, ISSN 1818-4952.

UNAIDS, 'AIDS and the Military', *UNAIDS Best Practice Collection,* May 1998, available at *https://www.unaids.org/en/media/unaids/contentassets/dataimport/publications/irc-pub05/militarypv_en.pdf*, accessed on 19 July 2013.

UNAIDS, 'Brief for parliamentarians on HIV and AIDS: making the law work for the response to HIV', *UNAIDS, UNDP, INTER-PARLIAMENTARY UNION*, 2011, available at *http://www.ipu.org/pdf/publications/aids12-e.pdf*, accessed on 6 December 2013.

UNAIDS, 'Core Slides: Global Summary of the AIDS Epidemic; 2013', 2013, available at *http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2013/gr2013/201309_epi_core_en.pdf*, accessed 2 January 2014.

UNAIDS, 'Criminalization of HIV Non-Disclosure, exposure and transmission: scientific, medical, legal and Human Rights issues', *Revised version of background paper for the Expert Meeting on the Science and Law of Criminalization of HIV Non-Disclosure, Exposure and Transmission, Geneva Switzerland*, 2012, available at *http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/KeyScientificMedicalLegalIssuesCriminalisationHIV_final.pdf*, accessed on 12 December 2013.

UNAIDS, 'Global Report; UNAIDS report on the global AIDS epidemic', *Joint United Nations Programme on HIV/AIDS,* 2010, available, at

http://www.unaids.org/globalreport/documents/20101123_GlobalReport_full_en.pdf, accessed on 16 July 2013.

UNAIDS, 'HIV and AIDS estimates 2011: Nigeria', available at *http://www.unaids.org/en/regionscountries/countries/nigeria/*, accessed on 16 July 2013.

UNAIDS, "HIV Voluntary Counselling and Testing: a gateway to prevention and care", *UNAIDS Case Study*, June 2002, UNAIDS Best Practice Collection, available at *http://www.unaids.org/en/media/unaids/contentassets/dataimport/publications/irc-pub02/jc729-vct-gateway-cs_en.pdf*, accessed on 23 August 2013

UNAIDS, 'Opening up the HIV/AIDS epidemic; Guidance on encouraging beneficial disclosure, ethical partner counselling & appropriate use of HIV case-reporting', *UNAIDS best practice collection,* 2000, available at *http://www.who.int/hiv/pub/vct/en/Opening-E%5B1%5D.pdf,* accessed on 12 October 2013.

UNAIDS, UNICEF, WHO, 'Global HIV/AIDS response; Epidemic update and health sector progress towards Universal Access', *Progress Report 2011*, 2011, available at *http://www.who.int/hiv/pub/progress_report2011/en/index.html,* accessed on 16 July 2013.

UN Committee on ESCR General Comment No 14, UNDoc E/C/12/2000/4.

UNDP, 'Human development report: Nigeria', United Nations Development Programme, 2012, available at *http://hdrstats.undp.org/en/countries/profiles/NGA.html*, accessed on 20 July 2013.

UNESCO, 'National Literacy Action Plan for 2012 – 2015: Nigeria', *High-Level International Round Table on Literacy*, 6 to 7 September 2012, available at *http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/Nigeria.pdf*, accessed on 16 July 2013.

Vanable, Peter, Carey, Michael, Blair, Donald C and Littlewood, Rae, 'Impact of HIV-related stigma on health behaviours and psychological adjustment among HIV-positive men and women', (2006) *AIDS and Behaviour* 10(5).

Wagbatsoma, VA Okojie, OH, ‘Knowledge of HIV/AIDS and sexual practices among adolescents in Benin City, Nigeria’, (2006) *African Journal of Reproductive Health*, 10(3), 76-83.

Yahaya , LA, Jimoh, AA, Balogun, OR, ‘Factors hindering acceptance of HIV/AIDS voluntary counselling and testing (VCT) among youth in Kwara State, Nigeria’, (2010) *Afr J Reprod Health* 14(3), 159-64.

Young, Saundra, ‘HIV no longer considered death sentence’, *CNN International edition* 1 December 2013, available at *http://www.edition.cnn.com/2013/12/01/health/hiv-today/,* accessed on 2 December 2013.