

**AN ANALYSIS OF THE INTERPLAY BETWEEN THE NEED TO
PROTECT PUBLIC HEALTH AND THE RIGHTS TO PRIVACY,
CONFIDENTIALITY AND DATA PROTECTION IN THE
PERIOD OF COVID 19 PANDEMIC**

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ABSTRACT

The dire need to protect public health from the claws of the Covid-19 Pandemic, has spawned governments to undertake inevitable practices, some of which confronted the very essence of the rights of citizens to privacy, confidentiality and data protection particularly in the public-health sector. For instance, a lot of data are used unprecedentedly and dramatically on a large scale by governments and health-care bodies to curtail the pandemic in its track. Meanwhile, right to privacy and data protection are guaranteed under the 1999 Constitution and some other legislations in Nigeria. It then becomes necessary to determine when breaches can be said to have occurred as doubts linger about the somewhat trade-off between individual privacy rights and public health that has been brushed over amid the crisis in many countries. This article examines the extent and exceptions to laws on privacy, confidentiality and data protection in Nigeria using the relevant medical lens. Most importantly, an overview is made of the curtailment of the incidence of Covid-19 in Nigeria, and its effect on the administration of privacy laws and data protection by x-raying the privacy concerns arising from the practices employed to curb the spread. This is done by identifying cases of compliance or breach and providing justification or criticism as appropriate under the extant legal framework. Attempt is also made to discuss the attendant consequences arising from the present utilitarian approach provided for by the legislative framework and which is employed by the government. The paper proffers recommendations to some of the challenges that serve as clogs in the wheels of intersection between privacy rights with the aim of curbing Covid-19 in the interest of public health.

Keywords: Privacy, Data Protection, Confidentiality, Public Health, Medical Laboratory Reports, Covid-19 Pandemic

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1. INTRODUCTION

Under international laws and domestic laws, the right to privacy is recognized as an inalienable right of every human. For instance, the Universal Declaration of Human Rights (1948) provides for the right to privacy and equality. This is also contained in the Constitution of the Federal Republic of Nigeria and the African Charter on Human and People's Rights.³ It has been said that the origin of patients' right which bothers on the privacy of their medical reports and records, are different from that of fundamental rights to privacy as guaranteed under the constitution⁴. This right, often called the Rights to Confidentiality, is essentially rooted in ethics, while the fundamental right to privacy derives from common law.⁵ Meanwhile, the operation of the rule of confidentiality has been engrafted into Nigerian laws and can be said to have transcended the question of ethics. This right means that personal information that is shared with physicians, lawyers, therapists or other individuals enjoy protection and cannot be disclosed to third parties, unless and until the client consents. Interestingly, the Nigerian Data Protection Regulation also recognizes this right to confidentiality by categorizing medical information as personal data.

The crux of this paper is to examine the situational shift caused by the reaction of government and its institutions in the bid to curb the spread of COVID-19. The heart of the question is as to whether the rights to privacy, data protection and confidentiality still retains their relevance during a pandemic like COVID-19. The situation of things only reveal that the rights are largely being trumped by the need to track, report and carefully monitor the cases of COVID-19. One of the most required information needed by the government in order to successfully track the cases of COVID-19, are the medical reports of persons who have been tested positive. This is often done, notwithstanding that the health service provider does not intend to publicly disclose the result. However, based on government

³ Cap A9 Laws of the Federation of Nigeria 2004.

⁴ Section 37 1999 Constitution of the Federal Republic of Nigeria (as amended).

⁵ Nnamdi Oragwu, Sharon Juwah and Sandra Ifejika, 'Nigeria: COVID-19: Patient Confidentiality and Right to Medical Laboratory Reports' (2020) <www.mondaq.com/nigeria/reporting-and-compliance/977386/covid-19-patient-confidentiality-and-right-to-medical-laboratory-reports> accessed 7 February 2021.

directives, certain demographics like the patient's age, gender, places recently visited and other recent activities will also be released to the public. Not just that, the information is usually publicized for the purpose of creating awareness.⁶

In juxtaposing the above in line with the requirement of consent before the disclosure of medical information, the question is, does a pandemic draw a curtain on the operation of the rule of medical confidentiality? What are the true qualifications to the right to confidentiality, if any? What are the emerging privacy concerns, consequences of bending the observance of these rights or issues likely to arise in the future? Are there any suggestions to improve the actualization of the law without dealing a fatal blow to the need to protect public interest (curtailment of the pandemic)? It is important to identify and discuss these issues because of the delicate nature of the rights under the law.

2. NATIONAL AND INTERNATIONAL LEGAL FRAMEWORKS

Presently, there are quite a number of laws, both at the international and national level, that provide for privacy and data protection. Apart from international laws like Article 12 of the Universal Declaration of Human Rights that provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation, the African Union Convention on Cyber Security and Personal Data Protection⁷ 2014 is worthy of note. It addresses the automatic processing of personal data collected by either government or private sector service providers. Also, the International Covenant on Civil and Political Rights,⁸ in article 17, provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attack on his house and reputation. Furthermore, there is the United Nations Personal Data Protection

⁶ Heidi Schult Gregory, 'Patient Right to Privacy Called into Question During Covid-19 Pandemic' (2020) <www.jdsupra.com/legalnews/patient-right-to-privacy-called-into-43101/> accessed 20 February 2021.

⁷ African Union Convention on Cyber Security and Personal Data Protection, adopted 27 June 2014.

⁸ International Covenant on Civil and Political Rights [1966] United Nations Treaty Series, Vol 999, 171.

and Privacy Principles.⁹ This sets out a basic framework for the processing of data by, or on behalf of, the United Nations System Organizations in carrying out their activities. It aims at harmonizing standards for the protection of personal data; ensure respect for the human rights and freedom especially right to privacy together with facilitating the accountable processing of personal data. The principles was developed by the UN Privacy Policy Group, an inter-agency group and was formally adopted on October 11, 2018 by the High Level Committee on Management.

At the African regional level, there are multilateral instruments like the African Union Convention on Cyber security and personal Data protection (Malabo Convention) 2014, the African Declaration on Internet Rights and Freedoms, the ECOWAS Supplementary Act A/SA.1/01/10 on personal data protection, 2010 and the Declaration of principles on Freedom of Expression and Access to Information in Africa among others. While many of these instruments have beautiful provisions, the reality is that even in countries having data protection laws, the laws are still inadequate in tacking the new challenges facing data protection.¹⁰

At the domestic level, the 1999 Constitution of the Federal Republic of Nigeria (as amended) is the supreme law of the country. By virtue of the provisions of section 37, the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic materials are guaranteed. By placing this right under chapter IV of the Constitution, it is deemed a fundamental right of every Nigerian. The effect of this is that it is an inalienable right of every human. Generally, by deploying this provision, many cases of privacy breach have been instituted in courts. An example of a judicial decision is the case *Medical and Dental practitioners Disciplinary Tribunal v. Okonkwo*¹¹ where the court held that the right to privacy and freedom

⁹ United Nations Personal Data Protection and Privacy Principles of 11 October 2018 United Nations Privacy Group [2018].

¹⁰Tomiwa Ilori, 'Data Protection in Africa and the COVID-19 Pandemic: Old problems, New Challenges and Multistakeholder Solutions' (2020) <https://africaninternetrights.org/sites/default/files/Tomiwa%20Ilori_AfDec_Data%20protection%20in%20Africa%20and%20the%20COVID-19%20pandemic_Final%20paper.pdf> accessed 10 March 2021.

¹¹ [2001] WRN 1.

of thought, conscience or religion which and individual has is that individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justified the contrary.

The right to privacy of a child in Nigeria is protected under section 8 of the Child's Right Act 2003. Other legislations include section 26 of the National Identity Management Commission, section 14 of the Freedom of Information Act 2011, sections 14 and 16 of the Cybercrime (Prohibition, Prevention, Etc.) Act 2015, section 13(1) of the HIV and AIDS (Anti-Discrimination) Act 2014, section 9 of the Credit Reporting Act 2017, etc.

Meanwhile, the principal data protection legislation in Nigeria is the Nigeria Data Protection Regulation 2019 ("NDPR").¹² Under the NDPR¹³, personal data is any information relating to an identified or identifiable person. According to the regulation, it can be anything from a name, address, a photo, an email address, medical information, among others. Under the Regulation, 'Data subject' is defined as the identifiable person who is identified directly or indirectly with reference to an identification number or other factors specific to his/her physical, physiological, mental, economic, cultural or social identity.¹⁴The NDPR also regard health information as 'sensitive personal information.'

All of these provisions have enjoyed application at different times under the Nigerian legal system. However, the NDPR is a more recent regulation that seeks to cover emerging issues pertaining to data protection in Nigeria. It is important to note that these laws make general provisions towards the protection of personal data and privacy. The concept of medical confidentiality and the specific laws relevant to it are discussed under the next heading.

¹² This was issued by the National Information Technology Development Agency ("NITDA") in 2019.

¹³ Part one, Regulation 1.3 (xix).

¹⁴ Section 1.3 (xiv).

3. THE SCOPE OF CONFIDENTIALITY IN MEDICAL AND PUBLIC HEALTH

It is fundamentally essential to the relationship between patient-doctor that there should be a trust of confidentiality. Apart from the professional communications made between the doctor and patients, the medical records of the patient should be regarded as confidential. The doctor cannot be exonerated by posing an excuse that there was no express acknowledgment of the confidentiality of the statements. The *raison d'être* for this principle is to allow patients communicate to health workers without fear. If this is not the case, patients will hold back critical and sensitive information because they would not want their health issues to become subject to public discussions. Hence, it is generally the practice in all medical institutions and facilities in Nigeria that patient records are kept private and confidential to the end that only authorized entities are granted access to patient's medical records.¹⁵

In making a quick allusion to the first case of Covid-19 recorded in Nigeria of an Italian, against all criticism of the public towards the government and the health service providers to disclose the identity of the Italian, the government hesitated. This hesitation to disclose such personal information enjoys legal support and is premised on ethics and good conscience. The essence of this is that such critical information should be assessed by the individual only and third parties should be disallowed from feasting on or invading the personal information.¹⁶

The Nigerian Medical and Dental Association recognizes this not just as an ethical concept but as that which enjoys full legal anchorage. As such, the health services providers are always at alert to observe the

¹⁵ Titilayo O Aderibigbe and Bankole Sodipo, 'Patient's Medical Records, Privacy and Copyright in Nigeria: On-Going Research' (2017) Vol 42(2):88 92, University of Western Australia Law Review

<www.law.uwa.edu.au/_data/assets/pdf_file/0005/3052724/5.-Titilayo-O.-Aderibigbe-and-Bankile-Sopido.pdf> accessed 10 February 2021.

¹⁶ President Aigbokhan and Happiness Aigbokhan, 'Patients Privacy and Health Administrators Liability Under Nigeria Data Protection Regulation 2019' *The Guardian Newspaper* (21 April 2020) <<https://guardian.ng/features/law/patients-privacy-and-health-administrators-liability-under-nigeria-data-protection-regulation-2019-2/%3E>> accessed 20 February 2021.

Hippocratic Oath and the medical profession's guidelines. The principal legislations that give effect to the rule of medical confidentiality in Nigeria include the National Health Act (NHA) and the Code of Medical Ethics 2008. The Freedom of Information Act 2015 also provides that the professional communication between health workers and patients is privileged. Others with international origin include the Hippocratic Oaths, Lisbon Declarations of the Rights of Patients re-adopted by World Medical Association (WMA), WMA International Code of Medical Ethics 2006.

Section 26 National Health Act provides 'All information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment is confidential.' The Code of Medical Ethics, 2008 further provides for the rule of medical confidentiality. In respect of Medical Laboratory Scientists, the law does not expressly include public interest as an excuse for them to breach the rule of confidentiality.¹⁷

Other recognized rights of the patients under the laws regulating the medical profession include the right of the patient to be informed of his medical condition. This is to allow him make informed decisions that will affect his health. This right is not subject to the discretion of the health workers except in extreme circumstances where such disclosure is unsafe and has the likelihood of causing havoc to the patient or where the patient is a minor, in which case, the doctor will inform his or her next of kin.

4. THE EXCEPTIONS TO THE LAWS ON PRIVACY, DATA PROTECTION AND MEDICAL CONFIDENTIALITY

In the case of *FRN v Daniel*,¹⁸ the court held that notwithstanding the provisions of section 37 of the Constitution, section 45(1) has provided in unequivocal terms that nothing in sections 37, 38, 39, 40 and 41 thereof shall invalidate what appears to be reasonably justifiable in a democratic society –

¹⁷ Godfree Matthew, 'An Appraisal of the Limit of Medical Confidentiality Under Nigeria Law: Covid-19 Perspective' (2020) <<https://thenigerialawyer.com/an-appraisal-of-the-limit-of-medical-confidentiality-under-nigeria-law-covid-19-in-perspective-by-godfree-matthew-esq/>> accessed 2 February 2021.

¹⁸ [2011] LPELR-4152 [CA]

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons.¹⁹

Essentially, the utilitarian principle of greater good for the greater number of people, summarizes the position of the law on qualifications to the fundamental right to privacy. It is interesting that also in health law, the privacy of individual will be lawfully breached where it threatens public interest.²⁰ In cases of imminent danger, section 44 Rule F of the Code of Medical Ethics provides for 'discretionary breach of confidentiality to protect the patient and the community.'

Furthermore, the NDPR stipulates circumstances when it is allowed for personal data to be processed i.e., collected, disclosed or shared. Processing of data means any action carried out on personal information. Processing is described as, "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction." A person's data can only be collected and disclosed under any of the following conditions:

- (a) where the data subject has consented to the collection and disclosure;
- (b) where it is done for the performance of a contract;
- (c) when the processing is required for compliance with a legal obligation;
- (d) when the processing is required for protection of the vital interest of a data subject or another natural person; or
- (e) if the processing is necessary for the performance of a task carried out in the public interest.²¹

¹⁹ In this case the court went further to hold that section 41 of the National Drug Law Enforcement Agency Act, CAP. N30, Laws of the Federation of Nigeria 2004, is reasonably justifiable in the interest of public safety and public health. (Pp. 21-23, paras. E-C)

²⁰ See the case of *R v Crozier* (1990) 1 All ER 649.

²¹ Section 2.2 Nigerian Data Protection Regulation.

The rule of confidentiality is qualified. Section 26(2) of the National Health Act (NHA) recognizes cases where it becomes essential to bend to rules. The NHA provides that no person may disclose any information contemplated in subsection (1) unless:

- (a) the user consents to that disclosure in writing;
- (b) a court order or any law requires that disclosure;
- (c) in the case of a minor, with the request of a parent or guardian;
- (d) in the case of a person who is otherwise unable to grant consent upon the request of a guardian or representative; or
- (e) Non-disclosure of the information represents a serious threat to public health.

From the above, it is safe to submit that communications that are privileged under the law may be divulged under five (5) circumstances. The requirement of consent may be quite strict under the NDPR. It is required that the consent be freely given and the patient must be informed and unambiguously consent to the processing of his data. Before the collection of such data, the health administrator has to provide the patient with the identity of the hospital management, the details of the data protection officer (as created by the Regulation), the purpose of collecting and processing the data, the legal basis for the processing and the period for which the data will be stored.²²

Apart from disclosure based on consent, another instance is public interest. Employers and government institutions are allowed to communicate public health messages to their workers, clients, and the general public. While doing this, public authorities may require additional collection and sharing of personal data where there is a serious need to evaluate the risk of any case of infection and carry out proportionate measures. This, when done in compliance with the

²² President Aigbokhan and Happiness Aigbokhan, 'Patients Privacy and Health Administrators Liability Under Nigeria Data Protection Regulation 2019' *The Guardian Newspaper* (21 April 2020) <<https://guardian.ng/features/law/patients-privacy-and-health-administrators-liability-under-nigeria-data-protection-regulation-2019-2/%3E>> accessed 20 February 2021.

various exceptions stated under the laws, does not constitute a breach of the law as it is necessary in the interest of the public.²³

Section 27 of the NHA further provides that “a health worker or any health care provider that has access to the health records of a user may disclose such personal information to any other person, health care provider or health establishment as is necessary for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interest of the user.”

Apart from all of the exceptions stated above, it is important to also note that every individual also has the right to disclose the status of his health and other personal data to the public. This is often the case where such individuals are public figure and will often want to share their experience to their fans to support them in one way or the other. This was very common during the Covid-19 pandemic as many publicly disclosed cases of covid-19 across the world were by famous individuals, among others.

5. THE EFFECTS OF COVID-19 PANDEMIC ON PRIVACY LAWS

Having examined the concept of medical confidentiality and the legal framework on privacy and data protection in Nigeria, it is important to consider the recent activities of government in tackling the COVID-19 pandemic and the effect on the operations of the legal framework in question. The pandemic dealt a hard blow on almost every sector of life as organizations were forced to stop physical meetings and operations and many that could migrate online could only run their businesses or offices virtually.

As a result of the outbreak, many countries issued guidelines or some form of policy direction stipulating the blueprint for public and private organizations on the process to respect the data protection rights of their citizens. Based on the contagious nature of the COVID-19 virus, it was important for the Nigerian government to

²³ Davidson Oturu, ‘Nigeria: Covid-19: Coping with Data Protection/Privacy Challenges within the Context of the Nigerian Data Protection Regulation’ (2020) <www.mondaq.com/nigeria/data-protection/910792/covid-19-coping-with-data-protectionprivacy-challenges-within-the-context-of-the-nigerian-data-protection-regulation> accessed 20 February 2021.

identify infected persons and employ mechanisms towards risk management and contact tracing. This ordinarily could only be efficiently achieved without intruding the privacy of Nigerian citizens and tampering with their personal data.²⁴The privacy and data protection laws were not enacted to reduce the efficacy of a sound public health system; however, it is important to ensure that unscrupulous breach of human right is not allowed under the camouflage of the pursuit of public interest.

The situation becomes interesting to observe when considered in relation to the Covid-19 pandemic that swept the whole world like a wild fiery beast. The Integrated Disease Surveillance and Response (IDSR) strategy was incorporated by Nigeria. It became necessary for certain individuals like employees and institutions to have access to some personal data which ordinarily is protected under the law, to ensure that the public health is protected by tracking cases of infections and execute protocols like contact tracing among others. Generally, the government through its agency, the National Centre for Disease control regularly publishes the numbers of cases, deaths, discharged patients and the locations in question. However, there were cases where names had to be published because of the unscrupulous breach of the covid-19 protocol. An example was the publication of about 6 names of escapees of isolation in Ejigbo centres by the Osun State Government in April 2020.²⁵

The patient's right to confidentiality is overwhelmed by the intensity of public interest with the need to monitor and report cases of Covid-19. Although, the health service provider does not release the name of the patient or his or her address, where the patient has been tested positive for Covid-19, the state is notified and critical demographics are released including the patient's gender, age, place visited and some other recent engagements. Where it is very necessary, the

²⁴ Temitope Ogunmokun, 'Covid-19, Privacy and Data Protection: Matters Arising' (2020) <<https://legalnaija.com/covid-19-privacy-and-data-protection/02900951941647681314/>> accessed 10 February 2021.

²⁵ Shina Abubakar, 'Apprehension as six alleged coronavirus patients escape from hospital' *The Vanguard* (2020) <<https://www.vanguardngr.com/2020/04/apprehension-as-six-alleged-coronavirus-patients-escape-from-hospital-in-ejigbo/>> accessed 22 February 2021.

information may have to be publicized.²⁶The question is do these activities breach the right to privacy? If the answer to the foregoing question is in the affirmative, do the breaches fall under the available qualifications to the rights of the patients?

As discussed earlier, the key qualifications to the rights of patients to privacy and data protection together with the rule of confidentiality are basically consent, legitimacy and public interest. In this situation of Pandemic, it is submitted that the activities of the health service provider that seemingly breach the rights of the patients can conveniently be placed under the qualifications. For example, it is in public interest that necessary information about the new cases of infections in relation to the Covid-19 virus should be made public for people to be able to track the development and protect themselves. Some other issues that led to the public disclosure of names of persons purportedly infected with the virus includes reports of patients tested positive of the virus escaping from isolation centres;²⁷ failure of infected persons to self-isolate; refusal of patients to give accurate record to appropriate authorities, among others.

6. OTHER MISCELLANEOUS ISSUES

Apart from the various issues discussed above, there are other important matters resulting from employers' request from their employees, travel histories, sicknesses and symptoms?²⁸

It is trite that employers have the duty to keep the working environment safe for the employees. To perform this duty in a pandemic era like this, it becomes necessary that employers collect personal data of their employees pertaining to health and process same to make strategic decisions. Of course, the collection and processing of data has to be consistent with the provisions of law. Any dealing with the health information of their employees must be within the scope of the law or the exception thereof. In this case, the

²⁶ Harris Beach PLLC, 'Patient Right to Privacy Called into Question during COVID-19' (2020) <www.jdsupra.com/legalnews/patient-right-to-privacy-called-into-43101/> accessed 2 February 2021.

²⁷ Samson Toromade, 'Coronavirus patient escapes isolation centre in Bauchi as worrying nationwide trend grows' (2020) <www.pulse.ng/news/local/coronavirus-patient-escapes-isolation-centre-in-bauchi/b7vv3zj> accessed 2 February 2021

²⁸ Ogunmokun (n 22).

question as to the disclosure of employee's health information can be justified provided consent is given by the employee. Besides the requirement of consent, the interest of the other members of the workforce is paramount as the Covid-19 virus is highly contagious. To prevent the spread, it is important that medical status of any employee tested positive be disclosed so that others can see to it that such person comply with the self-isolation policies and other health directives of the government.

It is also submitted that employers may lawfully request for medical reports to authenticate the medical status of their employees. The pandemic situation demands that all measures be taken to curb the spread of the infection. Meanwhile, the use of the medical reports must be within the scope of the law which essentially bothers on consent, order of court, public interest and other qualifications in the law. No institution can embark on a flamboyant disregard for the privacy rights of their employees. Same applied to individual citizens as no one is allowed to trample upon the privacy rights of another.

Under what circumstances can the health status of a person be disclosed to third parties or the government authorities? Can hospitals and health workers divulge the health information of patients to government or third parties without running afoul of the law? The rule of confidentiality enjoys strong anchorage in the guise of privacy laws and the data protection regulation. Employers are not permitted to illegally disclose the identity of the members of staff with a case of Covid-19 notwithstanding the notification to the entire work-force of the discovery of a suspected case. Health information are sensitive personal data that are protected under the law and cannot be collected and processed except as in compliance with the legal provisions. The National Health Act and other laws already provide for situations where exceptions can be permitted.

The requirement of consent may be automatically waived where an employee who has contracted the virus keep exposing himself or herself intentionally against precautionary directives, to the detriment of the public. Such acts are apparently against public

interest and the law on consent becomes impotent to hinder any person aware of the case to disclose same.

Without prevarication, it is important to consider the question whether hospitals can disclose the medical reports of their patients to third parties or the authorities even though it is covered by the law of confidentiality. The position of the law is still the same, the various provisions impose strict obligation of non-disclosure of confidential information to third parties. The exceptions in section 2.2 NDPR, Section 26(2) and section 27 of the National Health Act do not give any special privilege based on the personality of a data processor save for the circumstances that necessitate bending the rules. The owner of the information may consent to that disclosure in writing; a court order or any law may require that disclosure; in the case of a minor, the health information can be disclosed with the request of a parent or guardian; in the case of a person who is otherwise unable to grant consent upon the request of a guardian or representative. Non-disclosure of the information represents a serious threat to public health.

A health worker or any health care provider that has access to the health records of a user may disclose such personal information to any other person, health care provider or health establishment as is necessary for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interest of the user.²⁹

Finally, another critical issue that also must be given attention to is the incidence of malicious actors that registered domains with words like 'corona' and 'coronavirus'. These cybercriminals were able to use this domain names to impersonate government institutions, the National Centre for Disease Control to convince individuals to perform some actions believing the websites truly belong to the government. These fake websites promised important information or help and provisions of financial support during the pandemic.³⁰

²⁹ Section 27 NHA.

³⁰ E. Ventrella, 'Privacy in emergency circumstances:

7. THE CHALLENGES IN THE ENFORCEMENT OF THE RIGHTS TO PRIVACY

In cases of breach of the rights of patients, the affected individual may institute an action under Chapter four of the 1999 Constitution of Nigeria or under the various laws that have been disclosed earlier.

In the case of the NDPR, the penalty for default is stated in section 2.10. Under the regulation, where any person is found to be in breach of the data privacy rights of any Data Subject, he shall be liable in addition to any other criminal liability, the following:

- (a) in the case of a Data Controller dealing with more than 10,000 Data Subjects, payment of the fine of 2% of Annual Gross Revenue of the preceding year or payment of the sum of 10 million naira whichever is greater;
- (b) in the case of a Data Controller dealing with less than 10,000 Data Subjects, payment of the fine of 1% of the Annual Gross Revenue of the preceding year or payment of the sum of 2 million naira whichever is greater.

Furthermore, a person who suffers from the breach of his right can bring a claim under a breach of contract or tort. The individual or person who breaches the rule can be held liable under the tort of medical negligence or a breach of contractual terms which is implied in such a doctor-patient relationship.

8. RECOMMENDATIONS

Public interest among other factors must take priority over the exercise of private rights. In this situation where there is a dire need for a flow of information to people as fast as possible, the numbers of suspected cases are to be regularly revealed but the identities of those persons have to be kept confidential. Meanwhile, it is not unlawful where in the interest of the public, the identity of such infected persons who have refused to obey self-isolations policies are disclosed. This, in this case, is needed to assist in stemming the spread of the pandemic and disclosure of such sensitive information

cannot be regarded as an attempt to blackmail anybody, particularly where such individuals have breached the covid-19 protocol by refusing to self-isolate or carry out the medical instructions given to them.

That notwithstanding, an organization or entity that seeks to request or process data must do so on legal basis and it is mandated that the principles of law are followed. Where the exceptions are sought to be applied, it must be reasonably shown that the circumstances are truly related to that which was envisaged by the law. The collected data must be specific and processed only for the stipulated purpose and must be kept from unlawful disclosure. Where the data controller fails in its responsibility to comply with the legal obligations, he could incur liability for breach and be sanctioned by the constituted body or a court of competent authority.³¹

The United Nations, on November 2020, issued a Joint Statement on Data protection and privacy in the Covid-19 response after the endorsement of the undersigned UN System Organizations.³² It is recommended that States should apply the policies in this statement, to the letter. In the joint statement, the UN reiterate that the rights of all people must be protected during public health emergencies, data collection, processing, and use. The stamen raised awareness in respect of the benefits and challenges that data and technology practices may entail during an emergency response. Among other policies, as recommended in the statement, data collection, use and processing, at a minimum, should be lawful, limited in scope and time, necessary and appropriate to specified and legitimate purposes in response to the COVID-19 pandemic.

³¹ An example is the Administrative Redress Panel set up by the National Information Technology Development Agency (NITDA). See section 3.2.1 of the NDPR.

³² United Nations Privacy Group, 'Joint Statement on Data protection and Privacy in the Covid-19 Response' (2020) <www.who.int/news/item/19-11-2020-joint-statement-on-data-protection-and-privacy-in-the-covid-19-response> accessed 17 March 2021.

9. CONCLUSION

Conclusively, the right to privacy is inextricably linked with personal autonomy and dignity. It is that which makes it possible for individuals to enjoy their lives free from public interference. It is, however, important to note that though the rights to privacy and data protection are fundamental rights, they are not absolute rights. Under Section 45(1) of the 1999 Constitution, the supreme law of the country, any provision of a law attempting to limit the right to privacy must be reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health, or in order to protect the right and freedom of other persons.

An absolute right will essentially outweigh other rights including the moral need to protect human lives. The right to privacy of an individual does not qualify to suppress the interest of the entire public in the face of a deadly pandemic. However, it is submitted that the incidence of the Covid-19 pandemic does not in any way allow for an unscrupulous violation of the right to privacy or the rule of confidentiality, neither does it create room for an audacious affront to the data protection regulation. However, the qualifications to these rights are activated to cater for the peculiar needs of the present times.