Rights of healthcare personnel under the Nigerian law

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Abstract

Background: The rights of Health Care Personnel (HCP) is rarely discussed among authors unlike rights of patient. In many of the literatures, emphasis was always on the rights of patient as if other rights were not in existence. In other words, it is as if only patients have rights but not the HCP. Therefore, it is not surprising that caregivers, in the course of providing care to patient, were subjected to ridicule, verbal abuse, physical or sexual assault from both the patients and their relatives. But, in reality, HCP are human beings like the patient and their relatives, and are entitled also to rights that are alienable, rights that were imposed by the state and other civil rights meant for them.

Methods: The research methodology used here is doctrinaire. Here, relevant primary sources – national statutes (i.e., the 1999 Constitution of Federal Republic of Nigeria [CFRN], National Health Act [NHA] etc.), international declaration (i.e., Universal Declaration of Right [UDHR] etc.), international treaties/conventions (i.e., International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Culture Rights (ICESCR), International Labour Organisation (ILO) convention etc.) – were explored. In addition, secondary sources that include available literatures supported with some applicable court cases were also explored in discussing the topic.

Results: All the relevant legal regimes explored indicated that, under the law, rights of HCP are well provided for. In fact, based on the principle of jural relation existing between rights and duty (the consequence of which guarantee their reciprocity), the government, patients and relatives of patients are mandated by law to protect these rights of the caregivers.

Conclusion: It was shown that the rights were not just provided for but were also a kind that are so important that a violation of which can be enforced through the machinery of the law. Put differently, there are substantial evidence to show that HCP are entitled to some enforceable rights that should not be violated or interfered with. And where such rights are denied or violated, the HCP are given the power to enforce it through a litigation or other process provided by the law.

Key words: caregiver, healthcare, personnel, right.

Introduction

Healthcare personnel (HCP) are group of health professionals trained with necessary skills on how to provide health/medical care to those in need of it. While doing this, some HCP who have had their rights violated, have sought legal solution.[1] Many are working under difficult conditions (like lack of adequate equipment, poor electricity supply and inadequate staffing, etc.). they are molested, shouted at and sometimes manhandled by patients or their relatives, under the guise of being less caring, incompetent or negligent.

On many occasions, the HCP are involved in litigation with very little option available to

extricate themselves from false accusation levelled against them. Many have run away, thinking, running away from the problem would have solved it instead of asking for their own rights. So, it is refreshing to know that there are many laws protecting the rights of the HCP. These include, but not limited to, right to life, right to protection from injury in place of work, right to fair pay and safe working conditions, among others. These rights, as outlined in legal documents, are not only available but are also enforceable at the same time against anyone, who infringed on them without legal justification.

To show the nature of these rights, they are, for the purpose of identification, description and analysis, classified into perfect or imperfect rights at one time, and positive and negative rights at some other time. All these rights were then provided under the law as specific rights as found in various legal regimes.[2] We shall, for the purpose of analysis, discuss some of these provided rights in this paper in the following lines.

Methodology/Results

This paper adopted a doctrinaire research methodology in discussing it. Some primary sources that include national statutes (like the 1999 Constitution of Federal Republic of Nigeria [CFRN],[3] National Health Act [NHA] etc.), international declaration (like Universal Declaration of Rights [UDHR][5] etc.), international conventions (like the International Covenant on Civil and Political Rights [ICCPR],[6] International Covenant on Economic, Social and Culture Rights [ICESCR],[7] International Labour Organization [ILO] convention[8] etc., were consulted.

In addition, secondary sources like relevant literatures and court cases were explored. The result of these searches indicate there were enough legal provisions to protect the rights of HCP,[8] some of which were already decided by court cases - local and international. All these reaffirmed the fact that the HCP[5] are not only protected by the law but empowered as well to seek redress through the machinery of the law whenever their rights are trampled upon.

Definitions of Terms

In discussing this paper, some technical terms need to be defined for the readers to understand the line of argument of the discussion and context from which they appear. The first word, "right" used here is not about right as in its literary term describing something "correct", "having correct opinion," something "proper" or "morally good," "usual" etc.[9] On the contrary, rights in this paper is about a legal right by the law, by Salmond defines this as,

right to mean, “an interest recognised and protected by a rule of legal justice - an interest, the violation of which would be a legal wrong to him whose interest it is, and respect for which is a legal duty.”[10]

As to the meaning of healthcare, Hornby defines it as “the service of providing medical care,[11] while according to the *Microsoft Encarta Dictionary*, it means “activities to maintain health: the provision of medical and related services aimed at maintaining good, health, especially through the prevention and treatment of disease.[12]

Healthcare giver is defined variously in different terms by law. The Interpretation Section, section (Sect.) 64 of NHA used three synonyms - "health care personnel," "health care provider" and "health worker" to define it. While analysing the phrases, “health care personnel" this was defined to mean “all caregiver whether healthcare providers or health workers.” As to "health care provider,” the section defines it as ‘a person providing health services under this Act or any other law.’ This term covered only those that provide specific health services like medical doctor, nurse, laboratory scientist, physiotherapist, pharmacist etc.[13]

The title “health worker” mentioned to be part of the HCRs in the Act, such individual means, ‘any person who is involved in the provision of health services to a user but does not include a health care provider’. Examples of health worker are cleaner, health attendant, health assistant etc., who help the healthcare service provider in giving healthcare to patients.[14]

Nature of Rights

Generally, rights, besides being correlated to duty, are discussed by Salmond and colleagues in so many ways vis-à-vis its nature and relativity.[15] As to the nature (which is the concern of this paper), we often say a right is a perfect right. In other words, right correspond to the perfect duty, and in a perfect duty we think of something not only recognised by law but also enforceable under it. In this case, the rights and duties are perfect as to no actions lie for their maintenance.[16] Thus, for instance, the right that an HCP is a human being and as such entitled to right to life is a perfect right. This is because if a perfect right is violated, a sanction is imposed. On the opposite, where the right is not perfect, it is said to be an imperfect right as it does not carry a sanction nor is it punishable when violated - like some moral right. For instance, a patient refuses to appreciate the HCP by thanking them for taking good care of him/her.[17]

There are also positive and negative rights. In the former, the subject is obliged to perform a duty to the recipient of the rights. That is, the law imposed a specific duty on the subject, which he/she must discharge to another person. For example, patient or his/her relative must protect the life of HCP because it is a positive law imposed on all the world. In negative rights, the patient or his relatives are restrained from act/omission that may affect the right of the caregiver, like for instance, they cannot deny him/her of right to freedom of thought, conscience and religion.[18]

The nature of rights can, as well, be described as real or personal rights. In real rights, this corresponds to a duty imposed upon all persons in general, as it is available against the whole world. These rights are more important than personal rights because of their generality. Thus, the right to privacy and confidentiality is a real right of HCP against the whole world and none has the right to interfere with it. As to personal right, they correspond to a duty imposed upon determinate individuals, and since it is available only against a particular person, such rights are regarded as positive right for instance, a HCP has personal right against an individual who to receive compensation if verbally abused by a patient or his/her relative.[19]

Rights of Health Care Personnel

From the above analysis, it becomes obvious that HCP are not only entitled to right but have power under the law to enforce the denied rights. In the following lines, we shall mention some of the rights belonging to the patients and protected by the law. These are:

a) Rights to Life – the right of an individual to live is sacrosanct, inalienable and non-derogable except based on the law.[20] This is clearly stated in Art. 3 of UDHR, Art. 6(1) ICCPR and at the national level, Sect. 33. (1) of the 1999 CFRN provided that: "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria."

It thus means that HCP's lives are immune from being taken illegally by anyone – be it patients or their relatives. In other words, this right is non derogable as no one can derogate it for any other purpose or reason without just cause allowed by the law. As such, no patient or any of his/her relative has power to threaten to kill or even attempt to kill a HCP as held in the case of *Bello v A. G. Oyo State*.[21]

b) Right to Respect of Human dignity – Sect. 34(1) of the CFRN maintained that every Nigerian (and the HCP are one) is entitled to respect for the dignity of his person, and in no way can such 'be subject to torture or to inhuman or degrading treatment.' In fact, he/she cannot be held in slavery or servitude; and cannot be required to perform forced or compulsory labour.'

This right is also protected under Article (Art.) 7 of the ICCPR and Art. 5 of UDHR. The combined reading of all these documents goes against a HCP forced to cover or run two or more shift at a time. Where this happens, this is a violation of their respect to human dignity and amounts to an inhuman and degrading treatment. This position is enunciated in the case of *Nemi v. A.G. Lagos State*.[22]

c) Right to Personal Liberty – by sect. 35. (1) (e) of the CFRN, the HCP is 'entitled to his personal liberty and cannot be deprived of such except '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. This same right is provided for under Article 9(1) ICCPR as right to liberty and security in similar term and so applicable both nationally and internationally.

d) Right to Privacy and family life – this right is provided under Sect. 37 of the CFRN stating that, "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected." The court in the Court of Appeal case of *Ezeadukwa* v. *Maduka*[23] held that this is a right protected under the constitution and such must be respected as such. Instances of the violation of this right include bugging of the phone of a HCP, intercepting and reading their letters, whatsup, e-mail, text messages, or other correspondence without lawful authorization. This right is also protected under the international convention under Article 17(1) ICCPR, and Article 12 ICESCR. Infact Article 17 of ICCPR states that:

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks."

The United Nation Human Right Committee (HRC) while interpreting the import of this article vis-à-vis the rights it tends to protect–especially in their General Comment 16, state as follows:

• The term "home" is to be understood to indicate the place where a person resides or carries out his usual occupation.

• Even regarding interferences that conform to the covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. Compliance with Article 17 requires that the integrity and confidentiality of correspondence should be guaranteed *de jure* and *de facto*. Surveillance, whether electronic or other; interceptions of telephonic, telegraphic, and other forms of communication; wiretapping; and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.

• The gathering and holding of personal information on computers, data banks, and other devices, whether by public authorities or by private individuals or bodies, must be regulated by law.

• The state is obliged to provide protection under the law against any unauthorized interferences with correspondence and to ensure strict and independent (ideally, judicial) regulation of any such practices, including wiretapping.

• Searches—of a home (and workplace) and of a person—should also be subject to appropriate safeguards.

• The protection of honour and reputation under Article 17 is probably limited to unlawful rather than arbitrary attacks—in other words, attacks that fail to comply with an established legal procedure.

Given the HRC's interpretation of "lawful" in the context of another ICCPR provision (Article 9[4]), the term may extend beyond domestic law.

- Professional duties of confidence, such as those undertaken by the medical profession, are an important aspect of the right to privacy, and any limitations on professional privilege must be specified in detail.

This right is not absolute, it has exception which are expected to be not just an excuse but must be genuine exception. Article 19(3) ICCPR provides that such exception includes the need for respect of the rights or reputations of others and for the protection of national security or of public order (*ordre public*), or of public health or morals.

e) Right to Freedom of Thought, Conscience and Religion – among the right is right to practice one's religion. Art. 18 of ICCPR and Art. 18 of UDHR at the international level, make provision for this right. In fact, in Nigeria, Sect. 38. (1) of the CFRN provides that "Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."

In the case of *Adamu v. A.G. Borno*[24] the Nigerian Court of Appeal held that this right is among the fundamental right given by the constitution to the people. Therefore, a HCP cannot be denied what he/she believes to be his/her thought, conscience and religion. As a matter of fact, the policy where Muslim girls or women being denied and harassed for wearing their head covering (*hijab*) has been reversed. A recent Supreme Court case between *Lagos State Government & Ors v. Asiya Abdulkareem*[25] has in 2022 been decided. It means the right to practice one' religion reaffirmed.

f) Right to Freedom of Expression – Art. 19 of the UDHR also provide for the enjoyment of this right. In fact, under the CFRN, Sect. 39(1) provides that: **"**Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference."[26]

Byrne et al gives instances of a senior health service manager who was dismissed after revealing that a hospital has been

purchasing unlicensed drugs, or state authorities trying to intervene to prevent employees from learning that their hospital contains dangerously high levels of radiation. In other words, the fact that hospital lacks vital hospital equipment or facilities - like mechanical ventilator, oxygen administration equipment etc., is a ground for expression of this information. Better still, where the above happen, Byrne et al add that the whistle-blowers within the medical profession could be protected from unlawful prosecution provided that the information they are seeking to put into the public domain cannot legitimately be restricted. The only exception is where the information are not true or may affect personal individual, who knows nothing about the allegation. In that wise, the law of defamation can be evoked to protect the rights and reputation of others.[27]

g) Right to Freedom of Association and Assembly – Sect. 40 of the CFRN gives every HCP this right, stating *inter alia* that**.** "(E)very person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests."[28] This provision is reiterated clearly in Art. 20 of UDHR, which states;

> *(1) Everyone has the right to freedom of peaceful assembly and association.*
> *(2) No one may be compelled to belong to an association.*

As such, it is not right for the hospital management, without any legal justification, to prevent a union from embarking on a rally to improve pay and conditions for health workers. This is because this right is among the fundamental human rights and except there is a real justification that borders on security or likely infliction of personal harm on individual or hospital facilities, such right remain applicable. Such instances of exception are reflected in other legal instruments. Thus, according to Byrne *et al.*:

> *Although freedom of assembly is not an absolute right, any restrictions on the ability of people to peacefully protest must be justified in line with the conditions explicitly stated in Article 21 of the ICCPR.*

Based on this reality, there is need to know the exception as provided under various legal instruments protecting this right. Some

of these exceptions are enunciated in Article 21 and 22 of ICCPR stating as follows:

Article 21**:** *The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

Article 22 *(3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*

Another form of protection for this right was provided for under the International Labour Organisation (ILO) Convention of 1948, especially *Convention 87 on the Freedom of Association and Protection of the Right to Organise*.[29] The content of the convention provides as follows:

Article 2: *Workers and employers, without distinction whatsoever; shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*

Article 3: (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4: Workers' and employers' organisations shall not be liable to be

dissolved or suspended by administrative authority.

Article 5: *Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.*

Medical Ethics in Nigeria provides that: Practitioners shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, and the nature of the environment in which to which to provide medical care. [30]

So, all sorts of patients – arsonists, serial killers, rapists, leaders of secret cults, or members of a criminal gang etc., were brought for treatment. This situation appears not to be binding because it was assumed not to be having teeth of the law. Although it was mentioned as a code of ethics, yet, by Sect. 10 (1) and (2) [31] of Interpretation Act, it is binding. In fact, the Supreme Court case of *Medical and Dental Practitioners Disciplinary Tribunal (MDPDT) v. Dr John Emewulu Nicholas Okonkwo*, held that the medical code is legally binding document[32]

To give this right more force of the law, in 2014, a new law, the National Health Act was passed which gave HCP the discretion to claim a conscientious exemption. This provide protection, as of right, to caregiver from not treating a patient he/she chooses not to treat. According to sect. 21 (1) of NHA.

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.

The word "conscientious," according to *Microsoft Encarta Dictionary*, means, "in accordance with somebody's accordance with somebody's conscience: governed by or done according to somebody's sense of right and wrong."

In other words, where a HCP felt that morally or legally he/she is not comfortable in proving a healthcare service to a patient, he has discretion under the law to claim a conscientious exemption. The only exception to this claim is where there is applicable law against such stance. Such instance is the case of emergency identified under sect. 2.6 of Code of ethics mentioned above. In such exception, the law imposed a positive right on HCP that a dying patient (who happens to fall in the categories mentioned above) must be treated. The fact is Sect. 33(1) of the CFRN provides that every person has the right to live. The Medical Hippocrates oath, the Nurse's Nightingale pledge etc., require practitioners to save life as a duty regardless of the kind of patient before them. This is the applicable law, which must be obeyed from legal and professional point of view.

Other than this duty to save life, HCP who felt he/she cannot handle a case before him/her may exercise the right to claim a conscientious exemption. For example, a former patient who has once sued a caregiver for unfunded allegation of negligence is not expected to be treated by the same HCP. This is because the trust has broken – a situation which may breeds suspicion and hatred. In such circumstance, the HCP is free to exercise a conscientious exemption in the in the care of such patient.

i) Right to Protection from Injury in Place of Work - one of the rights of HCP is to be protected by their employer from all forms of injuries – bodily and industrial in the place of work both to their persons and properties (like car, baggage or luggage etc.). For a caregiver, the hospital environment must be fit for work and be free from all forms of health hazard – like infection, rodents, reptiles, poisonous gaseous substances that may be life threatening or endangered health. To protect the interest of the health personnel, sect. 21-(2) of the NHA provides that:

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.

It is therefore the duty of the hospital management to provide parking space or place of custody for the properties of their employees. Where they do not, the security in the hospital would be responsible for any harm done to the staff properties. The management too would be liable in a

vicarious liability for injury or harm suffered by the HCP to their person or properties. The only exception is where the hospital management placed a caveat like, "vehicle park at owner's risk" boldly written. In that wise, the liability would no more be solely on the security or the management as the owner would be responsible for contributory negligence for failure to heed the warning.

j) Right to Refuse Treating an Abusive Patient – Generally, a patient who is abusive or assaultive or both can be denied of healthcare by the HCP. This is based on the recent provision from Sect. 21(3) NHA, which, for instance, provides that :

Without prejudice to section 19(1) of this Act and, except for Psychiatric patients, a healthcare provider may refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her, and in such a case the health care provider should report the incident to the appropriate authority.

In other words, HCP may refuse to provide healthcare to a patient, who is verbally abusive or physically assaultive. Before the enactment of this law, female HCP are subjected to frequent sexual harassment by patient, relative of patient or even other members of staff. Even with this, they are still expected to continue to provide for the care of their assailant. By the above provision, it has become a clear violation of right to human dignity – a situation, which justifies refusal to treat instances of such abusive patient.

However, the section gave an exception which border on the level of sanity of the patient. Thus, patients with psychiatric illness (which may be extended to unconscious patient, patient suffering from somnambulism, mongolism/down syndrome, cretinism, imbecility etc.) or other ailments that may impede the control of the senses of assailant, are exception.

Where the above instance exception is visible or known, the law regards it as part of the sickness of the patient and as such must be given the required healthcare. Where the patient is sane and still abusive or assaultive, the HCP can exercise his/her right to refuse to provide care and have to go further to report such patient to the appropriate authority as indicated in the cited section of the Act.

k) Right to Be Indemnified Over Wrong Claim against the Caregiver - This right is among other rights the HCP are entitled to enjoy as a citizen. Sect. 22 of the NHA has provided that in case of false accusation (as in criminal case) or wrong litigation (as in civil

or tortious claim) instituted by a patient against a caregiver, and the latter was able to win in a competent court, the health facility is mandated, as of right, to indemnify the affected HCP. For purpose of clarification, the section provides:

> *Subject to not being found negligent, a health care provider or other officers or employees of a health care establishment shall be indemnified out of the assets of the health care establishment against any liability incurred by him in defending any proceeding, whether civil or criminal in which judgement is given in his favour or is acquitted, if any such proceeding is brought against him in his capacity as a health care provider, an officer or employee of a health care establishment.*

i) Right to Work in Decent Conditions – To work in the right and conducive environment is one of the rights a HCV is ought to enjoy by the provision of the law. On the contrary, many caregivers were forced to work in unfavourable conditions –like working in excess of eighty (80) hours per week or more without off-duty to get enough rest or being satisfactorily compensated. This attitude violates the right to working in decent environment – a right protected under legal regimes such as UDHR, ICESCR etc. For instance, under the UDHR, Art. 23(1) provides that:

> *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*

Art. 6(1) of the (ICESCR) reiterates the above position when it further emphasizes the importance of this by indicating clearly that**:**

> *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right*

In order to explain what this right actually implied under international human right, the United Nations Committee on Economic, Social, and Cultural Right (UNCESCR) – especially in its General Comment 18, para., 4 states that:

> *…the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly...*

Under General Comment 18, paras. 6, 23, and 25, the UNCESCR equally noted that:

"The right to work does not mean there is an absolute and unconditional right to obtain employment but that rather that the state should ensure that neither itself or others (such as private companies) do anything unreasonably or in a discriminatory way to prevent a person from earning a living or practicing their profession."

m) Right to Fair Pay and Safe Working Conditions - One of the challenges that affect the HCP is working in a hazardous environment or places where the hygienic condition is highly compromised. For instance, there are radiographers/ radiologist who are frequently exposed to high levels of harmful radiation, nurses being exposed to people infected with HIV due to poor sterilization system, and laboratory scientists being exposed to infected or contaminated blood, serum, or other body fluid due to lack of adequate facility or faulty equipment etc.

In all these instances, the HCP were unnecessarily exposed to work hazard, which affects the right to safe working conditions. Unfortunately, the hazard allowance the government claim to pay is grossly inadequate. The rights of caregivers require the management of health facilities to provide safe working condition or pay health allowance that can take care of the challenge of health risk they are exposed to.

Generally, the provision of this type is capture under sect. 17(1) – (3) c-f of the CFRN. It provides that the condition of work is to be humane, safe and that employee must not be endangered or abused.[33] This falls under Chapter Two of the Constitution described as fundamental objectives and directive principles of state policy. It spells out what government intend to achieve but not something fundamental to reach the level of enforceability. In other words, when this is violated, one may not be able to enforce it as a national law. However, they are rights enforceable under the international human rights since Nigeria is a signatory to some of the documents. One of such documents, ICESCR under Article 7 go ahead to provide that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays.

Article 12 of ICESCR provides further that:

(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for... (b) [t]he improvement of all aspects of environmental and industrial hygiene ...

The United Nation Committee on Economic, Social, and Cultural Right (UNCESCR) has provided a working interpretation to the forgoing provisions in the main document in the clearest way. Byrne et al quoted this position as follows:

CESCR has expressed concern about a range of working condition issues, including: the need to harmonize the labour code with international standards, especially with regard to maternity leave; disparities in pay and conditions between the private and public sectors (in teaching); discrimination in employment on the grounds of political opinion; the lack of a national minimum

wage for public sector employees and the serious deterioration of some of those employees' (specifically, teachers') salaries in terms of purchasing power; the conflictual nature of relations between teachers and the state and the apparent ineffectiveness of the measures taken to remedy that situation; ineffective campaigns to increase awareness of hygiene and safety in the workplace where they are frequently below established standards; the fact that standards for the protection of workers concerning limits on the duration of the working day and weekly rest are not always fully met due to some areas of the private sector being dilatory in enforcing the relevant legislation; the lack of legislation to protect workers who are not covered by collective bargaining agreements in relation to a minimum wage, health and maternal benefits, and safe working conditions; unsafe working conditions and lack of compensation for workplace injury; the privatization of labour inspections and control systems; legislation that favours individual negotiation with employers over collective bargaining; the need for effective implementation of legislative provisions concerning job security; and the allowance of excessive working hours in both the public and private sectors.

Somewhere else, the UN Human Rights Council (HRC) "has condemned sexual harassment in the workplace and the lack of implementation of laws concerning labour standards. Laws concerning labour standards include those that call for adequate monitoring of working conditions and sufficient funding for labour inspection workforce."

Other international document that tend to protect this right is the International Labour Organization (ILO) convention - especially on Occupational Safety and Health Convention No. 155,1981:110, provide under its Article 4 that: "state is under an obligation to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment with the aim of preventing accidents and injury

to health arising out of linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the work environment.

Art.2 (1) of the Promotional Framework for Occupational Safety and Health of ILO Convention No. 187, 2006:112, provides that:

States under a duty to promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy national system and national programme.

Furthermore, Art. 3(1) of the ILO Occupational Health Services Convention No. 161,1985111 also makes provision for the HCP - especially where it provides that : "States undertake to develop progressively occupational health services for all workers, including those in the public sector."[34]

Mechanisms for Enforcement of These Rights

One interesting fact is that all the above rights were not only provided in the law book but were those rights that can be enforced once they are violated or denied.[35] As per the rights classified as fundamental under the 1999 CFRN, Nwankwo and Lawal writes that violation of anyone of them is said to have occurred immediately a "person's fundamental right is violated, when any of the rights guaranteed him/her under the fundamental rights provision of the constitution has been, is being, or is likely to be infringed."[36]

To enforce these violated constitutional rights, anyone who felt or alleged that these rights were infringed upon is to do so either by approaching National Human Right Commission, or directly to the Court. In the former, a letter is written to the Commission stating the particular right violated, where, when, and how? If it is genuine and validly presented, the Commission takes it up and retrieve the right so long the victim has not already resorted to self-help by inflicting personal injury to the violator already. Where this happen, the opportunity to retrieve the right ceased and there is problem of enforcement on the part of the victim.

If redress is to be done through the High court directly, it has to be through the Fundamental Rights (Enforcement Procedure) Rules (FREP).[37] This process is

through any of the High court based on the constitutional directives outlined under Sect. 46 (1) and (2) of the CFRN (as amended), which provides that;

> (1) Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in the State for redress
>
> (2) Subject to the provision of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under the Chapter.

As to seeking of remedy over the violation of one's rights provided by NHA, the High court and Industrial Court have coordinates jurisdiction to entertain the case. The HCP whose rights are violated can set the machinery of the law in process by commencing the action to enforce his/her violated rights in both courts. At the High Court, the victim of violation can apply for the issuance of prerogative writs – like orders of *Certiorari, Mandamus and Prohibition.*[38] By order of *Certiorari*, the victim could ask the court to quash the frivolous proceeding against the HCP; the order of Mandamus allows victim to ask the court to compel the violator to perform his/her duty; lastly, the order of prohibition is used to ask the court to stop the violator of rights from further breach. The Honourable Justice Rhodes-Vivor (JSC) in the Nigerian Supreme Court's case of *Judicial Service Commission of Cross-River State v. Young,*[39] explained this order especially where he stated as follows:

> ...one of the prerogative writs, the other *Mandamus*, used by the courts to restrain the abuse or misuse of power, or to correct errors of law, wrong exercise of discretion by tribunals public authorities and government officials. Once a public authority acts judicially or administratively, its conduct is subject to control by the courts by means of *certiorari* or *mandamus*.

At the Industrial Court, the HCP who alleged that his/her rights have been infringed is entitled to claim of damages – especially where his/her reputation was affected during the time of violation. Such damages include

general, specific, pecuniary etc., and cost of litigation etc. Put simply, where there is allegation of violation of rights - statutory or constitutional, the victim can ask the court to compel the violator to restore the rights, or to restrict further violation accordingly.

As to modality of enforcing international human rights conventions – like ICCP, ICESCR etc., it is of note to state that Nigeria is a signatory to some of these documents. Ordinarily, Nigeria State has ratified both ICCPR and ICESCR on the 29th of July 1993.

It *ipso facto* suggests that these provisions can be enforced (with some reservations) by the Court of Justice of the Economic Community of West African States (or Simply ECOWAS Court) holden at Abuja or Ibadan. In other words, where HCP alleged that his/her rights provided by these international legal regimes were violated, there is right to seek for their enforcement accordingly.[41]

Conclusion

From the foregoing, it is established that the HCP, like all other human beings are entitled to some rights protected by national and international regimes. And where such rights are violated or denied, there are mechanisms for their enforcement. The fact that the caregivers provide care to their patient does not deprive them of their own personal right. Therefore, the false notion that, "the patient is always right" is correct to the extent that they do not trespass into the rights of others. This is because, right is not an exclusive privilege of the patient alone, but one also possessed by the caregivers. As such, patient who is abusive and assaultive, or employer who denied their employees their rights, could be made to pay for every violation through the instrumentality of the law.

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Conflict of Interest: Nil