



LAW AND BIOETHICS AS TOOLS FOR HUMAN RIGHTS PROTECTION IN NIGERIA

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**Abstract**

*This paper examines how Law and Bioethics can be used as tools for upholding human rights. Ethics seeks to address philosophical questions about morality. Bioethics, relates to analysing ethical, legal and social implications of scientific discoveries. Law, in its part is made up of societal rules and regulations that are advisable and obligatory to observe. It is a guide for solving ethical issues. Human rights are rights that are inherent to all human beings, regardless of their nationality, place of residence, sex, or ethnic origin, colour, religion, language, or any other status. They are fundamental rights which means constitutional Rights, that is, a significant component of liberty, infringements of which are challenged in courts to ascertain the propriety or otherwise of such interventions. Human rights are based on the principle of respect for an individual. Bioethical principles are hinged on fundamental human rights. The paper will also illustrate the link between Law and Bioethics. The sociological school of jurisprudence, which sees law as a method of social control, will guide the arguments made in this paper. According to the sociological school of jurisprudence, Law aims at the good of the society and permits individuals to realize their purposes. It is a mediator, the balancer and the harmonizer. It is therefore a tool for social engineering. This paper seeks to investigate how Law and Bioethics, as tools of social engineering can be employed in upholding human rights.*

**Key Words:** Law, Ethics, Bioethics, Human Rights, Human Right Protection

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## Introduction

Bioethics, is an interdisciplinary field. Bioethics has its roots in biology and medicine. Philosophy has aided its development, whilst law, through statutes and cases have guided this development. The foundation of Bioethics principles is the protection of human rights, which are premised on the inherent dignity, and the equal and inalienable rights of persons.<sup>1</sup> Law plays an unequivocal role in the development of bioethics. It provides a means for resolving disputes, as well as illustrating that issues have two opposing sides, which battle for respective rights to act in particular manner, or prevent the other side from acting in a specific manner. The Law, through international, regional and national legislative instruments recognise the need to uphold human rights. These human rights instruments include, Universal Declaration of Human Rights (UDHR) 1948<sup>2</sup>, International Covenants on Civil and Political (ICCPR) Rights 1966<sup>3</sup>, The Economic, Social and Cultural (ECOSOC), Rights 1966<sup>4</sup>, African Charter on Human and People's Rights (ACHPR) 1981<sup>5</sup>- a regional human right instrument, and the Constitution of the Federal Republic of Nigeria, 1999<sup>6</sup>. These human rights instruments, provide that State parties have the duty to respect, protect and fulfil human rights. To achieve this aim of upholding human rights, laws, policies and regulations are put in place. The paper examines how Law and Bioethics can be used as tools for upholding human rights.

## Definitions

**LAW** - Law has been described as a rule made by an authority, which must be obeyed. It is commonly made by a government; which citizens are expected to follow or face punishment. For

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<sup>1</sup>The Preamble to the United Nations Declaration of Human Rights (UDHR), G.A. Res. 217A (III) (1948).

<sup>2</sup>Universal Declaration of Human Rights (UDHR), 10 December 1948, 217 A (III). <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 19<sup>th</sup> January, 2023

<sup>3</sup> International Covenants on Civil and Political (ICCPR) Rights 1966, United Nations, Treaty Series, vol. 999, p. 171 <<https://www.refworld.org/docid/3ae6b3aa0.html>> accessed on 19<sup>th</sup> January, 2023.

<sup>4</sup> The Economic, Social and Cultural (ECOSOC), Rights 1966, United Nations, Treaty Series, vol. 993, p. 3 <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed on 19<sup>th</sup> January, 2023.

<sup>5</sup> African Charter on Human and People's Rights (ACHPR) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

<[https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)> on 19<sup>th</sup> January, 2023

<sup>6</sup>Constitution of the Federal Republic of Nigeria, 1999, as amended.



instance, there are laws against stealing. When an individual is caught stealing, they could be fined or put in jail, depending on the law broken and the punishment set up for that law.<sup>7</sup>

**ETHICS** - These are moral principles that govern a person's behaviour or the conducting of an activity. It is also known as moral philosophy, which is concerned with what is morally good and bad, and morally right and wrong. It also applies to any system or theory of moral values or principles.<sup>8</sup>

**BIOETHICS**—is made up of two words, namely, “ethics” which refers to the identification, study, and resolution or mitigation of conflicts among competing values or goals; and “bio” which puts the ethical question into a particular context.<sup>9</sup> It is the study of the ethical issues emerging from advances in biology and medicine. It is also moral discernment as it relates to medical policy and practice.

**HUMAN RIGHTS** - rights that are inherent to all human beings, regardless of their nationality, place of residence, sex, or ethnic origin, colour, religion, language, or any other status.<sup>10</sup>

**INFORMED CONSENT** - It is the process where a patient or research participant is given all material information, to help him/her decide whether or not to submit to a particular mode of medical intervention or research. The material information will include the risks and benefits involved, details of the procedure, treatment or research. The process is continuous, therefore, new information must be made available to the patient or research participant, who is free to withdraw the consent at any time<sup>11</sup>.

**PROXY CONSENT** - is given by/ obtained from a person who was appointed by another to grant an informed consent on their behalf<sup>12</sup>.

**RIGHT TO PRIVACY** - the right of a person to be free from intrusion into or publicity concerning matters of a personal nature<sup>13</sup>

<sup>7</sup> Dictionary.com. <<https://www.dictionary.com/browse/law>>accessed 20th January, 2023.

<sup>8</sup>Britannica.<<https://www.britannica.com/topic/ethics-philosophy>>accessed 20th January, 2023.

<sup>9</sup> “What is Bioethics”.A publication of the Center for Bioethics and Justice.College of Human Medicine.Michigan State University. Michigan. USA. <<https://bioethics.msu.edu/what-is-bioethics>>accessed 20th January, 2023.

<sup>10</sup><<https://www.un.org/en/global-issues/human-rights>>accessed 20th January, 2023.

<sup>11</sup><<https://www.cancer.gov/publications/dictionaries/cancer-terms/def/informed-consent>> Accessed on 20<sup>th</sup> January, 2023

<sup>12</sup><<https://biotech.lsu.edu/books/lbb/x302.htm#:~:text=Proxy%20consent%20is%20the%20process,that%20right%20to%20another%20person>> Accessed on 20<sup>th</sup> January, 2023

<sup>13</sup><<https://www.merriam-webster.com/legal/right%20of%20privacy>> Accessed on 20<sup>th</sup> January, 2023.

**CONFIDENTIALITY** – is the principle and practice of keeping sensitive information private unless the owner or custodian of the data gives explicit consent for it to be shared with another party<sup>14</sup>.

**DISCRIMINATION** - treating some people differently from others<sup>15</sup>.

**STIGMATISATION** - the act of treating someone or something unfairly by publicly disapproving of them.<sup>16</sup>

### Relationship between Law and Bioethics

Bioethics is an interdisciplinary field. It encompasses Biology, Medicine, Philosophy and Law. Bioethics is concerned with issues relating to how personhood is determined. Examples will include, determining the point at which the activities of a healthcare giver, constitutes a murder, giving and receiving payment in the event of organ transplantation or custody of a child, whether the benefit of a study, to the community where the study is being carried out, will ever justify misconduct of any type.<sup>17</sup> In settling these and other Bioethical concerns, the law has been resorted to. Bioethics is concerned with

*analysing ethical, legal and social implications of scientific discoveries and biotechnological applications to propose fair agendas to its treatment and, by it, to request from Law at the time of applying and providing effectiveness to its proposals.*<sup>18</sup>

Consequently, Bioethics provide the means for arriving at decisions which affect values by elaborating processes, analysing agendas which govern actions relating to technical intervention over issues of life, resulting in legal norms. Law possesses general and bonding features whose

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<sup>14</sup><https://www.hypr.com/security-encyclopedia/confidentiality#:~:text=Confidentiality%20is%20the%20principle%20and,honor%20the%20principle%20and%20practice>.

<sup>15</sup> Introduction to Discrimination <<https://www.nidirect.gov.uk/articles/introduction-discrimination#:~:text=Discrimination%20means%20treating%20some%20people,discriminate%20against%20you%20by%20law>> Accessed on 20<sup>th</sup> January, 2023.

<sup>16</sup><https://dictionary.cambridge.org/dictionary/english/stigmatization>> Accessed on 20<sup>th</sup> January, 2023

<sup>17</sup> The foregoing are examples of bioethical issues, buttressing the earlier point. See for instance, Khanam S. 2013. Ethical Requirements for Clinical Trials.<<https://www.editage.com/insights/what-every-researcher-should-know-to-conduct-research-ethically>> Accessed on 25<sup>th</sup> January, 2023.

<sup>18</sup> Maria Casado, Debate on the Relationships Between Bioethics and Law. *Rev. bioét (Impr.)* (2011); 19(1): 15 – 28. At p.15.<<https://revistabioetica.cfm.org.br>>accessed 25/1/2023.

values are ideal for behavioural guidance in the society.<sup>19</sup> There are international, regional and national legislative instruments that recognise and protect human rights, thereby ensuring that the law accomplishes its purpose in the society. International instruments provide the minimum basic content, suitable for a culturally diverse international context, while national constitutions deal with fundamental principles and values to meet the needs of each particular state.<sup>20</sup> In examining the beginning of Bioethics, many dates have been postulated. The earliest being 1847, when the first Code of Medical Ethics was published by the American Medical Association (AMA).<sup>21</sup> This version of the AMA Code transformed medical practice from being loose, unstructured and unregulated into being based on scientific principles, and devoted to the service of mankind.<sup>22</sup> The end of the Nuremberg trial, 1947, and promulgation of the Nuremberg Code, has been set as another date for the commence of Bioethics. The Nuremberg Code made provisions for ethical requirements for biomedical research on humans.<sup>23</sup> The term “Bioethics” was first used in print in 1970, in Van Rensselaer’s article titled “Bioethics, the Science of Survival.”<sup>24</sup> This has also been regarded as another date for the beginning of Bioethics. This accounts for the argument that “Bioethics” is an American concept, developed by aspects of the American culture.<sup>25</sup> This argument is backed by the notion that, because Americans lacked an established church of singular heritage, in spite of their commitment to the equality of persons and the rule of law, they turn to the courts, when seeking to resolve moral conflicts.<sup>26</sup>

The relationship of Law and Bioethics is complex and multifaceted. The Law has a strong impact on the value, focus and methodology of Bioethics.<sup>27</sup> The Nuremberg Trial<sup>28</sup>, which resulted from the unethical practices of the Nazi physicians experiments on prisoners in the concentration

<sup>19</sup>MartíFP. Bioética Y Valores Constitucionales. In: Casado M, Coordinadora. Bioética, Derecho Y Sociedad. Madrid: Trotta; (1998). p.35-54. Referred to in Casado M. on page 16.

<sup>20</sup>M Casado, *ibid.* p.16

<sup>21</sup>Code of Medical Ethics of the American Medical Association. 1847 [last accessed January 1, 2009]. available at [www.ama-assn.org/ama/upload/mm/369/1847code.pdf](http://www.ama-assn.org/ama/upload/mm/369/1847code.pdf)

<sup>22</sup>. See Starr, Paul. The Social Transformation of American Medicine. New York: Basic Books; 1984

<sup>23</sup>. See Weindling, Paul Julian. Nazi Medicine and the Nuremberg Trials: From Medical War Crimes to Informed Consent. New York: Palgrave Macmillan; 2006.

<sup>24</sup>. Van Rensselaer, Potter. Bioethics: The Science of Survival, 14 Perspectives in Biol. & Med. Vol. 127. 1970.

<sup>25</sup>A M Capron, “Law and Bioethics”. *Bioethics*. (4<sup>th</sup>ed). Cengage Learning. (2014) pp. 1789-1797, at p.1790.

<sup>26</sup>*Ibid.*

<sup>27</sup>George J Annas, *Standard of Care: The Law of American Bioethics*. 1993. [Oxford University Press](http://www.oxforduniversitypress.com). [New York](http://www.oxforduniversitypress.com). p.

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<sup>28</sup> The Nuremberg Trial <<https://www.legal-tools.org/doc/45f18e/pdf>> Accessed on 22<sup>nd</sup> January, 2023



camps, during the World War II and the Tuskegee Syphilis study<sup>29</sup> carried out by the US Public Health Services between the 1930s and 1970s, without the participants' informed consent, are instances where Law has been used to resolve cases of unethical researches, leading to promulgation of legal instruments to regulate the conduct of research. An example of the influence of Law on Bioethics is the Karen Quinlan's case.<sup>30</sup> Karen Quinlan was left in a persistent vegetative state following lack of oxygen incidence. Her parents wanted the ventilator to be removed, as there was no change, over a period of months. Her parents and the hospital went to court to determine whether the withdrawal of the life support amounted to homicide. The court held that privacy rights enabled a person to decide to discontinue life sustaining treatment. Consequently, Karen's parents were in a position to decide accordingly, on behalf of their daughter. Similarly, in Nigeria, the constitution of the National Health Research Ethics Committee (NHREC)<sup>31</sup> and the promulgation of the National Code for Health Research Ethics (NCHRE) which applies to all health research involving human participants, conducted, supported or otherwise subject to regulation by any institution in Nigeria<sup>32</sup>, illustrate the influence of Law on Bioethics. The NCHRE applies to all health researches involving human participants, conducted, supported or otherwise subject to regulation by any institution in Nigeria.<sup>33</sup> The law has offered bioethics not just a procedural response but also a long tradition of protecting people from harm by assertion of their rights; indeed, a rights orientation seems inherent in the law's perspective on the relationship of the health care system to patients and research subjects.

In its part as well, Bioethics has impacted the law. Law is basically concerned with commerce, public and private institutions. Bioethics, is concerned with people, their fundamental choices, which determine and define their lives. While law 'notifies' Bioethics of rights and procedures, Bioethics provide law with real life dramas to which its rules can be applied<sup>34</sup>. In the words of

<sup>29</sup> The Tuskegee Syphilis Study <<https://www.cdc.gov/tuskegee/timeline.htm>> Accessed on 22<sup>nd</sup> January, 2023.

<sup>30</sup> *In re Quinlan*, 355 A.2d 647 (N.J. 1976)

<sup>31</sup> S.31 National Health Bill, 2008.

<sup>32</sup> Section B National Code for Health Research Ethics.

<sup>33</sup> Section A. National Code of Health Research Ethics 2007.

<sup>34</sup> Alexander Morgan Capron. 1995. Law and Bioethics. <<https://www.encyclopedia.com/science/encyclopedias-almanacs-transcripts-and-maps/law-and->



Stephen Toulmin, *medicine saved the life of the law*.<sup>35</sup> There is no doubt that ethical dilemmas have provided the context for which issues such as individual rights, public good, liberty, equity and equality are showcased and resolved. A major function of Bioethics, is bring to the fore, the possibility of harm that may be imposed on the majority and, in some cases, the limitation of the law in setting societal standards<sup>36</sup>. Law and Bioethics, have a few things in common. They are both created by humans and are historically significant. They are based on human experiences, scientific, religious and customary influences.<sup>37</sup> Both Law and Bioethics apply reasoning in seeking to justify positions taken by an individual or authority, or in favour or against an argument and for critical analysis.<sup>38</sup> The impact of Law on Bioethics<sup>39</sup> is evident in areas such as informed consent and patients' rights, the conflicts on origin and ending of life, or the search for agreements in plural contexts, and has intrinsic feature. The contribution of the Law to Bioethical analysis is fundamental and of extreme usefulness for public law. Both disciplines have the similar goal of respect and promotion of recognized human rights.

As noted earlier, the application of Law to Bioethical breaches has resulted in landmark judicial decisions and the adoption of new statutory and administrative laws. An example is the Nuremberg Trial and the resultant Code. The Nuremberg trial was the first international war crimes tribunal in history. It revealed the true extent of German atrocities and held some of the most prominent Nazis accountable for their crimes. At the end of the trial, the Nuremberg Code was promulgated. This code contained 10 (ten) principles. The principle recognised the concept of individual criminal accountability under international law, and defined crimes against peace, war crimes and crimes against humanity<sup>40</sup>. The code set a new standard of ethical medical behaviour for the post World War II human rights era. The principles include the requirement of

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[bioethics#:~:text=The%20relationship%20of%20law%20and,and%20even%20define%20their%20lives>](#) Accessed on 25/1/2023

<sup>35</sup>S Toulmin, "How Medicine Saved the Life of Ethics." (1982) *Perspectives in Life and Medicine* 25 (4): 736–50. Referred to in A Capron, 2014. *Ibid.* p. 1790.

<sup>36</sup>Capron A M. 2014. *Law and Bioethics*. Bioethics. (4<sup>th</sup>ed). Cengage Learning. pp. 1789-1797

<sup>37</sup>*Ibid*

<sup>38</sup>*Ibid*

<sup>39</sup>Martín R Mateo, *Bioética y derecho*. Barcelona: Editorial Ariel; 1987. Referred to on page 15

<sup>40</sup> The Nuremberg Principles <<https://www.nurembergacademy.org/about-us/history/#:~:text=The%20Nuremberg%20Principles,-In%201950%2C%20Principles&text=With%20these%20Principles%2C%20the%20concepts,crimes%20against%200humanity%20were%20defined>> accessed on 21<sup>st</sup> January, 2023.

voluntary informed consent of the human subject, which protects the right of the individual to control their own body. In addition, it recognised that the risk/benefit ratio of the study must be borne in mind, eliminating unnecessary pain and suffering. By virtue of the code, doctors must avoid actions that injure human patients. These principles have been extended into general codes of medical ethics.<sup>41,42</sup>

### **Law as tool for societal engineering - Sociological Jurisprudence**

In examining the role of law and bioethics as tools for human rights protection, the Sociological School of Jurisprudence will be employed. This school of thoughts describes law as a tool for societal engineering. The proponents of the Sociological School include, Roscoe Pound, Rudolf Von Jhering, Jeremy Bentham and Herbert Lionel Aldophus Hart. The Sociological School of Law, promotes the study of law as a phenomenon. It attempts to look at law against the background of the people it is meant to govern. It believes that law cannot exist in the absence of the people, and that law must be part and parcel of the people in order to command legitimacy. Consequently, Sociological Jurisprudence is the study of law in its social setting or as a social institution.<sup>43</sup> Sociological jurisprudence has been described as a theory which attempts to use the various social sciences to study the role of law as a living force in society and seeks to control this force for the social betterment. Montesquieu, the fore runner of sociological jurisprudence, in his *L'Esprit des Lois*, postulates that a system of law is a living growth and development, which is interrelated with the physical and societal environment.<sup>44</sup>

According to the sociological approach, to Jurisprudence, law is a non-unique, method of social control. The proponents of this approach reject the 'jurisprudence of concepts', which views law as a closed logical order. They are skeptical about rules as presented in textbooks, but were

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<sup>41</sup>The Nuremberg Doctor's Trial. 1996. British Medical Journal No 7070 Volume 313: Page 1448, 7 December 1996. See also Moreno J D, Schmidt U and Joffe S. 2017. The Nuremberg Code 70 Years Later. JAMA. 2017;318(9):795-796. doi:10.1001/jama.2017.10265 <<https://jamanetwork.com/journals/jama/fullarticle/2649074>> on 21<sup>st</sup> January, 2023.

<sup>42</sup> An example is the World Medical Association Declaration of Helsinki on Ethical Principles For Medical Research Involving Human Subjects. The latest edition was adopted in 2013.

<sup>43</sup> Roscoe Pound. 1912. The Scope and Purpose of Sociological Jurisprudence. [Concluded.] III. Sociological Jurisprudence. Harvard Law Review, Apr., 1912, Vol. 25, No. 6 (Apr., 1912), pp. 489-516

<sup>44</sup>Montesque. 1748. *L'Esprit des Lois*. Referred to in James A. Gardner. 1961. The Sociological Jurisprudence of Roscoe Pound (Part I). 7 Vill. L. Rev. 1 (1961). <<https://digitalcommons.law.villanova.edu/vlr/vol7/iss1/1>> on 24<sup>th</sup> January, 2023.





more concerned with ‘the law in action’, that is, what really happens. They espouse relativism rather than naturalism which believes that an ultimate theory of values can be found. They believe in the importance of harnessing the techniques of the social sciences, as well as the knowledge from sociological research towards the establishment of a more effective science of law.<sup>45</sup> As noted earlier, proponents of the sociological approach include, Jhering, Ehrlich, Bentham, the Tübingen School, Roscoe Pound and Duguit. This paper will however confine itself to the theory of Jhering, as Jhering’s theory best illustrates the topic under discussion.

### **Rudolf Von Jhering/Ihering (1818-1892)**

In his *The Spirit of Roman Law*, Jhering noted that the origin of laws lay in sociological factors and that the basis of a ‘right’ was an interest, which led him to consider more closely, how laws deal with conflicting interests. According to Jhering, the dominant notion in the exercise of human will is purpose. In other words, causality in the natural world is governed by a ‘because’. He posited that, ‘*a stone falls because without its support, it must fall*’.<sup>46</sup> Law, in Jhering’s opinion, is a part of human conduct and its purpose is as an instrument for serving the needs of society by furthering and protecting the interests of the society.<sup>47</sup> The essence of law is for the protection of societal and individual interests. In such instance, law co-ordinates and resolves the competing interests. According to him, the conflicting interests are mutual, because the essence of the society is to secure and guarantee the satisfaction of human wants. Jhering opined that, law, in a social setting, exists for a special purpose. This, for instance can be seen in the preamble of the 1999 Constitution of the Federal Republic of Nigeria, which provides that the Constitution exists;

*for the purpose of promoting the good government and welfare of all persons in our country and the principles of freedom, equality and justice, and for the purpose of consolidation the unity of our people*<sup>48</sup>.

Law, in his opinion, aims at the good of the society and permits individuals to realize their purposes. It is a mediator, the balancer and the harmonizer. Legal institution enables man to add

<sup>45</sup>Pound R. (1923). *Interpretation of Legal History*. Ch. 7. Referred to in Lloyd’s p.548.

<sup>46</sup>Jhering. 1913. *Law as a Means to an End*. Boston. The Boston Book Company. p.2

<sup>47</sup>Dias. *Op cit*. p.424.

<sup>48</sup>The Preamble to the 1999 Constitution of the Federal Republic of Nigeria.

to the quality of his being. He noted further that, societal purpose and standards will change in time and space. According to him, the existence of immutable natural law as an absolute guide to social and legal activities is unrealistic. Consequently, Jhering rejects a universal law that will minister to the needs of all at all times.<sup>49</sup> Jhering described law as the *reconcilator* of conflicting interests.<sup>50</sup> It is therefore, a tool of social engineering, which brings reforms by modifying existing ones, whilst taking into cognizance the varied interests in society and to avoid any conflict that the interests may create. Consequently, the Law serves the needs of society by furthering and protecting the interests of the society. For instance, Human rights are guaranteed by the law, thereby ensuring that violations are stopped and penalized where appropriate.

### **Role of Law and Bioethics in Human Rights Protection**

This section discusses how law and bioethics have been applied to life issues, leading to preservation of human rights. It begins with a discussion of what human rights are and the justification for them. It proceeds to examine the principles of Bioethics and how applicable they are to Human Rights protection and concludes with the role of the State in protecting Human Rights.

### **Human Rights and Justification of Human Rights**

Human rights are rights that are inherent to all human beings, regardless of their nationality, place of residence, sex, or ethnic origin, colour, religion, language, or any other status<sup>51</sup>. Human rights are the freedoms, immunities, and benefits that, according to modern values (especially at an international level), all human beings should be able to claim as a matter of right in the society in which they live. They can also be said to be fundamental rights which means constitutional rights. That is, a significant component of liberty, infringements of which are challenged in courts to ascertain the propriety or otherwise of such interventions.<sup>52</sup> Human rights are interrelated, interdependent and indivisible. They are expressed and guaranteed by laws, both national and international. These laws set obligations for governments to act or

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<sup>49</sup>Jhering. 1913. *Law as a Means to an End*. Boston. The Boston Book Company.

<sup>50</sup>*Ibid.* p.566

<sup>51</sup>Art. 2, UNDHR. These rights are however all interrelated, interdependent and indivisible.

<sup>52</sup>Bryan A.G. (ed.) *op. cit.* 697



refrain from certain acts, in order that human rights and fundamental freedoms of citizens are promoted and protected.<sup>53</sup> They are based on the principle of respect for the individual. Their fundamental assumption is that each person is a moral and rational being who deserves to be treated with dignity. They are called human rights because they are universal. Whereas nations or specialized groups enjoy specific rights that apply only to them, human rights are the rights to which everyone is entitled - no matter who they are or where they live - simply because they are alive<sup>54</sup>.

Thus, a right is seen as an entitlement, which the beneficiary has under a legal code; a benefit or privilege that is recognized and enforced by the law. Human rights, therefore, are the basic standards without which people cannot live in dignity. Consequently, to violate someone's human right is to treat that person as though he or she is not a human being.<sup>55</sup> Human rights entail both rights and obligations.<sup>56</sup> Under international laws, states take on obligations and duties to respect, to protect and to fulfil human rights. The obligation to respect implies that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. By the obligation to fulfil, States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, they are based on values such as dignity, respect, fairness, equality and independence. They can be classified into two (2) main types, namely, civil and political rights, and social, cultural and economic rights<sup>57</sup>. The first category includes the right to life and liberty, freedom of expression, equality before the law and the right to be free from

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<sup>53</sup> Art. 2 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. General Assembly resolution 53/144. Adopted on 9<sup>th</sup> December, 1998. Accessed from <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and#:~:text=Each%20State%20has%20a%20prime.legal%20guarantees%20required%20to%20ensure> on 29<sup>th</sup> January, 2023

<sup>54</sup> United for Human Rights <<https://www.humanrights.com/what-are-human-rights/>> Accessed on 29<sup>th</sup> January, 2023.

<sup>55</sup> Human Rights: Here and Now. A publication of the Human Rights Resource Center, University of Minnesota, USA. <<http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/whatare.htm>> Accessed on 28<sup>th</sup> January, 2023.

<sup>56</sup> "What are Rights?" A publication of the Office of the Commissioner, UN Human Rights. <[www.ohchr.org](http://www.ohchr.org)> accessed 28<sup>th</sup> August, 2017.

<sup>57</sup> Mubangizi J C. 2004. Towards A New Approach to the Classification of Human Rights with Specific Reference to the African Context. 4 African Human Rights Journal. p.95



discrimination. The second category consists of the right to participate in culture, the right to work, the right to an adequate standard of living, right to health, and the right to education<sup>58</sup>.

While we are entitled to our human rights, we should also respect the human rights of others. Human rights have been codified into International, Regional and National instruments such as, the Universal Declaration of Human Rights (UDHR)1948, which is the first document to codify fundamental human rights and made provisions regarding the rights of citizens and obligations of governments, in relation to upholding these rights; International Covenants on Civil and Political (ICCPR) Rights 1966, a convention, which provides for rights relating to citizenship, individual liberty, voting rights, freedom of speech and thought and freedom from torture and slavery; The Economic, Social and Cultural (ECOSOC), Rights 1966, which guarantee adequate standard of living; the applicable regional instrument for sub-Saharan Africa is the African Charter on Human and People's Rights (ACHPR)1981, which protects, promotes and preserves human rights in Africa. Provisions relating to human rights are contained in the Constitution of the Federal Republic of Nigeria, 1999. Specifically, these include, right to life (S.33 1999 Constitution); Right to human dignity (S.34); Right to freedom from discrimination (S.42); Right to personal liberty (S.35); Right to freedom of thought, conscience and religion (S.38). Given that human rights are rights, plural, and that they address various issues, which are universal and of high priority, it is necessary to justify their existence. Human rights are grounded in human worth and the respect that is due to persons, being valuable social entities. These are found in basic human needs, in the conditions for human agency or autonomy, in self-ownership, or in certain intrinsic human goods.<sup>59</sup> Human rights can also be justified by referring to individual or social well-being or both. Theologically, they are justified by most religious faiths, on the basis that all human beings are beneficiaries of divine love.<sup>60</sup> Consequently, human rights exist through the force of morality, implicitly forged covenants among us as individuals and between

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<sup>58</sup> What are Human Rights: Economic, Social and Cultural Rights.<<https://www.ohchr.org/en/human-rights/economic-social-cultural-rights>> Accessed on 25<sup>th</sup> January, 2023.

<sup>59</sup>P Jones, "Human Rights. *Routledge Encyclopaedia of Philosophy*.<<https://www.rep.routledge.com/articles/thematic/human-rights/v-1/sections/justifying-human-rights>> accessed 19/1/2023

<sup>60</sup> For instance, the Bible says in *Genesis 1: 26-27*, that God made man in His image and after His likeness. This fact bestows freedom, equality, and dignity. Paul, in *Galatians 5:13-14* states that we have divinely ordained rights, which gives us the freedom to love and serve God and others.

us and our governments, and the natural rights we maintain as individuals and those we collectively surrender to the common good, which have been determined by nature, natural laws, and natural rights that human beings have the right, not the privilege.

### **Bioethics, Bioethical Principles and Human Rights**

Bioethics and human rights respond to the same social and historical forces and events.

The Universal Declaration on Bioethics and Human Rights (UDBHR), 2006<sup>61</sup>, established the link between bioethics and human rights. Its preamble provides –

*Recognizing that ethical issues ... should be examined with due respect to the dignity of the human person and universal respect for, and observance of, human rights and fundamental freedoms*<sup>62</sup>.

Human rights form the basis of bioethical principles - Article 3 UDBHR provides thus, *Human dignity, human rights and fundamental freedoms are to be fully respected. The interests and welfare of the individual should have priority over the sole interest of science or society.*

The UDBHR provides that Bioethical principles are to be regarded, interpreted and applied as international human rights (and not as optional ethical principles).<sup>63</sup> It is noteworthy that, Bioethical requirements such as informed consent, proxy consent, right to privacy and confidentiality, discrimination and stigmatisation are all fundamental human rights.

The basis for Bioethical principles can be found in the Belmont Report<sup>64</sup>, issued in the USA in 1979. These principles are:

- a) Respect for Persons<sup>65</sup>, which has at least two ethical considerations<sup>66</sup>. The first is that the individual human research participant be treated as an autonomous being. The second is that those persons who are not able to make and carry out decisions for themselves, such as children or sick people or those who have a mental disorder must be protected from

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<sup>61</sup>*Loccit*, fn.2

<sup>62</sup> *Ibid*.

<sup>63</sup> See the Preamble to the Declaration, which states that, *Recognizing that this Declaration is to be understood in a manner consistent with domestic and international law in conformity with human rights law ...* (UDBHR 2006).

<sup>64</sup> “The Belmont Report” – Office of Human Subject Research. <<https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/read-the-belmont-report/index.html>> accessed 20/1/2023.

<sup>65</sup> This is sometimes referred to as “Respect for Autonomy”.

<sup>66</sup> “The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects Of Research” <<https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/read-the-belmont-report/index.html>> accessed 20/1/2023.

coercion by others and from activities that harm them. The implication of this is that an individual participates in research willingly after having received material information. This principle finds expression in the Human Rights to dignity<sup>67</sup>, life<sup>68</sup>, personal liberty<sup>69</sup> and freedom from discrimination.<sup>70</sup>

- b) Beneficence has to do with doing good to the individual. In the Belmont Report, beneficence is understood in a stronger sense, as an obligation, that is, to do no harm (Non Maleficence) and to “maximize possible benefits and minimize possible harms” to the individual research participant.<sup>71</sup> Non-maleficence requires that harm or injury is not intentionally caused. Beneficence and Non-maleficence are reflected in the Human Right to dignity, health and life, and freedom from discrimination and stigmatization, privacy and confidentiality<sup>72</sup>.
- c) Justice, as it is referred to in the Belmont report, refers to the benefits and harms to individual subjects of research. The benefits and burdens of research should be justly distributed<sup>73</sup>. Justice, in this regard is seen as a form of fairness, or as Aristotle once said, "giving to each that which is his due."<sup>74</sup> The basis for distributive justice is hinged on the fact that given that certain resources are in short supply, it will be necessary to adopt means of allocation that are fair, in distributing these scarce resources.

The principle of Justice is seen in Rights to dignity, and freedom from discrimination.

## The Role of Bioethics in Protecting Human Rights

<sup>67</sup> Art. 1 UDHR; Art. 13 ICESCR; S. 34 1999 CFRN

<sup>68</sup> Art. 3 UDHR; Art.6. ICCPR; S.33 1999 CFRN

<sup>69</sup> Art. 13 UDHR; Art. 9 ICCPR; S. 35(1) 1999 CFRN

<sup>70</sup> Art. 7 UDHR; Art.3 ICESCR; Art. 3. ICCPR; S.42 1999 CFRN

<sup>71</sup> The Belmont Report. A Publication of the University of Washington. 2020

<<https://www.washington.edu/research/hsd/guidance/ethical-principles/belmont/>> accessed 25<sup>th</sup> January, 2023.

<sup>72</sup> Art. 12 UDHR; S. 37 1999 CFRN

<sup>73</sup> “The Belmont Report: Ethical Principles and Guidelines for the protection of human subjects of research”, <<https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/read-the-belmont-report/index.html>> accessed 20/1/2023.

<sup>74</sup> T R McCormick, Principles of Bioethics. University of Washington.

(2018) <<https://depts.washington.edu/bhdept/ethics-medicine/bioethics-topics/articles/principles-bioethics#:~:text=The%20Principle%20of%20Justice.at%20the%20role%20of%20entitlement>> accessed 25<sup>th</sup> January, 2023.

In protecting Human Rights, Bioethics uses the Bioethical Principles. These have been discussed in section 5 above. This section will examine the concept of Informed Consent (IC). All the Bioethical Principles are present in IC. IC is a process for obtaining permission before conducting a healthcare intervention or research on a person. It is synonymous with the ideal of shared decision making between the researcher and research participant, where the former is required to give the latter, all material information, necessary for the latter to take an informed decision, whether or not to participate in a particular study.<sup>75</sup> The essence of IC is protecting the research subject's welfare, promoting the research subject's autonomy, ensuring that individuals can exercise their autonomous decisional authority to safeguard their welfare, thereby giving patients and subjects a choice and preserving their Human Rights.<sup>76</sup> In order for an IC to be valid, the person giving the consent must have capacity to consent, the IC must have been freely and voluntarily given/obtained. This means that it does not entail undue influence, coercion or manipulation; and it must apply to the particular study for which it is obtained. Lastly, person granting the consent, must realize that consent may be withdrawn at any time before the study is concluded.<sup>77</sup>

With regards to the legal justification for IC, three (3) areas of the Law are involved. These are the Law of Torts, Law of Contract and Constitutional Law. Tort is a civil injury to one's person or property, intentionally or negligently inflicted by another and that is measured in terms of, and compensated by, money damages. Of relevance are battery, assault and negligence. The relationship between the researcher and the research participant is presumed to be a contractual one. In order for a contractual relationship to exist, the elements of contract such as offer, acceptance, consideration and intention to enter into a legal relationship must be present. Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 provides for the fundamental Human Rights. The following reflect on Informed Consent, the right to life<sup>78</sup>, the right to dignity

<sup>75</sup> Research Ethics and Informed Consent. A Publication of the University of Connecticut. <<https://researchbasics.education.uconn.edu/ethics-and-informed-consent/>> on 25<sup>th</sup> January, 2023.

<sup>76</sup> Berg JW, Appelbaum P S, Lidz C W, Parker L S. 2001. The Concept and Ethical Justification of Informed Consent <<https://doi.org/10.1093/oso/9780195126778.003.0007>> Accessed 23<sup>rd</sup> January, 2023.

<sup>77</sup> Sil A and Das N K. 2017. Informed Consent Process: Foundation of the Researcher-participant Bond. *Informed Consent Process: Foundation of the Researcher-participant Bond*. *Indian J Dermatol*. 2017 Jul-Aug; 62(4): 380–386.

<sup>78</sup> S. 33. Constitution of the Federal Republic of Nigeria (CFRN), 1999



of human person,<sup>79</sup> the right to personal liberty<sup>80</sup>, the right to private and family life<sup>81</sup>, the right to freedom of thought, conscience and religion<sup>82</sup>, the right to freedom of movement<sup>83</sup> and the right to freedom from discrimination.<sup>84</sup> IC illustrates the relationship between the Law and Bioethics by portraying how law gives backing to bioethical principles and concepts.

### **The Role of the State in Protecting Human Right**

The foundation of international human right is the Universal Declaration of Human Rights. The UDHR was adopted in 1948 and has inspired a rich body of legally binding international human rights treaties. It represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone.

Article 2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,<sup>85</sup> provides that,

- 1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.*
- 2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.*

This provision lays down obligations which States are bound to comply with -

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<sup>79</sup>S.34. CFRN 1999

<sup>80</sup>S. 35. CFRN, 1999

<sup>81</sup>S. 37. CFRN, 1999

<sup>82</sup>S.38. CFRN, 1999

<sup>83</sup>S. 41. CFRN, 1999

<sup>84</sup>S. 42. CFRN, 1999

<sup>85</sup>General Assembly resolution 53/144. Adopted on 9<sup>th</sup> December, 1998.<<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individualsgroupsand#:~:text=Each%20State%20has%20a%20prime,legal%20guarantees%20required%20to%20ensure>>accessed 29<sup>th</sup> January, 2023





**Respect** - States must refrain from interfering with or curtailing the enjoyment of human rights. Consequently, States must not undermine their citizens' right to enjoy these rights.

**Protect** – States to protect individuals and groups against human rights abuses. The obligation to protect requires the State to employ both preventive and remedial steps. It requires a State will enact laws aimed at protecting human rights, take positive actions at protecting human rights, in instances of abuse and guarantee access to legal remedies, in the event of violation.

**Fulfil** - States must take positive action to facilitate the enjoyment of basic human rights. This obligation requires the States to take positive action in ensuring that human rights are realized. It is recognised that the extent of the obligation is in accordance with the resources available to each State and the Human Rights concerned. However, it is expected that States will create, *the legal, institutional and procedural conditions that rights holders need in order to realize and enjoy their rights in full.*<sup>86</sup>

### **Conclusion and Recommendation**

Human rights are fundamental and its basis is in the right to dignity. Being rights, they create corresponding duties/obligations on the State. As noted earlier, States are to put into place domestic measures and legislation compatible with their treaty obligations and duties. These can and have been achieved through the use of laws and bioethical principles. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law. In fulfilling its obligations of upholding human rights, under the Bill of Rights, Nigeria, must ensure the adherence and compliance with the various Laws, Rules and Regulations in relation to bioethical principles and human rights. A breach of these principles in conducting human subject research, has adverse effects on research participant, which may result in death, a violation of the right to life, amongst other rights. Having gone as far as putting legal instruments in place to guard against adverse events occurring, the government needs to go the extra mile in ensuring strong enforcement mechanisms are in place.

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<sup>86</sup>K Walter and J Kunzli, *The Law of International Human Rights Protection*, Oxford, Oxford University Press, 2009, 112.