

# Conflicting Concerns Of Mobility And Health Rights In Emergencies- Where An Ethical Blueprint Fit?

Israel Chukwuka Okunwaye

LL. B Hons. (Benin), BL (Lagos), LLM (Birmingham), M.A (Birmingham)

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**Abstract:** In times of health emergencies, such as the outbreak of a communicable disease, there are issues in law and ethics that are raised. This include, the need to maintain the dignity of those affected, ramping up measures to ensure the protection of health rights, and whether there is a justification for restricting movement given the risk of infection but taking cognisance of the economic implication. Policymakers and health professionals will be faced with the decision of how to maintain conduct so as not to undermine these rights, but also ensure safety.

**Index Terms:** Ethics, Human Rights, Emergencies and Health Crisis, Public Safety, Mobility

There is an economic question to be raised on the issue of health rights, via referencing the arguments in law.<sup>1</sup> It's hardly simply whether there ought to be treatment, but whether the background of the limited nature of the State's financial resources enthrone the conversation of how much of allocation for treatment is to be envisaged, and to who, in terms of prioritisation. This extends beyond health resource allocation and the balancing act of redirection of funds to more vulnerable areas of need, to analysis of the external impact of pandemics on the financial markets, and economic prospects within societies.<sup>2</sup> With consideration of Brexit developments, a period of deliberation which showed a great deal of political will to respect the right of the people to choose representatively, the framework of engagement with Europe and control of access to opportunities in a globalised world, these issues are still less thorny because they spring from the vicissitudes of life. Effectiveness in curbing the attendant risks may stem from a globalised and concerted response. People are constantly moving, and the nature of business require the movement of goods and services.<sup>3</sup>

The scope of rightful access to beneficial treatment and positive obligation to treat patients with dignity and professional care remains. Recent health emergencies across several parts of Europe and beyond, in other continents, leading to shutting of travel arrangements and closing of public institutions and spaces, makes the dilemma of extent of protection of these health rights more dire.<sup>4</sup> Should huge

<sup>1</sup> A.R. Maclean, "The Human Rights Act 1998 and the Individual's Right to Treatment" (2000) 4 *Medical Law International* 245-276. Maclean considers this scenario in common law and the Human Rights Act 1998 in relation to the legal obligations entrenched in the several Conventions- especially how resource allocation can be scrutinised vis a vis the duty to care for patients and their right to insist on medical treatment. This argument extends to the role of the convergence of law and ethical consideration- Amy L. McGuire, Mary A. Majumder, and J. Richard Cheney, "The Ethical Health Lawyer: The Ethics of Lawyer- Ethicists"(2005) 33(3) *Journal of Law, Medicine & Ethics* 603.

<sup>2</sup> Fred Imbert, Thomas Franck "Dow Plunges 10% amid Coronavirus Fears for its Worst Day Since the 1987 Market Crash" March 12, 2020 <<https://www.cnbc.com/2020/03/11/futures-are-steady-wednesday-night-after-dow-closes-in-bear-market-traders-await-trump.html>> accessed March 14, 2020; M. El-Erian, "How This Market Crash is Different from 2008, and the Same: The Global Economy's Banking Nerve Centre is not under Threat" *Financial Times* March 9, 2020 <https://www.ft.com/content/c789f080-6203-11ea-a6cd-df28cc3c6a68> accessed March 14, 2020-

"...the actual and feared impact of the coronavirus is destroying supply and demand simultaneously. This has undermined the momentum of global economic growth."<sup>3</sup> Travel has been affected severely, leading to restrictions on movement of several people across countries. Alex Leary, Xie Yu and Jennifer Calfas, "Trump Administration Expands Europe Travel Ban to U.K. and Ireland as Spain Goes Under Lockdown: Nations world-wide step up border controls and restrictions on movement, seeking to slow pandemic" *Wall Street Journal* March 14, 2020 <https://www.wsj.com/articles/coronavirus-closes-national-borders-apple-stores-11584183924>

<sup>4</sup> On the Covid-19 situation World Health Organisation's report show "On 31 December 2019, WHO was informed of a cluster of cases of pneumonia of unknown cause detected in Wuhan City, Hubei Province of China. The coronavirus disease (COVID-2019) was identified as the causative virus by Chinese authorities on 7 January. As part of WHO's response to the outbreak, the R&D Blueprint has been activated to accelerate diagnostics, vaccines and therapeutics for this novel coronavirus." By January 30, 2020 it was declared a Public Health Emergency of International Concern (PHEIC) and Scientists across the world would meet in Geneva by 11-12 February 2020 to assess the virus and work on strategy to curtail it; WHO, Coronavirus disease (COVID-2019) R&D <<https://www.who.int/blueprint/priority-diseases/key-action/novel-coronavirus/en/>> accessed on March 14, 2020. "The R&D roadmap for COVID-19 outlines research priorities in 9 key areas. These include the natural history of the virus, epidemiology, diagnostics, clinical management, ethical considerations and social sciences, as well as longer-term goals for therapeutics and vaccines" WHO, "WHO publishes draft R&D blueprint draft for COVID-19" 6 March 2020 <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>> accessed on March 13, 2020. From monitoring of the situation in Wuhan from January 4, 2020 when there was no recorded death, by March 11, 2020 the update indicate the virus has spread to 118,000 cases in 114 countries, and 4,291

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cost and lack of practical preparedness erode these daily privileges? Where governments were to take actions to temporary curtail movements, clearly breaching the right of movement of her citizens within communities and their travel to other countries, it is doubtful it would be an unnecessary infringement<sup>5</sup> even if not in a war emergency but a health crisis of which the magnitude was still unravelling, given the highly disruptive nature to public safety and flourishing, albeit for a short time. The other right to live safely by ensuring a protected communal space, though subtle, has to also be guaranteed. Whilst health is given its due, there is also the undertones for financial stability, and perhaps more significantly a respect for and preservation of human lives. Both Bioethicists and Christian theological ethicists would be concerned with treating patients with dignity even in times of emergencies, which could mean respect for their belief system such as belief in God and the potency of prayer, not just as an afterthought but a pre-emptive response; then chaplaincy and institutional structures needs to exist to affirm that.<sup>6</sup> Proactive measures such as these then, which involves the acknowledgment of personal preference, autonomy, and human conditioning, can be viewed with less scepticism. Its' been argued a minute level of scepticism might be helpful in some cases,<sup>7</sup> but sound value based ethics could form the basis of a review whether response has been appropriate and efficient in light of capacity to deliver healthcare, human dignity upheld, recommended and approved medications used, and especially whether respect for engrained rights has been observed. And where rights have been limited as a matter of consensus and professional opinion, access to the right to treatment must have been void of tribal inclinations, societal class prejudices, and individual complacency as a result of lack of training.

Again, one may think the right of movement entirely sacrosanct, well that remains to be so in war-like emergencies- as they ponder and shudder at the thought of been hurled off their favourite tea or coffee sweet spot, by security and enforcement agents, where there is the slightest indication of a flu-like symptom.<sup>8</sup> Apprehension may mellow where it to be revealed their health was of utmost concern. But, is the State to be paternalistic in approach or rather trust the instinct of the individual to seek their own healthcare, even if it means veering to the edgy cliff, and could drop? However, of note is, the denial of the individual's right to movement in a health emergency do not equate to a guarantee of access to treatment where fund is not infinite. The patient soon discovers the sudden and real possibility of a loss of rights at both ends of the stick. Maclean, puts it this way, "It may be, that to do justice to the individual's human rights the courts will have to look beyond the immediate resource allocation decision and consider the overall funding question."<sup>9</sup> He however conceded, "the right to life creates a powerful claim that resources should be diverted towards life-preserving and life-saving treatment and away from other therapies", whether the patient has the right to choose what manner of life-saving therapy is another issue.<sup>10</sup>

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people have lost their lives; WHO, "WHO Director-General's opening remarks at the media briefing on COVID-19", 11 March 2020 <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> > accessed on March 13, 2020.

<sup>5</sup> Article 13, 20 and 27, has to be read in conjunction with Article 29 and 30 UDHR- both the right to freedom of movement within and without a country, and the right to gather in community peacefully and to share of her culture and arts, is however "subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." UDHR, <https://www.un.org/en/universal-declaration-human-rights/> accessed March 12, 2020. Similarly, Article 3,8 Human Rights Act 1998 UK allows for adjustments or amendments by legislation to "Convention Rights" and freedoms, as well as for the Courts to make judicial pronouncement as it may find appropriate in society. With Brexit deliberation and frequent health emergencies as Covid-19, it is feasible to anticipate legislative steps to balance protection of rights movement and societal integration and guarantee public safety. For EU States, *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto Strasbourg, 16.IX.1963*: Article 2 (1)-(2) provides for the rights to movement in residence and outside the country, but subsection 3 and 4, introduces the caveat for emergencies that allows the government to act in interest of public safety, for the protection of health- "No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of order public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." This is not a destruction of right but a logical step to protect and enhance the right, because an individual's freedom has to be viewed in the context of lack of intrusion by another. *Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950* < [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)>: Articles 11(2), 15(1),17,18 the combined effect forbids the destruction of these convention rights but envisages a situation the exigencies require the life of a nation, safety, peaceful co-existence for the State to act in her best interest to restrict the prescribed rights.

<sup>6</sup> Jim Q. Ho, Christopher D. Nguyen, Richard Lopes, Stephen C. Ezeji-Okoye, and Ware G. Kuschner "Spiritual Care in the Intensive Care Unit: A Narrative Review" (2018) 33(5) *Journal of Intensive Care Medicine* 279-287.

<sup>7</sup> Cynthia L. Rigby, "Stepping into the Madness: On Being Sceptical, Doing Justice, and Hoping Against Hope" (2015) 28(2) *Studies in Christian Ethics* 175 –186; Jim Q. Ho, and others, *Spiritual Care in the Intensive Care Unit* Ibid.

<sup>8</sup> Cynthia Rigby, takes the view Christian values (Reformed) should allow for scepticism of belief in its traditional ethics- for disbelief and unknowing. In my opinion, Christian ethics present a concrete value stance, based on belief in God and of His goodness, and a respect for human life and need for dignity, as well as the protection of the rights of the vulnerable, else such a person stands the risk of spiritual judgement from God. This view also filters into the insistence, as a matter of taking human responsibility, for doctors to exercise due care to their patients. *Jim Q. Ho and others*, write spiritual care has a positive role in healthcare delivery, they caution those responsible- "Rather than emphasizing biomedical facts or manipulating spiritual beliefs to reinforce their argument, which may provoke distrust and are often futile, physicians could instead try to explore and understand their spiritual views. Once the patient's or family's views have been clarified, the physician could then find common ground to align with the view and share hope" p.284. I have argued in another place natural rights are God-given to a human, and inalienable, which should be protected [Israel Okunwaye, "A Jurisprudential Quagmire on Definition of 'Rights'- Human or Legal, Both or Neither? To What Divine and Constructive Purpose in Society?" (2017) 4(2) *IJLLS* 23].

<sup>9</sup> "Conflating health and safety is not just a post-9/11 phenomenon, but the events of 9/11 have made this conflation more apparent and more dangerous to human rights", P.335- George J. Annas, "Ebola and Human Rights: Post-9/11 Public Health and Safety in Epidemics" (2016) 42 *American Journal of Law & Medicine* 333-355. Furthermore, Annas suggests "With the Ebola epidemic, there is an ethical obligation to treat people who have the disease, and to try to halt its spread" P.353.

<sup>10</sup> Maclean, *Individual's Right to Treatment* P.263.

<sup>10</sup> Maclean Ibid 263.

Mobility concerns may have to be relegated in the hierarchy of needs to meet in emergencies, to prioritize health- it's not a case of a denial of rights but rather a scrutinising of best outcomes; how for instance out of two rights one has to take precedence, mobility right may have to give way to a medical privilege to professional treatment, even it means being confined for a short period of time. The right to treatment has to be considered in the broader spectrum,<sup>11</sup> of whether the State has granted taking legislative steps to preserve that opportunity and the extent to which, and also in the context of the financial power for allocation for health services, or the individual's capacity and freedom to secure their privilege through self-funding. Also, in terms of the duty to care with the acceptable professional standard and enabling access to treatment without discrimination. In such circumstances of strategic disease control, it is argued human rights is not restrained but enhanced through protection and access to treatment. This is because there may be a credible reason for containment of many in a community at a particular time of crisis, and towards professional care, but to also ensure there is not a freedom expressed to also affect others' right to life and well-being. It becomes a contextualisation of communal rights, an individual's rights enabling another individual's rights- creating a situation that helps deal with the spread of infection that threatens life. When there is a virus which by nature is communicable, the apprehension comes from the need to maintain public safety as well as provide standard treatment as required to a patient in the same breadth, whilst it may be rightly perceived in some quarters as the patient being locked up, the broad consensus is one of curtailment of the disease from spreading, and if need be for as long as necessary to restrain movement.<sup>12</sup> If the vulnerable in the population is to survive in a health crisis, they must not be left only to their self-help measures, but access to treatment would need to be readily accessible, and that includes providing accurate health information and counselling, medical testing opportunities, approved medication, and a comprehensive monitoring strategy; to secure their rights in a democratic society and others, so together as the global community can be empowered to flourish and enjoy the benefits of migration.

#### **About Author:**

*Israel Chukwuka Okunwaye LLB, BL, LLM, MA*, is an Author and Christian Speaker. He facilitates an online project and blog, Zucchini Advocacy Initiative. His interests are in Ethics, Human Rights and Social Justice. He has worked with the National Human Rights Commission, Abuja, and Citizens Advice Bureau, Dudley. He has postgraduate degrees, in Law from Nigeria Law School, Lagos; Birmingham Law School; and in Evangelical and Charismatic Studies from the School of Philosophy, Theology and Religion, University of Birmingham UK. He also has a first degree from the University of Benin, Nigeria.

#### **Correspondence:**

Email: [israelokunwaye@yahoo.com](mailto:israelokunwaye@yahoo.com); website: [www.zucchiniadvocacy.com](http://www.zucchiniadvocacy.com).  
27 Old Gloucester Street, London, WC1N 3AX

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<sup>11</sup> George J. Annas, *Ebola and Human Rights* P. 353-354- "The Ebola experience suggests four principles that should guide a public health/human rights response to future epidemics: 1. Prevention should remain the primary goal so that research and other non-treatment interventions should not be pursued if they make prevention efforts less effective; 2. Government has the primary responsibility for the health of the people, and therefore must follow basic human rights, including non-discrimination, the right to health, and special protections for women and children; 3. Interventions should be sustainable and contribute to building a healthcare system and healthcare infrastructure, not increasing silos. 4. There are no disaster exceptions to informed consent for research."

<sup>12</sup> Peter Moszynski, "Doctors Disagree over Detention of Patients with Extensively Drug Resistant Tuberculosis" (2007) 334(7587) *British Medical Journal* 228.

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