

**A Short Long Sleeve below the Wrist: A Critical Analysis of
Enugu State Hiv/Aids Anti-Discrimination and Protection Law,
2005**

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Abstract

Discrimination and stigmatisation have become a major problem of persons living with Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS). It is beyond question that that the disproportional burden of the HIV/AIDS pandemic is on developing countries, African countries especially. The scale of discrimination and stigmatisation is equally unbearable in these countries. It is perhaps in a bid to stem this tide that the Enugu State Government enacted the Enugu State HIV/AIDS Anti-discrimination and Protection Law, 2005. The provisions of this Law are laudable in that they aim for the most part to stem the tide of discrimination and stigmatisation and thus ameliorate the predicament of persons living with HIV/AIDS. It will however be seen that laudable as the Law is, many of its provisions make it appear to overreach itself. In this paper therefore, we have attempted a critical analysis of the provisions of the Law and it is our contention that the Law can at best be approximated to a short long sleeve below the wrist. A long sleeve in the sense that it makes far reaching provisions for protection and against stigmatisation, but short in the sense that it falls short in many a significant area.

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1. Introduction

It is becoming increasingly obvious that Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (HIV/AIDS) is the greatest public health problem confronting mankind today. Since 1981 when the first strand of what is now called HIV/AIDS was isolated,¹¹ it has grown to epidemic proportions and is threatening to surpass the plague of the 14th century in Europe. The World Health Organization (WHO) statistics shows that about 40 million of the World's populations are living with HIV/AIDS,² of this number, more than 25 million have already died of the disease while another 60,000 infections are taking place every day.³ The picture of HIV/AIDS in sub-Saharan Africa is despicable. Sub-Saharan Africa accounts for almost 75% of the total HIV/AIDS population in the world.⁴² Of all HIV/AIDS infections in the World, Sub-Saharan Africa has the unenviable position of ranking second (South Africa) and third (Nigeria).⁵ Cultural practices, discrimination and stigmatization in Africa have conspired to make interventions and responses to the challenges posed by the scourge of HIV/AIDS even more daunting.

From available statistics, Nigeria seems to be making some progress in the area of HIV/AIDS prevention and control. Infection rate in Nigeria stands at 4.4% from 4.8% two years ago.

¹¹ In 1981, some physicians in the United States especially in the San Francisco area and New York discovered a new form of disease common among homosexuals, manifested by diminished immune system. The reason for this failing health condition was discovered to be HIV/AIDS. Credit for the first scientific isolation of the virus is shared jointly by an American Scientist, Dr. Robert Gallo of the American National Institute of Health and two French researchers, J.C. Chermann and Luc Montaneir, both of the *Institut Pasteur*.

² 2007 AIDS Epidemic Update available at http://data.unaids.org/Pub/EpiReport/2007/o2-GlobalSummary_2007_Equipdate_eng.pdf, last accessed 31/03/08.

³ *Ibid.*

⁴² 2007 AIDS Epidemic Update, *supra* note 2.

⁵ *Ibid.*

⁶ B. A. Garner (ed.), *Black's Law Dictionary* (8th edn.), (Dallas, Texas: Thomson West, 2004), p. 500.

2. Discrimination and its Discontent

According to Black's Law Dictionary⁶ Discrimination used as a noun means:

- (1) The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion or handicap.
- (2) Differential treatment, especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.

The Enugu State Anti-Discrimination and Protection Law⁷ defines discrimination from the perspective of both direct discrimination and indirect discrimination. Direct discrimination “means when a person treats another person less favourably than a third person would have been treated in comparable circumstances, or attributes characteristics which are thought to relate generally or be generally imputed to people of a particular status, that is stereotypes,”⁸ while indirect discrimination “is said to occur when unreasonable conditions or requirements such as mandatory HIV testing, *inter alia* are placed as pre-requisite for socio-economic benefits.”⁹

The Law also defines stigma to mean “any negatively perceived characteristics used to set individuals apart from normal society, and seen as marks of shame and disgrace resulting from a situation where distinction is made against a person or group of persons resulting in their being treated unfairly and unjustly on the basis of their being HIV infected and/or affected, or as a result of their belonging or being perceived to belong to a particular group that lack social approval”¹⁰

⁷ Enugu State HIV/AIDS Anti-Discrimination and Protection Law NO. 2 of 2008 (hereinafter referred to as “the Law”)

⁸ *Ibid.*

⁹³ *Ibid.*

¹⁰ *Ibid.*

¹¹ S. 42 of the 1999 Constitution of the Federal Republic of Nigeria (herein after the Constitution).

The 1999 Constitution of the Federal Republic of Nigeria also provides for freedom from discrimination as a fundamental right in its following provisions:

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 such 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, religious 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, religious or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.¹¹

Discrimination and stigmatization is one of the major challenges facing persons infected with or affected by HIV/AIDS. As Dr. Nelson Mandela, former President of South Africa puts it, people who are suffering from AIDS do not die of the disease but of the discrimination and stigmatization that accompany the disease.¹²⁴People who are infected with HIV/AIDS suffer social death

¹²⁴ Dr. Nelson Mandela's Luncheon Remarks at the 2002 World AIDS Conference in Barcelona, Spain.

¹³ S. I (1) of the Law.

¹⁴ *Ibid.*, s. II (1) (a).

¹⁵ *Ibid.*, s. II (1) (b).

¹⁶ *Ibid.*, s. II (1) (c).

¹⁷ *Ibid.*, s. II (1) (d).

as they are ostracized from the rest of the society. They are usually treated as outcasts even by their immediate family members. There is discrimination at home, in the workplace, in insurance, in healthcare facilities and in the social segments of society. The consequence is that such a person becomes a social outcast. Perhaps, it is in realization of the above that the Enugu State government through the Enugu State House of Assembly enacted the HIV/AIDS Anti-Discrimination and Protection Law of 2005.

3. Enugu State HIV/AIDS Anti-Discrimination and Protection Law

3.1 Institutional Framework

The Law establishes a Regulatory State Committee on HIV/AIDS with the responsibility of implementing the provisions of the Law.¹³ The Regulatory committee, subject to the approval of the Governor of the State has such powers including power to accept gifts or donations on behalf of persons infected with, or affected by HIV/AIDS,¹⁴ or reject such gifts.¹⁵ The regulatory committee has the power to defend the rights of infected persons,¹⁶ ensure compliance with the provisions of the law¹⁷ as well as maintain quality control of products, devices and medications related to the control and prevention of HIV/AIDS.¹⁸

The functions of the Regulatory Committee includes to create awareness of the existence of the law,¹⁹ educate HIV/AIDS infected people on their human rights,²⁰ monitor the operation of the law,²¹ coordinate the activities of all other organizations, institutions and individuals that are involved with HIV/AIDS work²² and finally, maintain data and statistics of HIV/AIDS cases in Enugu.²³

It must be pointed out that the Regulatory Committee as created by the preceding sections seems to be an island, entire of itself. There are, indeed, a number of questions to be asked and which are

¹⁸ *Ibid.*, s. I (2) (1) (e).

¹⁹ *Ibid.*, s. I (3) (1) (a).

²⁰ *Ibid.*, s. I (3) (1) (b).

²¹ *Ibid.*, s. I (3) (1) (c).

²² *Ibid.*, s. I (3) (1) (d).

²³ *Ibid.*, s. I (3) (1) (e).

²⁴ *Ibid.*, s. I (3) (1).

begging urgent answers. For instance, who appoints members of the Committee and what is the composition. Also issues about the tenure of office of the committee was not addressed and this “very important” committee was never mentioned anywhere in the law. It is our position that the committee as provided under the law is an unnecessary distribution and duplication of functions. In short, its purpose is intended to confuse and nothing more and this law is better off without it.

3.2 Public Health Legislation (Issues)

The Law also dwelt extensively on a number of public health issues. For instance, it provides that HIV testing must be voluntary with full informed consent²⁴ and that there should not be mandatory testing even for couples intending to marry.²⁵ The law however recognizes three exceptions to mandatory testing. Firstly, blood, tissue or organ donors,²⁶ persons guilty of sexual offences like rape,²⁷ and if testing is ordered by a court for purposes of judicial proceedings.²⁸ The Law also emphasizes the need for pre and post testing counselling,²⁹ even

²⁵ *Ibid.*, s.II (1) (2). It is important to point out that the practice whereby the Catholic Church requires intending couples to present an HIV test result before marriage band is issued to them is unconstitutional and offends the provisions of this law, ditto for Covenant University that requires HIV test for those seeking admission as well as graduating students. It is also important to state that employers of labour who demand HIV test before hiring a prospective employee are in total breach of the constitution and this particular law as well.

²⁶ *Ibid.*, s.II. (1) (3) (a).

²⁷ *Ibid.*, s.II. (1) (3) (b).

²⁸ *Ibid.*, s.II. (1) (3) (c).

²⁹ *Ibid.*, s.II. (1) (4).

³⁰ *Ibid.*, s.II. (2) (1).

³¹ *Ibid.*, s.II. (3) (1).

³² *Ibid.*, s.II. (3) (2).

³³ *Ibid.*, s.II. (4) (1). There have been unconfirmed reports of persons who after a positive test were arrested and detained by the police. This is a clear violation of the Constitution and this law.

³⁴ *Ibid.*, s.II. (5) (1).

³⁵ *Ibid.*, s.II. (5) (1).

³⁶ *Ibid.*, s.II. (6) (1).

as anonymous testing with coded data is provided so as to conceal the identity of the individuals tested.³⁰ Partner notification of test results should be voluntary and confidential.³¹ While healthcare providers are authorized but not required to notify an individual's sexual partner.³² The Law also provides that "No one shall be detained, isolated or quarantined solely on the basis of his/her HIV status rather than on personal behaviour that puts others at risk."³³ The law enjoins all health institutions and professionals in the state to ensure that blood, tissues or organs and body fluid are screened before they are transfused, especially for blood that need a six month window period³⁴, and any healthcare provider that is established to be negligent will be liable to pay compensation depending on the extent of damage.³⁵

The law also enjoins healthcare providers to observe Universal Infection Control Precautions,³⁶ and any such non-observance shall be guilty of medical negligence and abuse of patient's right to life and health.³⁷ And the law makes it an offence for anyone who exposes others at risk of HIV infection through such practices as scarification, tattooing, incision or circumcision.³⁸ This is also true for those who encourage or abate this practice.

3.3 Criminal and Correctional System Legislation

This section brings HIV within the purview of the criminal law. The law makes it a criminal offence for anyone who wilfully and intentionally exposes someone else or transmits the virus to another person, or engages in such behaviour or practices that are considered to put others at risk of HIV infection.³⁹ And any person who engages in sexual intercourse by force or coercion or fraudulently obtains the consent of another, and thereby actually transmits the virus, the offender shall be required to pay the victim ₦200,000.⁴⁰ It is our

³⁷ *Ibid.*, s.II (6) (3).

³⁸ *Ibid.*, s.II (6) (3).

³⁹ *Ibid.*, s.III (1) (1).

⁴⁰ *Ibid.*, s. III (1) (3).

⁴¹ *Ibid.*, s.III (1) (4). This provision is indeed a bizarre one. HIV status is not a ground for Divorce under the Marriage Act and this provision may be struck down for unconstitutionality.

⁴² *Ibid.*, s.III (3) (3).

contention that this provision for compensation of ₦200,000 is ridiculous because it does not yet have a cure and due to its life threatening nature it has been described as a death sentence.

Apart from nutritional requirements, the drug regime is expensive and it is therefore difficult to see how this meagre sum can compensate for this colossal tragedy of HIV infection. The law also makes HIV/AIDS a ground of divorce when it stated that: “Any partner in a marriage has the right to secure divorce in a situation where he/she considers himself/herself 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.”⁴¹ Also either party to a relationship (not marriage) can terminate such relationship if either party does not practice safer sex thereby exposing the other partner to the risk of HIV infection.⁴² The Law also provides that where there is consent to intercourse with an HIV positive person, the latter is absolved from liability for wilful transmission of HIV if there is a malfunctioning of a protective device as in the event of a condom breaking.⁴³ Persons are also enjoined by the law to marry whoever they want once they are consenting adults and are aware of each other’s status.⁴⁴ The law frowns at the practice known as widow inheritance which has been considered as a negative cultural practice. It provides that:

Any culture or tradition that encourages the compulsory inheritance of the widow/widower of a deceased relation, notwithstanding the HIV status of either parties, shall be prohibited, except in cases of mutual informed consent of both parties intending to relate as husband and wife or as sexual partners under such circumstances that do not put either parties at risk of HIV infection”⁴⁵ This is to forestall a

⁴³ *Ibid.*, s.III(1)(6). But what of negligence or recklessness? If for instance the man was indifferent to whether his condom breaks or not, will he still be protected by this section?

⁴⁴ *Ibid.*, s.III (1) (5).

⁴⁵ *Ibid.*, s.III (3) (4).

⁴⁶ *Ibid.*, s.III (4) (3).

⁴⁷ *Ibid.*, s.III (5) (2).

⁴⁸ *Ibid.*

situation whereby a brother-in-law who may be HIV positive will inherit the wife of his late brother.

There are also provisions for sex workers and prostitutes as well as for prisoners. It is generally lenient on sex workers. For instance, they should not be ordinarily restricted or detained or compulsorily tested merely because they are sex workers or prostitutes.⁴⁶ For prisoners who are HIV positive, they can be granted release for medical treatment for seven days subject to the provision of a surety or guarantor and upon an order of court.⁴⁷ Prisoners and detainees are also not subjected to compulsory HIV testing, except where a particular individual's behaviour severely puts other inmates at risk of infection.⁴⁸ Also Prisoners should not be denied treatment or subjected to torture merely on account of their HIV status.⁴⁹⁵⁰ An inmate who is critically ill with HIV may be released upon order of court or by the state governor.⁵⁰

4. Anti-Discrimination and Protective Legislation

Perhaps the most important aspect of this whole Law is the anti-discrimination and protection segment. This area provides for non-discrimination, vilification as well as penalties for such reprehensible conducts. Due to its encompassing nature, it has become important to reproduce certain portions of the Law. It provides:

Notwithstanding the provisions of any other written law in force in the state undertaking to end discrimination on specified grounds, no one suspected or presumed to be infected with HIV, including members of vulnerable population, their partners, caregivers, associates and families shall be subjected to any form of restriction, stigmatization, unfair treatment or discrimination, either directly or indirectly, on the basis of their HIV status or HIV-related circumstances with respect to: (a) Healthcare (b) Employment, (c) Welfare and Social Security benefits, (d)

⁴⁹ *Ibid.*, s. III (5) (3)

⁵⁰ *Ibid.*, s. III (5) (4)

⁵¹ *Ibid.*, s. IV (1.1)

Education and training, (e) Sports and Recreation (f) Associations and membership to Organizations (g) Accommodation and residency (h) Trade Unions and qualifying bodies (i) Access to transport and movement (j) Superannuating and insurance (k) Provision of goods and services⁵¹.

And to finally put a nail on the coffin of discrimination against persons infected by HIV, it provides again that:

No one shall be subjected to any form of vilification including abusive, malicious and derogatory treatment or statements based on preconceived assumptions and stereotypes of a group to which one is presumed/perceived to or actually belongs to with the intention of bringing the individual or members of the said group into hatred, ridicule, contempt, molestation, stigma slander or disrespect, either directly or indirectly on the basis of such a person or group's perceived or actual HIV positive status or HIV related condition.⁵²¹¹

The above provisions underscore the harmful consequences of discrimination and the determination and preparedness of the state to stamp it out. In short, it is defamatory and actionable for two or more people to conspire and falsely declare a person to be HIV positive.⁵³ Also, the need for public interest advocacy was highlighted when the Law provides that civil society organizations and Non Governmental Organisations (NGOs) can file action in a representative capacity on behalf of HIV affected persons and even death of the victim does not

⁵² *Ibid.*, S. IV (1.0).⁵⁸ *Ibid.* S. IV (4) (4)

⁵³ *Ibid.*, (2.0).

⁵⁴ *Ibid.*, (3) (1).

⁵⁵ *Ibid.*, (3) (1). But it should be pointed out however that discrimination cases are essentially human rights violations and will ordinarily be guided by the Fundamental Rights Enforcement Rules of 2008.

⁵⁶ *Ibid.*, s. IV (4) (1) and (2).

⁵⁷ *Ibid.*, s. IV (4) (3).

⁵⁸ *Ibid.*, s. IV (4) (4).

⁵⁹ *Ibid.*

extinguish the claim.⁵⁴ The court is under the circumstances directed to complete the case within 90 days.⁵⁵

The Law also emphasizes the need for protection of privacy and confidentiality through the use of pseudonyms in filing and reporting complaints and actions,⁵⁶ while persons living with HIV/AIDS are entitled to enjoy their right to privacy and confidentiality.⁵⁷ In order to ensure that their privacy is protected, test results are to be delivered by hand and not through phone or any other 3rd party and violators will be made to pay compensation.⁵⁸ Disclosure of medical information is also prohibited unless such disclosure is for precautionary purposes, or the person is undergoing a surgical procedure, or upon an order of a court, or where the parties involved are intending couples.⁵⁹

In respect of employment, the law makes elaborate provisions on how employees and prospective employees can be protected from discrimination purely because of their HIV status. It gives a general provision that individuals cannot be discriminated against in employment or in the offer of employment on the basis of his/her HIV status or HIV related circumstance⁶⁰¹² and prohibits mandatory HIV testing for applicants as a requirement for employment.⁶¹ It is important also to say that it offends the spirit of the Law to dismiss an employee because of his HIV status,⁶² just as such persons are entitled to all their rights and privileges namely insurance, coverage, social security, superannuation, leaves, allowances, sickness and death benefits irrespective of his/her HIV status.⁶³

In the area of Insurance, it provides that a person's insurance policy cannot be revoked merely on the ground of HIV status,⁶⁴ while

⁶⁰ *Ibid.*, s. IV (5) (1).

⁶¹ *Ibid.*, s. IV (5) (2).

⁶² *Ibid.*, s. IV (5) (3).

⁶³ *Ibid.*, s. IV (5) (4).

⁶⁴ *Ibid.*, s. IV (5) (5).

⁶⁵ *Ibid.*, s. IV (5) (7).

⁶⁶ *Ibid.*, s. IV (6) (1).

⁶⁷ *Ibid.*, s. IV (7) (2).

⁶⁸ *Ibid.*, s. IV (7) (3).

⁶⁹ *Ibid.*, s. IV (7) (5).

⁷⁰ *Ibid.*, s. IV (7) (7).

it provides for comprehensive insurance for all workers.⁶⁵ The Law makes provisions for workplace ethics and enjoins public and private sector to observe the best practices available to minimize discrimination in the workplace.⁶⁶ There are also adequate provisions for children, trafficking in children, mounting HIV/AIDS education in school,⁶⁷ voluntary testing and counseling for children⁶⁸ as well as adoption/custody of children orphaned by HIV/AIDS,⁶⁹ non-discrimination against children in school.⁷⁰

Pregnant women in the state are required to undertake voluntary testing and receive pre and post test counselling so as to prevent mother-to-child transmission.⁷¹¹³ Every person in the state has a right to acquire and own property irrespective of his/her HIV status.⁷²

5. Offences and Penalties under the Law

There are two other sections of this Law which are not of great importance to the present discourse. The first deals with Regulation of Goods, Services and Information which deals essentially with statutory compliance with bodies such as the National Agency for Food and Drug Administration and Control (NAFDAC), ethical requirement for research as well as the role of the media. The other segment is the legal support services which enjoin government to provide *pro bono* legal services for persons infected with or affected by HIV/AIDS⁷³.

What is however of great importance and which should engage our attention is the offences created under this Law. Firstly, it is an offence to interfere with the work of the Regulatory committee. Any person found guilty of such interference will be liable upon conviction to imprisonment of not more than six months or a fine of not more than ₦100, 000.00 or both.⁷⁴

Secondly, for contravening any of the provisions of the law relating to voluntary testing and informed consent, notification of

⁷¹ *Ibid.*, s. IV (7) (8).

⁷² *Ibid.*, s. IV (8) (1).

⁷³ See generally ss. V and VI of the Law under discussion.

⁷⁴ *Ibid.*, s. VII (1) (1). The regulatory committee as we have pointed out earlier is an inchoate body. It is doubtful if this penalty will attach when its own existence in serious doubt.

coded information, partner notification of HIV status, irresponsible behaviour capable of putting others at risk of HIV, negligence in ensuring blood safety, or other harmful traditional practices is guilty of a public health offence and is liable to a maximum of 10 years imprisonment or a fine of not more than ₦500, 000.00 or both. Such a person may also be required to pay damages.⁷⁵¹⁴ But a question that may be asked is what a public health offence is since it is not defined in the law under consideration. It is also doubtful if public health offence as herein stated is contained in any other penal section of our laws.

The third category of offences relates to wilful and intentional transmission/exposure to HIV/AIDS, use or exchange of needles, unhealthy sexual acts and relationships, sex work and prostitution. Such persons shall be liable to a minimum of three years and a maximum of ten years imprisonment or a fine of not less than ₦500,000.00 or both. Damages may also be ordered.⁷⁶

The fourth line of offences relates to Discrimination or vilification, breach of privacy, confidentiality or such kindred offences. The penalty is imprisonment of not less than four years but not more than twelve years with or without a fine of ₦1,000,000.00.⁷⁷

For breach of quality control and standards including ethical issues, the punishment is a minimum of four years imprisonment and maximum of twelve years with or without a fine of ₦1,000,000.00.⁷⁸ Finally for breaches involving professional ethics, the court may in appropriate circumstances order withdrawal of license of such professional.⁷⁹

6. This Law: A Short Long sleeve Shirt below the Wrist

Enugu state is one of the few states that have the HIV/AIDS anti-discrimination law. To that extent and even beyond, it has blazed the trail. And it need be admitted that there are many laudable provisions

⁷⁵ *Ibid.*, s. VII (2) (1).

⁷⁶ *Ibid.*, s. VII (3) (1).

⁷⁷ *Ibid.*, s. VII (4) (1).

⁷⁸ *Ibid.*, s. VII (5) (1).

⁷⁹ *Ibid.*, s. VII (5) (2).

of the Law. In some instance they are right on target, in other instances if fell short, while in others it over-reached itself.

For instance, the regulatory committee is an unnecessary creation and intended to duplicate the functions of a statutory body like ENSECA. Questions about who sets up the regulatory committee, composition and tenure of office will continue to be asked.

Also, section II (4) (2) which empowers public health officials and law enforcement agents to place restrictions on residential circumstances and employment of HIV positive persons who put others at an unreasonable risk of infection may be subject to abuse even if such restriction is ordered by the court. What is the standard of reasonableness? It is our contention that such provisions being anachronistic and an infringement on fundamental freedoms should be expunged. In like manner we propose that the whole of sub-section 4(3) and (4) (4) be expunged for being too idealistic.

Furthermore, under section I (4) (8), complaints and trials in respect of HIV persons are required to be in camera. This is clearly a violation of the constitutional provision that all trials and proceedings of courts must be in the open. We need to emphasize also that making HIV status a ground for divorce does not appear to be well thought out. Apart from the fact that it contradicts our law on marriage and the well set out grounds for divorce, it definitely amounts to further stigmatization for partners to divorce each other merely on the grounds of HIV status.

It is also noted that the penalty for wilful and intentional transmission of HIV is the same as being a sex worker or prostitute without more,⁸⁰¹⁵ just as the burden of proof of discriminatory conduct has been lowered by removing the need for proof of intention. To establish discriminatory conduct, a mere casual connection is sufficient.⁸¹¹⁶ This is in conflict with our criminal law that requires proof of both intent as well as the act before crime can be made out.⁸²

⁸⁰ *Ibid.*, s. VII (3) (1).

⁸¹ *Ibid.*, s. II (9) (2).

⁸² See for instance s. 24 of the Criminal Code which requires both elements of intention and the act.

Furthermore, the drafters of the Law seem to have run into a definitional quagmire. Thus we found definitions as “specific expressed consent” or “specific informed consent” instead of just defining consent or informed consent as the case may be.

7. The Challenge of Implementation

The Law is a well intentioned document. It is borne out of “recognition of the stigma and discrimination confronting persons infected and affected by HIV/AIDS. The challenge of implementing a law of this nature is enormous. There is the challenge of enlightenment and dissemination. The general populace is ignorant of this law and its laudable provision.

Secondly, the issue of manpower will be a huge challenge. So many provisions of the Law will need a lot of manpower to effectuate their goals. To achieve the objectives of this law development of manpower will be imperative.

Closely related to the above are the material resources to embark on the implementation of the law. Without financial resources most of the provisions will remain a dream and therefore unrealizable. Furthermore, overcoming the stigma complex will be a huge challenge. Experience has shown that our people are so timid that they cannot speak up even in the face of death.

Persons infected with or affected by HIV/AIDS must move out of their cocoon of fear and speak up. They must show that they need help so that they can be assisted; otherwise the whole essence of this law will be defeated.

Finally, there is the need for political will on the part of our leaders. They must demonstrate that they have the will to carry out the letters of this Law; otherwise it will be consigned to one corner of the shelf where it will be in continuous communion with cockroaches and rodents.

8. Conclusion

We have seen that the Enugu State HIV/AIDS Anti-discrimination Law is more than an anti-discrimination and protection law. It is also a law that sets out the institutional framework for the control of HIV/AIDS as well as Public Health legislation. It is also criminal and

correctional system legislation, a law for the Regulation of Goods, Services and Information and a law for legal support services for persons affected with or affected by HIV/ADIS. We have seen that there are many laudable provisions of this law which can readily enhance the conditions of persons infected with or affected by HIV/AIDS. There is no doubt that with this law, the people of Enugu state have a potent instrument of empowerment in their hands.