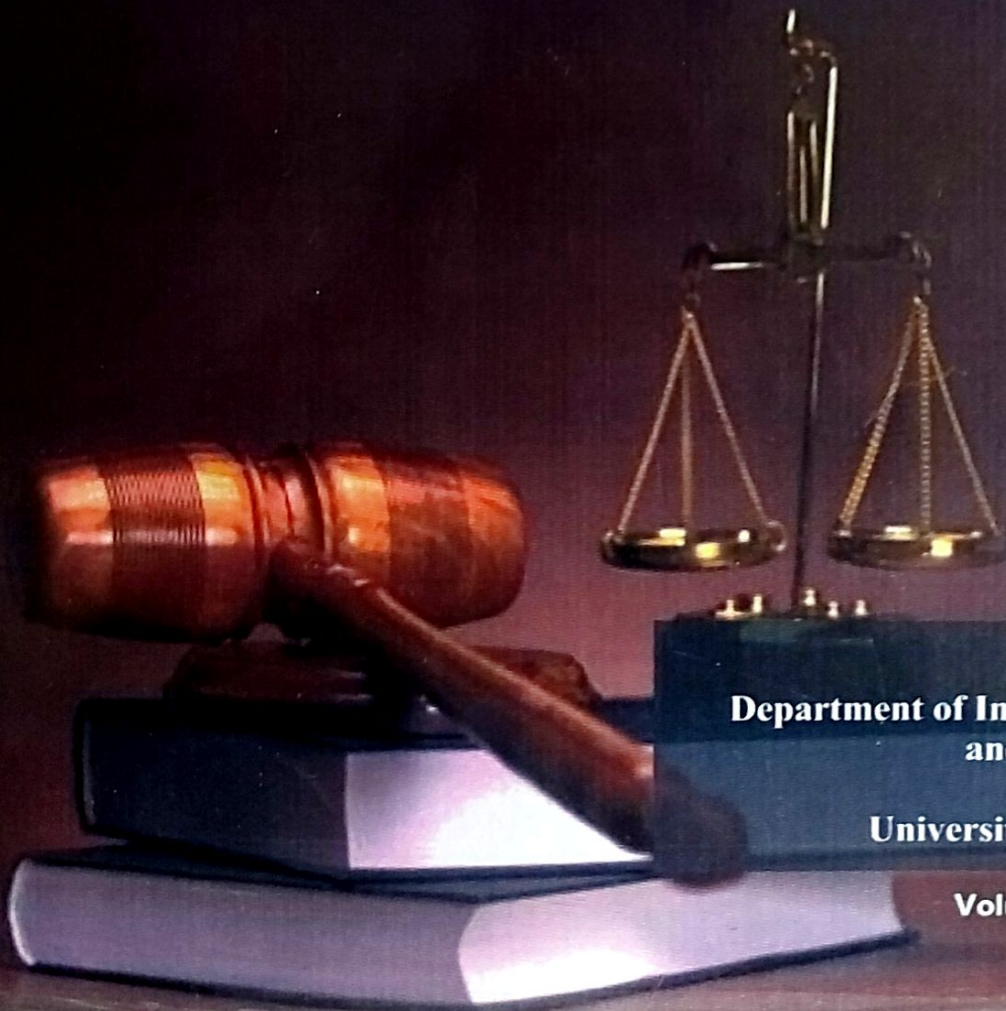




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CORONA VIRUS AND HUMAN RIGHTS VIOLATION IN NIGERIA: A REVIEW OF PATIENT RIGHTS

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Abstract

Research has shown that the Corona Virus is a global pandemic that was first reported by the World Health Organisation's Office in China, and this virus that emanated from Wuhan was first reported in Nigeria on the 27th day of February, 2020. The virus which is highly contagious and had put the whole world to a standstill has resulted to the violation of rights of citizens as enshrined in the Constitution of the Federal Republic of Nigeria (Section 35 and 37) and patients right as contained in the National Health Act and the rights of medical personal. The paper had analysed the conflict between the State trying to fight this global pandemic and ensuring to protect the rights of its citizens. The researchers in trying to do justice to the topic under consideration had looked into the clash of interest between patients, health workers and the society at large in the fight against Corona Virus. The paper concluded that patients while undergoing treatment are to enjoy all their human rights as contained in the 1999 Constitution (right to personal liberty, privacy and freedom of thought conscience and religion) only to the extent that the state is allowed to restrict such rights in the interest of the society. The paper in view of the aforementioned, recommends the criminalization of treatment of any patient without disclosing the rights of the patient under the law and criminalising any nondisclosure on the path of the patient that jeopardizes public interest.

Key Words: Corona virus, Patient Rights, Health Workers Right, Right of Society

Introduction

The Corona virus first reported cases were to the World Health Organization's China Office. It was first reported as an unknown virus behind pneumonia cases in Wuhan, in Eastern China. The virus then spread to the rest of China and is now a global pandemic¹. Though the mortality rate of the virus is low and is most among the aged and persons with underlying illnesses like diabetes, cancer,

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¹ Matt Reynolds and Sabrina Weiss" How coronavirus started and what happens next, explained"<<https://www.wired.co.uk/article/china-coronavirus>> accessed on 5th June, 2020.

hypertension among others, there is a global scare because it spreads fast due to the nature of easy contraction being airborne.

Nigeria had its first reported case in Lagos, on the 27th day of February, 2020. The first case was successfully treated and discharged, however the first death was of a former MD at PPMC who had an underlying health issue (cancer) and had contracted the illness while undergoing treatment in the United Kingdom. There have been many successful treatments of the virus in the country after that. However there are human rights concerns that have arisen with the manner of treatment and collation of data which seem to infringe on the patients' rights. Another concern associated with the outbreak of the virus relates to medical personnel treating covid-19 patients. Looking at the highly contagious nature of the virus and the challenge of scarcity of protective gear for the medical personnel treating persons infected with the virus, one wonders whether the medical personnel have the right to refuse to treat covid-19 patients. This issue is a collision of three interests and rights: that of the state, the patient and the medical personnel. This research paper gives an analysis of the collision of all three rights and interest and gives recommendations of how they should be handled.

The Corona virus pandemic has raised the issues of rights; we have human right of personal liberty enshrined in Sections 35 and 37 of the Nigerian Constitution² and also patients' rights as contained in the National Health Act³, rights of the medical personnel as contained in the sections 21(2) and (3) of the National Health Act and that of the state in section 8 of the Quarantine Act. We shall consider these provisions.

The Corona Virus Pandemic And The Clash Of Interests And Rights

The writers have established that the Corona Virus Pandemic has raised concerns affecting the following classes of persons:

1. Patients
2. Health worker
3. The Society

Patients

The persons infected with corona virus have rights and the presence of the virus in their system does not strip them of those rights. Their rights are guaranteed in the Nigerian Constitution and the National Health Act. The rights of the patients as guaranteed by the Constitution are contained in Sections 35 and 37 which provide for the right to personal liberty and right to private and family life respectively as follows: "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law."

The *Black's Law Dictionary* defined personal liberty as 'One's freedom to do as one pleases, limited only by the government's right to regulate the public

² Constitution of the Federal Republic of Nigeria 1999 as amended.

³ Sections 23 and 26 (1) and (2) of the National Health Act

health, safety and welfare' ⁴. The court in *Adewole v. Jakande (Alhaji) (Governor Lagos State)*⁵ defined personal liberty as:

...privileges, immunities, or rights enjoyed by prescription or by grant. It denotes not merely freedom from bodily restraint, but rights to contract, to have an occupation to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized at law for happiness of free men.

The Nigerian constitution guarantees that Nigerian citizen has the right to his/ her personal liberty, however this right is not absolute as was held per Ibrahim Tanko JSC in *Dokubo Asari v. FRN*⁶ that the right to personal liberty provided in section 35 of the Nigerian Constitution is not absolute. The provisions of the said section gave instances for the restrictions of such rights; one of which is part (e) of subsection (1) which is persons suffering from infectious or contagious disease. Section 35(1) (e) provides as follows: "in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or..."

So, because of the infectious nature of Corona Virus, persons infected by the virus cannot exercise their right to personal liberty while they are infected with the virus. The presence of the infectious virus in their system places a restriction on their right to personal liberty for the purpose of their care or treatment or the protection of the community. The reason for the restriction on their right to personal liberty is for:

- (I) the care and treatment of the patients
- (II) the protection of the society.

The Care and Treatment of the Patient

The patient's right to personal liberty is restricted in his own interest for the purpose of his care and treatment. The Corona Virus affects the respiratory systems of the persons infected with the virus, some patients experience difficulty in breathing and a ventilator is used to aid breathing. Patients are treated in isolation camps and are released after testing negative to the virus several times before they are released back into the community. Due to the nature of the virus and the fact that though there have been records of successful treatments, several treatments are at the experimental stage. As at the time of writing this paper, there are ongoing researches on the vaccines for the virus and several are at the experimental stage. Therefore, this restriction is in the best interest of the patient as it ensures that he gets the best care and treatment from trained medical personnel who will probably have more information on treatments and advancement in treatment of the virus than the average medical personnel who is at the forefront.

⁴ Bryan A. Garner, *Black's Law Dictionary*, ninth edition (2009, West Publishing Co. St Paul, USA) p.1002

⁵ (1981) 1 NCLR 262 at 278 HC Lagos

⁶ LPELR 958 SC @35

The patient also has the right to autonomy and self-determination. The right of autonomy and self-determination in medical law parlance means the right of a competent adult to make an informed choice and consent to investigation and/ or treatment. A competent adult after subjecting himself to examination by health workers due to ill health has the right to be given adequate information on the investigations to be carried out and the possible treatments and before these investigations and treatments are carried out the patient must consent to them. The health workers cannot make those decisions for the patient even though it is in the patient's best interest. A locus classicus on the patient's right to autonomy and self-determination is *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*⁷. The appellant had convicted the respondent of infamous conduct. Mrs. Martha Okorie ("the patient") and her husband belonged to a religious sect known as Jehovah's Witnesses who believe that blood transfusion is contrary to God's injunction. Mrs. Okorie, a 29 -year old woman, having had a delivery at a maternity on 29th July, 1991 was admitted as a patient at Kenayo Specialist Hospital, for a period of 9 days from 8th August, to 17th August, 1991. She had complained of difficulty in walking and severe pain in the pubic area. At Kenayo Hospital the diagnosis disclosed a severe ailment and a day after her admission blood transfusion was recommended. The patient and her husband refused to give their consent to blood transfusion. Dr. Okafor of Kenayo Specialist Hospital consequently discharged the patient, giving her a document stating her refusal for the blood transfusion leading to her subsequent discharge. Upon her discharge from Kenayo Hospital she was taken to JENO Hospital by her husband on 17th August, 1991 where the respondent proceeded to treat the patient without transfusing blood. However, the patient died on 22nd August, 1991. The respondent was charged before the Medical and Dental Practitioners Disciplinary Tribunal. In its judgment the Tribunal concluded that the respondent was not criticized for holding his religious belief or for respecting the religious belief of others but for holding on to the patient knowing fully well that the correct treatment cannot be given in the face of failure to obtain consent. The Tribunal therefore found the respondent guilty on the charges and suspended him for a period of six months on each of the charges, to run concurrently. The respondent appealed to the Court of Appeal which allowed the appeal and set aside the Tribunal's judgment. Dissatisfied, the appellant appealed to the Supreme Court. In the case, His Lordship, Justice Samson Odemwingie Uwaifo JSC held thus⁸:

I am completely satisfied that under normal circumstances no medical doctor can forcibly proceed to apply treatment to a patient of full and sane faculty without the patient's consent, particularly if that treatment is of a radical nature such as surgery or blood transfusion. So the doctor must ensure that there is a valid consent and that he does nothing that will amount to a trespass to the patient. Secondly, he must exercise a duty of care to advise and inform the patient of the risks involved in the contemplated treatment and the consequences of his refusal to give consent.

⁷(2001) LPELR 1856 SC

⁸ Pp 70 - 71 paras D-A

In the same case, Emmanuel Olayinka Ayoola JSC held as follows: The patient's constitutional right to object to medical treatment or, particularly, as in this case, to blood transfusion on religious grounds is founded on fundamental rights protected by the 1979 Constitution as follows: (i) right to privacy: Section 34; (ii) right to freedom of thought, conscience and religion: Section 35. All these are preserved in Sections 37 and 38 of the 1999 Constitution respectively. The right to privacy implies a right to protect one's thoughts, conscience or religious belief and practice from coercive and unjustified intrusion; and, one's body from unauthorized invasion. The right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The limits of these freedoms, as in all cases, are where they impinge on the rights of others or where they put the welfare of society or public health in jeopardy. The sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary. Law's role is to ensure the fullness of liberty when there is no danger to public interest. Ensuring liberty of conscience and freedom of religion is an important component of that fullness. The courts are the institution society has agreed to invest with the responsibility of balancing conflicting interests in a way as to ensure the fullness of liberty without destroying the existence and stability of society itself. It will be asking too much of a medical practitioner to expect him to assume this awesome responsibility in the privacy of his clinic or surgery, unaided by materials that are available to the courts or, even, by his training. This is why, if a decision to override the decision of a competent patient not to submit to blood transfusion or medical treatment on religious grounds, is to be taken on the grounds of public interest or recognised interest of others, such as dependent minor children, it is to be taken by the courts.

The decision of the Supreme Court in *Okonkwo's* case is in line with the patient's right to autonomy and self-determination. Even though the blood transfusion would have saved Mrs. Martha Okorie's life as she was informed by Dr. Okafor, yet she refused that mode of treatment as she felt it was against her religious belief and she did not want to go against her religious belief even if it could lead to her death. This means that a person suspected to be infected by corona virus can refuse investigations and subsequent treatment even though it might save his life. However, the person cannot refuse to be quarantined as it will endanger public health. The person's right to personal liberty will be restricted as

his suspected condition can lead to spread of the virus so the interest of the community overrides his right to personal liberty. However, it does not affect his right to autonomy and self-determination. So the person will be quarantined till the patient recovers or dies. Though another controversial aspect will be – How will the health workers be able to know that the patient no longer has the virus if he refuses to subject himself to a test when he no longer shows signs of the virus? This is a throbbing question as the absence of symptom doesn't mean the absence of the virus as some persons who have the virus might be asymptomatic⁹. The case will be different if the patient or person suspected to be infected by the virus is a child. In the case of *Tega Esabunor & Anor v. Dr. Tunde Faweya & Ors* the patient was a child of one month, the one month old Tega Esabunor was rushed to the Chevron Clinic by his mother. After examination by Dr. Faweya, it was discovered that the child was suffering from severe infection and anaemia (lack of blood) and was immediately placed on oxygen therapy. Dr. Faweya further advised that it was apparent the child needed blood transfusion immediately to stay alive. The child's mother bluntly refused blood transfusion for her child. She made it clear that because of her religious beliefs, being a member of the Jehovah Witness sect she cannot consent to her child receiving blood transfusion. The next day, the learned counsel for the Commissioner of Police, Lagos State moved an Originating Motion Ex parte before the Chief Magistrate pursuant to Section 27 (1) and (30) of the Children and Young Person's Law Cap 25 of Lagos State in that regard. The relief sought was:

that the medical authorities of the Clinic of Chevron Nigeria Limited Lekki Peninsula Lagos be allowed and are hereby permitted to do all and anything necessary for the protection of the life and health of the child TEGA ESABUNOR and for such further order or orders as the Court may deem fit to make in the circumstances.

After hearing counsel, the Chief Magistrate granted the application under its inherent jurisdiction. On receipt of the Order of the Chief Magistrate blood transfusion was administered on the 1st appellant by the 1st respondent on the same day. (i.e. 12 May, 1997). The 1st appellant got well and was discharged. His mother took him home. On 15 May, 1997 the 2nd appellant filed an application on notice wherein she sought for the setting aside of the order made on 12 May, 1997. The application was unsuccessful. It was dismissed on 21 May, 1997. The appellants were dissatisfied with the proceedings before the Chief Magistrate, so they approached the High Court for a certiorari order and damages. In a considered ruling delivered on 28 May, 2001 the learned trial judge refused their prayers and claims. The appellants were not satisfied with the ruling of the High Court. They filed an appeal. It was heard by the Court of Appeal, Lagos Division and was dismissed. The appellants further appealed to the Supreme Court. The Supreme Court cited Sections 13 (2) and 59 (a) of the Child Rights Act and held per John Inyang Okoro JSC thus¹⁰:

⁹ Do not show symptoms of the virus but have the virus in their system and might also infect others.

¹⁰ P. 47 paras A- D

In the light of the above provisions, I hold the view that it could have amounted to a great injustice to the child if the Court had stood by and watched the child being denied of basic treatment to save his life on the basis of the religious conviction of his parent. He probably would not be alive today. I agree with my learned brother that in a life threatening situation, such as the 1st Appellant was in as a child, the consideration to save his life by application of blood transfusion greatly outweighs whatever religious beliefs one may hold, especially where the patient is a child. On the whole, I find no reason to differ from the concurrent findings of the lower courts.

The court, in this case, made its decision on what is in the best interest of the child by saving the child's life even if it was against the religious beliefs of the parents. This is in line with Section 13(2) of the Child's Rights Act which provides as follows: "Every Government, parent, guardian, institution, service, agency, organisation, or body responsible for the care of a child shall endeavour to provide for the child the best attainable health". Since the child was too young to make a decision the courts made one to save the child's life as the child also has the right to life as enshrined in Section 33 the Nigerian Constitution.

The United States of America has a Federal Act concerning a patient's right to self-determination which is the Patients Self Determination Act 1990 (PSDA). The PSDA mandates that hospitals, skilled nursing facilities, hospice organizations, home health organizations, and HMO's perform a number of specific actions and ensure that other certain conditions are met. The Act states that it is required that patients are informed of their right to be involved in decisions making concerning the medical care they receive. The Act also requires that the patient is asked about advanced directives, and to document any wishes the patient might have with regard to the care they want or do not want. Also, there should be no discrimination in any healthcare organization against any patient putting forth advanced directives. It mandates that patient's advanced directives be implemented if necessary, assuming those wishes are legally valid and permissible by state law. That is, the state law where the patient is seeking medical attention should not outlaw any of the directives that the patient is given concerning treatment.¹¹

American legal authors and courts have held opinions and judgments in favour of autonomy and self-determination. In fact, some authors have linked it to the right to privacy. Professor Edward J. Bloustein argued that the fundamental principle common to the legal protection of privacy under tort and non-tort laws, particularly constitutional law is to give respect to human dignity, personality and individuality¹². Professor David A.J. Richards extensively discussed the meaning

¹¹ DacTeoli and Sassan Ghassemzadeh, 'Patient Self Determination Act' <<https://www.ncbi.nlm.nih.gov/books/NBK538297/>> accessed on the 22/06/2020.

¹² Edward J. Bloustein, Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser, 39 N.Y.U. L. Rev. 962, 994 (1964). Through Kanaboshi, Naoki (2006) "Competent Persons' Constitutional Right to Refuse Medical Treatment in the U.S. and Japan: Application to Japanese Law," Penn State International Law Review: Vol. 25: No. 1, Article 3. <<http://elibrary.law.psu.edu/psilr/vol25/iss1/3>> accessed on the 22/06/2020

and underlying values of the right to privacy and argued that the right to privacy consists of personal autonomy essential to forming and defining one's life. Based upon this meaning of the right to privacy, he then argued that the right to privacy includes one's decision making about how to die. He went further to state that the notion of human rights consists of two components: autonomy and treating persons as equals.

As regards autonomy, he argued that autonomy can be distinguished between higher order desires and lower order desires. Higher-order desires are simply desires to do or not do something based on pleasure or talent, which other non-human animals can also have. In contrast, only human beings have personhood or the complex capacity for reflective self-evaluation- a capacity that allows them to critically evaluate and give order and personal integrity to one's system of ends in the form of one's life. These capacities permit persons to take ultimate responsibility for how they live their lives. Treating persons as equals is another element of human rights. Richards avers that the idea of human rights indicates that all persons' capacities for autonomy have equal value. He further suggests that the right to privacy includes autonomous basic life-plan choices; choices which define the meaning of one's life. Richards argues that this right to privacy includes one's decision to die in certain circumstances, including the right to refuse life-sustaining treatment. He justifies this conclusion by pointing out that the consideration of how to die is an essential life choice.

The meaning of life is considered important because of our inevitable death. If personhood gives us the capacity of higher-order reflection on and evaluation of our system of ends and how they cohere in life, the terms of that reflection and evaluation are posed by the thought of our death and by the need to make sense of it. Because of our self-consciousness about our whole life including death and because death frustrates the projects, we set in the center of our lives, making sense of death appears to be an inexorable part of making sense of life." In other words, "If death is senseless, life may be senseless too." Based upon this recognition, he argues that a person who has a right to define the meaning of one's life should have a corollary right to define the meaning of their death.

Another American Professor Ronald Dworkin also argues for protecting the right to refuse life-sustaining treatment as autonomy in authoring one's life. Similar to Richard's distinction between higher-order decisions and lower-order preferences, Professor Dworkin divides people's interests into experiential interests and crucial interests. The experiential interests are those whose value is determined by the fact that they offer pleasurable or exciting experiences. They can also be called "experiential preferences," and include such activities as playing soft-ball, watching a football game, or listening to music. On the other hand, the crucial interest people have been those that "make their life genuinely better to satisfy." 'An example of this is someone's close relationship with his children; this has value not just because one desires this experience, but also because one believes a life without it would be a much worse one. Professor Dworkin argues that how we die is a matter critical to the success of our whole life. It is critical in two ways. First, how we die is a critical question because

death is part of our life and every part of our life is important. Second, death is a peculiarly important event as it is at the climax of one's life, and thus has important symbolic meaning because the way we die determines how people remember us. He justifies respect for one's refusal of life sustaining treatment based on the value of individual autonomy and individual well-being. His discussion also gives a basis for constitutional protection of the right to refuse life-sustaining treatment as autonomy in authoring one's life.

Professor Brock argues that the value of self-determination is explained by its role in permitting people to form and live in accordance with their own conception of a good life and, in exercising self-determination, to let people take responsibility for their lives and for the kinds of persons they become. People's capacity to control their lives in this way lies at the center of human dignity. Brock argues that the value of individual self-determination includes end-of-life decision making. He notes that people's concern about the nature of the last stage of their lives reflects not just a fear of experiencing substantial suffering when dying, but also a desire to retain dignity and control during this last period of life. The second basis of the right to refuse life-sustaining treatment is individual well-being. For competent persons, the value of well-being does not conflict with the value of self-determination, because patients' well-being is determined by the patient herself. Brock says, "when a competent patient decides to forgo all further life-sustaining treatment then the patient, either explicitly or implicitly, commonly decides that the best life possible for him or her with treatment is of sufficiently poor quality that it is worse than no further life at all.

The courts in the United States of America and the United Kingdom have supported a physician's duty to treat incompetent patients against their express wishes. Judges have hesitated when asked to impose treatment on competent, adult patient. However, in some exceptional cases the courts permitted non-consensual treatment for the protection of third parties, usually foetuses or minor children.

The Protection of the Society

One of the reasons the patient's right is restricted is to stop the spread of the infectious or contagious disease in the community. The contagious nature of the corona virus is not in doubt as it started from Wuhan in Eastern Region of China in December 2019 and spread to over 200 countries of the world affecting the economies of several countries. As at January, 2021, 96.2 million people have been infected by the virus worldwide¹³. In Nigeria, there is a total of 113,305 corona virus cases with 1,464 deaths.¹⁴ So, the restriction of the personal liberty of persons infected with corona virus is done for the protection of the community. This falls under the interest of the state as was discussed above.

The patient also has the right to personal and family life. This means that the patient has the right that his health status should be kept private. The patient's health status is not for public consumption.

¹³Wikipedia, updated at 10:pm 20/1/2021

¹⁴https://www.who.int/whr/2006/06_chap1_en.pdf accessed on the 21st of June, 2020

The National Health Act in sections 23 (1) and 26 provide for patients' rights. Section 23 of the National Health Act provides as follows:

- (1) Every health care provider shall give a user relevant information pertaining to his state of health and necessary treatment relating to-
- (a) the user's health status except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of the user;
 - (b) the range of diagnostic procedures and treatment options generally available to the user;
 - (c) the benefits, risks, costs and consequences generally associated with each option; and
 - (d) the user's right to refuse health services and explain the implications, risks or obligations of such refusal.

This means that the health care provider must give user (patient) relevant information concerning the patient's health and treatment relating to the person's health, range of diagnostic procedures and treatment options, benefits, risks, costs and consequences, user's right to refuse health services and explain the implications, risks or obligations of such refusal. The exception to the patient not being told of the patient's health status is when there is substantial evidence that the disclosure of the patient's health status will be contrary to the best interest of the patient. Nothing should be hidden from the patient. This is in line with the patient's right of informed consent. The right of informed consent is the right of the patient to give consent to being treated based on the health worker supplying the patient all relevant information pertaining to the patient's health status, treatments available, viability of such treatments and cost of treatments. Anything contrary to this violates the patient's right to informed consent and consequently section 23(1) of the National Health Act.

Section 26 of the National Health Act provides as follows:

- (1) All information concerning a user including information relating to his or her health status, treatment or stay in a health establishment is confidential,
- (2) Subject to section 27 of this Act, no person may disclose any information contemplated in subsection (1) unless- (a) the user consents to that disclosure in writing; (b) a court order or any law requires that disclosure; (c) in the case of a minor, with the request of a parent or guardian;
- (d) In the case of a person who is otherwise unable to grant consent upon the request of a guardian or representative; or
- (e) non-disclosure of the information represents a serious threat to public health.

Health Worker

Health workers are people whose job it is to protect and improve the health of their communities. Health workers are all the people engaged in actions whose

primary intent is to enhance health. Their job entails caring for the sick and injured. Their job is essential because they contribute to quality patient care and health system strengthening. Health workers include: medical doctors, nurses, dentists, laboratory technicians, pharmacist, emergency medical personnel (ambulance) and students undergoing practical training of the mentioned professions. In the process of caring for the sick, they are prone to being infected by the patients who are carrying infectious diseases.

The rights of the health worker are also important as his job does not strip him of his humanity. The health worker's expertise is needed at times of epidemics for the survival of the community and the human race as a whole. It is important to ask - Can the need of the health worker's expertise for the survival of the community override the health worker's rights? Though the health worker's expertise is needed during the corona virus pandemic, they also have rights which should be protected. The National Health Act has provided for the rights of the medical personnel while carrying out their duties. Section 21 of the National Health Act provides as follows:

- (1) Subject to any applicable law, the head of the health establishment concerned may in accordance with any guideline determined by the Minister, Commissioner or any other appropriate authority, impose conditions on the services that may be rendered by a health care provider or health worker on the basis of health status except if the health personnel claims a conscientious exemption.
- (2) Subject to any applicable law, every health establishment shall implement measures to minimise-
 - (a) injury or damage to the person and property of health care personnel working at that establishment ; and
 - (b) disease transmission.
- (3) without prejudice to section 19(1) of this Act and, except for psychiatric patients, a health care provider may refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her, and in such case the health care provider should report the incident to the appropriate authority.

The head of a health establishment may impose conditions on services that may be rendered by a health care provider or health worker on the basis of health status except if the health personnel claims a conscientious exemption. This means that the health worker may refuse to treat the patient.

Section 21(2) provides that the health establishment may implement measures to minimize injury or damage to the person or property of the health care personnel working at the establishment and also minimize disease transmission. The health establishment is under the obligation to implement measures that will minimize the chances of the health worker contracting corona virus by providing protecting gears, sterilizing equipment so that the health care provider will not be in a dilemma between saving his life by turning away his patient and risking transmitting the virus by treating the patient without protective

gears and sterilization measures. This is in the best interest of the health worker. Though the health worker has an obligation to his patients, he mustn't be put in a situation where his health is put at risk by preventable threats while performing those obligations. The health worker is also entitled to rights as enshrined in the constitution.

The Society

Gleaning through the statutory provisions as well as case laws for the protection of the patient and the health worker, it is apparent that the law offers a higher level of protection for the society. We will reproduce a few of those provisions to buttress this point. Section 35 (e) provides for personal liberty except 'the case of persons suffering from infectious or contagious disease....' The fact that the law specifically mentions the words 'infectious' and 'contagious' by necessary rule of interpretation¹⁵ shows that any other diseases that do not qualify as such are excluded.

We have already established the infectious nature of the corona virus. A disease is said to be infectious if it is capable of transmission from one person to another, usually through the air breathed. It is therefore obvious that the reason the law would restrict the right of a patient infected with corona virus is to protect any member of the society from contracting the virus. One is the right of confidentiality enjoyed by a patient. Section 23(2) (e) of the National Health Act provides that no person may disclose any information disclosed by a patient unless 'non-disclosure of the information represents a serious threat to public health'. Again, the society is put ahead of the patient.

In *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*,¹⁶ more elaborately discussed above, Emmanuel Olayinka Ayoola JSC captures the place of the society in case of a conflict between a patient's right and that of the society in these words: '...the courts are the institution society has agreed to invest with the responsibility of balancing conflicting interests in a way as to ensure the fullness of liberty without destroying the existence and stability of society itself.' This means the existence and stability of the society takes precedence over any individual's right.

To go on and on is to attempt to reproduce what we discussed above where we established authoritatively that all the authorities providing for the rights of a patient have created exceptions in the enjoyment of those rights where the interest of the society is contemplated.

Conclusion

From the foregoing, it is clear that persons infected with the corona virus enjoy certain rights which are provided for and protected by the law. These include the right to personal liberty, privacy, freedom of thought conscience and religion as well as the right to informed consent as may be necessary for treatment. It is also true that the health worker is not devoid of statutory protection while treating persons infected with the virus. The law insist first on the protection of the health

¹⁵ Expression unisestexclusioalterius- meaning the express mention of one thing excludes any other thing not mentioned.

¹⁶Supra

worker as a condition precedent for medical care. This is to ensure that his health is not jeopardized in the course of treating infected persons. The next obvious place of interest is the state or the society. Looking at the mode of transmission of the virus which is mainly from person to person, as well as the deadly nature of the virus, it is necessary that the society be protected as well. Hence, an infected person and a health worker are permitted by the law to enjoy the rights outlined in our discussions only in the absence of a clear and compelling overriding state interest. It is expedient to reiterate that the law exists to guarantee fullness of liberty only when there is no danger to public interest. Thus, in the fight to contain the corona virus, the interest of the state overrides any other interest.

Recommendations

Haven juxtaposed the rights of a patient infected with the corona virus and that of the society and established that both have rights which are recognised and protected by the law, we proffer the following recommendations for the protection of these rights with minimum conflict.

1. Health Act should be amended to include a provision criminalizing the treatment of any patient without first of disclosing to the patient the rights he is guaranteed under the law. The law should require this disclosure to be in writing to minimise future conflicts.
2. The amended Act should draw inspiration from America's Patients Self Determination Act 1990 (PSDA) by mandating that hospitals, skilled nursing facilities, hospice organizations and health organizations involve patients in decisions making concerning the medical care they receive and asked in advanced directives, and to document any wishes the patients might have with regard to the care they want or do not want. Also, there should be no discrimination in any healthcare organization against any patient putting forth advanced directives. It should mandate that patient's advanced directives be implemented, if necessary, as far as they are legally valid and permissible.
3. It should equally criminalize any non-disclosure on the ^{part} path of a patient which jeopardizes public interest.