ESTABLISHMENT OF THE OFFICE OF HEALTH CARE OMBUDSPERSON: A MEANS TO ENSURING ACCOUNTABILITY FOR HEALTH CARE IN NIGERIA

A dissertation submitted in partial fulfillment of the requirements of the degree LLM (Sexual and Reproductive Rights in Africa)

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PLAGIARISM DECLARATION

I, Maryanne Nkechi Obiagbaoso, declare that the work presented in this dissertation is original. It has not been presented to any other university or institution. Where the work of other people has been used, it has been duly acknowledged.

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DEDICATION

This work is dedicated to Almighty God. His infinite mercy and love made this work possible.

It is dedicated to the loving memory of my sweet mother, Late Eugenia Obiagbaoso who did not live to see the woman I have become. I love you more and will continue to make you proud.

It is dedicated to my loving husband, Emmanuel Udegbunam and my family for your unconditional love, support, encouragement and inspiration. All these and more kept me going throughout the course.

To my daughter, Mmesomachukwu Genevieve Udegbunam, I dedicate this work to you for always being there from the beginning of the programme and never being a hindrance to its actualization.

To all the African women who are hoping that someday their reproductive health rights will be recognised, respected and protected, I dedicate this work to you as we look forward to a better world for women.

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LIST OF ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
African Charter	African Charter on Human and Peoples' Rights
BHCPF	Basic Health Care Provision Fund
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CFRN	Constitution of the Federal Republic of Nigeria
CRC	Convention on the Rights of the Child
ICESCR	International Covenant on Economic, Social and Cultural Rights
HMO	Health Maintenance Organisation
HO	Health Ombudsman
HPCSA	Health Practitioners Council of South Africa
HQCC	Health Quality and Complaints Commission
NHA	National Health Act
NHAA	National Health Amendment Act of 2013
NHIS	National Health Insurance Scheme
NHP	National Health Policy
NHISA	National Health Insurance Scheme Act
NRS	National Relay Service
OHO	Office of the Health Ombudsman
OHSC	Office of Health Standards Compliance
SDGs	Sustainable Development Goals
TIS	Translating and Interpreting Service
UN	United Nations
Universal Declaration	Universal Declaration of Human Rights

UHC	Universal Health Coverage

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ABSTRACT

The research work generally looks at the importance of the office of health care ombudsperson. It proposed the establishment of the Office of Health Care Ombudsperson in Nigeria as a means of ensuring accountability for the realisation of full reproductive health care rights by Nigerians. This was done by looking at the national and international laws guaranteeing the right to health in Nigeria, the general concept of the ombudsperson and the success of its establishment in other jurisdictions.

It further highlighted how establishment of the Office of Health Care Ombudsperson will help improve the health care system, prevent the same problem from repeating itself and how it will make reproductive health care services better. The research work also provides an insight for governments at all levels of the Nigerian federation to have a critical consideration on establishing a separate authority like the office of health care ombudsperson so as to address complaints relating to health care service and thereby fulfilling their international obligations under international and regional laws.

The research work is structured to answer one main question and three sub-questions. The main question is how can the establishment of the health ombudsperson's office ensure accountability for reproductive health care in Nigeria? The sub-questions are structured to answer firstly, what is the importance of establishing the office of health care ombudsperson? Secondly, how can the negligence of healthcare professionals be addressed by the health care Ombudsperson? And lastly, what will be the benefit of resorting to health care Ombudsperson as against litigation? The research work therefore attempted to answer all three questions and make recommendations for the establishment of the office of the health care ombudsperson in Nigeria.

ESTABLISHMENT OF THE OFFICE OF HEALTH CARE OMBUDSPERSON: A MEANS TO ENSURING ACCOUNTABILITY FOR HEALTH CARE IN NIGERIA.

CHAPTER ONE: INTRODUCTION

1.1 Problem Statement

One of the problems facing women in Nigeria is the fact that countless women's reproductive health right have been abused resulting in high incidences of maternal mortality and morbidity. Access to adequate health care services and facilities is deteriorating and no one is answerable or punished for them. The bedrock for this problem is the Constitution of the Federal Republic of Nigeria (as amended)[1] which did not give paramount consideration to the right to health.

The Constitution of the Federal Republic of Nigeria (CFRN) (as amended) in its entirety did not expressly provide for the right to health as a fundamental human right as contained in sections 17-32 irrespective of the very important nature of the right to health to human life. Fundamental rights have always been guaranteed in Nigeria's Constitution since the 1960 Constitution up to the 1999 Constitution (as amended) but have failed to include the right to health care. However, the Fundamental Objective and Directive Principles of State Policy became part of Chapter II of the Constitution with provisions that require the Government to pursue policies that are targeted at meeting certain economic, social, political and cultural objectives.[2] An important part of this commitment is the requirement to ensure the health, safety and welfare of all persons in employment and provision of adequate medical and health facilities for all persons.[3] A remedy to this vacuum is the National Health Act of 2014 that provides for the protection, promotion and fulfillments of the rights of individuals to access health care services.[4]

The right to health care can be more fully realised if there is an established Office of the Health Care Ombudsperson. According to Encyclopedia, "Health Service Ombudsman is an official

[1] Constitution of the Federal Republic of Nigeria of 1999 Cap C23 Laws of the Federation of Nigeria 2004.
[2] Constitution of the Federal Republic of Nigeria of 1999 sec 17(c)&(d). This constitutional provision is generally thought to be unenforceable and unjusticiable having regard to sec 6(6)(c) of CFRN.
[3] EB Omoregie & D Momodu 'Justifying the right to health care in Nigeria: Some comparative lessons' (2014) 12 *The Nigerian Juridical Review* 14.
[4] National Health Act of 2014 of Nigeria sec 1(1)(e).

responsible to parliament, who is appointed to protect the interests of patients in relation to administration of and provision of health care by the National Health Service."[5] Also, "an Ombudsman, Ombudsperson or Ombud is an official who is charged with representing the interest of the public by investigating and addressing complaints of maladministration or a violation of rights."[6]

It is essential to have a health Ombudsperson in Nigeria as it will aid the investigation of complaints on health rights violations by health care professionals and attempts will be made to resolve them through recommendations. These recommendations will promote and protect the rights of individuals thereby improving the safety and quality of health service in Nigeria. Current violations include situations where women are detained in hospitals and made to suffer degrading and inhuman treatments due to inability to pay hospital bills after childbirth.

Countries like South Africa and Brazil were ableto address some health care violations through the offices of the Health Ombudsperson. In South Africa, the Office of the Health Ombud was able to expeditiously address complaints of patients' mismanagement and patients'rights violation in the Eastern Cape by making recommendations for the report of and suspension of erring Doctor to the Health Professions Council of South Africa for serious professional misconduct and violations of 'codes' of health practice so as to safeguard the wellbeing of patients and their right to confidentiality.[7] In Brazil, the Municipal Health Ombudsman established in 2009 in the State of Minas Gerais, Southeastern Brazil, has been able to ensure access to healthcare services, resolve health problems, listen and clarify issues regarding Brazilian Unified Health Systems operations and procedures, foster an effective health policy and represent citizens in other to protect their right to health care.[8]

1.2 Research Aim and Objectives

[5]Encyclopedia.com 'Health service Ombudsman, a Dictionary of nursing' https://www.encyclopedia.com/caregiving/dictionaries-thesauruses-pictures-and-press-releases/health-service-ombudsman (accessed 15 March 2019) 1.
[6] Wikipedia 'Ombudsman' https://en.m.wikipedia.org>wiki>omb (accessed 15 March 2019) 1.
[7] Office of the Health Ombud 'Release of the report "Into allegations of patient mismanagement and patient rights' violations at the Tower Psychiatric Hospital Rehabilitation Centre" in the Eastern Cape' http://healthombud.org.za/release-of-the-report-into-allegations-of-patient-mismangement-and-patient-rights-violations-at-the-tower-psychiatric-hospital-and-psychological-rehabilitation-centre-in-the-easter/ (accessed 16 March 2019) 1.
[8] RCC Silva et al 'Ombudsman in health care: Case study of a municipal health Ombudsman (2014) 48 *Rev Saude Publica* http://www.scielo.br>scielo (accessed 16 March 2019) 1.

The research will look generally at the importance of the office of health care Ombudsperson as its main subject of examination. It will also propose the establishment of the Office of health care Ombudsperson in Nigeria as a means of realizing full reproductive health care by Nigerians. This will be done by looking at the success of its establishment in other jurisdictions.

However, the main aim of this research will be to highlight the importance/relevance of the Health Ombudsperson in advancing reproductive health rights in Nigeria.

The research has three main objectives which are:

1. to examine the scope and limitations of the powers of the health care ombudsperson in the delivery of their functions;
2. to advocate for the creation of the office of the health care Ombudsperson as a strong agency in ensuring transparency and accountability in the delivery of reproductive health care services in Nigeria; and
3. to expound on how the health care Ombudsperson safeguards the rights of individuals against maladministration, and abuse of power or violations of fundamental human rights by public authorities, health practitioners and health service organisations.

1.3 Research Questions

The research seeks to answer one main question and three sub-questions.
The main question is: How can the establishment of the health ombudsperson's office ensure accountability for reproductive health care in Nigeria?
The sub-questions are:

a. What is the importance of establishing the office of health care ombudsperson?
b. How can the negligence of healthcare professionals be addressed by the health care Ombudsperson?
c. What will be the benefit of resorting to health care Ombudsperson as against litigation?

1.4 Research Methodology

The proposed research analysis will mainly be a desktop research which will rely on primary sources of information like national legislation, case law, treaties and relevant secondary sources of information like textbooks, journals and internet sourced information. As there is no law establishing the office of health care ombudsperson in Nigeria, reliance will be placed on how it was established in other jurisdictions. However, it will be impracticable to carry out a

survey of all the countries, therefore countries like South Africa and Queensland, Australia will be examined to justify the need for its establishment in Nigeria.

The research will also give an in-depth analysis of the general role of an Ombudsperson and how the office of the health ombudsperson will address violations of reproductive health rights.

1.5 Significance of the Research

The significance of the research will be to analyse the relevance of the health care Ombudsperson with the sole intention of proposing its establishment in Nigeria. It will further highlight how the health ombudsperson will help improve the health care system and prevent the repetition of the same problem. It will also serve as an insight for governments at all levels of the federation to have a critical consideration on establishing a separate authority like the office of health care Ombudsperson so as to address complaints relating to health care service and thereby fulfilling its international obligations under the African Charter on Human and Peoples' Rights.

1.6 Literature Review

There is no literature advancing for a distinct establishment of the office of health care ombudsperson in Nigeria. Most of the available literature gives special attention to the roles of the ombudsperson and on how complaints are received and investigated. For instance, Kroening, Kerr, Bruce and Yardley[9] gave analysis of the kind of complaints received by the Ombudsperson's office to include complaints commonly focused on staff attitude and treatment. They made emphasis on the failure of medical personnel to recognise a patient's health deterioration as a form of early warning system that would have been prevented if acted upon. These analyses also buttressed the fact that the Ombudsperson's office has been able to mitigate such issues.

Also, Chike and Madumelu[10] wrote extensively on the role of the Public Complaint Commission in Anambra state of Nigeria which they classified as an ombudsperson established to address several categories of complaints from Nigerians. However, they did not delve into the need to

[9]HL Kroening et al 'Patient complaints as predictors of patient safety incidents' (2015) 2*Patient Experience Journal https://pxjournal.org/cgi/viewcontent.cgi?article=1052&context=journal* (accessed 27 October 2018) 95.
[10] O Chike & M Madumelu 'The Ombudsman and administration of justice in Nigeria: A study of Anambra State; 2010-2015' (2017) 22 *IOSR Journal of Humanities and Social Science*www.iosrjournals.org/iosr-jhss/papers/Vol.%.2022%20Issue4/...5/F2204054057.pdf (accessed 30 November 2018) 40-41.

establish a separate Ombudsperson's office that will specifically address health care issues in Nigeria.

In comparing the Ombudsperson's role in Nigeria with that of the United Kingdom and Australia, Obodo and Anigbata[11] still made references to the Public Complaints Commission that was established in Nigeria by Decree No. 31 of 1975. The 1975 Decree was amended by the Public Complaints Commission Decree No. 21 of 1979. The 1979 Decree stated that the Public Complaints Commission is the Ombudsman's office charged with the responsibility of receiving and investigating complaints in Nigeria. Obodo and Anigbata's article is also silent on the need to have a separate Ombudsperson's office for reproductive health care services delivery complaints.

Silva, Marcelo and Paola[12] analyzed the role of a Municipal Health Ombudsman in Brazil and the advantages to public health management. They highlighted how the complaints received by the health ombudsman have human rights implications. They were also of the view that the complaints made to the health Ombudsman indicated difficulties that health care users face in accessing health care services. These difficulties run the risk of being perceived as a hindrance to gaining accessibility to health care services without consideration of the principle of social justice. Their study also shows that the Ombudsperson is a key management body in monitoring the activities in the health care system thereby promoting transparency and accountability. Also, establishing an Ombudsperson's office constitutes advancement in democratic development though it has its own challenges in terms of its jurisdiction and exercise of power. Silva, Marcelo and Paola's literature also makes references to the establishment of the Ombudsperson in countries like the United States and other European countries.

Mirzoev and Kane[13] gave an analysis of the strategies for the improvement of the Ombudsperson which Nigeria can borrow a leaf from in the effective establishment and management of the health service Ombudsperson.

[11] NA Obodo & DO Anigbata 'Comparison of Ombudsman in Nigeria, the United Kingdom and Australia to determine operational nexus for global best practices' (2017) 5 *Journal of Management and Social Sciences* http://www.journal.gouni.edu.ng/index.php/frnss/article/view/77/54 (accessed 20 November 2018) 55-69.

[12] Silva et al (n 8 above).

[13] T Mirzoev & S Kane 'Key strategies to improve systems for managing patient complaints within health facilities – what can we learn from the existing literature?' (2018) 11 *Global Health Action https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5912438/* (accessed 28 November 2018) 1.

The implication of the above literature is that majority of the scholars focused on the roles of the ombudsperson, their challenges and receipt of complaints. The literature however, did not make emphasis on the establishment of the office of a health care ombudsperson in Nigeria.Therefore this research will go beyond what other literature has posited to include the advantages of a distinct health care Ombudsperson's office in Nigeria as against litigation. Recommendations will be made for its establishment in Nigeria so as to ensure accountability in reproductive health care service delivery in the country.

1.7 Chapter Outlines

The research work is divided into five chapters. Chapter one contains the introduction, background and the justification for the research. Chapter two examines the legal framework on the right to health in Nigeria and the gaps in the legal frameworks. Chapter three gives an overview of the health care ombudsperson including their roles, methods of receiving and treating complaints and their functioning in other jurisdictions. Chapter four looks at how the offices of the health care Ombudsperson were established in countries like South Africa and Queensland and how Nigeria can tap from their strategies. Finally, chapter five contains the conclusion and recommendations for the possible establishment of the Health Service Ombudsperson's office in Nigeria.

CHAPTER TWO: THE LEGAL FRAMEWORKS ON THE RIGHT TO HEALTH IN NIGERIA

2.1 Introduction

The right to health being an agreed human right standard that is inseparable from the other rights is central and includes both freedom to control one's sexual and reproductive health right

and entitlements like health protection.[14] For the right to health to be promoted and protected, laws and policies on health must be put in place. Also, institutional arrangements have to be generated for the implementation of laws and policies. Nigeria through the ratification of international human rights instruments committed to ensure that the highest attainable standard of health is enjoyed by its citizenry without any form of discrimination.

In fulfillment of her obligations, laws and policies have been created to ensure that the right to the highest attainable standard of health is enjoyed. Though these laws have been able to guarantee the right to health, they have also been unable to address some fundamental issues that will lead to the effective realisation of the right.

In the subsequent paragraphs, an attempt will be made to examine the legal frameworks providing for the right to health in Nigeria and also their gaps. This will be premised on legislation and case law that speak to the issue of the right to health in Nigeria.

2.2 The right to health under international law

The right to health is clearly spelt out under international law. It encompasses the broad concept of health and the obligation of States to ensure that the right is protected. The right to health was first mentioned in article 25 of the Universal Declaration of Human Rights (Universal Declaration) of 1948[15] and was proclaimed by the UN General Assembly as a common standard for all humanity. Though the definition given by the Universal Declaration did not give the components of the right, it however goes beyond health care.

Subsequent to the Universal Declaration is the International Covenant on Economic, Social and Cultural Rights (CESCR) of 1966.[16] It provides the most comprehensive article on the right to health in international human rights laws. Article 12(1) of CESCR provides that "the States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" It explained clearly the concept of the right to health and defines steps that States should take to realise the "highest attainable standard of health."[17]

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[14] Committee on Economic, Social and Cultural Rights General Comment No.14 on art 12, The right to the highest attainable standard of health E/C.12/2000/4 para 8.

[15] Universal Declaration of Human Rights of 1948 available at '*https://www.ohchr.org › NewsEvents › Pages › DisplayNew*s (accessed 5 September 2019).

[16]International Covenant on Economic, Social and Cultural Rights (CESCR) of 1966 available at *https://www.ohchr.org › professionalinterest › pages › cesc*r (accessed 5 September 2019).

[17] AE Yamin 'The right to health under international law and its relevance to the United States' (2005) 95 *Journal of Public Health* 1156.

The UN Committee took a step further to clarify what the right encompasses. According to the UN Committee on Economic, Social and Cultural Rights' (Committee on ESCR) General Comment No 14[18], the right to health is not just a right to be healthy but includes the freedom to control one's sexual and reproductive health, the freedom to be free from torture and non-consensual medical treatment. It also includes entitlements like the right to health protection with equal opportunity for people to enjoy the highest attainable standard of health.

The Committee on ESCR went further to state that the right to health includes four basic components which States are expected to apply for the attainment of the right.[19] These components require health care facilities, goods and services to be functional and made available in adequate quantity within a state. It also requires health care facilities, goods and services and information to be physically accessible to all persons including children, persons with disabilities, women and older persons without any form of discrimination. The third component requires that health care facilities, goods and services must respect medical ethics and be culturally acceptable by individuals, sexual minorities and be sensitive to gender requirements. Finally, health care facilities, goods and services must be scientifically and medically suitable and of good quality. That is, it requires trained health professionals to be in health facilities, drugs to be scientifically accepted and of good standard, adequate hygiene and unexpired drugs and hospital equipments.

The right to health is also guaranteed in other international human rights instruments. These includethe African Charter on Human and Peoples' Rights (African Charter) 1981,[20] Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol) of 2003,[21] the African Charter on the Rights and Welfare of the Child of 1990,[22] the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) of 1979,[23] the Convention on the Rights of the Child (CRC) of 1989,[24] the International Convention on the

[18] n 14 above.
[19] n 14 above, para 14.
[20] Art 16 of the African Charter, 1981.
[21]Art 14 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol), 2003.
[22] Art 14 of the African Charter on the Rights and Welfare of the Child, 1990.
[23] Art 11(1)(f) and art 12(2) of the Convention on the Elimination of all forms of Discrimination Against Women, 1979.
[24] Art 23 and 24 of the Convention on the Rights of the Child (CRC), 1989.

Elimination of All Forms of Racial Discrimination 1965,[25] and the Convention on the Rights of persons with Disabilities of 2006.[26]

Nigeria has ratified these international human rights instruments and has therefore committed to ensure the enjoyment of the highest attainable standard of health. The State is expected to take steps to put necessary health care facilities, goods and services in place for the enjoyment of all.

2.3 The Constitution of the Federal Republic of Nigeria (CFRN)

The CFRN is the fundamental norm of Nigeria and from which every other law derives its validity. Nigeria has had several Constitutions from 1914 up until 1999. The first Constitution was enacted by Order in Council during the colonial era in 1913 and it came into force on 1 January 1914 when Nigeria was administered as a Crown Colony.[27] Subsequent constitutions were approved and promulgated in 1922, 1946, 1951 and 1954 respectively.

In 1960, Nigeria's first Constitution as a sovereign state was enacted and it came into force on 1 October 1960 upon Nigeria's independence. However, on 1 October 1963, Nigeria became established as a federal republic through the enactment of its 1963 constitution (first Republic).Other constitutions were enacted in 1979 and 1993 ushering in the Second and Third Republic respectively. In order to restore democratic rule in Nigeria, the 1999 Constitution was enacted (though with three amendments) and remains in force to date.

The 1999 Constitution (as amended) provides for fundamental rights in Chapter IV but did not expressly provide for the right to health as a fundamental right irrespective of the very important nature of the right to health to human life. However, the Fundamental Objective and Directive Principles of State Policy became part of Chapter II of the Constitution with provisions that require the Government to pursue policies that are targeted at meeting certain economic, social, political and cultural objectives.[28] An important part of this commitment is the requirement to ensure the health, safety and welfare of all persons in employment and provision of adequate medical and health facilities for all persons.[29] However, these constitutional provisions cannot

[25] Art 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965.
[26] Art 25 of the Convention on the Rights of Persons with Disabilities, 2006.
[27] OVC Ikpeze 'Constitutionalism and development in Nigeria: The 1999 Constitution and role of lawyers' (2010)1 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 227.
[28] Omoregie & Momodu (n 3 above).
[29]Constitution of the Federal Republic of Nigeria of 1999 sec 17(c)&(d)).

be brought before the Court for adjudication to compel the government to comply with it because they only serve as a guide and are unenforceable and non-justiciable. The bedrock for the non-justiciability of this provision is section 6(6)(c) of the CFRN which provides that:

> The judicial powers vested in accordance with the foregoing provisions of this section – shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

The non-justiciability of section 17(c) and (d) of the CFRN has been supported by the court in plethora of cases. In the case of *Okogie (Trustees of Roman Catholic Schools) and others v Attorney General, Lagos State*,[30] the Court of Appeal interpreted the constitutional provision on the right to health. The Court stated that:

> While section 13 of the Constitution makes it a duty and responsibility of the judiciary among other organs of government, to conform to and apply the provisions of Chapter II, section 6(6)(c) of the same Constitution makes it clear that no court has jurisdiction to pronounce on any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear therefore that section 13 has not made Chapter II of the Constitution justiciable. I am of the opinion that the obligation of the judiciary to observe the provisions of Chapter II is limited to interpreting the general provisions of Constitution or any other statute in such a way that the provisions of the Chapter are observed, but this is subject to the express provisions of the Constitution.

In *Attorney General, Ondo State v Attorney General of the Federation*,[31] the Supreme Court held that the provisions of Chapter II of the Constitution cannot be enforced until the National Assembly enacts a specific law for their enforcement. According to the Court, the provisions of Chapter II remain mere declarations that cannot be enforced by a legal process but would be seen as a dereliction of duty and responsibilityby state organs if they act in disregard of its provisions.

[30] [1981] 2 NCLR 337.
[31] (2002) 9 NWLR (Pt 772) 222.

The constitutional provision of section 6(6)(c) of the CFRN is an exclusion to the jurisdiction of the court with regards to the provision of section 17 of the CFRN. The implication of section 17 and section 6(6)(c) of CFRN is that the Constitution does not expressly include the right to health in its provisions and same cannot be challenged in the court because it is unenforceable. Therefore, the unenforceability and non-justiciability of section 17 serves as a barrier to the realisation of the right to health in Nigeria because the court which has the power to adjudicate has been denied the power to adjudicate on health right violations. Irrespective of this non-justiciability clause, the right to health can be enforced through other provisions of the CFRN. For instance, the right to life[32] as provided in Chapter IV of the CFRN is an essential component of the right to health and can be used to advance the right to health.

The obligation of States to adopt "all positive measures to reduce infant mortality and to foster life expectancy, especially by adopting measures to eliminate malnutrition and epidemics"[33] is considered in most cases to be offering protection of the right to life and right to the highest attainable standard of health. The backdrop against this is the fact that if the right to health is not achieved and adequately provided for, then the right to life will be said to have been jeopardized by the State.Also, in the case of *Femi Falana v. Attorney-General of the Federation*,[34] an application to secure the right of the applicant to life and health was dismissed by the Federal High Court in Abuja on the ground that section 17 of CFRN which guarantees the right to health is not justiciable.

2.4 The National Health Insurance Scheme Act

The National Health Insurance Scheme Act (NHISA) was enacted in 1999 to provide for a National Health Insurance Scheme (NHIS).[35] NHIS is a regulatory body that supervises the operation of health insurance in Nigeria and became effective in 2005.The NHIS is aimed at ensuring effective healthcare services to Nigerians at an affordable amount through the sharing of the expenses associated with the health care of individuals and also to secure Universal Health Coverage (UHC).[36]

[32] Constitution of the Federal Republic of Nigeria of 1999 sec 33.
[33] Human Rights Committee General Comment No. 6 on article 6, The right to life HRI\GEN\1\Rev.1 para 5.
[34] Suit No. FHC/IKJ/CS/M59/10.
[35] National Health Insurance Scheme Act of 1999 sec 1(1).
[36]n 35 above, sec 5(a-j).

The scheme is made up of three different programmes that address different segments.[37] The first segment of the scheme addresses the formal sector social health insurance programme. This comprises of the federal, state and local governments inclusive of the organised private sector. The second segment addresses the informal sector social health insurance programme and comprises of community based social health insurance programme and voluntary contributions. The third segment is the vulnerable group social health insurance programme. It covers persons with disabilities, prison inmates, children under the age of five, refugees, victims of human trafficking, internally displaced persons, immigrants and pregnant women.

The mode of operation of these segments is such that health services are addressed from the funds pooled by employers and employees. The healthcare facility, Health Maintenance Organisation (HMO) and NHIS are expected to carry out certain responsibilities for the effective implementation of the scheme. The healthcare facility is expected to be accredited with NHIS and abide by the regulating guidelines for delivery of healthcare services which includes preventive, curative and rehabilitative services.

The HMO is expected to market health insurance plans that are approved and ensure continuous sensitisation of enrollees, ensure quality assurance of healthcare facilities, timely approval of referrals, follow up on referrals, timely financial payments to healthcare facilities and effect necessary returns to NHIS. NHIS is expected to put in place, standards for the programme and accredit healthcare facilities and the HMO. NHIS is also expected to carry out periodic reviews in order to know the rates to be contributed by the government, payment rates to service providers and the technical support for the implementation of the programme.

However, the scheme which was introduced fourteen years ago has failed to achieve its desired objectives as it has only been able to cover 1.5% of the Nigerian population.[38] The scheme had always operated in favour of the federal and state government staff leaving out the informal sector and the vulnerable group who till date pay out of their pockets for their healthcare services. The reason for the poor implementation of the scheme can be traced to the fact that the scheme made health insurance contribution optional for the public and private sector, and employers decide whether to adopt the scheme or not unlike the pension scheme that was made

[37] National Health Insurance Scheme *https://nhis.gov.ng/* (Accessed 28 May 2019).

[38]'Nigeria: National Health Insurance (NHIS) and Matters Arising' *Daily Trust* 17 July 2017 *https://www.dailytrust.com.ng › Latest* Posts *(accessed 30 May 2019).*

mandatory by law. The desire to achieve UHC will only be possible if NHIS is made compulsory through the rule of law.

Also, the scheme took cognisance of civil servants and their families overlooking that only few populations of Nigerians are civil servants thereby leaving out people in disadvantaged conditions and pregnant women who still have to pay for their maternal and child health care services. Furthermore, the scheme did not define the coverage population nor outlined funding mechanism for the vulnerable group. The scheme did not outline ways of getting funds from the informal sector (though they are not fully integrated into the scheme).

From the foregoing, it is clear that the factors contributing for the failure of NHIS are inadequate legal framework for a successful scheme, poor implementation of the Act; poor government funding of health care and the health insurance scheme, optional enrollment policy, inappropriate practices by the regulatory agency, the HMO and the service providers and lack of political will.

According to Christina Campbell:

> These factors have hampered the attainment of the objectives of the scheme as only about 3% of Nigerians have access to medical care. About 97% of Nigerians are uncovered and among these are the less privileged and other vulnerable groups. These less privileged and vulnerable groups are not protected from financial hardship of huge medical bills. There is still a high out of pocket payment in Nigeria. The out of pocket expenditure as part of our Total health Expenditure is still about 64%.The high percent of Nigerians purchasing care out of pocket are exposed to fluctuations in the price of services unlike health insurance with a definite premium and price for services. It becomes difficult to control or limit the rise in the cost of health care services when a large proportion of the population is outside the control of the scheme.[39]

2.5 The National Health Act

The National Health Act (NHA) was enacted on 31 October 2014.This was consequent on the failure of the CFRN to adequately provide for the right to health care. The NHA provides for the regulation, development and management of the nation's health system. It sets standard for the delivery of health care to Nigerians through the Basic Health Care Provision Fund (BHCPF) by

[39] 'Failures of Nigerian Health Insurance Scheme: the way forward' *The Guardian* 18 January 2018, https://guardian.ng/.../failures-of-nigerian-health-insurance-scheme-the-way-forward (Accessed 20 May 2019)

the extension of primary health care to all Nigerians. The NHA provides for the protection, promotion and fulfillments of the rights of individuals to access health care services.[40]

The NHA, which was enacted five years ago, has not really been implemented due to poor knowledge of the NHA by medical professionals and members of the public and also due to the failure of the government to issue the certificate of standard as required by the NHA to hospitals. The full implementation of the NHA is also a necessary step to the realisation of UHC.

Specifically, the law demands funding from the federal government with counterpart funding from state and local governments for guaranteed basic minimum health care package for all. For the first time in five years, the funding has been captured in the 2019 federal budget that was passed on 28 May 2019 wherein N51.22billion is provisioned for the implementation of the NHA.[41]

The Act is divided into seven parts. Part one[42] provides for the responsibility for health, eligibility for health services and establishment of National Health System. Part two[43] provides for health establishments and technologies. It gives the Minister the power to regulate, coordinate and classify health establishments and technologies. The NHA also makes provision for health establishments, health agencies and technologies to be issued a certificate of standard failing which such establishment, agency or technology cannot operate after twenty four months preceding the commencement of the Act.[44] This requirement has led to the non-implementation of the Act because the implication for hospitals not having the certificate of standard in Nigeria is that they are operating illegally. Since the Act was adopted, no hospital has received the certificate of standard.

Part three[45] of the Act provides for the rights and obligations of health care users and health care personnel which include the duty of health provider to ensure confidentiality, keep record and provide full knowledge of a health condition or procedure to a patient or patient's family. Part four[46] of the Act provides for National Health Research and Information System for

[40] n 3 above.
[41] Budget Office of the Federation, Ministry of Budget and National Planning 'Citizen's guide to understanding FGN's 2019 Budget of Continuity' (2019) 27.
[42] (n 4 above), sec 1-11.
[43] (n 4 above), sec 12-19.
[44](n 4 above), sec 13.
[45](n 4 above), sec 20-30.
[46](n 4 above), sec 31-40.

collection of data and information of every health condition, treatments and procedures. It also provides detailed information on how the National Council on Health should ensure the catchment for the National Health Insurance Scheme (NHIS).

Part five[47] of the Act provides for the human resources for health through the development of a policy and guidelines for the recruitment, capacity building and distribution of well trained staff at health facilities in other to meet the health needs of Nigerians. Part six[48] provides for the control of use of blood, blood products tissue and gametes in humans while part seven[49] provides for the regulation of the Act and miscellaneous provisions.

Irrespective of the purpose of the NHA which is to provide adequate health care for Nigerians by seeking to reduce maternal and infant mortality rate through the provision of free delivery services to pregnant women in the nation's health facilities, it has failed to make provision for abortion. The death rate of women in Nigeria which results from complications arising from unsafe abortions is not addressed by the NHA which tends to achieve UHC. It was thought that the NHA will have some provisions on cost-free abortion in the nation's health facilities in an attempt to address the issue of maternal mortality arising from unsafe abortions.

2.6 Health Policies in Nigeria

Apart from legislation, some health policies have been put in place by the federal government to further advance the realisation of the right to health in Nigeria. Some of these health policies are the National Policy on the Health and Development of Adolescents and Young People in Nigeria of 2007[50] approved by the federal government with the objective of encouraging advocacy efforts for increased political will and resource allocation for young people's health and development programmes and interventions. There is also, the National Reproductive Health Policy approved by the federal government in 2010[51] with the aim of ensuring the availability and accessibility to full sexual and reproductive health quality services and information.Other health policies are the National Health Policy (NHP) of 2017,[52] National policy

[47](n 4 above), sec 41-46.
[48](n 4 above), sec 47-58.
[49](n 4 above), sec 59-65.
[50] Federal Ministry of Health, Abuja 'Assessment Report of the National response to young people's sexual and reproductive health in Nigeria' (2009) www.actionhealthinc.org › publications › docs › Assessment Report of Na*t…* (accessed 27 September 2019) 9.
[51]Issuelab 'National Reproductive Health Policy' (2015) *https://www.issuelab.org › resource › national-reproductive-health-poli*cy (accessed 29 July 2019) 1.
[52] World Health Organisation'Nigeria: Country corporation strategy at a glance'(2018) *apps.who.int › iris › bitstream › ccsbrief_nga_e*n (accessed 25 September 2019).

on the sexual and reproductive health and rights of persons with disability with emphasis on women and girls of 2019[53] and the National strategic framework for the elimination of obstetric fistula in Nigeria 2019-2023[54].

These policies have been designed by the federal government in order to address emerging issues and to adopt evidence-based practices that have been implemented at scale to address the sexual and reproductive health challenges of adolescents and women including persons living with disabilities in Nigeria.[55] However, for want of space, only the NHP will be discussed in this research because the NHP reflect new realities that includes the unfinished program of the Millennium Development Goals, the new Sustainable Development Goals and rising health issues like epidemics. Also, the NHP is a reflection of Nigeria's renewed commitment to UHC and globalisation.

2.6.1 The National Health Policy

The Nigerian National Health Policy (NHP) is the third NHP in the history of Nigeria. The first NHP was approved in 1988 while the second NHP was approved in 2004.The 1988 and 2004 NHP were developed at a time when Nigeria Health System was at critical stages and there was need to improve the health system.

Due to lapses like inadequate provisions to address the weak Nigerian health system, lack of financial risk protection, unresponsive health system provisions, inadequate provisions to mitigate inequality in accessing services that are hindered by variations in socio-economic status and low geographical coverage, the Federal Executive Council approved a new NHP in 2017. The aim of the new NHP is to promote the health right of Nigerians and also to fast track socio-economic development in Nigeria. The 2017 NHP was first approved by the National Council on Health before its subsequent approval by the Federal Executive Council. The essence for a new policy is to accommodate emerging trends for the attainment of UHC, comply with the Sustainable Development Goals (SDGs), and reflect the country's context, the challenges and to address what went wrong in the previous policies and therefore reposition the Nigeria Health sector.[56]

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[53] 'Nigeria: Government launches eleven policies on reproductive health, others' *Daily Trust* 24 April 2019, https://allafrica.com>stories (accessed 30 June 2019).
[54] n 53 above.
[55] n 53 above.
[56] This is stated by Professor Isaac Folorunso Adewole, Honourable Minister of Health in the forward to the Revised National Health Policy of 2017.

According to the Minister of Health, Prof. Isaac Adewole:

> This new policy will provide directions necessary to support the achievements of significant progress in terms of improving the performance of the national health system. It also lays emphasis on primary healthcare as the bedrock of our national health system in addition to the provision of financial risk protection to all Nigerians particularly the poor and vulnerable population.[57]

The policy captures the measures for reducing maternal and child mortality, it provides for a wider immunisation coverage and better control and prevention of public health emergencies. However, the policy failed to provide for safe abortion as a means of curtailing unsafe abortion which contributes to the high rate of maternal mortality in Nigeria. Also, the NHP has established solid and evidence-based mechanisms and guidelines for Nigeria to extensively improve the health status of all its citizens to enable them live fully healthy and fulfilling lives but has not in any way provide for mechanisms that will address health sector complaints.

2.7 Conclusion

This chapter has concentrated on the legal frameworks on the right to health in Nigeria and the gaps inherent in them. It gives an overview of the relevant laws on health and the challenges in actualising the intendments of the laws. It highlights how health care provisions are made without full provision for their actualisation and adjudication.

Section 17 of the CFRN in tandem with section 6(6)(c) of the CFRN has been discussed. Though section 17 provides for the right to health, section 6(6)(c) has made such important right non-justiciable as Nigerians cannot enforce same against the government in court.

The NHISA as discussed in this chapter has good intentions though it has failed to cover the informal sector and the vulnerable groups through its optional provision. However, suggestions have been made for a review of the law in order to make it mandatory for the informal sector and vulnerable groups by repealing the optional provision.

[57] FG approves new National Health Policy' *Punch News* 15 February 2017, https://punchng.com/fg-approves-new-national-health-policy/ (accessed 29 May 2019).

The NHA and the NHP have also been assessed as a law and policy that have come to mitigate the hardship of CFRN and NHISA. However, they still did not make provision for abortion rights or a distinct office charged with the sole responsibility of addressing health care problems.

The appraisal of the legal frameworks on the right to health has shown the inconsistency and disagreement between the CFRN and the other health laws. Therefore, the government should fast track efforts aimed at reviewing the CFRN and other laws in other to achieve UHC in Nigeria and also meet the SDGs.

CHAPTER THREE: OVERVIEW OF THE HEALTH CARE OMBUDSPERSON

3.1 Introduction

In a bid to prevent unethical practices in public and private services, the European continent was the first to conceive the need to establish the first office of the ombudsperson. The office of the ombudsperson was believed to be a strategic instrument for safeguarding the public from maladministration and wrongful practices (inclusive of wrongful practices in the health sector) which will in turn enthrone a self-check on public and private services. It was hoped that the office of the ombudsperson would aid in enforcing accountability, prevent corrupt practices and serve as a guide against maladministration.[58]

[58] Unpublished: AK Judy 'The Office of the Ombudsman as an advocate of access to administrative Justice: Lessons for Kenya' unpublished Masters thesis, University Of Nairobi, 2014 1.

However, the need for the office of the ombudsperson charged with the specific role of addressing health care complaints came up as far back as in 1990s in South America.[59] Complaints were received from health care facilities' users about alleged abuses and neglects they suffered in the hands of health personnel in health care facilities.[60] These complaints led to increased attention targeted at addressing the grievances of health care users. One of the strategies adopted by States was the establishment of a health care ombudsperson while some States like the District of Columbia are considering enacting legislation for the establishment of health care ombudsperson in their State.[61]

Subsequently, the African continent also conceived the need to establish the office of the ombudsperson or institutions that have similar roles as that of the ombudsperson. The number of sub-Sahara African countries with the institutions emanate as far back as 1960s with countries like Tanzania, Ghana, Zambia, Sudan, Nigeria and Zimbabwe being among the first to establish the institution. From 1990, the number increased to about a dozen with the inclusion of Namibia in 1990, Malawi, Senegal and South Africa in 1995.[62]

The activities and mandates of the ombudspersons in these African countries vary but in all cases, "they reflect an affirmation of a commitment to assisting citizens who seek redress against maladministration to get some reasonable amount of solution."[63] Irrespective of the fact that the office of the ombudsperson or a similar institution exists in these African countries, they are charged with a wide spectrum of roles that covers various sectors of the economy. With the exception of South Africa, these offices are not established as a single ombudsperson's office charged with receiving and addressing complaints relating to health care.

This chapter examines what the ombudsperson means. It went a step further to examine the origin of the ombudsperson, their roles and manner of operations in some States.

3.2 What Ombudsperson means

An "ombudsperson" (or ombudsman) has been defined to mean "a person who intervenes to address the concerns of dependent individuals or groups in relation to powerful organisations or bureaucracies."[64] The ombudsperson has also been defined as "an official, usually (but not

[59] LE Barman 'The role of the health care ombudsman' (2004) 4*Manag Care Interface* 38.
[60] Barman (n 59 above).
[61]as above.
[62] A Ladipo *'Public Administration in Africa'* (2002) Spectrum Books Limited 3.
[63]Ladipo (n 62 above).
[64]RA Mary 'Ombudsman programs for managed care' (1999) 1*Health Law & Policy Institute* 1 https://www.law.uh.edu/healthlaw/perspectives/Managed/990629Ombuds.html (accessed 1 August 2019)

always) appointed by the government or by parliament, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens."[65]

According to Hill (2002), the main role of the ombudsperson is to serve as an agent for redress against arbitrary governments or administrative actions.[66] The office of the ombudsperson is an appropriate institution for addressing complaints. It can conduct inquiries into the activities of private and public institutions where applicable.

The health care ombudsperson is also an independent person charged with the responsibility of assisting health care service users in mediating or conciliating complaints. The ability of the ombudsperson to mediate and conciliate over complaints is derived from the power they have to handle complaints without interferences from any external body like the government. The health care ombudsperson is client-centred and operates in the best interest of health care services users. In this instance, the health care ombudsperson is expected to put personal interest behind and be supportive of their clients while offering the most appropriate solutions to their complaints.

3.3 Origin of Ombudsperson

The word "ombudsperson" or "ombudsman" originated from the Swedish word "umbuds man" which was translated to English to mean "representative" or "proxy." As far back as the 19th century, the ombudsperson was incorporated into the Swedish Constitution with the important role of providing the Parliament with the relevant means of supervising the conduct of the government administration and the judiciary.[67] In 1809, the first ombudsperson office was established in Sweden; followed by Finland in 1919, Norway in 1952 and thereafter in Denmark between 1953 and 1954.[68]

Following the transition of States towards the consolidation of democracy and the protection of citizen's rights against violations, the office of the ombudsperson has greatly spread across the world.In the 1960's, the office of the ombudsperson expanded through North America and Oceania with the first office of the ombudsperson being established in the United States. This

[65] L.B Hill 'The ombudsman revisited; Thirty years of Hawaiian experience' (2002) 24 *Public Administration Review 41*.
[66] Ladipo (n 62 above), 6.In the text you refer to Hill and not Ladipo. Where do we find the source on Hill that was published in 2000 according to your text?
[67] OECD Working paper on Public Governance 'The role of Ombudsman Institutions in Open Government' (2018) 29 *Governance Reviews and Partnerships Division* 4.
[68]Ladipo (n 62 above).

was as a result of the exposure of the country to government secrecy and scandal. New Zealand became the first country in its region to set up the office of the ombudsperson. Its set up in New Zealand subsequently inspired other countries within the Commonwealth to establish the office of the ombudsperson.

In the 1980s, the office of the ombudsperson emerged in Asia while in the 1990s, Latin America established the majority of the offices of the ombudsperson at the time the region was going through institutional reforms targeted at enhancing and strengthening participation, the rule of law, accountability and democratic governance.[69] During this period, African States also started establishing the office of the ombudsperson as a way of transitioning towards democratic governance with Tanzania being the first African State to establish the office of the ombudsperson in Africa in 1965.[70] Also, Central and Eastern European countries established the office of the Ombudsperson during and after 1990.[71]

3.4Role of the health care ombudsperson

The office of the health care ombudsperson is becoming a common feature of most States' institutional frameworks. Their role and scope of intervention differ from one State to another as States take into account different political, historical and institutional contexts in defining their role.[72]

Health care ombudspersons are charged with several roles for effective health care service delivery. The role of the health care ombudsperson generally is to conduct investigations and then give judgments or recommendations based on their findings. These investigations arise from complaints made by the health care service users about the activities of health care practitioners.[73] The health care ombudsperson can also initiate court proceedings on behalf of the complainants where it is expedient to do so.[74] However, this can only happen in rare cases such as complaints against bodies that are only bound by the decision of the court.

Some of the roles they are expected to carry out also include helping health care service users to resolve complaints lodged about health care service providers and therefore improve the quality of health care in the State. The complaints received are not limited as any form of

[69]n 67 above.
[70]Ladipo (n 62 above).
[71]n 67 above.
[72] n 67 above
[73]Ladipo (n 62 above), 7.
[74] Z Inga & G Danguolė 'The status of equal opportunities Ombudsman in the Republic of Lithuania: Selected problematic issues' (2014) 4 *Wroclaw Review of Law, Administration & Economics* 8.

complaints can be lodged about anyone who claims to provide health care services or holds health care information.

Health care ombudspersons are also charged with the role of upholding the principle of confidentiality.[75] It entails holding all communications from complainants in strict confidence. The communications within the knowledge of the ombudsperson can only be disclosed with the full permission of the complainant first sought and obtained. In exceptional cases, the communications can be disclosed where failure to disclose will pose imminent risk of grave harm.[76]

The health care ombudsperson is also expected to see to the realisation of women's reproductive health right by taking necessary actions in ensuring that reproductive health right is promoted[77] through dissemination of information that challenges all forms of discrimination against citizens that would like to access reproductive health care services. The said information can be through public enlightenment programmes to educate the public on their rights and responsibilities, and what to do when their rights are violated.[78] The health care ombudsperson plays a major role in ensuring accountability in the health care sector thereby safeguarding the human rights of health care users.

3.5 Methods of receiving and processing complaints

Health care service users can lodge complaints to the ombudsperson about inadequate and low quality health care services, inadequate information on available treatments, refusal to make informed choices about treatment and denial of their right to respect, dignity or privacy. In situations where the direct aggrieved health care service user is unable to make complaints, relatives, friends or anyone with sufficient interest and adequate information about the violation can lodge the complaints. Such a person is required to first obtain the consent of the aggrieved health care service user (especially in cases where delicate information will be disclosed and where the health care service user is a minor) prior to the lodge of the complaint.

[75] PR Mary, GS Mary & B Ann 'Ombudsman dilemmas: Confidentiality, neutrality, testifying, record-keeping' (1993)15 *Journal of Health and Human Resources Administration 333.*

[76] D Miller 'In whom can we trust?' (2011) 4*Journal of the International Ombudsman Association* 6.

[77] E Kismodi 'The ombudsman approach to the protection of reproductive rights in Hungary' (1999)18 *Med Law* 306.

[78] H Laura & C Radu 'Critical assessment of the role of the Romanian Ombudsman in promoting freedom of information' (2011) 33 *Transylvanian Review of Administrative Sciences* 103. See also BE Mariana 'Children's rights of access to health care services and to basic health services: A critical analysis of case law, legislation and policy'(2016) 49 *De Jure 309.*

However, before lodging complaints with the ombudsperson, it is advisable to first attempt resolving the complaints directly with the health care service provider and where positive outcomes are not achieved; complaints can then be made to the health care ombudsperson.[79] This is applicable in the Quebec Ombudsman where the Ombudsperson serves as the second resort for complaints about health care services. Nonetheless, the Quebec Ombudsman in some instances serves as first resort for complaints especially when it is an emergency or the safety or life of a person is in danger and there is need for immediate action.[80] However, the Quebec Ombudsman does not receive complaints against a doctor, dentist, pharmacist, a private clinic or a health professional.[81]

In New Zealand, the categories of complaints lodged with the Patients' Complaints System which serves as the health care ombudsperson can be about or against health practitioners, nurses, laboratory scientists, social workers in health facilities, dentists, hospitals or ambulances. This list is not exhaustive as anyone else who provides health care service falls in this category.[82] This wide scope makes all health service providers liable to be reported when they have failed to discharge their duties in accordance with due procedures.

Complaints can either be made in writing or verbally. Subsequent after the lodge of complaint, the health care ombudsperson is expected to carry out investigations by either asking questions and/or requesting for a document from any person the ombudsperson believes has possession of them. The ombudsperson is also expected to give report of findings, make recommendations and settle the complaints within a specified period.[83] The health care ombudsperson is also expected to do a follow-up in other to determine whether the recommendations have been complied with. For instances where the ombudsperson's recommendations have not been complied with, the ombudsperson can advise the Minister of Health or the government on the necessary actions to take.[84]

[79]Educaloi 'The quebec Ombudsman' https://www.educaloi.qc.ca/.../quebec-ombudsman-second-place-turn-complaints-about-... (accessed 30 July 2019).
[80]n 79 above.
[81]as above.
[82] R Paterson 'The patients' complaints system in New Zealand' (2002) 21 *Health and Globalization* https://www.healthaffairs.org/doi/full/10.1377/hlthaff.21.3.70 (accessed 20 August 2019)1.
[83] Paterson (n82 above).
[84]n 79 above.

3.6 Benefits of healthcare ombudsperson over litigation

The health care ombudsperson has several roles to play in achieving accountability in the health care setting. The significance of accountability translates to how decisions are made, by whom and for whom. It demands for transparency in the health care activities. Presently, accountability in the Nigerian health care setting is poorly reflected both for practical, political and economic reasons.

The emergence of accountability in health care setting has the benefit of promoting a further examination of the roles, responsibilities and communications of health professionals in the health care facilities. It improves and strengthens the 'relationship between health care providers and patients, health care providers and governments, and between citizens and government.'[85] These relationships are improved and strengthened through the responsiveness and delivering on commitments from the government to the health care professionals and from health care professionals to the health care users. This will eventually results in maintenance of professional standards, practices and values that will bring about quality health care services.

Achieving accountability in the health care setting requires sufficient procedures for it to be operative. It demands for comprehensive and responsive actions that will ensure a humane service to health care users. This necessitates the need to establish the office of a health care ombudsperson in Nigeria as a way of enhancing accountability in the health care setting and achieving accountability for reproductive health right.

The health care ombudsperson and the process of receiving and handling complaints will allow health care users to voice their grievances to policy makers, health care managers and the public. The health care ombudsperson will achieve it by enhancing the communication channels between the health care users and the policy makers and health care managers.

The health care ombudsperson will contribute, with varying degrees of success, to the efficient realisation of health care users' rights as well as define clear prospects on issues relating to health care.The power of the health care ombudsperson will enable the ombudsperson to report complaints arising from health care facilities to the Government and the lawmakers. The ombudsperson will be able to raise issues and concerns that most affect the health care users.

[85] R Catherine 'The accountability challenge in health care: The contribution of a Health Ombudsman' (2016) 4 *Journal of Arbitration and Mediation* 101.

It is not in doubt that majority of the issues usually relates to the reproductive health right of the health care users which the ombudsperson can assist in resolving them.

The health care ombudsperson will be able to ask for justification for the quality of health care and services provided by health care professionals by making recommendations for the review of medical code of conduct, professional guidelines and propose regular professional inspections within health facilities. These procedures will work as positive actions for maintaining good standards of practice within the health care facilities.[86] In order to realise reproductive health care, the ombudsperson should be carrying out vital roles in ensuring that programmes for reproductive health care are implemented appropriately and in a manner that is responsive to needs.[87]

The office of the health care ombudsperson when carefully considered and properly managed will be of greater importance to the country. It will be a relief to health care service users who feel that the only way they can seek redress is through litigation. According to Lawrence, "Litigation, in ordinary speech, refers to actions contested in court, this involves a claim, a dispute or conflict and the use of a specific institution, the court, to resolve the conflict or dispute."[88] It involves getting the services of a lawyer, filing processes in court, calling witnesses, deposing to several affidavits, dealing with several adjournments, the high cost implication, years of adjudication and the rigorous process of judgment execution. Unlike litigation, the office of the health care ombudsperson comes with a great deal of benefits which make it more preferable to litigation.

First, the health care ombudsperson is an independent body free from government interferences. The ombudsperson has the will to run the office without taking directives or orders from the government or any of its parastatal.[89] Lodging of complaints is also done at no cost on the part of the complainants. This is so because the office of the health care ombudsperson is not expected to demand for processing fees from complainants' before acting on the complaints which in most cases revolve around reproductive health right.[90] The office of the health care ombudsperson is designed in such a way that it is free to the complainants and it is user-friendly.

[86] Catherine (n 85 above).
[87] G Asha 'Using accountability to improve reproductive health care' (2003) 11 *Reproductive Health Matters* 167
[88] MF Lawrence 'Litigation &society' (1989) 15 *Annual Reviews* 17.
[89]Mirzoev & Kane (n 13 above).
[90]n 67 above.

It does not require a formal legal representative before the services of the office can be accessed.

Usually, the ombudsperson publishes annual reports on issues arising. Through the reports, the government, its agencies and the public will be informed about the systematic issues or complaints arising from health care facilities and health professionals.

The ombudsperson also helps in remedying bad practices in health care facilities which has resulted in the violations of the health rights of women and children. It is not in doubt that women and children are majorly the end users of health care services either for reproductive purposes or for medical check-ups. These groups most times get discouraged to pursue violations of their health right due to the technicality of the court. However, women and children will be willing to lodge complaints at the ombudsperson's office for swift remedy over complaints of bad practices in health care facilities.

Unlike litigation where the court gives verdict relying solely on the information and evidence brought before it irrespective of whether they are true or not, the health care ombudsperson helps in reconciling the dispute between the aggrieved complainants and the health facility or personnel complained against. This usually happens when it is discovered after investigation that there was a misconception.[91] This is done through a number of Alternative Dispute Resolution (ADR) mechanisms like mediation, conciliation and arbitration that seeks to achieve a win-win situation as opposed to litigationwhich does not result in a win-win situation. The proceedings of the ombudsperson are done by way of investigation and not through adversarial hearings thereby providing a level playground between the complainants and the health care facility or personnel.

Unlike what is obtainable through litigation, the recommendations from the ombudspersoncan suggest for a change in the system. The ombudsperson can achieve the change in the system by first giving full consideration to the circumstances that gave rise to the complaint and make recommendations for a change in the health sector complained against for the good of all health care service users. The knowledge, experience and skills of good and best practice of the health care ombudsperson help inform their recommendations in a positive way.[92]

[91] SK Jeffrey 'Reevaluating the nursing home ombudsman's role with a view toward expanding the concept of dispute resolution' (1994) 1994 *Journal of Dispute Resolution* 231.
[92] Lawrence (n 88 above).

The investigations of the health care ombudsperson are carried out in private. This is understandable as most health right complaints are private and sensitive. In carrying out their investigations, the ombudsperson examines necessary records, carry out witness interviews and consult professional experts where it is necessary to do so. Also, the ombudsperson usually makes the name of the complainant anonymous in their annual reports in sensitive cases and name the organisations complained against.[93]

The remedies provided by the health care ombudsperson are usually fair and reasonable in all situations. They do not follow and are not bound by strict adherence to law or legal precedent.[94]

The office of the health care ombudsperson is accessible to members of the public. They provide a voice for the voiceless complainant and help them cross several barriers that arise as a result of their complaints either against the government, health care facility or health care personnel.[95] Litigation on the other hand, does not make the courts to be an easily accessible place of resort for complainants.

3.7 Limitations on the powers of the ombudsperson

It is worthy to note that the office of the health care ombudsperson has a great deal of benefits when compared to litigation. However, the health care ombudsperson has some factors that limits the activities of the ombudsperson and in some cases serve as an impediment in achieving accountability in the health care sector. Unlike the court that has wide powers, there are organisations and agencies that are not bound by the rules and recommendations of the ombudsperson. This is usually because the law setting up the organisation or agency had expressly put a limit on the institutions they can be bound by. For instance, some privately funded health care establishments have provisions that restrict the lodging of complaints against them to their independent adjudication service or the court. Any resolution made by the ombudsperson against such privately funded health care establishment will not be binding on them. Usually, when the ombudsperson receives complaints against such privately funded health care establishment, the ombudsperson will refer the complaint to the appropriate independent adjudication service and then ensure that proper action is taken by either making

[93]Cabinet office 'Ombudsman schemes-Guidance for departments' www.ombudsmanassociation.org/docs/CabinetOfficeGuidanceNov09.pdf (Accessed 28 July 2019).
[94] Lawrence (n 88 above).
[95]Commonwealth Ombudsman https://www.ombudsman.gov.au/.../22-and-25-June-2004-ey-Features-and-Strength... (Accessed 30 July 2019).

recommendations on what should be done or work hand-in-hand with the appropriate independent adjudication service in resolving the complaint.[96]

Most complaints that should come before the ombudsperson are hindered by the time limits within which complaints can be brought before the ombudsperson. These limitations are usually spelt out in the laws governing the ombudsperson which members of the public might not be aware of. When complaints that are outside the time limit are brought, the ombudsperson does not carry out investigation on them. However, there are instances where complaints outside the time limit are received and investigated especially when it is a delicate case like one involving reproductive health right violation and where the complainant has good reasons for not complaining within the time specified.[97]

The ombudsperson cannot give judgment or orders that only the court is empowered to give. For instance, the ombudsperson cannot give an order for imprisonment of anyone found guilty of violating health rights except through the order of a court. This makes it impossible for the ombudsperson to give quick decision to complex matters.The complainant does not have control over the investigation process unlike litigation where the matter revolves round the complainant.[98]

The findings of the ombudsperson are limited to recommendations. Therefore, the ombudsperson has to persuade the government to accept its recommendations and act on them thereby affecting the efficiency of the ombudsperson.[99]

3.8 Conclusion

From the discussions of this chapter we have seen the overall importance of the office of the health care ombudsperson. This chapter has brought to the purview the overview of the health care ombudsperson. It provided the definition of the term for a better understanding of the concept of the health care ombudsperson. It elaborated on the origin of the ombudsperson and its subsequent establishment in other countries and in Africa.

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[96] Kenya draft report of the regional colloquium of African Ombudsmen 'Repositioning the Ombudsman: Challenges and Prospects for African Ombudsman Institutions' (2013) *Kenya School of Monetary Studies*, aoma.ukzn.ac.za/.../Kenya_Draft_Report_of_the_Regional_Colloquium_of_African_... (accessed 30 July 2019) 49.
[97]Parliamentary and health service ombudsman 'What we can and can't help with' https://www.ombudsman.org.uk/making-complaint/what-we-can-and-cant-help (Accessed 3 August 2019).
[98] Legal Services Commission of South Australia 'Advantages and disadvantages of using the ombudsman' https://lawhandbook.sa.gov.au/ch09s01s02s03.php(Accessed 3 August 2019).
[99] n 95 above.

The broad role of the health care ombudsperson and methods of receiving complaints were discussed though they are not exhaustive as they differ from country to country. However, one thing that came out from this chapter is the fact that the major role of the health care ombudsperson is to conduct investigations based on complaints received verbally or in writing.

Some of the benefits of the health care ombudsperson were also mentioned in other to show why it is favourable when compared to litigation. Attempt was also made to point out some of the limitations of the health care ombudsperson but when compared to the benefits therein, it is evident that the advantages outweighed the disadvantages.

Thus, a positive interpretation of this chapter is to the effect that the office of the ombudsperson when properly managed in accordance to set laws and standards, will lead to accountability in the heath care sector especially as it relates to reproductive health right. The next chapter will analyse the establishment of the office of the health care ombudsperson in South Africa and Queensland, Australia and their effective functioning in addressing health care complaints.

CHAPTER FOUR: ESTABLISHMENT OF THE OFFICE OF THE HEALTH CARE OMBUDSPERSON IN SOUTH AFRICA AND QUEENSLAND, AUSTRALIA

4.1 Introduction

For so many years, several violations of women's reproductive health right have been taking place in Nigeria. A number of complaints about maladministration, neglect and treatment without informed consent have been reported to several agencies like the Public Complaints Commission and social welfare services. Criticisms and dissatisfaction towards the way and manner complaints are handled and treated by these agencies have been reported. The complaints focus around unruly attitude of the agencies' staff, unfamiliarity with the issues complained about and complaints not being taken seriously or given priority by the assigned staff.[100]

[100] Parliamentary and Health Service Ombudsman 'An opportunity to improve' https://www.ombudsman.org.uk/publications/opportunity-improve/introduction (accessed 10 August 2019).

These concerns have given rise to the growing need and high expectations from the members of the society who have more complex health care needs. These concerns call for responsive action that will address the growing need of patients and improve the manner of addressing complaints such that it will be responsive and give good management of feedback about complaints.

The number of complaints from health care service users about the dissatisfaction in the complaint handling system is an indication of a failure in the complaint agency. This dissatisfaction has led to low reportage about health care services. The implication of which, people are left to accept their fate rather than get solution to their concerns.

The number of complaints from health care service users indicates the need for an independent body charged with the responsibility of receiving complaints about health care services and addressing same within a specified period. This independent body will have as its staff, persons specialised and skilled on health related issues. The independent body is called the health care ombudsperson responsible for investigating complaints and coming up with recommendations for improvement.[101]

The office of the health care ombudsperson is gradually becoming an indispensable organisation for safeguarding the health right of citizens and for holding the government and health care service providers to account. This is evident from the expansive role of the government to demand for open, fair and accountable health care services.[102] This can be achieved if the office of the health care ombudsperson is structured appropriately to improve the quality of health care services.[103]

The purpose of this chapter is to take a review of the establishment of the office of the health care ombudsperson in South Africa and Queensland, Australia. It will provide a snapshot into the quality of their practice in handling complaints, identify the good practices inherent in them and proffer lessons Nigeria can learn from their good practices.

[101]n 100 above.
[102]n 93 above.
[103] Silvia (n 8 above).

4.2 Office of the ombudsperson in South Africa

4.2.1 Background

The office of the health care ombudsperson in South Africa is called the 'Office of the Health Ombud.' The Office of the Health Ombud was established on 1 June 2016 in accordance with the National Health Amendment Act of 2013 (NHAA). It is situated within the Office of Health Standards Compliance (OHSC).[104]

The need to establish the office was necessitated by the health crisis situation in the health sector in South Africa. The health crisis was associated with the direct increase in medical negligence claims from health care service users.[105] Medical practitioners became reluctant to carryout required surgeries for the fear of being sued for medical negligence if something goes wrong. The refusal to carryout required surgeries led to severe medical conditions and implications on the general health care service in South Africa.[106] The Minister for Health in the person of Aaron Moatsaledi saw the need to address the health crisis situation and therefore announced in March 2016 that the Department of Health in South Africa will attend to the situation by appointing an ombudsperson.[107]

The Office of the Health Ombud is an independent body headed by Professor Malegapuru William Makgoba being the first ombudsperson for the office for a term of seven (7) years that is non-renewable. He is assisted by designated persons and the OHSC and he reports to and is accountable to the Minister of Health.[108]

4.2.2 Purpose and role of the Office of the Health Ombud

The main objective of establishing the Office of the health Ombud is:

> To protect and promote the health and safety of users of health services by considering, investigating and disposing of complaints in the national health system (private and public health establishments) relating to non-compliance with prescribed norms and standards and 'contribute towards a development of public service culture characterized

[104] Office of the Health Ombud 'About the OHO' healthombud.org.za/ (accessed 2 August 2019).
[105]Abarder A 'Health Ombudsman' www.macrobert.co.za/News-Blog/Blog/Health-Ombudsman (accessed 2 August 2019).
[106]Abarder (n 105 above).
[107]Abarder (n 105 above).
[108]n 104 above.

> by fairness, dedication, commitment, openness, accountability and the promotion of the right to good public administration.[109]

From the foregoing, it is clear that the Office of the Health Ombud intends to achieve improvement in clinical governance through the promotion of excellence, quality and properly managed health care services to the public. It has charged the Ombudsperson with the major role of addressing the challenges facing both the private and public health care sectors and has the mandate of enforcing health and safety in the country by acting as the protector of the public in the health care sector.[110]

The role of the Health Ombudsperson played out in October 2015 in the Life Healthcare Esidimeni Scandal involving the deaths of more than 94 psychiatric patients that were transferred from Life Esidimeni to the care of their families, non-governmental organisations (NGOs), and other hospitals. The transfer was necessitated by the Gauteng department of health after the termination of their outsourced care contract with Life Esidimeni for the purpose of saving money and deinstitutionalising psychiatric patients. The incident has been called "the greatest cause of human rights violation" in democratic South Africa.[111]

The health ombudsperson carried out investigations and interrogations into the grave human rights violation and came up with a report on 1 February 2017. Among the findings of the health ombudspersonare that the Gauteng Mental Health Marathon Project (GMMP) must cease to exist and the health professionals and NGOs that contributed to the death should face disciplinary actions.[112]

4.2.3 The function of the Office of the Health Ombud

By virtue of the NHAA, the Health Ombud is mandated to receive, investigate and handle complaints in fairness, be economical in the process and deal with the complaints in an expeditious manner.[113] The Health Ombud is not expected to bring in personal interest in the dispensation of its functions as this will defeat the principles of fairness as required by the NHAA.

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[109]n 104 above.
[110]n 104 above.
[111] Health Ombud: Republic Of South Africa 'The Report into the 'Circumstances surrounding the deaths of mentally ill Patients: Gauteng Province' (2016) *https://www.sahrc.org.za › home › files › Esidimeni full report* (accessed 28 September 2019) 1.
[112]n 111 above, 18.
[113]Abarder (n 105 above).

The ombudsperson is also expected to carry along the complainant and the reported health institution in all the process by reporting the findings and recommendations to them. This function gives room for transparency in the processes of the ombudsperson thereby preventing either party from complaining about not being carried along. As a result of the investigation, recommendations have to be made and the Chief Executive Officer of the OHSC must ensure the implementation of the recommendations.[114]

The NHAA further directs the ombudsperson to carry out his functions "in good faith and without fear, favour, bias or prejudice".[115] This function requires the ombudsperson to act in a just manner and not be influenced by external factors like the government and other institutions. The functions requires the ombudsperson to pay attention and understand the grievances of health care service users, render assistance to the aggrieved public and provide adequate information about available options for redress. Relevant information that will aid the positive dismissal of the complaint will be provided by the health ombudsperson as and when needed.

The ombudsperson serves as a guide to the complainant and the health care service provider so they deal with each other in a civil manner and follow the right procedure. The ombudsperson also helps identify windows of opportunities for transformative change within the Department of Health.[116]

The ombudsperson is charged with the responsibility of mediating between the parties. As a mediator, his recommendations will be such that both parties to the complaint will come to a win-win. The mediating role of the ombudsperson helps the parties to maintain existing relationships after resolution. However, the health ombudsperson cannot take disciplinary measures against health care service providers. The ombudsperson can only refer the complaint and the health care service provider to the Health Practitioners Council of South Africa (HPCSA) especially where the complaints relates to dirty hospitals, medical equipment issues and shortage of medical staff.[117]

[114]n 104 above.
[115]n 104 above.
[116]n 104 above.
[117]Abarder (n 105 above).

4.2.4 Methods of lodging complaints and contact

Complaints can be lodged by the general members of the public, health care service users and anyone with adequate information on behalf of a relative, a minor or any other person. The categories of complaints that can be lodged are those relating to improper treatment or care, unruly behavior by a health care facility, provision of poor quality health care by a health care institution and inadequate handling of a complaint by a health care institution. The complaint may emanate from an act or error by a person in control of or working for a health institution or any facility rendering a health care service.[118]

These categories of complaint can be lodged by fax, email, post or in person at the Office of the Health Ombud. It is however advised that complainants lodge their complaints with the relevant health care service institutions either verbally or in writing. The methods of lodging complaints is all encompassing thereby making it possible for the public to choose a favourable means of lodging their complaints unlike when a particular means is prescribed and some members of the public are excluded due to their inability to adopt the means.

The health care service institutions are expected to act on the complaint and where the complaint is not resolved or the complainants are not satisfied with the result of the resolution, they can then lodge the complaints with the ombudsperson. This requirement will limit health care users from lodging complaints that can ordinarily be addressed by the health care institutions. Also, this requirement will limit the volume of complaints of that lodged with the health ombudsperson.

The complaints being reported must have occurred within the space of two years otherwise the complainant will not be accepted expect in exceptional cases.[119] From all indications, the limitation period for lodging complaints will likely be a clog on those that wishes to lodge complaints after two years of its happening especially when the complainant did not know about the limitation period.

4.2.5 Office of the Health Ombud complaints handling system

Consequent upon the receipt of a complaint, the ombudsperson will carry out investigations into the matter and make a resolution. This process takes about six (6) months and in complex cases

[118] n 104 above.
[119] n 104 above.

it takes up to two years. Nevertheless, the complainant and the health care service provider concerned will be kept up to date about the progress of the investigations. The possibility of cases taking up to two years before it is resolved makes the health ombudsperson's complaint handling procedure to equal to the long period of waiting experienced with court cases. The implication of this is that complainants might have given up on the possibility of getting redress before the resolution is had.

In situations where more information is required for expeditious handling of the complaint, the ombudsperson can call for explanation from any one he or she believes has information about the matter under consideration. The ombudsperson may also call for witnesses to testify under oath or affirmation.[120] The ombudsperson can also work together with relevant bodies like HPCSA during its investigation and also refer and receive referrals from them. The health ombudsperson has to be cautious so as to ensure that those providing the information are not bias and do not have interest in the outcome of the complaint.

A written appeal may be lodged with the Minister of Health in cases where a person is dissatisfied with the resolution or any conclusions and recommendations of the OHSC or ombudsperson or anyone acting in their place. The appeal must be lodged within thirty (30) days of being aware of the resolution and the Minister of Health upon receipt of the written appeal must "appoint an independent Ad Hoc Tribunal and submit the appeal to the Tribunal for adjudication in the prescribed manner."[121]

The members of the Tribunal must be made up of three persons, consisting of a retired judge of a high court or a retired Magistrate and two other persons with adequate knowledge of the health care institution. The retired judge or retired Magistrate must be the Chairperson to preside over the Tribunal.[122] The decision of the Ad Hoc Tribunal may authenticate, set aside or differ the decision of the OHSC or ombudsperson and the parties must be notified of the new decision.The NHAA did not provide for the number of days within which the Tribunal will come up with its decision and this can make the adjudication by the Tribunal to take a longer time.

[120]n 104 above.
[121]n 104 above.
[122]n 104 above.

4.3 Office of the ombudsperson in Queensland, Australia

4.3.1 Background

In Queensland, the existing ombudsperson's office is the Office of the Health Ombudsman (OHO). It was established on 1 July 2014 by the Queensland Government in accordance with the Health Ombudsman (HO) Act 2013[123] to strengthen the management of health care complaints systems. The OHO was established to succeed its predecessor which was the Health Quality and Complaints Commission (HQCC).

The HQCC was established on 1 July 2006 for health care service users to lodge complaints about health services. The HQCC was also established as an independent commission with the role of developing and implementing quality, safe and "clinical practice standards throughout Queensland's public and private services and monitor best practice clinical governance and patient safety."[124]

The HQCC was criticised for being fundamentally deficient in the manner it handled complaints and unwarranted delays in handling complaints against health care service providers thereby necessitating the establishment of OHO. The establishment of the OHO was in response to the Forster Review of Queensland Health System that came up with a report showing the inefficiency of the HQCC and recommending the establishment of the OHO. In adherence to the Forster Report, the then Minister for Health introduced into the Legislative Assembly the Health Ombudsman Bill 2013. The Bill was introduced in June 2013 and the Legislative Assembly subsequently passed it into the HO Act in March 2014.[125]

4.3.2 Purpose and role of the OHO

The HO Act introduced the OHO as the single entry point for health related complaints with the objective of promoting "professional, safe and competent practice by health practitioners and high standards of service delivery by health service organisations."[126]The role of the OHO was to "maintain public confidence in the management of complaints by assessing, investigating,

[123] Health Ombudsman Act of 2013, sec 24.
[124] Parliamentary Committees 'Inquiry into the performance of the Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013'(December 2016) Report No. 31, 55th Parliamentwww.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/.../5516T2268.pdf *(accessed 1 August 2019) 9.*
[125] Health Ombudsman Act 2013-Queensland Legislation https://www.legislation.qld.gov.au/view/pdf/inforce/2017-09-13/act-2013-036 (accessed 1 August 2019).
[126] Office of the Health Ombudsman https://www.oho.qld.gov.au/ (accessed 7 August 2019).

resolving, prosecuting complaints and other matters relating to the provision of health services."[127] The HO Act made the health and safety of the people a paramount consideration.[128]

The OHO extended his role into maternal health care when it carried out investigations into the safety and quality of maternity services in five hospitals namely; Rockhampton, Gladstone, Emerald, Biloela and Theodore in Central Queensland. The investigation enabled the OHO to address issues of safety and quality governance, classification and identification of maternal risk and subsequent escalation, liaison between emergency and maternity among others. The OHO made recommendations that will ensure safety and quality governance improvements and also ensure that maternity services are safe and of high quality for mother and babies across Central Queensland.[129]

4.3.3 The function of the OHO

The OHO was given the function of receiving and investigating complaints about health care service and professional misconduct on the part of health care service providers irrespective of whether the health care service provider is registered or unregistered.[130] This function gives the OHO wide power to address issues arising from unregistered health care providers that ordinarily would want to claim that they are not bound by the powers of the OHO.

The agency is expected to a take a decision as to which action is most appropriate for each complaint and ensures that its actions are in line with the protection and safety of the public. The OHO is also empowered to carryout monitoring on the health, conduct and performance of the functions of the Australian Health Practitioner Regulation Agency and National Health Practitioner Boards. Ability of the OHO to carry out this function makes the OHO to not just a body that merely investigates complaints but also a body that has the duty to carryout oversight functions. It is also the function of the OHO to provide adequate information about how they minimise and resolve health care service complaints and report the performance of their activities to the public.[131]

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[127] n 125 above.
[128] n 124 above.
[129] Office of the Health Ombudsman 'Health Ombudsman releases report into Central Queensland maternity services' *https://www.oho.qld.gov.au › health-ombudsman-releases-report-into-central...* (accessed 28 September 2019).
[130] Inquiry into the performance of the Health Ombudsman's functions. *www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/.../5516T2268.pdf* …...(accessed 28 September 2019).
[131] Health Ombudsman Act of 2014 sec 25.

The OHO therefore became an independent statutory body that provides health service complaints in Queensland. The OHO addresses complaints about health care service providers, or health care service provided to a person, a family member or someone in their care.[132]

The OHO is headed by the Health Ombudsman. His position is a statutory one that requires overseeing the OHO. The Health Ombudsman must be independent, impartial and act in the interest of the public in all his dealings. He is responsible for executing the functions of the OHO as spelt out in the HO Act.[133] As with the case with the health care ombudsperson in South Africa, the health care ombudsperson in Queensland is also not expected to have personal interests when discharging his duties.

4.3.4 Methods of lodging complaints and contact

The public can lodge complaints about health care services or health care service providers or health care service organisations. These health care service organisations include "a public or private healthcare facility, ambulance service, health education service, pharmacy, mental health service, community health service."[134] Also, a health care service provider can lodge complaints against another health care service provider where concerns about the health, conduct or performance of the health care service provider are raised. The complaints that can be lodged is broader in Queensland and is not limited to health care users only as service providers can also lodge complaints against a fellow service provider. The advantage of this is that health care service providers will serve as check on one another thereby bringing accountability in the health care setting.

The complaint is lodged by filling out the complaint form and sending it either by post, online or via email. The OHO also accepts calls to lodge complaints. Unfortunately, the OHO does not receive complaints in person at their office.[135] The act of not receiving complaints in person will discourage those that would ordinarily prefer to have an interface with the health ombudsperson prior to lodging their complaints. The implication of this will be less reporting of issues that demands redress.

[132] n 125 above
[133] n 125 above
[134]n 125 above.
[135]n 125 above.

The OHO also recommends that the complainant takes the first step of trying to resolve the issue with the health care service provider prior to lodging a complaint with the OHO. Where the complainant is not satisfied with the outcome of the initial resolution with the health care service provider or the complainant does not feel comfortable discussing with the health care service provider, then the complaints can be lodged with the OHO.[136] Also, this requirement enables the complainant to exhaust local remedies prior to lodging complaints with the OHO. In some cases, exhausting local remedies usually results in the complaint being resolved without the need to approach the OHO.

After the complaint had been lodged with the OHO through either of the means of submitting complaints and the OHO needed to contact the complainant for further consultation and inquiry, the OHO reaches the person who lodged the complaint by email, fax, mail, phone or invite the person as the case may be. So far, the highest complaint received by the OHO have bothered around the issue of access to health care services, wrong or improper medication and professional performance on the part of the health care service providers.[137]

The complaints received by the OHO could be any in relation to health care services. Some of the complaints that can be lodged with the OHO are about the sharing or use of one's information without prior consent, unruly conduct by the health care service provider, diagnosis, treatment or care given, issues about the quality of the health care service provided and how a health care service provider has handled one's complaint.[138] These complaints can also revolve around reproductive health rights.

4.3.5 OHO complaints handling system

Subsequent to the receipt of complaint, the OHO usually reach a decision as to whether to accept the complaint or not. This decision must be arrived at within seven days of its being lodged. Where there is a need for further information to guide the decision, the OHO can seek advice from an independent expert. OHO may also ask the complainant and/or the health care service provider for additional information or a formal submission within the space of fourteen days after the request is made or penalties may apply for non-compliance.[139] Efforts should be

[136]n 125 above.
[137] n 125 above
[138]n 125 above.
[139]n 125 above.

made in ensuring that those called upon to testify are people that do not have any interest in the outcome of the complaint otherwise the purpose may be defeated.

The complainant and the health care service provider are kept abreast of the whole process which usually involves analysing the information received, making an assessment of the complaint and deciding whether or not to take additional action. This process is done in a thorough, impartial and fair way and does not take more than thirty days. However, the process may be extended for additional thirty days for complex complaints or in situations where getting the necessary information takes a longer period.

In a situation where the OHO has decided to take further actions on a matter, it may attempt facilitating local resolution of the matter, conciliating the complaint, refer the complainant to the health care service provider's registration board, or any other organisation it feels will address the matter appropriately or take quick action against the health care service provider. In cases where the OHO is unable to address a complaint, it will give sufficient reasons for not being able to do so.

The OHO is structured in such a way that it is accessible to those who do not understand English Language. The complaints of complainants who do not understand English Language is interpreted and translated by the Translating and Interpreting Service (TIS) through the services of an interpreter at no cost to the complainant. Persons with hearing or speech impairment can also lodge complaints through the National Relay Service (NRS). The NRS is a free phone service and can be contacted through voice call, speak and listen or SMS relay.
This very structure of the OHO takes into consideration the right of persons with disability to lodge complaints about their grievances.

4.4 Good practices in the offices of the health care ombudspersons in South Africa and Queensland, Australia

The health care ombudspersons of the two countries under review have good practices for adoption by Nigeria however; the practices of one country may be preferable to the other country in some instances as will be highlighted here. The health care ombudspersons of both countries were established to address challenges facing the health sector and the dissatisfaction of health care service users in the system. They were established at a time when health care service providers felt they were not accountable to anyone and thereby treated their works with less

professionalism. The establishment of the ombudsperson is a clear indication of the countries' intention to give priority to the right to health.

The OHO has a wider scope as it addresses complaints lodged against medical practitioners irrespective of whether the health professional is registered or not registered. Also, the ombudsperson of both countries address health challenges in the private and public health sector thereby leaving no health sector out of their scope.

The Office of the Health Ombud in South Africa accepts complainants walking into the office to lodge their complaints. This practice is most ideal as most people will prefer to go lodge complaint in person than through other means. Also, some persons might not be able to lodge their complaints through fax, email, post and online and would therefore be refused the chance of getting redress if the option of lodging complaints in person is excluded.

The time frame within which complaints are investigated and resolved in Queensland is thirty days with additional thirty days for complex cases and where more information is required. This makes the system of resolution faster and builds confidence in the system. This will also bring about accountability in the health sector as issues are quickly disposed of and make it preferable to litigation.

The structure of the OHO in Queensland can be said to be inclusive. This is evident from the fact that provisions are made for interpreters in cases where the complainant does not understand English Language. Also, the system does not exclude persons with hearing and speech impairment from seeking redress as their complaints are captured through the NRS.

The system in South Africa makes provision for appeal against the decision of the ombudsperson. The provision for appeal will also serve as a check on the ombudsperson as he or she will want to be fair, impartial and unbiased in his or her decision to avoid the decision being overturned by the appellate Tribunal.

4.5 Lessons Nigeria can learn from the offices of the health care ombudspersons in South Africa and Queensland, Australia

The two offices under review have made great efforts at establishing the office of the health care ombudsperson with laid down procedures for their functioning. From the review of their good practices, Nigeria can learn lessons in establishing the office of the health care ombudsperson.

The lessons are not limited to first, enacting a law establishing the office of the health care ombudsperson. The law will make provisions for the role and functions of the health care ombudsperson. It will provide a guideline for the manner of receiving and addressing complaints. Secondly, the office of the health care ombudsperson should be conferred with the power of addressing complaints against registered and unregistered health professionals, and complaints against either the private or public health sector.

Also, the methods of lodging complaints should include in person, fax, email, post and online thereby making complainants to choose their most preferred method. There should be swift dispensation of complaints as recorded in Queensland so justice will not be denied and accountability will be achieved. The system should be inclusive for all without any form of discrimination. Structures should be put in place to enable those with impairment access the services of the health care ombudsperson. More so, Nigeria being a country with diverse languages, it is important to have interpreters for those that do not understand English Language. Lastly, there should be room for appeal against the decision of the health care ombudsperson.

4.6 Conclusion

This chapter has extensively analysed the office of the health care ombudsperson in South Africa and Queensland. An in-depth study of how they were established in accordance with the NHAA and HO Act respectively was done.

A succinct view of the Office of the Health Ombud in South Africa and Queensland reveals the purpose of establishing the ombudsperson, their roles and functions which generally is to investigate and make recommendations based on their findings for the good of the health care of the public. Their modes of receiving complaints and treating complaints against health care service providers and facilities were also done. This brought out the variance in their functions as discussed when pointing out their good practices.

Generally, this chapter brought to the limelight that the lodging of complaints about health care services are vital as they aid in identifying areas that calls for improvement, prevent the occurrence of the same problem and make health care services better as health care service providers are made to be accountable.

The next chapter being the last will give a summary of the entire work, make conclusions and then identify ways Nigeria could adopt the good practices in South Africa and Queensland, Australia in establishing the office of the health care ombudsperson in Nigeria.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This research work is structured to answer one main question and three sub-questions. The main question is how can the establishment of the health ombudsperson's office ensure accountability for health care in Nigeria? The sub-questions are structured to answer firstly, what is the importance of establishing the office of health care ombudsperson? Secondly, how can the negligence of healthcare professionals be addressed by the healthcare Ombudsperson? And lastly, what will be the benefit of resorting to health care Ombudsperson as against litigation? This chapter consequently provides a brief summary of what has been earlier discussed in the four preceding chapters and overall conclusions.

The research is premeditated to widen the discussion for the establishment of the Office of Health Care Ombudsperson as a means to ensuring accountability for health care in Nigeria.

5.2 Conclusion

The office of the health care ombudsperson is an innovative body that safeguards the right of health of the people especially women's reproductive health right. In contrast, Nigeria has a high rate of violations of women's reproductive health right. This research work has been able to exhibit the widespread situation of women who exercise their reproductive health rights in Nigeria's health care facilities and the reason they do not take actions to challenge violations of their reproductive health right. The current Public Complaint Commission which is the body charged with receiving and addressing all complaints lodged by Nigerians has a wide scope and sees to all complaints emanating from all sectors. This overreaching scope has made the commission not to give priority to reproductive health right and address the challenges of the health sector. A commission that does not have a special focus on complaints about the health sector cannot be termed a body established to address health rights violations in Nigeria. According to the author, this condition is fundamental to addressing high occurrence of reproductive health rights violations in Nigeria and its resultant implications of maternal mortality and morbidity.

This research work has examined in chapter two the legal frameworks on the right to health in Nigeria. It examined the right to health as provided and protected in international human rights laws and Nigeria's commitment to advance the right to health in Nigeria.

It went further to assess the right to health in the Constitution of the Federal Republic of Nigeria (CFRN) and the implication of section 6(6)(c) that made the right to health to be a non-justiciable right in Nigeria. However, we were able to see that the right to health can be inferred from the right to life as provided in Chapter IV of the CFRN. An assessment of the other laws and policies advancing the right to health in Nigeria showed that they are not enabling the realistic realisation of the right to health in Nigeria for not establishing structures that will address health right violations.

Also, the National Health Act (NHA), a law that was enacted to protect and promote the right to health of Nigerians, has not fulfilled its purpose and this is because most health professionals and the public are not aware of the existence of the Act. Also, the requirement for certificate of registration by NHA to health facilities has affected the full implementation of the Act and a clog to the realisation of Universal Health Coverage (UHC).

The author in chapter three assessed the overall concept of the ombudsperson. It examined its origin in Sweden, their overarching roles in the dispensation of their duties. The methods of receiving and addressing complaints was expatiated by the author. The author also analysed the benefits of resorting to the health care ombudsperson for address over violations of health rights as against litigation. The research work further analysed the limitations to the functioning of the health care ombudsperson.

The research work in chapter four assessed the establishment of the office of the health care ombudsperson in South Africa and Queensland, Australia. An assessment of how they were established and their functioning in protecting health right was done. The author took cognisance of the fact that no country has the best health care ombudsperson therefore the author analysed the countries, pointing out their good practices and lessons Nigeria can learn from them.

It is the view of the author that an innovative to addressing the latitude of health care service providers and health facilities is the establishment of the office of the health care ombudsperson. The research work therefore argues for the establishment of the office of the health care ombudsperson in Nigeria as a means to ensuring accountability for health right. The recognition of the reproductive health right of women and the need to protect this right from violations that usually result in maternal death justifies and supports the need to establish the office of the ombudsperson.

The evaluation in the research work has employed available sources of information and has relied on legislation, case laws and treaties. Judges and scholars continue to deviate from the need to establish a distinct body for addressing health right complaints in Nigeria. One of the reasons may be that the governing laws in Nigeria do not prioritise enacting a law that will propel the establishment of the office of the health care ombudsperson in Nigeria even though the NHA guarantees protecting the right to health. It must however be acknowledged that the fact that no existing law provides for the establishment of the office of the ombudsperson is not a bar to introducing a Health Care Ombudsperson's Bill at the National Assembly for passage. The passage of the Bill will be a step to respecting, protecting and fulfilling women's reproductive health right and achieving UHC in Nigeria while making health care service providers accountable for their actions and inactions.

By and large, this research work sought to provide an evaluation of the health right laws in Nigeria and the importance of the office of the health care ombudsperson as a means to

addressing the problems associated with the health sector. It addresses the clog placed by adversarial litigation that limits the enforcement of the right to health in Nigeria. Based on the fact presented in this research work, it can safely be said that the office of the health care ombudsperson has the potential of ensuring accountability in the health sector and ensuring that women do not die while giving birth due to the latitude of health personnel. Finally, the author recognises the importance of protecting reproductive health rights through the establishment of the health care ombudsperson as a means to ensuring accountability in the health sector.

5.3 Recommendations

If the office of the health care ombudsperson is to address the situation of women's reproductive health right in Nigeria, then the Ministry of Health should use their jurisdiction of ensuring the advancement of health, to present a Health Care Ombudsperson's Bill at the National Assembly for passage into law. The enactment of a law establishing the office of the health care ombudsperson in Nigeria will serve as a starting point for the government to take measures and steps towards addressing the problem facing the health sector in Nigeria. Otherwise it will mean nothing to women where is no established office of the health care ombudsperson to address the complaints relating to their reproductive health right.

Also, the government's commitment to achieve UHC can be further achieved by the establishment of the office of the health care ombudsperson as the government will not only ensure that it is established, but will pronounce it as the best innovation for addressing complaints about health care services. The helpfulness of the ombudsperson must be tested to ensure that its operation does not create a clog for women but that it addresses women's specific health concerns. This will be in accordance with the government's intendment of addressing the challenges that contributes to violations of reproductive health rights with the resultant effect of maternal deaths.

In ensuring that the office of the health care ombudsperson when established is not just an edifice that exist in the country, the law enacting it must make health care service providers, health care facilities and health care organisations accountable for their obligations to health care service users. This can be achieved through the following means:

1. The law must give the ombudsperson power to investigate, resolve and make resolutions about complaints lodged against health care service providers, health care facilities and health care organisations without a clog on their powers. The ombudsperson can then

notify the relevant bodies responsible for the health care service providers, health care facilities and health care organisations for the implementation of their resolutions.

2. The law must specify a particular number of days or months within which every complaint must be investigated and concluded. Complaints should be addressed timeously in other to show the expeditious manner of addressing matters as against the time consuming litigation. If complaints evolve for too long and the complainants are getting solutions, the public will not see or appreciate the benefit of resorting to the ombudsperson as against the court.
3. The office of the ombudsperson should be strategically placed to be accessible to the public on all grounds. Branches of the ombudsperson should be established in major states to avoid people not being able to access the services. The methods of lodging complaints should include ability of a complainant to walk into the office of the ombudsperson and lodge complaint verbally. The ombudsperson should be accessible to people who do not understand or speak English. Therefore, interpreters should be engaged at all times for complainants who do not understand English Language. Also, the ombudsperson should be accessible to persons with disabilities as they suffer more neglect on grounds of their disability otherwise the ombudsperson will not be achieving the purpose of safeguarding the general public from the violations of their health right.

More importantly, structures should be put in place for the enforcement of the decisions of the ombudsperson. This can be done through collaboration with the relevant agencies that have the power to enforce the decisions on the erring health care service provider, health care facilities or health care organisations.

The government should give priority to the funding of the office of the ombudsperson. The government should make use of its political will to achieve implementation of the health care ombudsperson law when passed.

Measures such as sensitisation programmes and awareness creations should be done both in rural and urban areas about the ombudsperson's specialty on health related issues. These measures should make emphasis on the ability of the ombudsperson to address reproductive health rights complaints. Therefore, the office of the health care ombudsperson provides the public especially women with the right to seek redress against violations of their reproductive health rights. This will be done at no cost to the complainant and the required services will be made available and accessible to women.

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