MEDICAL NEGLIGENCE AS A LIMITATION TO THE RIGHT TO HEALTH AND HEALTHCARE: THE NIGERIAN PERSPECTIVE*

Abstract

The Right to highest attainable level of health and healthcare is one of the basic rights recognized in the United Nations International Covenant on Economic Social and Cultural Rights (ICESR)[1]. It also forms part of many other international treaties. In Nigeria, though the right of healthcare does not form part of the Constitution, the right can be enforced through international human rights treaties and conventions to which Nigeria is signatory including the African Charter on Human and Peoples Right which has been codified as African Charter on Human and People Right (Ratification and Enforcement) Act[2]. This article, using doctrinal method, examines medical negligence as an anathema to the enjoyment of the right to health and healthcare is applicable in the Nigerian environment. The study discovers victims of medical negligence can obtain redress through action in tort and fundamental right enforcement procedure. It is also found that much of the cases of medical negligence are not brought to Courts for adjudication because of reasons ranging from high cost of litigation, limitation period for compensation etc. It is recommended inter alia that the compensation system for medical negligence ought to be brought to par with other countries.

1.1. Introduction

It is no secret that the health care sector of Nigeria is to put it lightly, a mess. Nigerian Patients have one of the highest ranking mortality rates in the world[3]. There is a real risk of death or injury from the inadequacies of the health system in its basic organization and in the specifics of its delivery in individual cases.

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[1] Article 12 International Covenant on Economic, Social and Cultural Rights
[2] CAP A9 Laws of the Federation of Nigeria 2004
[3] https://data.unicef.org/country/nga last accessed on 11/7/2018

What is more? There is a severe disparity and gross insufficiency in the provisions for redress for individuals who have suffered damages from these inadequacies in the Nigerian Public and Private Health Sector. What this means is that more people in Nigeria are likely to suffer damage from medical negligence, less victims likely to obtain redress in Courts over said damages and even less, likely to receive sufficient compensation for their loss. Because of these and the difficulty of proof of medical negligence, reluctance of expert witnesses to testify against their peers, difficulty in establishing causation of the loss or damage and poverty[4], it is no wonder that medical negligence is rarely the subject of litigation in Nigeria.

2.1. The Nigerian Provisions for the Right to Health

The Right to health is not expressly constitutionally guaranteed in the present Nigerian Constitution. However, it has become part of our laws by being embedded in the African Charter for Human and Peoples' Rights which Nigeria has adopted. The enforcement of the said law in Nigeria is another kettle of fish altogether. The Universal Declaration of Human Rights, 1948 which is also a universally accepted fundamental human rights documents also along with the ICCPR and ICESCR provides for the protection of the right to health of individuals whose Nations are member States to those treaties. Article 12 of the International Covenant on Economic, Social and Cultural Rights[5] reads thus:

> (1) The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
>
> (2) The steps to be taken by the States parties to the Covenant to achieve the full realization of this right shall include those necessary for:

[4] H Doma, Enhancing Justice Administration in Nigeria through Information and Communications Technology (2016) 32 J Marshall J of Info. Tech. & Privacy L 89, at 95-96.

[5] 1966

> (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The Protocol of the ECOWAS (of which Nigeria is a member State) on democracy and good governance provides that the rights set out in the African Charter on Human and Peoples' Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States; each individual or organization shall be free to have recourse to the common or civil law courts, a court of special jurisdiction, or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of his or her rights. In the absence of a court of special jurisdiction, the present Supplementary Protocol shall be regarded as giving the necessary powers to common or civil law judicial bodies[6]. This means that Nigeria is bound to provide adequate health care services to its citizens and these citizens have a right of redress upon infringement both locally and internationally. The enforcement of these objectives are however not the main objective of this editorial.

The National Strategic Health Development Plan Framework: Health Sector Development Team[7] acknowledged that health care services in Nigeria are provided by a multiplicity of health care providers – public, private including for profit and not-for-profit, patent medicine vendors and the traditional health care providers. It states:

> "Despite considerable investment in the health sector over the years, available evidence suggests that health services throughout Nigeria are delivered through a weak health care system.

[6] (2001), Article 1(h)
[7] (2009-2015) 1, at 23

> "Consequently it is unable to provide basic, cost-effective services for the prevention and management of common health problems especially at the LGA and Ward levels. For example, the proportion of PHC facilities providing immunisation services range from 0.5% in the North-West Zone to 99% in the South West and South East Zones. Also the capacity to provide basic emergency obstetric services is very limited as only 20% of facilities are able to provide this service. This limited coverage of basic health services, which results from poor access to information and services result in under utilisation of services."

Nigeria's National Health Policy, revised in 1996, places much emphasis on primary healthcare under local government as it is contained in the Fourth Schedule[8]. The Federal, State and Local Governments are vested with the responsibility of provision of health services at their respective levels[9], thus, these bodies along with privately owned and Non-governmentally administered health provision institutions are the culprits in the issue of medical negligence which is the subject matter of this discourse.

3.1. Medical Negligence –Meaning

3.2. The word "negligence" means carelessness, laxity or neglect. Medical negligence is a combination of two words. Negligence is an offense under tort.

3.3. Medical negligence has been defined as an act or omission (failure to act) by a medical professional that deviates from the accepted medical standard of care. Medical professionals owe a duty of care to their patients to provide treatment that is in line with the medical standard of care which is usually defined as the level and type of care that a

[8] 3 Section 7(2) The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters – (c) the provision and maintenance of health services

[9] Section 17, Constitution of the Federal Republic of Nigeria, 1999 (as amended)

reasonably competent and skilled health care professional, with a similar background and in the same medical community, would have provided under the circumstances that led to the alleged malpractice[10]. Medical Negligence basically is the misconduct by a medical practitioner who in breach of his duties fails to act in exercise of reasonable care as expected of a professional and resultantly causes harm to the patient entrusted to his care. While medical negligence may exist with or without injury, to ground a claim of medical negligence in Nigeria, an injury must have resulted from the said medical negligence. It may take the form of misdiagnoses, delayed diagnoses, failure to treat, surgical errors, birth injury, medical product liability-when a medical product used by a patient is defective, e.t.c. Another rife instance is Healthcare institutions demand of patients that they provide a deposit before treatment is given even in cases of emergency[11]. Medical negligence has caused many deaths as well as adverse results to patients in Nigeria.

3.4. In *Otti v. Excel C. Medical Centre Ltd & Anor*[12], it was stated in explaining medical negligence thus:

> It is rudimentary law that in order to find a **medical** professional guilty of **negligence**, the situation has to be such that what he did is what professional colleagues would say that he really made a mistake and that he ought not to have made it. Put differently, the action would be such that falls short of the standard of a reasonably skillful **medical** professional

To state it succinctly, the Rules of Professional Conduct for Medical and Dental Practitioners also known as the Code of Medical Ethics highlights some instances that would amount to Professional Negligence. Some of these are:

[10] D Goguen , Medical Negligence- All Law Articles. Copyright ©2019 MH SUB 1, LLC, dba Nolo

[11] Obidimma&Obidimma, Legal and Ethical Issues in the Demand for Payment before Treatment in Nigerian Hospitals (2015) 38 Journal of Law, Policy and Globalization 176. Yusuf O. Ali (SAN), ″Negligence and Damages Section of the International Bar Association Conference″, A Doctor's Nightmare: Protection From Medical Malpractice Suits – The Nigerian Perspective (2nd October 2012, Dublin)

[12] (2017) LPELR (CA)

(A) Failure to attend promptly to a patient requiring urgent attention when the practitioner was in a position to do so.

(B) Manifestation of incompetence in the assessment of a patient.

(C) Making an incorrect diagnosis particularly when the clinical features were so glaring that no reasonable skillful practitioner could have failed to notice them.

(D) Failure to advise, or proffering wrong advice to, a patient on the risk involved in a particular operation or course of treatment, especially if such an operation or course of treatment is likely to result-in serious side effects like deformity or loss of organ.

(E) Failure to obtain the consent of the patient (informed or otherwise) before proceeding on any surgical procedure or course of treatment, when such a consent was necessary.

(F) Making a mistake in treatment e.g. amputation of the wrong limb, inadvertent termination of a pregnancy, prescribing the wrong drug in error for a correctly diagnosed ailment, etc.

(G) Failure to refer or transfer a patient in good time when such a referral or transfer was necessary.

(H) Failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient.

(I) Failure to see a patient as often as his medical condition warrants or to make proper notes of the practitioner's observations and prescribed treatment during such visits or to communicate with the patient or his relation as may be necessary with regards to any developments, progress or prognosis in the patient's condition.

Sadly, the medical and Dental Practitioners Act of 1988 which should regulate medical malfeasance in Nigeria, does not recognize or make provisions for medical negligence. The offences envisaged by that Act relates mainly to impersonation of a medical practitioner which in itself cannot actually be defined as medical malfeasance. Worse still, the penalties are so minute in comparison to the injuries suffered by victims of medical negligence. Section 17 of the said Act reads thus:

(1) Subject to subsections (6) and (7) of this section, if any person

who is not a registered medical practitioner –

(a) For or in expectation of reward, practices or holds himself out to practice as a medical practitioner; or

(b) Takes or uses the title of physician, surgeon, doctor or licentiate of medicine, medical practitioner or apothecary; or

(d) Without reasonable excuse takes or uses any name, title addition or description implying that he is authorized by law to practice as a medical practitioner. He shall be guilty of an offence.

(2) Subject to subsections (6) and (7) of this section, if any person who is not a registered dental surgeon---

(a) For or in expectation of reward, practices or holds himself out to practice as a dental surgeon; or

(b) Takes or uses the title of dental surgeon, dentist or dental practitioner, or

(c) Without reasonable excuse takes or uses any name, title, addition or description implying that he is authorized by law to practice as a dentist, he shall be guilty of an offence under this section.

(3) If any person for the purpose of procuring the registration of any name, qualification or other matter--- (a) makes a statement which he believes to be false in a material particular; or (b) recklessly makes a statement which is false in a material particular, he shall be guilty of an offence under this section. (4) If the Registrar or any other person employed by the Council willfully makes any falsification in any matter relating to the Register he shall be guilty of an offence under this section. (5) A person who is guilty of an offence under this section shall be liable--- (a) on summary conviction to a fine not exceeding N5,000.00, (b) on conviction or indictment, to a fine not exceeding N10,000.00 or imprisonment, for a term not exceeding five years or to both such fine and imprisonment. (6) Where any person is acknowledged by the members generally of the community to which he belongs as having been trained in the system of therapeutic medicine traditionally in use in that community, nothing in paragraph (a) of subsection (1) or paragraph (a) of subsection (2) of this section shall be construed as

making it an offence for that person to practice or to hold himself out to practice that system.

The Medical and Dental Practitioners Act however admits of "professional misconduct" or infamous conduct". In the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* (2001) LPELR 1856(SC)1 What amounts to infamous conduct in medical practice was explained as any serious infraction of the acceptable standards of behavior in the medical profession.

> "A charge of infamous conduct must be of a serious infraction of acceptable standard of behaviour or ethics of the profession. It connotes conduct so disreputable and morally reprehensible as to bring the profession into disrepute if condoned or left unpenalised. Although the medical profession is the primary judge of what is infamous conduct, it cannot do so without paying attention to what the law permits, either of the patient or of the practitioner."

Thus, a medical practitioner has a duty to exercise reasonable care. Any action in the administration of medical aid and practice of medicine, less of what a reasonable trained and registered medical practitioner would do would make such a practitioner guilty of medical negligence. See Adebayo v. Chairman, MDPIP &ors. (LPELR) 45537 (CA)

The Courts in interpretation of Section 13(1) of the Medical and Dental Practitioners Act, 1963 with respect to the types of cases under which the Tribunal can inflict penalties for unprofessional conduct by practitioners stated thus:

> "Section 13(1) of our Act envisaged three types of cases under which the Tribunal can inflict penalties for unprofessional conduct by practitioners. The Section reads: "13(1) Where -(a) a registered person is judged by the tribunal to be guilty of infamous conduct in any professional respect; or (b) a registered person is convicted, by any Court in Nigeria or elsewhere having power to award imprisonment, of an offence (whether or not an offence punishable with imprisonment) which in the opinion of the tribunal is incompatible with the status

> of a medical or dental practitioner, as the case may be; or (c) the tribunal is satisfied that the name of any person has been fraudulently registered, the tribunal may, if it thinks fit, give a direction reprimanding that person or ordering the registrar to strike his name off the relevant register or registers". In effect where the unprofessional conduct of the practitioner amounts to a crime, it is a matter for the Courts to deal with; and once the Court has found a practitioner guilty of an offence, if it comes within the type of cases referred to in Section 13(1)(b), then the Tribunal may proceed to deal with him under the Act."

4.1. Obtaining redress for Medical Negligence in Nigeria – Duty of Care in Medical Negligence Litigation

Apart from the pursuit and prosecution of a criminal charge against a medical practitioner who causes loss of life or limb by his medical negligence, there are two main methods by which a victim of medical negligence may obtain a relief of damages or compensation for medical negligence in Nigeria. Such a person may seek legal redress in one of two ways:

a. Civil claim for tortious liability

b. Fundamental Rights Enforcement

Other Non-judicial Methods include:

a. Report to the Medical and Dental Council of Nigeria

b. Alternative Dispute Resolution Methods

4.2.1. Civil Claim for Tortious Liability

A person who seeks to prove medical negligence has a duty to prove his allegation akin to the duty in proof of every other tort of negligence. See the case of *Abubakar & Anor v. Joseph & Anor*[13]. See also *NB PLC v. Audu*[14] where it was held thus:

[13] (2008) LPELR 48 (SC)
[14] (2009) LPELR 8863 (CA)

> "The law is quite trite that, he who asserts must prove. For in civil cases, the burden of proof is on the party who asserts a fact to prove the fact. The burden of proof of negligence falls upon the plaintiff, in this case, the Respondent who alleged negligence. This is because negligence is a question of fact, not law, and it is the duty of the one who asserts it to prove it. By virtue of Section 135(1) of the Evidence Act, whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

In *MTN v. MUNDRA Ventures Ltd*., the Court Per GEORGEWILL ,J.C.A also held that:

> "In considering a claim of negligence the duty of care owed must be proportional to the degree of the risk involved and for the principle of "res ipsa loquitur" as well as in the rule in *Rylands v. Fletcher* (1886) LR 1 Exch 265 to apply it must be shown that the thing which cause the damage was under the care and control of the Defendant and that the occurrence was such that it could not have happened in the absence of negligence and that there is no evidence as to why or how the occurrence took place, which circumstance is clearly not the case of the Respondent. See *NEPA v. Alli* (1992) NWLR (Pt. 259) 229. See also *North Western Utilities Ltd v. London Guarantee and Accident Co. Ltd &Ors (*1936) AC 108; *Rylands v. Fletcher* (1868) LR 1 Exch 265. Once a Plaintiff leads evidence which creditably and cogently establishes a duty of care owed him by the Defendant, the breach of that duty by the Defendant and the resultant damages he is entitled to his claim for damages for negligence. The converse is thus the case once a Plaintiff fails to establish by credible evidence all or any of these key three ingredients of

> the tort of negligence, such a claim fails and ought to be dismissed. The Plaintiff must prove that the injury caused him was as a result of the negligence of the Defendant, nothing else or less would be sufficient. See *B. J. Ngilari v. Mothercat Ltd* (1999) 13 NWLR (Pt. 636) 626. See also *Oyidiobu v. Okechukwu* (1972) 5 SC 191; *Orhue v. NEPA* (1998) 7 NWLR (Pt. 557) 187; *R. v. Tatimu* (1952) 20 WLR 60. In law, therefore the proof of the existence of a duty of care, its breach and resultant damages is a sine qua non for a successful claim in negligence. In all cases in which damages is being claimed for negligence it may be well for trial Courts to bear it in mind that negligence is a matter of question of fact and not law and thus a finding as of fact of the act of omission or commission of the Defendant must first be made before damages could be assessed. See M. *O. Kanu & Sons Ltd Co. Ltd v. First Bank of Nigeria Plc* (2006) LPELR 1797 (SC). See also *Agbonmagbe Bank Ltd v. CFAO* (1966) 1 All NLR 490; *Diamond Bank Ltd V. Partnership Investment Co Ltd & Anor* (2009) 18 NWLR (Pt. 1172) 67; *Alhaji Kaka v. Jarma Kani Therpul Ltd* (1961) All NLR 778); *Alhaji Abubakar & Anor v. Joseph & Anor* (2008 13 NWLR (Pt. 1104) 307. In order to establish negligence against a Defendant, one pertinent question arises for consideration and that is whether as between the alleged wrong doer and the person who has suffered damage, there is sufficient relationship of proximity or neighbourhood such that in the reasonable contemplation of the of the former, carelessness on his part may be likely to cause damage to the latter?

The Honourable Court went on to hold as follows:

> It is firmly established that a party who alleges negligence should not only plead the act or acts of

negligence but should also give specific particulars and thus it is not open to the Court to find reasons other than those pleaded to find for the Plaintiff in the tort of negligence. The particulars of the alleged negligence must be pleaded in sufficient detail and must be supported by credible evidence at the trial. See *A G Leventis Nig Plc V. Chief Christian Akpu* (2007) 6 SC (Pt. 1) 239 or (2007) 17 NWLR (Pt. 1063) 416.See also *Aku Nmecha Transport Services Nig. Ltd & Anor V. Atoloye* (1993) 6 NWLR (Pt. 298) 233 @ p. 248; *UBN Plc V. Emole* (2001) 12 SC (Pt 1) 106; *Aemareli V. AIC Ltd* (1986) NWLR (Pt. 443) 449; *Rabiu Hamza V. Peter Kure* (2010) 10 NWLR (Pt. 1203) @ 630 My Lords, before a trial Court can arrive at a finding of liability for damages for negligence, it is the basic requirement of the law that the Defendant must be shown to owe a duty of care to the Plaintiff and therefore where there is no such national duty to exercise, negligence with have no legs to stand and any claim premised thereon will fail. See also *Koya v. UBA Ltd* (1997) 1 NWLR (Pt. 481) 251; *Universal Trust Bank of Nigeria v. E FedeliaOzoemena* (2007) 3 NWLR (Pt. 1022) 448 Kalgo JSC. In *Alumininum Manufacturing Co. of Nig. Ltd v. Volkswagen of Nigeria Ltd* (2010) LPELR 3759 (CA), Nwodo JCA (God blessed her soul), discussed in details the requirements for a successful claim in damages for negligence thus: "The onus of proving negligence is on the Plaintiff who alleges it. Where Plaintiff pleaded and relies on negligence by conduct or action of the Defendant he or she must prove by evidenced the conduct or action and the circumstances of its occurrence giving rise to the breach of the duty of care. Once Plaintiff has discharged the onus on him the burden shifts on the Defendant to adduce evidence in challenge. The basic requirement is that the Plaintiff must plead all

> the particulars in sufficient detail of the negligence alleged and the duty of care owed by the Defendant must be established by evidence. The constituent of negligence is a question of fact not law. Consequently each case is decided in the light of its own peculiar facts."

Flowing from the foregoing, it is clear that the plaintiff in such an action must therefore show:

1. That a **doctor-patient relationship** exists with the medical practitioner being sued and as such a duty of care was owed[15].
2. That the medical practitioner was negligent in a way that caused harm to the patient. The plaintiff in an action for medical negligence must be able to show that a competent/reasonable medical practitioner with the same skills will not have caused such harm. The "Reasonable man" test is used to determine the negligence of a doctor, it is determined by what a fellow doctor with the same skills will do in that case[16].
3. The plaintiff also has to prove that the medical practitioner's negligence caused the injury or harm the patient is suffering from. For the patient to prove that, he needs expert testimony from a medical practitioner with the same skills stating that he will not have acted in such an incompetent manner[17].
4. The patient has to prove specific damages caused by the injury inflicted by the medical practitioner[18].

In other words, as in tort, Duty of care – Breach of duty of care – Resultant Damage must be proved by a person seeking to be compensated for medical negligence. A party who alleges negligence must plead the acts of negligence and give specific particulars of same.

[15] International Messengers Nig. Ltd. V. Nwachukwu (2000) LPELR 6852 (CA)
[16] Milam v. Medical & Dental Investigation Panel &Anor (2018) LPELR 45539 (CA)
[17] Bello &Ors. V. A.G. Oyo State (1986) LPELR – 764 SC
[18] D Majekodunmi, Medical Malpractice in Nigeria. https://esq-law.com/medical-malpractice-in-nigeria/.last accessed on 8/07/18 at 11:44am.

It is not sufficient for a plaintiff to make a blanket allegation of negligence against a defendant in a claim on negligence without giving full particulars of the items of negligence relied on as well as the duty of care owed to him, by the defendant. See *Machine Umudje and Another v. Shell-BP Petroleum Development Company of Nigeria Ltd*[19].

The applying party ought to state the facts upon which the supposed duty is founded, and the duty to the plaintiff with the breach of which the defendant is charged. It is not enough to show that the defendant has been guilty of negligence without showing in what respect he was negligent, and how he became bound to use care to prevent injuries to others. See also *Enyika v. Shell B.P.Petroleum Development Co*[20]. and *Abusomwan v. Mercantile Bank*[21].

As each case is individual, the amount of compensation awarded will vary from claim to claim. However, there are certain things the court will consider when deciding the amount of compensation a claimant would be entitled to, this includes factors such as a person's age, severity of injury, employment status and associated losses caused as a result of the treatment etc.

The duty of care which a medical practitioner owes his patient has been described as "reasonable[22]".What the law requires is that the medical professional must exercise the reasonable standard of care expected from him.

4.2.2. Seeking Redress on Medical Negligence Matters Through Fundamental Rights Enforcement Procedure

This system of judicial redress for medical negligence is usually used where the victim of the medical ineptitude is dead. It is not uncommon for medical negligence to result in the death of the victims in Nigeria.

[19] (1975) 9-11 S.C 155 at 166-167
[20] (1997) 10 NWLR (pt 526) 638
[21] (1987) 3 NWLR (pt 60) 196
[22] *Supra*

The family of the deceased in pursuing this judicial remedy must follow the provisions of the Fundamental Rights Enforcement Procedure Rules of 2009 which dictate the form and procedure for pursuing the enforcement of fundamental rights which have been violated[23].

The right to life is guaranteed by Section 33 of the Constitution[24]. Subsection 2 of the said section provides for circumstances of death which would not be tantamount to an infraction of the right to life. It provides thus:

> A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -

(a) For the defence of any person from unlawful violence or for the defence of property:

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) For the purpose of suppressing a riot, insurrection or mutiny.

Loss of life through medical negligence is not recognized as an excusable death of a Nigerian Citizen.

The Challenges of Medical Negligence Litigation in Nigeria

There are several challenges of medical negligence litigation ranging from ignorance to procedural gridlocks. Some of them are:

a. Limitation period of three years only within which a claim for compensation be made. This time period runs from the date when the applicant first received the negligent treatment complained of or the date on which he/she first discovered that the treatment was negligent[25].

[23] *Emeka v, Okoroafor & Ors* (2017) LPELR 41738 (SC)
[24] Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended
[25] https://lawpadi.com/sue-medical-negligence-nigeria/.last accessed on 08-11-2019 at 10:00am

b. Inadequacy of laws criminalizing medical negligence. The medical and Dental Practitioners Act of 1988 which should regulate medical malfeasance in Nigeria, does not recognize or make provisions for medical negligence. The offences envisaged by that Act relates mainly to impersonation of a medical practitioner which in itself cannot actually be defined as medical negligence.

c. Ignorance of the existence /or enforceability of the Laws governing medical negligence in Nigeria.

d. High cost of litigation.

e. Reluctance of Medical Professionals to testify against their peers.

Conclusions and Recommendations

Generally, certain problems plague the Nigerian Health Sector. Issues such as underfunding and under-staffing of hospitals, unpaid doctors, intermittent power supply, poor infrastructure, lack of resources and corruption have reduced the health sector into a mass of undependable structures instead of the health- care giving sector it is supposed to be. Misallocation and Diversion of funds by Healthcare Administrators[26] and its mother Corruption in the public sector is a huge challenge to standard health care provision. These impact at the micro level, care for individual patients especially in Public Health Provision Systems. However, there are times when the preventable deaths and incapacitation suffered are caused by a human factor as against the system factors listed above. This is where medical negligence comes in.

[26] O Nnamuchi, Kleptocracy And Its Many Faces: The Challenges Of Justiciability Of The Right To Health Care In Nigeria (2008) 52 (1) J of African L 1, at 10. The author analyses the negative impact of corruption on realization of the right to healthcare, he notes: "In addressing the centrality of good governance to the effective implementation of human rights, the UN Committee on Economic, Social and Cultural Right (Committee on ESCR) stressed that to be successful, a national health strategy and plan of action should be anchored on the principles inter alia of 'accountability' and 'transparency'. Conversely, bad governance, in terms of accountability and transparency void, as quite often typified by corruption and economic mismanagement can have a devastating impact on human rights particularly socio-economic rights, for in contradiction to civil and political rights, the realization of socioeconomic rights is wholly dependent on availability, proper allocation and efficient utilization of resources, and misuse often result to severe hardship and deprivation for those on the receiving end

Current medical malpractice system in the United States and other developed parts of the World offer better or more effective compensatory measures than are available in Nigeria. Policy responses to a series of medical malpractice crises have not resulted in effective reform and have not altered the fundamental incentives of the stakeholders.

These issues should be looked into with a view to providing more stringent punitive measures against persons found guilty of medical negligence. Better compensatory plans should also be put in place to ameliorate the sufferings of persons who have lost "life or limb" to medical negligence. There is also a need for public awareness of these issues.

There are methods by which to curb, punish and compensate for medical negligence in Nigeria. Although these methods are not devoid of lapses, they are a good place to start the movement to curb or reduce to its barest minimum, medical negligence.