



**Global
Criminalisation
Scan**



Country Assessment 2009

June 2010





Nigeria

Published by:

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ISBN: 978-978-908-648-1

Acronyms

AIDS	Acquired Immune Deficiency Syndrome
CIDA	Canadian International Development Agency
CS	Civil Societies
DfID	UK government Department of International Development
FMOH	Federal Ministry of Health
FSW	Female Sex Worker
GNP+	Global Network of People Living with HIV
HIV	Human Immunodeficiency Virus
IBSS	Integral Biological and Behavioural Surveillance Survey
IDU	Intravenous Drug User
MSM	Men who have sex with men
NASCP	National AIDS and Sexual Transmitted Disease Programme
NEACA	National Expert Advisory Committee on AIDS
NEPWHAN	Network of People Living with HIV/AIDS in Nigeria
NPC	National Population Commission
PCA	Presidential Council on AIDS
PEPFAR	President Emergency Plan for AIDS Relief
PLHIV	People living with HIV
PMTCT	Prevention of Mother-To-Child Transmission
UNAIDS	Joint United Nations Programme on HIV/AIDS
USAID	United States Agency for International Development
WAC	World AIDS Campaign



Acknowledgements

The Network of People Living with HIV and AIDS in Nigeria (NEPWHAN) is immensely grateful to the UKaid from the Department for International Development (DFID), from the Governance and Transparency Fund, and the Centre for Rights to Health (CRH) for the financial and technical support that made this study possible.

We are especially grateful to Bede Eziefule, the consultant who led the research process and developed the final report.

We would like to acknowledge the invaluable role of people living with HIV and their partners who participated in this study for their time and sharing their stories. We trust that these findings will contribute to improving the health and quality of their lives and that of PLHIV in general.

NEPWHAN acknowledges the support from the Global Network of People living with HIV (GNP+) and the World AIDS Campaign (WAC) for their work on the HIV Leadership through Accountability programme. We would like to thank Edward Ogenyi, National Coordinator at NEPWHAN; Peter Nweke, Programme Manager at NEPWHAN and Moono Nyambe, Programme Officer at GNP+, for the technical guidance provided throughout the study. We also acknowledge the support from the National Agency for control of AIDS (NACA) and the National Bureau of Statistics as well as our Civil Society partners. Finally we would like to thank UNDP and UNAIDS for their support in disseminating the report findings and recommendations.

The Criminalisation Scan is one of five evidence-gathering tools being implemented through the HIV Leadership through Accountability programme. The programme combines specific HIV evidence-gathering tools, national AIDS campaigns and targeted advocacy to achieve Universal Access to prevention, treatment, care and support. For more information about the HIV Leadership through Accountability programme please visit www.hivleadership.org.



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Introduction

1.1 Country Background Information

Nigeria is the most populous country in sub-Saharan Africa and has a land area of 923,768 square kilometers. Based on the 2006 national population census figure, Nigeria's population is estimated at over 140 million (NPC, 2006). Approximately two-thirds of the population lives in rural areas, which are areas mostly lacking in many modern social amenities. The population distribution in Nigeria is very uneven. While large expanses are sparsely populated in some parts of the country, many of the major urban centers have high population density. A high level of rural-urban migration occurs in the country and this has implications for the demands on the social and physical infrastructure, general development planning and quality of life of the citizenry.

The spread of HIV has increased significantly in Nigeria since the official report of the first case in 1986. The results of periodic national surveys among ante-natal clinic attendees has shown a progressive increase in adult HIV sero-prevalence rate from 1.8% in 1991 through 4.5% in 1996 to a peak at 5.8% in 2001 before declining to 5.0% and 4.4% in 2003 and 2005 respectively. The 2008 survey puts the new figure at 4.6%; an increase of 0.2% from the last survey results in 2005.

Going by the 2008 HIV prevalence, about 2.87million people in Nigeria are estimated to be living with HIV and AIDS (FMOH, HIV SENTINEL SURVEY 2008). Nigeria is currently experiencing a generalized epidemic with every state of having a prevalence of over 1%. HIV and AIDS have extended beyond the commonly classified high-risk groups and now prevalent in the general population.

HIV in Nigeria cuts across both sexes and all age groups. However, youths between the ages 20–29 years are disproportionately infected with sero-prevalence rates of 4.9% for 25-29 age group and 4.7% for 20-24 age group.

The number of HIV-positive children is increasing, with mother-to-child-transmission as the principal route of infection. The number of children orphaned by AIDS has also increased substantially to an estimated 2.1 million (FMOH, HIV SENTINEL SURVEY 2008). By all indications, the HIV and AIDS epidemic has continued to grow largely through unprotected heterosexual sex, mother-to-child transmission and contaminated blood and blood products. Among the high-risk groups, however, the findings from the 2007 IBBSS showed that the most affected group is Female Sex Workers (FSW) with HIV prevalence of 34.0% followed by Men having Sex with Men (MSM) and Injecting Drug Users (IDU) with



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prevalence of 13.5% and 5.6% respectively and the least is members of the Armed Forces with HIV prevalence of 3.1% (FMOH, 2007a).

1.2 Responses to HIV and AIDS Situation in Nigeria

Nigeria has passed through several phases in her responses to the AIDS epidemic. These stages included an initial period of denial, followed by a large health sector response, and now a multi-sectoral response that focuses on prevention, treatment and mitigation of impact interventions.

Program coordination and implementation have been positioned as two as distinct response components nationally. A central body is dedicated to leading and coordinating the national response, while the various sectors- including civil society organizations, faith based organizations, networks of people living with HIV and AIDS support groups focus on packaging and implementing interventions based on the national action plan.

The health response commenced with the setting up of an ad hoc National Expert Advisory Committee of AIDS (NEACA) in 1987. By 1988, the National AIDS and STDs Control Programme (NASCP) was formally established, with state counterparts set up thereafter to both organize and coordinate HIV and AIDS at the state level. Federal Ministry of Health's HIV/AIDS division (formerly known as NASCP) played a key role in developing guidelines on key interventions and monitoring of the epidemic.

In 1997, the National Council on Health formally endorsed the multi-sectoral approach and in 2000 the Federal Government of Nigeria commenced the implemented this approach with the establishment of a Presidential Council on AIDS (PCA) and the National Action Committee on AIDS (NACA). NACA has since transformed from a committee to an agency called the National Agency for the Control of AIDS. NACA is responsible for effective coordination of the national multi-sectoral response to HIV/AIDS. Nigeria's first HIV/AIDS Emergency Action Plan; was prepared by NACA and approved in 2001 for a 3-year period. The Plan's objectives included

- Increasing awareness and sensitization of general population and key stakeholders
- Promoting behavior change in both low-risk and high-risk populations;
- Ensuring that communities and individuals are empowered to design and initiate community-specific action plans;
- Ensuring that laws and policies encourage the mitigation of HIV/AIDS;
- Institutionalizing best practices in care and support for people living with HIV/AIDS;
- Mitigating the effect of the disease on people living with HIV/AIDS, orphans and other



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- affected groups;
- Creating networks of people living with HIV/AIDS and others affected by AIDS;
- Establishing an effective HIV/AIDS surveillance system; and
- Stimulating research on HIV/AIDS.

In 2004, Nigeria became one of the President's Emergency Plan for AIDS Relief (PEPFAR) 15 focus countries. Under PEPFAR, Nigeria received grants to support comprehensive HIV/AIDS prevention, treatment and care programs. Also, Nigeria received funding for other HIV/AIDS bilateral programs and contributions via the Global Fund to Fight AIDS, Tuberculosis and Malaria, and Canadian CIDA. These resources have supported antiretroviral treatment, prevention of new HIV infections, and care and support including orphans and vulnerable children (www.usaid.gov).

The epidemic poses continual social and economic problems, and also has legal and human rights implications. People living with HIV/AIDS (PLHIV) or people affected by HIV/AIDS are subjected to stigma and discrimination on a daily basis.

NEPWHAN has had reports of PLHIV or people affected by HIV/AIDS being discriminated against in the healthcare and other sectors. Examples include people being denied treatment due to HIV status or PLHIV being refused employment, dismissed from work, or ejected from their accommodation due to their HIV status. Breaches of confidentiality also occur. PLHIV are often ostracized by friends and family members. Such incidents amount to violations of the human rights of PLHIV as enshrined in international and regional human rights instruments.

1.3 Criminalization Situation in Nigeria

Although there are no known cases of documented prosecutions for transmission of HIV in Nigeria to date, some States have passed laws criminalizing transmission of and exposure to HIV. Also, before the national assembly is a bill, which if passed into law has a provision for the criminalization of HIV transmission. Although the bill seemed to adequately provide protection of the rights of the PLHIV, this provision in section 23, they reason will attempt to ensure that the PLHIV lives responsibly, not endangering the safety of public health.

The antagonists (civil societies) of this criminalization efforts argument is based on the power of proof which the PLHIV might not have. This is because it is very difficult, if not almost impossible to determine place, manner and individual responsible for HIV infection. The reason for this is not farfetched as symptoms of infection may only appear months and sometimes years after infection.

These people opined that criminalization will further help to drive the stigma incidences to an alarming stage considering the present situation where some PLHIV are still living in



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denial due to fear of all imaginable verbal and psychological attack from the community. Also, incidences of victimization and intimidation cannot be ruled out as rights are bound to be abused arising from any flimsy accusation.

Others however argue that the PLHIV has an obligation to the safety of public health of the population to ensure that he does not endanger others through a reckless way of life. There are undocumented reports of certain PLHIV who embark on indiscriminate sexual escapes as a means for getting back on the society they accuse of infecting them in the first place. These set of people strongly believe that efforts must be enacted to compel them to behave accordingly.

At the national level, civil societies on HIV have taken government to task by the agitation for the passing of the antidiscrimination bill into law. Response from the part of government has been laboriously slow as the bill has just only gone through the 2nd reading stage at the national assembly. The whole apprehension is based on the fact that there is too little time left for the law makers to act decisively bearing in mind the near expiration of the tenure of the law makers. The bill if passed has provision for the protection of the rights of the PLHIV and provides penalties for any violation of these rights that belongs to him.

Civil Society not ignorant of this dire situation has agreed to take the bull by the horn by strengthening themselves and coming to a consensus to speak with one voice. One agenda has been agreed upon and the goal for the passage of the anti discrimination bill by the next 6 months has been agreed upon.

1.4 Programme Introduction

It is against this background that the Network of People Living with HIV/AIDS in Nigeria, with support from the Global Network of People Living with HIV/AIDS, embarked on a study to document the use of laws and practices around criminalization of HIV transmission in Nigeria.

Through the HIV Leadership through Accountability program – a collaboration between the Global Network of People Living with HIV/AIDS (GNP+), the World AIDS Campaign (WAC), national networks of PLHIV and national Civil Society platforms, the Network of People Living with HIV/AIDS in Nigeria (NEPWHAN) is implementing evidence collecting tools by and for PLHIV. Elaborated by GNP+ and its partners, the tools aim to strengthen the evidence in four key areas:

- Stigma and discrimination: The People Living with HIV Stigma Index
- The level of involvement of people living with HIV: The GIPA Report Card
- Documenting and analyzing human rights violations against PLHIV: Human Rights Count!



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- Documenting and analyzing current experiences in criminalization of HIV transmission: The Global Criminalization Scan.

The Global Criminalization Scan is an international tool used in documenting laws, judicial practices and case studies around the criminalization of HIV transmission. The Global Criminalization Scan is an initiative of GNP+ and partner organizations which was developed after a realization that prosecutions for ‘alleged’ HIV transmission were on the increase, and many countries were considering introducing new legislation relating to HIV transmission.

The aims of the Global Criminalization Scan are:

- To collect and keep up to date information on national or state level laws criminalizing the transmission of or exposure to HIV transmission;
- To provide an easily accessible ‘clearing-house’ of resources, research, and initiatives on the subject;
- To provide a platform for advocacy initiatives.

Methodology

The data used in this report is qualitative and quantitative in nature and was collected using the standard Global Criminalization Scan questionnaire. The sample included government agencies responsible for making laws and policies that could affect PLHIV. Also, civil society organizations, bilateral donors (USAID and DfID), UNAIDS, and human rights organizations were sampled.

The research comprised a survey and analysis of the extent and nature of national laws involving the criminalization of the transmission of HIV. The research involved the following activities:

- Creating a list of potential contacts from various sources;
- Sending out a questionnaire to all of those on the contact list and tabulating results;
- Following these up with phone calls, emails, etc;
- Tabulating results; and
- Conducting analysis based on results of the survey.

The questionnaire is divided into five sections:

SECTION 1: About Criminalization of HIV transmission - factual information about rates of convictions and prosecutions, where applicable;

SECTION 2: The Law - information of the laws used, where applicable;

SECTION 3: Who has been prosecuted? - Information about the people being prosecuted: gender, mode of transmission, nationality and occupation at the time of prosecution;

SECTION 4: Other issues: The media, policy/ campaigns and advocacy;

SECTION 5: The organization completing the questionnaire - details of respondents and organizations working in this area.

A total of 24 questionnaires were sent electronically: of these, only two were returned. 10 were sent by surface mail. Of these eight were returned. Overall this is a response rate of 29%.



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The ten organizations who responded to the questionnaire are as follows:

- National Agency for Control of AIDS
- Association of Women Living with HIV/AIDS in Nigeria
- Journalists Against AIDS, Nigeria
- Association of Positive Youths Living with HIV/AIDS, www.apyin.org
- Center for the Right to Health, www.crhonline.org
- Civil Society for HIV/AIDS in Nigeria
- Association of Religious Leaders Living with HIV and AIDS
- Nigerian Business Coalition Against HIV/AIDS
- United Kingdom Department for International Development (DfID)
- United States Agency for International Development (USAID)

Telephone calls were made to identify and elicit the support of respondents in completing questionnaires and to clarify incomplete and unclear responses.

Results

It appears that there is very limited knowledge of the status of criminalization in the country as most of the answers were left blank, with comments of 'no research' made against many questions.

Section One: Criminalization of HIV Transmission

The majority of the ten respondents agreed that, to date, there have been no known or reported prosecutions or convictions in Nigeria. One respondent said that there has been one prosecution of exposure or transmission to HIV, but could not give further details.

Section Two: The Law

Nine out of ten respondents noted that there is no specific national law in Nigeria to prosecute persons for transmission of or exposure to HIV. However, two states have passed laws that criminalize exposure to or transmission of HIV. These are:

- Enugu State of Nigeria:
Law No 2- HIV/AIDS Anti-discrimination and Protection Law 2005¹;
- Lagos State Government of Nigeria:
Law No 17- A Law for the Protection of Persons Living with HIV and Affected by AIDS in Lagos State and for Other Connected Matters of 2007².

It took the researcher two weeks of visits and calls to access the Lagos State Law No 17. It is surprising that a law of such magnitude is not readily available to all interested parties.

An anti discrimination bill is currently before the National Assembly. This bill is supported by the National AIDS Control Agency and civil society organizations in Nigeria, and is expected to counter workplace discrimination and the specific laws to effect criminalization of HIV transmission that are emerging from some States.

¹ http://www.gnpplus.net/criminalisation/index.php?option=com_content&task=view&id=497&Itemid=44

² *ibid*



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Section Three: Who Has Been Prosecuted

Nine respondents out of ten gave no answer to any question under this section. One respondent reported that two men and one female have been prosecuted and that this was following transmission through heterosexual sex. However, efforts to verify this information were unsuccessful.

Section Five: The Organizations Completing this Questionnaire

Only four of the respondents reported that their organization carries out any work related to issues of prosecution for transmission. Of these, three works on policy matters and are involved in campaigning, and one carries out research. The National Human Rights Commission and the Human Rights department of the Nigeria Bar Association are also interested in these issues.

The National Agency for the Control of AIDS stated that there is an urgent need for the establishment of a legal framework to help on issues of stigma and willful transmission of HIV. The Civil Society for AIDS commented that although there have been no documented cases of prosecutions for transmission of HIV and/or other sexually transmitted infections, there is an urgent need for civil society organizations to mobilize to ensure quick passage of the anti-stigma bill at the National Assembly.

Conclusion

Appendix 1:

Applicable laws

- **Enugu state- part IV: Criminal and correctional systems legislations**
Transmission and Exposure offences

12(1) it shall be considered a criminal offence for someone with established knowledge of his/her positive status to willfully/intentionally expose someone else or transmit the virus to another person, or engage in such behaviour or practices that are considered to put others at the risk of HIV infection

(2) Notwithstanding existing criminal, public or mental health laws, one shall be guilty of engaging in risky behaviour capable of willfully and intentionally transmitting HIV if he/she engages in intentional unprotected sex, attempts murder, assault, battery, unlawfully causing bodily harm, engaging in dangerous acts, use of noxious things and other such acts considered to constitute to public nuisance.

(3) Notwithstanding criminal laws existing on sexual offences, anyone who coerces or engages in sexual intercourse with another person without the consent of the latter, or if such consent is obtained under force threat, fear, impersonation or offer of inducements whereby the victim is exposed to risk of transmission of HIV the perpetrator of the act shall be liable to compensate the victim to the tune of ₦=200,000 if prove of infection is provided.

(4) Any partner in 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 or practice safer sex, especially the consistent use of condoms.

(5) HIV- positive individuals shall not be prohibited from having sex or marrying anyone of their choice, provided the latter's consent is obtained by his/her partner either voluntarily or the demand of his/her HIV positive status, the protection of the formers right to privacy notwithstanding.

(6) where an HIV- positive person is taken a preventive measure and such measure fails such as the case of the broken condom, resulting in the infection of his/her sexual partner, the



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former shall not be guilty of willful transmission if he/she obtained consent of the latter to having sex, and the latter was informed of the positive status of the former.

(7) Anyone charged with the above offences on transmission and exposure of HIV infection shall have the right to put up defense. Notwithstanding, consent shall not be considered a defense for willful or intentional transmission or exposure to HIV infection if such consent was not “informed” by the disclosure of the status of the HIV positive individual to the consenting party.

- **Lagos State - Section 18 Offences and Penalties**

(1) Any Person who willfully or knowingly endangers other persons by infecting them with the AIDS virus commits an offence and shall be liable on conviction to a fine not exceeding Two Hundred Thousand Naira only (N200, 000) or imprisonment not exceeding ten years.

- **Draft Anti Discriminatory Bill: Section 31 Willful or Deliberate Spread of HIV Virus**

Penalty - Any person, having known his/her sero-positive status, deliberately transmits the HIV directly or indirectly shall be guilty of an offence and, upon conviction be sentenced up to twelve months imprisonment or fine of up to N500, 000.00 or both.

References

Enugu state of Nigeria, 2005, Law no 2- HIV/AIDS anti-discrimination and protection law.

Lagos state government of Nigeria, 2007, Law no 17- a law for the protection of persons living with HIV and affected by AIDS in Lagos state and for other connected matters.

A bill for an act to make provisions for the prevention of HIV and AIDS-based stigmatisation, discrimination and to protect the human rights and dignity of people living with and people affected by HIV and AIDS and other related matters. be it enacted by the national assembly of the federal republic of Nigeria as follows:

UNAIDS policy brief: criminalization of HIV transmission

Notes







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