

Breaking the Ceiling Glass: Illegality of Mandatory Requirement for Police Report - Clearance for Medical Emergency Treatments by Health Providers in Nigeria

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Abstract: The National Health Act, 2014 is the first national legal framework that specifically deals with the right to health in Nigeria and other ancillary issues. Notwithstanding the provisions of the Act recognising and guaranteeing right to health in Nigeria, it is riddled with lacuna and deficiencies therein that constitute legal issues on right to health in the country. For instance, Section 20 (1) of the National Health Act, 2014 provides that a health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason. Regrettably, notwithstanding this provision of the Act, victims of accident or persons that have gunshots injuries and who need urgent medical attentions are being refused emergency medical treatment and rejected when taken to the hospitals on the ground that they are unable to provide the Police Report/Clearance. This paper submits that this practice is a flagrant violation of the provision of the National Health Act, 2014 which provides that no person should be refused emergency medical treatment for any reason. The paper submits further there is nothing in the National Health Act or any other law whatsoever in Nigeria that provides that a Police Report/Clearance must be produced before a victim of accidents or gunshots could be treated by the health care providers.

Keywords: National Health Act, Police Report/Clearance, Medical Emergency Treatments, Right to Health, Justiciability

1. Introduction

Right to health is one of the most abused and not justiciable right globally. Not justiciable in most constitutions of the African countries, Nigeria inclusive. It is a right that has been argued by scholars and researchers to be linked to right to life [1]. Right to health is a human right written and backed up by plethora of international instruments but not enforceable and justiciable in most countries of the world. It must be noted however that the realization of right to health, being socio-economic right, depends significantly on the political will on the part of the state; though most countries of the world that are signatories to these international instruments have the duty to respect, protect and fulfill the right [2].

It must also be emphasized that notwithstanding the fact that there are international, regional, and national legislation

coupled with regulations on the right to health, the right to health is neither justiciable nor enforceable in most African states such as Nigeria, India, Namibia [3] Uganda, Ghana, and Malawi because the constitutions of these countries provide for non-justifiability of the right. The non-justifiability of this right, therefore render the citizenry helpless in the realization of this right notwithstanding the fact that the states have the mandate to ensure that the right is realized and enforced. The health care sector of most African states are riddled with cases of poor availability of essential medicines, frequent stock-outs and suboptimal prescription and use of medicines and substandard quality treatments to the utmost detriment of the poor citizens who could not afford medical care abroad. This paper would generally examines an overview of the Economic, Socio and Cultural Rights, the concept of right to health in Nigeria vis-à-vis the justiciability or otherwise of Economic, Socio and Cultural

Rights under International law with specific emphasis on the illegality of mandatory requirement for Police Report/ Clearance for emergence medical treatments by health providers in Nigeria.

2. Examination of Right to Health in Nigeria and Its Justiciability

The right to health and acceptable standard of living is a global right entrenched in the statute books. This right has enjoyed domestic recognition in the constitutions and subsidiary legislations of most countries in the world; Nigeria inclusive. Section 17 (3) (c) & (d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) gives effect that the State shall direct its policy towards ensuring that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused and that there are adequate medical and health facilities for all persons. Similarly, section 27 (1) (a) of the Constitution of the Republic of South Africa states that everyone has the right to have access to health care services, including reproductive health care. It must be stated here that notwithstanding the provision of the Nigeria's constitution on the right to health, the right is neither justiciable nor enforceable. For instance in Nigeria, section 6 (c) of the 1999 Constitution of Federal Republic of Nigeria (as amended) makes socio-economic rights non-justiciable, of which right to health, safety and welfare are inclusive. This makes it difficult for the citizenry to approach the court for the enforcement of this right under the constitution except when the application for its enforcement is brought under the relevant international or regional statutes such Africa Charter on Human and Peoples Right, Ratification and Enforcement) Act (the "African Charter Act").

Oyeniyi argues that right to health "is the right to the highest attainable standard of health and it is recognized in at least 115 constitutions." According to him, every human being is entitled to the enjoyment of the highest attainable standard of health. He argues that right to health is regarded as a second generation right and which is neither justiciable nor enforceable until same is domesticated under the national law. He opines that the first *corpus juris* that recognizes the right to health was the Universal Declaration on Human Rights which served as a foundation for other international instruments to follow. Article 25 (1) of the Declaration provides that:

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

He submits that notwithstanding the existence of domestic legislation on the right to health in Nigeria, which is the National Health Act, 2014, the right is not justiciable; thereby

serving as a clog in the wheel of the realization of the right in Nigeria [4-6]. He, however, submits that the right is actionable and could be sustained under the relevant regional and international instruments such as the African Charter on Human and Peoples Rights, (Ratification and Enforcement) Act (the "African Charter Act"). He submits further that right to health is interrelated to other human rights and indispensable for the exercise of other human rights such as right to life.

Kolawole on his part agrees with the view of Oyeniyi above that right to health is linked with right to life [7]. Kolawole argues further that human rights are interdependent, indivisible and interrelated to the effect that the denial of the right to health may affect the enjoyment of other human rights such as the rights to life and the right to education or work. He draws the basis of his argument from judicial decisions of courts in jurisdictions like Ecuador, Russia, United Kingdom and India wherein the courts held inter-alia that the breach of right to health is the breach of right to life. He submits further that contrary is the position in Nigeria as the right to health is not enforceable under section 6 (6) (c) of the 1999 Constitution of Federal Republic of Nigeria (as amended) neither is the breach of the right to health is seen as the breach of the right to life which is justiciable under the Constitution. He opines further that by virtue of article 12 of the International Convention on Economic, Socio and Cultural Rights (ICESCR), one of the international legal frameworks on the right to health which Nigeria is a signatory, state parties are to achieve progressively the full realization of the rights (right to health inclusive) and that states parties would take all necessary measures towards progressive attainment of the rights.

According to Kolawole, wherever it is proved and established that the right to life is breached, right to health is invariably breached also as both are interrelated and linked. This entitles the injured party/victim to remedies in law as the public or private health provider may be held liable for tort of negligence in civil law with reciprocal damages and or compensation. Criminal action also can be filed against the culprit for manslaughter under the Criminal Code¹ or culpable homicide under the Penal Code² as the case maybe. He recommends that the country should enact an Act that would recognise the right to health as the country has adequate health facilities to achieve this right. To him, this would bring right to health in the same status as right to life which is enforceable and justiciable under the 1999 Constitution, Federal Republic of Nigeria. He argues that there is a duty on Nigeria as a state to respect, protect and fulfill international and regional instruments that it had signed and ratified. The failure to which, the country as a sovereign maybe held liable at the international court or fora. If by any reason, it is unable to meet its obligations due to lack or inadequate resources, it must show that every conceivable effort has been made to put to use all the

1 Law of the Federation of Nigeria 2004 s. 317 Cap C38.

2 Law of the Federation of Nigeria s. 222 Cap P3.

resources it possesses in the realization of the right.

May I humbly state from the outset that notwithstanding the fact that an Act has been enacted that recognises the right to health in Nigeria as validly recommended by Kolawole, the Act has not been able to curb the recurrent practice of mandatorily demanding for medical report/clearance from victims of gunshots before they are treated by the hospitals in contravention of the said Act. This paper attempts to examine the illegality of this practice.

Furthermore, as convincing as the argument of Kolawole that Nigeria has adequate health facilities to achieve this right seems, I contend that as of today and based on the present situation in Nigeria, there are no adequate health facilities to achieve right to health in the country. Most of the government owned health care system centres are in gory state compared with the private owned health care system. Nigeria has 0.5 hospital beds per 1000 people, which definitely falls below the average of 1.0 hospital bed per 1000 people in other sub-sahara African countries [8]. Furthermore, there are only about 47 tertiary hospitals that cater for the teeming needs of over 200 million Nigerians. Lack of essential medicines and enabling environment for health care workers to work in are orders of the day [9]. The non-availability of essential medicine in government owned hospitals and health centres in Nigeria must be addressed first as a foundation to the push to the full attainment of the right to health. Government of Nigeria should see it as duty to provide and equip government owned health care systems with best state of the art facilities and technologies that would make job easier for the health workers and at the same time make the government owned health facilities competitive with the private actors such as (pharmaceutical companies, private hospitals etc) in the health sector. This, on the long run, will help in ensuring that the citizenry get best medical care.

On the justiciability or otherwise of the economic and socio-cultural rights in Nigeria, which right to health is one, Oyeniyi further submits that the major problem with its implementation and enforcement is that its enforcement is dependent upon resources available within the state [10].

I disagree with Oyeniyi using Nigeria as a case study that the situation is not totally because the necessary resources are not available to ensure that emergency medical treatment is made readily accessible in the country. Other factors such as lack of political will, bad leadership, and corruption on the part of the government serve as clog in the wheel of the government in providing qualitative health care system. For instance, Section 11 of the National Health Act, 2014 makes provision for the establishment of the Basic Health Care Provision Fund (BHCPF). The purpose of the fund is to ensure that funding is made available for the health sector in the country by ensuring that at least 1 percent from the Consolidated Revenue Fund is devoted for the provision of essential drugs, equipment and transport for eligible primary health care services amongst others. Though in the recent times, there has been delay in agreeing on the content of the operational guidelines of Basic Health Care Provision Fund

(BHCPF) among stakeholders mostly the key federal health institutions that have roles to play in realization of the guidelines.

The above view of mine that other factors such as lack of political will, bad leadership, and corruption on the part of the government serve as clog in the wheel of the government in providing qualitative health care system is supported by Bolaji while examining the history of health care in Nigeria when he submits that corruption in the Nigerian health system dates back to the 1960s and has had negative effects on improvement in health outcome [11]. He submits that the Nigerian health system is weak and has been evolving over the years with misplaced priorities and the focus on health inputs rather than outputs. He submits further that the Nigerian health system is structured in primary, secondary and tertiary levels with the three tiers of government sharing responsibility for provision of health services [12]. The Federal Government (FG) is responsible for tertiary care, development of national health policy as well as providing technical assistance to state ministries of health (SMOH) and local government health authorities (LGHAs). The State Governments (SG) are responsible for state tertiary and secondary care, regulation as well as providing technical assistance to LGHAs while the LGHAs are responsible for primary health care (PHC) service delivery. The health system comprises the public and private health sector. The Nigerian health system is a complex mixed system with private hospitals operating as free market entities and public hospitals operating as government entities with staff salaries paid by government and all buildings and equipment owned by government. The private health sector is responsible for about 60% of health care service delivery while the public health sector account for 40%. Public health sector is organised at the primary, secondary and tertiary levels. The local government is responsible for the primary level, the state government is responsible for the secondary level and the federal government is responsible for the tertiary level. Public health facilities include teaching hospitals, specialist hospitals, general hospitals, health centres and health posts. However, the National Primary Health Care Development Agency (NPHCDA) which is an agency under the Federal Ministry of Health (FMOH) provide support for PHC due to weakness of local governments (LGs) while the ultimate responsibility still lie with the LGs. The private health sector comprises of private-for-profit hospitals, private-not-for-profit hospitals, faith-based health facilities, small clinics, pharmacies, patent medicine dealers, maternity homes, traditional healers and alternative health care providers.

According to Bolaji, the construction of health facilities and procurement of medical equipment across Nigeria was an avenue for corruption in the 1980s and remain a source of corruption within the health system. He submits further that the reported cases of misuse of funds provided by Global Alliance on Vaccines Initiative (GAVI) [13] and Nigeria's indictment by the Global Funds for AIDS, Tuberculosis, and Malaria are pointers to corruption as well as lack of transparency and accountability within the Nigerian health

system. It must be noted that corruption continues to persist within the Nigerian health system despite efforts by governments over the decades through the use of public procurement, decentralised distribution, introduction of suggestion boxes, and regular audits [14]. To him, since the 1960s, many strategic policy frameworks have been put in place within the Nigerian health system but devoid of good and effective implementation. Policy frameworks have not been matched with effective oversight, regulation and accountability. Furthermore, he submits that the coordination of donor funds has been poor over the decades. From the above, it is crystal clear that the situation is not totally because the necessary funds/resources are not available to ensure that emergency medical treatment is made readily accessible in the country, but corruption and mismanagement of the funds/resources among other factors.

Furthermore, over the years, political office holders in Nigeria, including the Presidents, Vice-Presidents, Governors, and Deputy-Governors travel out of the country with their families for medical health care notwithstanding the dilapidating state of the health sector of the country with the state's resources and finances in breach of section 46 of the National Health Act, 2014 [15-17]. In the wake of COVID-19 pandemic, the political office holders who contracted the virus got treatment from privately owned hospitals for medical attention (assuming there is no travel restrictions worldwide, they would have travelled abroad), leaving the poor people to suffer in the ill-equipped public or government-owned hospitals which they created due to their neglect and insensitivity [18, 19].

The question begging for an answer is: why not develop the health sector of the country in line with the best international standards which would make all and sundry to desire to stay within the country to be attended to medically, instead of using the commonwealth of the nation to treat few at the expense of the entire citizens. This has been the recurrent decimal over the years as the nation's resources are being used to cater for the health care of the rich powerful politicians in the country at the expense of the general populace. This situation is common in virtually all African countries. The former Zimbabwe's Head of State, Robert Mugabe is a good example of African leaders who regularly snubbed his country's health facilities and flew thousands of miles to get medical treatment overseas. Unfortunately, the irony is that he even died in a foreign hospital. Recently also, the Deputy President of South Africa, David Mabuza, travelled to Russia for medical treatment despite several outcries by the citizens asking for clarification on the details of his trip, specifically on who is footing the bill [20]. There were legitimate insinuations that the taxpayers' money was used to sponsor this trip. It is on records that he frequently travels to Russia for his routine medical check leaving his crumbling public health care system [21]. Of recent, on 3rd of March, 2022, the Nigerian President Muhammadu Buhari traveled to the United Kingdom for medical treatment leaving the affairs of the State to his Vice-President, Professor Yemi Osinbajo [22]. This constitutes a pattern of

African leaders leaving crumbling health establishments in their own countries and flying abroad to get the best and world's best medical treatment, while their citizens are left to bear the brunt of a declining and deplorable state of healthcare.

3. Illegality of Mandatory Requirement for Police Report/Clearance for Medical Emergency Treatments in Nigeria

Real life cases are replete of innocent accident, robbery and gunshot victims who lost their lives due to the fact that they were rejected or refused treatment on the ground of failure to produce Police Report/Clearance [23]. Raphael and Felix Omorukhe are two brothers who were attacked during a robbery incident in Lagos, Nigeria. Felix died instantly, while Raphael survived the incidence but died later when he was rejected by private and public hospitals because there was no Police Report. The death of Alhaji Usman Dikko is another good example. Dikko died on June 23, 2020, about three days after his 67th birthday. It was reported that on this fateful day, he complained of chest pain and weakness which necessitated the need to take him to the hospital for treatment. He was however rejected by six different hospitals both private and public in Abuja, Nigeria giving excuses such as non-availability of bed space, unreasonable suspicion of him suffering from COVID-19 etc which finally led to his death [24].

The question begging for answer is, does the practice of mandatorily requiring for Police Report/ Clearance before victims of accidents or robberies and gunshot victims can be treated by the health care providers in Nigeria legal? In other words, what is the legal basis for this practice?

An examination of the extant laws on the right to right in Nigeria shall be examined under this heading; specifically the provisions of the laws in Nigeria that out-rightly provide that a health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason. The provisions of these laws shall be taken in seriatim.

3.1. The National Health Act, 2014

The National Health Act, 2014 is the first national enactment that specifically deals with the right to health in Nigeria and other ancillary issues [25]. Notwithstanding the provisions of the Act recognising and guaranteeing right to health in Nigeria, the Act has not been able to curb the recurrent practice of mandatorily demanding for medical report/clearance from victims of gunshots before they are treated by the hospitals in contravention of the said Act. The legality or otherwise of mandatory requirement for Police Report/Clearance for medical emergency treatments by health providers in Nigeria has become an issue of concerns in Nigeria which this paper attempts to address.

Section 20 (1) of the National Health Act, 2014 provides *inter-alia* a health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason. Subsection (2) of the Act states further that a person who contravenes this section commits an offence and is liable on conviction to a fine of N100,000.00 or to imprisonment for a period not exceeding six months or to both. The provision of the Act is explicit, clear and ambiguous on this. There is no section of the Act that provides that Police Report/ Clearance must be presented by accident and or gunshot victims before they can be given emergency medical treatment. Therefore, this practice is a flagrant violation of the provision of the National Health Act, 2014. Regrettably, notwithstanding this provision of the Act, victims of accident are being refused emergency medical treatment and rejected when taken to the hospitals for flimsy excuses that the victims failed to make upfront payment/deposit as hospital bills before treatment [26].

Furthermore, several lives have been lost due to the rejection of victims of accidents and gunshots on the ground of mandatory requirement for Police Report/Clearance and no few health care providers has been reported to have been tried and or convicted for the death of any victim of accidents and gunshots [27]. This paper submits that there should be a strong political will on the part of the government of Nigeria to stop and curb this practice by the health care providers. It is not enough to have strong and coherent body of laws and or regulations that are geared towards ensuring emergency medical treatments if there is no strong political will for its enforcement.

3.2. The Compulsory Treatment and Care for Victims of Gunshots Act, 2017

Another important law that criminalises the mandatory requirement for Police Report/Clearance is the Compulsory Treatment and Care for Victims of Gunshots Act, 2017 [28]. The Act places duty of care on health care providers to ensure that the victims of gunshots are treated and attended to first before making demand for payment or police report/clearance with a caveat that the said health care provider should make a report to the nearest police station within two (2) hours of commencing the treatment. The Act also prevents the Police from whisking away any person who has gunshot wounds in the hospital in the guise of conducting investigation until the Chief Medical Director of the hospital certifies the person fit and no longer in dire need of medical care.

Section 1 of the Compulsory Treatment and Care for Victims of Gunshots Act, 2017 states that:

‘As from the commencement of this Act, every hospital in Nigeria whether public or private shall accept or receive, for immediate and adequate treatment with or without police clearance, any person with a gunshot wound.’

Section 9 of the Act further states that:

‘Any person who commits an offence under this act which leads to or causes substantial physical, mental, emotional, and psychological damage to the victim commits an offence and is liable on conviction to imprisonment for a term of not more than

15 years and not less than five years without the option of fine’

Section 2 of the Compulsory Treatment and Care for Victims of Gunshots Act, 2017 further states that:

- 1) Every person, including security agents, shall render every possible assistance to any person with gunshot wounds and ensure that the person is taken to the nearest hospital for immediate treatment.
- 2) Accordingly,
 - a) A person with a gunshot wound shall be received for immediate and adequate treatment by any hospital in Nigeria with or without initial monetary deposit, and
 - b) A person with a gunshot wound shall not be subjected to inhuman and degrading treatment or torture by any person or authority including the police or other security agencies.

Section 1 of the Act stipulates that every hospital in Nigeria whether public or private shall accept for immediate and adequate treatment with or without police clearance, any person with a gunshot wound. This section strictly imposes a compulsory duty on all hospitals to receive and immediately treat gunshot victims without waiting for police clearance. This section certainly, represents a step forward in an attempt to respect human dignity and preserve life.

Furthermore, the Act provides for the duty to assist in section 2, which specifically compels every person, including security agents, to render every necessary assistance to ensure that a gunshot victim is taken to the nearest hospital; while also providing for compulsory treatment of gunshot victims by hospitals without initial monetary deposit. The importance of this provision cannot be over emphasised, because apart from fear of being implicated by the police, some hospitals refuse gunshot victims purely on the basis of demanding for an upfront payment of the cost of treatment. Notably, implementing this section may be problematic, as hospitals may have to bear the cost of treatment where the victims lack the money to pay after they have been treated.

Further, the right created by section 1 of the Act establishes a corresponding duty on hospitals and other healthcare institutions to report the fact to the nearest police station within two hours of commencement of treatment, to enable the police to immediately commence investigation with a view to determining the circumstances under which the person was shot. Consequently, any hospital that fails to make a report to the police upon commencement of treatment commits an offence under the Act and shall be liable to pay a fine of ₦100,000, while every doctor directly involved with the treatment shall be liable on conviction to a term of 6 months imprisonment or to a fine of ₦100,000 or both.

In general, the Act provides extensively for the treatment of gunshot victims, and as well provides protection for all people that may in one way or the other be involved with gunshot victims. The Act penalizes defaulters of its provisions, (including cooperate bodies) and also provides for an order of restitution, (in addition to any other penalty under the Act) ordering convicted persons or corporate bodies to pay to the victim an amount equivalent to the loss sustained. Additionally, the Act provides for the respect and

protection volunteers or helpers of a victim from being subjected to unnecessary and embarrassing interrogation in their genuine attempt to save life [29].

Moreover, section 11 provides that

“Any person or authority including any police officer, other security agent or hospital who stands by and fails to perform his duty under this Act which results in the unnecessary death of any person with gunshot wounds commits an offence and is liable on conviction to a fine of ₦500,000 or imprisonment for a term of five years or both.”

The above section of the Act shows that the omission of standing by and failing to render necessary help and assistance to victims of accidents and gunshots by an individual or police officer or any security agent or hospital constitutes a punishable offence under the section. This simply means that no one can stay aloof and be watching whenever emergency cases are involved.

It is safe to submit at this juncture that notwithstanding the provisions of the National Health Act, 2014 and Compulsory Treatment and Care for Victims of Gunshots Act, 2017 that provides that a health care provider, health worker or health establishment shall not refuse a person emergency medical treatment for any reason and every hospital in Nigeria whether public or private shall accept or receive, for immediate and adequate treatment with or without police clearance, any person with a gunshot wound respectively, the practice of mandatorily demanding for medical report/clearance is increasing daily.

4. Conclusion

From the above, the following conclusions could be inferred:

- 1) Right to health is one of the most abused and not justiciable right globally. Not justiciable in most constitutions of the African countries, Nigeria inclusive.
- 2) Notwithstanding international, regional, and national legislation coupled with regulations on the right to health, the right to health is neither justiciable nor enforceable in most African states such as Nigeria, India, Namibia, Uganda, Ghana, and Malawi because the constitutions of these countries provide for non-justifiability of the right.
- 3) The National Health Act, 2014 and Compulsory Treatment and Care for Victims of Gunshots Act, 2017 have not been able to curb the recurrent practice of mandatorily demanding for medical report/clearance from victims of gunshots before they are treated by the hospitals in contravention of the said Acts.
- 4) The practice of mandatorily requiring for Police Report/Clearance before accidents and gunshots victims can be given emergency medical treatments is a flagrant violation of the provision of the National Health Act, 2014 as there is nothing in the National Health Act or any other law whatsoever in Nigeria (Compulsory Treatment and Care for Victims of Gunshots Act, 2017 inclusive) that provides that a Police Report/Clearance must be produced before a victim of accidents or

gunshots could be treated by the health care providers.

5. Recommendations

The following recommendations are therefore suggested:

- 1) There should be a strong political will on the part of the government of Nigeria to stop and curb the practice of mandatorily demanding for Police Report/Clearance by the health care providers before victims of accidents and gunshots can be given emergency medical treatments. It is not enough to have strong and coherent body of laws and or regulations that are geared towards ensuring emergency medical treatments for victims of accidents and gunshots if there is no strong political will for its enforcement.
- 2) Compulsory Treatment and Care for Victims of Gunshots Act, 2017 should be amended to define the term ‘*substantial*’ in section 9 of the Act to prevent abuse. This is predicted on the fact that the Act failed, refused and or neglected to define what constitutes ‘*substantial*’. This tends to make the interpretation of the section problematic and same speculative and difficult to determine.
- 3) Medical practitioners and health centres like hospitals, clinics that are found wanting contravening the provisions of the National Health Act, 2014 and the Compulsory Treatment and Care for Victims of Gunshots Act, 2017 should be prosecuted and or sanctioned in line with the relevant extant laws as deterrent to others.
- 4) Victims of medical negligence should be duly compensated and rewarded maximally with a view to returning them to the status quo before the incidence occurs.

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