

## Imperatives of Access to Health Care in Nigeria under the National Health Act, 2014

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### **Abstract**

*The National Health Bill was presented to National Assembly in 2004, with a view to improve on the existing provisions of the law on health care and access to health care in Nigeria. The enactment of the National Health Act, 2014 is a welcome development as it provides solace for the decades of clamouring for a regime that will effectively address the gap in the transformation of the provisions of the international treaties into reality in Nigeria; and ensure the implementation of governmental policies on access to health care, which is more desired. The paper considers the provisions of the Act and its provisions on the establishment of a national health system, health establishments, rights and duties of users and health care personnel. The Act also provides adequately for the regulation of national health research and information system, the control of use of blood, blood products, tissues and gametes in humans amongst others. The paper identifies the importance of the Act, and however, concludes in its critique that though the enactment of this law is a positive development, it is not yet 'uhuru', as the implementation and a few gaps identified in this paper remains a challenge. The authors recommend alongside necessary amendments of the Act, that government should ensure adequate funding of the health sector in order to enable the average citizen, less privileged and uninsured persons to have all-time access to health care in Nigeria.*

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## **Introduction**

Access to health care in Nigeria continues to be a night mire just as it is the case in other developing countries particularly in Africa. Nigerians struggle to have access to the basic health care services, and this is worsened by the teeming population now estimated at over 150million. The health index on mortality rates of infants and children below 5 years are near the highest in the world. Nigeria has the second largest number of people infected with HIV/AIDS in the world only next to South Africa and in 2008, between 3 million and 3.5 million people were estimated to be living with HIV/AIDS. The index on tuberculosis reveals that Nigeria has the fourth highest number of Tuberculosis cases in the world, with an estimate of 293 new cases per 100,000 population and 546 per 100,000 total cases in the last decade.<sup>1</sup> Nigeria has struggled relentlessly to salvage its healthcare system.

In a 2000, survey by the World Health Organization (WHO), Nigeria's healthcare was ranked 187 out of 190 countries in the world that are member states. A United Nations report released May 16, 2012, called "Trends in Maternal Mortality: 1990 to 2010," showed that 14 percent of the world's deaths are related to childbearing are in Nigeria. Nigeria is the most populous country in Africa, therefore providing universal health care is not an easy task.<sup>2</sup> Life expectancy at birth averages 54 years for both sexes.<sup>3</sup> Maternal mortality is 545 per 100,000 live births. The mortality rate for younger children is more than double the global average at 157 per 1000 live births.<sup>4</sup> Nigeria is the only country in the African continent to have never eradicated poliomyelitis and only 3% of HIV positive mothers receive antiretroviral drugs. Just 6% of the country's gross domestic product is spent on health care in its allocation between the rich and poor areas of the country.<sup>5</sup> The Nigerian health sector has been faced with a varying degree of challenges in managing the health care sector issues and this can

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<sup>1</sup> World Health Organization, <http://www.unfpa.org/public/home/mothers/MMEstimates2012> Accessed February 16th 2015.

<sup>2</sup> Saka, M. "An Overview of the Nigerian National Health Bill" (2012)1(1), *Savannah Journal of Medical Research and Practice*, 1

<sup>3</sup> Nigeria demographic and health survey 2008; National Population Commission Federal Republic of Nigeria, Abuja, Nigeria, 228-230.

<sup>4</sup> National Demographic Health Survey 2010 Result Matrix.

<sup>5</sup> Federal Ministry of Health Midterm Expenditure Frame work 2010 with support from partnership for transforming health systems

be argued to have contributed to the level of growth and development today. Some of the factors that affect the overall performance of the health system include inadequate health facilities, poor human resources and management, poor remuneration and motivation, lack of fair and sustainable health care financing, unequal economic and political relations, the neo-liberal economic policies of the Nigerian state, corruption, illiteracy,<sup>6</sup> very low government spending on health,<sup>7</sup> high out-of-pocket expenditure in health and absence of integrated system for disease prevention,<sup>8</sup> surveillance and treatment,<sup>9</sup> inadequate mechanisms for families to access health care,<sup>10</sup> shortage of essential drugs,<sup>11</sup> and supplies and inadequate supervision of health care providers are among some of the persistent problems of the health system in Nigeria.<sup>12</sup> In a bid to address the deteriorating nature of the Nigerian Health care system, the National Health Bill was first introduced as an executive bill to the national assembly.<sup>13</sup> This paper therefore examines the provisions of the National Health Act, 2014 in four parts. The first part contains introduction, the second part examines the background of the health care system

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<sup>6</sup> Timothy, G., Irinoye, O., et al. 'Balancing Demand, Quality and Efficiency in Health Care Delivery System' Vol. 6, No. 23, (2014), *European Journal of Business and Management*. p. 50-54.

<sup>7</sup> Ibid (n.52)

<sup>8</sup> Odunsi, B., Bamidele, I. 'Right to Health, Bickering Stakeholders and the Embryonic Promises of Nigeria's National Health Bill, Vol. 1, No. 1 (2014) *Ife Journal of International and Comparative Law*. p. 19-21

<sup>9</sup> Ibid at 19

<sup>10</sup> Travis, P., Bennett, S., Haines, A., Pang, T., Bhutta, Z., Hyder, A.A., Pielemeier, N.R., Mills, A., Evans, T. (2004) Overcoming health-systems constraints to achieve the Millennium Development Goals. *Lancet* 364: 900-906.

<sup>11</sup> Supra at n.9

<sup>12</sup> See generally Aregbeyen J.B.O. (1992) "Dimension of Policy and Institutional Reforms in the Health Sector". Lecture Delivered at Training Programme on Sectorial Policy Analysis and Management organized by NCEMA

<sup>13</sup> The bill has stayed through several national assemblies, revisions and attempts at passage. However, in 2012 the Bill was reintroduced and with sustained and concerted efforts from policy champions in the Legislature, executives, and other health advocates within the donor community, development partners, CSOs and organized private sector, the Nigeria senate passed the National Health Bill on February 19, 2014. The House of Representatives followed suit and passed the bill in June 2014. After harmonization of the Health Law passed by the two houses, a "clean copy" was transmitted to the President for his assent. The Bill was signed by President Goodluck on December 9, 2014

in Nigeria, and while a detailed analysis of the National Health Act, 2014, is examined in part four with a criticism of the bill; finally, the fifth part contains the conclusion and recommendations of the authors.

### **Regime of Health Care System in Nigeria**

Nigerian health care system is characterised by high prices, lack of drugs, poor standards of care, lack of motivated staff and deteriorated equipment and facilities.<sup>14</sup> While private healthcare services have markedly increased, they still remain too expensive for most people, especially the poor, and the uninsured who are unable to pay and have access to health care regularly. The Constitution of the Federal Republic of Nigeria, 1999, (as amended) spells out health as a universal human right and prescribed the roles of the three tiers of government in the provision and maintenance of health services.<sup>15</sup> However, under the current constitution, the constitutional provisions for the duties and responsibilities of governments at different levels remain largely vague and unattainable.<sup>16</sup> Section 17(3)(c) provides as follows:

- 17 (3) The State shall direct its policy towards ensuring that-
- (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;
  - (d) there are adequate medical and health facilities for all persons

The constitution also makes provision for the overriding of individual rights, if it is in the interest of, among other things, public health.<sup>17</sup> The current constitution fell short of specifying what roles the Local, State and Federal Governments must play in the national health care delivery system. For the health sector, this

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<sup>14</sup> Health Sector Reform Program 2003-2007, Federal Ministry of Health (FMoH).

<sup>15</sup> See generally the provisions of Sections 17, 33 and 34 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

<sup>16</sup> *Ibid.*

<sup>17</sup> See the provisions of Section 45, Constitution of the Federal Republic of Nigeria, 1999 (as amended)

is a very serious omission since the current health system is built on a three tier system, with local Governments being the main implementing agents of primary health care.<sup>18</sup> Though health is in the concurrent list in the Constitution of the Federal Republic of Nigeria, implying that all the tiers of Government, the Federal, State and the Local authorities are empowered to oversee health with the roles and responsibilities not spelt out in the constitution. This notwithstanding, the National health policy 1988 envisaged the following responsibilities for the three tiers of Governments in Nigeria.<sup>19</sup> Primary health care is the basis of the National Health care system in Nigeria and is designed to be available and accessible to all Nigerians in these communities. As the entry point of the health care system, the primary health care provides preventive and rehabilitative health services to the population.<sup>20</sup> The Local Government is saddled with the responsibility of providing primary health care with active support from the state's ministries of health.

The secondary health care level which is the responsibility of the State Governments provides specialized services to patients who are expected to be referred to hospital for general medical, surgical, paediatric and community health services. Supportive services such as laboratory, diagnostics, blood bank, rehabilitation and physiotherapy are also provided at the secondary level. While the federal government provides the tertiary health care level with highly specialized referral services to both primary and secondary levels of the health care delivery system. Health care services at this level are provided by teaching and specialist Hospitals, covering specific diseases, conditions of specific groups of persons, such as orthopaedic, eye, psychiatric, maternity and paediatric hospitals.<sup>21</sup>

### **The National Health Act**

The National Health Bill, 2014 (now an Act), is a bill for an act to provide a framework for the regulation, development and management of a national health system and set standards for rendering health services in the federation, and other matters connected therewith. It is divided into seven parts. Part I sets out the

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<sup>18</sup> Editorial, "Hope for Health in Nigeria" (2011)377(1), *The Lancet Journal*, [www.thelancet.com](http://www.thelancet.com) Accessed March 4<sup>th</sup> 2015.

<sup>19</sup> *Ibid* (n.5)

<sup>20</sup> *Ibid* (n.5)

<sup>21</sup> *Ibid*.

responsibility and roles of different players in the Nigerian health sector. It establishes a national health system comprising of public and private providers of health services, traditional and alternative healthcare providers and the health ministries and departments at each tier of government and defines the entitlement of all Nigerians to a basic minimum package of health services.<sup>22</sup> Furthermore, it establishes processes for exempting certain groups from paying for services in public hospitals.<sup>23</sup>

Section 2 of the bill provides that the Federal Ministry of Health is given the role of oversight, coordination and planning but is also now required to prepare and present an annual report on the state of health of all Nigerians and the National Health System to the National Assembly and the President. Part I also establishes a Technical Committee to advise the National Council of Health (minister of health and state commissioners), which is tasked with implementing the health plans developed by the Federal Ministry of Health.<sup>24</sup> A National Tertiary Health Institutions Standards Committee is also established by the Act, to oversee and set standards for tertiary health institutions in the country and also publish annually “information in relation to tertiary healthcare services”.<sup>25</sup> Tertiary hospitals will also be required to undergo annual peer reviews. To fund the basic health care package entitlement, the Basic Health Care Provision Fund is mandated by the Act. Out of the fund, 50% shall be used for the provision of basic minimum package of health services to citizens, in eligible primary/or secondary health care facilities through the National Health Insurance Scheme (NHIS); 20% shall be used to provide essential drugs, vaccines and consumables for eligible primary health care facilities; 15% shall be used for the provision and maintenance of facilities, equipment and transport for eligible primary healthcare facilities; and 10% shall be used for the development of Human Resources for Primary Health Care; 5% of the fund shall be used for Emergency Medical Treatment to be administered by a Committee appointed by the National Council

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<sup>22</sup> The National Health Bill 2014, s.1

<sup>23</sup> The National Health Bill 2014, s.3

<sup>24</sup> Ibid.

<sup>25</sup> The National Health Bill 2014, s.4

on Health.<sup>26</sup> As contained in the Act, in order to ensure effective distribution of the fund to Local Government and Area Council Health Authorities, the National Primary Health Care Development Agency shall through the State and Federal Capital Territory Primary Health Care Boards, disburse the funds to provide for: essential drugs, vaccines and consumables for eligible primary healthcare facilities; maintenance of facilities, equipment and transport for eligible primary healthcare facilities; and development of Human Resources for Primary Health Care.<sup>27</sup>

However, the Act prohibits National Primary Health Care Development Agency from disbursing money to any Local Government Health Authority if it is not satisfied that the money earlier disbursed was applied judiciously as provided in the Act; State or Local Government that fails to contribute its counterpart funding; States and local governments that fail to implement the national health policy, norms, standards and guidelines prescribed by the National Council on Health. It further mandates the National Primary Health Care Development Agency to develop appropriate guidelines for the administration, disbursement and monitoring of the fund with the approval of the Minister.<sup>28</sup> Part II of the Act sets out a process for regulating health establishments and technologies and ensuring quality and standards. Health establishments will now need to have a certificate of standards. Without being in possession of a Certificate of Standards, the Act prohibits a person, entity, government or organization from: establishing, constructing, modifying or acquiring a health establishment, health agency or health technology; increasing the number of beds in, or acquire prescribed health technology at a health establishment or health agency; providing prescribed health services; continuing to operate a health establishment, health agency or health technology after the expiration of 24 months from the date this Act took effect.<sup>29</sup>

The bill in Section 14 provides that operating a health establishment without a Certificate of Standards, twenty (24) months after the Act has been passed will be punishable by a fine

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<sup>26</sup> Abubakar Jimoh, "Understanding the National Health Act" CISLAC Nigeria (28<sup>th</sup> December, 2014) <http://www.cislacnigeria.net/2014/12/understanding-the-national-health-act/>. Accessed on March 1<sup>st</sup> 2015.

<sup>27</sup> The National Health Bill 2014, s.(11)(4)

<sup>28</sup> The National Health Bill 2014, s.11(6)

<sup>29</sup> The National Health Bill 2014, s.13

of 500,000 naira or 2 years imprisonment.<sup>30</sup> Part III of the Act focuses on the rights and obligations of users and healthcare personnel and makes it an offence to refuse to give emergency medical treatment. Offence is made punishable by a 100,000 naira fine or six (6) months imprisonment. However, except for Psychiatric patients, a health care provider may refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her, and in such a case the health care provider must report the incident to the appropriate authority. This part also sets out the rights of healthcare personnel and indemnifies them from claims where they have not been negligent.<sup>31</sup> Healthcare workers are now required to give users relevant information (health status, diagnosis and treatment options and risks and benefits, right to refuse treatment) to their state of health and treatment unless there are exceptional circumstances. Health establishments are also now required to clearly define their services, complaints processes and timetables and to keep records for each user with confidentiality standards.<sup>32</sup>

Part IV establishes the National Health Research and Information System with a 13 member National Health Research Committee established to promote research and ensure that it aligns to priorities. A National Health Research Ethics committee with 17 members, one of whom must be a woman, is also established and any institution carrying out research is required to have an ethics committee. This part also requires the Federal Minister of Health to facilitate the creation of a comprehensive National Health Information Management System and to prescribe data for collection at every level of the health system. Public and private establishments are required to establish and maintain a health information system, which will be a requirement for the award of certificate of standards. The Minister and commissioners of health are required to publish annual reports on the health of the citizenry and the health system.<sup>33</sup>

Part V focuses on human resources for health and requires the National Council of Health to develop policy and guidelines for

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<sup>30</sup> The National Health Bill 2014.

<sup>31</sup> Ibid (n.23)

<sup>32</sup> Ibid.

<sup>33</sup> The National Health Bill 2014,S.31



training and distribution of health workers.<sup>34</sup> In relation to strikes, health services classified as essential services and the Minister is required to apply all reasonable measures to ensure return to normalcy after disruption within 14 days.<sup>35</sup> This part also bars all public officers from medical check-up, investigation or treatment abroad at public expense, except in exceptional cases approved by a medical board and minister or commissioner.<sup>36</sup> Part VI establishes the National Blood Transfusion Service, outlines procedures for obtaining consent and bans the sale of blood and tissue.<sup>37</sup> It also prohibits the manipulation of genetic material (“cloning”) and the import/export of embryos. Part IV specifies that transplantation can only be done with the approval of a medical practitioner and also establishes a process for living wills for organ donation.<sup>38</sup> Part V establishes conditions for post mortems and outlines who can authorise them—spouse, child, parent, guardian, brother or sister in that order.<sup>39</sup>

The Act mandates the Minister to prescribe mechanisms to ensure a co-ordinated relationship between private and public health establishments in the delivery of health services. In this case, Federal Ministry, any state ministry or any Local Government or any public health establishment may enter into an agreement with any private practitioner, private health establishment or non-governmental organization in order to achieve any objective of the Act.<sup>40</sup> Against the years of unethical behaviours of healthcare providers that discourage attendance at health facilities, the Act encourages any person to lay a complaint about the manner in which he or she was treated at health facilities. It mandates the Minister, Commissioner or any other appropriate authority to establish a procedure for the laying of complaints within the areas of the national health system for which the Federal or State Ministry is responsible.<sup>41</sup>

In order to ensure comprehensive National Health Management Information System for use in effective planning and decision

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<sup>34</sup> The National Health Bill 2014, s.41

<sup>35</sup> The National Health Bill 2014, s.45

<sup>36</sup> The National Health Bill 2014, s.46

<sup>37</sup> The National Health Bill 2014, s.47

<sup>38</sup> The National Health Bill 2014, s.51

<sup>39</sup> The National Health Bill 2014, s.58

<sup>40</sup> The National Health Bill 2014

<sup>41</sup> The National Health Bill 2014, s.35

making, the Act saddles Federal Ministry of Health with the responsibility to facilitate and co-ordinate the establishment, implementation and maintenance of Health Information System by State Ministries, Local Government Health Authorities and the private health sector at national, state and local government levels.<sup>42</sup> The Act allows for use, approved compendium of drugs in health facilities throughout the Federation. This shall be under periodic review of the National Drugs Formulary, and Essential Drugs List Review Committee. It encourages indigenous and local manufacture and production of as many items in the formulary as practicable; and mandates the National Council on Health to ensure widest possible catchments for health insurance scheme throughout the country.<sup>43</sup> As part of the efforts to resolve inadequacy and lopsidedness allocation of healthcare personnel across the country, especially the grassroots, the Act charges National Council on Health to develop policy and guidelines for, and monitor the provision, distribution, development, management and utilisation of, human resources within the national health system. This includes facilitating and promoting adequate distribution of human resources; providing appropriately trained staff at all levels of the national health system to meet the population's health care needs; and effective and efficient utilisation, functioning, management and support of human resources within the national health system.<sup>44</sup>

Similarly, Minister of Health and the National Council on Health shall determine guidelines that will enable the State Ministries and Local Governments to implement programmes for the appropriate distribution of health care providers and health workers. This includes availability of adequate resources for education and training of healthcare personnel to meet the human resources requirements of the national health system; prescription of a re-certification programme through a system of continuing professional development; identification of shortages of key skills, expertise and competence within the national health system, and

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<sup>42</sup> Ibid (n.37)

<sup>43</sup> The National Health Bill 2014, s.39

<sup>44</sup> Abubakar Jimoh, "Understanding the National Health Act" CISLAC Nigeria (28<sup>th</sup> December, 2014) <http://www.cislacnigeria.net/2014/12/understanding-the-national-health-act/>, accessed on 1<sup>st</sup> March, 2015.

prescribe strategies to make up for any shortfall in respect of any skills, expertise and competences; and prescribe strategies for the recruitment and retention of health care personnel within the national health system and from anywhere outside Nigeria.<sup>45</sup>

### **Importance of the National Health Bill**

According to experts, the Act seeks to provide a framework for the regulation, development and management of a National Health system and set standards for rendering health service in the country. Some of the accruing benefits of the new Act include the provision of free basic health care services for children under the age of five, pregnant women, the elderly and persons with disabilities in the country.<sup>46</sup> Additionally, the law guarantees the universal acceptance of accident victims in both public and private health institutions. Interestingly and deservedly too, the new law bans senior public officers' use of public funds for treatment abroad, especially for ailments that can be treated locally.<sup>47</sup>

The former President of the Nigerian Medical Association, Osahon Enabulele, noted that if enforced, the essential provisions in the Act would help Nigeria achieve the Millennium Development Goals which aim at reducing maternal and infant mortality rates by the year 2015. At present, Nigeria has the highest infant and maternal mortality in Africa. A Demographic Health Survey in 2013 reportedly found that Nigeria contributes about 13 per cent of global maternal mortality, with estimated 36,000 deaths annually. Thus, the coming of this Act is expected to reverse that ugly trend as more pregnant women would have access to free delivery services while their children are assured of standard paediatric services in the nation's health facilities.<sup>48</sup> The ex-NMA boss added that with this new Act, there will be improved funding of health care services at the grass roots so that people don't have to travel far to access medical services.

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<sup>45</sup> Ibid (n.41)

<sup>46</sup> "The Nigeria National Health Act 2014: Snap Review" Lawyer's Alert (26<sup>th</sup> January, 2014) <https://lawyersalert.wordpress.com/2015/01/26/the-nigeria-national-health-act-2014-snap-review/>, Accessed March 1<sup>st</sup> 2015.

<sup>47</sup> Jide Ojo, "Importance Of The National Health Act", Punch Online (December 24 2014) <http://www.punchng.com/opinion/importance-of-the-national-health-act/> accessed 2<sup>nd</sup> June, 2015

<sup>48</sup> Ibid.

There is a Basic Health Provisions Fund for primary health care centres in the Act and it is to be majorly funded with one per cent of the Consolidated Revenue Fund of the Federation. This, undoubtedly, will re-energise Nigeria's primary health care system. The ex-NMA boss stated that the National Health Act would change the situation as it provides direct funding for primary health care services from the Sovereign Wealth Fund of the nation.<sup>49</sup> He further explained that there will be improved funding of health care services at the grass root so that people don't have to travel far to access medical services. There is a Basic Health Provisions Fund for primary health care centres in the Act and it is to be majorly funded with one per cent of the Consolidated Fund of the Federation. This, undoubtedly, will re-energise Nigeria's Primary Health care system. The Act will reduce mortality among Nigerians who die because they do not go to the hospital when they are sick as they cannot afford to pay their bills. At present, over 5,000 Nigerians travel to India, the United Kingdom and the United States for treatment. Nigeria is losing billions of naira in capital flight to medical tourism by her citizens and her leaders, who travel to foreign hospitals to treat common ailments like malaria. Stakeholders expect that medical tourism, which is plaguing the health sector of the country, will be a thing of the past going by the provisions in the health Act. The trend thrived due to the fact that Nigeria did not have a law that was regulating the health sector.<sup>50</sup>

According to the former NMA boss, if the Act is well implemented, it will be difficult for Nigerians, no matter their status, to access treatment for diseases that can be treated in the country in foreign hospitals. The Act has provisions that tackle the vexatious issue of medical tourism and its current negative impact on Nigeria, as well as the gross abuse of tax payers' money on account of the incessant foreign medical trips by political and public office holders in search of foreign medical attention for

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<sup>49</sup> Lekan Adetayo & Bukola Adebayo, "Jonathan signs National Health Bill into law", Punch Online, December 10, 2014 <http://www.punchng.com/health/jonathan-signs-national-health-bill-into-law>. Accessed February 24<sup>th</sup>, 2015.

<sup>50</sup> Osahon Enabulele (Former President of the Nigerian Medical Association) speaks on the importance of the national health Bill, <http://www.punchng.com/opinion/importance-of-the-national-health-act/> accessed June 1<sup>st</sup> 2015.

medical conditions that can effectively be treated in Nigeria. The National Health Act provides for stricter regulation of all medical referrals abroad and emphasises greater collaboration between public and private health care facilities in Nigeria. Currently, lots of Nigerians, including top political office holders, travel frequently to other countries in search of medical care even for conditions that can be satisfactorily managed in Nigeria.<sup>51</sup> Furthermore, Enabulele, stated that on the average, over \$800million dollars is lost annually by Nigeria on account of foreign medical trips. The National Health Act will substantially reverse the trend of frequent and sometimes unnecessary foreign medical trips, and make Nigeria a destination for medical tourism. Prior to this Act, the sector, which caters to the health and wellbeing of over 160 million Nigerians, was largely unregulated. This vacuum, many believe, had created an open invitation to quacks to invade the system.<sup>52</sup>

The Chairman, Health Reform Foundation of Nigeria, Board of Trustees, Benjamin Anyene, was quoted as saying that the implementation of the bill will save the lives of three million women and children over a five-year period. At present, over 5,000 Nigerians allegedly travel to India, the United Kingdom and the United States for treatment while on the average, over \$800 million is reportedly lost annually by Nigeria to medical tourism. In the view of the Supervising Minister of Health at the time of passing the bill into law, Dr. Khaliri Alhassan, the new National Health Act would cause government's savings in health care delivery to rise from ₦17bn in 2015 to over ₦211bn in 2025 if the Act is fully implemented.<sup>53</sup> The minister opined further that individuals and families will have more disposable income through reduction in catastrophic health expenditure occasioned by very high cost of out-of-pocket spending when the mandatory social health insurance scheme that will be supported by the Act is

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<sup>51</sup> Dr Osahon Enabulele's interview with Tobore Ovuorie "National Health Bill is for Nigerians' wellbeing, not doctors' selfish gains" Nation Mirror (Feb 13, 2013) <http://www.nationalmirroronline.net/new/national-health-bill-is-for-nigerians-wellbeing-not-doctors-selfi-sh-gains-nma-president/Accessed> February 9th, 2015

<sup>52</sup> Punch Online (n.44)

<sup>53</sup> Lekan Adetayo & Bukola Adebayo, "Jonathan signs National Health Bill into law", Punch Online, December 10, 2014 <http://www.punchng.com/health/jonathan-signs-national-health-bill-into-law>, Accessed February 24<sup>th</sup>, 2015

implemented. Moreover, the Act provides for a minimum package of essential health services for all citizens to guarantee a more productive life and will impact positively on infant, child and maternal mortality rates which currently are highly unacceptable at 69 and 66 per cents respectively. The minister concluded by saying that the multiplier effects of this will holistically manifest in increased life expectancy of Nigerians, as well as increased productivity.<sup>54</sup> It is the singular instrument required to unlock economic goodness and health to Nigerians. Listening to all these glowing tributes to the law gladdens one's heart. However, implementation and enforcement is harder to achieve. It is hoped that there is the political will to give full expression to the execution of this Act.<sup>55</sup>

The National president of the Pharmaceutical Society of Nigeria, Olumide Akintayo, urged the President to appoint stakeholders from all cadres of the health profession to ensure the successful implementation of the Act. In his words,

The process of appointing the drivers of salient aspects of the Health Act should therefore logically follow the conduct of a competitive selection process from a pool of professionals who have competent skills and cognate experience. We maintain with strong emphasis that such skills are found in all cadres of the health profession not just one profession.

This statement is pregnant, given the fact that unhealthy rivalry among the different medical professionals have been destabilising the Nigerian health sector for some time now.<sup>56</sup> The Presidential Committee of Experts on Inter-Professional Relationship in the Public Health Sector headed by a former head of service, Alhaji Yayale Ahmed, on December 19, submitted its report to former President Jonathan. The committee reportedly found 50 conflict

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<sup>54</sup> Ibid (n.49)

<sup>55</sup> "Salvaging Nigeria's health care challenges" The Daily Independent Nigerian Newspaper (January 9<sup>th</sup>, 2015)

<sup>56</sup> Pharmacist, Health Workers Disagree with Doctors over National Health Bill" Pharmaceutical Society of Nigeria [http://www.nigerianmuse.com/2014/12/11/183304\\_zg/sections/health/pharmacists-lagos-nma-laud-jonathan-for-signing-national-health-bill-into-law/](http://www.nigerianmuse.com/2014/12/11/183304_zg/sections/health/pharmacists-lagos-nma-laud-jonathan-for-signing-national-health-bill-into-law/), Accessed March 2<sup>nd</sup>, 2015.

areas among the health professionals. It is hoped that the new President, Muhammadu Buhari will speed up the process and match words with action by ensuring that the White Paper committee reviews the report expeditiously in time to make room for early implementation. The danger is, if this cold war among health professionals persists, the implementation of the new National Health Act will be compromised and rendered ineffectual. Thus, all relevant stakeholders must play their part in the full implementation and enforcement of this “Messianic Act”.<sup>57</sup> There is the need for adequate sensitisation of the populace on this Act so that we all can positively take advantage of it. The experts, who highlighted the benefits of the Act to Nigerians, stated that the President would only be paying lip service towards improving the health status of Nigerians, if all its provisions were not properly implemented and enforced.<sup>58</sup>

### **Criticisms of the National Health Bill**

The purport of the National Health Act, 2015, is to provide a comprehensive framework for the regulation, development and management of a national health system and set standard for rendering health services in the Federation. In view of the implications of the legislative intervention in the health care delivery system in the country, attention has been drawn to certain provisions of the Act.<sup>59</sup> Before reviewing the said provisions it is pertinent to note that the fundamental right of Nigerians to health is guaranteed by Article 16 of the African Charter on Human and Peoples' Rights<sup>60</sup> which provides that every individual shall have the right to enjoy the best attainable state of physical and mental health. Also, States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.<sup>61</sup>

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<sup>57</sup> Jide Ojo, “Importance of the National Health Act”, Punch Online (December 24 2014) <http://www.punchng.com/opinion/importance-of-the-national-health-act/> Assessed March 1<sup>st</sup> 2015

<sup>58</sup> Ibid (n.53)

<sup>59</sup> Abubakar Jimoh, “Understanding the National Health Act” CISLAC Nigeria (28<sup>th</sup> December, 2014) <http://www.cislacnigeria.net/2014/12/understanding-the-national-health-act/> Assessed on March 1<sup>st</sup>, 2015

<sup>60</sup> Ibid (n.41)

<sup>61</sup> African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004

Over the years the Government abandoned the health sector to the extent that public hospitals became consulting clinics in the 1980s. They have since been reduced to mortuaries. In the circumstance, the few rich people in the society and top public functionaries fly abroad for medical check-up and medical treatment. To the embarrassment of the nation many Nigerians are flown to India, Egypt and South Africa for medical treatment. Section 46 of the National Health Act which bars public officers from traveling overseas for medical examination and treatment permits the Minister of Health to grant a waiver in certain situations!<sup>62</sup> Contrary to the reports in the media, the Act has not significantly addressed the funding of health services and the upgrading of local medical facilities to meet international standards. On funding the Act has created a Health Provision Fund to which the Federal Government shall contribute one percent from the consolidated revenue fund. Fifty percent of the fund shall be earmarked for the provision of basic minimum package of health services to citizens.<sup>63</sup> Although every citizen is entitled to a basic minimum package of health services, it is the Minister of Health who has the prerogative to prescribe the set of health services that will constitute the basic minimum package.<sup>64</sup>

In determining persons who may be entitled to exemption from payment for health services in public health establishments the Minister shall have regard to “the needs of vulnerable groups such as women, children, older persons and persons with disabilities.”<sup>65</sup> However, the National Council on Health is under an obligation to ensure that children between the ages of zero and five years and pregnant women are immunized with vaccines against infectious disease.<sup>66</sup> According to section 20 of the bill, a health care provider, health worker or health establishment shall not refuse a

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<sup>62</sup> Job Ozazuwa, “New National Health Act: Controversy Over Organ Donation” The Sun Newspaper Online (January 25, 2014) <http://www.sunnewsonline.com/New/?P=96995>, Assessed February 12<sup>th</sup>, 2015.

<sup>63</sup> Femi Falana, *Demand for urgent review of the National Health Act, 2014*, Elombah.Com (29<sup>th</sup> December, 2015) [www.elombah.com/index.php/articles-mainmenu/57-news/press-statements/28631-demand-for-urgent-review-of-the-national-health-act-2014](http://www.elombah.com/index.php/articles-mainmenu/57-news/press-statements/28631-demand-for-urgent-review-of-the-national-health-act-2014)

<sup>64</sup> The National Health Act 2014, s. 11(3)

<sup>65</sup> The National Health Act 2014, s. 64

<sup>66</sup> The National Health Act 2014, s. 3



person emergency medical treatment for any reason.<sup>67</sup> Having regards to the enormous costs of medical services the grant of one percent from the consolidated revenue of the Federal Government is inadequate for providing the so called basic minimum package of health services to the Nigerian people. The National Assembly is therefore called upon to amend the National Health Insurance Act to embrace all citizens with the provision of universal health coverage insurance scheme. In other words, the mandate of the NHIS should not be limited to workers alone.<sup>68</sup>

According to Falana, apart from the above observations, the National Assembly has violated the fundamental rights of Nigerians to life, human dignity, privacy and freedom of thought, conscience and religion by authorizing medical doctors to remove organs of living persons in Nigeria without their informed consent. In order to appreciate the extent of the infringements of the human rights of the Nigerian people sections 48 and 51 of the National Health Act, 2014 which have made elaborate provisions for organ transplantation, are hereby reproduced below.<sup>69</sup> Section 48(1) of the National Health Bill, provides that subject to the provision of section 53, a person shall not remove tissue, blood or blood product from the body of another living person for any purpose except with the informed consent of the person from whom the tissue, blood or blood product is removed granted in prescribed manner, that the consent clause may be waived for medical investigations and treatment in emergency cases; and in accordance with prescribed protocols by the appropriate authority.<sup>70</sup>

Regarding the provisions of section 48(2), a person shall not remove tissue which is not replaceable by natural processes from a person younger than eighteen years. A tissue, blood or a blood product shall not be removed from the body of another living person for purpose of merchandise, sale, or commercial purposes.<sup>71</sup>

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<sup>67</sup> The National Health Bill 2014, s.5

<sup>68</sup> The National Health Bill 2014, s. 20

<sup>69</sup> Operational Guideline- National Health Insurance Scheme, June 2014

<sup>70</sup> Femi Falana, "Removing body organs without consent permitted by the National Health Act, 2014" The Vanguard Newspaper ( February 23<sup>rd</sup> 2015) <http://www.vanguardngr.com/2014/12/removing-body-organs-without-consent-permitted-national-health-act-2014/>, Accessed February 26<sup>th</sup> 2015

<sup>71</sup> The National Health Bill 2014, s.48(1)

The Act also makes provision for a punishment for such act.<sup>72</sup> Since all hospitals and other medical establishments have been mandated to admit and treat all persons in emergency situations the National Assembly have licensed medical personnel to engage in unauthorized surgical operations for the purpose of removing vital organs of living persons. Even though there are stringent penalties for commercializing any organs removed from any living person why the consent of the donor should be dispensed with? In other parts of the Third World where similar dangerous legislation exist, organs removed from living or dead persons are sold and transported to western countries where they are in high demand.<sup>73</sup>

According to Iyoha and Nwabueze, it is not altogether surprising that the first statutory and comprehensive legislation in the country to regulate and legitimate a medical procedure that is absolutely extraordinary should elicit mixed reactions from Nigerians, of relief and gratitude in some, and responses of outright jubilation or condemnation by others. Developed countries like the United Kingdom and the USA, where organ donation and transplantation have become routine, passed through a similar phase about 60 years ago when organ donation and transplantation were still rudimentary in those countries, and their lawyers equally struggled to account for the legality of the procedure under their prevailing legal systems.<sup>74</sup> At that time, it was strongly believed in some respectable legal circles that the extraction of an organ from a living donor for transplantation into a recipient would amount to a criminal offence since the extracted organ could not be said to be for the treatment of the donor. But all that is now legal history and there cannot be any doubt as to the legality of organ donation and transplantation carried out within the confines of law in all developed countries. A bit of introduction of the doctrine of informed consent is necessary.

Informed Consent is an ethical and legal doctrine that requires healthcare professionals to obtain the consent of their patients before treatment is administered or surgery performed. The principle of patient autonomy is foundational to the doctrine of

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<sup>72</sup> The National Health Act 2014, s.,48(3)

<sup>73</sup> See The National Insurance Act, 2014, s., 48(4)

<sup>74</sup><http://sjkdt.org/article.asp?issn=13192442;year=2014;volume=25;issue=1;spage=196;epage=205;aulast=Iliyasu> assessed July 27, 2015

informed consent: patient autonomy recognizes the right of every patient to decide what is to be done with his or her body as well as every patient's right to bodily integrity. Informed consent, which applies in both medical research and treatment, arose because of the Nuremberg trials in 1946 and the horrific inhuman experimentation carried out by medical physicians. Principle 1 of the Nuremberg Code established after the trials stipulates the requirement of voluntary consent as essential to the grant of consent for research purposes, accompanied by the individual's knowledge and understanding of the nature of the subject matter involved. The new National Health Act (NHA) incorporates the informed consent doctrine in section 23, which provides for the right of every patient in Nigeria to informed consent in matters of diagnosis and treatment and the right of every patient to refuse health services. Informed consent has been a challenging subject for many health professionals. In fact, some have assumed that the concept is merely a tool for health professionals to get their patients to accept the professional's own idea of what is best for the patient, rather than as a mechanism for facilitating a patient's independent decision-making.<sup>75</sup>

Iyoha and Nwabueze claimed that the fact that the NHA does not define what constitutes 'medical investigations and treatment in emergency cases' under section 48(1)(b) of the Act further fuels Falana's angst about his perceived displacement of the informed consent rights of Nigerians in emergency situations in the new Act. According to them, Falana's argument on this point, however, is also not substantiated by the exceptions to the informed consent principle, of which the circumstance of emergency is one. It is particularly relevant that informed consent functions within certain constitutive elements or conditions, including whether the individual from whom consent is sought has the necessary competence to do so.

To be competent to provide consent, the patient must have the mental capacity to consent and must have attained the age of majority, which is 18 in Nigeria, or if younger than 18, is able to appreciate the nature and consequences of the proposed treatment; the patient must also be conscious and mentally capable to provide

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<sup>75</sup> Dr. Ireh Iyioha & Remigius Nwabueze, "National Health Bill: Experts Argue Over Harvesting Organs From Patients Without Consent", Sun News Online (February 12<sup>th</sup> 2015) <http://sunnewsonline.com/new/national-health-bill-experts-argue-over-harvesting-organs-from-patients-without-consent/> assessed 16th July, 2015

consent. Indeed, the Code of Medical Ethics of the Medical and Dental Professions in Nigeria outlines this clearly.<sup>76</sup> According to the Code, a competent patient in Nigeria is one who has attained the age of 18 and is not mentally impaired or unconscious. Where a patient is incompetent by virtue of age, mental impairment or being unconscious, a next-of-kin must provide the necessary informed consent for a procedure to be carried out. Where there is no next-of-kin, the highest-ranking physician in a hospital is given the power to give appropriate directives to preserve the life of the patient, and where necessary, a court order may be required to enable a life-saving procedure to be carried out by the physician. Of course and as clearly stated in the Code, these safeguards are in place to protect the fundamental rights of every patient. From the discussion above, therefore, they argued that based on the Code of Medical Ethics, ‘emergency’ under the NHA involves a situation where a patient is in urgent need of life-sustaining medical attention and is either unconscious or unable to provide the necessary consent either explicitly or implicitly, nor is the patient’s next-of-kin, legal guardian or representative available to give proxy or substituted consent.<sup>77</sup> This is consistent with common law’s approach to emergency treatment as evident in numerous cases on the topic, which recognize the legal rule that health professionals can, without risking legal repercussions, take measures to save the life of an ‘incompetent’ patient without the consent of the patient’s next-of-kin or legal representative due, of course, to an inability to reach the latter promptly before the performance of a time-sensitive life-saving medical procedure.

Simply stated in legalese (with apologies to readers who are non-lawyers or experts), there is in law a presumption of consent to medical treatment in cases of incapacity where there is neither an advanced directive nor any of the other proxy or substitute decision-makers identified above. Thus, the common law on emergency treatment is fairly basic. It should be noted, however, that instead of the simple characterization of the topic as ‘emergency treatment’ as is often the case in the medico-legal literature, the Act uses the cognomen of ‘medical investigation and

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<sup>76</sup> Asuzu, M.C. ‘The necessity for a health systems reform in Nigeria’ *Journal of Community Medicine & Primary Health Care*. 16(1) 1

<sup>77</sup> *Gillick v West Norfolk and Wisbech AHA* [1985] 1 ALL ER 533, CA.

treatment in emergency case. But this adds nothing to the standard acceptation and understanding of the medical emergency exception to the doctrine of consent. The ‘medical investigation’ part of the phrase simply means ‘medical diagnosis’, so that if the entire phrase is read together it means medical diagnosis and treatment provided in a period of emergency. This means that, at least, the removal of tissues, blood and blood products for non-therapeutic research involving human subjects or other purposes such as transplantation is not contemplated by section 48(1)(b). The emphasis is ‘treatment’ in the course of an emergency.<sup>78</sup> Also, the Catholic Church criticised the National Health Bill passed by the National Assembly, indicating that some sections were defective and inimical to human life. The Catholic Archbishop of Abuja, His Eminence John Cardinal Onaiyekan, said this at a forum organised by the Catholic Caritas Foundation of Nigeria on the bill in Abuja. Onaiyekan, advised President Goodluck Jonathan not to sign the bill into law until sections of the Act, particularly Sections 50, 51, 52 and others were revised.<sup>79</sup> In his words, he said:

I think it is important for us to insist on putting right anything that will have negative effect on the lives of our people, I am saying this because people present our position as if we have a particular interest but of course we don’t. In the case of the health bill, it is the interest of our people and we must speak against it. “The sections of the bill as passed that touches on tissue and organ transplant among other delicate issues is against the teachings of the Church.”

Onaiyekan advised the Federal Government and the National Assembly to be careful of policies and initiatives introduced by foreign governments and organisations. He blamed foreign powers and some multinational organisations for the passage of the bill in a manner that could violate the teachings of the church. The cardinal said ideas coming in from outside should be accepted if

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<sup>78</sup> Dr. Ireh Iyioha and Dr. Remigius Nwabueze gave a critical analysis of Femi Falana (SAN)’s argument concerning harvesting and donation of organs as contained in s.48 and s.51 of the National Health Bill, See <http://sunnews online.com/new/national-health-bill-experts-argue-over-harvesting-organs-from-patients-without-consent/> assessed 16th July, 2015

<sup>79</sup> Ibid (n.75)

they would be useful but should be discarded if found to be inimical to the health and wellbeing of Nigerians.<sup>80</sup> The Minister of Health, Prof. Onyebuchi Chukwu, However, appealed to Nigerians to allow the president sign the bill into law as passed by the National Assembly. He said that it was better to allow the law to stand to ensure smooth regulation of the health sector in Nigeria and amend the defective sections afterward than to delay its assent. Furthermore, he said the Act as passed by the National Assembly would be beneficial to Nigerians, noting that the imperfections observed should not be the yardstick to abandon it.

### **Conclusion/Recommendation**

In alignment with some medical professionals it is advised that the poor manner of implementing laws and other Acts of Parliament, under the previous administration of the former President Goodluck Jonathan did not augur well for the healthcare system, Nigerians are now been called upon to close ranks and join forces with other stakeholders to ensure the full implementation of the newly signed National Health Act under this new regime.<sup>81</sup> The signing of the Health Bill into law is an undeniable legacy in rising to the challenges of health inequalities, disparities and social protection for all Nigerians. With the passing into law of the National Health Bill, it is expected that health services for Nigerians would be transformed; as the new health law provides funding from the federal government for guaranteed basic minimum health care package for all children below the age of five, pregnant women, the elderly and people with disabilities would receive free health care, the law requires universal acceptance of accident and other emergency cases by all health facilities, both public and private hospitals. Also, the law provides for improved standards and quality of healthcare in our health facilities, it curbs the use of public funds by Nigerian public office holders and civil servants seeking treatment abroad, a popular

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<sup>80</sup> John Cardinal Onaiyekan, Catholic Church Criticises Newly Passed National Health Bill, The Eagle Online [www.heeagleonline.com.ng/catholic-church-criticises-newly-Passed-National-Health-Bill](http://www.heeagleonline.com.ng/catholic-church-criticises-newly-Passed-National-Health-Bill). Accessed March 2, 2015.

<sup>81</sup> Ibid.

trend that sees thousands of medical tourists spending millions of dollars' worth of taxpayer money overseas.<sup>82</sup>

The National Health Bill is a major victory for healthcare reformers across Nigeria and internationally but an even greater victory for mothers, children and families especially those who are poor. The renewed hope is that they will now have easier and more frequent access to quality healthcare services. It is expected that the minimum package of basic healthcare services and provision of free medical care for children less than five years of age, pregnant women, the elderly and people with disabilities will improve the health statistics of Nigeria and inch it closer to the Millennium Development Goals. It is also expected that medical tourism will be drastically reduced, especially by those in the political class and public office holders who utilise public funds for their private well-being.

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<sup>82</sup> Muhammed Lecky "Nigerians Must Take Responsibility in the Implementation of National Health Act" This Day Live (12 Dec 2014) [Http://Www.Thisdaylive.Com/Articles/-Nigerians-Must-Take-Responsibility-In-The-Implementation-Of-National-Health-Act-/196497/](http://www.thisdaylive.com/articles/-Nigerians-Must-Take-Responsibility-In-The-Implementation-Of-National-Health-Act-/196497/)