

POLICY PAPER: PROTECTION AGAINST DISCRIMINATION OF COVID-19 SURVIVORS



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HOW THE GOVERNMENT CAN FOSTER A SMOOTH TRANSITIONING AFTER THE PANDEMIC BY ENACTING AN ANTI-DISCRIMINATION AGAINST CORONA VIRUS SURVIVORS BILL

INTRODUCTION

It is clear that due to the Global pandemic caused by the Novel Corona Virus (COVID-19) disease, the Economic World order has been disrupted. Major sectors are experiencing catastrophic losses, and businesses are plunging at all time lows.

Governments of the world are exploring various options to revamp their economy Post-COVID-19, Businesses and industry players are going back to their drawing board to develop innovative, workable strategies to tackle the situation and provide an effortless transition for the operations of their business.

Necessity is the mother of invention, and as the necessity to remain a going concern drives every aspect of the economy, the world will eventually heal from the damages caused by the virus.

While there is so much emphasis on the economical aspect and wealth implications of the virus, no policies have been implemented to protect the persons who were infected by the virus and have fully recovered against

discrimination. This paper proposes a policy on this issue.

This paper will refer to persons who recovered from COVID-19 as "COVID-Survivors".

After fully recovering from the virus as validated by the various tests which indicate the status as Negative for COVID-19, the "COVID-Survivor" is free to return to life as he/she knew it before the virus.

One of the implications of being ever infected with the virus is that there may be a sudden stigma attached to persons in this category, and they may suffer discrimination and victimization based on their previous Positive COVID-19 status.

This protection of foreseeable Discrimination is the basis for this paper.

Statutory Provisions on Discrimination .

Nigerian Constitution

The constitution of the Federal republic of Nigeria provides for Fundamental Human Rights that should be enjoyed by citizens. Although some rights have certain instances where they can be limited, the Right to freedom from Discrimination is not one of those. **Section 42** guarantees this right, but does not expressly provide for health status or medical records as a basis for discrimination.

Section 17 of the Constitution provides further that the State shall direct its policy towards ensuring that all citizens

can secure adequate means of livelihood, as well as suitable employment, and that there should be equal pay for equal work without discrimination on the grounds of sex or *any other ground*, without discrimination on any group whatsoever.

It is worthy of note that the principles stated in section 17 of the Constitution are not enforceable, because they are fundamental objectives and directive principles of a state, but they still have persuasive authority for all purposes.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) – a milestone document in the history of human rights was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievement for all people and all nations.

Article 7 provides that

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

This provision contains a general and all-encompassing Anti-Discrimination provision, and as such can be used to further support the position in this paper.

Discrimination (Employment and Occupation) Convention 1958

The General Conference of the International Labour Organization (ILO) supports the position of the Universal Declaration of Human Rights that discrimination constitutes a violation of right, and came up with this convention. It was ratified and domesticated by Nigeria in October 2002.

Article 1 defines discrimination as

a.) any distinction, exclusion or preference made on the basis of race, color, sex religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

b.) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation...”

The ILO Convention clearly provides for all aspects of discrimination, as it clearly stated in 1(b) *“such other distinction...impairing equality of opportunity”* The term “such other distinction” can be interpreted to cover medical conditions and record.

Key Points of the Policy Paper

Employee Protection and Employer Obligation

The need to protect COVID-Survivors is paramount, and a provision to this effect can be generally drafted out as;

“No person, community, institution, employer or employee shall discriminate directly or indirectly against any person in the society on the basis of their previous COVID-19 Status”

As the world slowly contains the virus, and adopts policies to foster economic growth and development, the need to also protect human capital which may have been infected is crucial.

A COVID-Survivor should not be subject to any form of discrimination, stigma or ostracizing on the basis of his/her previous COVID-19 status. There should be entitlement to enjoy protection under the law and be guaranteed now more than ever the Right to Freedom from Discrimination.

Employee Protection

Hohfeldian theory of Rights and Duties states that for every right, there is a duty to enforce it.

COVID-Survivors should be integrated into the community, and more importantly, not be denied the opportunity to fend for themselves and have stable means of livelihood.

When a COVID-Survivor who seeks to return to work, is fired on the basis of being infected, this is a clear discriminatory act, and this should not be tolerated. The Employee should be protected from this form of Discrimination, as it is an obvious violation of the Fundamental Human Rights which the country has a duty to protect.

Hiring Discrimination can also be experienced where the COVID- Survivor has met all the requirements and passed all the relevant screening for new employment in the nearest future, but is denied employment because of his previous COVID-19 Status. This form of discrimination will deprive the person of employment opportunities that would have ordinarily been attained on merit.

Employer Obligation

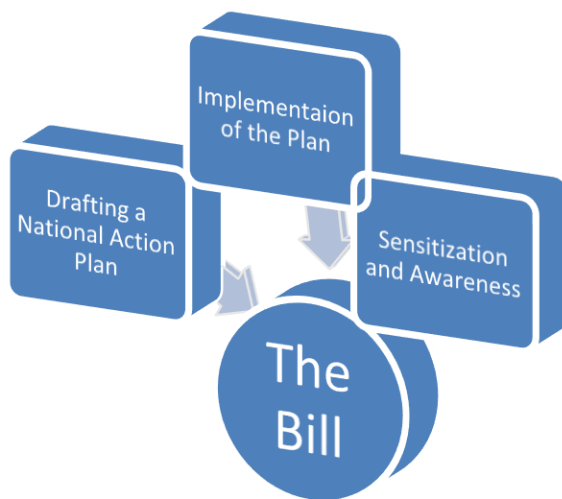
The Employer has an Obligation to respect all employees and guarantee that they would not be discriminated against while they are in the workplace.

No employee shall be dismissed unlawfully on the basis of his previous COVID-19 Status. For employments based on terms of contract, any dismissal or termination should be in accordance with the terms stated in the contract only.

The Employer also has an obligation to protect a COVID-Survivor from

discrimination from all other employees within the workplace. The responsibility to deal with complaints of this nature falls on the employer, and adequate measures should be taken to curb and curtail such acts from happening again. Employers should be sensitized on how to deal with complaints of discriminatory nature.

Means of Implementation



Drafting the National Action Plan

The Action plan will be directed at translating priority issues into actionable strategies to solve the anticipated dicriminatory challenges that may be experienced. The plan will be formulated using a participatory, consultative and collaborative approach, and will be driven by taking the followinnng steps;

- Composition of a Committee comprising of representatives from the three arm of

government, labour law experts from both private and public sector, and Human Right Activists.

- Examination of the urgency and the hardship suffered from the absence of the proposed bill.
- Formulating actual results and indicators of success of the implementation of actions
- Assessing financing sources ratio, and building a financial model.

Implementation of the Plan

After the successful formulation of strategies that will make the plan actionable, the next step will be to implement it by identifying the key drivers of the plan.

- Ministry of Health
- Ministry of Labour
- Ministry of Justice
- Nigerian Labour Advisory Council
- National Human Rights Commission
- National Industrial Court (NIC)
- International Labour Organization

These bodies will work together to ensure that issues of discrimination against COVID-Survivors are handled with utmost priority and importance, in other to protect the COVID-Avenger.

Sensitization and Awareness

“Content is King, but engagement is queen and the lady rules the house” – Mari Smith

A bill cannot be said to be effectively active if the people it sets out to protect are not aware of its existence. The aim here is to ensure that employers, employees and the entire business space is aware that actions or inactions that may be discriminatory against a COVID- Survivor on the basis of previous status, amounts to an Infringement of the Right to freedom from Discrimination.

The need for Medical Awareness and sensitization on the status of Survivors cannot be overlooked. The Ministry of Health and the National Centre for Disease Control (NCDC) have to issue circulars and directives to public informing them in detail about the status of a COVID- Survivor, and that there is no reason to ostracize or discriminate against them.

Conclusion

Modern day problems beget modern day solutions. Nigeria as a progressive and forward-thinking Nation should spearhead reforms that protect Fundamental Human Rights at every cost.