

**LEGAL IMPERATIVE FOR PATIENTS' SAFETY UNDER COVID-19 CARE
AND TREATMENT PROTOCOL IN NIGERIA***

Abstract

The principle of patients' safety is fundamental to any modern health care system in the world today. It seeks to ensure that patients get adequate attention and prevention of any adverse physical, social, emotional or psychological events due to medical errors or inadequate medical facilities or improper environment while undergoing treatment in a health facility. In Nigeria this principle is more adhered to in breach than in observance in healthcare delivery and, particularly, in the care and treatment protocols of the COVID-19 patients. In this paper, attempt is made to espouse the general principle of patients' safety and to set out the law, the exceptions and the various aspects of violation of the principles of patients' safety in the care and treatment of Covid-19 patients in Nigeria. A case is finally made for the establishment of a legal framework for patients' safety in Nigeria to enhance the application of the principle in Nigerian healthcare delivery system and particularly in the treatment and care of the Covid-19 patients.

Keywords: Patients, Protocols, COVID-19, Safety, Publi.

1. Introduction

Patient safety is an emerging concept in the Nigerian healthcare system.¹ It is a modern field of health science that gives adequate attention to prevention of adverse events and medical errors associated with healthcare procedures. It is also, described as the cornerstone of high-quality health care,² which guarantees patient centred care. In the bid to contain with iatrogenic infections, the World Health Organisation (WHO) found that non-practice of hand hygiene by the health workers in the medical facilities was the major cause of infection transmission and thereby issued a guideline on how to improve the practice of hand hygiene (hand washing) by the health workers while attending to patients so as to halt the transmission of such infections.³ Again, in order to reduce medical errors and adverse events in surgical procedures, WHO provided Safety Surgical Checklists (SSC) to be performed by surgeons before and after surgical operations.⁴ Hand hygiene and sterilizing of medical instruments by the healthcare providers, are therefore the primary solution to eliminating iatrogenic infections in the healthcare facilities. The outbreak of corona virus (covid-19) pandemic, which has claimed about 259 (Nigeria) and 357,736(globally) lives as at 29 May, 2020 left the humanity in state of socio-economic quagmire. The media houses both local and international are awash with reportage on Covid-19 pandemic, its challenges and effort to contain it. The WHO is effectively collaborating with the international community in its effort to ensure that the transmission of the disease is reduced and the vaccine for its prevention is developed. As part of the efforts to contain the transmission of the virus, WHO issued Guidelines/Protocols on prevention of transmission, as well as the treatment of Covid-19 patients. The Guidelines has been generally adopted by States affected by the pandemic including Nigeria, though each country modifies it to suit its peculiar circumstances. In Nigeria, the Nigeria Centre for Disease Control (NCDC), in line with the WHO Guidelines has issued the Nigerian version of the Covid-19 prevention and treatment protocols. Patients' rights violations, unethical practices of health workers, ill treatment and lack of adequate healthcare facilities for the Covid-19 patients at the treatment centres, have resulted in protests, abscondments from treatment centres, and complaints against NCDC, and the Presidential Task Force (PTF) especially during their media briefings. The

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¹ C Onyemelukwe, 'Patient Safety in Nigeria: An Emergent Concept' in J Tingle and others, *Global Patient Safety: Law, Policy and Practice* (London: Routledge Taylor & Francis Group 2019) 205.

² P H Mitchel, 'Patient Safety and Quality: An Evidence-Based Handbook for Nurses' (1) 4 <<https://www.ncbi.nlm.nih.gov/books/NBK2681/>> accessed 19 May, 2020.

³ <<https://www.who.int/gpsc/5may/tools/9789241597906/en/>> accessed 15 May, 2020.

⁴ <<https://www.who.int/patientsafety/safesurgery/checklist/en/>> accessed 15 May, 2020

foregoing is a clear indication that Nigerian healthcare system is yet to fully implement patients' safety principles in her healthcare delivery.

This paper is an *exposé* on patients' safety with special attention to the ethical and legal rights of Covid-19 pandemic patients receiving care and treatment at the isolation centres. The paper advocates that with the Covid – 19 patients experience, it is the right time to develop a legal framework for patient safety in the Nigeria healthcare system and consequently initiate full implementation of patient safety practices in the treatment of Covid – 19 patients at the treatment centres.

2. Understanding Patient Safety

According to WHO, Patient Safety is 'the science of eliminating the risk to patient's health during medical treatment.'⁵ The central pillar of patient safety is the ability to understand causes of medical errors and proffering solution to them.⁶ Patient safety is relatively a new discipline in the healthcare science, it is aimed at globally preventing medical errors, which may result in adverse health events in health facilities. Prevention of nosocomial⁷ infections was its first objective, but later extended to prevention of medical errors in the patients' care. The principle of '*primum non nocere*' (first do no harm) has always been the intention of every physician.⁸ However, nosocomial infections or health associated infections and medical errors have remained inevitable in medical practice.⁹ Fortunately, the 19th century discovery by Pasteur Louis that germs are the genesis of infectious diseases, which was accepted by the global scientific community, became very relevant in the course of discovering the preventive mechanism for nosocomial infections.¹⁰ It was therefore established that, proper washing of hands and sterilizing of medical instruments by the doctors and allied medical professionals would reduce the transmission of such infections.¹¹ Failure by the physicians to adhere to hand hygiene may expose the patient to nosocomial infection and may lead to permanent disability or death.

In order to prevent transmission of the nosocomial infection in the patients' care WHO came up with two campaigns to promote the patient safety agenda. In 2005 'Cleaner Care is Safer Care' was introduced to obviate the first Patient Safety Challenge by reducing the risk of nosocomial infections through a good standard of hand hygiene.¹² In 2009, the second Global Patient Safety Challenge of 'Safe Surgery Saves Lives' campaign was introduced to reduce the rate of medical errors during surgery, by complying with surgical checklist by the surgical team.¹³ The Safety Surgical Checklist launched in 2008 by WHO was to be observed by surgeons before, during and after surgery to reduce medical errors.¹⁴ Basically infections whether nosocomial or Covid-19 are all controllable by hand hygiene, which is in line with prevention and treatment protocol to combat the present pandemic. Patients' safety does not end just with prevention of healthcare related infections and medical errors, since 'health is a state of complete physical, mental, and social wellbeing and not merely the absence of disease or infirmity.'¹⁵ This means that patients' safety extends to psychological, emotional, sociological, and environmental safety. Human being as composite being needs interaction with his/her environment in order to attain a state of complete wellbeing. In line with the above, physical environment like the medical facilities plays a significant role in patients' recovery.¹⁶

⁵ <<https://worldwide.saraya.com/who-patient-safety>> accessed 14 May, 2020.

⁶ <<https://worldwide.saraya.com/who-patient-safety?id=126>> accessed 14 May, 2020.

⁷ Healthcare associated infections or Hospital acquired infections

⁸ <<https://www.health.harvard.edu/blog/first-do-no-harm-201510138421>> accessed 14 May, 2020.

⁹ Hassan Ahmed Khan et al. 'Nosocomial infections: Epidemiology, prevention, control and surveillance' in *Asian Pac J Trop Biomed* 2017 1.

¹⁰ <<https://www.sciencehistory.org/historical-profile/louis-pasteur>> accessed 15 May, 2020.

¹¹ <<https://www.who.int/surgery/Chapter2.pdf?ua=1>> accessed 15 May, 2020.

¹² <<https://worldwide.saraya.com/who-patient-safety?id=127>> accessed 15 May, 2020.

¹³ <<https://worldwide.saraya.com/who-patient-safety?id=127>> accessed 14 May, 2020.

¹⁴ <<https://worldwide.saraya.com/who-patient-safety?id=134>> accessed 14 May, 2020.

¹⁵ WHO Preamble to the constitution of the World Health Organization as adopted by the International Health Conference. New York: 19e22 June, 1946; 1948; signed on 22 July 1946 by the representatives of 6 states (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

¹⁶ E R C M Huisman and others, 'Healing environment: A review of the impact of physical environmental factors on users' in *Building and Environment* (58) 2012 70 <<https://www.researchgate.net/publication/23600n0806>> accessed 20 May 2020 Huisman and others *ibid*

3. Protocol for Prevention and Treatment of Covid-19 Patients

On the 29th day of February, 2020 the Nigeria Centre for Disease and Control (NCDC), issued a protocol in line with the WHO Guideline for Prevention and Control of Covid-19 Infection as well as patients' care at the treatment centres.¹⁷ For ease of understanding, the protocol is categorized into two phases thus: preventive mechanisms and medical care for Covid-19 patients at the treatment centres. In a nutshell, the preventive mechanisms include hand hygiene by washing of hands with soap at least 15 seconds; use of alcohol-based sanitizer; proper wearing of face masks; social distancing, observing at least 1-2 metres apart; avoiding crowded places; and avoiding handshakes; self-isolation for about 14 days after having contact with a suspected case and seeking the attention of NCDC¹⁸ on suspicion of Covid – 19 symptoms.

In line with the preventive measures, the Federal Government, joined by state governments issued an order of lockdown prohibiting all public gathering in some states in Nigeria which affected schools, religious places of worships, air and land transportation, markets, etc.¹⁹ These orders were later published as Covid – 19 Regulations 1,2 &3 issued by the President. The second phase of the Guidelines is where the patient exhibits the symptoms of covid-19, he/she 'should be immediately isolated'²⁰ and his/her movement automatically restricted. The health care workers are enjoined to apply a standard precautions for all patients at all times,²¹ by protecting themselves from contacting the infections from the patients by adhering to '5 moments'²² of hand hygiene and wearing their Personal Protective Equipment (PPE) properly.²³ As part of a comprehensive strategy, case identification, isolation, testing, care, and contact tracing and quarantine, are critical activities to reduce transmission and control of the pandemic.²⁴

4. General Rights of Patients in Medical Care and Treatment

Patients' Rights to Autonomy, Self-Determination and Informed Consent

It is the general principle of Medical Law Ethics, that in order to guarantee patient safety, an adult patient in a good state of mind possesses the right of autonomy, self-determination,²⁵ and right to give an informed consent to his medical treatment²⁶ Disclosure of the treatment procedure, which includes the risks and benefits therein, will arm the patient with sufficient information to make an informed medical decisions. Right of autonomy is also expressed in the patient's right to participate in his/her own treatment decisions,²⁷ and right of choice of hospital and medical professionals.²⁸ The Constitution of the Federal Republic of Nigeria also provided for these rights as freedom of expression,²⁹ right to privacy³⁰ and right to the freedom of thought, conscience and religion.³¹ It is the fundamental principle of medical practice for the patient to give or

¹⁷ Infection Prevention and Control Recommendations During Health Care When Covid-19 is Suspected

¹⁸ <http://https://ncdc.gov.ng/themes/common/docs/protocols/172_1583044210.pdf> accessed 15 May, 2020.

¹⁹ <<https://covid19.ncdc.gov.ng/media/archives/PTF-COVID-19-Guidance-on-implementation-of-lockdown-policy-FINAL.docx-2.pdf>> accessed 15 May, 2020.

²⁰ Infection Prevention and Control Recommendations During Health Care When Covid-19 is Suspected

²¹ Ibid 5.

²² Before touching a patient, before clean/aseptic procedures, after body fluid exposure/risk, after touching a patient, and after touching patient surroundings.

²³ <https://covid19.ncdc.gov.ng/media/archives/PERSONAL_PROTECTIVE_EQUIPMENT_RECOMMENDATIONS_DURING_HEALTHCARE_DELIVERY.pdf> accessed 14 May, 2020.

²⁴ World Health Organization. Critical preparedness, readiness and response actions for COVID-19 (Interim Guidance) <<https://www.who.int/publications-detail/critical-preparedness-readiness-and-response-actions-for-covid-19>> accessed 14 May, 2020.

²⁵ <<https://www.bma.org.uk/advice-and-support/ethics/medical-students/ethics-toolkit-for-medical-students/autonomy-or-self-determination>> accessed 20 April 2020.

²⁶ U Abugu, *Principles and Practice of Medical Law and Ethics* (Abuja: Pagelink Nigeria Limited 2018) 181.

²⁷ S I Salihu and others, 'Autonomy, Self Determination and Paternalistic Medical Practice in Nigeria: Some Suggested Limitations' in *UNIMAID Journal of Private and Property law* (2) (1) 2017 101.

²⁸ WMA Council Session, Oslo, Norway, Principle 2.

²⁹ CFRN s 39.

³⁰ CFRN s 37.

³¹ CFRN s 38.

withhold his/her consent to treatment.³² Right to consent to treatment is equivalent to right to refusal of same, which is an expression of respect for individual's right of autonomy. Patients' consent to treatment legalizes the action of the physician.³³ It is therefore unlawful to physically invade the person of another without his/her consent. American Justice Cardozo succinctly ruled that, 'every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without the patient's consent commit an assault for which he is liable in damages.'³⁴ This simply reiterates that '...it is the patient, not the doctor, who decides whether surgery will be performed, where it will be done, when it will be done, and by whom it will be done.'³⁵ Consent to treatment is provided in the National Health Act,³⁶ the case laws³⁷ and the Code of Medical Ethics in Nigeria.³⁸

Right of Confidentiality and Access to Medical Records

Every patient has the right of confidentiality and his medical records cannot be assessed by anyone except for therapeutic reasons.³⁹ It is therefore imperative that healthcare providers should respect patients' medical secrets as a fundamental principle of medical law and ethics.⁴⁰ The International Code of Medical Ethics,⁴¹ in support of the above rights, provides that 'a Physician shall preserve absolute confidentiality on all he knows about his patient even after the patient has died.' The Constitution,⁴² National Health Act⁴³ as well as Code of Medical Ethics in Nigeria⁴⁴ recognize confidentiality right and thus made ample provisions for it. Every information given by the patient to a medical professional is privileged and should be treated as such.⁴⁵ Also, physicians and other healthcare providers profess to this right in their Physicians' Oath (Hippocratic Oath) which every physician subscribes to keep on the day he/she was admitted into the medical profession. In the Oath, the physician undertakes thus: 'I will respect the secrets which are confided in me, even after the patient has died.'⁴⁶ It is only the informed consent of the patient in writing that can legalise disclosing patients' secret to the third party.⁴⁷

Right to full Disclosure of Patient's Health Status and Treatment

The patient has the right to full disclosure of all the relevant information pertaining to the status and necessary treatment to be administered to him/her by the healthcare provider.⁴⁸ Healthcare providers include physicians, nurses, medical facility management and all categories of medical professionals. In disclosure, the 'best interest of the patient' is of paramount consideration.⁴⁹ This is in line with the therapeutic privilege, which empowers the doctor to withhold information where he considers the patient psychologically unstable to withstand the information to be disclosed to him without worsening his/her state of health, especially when the information is on the negative.⁵⁰ In Nigeria, the physician shall disclose to the patient, the range of diagnostic procedures and the treatment options available to

³² Irwin Kleinman, 'The Right to Refuse Treatment: Ethical Considerations for the Patient' in *Mcan Med Assoc J* (144) (10) 1991 1219.

³³ Abugu, (n26) 179.

³⁴ *Schloendorff v Society of New York Hospital* 105 NE92(NY,1914)

³⁵ *Allan v New Mount Sinai Hospital* (1980) 109 d LR (3d.)632

³⁶ NHA s 23.

³⁷ *Okekearu v Tanko* (2002) 15 NWLR (pt. 791) 657 SC

³⁸ Medical and Dental Council of Nigeria, Code of Medical Ethics in Nigeria 2008, (CME) Rule 21; Appendix 3A (n38,77 78

³⁹ NHA ss 27 and 28

⁴⁰U Abugu, 'Patients' Confidentiality Issues In Covid -19 Pandemic' <https://web.facebook.com/Lifeline-Centre/2332429950366971/?_rdc=1&_rdr> accessed 20 May, 2020.

⁴¹ Adopted by the World Medical Association at the World Medical Assembly in London in October 1949.

⁴² CFRN s37, Right to Privacy

⁴³ NHA s 26.

⁴⁴ Code of Medical Ethics (CME) 2008, Rule 44

⁴⁵ CME Rule 44

⁴⁶ Hippocratic Oath adopted by Geneva Declaration by the World Medical Association in 1948.

⁴⁷ NHA s.26(2) (a), 29; CME, Rule 44

⁴⁸ NHA s 23

⁴⁹ NHA s 23 (1) (a)

⁵⁰ Abugu, (n26) 182; *Scholendorft v Society of New York Hospital, sideway v Board of Governors of Bethlem Royal Hospital*

him/her.⁵¹ It is incumbent on the healthcare provider, to explain to the patient the benefits, risks, costs and consequences generally associated with each option of treatment.⁵² Right to full disclosure extends to the use of language that the patient will understand in the diagnostic processes, so as to avail patient the latitude for making an informed decision.⁵³

Right to Freedom of Movement

Every person including Covid-19 Patients has the right to freely move around in Nigeria without restrictions.⁵⁴ This means that nobody except within the provisions of the law can restrict the right of the citizen to move in and out of Nigeria. In respect of the present Covid-19 pandemic, it is obvious that there is public health and safety considerations that justify the relaxation of this provision of the law.⁵⁵ This is evident in the national lockdown, sit-at-home orders, quarantine and self-isolation put in place by the government. The essence of these restrictions is to promote patients' safety and ensure that the transmission of the virus is prevented or contained.

Right to Personal Liberty

Every person is entitled to his/her personal liberty which shall not be denied of him/her except in some instances permitted by the law.⁵⁶ A Covid-19 patient is entitled to this right also. However, it is evident that a Covid-19 patient is coercively tested, compulsorily quarantined and forcefully detained and treated at the treatment Centre without the patients consent.⁵⁷ Though this right is not an absolute right, its derogation must be in line with the provision of the law reasonably justifiable in a democratic society.⁵⁸

Patient Right of peaceful Assembly, Association and Religion

Every person has the right to freely assemble peacefully and associate with one another.⁵⁹ Freedom of worship is inherent in the fundamental rights of every person.⁶⁰ The reality of Covid-19 pandemic has deprived Covid-19 patients and almost the whole world temporarily of these rights, wherein through Covid-19 Regulations and Guidelines from the WHO, Nigeria Centre for Disease Control and the Regulations of the Federal Government and State Governments imposed lockdown, and social distancing and other measures on the people.

5. Circumstances that Allow for Restricting the Rights of Covid-19 Patients

The law is that human rights are inalienable.⁶¹ The exceptions provided by the constitution and the international human right instruments provide for derogation from the fundamental rights of a person under any of the following grounds: interest of defence, public safety, public order, public morality and public health; or for the sake of protecting the rights and freedom of others.⁶² For the Purpose of this paper, we shall concentrate on public safety and public health; and protection of right and freedom of other persons.

Public Health and Safety

Patients' constitutional rights to privacy, religious worship, expression and press, peaceful assembly and association, personal liberty and freedom of movement are restricted by overriding public interest. In order to contain the spread of Covid-19, the State steps in to ensure that lives of the citizens are

⁵¹ NHA, s 23(1)(b)

⁵² NHA, s 23(1)(c)

⁵³ NHA, S 23 (2)

⁵⁴ CFRN s 42

⁵⁵ CFRN s 45(1)

⁵⁶ CFRN s 35

⁵⁷U Abugu, 'An Assessment of the Legality of the Covid-19 Regulations And Policies', 1 May, 2020 at <[https:// the nigerianlawyer.com/an-assessment-of-the -legality-of-the-covid-19-regulations-and-policies-by-prof-uwakwe-abugu/](https://the-nigerianlawyer.com/an-assessment-of-the-legality-of-the-covid-19-regulations-and-policies-by-prof-uwakwe-abugu/)> accessed 17 May,2020.

⁵⁸ CFRN s 45(2); *Okafor v. Lagos State Govt & Anor* (2016) LPELR-41066(CA)

⁵⁹ CFRN s 40

⁶⁰ CFRN s 38

⁶¹ ICCPR art 5; CFRN s45 (1)

⁶² CFRN s 1(a) (b)

safeguarded, by issuing Covid-19 Regulations. The legality of the Regulations by the federal and state governments remains in doubt due to inelegant draftsmanship. The position of some schools of thought that ‘the Covid-19 Regulations are substantively ultra vires,’⁶³ may be true but the patients’ safety advocates, stand for saving lives and prevention of the spread of the pandemic. Restricting the rights of autonomy and self-determination of the patients by the state must be for the good interest of the patient and the public and rooted in the defence of necessity. The essence of it is to prevent the patients from harmful and non-beneficial choices of treatment.⁶⁴ In times of pandemic, the choice of the patients who lack capacity (mental, unconscious or a minor) or a choice contrary to principles of medical ethics (i.e. euthanasia) will be rejected.⁶⁵ The right to choice of physicians is restricted, due to limited number of medical practitioners trained to handle infectious disease cases. The restriction to choice of medical facilities may extend to private hospitals that do not have facilities to take care of the Covid-19 patients.⁶⁶ In line with Public health and safety, the patients’ right of consent to treatment may be waived so as to protect the third party and the society from being infected with the contagious disease.⁶⁷ As a result of the above, the right of refusal of treatment will also be restricted.⁶⁸ In such situations principle of necessity to save life is invoked and strict compliance with the law is relaxed.⁶⁹

Right to confidentiality and access to medical records may be relaxed, where the court or any statute requires disclosure to be made;⁷⁰ in the case of a minor, at the request of a parent or guardian;⁷¹ in the case of a person who is unable to grant consent, upon the request of a guardian or representative,⁷² or where the access to patient’s health records or disclosure is in the interest of the user;⁷³ and where non-disclosure of the information represents a serious threat to public health.⁷⁴ The emphasis here lies on the serious threat to public health, which Covid-19 presents. The effort to protect the patient or the community from danger, or spread of infections does not mean that the patient should be ignored and effort not made to seek his/her consent before the confidential disclosure. However, where statutory notification of disease is involved, the patients’ approval of the disclosure may not be required.⁷⁵ The Code of Medical Ethics in Nigeria 2008 also admonishes practitioners that in situations where the disclosure of the patients’ health information is for the purpose of education, research monitoring, epidemiology, public health surveillance, clinical audit administration and planning, the strict rule of non-disclosure should be made flexible but must adhere to the following guidelines: (a) the medical practitioner should seek the patients’ consent to disclose any information whenever possible; (b) whether or not you judge that the patient can be identified from the disclosure ‘Anonymise’ the data where anonymous data will serve the purpose; and (c) keep the disclosure to the minimum necessary.⁷⁶

Protecting the Rights and Freedom of Other Persons

Alfred George Gardiner opined that ‘a person’s freedom ends where another person’s freedom begins.’⁷⁷ This is an indirect way of saying that, ‘a citizen’s rights end where another citizen’s begin.’⁷⁸

⁶³ Abugu, (n57).

⁶⁴ I Goold and J Herring, *Great Debates in Medical Law and Ethics* (2nd edn London: Palgrave 2018) 6.

⁶⁵ <<https://hospitalnews.com/are-there-limits-to-a-patients-autonomy-in-making-health-care-decisions/>> accessed 10 May 2020

⁶⁶ <<https://www.thisdaylive.com/index.php/2020/04/16/concerns-mount-over-treatment-of-covid-19-patients-by-private-hospitals/>> accessed 18 May 2020.

⁶⁷ G T Laurie and others, *Mason & McCall Smith’s Law & Medical Ethics* (10th edn, Oxford: Oxford University Press 2016) 69.

⁶⁸ NHA ss 20(2) & 23(d)

⁶⁹ NHA ss20 (2) & 23(d)

⁷⁰ NHA, s 26(2) (b)

⁷¹ NHA, s 26(2) (c)

⁷² NHA, s 26 (2) (e)

⁷³ NHA, s 27

⁷⁴ NHA, 26 (2) (e)

⁷⁵ CME, Rule 44

⁷⁶ CME Rule 44

⁷⁷ The famous poet Alfred George Gardiner in his work ‘Pebbles on the Seashore’, <<https://www.freepressjournal.in/analysis/conflict-of-rights-my-rights-end-where-yours-begins>> accessed 18 May 2020.

⁷⁸ Words of Shambhavi Ravishankar

The above assertions were also affirmed by, Justice Oliver Wendell Holmes, John Stuart Mill and Abraham Lincoln affirmed same.⁷⁹ In the light of the above, the right of a covid-19 pandemic patient may be restricted for the purpose of protecting the rights and freedom of other persons, who may be exposed to the disease.⁸⁰ The essence of this provision is to protect the third party from contacting the disease, which is to promote public health and safety and thereby guarantee patient safety. Patients' rights which are derived from the human rights are fundamental and should not be limited by anyone. To ensure compliance, the International Covenant on Civil and Political Rights (ICCPR) in clear terms provides that there shall be no restrictions or derogations to any of the fundamental human rights existing in any of the laws of the State parties on the ground that it is not provided in the ICCPR,⁸¹ which is reasonably justifiable in a democratic society.⁸² However, the constitution permits derogation from fundamental rights by any law made to protect national security, public order, public safety, public health, or morality and for the purposes of protecting the rights and freedom of others persons.⁸³

6. Patients' Safety in the Era of Covid-19 Pandemic Patients' Rights Violation

The best interest of the patient is the cornerstone of patients' safety. Since the outbreak of Covid-19 pandemic, countries of the world including Nigeria have been working tirelessly to contain with the spread of the virus and flatten the curve of its spread. The WHO, NCDC, Federal Ministry of Health and Presidential Tax Force (PTF) on Covid-19, issued Protocols/Guidelines for the treatment of Covid-19 patients. Nigeria has established about 27 treatment centres across the nation where patients are treated. Surprisingly, the patient's care at those treatment centres is marred with a lot of cases of patients' right violations and lack of adequate care. One of the cases in point is the case of Susan Idoko-Okpe Lawani, a purported Covid-19 index case in Benue state, who was claimed to have tested positive to the virus and was detained for 58 days at the treatment centre without any medication.⁸⁴ Another related case is a 36 year's old female who was detained for 17 days at a treatment centre in Delta State, but claimed she never tested positive to the virus.⁸⁵ In the same vein another shocking incident is that covid-19 patients at the treatment centre located in Gombe state staged a protest for lack of adequate care, lack of medication, lack of food, lack of medical practitioners to attend to them, etc.⁸⁶ Looking at the above scenarios it is evident that patient rights are not only violated but principles of patient safety have been grossly disregarded.

Considering the three cases referred above, there abound violations of patients' rights, disregard to fundamental principles of medical ethics and non-compliance with the patients' safety principles. The effect of patients' rights violation at the treatment centres is that the campaign to prevent the spread of covid-19 in Nigeria may be defeated. The fear of maltreatment, lack of adequate care, discrimination at the centres and stigmatization of patients at the treatment centres may discourage individuals to voluntarily present themselves for test and treatment. Also, the trauma and dehumanization experienced by persons at the treatment centres like case of Susan Idoko Okpe-Lawani, may lead to loss of trust in the process, which will not promote patients' safety drive. Again, there is noticeable violation of patients' rights to disclosure of relevant information particularly their health status as guaranteed under section 23 of the National Health Act, 2014. For instance, Susan Idoko Okpe-Lawani, she was tested three times without any of the results being given to her. It was at the request of the forth test that the woman revolted and made it a public issue in social media, leading to the intervention of legal

⁷⁹ <<https://www.rediff.com/news/column/my-rights-end-where-yours-begin/20170306.htm>> accessed 19 May 2020.

⁸⁰ CFRN s 45(1) (b)

⁸¹ ICCPR art 5 CFRN s45 (1)

⁸² CFRN s45 (1)

⁸³ ICCPR art 12 (3), art 18(3); CFRN s 45 1 (a) (b)

⁸⁴ 'Benue COVID-19 Index case, Susan Idoko released' May 20, 2020 <<https://www.pmnewsnigeria.com/2020/05/20/just-in-benue-covid-19-index-case-susan-idoko-released/>> accessed 17 May, 2020.

⁸⁵ 'COVID-19 is a scam, discharged Delta patient alleges' May 18, 2020 <<https://www.vanguardngr.com/2020/05/covid-19-is-a-scram-discharged-delta-patient-alleges/>> accessed 20 May, 2020.

⁸⁶ 'Protest rocks Gombe Community as COVID-19 Patients decry ill-treatment' 5 May, 2020.

<<https://guardian.ng/news/protest-rocks-gombe-community-as-covid-19-patients-decry-ill-treatment/>> accessed 17 May, 2020.

practitioners.⁸⁷ One of the consequences of the above violation of the safety and rights of Covid-19 patients is the reported incidence of some Covid-19 patients absconding from the treatment centres.

7. Legal Imperative for Patients' Safety in the Treatment of the Covid-19 Patients

The prevalence of the violation of the Covid-19 patients' rights and lack of adequate and timely medical intervention indicate that the principles of patient safety are not adhered to at the Covid-19 treatment centres in Nigeria. It is therefore pertinent at this time for the legislature to enact a law establishing a legal framework for patients' safety in Nigeria to ensure that the principles of patients' safety are applied in all the treatment centres in Nigeria. Codification of the patient safety principles will definitely assist in the care for the Covid-19 patients as well as improve the Nigeria healthcare sector. To ensure that patients' safety is achieved in the treatment centres across Nigeria, the National Human Rights Commission came up with 'Standard Minimum Guideline for the Human Rights of Covid-19 Patients in Treatment Centres in Nigeria, 2020. The primary objective of the document is to provide basic human right protection to the patients and other frontline health workers at the treatment centres.⁸⁸ The basic principle and the reason for the Guideline is to secure patients right to dignity of human person, ensure highest attainable standard of health, and to protect members of the public from infection.⁸⁹ Respect for the patient's rights by the healthcare givers is an expression of promoting patients' safety agenda in the healthcare delivery. In line with the above, the Guideline addressed the rights of patients at the treatment centres, which includes rights to: adequate and timely medication, equality and non-discrimination of covid-19 patients, dignity of person, mental well-being of patients and staff of treatment centres, access to adequate accommodation, access to food and water, religious observances, privacy and confidentiality, and access to communication and information.⁹⁰ The Guideline also cover the rights of vulnerable persons like infant and children, persons with disabilities, elderly persons, patients in the intensive care units, patients participating in clinical and drug trials.⁹¹ The above rights do not fall from the moon but derive their power from various sections of the constitution.⁹² It is therefore obligatory on the government, health authorities and the management of each treatment centres to ensure perfect implementation of the rights of covid-19 patients. Adequate implementation of the guidelines will enhance patient safety and guarantee quality healthcare delivery. The guideline came at the time it is absolutely needed, and the provisions are very critical in for the achievement of patient safety agenda.

8. Conclusion

Having considered the right of the covid-19 patients and the incessant breaches of the rights, it has become imperative that patient safety principles should be adopted and practiced in order to achieve quality healthcare system especially in the care of Covid-19 patients in the treatment centres in Nigeria. However, this goal may not be fully achieved unless a legal framework on the patient safety is developed through a legislative process. Though NCDC has issued Treatment protocols, and National Human Rights Commission issued the Standard Minimum Guideline for the Human Rights of Covid-19 Patients in Treatment Centres in Nigeria, 2020, yet a lot of patients' rights have been violated and are still being violated on a daily basis at the centres. It is therefore necessary that patient safety law should be passed by the legislature to establish a comprehensive legal framework for patients' safety to protect as well as enhance the enforcement of the rights of Covid-19 patients and other patients in Nigeria.

⁸⁷ (n84)

⁸⁸ National Human Rights Commission (NHRC), Standard Minimum Guidelines for the Human Rights of Covid-19 Patients in Treatment Centres in Nigeria(2020), Part 1

⁸⁹ Ibid, para. 3

⁹⁰ Ibid, para. 2

⁹¹ Ibid, para. 3

⁹² CFRN 1999 ss 33-46.