INFORMED CONSENT IN MEDICAL PRACTICE: A COMPARATIVE ANALYSIS OF NIGERIAN AND SOUTH AFRICAN LEGAL FRAMEWORKS

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Abstract

This study undertakes a comparative analysis of the legal frameworks governing informed consent in medical practice in Nigeria and South Africa. The objectives are to examine the concept of informed consent, its essential conditions, and the process involved; to investigate the legal frameworks regulating informed consent in both countries; and to compare and contrast their approaches. Using a doctrinal research methodology, this study reviews relevant statutes, case law, and academic literature from both countries. Data collection involved an exhaustive analysis of primary and secondary sources. The findings reveal significant differences in the legal frameworks, including the scope of disclosure, the role of family members, and the standard for determining capacity. The study also identifies areas of convergence and highlights the implications for medical practice and patient rights. Based on the findings, this study recommends the development of clear guidelines for informed consent in Nigeria and increased public awareness campaigns in both countries to promote patients' understanding of their rights and responsibilities in medical scenarios.

***Keywords**: Informed Consent, Medical Practice, Legal Frameworks, Nigerian and South African*

1.0 Introduction

The patient's right to offer valid consent in his or her lucid state to any medical treatment proposed by medical personnel has lately received international validation[2]. The notion of the individual's inviolable freedom to select and decide the circumstances of his health is the foundation upon which this right to consent to medical treatment is built[3]. The consent must be granted voluntarily by a patient who possesses the necessary legal standing. There must also be complete disclosure of information about the treatment, benefit, risk, complications, and outcomes of such a procedure. The physician is so required to offer all relevant information about a procedure or therapy to be performed on the patient. Medical and legal researchers in Nigeria have noticed that the issue of free, prior, informed permission in medical practice is poorly implemented, but this is not the case in South Africa, which has a more established process for getting patient-informed consent before to any medical procedure. It has also been said that Nigeria's law on informed consent is woefully inadequate[4]. This phenomenon has been attributed to a complex interplay of multifaceted factors[5]. Nigeria's low literacy rate, inadequate healthcare system, insufficient prosecutorial authority for medical violations, and absence of effective right enforcement mechanisms are only a few of these issues[6]. Patients who are illiterate frequently rely entirely on the doctor's judgement and recklessly

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[2] SD Pattison, *Medical Law and Ethics* (Sweets & Maxwell 2006) 97.

[3] J Cutan, 'Informed Consent: An Ethical Obligation or Legal Compulsion'. *Journal of Cutaneous and Aesthetic Surgery* [2008] (1) (1) 33 at 35.

[4] FO Emiri, *Medical Law and Ethics in Nigeria* (Malt house Press Limited, 2006) 71

[5] *Ibid*

[6] *Ibid*

entrust their lives to them without exercising any care or precaution. The problem is made direr by the lax enforcement of the right to informed consent. This is further compounded by the fact that patients whose rights to informed consent have been unilaterally violated have little options for redress under the Nigerian legal system.

Most people consider patient-informed consent to be an ethical principle. "Autonomy implies responsibility," according to the UNESCO International Bioethics Committee's (IBC) study on consent. The ability to make one's own decisions implies *ipso facto* acceptance of the results of one's actions, which can have far-reaching effects, particularly when it comes to health[7]. A person must thus be made aware of the specific repercussions of the decision they make, which prompts one to think about the circumstances in which consent is acquired. Respect for the autonomy of those who make decisions, while accepting responsibility for such decisions, is strongly related to *Article 1* of the Universal Declaration of Human Rights (UDHR), which posits that all human beings possess inherent dignity and are endowed with equal and inalienable rights from birth. They are gifted with reason and conscience, and they should treat one another with fraternity. Given the foregoing, it could be argued that the doctrine of informed consent has evolved into a legal requirement that no diagnostic or therapeutic procedure be performed on a patient unless the risks of the procedure and any alternatives to it are fully disclosed prior to consent.

Furthermore, the procedures for enforcing the right to informed consent are constantly impeded by bureaucratic bottlenecks and judicial delays caused by a lack of adequate authority and forensic evidence in medico-legal jurisprudence. This paper consequently intends to provide a comparative analysis of Nigeria and South Africa's legal frameworks on informed consent in medical practice in order for the Nigerian medico-legal system to benefit from the South African experience and legislative developments in medical jurisprudence.

2.0 Autonomy, Responsibility, and the Doctrine of Informed Consent

According to the consent report by the UNESCO International Bioethics Committee (IBC), "autonomy implies responsibility." The ability to make one's own decisions implies *ipso facto* acceptance of the results of one's actions, which can have far-reaching effects, particularly when it comes to health issues[8]. A person must thus be made aware of the specific repercussions of the decision they make, which prompts one to think about the circumstances in which consent is acquired. *Article 1* of the Universal Declaration of Human Rights (UDHR), which maintains that all people are born free and equal in dignity and rights, is strongly related to respecting the autonomy of those who make decisions while accepting responsibility for them. They are endowed with reason and conscience, and they should treat one another with brotherhood[9]. Given the foregoing, it could be argued that the doctrine of informed consent has evolved into a legal requirement that no diagnostic or therapeutic procedure be performed on a patient unless the risks of the procedure and any alternatives to it are fully disclosed prior to consent.

3.0 The Essential Conditions of Informed Consent

In general, five essential conditions must be met for consent to be deemed legitimate or fully informed[10]. Information disclosure, or the giving of sufficient information, would be among them. competence, which denotes the ability to comprehend such information; voluntariness, which implies making decisions free from force or duress; comprehension which is defined as the ability to comprehend the information that has been presented, and Consent, which implies acceptance of the suggested course of action.

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[7] International Bioethics Committee (IBC), 'Report of the International Bioethics Committee of UNESCO on Consent. Social and Human Sciences Sector, Division of Ethics of Science and Technology, Bioethics Section SHS/EST/CIB08-09/2008/1', *UNESCO* 2008

[8] *Ibid*

[9] United Nations, *Universal Declaration of Human Rights United Nations*, 1948.

[10] RM Nelson, T Beauchamp, VM Miller, W Reynolds, RF Ittenbach and MF Luce, 'The Concept of Voluntary Consent'. *AJOB* [2011] (11) 6-16.

Some have suggested that merely reciting the contents of a written document as part of a ritual is not enough to inform the patient. Instead, the healthcare provider must make an effort to communicate the information in a way that is appropriate for the patient's comprehension level, whether it be in writing or verbally[11]. The prospective subject's maturity, IQ, educational attainment, and belief system all influence their capacity to comprehend the information required to elicit, therefore the healthcare provider seeking consent should keep this in mind. Additionally, it depends on the clinician's capacity and readiness to communicate in a sensitive and patient manner[12]. In *Canterbury v. Spence*[13], the US District Court of Appeal stated that it is only when the patient has access to sufficient information to make an informed decision can they effectively exercise their right to self-determination.Informed choice-making, which involves having the chance to carefully consider the risks associated with each option, is the foundation of true consent to one's own fate. These axiomatic reasons give rise to the necessity, and thus the requirement, that the patient be given a suitable amount of information by the doctor in order to enable such a decision.

In the *Salgo v. Leland Stanford University*[14] case, it was further argued that a doctor might be held liable and breaches his duty to his patient if he withholds information that would enable the patient to give their informed consent to a planned course of treatment. It has been proposed that the quality of informed consent provided by patients during various clinical encounters should be scientifically investigated for validity, completeness, and consistency with established ethical and legal principles due to the possibility of a violation of the patient's rights and dignity during the informed consent process[15].

4.0 The Process of Informed Consent

The independent permission of a medical intervention by persons is known as informed consent[16]. A complementary perspective on informed consent has been defined by others as a dialogue that adheres to certain guidelines[17]. The doctor or other healthcare provider should preferably start this kind of dialogue, which entails openness, participation from both sides, and lasts the duration of the healthcare intervention. A witness signature, co-signed consent forms, or medical progress records may also be needed as proof that this talk took place[18]. Generally speaking, a doctor should not begin medical treatment unless the patient has given their verbal or implicit consent. Any change in circumstances that are not disclosed to and agreed by the person giving consent could void the patient's consent, which can be revoked at any moment[19].

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[11] F Tekola, SJ Bull, B Farsides, MJ Newport, A Adeyemo, CN Rotimi and G Davey, 'Tailoring Consent to Context: Designing an Appropriate Consent Process for a Biomedical Study in a Low Income Setting'. *PLoS Negl Trop Dis* [2009] (7) e482.

[12] Council for International Organizations of Medical Sciences (CIOMS): International ethical guidelines for biomedical research involving human subjects Geneva: CIOMS; 1993.

[13] [1972] 464 2d 772 (DC).

[14] [1957] 54 Cal App 2d 560.

[15] S Joffe, EF Cook, PD Cleary, JW Clark and JC Weeks, 'Quality of Informed Consent: A New Measure of Understanding Among Research Subjects'. *J Natl Cancer Inst.* [2001] (93)139-47; R Worthington, Clinical Issues on Consent: Some Philosophical Concerns'. *J Med Ethics* [2002] (28) 377-380.

[16] JS Svoboda, RS Van Howe and JG Dwyer, 'Informed Consent for Neonatal Circumcision: An Ethical and Legal Conundrum'. *J Contemp Health L & Pol'y* [2000] (17) 61-133; TL Beauchamp and RR Faden, Informed Consent: II. Meaning and Elements of Informed Consent'. In *Encyclopaedia of Bioethics*. Volume 3. Revised edition. New (York: Simon & Schuster Macmillan;Reich WT 1995)1240-1245.

[17] TR McCormick, *Informed Consent, its Basis, Problems, Uncertainties* (University of Washington School of Medicine, 1998). Available at: http://depts.washington.edu/bioethx/, accessed 10 February 2025.

[18] *Ibid*

[19] *Ciarlariello v. Schactr* [1993] 100 DLR (4th) 609 SCC.

5.0 Informed Consent in Nigeria: A Review of the Legal Framework

The regulation of informed consent in Nigeria appears to be unaffected by any distinctive feature of the local culture or social setting. This is hardly surprising given the country's colonial history and the cosmopolitan structure of Nigerian society. The Code of Medical Ethics in Nigeria governs the professional conduct of medical physicians, and *Rule 19* of *Part A* addresses informed consent[20]. Its criteria, as well as the concept of autonomy and human rights, are similar to those of any industrialised Western country. It recognises that consent can be sought from the patient, his or her relatives, or the public authorities, depending on the circumstances. While the Nigerian patient has the primary right to information and to make decisions about his or her treatment, a next of kin can provide consent for children and those who lack capacity. When no relative is accessible, the most senior doctor in the facility can issue an appropriate directive to save lives. A court order may be required in certain instances. Consent discussions and paperwork should be observed. The code requires that a proper informed consent contain:

(1) the advantages and dangers of a procedure,
(2) appropriate expert advice on possibilities,
(3) the patient's selected option, and
(4) authorisation for the practitioner to begin treatment by completing the form.

The code recognises the patient's intrinsic right to his or her body and life. While the policy recognises several forms of consent (including voluntary self-offer for treatment), it demands that specific interactions require expressly specified and documented approval. It includes a standard consent form but does not recognise any alternative forms used by individual physicians.

Nigeria's legal system is based on British law, and the majority of procedural cases are taken from it. Medical practice in Nigeria is generally free of malpractice litigation when compared to developed countries. Accusations of medical negligence, incompetence, and unethical or unprofessional behaviour are prevalent; however the majority of these instances are decided by the disciplinary committee of the Medical and Dental Council of Nigeria, which oversees professional medical practice in Nigeria. The disciplinary committee's verdict can be appealed to the normal Appeal Courts, although this is an exception.

It is claimed that the Nigerian sociocultural environment is ingrained with a widespread hesitancy to utilise litigation to resolve medical disputes[21]: There are long-standing customs that involve using family members, religious leaders, and elders to resolve conflicts. Instead of taking action to seek restitution in the courts, Nigerians will choose to "leave the judgement to God.[22]" However, it is questionable to what extent cultural concerns - rather than social, educational, or economic factors are to blame for this hesitancy to employ legal recourse. Particularly in rural and northern regions of the country, the literacy rate is low. Even well-educated persons frequently lack enough knowledge of their legal rights. Furthermore, the cost of litigation is prohibitively expensive, and in the face of hardship, offended individuals would rather devote scarce resources to immediate needs and other worthwhile endeavours. Legal considerations also make litigation undesirable. The wheel of justice moves slowly, and the bar and bench are not immune to the corruption that exists throughout the system. Furthermore, medical practitioners in Nigeria are among the most fortunate in the country; the average person may lack the money to seek redress. Furthermore, many patients appear late in their disease progression and are in poor health by the time a doctor sees them. Whatever the outcome, it is more difficult to place responsibility on the doctor. The lack of medical malpractice cases in Nigeria would not last for long given the country's rising literacy rate, decreasing poverty, and the implementation of a health insurance program[23].

[20] Medical and Dental Council of Nigeria, *Codes of Medical Ethics in Nigeria* (Surulere: Petruvanni Co. Ltd., 2004) 26-31.
[21] JA Yakubu (ed.), *Medical Law in Nigeria* (Ibadan: Demyaxs Press, 2004).
[22] *Ibid*

The Nigerian Supreme Court decided its most well-known case on informed consent in 2001, clearly deviating from the rule that there are few lawsuits in the medical field[24]. Dr. Okonkwo, the appellant in *Medical and Dental Disciplinary Tribunal v. Okonkwo*, was convicted of professional misconduct. He complied with the written and verbal requests of a Jehovah's Witness patient who declined a blood transfusion and passed away while receiving care. Dr. Okonkwo's appeal was supported by the Nigerian appellate court, and the Supreme Court upheld the decision[25]. An adult Nigerian has the right to decline life-extending medical care, including blood transfusions, according to a ruling by the Supreme Court. The court found that right in the freedom of thought, conscience, and religion as well as the right to privacy guaranteed by the constitution. In that ruling, the court defined the boundaries of therapy as follows:

> 'The patient's consent is paramount... (Accordingly) the patient's relationship (with the Doctor) is based on consensus. It follows that the choice of an adult patient with a sound mind to refuse informed consent to medical treatment, barring state intervention through judicial process leaves the practitioner helpless to impose a treatment on the patient.'[26]

Beyond the Okonkwo case, Nigerian courts have not defined the scope of the physician's duty of consent, and as a result, little information is supplied to patients in practice. While local culture and social expectations may influence the actual practice of informed consent in Nigeria, the above legal finding, along with the rules, handled informed consent in the same way that any Western system would. Legal academics' analyses of Nigerian medical legislation largely resemble the needs of the law in the United States (US) and Britain, which they cite as precedents[27]. However, it is difficult to predict what restrictions the courts may place on medical professionals in real adversarial cases. Because it was the first of its kind, the Okonkwo case made headlines in the Nigerian medical world. However, because it was portrayed in the media as a case involving Jehovah's Witnesses' freedom to refuse blood transfusions, its true influence on doctors' informed consent was not fully understood. However, this decision shed additional insight on Nigerian patient-physician relationship expectations and indicates the direction that legal decisions are likely to take should litigation play a substantial role in influencing consent procedures in the country.

6.0 Legal Framework for Informed Consent in South Africa

In the seminal judgment in *Minister of Safety and Security v. Xaba28*, the police sought a court order to force an accused person to have surgery in order to obtain a bullet that would be used as evidence against the accused; the court denied this request, stating that it would violate the defendant's constitutional rights to bodily and psychological integrity, including the right to security and control of one's body[29]. This case demonstrated that South Africa has a constitutionally protected right to informed consent prior to medical procedures. A well-established principle in South African common law is that agreement from patients is necessary for all legal medical procedures[30]. *Esterhuizen v. Administrator Transvaal*[31] and *Stoffberg v. Elliot*[32] were the first cases in this field. A patient in the former case filed a lawsuit against his doctors for assault damages after their member

[23] R Emmanuel Ezeome and A Patricia Marshall, 'Informed Consent Practices In Nigeria'. *Developing World Bioethics* [2008] 1-11. DOI: 10.1111/j.1471-8847.2008.00234.x

[24] CC Nweze, 'Medical Negligence: Comparative Contemporary Legal Perspectives'. *Consumer Journal* [2005] (1) 35-67.

[25] *Supreme Court of Nigeria. Medical and Dental Disciplinary Tribunal V Okonkwo* (2001) 4 SCN 78. Nigerian Weekly Law Report 2001; Part 711: 205-255.

[26] AJ Dada, 'Consent to Medical Treatment'. In AJ Dada (ed.), *Legal Aspects of Medical Practice in Nigeria* (Calabar: University of Calabar Press, 2002) 157-171.

[27] *Ibid* (n 20).

[28] [2003] (2) SA 703 (D).

[29] P Carstens and D Pearmain, *Foundational Principles of South African Medical Law* (Durban: LexisNexis, 2007).

[30] FFW Van Oosten, 'The Doctrine of Informed Consent in Medical Law'. *LLD Thesis* (University of South Africa, School of Law, 1989) 45-101..

was unjustly severed without their informed consent owing to penile cancer. As he gave the jury instructions, Watermeyer J. believed that, according to the law, everyone has certain unalienable rights that are safeguarded by the law. They are not reliant on a law or a contract, but they are rights that must be upheld, and one of those rights is the right to complete personal security. Any physical interference with or restriction of a person's body that is not justified, excused, or consented to by law is wrong, and the person whose body has been interfered with has the right to sue for the damages he can demonstrate he has suffered as a result of that interference.

In the *Esterhuizen v. Administrator Transvaal*[33] case, a 10-year-old girl with Kaposi's sarcoma received superficial radiation treatment at first with her parents' approval. But as the malignancy returned, she received extreme radiation treatment, which caused serious burns and required her limbs to be amputated. The Court ruled that, while the superficial radiation was performed with parental consent, the latter procedure was undertaken without the child's guardians' informed consent. The court dismissed the defence's claims for implied consent, citing the fact that her parents had previously consented to similar therapy, as well as arguments that the treatment was in the child's best interests. Holding that because the radical therapy was radically different from the previous superficial radiation, the child's parent must have been sufficiently apprised of the risks involved in the new treatment before such agreement may be regarded legitimate[34]. Ackerman J's recent decision in *Castell v. DeGreef*[35] appears to have established the doctrine of informed consent in South African law. As a result of the latter ruling on South African medical legislation, the following concepts have largely been accepted into the clinical practice of medicine locally[36].

- The change from patient autonomy to medical paternalism
- The "prudent patient" standard has replaced the "reasonable doctor" norm.
- The change in disclosure to the "material risk" criterion, which stipulates that the amount of information needed, is what a reasonable patient would think relevant before making a choice.

According to some, the Court seems to view the patients' informed agreement as falling within the voluntary assumption of risk, or *volenti non fit injuria*, doctrine rather than the delict[37]. Informed consent provisions were incorporated into South African law in 2003 with the promulgation of the National Health Act (NHA)[38]. According to *Section 7* of this act, unless "the user is unable to give informed consent and such consent is given by another person, mandated by the user in writing to grant consent on his or her behalf; or authorised to give such consent in terms of any law or court order; or where the user is unable to give informed consent and no one is mandated or authorised to give such consent," health services cannot be provided to a healthcare user without the user's informed consent[39]. A user must also be informed of "the user's health status, except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interests of the user," according to the law[40]. According to *Section 6* of the NHA, the following details must be included in any information given to patients:

(a) The user's overall access to a variety of diagnostic techniques and therapeutic alternatives.
(b) The general advantages, dangers, and repercussions of each choice; and

[31] [1957] (3) SA 710 (T).
[32] [1923] CPD 148-150.
[33] *Ibid* (n 30)
[34] *Ibid* (n 31).
[35] [1993] (3) SA 501.
[36] FFW Van Oosten, '*Castell v. DeGreef* and the Doctrine of Informed Consent: Medical Paternalism Ousted in Favour of Patient Autonomy'. *De Jure* [1995] 164-179.
[37] *Ibid*
[38] National Health Act 61 of 2003: Government Gazette 2004, 469 (26595).
[39] *Ibid*
[40] *Ibid*

(c) The user's right to decline medical services and the obligations, risks, and ramifications of doing so[41].

Additionally, the NHA mandates that health care practitioners provide the above information to the patient in a language that the patient can understand and in a way that considers the patient's literacy level[42].

7.0 Informed Consent in South Africa and Nigeria: A Comparative Legal Analysis

In South Africa, the right to informed consent prior to medical procedures is guaranteed by the constitution. In Nigeria, this is not the case. The principle was aptly illustrated in the seminal case of *Minister of Safety and Security v. Xaba*[43]. In this case, the police requested a court order compelling an accused individual to have surgery in order to collect a bullet that would be used as evidence against them. The Court denied this motion on the grounds that it would infringe upon the defendant's fundamental rights to psychological and physical integrity, particularly the right to bodily control and security[44]. According to South African common law[45], obtaining a patient's permission is a prerequisite for any legal medical procedure. *Esterhuizen v. Administrator Transvaal*[46] and *Stoffberg v. Elliot*[47] were the first cases in this field. A patient in the former case filed a lawsuit against his doctors for assault damages after their member was unjustly severed without their informed consent owing to penile cancer. In his instructions to the jury, Watermeyer J. expressed his belief that everyone has certain unalienable rights that the law upholds. They are not based on a statute or a contract, but they are rights that must be honoured, and one of them is the right to absolute security of the person. Any physical interference with or constraint of a man's person that is not justified in law, excused by law, or consented to is a wrong, and the person whose body has been interfered with has the right to seek such damages as he can demonstrate he has suffered as a result of that interference.

A 10-year-old child with Kaposi's sarcoma was first treated with superficial radiation with her parents' approval in the case of *Esterhuizen v. Administrator Transvaa*[48]. But as the malignancy returned, she received extreme radiation treatment, which caused serious burns and required her limbs to be amputated. The Court ruled that although the parents' approval was obtained for the superficial radiation, the child's guardians' informed consent was not obtained for the latter surgery. Given that her parents had previously agreed to a similar treatment and that the treatment was in the child's best interest, the court dismissed the defense's claims of implied consent.

Holding that because the radical therapy was radically different from the previous superficial radiation, the child's parent must have been sufficiently apprised of the risks involved in the new treatment before such agreement can be regarded valid[49]. Ackerman J's recent decision in *Castell v. DeGreef*[50] appears to have established the doctrine of informed consent in South African law. The results of the latter ruling on South African medical law were that the following concepts were largely integrated into clinical practice of medicine locally, and it is hoped that they would become part of Nigerian medical jurisprudence in the coming years. These include "a shift in disclosure to the 'material risk' standard, where the level of disclosure required is what a reasonable patient would consider pertinent before making a decision; a shift from medical paternalism to patient autonomy; and a shift from the 'reasonable doctor' standard to the 'prudent patient' standard."

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[41] Ibid (n 28).
[42] *Ibid*
[43] *Ibid* (n 27)
[44] *Ibid*
[45] *Ibid* (n 29).
[46] *Ibid* (n 32).
[47] *Ibid* (n 31).
[48] *Ibid* (n 45).
[49] *Ibid*
[50] *Ibid* (n 34).

Therefore, it has been proposed that the Court seems to consider the patients' informed assent to be a voluntary assumption of risk, or *volenti non fit injuria*, rather than a delict[51]. Informed consent provisions were enshrined into South African legislation in 2003[52] with the promulgation of the National Health Act (NHA). According to *Section 7* of this Act, unless "the user is unable to give informed consent and such consent is given by another person, mandated by the user in writing to grant consent on his or her behalf; or authorised to give such consent in terms of any law or court order; or where the user is unable to give informed consent and no one is mandated or authorised to give such consent"[53], health services cannot be provided to a healthcare user without the user's informed consent. The law also requires that every health care professional tell a user of their health state, unless there is substantial evidence that disclosing the user's health status would be detrimental to the user's best interests[54]. *Section 6* of the NHA requires that information supplied to patients include the following:

(a) The user's overall access to a variety of diagnostic techniques and therapeutic alternatives.
(b) The overall advantages, dangers, and repercussions of each choice; and
(c) The user's right to decline medical services and to disclose the obligations, risks, and ramifications of doing so[55].

The NHA also demands that health care practitioners communicate this information to the user in a language that the user understands and in a way that takes into account the user's level of literacy. This particular need is an enhancement above what is already available in Nigeria.
In South Africa, the concept of informed consent is just as advanced as it is in Nigeria. A complementary perspective of informed consent as a dialogue that adheres to particular guidelines[56] is taken by informed consent, which is the independent approval of a medical action by individuals. In South Africa, the doctor or other healthcare provider should preferably start this kind of dialogue, which entails openness, participation from both sides, and continuation for the duration of the medical intervention. A witness signature, co-signed consent forms, or medical progress notes[57] are further forms of proof that this talk took place. In general, however, medical treatment in South Africa does not begin until the doctor has gained the patient's agreement, which can be expressed or implicit. A patient's permission may be revoked at any time[58], and it may be void if any change in circumstances is not disclosed to and approved by the individual consenting.

As earlier noted, the standards for the legitimacy of patient consent are much further advanced in South Africa. In general, five (5) essential conditions must be met for consent to be deemed legitimate or fully informed, and these include[59]:

i. Information disclosure: giving sufficient details
ii. Competence: the ability to comprehend that information;
iii. Voluntariness: the ability to make decisions free from coercion or deceit;
iv. Comprehension: comprehension of the information supplied; and
v. Consent: acceptance of the suggested course of action.

It should be mentioned that, unlike in Nigeria, educating a patient in South Africa involves more than just reciting the contents of a written document. Instead, when communicating verbally or in writing, the healthcare provider aims to use language that is appropriate for the patient's comprehension level[60]. When a healthcare practitioner obtains consent in this jurisdiction, they must take into account the fact that the potential subject's maturity, IQ, educational attainment, and belief system all

[51] *Ibid* (n 40).
[52] National Health Act 61 of 2003: Government Gazette. 2004, 469 (26595).
[53] *Ibid*
[54] *Ibid*
[55] *Ibid*
[56] TR McCormick, *Informed Consent, Its basis, Problems, Uncertainties* (University of Washington School of Medicine, 1998). Available at: http://depts.washington.edu/bioet, accessed 10 February 2025.
[57] *Ibid*
[58] *Ciarlariello v. Schactr* [1993] 100 DLR (4th) 609 SCC.
[59] *Ibid* (n 9).

influence their capacity to comprehend the information required to provide consent. Additionally, it is contingent upon the clinician's capacity and readiness to speak with tact and patience[61]. In *Canterbury v. Spence*[62], the US District Court of Appeal held that a patient can only successfully exercise their right to self-determination if they have access to sufficient information to make an informed decision. Informed choice-making, which involves having the chance to weigh the risks associated with each option and the options available, is what constitutes true consent to what happens to oneself. It is hoped that the Nigerian health system will adopt this approach. These axiomatic considerations give rise to the necessity, and hence the demand, of a reasonable disclosure by the physician to the patient in order to make such a decision conceivable.

In the case of *Salgo v. Leland Stanford University*[63], it was further argued that a doctor might be held liable and breach his duty to his patient if he withholds information that would enable the patient to give their informed consent to a planned course of treatment. It has been proposed that the quality of informed consent provided by patients during various clinical encounters should be scientifically investigated for validity, completeness, and consistency with established ethical and legal principles due to the possibility of a violation of the patient's rights and dignity during the informed consent process.

Another difference in patient informed consent between the two (2) countries is the level of difficulty created by the language barrier. South Africa currently has 11 official languages, but Nigeria only has one official language: English. Nigeria, despite its multilingual population, has an appropriate form of communication in our hospitals: English or the local language of the inhabitants. Thus, language problems, particularly the lack of suitably trained translators to assist healthcare workers in giving treatment to patients, are serious issues in South Africa and Nigeria. Language limitations in hospitals cause serious issues for medical staff and can have a detrimental effect on patients' rights to confidentiality, informed consent, and the standard of healthcare service delivery, according to a study conducted at a district hospital in South Africa[64]. Different cultural views on blood transfusions and amputations are among the other cultural hurdles that the clinicians in the study discovered. In the traditional African cultural ethos, the influence of family members on decision-making—particularly husbands—affects both nations equally. In both nations, they are all considered to be obstacles to the proper application of informed consent. The US National Bioethics Advisory Commission (NBAC) has recommended that community participation be permitted in order to enhance understanding and comprehension during the informed consent process. This may involve holding community meetings and distributing written information sheets for family members to discuss[65]. However, the NBAC warns that family consent should not take the place of individual informed consent.

8.0 Conclusion and Recommendations

Conclusively, it is acknowledged that everyone has the right to complete and accurate information regarding the nature of their illness, the diagnostic processes involved, the suggested course of treatment, the associated costs, and any potential risks related to the administration of medications or other forms of treatment so that they can make an informed decision about whether or not to receive it. Patients must be able to give valid consent (either directly or through a proxy); they must have a

[60] *Ibid* (n 10)
[61] *Ibid*
[62] *Ibid* (n 12).
[63] *Ibid* (n 13).
[64] *Ibid* (n 60).
[65] Aderonke Abimbola Ojo, 'The Right to Patients' Informed Consent in Nigeria and South Africa: A Comparative Discourse'. *Journal of Research in Humanities and Social Science* [2021] (9) (11) 43-58.

thorough understanding of why the doctor needs the test results; they must have access to adequate information about the diagnosis, proposed treatment, expected benefits, risks, alternative treatment, probable results, etc. These are some of the components of patient-informed consent that are used in more developed medico-legal jurisdictions, such as South Africa. Other requirements include that the consent be voluntary and unrestricted; it must be written or implied specifically for HIV tests; it must not conflict with good morals or the constitution. In order for the doctor to avoid using the patient's impaired understanding capacity as a defence, the patient must also truly comprehend everything, or at the at least, plans must be put in place to aid in the process of understanding. To better handle frequently complex legal matters involving medical and forensic evidence about medical negligence, the judiciary and other law enforcement agencies must also receive improved medical and forensic training. This will help them better comprehend the dynamics of patient-informed consent.

According to the reviewed research on informed consent in Africa, particularly in Nigeria, many physicians are generally aware of the ethical doctrine of informed consent in theory, but in practice, they typically do not apply and adhere to the legal and ethical requirements, in contrast to South Africa, where it is taken very seriously. As a result, it is hoped that Nigerian physicians and other health professionals will learn from their South African counterparts.

It is also worth noting that part of the major challenges militating against the proper practice of informed consent in Nigeria include medical paternalism (the 'my doctor knows best' syndrome), lack of patient education, language barriers, insufficient administrative support, most especially patient interpreters and Geriatric doctors to attend to aged patients, large patient numbers, an excessive workload, and time constraints within which to ask the requisite consent.

It is thus recommended that, regardless of the challenges, Nigeria must be prepared to learn and study the mechanisms for patient-informed consent in order to learn valuable lessons from South Africa's advanced legal and medical healthcare systems, in order to build a competent, viable, sustainable, and worthwhile legal and regulatory framework to encourage the stimulation of patient-informed consent in Nigeria.