

THE LAW OF HIV/AIDS INFECTED PERSONS

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Abstract

The paper appraises the issue of protection of human rights and fundamental freedom of persons infected with HIV/AIDS. It frown at the way and manner people who are infected or suspected of being infected with the disease (HIV/AIDS) are being stigmatized and discriminated against by way of educational opportunities and loss of employment as a result of their condition. The paper is of the opinion that such practice will instead of curtailing the pandemic, will rather make the carriers go into hiding thereby making the eradication impossible. It reasons that the application of human rights and prevention of discrimination against those infected will be a sure way of preventing the spread of the disease. It stresses that public health polices for the eradication should be everybody's concern. It warns people that condom which they resort to as a way of prevention is not hundred percent effective. The paper enumerated some symptoms of HIV infection and also some of the ways it could be prevented. In conclusion, suggestions were made in the way the rights of the infected persons could be protected.

Keywords: HIV, AIDS, Discrimination, Stigmatization, Symptoms, Condom,
Rights.

Introduction

There exists a clear and strong public health rationale for the protection of human rights and the dignity of infected persons. If it becomes a common practice that HIV infection or the simple suspicion of infection leads to the stigmatization of the infected person or group or to the discrimination of the affected person or group (by way of loss of employment, obstacles to access to education, health centres, among others), such affected persons or groups will obviously avoid detection thereby losing contact with health and social services. It is this unwillingness to seek assistance as a result of fear of stigmatization and discrimination that contributes to the difficulties of the infection prevention.

The practice of discrimination and stigmatization of these infected is a hazard to public health which concerns every person. Instead, the protection of human rights and prevention of discrimination in the context of HIV/AIDS must be an integral part of public health policies for the prevention and control of the pandemic now ravaging the world.

Discrimination and stigmatization against persons already affected, and suspicion of their families and their associates of being infected will greatly magnify the tragic impact the disease has on their

lives. Their rights to access to employment, housing, healthcare and needed social support, will be hindered. There is no doubt that discrimination and stigmatization related with HIV/AIDS infringe on the rights and dignity of all the affected persons.

It is to create the needed awareness that this paper is centered on. The paper also examines the nature and sources of HIV/AIDS and the relationship between this disease with medicine and law.

Nature of HIV and AIDS

HIV means Human Immune Deficiency Virus. This is the virus that causes AIDS. AIDS means Acquired Immune Deficiency Syndrome. AIDS is the combination of infections which occur when a person has been infected with HIV/AIDS and it is not curable. There is no known vaccine for HIV infection now.

HIV/AIDS is Preventable

HIV/AIDS can be prevented by:

1. Abstinence from sex (this is the surest way of prevention);
2. Mutual fidelity between uninfected partners;
3. Avoidance of casual sex
4. Use of condom.

Symptoms of HIV Infection

Not all people who are infected with HIV/AIDS becomes ill soon afterwards. There are in fact, many people who do not show signs or symptoms of the disease for years after becoming infected. The symptoms are likely to progress over a number of years, and may be divided into five stages.

Stage 1: Sero-conversion to HIV Status

Sero-conversion means that people change from being HIV negative to HIV positive. This usually happens in a few weeks of a person being exposed to HIV infection (e.g after unprotected sex). It is said that about half of the people who become HIV infected show the following symptoms before they become well again: a flu-like illness with fever, sore throat, swollen glands, headaches, muscle aches and sometimes a rash. These symptoms only last for one or two weeks and then they become well again.

Stage 2: Stage without symptoms

After they have sero-converted to HIV positive, many remain healthy for many years without showing any symptoms of the virus, except possible swollen lymph glands.

Although HIV positive people look and feel healthy during this period, they are highly infectious and can easily infect HIV negative people if they have unprotected sex with them. Although there is no apparent symptom of HIV infection, the virus continues to attack the infected person's immune system.

Stage 3: Early Symptoms of HIV Infection

As the HIV positive person's immune system is attacked over the years after he or she was first infected, early symptoms of the infection may begin to appear. These include the following:

- Swollen lymph glands
- Mild skin irritation and rash
- Fungal skin and nail infections
- Mouths ulcers
- Chest infection
- Weight loss

Stage 4: Medium-Term Symptoms of HIV Infection

As the HIV positive person's immune system continues to weaken, he or she may begin to become ill more frequently and display some of the following symptoms.

- Tuberculosis
- Recurrent oral and vaginal thrush (rashes or sports)
- Recurrent herpes blisters on the mouth (cold sores) or genital herpes
- Ongoing fevers
- Persistent diarrhea
- Significant weight loss

Stage 5: Full-blown AIDS

AIDS-defining illnesses that indicate full blown Aids include the following:

- Severe diarrhea
- Severe weight loss
- Severe pneumonia
- Brain infections
- Confusion and memory loss
- Severe skin rashes
- Pain and difficulty in swallowing

The above symptoms indicate that the immune system of the person with full-blown AIDS has been severely compromised and he/she may be infected with several illnesses at the same time. Thus he/she may suffer simultaneously from severe opportunistic infections such as cancer and damage to their organs, and their brain.

Good Conduct not Condom

As earlier stated, abstinence is the surest ways of prevention. As more people wrongly believe that condom prevents AIDS, so do they find it easier to avoid abstinence while preferring condom, after all, abstinence is not an easy virtue to practice. The use of condom promotes our individual inglorious habits, collective misdemeanours and national vacillation and ignominy.

Good conduct not condom is the answer to the problems of HIV/AIDSs. Condom has several defects. From the material angle, and from human usage and material point of view, it is common knowledge that 99.9 percent of condom used today is made from natural latex rubber. Rubber

Technologists or Scientists have since 1982 in the United States warned that condom does not completely prevent HIV. On the human usage, condoms have the tendency of breaking and slipping. When the condom is pulled off, there is no guarantee that secretion from the woman cannot be transferred to the man the moment it touches the tip of the man's penis. Thus condom is a trial and error device. Yet given human frailty, it is still the best outside abstinence.

A German Chemical Plant, Stuttgart Chemical and Veterinary Research Office has confirmed that in order to improve on the sexual utility of condom, the manufacturers have succeeded in adding cancer-causing agents to the rubber. Nobody warns users that condoms contain carcinogenic Nitrosamine material, one of the most potent carcinogenic which can be absorbed during sex. This material was being added to improve the quality of condom. Without changing the intrinsic nature of latex rubber, no improvement will be effective, and changing this intrinsic quality of rubber is impossible. Be that as it may, condom is still better than nothing.

Short History of HIV/AIDS

HIV/AIDS has a short history. It first appeared in the early 1980's when some American workers noticed persistent diarrhea and severe loss of weight in some ill persons. From America, the disease widely entered the world. Today, man with his science and technology has not yet being able to arrest the epidemic calamity by finding a final cure to it. What has been possible, meanwhile is the development of antiretroviral drugs which can alleviate the effect of HIV/AIDs so as to improve the quality of life of all those who live with it. One day, it is hoped, that there will be a cure for it like the other ancient diseases before it.

The Position of Human Right Law on People Living with HIV/AIDS (PLWHA)

It is wrong in law, medicine and ethics to discriminate against any person affected by HIV and AIDs. As a human being, every person is entitled to certain fundamental rights. These are right which human persons come to the world with. To alienate such rights is to reduce a person to nothing.

Our Constitution (Nigerian) and various international law documents provide for the protection of these rights. The protections of these rights include:

Right to Life

Section 33(1) of the 1999 Constitution guaranteed to every person (including the PLWHA) the right to life. He cannot be denied of this right by way of euthanasia or other means just because he is suffering from the dreaded disease. Refusal to give medical treatment amounts to denial of right to life.

Right to Dignity of Human Person

It is provided in section 34 (1) (b) that no person shall be subjected to inhuman or degrading treatment. By this, no person or school or hospital is allowed to show by action or inaction any harm to any person's dignity because of his or her HIV status. To treat people living with HIV and AIDS like sub-human being or animals is contrary to Constitutional provisions. Even compulsory testing is degrading.

Rights to Personal liberty

Compulsory testing of patients as observed above is against the spirit of section 35 of the Constitution which gives right to personal liberty. No medical and scientific experiments should be carried on the body of a person without his informed consent. Refusal to treat a patient because he has HIV and AIDS is equal to a denial of right to life protected by Section 35 of the 1999 Constitution.

By Article 16 of the African Charter on Human and People's Rights, 1981, provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.

Right to Privacy

People living with HIV/AIDS have rights to healthcare like any other sick people. Section 37 provides that everyone has the right to privacy. No person with HIV/AIDS should be compelled by any employer or hospital or school to disclose his/her HIV/AIDS status.

Right to Freedom of thought, Conscience, Religion and Freedom of Expression

Right to peaceful assembly and association is guaranteed by section 38. For the people living with the disease, this means that they should not be prevented from joining any organization they choose. They have the right to also associate peacefully with other people of their choice.

Right to Freedom of Movement and Residence

Under section 41(1) every Nigerian citizen is entitled to freedom of movement and residence. People with HIV/AIDS can freely move from one place to another in Nigeria, they are also free to leave Nigeria. Nobody has the right to compel them to live in a separate areas away from other people. People living with HIV / AIDS can take up any trade or occupation and/or profession they like.

Right to Freedom from Discrimination

By section 42(2) of the Constitution, a citizen of Nigerian shall not be subjected to disabilities or restrictions merely by reason of the circumstances of his birth. A person born by HIV/AIDS patients should not be made to suffer any disability or deprivation just because of the status of his/her parents.

Article 2 of the African Charter on Human and Peoples' Rights, 1981, provides that "Every individual shall be entitled to enjoyment of rights and freedom 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".

Article 3 provides that every individual is equal before the law, that every individual shall be entitled to equal protection of the law.

The combined effect of the foregoing provisions is that all persons living with HIV/AIDS should be given the same treatment like other persons. There is no legal basis for discrimination against the victims.

Right to work Under Equitable Condition – Consent to Examination and Treatment

It is illegal for any healthcare provider to examine and treat any patient without his or her consent. The common practice of taking blood sample of patients to test if they are HIV/AIDS positive without their consent is unlawful and gross professional misconduct. All medical investigations and treatment must be with the consent of the patient. This consent must be obtained before anything, otherwise, the doctor or nurse would lack authority or contractual capacity to handle the patient's case. Consent to medical investigation and treatment is a fundamental right of the patient and must be respected. The patient is free to decide whether or not to submit to treatment. Since there is scarcity of Nigerian cases in this regard, foreign cases serve the purposes of the study. In *Scholemdorf V. Society of New York Hospital*, Cardoso J. observed thus: "Every human being of adult years and sound mind has a right to determine what shall be done in his body..."

In *Sideway V. Board of Governors of Royal Hospital*, the Court through Lord Templeman had this to say:

The patient is free to decide whether or not to so submit to treatment recommended by the doctor... if the doctor making a balance judgment advises the patient to submit to the operation, the patient is entitled to reject the advice for reasons which are rational or irrational.

In the case, the Court further held that:

The courts should not allow medical opinion of what is best for the patient to override the patient's right to decide for himself whether he will submit to the treatment offered him.

Article 7 of the International Covenant on Civil and political Rights, 1996, prohibits cruel, inhuman or degrading treatment or punishment. It further states, "that no one shall be subjected without his free consent to medical or scientific experimentation".

It is provided in Nigerian Constitution, that no person shall be subjected to torture or to inhuman or degrading treatment. Inhuman treatment here means any barbarous or cruel act or acting without feeling for the suffering of the other.

Torture could be as provided in section 34, brutalization of human body or even a mental torture in the sense of mental agony or mental worry. A degrading treatment has the element of lowering the societal status, character, value or position of a person, it makes the victim to have some form of complex which is not dignifying. The right to dignity of human person as covered by section 34 of the Constitution belongs to every individual whether a Nigerian citizen or an alien. It extends to the actions of not only of the State but also the actions of all government agencies and private individuals.

However, it will be proper to state here that discrimination and stigmatization as stated above, are no longer very obvious in Nigerian society. This is for the fact that the carriers of HIV/AIDS are now being integrated into the society as a result the findings in medical field. That is not to say that there are no traces of discrimination and stigmatization on the carriers especially among the rural dwellers.

Conclusion

People living with HIV/AIDS have all rights pertaining to human beings. Discrimination, degradation, assault and dehumanization are factors that help to increase the spread of the disease because the victims of the dreaded disease avoid disclosing their conditions thereby making the effective management of the disease difficult.

People with HIV or AIDS should enjoy constitutional rights to human dignity, freedom and security of person, privacy and freedom of expression, association and movement etc. They should enjoy easy access to health care, education and economic facilities in a non-discriminatory manner.

All HIV/AIDS positive people who feel being marginalized or discriminated against on account of their conditions should always have the courage to challenge such act in the courts. Freedom from discrimination, and treatment based on informed consent and respect to confidentiality unless excepted by ethnics and law must be enjoyed by all HIV/AIDS patients. Our penal codes should be invigorated to punish deliberate transmission of the pandemic.

Screening of population, voluntary and informed consent for HIV testing, anonymity and confidentiality of testing and test results, mandatory treatment and isolation are now frequently rejected. There is also the obligation to ensure the safety of blood transmission, individuals and governments at all level should always be encouraged to ensure effective implementation of these rejections and obligations.

Coercive policies and legislation in the context of HIV/AIDS, such as testing, public disclosure of status, segregation and the discriminatory denial of employment, housing and education, do not have any public health rationale.

All actions which interfere with human rights standards, have to be provided for and executed in accordance with the law. The measures taken must be proportionate to a pressing objective.

Ignorance and fear mostly cause ostracism and stigmatization of and discrimination against HIV infected people and people with AIDS. Education outreach and proper information dissemination, form the most effective means of prevention and control of the disease. HIV transmission can be prevented through informed and responsible behavior. In other words, it is the responsibility of the individuals to conduct their lives within moral and legal obligation in order to protect themselves and other persons from HIV and AIDS.

If we must protect ourselves today for tomorrow, strict laws must be made and be obeyed. Human dispositions (attitudes, actions and omissions differ as persons differ). This is why there is urgent need for law to regulate to an acceptable standard the conduct of human persons if they must live in the mist of others. That law is the anti-HIV discrimination and anti-deliberate spread of HIV/AIDS laws.

Again, more budgetary allocations should be made in favour of HIV/AIDS programmes by our governments at all levels. Unfortunately, the easier way of making huge money is to false claim to fight for the HIV/AIDS and show their commitment in respect of the campaign against HIV/AIDS and all they are doing to alleviate the suffering of victims. These they present to international agencies who sent them funds and drugs. Unfortunately these funds and drugs at most of the time were diverted to private pockets or ventures unrelated to HIV/AIDS campaign. Unless these inhuman realities are removed, there will be no better day for successful campaign against HIV/AIDS.

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