



# A Child has a Right to Blood Transfusion Services in Nigeria, despite the Religious Status of the Parents or Guardians

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## Review Article

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## Abstract

Red blood cell transfusion is an important and frequent component of neonatal intensive care. Whereas blood and blood products transfusion can help a patient (child) recover from a serious illness, surgery or injury, because of the religious beliefs of some parents or guardians, a child may be denied the benefit of this life-saving service. Several legal statutes and precedents exist to protect the rights of children in need of life-saving blood transfusions where denied this opportunity to be transfused and survive. The awareness of these extant laws and statutes are critical for the empowerment of healthcare providers in the performance of their role within the provisions of the law and medical ethics.

**Keywords:** Child; Rights; Blood Transfusion; Parents; Guardians; Religion; Ethics; Medical Ethics

## Introduction

Human blood can be separated into more than 30 different products [1]. The process of infusing blood and blood products into someone's body is known as a blood transfusion [2]. The attainment of blood transfusion safety in Nigeria (and probably the rest of Sub-Saharan Africa) remains an uphill task due to a several factors, ranging from shortage of blood, poor implementation of blood transfusion guidelines, infrastructural deficits to a relatively high prevalence of transfusion transmissible infections (TTIs), particularly hepatitis and human immune deficiency viruses

[3-5].

The World Health Organization has been at the forefront of efforts to establish safe, available, and affordable blood transfusion services in most parts of Africa through encouraging increased voluntary and quality improvements with regards to blood donor recruitment, donor blood testing, and blood collection as well as developing and disseminating strategies for the rational use of blood. Even though modest improvements have been recorded in Nigeria, particularly with regards to donor blood screening for common TTIs, considerable efforts are needed in the form of

robust public enlightenment campaigns (on blood donation) and continuous system improvement to drive numbers of voluntary blood donors and the current transfusion practices in the country toward safety and self-sustenance [6].

Any child may need a blood or blood product transfusion during a major surgery or to treat a medical condition. This report aims to help convey the understanding that a child has a right to blood transfusion no matter the religious beliefs of the parents or guardians. However, the decision to transfuse must be guided by ethical principles of autonomy, benefit to the health of the patient, absence of harm and justice.

It is instructive to emphasize that the expected improvement in Nigeria's low health indices, particularly high maternal and infant mortalities, may continue unabated until significant improvements take place in the country's blood transfusion services. In the midst of these challenges to safe, quality, blood transfusion services nationally, many children are denied life-saving blood transfusions, due to the religious beliefs of their parents or guardians.

The question now is, is it proper or appropriate, and ethical to transfuse blood to a child to save his/her life or do nothing and watch a child die because the religious beliefs of the parents/guardians disallow the acceptance of blood transfusion? This paper chronicles several case studies of this ethical dilemma and the legal statutes that have subsequently arisen to address the issue.

### Who is a Child?

In Nigeria, section 277 of the Child's Rights Act 35 describes a "child" as a person below the age of eighteen years [7]. There is no clear judicial authority in Nigerian law which clearly states whether a child is capable of giving or withdrawing consent to medical treatment. However, although the age of majority is 18 years, this is not considered the age of legal capacity to give consent to medical treatment [8]. To put in another way, consent to medical examination and treatment is not predicated on the attainment of the age of 18 years.

To illustrate this, the Supreme Court of Nigeria in the case of *Okekearu v Tanko* [9] in a ruling that debunked the customary position of parents and/or guardians to make necessary medical decisions on behalf of their children or wards who have not attained the age of majority faulted the amputation of the finger of a 14-year-old boy without his consent. Therefore, by that ruling, it is considered that where the minor is mature and sufficiently understands the nature and consequences of the proposed clinical procedure, he or she is competent to make their own medical decisions. This position corroborates that espoused in England under the Family Law Reform Act of 1969 which provides that a person

over 16 years old, though not an adult, may validly consent to medical treatment without reference to the parent or guardian [10].

### Parental withholding of Consent for Blood Transfusion in Infants and Children

#### *Esanubor v Faweya*

A case of Tega [8] who was born on 19th April 1997 at the Chevron Clinic Lagos is here presented. On 11th May 1997, he fell sick and was taken to the same hospital where he was born. After thorough medical examination, baby Tega was found to be suffering from a severe infection which led to very low blood levels. He was therefore placed on antibiotics, but by the morning of 12th May 1997, it was clear that the medications were not working. After being placed on oxygen therapy, the medical personnel at the hospital believed that without a blood transfusion, baby Tega would die. His mother was informed of his situation, but she refused to consent to the transfusion on the grounds that she was a Jehovah's Witness, and blood transfusion was forbidden by her religion. The Nigerian police on receiving the report from the hospital, applied for and obtained an order from a Chief Magistrate's court authorizing the hospital to do everything necessary to save the child's life. This order enabled the hospital to proceed with the transfusion of the child whose condition subsequently improved, and he was discharged. The Court held that the mother's desire to sacrifice her son's life was "an illegal and despicable act which must be condemned in the strongest terms".

In effect, the Court held that the right to life of the child superseded the religious rights of the mother, which the Court conceived gave her the right to determine whether the son should receive a blood transfusion. In this ruling, the Court relied on a prior decision of the Nigerian Supreme Court in *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo (Okonkwo's case)* 7 NWLR (Pt. 711) 206. [11].

Several years later, the child sought a reversal of the order of the Magistrate's Court on the grounds of fraud, which was rejected. Thereafter he applied to the High Court seeking judicial review of the order as well as damages for the unlawful transfusion of blood (without his own or his mother's consent). After the dismissal of the child's claim by the Lagos State High Court, the child's mother appealed to the Court of Appeal [11].

The Court of Appeal also dismissed their appeal as well and stated that the Magistrate's Court was right to have issued an order to save the life of the child and protect his right to life in accordance with Section 33(1) of the Constitution of the Federal Republic of Nigeria 1999. The Appeal Court held

that it was proper to overrule the refusal of consent to a blood transfusion by the mother on the grounds of her faith since the infant was incapable of giving consent to die on account of the religious belief of the mother. The Court upheld that the right to life of the child trumped the religious right of the mother [12].

### Trento, Italy Case

In another case in Trento, Italy [13], a female child received regular blood transfusions as part of life-saving management of a medical condition - beta thalassemia major. When her parents converted to the Jehovah's Witness faith, they decided that they were no longer willing for their premature infant daughter to continue to receive the necessary blood transfusions. Therefore, when the child, who was expected to attend the clinic for her essential transfusion, failed to be brought in, the medical staff notified the hospital directorate of this occurrence, emphasizing the essential nature of the treatment to the child's survival. This led to the notification of the Juvenile Court by the hospital's Department of Social Services.

Subsequently, each time the parents failed to bring their daughter in for the required treatment, the Judges had to issue numerous orders, which included temporary removal of the child from the family's custody and admitting her in the medical institution, in order to ensure that she received the necessary blood transfusions. The police were also ordered to caution the parents by informing them of their civil and criminal liabilities in the event that on any required occasion, they failed to allow their daughter to receive the necessary blood transfusions. Finally, the Judges issued an order mandating regular supervisory visits by officials to monitor the planning and undertaking of the transfusions. This measure was aimed at definitively solving the problem and avoiding the adoption of arduous measures that needed to be taken to ensure her treatment each time, with the attendant delays which could endanger the child's life.

Unfortunately, despite these measures, the case tragically ended with the death of the child [14]. The opinion has been raised by some commentators that, in cases such as this, the Juvenile Court could have withdrawn or suspended the parents' parental authority, ordered the permanent removal of the child from the family home, investigated the possibility of her being placed in the custody of other relatives during the periods between hospital stays or, failing that, sought an appropriate community organization capable of providing her with accommodation and assistance [15].

If treatment refusal results in a child suffering, parents may be criminally liable [14]. In this Italian case, the parents'

conduct was the subject of a lengthy legal procedure which eventually resulted in their being convicted of manslaughter for having failed to provide their daughter with the regular blood transfusions vital to ensuring her survival [16-19].

### Ethics in Blood Transfusion

Prior to navigating ethics in the Science of Blood transfusion, there is a need to explore what ethics means. Ethics is a system of moral principles that apply values and judgments to the practice of any profession that includes its practical application in both clinical settings and work. These principles include respect for individual autonomy, beneficence, non-maleficence, and justice.

These fundamental principles preclude the interference with the decisions of competent adults and include the emphasis on a duty to empower others for whom we are responsible, obligation to bring about good in all our actions, obligation not to harm others and obligation to provide others with whatever they are owed or deserved. The application of these ethical principles in contentious situations may require judicial intervention especially where there may be disagreement between the parties involved (in this case, physicians, parents/guardians, patients) about the right way to act in such situations.

In Section 33(1) of the Constitution of the Federal Republic of Nigeria 1999: "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria" [12].

One of the applications of ethics in keeping with respect for the ethical principle of autonomy in blood donation is that the donation of any blood product or component must be freely, voluntarily and without coercion in line with Obeta KO, et al. [20] in any of the following types of blood donations:

- Voluntary and non-remunerated donations
- Replacement donations
- Autologous donations
- Apheresis donations

Secondly, there must be informed consent about

- Blood donation
- Use of blood by transfusion service
- Testing of samples
- Notification of the donor of results of testing for transfusion-transmissible infections (TTI) such as human immunodeficiency virus (HIV), hepatitis B, hepatitis C and syphilis.

## Blood Donor Safety

- Risks associated with the procedure and protection of the donor's safety.
- Procedures relating to the administration of any substance to a donor (apheresis).

### Anonymity, Privacy and Confidentiality

- Identity of both donor and recipient must not be known between them except in special situations.
- Confidentiality of donor information.

## Pre-Donation Donor Counseling

This is the process of informing the donor of their ethical responsibilities towards the recipient and themselves, one-on-one counseling to maintain privacy of the donor, aiding the donor to understand the need for safety of the donated blood, risks of donating infected blood, other likely health hazards to the recipient from having particular diseases or taking certain medications. This culminates in a duly signed consent form by the donor when all donor requirements have been fully satisfied.

### Blood collection

- This should be under the responsibility of a qualified Medical Laboratory Scientist.
- Donor should know the amount of blood that he/she will be donating.
- Monitoring for adverse effects during donation.
- 10-15 minutes rest after donation.

### Harm

- Donors and recipients should be informed if they have been harmed after the process.

### Patient consent

- Risks and benefits of blood transfusion.
- Patient's right to accept or refuse transfusion.
- If unable to give consent, the basis for transfusion must be in their best interest.

## The Global View on Ethics of Blood Transfusion in Children

In Italy, except in emergency situations, as a general principle, parental consent is a legal requirement before the performance of any medical treatment on a minor (anyone aged below 18 years). Both parents have parental responsibility and the power to give or withhold consent to medical procedures on their children (the right to be heard) [21]. The parents exercise this responsibility by mutual agreement, duly considering their child's capabilities, natural inclinations, and aspirations.

Special circumstances are legally recognized where the parents are not in agreement on matters of particular importance. In such circumstances, each parent may submit the matter to the judicial authorities. If either parent is away or under any other form of impediment that prevents them from exercising their parental responsibility, it is exercised solely by the other parent. In situations not classified as routine where the health care staff receive consent from only one parent, they must weigh the pros and cons carefully, assess the estimated time duration required to consult the other parent, the degree of invasiveness of the treatment and the level of risk involved, the urgency and severity of the minor's condition, bearing in mind that the priority above all must be the best interest of the minor [22].

Section 24 of the Decree of the Italian Minister of Health of November 2, 2015, on requirements for quality and safety of blood and blood components, contains specific rules concerning the acquisition of informed consent to blood transfusion. In particular, when the patient is a minor, consent must be given by both parents and or a legal guardian. If parents are not in agreement or refuse the blood transfusion, consent must then be requested of the probate judge; and taking into account the degree of maturity of the minor, the obtainment of his/ her assent is advisable.

According to Conti et al [14], courts throughout the western world recognize these parental rights, "but additionally recognize that these rights are not absolute and exist only to promote the welfare of children" [23].

Consideration should therefore be given to cases in which both parents refuse consent for a treatment that the health care staff consider important for the minor and this treatment refusal may be prejudicial to the health of the minor.

## Declaration of Child Right to Blood Transfusion

Where young children are concerned, the power to give or withhold consent to medical treatment on their behalf lies with those with parental responsibility. Legally, except in an emergency, parental consent is necessary to perform any medical procedure on a child. Two commonly used arguments when parents refuse treatment are parental rights to raise children as they see fit and religious freedom. Jehovah's Witness parents have expressed these arguments when defending their right to refuse blood on behalf of their children.

Parental rights to raise children are qualified by a duty to ensure their health, safety, and wellbeing. Parents should not make decisions that may permanently harm or otherwise



impair their healthy development. If treatment refusal results in a child suffering, parents may be criminally liable. However, prosecution rarely occurs. Instead, the courts are asked to exercise their power under the doctrine of *parens patriae* which allows state interference to protect a child's welfare. This doctrine has been used frequently when parental religious beliefs preclude specific treatments [24].

## Conclusion

It is challenging to always maintain a balance between obligations to save or restore patients' lives as a health professional and respecting patients' values and beliefs regarding blood transfusion. One of these challenges is refusal to a medically justified treatment especially in the case of minor and emergency cases, by parents, based on religious or cultural beliefs and this in turn, raises ethical, legal, cultural, and moral issues in the healthcare environment. In Nigeria today, it is legal and ethical to transfuse a child with blood not minding the position of the parent or guardian [22]. The authors therefore recommend that:

- Parents should not take decisions that would impair the wellbeing of their wards in critical conditions because of religious beliefs.
- There is a need for creation of awareness and societal appreciation of the tenets of the Child Rights Laws [7]. In the vast majority of Nigeria's cultural context, the child has no status and all decisions concerning the child are taken by the parents [11], and the fact that the Child Rights Law has not been promulgated in some parts of Nigeria illustrates this cultural context. Therefore, in addition to the domestication of UN Convention on the Rights of the Child [23] and the African Children's Charter by the Federal and State governments in Nigeria [25], raising awareness to ensure the operationalization of the provisions of the Child Rights Law to become the legislative framework determining the rights of the Nigerian child is vital to enabling ethical decision-making by healthcare providers to save the lives of children. To quote Professor Uzodike [25] who stated years before the passage of the Child Rights Law as follows: "the less it is accepted within the Nigerian society that children are the property of their parents, the more the authorities will take these laws seriously and actually interfere in the exercise of certain rights which are inimical to the interests of children".
- It should be recommended that, in the event of the refusal of blood transfusions for a child by their Jehovah's Witness parents, safeguarding the health of the child in keeping with the provisions of the Child's Rights Act for the best interest of a Child to be of paramount consideration in all actions; for a child to be given protection and care necessary for their well-being; and a child's right to survival and development

must be paramount in the decision-making process. The imposition of refusal of blood transfusion for example, can be regarded as a denial of the child's right to freedom of thought, conscience, and religion but, "consideration should be given to parental views, and treatment moderated when possible. But if conflict occurs, the child's interests must always come first" [26].

- Though the views of parents or guardians are very important [27], where the feasibility of other possible treatment options have been explored and deemed unsuitable, the medical team should have the final say in saving the life of the child when it involves medical practice.

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