

# CURRENT TRENDS & ISSUES IN NURSING IN NIGERIA



Edited by

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**Current Trends and Issues in Nursing  
in Nigeria**

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## **Rights of the Nurse in the Context of HIV/AIDS under the Law in Nigeria**

*Akinbola Ruth Bukola*

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### **Introduction**

Dispensing medical services to persons living with HIV/AIDS (PLWHA) poses a great challenge to health workers. The Nurse is particularly in a precarious position in this regard by virtue of the nature of the demands of the nursing profession. Chapter IV of the constitution of the Federal Republic of Nigeria (CFRN) 1999 confers what is called the Fundamental Rights on all Nigerians irrespective of their profession or health status. Some of the rights so conferred are potentially endangered in the course of a Nurse and patient interaction due to the nature of HIV and its mode of transmission, the attitude of society towards PLWHA and the circumstances under which nurses discharge their duties in Nigeria. The basic rights in focus in this writing is the right to life, right to dignity of human person and the right to freedom from discrimination.

This paper examines some preliminary issues and clarifies key terms including Nursing and HIV/AIDS. It also looks at a brief history of the Nursing profession in Nigeria from a legal perspective. The provisions of the law on the right to life, dignity of human person and right to freedom from discrimination are then highlighted as contained in Nigerian laws. All Nigerians are entitled to the exercise of these rights and exercise of any of the rights by one person must not undermine the well-being of another. There are possibilities of conflict in the exercise of these rights in the course of Nurse/Patient interaction in the context of HIV/AIDS.

Suggestions are made for minimizing and ultimately eradicating such conflicts that may result in endangering the health, safety and right to life of the Nurse in the discharge of her

duties to patients living with HIV/AIDS in Nigeria and lastly the work ends with a conclusion.

### **Preliminary Clarification**

**Nursing:** "Nursing is a dynamic process of action, coordination and interaction between the nurse and patients such that the basic needs of daily living and the ability to cope with health and illness at a particular point in life is enhanced" (Laoye, 1988). Nursing has also been described as "a therapeutic interpersonal relationship, which facilitates the growth and development of both patient and nurse" (Peplau, 1988). It has been further defined thus:

The practice of nursing ... means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, (Markus, 2006).

The Nursing and Midwifery Council of Nigeria (NMCN, 2006) states that nursing history in Nigeria is closely interwoven with the history of nursing as a universal profession, the history of education and the history of Nigeria itself. It is pertinent to ask why the rights of a nurse attract enough attention to justify this writing. The very nature of HIV/AIDS as well as the nature of nursing practice, answer this question. Markus, distinguishing between the role of a Nurse and the practice of medicine, states:

Whereas medicine focuses on pathology, nursing focuses on patients' response to health problems and the nursing needs that arise there from, wherein lie many quality-of-life issues (Markus, 2006).

Another peculiarity of the role of a nurse that has justified attention on her right here is the nurse's ethical mandate. The ethical mandate of a nurse may sometimes diverge her from her employer's goals (Markus, 2006). While hospitals are under economic pressure to increase revenue by treating the largest number of patients with the least possible number of nurses, and facilities, the nurse has a duty to uphold her professional oath and code of ethics of her profession in the discharge of her duties. The result is that sometimes a nurse's view of her rights and obligations may differ from that of the patient, her employer or even the general public. She owes allegiance not only to her employer because of her contract of employment, but also to her professional



ethics. It is important to state that her allegiance to her own life and safety are not by any means less important. A safe and protected working condition is therefore a *sine qua non* for the practice of nursing in the context of HIV/AIDS prevalence in Nigeria.

### **Legal History of Nursing in Nigeria**

Modern scientific nursing has been traced to the crusading efforts of Miss Florence Nightingale (1820 – 1910) during and after the Crimean War (1854 – 1856). In Nigeria, Nursing is traceable to the advent of the early Christian missionaries, namely the early missionaries who came to Nigeria in the nineteenth century. Their philosophy and mission necessitated the practice of Nursing as an outlet for their missions. They

had the strong belief that Jesus Christ is the Spiritual king, the greatest Nurse and Physician capable of caring for and healing whatever affects the body, mind and soul. They combined their missionary work with the provision of medical and nursing care to the sick (NMCN, 2006).

The nursing initiatives rested firmly with the early missionaries while the process of colonization went on until a fully colonized Nigeria emerged. Nursing as a profession therefore grew and developed steadily in Nigeria from the colonial era. With the amalgamation of the colony and the protectorates of Nigeria into one country in 1914, Nigeria became a Colony of Britain and Ordinances of the colonial Government regulated different aspects of life of her citizens. The colonial Government as part of its regulatory control strategies, decided to introduce, gradually, Nursing and Midwifery education formally to enable them render “modern and scientific Nursing and Midwifery care to the civil servants and their families” (NMCN 2006). Consequently, in 1930, the Midwives Ordinance which established the defunct Midwives Board was promulgated to regulate Midwifery education and practice in Nigeria (NMCN, 2006).

Again in 1947, the Nursing Council of Nigeria was established by the Registration of Nurses Ordinance of August 1947 to regulate and control the education and practice of Nursing in Nigeria. There were series of Amendments thereafter. For instance, the 1930 Midwives Ordinance was amended by the Midwives Act of 1966. Also, the Nurses Ordinance of August

1947 was followed by series of amendments such as the Ordinances of 1957, 1959, the Nurses Act, No. 2 of 1970 and the Nurses Amendment Act No. 30, of 20<sup>th</sup> July 1974. Decree 89 of 1979 eventually merged into one body called the Nursing and Midwifery Council, the two separate bodies for greater effectiveness (NMCN, 2006). The Nursing and Midwifery Council of Nigeria is currently the only professional Council for all grades of Cadre of Nurses and Midwives in Nigeria. It is the only legal and administrative, corporate and statutory body charged with specific functions to perform on behalf of the Federal Government of Nigeria to ensure the delivery of safe and effective Nursing and Midwifery care to the Public (NMCN, 2006). For the purpose of this paper, it is very important to recognize the crucial role of this body as its role in the protection of members of the nursing profession is most crucial in the context of HIV/AIDS.

### **HIV/AIDS**

HIV means Human Immunodeficiency Virus and is the virus which causes AIDS. AIDS means Acquired Immunodeficiency Syndrome (UNDP, 2008). AIDS is a condition characterized by a combination of signs and symptoms caused by HIV, which attacks and weakens the body's immune system, making the afflicted person susceptible to other life-threatening infections (UNDP, 2008). In terms of the deadliness of the disease, research has shown that death usually occurs within twelve months of diagnosis. The manner of its attack is that typically, HIV attacks white matter, the frontal, occipital, parietal lobe and basal ganglia (Lasher, 1989). By virtue of the stigma that is associated with the disease, the dignity of the person afflicted by the disease most times fades into insignificance.

For the PLWHA, one of the most important challenges is that of having the dignity of the human persons intact while seeking for care and support. Dignity refers to the true worth of a person and it is the quality that earns or deserves respect (Oxford, 2003). Dignity of the human person has been a very important human rights issue and in fact a core factor that led to the Universal Declaration of Human Rights (1948), after the Second World War.

HIV/AIDS status notwithstanding, the personhood of an individual remains intact under the law. However, the reality of the situation in the relationship of the nurse / patient is that a patient that tests positive risks being kept at arms length by the nurse for the fear that the virus maybe transmitted to her if extra care is not

applied in the course of performing her duties towards such a patient.

Generally, the right of PLWHA to dignity of their human persons often appears to conflict with the rights of nurses not to be infected by the virus in the course of the discharge of their duties as nurses. Trained interviewers conducted a survey of 1021 Nigerian health professionals comprising 324 physicians, 541 Nurses and 133 Midwives. Many of the survey's results were found to be worrying. Nine percent of the professionals reported refusing to care for a patient with HIV/AIDS, and 9% said they had refused such a patient admission to a hospital. 40% believed a person's HIV status could be determined by their appearance. 20% agreed that many with HIV/AIDS had behaved immorally and deserved their infection. 8% felt that treating someone with HIV/AIDS was a waste of resources (Iacopino, 2005). This situation clearly points to the reality of fear of infection and biases in resource allocation. The consequence is discrimination by the nurse against PLWHA which cannot be dismissed as unfounded as it is informed by several factors including level of knowledge and level of protective mechanisms available.

Conflict of interest therefore results often as the PLWHA seek the best available nursing care and the nurses also seek to protect themselves from infection by the virus, leading to some key legal questions of rights. Interest here refers to "something with which one concerns oneself" and is often something of advantage; profit; well-being and legal right to a share in something (Oxford, 2003).

Conflict of interest which implies opposition or discord in the pursuance of the rights of two or more opposing parties and in this instance, the parties are the Nurse and the PLWHA, appears inevitable unless certain conditions exist to guarantee the safety of the nurse in the course of the discharge of her duties in nursing PLWHA. Conflicts could arise when the right to life is viewed from the perspective of both the nurse and the PLWHA. Should the right of the patient to life and therefore need for nursing care result in needless risk to the nurse's life? Can nurses justify discrimination against PLWHA on the basis of the exercise of the right to life while violating the right of PLWHA to the right to dignity of the human person, which is the very essence of their being? These are debatable questions to which the law seeks to supply answers through policy and legislations.

Ethical and legal issues affecting the nurse/patient relationship such as the handling of "sero-discordant" issues, self disclosure by

the patient to a nurse, voluntary and confidential counseling and Testing (VCCT), and resource allocation between competing interests of PLWHA and those without, are just a few of the possible complexities that may arise from a relationship such as the one in this paper. How much liberty can the nurse exercise in the disclosure of an HIV positive patient's health status to a spouse for instance, without being criminally or otherwise liable? The standard of the duty of confidentiality required from a nurse towards her patient is strict, especially in the context of HIV and disclosure without consent of the PLWHA will definitely attract legal sanctions for the nurse unless she is able to prove exceptional circumstances to justify an exception to the general rule. Marriages have broken down and intending marriages have been cancelled on discovery of the health status of a spouse or one to be, for testing HIV positive.

### **Fundamental Rights**

Fundamental rights are the basic and inalienable rights that accrue to all human beings irrespective of their race, colour, religion, sex, nationality or other criteria of differences.

'Human rights are the rights that are taken to inhere in human beings solely on account of their being humans. Such rights may be taken to derive from reason, God, nature or any other source. Whatever the case, they are supposed to apply to human beings regardless of their codification in any positive law (Hoffman, 1983).

Historically, the Universal Declaration of Human Rights (1948) was formulated immediately after the Second World War as the first major document on human rights. This was followed in 1966 by the adoption of two other very important documents by the United Nations for the protection of human rights, namely the International Covenant on Economics, Social and Cultural Rights (ICESCR, 1966) and the International Covenant on Civil and Political Rights (ICPR) (1966). Before then, writings of Philosophers like Rousseau, John Locke and Hobbes (Tijani, 1999) had preceded the international Human Rights Covenants and obviously had greatly influenced the formulation of thoughts about the subject of human rights.

The existence of the Universal Declaration of Human Rights (UNDHR, 1948), the International Covenant on Economics, Social and Cultural Rights (ICESCR, 1966) and the International Covenant on Civil and Political Rights (ICPR, 1966) did not totally

solve the problems of human rights violations as some categories of people were still identified as groups needing specific human rights protection. Included in that group were women, children, migrants and more recently, persons who have disabilities. Discrimination appears to be ingrained in man and usually it is expressed by the strong against the weak or the majority against the minority. Thus it became necessary for the United Nations to adopt for example, the convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1981, the Convention on the Rights of the Child (CRC, 1989) and a number of other conventions for the protection of the Human Rights at the global level.

Nigeria is a party to all the above conventions and these laws have been domesticated and made applicable in the country. For the purpose of this paper and in addition to the earlier mentioned conventions the specific international law that is relevant for the Nurse in the course of her professional duties in terms of protection in international law, is the International Labour Organization Convention (ILO) which allows the nurse to protect herself where she perceives danger to her safety in discharging her duties under unfavourable conditions. It will be discussed under the heading of the Nurse's Rights.

### **The Nurse's Rights: International Law**

There are a host of incriminating laws which could be invoked against a nurse for discriminating against a patient with HIV/AIDS. For instance, where a nurse fails to provide needed nursing care for a PLWHA, if she is convicted for "refusal to perform her duty as a public officer", she will be liable to a term of imprisonment for two years (Section 198, Criminal Code Act, Laws of the Federation, 2004). The Criminal code provides:

Any person who, being a person employed in the public service, and being required by any Order, Act, Law, or Statute, to do any act by virtue of his employment, perversely and without lawful excuse omits or refuses to do any such act is guilty of a misdemeanour, and is liable to imprisonment for two years. A prosecution for any offence under this section shall not be instituted except by or with the consent of a Law officer.

With a provision of this kind, what is the position of a nurse who acts to protect herself against infection and therefore abstains from doing certain acts for a PLWHA? Should she be regarded as "perversely and without lawful excuse" omitting or refusing to do

what she is duty bound to do and therefore be held guilty and liable to two years imprisonment? Would her reason be tenable that she omitted to do such acts normally expected from a nurse towards her patient (in the absence of HIV) just because the particular patient in question has tested positive to the virus and she has not been provided with adequate protective devices and facilities? It is the view of this writer that unless proper protection has been provided and the health of the nurse is safeguarded, it will be unjust and contrary to the intention of the law, for this penalty to apply.

The International Labour Organization (ILO) provides protection for any worker from undue consequences if such removes him/herself from a situation of threat. Exposure to HIV/AIDS infection is obviously a threat to an unprotected nurse in the discharge of her duties, especially in the administration of blood transfusion or an injection while having an open wound and without proper protective facilities like gloves for instance, since body fluid contact is one of the means of transmittance of the virus.

The ILO convention provides in its Article 13 thus:

A worker who has removed himself from a work situation, which he has reasonable justification to believe, presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national condition and practice.

The ILO further provides that;

There shall be arrangements at the level of the undertaking under which .... A worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health.

The international protections are notable and ought to be as explicitly stated also in the Nigerian Labour Act and other laws

that are relevant to the protection of workers. More than a decade ago, the conditions in Nigeria for nursing in the context of HIV/AIDS were so poor as according to Dr. Lolade Olusola Ojo of the National AIDS AND STD Control programme in Nigeria,

“There are 818 blood screening centers in Nigeria. A law is coming up to compel screening of all donated blood before transfusion. This is because for now, most of the medical laboratories “screened blood” on blood bags that are not screened. Sixteen per cent of these “screened blood” [bags] are found to be contaminated” (Effa-Heap 1997).

Working in such a negative environment makes it imperative for nurses to be adequately protected by law. Happily, there have been many improvements since then in recognizing and adapting situations to the challenges of HIV. The legal protection for nurses in the context of the virus is however still grossly inadequate. The nurse is however not as helpless as the situation appears in the views of some authors. Examining the nurse and her ethical obligations, Wood has stated as follows:

Nurses must maintain vigilance and competence within this complex health care system to identify and address actions or events that ethically may compromise them or the patients for whom they are responsible. Sources of assistance in the domain of ethics include professional codes or standards and formal ethics structures. Nurses must use sound nursing knowledge coupled with critical thinking skills in order objectively to assess the facts of a situation and related legal implications (Wood, 2001).

Protection for nurses under the different relevant laws and policies in Nigeria, within which he/she may exercise discretion, will be examined in this regard.

### **Constitutional Protection in Nigeria**

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 is the highest law in the hierarchy of laws in Nigeria and is sometimes referred to as “*the grund norm*”. In a self declaration of supremacy, the CFRN provides:

This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria [Section 1 (1)].

For the avoidance of any doubt about its relationship with other laws in the country, it provides:

If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void [Section 1(3)].

This same constitution then sets out in chapter IV under the title: 'Fundamental Right', the human rights which are contained also in the international conventions earlier mentioned and to which Nigeria is a party, since they will be inapplicable if not domesticated in a local enactment. . The rights guaranteed for all Nigerians in the CFRN 1999 as are as follow:

- (a) Right to Life (Section 33 CFRN 1999);
- (b) Right to dignity of human person (section 34 CFRN 1999);
- (c) Right to personal liberty (Section 35 CFRN1999);
- (d) Right to fair hearing (Section 36 CFRN 1999);
- (e) Right to private and family life (Section 37 CFRN 1999);
- (f) Right to freedom of thought, conscience and religion (Section 38CFRN 1999);
- (g) Right to freedom of expression and the press (Section 39 CFRN 1999);
- (h) Right to peaceful assembly and association (Section 40 CFRN 1999);
- (i) Right to freedom of movement (Section 41CFRN 1999);
- (j) Right to freedom from discrimination (Section 42 CFRN 1999);
- (k) Right to acquire and own immovable property anywhere in Nigeria (Section 43 CFRN 1999);
- (l) Right not to be deprived of property by compulsory acquisition of property except in accordance with law (Section 44 CFRN 1999);
- (m) Restriction on and derogation from fundamental rights (Section 45 CFRN1999).

The first of all the rights which is often rated as the most important of all is the right to life. The right to life is endangered in the context of dispensing nursing care in an unprotected condition borne either from absence of adequate and appropriate information



or non provision of protective facilities in nursing in the context of HIV/AIDS.

### **Possible Areas of Conflicts**

The above highlighted rights are laudable and they underpin the equality of all Nigerians and provide a legal basis or platform for the enforcement of any of the rights in the event of a violation. The constitution makes the rights “justiceable”, which implies that an individual can go to the courts to enforce any of these rights if violated or even threatened with violation as provided in chapter IV of the CFRN. The key rights of interest and importance in this paper are the right to life, right to dignity of human person and right to freedom from discrimination. The rights in chapter IV of the constitution is of equal applicability to all Nigerians, but where the health, and by implication, the life of a person is endangered by exposure to certain risks in the performance of his work, how should the law apply? The person infected by HIV/AIDS has a right to life, dignity and not to be discriminated against, whilst the nurse also has the right to live and remain healthy in the course of her work. These seemingly conflicting interests must be reconciled in the interpretation and application of the law. Section 42(1) of the constitution makes discrimination an unlawful act. In the Nigerian case of *Odafe and others v. Attorney General and others* (2004) AHRLR (NgHC 2004) where some PLWHA alleged discrimination on the basis of testing positive to HIV by prison officials, the court found in favour of the PLWHA. The plaintiffs had been kept in prison awaiting trial for an unreasonably long time and also denied access to medical treatment because the prison officials felt they could be infected in the course of attending to the needs of the PLWHA. However, section 42(1) did not cover discrimination by reason of illness, virus or disease. For emphasis, its details are as follows: *“A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person”* The court found that the plaintiffs should have been sent to the hospital by the authority of sections 7 and 8 of the Prisons Act Cap 366, to be treated for serious illness. The court by this statement recognizes HIV/AIDS as “a serious illness”. Also in the South African case of *Minister of Health and others v. Treatment Action Campaign and others* (2002) AHRLR 189 (SACC 2002), the constitutional court of South Africa described HIV/AIDS as

one of the many illness that requires attention and that it is the greatest threat to public health in their country.

If the courts ascribe such seriousness to HIV/AIDS, it is submitted that the law ought to provide the uttermost protection for the nurse as a caregiver. The value of a nurse's life is by no means less than that of a PLWHA under the law. The right to life under the constitution will be briefly examined at this point.

### **Right to Life:**

The CFRN provides for the right to life in the following words:

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 [Section 33(1)].

The constitution regards life as sacred and makes it unconstitutional to take life under any circumstance, but the same CFRN provides for circumstances under which a person shall not be regarded as having been deprived of his life. This includes when a person's life is taken in circumstances permitted by law, using force as is reasonable and to such extent and in such circumstances as permitted by law (Section 34). Life may therefore be taken without liability under the following circumstances:

- (i) For the defence of any person from unlawful violence or for the defence of property;
- (ii) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (iii) For the purpose of suppressing a riot, insurrection or mutiny.

None of the exceptions in respect of the sanctity of human life as guaranteed by the constitution allows for the life of anyone to be taken in a bid to perform professional obligations. It is therefore important for proper working conditions that recognize and provide for the protection of the right to life and health of medical workers and nurses in particular, to be provided in the contemporary context of HIV/AIDS challenges to the practice of nursing. Failure to do so may be an implied unconstitutional act and should attract heavy penalties against such health care institutions. Nurses may institute court actions to seek for

protection from undue and avoidable exposure to infection by HIV in the course of their work especially where an employer has failed, neglected or omitted to provide specific protective materials which are necessary for the protection of the nurse in her work. Much as there are not many cases on this to date, nurses have the onus to speak out and call for the application of existing laws in their favour and then leave the courts to make pronouncements. The dearth of case law on HIV discrimination in Nigeria cannot be divorced from the high level of stigma and discrimination that go with the disease in the country. For nurses to sue to insist on some baseline protection for nursing in the context of HIV, should however not be stigmatic. They are care givers and not necessarily infected persons and should therefore not have as much problem with stigmatization related to the virus. Also, the general expectation is that even members of the public that discriminate against PLWHA will support the nurses' course in advocating for protection

### **The National Policy on HIV/AIDS in Nigeria**

Nigeria has a health policy which goal is to control the spread of HIV in the country, to mitigate its impact to the point where it is no longer of public health, social and economic concern. The main target of the HIV/AIDS policy is to achieve at least a 25 per cent reduction in HIV incidence among adults (Nigerian: National Policy on HIV/AIDS, 2003). Since law follows policy and sometimes the reverse is also the case, the policy recognizes the danger posed to, and provides in part for the protection of workers and other PLWHA. The policy states that "...the government of Nigeria commits itself to reviewing existing legislation and enhancing appropriate new laws in the following areas" (UNDP, 2008).

- HIV/AIDS legislation in the workplace: Protection of worker's right on the job for those infected
- HIV/AIDS legislation in the workplace: Protection of worker's on the job from being infected as a result of their work;
- Legislation on legal rights and property ownership of persons infected and affected by HIV/AIDS;
- Legislation to improve access to legal services, and care and support for persons infected and affected by HIV/AIDS;

- Legislation to protect the rights of victims of sexual violence;
- The establishment and codification of the nation's HIV/AIDS response structure;
- The codification of HIV relevant legislation (UNDP, 2008).

The idea of a national policy on HIV/AIDS though came rather late for Nigeria, is a welcome and necessary one. However, the amount of emphasis it places on the rights of PLWHA appears disproportionate to those of health workers and especially nurses who invariably have close contacts for prolonged periods with persons infected in the course of treatments. Only the second item of the goals on development of legislations on HIV/AIDS recognizes the risk it poses to health workers on the job. Where a nurse fails to act or acts in a particular manner that is considered discriminatory against a person infected with the HIV virus in a bid to protect self from infection, the policy imputes illegality for such acts or omission. The policy under the heading: "Ethics and Human Rights," provides:

- Persons living with or affected by HIV shall not be discriminated against on the basis of their health status with respect to education, training, employment, housing, travel, access to health care and other social amenities and citizenship rights;
- The denial of appropriate care and support for persons living with HIV is an abuse of their human rights, unethical and illegal;
- All persons shall respect the right to privacy and confidentiality of people living with HIV and shall not disseminate information on the HIV status of individuals without the individual's consent, or that of the individual's family when the individual is incapable of giving such consent; ...
- HIV and STI testing shall not be included as part of a routine medical examination without the knowledge and prior consent of the client.
- Mandatory HIV testing without consent is illegal except in the case of a person charged with any sexual offence that could involve risk of HIV....
- The Government of Nigeria shall monitor human rights abuses and develop enforcement mechanisms for redress.

The National Policy prohibits discrimination against PLWHA even in the course of work by medical workers and makes it illegal, unethical and an abuse of human rights for appropriate care and support to be withheld from PLWHA. It also makes it unlawful for tests to be carried out on the HIV status of a person except with informed consent and under certain conditions. While it is good for the policy to provide adequate legal protection for PLWHA to ensure the ability to live normal lives despite their HIV status, it would definitely have been preferable if the policy takes better cognizance of the position of Nurses and the risks involved by the nature of the profession and therefore provides more liberty for self protection against infection in the course of discharge of duty for them. Informed consent before testing for HIV status is in keeping with international standards and best practices for the respect of the human rights of PLWHA. The policy should however have made testing compulsory for some category of persons less voluntary. Where for instance, a person is brought to a hospital in an unconscious state and by well wishers who have no knowledge of the patient and cannot even contact his family for obtaining consent from them, testing ought not to be preceded by mandatory consent. If a nurse insists on knowing the HIV status of such a person and goes ahead to demand information before administering 'care and support' on the basis of self protection, it should not be taken to amount to an illegality.

Under the title: 'Clinical Management', the national policy on HIV/AIDS provides inter alia,

"No health care institution or health care worker shall refuse to provide treatment to AIDS patients or those with HIV infection" (National Policy, 2003).

By implication, this provision fails to recognize the right to life and dignity of the human person that inheres in the nurse just as much as in the PLWHA. It leaves the nurse with no choice even if he/she believes that he/she is in danger of being infected in the course of offering care and support, especially where adequate infrastructure is lacking for the protection of the caregiver.

### **Conclusion**

The need to protect the rights of all in the face of the great challenges posed by the scourge of HIV/AIDS in Nigeria has been examined. The law has paid great attention to PLWHA and their

need for legal protection of the right to life, dignity of human person and freedom from discrimination, almost to the detriment of care givers and particularly nurses. This work has attempted to evaluate the different protections afforded by law in Nigeria for PLWHA and for nurses. It has found that the law needs to do much more than is currently being done to encourage nurses to give their best in care giving and adherence to their professional ethics. International law, constitutional law and the Nigerian policy on HIV have been examined. It is recommended that the Nursing and Midwifery Council of Nigeria should make proposals to the Federal Government for the enactment of a law that gives comprehensive and expert oriented protection to its members in the face of the current challenges posed by the hitherto non-existent or unknown disease, HIV/AIDS. The threat posed by the disease is of such great magnitude that Nigerian Policy on it and the interpretation and application of existing laws appear to strive to give the much needed protection to the PLWHA while taking the health, welfare and rights of the nurse for granted. This position needs to be redressed by law through the enactment of a comprehensive and expert oriented legislation that upholds the rights of the all medical workers and those of the nurse in particular, in the context of the current challenges posed by HIV/AIDS. The law while it means well, must not be seen "to be robbing Peter to pay Paul" by focusing upon and emphasizing the rights of PLWHA without reviewing the context of nursing. Laws affecting the Nursing career must be reviewed and updated to meet modern challenges to the health and welfare of nurses. Employers of nurses and other care givers must be brought under legal obligation to maintain some baseline standards in practice and infrastructures. Failure to meet such standards should then be made punishable under the law, rather than leaving the nurse to her plight while nursing in the context of HIV/AIDS.

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