

## HIV/AIDS AND MARRIAGE LAWS IN NIGERIA: TOWARDS PROVIDING A LEGAL FRAMEWORK FOR PREMARITAL COUNSELLING

### Abstract

*There is a common practice where parties to marriage contract are advised and/or subjected to HIV/AIDS testing due to the prevalence of the disease. In spite of this practice however, some persons concealed or forged and/or connived with, when they were diagnosed as having AIDS or HIV infected engages in marriage contract without having first disclosing or informing the other that he or she is infected. What seems to hinder this practice or aids the non-disclosure of one's health status to another is that it is not backed by any law. Most marriages are products of law though, Nigeria does not have unitary legal system, and instead, Nigeria's sources of law are common law, statutes, Islamic and Customary law (referred to as legal pluralism). The work briefly discusses the nature of marriage institution as well as the history and impact of HIV/AIDS in Nigeria. It also discusses the propriety of mandating parties to a marriage contract to be diagnosed or tested before marriage to ensure the marriageability or fitness or healthiness of the parties with a view to curbing the epidemic. The writer also discusses marriage under the statutory marriage, Islamic and Customary law as well as the religious and cultural practices governing and surrounding marriage which seem to encourage or contribute the transmission of the disease to innocent marriage couples. These types of marriages have acknowledged incurable defects both as a condition for marriage and valid ground for divorce. Due to the considerable harm which this virus does to large number of innocent people through marriages, the writer suggests the enactment of Public Health Code to punish any person who knows he or she has been diagnosed as having HIV/AIDS engages in sexual intercourse in marriage or otherwise with another person without having first informed the other person that he or she is HIV/AIDS infected.*

**Keywords:** HIV/AIDS, Marriage, Laws, Legal, Framework, Counseling

### 1. Introduction

The history of HIV/AIDS epidemic began in illness, fear and death. It is widely believed that HIV originated from Kinshasa, in the Democratic Republic of Congo around 1920 when it crossed species from Chimpanzees to humans<sup>1</sup>. HIV was unknown and transmission was not accompanied by noticeable signs or symptoms. While sporadic cases of AIDS were documented prior to 1970, available data suggests that the current epidemic started in the mid- to late 1970s. By 1980, HIV may have already spread to five Continents, namely; North America, South America, Europe, Africa and Australia<sup>2</sup>. Nigeria is one of the ten countries in the world that together make up 80% of all People Living with HIV. Mathematically, it has 9% of People Living with HIV/AIDS (PLWHA) globally. Although the prevalence of the disease among adults is remarkably small with 3.2 per centum compared to other sub-Saharan African countries such as South Africa with 19.1% and Zimbabwe with 12.5%. As of 2013, the population of people living with HIV out of the large population of Nigeria is 3.2 million<sup>3</sup>. Nigeria, South Africa and Uganda account for almost half of all new HIV infections in Sub-Saharan Africa, despite efforts in reducing new infections between 2005 and 2013. Approximately 210,000 people died of AIDS related illness in Nigeria in 2013, which is 18% of the global total. Since 2005, there has been no reduction in the number of annual deaths owing to the fact that only 20% of PLWHA are accessing anti-retroviral treatment (ART)<sup>4</sup>. Unprotected heterosexual sex accounts for about 80% of new HIV infections in Nigeria, majority of remaining HIV infections among key affected populations. In response to this, the Nigerian national HIV/AIDS Plan (NSP) 2010-2015 calls for enhanced behavioral change communication for key affected population. In achieving this, peer education systems have been put in place alongside social media messaging that aims at reaching those populations who tend not to access for HIV services<sup>5</sup>. In 1999, due to the rapid spread of the epidemic the prevention, treatment and care became one of the priorities of the government. This led to the establishment of Presidential Committee on AIDS and National Action Committee on AIDS (NACA) after which various States Action Committee on AIDS (SACA) were also established.

\* **Venen Lawrence AN TOM PhD**, Department of International Law and Jurisprudence, Faculty of Law, Nigeria Police Academy, Wudil-Kano. Venenantom@gmail.com. Phone Number: 08065901567

\* **Mohammed Aminu UMAR ESQ**, Department of Customary and Islamic Law, Faculty of law, Nigeria Police Academy, wudil-Kano. Farhanhanhanif99@gmail.com Phone Numbers: 08137601629, 08080675542

<sup>1</sup> Avert, 'Avert HIV/AIDS in Nigeria' (2013) <[http:// www.avert.org>home>professionals>around the world >sub-Saharan Africa](http://www.avert.org/home>professionals>around the world >sub-Saharan Africa) visited on the 17<sup>th</sup> April, 2016

<sup>2</sup> Avert, (n 1)

<sup>3</sup> Avert (n 2)

<sup>4</sup> Avert (n 3)

<sup>5</sup> Avert (n 4)

## **2. Marriage laws and HIV/AIDS**

In Nigeria, there are basically three types of marriage known to our legal system and they are; Statutory, Islamic and customary law marriages.

### **Islamic law Marriage and HIV/AIDS**

Islam is a complete way of life. It considers family as a corner stone of Islamic society. It bases the atmosphere in the family on sacrifice, love, loyalty and obedience. In the light of this therefore, family means the traditional definition of it, namely; husband, wife and children. The importance of marriage as institution is such that cannot be overlooked because it is considered amongst the basic objectives of Islamic legal system (*Maqasid al- shariah*). Marriage under the Islamic legal system is a social binding contract based on mutual consent between a man and woman often for the purpose of founding and maintaining family in the society. It is a religious duty and moral safeguard as well as social necessity. As a requirement under *shari'ah*, marriage is forbidden for a man who suffers from an illness serious enough to affect his wife and progeny<sup>6</sup>. A woman that suffers from illness serious enough to affect the husband and the progeny fall within this principle. The question is what sickness that is serious enough to affect spouses and their progeny? This could be defects peculiar to man, defects peculiar to woman and / or defects peculiar to both of them whether curable or incurable. According to the *Shari'ah*, where a party or a spouse is infected with incurable communicable disease it constitutes a valid ground for the non- infected party to refuse or rescind the contract of Marriage except where he or she is aware of the defect<sup>7</sup>. Where the parties have already married it as well constitutes a valid ground for the non-infected party to seek for dissolution of the marriage. Thus, in *Ibrahim Sambo v Habiba Yunusa*<sup>8</sup>, the Appellant appealed from the decision of a trial Court upon suspicion of HIV infection. However, the Court *inter-alia* ordered that the Appellant to undergo a proper medical test at Specialist Hospital, Lafia-Nasarawa State.

### **Statutory Marriage and HIV/AIDS**

Statutory marriage is basically marriage under the Act<sup>9</sup>. The Marriage Act set out requirements such as age, prohibited degree of consanguinity and affinity, party must not be already married, parental consent, consent of the parties and sanity<sup>10</sup>. Apart from these, there are certain formalities that are to be fulfilled before solemnization of the marriage under the statute. There must be notice of marriages, issuance of certificate by the Registrar, celebration of marriage etc. Statutory marriage acknowledges venereal disease in a communicable form as a ground to nullify marriage contract. The marriage is voidable where at the time of its celebration either party was suffering from venereal disease in a communicable form. However, if it cannot be shown that the party in question was suffering from the disease at the time of the marriage, the disease will not constitute a ground for nullity<sup>11</sup>. Venereal diseases mean sexually transmitted diseases (STDs) such as Gonorrhoea, syphilis, HIV/AIDS and they are communicable. Where a party alleges another of been suffering from venereal disease in a communicable form (like HIV/AIDS), the onus lies on him or her to prove in various ways including the calling of medical evidence<sup>12</sup>.

### **Customary Law Marriage and HIV/AIDS**

Marriage under the customary law is generally not governed by written law. Marriage means different things to different cultures. However, the common feature despite the cultural differences is that, it is the institution in which a man and woman become legally united on a permanent basis<sup>13</sup>. In simple terms, a man can marry in terms of customary marriage as many wives he wants. It is generally polygamous. It is pluralistic with much wider incidents than in Anglo-Saxon or other European or ecclesiastical law<sup>14</sup>. It is a form of marriage in which several wives are united to one man, each having the status of a legal consort<sup>15</sup>. The attendant consequence of plurality of partners lies in the fact that if one person in the circle gets infected with HIV/AIDS or any kind of STDs, there is a likelihood of other persons involved being infected<sup>16</sup>.

---

<sup>6</sup> AI Doi, *Shari'ah : The Islamic Law* (London: Ta-Ha Publishers,1984) P.119

<sup>7</sup> FH Ruxton, *Maliki Law* ( London: Lucas& Company, 1914) P.104

<sup>8</sup> Unreported NSJ/SCA/CV4/2001

<sup>9</sup> Marriage Act, CAP M, LFN 2004

<sup>10</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: HEBN Publishers PLC, 1990) P. 23

<sup>11</sup> GB Okoronkwo, *Understanding HIV/AIDS and their Impact on the Society* (All Shades Ltd, 2003) P.143

<sup>12</sup> GB Okoronkwo (n 11)

<sup>13</sup> A Emiola, *Emiolas African Customary Law* (Ogbomoso: Emiola Publishers Ltd., 2011) P. 119

<sup>14</sup> Emiola (n 13)

<sup>15</sup> MA Begho, *Law and Culture in the Nigerian and Roman Worlds* (Benin: Ethiope Corporation, 1977) P. 24

<sup>16</sup> *Ibrahim Sambo v Habiba Yunusa* (supra)

### 3. Socio-cultural and Religious Practices and HIV/AIDS

In Nigeria, there are some socio-cultural and religious practices that predispose people to HIV/AIDS infection in Nigeria; viz:

#### Between Marriage, Adultery and HIV/AIDS

Marriage from its meaning guarantees free sexual relation between spouses. Except otherwise agreed upon themselves, they will have sex without negotiating the use of condom because there is an agreement for sexual gratification. Now marriage does not seem to stop some men or women from the act of adultery. As many women all over the world have found out entering into a monogamous marriage does not guarantee monogamy. The men in monogamous marriage use to have an affair with women and his wife cannot complain of his infidelity. In the course, if he gets infected he transmits the disease to his wife. Within all marriages, women face a variety of challenges the major one being infidelity<sup>17</sup>. While those married under the monogamous marriage have recourse through suing for damages for adultery, the majority of women under the other types of marriage do not have remedy<sup>18</sup>. In terms of laws in Nigeria, if a person married under the Marriage Act goes out to have a sexual relation with someone else while the marriage is still subsisting could be a valid ground to seek for decree of divorce provided he or she proves the adultery and finds it intolerable to live with him or her. He or she could also claim damages from co-respondent who has committed adultery with the spouse. The claim must be made in a petition or cross petition for decree of divorce alleging that the other spouse has committed adultery with a third party (co-respondent) or including that allegation. However the court will not award damages where the adultery of the respondent has been condoned and this constitute an absolute bar to the grant of a decree of divorce<sup>19</sup>. Women that married under the customary law marriage have no right to sue for adultery because their marriage is potentially polygamous. But in some parts of Nigeria, customary law confers on the husband a right of action for damages against a third party who commits adultery<sup>20</sup>.

The dangers posed by adultery are very clear. It takes one person in the circle to get infected and all other persons will be at risk. Moreover, it is not easy for married women to walk away from their marriages. There is a societal pressure to stay at all costs even in the face HIV/AIDS<sup>21</sup>. This phenomenon was termed by Women and Law in South Africa (WLSA) as 'Mrs. Syndrome' and it was explained thus:

Marriage even to working women with access to education and jobs, is also seen as yielding positive benefits... The domination of women by men in our society has created the mentality that women believe they need a man to walk them through life. A woman who is not married or who does not have some semblance of a permanent attachment to man is viewed as incomplete.<sup>22</sup>

Would a wife whose husband is into sex with many girls in casual relationship negotiate for condom use? Women do not find it easy to negotiate for condom use within their marriage because it is considered as un-cultural to use condom with one's spouse<sup>23</sup>. They sexually submit to their husbands (who go out for casual sex) at the risk of HIV/AIDS for fear of not upsetting them or they may not be fed and accommodated. This is aptly captured thus:

Some women do not want to use condoms, because they see their relationship as long term or 'serious' and believe that condoms are only appropriate for casual sex. Other women who want to use condoms, often keep silent rather than upset their sexual partner, who may be the only source of food and shelter for themselves and their children. Many women prefer unprotected sex to the risk of violence or being thrown out of their homes<sup>24</sup>.

Paradoxically, our laws do not take adultery with utmost seriousness and that is why condom use has been advocated as one of the strategies to curb the menace of HIV/AIDS. However, adultery is an offence under the Penal Code<sup>25</sup> but it is not an offence under the Criminal Code. Sexual activity nowadays by male gender is viewed

<sup>17</sup>S Chirawu 'Till Death Do Us Apart: Marriage, HIV/AIDS and the Law in Zimbabwe' <<http://www.law.bepress.com/cgi/viewcontent.cgi?.....> visited on 23rd march, 2016.

<sup>18</sup> Chirawu (n 17)

<sup>19</sup> Matrimonial Causes Act, s.31 (1) (2)

<sup>20</sup> EI Nwogugu, (n 10) p. 102

<sup>21</sup> S Chiawu, (n 18) 12

<sup>22</sup> Chirawu (n 21)

<sup>23</sup> Chirawu (n 22)

<sup>24</sup> Chirawu (n 23)

<sup>25</sup> Penal Code, ss. 387-388

as an activity for fun and fame. If a man sleeps around, he is more popular while a woman that involves in similar nefarious acts is viewed in a derogatory way<sup>26</sup>.

### **Coercive Guardianship and HIV/AIDS**

This is a power given to a father under Islamic law to give out a virgin daughter in marriage with or without her consent. Her choice of partner is subject to the overriding power of guardianship. Under Islamic law, this power is referred to as power of *ijbar* and it is mostly exercisable by a father known as *Waliy Mujbir* (coercive guardian). The right of the father to give out his virgin daughter against her wishes is perceived as a safety valve especially under the Maliki and Shaf'i law. This is based on the fact that a girl in her immaturity or overzealousness may want to marry a man who possesses bad character or she has distorted information or who lack proper means of livelihood. In such a case, it is incumbent on the guardian to restrain her from marrying that man and finds a suitable person to be her husband. It was viewed that these marriages arranged by the fathers/guardians work better than the marriage brought through courtship<sup>27</sup>. Under the *Shari'ah*, a woman should not be married until her consent is obtained. It was reported that the prophet of Islam repudiated the marriage of a virgin girl upon a complaint that her father married her to against her wish<sup>28</sup>. Some Muslims parents hide under this to force their children into early or force marriage its consequences notwithstanding.

### **Virginity and reproduction testing**

Virginity testing is a cultural practice meant to ascertain a girl's cultural purity at marriage and to discourage girls from engaging in sexual activities prior to marriage. In Zimbabwe, this culture is considered as a way to combat the spread of HIV/AIDS. A view claims that virginity testing preserves African identity and culture. A woman under this culture is supposed to get married at all costs. If she is virgin, she fetches a higher price in terms of *lobola*. She has no control over her sexuality as it is men who sit down and negotiate the *lobola*<sup>29</sup>.

The perception created by virginity testing before marriage is that womanhood is the major vehicle for HIV transmission. Boys are not tested and have led to one member of the International Community of Women Living with AIDS to comment that 'virgin Mary should marry a virgin Peter'<sup>30</sup>. In Nigeria, there is a virginity tradition practice by some tribes. For instance, there is a virginity tradition in Yoruba called *Asa Ibile*. It is a virginity test where a bride goes in with the groom on their wedding night with a white piece of cloth. Later on that night after intimacy, if the bride is virgin, she gets gifts of high value from both families and a symbolic message of white cloth with blood stains sent to her family, which is received with joy. However, if on the other hand the bride fails, a euphemistic message of half boiled/roasted yam is sent to the bride's family and she will be deemed to have brought shame to her family. And for life the bride will live with shame that comes with first night incident in her matrimonial home. But no one cares to question or test the virginity of the man. This culture is no longer practice as before<sup>31</sup>. In contrast to the view that virginity testing is considered as a way to combat the spread of the HIV/AIDS, the writer argues that the view is far from been true. This is because, the practice may likely expose women to risky sexual behavior which may later resulted into sexually transmitted infections such as HIV/AIDS.

## **4. Widowhood Inheritance Marriage**

This is a kind of customary law marriage where a man will inherit the wife of his brother or any close relation. The new marriage becomes effective without a need for fresh bride price or formal marriage<sup>32</sup>. This practice recognizes the right of widow to elect who to marry within her late husband's family. She has preference as to which brother or close relative to accept as husband. Some Customs even allow sons to inherit their step mothers<sup>33</sup>. Her right of choice is impracticable as women are forced to be inherited at the risk of HIV/AIDS. The man in serious desperation also inherited the woman at his own risk as he will not bother to inquire what sickness resulted to the death of his relation.

## **5. HIV/AIDS and Michigan Law Position**

---

<sup>26</sup> S Chirawu, (n 24)

<sup>27</sup> Al Doi, *Sharia'a: The Islamic Law* (Zaria: Taha Publishing, ) . 123

<sup>28</sup> Abu Dawood, 12:25

<sup>29</sup> S Chirawu,(n 25)

<sup>30</sup> Chirawu (n 29)

<sup>31</sup> E. Z. Grace, 'The Virginity issue' (2014)<http://www.bellanaija.com/2014/12/grace--efe-zokhaehtm> visited on the 20 April,2016

<sup>32</sup> Grace (n 31)

<sup>33</sup> Grace (n 32)

Some countries in the World have since enacted this law for safety of their Citizens as it punishes offender who concealed his or her health status to his or her partner (in marriage or otherwise). The classical example is the Public Health Code of the Michigan State in the United State of America. In the Code it is an offence to conceal having diagnosed as having HIV/AIDS infection to engage in marriage without first disclosing to the other that he or she is infected. The Code empowered a local health department to which individual is referred shall inform the individual that he or she has a legal obligation to inform each of his or her sexual partners of the individual's HIV infection before engaging in sexual relations with that sexual partner and that the individual may be subject to criminal sanctions for failure to so inform a sexual partner<sup>34</sup>. In Michigan, for one to be given marriage license must undergo a HIV counseling test before he could be qualified fit for the contract. Criminal sanctions await the violator of the law if he or she fails to disclose to his or her partner that he or she was diagnosed as having HIV infection. An individual applying for a marriage license shall be advised through the distribution of written educational materials by the county clerk regarding parental care and the transmission and the prevention of disease and HIV infection. The county clerk under the law is not allow to issue marriage license to an applicant who fails to sign and file with the county clerk an application for a marriage license that includes a statement with a check-off box indicating that the applicant has received the educational materials regarding the transmission and prevention of venereal disease and HIV infection and has been advised for testing for both venereal disease and HIV infection. If the applicant undergoes the test for the HIV or antibody to HIV and the result indicated that he is infected he will be told by the physician or a designee of the physician of the test result. The physician or his designee will also counsel both applicants regarding the mode of transmission, the potential for HIV transmission to a fetus and protective measures<sup>35</sup>. The law punishes for disclosure of the individual result test except under the circumstances specified by the law<sup>36</sup>. The report or records or data pertaining to HIV/AIDS and others are made confidential. The circumstances that warranted the disclosure are in cases of court order and subpoena. Noting also is that the law also allows the disclosure of information pertaining to HIV/AIDS status of a tested individual if it is disclosed to local health department or any health service provider to prevent the health of an individual, to prevent further transmission of HIV and to diagnose and care for a patient. So the law allows the information to be disclosed to prevent a reasonable foreseeable risk of further transmission of HIV<sup>37</sup>. The law in section 5210 (1) punishes one who knows that he or she has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex or he or she is HIV infected, and engages in sexual penetration with another person without having first informed the other person that he or she has acquired immunodeficiency syndrome or acquired immunodeficiency related complex or is HIV infected. It is a felony under the law for one who knows he is HIV/AIDS infection engages in sexual penetration. The law defined the sexual penetration to mean sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening of another person's body but emission of semen is not required<sup>38</sup>.

Though, the idea to have a legal framework may be viewed as encouraging the discrimination and stigmatization of People Living with HIV/AIDS (PLWHA). The perception is always that casual relationship and marriage are purely private affairs and therefore that should be regulated by individual life .On a moral ground ordinarily, one need not be told that he or she should go for HIV/AIDS testing before marriage. If diagnosed as having HIV/AIDS, he or she ought to have known that it is wickedly immoral to conceal his or her status and engages in friendship or marriage to a healthy man or woman. Jurisprudentially however, there is a distinction between morality and law but they share things in common. In the sense that, law is morality but not all moralities are laws. A typical example of this is the case of adultery. In some communities in Nigeria, adultery is an immoral acts but somehow not an offence. It is seen as an immoral act only and law is impotent to influence the moral ideas current in the society. The argument is always that, it is illegitimate to use law to impose a particular set of moral ideas on the society. The only occasion in which it is legitimate to prevent somebody from acting as he wishes is when the action contemplated is likely to result to harm to others and that is never justified for the law to seek to regulate the private affairs of the people<sup>39</sup>.

From the above it is decipherable that the non –disclosure of one health status having tested positive is likely to cause harm to would be partner or partners. So it is legitimate under this circumstance to impose law to punish whoever conceal, forged or connived having tested positive engages in marriage contract without having first

<sup>34</sup> Ibid s. 5114 (4)

<sup>35</sup> Michigan Public Health Code s. 5119 (1), (2), (3)

<sup>36</sup> Ibid s. 5131 (1), (2), (3)

<sup>37</sup> Ibid s. 5131 (5)

<sup>38</sup> Ibid s. 5210 (2)

<sup>39</sup> JM Elegido, *Jurisprudence* (Ibadan: Spectrum Books Limited, 1994) P. 346

disclosing or informing the other that he or she is infected. Using the harm principle propounded by JS Mill, compulsory pre-marital counseling is the best option to curb the menace of HIV/AIDS in Nigeria. Mill says:

One very simple principle, as entitled to govern absolutely the dealings of society with individuals is the way of compulsion and control ... That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their member is self-protection. That the only purpose for which power can be rightly exercised over any member of a civilized community, against his will, is to prevent harm to others...<sup>40</sup>

This principle has come to be known in the philosophical and jurisprudential literature as the harm principle<sup>41</sup>. Considering the harm HIV/AIDS does to others due to non-disclosure of one's health status, there is need to legislate a law that will make it mandatory for marriage parties to be diagnosed before contracting marriage. The affair looks so private and the argument of some readers will be that why should a law concern itself with the private actions or business between individuals. Those who uphold this argument insist that law should not concern itself with private action or transaction between two consenting adults which have no repercussions on others<sup>42</sup>. Applying this argument to the topic in question it means that casual relation or marriage is a private affair between a man and woman and their relationship of whatever nature has no repercussion on others. Then, why should there be law to regulate this affair of private nature, so called. But the question is, why should one knows that he or she is suffering from HIV/AIDS transmit it to his or her partner? Are the non-disclosure of the defects and the transmission of the disease to the partner not a repercussion? If that is a repercussion, doesn't it have repercussions on others? According to Elegido, all actions which anybody has an interest in prohibiting can be shown to have repercussions on other people, no matter how privately they may be performed<sup>43</sup>. Nigeria should imitate the USA state of Michigan's gesture to avert the risk and foreseeable risk of HIV/AIDS for the safety of its Citizens through the enactment of a Public Health Code that will mandate marriage couples pre- marriage testing and criminalizes anyone who knows he is HIV/AIDS infected engages in marriage contract without first disclosing to his or her partner that he or she is either HIV or AIDS infected. This will certainly go a long way in curbing the menace of HIV/AIDS cum reduction of expenses of HIV/AIDS campaigns in Nigeria.

## **6. Conclusion**

It is really pathetic that Nigeria is rated among the countries in Africa with high rates of HIV with more than 3.9% infected persons<sup>44</sup>. The perception will be that why should law concern itself with the private affairs of individual. This idea should be avoided considering the repercussions and fears that these private affairs caused to the large population of Nigeria. JS Mill's harm principle is more in tune to the modern situation we found ourselves. The only purpose for which government power can be rightly exercised over any citizen against his will is to prevent harm to others. Though, the efforts of the government toward eradicating the menace is highly commendable, but there is a need for this law as it was in the other jurisdictions to save lives by punishing infected individuals who intentionally transmit the virus to suffer others. If such kinds of persons are punished with the force of this law, the rate of HIV/AIDS infection may be reduced. The campaign for safety against this virus using the ABC strategy by the government and NGOs is more of encouraging the spread of the virus to some extent. The campaign is always that abstains or be faithful or use condom. Many people did not abstain and are not faithful but delve into skin to skin sex with their casual friends. If condom is advised to be used for casual relationship, it will not be possible for spouses to negotiate for condom use in the conjugal relation. The only way to prevent harm to either of the spouse is to subject them to HIV/AIDS testing before their marriage contract. The campaigns for abstinence from adultery have proven that we have acknowledged the cause of the HIV infection is through adultery because Nigeria does not have a clear law punishing adulterers save reluctantly in the Penal Code applicable to Northern region only. The two major religions we have both in their scriptural books have prohibited adultery. Islam from the first place says one should not come close to adultery because it open gate for other evils. Because of it gravity, in yet another verse it punishes offenders with one hundred lashes or stoned to death. While the bible makes almost similar provisions with the Quran.<sup>45</sup>

---

<sup>40</sup> JM Elegido (n 39) P.351

<sup>41</sup> *ibid* P.351

<sup>42</sup> JM Elegido, (n 41)

<sup>43</sup> *Ibid*

<sup>44</sup> African Renewal, 'HIV Prevalence in Africa, Map' (United Nation Development of Public Information, August 2007) P. 36

<sup>45</sup> See *Quran* 17:32, 24: 2; *Leviticus*, 20: 10, *Deuteronomy*, 22: 23-24