The Right to Qualitative Health Care in Nigeria: A Quest for Law Reform

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ABSTRACT

Human rights are inherent to all human beings, regardless of their nationality, place of residence, sex, or ethnic origin, colour, religion, language, or any other status. Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. The right to health guarantees the right to life, on which other social, economic and political rights are hinged. The right to health involves availability, accessibility, acceptability, and quality of public health and health care facilities, goods and services. The availability of counterfeit drugs is a direct infringement on the right to health, which provides that health care must not only be affordable, accessible and acceptable, but must be of good quality. Nigeria has a robust and comprehensive legal framework. However, their effect is not being felt due to enforcement challenges. The rights of victims to compensation has not been provided for. This paper calls for law reform in this regard, proposing the adoption of the template provided for by the United Nations Guiding Principles on Business and Human Rights (UNGP). The UNGP promotes the principles of 'protect, Respect and Remedy'.

Keywords: Human Rights, Right to health, Drug Counterfeiting, UNGP.

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1. INTRODUCTION

Human rights are rights that are inherent to all human beings, regardless of their nationality, place of residence, sex, or ethnic origin, colour, religion, language, or any other status[3]. Human rights are the freedoms, immunities, and benefits that, according to modern values (especially at an international level), all human beings should be able to claim as a matter of right in the society in which they live. They can also be said to be fundamental rights which means constitutional rights. That is, a significant component of liberty, infringements of which are challenged in courts to ascertain the propriety or otherwise of such interventions[4]. Human rights are the rights to which everyone is entitled - no matter who they are or where they live - simply because they are alive. These rights include the rights to life, dignity, personal liberty, privacy and family life, freedom of thought, conscience and religion, freedom from discrimination on grounds of ethnicity, place of origin, sex, religion, or political opinion.

[3]Art. 2, UNDHR. These rights are however all interrelated, interdependent and indivisible.
[4] Bryan A.G. (ed.) Black's Law Dictionary, 9th edition. 697

Thus, a right is an entitlement, which the beneficiary has under a legal code. Human rights, therefore, are the basic standards without which people cannot live in dignity. Consequently, to violate someone's human right is to treat that person as though he or she is not a human being. Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. The right to health guarantees the right to life, on which other social, economic and political rights are hinged. According to International instruments on the right to health[5], every human being has a right to health. Article 12 of the International Covenant on Economic, Social, and Cultural Right (ICESCR) and Comment No 14 of the UN Committee on Economic, Social, and Cultural Rights (CESCR), affirm the right of everyone to the highest standard of physical and mental health. Every human being is therefore entitled to the enjoyment of the highest standard of health conducive for living a life in dignity. The right to health involves availability, accessibility, acceptability, and quality of public health and health care facilities, goods and services.

Access to medicine is a public health challenge in low-medium income countries. This is mainly due to the inability of the majority of the population to afford most life-saving medicines. This has, contributed to the emergence of informal pharmaceutical supply networks/chains, a breeding ground for counterfeit and substandard drugs. The effects of these poor quality drugs include increased disease burden, resistance to available treatments, unnecessary deaths and suffering with the resulting effect of wastage of limited health resources on poor quality products, loss of confidence in the health professionals, health systems, pharmaceuticals and brands.

The availability of counterfeit drugs is a direct infringement on the right to health, which provides that health care must not only be affordable, accessible and acceptable, but must be of good quality. The requirement for quality applies to facilities, goods and services, which must be scientifically and medically appropriate and of good quality. Counterfeit drugs are deadly and can result in death, amongst others. Where death occurs, it constitutes a violation of the right to life.
This paper discusses the availability of counterfeit drugs as a violation of the right to qualitative health care, the efforts made by the Nigerian government, at fulfilling its obligation under this right to its citizens, making recommendations for improvements. The paper is divided into 7 parts. Part 1 is the introduction, part 2 examines the human rights generally, the right to health, relationship between health and human right. Drug counterfeiting in Nigeria and the laws governing it, the paper then looks at the United Nations Guiding Principles for Business and Human Rights and its "All Embracive Approach", as a template for reforming the law to take care of the victims. The Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act (Amendment) Bill, 2015[6], which seeks compensation for the victims of counterfeit drugs, will also be examined.

2. HUMAN RIGHTS AND THE RIGHT TO HEALTH

Human rights are those rights which are inherent in human beings. These rights are enjoyed by all, regardless of their race, sex, and religion, political or social affiliation. According to Dr. Justice Durga Das Basu,

> human rights are those minimal rights; every human being must have against the State, or other public authority, by virtue of his being a member of the human family irrespective of any consideration.[7]

These rights though not creations of the law, are guaranteed by the law and states have the obligation to uphold these rights. The UDHR defines human rights as "rights derived from the inherent dignity of human persons".[8]

[5]General Comment No.14 (2000) to ICESCR; Article 12 of the International Covenant on Economic, Social, and Cultural Right (ICESCR); UN Committee on Economic, Social, and Cultural Rights (CESCR).
[6] Retrieved from https://lawpavillion.com on 10th February, 2018.
[7] Human Rights: Nature and Constituent. Retrieved form http://archive.mu.acc.in. on 8th June, 2018.
[8] Preamble to the UDHR.

They are founded on respect for the dignity and worth of each person, they are universal, inalienable, indivisible, interrelated and interdependent.[9] The implication of this is that, they are conferred on a person by virtue of his or her existence. Secondly, human rights are essential and necessary because they provide material and moral uplifting of people. These rights include the rights to life, dignity, personal liberty, privacy and family life, freedom of thought, conscience and religion, freedom from discrimination on ground of ethnicity, place of origin, sex, religion, or political opinion.

The UDHR, ICESCR (1966) and other conventions and declarations make up the contemporary and embody the belief, in the existence of a universally valid moral.[10] The right to health is one of the natural rights that a person has. The right is recognized by almost all countries of the world and by many international Conventions, Declarations and Treaties. The usage of counterfeit drugs has harmful effects on the public and it undermines their right to health which eventually affects their right to life. The right to health is a fundamental part of our human rights and of our understanding of a life of dignity[11]. It is the right to the enjoyment of the highest attainable standard of physical and mental health[12]. Health, in its part, is the state of being sound or whole in body, mind, or soul; the freedom from pain or sickness[13]. According to the preamble of the WHO Constitution, it is "a state of complete physical, mental and social well – being and not merely the absence of disease or infirmity". The 1948 Universal Declaration of Human Rights, states that health is a part of the right to an adequate standard of living.[14] In addition, the Commission on Human Rights in its resolution 2002/31 created the mandate of Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The right to health is an inclusive right, as it contains freedoms and entitlements[15]. The 'freedoms' include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation[16]. On the other hand, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health[17].

This right covers two areas, the underlying determinants, which include, water, sanitation, food, nutrition, housing, healthy occupation and environmental conditions, education and information, and healthcare. In upholding this right, all services, goods, and facilities must be available, accessible, acceptable and of good quality. That is, they must be scientifically and medically appropriate and of good quality. According to International instruments on the right to health[18], every human being has a right to health. Article 12 of the International Covenant on Economic, Social, and Cultural Right (ICESCR) affirms the right of everyone to the highest standard of physical and mental health.

[9] *Human Rights: A Basic Handbook for UN staff*. Retrieved from www.un.org. on 8th June, 2018. P.3.
[10] Fagan A. (2015) Human Rights. Retrieved from www.iep.utm.edu on 3rd September, 2018.

[11] The Right to Health Fact Sheet No.31, p. 1. Retrieved from www.who.int.org on 1st August, 2013.
[12] WHO Constitution of 1946.
[13] Bryan A.G. (ed.) *op.cit*. 737
[14] Art 25, Universal Declaration of Human Rights, 1948. See also the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.
[15] General Comment 14 to the ICESCR.
[16] Kinney, E D. 2001. The International Human Right to Health: What does this mean for our Nation and the world? *Indiana Law Review* Vol 3:14757: 146
[17] The right to the Highest Attainable Standard of Health, UN. Doc. E/C: 4th Dec, 2000: ICESCR, Gen. Comment 14 (2000).
[18] General Comment No. 14 (2000) to ICESCR.

Similarly, Comment No 14 of the UN Committee on Economic, Social, and Cultural Rights (CESCR) makes health a fundamental human right, indispensable for the exercise of other human rights. Every human being is therefore entitled to the enjoyment of the highest standard of health conducive for living a life in dignity. Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. Consequently, the right to health guarantees the right to life, on which other social, economic and political rights are hinged.

The elements of the right to health are[19]:

a. Availability, which entails sufficiency in quantity of functioning public health and health care facilities, goods and services, and programmes;
b. Accessibility - health facilities, goods and services must be accessible to everyone. Accessibility is four folds, namely, non – discrimination, physical accessibility, economical accessibility (affordability) and accessible information;
c. Acceptability – all health facilities, goods and services must be respectful of medical ethics and culturally appropriate as well as sensitive to gender and life cycle requirements; and
d. Quality – health facilities, goods and services must be scientifically and medically appropriate and of good quality.

The right to health therefore includes access to timely, acceptable, and affordable health care of appropriate quality and implies that governments must provide an environment in which everyone can, to a considerable extent enjoy healthy living. Such conditions range from ensuring availability of qualitative health services, healthy and safe working conditions, adequate housing and nutritious food. It should however be noted that the right to health does not mean the right to be healthy[20,21].

The right imposes a duty on each state party, to take whatever steps that are necessary to ensure that everyone has access to health facilities, goods and services so that they can enjoy, as soon as possible, the highest attainable standard of physical and mental health. State parties, therefore, have an obligation to - Respect, Protect and Fulfill. They are not to interfere with the enjoyment of the right to health[22]. They are however to ensure that third parties (non-state actors) do not infringe on the enjoyment of the right to health, by regulating non-state actors. Consequently, state parties ought to enact legislations against counterfeiting, which they must make provision for enforcement. Lastly, state parties must take positive steps to realize the right to health by adopting appropriate legislative, administrative, budgetary, judicial, promotional measures. They are to adopt "national strategies that ensure that all citizens enjoy the right to health indicators and bench marks".[23]

Chapter Four of the 1999 Constitution of the Federal Republic of Nigeria makes provision for the fundamental human rights recognised by the Constitution. The Constitution however makes provision for the right to health under its chapter two.[24] The difference between chapter two and chapter four is that the rights provided for under chapter four are enforceable in courts of law while those provided for under chapter two are deemed to be Fundamental Objectives and Directive Principles of State Policy which are not enforceable in courts. Rather, the country is enjoined to carry out its duties and responsibilities as stated in the chapter.

[19] General Comment No.14 (2000) to ICESCR.
[20] WHO Factsheet No.323 of November, 2012.
[21] The role of the government is to uphold it citizens right to health by providing facilities and product conducive for healthy living. However, being healthy is the responsibility of each citizen.
[22] This is a duty "not to cause harm' or 'non malificience'.
[23] *Op.cit.*
[24] Section 17(3)(d) of the 1999 Constitution of the Federal Republic of Nigeria provides that: The State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons.

Consequently, although the Constitution denies legal recognition of the right to health as well as other social and economic (socio-economic) rights, the domestication of the African Charter in 1983 has introduced monumental changes to the legal status of these rights in the country. No longer may constitutional denial of legal recognition to these rights be relied upon to shield the government or its agencies from obligations regarding the right. More specifically, article 16 of the Charter guarantees the right to health. Medicine is an essential contribution to the quality of life, human dignity, and self-esteem of people worldwide. The availability of counterfeit drugs is a direct infringement on the right to health, which provides that health care must not only be affordable, accessible and acceptable, but must be of good quality. The requirement for quality applies to facilities, goods and services, which must be scientifically and medically appropriate and of good quality. Counterfeit drugs are deadly and can result in death, amongst others. Where death occurs, it constitutes a violation of the right to life. Dealing in counterfeit drugs has been classified as a transnational organized crime[25], with the bodies of the victims becoming crime scenes.[26]

3. DRUG COUNTERFEITING

Drugs play pivotal role at all levels of healthcare. They are useful for maintenance of health, diagnosis, prevention, treatment, or mitigation of diseases or disorders. However, due to the immense benefits derived from drugs and their global usage, some unscrupulous persons see them as a means of making fast money, thus they indulge in producing and circulating counterfeit drugs[27]. Counterfeit and substandard drugs have existed long for many centuries. As far back as the 400BC, there has been warning concerning them[28]. They have however become an international problem[29] contributing to illness, death, toxicity, and drug resistance[30]. Harms and damages caused by drugs counterfeiting in Nigeria cannot be overemphasized. Some have been maimed; many have brain retardation and a large number is disabled as a result of the use of counterfeiting drugs. The victims of drugs counterfeiting in Nigeria cut across the rank and file of every segment of the society. It includes the patients, the manufacturers and the Government.

The WHO describes a counterfeit medicine as one which is deliberately and fraudulently mislabeled with respect to identity and/or source[31]. Their quality is also unpredictable the reason being that they may contain the wrong amount of or insufficient active ingredients, wrong ingredients, ingredients different from what is stated on the package or absence of active ingredients altogether, fakes and copies, orthodox medicines mixed with herbal preparations, and expired drugs which have been relabeled with a fake later expiry date[32].

[25] "Fraudulent Essential Medicines From South Asia to West Africa" in Focus on the Illicit Trafficking of Counterfeit Goods and Transnational Organised Crime". Retrieved from http://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf on 31st August, 2016.

[26] Ebam K. (2011). *Dangerous Dose: A True Story of Cops, Counterfeiters and the Contamination of America's Drug Supply*. (Kindle Edition)., A Harvest Book, Harcourt Inc. New York. Loc. 344 of 822.

[27] Akunyili D. (2004) Fake and counterfeit drugs in the health sector: the role of medical doctors. *Annals of Ibadan Postgraduate Medicine*. Vol. 2 No. 2: 19

[28] . WHO. Counterfeit Drugs - Guidelines for the development of measures to combat counterfeit drugs. Geneva, Switzerland : s.n., 1999. Similarly, in 1 A.D. Pedanius Dioscorides, a Greek physician, in his *Materia Medica* commented on the dangers of adulterated drugs.

[29] The spread of counterfeit drugs is generally more pronounced in those countries where the manufacture, importation, distribution, supply and sale of drugs are less regulated and enforcement may be weak and the exact extent of the problem is difficult to measure. See also Akunyili, D. (2006)., "Lessons from Nigeria: the fight against counterfeit drugs in Africa". Diabetes Voice. September 2006 Volume 51 Issue 3. Page 41.

[30] Green, M D. (2013) Perspectives: Counterfeit Drugs. Retrieved from www.nc.cdc.gov on 30/5/2017.

[31] www.who.int/medicines/services/counterfeit/faqs/03/en.

[32] WHO. Guidelines for the Development of Measures to Combat Counterfeit Drug. Accessed at www.who.int on 23rd June, 2017.

Counterfeit drugs are also said to include drugs without the full name and address of the manufacturer and drugs not certified and registered by NAFDAC[33]. In some cases, counterfeiters set up fake companies and procure fake certificates and documents for exporting and importing pharmaceutical ingredients as well as machinery[34]. In all cases counterfeit medicines are manufactured secretly with no possibility of control. One fact that is worthy of note is that counterfeiting occurs both with branded and generic products. It has been found that counterfeiters not only copy or imitate existing products but they also manufacture products that are completely new inventions[35]. Counterfeits can be found in street vendor stalls as well as legitimate-looking stores. In recent years, many stores selling counterfeits have become increasingly well organized and established so as to imitate a store selling legitimate products. Furthermore, counterfeits are now increasingly sold online creating more opportunities to dupe consumers into thinking they are buying genuine goods at discounted prices. In fact, it has been proven that medicines purchased over the Internet from sites that conceal their physical address are counterfeit in over 50% of cases[36].

It is pertinent to note that, counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient (inadequate quantities of) active ingredient(s), or with fake packaging[37]. In developing countries, the most disturbing issue is the common availability of counterfeited medicines for the treatment of life-threatening conditions such as malaria, tuberculosis and HIV/AIDS[38] as fake antiretroviral drugs have been reported in Africa.

4. DRUG COUNTERFEITING AND AVAILABLE REMEDIES TO VICTIMS

The legal and institutional frameworks for drug counterfeiting in Nigeria are mainly derived nationally, regionally and internationally. The National legal instruments are legislations, policies and guidelines, which are issued pursuant to one legislation or the other. Amongst which are, NAFDAC Act, Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, Food, Drugs and Related Products (Registration, etc) Act, Foods and Drugs Act, Poisons and Pharmacists Act, Trade Malpractice (Miscellaneous Offences) Act, Criminal Code Act, Pre-Shipment Inspection of Imports Act, Pre-Shipment Inspection of Export Act, Standards Organisation of Nigeria Act, Consumer Protection Act. Policies, Guidelines, and Regulations range from the National Drug Policy to Guidelines on National Drug Distribution and Drug Labelling Regulations, to name a few.

An examination of the legal framework, revealed that Nigeria has a robust and comprehensive legal framework. However, their effect is not being felt due to enforcement challenges. Some of these instruments have been found to be outdated, overlapping and conflicting, thereby making enforcement almost impossible. Penalties are lenient. All these leave room for offenders to maneuver. Law reform has also been delayed by lack of political willpower to change the situation. None of these make provisions for victim compensation. The legal issues identified in relation to drug counterfeiting are contract, torts, criminal law, human rights intellectual property rights, strict liability and product liability. A look into the legal issues in drug counterfeiting, established that it is a violation of the right to qualitative healthcare. With regards to victim's right of redress, under the law of contracts, given that there is no contractual relationship between the manufacturer and the end user, the principle of privity of contract will not be applicable.

[33]Akunyili D. (2006) Lessons from Nigeria: the fight against counterfeit drugs in Africa.*Diabetes Voice*. Volume 51 Issue 3:42; See also, Akunyili D. *op.cit* p.19

[34] Counterfeit Medicines. World Health Organization. Fact sheet No. 275 revised 2006. Accessed at www.who.inton 1st August, 2017.

[35]Ibid.

[36] Counterfeit drugs kill. Accessed at www.who.int on August 1, 2018.

[37] WHO, ibid.

[38]*Op. cit*.

The caveat emptor principle may have unfair consequences, in instances where authenticating the drug with the Mobile Authentication System (MAS) has not been possible due to electricity or telecom network. The end user may be able to rely on misrepresentation, given that the medicine does not comply with the standard/specification that it claims to have. The alleged claims on the packaging and instruction leaflet would have induced the buyer to buy the drug believing that it will be fit for purpose. This will entitle him to rescind the contract. The buyer however has no right of action against the seller, as it was not the seller that is responsible for the misrepresentation.

Applying the principles of criminal law to this situation, offences of strict liability makes manufacturers culpable for their actions, not just in their personal capacities, but their corporations as well. Given all the surrounding circumstances surrounding the legal issues, a victim of counterfeit drug can get remedy under the principle of negligence in tort and product liability. All he needs to show is that he is owed a duty of care, which has been breached and the breach has resulted in harm/injury to him. This will entitle him to compensatory damages.

Be that as it may, victims of counterfeit drugs may still be denied justice, given the lapses of the Nigerian Judicial system, which is slow and expensive. As a result of this, many victims do not bother with seeking redress. Some are also not aware of their rights, as so cannot pursue redress. Nigeria, however has an obligation to protect, fulfill and respect the right to health of her citizen. It is therefore essential for there to be a law reform so as to discharge this duty. The United Nations Guiding Principles on Business and Human Rights provides a template for this.

5. THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGP)

The need to manage the negative impact of businesses on human right of their employees, consumers and communities led to the development of the UNGP. In 2008, the UN endorsed the framework of "Protect, Respect and Remedy" as prescribed by the UNGP. The Human Right Council of the UN endorsed the UNDP by its resolution 17/4 of 16th June, 2011. The UNGP are grounded on the principles that, States have existing obligations to respect, protect and fulfill human rights and fundamental freedoms. Secondly, businesses are specialised organs of the society and they perform specialised functions. They must therefore comply with all applicable laws, as well as respecting human rights. Lastly, rights and obligations of all concerned should be commensurate with available remedies in the event of a breach of duty.

The UNGP is applicable to all member states and businesses, whether transnational or otherwise. It is expected that their provisions will be implemented in a non-discriminatory manner. According to John Hagee, the Framework addresses the question, "*what States and business enterprises need to do to ensure business respect for human rights*". It elaborates the implications of existing standards and practices for States and businesses, integrating them within a single, logically coherent and comprehensive template, and identifying where the current regime falls short and how it should be improved."[39]

The UNGP within its pillars of 'Protect, Respect and Remedy', provides for general regulatory and policy means by which States ought to foster business enterprises' respect for human right throughout their operations. With regards business enterprises,[40] the UNGP provides for a human rights due diligence process. The process involves assessing actual and potential human rights issues, integrating and taking actions on findings, monitoring how effective the responses are, and to communicate how the human rights issues are to be dealt with.

[39] Report to UN Human Rights Council. The Report was presented by Prof. John Hagee, Special Representative of the Secretary General for Business and Human Rights, at Geneva, on 30th May, 2011. p.2.
[40] Principles 11-24 UNGP

The due diligence extends to third (3rd) parties connected to the enterprise in question. It also deals with ensuring that victims have greater access to adequate remedy. Highlighted also is the need to deal with legal and practical barriers which victims may face in obtaining judicial remedy, recommending steps for strengthening state-based non-judicial mechanisms and need for enterprises to create and or co-operate in effective operational -level grievance mechanism. A fundamental principle of international human rights system is that when a right is violated, victims must have access to an effective remedy. The State, in protecting the human rights of her citizens, must ensure that businesses within her territory do not violate the human rights of the citizens, and provide access to remedy, should the rights be violated. It is the responsibility of the State to ensure that the National judicial system can deal with business-related human rights abuse and that the business-related human right violation. In their part, businesses are to provide for, or be involved in effective grievance settlement mechanism for human right violation(s) resulting from the company's activities.

The Framework prescribed that effective grievance mechanism, should be legitimate, accessible, predictable, equitable, transparent and rights-compatible. They must be capable of providing genuine remedies for victims of human rights violations by business enterprises.Applying the UNGP to drug counterfeiting, it has been established that drug counterfeiting is a violation of the right to health. A victim of counterfeit drugs will therefore be entitled to remedy for the abuse of his/her right to health. In the same vein, counterfeiters are businesses within the context of the Framework. And as stated in the Framework, the size and the industry of the enterprise is immaterial.

The challenge of applying the Framework to drug counterfeiting in low and medium income countries like Nigeria is that, the counterfeiters may be based in other countries, therefore, invisible. Those based within the territory, may still be difficult to trace the counterfeiter, especially if the business is transacted on the internet. The Framework, by requiring the State to provide enforceable laws and judicial and non-judicial legal system to handle business related human right violation, has provided a way out of this predicament. The provisions of the Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act (Amendment) Bill 2015, comply with the requirement of the Framework, thereby ensuring the protection of the human rights of the Nigerian citizens. It is therefore important for the government to do all necessary to see that the Bill receives Presidential assent.

6. COUNTERFEIT AND FAKE DRUGS AND UNWHOLESOME PROCESSED FOOD (MISCELLANEOUS PROVISIONS) ACT (AMENDMENT) BILL, 2015[41]

This is a Bill for an Act to amend the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act[42] [CF&UPF(MP) Act] and other related matters. The Bill was passed to law by the Senate on 3rd November, 2016. It seeks to amend sections 3 and 4 of the principal Act, to make up for its deficiencies. The essence of the Bill is to make provision for a means of deterring people from indulging in drug counterfeiting. The Bill makes provision for stiffer penalties, such as, life imprisonment and increased fines, power of seizure of the assets of the counterfeiters, confiscation of assets of the counterfeiter(s) and proceeds from the crime, this should be deposited in the Consolidated Fund of the Federation (CFF), the creation of a 'Victims Compensation Fund' (VCF), for the purpose of compensating victims of counterfeit drugs. The VCF will be funded from the funds deposited in the CFF. Although the Bill had been read by the Senate for the third (3rd) time and passed, there is no evidence that it was put forward for the President's assent, nor any other action taken on it till date.

[41] Retrieved from https://lawpavillion.com on 10th February, 2018.
[42] Cap C34 LFN 2004.

7. CONCLUSION AND RECOMMENDATIONS

Counterfeit drugs are a global public health problem causing death, disability and injury to adults and children alike. No country is free of this menace, which plagues developing and developed countries alike[43]. The nature, scope and growth of the expertise and sophistication or their manufacturers are phenomenal and the menace continues to thrive despite numerous legislations against it. The people's right to health include the right of access to qualitative healthcare and assurance that drugs received are not only genuine but safe, effective, and affordable and it is also the responsibility of government to protect its citizens from the clutches of unscrupulous members of the society[44]. In a bid to do this, there are national, regional and international laws and conventions, to curb the menace of drug counterfeiting. These laws seem to be adequate generally, but fall short in their award of punishment and also in their implementation. This is due to the fact that, aside of the enabling environment, the penalty is not commensurate with the profit made or that can be made from the business.

In view of this, the adoption of the all embracive approach is proposed. It seeks to make business organisations responsible for their offences. It provides for a compensation for the victims. It is believed that if the offenders are made to compensate the victims, the loss in funds will serve as a deterrent.

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[43] WHO. 2007. *ibid*
[44] Erhun WO, Babalola OO, Erhun M O. (2001) *Loc cit*

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