



The rights to health care and the principle of non-discrimination in Nigeria

Rasheed A A¹, Tijani W O², Ikemezie M I², Igbo S I², Igwe J A²

¹Leadcity University, Ibadan, Oyo State, Nigeria

²Federal College of Agriculture, Ishiagu, Ebonyi State, Nigeria

Abstract

The menace of violation of the Fundamental Rights to Healthcare of patients by healthcare providers are common occurrence in Nigeria. This continues on incremental scale due to lack of information and acute ignorance of the patients and the society in general regarding their Health Rights. This paper seeks the review of the principle of non-discrimination as it applies to the Rights to Health care from the Nigeria context. The following sub-themes were reviewed: discrimination, principle of non-discrimination, Rights to Health care in Nigeria. The paper concludes that the principle of non-discrimination and the Fundamental Rights to health care are integral part of Nigeria Health systems as enshrined in the National constitution and the National Health Act despite cases of negligence and abuse from health care providers.

Keywords: rights, healthcare, principle, non-discrimination, Nigeria

Introduction

People across the globe face barriers to accessing quality healthcare. The reasons vary between countries and between the communities within them. However, some barriers are present across the board. They include various forms of discrimination that are faced by certain populations. Key populations and other vulnerable groups continue to face stigma, discrimination, criminalization and ill-treatment based on their actual or perceived health status, race, socioeconomic status, age, sex, sexual orientation, or gender identity and expression. Such discrimination and other human Rights violations are pervasive in healthcare settings, affecting the health of those affected populations. Workers in healthcare settings can also face discrimination from their co-workers and employers. Discrimination is rarely linked solely to one characteristic of a person. It is often fuelled by multiple factors (UNAIDS, 2016) [6].

Under International Human Rights law, States have a duty to take measures to address all forms of discrimination, including ensuring the Rights to access healthcare on a non-discriminatory basis (Stangl *et al.*, 2013) [6]. The United Nations Committee on Economic, Social and Cultural Rights has noted that all health facilities must be accessible to everyone, without discrimination - this includes ensuring physical and economic accessibility to the most vulnerable populations (UNAIDS, 2014) [9].

The goal of healthy lives for all, and the targets of Universal Health Coverage and ending AIDS, tuberculosis, malaria, hepatitis and other communicable diseases are contingent on addressing stigma and discrimination in healthcare.

Equality and non-discrimination are the most widely recognized Human Rights in international law. In fact, all countries that are members of the United Nations have undertaken legal obligations to promote and protect the Rights to equality and non-discrimination (UN Charter, 1945) [10]. It is against this backdrop that this paper seeks to review the Rights to health care and the principle of non-discrimination in Nigeria. Within this context, the following sub-themes will be explored: discrimination, principle of non-discrimination, Rights to healthcare in Nigeria.

Defining discrimination

Discrimination as defined by international human rights law, includes any act or behaviour that has the intention or effect of impairing the enjoyment or benefits of fundamental Human Rights by all people on an equal footing, including their right to access healthcare *et cetera*. The right to non-discrimination implies that people are treated with respect for their human dignity, autonomy, privacy and confidentiality; and that their freedom from coercion and abuse is guaranteed on an equal basis, including in relation to healthcare (UNAIDS, 2014) [9].

Discrimination can be direct or indirect. Both direct and indirect forms of differential treatment because of discrimination are prohibited (International Labour Organization {ILO}, 2010) [11]. Direct discrimination occurs when an individual is treated less favourably, through either acts or omissions, than another person in a similar situation for a reason related to a prohibited ground. For example, an HIV-positive person may be discriminated against in employment by not being hired, or through concerns about their ability to perform their job duties, because of their real or perceived HIV status. Living with HIV generally does not affect a person's ability to perform on job duties, particularly considering the effects of sustainable antiretroviral treatment. Indirect

discrimination refers to laws, policies or practices that appear neutral at face value, but have a disproportionate impact on specific groups of people. For example, requiring a permanent address or registration in a specific locality to obtain health benefits may indirectly affect migrants.

Drivers and facilitators (United Nations Committee on Economic, Social and Cultural Rights {UNCESCR}, 2009^[12]; Convention on the Elimination of all Forms of Discrimination Against Women, 2004)^[13] leading to discrimination include: HIV-related stigma that results from fear of HIV, prejudice and stereotypes; punitive laws targeting people living with HIV and other key section of the populations; other legal and regulatory barriers to accessing services; gaps in institutional policies and means of protection for healthcare workers; and lack of information and literacy related rights.

Discrimination in health care does not only relate to denial of healthcare services. Examples of discrimination in healthcare settings also include the provision of misinformation, requiring third party authorizations for provision of services, lack of privacy, breach of confidentiality, mandatory HIV testing or screening, and providing treatment without informed consent (United Nations Committee on Economic, Social and Cultural Rights {UNCESCR}, 2016^[14]; UN Convention on the Elimination of all Forms of Discrimination Against Women, 1999)^[15].

Fundamental Rights to Healthcare

The Fundamental Rights of Nigerians to health is guaranteed by Article 16 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004 which provides as follows:

- Every individual shall have the right to enjoy the best attainable state of physical and mental health.
- States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

The Fundamental Rights to healthcare systems implies the right to health, which is enshrined in Constitution of the Federal Republic of Nigeria (National Health Act, 2014; FGN, 2004)^[3, 2], the Constitution of the World Health Organization, and many international Human Rights treaties. The Universal Declaration of Human Rights includes the Rights to health as a component of the Rights to an adequate standard of living (UN Charter, 1945)^[10]. The International Covenant on Economic, Social and Cultural Rights (ICESCR) also contains the Rights to health and requires the countries that are parties to the Covenant to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Additionally, the Covenant calls for countries to take steps, for example, to reduce infant mortality, to improve environmental conditions, to ensure workplace safety, to prevent and treat epidemics, and to secure healthcare services for all (United Nations Committee on Economic, Social and Cultural Rights {UNCESCR}, 2016^[14]; UN Convention on the Elimination of all Forms of Discrimination Against Women, 1999)^[15].

In 2000, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 14, which explains in more detail the content of the Rights to health. The Comment states *inter alia* that “the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”

Importantly, parties to the Covenant must ensure equal access for all to health care and the underlying determinants of health. Accordingly, payment for healthcare services must be based on the principle of equity, meaning that “poorer households should not be disproportionately burdened with health expenses as compared to richer households.” Additionally, health resource allocations should not favor expensive curative healthcare, often accessible to only a privileged few, at the expense of primary and preventative health care, benefiting the larger population. The Covenant acknowledges that governments have constraints due to limited resources and thus allows for progressive realization of the right to health. However, it imposes an immediate obligation upon governments to guarantee the exercise of the Rights to health without discrimination of any kind. Furthermore, governments have the immediate obligation “to ensure equitable distribution of all health facilities, goods and services.”

Like the Human Rights Committee, the Committee on Economic, Social and Cultural Rights is troubled by bloc inequalities, and it is particularly disturbed by inequalities that adversely impact poor population. For example, in its 2004 Concluding Observations on Colombia, the Committee indicated concern about the reduction in subsidies for healthcare, which made access to healthcare in rural areas more difficult and adversely impacted women and indigenous groups. The Committee urged the government “to allocate a higher percentage of its GDP to the health and educational sector; and to ensure that its system of subsidies does not discriminate against the most disadvantaged and marginalized groups.”

The Rights to health is the economic, social and cultural Rights to a universal minimum standard of health to which all individuals are entitled. The concept of Rights to health has been enumerated in international agreements which include the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities.

The Universal Declaration of Human Rights provides: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing and medical care (UN Charter, 1945)^[10].”

However, there remains some international variation in the interpretation and application of the Rights to health due to considerations such as how health is defined, what minimum entitlements are encompassed in the Rights to health, and which institutions are responsible for ensuring Rights to health (World Medical Association {WMA }, 2013)^[17].

Principle of Non-discrimination as related to Nigeria The HIV/AIDS (Anti-discrimination) act 2014

The Nigeria Government signed into law the anti-discrimination Bill (2014) that protects the rights and dignity of people living with HIV. The HIV/AIDS (Anti-Discrimination) Act 2014 makes it illegal to discriminate against people based on their HIV status. It also prohibits any employer, individual or organization from requiring a person to take an HIV test as a precondition for employment or access to services. It is hoped that the new law will create a more supportive environment, allowing people living with HIV to carry on their lives as normally as possible (NIGERIA LAW, 2014; 2015)^[4, 5].

Convention on the elimination of all forms of discrimination against women

Nigeria as a member Nation of the United Nation uphold the Article 2 of the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women (National Health Act, 2014). The Convention outlines women's protection from gender discrimination when receiving health services and women's entitlement to specific gender-related health care provisions. The full text of Article 12 states *inter alia*:

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to healthcare services, including those related to family planning.
2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation (Amnesty International, 1988)^[1].

In addition, the country is a party to several Conventions of the International Labour Organization, some of which contain provisions on the health of workers. Nigeria is also a party to the Geneva Conventions and Additional Protocols that prescribe rules for health - related obligations.

Conclusion

The principle of non-discrimination as applies to the Rights to Health care from the Nigeria context was reviewed within the context of the following sub-themes: discrimination, principle of non-discrimination, Rights to Health care in Nigeria. The paper observes that the principle of non-discrimination and the Fundamental Rights to health care are integral part of Nigeria Health systems as adopted from Multilateral Conventions, treaties and agreements. Those are equally enshrined in the National constitution and the National Health Act. Though few cases of negligence from health care providers exists within the system but it is very negligible.

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