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RIGHT TO HEALTH: X-RAYING THE CHALLENGES OF RIGHT TO ACCESS MEDICINES IN NIGERIA

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Abstract

The health of every citizen in any nation is very important, because human resources, being pillars driving forth development, can only be achieved where the people are healthy and able. This informed the reason for the inclusion of the right to health in the Nigerian Constitution, albeit not justiciable. Access to medicine became so paramount to achieving the ultimate right to health. The situation is not worrisome in the industrialized nations, but the reverse is the case in the least developed countries, especially the African nations and particularly in Nigeria. These least developed nations wished they have easy or unhindered access to medicines and other healthcare facilities but for some factors militating against such efforts. It is in this light that this paper ex-rayed the various challenges posing as impediments to the realization of access to medicines in Nigeria. These challenges could be seen in areas of Patent in itself as a barrier to the essential medicines, Prices, weak national policy on drugs, corruption and counterfeit drugs found in the competitive markets. Other impediments or challenges are the none proper implementation of the provisions of the Trade Related Aspect of Intellectual Property Rights (TRIPs), insecurity, sociocultural practices, infrastructural challenges and High dependence on importation and the lack of capacity to manufacture drugs locally. The paper recommended, among others, the immediate repeal of the legal framework on Intellectual property right to Patent, which is the Patent Act and Designs Act in Nigeria to capture TRIPs flexibilities that will allow for achieving public health. It also recommended industrialization of the nation towards selfproduction of essential drugs and the provision of infrastructure that will accommodate IT driven medical practice.

Key Words: Right, Health, Access, Medicines and Challenges.

Introduction

There are numerous identified challenges to accessing medicines in Nigeria. These challenges pose impediments to the realization of the rights to life of the individuals.

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The right to life of every Nigerian citizen is guaranteed under the Constitution[1] and the government is duty bound to direct all its policies towards ensuring that the health of every citizen is guaranteed by providing 'adequate medical and health facilities for all persons.'[2] Some of the factors that militate against such adequate provision of health facilities and thus impeding on the right to life of citizens shall be discussed in details in this paper.

Right To Health

The health of every individual and those of the citizens of any nation is immensely significant to the general development and well-being of a nation. Wellness and agility gives rise to effectiveness of labour which is an essential factor of production. This is so regardless of age, socio-economic status, gender or ethnicity. Ill health on the other hand would impede productivity and embarking on responsibilities or from full participation in daily activities.[3] It becomes necessary to understand that right to health is essential to the issues around the enjoyment of right to life. As such right to life is seen as: "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"[4]this has proven that health is a great resource that everyone need for everyday life; the state needs it too for its physical, social and economic development.

The concept of right to health is well articulated under the international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides that: "the State Parties to the present covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The member states are enjoined to take steps necessary towards achieving this by improving all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; ensure the creation of conditions which would assure to all medical service and medical attention in the event of sickness.[5]As though not too satisfied with the provision, the Committee on ICECR later made general comment and gave expansive effect to the right to health to include 'Access to safe and portable water, adequate sanitation, adequate supply of food, nutrition and housing, access to health related education and information, including on sexual and reproductive health' another further important aspect of the right to health is the participation in all health-related decision-making at the community, national and international level.[6]The same is also

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[1] Section 33, Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

[2] Section 17 (3)(d), Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

[3] Olomojobi, Y. *Medical Health and Dental Health Law,* 3rdedn., Princeton & Associates, (2019) P 1.

[4] The Preamble to the Constitution of the World Health Organization (WTO) as adopted by the International Health Conference, New York, 1946.Available at www.who.int>governance.Accessed on the 21st August 2024.

[5] Article 12 (a)(b)(c)(d), International Covenant on Economic, Social and Cultural Rights, (ICESCR) 1966.

[6] The Committee on Economic, Social and Cultural Rights, General Commend 14, The Right to Health (UN Doc. E/C. 12/2000/4 2000) Para 11. Available at https://www.ohchr.org>cescr.Accessed on the 21 August, 2024.

[7]Article 25, Universal Declaration of Human Rights, 1948.

seen at the regional human rights instruments. The Universal Declaration of Human Rights, also state clearly by providing that 'everyone has right to a standard of living adequate for the health and well-being of himself and his family…'[7] So also The African Charter on Human and Peoples Rights provides[7]for the right to health and it considers such right as very important.

While at the national level, the Constitution of the Federal Republic of Nigeria, 1999 (as amended), recognizes the importance of the right to health by providing that the state shall ensure that 'the health safety and welfare of all persons in employment are safeguarded and not endangered' and that 'there is adequate medical and health facilities for all persons.' The problem here is the fact that despite the well elaborated provisions on the right to health, access to health has become so difficult to myriads of persons, especially Nigerians. Consequent upon these, the need for in-dept analysis to exhume the causes of such lack of access became irresistible in order to proffer lasting solution that will adequately address lack of access to health.

Challenges On Access To Medicines Patents as a Barrier to Access Medicines

Patent, as earlier discussed, is the exclusive right granted on invention on a country-bycountry basis, allowing its holder to exclude others from using, selling, producing or importing such an invention without the holder's permission. The invention as it relates to pharmaceuticals could be a product or a process. In countries that are members of the World Trade Organization, patents are granted for 20 years.[8] Patent grants exclusive right to the right holder with concomitant right to monopolize the market to his advantage. He determines price and quantity to supply at a giving time. This poses serious problem of health and access to medicines to the people who are in dire need of the drugs. The challenge is mostly associated with the people living in the third world nations or the developing countries. According to Fatti: 'more than 2 billion people in developing countries do not have access to affordable medicines, including many patients in the countries negotiating Trans-Pacific Partnership (TPP) Free Trade Agreement.'[9] This statistic is so high to be neglected and so a critical look at the situation to finding solution becomes imperative. Two key factors will be responsible for this state of affairs; lack of supply or availability of the drugs or the inability of the people to access the available drugs due to high cost. These two factors are all the resultant effect of intellectual property law in granting patent on pharmaceutical drugs. There is no doubt that what underpins intellectual property everywhere is the fact that patents are a public policy tool aimed at stimulating innovation. This, government does by encouraging research and development by providing monopoly through patents that

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[8] See Article 16 (1&2), African Charter on Human and People"s Rights, 1981.

[9] Tomlinson C., Yuan, Q.H and Hill, J.,,,Patent Barriers to Medicines in South Africa: A Case for Patent Law Reform," edited by Lillie Joanne, Published by: Fix the Patent Laws Campaign (2016), available at http.mccza/documents/632c3b6a947 and also www.msfaccess.org. Accessed on the 2nd February, 2024.

now gives the inventor an economic advantage and at the same time the people are benefitting from technological advancements.

Fatti went on to state categorically that:

> High level of IP protection in developing countries exacerbate rather than solving the problem of access to affordable medicines. Extensive patent protection for new drugs delays the start of competition for generic drugs and since generic drugs competition is the only way to keep drug prices down, such high level of intellectual property can be very damaging to public health. Intellectual property and patent are one of the most controversial issues related to access to medicines since the establishment of the World Trade Organization (WTO) and the entry into force of the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Patent are not the only barrier to life-saving medicines but they can play an important or decisive role. During the term of patent protection the ability of patent owners to set prices without competition can make medicines unaffordable for most people in developing countries.

The assertions are not a distance from the truth considering the fact that there is so much reliance by the developing countries (Nigeria inclusive), on the importation of almost everything from the developed nations in spite of the enormous resources at her disposal. The key solution to free access to medicines is industrialization. Where a country develops its capacity to manufacture drugs, even where there is patent over a particular drug, the home company will be able to produce generic drugs under the

[10] N Fatti, „Intellectual Property Rules and its Impact on Access to Medicines," *International Journal of Law and*
Conflict Resolution, ISS: 2408-5512 Vol. 10 (2) 2022. Available at www.globalscienceresearchjournals.org.Accessed on the 2nd February, 2024.
Note: the TTP was a massive trade agreement signed by twelve Pacific Rim countries, including the United States, that together comprised 40 percent of the global economy.
See: McBridge, J, Chatzky, A, and Siripurapu, A., „What Next for the Trans-Pacific partnership (TPP)," Council on Foreign Relations. Available at www.cfr.org/backgrounder/.Accessed on 24th June 2024.

principles of compulsory licensing. Under the principles of compulsory license, government allows someone else to produce a patented product or process without the consent of the patent owner or plans to use the patent-protected invention itself.[9] This principle allows a country that has national health emergency or crises to produce such a patented drug for the use of its people even without the consent of the patentee. This has been seen as a veritable tool in reducing the high cost of patented drugs and a means to boost the manufacturing capability of a country. 'The compulsory licensing presents a favorable path forward to increase global access to medicines.'[10] The situation becomes more pathetic because, according to Davey:

> Most of the patenting in pharmaceutical sector occurs in the Global North, which has often left countries in the Global South helpless during crises.
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> For example during HIV/AIDS epidemic, pharmaceutical players with patents on life-saving antiretroviral drugs did not budge to decrease prices for Low-and –Middle-Income Countries (LMICs). Some countries, however, have successfully employed compulsory licenses to overcome these hurdles. Larger LMICs like Brazil and Thailand – which had greater leverage and lesser fear of backlash – enacted such licenses on antiretroviral between 2006 and 2007. Importantly political economy plays huge role in dictating whether countries can successfully employ compulsory licensing[11].

This work make bold to say that most of the developing countries do not have the political will to face giants like the United States of
America, which control the patents and manufacturing of drugs, due to fear of trade or economic sanction or being blacklisted. In some cases, the giant nations with the patents rights are so reluctant to patent drugs in some of the developing countries because they know very well that those countries have no capacity to either produce even the generic drugs or activate compulsory license.

During the Covid-19 pandemic, the world witnessed a disaster that made the Global North to come out in aid of the global South, as a matter of urgency to be able to save not just the global South but themselves. During the subsistence of the virus, one thing was made clear: 'nobody on this planet is safe until everyone is safe.'[12] In other to break

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[11] „Compulsory Licensing of pharmaceuticals and TRPIS, World Trade Organization."https://www.org/english/.Accessed on the 2nd February, 2024.

[12] Davey, N „Overcoming Patent Barriers to Increase Access to Medicines: A New Path Forward for Compulsory License," *Harvard Journal of Law and Technology*, Vol.35, No.2, spring 2022P. 171. P 691. Available at www.jolt.law.harvard.edu>pdf.Accessed on the 2nd February, 2024.

[13] Ibid.

[14] Cannon, C.„„Forward to COVID-19 in the Global South: Impact and Responses," In

barriers and contend the widespread of COVID19, a new dimension was brought to provision of TRIPS.[14] This saw

South Africa and India propose a Waiver to the WTO that would suspend certain intellectual property rights recognized by the TRIPS for COVID-19 technologies. The proposed waiver presents significant benefits: it would eliminate the complexities of Article 31(f), which are amplified in the COVID-19 context because novel Moderna's vaccine implicate patents of myriad stakeholders; the waiver proposed is also narrow, specifically tailored to 'prevention, containment and treatment of COVID-19,' and not other diseases; the set duration was later revised to 'at least 3 years rather than leaving the time frame open-ended and to limit the range of products covered.[15]

Another problem associated with patent being a barrier to access to medicines is 'evergreening.' This is a the situation where the manufacturers of patented drugs, before the prescribed time elapses, redesign and inject life into the product and represent it as having new potency, and get renewal of the patent. This is usually done to keep excluding others from the market. Beall, described it in a more succinct way when he said: not all new drug products are truly new. Some are the result of marginal innovation and incremental patenting of existing products, but in such a way that confers no major therapeutic improvement. This phenomenon, pejoratively known as 'ever-greening,' can allow manufacturers to preserve market exclusivity, but without significantly bettering the standard of care. Other studies speculate that ever-greening is especially problematic for medicines/device combination products, because patents on the device component may outlast expired patents on the medicine component, and thereby keep competing, possibly less-expensive generic products off the market.[13] This method tends to prolong the monopoly and extends hardship on people buying the drugs under high cost.

The Effects of Price on Pharmaceutical Products

In the quest to get people, especially Nigerians, right to access to health, pharmaceutical drugs or medicines must be affordable and accessible by its teeming populace. The accessibility by Nigerians is greatly hindered due to the high cost of such drugs in the market. Only the few rich in Nigeria has capability to buy drugs that treats quotidian and life threatening diseases. Poverty and want negatively affects access to health due

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Davey N., „Overcoming Patent Barriers to Increase Access to Medicines: A New Path Forward for Compulsory License,"*Harvard Journal of Law and Technology*, Vol.35, No.2, spring 2022P. 171. Available at www.jolt.law.harvard.edu>pdf. Accessed on the 2nd February, 2024. [14] Article 31(f), Trade Related Aspect of Intellectual Property Rights, 1995. [15] Davey, N. (n.14).

[15] Beall, R.F.,,,Nikerson, J.W., et all, „Is Patent "Ever-greening" Restricting Access to Medicine/Device Combination Products?" edt Fehrenbach Heinz, National Library of Medicine doi:10.1371/journal.pone.0148939 (2016). Available at www.ncbi.nlm.nih.gov/pmc/article.Accessed on the 2nd February, 2024.

to the price of the patented commodity. It is but a truism that 'high drug costs, exacerbate health inequities, as vulnerable populations, such as low income individuals and minorities, are disproportionately affected. These individuals may face even greater barriers to accessing essential medications, leading to disparities in health outcomes.'[14] And according to the WTO, 'Equitable access to high-quality, effective and affordable essential medicines and other medical technologies depend on affordable and fair pricing.'[19] This is true because price is a key determiner in the market forces of demand and supply and it bears more truth when it's narrowed to the developing world of which Nigeria is one. But we may yet be confronted with the school of thought that hold fast to the claim that higher price is fair and justified as an incentive to encourage research and that without such incentives, many of the drugs would not be produced. The claim may no doubt have some validity, as we argued earlier in the work, putting side by side right to life in the face of price, 'prize'[15] would have been a better incentive.

According to the *Black's Law Dictionary,* price means: "the amount of money or other considerations asked for or given in exchange for something else; the cost at which something is bought or sold."[16] In this sense, money or other considerations as the purchasing power of something of value in the eyes of the law, when it is set high, it goes beyond the reach of the lower income earners especially of developing nations. This factor plays greater role in the inelastic market with monopoly producers and sellers set out by patented goods like drugs. But the situation becomes different in a perfectly competitive and unregulated market or elastic market where the forces of demand and supply affects the price of the products. The situation is aptly captured by Hestermeyer, when he opined that:

> A perfectly competitive, unregulated market is an ideal fulfilling several conditions: a large number of small companies compete against each other for market share in one product. The products of the companies are identical so that buyers are indifferent as to which supplier they purchase from. Because the number of competitors is large, a change in output by one of them has no effect on the overall market supply and on the market price of the product. Also, there are no barriers to enter or

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[16] Doctors Explain Digital Health: The High Cost of Prescription Drugs and its Impact on Patient‟s Access to Essential Medications, as Well as Potential Policy Solutions, October 9, 2023.Available at www.linkedin.com.Accessed on the 1st February, 2024. [19]„Health Products Policy and Standards: Medicines Affordability and Pricing.‟ www.who.int/teams. Accessed on the 1st February, 2024.

[17] Love, J. and Hubbard, „Price for Innovation of New Medicines and Vaccines.‟ In Davey N., „Overcoming Patent Barriers to Increase Access to Medicines: A New Path Forward for Compulsory License,‟ *Harvard Journal of Law and Technology*, Vol.35, No.2, spring 2022P. 171. www.jolt.law.harvard.edu>pdf.Accessed on the 2nd February, 2024. James Love has been a strong proponent of prizes to encourage innovation in the pharmaceutical industry while maintaining adequate access to affordable medicines.

[18] Garner, B.A., *Black's Law Dictionary*, 8edtn, Thomson West, (2004), P.1226.

> exit the market. Finally, information about alternative suppliers is readily available and both buyers and sellers are mobile. In such a market, goods will be sold at marginal cost.[17]

One can agree with the assertion on the basis of the fact that, market suasion plays major role on price of goods at given time, just as Nicholson says: 'the Prices are set by the invisible hand of the market, the workings of the laws of supply and demand, ensuring that resources are used efficiently.'[18] But the situation becomes the opposite in the monopoly market especially that which is a patented market like the pharmaceuticals market. The market is full with patented goods that set in the monopoly with footprints in law. The law allows the inventor of drugs to hold monopoly over manufacturing, distribution and sale of the particular drug for twenty years. So that within this period, no other company or person will be able to compete with that company and that gives him liberty to set out price by controlling production and availability in the market. The law States that: A patent holder can prevent third parties from making, using, offering for sale, selling or importing, for these purposes the product.[19] According to Hestermeyer:

> A monopoly is commonly understood as a situation in which there is only one supplier of a good that is lacking close substitutes. A monopoly supplier is a price maker – as the sole supplier of good, it can set its price. The output of the supplier is the total market supply, the demand it meets is the market demand curve. A monopolist is free to choose between producing a larger quantity of the goods to be sold at a lower price or producing a smaller quantity to be sold at a higher price. In a free market system it will select the market price promising the highest profit.[23]

The point is made and so it will be important to understand that the producer of patented drugs is not a producer for charity, neither is the producer a human rights activist, but the producer is an investor who invested huge resources and capital into research and development to invent the drugs. Such a producer must make sure of regaining high returns on investment in order to be able to engage in further research to produce other products. Because of situation as this, the high cost of drugs and the inability of the individuals to pay for them, poses serious health challenge and points to the deprivation of the rights of the people to access essential drugs and thus their right to health and right to life is jeopardized.

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[19] Hestermeyer, H., *Human Rights and the WTO: The Case of Patents and Access to Medicines*, (Oxford University Press, 2007), 139.

[20] Nicholson, W., „Microeconomic Theory Basic Principles and Extensions," in Hestermeyer, H., *Human Rights and the WTO: The Case of Patents and Accessed to Medicines*, (Oxford University Press, 2007) 139.

[21] Article 28.1(a), TRIPS Agreement, 1995. [23]

Hestermeyer, H.(n.24) 143.

It has been argued that: though the innovation incentive is a strong justification of the monopoly granted to the patent owner, the price system has been criticized as being inefficient. The current system of financing research and development for new medicine is deeply flawed by the impact of high price on access to medicines, the wasteful spending on marketing and R&D for medically unimportant products, and the lack of investment in the areas of greatest public interest and need. Moreover, in most of the developing countries, the current price scheme makes drugs unaffordable to consumers who desperately need it.[20] The situation in Nigeria poses more challenge than even some of the developing nations. This is because countries like South Africa and Brazil, seem little ahead of Nigeria in terms of political Will and TRIPS compliance. This is why this work agrees with Pam when he opined that:

> In some cases, increased access to essential drugs may require increased domestic production in countries where this is practical, but Nigeria is faced with a number of challenges in this area. Nevertheless, domestic production is regarded as viable solution where the manufacture of drugs is feasible… this makes drugs to be readily cheaper for both local as well as international procurement, thereby facilitating the attraction of more monetary aid which remains one of the major constraints to improve access to drugs and treatment.
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> Unfortunately, even the steps are taken to provide the populations of developing countries low-cost essential drugs, far too many of these governments lack the ability to pay even reduced costs for drugs and the infrastructure needed to distribute them. The problem is truly enormous and making the changes needed to scale up the process to the point where the world's poor have access to the essential drugs they need.[21]

In order to phase out this monstrous challenge of high price, all hands must be on deck to ensure least developed nations, maintain the ability to produce and negotiate TRIPs agreement with other countries. Where this is not done, then access to essential drugs will continue to pose more challenge to our health system and the right to health and life will be a mirage.

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[22] Bakhoum, M.„TRIPS, Patent Rights and Right to Health: "Price" or "Prize" for Better Access to Medicine?, "*Max Planck Institute for Intellectual Property, Competition and Tax Law*. https://ssrn.com. Accessed on 2nd February 2024.P.6.

[23] Pam, A.A., *Access to Essential Medicines in Developing Countries: The Case of Nigeria*,"(Lambert Academic Publishing 2018) 105.

Inconsistency and Weak National Policy on Drugs

Due to the importance of health care delivery to the development and growth of every nation, countries put in place certain health policies that will ensure accessibility of essential medicines at all times, adequate supplies of drugs that are effective, affordable, safe and of good quality; to ensure the rational use of such drugs; and to stimulate increased local production of essential drugs to cater for the health and wellbeing of its people.[22]Usar and Bukar, pointed out that:

> Pharmaceutical regulation in Nigeria is particularly weak, characterized by irregular regulatory inspections, weak enforcement and pervasive infringements and associated negative health outcomes. Causative factors have included inadequate and often overlapping legislation, official corruption, poorly trained personnel and underfunding of regulatory institutions. This has resulted in widespread unregulated and sometimes illicit sale of restricted pharmaceuticals, often without prescription and frequently by unqualified staff. There is also high burden of fake, adulterated and substandard drugs in the market and an equally high prevalence of adverse events (sic). For example in 1990, 109 Nigerian children died following paracetamol syrup consumption and in 2004, three Nigerian hospitals reported cases of adverse reactions following the administration of locally manufactured infusions.[23]

This is the situation in Nigeria in respect of the weakness of the policies and in terms of the regulations. Over time, it was discovered that there have been a lot of changes and inconsistencies in the policies especially on who regulate what and the manner for the regulation. Where the policies keep changing and remained inconsistent at all times, the players in the pharmaceutical industry will do and carry out activities without much checks and the ultimate result will be adverse on the health of the people and the downward slide in the nation's health. Usar and Bukar, further pointed out that "the authority to regulate a set of drug vendors was reverted to PCN in April 2003, by ministerial directives and was under the purview of PCN for a long time. It was redelegated to various ministries in the states, then to local governments, then to states ministry of health and then, back to PCN again." [24] This paints a picture of ineffectiveness and inconsistency which will only but breed disaster for the nation's health system. This back and forth summersault in government policies and regulation makes, it practically impossible for the regulatory agencies to regulate drug dealers, especially here in Nigeria.

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[24] National Drugs Policy – The Nigerian Economic Summit Group.www.nesgroup.org. Accessed on 30th May, 2024.

[25] Usar, I.J and Bukar, B.B., „Challenges and Opportunities of Pharmaceutical Regulation in Nigeria," IOSR *Journal of Humanities and Social Science*, Volume 25, Issue 4, Series. 6 (2020) P12.

[26] Ibid. Note here that PCN stands for the: „Pharmaceutical Council of Nigeria".

Corruption and Counterfeit (fake) Drugs

It is no longer news that in Nigeria, as it is with most of the third world countries, corruption has taken a center stage in the affairs of the country.[29] It has become a major bane of the nation's developmental strides. Its impact bears upon groups, organizations and the entire society in many ways.[25]Corruption[26] has a toll on the pharmaceuticals and so it has negatively affected the rights of Nigerians to access quality medicines. A reliable, good-quality medicine supply is essential for health, but corruption brings about falsified and substandard medicines which effect includes poisoning, untreated diseases, early death and treatment failure.[27] According to Pam:

> …in virtually every case, success stories are countered by reports of endemic corruption and fake drugs manufacture that confounds even the most well-intention and well-operated interventions.[33]

Counterfeit drugs, are indeed counterproductive when it comes to health care matters. The counterfeit drugs may be attractive to many as a result of the fact that they are relatively cheaper, but the aftermath effect is hazardous. A well broadcasted effect of counterfeit drugs in Nigeria could be seen in the recent case of "My Picking Baby Teething Mixture."[28] In this case, three persons and the Appellant, a limited liability company, were arraigned before the Federal High Court, Lagos on six count charges under the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act[29] and Miscellaneous Offences Act.[30]

The accused persons pleaded not guilty. At the end of the trials, Okeke, J. found the appellant guilty which necessitated the appeal to Court of Appeal and the Court of Appeal found same for the appellant. The appellant further appealed to the Supreme Court where the Supreme Court ordered the matter back to the court of appeal for proper determination. The earlier conviction of the company was affirmed at the court of appeal. This case and many others, are there to establish the fact that counterfeit drugs are a real menace and great challenge to access to quality medicines to Nigerians. Even

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[29] Philip, D.D. and Akangbe, O.M., „Corruption as a Bane for Under-Development in Nigeria: Issues and Challenges," *International Affairs and Global Strategy,* ISSN2224574X (paper) 2224-8951 (online) Vol. 15, 2013. Accessed on 16th February, 2024.

[25]Leslie, H.„Why Corruption is a Problem," Doi: 10.1093/actrade/9780www.core.ac.uk>download>pdf199689699.003.0002, April 2015. www.accademic.oup.com/books/. Accessed on 16th February, 2024.

[26] Garner, B.A., *Black's Law Dictionary*(8thedtn, Thomson West 2004) 371 Defines Corruption as: "As depravity, pervasion, or taint; an impairment of integrity, virtue or moral principle; especially the impairment of a public official"s duties by bribery."

[27] National Academies Press, Washington, Countering the problem of Falsified and Substandard Drugs (2013).www.nap.nationalacademies.org/. Accessed on the 16th February, 2024. Among key findings of the research are that falsified and substandard drugs may contain toxic doses of dangerous ingredients and cause mass poisoning; instead of treating diseases it aid in disease progression, drug resistance and death; it threatens the general health of today and in the future. [33] Pam, A.A (n.29) 104.

[28] *Barewa Pharmaceuticals Limited v. Federal Republic of Nigeria* (2019) LLJR-SC. www.lawglobalhub.com/. Accessed on the 19th February, 2024.

[29] CAP C34 Laws of the Federation of Nigeria, 2004.

[30] CAP M17 Laws of the Federation of Nigeria, 2004.

when there is in place the Drugs Revolving Fund (DRF), being a financing mechanism used in the healthcare to improve access to essential drugs and medicines, with a primary goal of ensuring a steady supply of quality medications and the prevention of stock-outs or shortages in public health facilities, such as hospitals and health centers,[31] the DRF scheme still faces the challenges of fake drugs in circulation.[32] The right of Nigerians to access quality drugs and improve their right to health in all ramifications is still being hampered.

Impediments to TRIPs Agreement on Right to Access to Medicines in Nigeria

Nigeria, being one of the least developed nations has adopted and domesticated the TRIPS agreement. By this act of domestication, one would think that Nigeria will put up all the provisions dealing with access to medicines to its advantage, most especially, some of the provisions that have to do with flexibilities that will allow the country gain access to essential medicines, for example, the parallel importation and compulsory licensing, are not therein contained. This has not been so, due to the fact that the country is weak in terms of industrial and manufacturing know-how and the political will to drive home relevant policies in that direction are lacking in the leadership. The Agreement has introduced a challenge to access to medicine because it introduced the same minimum standard of patent for all WTO members to adopt and implement.[33] Thus, the agreement has added impetus to the concern that the patent protection processes and products can restrict generic competition and raise the transaction cost of accessing medicines which, in turn, limits the ability of users of the product at a competitive price. Consequently, patent rights in the TRIPs Agreement, has broadened the scope of the protection thereby increasing the market power conferred by it to contribute to the problem of accessibility.[40] Before TRIPs came into being, some developing countries were able to avoid paying the high prices charged by the pharmaceutical companies for purchasing branded medicines by acquiring the generic equivalents at a lower price from other countries whose patent laws did not cover

pharmaceutical products such as India. These generic products have the advantage of being less expensive compared to patented equivalents, because they did not have all the risks and costs associated with R&D for Manufacturing new medicines. With the introduction of TRIPs Agreement, however, generic production or imitation of patented drugs amounts to infringement in all WTO member countries, unless produced under

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[31] Tukur, I., „Nigeria‟s Drug Revolving Fund: A Conversation with Tukur Ibrahim, 2023.‟www.chemonics.com/blog/nigeria-drugs/. Accessed on the 29th February, 2024.

[32] „Our Experience: Drugs Revolving Funds, Akesis,‟www.akesishealth.org/drugsrevolving/.Accessed on the 19th February, 2024.

[33] Pogge, Rimmer Rubenstein, „Access to Medicines, Public Health and International Law,‟ in Mike J.H, *Women, Medicine Law and the TRPIS Agreement: Right to Health,*(Princeton and Associate 2020)144. [40] Mike, J.H., *Women, Medicine Law and the TRPIS Agreement: Right to Health,*(Princeton and Associate 2020) 145.

the safeguard and flexibilities in TRIPs or produced under license from the patent holder.[34] The cost of obtaining license from the patent holder often, in turn, pushes the price of the drugs higher as well.

These structural conditions and mandate imposed by the global patent law have reconfigured the landscape of countries that were prominent generic drug producers. For example, generic producing industries in Brazil and India had to conform to the mandatory twenty year term for product patents which was previously not part of their patent laws. With many developing countries including Nigeria relying on cheaper generics from these countries for several reasons, including the inadequate or insufficient manufacturing capacity and expertise, the availability and accessibility of the less expensive generics.[42] The strength of R&D in Nigeria for the purposes of manufacturing drugs is low compare to other developed countries. This has made access to branded as well as generic medicines, difficult. And so the tensions between intellectual property law and public health continue to resurface in Nigeria so long as there is no developed health strength innovation system that will help push the quest for access to medicine as of right for the Nigerians. According to Mortari and Nikiema, 'the experience of HIV/AIDS pandemic in the nineties, and most recently, the search for effective treatment and vaccine for COVID19 highlighted the tension between IP and public health interest.'[35] And they went on to state that: 'there is evidence that learning has taken place from the lessons of the HIV/AIDS pandemic. Some of these lessons include the willingness by the pharmaceutical companies such as Gilead sciences to enter into voluntary licensing agreement with manufacturing companies in the developing countries to serve less developed markets.'[36] This could be seen in the way and manner countries such as Canada, Germany, Chile and Ecuador, amended their respective patent laws to prohibit market exclusivities and to allow for compulsory licensing. It became necessary, of COVID-19 medicinal products and this shows how TRIPs flexibilities can be deployed to address health needs.[47] Nigeria can take a cue from this experience and make access to medicine to its citizens affordable.

Insecurity as a Challenge to Access Medicine in Nigeria

Access to safe, effective, quality and affordable medicines is an essential component of the right to health. This is so most especially in Nigeria, where the greater number of the 1opulation grapples with different forms of life threatening diseases. As part of the Sustainable Development Goal (SDG) 3,[37] access to medicines becomes more difficult

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[34] Ibid.

[42] Ibid.

[35] Motari, M, Nikiema, J.B. and Kasilo, O.M.J, et all, "The Role of Intellectual Property Rights on Access to Medicines in the WHO African Region: 25 Years after the TRIPS Agreement."(BMC Public Health 21, 490 2021).https//doi.org/10.1186/s12889-02110374-y.

[36] Ibid. [47] Ibid.

[37] Anyankora, C and Odibeli, O., „Access on Medicine Security in Africa: Advancing Towards Equitable Access to Medicines for All," *Business Day, Columnists*, 20th June, 2023. www.businessday.ng/columnists/article/.

due to reasons that most of the Nigerian communities, especially Northern Nigeria, are currently inaccessible as a result of surging cases of insecurity. The Federal Government of Nigeria has admitted that "insecurity, diversion and theft of medicines"[38] are threatening fight against diseases in the country. The effect of insecurity in the country on access to medicines is so much in that the local manufacturers could not have a conducive environment to manufacture the drugs. The fear of workers being abducted or kidnapped by gunmen and heavy ransom paid cripples the zeal for the drug manufacturing companies. After the goods or drugs were manufactured, another fear is one that has to do with the transportation of the goods to the point of distribution, sale and consumption. The Nigerian roads are so unsafe that people are being killed and kidnapped on regular intervals. The situation becomes worst in northern Nigeria where even when the drugs are stocked in hospitals, the villagers may not be able to access such drugs because it will mean them trekking long distances to access the hospitals and so they might be killed along the way. So the risk of manufacturing and the distribution, due to insecurity, has much multiplier effect on the final cost of the drugs to the consumer.

Socio-Cultural Practices

Traditional belief, especially among African Cultures, plays significant role in access to medicines. The socio-cultural practices are in diverse ways, yet have a line of agreement when it comes to its effect on the health practices of the people of the region. The natives here have so much belief in the supernatural and the powers of the roots and herbs in curing and improving the health conditions of the people. People put much of their trust in traditional medicines or what we currently refer to as Tradomedicines or ethno-medicines. According to Abdullahi, ethnomedicine, is a form of medicine "that is the oldest form of healthcare that has stood the test of time. It is an ancient and cultural-bound method of healing that human beings have used to cope and deal with various diseases that have threatened their existence and survival."[39] So this, in effect, before the introduction of the cosmopolitan medicines or the modern day medicines, the ethno-medicines was available to millions of Africans including Nigerians. The use of it has not been abolished completely but certain individuals still go back to its use or mix its use with the modern medicines. Abdullahi went on to state that: There are strong indications that traditional health care system are still in use by majority of the people not only in Africa but across the world. In Africa, the healers are variously addressed as *Babalawo, Adahunse* or *Oniseegun* among the Yoruba speaking people of Nigeria; *Abia Ibok* among the Ibibio community of Nigeria; *Dibia* among the Igbo community of Nigeria; *Boka* among the Hausa speaking people of Nigeria; and *Sangoma or Nyanga* among the South Africans. In indigenous African communities, the traditional doctors

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Accessed on 13th May, 2024.

[38] Adejoro, L., „Insecurity, Medicine Theft Threatening Fight against NTDs – FG," www.punch.com/.Accessed on the 14th May, 2024.

[39] A A Abdullahi, „Trends and Challenges of Traditional Medicines in Africa," *National Library of Medicines, African Journal of Traditional, Complementary and Alternative Medicines* (AJTCAM).www.ncb.nhi.gov/pmc. Accessed on 28th May, 2024.

are known for treating patients holistically. They usually attempt to connect the social and emotional equilibrium of patients based on community rules and relationships, unlike medical doctors who only treat diseases in patients. In many of these communities, traditional healers often act, in part, as an intermediary between the visible and invisible worlds; between the living and the dead or ancestors, sometimes to determine which spirits are at work and how to bring the sick person back into harmony with the ancestors. However, the arrival of the Europeans marked a significant turning point in the history of this age-long culture.[40]

This has gone to demonstrate that despite the introduction of modern medicines, and due to the expensive nature of modern medicines, compared to the ethno-medicines, the lager part of the people go back to its use as alternative. So in essence, there is low patronage among our people on the modern medicines. The religious and mythological part of the argument makes it more interesting. The African man is not just interested in the treatment of the ailment but he is more interested in the connectivity he will gain with his ancestors and the appeasement of the spirit troubling him in form of the manifested sickness. The final bet is that so many will die as a result of wrong diagnosis and mistreatment.

Infrastructural Challenges

Infrastructure is one factor that has posed serious challenge to the realization of access to medicines in Nigeria and most of the least developed countries in Africa. This is so because medicines and vaccines supply chain, represent critical systems for realizing one of the major targets of the United Nations' third Sustainable Development Goals (SDGs) that has to do with access to safe, effective, quality, and affordable essential medicines and vaccinations, for all.[41] However, as critical as the supply chain is, the system in Nigeria is confronted with serious infrastructural challenges. These challenges includes but not limited to: medicines or vaccines selections, procurement, distribution and inventory management. Others are poor storage facilities, financial constraints, insecurity, transportation challenges inadequate human resources.[42]This challenge gets worsened day by day despite the huge and enormous resources deployed to the health sector of the economy.

In Nigeria, today, even where the roads are motor-able for the drugs and vaccines to be distributed, the roads are still very unsafe for motorists largely due to unfettered activities of kidnappers and bandits. The state of the hospitals is also one without adequate man power and modern hospital and diagnostic equipment. This is caused by

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[40] Ibid.

[41] Olutuase V.O. and Iwu-jaja, et all, „Medicines and Vaccines Supply Chain Challenges in Nigeria: A Scoping Review."www.ncbi.nlm.nih.gov/pmc/. Accessed on the 29th May 2024.

[42] Ibid.

the 'movement of health personnel in search of better standard of living and quality life, higher salaries, access to advanced technology and more stable political conditions anywhere in the world.'[43] This has affected negatively the staffing in Nigerian hospitals, by the high number of medical and other health personnel leaving the country thereby making the health care system in the country systematically fragile and weak to provide effective service, where most needed. Before any individual is said to properly access medicines for the treatment of disease, he or she must have been properly diagnosed and right medicines in appropriate quantity prescribed to him by qualified medical personnel. Anything short of that, will mean such an individual has no accessed to medication -- this is the scenario in Nigeria.

And again, with the recent surge in electricity tariff in the country, and the removal of subsidy on petroleum, many hospitals find it very difficult to maintain stable power supply. This has implication for the effectiveness of healthcare delivery. This is so because most vaccines, chemical reagents and drugs, are kept under controlled temperature. And also, the diagnostic equipment and other gadgets, are highly dependent on electricity to function. Without all these, health care delivery becomes grossly inadequate and insufficient.

Medicine Importation and Lack of Capacity to Manufacture The African region relies heavily on the importation of medicines to meet its healthcare needs due to its poor local pharmaceutical manufacturing capacity. According to Anyakora and Odibeli: 'A 2019 McKinsley report noted that, for the 1.1 billion people in Africa, there are roughly 375 pharmaceutical manufacturing companies, with those in sub-Saharan Africa Clustered in nine out of 46 countries.'[44] This goes to show that because of 'the dearth of pharmaceutical manufacturing industries in Africa, pharmaceutical imports comprise as much as 70-90 per cent of drugs consumed.' [45] This overwhelming dependence on importation, predisposes vulnerable citizens to shortages. This also means that changes to supply chain logistics or policies affecting the importation of the drugs could cause scarcity and make medicines inaccessible. Again, the question that must be answered is: can any of the African countries manufacture drugs without expertise in research and development and technical know-how? The answer is, No! because, there is great need for high skilled local talents that have knowledge and the relevant industries built for drugs manufacturing purposes, no significant changes can be recorded in that light.

Owoeye, while stressing the fact of the burden the African region carry in terms of diseases, opined that: "Africa has highest disease burden in the world and continue to

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[43] YA Missau,N Al-Sadat, and AB Gerei, „Brain-Drain and Health Care Delivery in Developing Countries," available at www.ncbi.nlm.nih.gov/pmc/articles.Accessed on 30th May, 2024.

[44] McKinsley and Company: Social responsibility Report 2019. www.mckinsley.com. Accessed on the 14th May 2024.

[45] Ibid.

depend on pharmaceutical imports to meet its public needs."[46] More worrisome, is the fact that even the Asian generic manufacturers are beginning to operate under a more protectionist intellectual property regimes and their ability to manufacture medicines at prices affordable to poorer countries, is becoming more circumscribed. These trends have brought us to the sorry situation in Nigeria where multinational companies are packing out or exiting and closing businesses in Nigeria and relocating to some other economically friendly nations. This exodus, raises serious concerns about the future of access to essential medicines by millions of
Nigerians.[55]Part of the reasons that becomes incredibly difficult for Nigerian manufacturing industries to produce drugs could be attributed to the 'challenging business environment characterized by volatile exchange rates, high import duties, stringent regulatory processes, and bureaucratic hurdles.' [47] Oluwadare, stated that within two month following the removal of subsidy on petroleum in Nigeria, "approximately 4 million small and medium-sized businesses experienced daily closures, painting a grim picture of the economic climate in the country."[48] He further stated that: The Pharmaceutical industry, a critical player in the healthcare and economic stability, faced a significant blow as multinational pharmaceutical companies decided to either exit or reduce their operations in Nigeria. The departure of these vital healthcare players responsible for manufacturing life-saving medications poses a severe threat to the nation's health and economic well-being.[49]

This is sad and challenging to the nation's health care sector. In a situation where the country has no drug manufacturing capacity and yet, the few ones providing it with manufactured drugs are folding up, means the poor will have no access to essential drugs due the high cost of imported drugs in the country.

Slow Growth or Usage of Telemedicine in Nigeria

Telemedicine, otherwise known as 'Telehealth, 'relates to distribution health-related services and information via electronic information and telecommunication technologies. It allows longdistance patient and clinician contact, care, advice, reminders, education, intervention, monitoring and remote admissions. It is also referred to as: 'the use of electronic information and communications technologies to provide and support health care when distance separates the

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[46] Owoeye, O., „Compulsory Patent Licensing and Local Drugs Manufacturing Capacity in Africa," *Bulleting of the World Health Organization* pp 214-219, (2016). https//www.ssrn.com. Accessed on 28th May, 2024. [55] Erunke, F.„„Stop Exodus of Pharmaceutical, Multi-national Companies Now, NMA Tells Federal Government." vanguardngr.com/2024/05.Accessed on the 28th May, 2024.

[47] Oluwadare, A. J., „Effect of Exodus of Pharmaceutical Companies," www.thecable.ng. Accessed on the 28th May, 2024.

[48] Ibid.

[49] Ibid. Notable amongst the pharmaceutical companies that left are: GlaxoSmithKline Consumer Nigeria Plc and Sonofi-Aventis Nigeria Ltd, all cited unfavorable business conditions as reasons for leaving.

participants.'[50]Telemedicine came to light as a result of the presence of Information and Communication Technology (ICT) and has become a potent force in the development of many nations. It is sad that despite the wide ranging use of this technology around the globe, Nigeria is yet to fully apply it to its benefit. Telemedicine is applied to provide information that is readily handy over certain illnesses, as such it is considered as the "delivery of healthcare and sharing of medical knowledge over a distance using telecommunication means."[51]Ukaoha, K.C. and Egbokhare supplied examples of how the telemedicine works:

i. A radiologist at the University College Hospital, Ibadan interprets medical image on a high graphics enabled 4G mobile device coming from four clinics across the country;
ii. A patient living in a remote village with no accessible road uses a wireless phone to automatically upload vital signs and send it to a remote monitoring center manned by health personnel; and
iii. A cardiologist at the National Hospital, Abuja checks up on a heart transplant patient while away on a business trip to Holland, reviewing the patient's chart, looking at his live heart rhythms and talking to the patient.[52]

From the above examples, it is certain that the technology has not gone round to every nook and cranny of this country. This is because the level of IT coverage in the country is predominantly in the major cities and in some few local communities. Because of lack of network in all communities, telemedicine may not be available for all Nigerians to access. Therefore, according to Ukaoha and Egbokhare: 'using a system of healthcare that could allow doctors gain access to patients in remote locations is necessary and most useful in achieving government's aim of bringing useful healthcare to these remote rural and poorer areas. This among other things, would improve the quality of healthcare in rural and outlying areas, lower costs of delivering healthcare and give remotely placed physicians the opportunity to consult over any patient's case.'[53]

The Prospects Of Access To Medicines In Nigeria

Because Nigeria is a resilient and responsive nation, it is always going to be a case of 'never say never.' This means that, the country will continue to strive harder to ensure

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[50] 'Introduction and Background – Telemedicine – *NCBI Bookshelf.*' https://www.ncbi.nlm.nih.gov.Accessed on 9th September, 2024.

[51] Eriotis et al.(2008), sourced from: Ukaoha, K.C. and Egbokhare, F., „Prospect and Challenges of Telemedicine in Nigeria,"(Journal of Medicine and Biomedical sciences, November 2012).https://www.researchgate.net/publication/272877000. Accessed on the 26th June, 2024.

[52] Ukaoha, K.C and Egbokhare, F. „„Prospect and Challenges of Telemedicine in Nigeria, "*Journal Medicine and Biomedical Sciences*. https://www.researchgate.net/publication/272877000. Accessed on the 26th June, 2024, P.2.

[53] Ibid.

that it gets it right in the aspect of provision of adequate, affordable and quality healthcare to its teeming population. Nigeria is considered a big democracy in black Africa and for this reason, right to life and right to health will not elude its citizens. This democratic feat comes along with well attendant rights for citizens to propagate democratic tenets that upholds the true rule of law through the instrumentality of judiciary along with a vibrant legislature that is made up of true representatives of the people having the full powers to make laws for the good of the people.[54]The prospect of continuous law making and amendment of existing laws to curb areas of lag is guaranteed by the nation's constitution. It is therefore highly probable that the nation's laws on patent will be amended and improved upon to bring to bear the necessary changes in the changes in the intellectual property policies on patent towards ensuring access to medicines. Again, with the current drift towards privatization of major government corporations and repositioning them for maximum efficiency, Nigeria is moving towards 'production' rather than 'consumption.'
This will attract direct foreign investment in areas of drugs manufacturing that will boost access to medicines for the benefit of all citizens.

Furthermore, with the recent removal of fuel subsidy on one of the major sources of government revenue — petroleum, it means there will be more resources in the hands of the government, more infrastructural development across the country. By this, roads, power supply to hospitals and other health care facilities will be seen to be in place. Pharmaceutical companies too will have reduction in cost of production thereby reducing the prices for drug manufacturing, and distribution of drugs and vaccines to the various hospitals in the country easy. However, these are ideals. In reality the country is passing through one of its worst periods in its history.

The intensive fight that is being put against the activities of insurgents, bandits, kidnappers and all other forms of criminalities, when successful, will ensue that insecurity will be a thing of the past and so, people will access medical facilities in both urban and remote areas without any form of fear. Again, it is expected that the war against corruption will yield fruit. This, the government is doing through the well-positioned institutions like the EFCC,[55] and the ICPC.[56] With these efforts, there will be reduction in all forms of bottleneck in drugs distribution that allows for greater access to medicines to better the right to life of the citizens. To also boost access to medicines, there is currently high rise in the activities of health related NGOs, foreign donors and the international institutions on health like the WHO sending in interventions in terms of drugs, diagnostics, vaccines and financial aids to help boost the wellness of the people. This could be seen during the COVID-19 pandemic, where

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[54] Section 4 (2), Constitution of the Federal Republic of Nigeria 1999, (as Amended).

[55] Economic and Financial Crimes Commission. This is an institution established by the Economic and Financial Crimes Act, 2022 (as Amended).

[56] Independent Corrupt Practices Commission. This institution was established by the Independent Corrupt Practices Act, 2000 (as Amended).

Bill & Melinda Gates Foundation, committed more than 2 Billion US dollars to the global COVID-19 response.[57] In essence, when things are put in proper places in this country, the health of the people will be enjoyed as of right and not a privilege.

Conclusion

These challenges are, without doubt, capable of hindering or impeding the ability of the nation to access quality and affordable medicines, essential for the treatment of all life threatening diseases. Such inability has proven to be a no minor factor impeding the realization of individual's right to health in Nigeria. The realization of right to health will be achieved through deliberate and concerted efforts by the citizens and government of Nigeria. This might be so through mass reorientation of citizens against corruption in other to channel the resources to industrialization which will ultimately set the nation on the part of self-production of all the needed essential drugs to cater for its teeming poor population and then earn foreign exchange at the long run. The extant legal framework on patent, which is the Patent and Designs Act, must be repealed to bring to bear provisions that will bring about full scale utilization of the patent flexibilities, especially on 'parallel importation' and 'compulsory licensing. 'Other solutions may lie in the provisions of infrastructure to accommodate IT driven medical practice that will make medical consultation and diagnosis easier. In that regard, basic infrastructure like stable power supply, internet farcicalities, are necessary. These are of crucial importance for the design of a pro-competitive intellectual property system, in particular, for achieving public health objectives so that the least developed nations like Nigeria can gain much access to the long desired access to essential medicines.

[57] „Funding Commitment to Fight COVID-19."Accessed on the 26th June, 2022.