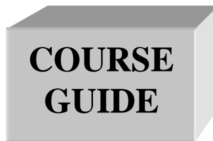
NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF SCIENCE AND TECHNOLOGY

COURSE CODE: HEM 712

COURSE TITLE: LEGAL AND ETHICAL ISSUES OF HIV/AIDS



HEM 712
LEGAL AND ETHICAL ISSUES OF HIV/AIDS

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CONTENTS **PAGES**

Introduction…………………………………………….. 1
What you will learn in this Course………………………...... 1
Course Aims……………………………………………... 1
Course Objectives………………………………………. 1 – 2
Working through this Course…………………………… 2
Course Materials………………………………………... 2
Study Units………………………………………………. 2 – 3
Textbooks and References………………………………3 – 4
Assignment File…………………………………………. 4
Presentation Schedule…………………………………... 4
Assessment………………………………………………. 4
Tutor-Marked Assignment ……………..………………… 4 – 5
Final Examination and Grading…………………………. 5
Course Marking Scheme…………………………………. 5
Course Overview……………………………………….. 5 – 6
How to get the most out of this Course……………………. 6 – 8
Facilitators/Tutors and Tutorials…………………………….. 8 – 9

Introduction

HEM 712: Legal and Ethical Issues in HIV/AID is a 2 credit course for PGD HIV/AIDS Education and Management and related disciplines

The course is broken into 5 modules and 17 study units. It will introduce the students to concepts of legal and ethical issues in HIV/AIDS.

At the end of this course, it is expected that students should be able to discuss, explain and be adequately equipped with legal issues in HIV/AIDS management, ethical dimensions of end of life decisions, stigmatization, discrimination, etc. It further highlights reproductive rights, right to life, living will, the concept of informed consent to treatment, and medical decisions.

The course guide, therefore, tells you briefly what the course: HEM 712 is all about, the types of course materials to be used, what you are expected to know in each unit, and how to work through the course material. It suggests the general guidelines and also emphasises the need for self assessment and tutor marked assignment. There are also tutorial classes that are linked to this course and students are advised to attend.

What You will Learn in this Course

The overall aim of this course, HEM 712, is to introduce students to the variables associated with legal and ethical issues in HIV/AIDS. During this course, you will learn about concepts of end of life decisions, informed consent, living will, rights of the sick person, ethical underpinnings of discrimination and stigmatization, etc.

Course Aims

This course aims to give students an in-dept understanding of legal and ethical issues in HIV/AIDS. It is hoped that the knowledge would equip students with the legal as well as ethical underpinnings of HIV/AIDS management.

Course Objectives

Note that each unit has specific objectives. Students should read them carefully before going through the unit. You may want to refer to them during your study of the unit to check on your progress. You should always look at the unit objectives after completing a unit. In this way, you can be sure that you have done what is required of you by the unit.

However, below are overall objectives of this course. On successful completion of this course, you should be able to:

- define the concepts: Ethics and legal;
- identify ethical issues in HIV/AIDS management;
- discuss discrimination, HIV stigmatization and its legal and ethical implications;
- identify reproductive rights associated with HIV/AIDS management;
- explain the concepts of living will and proxy and power of an attorney;
- discuss end of life decisions;
- discuss medical decisions;
- explain Euthanasia and right to life; and
- identify regional legal norms and international guidelines.

Working through this Course

To complete this course, you are required to read the units, the recommended text books, and other relevant materials. Each unit contains some self assessment exercises and tutor marked assignments, and at some point in this course, you are required to submit the tutor marked assignments. There is also a final examination at the end of this course. Stated below are the components of this course and what you have to do.

Course Materials

The major components of the course are:

1. Course Guide
2. Study Units
3. Text Books
4. Assignment File
5. Presentation Schedule

Study Units

There are 17 study units and 5 modules in this course. They are:

Module 1 Legal and Ethical Issues of Hiv/Aids

Unit 1 Ethical Issues of HIV/AIDS: Definition of Terms
Unit 2 Care for Infected People
Unit 3 Awareness of inherent Legal and Ethnical Issues
Unit 4 Ethical Issues in HIV/AIDS Treatment

Module 2 Discriminations and HIV/AIDS

Unit 1 Discrimination
Unit 2 Partner discrimination
Unit 3 Prenatal Counseling and mandatory testing

Module 3 Duties and Reproductive Rights

Unit 1 Obligation to Care
Unit 2 Reproductive Rights and Surrogate Decision Making

Module 4 End of Life Decisions and Living Will

Unit 1 End of life decisions
Unit 2 Euthanasia & Right to life
Unit 3 Informed to consent
Unit 4 Living wills and Proxy and Power of Attorney
Unit 5 Medical Decisions

Module 5 HIV/AIDS: International and Regional Organizations

Unit 1 International Covenants Treaties and Conventions on HIV/AIDS
Unit 2 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC).
Unit 3 Regional Legal Norms and International Guidelines on HIV/AIDS and Human Rights

Textbook and References

These texts will be of immense benefit to this course:

Obilade A.O. (1979). *The Nigeria Legal System*, Ibadan: Spectrum Law Publishing.

Ehrman, H.W. (1976). *Comparative Legal Culture*, Englewood cliffs: Prentice Hall.

Park, A.E W. (1963). *The Sources of Nigeria Law*, Lagos: Africa University Press. HIV/AIDS

Medical Glossary.

Aguda, A. (1983). *Law As a Means of Social Hygiene in the Judiciary in the Government of Nigeria*, New Horn Press.

Prof Alibed. Hon. Dr. T. Akinola Aguda: The Man, His Works and Society. Nigeria Institute of Advance Legal Studies 1986.

Ibidapo-Obe, Akin (2005). *Essays on Human Rights Law in Nigeria*: Concept Publication Ltd.

Assignment File

The assignment file will be given to you in due course. In this file, you will find all the details of the work you must submit to your tutor for marking. The marks you obtain for these assignments will count towards the final mark for the course. Altogether, there are 17 tutor marked assignments for this course.

Presentation Schedule

The presentation schedule included in this course guide provides you with important dates for completion of each tutor marked assignment. You should therefore try to meet the deadlines.

Assessment

There are two aspects to the assessment of this course. First, there are tutor marked assignments; and second, the written examination.

You are thus expected to apply knowledge, comprehension, information and problem solving gathered during the course. The tutor marked assignments must be submitted to your tutor for formal assessment, in accordance to the deadline given. The work submitted will count for 40% of your total course mark.

At the end of the course, you will need to sit for a final written examination. This examination will account for 60% of your total score.

Tutor-Marked Assignment

There are 17 TMAs in this course. You need to submit all the TMAs. The best 4 will therefore be counted. When you have completed each assignment, send them to your tutor as soon as possible and make sure that it gets to your tutor on or before the stated deadline. If for any reason you cannot complete your assignment on time, contact your tutor before the assignment is due to discuss the possibility of extension.

Extension will not be granted after the deadline, unless on exceptional cases.

Final Examination and Grading

The final examination of HEM 712 will be of 2 hour's duration and have a value of 60% of the total course grade. The examination will consist of questions which reflect the self assessment exercise and tutor marked assignments that you have previously encountered. Furthermore, all areas of the course will be examined. It is also better to use the time between finishing the last unit and sitting for the examination, to revise the entire course. You might find it useful to review your TMAs and comment on them before the examination. The final examination covers information from all parts of the course.

Course Marking Scheme

The following table includes the course marking scheme

Table 1: Course Marking Scheme

Assessment	Marks
Assignment 1-17	17 assignments, 40% for the best 4 Total = 10% X 4 = 40%
Final Examination	60% of overall course marks
Total	100% of Course Marks

Course Overview

This table indicates the units, the number of weeks required to complete them and the assignments.

Table 2: Course Organizer

Unit	Title of Work	Weeks Activity	Assessment (End of Unit)
	Course Guide	Week 1	
Module 1	**Legal and Ethical Issues of HIV/AIDS: An introduction**		
Unit 1	Ethical issues of HIV/AIDS: Definition of terms	Week 1	Assignment 1
Unit 2	Care for infected people	Week 2	Assignment 2
Unit 3	Awareness of inherent legal and ethical issues	Week 3	Assignment 3
Unit 4	Ethical issues in HIV management	Week 3	Assignment 4

Module 2	**Discriminations and HIV/AIDS**		
Unit 1	Discrimination	Week 4	Assignment 5
Unit 2	Partner's discrimination	Week 4	Assignment 6
Unit 3	Pre-natal counselling and mandatory testing	Week 5	Assignment 7
Module 3	**Duties and reproductive rights**		
Unit 1	Obligation to care	Week 6	Assignment 8
Unit 2	Reproductive rights and surrogate decision making	Week 6	Assignment 9
Module 4	**End of life decision and living will**		
Unit 1	End of life decisions	Week 7	Assignment 10
Unit 2	Euthanasia and rights to life	Week 7	Assignment 11
Unit 3	Informed consent	Week 8	Assignment 12
Unit 4	Living will and proxy and power of attorney	Week 8	Assignment 13
Unit 5	Medical Decisions	Week 9	Assignment 14
Module 5	**HIV/AIDS: International and regional organizations**		
Unit 1	UNAIDS: Covenants and conventions	Week 9	Assignment 15
Unit 2	Convention on the elimination of all forms of discrimination against women and convention on the rights of the child	Week 10	Assignment 16
Unit 3	Regional legal norms and International guidelines on HIV/AIDS and human rights	Week 10	Assignment 17

How to Get the Most Out of this Course

In distance learning, the study units replace the university lecturer. This is one of the huge advantages of distance learning mode; you can read and work through specially designed study materials at your own pace and at a time and place that suit you best. Think of it as reading from the teacher, the study guide tells you what to read, when to read and the relevant texts to consult. You are provided exercises at appropriate points, just as a lecturer might give you an in-class exercise.

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These learning objectives are meant to guide your studies. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chances of passing the course.

The main body of the units also guides you through the required readings from other sources. This will usually be either from a set book or from other sources.
Self assessment exercises are provided throughout the unit, to aid personal studies and answers are provided at the end of the unit. Working through these self tests will help you to achieve the objectives of the unit and also prepare you for tutor marked assignments and examinations. You should attempt each self test as you encounter them in the units.

The following are practical strategies for working through this course:

1. Read the course guide thoroughly.

2. Organize a study schedule. Refer to the course overview for more details. Note the time you are expected to spend on each unit and how the assignment relates to the units. Important details, e.g. details of your tutorials and the date of the first day of the semester are available. You need to gather together all these information in one place such as a diary, a wall chart calendar or an organizer. Whatever method you choose, you should decide on and write in your own dates for working on each unit.

3. Once you have created your own study schedule, do everything you can to stick to it. The major reason that students fail is that they get behind with their course works. If you get into difficulties with your schedule, please let your tutor know before it is too late for help.

4. Turn to Unit 1 and read the introduction and the objectives for the unit.

5. Assemble the study materials. Information about what you need for a unit is given in the table of content at the beginning of each unit. You will almost always need both the study unit you are working on and one of the materials recommended for further readings, on your desk at the same time.

6. Work through the unit, the content of the unit itself has been arranged to provide a sequence for you to follow. As you work through the unit, you will be encouraged to read from your set books.

7. Keep in mind that you will learn a lot by doing all your assignments carefully. They have been designed to help you meet the objectives of the course and will help you pass the examination.

8. Review the objectives of each study unit to confirm that you have achieved them. If you are not certain about any of the objectives, review the study material and consult your tutor.

9. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you can keep yourself on schedule.

10. When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the assignment is returned, pay particular attention to your tutor's comments, both on the tutor marked assignment form and also written on the assignment. Consult you tutor as soon as possible if you have any questions or problems.

11. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in this course guide).

Facilitators/Tutors and Tutorials

There are 8 hours of tutorial provided in support of this course. You will be notified of the dates, time and location together with the name and phone number of your tutor as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must mail your tutor marked assignment to your tutor well before the due date. At least two working days are required for this purpose. They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone' e-mail or discussion board if you need help. The following might be circumstances in which you would find help necessary: contact your tutor if:

You do not understand any part of the study units or the assigned readings.
You have difficulty with the self test or exercise.
You have questions or problems with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from the course tutorials, prepare a question list before attending them. You will learn a lot from participating in discussion actively. GOODLUCK!

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CONTENTS **PAGES**

Module 1 Legal and Ethical Issues of HIV/AIDS ….……. 1

Unit 1 Ethical Issues of HIV/AIDS: Definition of Terms... 1 - 5
Unit 2 Care for Infected People ………………………… 6 - 14
Unit 3 Awareness of Inherent Legal and Ethnical Issues... 15 - 20
Unit 4 Ethical Issues in HIV/AIDS Management ……... 21 - 24

Module 2 Discriminations and HIV/AIDS ………………... 25

Unit 1 Discrimination …………………………………… 25 - 33
Unit 2 Partner Discrimination …………………………… 34 - 36
Unit 3 Prenatal Counseling and Mandatory Testing …….. 37 - 39

Module 3 Duties and Reproductive Rights ………………… 40

Unit 1 Obligation to Care …………………………………40 - 46
Unit 2 Reproductive Rights and Surrogate Decision - Making……………………………………….… 47 - 51

Module 4 End of Life Decisions and Living Will ………… 52

Unit 1 End of Life Decisions ……………………………. 52 - 56
Unit 2 Euthanasia & Right to Life ……………………… 57- 61
Unit 3 Informed Consent ……………………………….... 62 - 66
Unit 4 Living Wills and Proxy and Power of Attorney …. 67 - 71

Module 5 HIV/AIDS: International and Regional Organizations ……………………………………... 72

Unit 1 International Covenants Treaties and Conventions on HIV/AIDS ……………………………….…...….. 72 - 78
Unit 2 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child(CRC).. 79 - 82
Unit 3 Regional Legal Norms and International Guidelines on HIV/AIDS and Human Rights……………….. 83 - 88

MODULE 1 LEGAL AND ETHICAL ISSUES OF HIV/AIDS

Unit 1 Ethical Issues of HIV/AIDS: Definition of Terms
Unit 2 Care for Infected People
Unit 3 Awareness of Inherent Legal and Ethnical Issues
Unit 4 Ethical Issues in HIV/AIDS Treatment

UNIT 1 DEFINITION OF TERMS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Definition of Terms
 3.2 Legal Issues and Framework Involve in HIV/AIDS
 3.3 The Right to Health
 3.4 Definition of Terms: Ethical Defined
 3.5 Ethical Issues Raised by HIV/AIDS Treatment
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

The ultimate aim of this unit is to provide social and scientific insight into the cause and control of HIV/AIDS through the instrumentality of Law. The Unit will introduce the student into the contextual determinant of Law to control the HIV/AIDS pandemic be it enactment, enforcement or administration. You will also see that law plays a crucial role in the control mechanism of the spread of HIV/AIDS. You will understand why law forms the core issue around which all other components of the HIV/AIDS preventive mechanism are build. By the end of this unit, you will be able to apply what you have learned in analyzing the Nigeria situation of HIV/AIDS, the interrelationship with the ethical issues involved in the treatment of HIV/AIDS. The goal is to develop a society where the fundamental Human Rights of people are respected.

2.0 OBJECTIVES

The overall aim of this unit is to apply legal insight in the phenomenon of HIV/AIDS endemic with a view to understanding and explaining the linkages of the legal framework and ethical issues involved in the

treatment of HIV/AIDS (PLWHA) and the control of the spread of the disease.

At the end of the unit, you should be able to:

- provide a brief definition of 'law';
- identify the Legal framework for the control of HIV/AIDS; and
- identify the Ethical Issues involved in the treatment of HIV/AIDS.

3.0 MAIN CONTENT

3.1 Definition of Terms

John Austin defined law as a 'rule' laid down for the guidance of an intelligent being by an intelligent- being having power over him." This definition conforms to the imperative or command theory of Law.

John Salmond also defines Law as "the body of principles recognized and applied by the state in the administration of justice. However, Fredrich von Savigny maintains that law, is not the creation of the legislator or any sovereign, but emanates from the popular consciousness of a nation (volkgeist) and exists for the purpose of regulating the actions of individuals and the whole community.

SELF-ASSESEMENT EXERCISE 1

Which of the different views of law agrees most with your own view of Law?

Taking cognizance of the above definition of law is a body of rules of social conduct which are recognized as obligatory by the people whose conduct it guides and which visit specific sanctions administered by legitimate authority on violators; we will further discuss the legal and ethical frameworks for HIV/AIDS.

3.2 Legal Issues and Framework for HIV/AIDS

The valve of a comprehensive legal framework in curtailing the HIV/AIDS epidemic as well as providing for the care and protection of the people infected and affected by it is very important. A legal framework that makes specific provision for the protection of people living with HIV/AIDS (PLWHA) and guide the society, institutions and individuals on how the epidemic and those infected and affected by it should be approached, is unavoidable and also very relevant. Equally important is that a robust legal framework that is sensitive to the needs

of PLWHA can afford them dignity and respect – qualities that may have come under attack by discriminatory societal structures and attitudes. Such laws and policies can create greater awareness of violations of dignity and of injustice and will have a critical impact on the spread of the epidemic. Such legal framework, that have been influenced by progressive international laws and conventions recognize the supremacy and efficacy of human rights and human dignity.

3.3 Right to HealthCare

The right to healthcare is much more than the right of access to medicine and doctors it is also about the duty of government to ensure that peoples live in conditions that do not harm their health, but instead promote and fulfill this right. People suffer poor health and disease when they live or work in situations where their human rights are not respected. Example: the risk of infection with HIV is much greater among people who do not have access to information and who are also poor. Also, women do not have full control over their won bodies are also very vulnerable to HIV/AIDS. Thus, the rights to human dignity, life, freedom from slavery, privacy, housing, education and access to information are all important for good health, as a result, people today can no longer be denied health services because of factors like their race, gender, colour or religion.

People cannot be discriminated against because they have an illness. Our constitution i.e. the 1999 Constitution of the Federal Republic of Nigeria provides that “everyone has the right of access to adequate health”.

3.4 Definition of Terms: Ethics Defined

Traditionally ethics provide insight but often fail short of guiding the complex biomedical ethical.

Ethics is a process of determining right and wrong conduct. It is the principle of conduct governing an individual or group; concerns for what is.

Ethics deals with what we believe to be good or bad and with the moral obligations that these beliefs imply. Ethics involves the rule for deciding right and wrong and the code of conduct that is based on our decision.

3.5 Ethical Issues Raised By HIV/AIDS Treatment

The human rights and ethical principles provided a framework by which the dignity and health of both those uninfected and those infected by HIV/AIDS are safeguarded. Furthermore adherence to human rights and

ethical principles is essential to create an effective public health environment in which most people are encourage changing their behaviour, preventing their own infection or onward transmission and receive care. In the context of HIV/AIDS, many institutions encourage beneficial disclosure of HIV/AIDS status and counseling in an ethical way.

On ethical issues involve in HIV testing and treatment. It is widely believed that without an effective HIV prevention, there will be an increasing number of people who will require HIV Treatment. Among the interventions which play a pivotal role both in treatment and in prevention is HIV testing and counseling. These two are paramount.

The World Health organization (Who) and UNAIDS recommend the following four types of HIV testing be clearly appeals that highest ethical standard should be followed. They are:

1. Voluntary counseling and testing
2. Diagnostic HIV testing
3. A routine offer of HIV testing for patient under specific conditions
4. Mandatory HIV screening

The HIV/AIDS challenges have necessitated a complete overhaul of our system and culture that enhances the spread of HIV e.g. the need for an appropriate legal and ethical response to HIV/AIDS. The ethical issue revolves around the standard of care informed consent across culture, privacy and confidentiality, stigma and discrimination protection of vulnerable groups.

SELF-ASSESSMENT EXERCISE 2

Explain the terms ethics and relate to ethical issues in HIV/AIDS

4.0 CONCLUSION

Law and ethics are the sole centralizing and organizing concept of the course legal dimension of HIV/AIDS studies. The study of the Legal and ethical issues revolves around this concept. Law is a body of rules of social conduct which are recognized as obligatory but ethics on the other hand is the study of moral standards and how they affect conduct.

5.0 SUMMARY

We have briefly defined and explain what the legal terms and ethical terms are. We also explained the various terminologies we shall come

across in our study of the legal and ethical issues involved in the control and prevention of HIV/AIDS.

ANSWER TO SELF-ASSESSMENT EXERCISE 2

Ethics deals with what we believe to be good or bad and with the moral obligations that these beliefs imply. Ethics involves the rule for deciding right and wrong and the code of conduct that is based on our decision. In relation to ethical issues in HIV/AIDS, adherence to human rights and ethical principles is essential to create an effective public health environment in which the most people are encourage to and indeed do change their behaviour, prevent their own infection or onward transmission and receive care.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the term Ethics as it relates to HIV/AIDS Treatment
2. Define what Law is and mentions conditions that shapes the various definition of Laws.
3 How does adherence to ethical standard help in preventing the spread of HIV/AIDS.
4. Distinguish between law and morals and discuss it with regards to ethical issues involved in HIV/AIDS treatment.

7.0 REFERENCES/FURTHER READINGS

Obilade, A.O. (1979). *The Nigeria Legal System*, Ibadan: Spectrum Law Publishing.

Ehrman, H.W. (1976). *Comparative Legal Culture*, Englewood Cliffs: Prentice Hall.

Park, A.E W. (1963). *The Sources of Nigeria Law*, Lagos: Africa University Press.

Schollar, H (1990). “Function of the Law and the Lawyers in Development Administration” Occasional paper No. 5, Nigeria Institute of Advance Legal Studies, Lagos.

UNIT 2 CARE FOR INFECTED PERSONS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 HIV/AIDS and the Rights of Access to Health Care
  3.2 Patient's Right
  3.3 Care and Support for HIV/AIDS
  3.4 Who Is Eligible for HIV/AIDS Counseling?
  3.5 Parental or Family Counselling
  3.6 Voluntary HIV Counselling and Testing
  3.7 Access to Essential HIV/AIDS Drugs
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

HIV/AIDS is a state of infection in which the person infected is said or termed to be living with AIDS. This is a virus that weakens the immune system of the carrier making him/her vulnerable to attack by other diseases. HIV means hemoglobin Immune Virus, when the virus is fully developed it is called Acquire Immune Deficiency Syndrome and people infected with the virus are referred to as people living with HIV/AIDS (PLWHA). In this unit, we will look at HIV/AIDS and the rights of access to health care patients rights an well as variables associated with care and support for HIV/AIDS. Enjoy your studies.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

describe HIV/AIDS and the right of access to health care;
describe patient's right in the context of HIV/AIDS;
understand how to care and support people living with HIV/AIDS;
identify who is eligible for HIV/AIDS Treatment;
describe parental or family counseling; describe
voluntary counseling and testing; and determine
access to essential HIV/AIDS drugs.

3.0 MAIN CONTENT

People living with HIV/AIDS are like any other person protected under the law and the status of any person living with the virus should not be the basis of any negative action or inaction. The Nigeria state is concerned with ensuring respect for the equality of rights and opportunities for all citizens and segments of the society. The state is responsible for providing support for their participation in normal life of society and proportion of those at risk of falling into destitution and diligence. HIV/AIDS is not an exception in this situation. The National Commission on Action for Aids (NACA) is the National Body in Nigeria which provides support for people infected with AIDS.

Although financial resources restructure may limit the ability of the state to provide free supportive services to people living with AIDS, other Non Governmental Organisations (NGO) now provide care and support for such people.

3.1 HIV/AIDS and the Right of Access to HealthCare

Section 17(3) of the 1999 Constitution of the Federal Republic of Nigeria states as follows 'The State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons". It is clear and obvious that the enjoyment of this right is a constitutional provision.

The right to health in Nigeria is located within the fundamental principles and objective of state policy in part two of the 1999 Constitution. Items in this part of the Constitution cannot be enforced because they fall within the purview of non-justiceable rights in our Constitution. Chapter II of the 1999 constitution covers issues on fundamental obligations of government, democracy, social justice educational objectives foreign policy and, environmental objective. The chapter also contains national ethics on discipline, integrity, dignity of labour, social justice, religious tolerance self-reliance and patriotism as well as and duties of the citizens. Section 6(6)(c) makes the provisions of chapter II non-justiciable.

However, the Supreme Court of Nigeria foreclosed a creative and holistic interpretation of the constitution in order to give justice able effect to the principles and objectives in chapter II when it held in the case of Attorney General Ondo State V Attorney General of Federation (2002) FWLR (Pt 111), that;

"The fundamental objectives and directive principle can be justiciable by legislation. The case challenged the Corrupt Practices and Other

Related Offences Act, 2000 on the ground that it was not a matter on which the National Assembly was empowered to enact laws for the peace and good governance of Nigeria. The National Assembly had acted pursuant to section 15(5) of the 1999 constitution providing that "The State shall abolish all corrupt practices and abuse of power". The appellant in that matter argued that all the provisions of chapter II of the 1999 constitution are not justiciable and therefore, could not be subject of any enactment or law, and by implication enforcement. The Supreme Court rejected the argument and the Court concluded that the National Assembly has the legislative power to make laws to promote and defend the fundamental objectives and directive principles contained in the constitution. In effect the right to health and access to health once legislated upon, could be made justiciable under our Constitution.

3.2 Patients Rights

The nature of relationship between the physician and the patient is dearly defined in Law. It is inherent in nature that the patient needs the understanding and care of the physician for the cure of his ailment. The primary duty of a physician is to take care or to find cure for the ailment of a patient that may be put in his care. This duty is contractual in nature.

One other area of patient's right is that it is important that in the relationship between a physician and his patient there is the need to maintain confidentiality of information with respect to the issue relating to the care of the patient. This issue is further assured by the 1999 constitution which states in section 37 that: "the privacy of citizens, their homes, correspondence, telephone, conversation and telegraphic communication is hereby guaranteed and protected".

It is also interesting to note the professional ethics of medical personnel as stated in The Medical and Dental Practioners Act Cap 221 Laws of the Federation of Nigeria 1990 which stipulates that medical personnel from both the Public and Private Spheres are under an obligation to keep a person's medical records confidential. This by all means applies to the HIV status of the patient.

3.3 Care and Support for HIV/AIDS

The care and support for people living with HIV/AIDS could come under various titles but it shall be discussed under the heading itemized below.

A. Informed Consent

The nature of the relationship between a physician and a patient makes it necessary for the patient to be supplied with necessary information. Information in this respect may relate to the diagnosis, the method of treatment to be adopted, the experience of the doctor in this respect, the advantages of the adoption of the method of treatment, the alternatives available, the prognosis and the effects and side-effects of the drugs to be prescribed or issued in the treatment of the patient.

Where necessary information in this respect is supplied to a patient; it should be possible for the patient to give his consent on the basis of information made available to him by the physician.

The right to privacy and integrity is protected under section 37 of the 1999 Constitution. This Section provides that the privacy of citizens, their homes etc is hereby guaranteed and protected.

A National Policy on HIV/AIDS is just evolving. However, compulsory test of HIV/AIDS is outlawed and no individual should be tested for the virus without his/her consent. The consent rule is very effective in Nigeria.

Hence, the pillar on which HIV testing rotates are notification, consent, confidentially and testing.

SELF-ASSESSMENT EXERCISE

Identify the specifications of Section 17(3) of the 1999 constitution of the Federal Republic of Nigeria.

B. Support for PLWHA

An environment in which human rights are respected in the context of HIV/AIDS, usually ensures that vulnerability to HIV/AIDS is reduced, those infected with and affected by HIV/AIDS (PLWHA) lives a life of dignity without discrimination and the personal and societal impact on HIV infection is alleviated.

In achieving HIV/AIDS prevention, information about HIV/AIDS is necessary in order to ensure widespread availability of quality prevention measures and services, adequate HIV/AIDS prevention and care information, and safe and effective medication of affordable price are necessary. It is also necessary that all persons on a sustained and equal basis have access to quality goods, services and information for HIV/AIDS prevention, treatment, care and support including anti-

retroviral and other safe and effective medicines, diagnostic and related technologies opportunistic infections.

C. Counselling

Pre Test Counselling

HIV/AIDS Counseling is a confidential dialogue with a specially trained person aimed at helping you to help yourself. Counseling encourages you to explore positive solutions to your problems and to consider the impact that certain decision may have on your life. HIV/AIDS Counseling is essentially about educating and counseling individuals' communities, groups in the control, management and prevention of HIV/AIDS.

HIV/AIDS Counseling is testing and referral. Early knowledge of HIV infection is now recognized as a critical component. Since there are no known cures for HIV/AIDS, the focus should be on interventions on caring for the physical as well as the psychological welfare of the HIV positive individual and his or here significant others.

D. Post HIV Counseling

Not many things in life could be as stressful as going back for HIV test results. However, the significant others in an HIV positive person's life often need help themselves to come to terms with (1) their own fears and prejudices and (2) the implications and consequences of their loved one medical position. The main function of the HIV/AIDS Counselor is to be supportive of his or her infected and affected clients to listen to their problems and to empower them to solve their problems and better their lives.

HIV/AIDS Counseling is a confidential dialogue between a client and a counselor. Counseling aims to enable the client to cope with stress and to make personal decisions related to HIV/AIDS. It includes an evaluation of personal risk of HIV transmission and facilitation of preventive behaviour. Counseling is offered to create a helping relationship between the counselor and the infected or affected person to help him/her and /or the related family and community cope with the challenges posed by HIV infection and disease.

3.4 Who Is Eligible for HIV/AIDS Counseling?

1. HIV/AIDS Counseling is provided to people with HIV/AIDS and their families.
2. Those seeking to undergo an HIV test.

3. Those who are concerned that they are at risk or have been at risk of acquiring HIV infection e.g. those whose partners are HIV infected or have symptoms of HIV infection, those that may have been exposed through blood, have had unprotected sex with multiple partners and those whose regular partners has unprotected sex with multiple partners.

3.5 Parental or Family Counseling

This is offered to those living in a committed relationship and those living in the same household i.e. parent to children. Parents hold the children the duty of care to counsel them on health matters especially the issue of HIV/AIDS. The parent should provide the children with information regarding HIV/AIDS with regards to preventing infection and re-infection of HIV and STD. The parent should inform the child about factors that may predispose him/her to opportunistic infections and what he/she can do to minimize the risk.

In an age where there has been an "explosion" of counseling for adult, it is tragic that the needs of children are being largely ignored. This may be because children live in a world controlled by adults. The parent is the next of kin and the law recognizes this and places the parent in a position to take certain decisions for the child. A child deserves the best help in order for him to manage his life effectively and to develop emotionally and spiritually into adulthood. Children need help to come to terms with their lives. Normally "Good –enough parenting" will provide help and comfort for a child. Parental counseling is therefore necessary.

The Nigeria Constitution of 1999 provides that the family shall be the natural unit and basis of society. It shall be protected by the state which shall take care of its physical health and morals. The state shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community. The African Charter on the Rights and Welfare of the Child (ACRWC), provides in Article 4 that in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
Compulsory medical test is necessary for a growing child to determine his/her status vis-à-vis HIV/AIDS and it will give room for planning the health services for the child, management of the child's health and control of opportunistic infection in case of children living with HIV/AIDS virus.

It is imperative that the child should be counselled on this ground so that early management of the virus, that is HIV/AIDS can control the effect of impact of the virus on the system.

People who are infected with HIV but not aware of it are not able to take advantage of the therapies that can keep them healthy and extend their lives. Knowing whether one is positive or negative for HIV confers great benefit in healthy decision-making. Early referral to medical care could prevent HIV transmission in communities while reducing a persons risk for HIV-related illness and possible death.

Parental Counseling is very important as it helps to strengthen the family relationship and promote mutual understanding in the family. Parental Counseling enables the family to share and learn more information on HIV infection and AIDS. When the status of all members of the family is known together and individually, the person involved make joint strategies of supporting one another socially and psychologically. They are able to share their feelings, anxieties, concerns and worries about HIV infection and diseases. In order to develop and promote behavioral change strategies, parental counseling gives parents opportunity to inform the children on how to identify factors that can predispose them to HIV and to set strategies for prevention.

3.6 Voluntary HIV Counseling and Testing

Voluntary HIV Counseling and Testing (VCT) is when a person chooses to undergo HIV/AIDS Counseling so that he or she can make an informed decision about whether to be tested for HIV. The government is encouraging everybody to come forward to be tested, in order to help the government for adequate planning on how to put programmes in place for those already infected and how to put preventive mechanism in place to check the spread. Voluntary testing also enables an individual to find out early that he/she has been infected with HIV virus. It also enables the individual to:

1. Learn more about the virus and how it affects the body
2. Look after our health so that we can stay as healthy as possible for as long as possible.
3. Get information and Counseling around how to live positively with the virus. This means (learning to accept the fact that we are HIV positive, seeking emotional support, eating a healthy diet, learning how to control the amount of stress in our life, making sure we don't become re-infected and planning the future.
4. Learn to recognize the signs of opportunistic infections so we can get them treated promptly.
5. Find out what resources are available within our community to help manage the HIV status.
6. Find out about prophylactic drugs. These drugs do not cure HIV/AIDS, but can prevent opportunistic infections that are

common with people living with HIV/AIDS e.g. TB and some kind of pneumonia.

7. Access Nevirpne: This is a drug available at a number of hospitals and clinics that lessens the chance of a pregnant mother passing the virus onto her baby.
8. Get emotional support by seeking counseling and joining support groups.

3.7 Access to Essential HIV/AIDS Drugs

Another area of support for PLWHA is the National Guideline Policy on the use of Anti-Retroviral Drugs and treatment of opportunistic infections. The provision of Anti-Retroviral drugs at cheap rate for PLWHA is a step in the right direction to support them and prolong their life span. The treatment and the provision of counseling services to HIV-infected people are among the core activities identified for the realization of the objectives of the National Strategic Plan to combat HIV/AIDS. To combat HIV/AIDS and support PLWHA there is need for increase access to health care facilities generally in the country.

4.0 CONCLUSION

People living with HIV/AIDS are commonly stigmatized in Sub-Saharan Africa and the world beyond. Lack of accurate information about the virus is wide spread. These realities prevent people from seeking treatment. In many regions – and especially in the rural areas – people still believe that HIV/AIDS patients have been bewitched, poisoned or "cursed by the gods". The resurgence of HIV/AIDS has become a grave health emergency and the government can no longer be lethargic in addressing it. They have to evolve a policy for the care and support of people in this group in order to put in the appropriate institution to check the spread of the disease.

5.0 SUMMARY

In this unit, you have learnt about the concept of HIV/AIDS and the terminology PLWHA. You have also learnt about the rights of HIV/AIDS patient and the obligations of the government to establish institutions to provide care and support for people living with HIV/AIDS (PLWHA).

ANSWER TO SELF-ASSESSMENT EXERCISE

Section 17(3) of the 1999 Constitution of the Federal Republic of Nigeria states as follows 'The State shall direct its policy towards

ensuring that; there are adequate medical and health facilities for all persons".

6.0 TUTOR-MARKED ASSIGNMENT

1. The right to health is justiceable under the Nigeria Constitution of 1999. Discuss.
2. Consent is necessary before HIV/AIDS test is carried out on a patient. Do you agree?
3. Discuss the right of access to health care in Nigeria.

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UNIT 3 AWARENESS OF INHERENT LEGAL AND ETHICAL ISSUES

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 Rights to People Living with HIV/AIDS
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

The Nigeria Constitution of 1999 in section 17(2)(a) guarantees the right of equality of all citizens before the law. According to this provision, citizens shall enjoy the same rights and shall be subjected to the same duties regardless of colour, race, sex, ethnic origin, place of birth, religion, educational level, social position, legal status of their parents, or their profession. Section 42(1) of the 1999 Constitution also states that "A citizen of Nigeria, of a particular community ethnic group, place of origin, sex, religion or political opinion should not, by any reason:

a. Be subjected either expressly by or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restriction to which citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religion or political opinions are not made subject, or
b. Be accorded either expressly by or in the practical application of any law in force in Nigeria or any such executive or administrative action, any or any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, place or origin, sex religion or political opinion".
c. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth.

Health status or HIV status is not one of the listed grounds for equality and non discrimination. The non-discrimination clause can however, be interpreted to protect people with HIV/AIDS on grounds such as "social position' or equality in all sphere".

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- identify the basic right of HIV/AIDS positive people (PLWHA);
- explain how the dignity of the human person can be safeguarded; and
- explain how discrimination against people with HIV/AIDS can be tackled using legislation.

3.0 MAIN CONTENT

3.1 Rights of People Living with HIV/AIDS

- Employment Rights (Labour Rights)
- (Right to Qualitative Education)
- Right of Access to Health Care
- Gender Right
- Right to Own Private Property
- The Right to Vote and Be Voted For
- Freedom from Discrimination
- The Right to Self Dignity
- Right to Life

A. Employment Rights (Labour Rights)

Section 17(3)(a): “The state shall direct its policy towards ensuring that:

a. All citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.
b. The health, safety and welfare of all persons in employment are safe-guarded and not endangered or abused.
c. There is equal pay for equal work without discrimination on account of sex or on any other ground whatsoever.

Employees may only be dismissed in accordance with the law and the issue of compulsory testing for HIV/AIDS is also against the Law.

B. Right of Access to Health Care

Section 17(3)(d) guarantees adequate medical and health facilities for all persons. All Nigeria citizens shall have the right to medical and health care and the state shall have the duty to promote and preserve health.

C. Gender Right

Section 11(a)and(b) – state that the state shall

> Protect preserve and promote the Nigeria cultures which enhance human dignity and are consistent with the fundamental objective as provided for in the constitution.
> Encourage development of technological and scientific studies which enhance cultural values.

While the Constitution promotes the values and cultural practices of the people, the practice cannot directly or indirectly violate the written laws of the country. It is noteworthy however that customary rules and tradition that amount to discrimination against women and children are common. Female genital mutilation is widespread in Nigeria, initiation rituals for males are a common practice. It appears that these harmful cultural practices play a crucial role in the spread of HIV.

Some other cultural obstacles are:

Polygamy
Early marriage and
Sexual purification of widows

The government and some non-governmental organizations and agencies are currently disseminating information relating to HIV and sexual practices throughout the country. Rape, sexual assault and physical violence are addressed in both the criminal code and penal code laws of Nigeria. It is suggested that provisions for harsher sentences for HIV – positive rapists should be included in the criminal and penal codes respectively or new Law created for that purpose.

D. Right to Own Private Property

By the provision of section 43 of the 1999 Constitution “every citizen of Nigeria has the right to acquire and own immovable property anywhere in Nigeria. Though HIV/AIDS patient not mentioned in that provision, it can be construed by the interpretation of the section to cover every person without exception.

E. HIV/AIDS and Medical Schemes

There is no medical scheme legislation in Nigeria. Public servants have a structured regional of medical arrangement from the government by registering at designated medical institution appointed by the

government. It is suggested that there should be a medical scheme policy for civil and public servants while the private sector should develop same.

SELF-ASSESSMENT EXERCISE

Does PLWHA have rights to own properties?

F. Insurance and HIV/AIDS

There is no general policy on HIV test for life insurance within the insurance industry in Nigeria. Nevertheless, blood tests are usually conducted. This may include an HIV test. These tests can only be conducted after informed consent or pro-and post- test counselling. The insurance companies have the discretionary power to grant life insurance. There are currently HIV/AIDS – specific life insurance policies in place in Nigeria.

G. Right to Privacy of Citizens

The Right is guaranteed under section 37(1) of the 1999 Constitution and its states that "The privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communication is hereby guarantee and protected. Though HIV/AIDS is not mentioned but it can be construed and interpreted to cover the right of privacy of people living with AIDS.

H. Right to Self Dignity

The Right guaranteed here covers every citizen including AIDS patients though the drafters of the Constitution did not state it specifically. Section 34(1) (a) – (e) covers the field to include persons in the category. Section 34(1) states that "Every individual is entitles to respect for the dignity of his person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment.

b. no person shall be held in slavery or servitude

c. no one shall be required to perform forced or compulsory labour. etc.

I. Right to Life

Section 33 of the 1999 Constitution guarantees the right to life. It provides that the right to life. It provides 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. Despite the observance of

specific regulations designed for the protection of people living with AIDS, the general intendment of the drafters of section 33 of the 1999 constitution is to offer some basic protection to the lives of all persons within Nigeria. This covers every person within the jurisdiction.

J. Freedom from Discrimination

Section42 (1) of the 1999 Constitution guarantees the rights to equality of all citizens before the law. According to this provision all citizens shall enjoy the same rights and shall be subjected to the same duties regardless of colour, race, sex ethnic origin, place of birth, religion, educational level social position, the legal status of their parents or the health status of individual citizen.

4.0 CONCLUSION

In this unit, we have identified those human right principles that already exist which could assist in the adoption of a human rights-based approach. This would broaden the legal framework by including human right provisions in the HIV/AIDS discourse.

5.0 SUMMARY

If you have comprehended this Unit, you should now be able to explain what the rights of people living with AIDS are. You should also be able to give the raison d'eter for such rights and the need for state intervention.

ANSWER TO SELF ASSESSMENT EXERCISE

By the provision of section 43 of the 1999 Constitution "every citizen of Nigeria has the right to acquire and own immovable property anywhere in Nigeria. Though HIV/AIDS patient not mentioned in that provision, it can be construed by the interpretation of the section to cover every person without exception.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is the role of the state in controlling HIV/AIDS epidemic
2. A person living with AIDS has a right to life. Do you agree?
3. All citizens are equal before the law. Discuss.

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UNIT 4 ETHICAL ISSUES IN HIV/AIDS TREATMENT

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Overview of Ethical Principles
 3.2 Special Procedure for HIV Testing
 3.3 Exception to Informed Consent
 3.4 Prenatal
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

This unit examines ethical issues related to HIV/AIDS testing, treatment, and research. Key issues to be analyzed includes confidentiality informed consent end to life mode of testing

2.0 OBJECTIVES

At the end of the unit, you should be able to:

- explain many of the features of the overall Ethical issues involved in HIV/AIDS;
- discuss the factors that contributed to the emergence of these ethical issues; and
- explain how the ethical principles provided can enhance the dignity and safeguard the health of infected persons.

3.0 MAIN CONTENT

In Nigeria all medical information generally is considered confidential and protected under the law. Because of the sensitivity of HIV – related information, information on HIV patient are always guarded secretly.

Exceptions to the Legal and ethical obligations to maintain the confidentiality of HIV –related information exist. For example health care providers have a duty to report HIV infection and AIDS cases to Public Health Authority. The benefit to the public health of this reporting are far to outweight.

3.1 Overview of Ethical Principles

There are there widely recognized principles in Nigeria Medical jurisprudence that apply to both clinical and research ethics: (1) Respect for persons, beneficence, and justice. Respect for person entails respecting the decision of autonomous person and protecting person who lacks decision making capacity and therefore are not autonomous. It also imposes an obligation to treat persons with respect by maintaining confidences and keeping promises. Beneficence imposes a positive obligation to act in the best interests of patients or research participant. Finally justice requires that people be treated fairly.

3.2 Special Procedure for HIV Testing

Blood test in Nigeria does involve an informed consent. Consent often is implied but not explicit. HIV test is recognized as a different from other blood tests because it presented serious psychosocial risks, such as rejection by family, discrimination in employment, and/or restricted or no access to health care. Insurance and housing. In recognition of these circumstances and to encourage testing, special procedure were adopted for obtaining consent for an HIV test. i.e. specific informed consent; special protection for confidentiality of HIV tests results were also put in place.

These special requirement still remain in place, voluntary counseling pro-testing and post testing was also put in place where many of these specify information that must be covered, including the nature of the test, the transmission and the confidentiality of HIV test result. The voluntary counseling requirement for informed consent. Informed consent is a constitutional provision. The constitution requires specific informed consent to HIV testing and in may cases it requires that consent be written.

In addition, specific information including information about the nature of the test, the nature of the illness caused by HIV risk behaviours and prevention measures, the confidentiality of tests results, reporting requirements and other circumstances under which test results may be disclosed; the voluntary nature of the test the ability to withdraw consent and the availability of anonymous testing.

SELF-ASSESSMENT EXERCISE

Identify the 3 principles in Nigeria Medical jurisprudence that apply to both clinical and medical research ethics.

3.3 Exception to Informed Consent

HIV testing may be permitted without informed consent under specific circumstances e.g. in the case of emergency response workers or healthcare workers consent an accident victim of HIV/AIDS before administering treatment.

Prisoners also can be tested for HIV/AIDS without an informed consent also person accused of sex crime. It is also mandatory that new born babies in Nigeria go through the required mandatory HIV testing which indirectly repeals maternal HIV Status.

4.0 CONCLUSION

In this Unit, efforts have been made to discuss the ethics of the medical profession and the rights of the patient , particularly a person living with AIDS. Also submissions have been made on the duties of the medical personnel and the rights of the patient.

5.0 SUMMARY

As can be seen from the above outline, UNAIDS and the World Health Organization believes on the ethical issues involved in HIV/AIDS testing. The belief of the two organizations is that without an effective HIV prevention, there will be an ever number of people who will require HIV treatment. Among the interventions which pay pivotal role both in treatment and in prevention, HIV testing and counseling stand out as paramount and it is our firm believe that human rights and ethical principles provided a frame work by which the dignity and health of both those uninfected and those infected by HIV are safeguarded. Furthermore, adherence to human rights and ethical principles is essential to create an effective public heath environment in which most people are encourage to and indeed do m change their behaviour, prevent their own infection or onward transmission and receive care.

ANSWER TO SELF-ASSESSMENT EXERCISE

The three widely recognized principles in Nigeria Medical jurisprudence that apply to both clinical and research ethics:

Respect for persons
Beneficence
Justice

Respect for person entails respecting the decision of autonomous person and protecting person who lacks decision making capacity and therefore

are not autonomous. It also imposes an obligation to treat persons with respect by maintaining confidences and keeping promises. Beneficence imposes a positive obligation to act in the best interests of patients or research participant. Finally justice requires that people be treated fairly.

6.0 TUTOR-MARKED ASSIGNMENT

1. List the Advantages of the ethical principle in context of HIV/AIDS
2. Explain the term counseling in context of HIV/AIDS.
3. Of what use is Human Right provision and ethical principles in the treatment and prevention of HIV/AIDS. Discuss
4. List the ethical issues involved in HIV/AIDS Testing.

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MODULE 2 DISCRIMINATIONS AND HIV/AIDS

Unit 1 Discrimination
Unit 2 Partner Discrimination
Unit 3 Prenatal Counseling and Mandatory Testing

UNIT 1 DISCRIMINATION

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 Defining Discrimination
  3.2 Discrimination and Constitutional Provisions
  3.3 Legislation on Equality and Non-Discrimination
  3.4 Discrimination and Stigma
  3.5 Stigma Related to HIV/AIDS
  3.6 Factors that Contribute to HIV/AIDS Stigma
  3.7 Forms of HIV/AIDS Stigma and Discrimination
  3.8 Stigma and Discrimination at Communities
  3.9 Women and Stigma
  3.10 Other HIV/AIDS Issues and Family, Employment and Health Care
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

Our primary concern in this section is to discuss the question of discrimination, especially its relevance in the study of our present course HIV/AIDS in Nigeria.

In order to best address the above question, it becomes necessary to break our discussion into segments within the unit and under each segment provide the answers that will give you adequate knowledge and understanding of what discrimination is all about.

2.0 OBJECTIVES

define discrimination;
illustrate discrimination and constitutional provisions;
identify legislation on equality and non-discrimination;

discuss discrimination and stigma;
identify stigma related to HIV/AIDS;
identify factors that contribute to HIV/AIDS stigma;
identify forms of HIV/AIDS stigma and discrimination;
discuss stigma and discrimination at communities; and
explain women and stigma and other HIV/AIDS issues.

3.0 MAIN CONTENT

3.1 Defining Discrimination

Advanced Leaner Dictionary defines the term "discriminate" as "make a distinction, treat unfairly.

3.2 Discrimination and Constitutional Provisions

Section 42(1) of the 1999 Constitution provides that all citizens shall enjoy the same rights and shall be subject the same duties regardless of colour, race, sex, ethnic origin, place of birth, religion educational level, social position.

Section 43 guarantees the right of equality to men and women in all spheres of political, economic, social and cultural domains.

Health status should therefore not be a ground to discriminate against any citizen.

3.3 Legislation on Equality and Non-Discrimination

There is no legislation apart from constitutional provision that deals with non discrimination. Although there are attempts by National Action Committee on AIDS in sponsoring two bills at the Senate and House of Representative on general principles of protection against discrimination. Effective public awareness is needed to check the issue of discrimination against people living with AIDS. There is no known policy or legislation on HIV/AIDS. Although Article 7 of the Medical and Dental Practitioners Act, *cap 22*. Laws of the Federation, 1990 states inter alia "Practitioners shall be at liberty to choose whom they will serve in rendering their professional service but they shall endeavour to render services without discrimination in any emergency to the best of their ability and according to the prevailing circumstances.

Legislation on equality and non-discrimination may be classified into two viz. local and international. The 1999 Constitution of the Federal Republic of Nigeria has a fairly comprehensive chapter in fundamental

rights. It is a local legislation for this purpose. On the other hand, there are international documents on human rights. The African charter on Human and Peoples' Rights, International Covenant on Civil and Political Rights, 1993; Convention Against Torture and Other Cruel, Inhuman or degrading Treatments or Punishments, 2001 fall under the international category. Nigeria is a signatory to document. However, before these documents could be assimilated into Nigerian Law, they need to be transferred as provided under the 1999 Constitution. It is noteworthy that only the African Charter on Human and Poeples' Rights has undergone this process. In spite of this, it is submitted that the signing of the treaty on its own appertains some responsibility on Nigeria.

1999 Constitution of the Federal Republic of Nigeria.

The 1999 Constitution provides inter alia in section 42(1) "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:

> Be subjected either expressly by, in the practical application of, any law in force in Nigeria or any executive or administrative action for the government, to disabilities or restriction to which citizens of Nigeria of other communities, ethnic group, place of origin, sex, religion or political opinion are not made subject or;
>
> Be accorded either expressly by or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religion or political opinions.
>
> No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

The African charter which was adopted in 1981 by the then Organisation of African Unity (AOU), (reconstituted as the African Union (AU), Nigeria ratified the charter on 22nd June 1983 and subsequently transformed it into domestic law pursuant to the Ratification and Enforcement Act. The African charter has enshrined in it the traditional three generations of rights. The first is civil and political rights; the second generation is economic, social and cultural rights and the third generation is peoples or groups right.

Article 3 through 12 of the charter guarantees the traditional libertarian rights. These rights are largely similar to those guaranteed in chapter IV

of the 199 Constitution, which includes freedom form Discrimination of citizen on any ground. The charter also enshrines egalitarian rights to reflect the need of Africans and a fortiori, Nigerians.

3.4 Discrimination and Stigma (HIV/AIDS)

The Rights of people living with HIV/aids often are violated because of their presume HIV/AIDS statue, causing them to suffer both the burden of the disease and the consequential loss of other rights. Stigmatisation and discrimination may obstruct their access to treatment and may affect their employment housing, and other rights. Since HIV – related stigma and discrimination discourages individuals infected with and affected by HIV from contacting health and social services. The result is that those meding information, education and counseling will not benefit even where the services are available.

3.5 Stigma Related to HIV AND AIDS

Stigma is a powerful tool of social control. Stigma can be used to marginalize, exclude and exercise power over individuals who show certain characteristic, while the societal rejection of certain social groups (e.g. homosexuals, injecting drug users, sex workers) may predate HIV/AIDS, the disease has reinforced the stigma.

In many societies people living with HIV/AIDS are often seen as shameful, in some societies the infection is associated with minority groups or behaviours, for example homosexuality. In some cases HIV/AIDS may be linked to "perversion" and those infected will be punished. Also in some societies HIV/AIDS is seen as the result of personal irresponsibility sometimes HIV and AIDS are believed to bring shame upon the family or community.

3.6 Factor Which Contribute to HIV/AIDS Related Stigma

HIV/AIDS is a life threatening disease.
People are scared of contracting HIV
The disease is associated with behaviour (such as sex between men and injecting drug use) that are already stigmatized in many societies.
People living with HIV/AIDS are often thought of as being responsible for becoming infected.
Religious or moral beliefs lead some people to believe that having HIV/AIDS is the result of moral fault (Such as promiscuity or deviant sex") that deserved to be punished.

3.7 Forms of HIV/AIDS Related Stigma and Discrimination

In some societies, Laws rules and policies can increase the stigmatization of people living with HIV/AIDS. Such legislation may include compulsory screening and testing, limitation on international travels and migration. In most cases, discriminatory practices such as the compulsory screening of risk groups. Laws that insist on the compulsory notification of HIV/AIDS cases and the restriction of a person right to anonymity and confidentiality as well as the right to movement of those infected, have been justified on the grounds tht the disease forms a public health risk.
Numerous countries including Nigeria have enacted legislation to protect the rights and freedoms of people living with HIV and AIDS and to safeguard them from discrimination. Much of this legislation has sought to ensure their rights to employment, education, privacy, and confidentiality, as well as the right to access information, treatment and support.

SELF-ASSESSMENT EXERCISE

Identify the factors contributing to HIV/AIDS related stigma and discrimination

3.8 Stigma and Discrimination at Communities

Stigma and discrimination can arise from community level responses to HIV and AIDS. The harassing of individuals suspected of being infected or of belonging to a particular group is a norm in some societies, it is often motivated by the need to blame and punish and in external circumstances can extend to acts of violence and murder. HIV/AIDS related murders have been reported in countries as diverse as Brazil, Colombia, Ethiopia, India and South Africa.

In December, 1998, Gugu Dhlamini was stoned and beaten to death by neighbours in her township near Durban, South Africa, after speaking out openly on World AIDS Day about her HIV status.

3.9 Women and Stigma

The impact of HIV/AIDS on women is particularly acute. In many developing countries, women are often economically, culturally and socially disadvantaged and lack equal access to treatment, financial support and education. In a number of societies, women are mistakenly perceived as the main transmitters of sexually transmitted diseases (STDs). Together with traditional beliefs about sex blood and the

transmission of other diseases, these beliefs provide a basis for the further stigmatization of women within the context of HIV and AIDS.

HIV – positive women are treated very differently from men in many developing countries. Men are likely to be "excursed" for their behaviour that resulted in their infection, whereas women are not.
*In Nigeria, for example, the husband who infected them with HIV/AIDS may abandon women living with HIV or AIDS. Rejection by wider family members is also common. Women, whose husbands have died from AIDS related infections, have been blamed for their death.

3.10 HIV/AIDS and Other Related Issues

Families

In the majority of developing countries families are the primary caregivers to sick members. There is clear evidence of the importance of the role that the family plays in providing support and care for people living with HIV/AIDS. However, not all family response is positive. Infected members of the family can find themselves stigmatized and discriminated against within the home.

Employment

While HIV is not transmitted in the majority of workplace setting the supposed risk of transmission has been used by numerous employers to terminate or refuse employment. There is also evidence that if people living with HIV/AIDS are open about their infection status at work, they may well experience stigmatization and discrimination by others. Pre-employment screening takes place in many industries, and this is used to deny HIV positive employment.

In some countries screening has also being a compulsory parameter to undertake before employment. It is a means HIV/AIDS positive employment. In some industries where health benefits are available to employees. Employer – sponsored insurance schemes providing medical and pensions for their workers have come under increasingly pressure in countries that have been seriously affected by HIV and AIDS. Some employers have used this pressure to deny employment to people with HIV/AIDS

HealthCare

Within the healthcare sector it has been observed that people living with HIV/AIDS are stigmatise and discriminated against by the health care system. Many studies revealed the reality of withheld, non- attendance

of hospital staff to patients, HIV testing without consent, lack of confidentiality and denial of hospital facilities and medicine. Also fuelling such responses are ignorance and lack of knowledge about HIV transmission.

HIV – related stigma and discrimination remains an enormous barrier to effectively fighting the HIV and AIDS epidemic. Fear of discrimination often prevent people from seeking treatment for AIDS or from admitting their HIV status publicly. People with (or suspected of having) HIV may be turned away from healthcare services, employment, refuse dentry to foreign country. In some cases, they may be evicted from home by their families and rejected by their friends and collogue.

The egalitarian rights include, the rights to property, which restates Article 17 of the Universal Declaration of Human Rights of 1942 and the right to work under equitable and satisfactory conditions and to fair wages as provided in article 15(1). Others are the rights to enjoy the best attainable state of physical and mental health- Article 16(1). The right to education and to participate in cultural life-Article 17. The charter protects the family, which is natural unit and basis of society. Article 23(1). The charter also calls for "the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

The charter does not expressly mention HIV/AIDS or people living with AIDS but most of the major provisions of the charter can be invoked, construed and interpreted to protect people living with such persons.

These rights are accorded to individuals or groups. They are not entitlements borne out of the benevolence of the state. The corollary to this is that all persons can realize themselves with dignity and organize society in such a way that all rights are effected and respected. In the words of Jacques Maritain.

"The human person possesses rights because of the very fact that it is a person, a whole master of itself and of its acts, and which consequently is not merely a means to an end, but an end, an end which must be treated as such. The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owned".

4.0 CONCLUSION

The 1999 Constitution of the Federal Republic of Nigeria as well as treaties an international legal document provides a framework for the

protection of people living with HIV/AIDS. By these documents they have a right to human dignity and to be able to realize their self worth as well as dignity. These documents are to the effect that the Health status of a citizen should not be the basis for the enjoyment or deprivation of fundamental human Rights as outlined in chapter IV of the Nigeria 1999 Constitution. Respect for the dignity of the human person is an indispensable component and determinant of all human rights. Discrimination or discriminatory treatments will only lower human dignity.

5.0 SUMMARY

In this Unit we have examined the concept termed discrimination. We recognized the fact that both constitutional and legal framework have been put in place to tackle the problem. Legislation may have to be promulgated to accommodate people living with AIDS specifically.

We have been able to show that both domestic Laws and international Laws have put down various safe guards which we can use as indices of measuring fight against discrimination on people living with AIDS.

ANSWER TO SELF-ASSESSMENT EXERCISE

Factor which Contribute to HIV/AIDS related Stigma and discriminations are:

HIV/AIDS is a life threatening disease.
People are scared of contracting HIV.
The disease is associated with behaviour (such as sex between men and injecting drug use) that are already stigmatized in many societies.
People living with HIV/AIDS are often thought of as being responsible for becoming infected.
Religious or moral beliefs lead some people to believe that having HIV/AIDS is the result of moral fault (Such as promiscuity or deviant sex") that deserved to be punished.

6.0 TUTOR-MARKED ASSSIGNMENT

1. Define the term "discrimination"
2. Under the African Charter on Human and People's Rights the right of people living with AIDs is protected. Do you agree?
3. Critically analyse the Rights of people living with AIDS as outlined in chapter IV of the 1999 Constitution of Nigeria.

7.0 REFERENCES/FURTHER READINGS

HIV/AIDS Medical Glossary.

Center for Disease Control, CDC National Prevention Network "HIV and AIDS" Are You at 'Risk' Revised March 2000.

The 1999 constitution of the Federal Republic of Nigeria.

The African Charter of Human and Peoples Right.

World Health Organisation "Report on The Global HIV/AIDS Epidemics" Global Estimates of the HIV/AIDS Epidemic as of 1999.

UNIT 2 PARTNERS DISCRIMINATION

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Gender and HIV/AIDS Partner Discrimination
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

By definition, HIV (Human immunodeficiency Virus) is the causative virus of AIDS (Acquired immune deficiency Syndrome). AIDS has no precedent in medical history. The virus primarily attacks the white blood cell (the T-lymphocytes or CD-4 dells) and macrophages of the body. These cells plays key role in maintaining a persons' immunity to disease. As a result, HIV infected people become susceptible to illnesses caused by the collapse of the body's immune system. Individual infected with the virus are infections for the result of their lives, and can transmit HIV via blood or sexual fluids.

The common conditions and diseases related to AIDS include Kaposi sarcoma (cancer of the living of the blood vessels); pneumonia, tuberculousis, toxoplasmosis (viral infection affecting the central nervous system). Candidiasis, and severe herpes. As the depressed immune system makes the individual vulnerable to many illnesses.

2.0 OBJECTIVES

By the end of this unit, you should be able to accurately:

- explain the reasons for discrimination between partners and families of partners in context of HIV/AIDS.

3.0 MAIN CONTENT

HIV is transmitted through exchange of infected fluids, whereby a substantially quality of virus gains access to the T4 cells in s susceptible individual.

HIV occurs in relatively high concentrations in the blood, semen and vaginal and cervical secretion of infected individuals. Therefore, there is

a significant risk of infection when these body fluid are passes directly into another persons blood or anal or genital tract. HIV is also present in breast milk, which is a possible vehicle of transmission to infants. There are only three significant routes of transmission for HIV:

a. from infected blood or blood product
b. from infected sexual fluids
c. from infected mother to baby during pregnancy and delivery.

3.1 GENDER AND HIV/AIDS PARTNERS DISCRIMINATION

AIDS stigma exists around the world in a variety of ways including ostracism, discrimination and avoidance of HIV infected people. Stigma –related violence or the fear of violence prevents many people seeking HIV testing.

Discrimination may occur if a subject is excluded from the participation of a service or events. HIV-related discrimination of a partner is the unfair treatment of people based on their actual or suspected HIV status. It is linked with and reinforces other forms of discrimination while stigma and discrimination disproportionately affect group that engage in behaviours that put them at a higher risk of HIV infection such as sex workers, men who have sex with men and injecting during users

Stigma and discrimination impact on people's ability to network organize, and co-operate to respond to HIV and AIDS.

Culturally in many parts of Nigeria women lower status in society and their greater vulnerability to HIV/AIDS are due to complex interplay of factors, these factors are often compounded by discriminatory Laws and customary practices. Such laws and practice advance and strengthen the subordination of women within society and within current gender relation. Ultimately, they make women more vulnerable to and less able to resist the contraction of HIV/AIDS. The unequal gender power relations fuels epidemic.

Women are mistakenly perceived as the main transmitter of sexual transmitted disease (STD). Together with traditional believes about sex, blood and the transmission of other diseases, these beliefs provide a basis for the further stigmatization of women with the context of HIV/AIDS.

HIV positive women are treated very differently from men in many developing countries. Men are likely to be "excused" for their behaviour that resulted in their infection, whereas women are not. The husband

who infected them with HIV/AIDS may abandon women living with HIV/AIDS. Rejection by wider family members is also common. Women whose husbands have died from HIV/AIDS related infections have been blamed for their death and were subsequently abandoned by the man's family.

4.0 CONCLUSION

Discrimination is one of the issues that people with HIV face everyday. Even though there are laws that deal with HIV/AIDS discrimination. It continues to be just one more obstacle surrounding this epidemic. Discrimination varies. It can be as subtle as avoiding someone in the place of work because of rumors that person is infected, or as overt as dismissal from a job because of a learned infection of HIV/AIDS. People who have been infected, as well as their friends, relative and some caregivers, have experienced a variety of different types of discrimination. Even the young are ostracized because of their infection. Fear seems to be largely responsible for unnecessary discriminatory practices.

5.0 SUMMARY

We have briefly defined what discrimination and partner discrimination is all about. The changes that accompanied the social status of a partner who tested positive to HIV?AIDS. The Cultural practice and Laws that reinforce and encourage partners discrimination.

6.0 TUTOR-MARKED ASSIGNMENT

HIV/AIDS partner related stigma is an unfair treatment. Discus

7.0 REFERENCES/FURTHER READINGS

HIV/AIDS Medical/Glossary.

Centers for Disease Control, CDC National Prevention Information Network "HIV and AIDS: "Are you at Risk," Revised March 2000.

World Health Organization, "Report on the Global HIV/AIDS Epidemics, Global Estimates of the HIV/AIDS Epidemic as of 1999".

Centre for Disease Control "Semi-Annual HIV/AIDS Surveillance Report" December 31 1999. "CDC Morbidity and Mortality Weekly Report". 11/2/97.

UNIT 3 PRE-NATAL COUNSELLING AND MANDATORY TESTING

CONTENTS

1.0 Introduction
2.0 Objective
3.0 Main Content
    3.1 Pre-Natal Counselling
    3.2 Pre-Natal HIV Testing
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

In purely biological terms, the period of pregnancy in woman marks a special time in the reproductive function of women. It heralds a period of more or less severe disturbance of their health equilibrium. The internal changes in the woman's system that take place with the end of this major phase of her life produces, health problems. Besides the hormonal alterations and their implications on her health there may also be other diseases in the blood that may be transferred into the life of the unborn child as recognized in the World Health Organization constitution. The WHO affirms the principle of governmental responsibility to provide adequate health services for the people: "Governments have a responsibility for the health of their people as follows; which can be fulfilled only by the provision of adequate health and social measures".

2.0 OBJECTIVE

At the end of this unit, you should be able to:

explain pre-natal counseling, and testing.

3.0 MAIN CONTENT

3.1 Pre-Natal Counseling

In line with the fundamental objective of improving the level of women's health through the promotion, protection and recovery of health before during and after the reproductive cycle, there is need to measure the attention given to women during the prenatal stage. At the

prenatal stage, there is need for counseling of the pregnant woman to undertake the HIV/AIDS test.

One of the planks of controlling the spread of HIV/AIDS blood transmission or through mother to child infection is to counsel the pregnant woman on the need to know her status notwithstanding that the right to privacy and integrity is protected by our constitution. It will be safe for a pregnant woman to submit to test at the prenatal stage so that she can be placed on anti retroviral therapy to prevent the transmission of the virus from the mother to the unborn child.

3.2 Prenatal HIV Testing

Mother to child transmission of HIV has been a priority area for earlier detection because transmission is significantly reduced if pregnant women identified as zero positive take antiretroviral therapy. In 1999, an institute of medicine panel on reducing prenatal HIV transmission concluded that pretest counseling and written informed consent requirement for HIV testing were barriers to prenatal HIV testing. To take advantage of the proven effectiveness of antiretroviral therapy.

In the United States of America, despite the stringent requirement of written inform consent, many state has relaxed their Laws or requirement for the routine HIV testing check on pregnant women.

The import of this is that HIV testing becomes an integral part for prenatal care. We should bare in mind that HIV testing entails much more greater psychosocial risks than other blood tests and that prenatal HIV testing fifer from HIV testing in other setting. Additional protection is necessary to safeguard pregnant women's autonomous choice.

Prenatal testing provides opportunities for HIV education and counseling, routine testing may enhance the prevention effort. The ethical concerns surrounding prenatal HIV testing are different in developing countries especially in Nigeria. To date, the cost of antiretroviral prophylaxis is prohibitive and therefore, for most part, pregnant women do not receive it. At a point, in south Africa the Antiretroviral drugs was denied pregnant women because of the Health policy in that country later on it was reversed and pregnant women were accommodated in the provision of antiretroviral drugs by the government.

Although pregnant women are often tested to determine the HIV status of the mother or pregnant women. Allowing them to know their HIV status may be helpful in guiding decisions concerning breast feeding.

The benefits of testing will increase as prenatal antiretroviral drugs, along with support services become increasingly available.

4.0 CONCLUSION

In this unit, we have ethical principle in the context of HIV/AIDS treatment. The relationship between the ethical issues and control of the spread of HIV/AIDS

5.0 SUMMARY

This unit provided information of pre-natal counseling and testing. Hope you enjoyed your studies.

6.0 TUTOR-MARKED ASSIGNMENT

Identify the reasons why HIV/AIDS pre-natal testing should become an integral part of pre-natal care.

7.0 REFERENCES/FURTHER READINGS

HIV/AIDS Medical/Glossary.

Centre for Disease Control, CDC National Prevention Information Network HIV and AIDS: “Are You at Risk”, Revised March 2000.

World Health Organization, “Report on the Global HIV/AIDS Epidemics, Global Estimates of the HIV/AIDS Epidemic as of 1999”.

Centre for Disease Control “Semi-Annual HIV/AIDS Surveillance Report” December 31 1999. “CDC Morbidity and Mortality Weekly Report, 11/2/97.

MODULE 3 DUTIES AND REPRODUCTIVE RIGHTS

Unit 1 Obligation to Care
Unit 2 Reproductive Rights and Surrogate Decision Making

UNIT 1 OBLIGATON TO CARE

C0NTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 Obligation to Care
  3.2 The Right to Heath
  3.3 The 1999 Constitution and Other Domestic Laws
  3.4 Duty to Take Care
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

Acquired Immune Deficiency Syndrome (AIDS) has the tendency to reduce the quality of life, According to the new index created by the United Nation Development Programme (UNDP); the AIDS pandemic in Africa has caused a drop in life expectancy. "The spread of AIDS has multiple consequences on development. It robs countries of people in their prime and leaves children uncared for." UNDP said, "AIDS pandemic is working against the development of Africa. Hence, the need for strategic response in the care for the infected people. HIV is a dynamic virus that equally demands dynamic response. The AIDS pandemic is possibly the greatest Medical and Health challenge of modern times.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

describe obligation to care;
identify the right to heath;
identify the 1999 constitution and other domestic laws; and
explain duty to take care.

3.0 MAIN CONTENT

3.1 Obligation to Care

The rights to health, education and housing are guaranteed in a many of international instruments. These include the Universal Declaration of Human Rights, the International Covenants on Economic Social and Cultural Rights (ICESCR), the Regional African Charter on Human and Peoples Rights (African Charter) among others. Article 25 of the Universal Declaration of Human Rights encapsulates the right to health and housing thus:

> Everyone has the right to a standard of living adequate for the health and well being of himself and for his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability widowhood, old age of other lack or livelihood in circumstances beyond his control.
> Motherhood and childhood are entitled to special care and assistance.

Though the provisions of the Universal Declaration are not strictu sensu binding on states, further elaborations of the provisions of the Declaration have been made under other components of international bill of rights

The ICESCR makes elaborate provisions on the rights to health, education and housing. Although ratified and binding on the Nigerian state under the doctrine on pacta sunt servanda, the ICESCR has not been domesticated as part of Nigerian laws. But the implication of its non-domestication does not imply that it is of no relevance before the domestic courts.

The relevant provisions of the ICESCR are as follows:

Article II(i):

> The state parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Article 12:

> The state parties to the present covenants recognize the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The steps to be taken by states parties to the covenant to achieve the full realisation of this right shall include those necessary for:

> The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child.
>
> The prevention, treatment and control of epidemic, endemic, occupational and other diseases.
>
> The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The African Charter as an international agreement also provides for the right to Health and Education.

On health, Article 16 provides that:

> Every individual shall have the right to enjoy the best attainable state of physical and mental health.
>
> State parties to the 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

3.2 The Right to Health

Article 16 of the African Charter entitles every individual to the enjoyment of the best attainable state of physical and mental health and demands that states takes measure for preventive and curative health. These tallies with the "World Health Organisation" definition of 'health' as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. Considering the very nature of Health as a human right, Eze and Onyekpere suggested that:

"A full appreciation of the concept of health will involve an understanding of the minute sectoral approaches necessary for that implementation of the right to health. This will relate to education, nutrition, water, sanitation, environment, housing, socio-economic dynamic etc. It will also involve the deeper questions of equity in health and market force. The quality of life and health security of specific population groups and accountability for health. Health could be used as a bench mark for the measurement of advancement in poverty eradication, promotion of social cohesion and elimination of discrimination."

Since the African charter did not go on to elaborate the details of the content of the right to health, the courts and other relevant interpretation agencies in construing this provision can, in accordance with article 60 of the charter:

"Draw inspiration from international law on human and peoples rights, particularly from the provisions of the various African instrument on human and peoples rights, the charter of the United Nation, the charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African Countries in the field of human and peoples rights and as well as from the provisions of various instruments adopted within specialized Agencies of the United Nations of which the parties to the present charter are members.

Thus a definition of the right to health as contained in the African charter can draw interpretation and guidance from the provisions of the Universal Declaration of Human Rights and the ICESCR.

Generally, rights and obligations arise to respect, protect, and fulfill the right to health. The obligation to respect requires states to refrain from interfering with the enjoyment of the right to health.

The obligation to protect requires state to prevent violations of the right to health by their parties. Fulfilling the right to health requires taking appropriate measures including legislative, administrative, judicial, budgetary and other measures for the realization of the right to health. The failure of the state to provide essential primary health care to those in need may amount to a violation of the right to health.

Another set of obligations arising in respect of the right to health and indeed for all other economic, social and cultural rights are the obligations of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. In the case of the right to health, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires states to achieve specific targets to satisfy a detailed substantive standard with respect to the right to health. An example of this is the requirement for the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the Beijing Fourth world Conference on Women.

Generally in matters of economic, social and cultural rights, there is the obligation on states to provide regardless of the state of economic development, minimum subsistence rights for all.

Audrey Chapman identified the following minimum conditions for a state to fulfill in respect of the right to health. They are:

The explicit recognition of the right to health

Establishment of an appropriate institutional framework and set of policies to assure basic standards for health and promote progressive realization of the highest attainable standard of physical and mental health;

Allocation of appropriate levels of resources invented in ways that will bring the greatest benefit to the population.

Respect for the equality of all persons

Institution of effective measures to prevent discrimination.

Priority efforts to rectify inequalities and inbalances in the distribution of resource in the health sector so as to bring currently underserved and disadvantaged groups up to mainstream level.

Designation and treatment of health services as a public good and not a profit making commodity.

Development of detailed plan with specific goals on the progressive realization of the right to health care: and

Monitoring performance and attainment of core goals based on adequate data gathering and analysis capabilities.

3.3 The 1999 Constitution and other Domestic Laws

Section 17(3) (b) and (c) of the 1999 Constitution provides that; the government shall direct its policies toward ensuring that:

- "The health, safety and welfare of all persons in employment are safeguarded and not endangered or abused.
- There are adequate medical and health facilities for all persons.

But the above section being under chapter 2 of the constitution is non-justiciable. Non justiciability, however, is not an assertion that a certain cause of action cannot be subjected to judicial review. An approach to interpreting the justiciable section of the constitution bears in mind that, fundamental objectives will help in bringing the constitutional provision to reality. For instance, the nexus between the right to life and health is obvious since the easiest way of depriving a person of his right to life would be to deny him of health-supporting facilitated to the point of 'abrogation.

3.4 Duty to Take Care

The primary duty of a physician is to take care or to find cure for the ailment of a patient that may be put under his care. The duty is usually regarded as contractual. Much as the duty is contractual and some of the remedies that are usually found when there is a breach of contract can be asked for in a relationship of a physician and patient, it is not unusual to ask for the remedies that are usually granted in the case of a delict or a tort.

Thus while it may be said that a physician accepts to treat a patient who presents himself to him for advice, diagnosis or cure by reason of which a contractual relationship is created. If however, along the line, the doctor is negligent in the performance of duty of care he owes by reason of his position as a physician, he becomes liable to pay damages the patient.

4.0 SUMMARY

From the foregoing it is obvious that the state is under obligation both by international instruments and domestic laws to care for sick people especially people living with AIDS. It is also one of the trite principles of medical practice that the physician has a duty of care for the patient. There is an obligation on the part of the physician to take care of patients especially HIV/AIDS patients.

5.0 CONCLUSION

The obligation to car rests fully on the state and the medical personnel. Though the right to health under the 1999 Constitution is non-justiciable, once a patient has consented to treatment by a medical personnel, such a medical personnel is under a duty of care once he has accepted to treat him/her.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the issues involved in the obligation to care.
2. To what extent does the 1999 constitution of the Federal Republic of Nigeria protect the health of the person?

7.0 REFERENCES/FURTHER READINGS

HIV/AIDS Medical/Glossary.

Centre for Disease Control, CDC National Prevention Information Network HIV and AIDS: "Are You at Risk," Revised March, 2000.

World Health Organization, "Report on the Global HIV/AIDS Epidemics, Global Estimates of the HIV/AIDS Epidemic as of 1999".

Centre for Disease Control "Semi-Annual HIV/AIDS Surveillance Report" December 31 1999. "CDC Morbidity and Mortality Weekly Report, 11/2/97.

UNIT 2 REPRODUCTIVE RIGHTS AND SURROGATE DECISIONS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main content
  3.1 Defining Reproductive Right
  3.2 Some Human Right Provisions Relating to Reproductive Right
    3.2.1 Medically Assisted Conception
    3.2.2 Use of Donor Gametes
    3.2.3 Surrogacy
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

While the right to health has been an internationally recognized as a human right since its affirmation as such in article 12 of the International Covenant on Economic, Social and Cultural Rights in 1966, it was only in 1993 that there was formal acceptance of the right to reproductive health. This was at the International Conference on Population and Development (ICPD) held in Cairo in 1993. At this Conference, reproductive right was affirmed as human right. The ICPD documents define Reproductive Health as "a state of complete physical, mental and social well being and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its functions and processes". Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have a capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the rights of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as other methods of their choice for regulation of fertility and the right of access to appropriate health care services that will enable woman to go safely through pregnancy and child birth and provide couples with the best chance of having a healthy infant.

2.0 OBJECTIVES

At the end of this unit you should be able to:

- explain what reproductive health and its origin;
- identify characteristics and functions of reproductive rights; and
- understand the nexus between reproductive health and surrogate decisions.

3.0 MAIN CONTENT

3.1 Defining Reproductive Health

Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights document and other consensus documents.
The Beijing Platform for Action adopted by the Fourth World Conference on Women in 1995 avers that "the human rights of women include the right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, discrimination and violence, equal relationship between women and men in matters of sexual relations and reproduction, including full respect, consent and shared responsibility for sexual behaviours and its consequences.

Reproductive rights as enunciated in international human rights instruments are:

1. The right of all couples and individuals to decide freely and responsibly for the number and spacing of their children;
2. The right to have information, education and the right shall include those necessary for:

   - The provision of the reduction of still birth rate and of infant mortality and for the healthy development of the child.
   - The improvement of all aspects of environmental and industrial hygiene.
   - The prevention, treatment and control of epidemic, endemic, occupational and other diseases.
   - The creation for conditions which would assure to all, medical services and medical attention in the event of sickness.
   - Convention on the Elimination of all forms of Discrimination Against Women (CEDA) 1979.

The Article 12 in reference provides as follows:

1. State parties to the convention shall take all appropriate measure it eliminate discrimination against women in the field of health care in order to endure on a basis of equality of men and women.
2. The right to have information, education and the means to do it.
3. The right to attain the highest standard of sexual and reproductive health.
4. The right to make decisions concerning reproduction free from discrimination, co-ercion and violence.
5. The right to free choice in marriage and family formation.

3.2 Some Human Rights Provisions Relating To Reproductive Health and Rights

Universal Declaration of Human Rights (UDHR) 1945

Article 25:1: Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and Medicare and necessary social services.

International Covenant on Economic, social and Cultural Rights (ICESCR). 1966.

Article 12:1 state parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 12:2: The steps to be taken by state parties to achieve the full realization of access to health care services, including those related to family planning.

State parties shall ensure to women appropriate services in connection with pregnancy, confinement and post natal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation.

Principle 7.2 of ICPS includes as reproductive rights, the rights of men and women to be informed and to have access to safe effective, affordable and acceptable methods of family planning of their choice as well as other methods of their choice for regulation of fertility which are not against the law and the right of access to appropriate health care services that will enable women to go safely through pregnancy and birth and provide couples with the best chance of having a healthy infant.

3.2.1 Medically Assisted Conception

Against the background of internationally accepted instruments of the right is citizens to reproductive rights and the best mode of reproducing self. Medically assisted conception may be resorted to in order to address some peculiar problems. Either as a result of threatening disease or one disability or the other; One disability or the order.

Medically assisted conception may either take place through artificial insemination on the one hand or invitro fertilization followed by embryo transfer on the other hand. Both parties are given the full facts of the procedure so as to avoid the problem of dispute as to the paternity of the child. This method is of advantage especially:

as a remedy against infertility of a man or woman
as a means of prevention of genetic diseases and
as an alternative for natural procreation.

3.2.2 Use of Donor Gametes

This is a method of medically assisted conception. Informed consent of the donor for the procurement of the egg donation and the gametes must be obtained. The anonymity of the donor is obtained by virtue of code of conduct of medical practitioners to observe the duty of professional secrecy towards third parties. This would also ensure that the donor does not bring a paternity claim later.

3.2.3 Surrogacy

Surrogacy relates to the practice where a woman is made pregnant with the intention that the child shall be handed over after birth to a couple. The use of artificial insemination or invitro fertilization makes it unnecessary to have sexual intercourse in order to become pregnant for the purpose of being a surrogate mother.

Surrogate decision is taken by 3 parties. That is to say that it is a tripartite agreement between a couple, medical practitioner and the surrogate mother whose duty is to carry the already fertilized egg in her womb for a period of time.

Surrogate decision is taken as a result of any of the following:

prevention of genetical diseases
prevention of HIV transfer from mother to child
an alternative of natural procreation or

inability the woman who donated the egg may not be able to cope with prolong pregnancy.

4.0 CONCLUSION

The sexual health of the people means that people should be able to have safe and satisfying sex life. Gender relations should be equal, responsible and mutually respectful. Sexual health encompasses behaviours essentially to countering sexually transmitted diseases (STDs), including HIV/AIDS.

5.0 SUMMARY

In this Unit you have learnt about the reproductive rights of the people, and how mother to child transmission of HIV/AIDS

6.0 TUTOR-MARKED ASSIGNMENT

1. What is sexual Health?
2. What is reproductive right?
3. Describe surrogacy in medical practice.

7.0 REFERENCES/FURTHER READINGS

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The 1999 Nigeria Constitution of the Federal Republic of Nigeria.

The United Nations Charter of Human Rights of 1948.

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MODULE 4 END OF LIFE DECISIONS AND LIVING WILL

Unit 1 End of Life Decisions
Unit 2 Euthanasia & Right to Life
Unit 3 Informed to Consent
Unit 4 Living Wills and Proxy and Power of Attorney
Unit 5 Medical Decisions

Unit 1 END OF LIFE DECISIONS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 Definition of Terms
  3.2 End of Life Decisions: Factors to be Considered
    3.2.1 Allowing Death and Taking Life
    3.2.2 Refusal of Beneficial treatment
  3.3 End of Life Decision and the Nigerian Constitution
3.4 Patient and Right to Life
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

Technological and biomedical advancements made throughout the 20th century have dramatically improved the potentials of modern medical practice to prolong the life of a patient. But these advancements have also raised important questions about end-of-life decisions. Who can and should be empowered to make these decisions and which quality of life factors should be consider in the process?

In advanced countries like the U.S. , U.K. and Canada more than 85% of patients die in some kind of health care facility(Hospital nursing homes, hospices, etc, of this group about 60% of the population choose to withheld some kind of life-sustaining treatment. Life is a gift from God; respect for life is a “seamless garment”

Many patients who desire to die are unable to do so without assistance, some who are able to assist themselves commit suicide with guns or some other lethal methods.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define the term “living will” and identify its legal importance for those making end of life decision;
- list several of the factors that must be considered when deciding to prolong the life of a patient;
- explore some of the factors that must be addressed by bioethics committee working to help patients; and
- recognize some of the complex issues that must be considered by doctors, hospitals and insurance companies surrounding the treatment of terminally ill patients.

3.0 MAIN CONTENT

A living will is a legal document in which a person expresses in advance his or her wishes concerning the use of artificial life support. To be referred to should the person be unable to communicate such wishes at the end of life.

3.1 Definition of Terms

1. Voluntary, non-voluntary, and involuntary Euthanasia
2. Voluntary patient choose to be put to death
3. Non-voluntary patient’s unable to make a choice at all.
4. Involuntary patient choose not to be put to death but is anyway.
5. Active Euthanasia: this occurs in those instances in which someone takes active means, such as lethal by action, to bring about someone’s death
6. Passive Euthanasia: occurs in which someone simply refuses to intervene in order to prevent someone’s death.
7. Euthanasia: means “a good death”, ‘dying will’. What is good death? Peaceful, painless, with loved one around?

3.2 End of Life Decisions: Factors to be Considered

When all appears that there is no benefit to the patient to live i.e. either hope for cure or a relief for suffering where there’s not going to be a cure but there’s going to be an extension of life, where there is non of those three factors, then there should be a decision that death should take over.

3.2.1 Allowing Death and Taking Life

Patients who once would have died because of their inability to take food and water by mouth can today be kept alive through artificially administered nutrition and hydration. These measures are often temporary and allow many to recover health, at other times, however, they alone maintain life, and they do so indefinitely.

Food and water are part of our basic human care. Artificially administered nutrition and hydration move beyond basic care to become medical treatment Patients have a right to refuse unduly burdensome treatment which are disproportionate to the expected benefits when medical judgment determines that artificially – administered nutrition and hydration will not contribute to an improvement in the patients underlying condition or prevent death from that condition, patients or their legal spoke persons may consider them unduly burdensome treatment. In these circumstances it may be morally responsible to withheld or withdraw them and allow death to occur. This decision does not mean that family and friends are abandoning their loved one.

3.2.2 Refusal of Beneficial Treatment

Patients and healthcare professionals share a common concern that medical treatment be beneficial. In most situations, they have a common understanding of that benefit when agreement exists, patients generally are willing to receive treatment. There are situations, however, when patients and health care professionals disagree on what will benefit the patient or on whether the expected benefit is worth the risks and burdens involved.

Health care professionals are obligated to inform patient of medical treatment options and what in their best judgment are the potential benefits and burdens of such options. They are also obligate to obtain the consent of patients of provide treatment.

SELF-ASSESSMENT EXERCISE

What is a living will?

3.3 End of Life Decision and the Nigeria Constitution

In developing Countries like Nigeria the right to life is guaranteed by section 33 (1) of the 1999 constitution of the Federal Republic of Nigeria which state inter alia “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.

A person shall not be regarded as having been deprived of his life in contravention of this section, if he does as a result of the use of force to such extent and in such circumstances as are permitted of such force as is reasonably necessary:

a. For the defence of any person from unlawful violence or for the defence of property,
b. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained or
c. For the purpose of suppressing a riot, insurrection or mutiny.

In Nigeria, it is a criminal offence for a medical practitioner to terminate the life of another for the purpose of showing mercy on the patient on account of his suffering or any unjustifiable cause, for example section 311 of the criminal code provide that; "a person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person. The most grievous offence which may be committed by a medical personnel is murder. Murder occurs when it is shown that the illegal conduct of the medical practitioner led to the death of the patient.

3.4 Patient and Right to Life

If it is unlawful for a medical practitioner to end the life of a patient for any reason whatsoever.

Our law also does not give the patient the right to end his own life. This will also amount to suicide as the right to life is a constitutional provision which cannot be overridden by any other enactment.

4.0 CONCLUSION

In this Unit, we have explained the nature, function and purpose of the provision of the law in respect of the right to life. We have also explained the various enabling laws that criminalise the offence of mercy killing by a Medical practitioner. We further explained the difference between lawful and unlawful killing.

5.0 SUMMARY

If you have comprehended this unit, you should now be able to explain what amounts to Euthanasia. You should also have acquainted yourself with the features of lawful and unlawful killing of patient as well as of end of life decisions.

6.0 TUTOR-MARKED ASSIGNMENT

1. Explain the term Euthanasia
2. Right to life is only for those who are healthy and not for those who are sick. Discuss.
3. What is end of life decision?

7.0 REFERENCES/FURTHER READINGS

The Constitution of the Federal Republic of Nigeria 1999.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

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UNIT 2 EUTHANASIA AND THE RIGHT TO LIFE

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Definition of Euthanasia
 3.2 Voluntary Euthanasia
 3.3 Involuntary Euthanasia
 3.4 Assisted Suicide
 3.5 Euthanasia by Action
 3.6 Euthanasia by Omission
 3.7 Right to Life
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

In the last unit, you learned the meaning of Right to life as a constitutional provision and derogation from it therefrom. Furthermore, there is a growing opinion that there are many other ways by which there can be derogate of right to life outside the ambit of the constitutional provisions. It has been suggested that technological development should also impact on our Law. This unit is devoted to examining the debate about the necessity of Euthanasia as a derogation from right to life.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- define euthanasia;
- define voluntary euthanasia and involuntary euthanasia;
- explain the concept of assisted suicide;
- define euthanasia by action and euthanasia by omission; and
- discuss Right to Life.

3.0 MAIN CONTENT

3.1 Definition of Euthanasia

Euthanasia is the act and practice of ending the life of an individual suffering from a terminal illness or an incurable condition by lethal injection or the suspension of extraordinary medical treatment. Euthanasia is the intentional killing by act or omission of a dependent human being for his or her alleged benefit.
Euthanasia could be voluntary, involuntary assisted suicide or by action or by omission

3.2 Voluntary Euthanasia

This is when the sick person requests to be killed through a living will or by giving power of attorney to a health proxy to take the decision on her/her behalf.

3.3 Involuntary Euthanasia

This is a situation when the person who is killed made an expressed wish to the country.

3.4 Assisted Suicide

This is a situation where someone provides an individual with the information, guidance, and means to take his or her own life with the intention that they will be used for this purpose. When this individual involved in the killing is a doctor, it is called "physician assisted suicide".

3.5 Euthanasia by Action

When a person intentionally causing a person's death by performing an action such as by giving a Lethal injection.

3.6 Euthanasia by Omission

Intentionally causing death by not providing necessary and ordinary (usual and customary) care or food and water.

The act or practice of painlessly terminating the life of a person or animal. It is accepted in some culture but in Nigeria it maybe treated as criminal, subjecting those responsible to prosecution under the criminal and penal code.

An exception to prosecution has been developed in some jurisdictions in which the termination of the life of an incurable ill patient is no longer treated as criminal if done by a guardian or immediate family member after consultation with an ethics committee of a hospital, and if accomplished by the negative means of withdrawing life support systems or extra-ordinary medical care rather than by some affirmative act.

In Nigeria this area of our Law is not well developed like in other jurisdiction like United State of America, England, Canada, etc. In some of these 'jurisdiction' the state is highly involved in euthanasia cases. The state can specify the number of individuals that must agree for euthanasia to be performed, the state can specify how frequently someone can sign a euthanasia authorization. The state can also specify that only the individual can decide.

Living will are part in the legal aspect of euthanasia. A living will can express a patient's thoughts towards his future medical treatment. Living wills allow anyone capable of making decisions to tell the doctor before hand that they do not wish to be put on life support.

SELF-ASSESSMENT EXERCISE

Euthanasia by action is pure murder? Discuss.

3.7 Right to Life

The Right to Life asserts the sanctity of human life. The African Charter on Human and People's Right put it thus:

"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one, may be arbitrarily deprived of this right" The derogation allowed by the Nigeria Constitution, with regard to right to life, all but make this right meaningless. For example, the police may kill in the process of arrest, of quelling a riot insurrection or mutiny S33(2)(c) of the 1999 Constitution. Most constitutions provides that the right to life may be derogated from where a sentence of death is imposed under due process of Law.

The right to life has often been extended to cover "the right to die" either by committing suicide or assisted suicide, as in voluntary euthanasia by a terminally ill patient. Several organizations exist in many parts of the world which espouse suicide and euthanasia as fundamental rights.

Late Dr. Akinola Aguda expoused this idea that the right to die is fundamental. He postulated that suicide which is regarded as an offence should be decriminalized. He asserted that suicide is a manifestation of the illness of the state.

He said "what does the right to life means when an individual he feels he will be happier if that very life is taken away from him, it does not matter to him whether he lives or not. Consequently, cases of attempted suicide should not be punished by imprisonment, as such an action will only increase his social depression. Euthanasia, similarly is a question of morality and not of criminal law. The people suffering from terminal diseases should in Aguda's view have the right to end their suffering.

4.0 CONCLUSION

In this Unit, you have been exposed to the rudimentary aspect of Law regarding the right to die in Nigeria. The effort here is to show that our law needs to be in tune with developments in science and technology, it doesn't have to be mechanical or static in its approach to issues

5.0 SUMMARY

This unit is to be taken as a further elaboration of the concept of right to life. The main objective is to expose you to debate about the necessity of the law on the right to die as an entrenched provision in the Nigeria Constitution. You have now read both the argument for an the argument against the provisions for the right to die. The awareness will inform our position on future law reforms of in this country or to appeal to the brooding ominispirit of the future for an amendment to the provision of the Right to Life in our constitution and make it more expansive enough to accommodate Rights to die.

6.0 TUTOR-MARKED ASSIGNMENT

1. In Nigeria euthanasia by action is pure murder, Discuss.
2. Explain the following terms:

a. Assisted Suicide
b. Voluntary Euthanasia

3. The Right to Die is entrenched in the 1999. Nigeria Constitution. Do you agree with the statement? Discuss.

7.0 REFERENCES/FURTHER READINGS

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UNIT 3 INFORM TO CONSENT AND MEDICAL DECISIONS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
3.1 Medical Decisions
3.1.1 End of Life Decision: Making Advances Directives
3.1.2 Components of an Advanced Directive
3.2 Contents of Advanced Directives
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

The term "Inform to Consent" is a medical term that is germane to the relationship between a patient and a medical practitioner. The Medical practitioner owns the patient the duty of care, which is imposed by the law. For this reason, there is the need for transparency and accountability on the part of the medical practitioner to the patient. Thus the two parties should be able to conduct their affairs in an open and transparent manner necessary about diagnosis, treatment and drugs. Information should be given to the patient to make an informed judgment.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- identify the relationship between patient and medical practitioner;
- explain the meaning of "inform to consent"; and
- describe the main ingredients that must be made available to the patient to make an independent judgment.

3.0 MAIN CONTENT

The nature of the relationship between a physician and a patient makes it necessary and confidential for the patient to be supplied with a necessary information. Information in this respect relate to the diagnosis, the method of treatment to be adopted, the experience of the doctor from the adoption of the said method of treatment, the alternatives available, the

prognosis and the effects and side-effects of drugs to be presented or used in the treatment of the patient. Where necessary information in this respect is supplied to a patient, it should be possible for the patient to give his consent on the basis of the information made available to him by the physician. It should be noted however, that in an emergency situation, it may be impossible to obtain the consent of the patient. There is justification for this especially in therapeutic case. Therapeutic cases therefore constitute justifiable exception. On whether a medical practitioner has disclosed enough information as to lead to the conclusion that the patient actually agreed to the line of action taken by him is a question of fact.

Lord Scarman, in Sideway V Bethlem Royal Hospital Governor (1985)/All/ER 643at646 put relevant issues in this regard in focus when he noted thus:

"Has the patient a legal right to know, and is the doctor under a legal duty to disclose, the risk inherent in the treatment which the doctor recommends? If the law recognizes the right and obligation, is it a right to full disclosure or has the doctor a discretion as to the nature and extent of his disclosure? And, if the right be qualified, where does the law look for the criterion by which the court is to judge the extent of the disclosure required to satisfy the right? Does the law seek the guidance in medical opinion or does it lay down a rule which doctors must follow, whatever may be the views of the profession? There is further a question of law as to the nature of the cause of action; is it a cause of action in negligence that is, a breach of the duty of care, or is it based on a breach of a specific duty to inform the patient which arises not from any failure on the part of the doctor to exercise the due care and skill of his profession but directly from the patient's right to know".

The determination of what should be regarded as appropriate consent depends on the answers given to these questions. With respect to the use of the opinion of a responsible and competent medical practitioner skilled in that art, there does not seem to b any problem especially if the acknowledged medical explanation or analysis of the issue is presented to the patient. However, this is said not to rest with the medical practitioner, but an issue to be considered from the point of view of the patient as it relates to his/her rights. In the cause of treating of a patient, especially where surgical operation is to be performed and presumed 'inform consent' of the patient may be overreached by the discovery of another ailment. The physician should be protected under the principle of "presumed consent" especially if further action has been taken by the physician more than that explained to the patient and upon which he could be said to have consented for the purpose of removing in its entirety the ailing condition of the patient.

3.1 Medical Decisions

3.1.1 End of Life Decision: Making Advance Directives

What Are Advance Directives?

Advance directives are documents written while a person is still able to make decisions, saying that if the person becomes mentally incompetent, then he or she no longer wants artificially-life-sustaining measures. These may include cardiopulnary resuscication(CPR) respirators.

Advance directives apply if a person is mentally unable to make decisions because before then, the doctor would have asked the person about his or her preference concerning treatment. If the mind is gone, the person can no longer ask to be allowed to die with dignity.

Another option in refraining from writing advance directives that specify particular treatments, is to appoint or designate a health care agent. The agent would be someone who will make decisions for the patient when he can no longer make them for himself. A health care agent would not be locked into the wordings of a particular advance directive document that might not apply to the actual situation on ground with the patient.

3.1.2 Components of an Advance Directive

It is hard to predict a person's medical situation when an advance directive document takes effect. You could be confined to a bed or a chair, he may not be able to recognize people or have conversation. When it is to decide that he needs fluid, antibiotics or artificial feeding it is nearly impossible to write an advance directive that will take into account the exact circumstances that you will be in at the end of your life.

3.2 Contents of Advance Directives

Appoint a Decision Maker

The appointment of a decision maker is in a document separate from advance directive. A living person should be named as a health care decision maker. An alternative may also be named.

Durable Power of Attorney

This may be a patient's best protection against ending up spending weeks, months, or years in a vegetative state or marginally being kept alive by the use of artificial life sustaining measures.

The Document Naming: A Healthcare Agent

This is particularly important if a patient would prefer a non-relative to make his health care decisions for him. If he does not name a non-relative, the hospital and the courts will name a relative. People with HIV/AIDS frequently want non-relatives to be their healthcare decision makers. Medical advances make it possible to keep a person alive who, in former times, would have died more quickly form the serious nature of his illness, injury or infection. This has set the stage for ethical and legal controversy about the patients rights; the family right and the medical profession's proper role. The state also has an interest in protecting its citizens form harm.

Each citizen has the constitutional right, established by law and court decisions to request that medical treatment be withdrawn or withheld. The right remains valid even if a person becomes incapacitated. Another aspect of end-of-life decision making is the right to insist in receiving, rather than refusing treatment. This issue relates to "medical futility, when medical personnel deem further treatment to be useless.
The big issue that confronts us today is when we think about our own death or that of someone we love. Our attitudes and beliefs about religion, pain, suffering, loss of consciousness, and leaving behind those we love come into play and we can let things unfold as they may. This fact sheet is not intended to provide a comprehensive planning tool. It outlines areas we need to think about and the resources that can help whether we are caring for someone who is already incapacitated or making decisions for ourselves in HIV/AIDS cases.

4.0 CONCLUSION

Lord Templeman adopted a new approach to the rights of a patient to know when he stated *in Sideaway V Bethlem Royal Hopital Governors tha*t; "A doctor offers a patient diagnosis, advice and treatment. The objectives, sometimes conflicting, sometimes unattainable, of the doctors service are the prolongation of life, the restoration of the patient to full physical and mental health and the alleviation of pain. Where there are dangers that treatment may produce results, direct or indirect, which are harmful to the patient, those dangers must be weighed by the doctor before he recommends treatment. The patient is entitled to consider and reject the recommended treatments and for that purpose to understand the doctors advice and the possibility of harm resulting form the treatment. I do not subscribe to the theory that the patient is entitled to decide everything".

The position of Lord Templeman is that professional judgment on medical decisions on what to do in treating a patient should be left with the medical doctors and not with the patient.

5.0 SUMMARY

Specifically what we have learnt can be summarized as follows:
Medical decisions
"Inform to consent" rule of practice in Patient-Medical Practitioner relationship
The duty of care of a Medical Practitioner to a patient.
Medical Decisions
End of Life decision: making advances directives
Components of an advanced directive
Contents of advanced directives

6.0 TUTOR-MARKED ASSIGNMENT

1. What is Medical decision?
2. Discuss the principle that all information concerning the diagnosis, treatment of a patient must be made available to him as of right.
3. What are the limitations of "inform to consent" principle in Medical Practice.

7.0 REFERENCES/FURTHER READINGS

John Ademola Yakubu: Medical Law in Nigeria.

The Constitution of the Federal Republic of Nigeria 1999.

The Criminal Code Act of Nigeria.

The Penal Code act of Nigeria.

UNIT 4 LIVING WILLS, HEALTH CARE PROXY, AND POWER OF ANTTORNEY OR MEDICAL DECISIONS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Living Wills
 3.2 Health Care Proxy
 3.3 Power and Limitation of an Agent
 3.4 Importance of Healthcare Proxies
 3.5 Structure of Health Care Proxy Form
 3.6 Medical Decisions
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

The purpose of living will is to appoint an individual on the basis of a document signed by a competent person giving direction to health care and providing treatment choices in certain circumstances.

2.0 OBJECTIVES

By the end of this unit, you should be able to accurately:

explain the term Living Will;
medical decisions;
advance Directive/ Living Wills; and
the meaning of the term Proxy with a Power of Attorney.

3.0 MAIN CONTENT

3.1 Living Will

A Living Will also referred to as will to live, is one type of advance health directive or advance health care directive. It is often accompanied by a specific type of power of attorney or healthcare proxy. These are legal instruments that are usually witnessed or notarized.

A living will usually covers specific directives as to the course of treatment that is to be taken by caregivers, or, in particular, in some cases forbidding treatment and sometimes also food and water, should the principal be unable to give informed consent ("individual health care instruction") due to incapacity.

A power of attorney for healthcare appoints an individual (a proxy) to direct health care decisions should the principal be unable to do so.
As the name suggest, the term "Will to live" as opposed to the other terms tends to emphasize the wish to live as long as possible rather than refusing treatment in the case of serious conditions.

In the Netherlands, patients and potential patients can specify the circumstances under which they would want euthanasia for themselves. They do this by providing a written euthanasia directive, this helps establish the previously expressed wish of the patient even if the patient is no longer able to communicate. However, it is only one of the factors that is taken into account. Apart from the will in writing of the patients, at least two physicians, the second being totally unrelated to the first physician in a professional matter (e.g. working in another hospital, with no prior knowledge of the medical case at hand) have to agree that the patient is terminally ill and that no hope for recovery exists. In the United States, most states recognise living will or the designation of a health care proxy.

3.2 HealthCare Proxy

A healthcare proxy is a legal document used in the United States that allows an agent to make health care decision in the event that the primary individual is incapable of executing such decisions

3.3 Power and Limitation of an Agent

The agent is empowered when a qualified physician determines that the primary individual is unable to make decisions regarding healthcare. The agent has the power to remove or sustain feeding tubes from the primary individual if these tubes are the only things that are keeping the primary individual alive. The agent's decisions stems from knowledge of the patient's desire on the matter. If the primary individual made his or her wishes clear on the proxy form, then they must be followed despite any possible objection from the agent.
An agent will not be legally or finally liable for decisions made on behalf of the primary individual as long as they take into account the primary individuals wishes and beliefs.

3.4 Importance of HealthCare Proxies

Healthcare proxies have become increasingly important today due to conflict among relatives of the primary individual. The American case of Terri Schiav is a famous modern day example. Doctors tried to treat Terri for more than ten years and concluded that she was in a persistent vegetative state. Her husband wanted to remove the feeding tube, but her parents opposed it. This resulted in a lengthy court battle that raised many political, moral and medical issues. The whole controversy could have been avoided if Terri had assigned either her parents or her husband as her health care proxy.

3.5 Structure of HealthCare Proxy Form

Healthcare forms may differ in structure from one jurisdiction to the other. They are standard form documents and the following information must be contained in the:

Name and address of the agent
Name and address of an alternative agent
Duration of the proxy – not indicating a duration means its valid unless stated otherwise.
Special instructions – these can broaden or limit the powers of the agent.

If the patient does not want to be on feeding tubes no matter what, this can be stated here. If there are certain treatments that the patient does not want to receive like analysis or blood transfusion, then they must be indicated. If the patient wants to give the agent more flexibility with some or no restriction, this must be written. Other data that must be contained therein are:

Name, date and signature of the primary individual.
Instruments on issues or organ donation.
Two adult witnesses must sign the document stating that they have witnessed this agreement and that both parties appears to be same. The witness must be 18 years old or above. The agent and primary individual do not qualify as witness.
A lawyer may help in drafting the document tailored to the needs of the primary individual.
Once signed, copies of the form must be given to healthcare provider, the agent, spouse and close friend. A copy should also be carried by the primary individual.

SELF-ASSESSMENT EXERCISE

Identify the structure of health care proxy form.

3.6 Medical Decisions

Medical decisions are taken on the basis of the content of living wills and power of attorney donated to a proxy by a primary agent. This seems to be the best solution in managing health decisions as contained in advance directive documents.
These documents show a comprehensive path for all healthcare providers hospital, hospital networks, health systems, doctors, medical groups, hospices and nursing houses to follow and comply with all the provisions of the document.

4.0 CONCLUSION

Advance directives as represented by the two documents examined above centre around the principles of your right to die and death with dignity with an advance directive. A patient express how much or how little he wants done for you when he is no longer able to make these decisions.

These directives are a way of making his voice heard when he can no longer speak. They allow him to appoint someone to make his healthcare decisions for him when he no longer can and to administer or withhold treatment and procedure.

5.0 SUMMARY

In this Unit, we have examined the concepts of living wills and power of attorney to proxy to take health decision on ones behalf. We also learnt that advance directives are not just for the elderly. Persons who desire to direct their medical care in the future should embrace any of the two options discussed above.

6.0 TUTOR-MARKED ASSIGNMENT

1 Discuss the class of information require in the following cases:
   a. Appointing a medical proxy.
   b. Living will.
2. What do you understand by the term proxy and power of attorney for medical decisions
3. Describe how an agent can be empowered to take medical decision.

7.0 REFERENCES/FURTHER READINGS

John Ademola Yakubu: Medical Law in Nigeria.

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MODULE 5 HIV/AIDS: INTERNATIONAL AND REGIONAL ORGANIZATIONS

Unit 1 International Covenants Treaties and Conventions on HIV/AIDS
Unit 2 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC).
Unit 3 Regional Legal Norms and International Guidelines on HIV/AIDS and Human Rights

UNIT 1 INTERNATIONAL CONVENANTS TREATIES AND CONVENTIONS ON HIV/AIDS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 The Bill of Rights
  3.2 International Covenant on Civil and Political Rights (ICCPR)
  3.3 International Covenant on Economic, Social and Cultural Rights (ICSCR)
4.0 Conclusion
5.0 Summary
6.0 Tutor-Mark Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

Treaties are formal agreements between states. They create legally binding obligations and rights among states which are parties to the treaty. At times the treaty may create rights in favour of the individual while creating obligations with which the state must comply. Human Rights treaties fall within this category. The states agree to guarantee specific human rights for all individuals within their respective jurisdiction and to comply with corresponding obligations. Countries are supposed to adopt internal legislation and policies to implement human rights standards, some human rights treaties create mechanisms for monitoring and reporting on state compliance. Others provide avenues for individuals whose rights are violated to seek redress.

2.0 OBJECTIVES

This Unit discusses treaties and other international documents on HIV/AIDS and their effects. At the end of this Unit, you should therefore be able to identify the treaties on the protection against and care for HIV/AIDS patients as well as their functional contents.

3.0 MAIN CONTENT

International, regional and national legal document and laws that touch directly on the subject HIV/AIDS reproductive health and rights in Nigeria are:

a. Bill of Rights
b. The UN Convention on Elimination of all Forms of Discrimination Against Woman (CEDA) 1979
c. The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 Law of the Federation (1990)
d. The United Nations Convention on the Rights of the Child
e. The Vienna Declaration on Human Rights. (1993)
f. The International Conference on Population and Development (ICPD) Programme of Action (1994 & ICPD
g. The Beijing Platform for Action (BPFA) 1995
h. International Covenant in Civil and Political Rights (ICCPR)
i. International Covenant on Economic, Social and Cultural Rights (ICESCR)
j. International guidelines, issued by UNAIDS and office of the United Nations High Commission for Human Rights.

International and regional human rights treaties do not include any HIV/AIDS specific provision. Nevertheless, a number of the articles in the various treaties have impact on people living with HIV/AIDS. There are no specific treaties within the international legal framework. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both came into force in 1976, about 4 years before the first HIV/AIDS case was documented. Nevertheless, specific provisions of these treaties may be applied to various legal situations affecting people living with or affected by HIV/AIDS. The Covenant on the Elimination of all Forms of Discrimination against women (CEDAW) is similar. Having been adopted in 1989, 10 years after the first reported case of HIV/AIDS made no mention of HIV/AIDS, with respect to children.

Generally, international treaties do not have a direct impact on the domestic legal systems of specific countries. These treaties can and

should guide the legislature to draft national laws to fulfill their obligations and to interpret the treaty rights into domestic legislation.

3.1 The Bill of Rights

These comprise the following; the Universal Declaration of Human Rights (UDHR), the International Covenant on Political and Civil Rights(ICPCR), and the International Covenant on Economic, Social and Cultural Rights(ICESCR). Nigeria has signed and ratified these instruments (treaties).

Article 16 of the Universal Declaration of Human Rights states that men and women of full age, without any limitation due to race, nationality, or religion have right to marry and to found a family.

3.2 International Covenant on Civil and Political Rights (ICCPR)

ARTICLE 2:

> Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the right recognized in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

It provides further:

> Each state party to the present covenant undertakes
> To ensure that any person whose right or freedom as herein recognized is violated shall have effective remedy, notwithstanding that the violation has been committed by persons acting in an official capability.
> To ensure that any person claiming such a remedy shall have his right determined by competent judicial administrative authorities or by any other competent authority provided for by the legal system of the state and to develop the possibilities of judicial remedy.
> To ensure that competent authorities shall enforce such remedies granted.

Article 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7: No one shall be subjected to cruel, inhuman or degrading treatment or punishment in particular. No one shall be subjected without his free consent to medical or scientific experimentation.

Article 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence or to unlawful attacks on his honour or reputation.

Everyone has the right to protection of the law against such interference or attacks.

Article 19(2) Everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers either orally in writing or in print, in the form of art, or through any other medium of his choice.

Article 22: Everyone shall have the right to freedom of association with others.

Article 24(1): Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state.

Article 26: All persons are equal before the law and are united without any discrimination to the equal protection of the law.

3.3 International Covenant on Economic, Social and Cultural Rights (ICSCR)

Article 2:

1. Each state party to the present covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The state parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 6(1): 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.

Article 7:

The state parties to the present covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular;
Safe and healthy working conditions
Equal opportunities for everyone to be promoted in his employment to an appropriate higher level subject to no consideration other than those of security and competence.

Article 9: The state parties to the present covenant recognise the right of everyone to social security, including social insurance.

Article 10: The state parties to the present covenant recognize that (2) family should have special protection, special protection should be accorded to mother during a reasonable period and after child birth.

This article contains general observation on maternity benefit and maternity leave.

Article 10(3) special measures for protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage, or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their moral or health or dangerous to life or likely to hamper their normal development should be punishable by law.

Article 11(1): the state parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.

Article 12:

1. The state 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 state parties to the present covenant to achieve the full realization of this right shall include those

necessary for (a) the provision for the reduction of the still birth rate and of infant mortality and for the healthy development of the child.

3. The prevention, treatment and control of epidemic, endemic, occupational and other diseases (a) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13(1): The states parties to the present covenant recognized the right of everyone to education.

They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedom

SELF-ASSESSMENT EXERCISE

i. What are the characteristics of a treaty?
ii. Outline international provisions on the right to health.

4.0 CONCLUSION

The United Nations is a living testament of hope. This body through the various international instrument (treaties) adopted by member nations lives in the heart and mind of every citizen striving to end violence, and promote tolerance, advance development and ensure equality, protect human rights, alleviate poverty, control the spread of HIV/AIDS and care for people living with HIV/AIDS. The United Nations at its best enables the achievement of those highest of human aspiration through all these international covenants and conventions.

5.0 SUMMARY

If you have comprehended this unit, you should now be able to explain what treaties is and understand the basic principles of making treaties enforceable within a domestic jurisdiction features of treaties and the difference between international law and domestic application.

6.0 TUTOR-MARKED ASSIGNMENT

1. Identify the salient principles that guarantee rights to health under ICESCR.
2. International Covenant on Civil and Political Rights is an ordinary paper enactment. Comment.

3. Because there are no direct provisions for HIV/AIDS in all the international legal framework, this means people living with AIDS have no right. Comment.

7.0 REFERENCES/FURTHER READINGS

The African Charter on Human and Peoples Rights Adopted June 27, 1981 Entry I.L.M 58 (1982) (Herein after African Charter).

International Covenant on Civil and Political Rights, Adopted Dec. 19, 1966, Entry into Force March 23, 1976.

International Convention on Economic, Social and Cultural Rights Adopted 16th Dec. 1966 entry into force 3 Jan 1976.

Covenant Against Torture and other Cruel, or Degrading Treatment or Punishment, Adopted Dec., 10 1984 Entry into Force June 26, 1987.

UNIT 2 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMAN (CEDAW) AND CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

CONTENTS

1.0 Introduction
2.0 Objective
3.0 Main Content
 3.1 Provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
 3.2 Convention on the Rights of the Child (CRC)
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

In the previous unit, you learnt about the nature of treaties and international instruments. The Unit introduced us further to the subject as well as analysis of other approaches to the protection of people living with HIV/AIDS.

2.0 OBJECTIVE

At the end of this, you should be able to:

differentiate between the different provisions in the international legal framework.

3.0 MAIN CONTENT

3.1 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

It is a treaty and it is an agreement between states. CEDAW is a central campaign unit for women human rights. It influences legislations and form part of national plans and policies.

CEDAW seeks to do away with discrimination against women. The most important part of the provision is that it applies to both international discrimination and acts that have discriminatory effects. It

calls for the elimination of all forms of discrimination against women and prohibits any practice that perpetuates woman's inequality.

Article 1: of the convention provides as follows; for the purpose of the present convention the terms "discrimination against women" shall mean any distinction, exclusion, or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status on a basis of equality of men and women, of human rights and fundamental, freedom in the political, economic, social, cultural, civil or any other field.

Article 2 goes to provide that state parties condemn discrimination against women in all forms, agree to pursue by all means and without delay a policy of eliminating discrimination against women and to this end, undertake:

a. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislations if not yet incorporated therein and to ensure through local and other appropriate means the practical realization if this principle.

b. To adopt appropriate legislative and other measures including sometimes where appropriate prohibiting all forms of discrimination against women.

c. To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

d. To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.

e. To take appropriate measures, to eliminate discrimination against women by any person, organization or enterprise.

f. To take all appropriate measures including legislation, to modify or abolish existing law, regulation, custom and practices which constitute discrimination against women.

g. To repeal all national penal provisions which constitute discrimination against women.

Article 12(1) states that: state parties shall take all appropriate measures to eliminate discrimination against women in the field of health in order to ensure on a basis of equality of men and women, access to health care services, including those related to family planning.

SELF-ASSESSMENT EXERCISE

i. Discuss the central point of CEDAW as an international instrument.
ii. Define the term **Discrimination** with respect to CEDAW

3.2 Convention on the Right of the Child (CRC)

The Convention on the Right of the Child (CRC) adopted in 1989 is one of the international documents put in place by the United Nations to offer protection to an important segment of the society, that is, the child.

Article 1, states that; for the purpose of the present convention a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

Article 2, provides thus; state parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents or legal guardians race, colour, sex, language, religion, political or other opinions, national ethnic or social origin property, disability birth or other status.

Article 6: provides:

1. State parties recognize that every child has the inherent right to life.
2. State parties shall ensure the maximum extent possible the survival and development of the child.

Article 24: enjoins state parties to recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

State parties shall strive to ensure that in child is deprived of his or her right to access to such healthcare facilities.

Article 27(1) provides that state parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 36: state parties shall protect the child against all other forms of exploration prejudicial to any aspects of the child's welfare.

4.0 CONCLUSION

In the Unit, we have explained instruments dealing with the child and women; (1) CEDAW and CRC. We have examined various aspect of the international legal instrument, its origin and development. We also examined the provision of all the articles and their relationship to the protection of people living with AIDS.

5.0 SUMMARY

Specifically, what we have learnt can be summarized as follows:

a. Provisions of CEDAW
b. Provision of the Child Right Convention (CRC)
c. The development of this international Legal Framework to protect the interest of people living with AIDS

6.0 TUTOR-MARKED ASSIGNMENT

What are the limitations of treaties?

7.0 REFERENCES/FURTHER READINGS

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

The Convention for The Right of the Child.

Tunis Declaration on AIDS and the Child in Africa, 1994 OAU.

1996 OAU Resolution on Regular Reporting of the Implementation Status of OAU Declarations on HIV/AIDS in Africa.

2001 Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infections Diseases.

UNAIDS and OHCHR HIV/AIDS and Human Rights International Guidelines 1996.

Convention Against Torture and Other Cruel or Degrading Treatment or Punishment adopted Sec. 10, 1984 entry into force June 26, 1987.

UNIT 3 REGIONAL LEGAL NORMS AND INTERNATIONAL GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 African Charter on Human and Peoples Right(ACHPR)
 3.2 International Guidelines on HIV/AIDS and Human Rights
4.0 Conclusion
5.0 Summary
6.0 Tutor-Marked Assignment
7.0 References/Further Readings

1.0 INTRODUCTION

This Unit continues with the discussion on international legal instruments that create a legal framework on which he rights of people living with HIV/AIDS is anchored.

The unit deals essentially with two of such instruments:

i. Africa Charter on Human and Peoples Rights (ACHPR).
ii. International Guidelines on HIV/AIDS and Human Rights.

2.0 OBJECTIVES

Essentially, this Unit is aimed at achieving the following objectives:

To expose you to the basic principles and rights of people living with HIV/AIDS as enshrined in international instruments.
To apply some of the basic principles and laws that guarantee protection for people living with HIV/AIDS.

3.0 MAIN CONTENT

3.1 African Charter on Human and Peoples Rights (ACHPR)

This Charter was adopted in 1981 and it makes no specific reference to HIV/AIDS. The instrument is one of the numerous international instruments that have relevance to the issue of HIV/AIDS control, management and treatment in Nigeria. The treaty has been ratified and

forms part of our domestic laws. In Nigeria, it is part of the domestic law by virtue of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Laws of the Federation (1990). This law addresses economic, social, cultural and group rights and duties. So far, this is the only international treaty ratified by Nigeria which has been incorporated into the local legislation in line with section 12 of the 1999 Constitution of the Federal Republic of Nigeria. By this the African Charter is enforceable in Nigerian courts. Article 18 provides; "The family shall be the natural unit and basis of society. It shall be protected by the state, which shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declaration and conventions.

Other excerpts form the (ACHPR) treaties that are particularly relevant for HIV/AIDS are:

Article 2: Every individual shall be entitled to the enjoyment of the rights and freedom recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 4: Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity for his life and integrity of his person. No one may be arbitrarily deprived of this right.

Article 5: Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.

Article 15: Every individual shall have the right to work under equitable and satisfactory condition.

Article 16(1): Every individual shall have the right to enjoy the best attainable state of physical and mental health.

> State parties to the present charter shall take the necessary measure to protect the health of their people and to ensure that they receive medical attention when they are sick.
> **Article 17(1)**; every individual shall have the right to education.
> Every individual may freely take part in the cultural life of his community.

Article 19: All people shall be equal they shall enjoy the same respect and shall have the same rights.

Article 24: All people shall have the right to a generally satisfactory environment favorable to their development.

SELF-ASSESSMENT EXERCISE

By ratifying the African Charter on People and Human Rights in 1981, Nigeria agreed to abide by the provisions of the conventions. Discuss.

3.2 International Guidelines on HIV/AIDS and Human Rights

The rapid progression of the HIV/AIDS pandemic particularly in the developing world has had a devastating impact on women. Responsible behaviour and gender equality are among the important prerequisites for its prevention.

There is also the need for more effective strategies to empower women to have control over and decide freely and responsibly on matters related to there sexuality, to protect themselves from high risk and irresponsible behaviour leading to sexually transmitted infection including HIV/AIDS and to promote responsible, safe and respectful behaviour by man and to also promote gender equality. In 1996 UNAIDS, in collaboration with the office of the United Nation High Commissioner for Human Rights, adopted HIV/AIDS and Human Rights – international guidelines. The guidelines focus on three crucial areas:

Improvement of governmental capacity for acknowledging the government's responsibility for Multi-Sectoral Co-ordination and accountability.

Wide spread reforms of laws and legal support services with a focus on anti-discrimination, protection of public health, and improvement of the status of women, children and marginalized groups.

Support for increased private sector and community participation in the response to HIV/AIDS, including building the capacity and responsibility of civil society to responsibility to civil society to respond ethically and effectively.

The guidelines deal with the following human right principles:

1. Encourage states to adopt a multi-sectoral approach through an effective national framework.
2. Enable community organizations to carry out activities in the fields of ethnics, human rights and Law.

3 Review and reform public health laws to adequately address HIV/AIDS

4. Review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and address HIV/AIDS without targeting vulnerable groups.

5. Enact or strengthen anti-discrimination laws to protect vulnerable groups. Ensure privacy, confidentiality and ethnics in research involving human subject.

6. Enact legislations to provide for the regulation of HIV –related goods, services, and information in order to ensure wide spread availability of quality prevention measures and services, adequate HIV prevention and care information and safe and effective medication at an affordable price.

Ensure that all persons on a sustained and equal basis have access to quality goods, services and information for HIV/AIDS prevention, treatment care and support, including anti-retroviral and other safe and effective medicines diagnostics and related technologies for the treatment of HIV/AIDS and related opportunistic infections

7. Implement and support legal assist services to educate people affected by HIV/AIDS about their rights; develop expertise on HIV related legal issues and use means other than courts such as human rights Commission to protect the rights of people affected by HIV/AIDS.

8. States together with community should promote an enabling and prejudice free environment for women, children and other vulnerable groups.

9. Promote the distribution of creative education, training and media programmes designed to change attitudes of discrimination and stigmatization around HIV/AIDS.

10. Translate human rights principles into codes of conduct with accompanying mechanism to implement and enforce these codes.

11. States should ensure monitoring and enforcement mechanism to guarantee and protect HIV –related human rights.

12. States should share experience concerning HIV- related human rights issues at international level and through UN agencies such as UNAIDS.

4.0 CONCLUSION

The Legislature framework analyzed indicates an overwhelming response to addressing HIV/AIDS and affording protection to the rights of those affected or infected. States elect to respond by introducing policies, codes or guidelines ratifying treaties and other international legal instruments. This means that government intervention is not only legally binding but can equally be enforced in the courts. In view of the fact that HIV/AIDS is an urgent international health issue, intercourse between National and International Organizations should be fostered in order to reduce the spread of the virus. States parties can also benefit immensely by putting into practice the guidelines designed by the United Nations Agencies on AIDS, that is UNAIDS.

5.0 SUMMARY

In this unit, we have examined the provisions of the African Charter on Human and Peoples Rights an the guidelines designed by UNAIDS for state parties to control, manage, and prevent the spread of HIV/AIDS. We also drew from the fact that provisions of the charter which have been domesticated offer enough safe guards for people living with AIDS to protect their right.

6.0 TUTOR-MARKED ASSIGNMENT

1. ACHPR provisions are a mere paper enactment in Nigeria. Discuss.
2. Identify 5 of the major international guidelines to the control of HIV/AIDS.

7.0 REFERENCES/FURTHER READINGS

The Africa Charter on Human and Peoples Right Adopted June 27, 1981 Entry into ILM 58 (1982) (hereinafter African Charter).

International Covenant on Civil and Political Rights, Adopted Dec. 19, 1966 Entry into Force March 23, 1976.

International Covenants on Economic, Social and Cultural Rights Adopted 16th Dec. 1966 Entry into Force Jan 1976.

Convention Against Torture and Other Cruel, or Degrading Treatment or Punishment Adopted Dec. 10, 1984 Entry into Force June 26, 1987.

UNAIDS and OHCHR HIV/AIDS and Human Rights International Guidelines, 1996.

Abuja Framework for Action for the Fight Against HIV/AIDS Tuberculosis and Other Related Infections and Diseases.

1996 OAU Resolutions on Regular Reporting of the Implementation Status of OAU Declaration on HIV/AIDS on Africa.