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LIVING THE NEW NORMAL:

Legal & Ethical Issues around Covid-19 Passports and What it means for Nigeria

The Coronavirus (Covid-19) pandemic has been on the rampage in several jurisdictions for more than a year now, accounting for a death toll of over 4 million people[1] across the globe and changing the dynamics of society like nothing the world has ever seen before.

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There is simply no area of life that the the Covid-19 pandemic has not upended, whether in terms of human interaction, business and social life as countries have been forced into response policies ranging from lockdowns to limitations on physical gatherings, businesses have been made to adopt new approaches while reeling from the shock of the pandemic, economies and markets are still grappling with receding fortunes and people the world over coming to terms with the new look of everyday life in the face of compelled restrictions in movement and interaction.

[1] https://covid19.who.int/

Nigeria is one of the 210 countries affected by the Covid-19 virus globally, with its first case confirmed in Lagos State on February 27, 2020. In Nigeria, as in most parts of the world, Covid-19 continues to be a concern, especially with the new variants of the virus which have been said to be mutated versions of the earlier version of the virus and are thought to spread faster from person to person, having been recorded in Nigeria and with fresh cases of Covid-19 infections ramping up in the numbers as the days go by.

To mitigate the mounting burden of COVID-19, vaccine development has occurred at an unprecedented pace.
As of December 31, 2020, safety and efficacy results for a number of vaccines were reported [2], and as of today, the following vaccines have been granted Emergency Use Listing by the World Health Organisation (WHO), AstraZeneca/Oxford, Johnson and Johnson, Moderna, Pfizer/BionTech, Sinopharm, and Sinovac. Globally, as of 25 July 2021, a total of 3,646,968,156 vaccine doses have been administered. [3]

Now that COVID-19 vaccines are being administered across the Globe, and with the prospects of a new social dynamic following the administration of the vaccines, discussion has turned to whether some type of vaccination or immunity "passport" might be required to distinguish people who have received Covid-19 vaccines from those who have not.

The underlying purpose, of course, is that the passport would be issued to people who have been vaccinated, to let them move more freely, both locally and globally, by allowing access to indoor restaurants, movie theaters, and international travel, almost other facilities and discretions hitherto restricted in response to the pandemic. It is expected to function similar to an immunization certificate and would help with contact tracing as well as with returning society to normalcy without compromising those still likely to be susceptible to the virus.

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[2] The impact of vaccination on COVID-19 outbreaks in the United States; Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7709178/. Accessed 25 July 2021.
[3] WHO Coronavirus (COVID-19) Dashboard; Available at: https://covid19.who.int/. Accessed 25 July 2021.

It is also expected to help with effective communication and data sharing about the immunization and susceptibility status of individuals, which will inform decisions around access to certain facilities or participation in certain activities and everyday experiences.

There is a strong case and valid rationale for the introduction of a Covid-19 passport. The reasons may range from the need to ease the effects of the lockdown policy adopted by many countries as a response to the Covid-19, to the need to reintroduce people back into everyday life in a safe way. There is strong contention against the social implications and general viability of the idea of Covid-19 Passports.

There are also legal and ethical undertones to the concerns against a Covid-19 Passport. For one, the idea of splitting populations into two groups with different privileges has legal and ethical implications and seems to suggest a breach of the right to freedom from discrimination on the basis of health status. On another front, it is considered that there is insufficient evidence about the effectiveness of antibody-mediated immunity to guarantee the accuracy of an "immunity passport"[4] or "risk-free certificate." Thus, people who assume that they are immune to a second infection may ignore public health advice, behave in a carefree manner, or otherwise expose themselves to risks, meaning that the use of such certificates

may increase the risks of continued transmission and contradict global Covid-19 response policies. Also, of extreme ethical concern is that electronic Covid-19 Passports could be used to monitor individuals' movements or health status. Finally, there are privacy concerns which relate to the sensitive health information passports may draw on, raising questions about who has access to that data and how it is protected and used.[5]

[4] "Immunity passports" in the context of COVID-19; Available at: https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-covid-19. Accessed 26 July 2021.
[5] Covid passports; Available at: https://www.instituteforgovernment.org.uk/explainers/vaccine-passports. Accessed 26 July 2021.

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Countries across the world have introduced and are adopting Covid-19 Passports.

The UK, for example, introduced a vaccine certificate for travel, now called the NHS COVID Pass, on May 17, 2021. The NHS COVID Pass is available through the existing general NHS app (which is different to the NHS Covid-19 contact tracing app). Individuals registered with a GP surgery in England can sign up to the app and click through to a QR code confirming their vaccination status, which is available two weeks after a second vaccine dose. A paper alternative is also available. [6] Denmark introduced the 'coronapas' in April 2021. It allows entry to venues like hairdressers and bars for vaccinated residents or those with a recent negative test result. It is incorporated into a pre-existing health app and can also be printed out. [7]

The European Union (EU), on July 1, 2021, made available its COVID-19 passport for all EU citizens and residents, as well as for specific categories of travelers from third countries. The European COVID-19 travel certificate was created by the European Union in a bid to restore the freedom of travel. Through the certificate, the EU intends to remove travel restrictions as entry bans, quarantine obligation, and testing. [8] In the United States, the federal government has ruled out introducing mandatory federal Covid-19 vaccination passports, saying citizens' privacy and rights should be protected. [9] The International Air Transport Association, a trade group that represents over 250 airlines, also has the IATA Travel Pass.

[6] Covid passports; Available at: https://www.instituteforgovernment.org.uk/explainers/vaccine-passports. Accessed 26 July 2021.
[7] Covid passports; Available at: https://www.instituteforgovernment.org.uk/explainers/vaccine-passports. Accessed 26 July 2021.
[8] All Details on EU COVID-19 Vaccine Passport Revealed: Here's What You Need to Know; Available at:
 https://www.schengenvisainfo.com/news/all-details-on-eu-covid-19-passport-revealed-heres-what-you-need-to-know/. Accessed 26 July 2021.
[9] Covid: US rules out federal vaccine passports; Available at: https://www.bbc.com/news/world-us-canada-56657194. Accessed on 26 July 2021.

The IATA Travel Pass is a mobile app that helps travelers to store and manage their verified certifications for COVID-19 tests or vaccines.[10]

In Nigeria, as of June 29, 2021, 2,265,805 people have been vaccinated with the first dose of the Covid-19 vaccine and 1,175,341 people vaccinated with the second dose.[11] Not much has been said about the use of a Covid-19 Passport, but it seems unlikely that this will remain the case for much longer, considering Edo State (in Nigeria) has introduced some restrictions relating to unvaccinated persons within the state.[12] Whilst this action has been challenged in several quarters as an act capable of causing violations to fundamental rights, it is simply a sign that Nigeria soon have policy redirections on the implications of obtaining vaccination.

Possible Policy Review

In following the stead of regional organisations and international bodies, covid-19 pass or passports may indeed be recommended for travel within the ECOWAS or African region, through the ECOWAS and AU to minimize as much as possible the incidence of Covid-19 pandemic within countries in the relevant economic block and to contain the virus due to the free movement of goods and services within the region. This position should not be taken to mean that persons without the Covid-19 pass/passport should be restricted from travel. It would simply imply that persons without such Covid-19 pass/passport would be obliged to take all the necessary tests and fulfil the quarantine conditions before travel, and after travel, for them to travel outside their countries. This is the current position for international travel.

Despite the possibility of the above policy action, Covid-19 passports/ passes may not be the best option for movement or travel within a country, as such restrictions may be considered as breach to fundamental rights.

It is therefore important that the implications of Covid-19 passports are carefully weighed by regulators and policy makers, before it is adopted with within the African region.

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[10] IATA Travel Pass Initiative; Available at: https://www.iata.org/en/programs/passenger/travel-pass/. Accessed 26 July 2021.
[11] Nigeria hits 3.4m COVID-19 vaccine jabs in 2 rounds — NPHCDA; Available at: https://www.premiumtimesng.com/news/headlines/470504-nigeria-hits-3-4m-covid-19-vaccine-jabs-in-2-rounds-nphda.html. Accessed 26 July 2021.
[12] COVID-19: Edo govt to restrict large gathering as second phase of vaccination begins (punchng.com)