LEGAL RESPONSES TO EMERGENCY MEDICAL SERVICES IN AFRICA: EXPERIENCES FROM NIGERIA*

ABSTRACT

Sometimes, people suffer acute sickness or injury requiring immediate medical attention, to escape death or disability. These occur without prior notice, pronouncing premature death or survival in a matter of minutes. It implies that victims must receive right treatment where they are or nearby. It follows that necessary conditions must be put in place to handle this healthcare needs before they happen. These necessary conditions are known as Emergency Medical Services (EMS). Nigeria, assures her citizens of universal health coverage. This work examines the legal structure and financing of EMS in Nigeria. It adopts doctrinal research design methodology from analytical approach. It found that there are inconsistencies within and between the EMS legal frameworks as some are ambitious while others are deficient, affecting their effectiveness. It recommends the amendment and harmonization of laws and total state financing of EMS, if needless, untimely deaths are to be averted.

Keywords: Basic Minimum Package of Health Services, Emergency Medical Services (EMS), National Health Act, Nigeria

1 Introduction

Health is a vital aspect of life in the absence of which life will be short and its quality abysmally poor. This necessitated its recognition as a human right through treaties, to ensure accountability in its provision. Consequently, the African Commission held in *Purohit and Another* v *The Gambia*,[1] that enjoyment of right to health is fundamental to all aspects of life because it aids the realization of all the other human rights. Its significance is evident in its making the list of global goals in the Millennium

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[2003] AHRLR 96 (ACHPR 2003).

Development Goals (MDGs)[2] and subsequent Sustainable Development Goals (SDGs).[3] A Health Law Expert successfully linked all the SDGs to health, meaning that in the absence of right to health, none of the goals will be attained. [4]

Healthcare is a bundle consisting of different parts, whether it is viewed from the levels of care of primary, secondary and tertiary, or from care recipient of men, women, children, aged, or the type of care received. While it is beyond contention that healthcare is fundamental, some aspects seem to receive greater attention than others. Of these many aspects, Emergency Medical Service (EMS) is critical because while other healthcare needs avail practitioners of opportunities of getting them right through trial and error processes, it pronounces the result of harrowing death or survival chances in a matter of minutes. Nigeria's Second National Strategic Health Development Plan indicates that EMS includes 'trauma, obstetric emergencies, medical, surgical, pediatric and trauma-related emergencies'.[5] Undoubtedly, it follows that, anyone, irrespective of age, sex, economic or even health status could have an EMS need. It could be required by pregnant women, children, elderly men and women, among others. This means that even someone with perfect health condition could suddenly have an experience that will require EMS. Unfortunately, it is mostly not accorded its due place of importance.

That Nigerians die due to failure of EMS is no secret. The media is awash with news of deaths arising from sudden health attacks, fire disaster, flooding, building collapse, bomb blasts, insurgency, civil unrest, armed robbery, car and airplane accidents, epidemics, acute illnesses and domestic accidents, among others. Many of these deaths happen due to absence of EMS, being that it is unplanned. Research shows that 3 out of 4 Nigerians have experienced medical emergencies in the past 5 years.[6]

Study reveals that road accidents is a leading cause of preventable deaths in Nigeria.[7] In fact, Nigeria is ranked second highest in deaths from road accidents and other

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2 United Nations UN, 2015, 'The Millennium Development Goals Report 2015' Working Papers id:7222, eSocialSciences.

3 https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals.

4 O Nnamuchi 'The Sustainable Development Goals (SDGS) and the Right to Health: Is There A Nexus? (2020) 32(2) Florida Journal of International Law 147-181.

5 FMOH *Second National Strategic Health Development Plan* 2018-2022 (FMOH Abuja 2018) 27.

6 T Coker, 'Emergency Medical Services in Nigeria - First Response No Longer a Last Resort' < https://www.tchealthng.com/thought-pieces/emergency-medical-services-in-nigeria-first-response-no-longer-a-last-resort> accessed 20 December 2023.

7 PA Mac and others, 'Needs Assessment of Emergency Medical and Rescue Services in Abuja/Nigeria and Environs' (2019) 19(78) *BMC Emergency Medicine* 1.

emergencies. The reason is not far from the fact that on such happenings, the victims are left at the mercy of road users or even where the members of Federal Road Safety Corps (FRSC), tasked with maintenance of safety on roads, get involved, they usually lack EMS training and will transport victims to nearby hospitals in their vans.[8] Additionally, victims requiring EMS often die in hospitals due to absence of such services. For instance a group doctors had an accident in 2016 and many died at the first hospital due to absence of EMS personnel.[9] Supporting this claim, a research found that ineffective EMS in Nigeria causes 1 000 000 deaths annually.[10]

Delay in EMS will not only lead to deaths and fatalities in worst cases but in best cases will cause severe disability, increasing the eventual cost of accessing healthcare. Nigeria's EMS ill preparedness is highlighted in a study positing that emergency pre-hospital care reduces premature death by 25% while its absence results in the 75% of death in Emergency care units.[11] This EMS planning failure indicate that some victims die at the scene of the accident, others on the way to hospital and some at the hospitals if there are no infrastructure to handle such cases. This suggests that in cases of health emergency, victims ought to be stabilized and then taken to the hospital or where stabilization is impossible, have the condition effectively managed till their arrival at the hospital.

EMS failure is depicted in a mental picture painted by a medical doctor -'in Nigeria, most deaths are harrowing and lonely because the victims struggle and appeal, albeit silently, to live, but no one gives them a chance.'[12] This work is concerned with whether EMS as an aspect of healthcare services, is available to Nigerians in view of the extant legal framework. It is partitioned into five sections. The introduction is followed by a section on the definition, constituents and history of EMS, which describes and briefly traces the history of EMS in Nigeria. The third part peruses the

[8] A Awoyemi, 'EMS Around the World: Bare Bones—EMS in Nigeria <https://www.hmpgloballearningnetwork.com/site/emsworld/article/1223146/ems-around-world-bare-bones-ems-nigeria> accessed 19 December 2023.

[9] K Akintoye 'Six Medical Doctors Die In Road Accident In Kaduna' <https://www.channelstv.com/2016/04/25/six-medical-doctors-die-road-accident-kaduna/> accessed 12 December 2023.

[10] A Usoro and Others '*Perspectives on the Current State of Nigeria's Emergency Care System among Participants of an Emergency Medicine Symposium: A Qualitative Appraisal* (2021) 11(8*)* BMJ Open.

[11] T Coker (n 6).

[12] JS Ehiozua 'Nigerian Healthcare and Its Non-existent Medical Emergency Services' *ThisDay* <https://www.thisdaylive.com/index.php/2022/02/10/nigerian-healthcare-and-its-non-existent-medical-emergency-services/> accessed 3December 2022.

legal and policy framework of EMS at the international, regional and local levels. The fourth part evaluates the constraints embedded in the EMS framework, affecting its success in Nigeria. The last part makes recommendation on how to take advantage of the abundant domestic EMS provisions to ensure its availability and accessibility.

2 EMS IN NIGERIA

2.1 EMS Definition and Constituents

EMS has been variously described. For instance, it is said to be 'pre-hospital, in-hospital, and inter-hospital medical treatment rendered by EMS personnel to individuals who have suffered illness or injury in order to prevent loss of life, the aggravation of the illness or injury, or to alleviate suffering.'[13] It is a system of coordinated response and emergency medical care, involving multiple people and agencies. The Nigeria's Second National Strategic Health Development Plan describes it as a 'comprehensive system that coordinates resources (personnel, facilities, equipment, transportation and communication) for the effective organization and timely delivery of health and safety services to victims of severe and life threatening acute illnesses and injuries.'[14]

The South African Constitutional Court considered it in the case of *Soobramoney* v *Minister of Health KwaZulu-Natal*. *Soobramoney* needed renal dialysis and was of limited means. He applied for state funded dialysis program but was considered ineligible. He went to court seeking right to receive necessary treatment. The court, in refusing his application, distinguished between ordinary care and emergency care. It defined EMS as the dramatic, sudden situation or event, which is of a passing nature in terms of time. It emphasized its elements of suddenness and unexpectedness.[15] It includes basic and advanced emergency medical treatment and is therefore a special area of medicine that addresses urgent and potentially life-threatening issues with immediate medical care and treatment to prevent further complications.[16]

It involves a continuum of pre-hospital, hospital and rehabilitative care and the linkages between the components, managed by a crop of highly trained professionals in private and public agencies and organizations. The components are: a) pre-hospital personnel

[13] Law Insider 'Emergency medical treatment Definition' <https://www.lawinsider.com/dictionary/emergency-medical-treatment> accessed 6 December 2023.

[14] FMOH *Second National Strategic Health Development Plan* 2018-2022 (n 5).

[15] Soobramoney v Minister of Health, Kwazulu-Natal [1997] (12) BCLR 1696 (CC).

[16] Cornerstone Urgent Care Center 'What Is Emergency Medicine Treatment? < https://www.cornerstoneuc.com/2021/02/05/what-is-emergency-medicine-treatment/> accessed 6 February 2023.

of paramedics, paramedic technicians, paramedic nurses and paramedic physicians based on the level and type of Ambulance service; b) hospital physicians, nurses, therapists and other health workers; c) administrators and health managers; d) emergency Service infrastructure: i) emergency communication system, ii) ambulances in good working conditions, iii) equipped accident & emergency units, iv) emergency drugs and consumables, v) side laboratory, vi) mobile X-ray machines, etc. and e) an informed public that knows what to do in emergency situations.[17]

Its system is triggered by: i) calling of the Emergency Contact Centre (ECC) -112 by a member of the public, ii) ECC dispatches a suitable ambulance service closest to the incidence within its area of coverage, iii) The ambulance service provides resuscitative care and transfers the patient to definitive care center iv) The accident and emergency units of hospital/ health facility provide definitive care.[18]

2.2 History of EMS in Nigeria

The concept of EMS is of ancient origin and was typified in the biblical parable of the 'Good Samaritan' where a Samaritan on a journey stopped by to assist another traveler who was wounded by robbers, before continuing.[19]

Before mid-90s, ambulances were basically for carrying corpses and not for patients.[20] Later, EMS became a mark of political arrival with nonfunctional ambulances just to show that the governor of a particular state had joined the upwardly mobile states that could purchase ambulances and showcase it as having EMS. Lagos at a point became the only state in Nigeria with an organized state run EMS with a working public safety answering point (PSAP)/emergency communication center. However, workers were many times not exposed to organized trainings like basic life Support and advanced cardiac life support to enhance their skills.[21] It established the Lagos State Emergency Services (LASEMS) in 1998, comprising of two trauma centers and ambulance services. They were separated in 2001 and the ambulance service became the Lagos State Ambulance Services (LASAMBUS), increasing from 6 access points to now 25

[17] FMOH, Policy on Emergency Medical Services (PEMS) in Nigeria 2016 7 <https://www.health.gov.ng/doc/EMS%20Policy%202.pdf> accessed 10 December 2023; What is EMS? HTTPS://WWW.EMS.GOV/WHATISEMS.HTML

[18] FMOH, *Policy on Emergency Medical Services (*PEMS) Ibid 7.

[19] NE Emeka, 'The Legal Framework for Emergency Medical Care in Nigeria: Messiah or Mirage?' (2022) 4(2) *IJOCLLEP* 84.

[20] N Nwauwa 'Improving Care & Response in Nigeria' https://www.jems.com/operations/ambulances-vehicle-ops/improving-care-response-in-nigeria/> accessed 20 December 2023.

[21] A Awoyemi (n 8).

and a marine rescue unit. It also established a radio-communication network.[22] In 2002, Rivers state started EMS. This was followed by other states and private providers.

The 2014 National Health Act (NHA) allocated 5% of Basic Health Funds to EMS to be administered by a committee to be set up by the Minister and National Council on Health (NCH).[23] In 2016, the Federal Ministry of Health (FMOH), developed an EMS Policy.[24]In 2019, the NCH, inaugurated the EMS committee known as National Emergency Medical Treatment Committee (NEMTC).[25] The NEMTC with other stakeholders, developed Basic Health Care Provision Fund (BHCPF) Guidelines in 2020.[26] The BHCPF Guidelines set up EMS state committees- State Emergency Medical Treatment Committee (SEMTC) to among other things; transmit verified claims from providers to NEMTC for payment. It further provides that for a state to participate, it must i) set up SEMTC, ii) evidence 25% counter funding, iii) map EMS at the state level, iv) provide EMS infrastructure, equipment and personnel and v) have a functional state insurance scheme (SHIS) to expedite payment.[27] The terms for participation ensure that states are ready and capable of using the NEMTC fund for EMS. States are complying, including Ogun,[28] Anambra[29] and the Federal Capital Territory Authority for Abuja,[30] among others.

In 2021, the federal government through the FMOH, announced its plan to introduce the National Emergency Medical Service and Ambulance System (NEMSAS) to reduce

[22] T Coker (n 6).

[23] National Health Act 2014, s 11(3) (e).

[24] PEMS (n 17).

[25] B Akinola, 'FG Constitutes Emergency Medical Treatment Committee' *PRNigera* (Abuja, 6 February 2019) < https://prnigeria.com/2019/02/06/fg-constitutes-emergency-medical/> accessed 18 December 2023.

[26] NPHCDA, NHIS, NEMTC, *Guideline for the Administration, Disbursement and Monitoring of BHCPF* (NPHCDA Abuja 2020)

[27] *Ibid* 81.

[28] D Ojerinde, 'Ogun State Inauguarates Emergency Medical Treatment Committee' *Punch* (Lagos, 24 February 2022)<https://punchng.com/ogun-inaugurates-emergency-medical-treatment-committee/> accessed 18 December 2023.

[29] C Nwauba, 'Government Inaugurates 14-Man Emergency Treatment Medical Committee' <https://www.facebook.com/ANSGMoH/posts/government-inaugurates-14-man-emergency-treatment-medical-committee-by-chukwudi-/524175668955539/>accessed 18 December 2023.

[30] O Ajimotokan, 'FCTA Inaugurates Emergency Medical Treatment Committee' *This Day* (Abuja 20 December 2020) < https://www.thisdaylive.com/index.php/2021/06/10/fcta-inaugurates-emergency-medical-treatment-committee> accessed 18 December 2023.

mortality by nearly 50 per cent by reducing delays in physical and financial access especially at night. The services will involve 'prompt response to medical distress calls of all types with first responders, transfer to facilities, (and) assured first aid at the point of care at no immediate user cost'.[31] In February 2022, the FMOH signed a memorandum of understanding with the private sector and other stakeholders for the operationalization of the NEMSAS.[32]

Presently, EMS is run by public and private agencies and hospitals in Nigeria. While Nigeria seems to be on the path of getting EMS right, the pace seems slow, requiring the readjustment of the entry point-legal framework.

3 Legal and Policy Framework on EMS

Nigeria, being part of United Nations, joins other progressive nations in discussing health agenda, resulting in soft and hard laws. These form part of the discussions hereunder.

3.1 International Framework

Health as a human right was recognized in the first document crystalizing human rights –the Universal Declaration on Human Rights (UDHR).[33] It states 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 …" Subsequently, other international treaties and declarations recognized it. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR),[34] a global treaty on socioeconomic rights. The International Convention on the Elimination of all Forms of Racial Discrimination (CERD), specific, to eradication of racial discrimination, guarantees health.[35] Women are not left out as the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), protects this

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31 N Adebowale-Tambe, 'Nigeria to introduce emergency medical, ambulance services – Official' <https://www.premiumtimesng.com/news/top-news/454982-nigeria-to-introduce-emergency-medical-ambulance-services-official.html?tztc=1> accessed 20 February 2023.

32 T Coker (n 6).

33 Universal Declaration of Human Rights adopted and proclaimed by UN General Assembly Resolution 217A (III) (December 10, 1948) Article 25.

34 International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, article 12.

35 The International Convention on the Elimination of all Forms of Racial Discrimination (CERD) adopted and opened for ratification by General Assembly resolution 2106(XX) of 21 December 1965, entry into force 4 January 1969, art 5(e) (iv) provides for 'the right to public health, medical care, social security and social services.

right.[36] The Convention on the Rights of the Child (CRC), assures children of right to health.[37] The Vienna Declaration has as one of its commitments, called upon states to refrain from any action that will impede human rights particularly, right to health.[38]

Article 12 of the ICESCR is considered the most comprehensive global provision on the right to health.[39] Article 12(1) guarantee everyone right to the enjoyment of the highest attainable standard of physical and mental health and paragraph (2) (d) provides for the creation of conditions which would assure to all medical service and medical attention in the event of sickness. This condition will necessarily include EMS.[40] This position is supported by the World Health Organization (WHO)'s recognition of EMS as an integral part of functional health system.[41]

The Committee on the Economic, Social and Cultural Rights consistently advances the frontiers of article 12 and other provisions of the treaty through General Comments (GC).[42] Of particular attention to this work is GC 14, explaining article 12.[43] This right to healthcare is related to and dependent on the realization of other human rights.[44] Its normative content comprises freedoms and entitlements. While freedom include right to

[36] The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981,art 12 assures women of this right on the same basis of equality as men and in all aspects of reproduction.

[37] Convention on the Rights of the Child (CRC) adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, art 24 guarantees children the highest attainable standard o health with emphasis on diminishing infant and child mortality.

[38] Vienna Declaration and Program of Action adopted on 25 June 1993 by consensus by the representatives of 171 States attending the World Conference on Human Rights and subsequently endorsed by the United Nations General Assembly on 20 December 1993

[39] UN Economic and Social Council General Comment No. 14 on The right to the highest attainable standard of health (art 12 ICESCR) E/C.12/2000/4 of 11 August 2000, para 2; O Nnamuchi, 'Securing the Right to Health in Nigeria under the Framework of the National Health Act' (2018) *Med Law* 37(3) 481.

[40] J Uusitalo, 'The Challenges to the Emergency Medical Services to be Recognised as a Human Right in International Human Rights Law' (2020) 26.87.4 *Croatian International Relations Review* 88.

[41] FMOH *Second National Strategic Health Development Plan* (n 13).

[42] Every Treaty has a treaty Monitoring Body (TMB). One of the functions of a TMB is to adopt a General Recommendation (GR) or General Comment (GC). A GR/GC is an interpretation of the provisions of the specific treaty. When this is done and communicated to States Parties of the particular treaty, it becomes binding on them.

[43] GC 14 (n 39).

[44] *Ibid*, paras 4 & 3.

control one's health and body, entitlements include right to a system of health protection to enjoy highest attainable level of health.[45] It extends to timely and appropriate healthcare,[46]which is necessary for EMS as health protection and evidence of enjoying the right.

The GC recognizes emergencies like emergency obstetric services,[47] urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations.[48] It further explained that right to health facilities, goods and services to means provision of equal and timely access to basic preventive, curative, rehabilitative health services.[49] It is submitted that EMS relates to timely access of preventive care, so is envisaged here.

3.2 Regional Framework

Right to health is recognized in Africa by most African human rights instruments beginning with the African Charter on Human and Peoples' Rights (African Charter),[50] the African Charter on the Rights and Welfare of the Child (African Children's Charter)[51] and Protocol to the African Charter on the Rights of women in Africa (Maputo Protocol).[52] The African Charter, secures right to enjoy the best attainable state of physical and mental health. The African Children's Charter is similarly worded except that it includes spiritual health. Though neither of them mentioned EMS but it is inferable because anyone could require such service and when it is the case, it will be provided as part of healthcare services. The Maputo Protocol in guaranteeing African women's right to health, focuses more on reproductive health rights. Though EMS is not mentioned but it is implied especially of the obstetric nature in view of article 14 (2)(c) authorizing abortion where continued pregnancy threatens the life of a woman or foetus. Again, a woman exercising reproductive function could have accident or acute illness requiring EMS. It is taken for granted that the Protocol would envisage the provision of EMS when necessary as only the living and healthy women will exercise reproductive rights.

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45 *Ibid*, para 8.

46 *Ibid*, para 11.

47 *Ibid, para 14*.

48 *Ibid, para 16*.

49 *Ibid, para 17*.

50 Adopted and opened for signature, ratification and accession by Assembly of Heads of State and Government Decision 115(xvi) in Kenya 27 June 1981, entry into force 21 October 1986, art 16.

51 Adopted in Addis Ababa Ethiopia in July 1990 and entry into force November 1999, art 14.

52 Adopted by the 2nd Ordinary Session of the African Union General Assembly in 2003 in Maputo CAB/LEG/66.6 (2003) entered into force 25 November, 2005, art 14.

The WHO has it that Africa bears 25% burden of world diseases but less than 1% of health expenditure.[53] This dismal health spending is disheartening because African heads of states at Abuja made an earlier declaration to allocate 15% of its budget to health.[54] Though this declaration was made in a conference relating to HIV/AIDS, Tuberculosis and other infectious diseases specifically, it is probable that the allocation of such sum to health will have a positive outcome on all aspects of health. Unfortunately less than half of the states are yet to do this.[55]

3.3 Domestic Framework

Nigeria ratified international and regional treaties on right to health. According to Vienna Convention on Laws of Treaty, ratifying States are expected to refrain from acts that will defeat the purpose of ratified treaties.[56] The Committee on Economic, Social and Cultural rights (CESCR) made this duty more health specific in explaining that right to health is crucial to the attainment of other human rights and its realization will involve policy formulation and adoption of legal instruments.[57] Consequently, Nigeria adopted legal instruments and policies pertaining to health as a right generally and EMS specifically. This aspect of the work examines the contents of these documents.

3.3.1 EMS and Constitution of the Federal Republic of Nigeria 1999 (as Amended)

Nigeria is a democracy with a written constitution, in which is enshrined right to adequate medical and health facilities[58] without the mention of EMS, unlike other African countries like South Africa, Kenya, Egypt, Somalia, South Sudan, Sudan and Zimbabwe.[59] It is inferable that EMS is envisioned being that it requires health facilities. Medical and health facilities cannot be said to be adequate if those relating to EMS is lacking. Despite the provision of socioeconomic rights in chapter II of the Constitution, its justiceability has been a subject of serious arguments with experts on

[53] Africa Renewal, 'Health care: from commitments to action' < https://www.un.org/africarenewal/magazine/december-2016-march-2017/health-care-commitments-action> accessed 12 December 2023.

[54] Abuja Declaration on HIV/AIDS, Tuberculosis and other related Infectious Diseases 26-27 April 2001.

[55] Africa Renewal (n 53) only Botswana, Burkina Faso, Malawi, Niger, Rwanda and Zambia have attained the 15% set goal.

[56] Vienna Convention on the Law of Treaties adopted in 1969, entered into force on 27 January 1980, United Nations, Treaty Series, vol. 1155, p. 331 ar 18, 26.

[57] GC 14 (n 39) para 1.

[58] Constitution of the Federal Republic of Nigeria (Promulgation) Act, (as amended) 1999, Cap C23, Vol. 3, LFN, 2004, s 17 (3) (d).

[59] TW Burkholder et al, 'Governing Access to Emergency Care in Africa' (2020) 10(1) *Afr J Emerg Med* S2–S6.

both sides of the divide. The initial thinking was that it was not justiceable, but majority have moved away from this perspective, including the courts.[60] As if to clear every misconception on justiceability of socioeconomic rights particularly right to health, Nigeria formulated policies and enacted laws which confirm categorically, the existence of right to health in Nigeria.

3.3.2 EMS and National Health Policy

Nigeria has had three policies on health-the Nigeria National Health Policy of 1988,[61] this was revised in 2004[62] and the current National Health Policy of 2016.[63] Though the 1988 policy aimed at providing healthcare for Nigerians, the 2004 and 2016 specified that the vision is universal health coverage (UHC) and further pronounced that Nigerians have right to health.[64] Despite this stance, the 1988 and 2004 policies were silent on EMS, but NHP 2016, being a current document provides for EMS. It began with acknowledging the NHA 5% earmarked to EMS and the integration of robust referral mechanism especially emergency transport services.[65] The policies assure equity in health accessibility.

3.3.3 EMS and Child's Right Act

Nigeria, having ratified the CRC and the ACRWC, domesticated them by enacting the Child's Right Act of 2003.[66] This child-specific law embodying the three generation rights secures for Nigerian children, right to the best attainable state of physical, mental and spiritual health. It obligates the government to ensure the provision of necessary medical and health services.[67] It ordinarily follows that in providing necessary medical and health services, a child requiring EMS will get deserved attention, whether in or out of the hospital.

60 *Odafe & Ors v AGF & Ors* [2003] FHC/PH/CS/680.

61 Federal Ministry of Health (FMH), National Health Policy and Strategy to Achieve Health for all Nigerians (Lagos, Nigeria: FMH, 1988)

62 Revised National Health Policy (Abuja, Nigeria: FMH, 2004).

63 FMOH, National Health Policy (Abuja FMOH 2016).

64 O Nnamuchi, 'Securing the Right to Health in Nigeria under the Framework of the National Health Act' (n 39) 483.

65 NHP 2016 (n 63) paras 2.5, 4.1.3, 4.1.4, 4.2.2.

66 Child's Right Act 2003.

67 *Ibid* s13.

3.3.4 EMS and National Health Act

Nigeria enacted the National Health Act in 2014 which set a standard for regulating, developing and managing healthcare services.[68] It guarantees Nigerians right to health, similar to ICESCR.[69] It is currently the most comprehensive law on right to health in Nigeria.[70] It is aimed at universal health coverage and in keeping to that, assures Nigerians of different aspects of health, including EMS. It recognizes the essence of EMS, in insisting that the healthcare worker, provider and institution cannot deny anyone EMS for whatever reason. It makes the violation an offence punishable with fine payment of ₦100, 000.00 and or six months imprisonment.[71]

In the true spirit of EMS, NHA excuses the waiving of consent for it.[72] It is settled law that consent is required for a healthcare practitioner to commence a medical procedure or to continue with such a procedure.[73] This is premised on the principle of patient's right to dignity of human person. However, there are situations where it is impossible to obtain consent and EMS is one of such, as it usually requires urgent attention, the patient will most probably not be in a position to give consent and contacting her/his representative may be practically impossible.[74]

The NHA entitles all Nigerians to Basic Minimum Package of Health Services (BMPHS).[75] This is defined as 'the set of health services as may be prescribed from time to time by the Health Minister after consultation with the NCH.[76] This provision is a welcome development as it will keep Nigerians informed on core minimum healthcare services they can enjoy and serve as a yardstick for assessing development in this area in terms of their availability, accessibility and quality. While there is a

68 NHA, s 20.

69 Ibid ss 1(1) (c) & (e), (c) provide for persons living in Nigeria the best possible health services within the limits of available resources; (e) protect, promote and fulfill the rights of the people of Nigeria to have access to health care services.

70 O Nnamuchi, 'Securing the Right to Health in Nigeria under the Framework of the National Health Act' (n 39) 490.

71 NHA, s 20.

72 Ibid s 48 (1) (b).

73 PI Gbogbo & M Oke-Chinda, 'An Analysis of the Doctrine of Informed Consent in Nigeria's Healthcare Services' (2018) 69 *Journal of Law, Policy and Globalization* 15-25.

74 E Ripley and others, 'EMS Providers and Exception From Informed Consent Research: Benefits, Ethics, and Community Consultation' (2012) 16(4) *Prehosp Emerg Care* 427.

75 I NHA,, s 3(3).

76 Ibid s 64.

BMPHS contained in the BHCPF Guidelines of 2020,[77] Nigerians are confused on whether it is the one envisaged under the NHA because it tasks the Minister[78] to perform this duty and the obligation is not delegable.[79] Thus, the NEMTC BMPHS Guidelines cannot be said to be prescribed by the minister. Buttressing this assertion is a plea on the legislature to compel the Minister of Health to prepare a BMPHS, some two years after the BHCPF Guidelines.[80] There are several BMPHS on Minimum Standards for Primary Health Care (PHC),[81] and this is not surprising being that PHC is considered the cornerstone of Nigeria's healthcare delivery.[82]

Be that as it may, the PHC Minimum Standard identifies EMS as a component of PHC and basic emergency obstetric care as one of the services.[83] Paragraph 4.14 of the BHCPF Guidelines also recognizes EMS variously. Under the primary level of care, they include: bites and stings first aid and management not including anti venom serum for snake, scorpion, bees, spider (adult internal medicine); essential drugs for emergency obstetric care (maternal, Neonatal and child health services); airway assessment and use of airway adjuncts, basic airway aspiration and clearance), breathing assessment and use of simple equipment to aid and monitor breathing, pulse oximetry, bleeding control using compression dressing, haemodynamic stability assessment, intravenous line, fluid resuscitation, basic cardiovascular pulmonary resuscitation, unconscious patient assessment and management, small laceration suturing, fracture and cervical spine immobilization (first aid and emergency). For Secondary care level, they include: emergencies occurring outside usual residence or accredited healthcare provider; treatment and procedure included in the BMPHS that cannot be handled at the primary level; emergency treatment including anti venom serum for snake, scorpion, bees, spider (adult internal medicine); basic emergency and

77 NPHCDA, NHIS, NEMTC, *Guideline for the Administration, Disbursement and Monitoring of BHCPF* (n 26).

78 NHA, s 64.

79 Ibid s 62.

80 V Okeke, 'Improving access to basic minimum package of health services in Nigeria' BluePrint (Abuja 15 December 2022) < https://blueprint.ng/improving-access-to-basic-minimum-package-of-health-services-in-nigeria/> accessed 18 December 2023.

81 NPHCDA *Minimum Standards for Primary Health Care in Nigeria* (Abuja NPHCDA 2007) 4-5; NPHCDA/WHO *Ward Minimum Health Care Package in Nigeria*, 2007 – 2012 (Abuja NPHCDA 2007).

82 NHP 2016 (n 63) xii.

83 NPHCDA *Minimum Standards for Primary Health Care in Nigeria* (n 81) 17 & 47.

comprehensive obstetric care (obstetrics and gynecology): blood transfusion services up to 3 pints (laboratory investigation).[84]

Noticeably, some forms of EMS made the BMPHS lists. Additionally, the NHA established the BHCPF for financing different aspects of healthcare services.[85] It allocates 50% for the provision of BMPHS to Nigerians, through the National Health Insurance Scheme (NHIS), 45% for PHC related services and 5% for EMS.[86] Evidently, the importance of EMS is highlighted in that the NHA did not only recognize it, but allotted specific funds to it, thus paying it double attention.

3.3.5 EMS and Policy on Emergency Medical Services (PEMS)

Given the recognition of EMS in the NHA, it is natural that necessary resources for its implementation be put in place. One of these is the PEMS, developed by FMOH in 2016.[87] The devotion of a policy on EMS suggests that it is an important aspect of health that Nigerian government is interested in. While policies are like toothless bulldogs which can bark but not bite, they demonstrate at the least government's commitment to an issue. Unfortunately they remain willing tools devoid of enforceable power.[88]

The goal of PEMS is to reach those in need of urgent medical care from place of acute illness to definitive care while objectives are to establish EMS in Nigeria, regulate its operations, define stakeholders' roles, provide funding plan, and implement guidelines of NHA. It is tasked with the responsibility of integrating and coordinating national EMS providers. These include- FMOH as lead, National Emergency Management Agency (NEMA), FRSC, Paramedics' schools, Accident and emergency unit of all hospitals (A&Es), Trauma centers at different levels, EMS unit in Ministries, Departments and Agencies (MDAs), All levels of government health facilities, private health facilities and Non-Governmental Organizations (NGOs).
It reiterates the provision of NHA that EMS care is to be provided without demanding deposits and police reports.[89] Noting the relevance of funding to EMS, it leans on the NHA 5% stipulation. It further called on NHIS to put in place EMS benefit packages.

84 NPHCDA, NHIS, NEMTC, *Guideline for the Administration, Disbursement and Monitoring of BHCPF* (n 26).46-53.
85 NHA, s 11.
86 *Ibid* s.11(2)(e).
87 PEMS (n17).
88 UP Okeke, 'Realising the Right to Procreation: Responses to Female Infertilityin Africa' (LLM Thesis UOVS 2007) 48.
89 PEMS (n17) para 5.8.

This NHIS specific EMS package will completely solve the problem of financing and alleviate facilities' fear of not being paid.[90]

Realizing that no system is perfect, it provides for sanctions and appeals in paragraph 8.0. These could be on acts such as malpractice, negligence, abuse of patient's confidentiality, noncompliance with regulations and misconduct. The sanctions include payment of fines and suspension or withdrawal of operating license. These are handled at the three levels -minister for health for the federal, commissioner for the state and district medical officer at the local government level. These 3-level sanctioning will ensure quick resolution of disputes. Its conclusion that Nigeria's best preparation for any incident is the implementation of the comprehensive PEMS is not only striking but factual.[91]

3.3.6 EMS and Compulsory Treatment and Care of Victims of Gunshot Act (CTCVG)[92]

Dealing with specific form of EMS, this law will reduce to the barest minimum, the number of deaths from gunshots emergencies. It ensures that victims of gunshots do not die from the bureaucracy of initial payment and provision of police reports before getting treated in hospitals whether private or public. It compels immediate and adequate treatment of gunshot victims.[93] However, the hospital has a duty of reporting to the nearest police station within 2 hours of commencement of treatment. This shows that the law expects such report after the victim has been stabilized and saved from the hands of death. The law prioritizes life. This view is supported by section 4 which insists that such victim can only be invited for investigation when the Chief Medical Director declares him fit for such. It punishes anyone who stands by and allows such victim die a needless death with 5years imprisonment and or N500 000:00 (Five hundred thousand naira fine).[94] However, any offence that causes victims' physical, mental and psychological damage attracts maximum imprisonment of 15 years and minimum of 5 years, without a fine option.[95] It is possible for an offender to be punished under the two sections if death is considered physical damage. It also protects helpers of gunshot victims, insulating them from indignity of unnecessary and

[90] Ibid para 6.0 & 6.3.
[91] *Ibid* 9.
[92] Compulsory Treatment and Care for Victims of Gunshots Bill, SB 247, 2017.
[93] *Ibid* s 1.
[94] *Ibid* s 11.
[95] *Ibid* s 9.

embarrassing interrogations.[96] This law ensures that Nigerians remain good Samaritans in cases of emergencies resulting from gunshots.

3.3.7 EMS and Patients' Bill of Rights[97]

The Consumer Protection Council (CPC), an agency set up by the government to protect Nigerian people, in collaboration with FMOH, developed the Patients' Bill of Rights (PBoR). It is a collection of the rights of patients, as contained in different laws, rules and codes. While the PBoR did not create any new right, it specifies the existing ones for ease of reference. It is made in user friendly and pictorial format for the benefit of all Nigerians irrespective of the literacy level. This is unique and evidences the interest in the rights of patients.[98]

It lists 12 rights, one of which is access to emergency care. It provides that emergency care must not only be urgent but sufficient and prioritized over payment and police report requirements. It imposes on the provider the duty of immediate evaluation of emergency cases and maintenance of sufficiently efficient 24- hour uninterrupted emergency unit. Foreseeing that these rights may be violated, the PBoR reemphasizes patients' rights to complain in cases of dissatisfaction and abuse. It mandates facilities to encourage patients to ask questions and maintain record of complaints and redress procedure while keeping the patients informed of the onset of such redress.

3.3.8 EMS and Guidelines on Basic Health Care Provision Fund

The NHA created the Basic Health Care Provision Fund (BHCPF) and allocated 5% of funds to EMS to be administered by NEMTC. The BHCPF is multi funded from sources including federal government annual grant of not less than one percent of its consolidated revenue fund.[99] The NHA did not only identify EMS as a minimum core available to Nigerians but assures of its economic accessibility.

96 *Ibid* s 8.

97 CPC & FMOH *Patients' Bill of Rights* <www.cpc.gov.ng>accessed 20 Decemberb2023.

98 Z Hashim 'Patients' Bill of Rights: Making health a human right in Nigeria' *Premium Times* (Abuja 14 April 2019) < https://www.premiumtimesng.com/news/headlines/325291-patients-bill-of-rights-making-health-a-human-right-in-nigeria.html?tztc=1> accessed 15 December 2023.

99 A Owoseye 'Buhari Rolls out Basic Provision Fund' Premium Times 8 jan 2019 < https://www.premiumtimesng.com/health/health-news/304833-buhari-rolls-out-basic-health-care-provision-fund.html?tztc=1 > accessed 15 December 2023 the Federal government provided N55 Billion, the 1% Consolidated Revenue Fund to cater for the BHCPF in fulfillment of the National Health Act, 2014. International partners such as the World Bank, Bill and Melinda Gates Foundation, and USAID are also contributing to the Fund.

On inauguration, NEMTC joined other named stakeholders -the National Primary Health Care Development Agency (NPHCDA) and NHIS to develop BHCPF Guidelines in 2020,[100] aimed at implementing section 11 of NHA, though the gateways can make protocols for its achievement as long as it does not contradict the NHA or this Guideline.[101] Its overall objective is to ensure the provision of BMPHS and EMS as well as strengthen PHC.[102]Specifically for EMS, it aims to achieve effective EMS in the 36 states and FCT in 5 years, reduce out of pocket payment (OOP) by 30% in 5 years, and increase life expectancy to 60 years in 10 years.[103] The terms of reference of NEMTC include administration of the 5% of BHCPF, establishment of additional innovative funding stream, developing recovery mechanism, coordination and regulation of EMS, monitoring and evaluation of EMS providers, public education on prevention and EMS access.[104]

According to EMS Guideline, the justification for EMS 5% is to guarantee reimbursement for EMS providers. The plan is to stabilize and transport the patient to a health care facility, and guarantee payment for up to the first 48 hours of care, or until financial responsibility is established and assumed by the patient, family, employer or other means.[105] It provides 3 ways of cost recovery-first for those with insurance coverage, the receipt will be sent to their Health Management Organizations (HMO), for those without insurance and can pay, will get direct invoice while those without insurance and cannot pay will go to NEMTC.[106]

3.3.9 EMS and National Health Insurance Laws

The PEMS rightly noted that without funding, EMS will not be achieved. This funding will cover its provision and access by individuals. Health is mainly accessed in Nigeria through OOP or user fees.[107] Wealth is unevenly distributed and relying on OOP hampers the attainment of universal health coverage because the differential economic power makes healthcare inaccessible. Further, right to health emphasizes equality of

100 NPHCDA, NHIS, NEMTC, *Guideline for the Administration, Disbursement and Monitoring of BHCPF* (n 26).
101 Ibid *29.*
102 Ibid *19.*
103 Ibid *25.*
104 Ibid *82-83*
105 Ibid *para 6.2.*
106 Ibid *87.*
107 O Nnamuchi, 'The Nigerian Social Health Insurance System and the Challenges of Access to Health Care: An Antidote or a White Elephant' (2009) 28 *Medicine and Law* 126.

access to services as states have an obligation to provide insurance for those lacking sufficient means, especially with respect to the core obligations of the right to health.[108] To surmount this, Nigeria introduced social insurance through insurance laws. Nigeria has had two national legislations on insurance. The first was National Health Insurance Scheme Act of 1999(NHISD).[109] The NHISD came with laudable objectives, some of which are relevant to the present study – i) ensure that every Nigerian has access to good health care service; ii) protect families from the financial hardship of huge medical bills; and iii) ensure equitable distribution of health care costs among different income groups. This decree established the Scheme to provide affordable health insurance for Nigerians and empowered it to among other things, issue necessary guidelines.[110] Its execution began with an Operational guideline of 2005 but was later replaced with that of 2012 which increased the programs.[111] The 1999 Act had three programs i) formal sector ii) informal Sector consisting of voluntary and community based and iii) vulnerable Group. This law though detailed, had its shortcomings, some of which are voluntary contribution breeding adverse selection and inequitable coverage.[112]

It was replaced by the National Insurance Health Authority Act (NHIAA) of 2022.[113] It changed the implementing body from Scheme to Authority[114] with its head as Director General and Chief Executive Officer [115]and replaced programs with schemes.[116] It makes insurance compulsory[117] for all Nigerians and legal residents and empowers the Authority to enforce it.[118] The Authority shall also enforce BMPHS across all health insurance schemes operating at the national, states and FCT[119] and implement BHCPF.[120] It established a novel, vulnerable group fund for the provision of healthcare

108 GC 14 (n 39)para 19.
109 National Health Insurance Scheme Act No 35 of 1999..
110 Ibid, ss 1 & 6(b).
111 NHIS, *National Health Insurance Policy Operational Guidelines* 2012 (NHIS Abuja).
112 O Nnamuchi, 'The Nigerian Social Health Insurance System and the Challenges of Access to Health Care: An Antidote or a White Elephant' (n 107) 160.
113 National Health Insurance Authority Act No 17 (NHIAA) of 2022.
114 *Ibid* s 1.
115 *Ibid* s 40.
116 *Ibid* s 13.
117 *Ibid* ss 14, 13(5), 15(2) & 24 .
118 *Ibid* s 3b
119 *Ibid* s 3(c).
120 *Ibid* s 3e.

services for vulnerable persons.[121] With the improvements introduced by the NHIIA, it is hoped that Nigeria will move away from the present meager coverage to a more generous one like what obtains in Rwanda which has reached 91% of insurance coverage, unlike other African countries, struggling with less than 10%.[122]

Given the provisions of the framework discussed in this section, it is certain that Nigerians have the right to EMS preserved. It may be difficult to say that a nation has all the laws on an issue as change is constant. For instance, Nigeria will need a bystander or Good Samaritan law and not the single provision relating to CTCVG Act. However, in view of the foregoing, Nigeria could be said to have near sufficient laws to ensure at the least, normal enjoyment of the right to EMS. This is laudable but the real question is whether these documents live up to their claims.

4. Appraising the Workability of Nigeria's EMS Legal and Policy Framework

Generally, there could be a plethora of reasons for the non-enjoyment of right to EMS. They include non-implementation of EMS Laws,[123] for instance PEMS leaving out private EMS providers an acknowledged major stakeholder in its design,[124] and omission of CSO in the NEMTC/SEMTC composition, despite the BHCPF mandating their involvement for observation and reporting.[125] Another factor relates to the failure to establish operational guidelines as is the case with NHIAA,[126] PBoR,[127] NEMTC[128] and BHCPF[129] as of December 2023. The next is the non-review within stipulated time for instance PEMS should be reviewed five yearly,[130] but is yet to be done some seven years after. Other reasons are corruption, inadequate health determinants like bad roads fueling heavy traffic, inadequate facilities and demand for deposits by private

121 *Ibid* ss 25 & 26.

122 Africa Renewal (n 53).

123 O Olajide, 'Enforcing Emergency Medical Treatment Laws' *Punch* (Lagos, 10 October 2023) < https://punchng.com/enforcing-emergency-medical-treatment-laws/> accessed 18 December 2023.

124 PEMS (n 17) 7 para iv.

125 NPHCDA, NHIS, NEMTC, *Guideline for the Administration, Disbursement and Monitoring of BHCPF* (n 26)*79, 80 & para 2.5.*

126 NHIAA (n 113)s 13(4).

127 Z Hashim (n 98) the PBoR till date has no guideline that will at the least inform Nigerian patients on the route to accessing EMS what to do when this is violated.

128NPHCDA, NHIS, NEMTC, *Guideline for the Administration, Disbursement and Monitoring of BHCPF* (n 26).*90.*

129 Ibid *29.*

130 PEMS (n 17) para 9.0.

hospitals,[131] lack of communication between first responders and hospitals and awareness of Nigerians on EMS availability and their role.[132] There are also insufficient trained EMS professionals despite the duty on NCH to develop guidelines for manpower development.[133]

However, this work is not focused on the usual problems as listed above but considers factors inherent in the legal framework that are capable of impeding the attainment of EMS.

4.1 Conflicting Provisions

There are many provisions on EMS but NHA is the most authentic, being an Act. In recognizing it as a patient's right, permits no refusal by using the word 'shall not refuse a person EMS for any reason whatsoever.' This conveys compulsoriness, admitting no exceptions. Penalizing its violation confirms its absoluteness.[134] The PBoR echoes this. Despite these abundance of evidences, the NHA in its interpretation section imports and defines a term not used anywhere in the Act by stating 'reasonable cause means any extenuating circumstance that prevents the healthcare provider, health worker or health establishment from providing EMS to a person.'[135] Interpretation section is used for clarifying contents of a law for ease of understanding and corrects uniform application.[136] In confirmation, the Blacks Law dictionary defines interpretation clause as a section of a statute defining words frequently used in other sections.[137] It is here submitted that this importation violates the essence of interpretation section and conflicts with specific provisions of NHA, alluding to carelessness capable of distorting the groundbreaking law.

Again, the NHA guarantees right to health in unmistaken terms, yet the NHP of 2016, a later provision insists that 'stakeholders in the health sector shall advocate for a review of the Constitution of the Federal Republic Nigeria, 1999, as amended, to make health

131 Sector Insight 'Liability & Risks During Emergency Care – Issues & Options' <https://legal.businessday.ng/2019/08/06/liability-risks-during-emergency-care-issues-options/> accessed 10 December 2023.

132 T Coker (n 6).

133 NHA ss 41& 44.

134 NHA(n 65).

135 NHA, s 64.

136 O Bilous, & P Liutikov 'The Concepts and the Essence of Interpretation of Law (2021) *7*(1), *Baltic Journal of Economic Studies*140.

137 Henry Campbell Black & Ors, *Black's Law Dictionary* (6th edn, West Publishing Co USA, 1990) 818.

an enforceable right in Nigeria'.[138] This is inexcusable because the Supreme Court long held in the case of *AG Ondo State v AG Federation & 35 Ors*,[139] that when the National Assembly enacts a specific law on any part of chapter II of the Constitution, it becomes justiceable. It is submitted that this is elementary knowledge and if policy makers exhibit a misunderstanding of this, it is unlikely that ordinary citizens would understand it and it will affect the implementation of the law.

The PBoR provides that patients have right to urgent, immediate and sufficient intervention in emergency cases and such is to be prioritized over cost payment, even in cases of inevitable service interruption.[140] However, it still maintains that in the event of an emergency, the patient has the duty of demonstrating ability and intention to pay for the services.[141] The question is how will a patient in an emergency situation demonstrate ability or intention to pay? The work submits that provision is not only confusing but not in tandem with the spirit of the law.

The BHCPF Guidelines a later document noted that there is no system to coordinate EMS responses[142] which task the PEMS earlier stated it would do.[143]
Additionally, the NHIAA set up the Authority as its implementing body and another body called the Governing Council. Their memberships are different and housed in different sections. Regrettably, their functions overlap in a manner that is capable of breeding confusion, dereliction of duty and waste of resources.[144] It also mandates

[138] NHP 2016 (n 63) para 5.3.
[139] [2002]9 NWLR (pt772) 222.
[140] PBoR (n 97)10.
[141] Ibid 3.
[142] NPHCDA, NHIS, NEMTC, *Guideline for the Administration, Disbursement and Monitoring of BHCPF* (n 26)*24.*
[143] PEMS (n 17)7,9&11
[144] NHIAA (n 113) ss 3 &5; section 3(a) is equivalent to section 5(d)-section 3(a) the Authority is to promote, integrate and regulate all health insurance schemes operating in Nigeria while in section 5(d) the Council is to regulate and supervise the various health insurance schemes established under the Act; section 3(f) is similar to 5(a&g)- in section 3(f), the Authority is to accredit and reaccredit and monitor the performance of Health Maintenance Organizations, Mutual Health Association, Third party administrators, healthcare facilities while in 5(a) the Council approves and register for the Authority, Third party administartors in any form; (g) the Council approve, license, regulate and supervise Health Maintenance Organizations, Mutual Health Association and other institutions relating to the authority as may be determined; section 3(h) is similar to 5(j)- in section 3(h) the Authority provide or require the establishment of mechanism for receiving and resolving complaints by members of the scheme and healthcare facilities, Health Maintenance Organizations, Mutual Health Association and Third party administer while in section 5 (j) the Council receive and investigate complaints of impropriety against Health Maintenance Organizations, Mutual Health Association and other relevant institutions; section 3(s) is similar to 5(h)- in section 3(s) the Authority regulate all health insurance schemes in Nigeria in accordance with the provisions of the Act while in section 5(h) the Council establish standards, rules and guidelines for the management of the various schemes under the Act;

insurance for all Nigerians and legal residents and tasks states and FCT with the implementation for residents while paying special attention to vulnerable groups. Surprisingly, it introduced permissiveness with the word 'may' as it relates to mandatory insurance, fueling confusion at the actual intention,[145] about compulsoriness of insurance.

4.2 Misrepresented Provisions

The PBoR by its nature is an illustrated congregation of patient's rights serving as quick reference. It must be updated to reveal the latest development. For instance, while restating the right to urgent and immediate EMS, it insists that 'Patients shall recognize that emergency treatment and prioritization do not mean a waiver of obligation to pay for services.' The way it is couched conveys a wrong message to an unenlightened EMS provider, especially a private one to prioritize payment. This is contrary to BHCPF Guidelines of government's guaranteed 48 hours payment. This position was buttressed by the Health Minister at the inauguration of NEMTC, that 'the key point here is that when treating Nigerians of injuries from road accidents, people should not border about who will pay the bills because under this scheme, the government is ready to take care of the entire Nigerian constituency.'[146]

4.3 Ambitious Provisions

Some provisions seem too ambitious. For instance PEMS insisting that all private health facilities must have EMS unit,[147] the PBoR raised the standard by insisting on efficient 24 hour uninterrupted emergency unit in these facilities. Considering what it takes to put in place and the necessary social determinants like uninterrupted power supply, good roads, among others, this provision seems to be too tall an order. PEMS

section 3(z) is similar to 5(k)- in section 3(z) the Authority sanction erring parties in accordance with the operational Guidelines while in section 5(k) the Council discipline by way of temporary suspension, revocation of license or imposition of fine to any erring Health Maintenance Organizations, Mutual Health Association, health facilities or any other institutions.

145 NHIAA (n 113)s 13(1).

146 B Akinola, 'FG Constitutes Emergency Medical Treatment Committee' (n 25).

147 PEMS (n 17) para 5.8.

also insists that communication between responders and hospitals are to be by personal GSM.[148] This seems to have neglected hitches of calling card and that workers are to be availed with working tools which for an EMS provider will include call card units.

4.4 Ineffectual Provisions

The NHA provides that the Minister 'may' make regulations.[149] This permissive tone could be the reason for the absence of EMS regulations, making it difficult to monitor and evaluate the development envisaged by the law. NHA ought to have mandated this duty with a timeline within which it will be carried out.

PEMS provide for sanctions and appeals to be handled by the minister for health at the federal, commissioner for health at the state and district medical officer at the local government areas. Yet appeals are to be had to the same offices. This offends the doctrine of natural justice as the imposer of sanction cannot take the appeals on the same sanctions because of bias.[150] Supporting this, the Supreme Court held that real likelihood of bias is sufficient to constitute bias.[151]

The NHIAA repealed the 1999 NHISD, which ordinarily includes its 2012 Operational Guidelines. The NHIAA makes room for the development of its own guideline. While this is not a problem, the fact that it has not happened for over one year, meaning that the NHIAA will remain inoperable till the guideline is developed. It could have retained the old one till the new is formulated.[152] This is discouraging because the NHIAA is considered remarkably novel in the federal government's prioritization of EMS.[153]

4.5 Deficient Provisions

Despite the innovations of the PBoR, it made no room for complaint procedure. This is indefensible because CPC is tasked with protecting Nigerian consumers. What is the use of a right if there is no enabling environment for its enjoyment? The PBoR tasks patients to complain of abuse first in line with the complaint mechanism of the facility, secondly to regulatory authority and thirdly to CPC where they are dissatisfied. The first question is how many Nigerians know regulatory bodies of healthcare

148 Ibid 25.
149 NHA, s 59.
150 Ese Malemi *The Nigerian Constitutional Law* (3rd edn, Princeton Publishing, Lagos, 2012) 236,359.
151 Yabugbe v COP [1968] 1 All NLR 306@ 312.
152 NHIAA (n 113) s 58.
153 T Coker (n 6).

professionals? For instance where a radiographer abuses the rights of a patient, how many Nigerians know where to go? It is even worse because the PBOR exemplified regulating authority as Medical and Dental Council of Nigeria (MDCN) as if doctors are the only healthcare professionals in a facility. It missed an opportunity to educate Nigerians on the existence of various healthcare professionals.

Compelling dissatisfied patients to come to CPC only where regulatory authorities fail, is making the complaints system tedious and rigid because some complaints may be rejected for not following the due process of facility to regulating authority to CPC. The CPC in line with its mandate ought to take these complaints. Doing this will be easier because being an agency of government, it has wider spread. Further, being a neutral body, it will better protect complainants than the facility or regulatory authority which may be biased.

5 Conclusion

This work considered EMS framework on two fronts, the first is its recognition as an aspect of healthcare services and the second is its financing. The two fronts are like Siamese twins as the absence of either, will hamper the other's attainment. The NHA created the National Health system providing Nigerians the best possible health services within the limits of available resources.[154] This System comprises the public and private health service providers within which the spirit of co-operation and shared responsibility is encouraged.[155] Public and private provision of EMS is legally rooted. The NHA, doubly funds EMS by allocating 5% to it and 50% to NHIS, which BMPHS covers some aspects of EMS. It follows that 5% specific EMS allocation will not fund the EMS contents of BMPHS, because that is already funded by NHIS. This seems to be the reason the EMS items on BMPHS are not costly.[156] Where these funds are conscientiously spent, it will not be difficult for private providers to get money for services rendered for at the least first 48 hours as stated in BHCPF.

Further, the NHA, empowers the exemption of some Nigerians from payment for health services and urges NCH to ensure the widest possible catchments for the health insurance scheme throughout the federation,[157] while the NHIAA makes insurance compulsory. Their community reading implies that EMS could be made totally free for Nigerians if it makes the list of payment exempted healthcare services. Such waiver is

[154] NHA (n 23) s 1(1) (e)&(c).
[155] Ibid ss 1(1) (a) & (b).
[156] NPHCDA, NHIS, NEMTC, *Guideline for the Administration, Disbursement and Monitoring of BHCPF* (n 26)*27*.
[157] NHA (n 21) s 40.

not impossible in view of its specific funding, especially considering the sanction-threat for non-provision. It will be more effective, if rights to EMS access will be respected protected, promoted and fulfilled,[158] as it will perpetually alleviate providers' fear of nonpayment by indigents. This importance is underscored by a South African EMS expert who alluded that it 'must remain the exception to the realization of any progressive political, economic or legal development policy.'[159]

Healthcare aids national security because the higher the care citizens receive, the greater the national stability and economic productivity.[160] In the absence of EMS, universal health coverage will remain a mirage. While many factors impede the enjoyment of EMS, in Nigeria, it is more of a legal than implementation failure. Since the legal framework is the entry point, its laxity, remains the chief problem. Being the foundation for programs, it is of utmost and urgent importance that it be addressed by making the existing ones building blocks for the new, harmonization to remove existing misrepresentations, repealing the deficient, amending the ineffectual, ambitious and conflicting provisions.

As EMS system must be available when needed, easily accessible, affordable and tailored to the society's socio-economic status,[161] there is need for awareness creation of the harmonized legal framework for the overall effect of achieving the set goals. Otherwise, how can a people demand for a right under a law they are not aware of? It is akin to the biblical saying 'if they call, they will be saved but to call they must receive, to receive, they hear the word, to hear the word, one must be sent'.[162] The legal framework is preaching EMS rights but how many Nigerians are hearing this good news? Is it an impossible task to put the information in major Nigerian languages and the new media? In view of abundant EMS legal framework, anything less will be likened to Bob Marley's 'in the abundance of water, a fool is thirsty.[163]

[158] A Yusuf 'Horror of Nigeria's dysfunctional emergency medical services (PART 2)' https://www.icirnigeria.org/horror-of-nigerias-dysfunctional-emergency-medical-services-part-2/ accessed 10 December 2023.

[159] E Kramer, 'No One May Be Refused Emergency Medical Treatment' – Ethical Dilemmas in South African Emergency Medicine' (2008) 1(2) *SAJBL* 55.

[160] Lawal YZ, and Others, 'Nigerian health care: A quick appraisal' (2017)20 *Sahel Med J* 79-88.

[161] NNwauwa (n 20).

[162] Holy Bible King James Version Romans chapter 10 verses 13-15.

[163] B Marley 'Rat Race' < https://www.boomplay.com/lyrics/3069614> accessed 20 December 2023.