

HIV/AIDS: LABOUR RIGHTS AND THE LAW

INTRODUCTION

Human immune deficiency virus and acquired immune deficiency syndrome have gained currency in our daily vocabulary because no one can pretend that aid does not exist. What effort should be done to combat the scourge is what is now gaining attention.

Aids issue used to be thought to be a medical problem. Today it is the problem of every discipline and to successfully attack and control it, the fight against it must be multi-disciplinary. It must involve all sectors, including the legal community.

THE STATE OF THE LAW ON HIV/AIDS

What is Law?

The term law is capable of as many interpretations as there are degree of human development and grades of human consciousness.

In its widest connotation, Law means a rule to which actions must or ought to conform. Hence we speak of law of gravity, law of supply and demands divine Law etc.

Law as it concerns human organization. According to Osborn's concise dictionary, "A law is an obligatory rule of conduct. The commands of him or them that have coercive power (Hobbes). A law is a rule of conduct imposed and enforced by the Sovereign (Austin). But the law is the body of principles recognized and applied by the state in the administration of justice (Salmond)".

A learned professor in Nigeria has defined Law as " a mode of behavior (norm) which is compulsory observed with the aid of organized sanction at the instance of the state.

Law has also been defined as “the regime that orders human activities and relations through systematic application of the force of politically organized society through social pressure backed by force, in such a society”.

To Akeem Ogunniran, Law “is a means of a social control that attempt to resolve current conflicts, maintain continuity with the past and tend to give a directive for future activities.

From the foregoing definitions, it can be clearly seen that Law:

- i. Is an instrument of social control
- ii. Is aimed at achieving orderliness and stability in the society
- iii. Is backed up by the machinery of state to ensure compliance.

It can be said that law responds to social change in order to fulfill its role as a paramount social order.

Having these definitions of Law at the back of our mind, let us quickly by look at the labour laws in Nigeria to see if HIV/AIDS is covered.

NIGERIAN LABOUR LAW

THE LABOUR ACT. Cap 198 LFN 1990

The Labour Act was promulgated in 1974 as a Decree of the Federal Military Government. It is a comprehensive legislation on many aspects of individual employment. It covers 92 sections divided into four parts.

Part 1 S 1 – 22

This part is concerned with protection of wages and terms and conditions of employment, including offences and penalties for breaches.

Part 2 deals with recruits and recruiting of workers.

Part 3 deals with special classes of workers apprentices, young persons, and women and miscellaneous provisions domestic service labour health etc. The provisions of the act cover a significant number of ILO conventions ratified by Nigeria.

TRADE UNION ACT Cap 437 LFN 1990 as amended

Trade Union Act makes provisions as to the formation, registration, and organization of trade unions, federation of trade unions, and the central labour organization, the amendments of 1996 and 1999 reduced workers unions from 42 to 29 and listed out senior staff Associations. The act recognizes only Nigeria Labour Congress. (Sec. 33).

TRADE DISPUTES ACT (TDA) Cap 432 LFN 1990 as amended

The act essentially makes provisions for the settlement of trade disputes, and other matters ancillary thereto. It creates industrial arbitration panel, and the industrial court. Negotiation and collective bargaining are its major highlights.

FACTORY ACT Cap 126 LFN 1990

It was promulgated in 1987 as Decree No. 16 and came into effect on 11th June 1987. It is described as an "Act to provide for the registration of factories, to provide for factory workers and a wider spectrum of workers and other professionals exposed to occupational hazards, but for who no adequate provisions had been formerly, to make adequate provisions for any breach of its provisions.

WORKMENS COMPENSATION ACT, Cap 470 LFN 1990

Promulgated in 1987 and came into effect of 12th June 1987. It makes provisions for the payment of compensations to workmen of injuries sustained in the course of their employment. The significant thing about this act is that liability is strict.

These are labour related laws in Nigeria.

Is there any place where HIV/AIDS is mentioned?

Why?

This is the problem we have in our hand today. How then do we tackle it?

It is thus established that there is a legal lacuna in Nigeria with respect to the issue of HIV/AIDS.

What happens to PLWHA when legal wrong are committed against them.

In law, it is said that there is no legal wrong without a remedy. Therefore the PLWHA must have remedies just like other citizens of the Land.

This is where the issue of rights comes in.

What is a right?

A right is defined as "an interest recognized and protected by the law, respect for which is a duty and disregard of which is wrong "Salmond". A capacity residing in one man of controlling with the assent and assistance of the state the actions of other" Holland.

Luckily for us, there are fundamental rights provisions in our constitution. Remember. The constitution is not the giver of the rights, it only guarantees them. The rights came with you from birth. Indeed, it "inheres" in you.

Nobody has given them to you. If I may say, you came from "heaven" with them.

The fundamental rights provision in our constitution were originally propounded by the British Government Commission for the protection of the minority in 1957.

The provisions were included in the 1960 constitution and retained and even amplified in the successive versions. The 1979 constitution's version of fundamental rights provision protects, life, human dignity, liberty, fair hearing, privacy, freedom of conscience, freedom of expression, freedom of association, freedom from discrimination, and the right to property. These protect all citizens and can give rise to causes of action against the state, government agency or private individual.

Arguably, if there are no laws positively enacted to address the issue of HIV/AIDS, invariably, HIV/AIDS becomes a Human Right issue.

Rights have certain characteristics that make them not only attractive but also imperative as a starting point to address the issues of HIV/AIDS.

1. They are founded on respect for the dignity of man
2. They have universal application
3. They are inalienable
4. They are interdependent

Of all the rights mentioned earlier certain rights are inevitable as a veritable instrument in the fight to control the spread of the disease. Indeed, they are core rights in our efforts to wage war against HIV/AIDS. These are

- (i) Right to life
- (ii) Right to non-discrimination
- (iii) Their right to confidentiality of personal data

(iv) The right to privacy

Right to life S, 30, 1979 CONSTITUTION

S. 30 affirms the individuals right to life. That is no one can be deprived of his life “intentionally” without as just cause.

There are exceptions, though

- Death penalty by a court of competent jurisdiction
- Defense against unlawful violence and to defined property
- To suppress riot, insurrection or mutiny
- Death resulting from acts of wars.

The people infected or affected by HIV/AIDS also have right to their life and cannot be deprived of such life “intentionally” except as stated above. I submit that if government or even the society watches it people infected or affected by HIV/AIDS without doing anything positive to ameliorate their conditions then such conduct is tantamount to, “intentionally” depriving such people their right to life.

S.31 Right to dignity of the human person

By this section, an individual is not be subjected to torture, inhuman or degrading treatment, slavery or any form of “forced labour. The court has defined the terms as follows:

- “torture” includes: mental harassment as well as physical brutalization
- Inhuman treatment: act ‘without feeling for the suffering of the other
- Degrading treatment the element of lowering the societal status.

S. 39 RIGHT TO FREEDOM FROM DISCRIMINATION

By far, this appears to be the handiest right in HIV/AIDS “war”. This is because “discrimination leads to stigmatization and both situation have accelerating effect on the spread of HIV/AIDS.

HOW

Rather unfortunately, due to ignorance and lack of proper awareness, HIV/AIDS issues have been moralized. Infected people it is believe, albeit wrongly must have lived a "bad Life". This is a general impression that is great conflict with available medical knowledge. Which has proved to us that sexual intercourse (the ball life) is only one of the four ways of transmission of HIV/AIDS.

The other three being;

- (i) Sharing syringes or other sharp object with an infected person
- (ii) Receiving blood (transfusion) that is HIV/AIDS infected
- (iii) Infected pregnant woman to her baby during pregnancy, delivery or through breast-feeding.

Therefore HIV/AIDS war for prevention and control is total and must be taken out of the realm of morality. For effectiveness, it must be a war involving everybody with multi-dimensional approaches parallel to human rights of all affected by the epidemics.

It is a simple logic. If people who are HIV positive are frightened of the possibility of discrimination, they will lack the courage to own up. Indeed they will conceal it and will not come forward for ameliorating treatment. They will probably spread it consciously (to punish the society) or unconsciously (because they lack requisite knowledge). Therefore discrimination is a bad weapon in the fight for prevention of HIV/AIDS scourge. It is counterproductive.

The section thus prohibits any law or executive or administration enactment that has a disparate impact, either favourable or unfavourable, upon any citizen of Nigeria, solely due to his or her membership in a particular community, or ethnic group, place of origin, sex, religion or political opinion. Importantly, Nigeria citizens are safeguarded against the infliction of any disability or deprivation by reason of the circumstances of their birth. It is with

the kind of provisions that rights of people living with HIV/AIDS can be protected.

ARE THESE PROVISIONS ENOUGH FOR THE URGENT 'WAR'?

My submission is that they are not. This position is informed by the reasoning of Justice Nnaemeka Agu, retired Justice of the Supreme Court who observed the difficulties strewn in the way of a Nigerian Lawyer involved in fundamental right career.

He said that a Nigerian lawyer

“cannot always achieve justice for his clients in fundamental rights cases by examining them from myopic angle of reading chapter 4 of the constitution in isolation.”

He suggested consideration of the following among others.

- The European Convention on Human Rights (1959)
- Human rights provisions in the Indian Constitution
- American Declaration of the Rights and Duties of man (1948)
- The American Convention on Human rights (1969)
- The African Charter of Human and People rights
- The Declaration on Human Rights by the Committee of Ministers of Europe 1978, and
- United Nations Convention on the Rights of the Child.

I must add that, the following conventions ratified by Nigeria will also come to the aid of Human right lawyer involved in HIV/AIDS related matters.

- African Charter On Human And People Rights (mentioned above)
- Convention Against Torture And Other Cruel, Inhumane Or Degrading Treatment Or Punishment
- Convention On Elimination Of All Forms Of Discrimination Against Women
- Convention On The Right Of The Child (mentioned above)

- International Convention On All Forms Of Racial Discrimination
- International Convention On Economic Social And Cultural Rights
- International Convention On Civil And Political Rights
- *UN Special Session On HIV/AIDS (UNGASS) Declaration Of Commitment*

FROM RIGHTS TO POLICY

Formulation of appropriate policies in sine qua non to success in the enjoyment of right established above.

The International Labour Organisation has come up with code of practice on HIV/AIDS and the world of work. The code recognizes HIV/AIDS as a major threat to the world of work and therefore make strong statements aimed at achieving the following:

- Prevention of HIV/AIDS
- Management and mitigation of the impact of HIV/AIDS on the world of work
- Care and support of workers infected and affected By HIV/AIDS
- Elimination of stigma and discrimination on the bases of real or perceived status.

The code indeed addresses salient issues such as:

- i. Recognition of HIV/AIDS as a workplace issue
- ii. Non discrimination in employment
- iii. Gender equality
- iv. Healthy work environment
- v. Continuation of employment relationship
- vi. Screening and confidentiality
- vii. Social dialogue
- viii. Prevention
- ix. Care and support

How does this code affect us?

We are workers and place of work is central to ILO code. We should begin to enter into social dialogue with our employers to formulate HIV/AIDS policy in our workplace.

Specifically, the right of workers infected or affected by HIV/AIDS should begin to form part of our proposals to the management for negotiation.

In other words, our **Collective Agreement** should also state our HIV/AIDS policy, if this is done, a worker who eventually gets infected will realize that there is a policy for him that recognizes his status and he does not feel disadvantaged by it. So issues of confidentiality and privacy will longer be paramount as no one will be ashamed to declare his status.

It follows that the PLWHA will not be discriminated again. And we know that non-discrimination and non-stigmatization will obviously open many opportunity for the control of the disease. It makes the workplace HIV/AIDS friendly.

What next!

A collective agreement does not possess automatic force of law. This is its major disadvantage. It is suggested that such collective agreements when made must have clauses that make them form part of the individual worker's contract of employment in order to make individual worker to have sufficient locus to found an action based on its provisions relevant to himself. At the national level, we have to form pressure groups to lobby the national assembly to come out with a comprehensive law that recognizes the rights of PLWHA and to remove the HIV/AIDS issues from the realm of morality to positive law.