



# IHR Implementation in Nigerian Law

Mapping of Legal Authorities and  
Analysis of Legislation at Federal Level

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WITH SUPPORT OF



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## Foreword

The Nigeria Centre for Disease Control is the National Public Health Institute (NPHI) for Nigeria. Our role includes the coordination of public health functions and programs to prevent, detect, and respond to public health threats, including infectious diseases and other health events. NPHIs like NCDC contribute to compliance with International Health Regulations (IHR, 2005). Our agency is mandated by law to serve as the IHR National Focal Point for Nigeria.

As part of our IHR focal point function, NCDC works to strengthen the collaboration among Ministries, Departments and Agencies with a specific role in health security for Nigeria. We also support national accountability for IHR and contribute to strengthening the overall health system.

In 2017, the Joint External Evaluation (JEE) of our IHR capacities revealed a gap in the legislative framework for IHR implementation in Nigeria. However, an objective assessment of existing laws and policies had not been carried out.

In 2019, Resolve to Save Lives (RTSL) supported NCDC in reviewing Nigeria's legal framework for IHR. This included an analysis of existing laws for disease surveillance, detection and response; port health; quarantine services; food safety and others.

This document describes findings from this assessment including strengths in existing laws, gaps where they exist and recommendations to strengthen the legal framework for IHR implementation in Nigeria. It provides detailed findings, which can also serve as guidance document for countries that want to create more robust and effective national public health capacities. The success of health security activities in any country, requires a well-structured legal framework to support implementation as well as other resources.

We are grateful to all the colleagues and partners that have worked hard in the implementation of this project and delivered this excellent report.

The Nigeria Centre for Disease Control remains committed to working with other Ministries, Departments and Agencies as well as our partners to ensure that Nigeria has the strong legal framework to effectively strengthen health security.

Dr. Chikwe Ihekweazu  
Director General  
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I would like to highlight several interested stakeholders who participated in a meeting at the start of this project and provided insights from their work, and asked questions that helped to shape this report, including representatives from the Federal Ministry of Health, Federal Ministry of Justice, Federal Ministry of Finance, Federal Ministry of Agriculture Research and Development (FMARD), Nigeria Agricultural Quarantine Service (NAQS), World Health Organization, the United States Centers for Disease Control and Prevention (CDC), African Field Epidemiology Network (AFENET), Pro-Health International, and Public Health England.

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## Abbreviations

AG	Attorney General
CAP	Chapter
FMARD	Federal Ministry of Agriculture Research and Development
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention Economic and Social Rights
IHR	International Health Regulations
JEE	Joint External Evaluation
LFN	Laws of the Federation of Nigeria
NAFDAC	National Agency for Food and Drug Administration and Control
NAPHS	National Action Plan for Health Security
NAQS	Nigeria Agricultural Quarantine Service
NCAA	Nigeria Civil Aviation Authority
NCDC	Nigeria Centre for Disease Control and Prevention
NDPR	Nigeria Data Protection Regulations
NEMA	Nigeria Emergency Management Agency
NFP	National Focal Point
NITDA	National Information Technology Development Agency
NPHCDA	National Primary Health Care Development Agency
NWLR	Nigerian Weekly Law Reports
PHEIC	Public Health Emergency of International Concern
POE	Point of Entry
SOPs	Standard Operating Procedures
WHO	World Health Organization
SC	Supreme Court

# 1. Executive Summary

Nigeria is bound by the International Health Regulations (IHR) (2005), which came into force in 2007. An analysis of Nigeria's compliance with the IHR (2005) was undertaken through the Joint External Evaluation (JEE) in 2017 under the technical area—National Legislation, Policy and Financing. That evaluation indicated a poor level of performance. Based on this, certain priority actions were recommended, including a comprehensive assessment of the existing legislative and policy framework to identify gaps hindering compliance with the IHR, and on the basis of this assessment, advocating revision of legal instruments and policies to address existing gaps and challenges.<sup>1</sup> Following from this, the National Action Plan for Health Security (NAPHS) 2018–2022 specifies the need for 'Working towards ensuring that adequate statutory and administrative provisions for the implementation of the IHR are in place by December 2019 ...'<sup>2</sup>

This Report addresses these priority actions by providing a comprehensive assessment of legislation drawn up at the federal level. It investigates the powers of the federal government to enact laws to ensure compliance with the IHR, and the extent to which it has exercised those powers in enacting legislation.

This Report undertakes both a mapping of the current legislation at the federal level and an evaluation of how the current federal laws align with IHR requirements. In terms of structure, the Report is divided into two parts. The first part is analysis of federal powers to enact legislation relevant to IHR requirements. Such powers are primarily contained in the Exclusive Legislative List in the Constitution of the Federal Republic of Nigeria, meaning only the national government may legislate on these topics. They are also on the concurrent lists, meaning both national and state governments may legislate within certain parameters. Such IHR-relevant matters as quarantine, shipping and aviation are exclusive legislative matters, and the federal government has legislated on these issues.

The second part focuses on the mapping of the relevant law and analyses of these laws, many of which have been enacted by the federal government pursuant to its exclusive legislative powers. The Quarantine Act, based on the International Sanitary Regulations, has been in place for over 70 years. Thus, many of its provisions do not align with the provisions of the IHR of 2005, as the IHR 2005 replaced the IHR 1969 which had earlier replaced the International Sanitary Regulations. Other laws are more recent and align more closely with the IHR, such as the Nigerian Civil Aviation Regulations made under the Nigerian Civil Aviation Act, which reference the IHR specifically. Reference is also made in this Report to bills that have been before the National Assembly at different points, which though they did not and may not become law, show the necessity for ensuring harmony in all IHR-relevant legislation to promote IHR compliance.<sup>3</sup>

The evaluation of the identified laws based on the mapping is based primarily on legal assessment guides from the WHO and from Resolve to Save Lives. The guides provide a streamlined but comprehensive way to assess the compliance of domestic legislation with the IHR, focusing on key aspects of the IHR.

The evaluation identified several gaps that need to be addressed. These include but are not limited to differences in key definitions, due in large part to dated legislation; lack of designation of points of entry in national legislation; and lack of delineation of human rights and freedoms in the context of public health emergencies, isolation and quarantine. Given the more recent enactment of the Act establishing

1 World Health Organization, Joint External Evaluation of IHR Core Capacities of the Federal Republic of Nigeria, 2017 (Nigeria JEE 2017) <<https://apps.who.int/iris/bitstream/handle/10665/259382/WHO-WHE-CPI-REP-2017.46-eng.pdf?sequence=1>> accessed on 6 November 2019.

2 Federal Republic of Nigeria, National Action Plan for Health Security 2018 -2022 (Nigeria NAPHS 2018-2022) <<https://ncdc.gov.ng/themes/common/files/establishment/5e88f9e22d2b4e4563b527005c8a0c43.pdf>> accessed on 6 November 2019.

3 The Public Health Bill 2013 which has elapsed and has not been reintroduced in the Nigerian Senate is one key example.

the National Focal Point, the Nigeria Centre for Disease Control and Prevention, earlier legislation does not clearly recognize its role, leaving room (at least within the existing pieces of legislation) for conflicts in mandate and gaps in coordination. This evaluation also finds that there are no legal provisions dealing with the communication of reports on detection, assessment and notification of public health events between competent authorities at the federal level, state and local communities. Neither are there specific legal provisions for communication between the National IHR Focal Point and WHO.

Recommendations are proffered to address the gaps identified in this Report. Some of these include suggestions on different approaches that may be taken to align Nigeria's legal framework more closely with IHR requirements and to address the gaps identified in the JEE Report, for instance: the need for new regulations especially in the area of procedures of administration of public health measures at the point of entry; the need to revise existing legislation such as the Quarantine (Ships) Regulation; and review of future legislation for closer alignment with IHR requirements. **Although recommendations are made about possible approaches that may be utilized to bring Nigerian law into greater alignment with the IHR as suggested in the JEE Report and the National Action Plan on Health Security, this report and its author do not endorse any position on whether any of these pending bills should or should not be passed by the Nigerian Legislature. Any recommendations for improvements to the bill are intended purely to illustrate how such bills could better align with IHR requirements.**

### **Summary of Recommendations**

The following table highlights concrete steps that the federal government would need to take to improve on IHR compliance and Nigeria's JEE scores in relation to National Legislation, Policy and Financing technical area in the next assessment.

## JEE National Legislation, Policy and Financing

*P1.1 The State has assessed, adjusted and aligned its domestic legislation, policies and administrative arrangements in all relevant sectors to enable compliance with the IHR*

SCORE	JEE INDICATORS	STEPS REQUIRED TO IMPROVE JEE SCORES
<b>1</b> No Capacity	Assessment of relevant legislation, regulations, administrative requirements and other government instruments not undertaken for the implementation of IHR	2017 JEE status
<b>2</b> Limited Capacity	Assessment of relevant legislation, regulations, administrative requirements and other government instruments for IHR implementation has been carried out, and required adjustments have been identified	National government endorses this assessment and its recommended adjustments
<b>3</b> Developed Capacity	The country can demonstrate the existence and use of relevant legislation in all relevant sectors involved in the implementation of the IHR	National government enacts NCDC bill (completed)  National government reviews all public health legislation and implements improvements that may include review and repeal of related legislation
<b>4</b> Demonstrated capacity	The country has legislation references and/or administrative requirements for specific areas (such as current legislation that specifically addresses National IHR Focal Point designation and operations)	National government enacts regulations to strengthen NCDC's relationship and communication with other competent authorities  NCDC develops SOPs to meet IHR requirements with respect to matters such as notification of WHO  National government enacts legislation to designate points of entry with IHR capacities, provides dedicated funding for public health and IHR implementation within new Public Health Bill or other legislation, strengthens human rights protections in IHR implementation and other key recommendations from this report.  New bill also domesticates IHR requirements.  State governments enact/adopt necessary legislation to implement IHR requirements.
<b>5</b> Sustainable Capacity	The country has legislation references and/or administrative requirements for all areas related to IHR implementation.	National and all state governments implement all recommendations from this Report.



## Part One

# LEGISLATIVE POWERS OF THE FEDERAL GOVERNMENT

## 2. Introduction

Nigeria has been bound by the International Health Regulations (IHR) since it entered in force in 2007. In 2017, Nigeria carried out the Joint External Evaluation (JEE) of its IHR core capacities.<sup>4</sup> WHO defines JEE as ‘a voluntary, collaborative, multi-sectoral process to assess country capacity to prevent, detect and rapidly respond to public health risks occurring naturally or due to deliberate or accidental events. The purpose of the external evaluation is to assess country-specific status, progress in achieving the targets under Annex 1 of the IHR and recommend priority actions to be taken across the 19 technical areas being evaluated. External evaluations should be regarded as an integral part of a continuous process of strengthening capacities for the implementation of the IHR.’<sup>5</sup> The JEE thus provides a set of technical areas and indicators against which a country’s capacity to comply with many requirements of the IHR can be evaluated. The first technical area is National Legislation, Policy and Financing. Here a country is required to show that:

- Legislation, laws, regulations, administrative requirements, policies or other government instruments in place are sufficient for implementation of IHR (2005);
- The State can demonstrate that it has adjusted and aligned its domestic legislation, policies and administrative arrangements to enable compliance with IHR (2005).<sup>6</sup>

Nigeria scored very low marks in the JEE in the area of National Legislation, Policy and Financing. The JEE noted that the country had not yet conducted an assessment of the existing laws to determine whether they had sufficient provisions to ensure IHR compliance. The JEE further noted, ‘This exercise would provide an opportunity to establish all existing constitutional and other legal instruments, decrees and policies that empower or impede the implementation of IHR, and identify existing gaps and remedies.’<sup>7</sup> Thus, the first recommendation of the JEE was that:

- A top priority is to fast track the legislation, regulatory and policy frameworks to support IHR implementation at the federal, state and local government levels.<sup>8</sup>

This recommendation is fundamental given the IHR’s requirement of a proper legislative framework for its domestic implementation. In this regard, the IHR requires that States uphold their IHR in their national legislation.<sup>9</sup> A legal basis for managing public health and fulfilling the requirements of the IHR is foundational and instrumental to meeting the other key requirements outlined in the IHR. To facilitate, promote, institutionalize and strengthen IHR core capacities, a cohesive legal framework compliant with the IHR is essential.<sup>10</sup> From establishing government authorities that can coordinate responses to public health threats and delineating the roles and responsibilities in creating and promoting healthier

4 Nigeria JEE 2017.

5 World Health Organization, Strengthening health security by implementing the International Health Regulations (2005): Joint External Evaluation (JEE) mission reports <<https://www.who.int/ihr/procedures/mission-reports/en/>> accessed on 6 November 2019.

6 Nigeria JEE 2017.

7 International health Regulations, Article 3(4) (IHR).

8 Ibid.

9 Ibid 8.

10 World Health Organization, Ten things you need to do to implement the IHR (WHO Ten things you need to do to implement the IHR) <<https://www.who.int/ihr/about/10things/en/>> accessed on 6 November 2019.

environments, to managing public health emergencies when they do occur, to designating the functions of different levels of government in public health activities and emergency response, the role of the law is well recognized in the IHR and the JEE.<sup>11</sup> Determining where there may be gaps in the legal framework, and proposing and implementing steps for addressing these gaps, is therefore crucial. The JEE report on Nigeria makes it clear that this is essential for the Nigerian context.

Nigeria is bound to comply with IHR requirements. However, Nigeria is a federation, with its constituent parts including the federal government at the centre and subnational bodies, each with its own lawmaking authority. As noted in the JEE, there is diverse legislation in place governing various aspects of the IHR at both state and federal levels. While some of these fall into the areas governed specifically by federal legislation (quarantine, for example), others fall within state purview (environment, surveillance).

Following from the recommendation of the JEE on fast tracking regulatory frameworks for IHR compliance, the NAPHS 2018–2022 has established plans for addressing the recommendations of the JEE, amongst other things. In regard to National Legislation, Policy, and Financing, the priority strategic actions noted are:

- Comprehensive assessment of existing legislative and policy frameworks to identify gaps that impede compliance with the International Health Regulations.
- Advocate for revision of legal instruments and policies to address existing gaps and challenges within the national administrative environment.
- Completion of pending legislative actions (NCDC Bill, 2017; Public Health Bill, 2013) to give key public health institutions (e.g. Nigeria Centers for Disease Control) the legal mandate needed to accomplish national goals.
- National government should articulate specific policies, guidance and guidelines to states and local government areas regarding obligations, roles and responsibilities to increase their respective ownership and implementation of the provisions of the National Health Act, and for accountability in allocation and application of resources for public health in line with the Basic Health Provision Fund (2014).
- Streamline roles and responsibilities in the various Ministries and Agencies that have responsibilities in IHR implementation to minimize duplication within their respective mandates.<sup>12</sup>

Some of the strategic actions have been completed, such as the enactment of the Nigeria Centre for Disease Control and Prevention Act, 2018. The Report focuses on addressing the challenge noted in the JEE and implementing the first strategic action under the NAPHS—comprehensive assessment of existing legislative frameworks to identify gaps that impede compliance with the IHR. It will equip decision-makers and relevant stakeholders with sound legal analysis and technical guidance for the revision of legal instruments and policies to address existing gaps in line with the second priority action. The Report also provides a basis for addressing other strategic actions under the NAPHS with respect to the federal government's taking the lead in articulating specific policies and guidance. This, however, may be a complex undertaking in a federal system of government. Indeed, the JEE report on Nigeria notes, 'The administrative semi-autonomy of the states has established an additional layer that often encumbers the application of laws, regulation, guidelines and other instruments addressing IHR.'<sup>13</sup> A vital issue to be determined therefore is the power of these constituent parts to implement core aspects of the

11 Akshara Narayan Menon, Emily Rosenfeld, and C. Adam Brush, 'Law and the JEE: Lessons for IHR Implementation' (2018) 16 Suppl 1 Health Security <<https://www.liebertpub.com/doi/pdf/10.1089/hs.2018.0053>> accessed on 6 November 2019.

12 Nigeria NAPHS 2018-2022.

13 Nigeria JEE 2017.

IHR. This is also helpful because it determines financial responsibility for IHR implementation, which has implications for effectiveness and sustainability.

The Report is therefore divided into two parts. This first report provides an articulation of the powers of the federal government to legislate on and implement the IHR. It identifies the legislation enacted by the federal government, pursuant to its powers under the Constitution. It also provides an analysis of the most relevant legislation in line with the requirements of the IHR. In so doing, it identifies the current gaps in these pieces of legislation as they relate to IHR requirements, which may necessitate amendments where possible. It concludes with key recommendations for improving the domestic legislative framework based on the identified gaps.

The second report to be developed will evaluate the states' obligations and authority to enact IHR-legislation. That report will answer generally applicable questions as they apply to all states, and evaluate what measures four states, including Lagos and Federal Capital Territory, have taken in this regard.

### 3. The Research Questions and Scope of the Report

- What is the authority of the federal government to legislate on the IHR?
- What are the current pieces of legislation at the federal level?
- What are the gaps in these laws?
- What impact, if any, do federal legislation and any gaps have on IHR implementation?

The Report does not address the powers and authority of the states.

This is addressed in the subsequent report. That report will answer the following questions:

- What effect have the current power-sharing arrangements had on IHR compliance in the states in the past?
- What, if any, legal actions related to IHR have occurred at the state level?
- How are states currently using existing legal frameworks?
- What are the gaps in state legislation?
- What are the hindrances likely to be encountered in the implementation of IHR policies in the states?
- What recommendations might be made, given the political economy and other contextual factors, to improve state actions in relation to IHR: What additional actions do states have to take? How best to proceed with strengthening state apparatus for developing and implementing IHR-related policies and mandates?

## 4. The Scope of the IHR

The purpose and scope of the IHR (2005) are ‘to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.’<sup>14</sup> Public health risks that the IHR is concerned with are primarily risks related to infectious diseases of international concern—that is, those that are likely to spread internationally or may present a serious and direct danger. Chemical events and radiological emergencies are also covered by IHR.<sup>15</sup>

For the purpose of this Report, we will map the laws against the IHR requirements. We have had the benefit of reviewing some mapping tools, which will be employed in assessing the legislation.<sup>16</sup> These indicators and tools will help identify both the extent to which the law provides for these issues, and the current gaps in legislation.

## 5. The Authority of the Federal Government to Legislate on the IHR

As subsequent portions of this Report will show, the federal government has enacted several IHR-related pieces of legislation. Where does the authority to enact these pieces of legislation emanate from and what are the limits, if any, on enacting IHR-related legislation? Authority to enact legislation is generally provided by the Constitution of the Federal Republic of Nigeria, 1999. The first part of this Report will therefore identify the areas where the Constitution makes provisions that have significant consequence for IHR legislation and implementation. It discusses the division of powers and then goes forward to identify the pieces of legislation that have been enacted by the federal government pursuant to its powers under the Constitution. The second part provides a detailed analysis of these laws and identifies the current gaps.

### 5.1 The Constitution of the Federal Republic of Nigeria

The Constitution is the fundamental law of Nigeria; it is supreme and above all other law.<sup>17</sup> It addresses key aspects that are relevant to the implementation of the IHR—the division of powers, the adoption of international law, fundamental human rights, and declaration of a state of emergency in regard to public health crises.

14 International Health Regulations (2005) (IHR 2005), Article 2.

15 The JEE provides a set of indicators against which to measure the progress in the IHR, along the lines of the specified scope of the IHR, specifically Prevent, Detect, and Respond. This is further broken down into specific technical areas. PREVENT - Financing, IHR coordination, Communication, Advocacy, Antimicrobial resistance, Zoonotic diseases, Food safety, Biosafety and biosecurity, Immunisation; DETECT - National laboratory system, Real-time surveillance, Reporting, Workforce development; RESPOND - Preparedness, Emergency response operations, Linking public health and security authorities, Medical countermeasures and personnel deployment, Risk communication; OTHER IHR-RELATED HAZARDS AND POINTS OF ENTRY - Points of entry, Chemical events, Radiation Emergencies. This Report, focusing as it does on the IHR, does not specifically focus on the JEE indicators, except where they are specifically identified by the IHR—such as points of entry.)

16 One of these is: World Health Organization, International Health Regulations (2005): Toolkit for Implementation in National Legislation, 2009 <[https://www.who.int/ihr/Toolkit\\_Legislative\\_Implementation.pdf?ua=1](https://www.who.int/ihr/Toolkit_Legislative_Implementation.pdf?ua=1)> accessed on 6 November 2019.

17 Constitution of the Federal Republic of Nigeria 1999, (Constitution 1999), Section 1.

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## Constitutional Provisions Related to IHR

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### Division of legislative powers

- Exclusive (Second Schedule, Part I)
  - Concurrent (Second Schedule, Part II)
  - Residual
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### Adoption of international law (Section 12)

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### Fundamental human rights (Chapter 4)

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### Declaration of a state of emergency in regard to public health crises (Section 308)

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## 5.1.1 Division of Powers

Nigeria is a federation, consisting of a federal (national) government and federating units (states and a Federal Capital Territory). The division of legislative powers between the federal government and the states is primarily contained in the Constitution of the Federal Republic of Nigeria, 1999.<sup>18</sup> Legislative powers at the federal/national level are exercised by the National Assembly, a bicameral body, consisting of the Senate and the House of Representatives, and at the state level by the State House of Assembly.

The legislative authority or mandate of the National Assembly and the State Houses of Assembly is specified in the Constitution. Under the Constitution, the powers to legislate are captured under two lists— the Exclusive List<sup>19</sup> and the Concurrent List.<sup>20</sup> There is also the Residual List, which though not provided for in the Constitution, captures the residue, that is, all that is not specified in the Exclusive and Concurrent Lists. The state governments have authority to legislate on those issues.<sup>21</sup>

The National Assembly has the authority to legislate at the federal level, including on exclusive, concurrent and residual matters. The State House of Assembly retains the authority to enact law for the states. The National Assembly also has authority to make law for the Federal Capital Territory, acting in the same manner as a State House of Assembly, using its residual authority.<sup>22</sup>

### 5.1.1.1 The Exclusive List

The Exclusive List under Schedule 2 of the Constitution contains matters over which only the federal government can legislate.<sup>23</sup> This means that the state cannot legislate on such matters. If the states were to legislate on such matters, such a law would be in conflict with the provisions of the Constitution. Under the Constitution, 'if any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall, to the extent of the inconsistency, be void.'<sup>24</sup> Furthermore, by Section 1 of the Constitution, which states that any laws in conflict with the provisions of the Constitution will be void,

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<sup>18</sup> Ibid, Section 4.

<sup>19</sup> Ibid, Second Schedule, Part I.

<sup>20</sup> Ibid, Second Schedule, Part II.

<sup>21</sup> See *AG Abia State v AG Federation (2006) 16 NWLR (Part 1005) 265 at 380-381, paras. D-C.*

<sup>22</sup> Constitution 1999, Section 4; *AG Lagos State v AG Federation (2003) 12 NWLR (Pt 833); 6 SC (pt 1) 24; LPELR –SC 353/2001.* (Supreme Court).

<sup>23</sup> Constitution 1999, Section 4 (2) and (3).

<sup>24</sup> Constitution 1999, Section 4 (5).

that law will then be void. Cases such as the Supreme Court decisions in *INEC v Musa*<sup>25</sup> and *A G Abia v A G Federation*<sup>26</sup> are clear on the point that laws inconsistent with the Constitution are void. For IHR purposes, this means that only the federal government has the power to enact laws on all IHR-related areas on the legislative list.

### The IHR-relevant areas on the Exclusive List are:

- Aviation<sup>27</sup>
- Drugs and poisons<sup>28</sup>
- Professional occupations<sup>29</sup>
- Fishing and fisheries<sup>30</sup>
- Post telegraphs and telephones<sup>31</sup>
- Maritime shipping and navigation<sup>32</sup>
- Trade and commerce<sup>33</sup>
- Quarantine<sup>34</sup>

This has practical implications. For one thing, only the National Assembly (the federal legislature) can enact laws in these areas. If there is need for amendments of any such legislation, these can also only be done by the National Assembly. Implementation also typically follows along the same lines, that is, the federal government implements its own laws.<sup>35</sup> Further, under the Constitution, section 12 (2) provides for the domestication of treaties that relate to the Exclusive List.<sup>36</sup>

As subsequent analysis of the provisions of the IHR and their articulation in Nigerian legislation indicates, a number of statutes have been enacted by the federal government in these areas. The laws and regulations enacted with respect to these issues include but are not limited to:

#### Aviation

- Civil Aviation Act, 2006
- Nigeria Civil Aviation Regulations

#### Drugs and poisons<sup>37</sup>

- Food and Drugs Act—CAP. F32 L.F.N. 2004
- Food Drugs and Related Products (Registration, Etc) Act—CAP. F33 L.F.N. 2004
- Dangerous Drugs Act—CAP. D1 L.F.N. 2004
- National Agency for Food and Drug Administration and Control Act—CAP. N1 L.F.N. 2004

#### Professional occupations related or connected to public health issues

- Medical and Dental Practitioners Act—CAP M8 L.F.N. 2004
- Medical Laboratory Science Council of Nigeria Act (Repeals Institute of Medical Laboratory Science and Technology Act—CAP I14 L.F.N. 2004)

25 *INEC v Musa* (2003) 3 NWLR (pt806) 72.

26 *A G Abia v A G Federation* (2002) S C 28/2001.

27 Constitution 1999, Second Schedule, Part 1, Paragraph 3.

28 Constitution 1999, Second Schedule, Part 1, Paragraph 21.

29 Constitution 1999, Second Schedule, Paragraph 49.

30 Constitution 1999, Second Schedule, Paragraph 29

31 Constitution 1999, Second Schedule, Paragraph 46.

32 Constitution 1999, Second Schedule, Paragraph 36

33 Constitution 1999, Second Schedule, Paragraph 62.

34 Constitution 1999, Second Schedule, Paragraph 54.

35 Exceptions are usually found where the National Assembly has enacted legislation on a residual matter like education, as for example in the Education Act, where it requires states to implement aspects of the law and provides financial incentives for doing so.

36 Constitution 1999, Second Schedule, Paragraph 31.

37 *Ibid*, Second Schedule.

- Nigerian Institute of Science Laboratory Technology Act, 2003 NO. 2 2003
- Pharmacists Council of Nigeria Act—CAP. P17 L.F.N. 2004
- Veterinary Surgeons (Amendment) Act, 2017
- Nursing and Midwifery (Registration, Etc.) Act—CAP. N143 L.F.N. 2004
- Institute of Public Analysts of Nigeria—CAP 116, LFN 2004

**Fishing and fisheries** other than fishing and fisheries in rivers, lakes, waterways, ponds and other inland waters within Nigeria.

**Maritime shipping and navigation**, including:

- Ports (Related Offenses, etc.) (Amendment) Act, 2003
- Lagos Port Operations (Special Provisions) Act—CAP. L3 L.F.N. 2004
- Posts, telegraphs and telephones
- Nigerian Postal Service Act—CAP. N127 L.F.N. 2004

**Quarantine**

- Quarantine Act of 1926

**Trade and commerce**, and in particular:

- Agricultural (Control of Importation) Act—CAP. A 13 L.F.N. 2004
- Water from such sources as may be declared by the National Assembly to be sources affecting more than one state
- National Inland Waterways Authority Act—CAP. N47 L.F.N. 2004

The pieces of legislation cited under each subject above are a few examples of the laws enacted under the authority given to the National Assembly under the Exclusive List. Out of these, a few are not directly relevant to the IHR and are not addressed further in the mapping.<sup>38</sup> The Report provides an analysis of the provisions of the IHR-relevant laws amongst those identified in subsequent pages, discussing how aligned they are with the IHR and how they support IHR implementation.<sup>39</sup>

### **5.1.1.2 The Concurrent List**

The Concurrent List, specified in Schedule 2, Part 2, also contains IHR-relevant provisions. The significance of the Concurrent List is that matters on the Concurrent List are matters over which both the federal government and the state government can make legislation.<sup>40</sup> Both levels of government are also conferred with the authority to make laws for 'peace, order and good government.'<sup>41</sup> However, in accordance with Section 4 (5) of the Constitution, and the doctrine of covering the field, a State Government cannot make law conflicting with federal legislation in any areas set out in the Concurrent List, if the federal government has made a valid law covering those areas. The validity of the law depends primarily on legislative competence, that is, whether or not the government in question has been conferred with the authority to make law over that subject matter by the Constitution. Thus, for instance, as earlier discussed, the federal government, through the National Assembly, alone can make valid law

<sup>38</sup> For example, the Water Resources (Amendment) Act 2016.

<sup>39</sup> For example, the Quarantine Act 1926.

<sup>40</sup> Constitution 1999, Sections 4 (4) and (7).

<sup>41</sup> Ibid, Sections 4 (2) and (3).

regarding matters on the Exclusive List.<sup>42</sup> In my view, the state can make a law to further the objectives of a law made by the federal government but no more than that.

To put it differently, the state governments through their State Houses of Assembly can make laws regarding matters on the Concurrent List to the extent stated therein.<sup>43</sup> Where the National Assembly, which is also conferred with authority to make laws over concurrent matters, has made law, the state cannot make laws that conflict with any made by the National Assembly on such concurrent matters. In Supreme Court cases such as *Attorney-General of Ogun State vs. Attorney-General of the Federation*<sup>44</sup>, and *Attorney-General of Abia State vs. Attorney-General of the Federation*<sup>45</sup> are also clear on the matter that state laws on concurrent matters (not residual matters)<sup>46</sup> cannot conflict with federal laws made on the Concurrent List. In these cases, the Supreme Court has held that where state law conflicts with federal legislation on a subject matter on which both governments have concurrent legislative powers, where the federal law suggests an intention by the National Assembly to cover the field, the state law is void to the extent of its inconsistency with the federal legislation. Nothing prevents the states from making a law that does not conflict with the federal law on a concurrent matter, but which furthers the objectives of such federal law without constituting a conflict.

The effect of this is that IHR-relevant matters on the Concurrent List can be legislated on by both the states and the federal government, with federally enacted legislation taking precedence. Matters that may have relevance for the IHR are:

**The establishment of research centres for agricultural studies:**

- The Nigerian Institutes Research Act of 1964, which establishes the Cocoa Research Institute of Nigeria, Nigerian Institute for Palm Oil Research, Rubber Research Institute of Nigeria, and the Nigerian Institute of Trypanosomiasis Research
- Agricultural Research Council of Nigeria Act, 1999, a federal statute that establishes the Agricultural Research Council and confers on it the power to advise the federal government on national policies and priorities in agricultural research, training and extension activities, amongst other things.

### 5.1.1.3 Residual List

All other matters that do not fall within the Exclusive and Concurrent Lists are considered residues. The states have absolute authority to legislate over these matters.<sup>47</sup>

In some instances, in order to set standards and encourage uniformity, the federal government has passed legislation on matters that are residual in nature, such as the Child Rights Act, the Compulsory Free Basic Education Act and the National Health Act. For implementation in the states, this requires state adoption. Such adoption typically takes place through the enactment of a law at the state level. Thus, for example, many states have adopted child rights laws modeled on the federal Child Rights Act, with some modifications in some cases. This applies similarly to the Compulsory Free Basic Education Act, which clearly recognized the constitutional authority of other levels of government over education,<sup>48</sup> but for the purpose of uniformity and quality made provisions for states to adopt law for the

42 Constitution 1999, Section 4 (2) and (3).

43 Ibid, Section 19, Part 2, Second Schedule.

44 [1982] 2 NCLR 166, 180–181.

45 (2002) 9 NSCQLR 670, 785, 788.

46 *AGF v AG Lagos*, Suit No. SC 340/2010 [2013] 16 NWLR (Part 1380) 249 where the Supreme Court held that the doctrine of covering the field does not apply to residual matters.

47 See *AG Abia State v AG Federation* (2006) 16 NWLR (Part 1005) 265 at 380–381, paras. D–C. per Ngwuta JSC; See also, J. Isawa Eliagwu, 'The Federal Republic of Nigeria' in *Dialogues on Distribution of Powers and Responsibilities in Federal Countries: Booklet Series, Volume 2*.

48 Section 1 of the Compulsory Basic Universal Education Act 2004, Section 1.



purposes of establishing the States Universal Basic Education Board by state law.<sup>49</sup> This was accompanied by financial incentives in the form of a grant by the federal government.<sup>50</sup> The National Health Act contains similar financial incentives through the Basic Health Care Provision Fund.<sup>51</sup>

In other instances, the federal government in past years (particularly in the colonial era, prior to the division of Nigeria into the current state structure), has legislated on IHR-relevant issues such as the Public Health Ordinance, which all states adopted with little or no amendment. This does not mean that the state cannot enact new laws to replace this or amend the existing laws as they wish, provided the subject matter is residual.<sup>52</sup>

In effect, new public health legislation enacted by the federal government will need to be adopted by the states with necessary amendments, except with regard to matters on the Exclusive List, such as quarantine-related matters.

#### **Areas of the IHR which are residual:**

- Health service delivery
- Health financing
- Antimicrobial resistance
- Zoonotic diseases
- Food safety
- Biosafety and biosecurity
- Immunisation
- Environment, including sanitation
- Public health law—detection, surveillance, reporting, notification, verification, response, coordination and collaboration activities
- Laboratory systems

In practice, the federal government has enacted legislation on these areas, while many states, although they have the power to do so within their residual authority, have not engaged with these issues through lawmaking. These laws typically apply within the Federal Capital Territory in the same way as state law. These laws would also apply more generally where an intention to do so is clear on the face of the statute and there is no conflicting state law. However, the state may validly make a conflicting law on these matters (as opposed to matters within the Concurrent List discussed above) or simply adopt the federal law. With respect to IHR-relevant laws, the pieces of legislation that the federal government has passed in this respect include:

#### **Health Financing**

- The National Health Act

**Public health law**—detection, surveillance, reporting, notification, verification, response, coordination and collaboration activities

- Public Health Ordinance, 1917
- Nigeria Centre for Disease Control and Prevention (Establishment) Act 2018

<sup>49</sup> Ibid, Section 12.

<sup>50</sup> Ibid, Section 11.

<sup>51</sup> National Health Act 2014, Section 11.

<sup>52</sup> *AG Lagos v A G Federation* (2003).

- Animals Diseases (Control) Act, 1988 (some states, such as Ondo State, have adopted this law, enacting a state law)

### Primary Care

- National Primary Health Care Development Agency Act, 1992

### Food Safety

- National Agency for Food and Drug Administration Control Act, 1993
- Food and Drugs Act, 1976
- Food, Drugs and Related Products (Registration, etc.) Act, 1993

Food safety is an indicator under the JEE. Although food is not an exclusive matter, and local governments are given the authority under the Constitution to regulate restaurants, bakeries and other places that sell food, the National Agency for Food and Drug Administration and Control (NAFDAC), by virtue of provisions made under the NAFDAC Act, currently controls the registration, manufacture, advertisement, distribution, sale, importation and exportation of food,<sup>53</sup> and has enacted regulation on these matters, including rules on the use of trans fats, additives and other aspects of processing.

### Immunisation

- Vaccination Act, 1917
- Yellow Fever and Infectious Diseases Act, 1945
- Child Rights Act, 2003

Several states have adopted these pieces of legislation.

In conclusion, the legislative lists in the Constitution set out the authority of the federal and state governments to make laws. While some issues are clearly exclusive matters like aviation, shipping etc., the concurrent issues are few (only relating to research institutes), and several IHR and JEE relevant matters fall within the residual area, over which states have authority to make laws (immunisation, zoonotic disease, plants). However, the Federal Government has enacted several relevant pieces of legislation, several dating from colonial times, and some more recent. The States have adopted some of these by legislation, such as the public health laws of various states. Others remain federal laws which the states have some part in implementing, such as the National Health Act. This indicates that the states play a significant role in the implementation of public health measures, even where this may hitherto not have been recognized by the states as a matter of immediate concern. It also suggests that there is a higher likelihood of lacunas or gaps in lawmaking to ensure compliance with the IHR. The Second Report focuses on the legislative powers of the State and how these have been implemented. An alternative approach to limit the possibility of gaps would be to domesticate the IHR in its entirety. This is discussed below.

## 5.1.2 Domestication of International Law

The Constitution also provides for the domestication and implementation of international law and treaties entered into by Nigeria. Under Section 12 of the Constitution, no treaty between Nigeria and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. In essence, any international law that is not domesticated in Nigeria cannot be enforced as law by Nigerian courts without such domestication. Cases such as *Abacha vs.*

<sup>53</sup> National Agency for Food and Drug Administration and Control Act 2004, Section 5 (1).

*Fawehinmi*<sup>54</sup> decided by the Supreme Court have reiterated this point. Furthermore, the National Assembly is permitted by the Constitution to make laws for the entire country with respect to implementing a treaty. The reason for this is fairly clear. The federal government enters into the treaty on behalf of the whole country and is best placed to domesticate that treaty to bind the country in agreement. However, to obtain the buy-in of the other federating units, the Constitution also provides that such a treaty shall be ratified by a majority of all the House of Assembly in the Federation. The treaty cannot be enacted as law and presented for assent to the President without such a ratification.<sup>55</sup>

The IHR sets out obligations binding upon Nigeria as a Member State of WHO. To comply with the IHR, Nigeria is required by its Constitution to enact domestic legislation to give force of law to IHR obligations. It can do this by domesticating it as a treaty in the same way as the African Charter. In doing so, however, it must follow the procedure laid out by the Constitution, that is, it must be passed in the regular way by the National Assembly and obtain ratification from a majority of all the State Houses of Assembly. This might be the most straightforward way of capturing all the obligations of the IHR but may not be politically expedient as it is likely to take a considerable amount of time to obtain the requisite consensus. At this time, such a step is not under contemplation. Instead, several IHR obligations are contained in discrete pieces of legislation. As the subsequent pages show, several IHR areas are covered under the Exclusive and Concurrent Lists. That being so, some IHR obligations are specific (such as designation of the focal point) and may require specific legal provisions to be inserted into Nigeria's legal framework, whereas others are broader and would be appreciated as capacities to be developed by the Federal Republic of Nigeria (i.e. IHR capacities for surveillance and response). IHR does not provide for one specific model of legislation or implementation. Article 3(4) of IHR provides that States Parties have the "sovereign right to legislate and to implement legislation in pursuance of their health policies. In doing so they should uphold the purposes of these [International Health] Regulations." As the analysis done with respect to the legal mapping will show, Nigeria has done this with certain recent legislation and regulations. For instance, the Nigeria Civil Aviation Regulations of 2015 expressly require compliance with the IHR in certain respects, providing that 'No airport operator shall prevent any aircraft from landing at any international airport for public health reason(s) unless such action is taken in accordance with the International Health Regulations (IHR) 2005 of World Health Organization (WHO).'<sup>56</sup> Bringing any outstanding areas, including areas relating to core capacities, whether residual or exclusive, into a piece of legislation—perhaps new public health legislation—to be adopted by states may be one way of getting into closer alignment with the IHR.

### 5.1.3 Fundamental Rights

The Constitution provides in its Chapter Four for the fundamental rights of all Nigerians, including the right to life, the right to freedom of movement, freedom of religion and conscience, dignity, nondiscrimination, expression etc. Nigeria is also a party to the African Charter on Human and Peoples' Rights (African Charter), the International Convention on Civil and Political Rights (ICCPR), and the International Convention on Civil and Socio-Economic Rights (ICESCR), which also provide for certain fundamental rights and freedoms. (Only the African Charter is justiciable in Nigeria, having been domesticated through a law enacted by the National Assembly. This means that the provisions of the African Charter are enforceable in Nigerian courts in the same way as domestic or municipal law).<sup>57</sup>

54 S.C. 45/1997 (Supreme Court).

55 Constitution 1999, Section 12.

56 Nigerian Civil Aviation Regulations, Regulation 18.8.9.3.

57 *Abacha v Fawehinmi* S.C. 45/1997 (Supreme Court).

Fundamental rights are a critical concern in IHR implementation. The IHR emphasizes the importance of fundamental rights. It states, 'The implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons.'<sup>58</sup> It also requires that travellers are to be treated with respect for their dignity, human rights and fundamental freedoms.<sup>59</sup> Amongst other provisions, the IHR requires a nondiscriminatory approach in applying the health measures contained in the Regulations.<sup>60</sup>

However, the Constitution (Section 45) allows for a derogation of these rights in certain situations, including in the interest of public health. It provides that no law, reasonably justifiable in a democratic society in the interest of public health is invalid because it makes provisions which affect or infringe on the rights of privacy,<sup>61</sup> freedom of religion and conscience,<sup>62</sup> freedom of expression,<sup>63</sup> freedom of association,<sup>64</sup> and freedom of movement.<sup>65</sup> Thus, laws such as quarantine laws (which often restrict the rights to freedom of movement and association) or compulsory immunisation laws (which may infringe on the rights to privacy and freedom of religion and conscience) are constitutional in Nigeria when a public health justification is established.

Further, the powers of emergency of the President with respect to natural disasters and calamity can curtail the exercise of these rights. However, under the IHR, checks and balances are required to ensure that even within the context of public health emergencies, human rights and fundamental freedoms are protected. The current legislation on quarantine and emergencies make limited provisions in this respect. This is discussed in more detail in the next subsection.

#### 5.1.4 The President's Powers of Emergency

The President is empowered by the Constitution to declare a state of emergency either of his own accord or at the request of a state governor where there is an occurrence of imminent danger, the occurrence of any disaster or natural calamity affecting a community, or any other public danger which constitutes a threat to the country.<sup>66</sup> The Constitution does not define 'disaster or natural calamity.' However, in my view the broader meaning<sup>67</sup> of 'disaster or natural calamity' can be argued to include not only a public health emergency of international concern as defined under the IHR—that is, an extraordinary event that constitutes a public health risk to other countries through the international spread of disease and may potentially require a coordinated international response.<sup>68</sup> but also an epidemic in-country that may not reach the scale of a public health emergency of international concern. The definition of 'disaster' in the Nigeria Emergency Management Agency Act lends credence to this view. In that act, 'natural or other disasters' include any disaster arising from an epidemic.<sup>69</sup> The NCDC Act also uses the term to describe public health events of significant magnitude. One of the functions of the NCDC is to 'develop and coordinate capabilities, measures and activities to control outbreaks

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58 IHR 2005, Article 3 (1).

59 Ibid, Article 32.

60 Ibid, Article 42 (1).

61 Constitution 1999, Section 37.

62 Ibid, Section 38

63 Ibid, Section 39.

64 Ibid, Section 40.

65 Ibid, Section 45.

66 Ibid, Section 305 (3) (e) and (f).

67 As noted in various cases such as the Supreme Court decision in *A G Lagos vs. A G Federation*, a liberal approach should be taken in interpreting the Constitution.

68 IHR 2005, Article 1.

69 National Emergency Management Agency (Establishment, Etc.) Act 1991, Section 6.

and mitigate the health impact of public health disasters.’<sup>70</sup> Further, this was the foundation of the declaration of an emergency during the Ebola crisis of 2014.

Such a declaration of a state of emergency is required to be published in the country’s Official Gazette, and the President must notify the Speaker of the House of Representatives and the President of the Senate.<sup>71</sup> One of the potential effects of such a declaration is that it allows for the passing of a law that may operate to abrogate temporarily the rights of citizens as specified under Chapter Four of the Constitution described above, including the rights to privacy,<sup>72</sup> freedom of thought, conscience and religion,<sup>73</sup> freedom of expression,<sup>74</sup> freedom of assembly,<sup>75</sup> and freedom of movement.<sup>76</sup> The Constitution allows a derogation of these rights when a law is “reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health.”<sup>77</sup> The National Assembly is also allowed to enact a law that derogates from the rights to life and the right to personal liberty during the period of emergency when a Proclamation of a state of emergency has been declared.<sup>78</sup>

The President’s power to declare an emergency is limited specifically to the instances provided under section 305, including when the country is at war or when there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation, including public health emergencies. The declaration must be made with the support of a two-thirds majority of the National Assembly. otherwise it expires 10 days after the President’s proclamation.<sup>79</sup>

A state Governor has powers to request that the President declare a state of emergency but must obtain two-thirds majority support of the House of Assembly.<sup>80</sup> Where the issue affects a state and the Governor fails within a reasonable time to make a request to the president to issue such Proclamation, the President may still issue a Proclamation of a state of emergency.<sup>81</sup>

### 5.1.5 Summary

In conclusion, the Constitution provides a basic foundation for the division of legislative powers of the federal and state government. It also provides for other key considerations such as the domestication of international treaties, a potential pathway to legislative implementation of the IHR, fundamental rights, and declaration of emergency. What emerges from this discussion is that the federal government has significant authority over matters contained in the IHR. However, states also have some authority, in particular over issues identified as indicators in the JEE. The Constitution also provides for powers to declare an emergency, but emergency is not clearly defined as to a specific public health emergency.<sup>82</sup>

With respect to legislative competence, two approaches seem plausible for the gaps identified later in this report:

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70 Nigeria Centre for Disease Control and Prevention (Establishment) Act 2018 (NCDC Act), Section 1.

71 Constitution 1999, Section 305.

72 Ibid, Section 37.

73 Ibid, Section 38.

74 Ibid, Section 39.

75 Ibid, Section 40.

76 Ibid, Section 41.

77 Ibid, Section 41.

78 Ibid, Section 45 (2).

79 Ibid, Section 305 (6).

80 Ibid, Section 30.

81 Ibid, Section 305 (4) and (5).

82 The declaration of a state of emergency was more detailed in the Public Health Bill of 2013, but there was also a risk of conflict with the provisions of the Constitution with respect to the governor’s powers to declare an emergency.

- The National Assembly may domesticate the IHR with respect to all matters within the Exclusive List. This would require a comprehensive contextual drafting of the IHR for Nigeria. This leaves matters that may be within the legislative competence of the states, which may be included in the draft (and two thirds of the House of Assembly approval obtained in line with the Constitution),<sup>83</sup> and which the states may adopt. Such a draft would repeal all other legislation.
- Develop new public health legislation and address as many gaps as possible, support state adoption. Review and amend other pieces of legislation over time to address the gaps in them.

<b>Federal Matters</b> <i>(Exclusive and Concurrent List)</i>	<b>State Matters</b> <i>(Residual List)</i>
Aviation Drugs and poisons Professional occupations Post Maritime shipping and navigation Quarantine Research centres	Health service delivery Health financing Primary care Antimicrobial resistance Zoonotic diseases Food safety Immunisation Environment, including sanitation Public health—detection, surveillance, reporting, notification, verification, response, coordination and collaboration activities and other matters in the JEE

<sup>83</sup> Constitution 1999, Section 12 (3).

## Part Two

# MAPPING OF LAWS MADE UNDER FEDERAL POWERS

## 6. Introduction to the Mapping

As noted above, the IHR is not a specific body of law that can be domesticated in one single piece of legislation. Instead it provides guidance through its requirements which may, and are typically, enacted in different pieces of legislation. This part of the Report aims to answer the research questions:

- What are the current pieces of legislation at the federal level for IHR implementation?<sup>84</sup>
- What are the gaps in these pieces of legislation implementation?

The first part of the Report began to answer the first question, identifying the current pieces of IHR-federal legislation. In this part, we analyse these pieces of legislation. The focus is on IHR-relevant legislation, but with attempts to identify legislation which may affect other technical areas such as zoonotic diseases, food safety, biosafety, immunisation, laboratory, etc.

An adequate legal framework to support and enable all of the varied IHR State Party activities is needed in each country. In some countries, giving effect to the IHR within domestic jurisdiction and national law requires that the relevant authorities adopt implementing legislation for some or all of the relevant rights and obligations for States Parties. However, even where new or revised legislation may not be explicitly required under a country's legal system for implementation of one or more provisions in the IHR, revision of some legislation, regulations, or other instruments may still be considered by the country in order to facilitate performance of IHR activities in a more efficient, effective or otherwise beneficial manner. Additionally, from a policy perspective, implementing legislation may serve to institutionalize and strengthen the role of IHR capacities and operations within the State Party, as well as the ability to exercise certain rights contained in the Regulations. A further potential benefit from such legislation is that it can facilitate necessary coordination among the different entities involved in implementation and help to ensure continuity. For these reasons, States Parties to the IHR should consider assessing their relevant existing legislation to determine whether they may be appropriate for revision in order to facilitate full and efficient implementation of the Regulations.<sup>85</sup>

WHO, *Ten Things you need to do to implement the IHR*

<sup>84</sup> Compliance with the IHR does not require that all provisions be enacted in the form of national legislation. The requirements can be domesticated through other legal measures such as regulations, decrees and state-level laws.

<sup>85</sup> WHO *Ten things you need to do to implement the IHR*.

## 6.1 Identification of IHR Relevant Laws

It is important to identify and collate IHR-relevant laws because we do not currently have comprehensive assemblage.<sup>86</sup> This activity was recommended in the Nigeria 2017 JEE and is part of the NAPHS.

Below, we identify all the federal legislation and regulations that have public health relevance. However, some of them have specific IHR relevance, and these are discussed in the context of the assessment of IHR implementation in the subsequent section.

Legislation		Relevance to IHR	Assessment of Compliance with the IHR	Corresponding JEE Technical Area
1	The Constitution of the Federal Republic of Nigeria	Sets out the constitutional provisions related to IHR seen in the Exclusive (Second Schedule, Part I), Concurrent (Second Schedule, Part III) and Residual lists	Reviewed to assess compliance with IHR	National legislation providing foundation for all laws and detailing relationship between national and state government
2	Nigeria Centre for Disease Control and Prevention (Establishment) Act, 2018	Established NCDC as a legal entity	Reviewed	National legislation—established the IHR NFP  Also addresses the following technical areas: ‘reporting’, “detection”, “workforce development” “preparedness” and “emergency response” to disease outbreaks.
3	National Emergency Management Agency (Establishment, Etc.) Act 1991	Empowers agency to formulate policy on all activities relating to disaster management in Nigeria and co-ordinate the plans and programmes for efficient and effective response to disasters at national level. Disasters include epidemics.	Reviewed.  Competent authority under IHR; liaises with the National Focal Point, NCDC.  As noted in the JEE, NEMA has coordinated public health emergency responses in Nigeria. Need for ongoing coordination with NCDC.	Workforce development;  Medical countermeasures and personnel development

<sup>86</sup> A previous mapping done by the CDC was very helpful in putting together these pieces of legislation. However, it was not complete, having missed some legislation that has just been enacted and other pieces that are relevant.



4	National Health Act, 2014	<p>Provides a framework for the regulation, development and management of a national health system and sets standards for rendering health services in the Federation; Identifies Port Health Services as part of Federal Ministry of Health</p> <p>Provides patients' rights;</p> <p>Provides for Certificate of Standards for health establishments, which could include laboratories and other health facilities focused on care</p> <p>Provides for the Basic Health Provision Fund for primary care interventions</p>	Reviewed. Makes provisions on port health services.	National policy; financing
5	Public Health Ordinance	Provides for management of public health, and the basis of most state public health laws	Reviewed	National legislation
6	National Agency for Food and Drug Administration Control Act, 1993	Regulates and controls the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals	Reviewed	Food safety
7	Civil Aviation Act, 2006	Control of air navigation and vests power in the minister to take additional measures to prevent the spread of diseases through air travel	Reviewed	Points of entry Risk communication Preparedness Immunisation
8	Nigeria Civil Aviation Regulations, 2015			
9	Dangerous Drugs Act, 1935	Prohibits and regulates the importation, exportation, manufacture and sale of dangerous drugs.	Reviewed. Not relevant	None
10	Food and Drugs Act, 1976	Prohibits the sale, advertisement, importation, or exportation of certain food, drugs and devices	Reviewed, but not specifically relevant in this Report	Food safety; Chemical events

<b>11</b>	Food, Drugs and Related Products (Registration, etc.) Act, 1993	Prohibits the sale of unregistered food and drugs	Reviewed but not specifically relevant to this Report	Food safety
<b>12</b>	National Agency for Food and Drug Administration and Control Decree, 1993	Regulates and controls the manufacture, importation, exportation, distribution, advertisement, sale and use of food, drugs, cosmetics, medical devices, packaged water, chemicals and detergents (collectively known as regulated products)	Reviewed but not specifically relevant in this Report	Food safety
<b>13</b>	Environmental Health Officers (Registration, Etc.) Act, 2002	Provides for registration, practice, etc. of environmental health officers in Nigeria	Reviewed. Food safety	-
<b>14</b>	Veterinary Council (Elections) Rules, 1953	Provides for the registration of veterinary surgeons	Food safety	-
<b>15</b>	Veterinary Surgeons Act, 1969	Provides for the registration of veterinary surgeons	Reviewed	Personnel development
<b>16</b>	Community Health (Practitioners Registration, Etc.) Act, 1992	Regulation of community health practitioners	Reviewed	Personnel development
<b>17</b>	Medical and Dental Practitioners Act 2004	Registration of medical practitioners and dental surgeons and to provide for a disciplinary tribunal for the discipline of members	Not reviewed	Medical countermeasures and personnel deployment
<b>18</b>	Nursing and Midwifery (Registration Etc, Amendment) Decree, 1992	Registration of nurses and midwives in Nigeria and state Nursing and Midwifery Committees and provides for the discipline of nurses and midwives and other ancillary matters	Reviewed. Not directly relevant	Workforce development
<b>19</b>	Pharmacists Council of Nigeria Act, 1992	Established the Pharmacists Council of Nigeria to regulate members of the profession and for matters connected therewith	Not reviewed	Workforce development

20	The Medical Laboratory Science Council of Nigeria Act, 2003	Established the Medical Laboratory Science Council of Nigeria, and repealed the Institute of Medical Laboratory Technology Act, Cap. 114 Laws of the Federation of Nigeria 2004	Reviewed	National laboratory system; Workforce development
21	Animal Diseases (Control) Act 1988	Control and prevention of animal diseases, with the object of preventing the introduction and spread of infectious and contagious diseases among animals, hatcheries and poultries in Nigeria.	Reviewed	Zoonotic diseases
22	Nigeria Agricultural Quarantine Service Establishment) Act, 2017	Established the Nigeria Agricultural Quarantine Service, an agency responsible for addressing animal and plant health and aquatic resources in relationship with public health	Reviewed	Zoonotic diseases
23	Live Fish (Control of Importation) Act, 1962	Regulates the importation of live fish; and for purposes connected therewith	Reviewed. No direct relevance	-
24	IPAN Act CAP. 116 LFN 2004	Regulates public analysts and empowers the IPAN to make regulations relating to laboratory safety and quality issues	Reviewed	Supports laboratory regulation
25	Registration of Analytical Laboratory Regulations			
26	Nigeria Data Protection Regulation, 2019	Regulates the use of data in Nigeria	Reviewed	
27	The National Primary Health Care Development Agency (NPH-CDA) Act, 1992	Establishes the National Primary Health Care Development Agency, which plays a critical role in emergencies for vaccine-preventable diseases	Reviewed	Immunisation
28	Child Rights Act, 2003	An act to uphold the best interests of children in Nigeria. Contains provisions on compulsory immunisation	Reviewed	Immunisation

29	National Crop Varieties and Livestock Breeds (Registration, Etc.) Act, 1987	Introduces a register for the certification, registration and release of national crop varieties and livestock breeds and other matters related thereto	Reviewed. No direct relevance	-
30	National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007	Provides for the establishment of the national standards and regulations development for the environment in Nigeria	Reviewed	Chemical events
31	Criminal Code Act, 1990	Establishes a code of criminal law	Reviewed. No direct relevance	-
32	Quarantine Act, 1926	Provides for and regulates the imposition of quarantine and to make other provisions for preventing the introduction into and spread within Nigeria, and the transmission from Nigeria, of dangerous infectious diseases	Reviewed	Immunisation  National legislation and policy  Point of entry

### Bills

This Report also includes an analysis of national bills. This is vital because these bills will replace some of our outdated legislation and regulate health security in Nigeria for the foreseeable future when enacted. It is crucial therefore to be clear about any gaps for possible amendment prior to enactment. The analyses provided and recommendations proffered in this Report are, however, only valid for the versions of the bills which we have been able to retrieve at this time.

## 6.2 Analysis of Legislation

The IHR requires countries to have core capacities in order to fulfill their obligations under the IHR. These core capacities include the ability to:

- detect, assess, notify and report events;<sup>87</sup>
- promptly and effectively respond to public health risks and public health emergencies of international concern;
- engage in verification and collaboration activities, and
- engage in activities concerning points of entry<sup>88</sup>

<sup>87</sup> IHR 2005, Article 5, Annex 1A on Core capacity requirements for surveillance and response, and Annex 1B on Core capacity requirements for designated airports, ports and ground crossings.

<sup>88</sup> Ibid, Annex 1.

It is essential for countries to ensure that their legislative framework makes room for the implementation of their obligations through their core capacities. The rest of this analysis addresses how adequate Nigerian legislation is for the purpose of addressing the core capacities as identified above.<sup>89</sup>

The analysis here is undertaken with headings drawn from other draft IHR legal assessment guides which we have had the opportunity to review.<sup>90</sup>

The broad areas considered are:

- Definition of key terms
- National IHR Focal Point

The report identifies the IHR requirements under each heading, followed by analysis of the Nigerian law, an identification of gaps, and then recommendations.

## 7. Definitions of Key Terms

The IHR defines key health security terms. While the IHR does not obligate States Parties to adopt exact definitions in the IHR, it is important for State parties to adopt these definitions, or as close to these definitions as possible, in order to ensure that the meanings and scope of the terms allow sufficient room for State parties to effectively implement their IHR obligations. Some definitions also relate to terms of art (e.g. public health emergency of international concern (PHEIC) that have a singular meaning in the global context. Their consistent use in the national context will reduce the risk of confusion linked to similar terms having different meanings in different contexts.

Another element to consider when amending definitions in existing legislation is the collateral effect that such changes could have on the obligation already foreseen in the existing legislation. There is no legal obligation under the IHR to adopt the exact wording of the IHR definitions. However, using these definitions is helpful not only for implementation, as noted above, but also to reduce the risk of confusion and guarantee covering the intended scope and purpose of the IHR. These potential effects need to be considered before amending definitions. It is important to note that a definition can also be tied to a specific context (i.e. IHR implementation, health security, public health) if necessary.

With these in mind, the definitions in the IHR are compared with the definitions in Nigerian federal legislation, and any gaps are identified in the section below.<sup>91</sup> The text under the table provides further analysis.

<sup>89</sup> Apart from the core capacities, the scope of IHR is very broad and touches on a wide range of substantive subject areas, including but not limited to: public health, international ports, airports, ground crossings (including quarantine), customs, collection, use and disclosure of public health information, and public health activities of authorities or other relevant entities at the intermediate (e.g. state, provincial or regional) and local levels. See World Health Organization, International Health Regulations (2005): A Brief Introduction to Implementation in National Legislation 2009 <[https://www.who.int/ihr/Intro\\_legislative\\_implementation.pdf?ua=1](https://www.who.int/ihr/Intro_legislative_implementation.pdf?ua=1)> accessed 6 November 2019.

<sup>90</sup> WHO, IHR (2005) Guidance on Implementation in National Legislation 2009 <[www.who.int/ihr/legal\\_issues/legislation/en](http://www.who.int/ihr/legal_issues/legislation/en)> accessed 6 November 2019; and RSTL, Draft Legal Assessment Guide, 2019.

<sup>91</sup> Several key words identified here are drawn from World Health Organization, Selected key definitions in the IHR (2005), 2009 <[https://www.who.int/ihr/6\\_Table\\_III\\_Selected\\_Key\\_Definitions\\_in\\_the\\_IHR\\_\(2005\).pdf?ua=1](https://www.who.int/ihr/6_Table_III_Selected_Key_Definitions_in_the_IHR_(2005).pdf?ua=1)> accessed 6 November 2019.

Key terms and IHR Definitions (Art. 1, IHR)		National Legislation		Recommendation
		Definition?	IHR Compliant?	
<b>De-ratting</b>	Procedure whereby health measures are taken to control or kill rodent vectors of human disease present in baggage, cargo, containers, conveyances, facilities, goods and postal parcels at the point of entry	Not defined in Nigerian legislation, though the Quarantine Act and the Quarantine (Shipping) Regulations provide the procedure for obtaining a 'de-ratting certificate.' (Regulation 14)	No	Include definition in future public health legislation
<b>Disease</b>	An illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans'	Nigerian legislation does not define 'disease.' The Quarantine (Ships) Regulations only define 'dangerous infectious disease,' which is defined as 'cholera, plague, yellow fever, smallpox and typhus, and includes any disease of an infectious or contagious nature which the president may, by notice, declare to be a dangerous infectious disease within the meaning of this Act'. —Quarantine (Ships) Regulations, Regulation 3	No	Include definition in future public health legislation
<b>Event</b>	A manifestation of disease or an occurrence that creates the potential for disease	This is not defined under the Nigerian legislation that has been investigated	No	The gaps in the definitions require a revision of current legislation. In particular, it is recommended that new public health legislation captures these definitions

<b>Free Pratique</b>	Permission for a ship to enter a port, embark or disembark, discharge or load cargo or stores; permission for an aircraft, after landing, to embark or disembark, discharge or load cargo or stores; and permission for a ground transport vehicle, upon arrival, to embark or disembark, discharge or load cargo or stores	Not defined in the laws investigated. However, a close term, 'radio pratique', is found in the Quarantine (Ships) Regulations, subsidiary legislation under the Quarantine Act (Regulation 9).  Also, the Civil Aviation Regulations made under the Civil Aviation Act prohibits the air operator from stopping an airplane from landing for public health reasons. It however does not define the term 'free pratique'	The provision on 'radio pratique' is essentially the same meaning under the IHR; however, it is restricted to ships  No. This provision is couched in negative rather than positive terms, unlike the Quarantine (Ships) Regulations	
<b>Health Measures</b>	Procedures applied to prevent the spread of disease or contamination; a health measure does not include law enforcement or security measures	Used in the Civil Aviation Regulations (Reg 18.8.17.3.). Not defined under Nigerian legislation	No	
<b>Ill Person</b>	Individual suffering from or affected with a physical ailment that may pose a public health risk	The Quarantine Act describes 'infectious person' as 'a person who is suffering from a quarantinable disease or is considered by the port health officer to be infected with such a disease.' Other relevant laws do not define this	No. This is narrower than envisaged in the IHR	
<b>Infection</b>	Entry and development or multiplication of an infectious agent in the body of humans and animals that may constitute a public health risk	Not defined in the body of laws	No	

<b>Inspection</b>	The examination, by the competent authority or under its supervision, of areas, baggage, containers, conveyances, facilities, goods or postal parcels, including relevant data and documentation, to determine if a public health risk exists	There is no definition of this term in relevant legislation, although the term is used in the Quarantine (Ships) Regulations (Regulation 3 and 15)	No. Though the term is not defined, use of the term is limited to ships and passengers on board. It does not extend to inspection of postal parcels, goods and other items as provided in the IHR	
<b>Isolation</b>	Separation of ill or contaminated persons or affected baggage, containers, conveyances, goods or postal parcels from others in such a manner as to prevent the spread of infection or contamination	Not defined under current Nigerian legislation	No. Restricted to individuals; does not extend to baggage, containers, postal parcels etc., which may also be sources of contamination or infection	
<b>Point of Entry</b>	A passage for international entry or exit of travellers, baggage, cargo, containers, conveyances, goods and postal parcels as well as agencies and areas providing services to them on entry or exit	Not defined in Nigerian legislation	No	
<b>Public Health Emergency of International Concern</b>	An extraordinary event which is determined, as provided in these IHRs:  (i) to constitute a public health risk to other States through the international spread of disease and  (ii) to potentially require a coordinated international response	Not defined in Nigerian legislation	No	



<b>Public Health Observation</b>	Monitoring of the health status of a traveller over time for the purpose of determining the risk of disease transmission	Not addressed in Nigerian legislation	No	
<b>Public Health Risk</b>	Likelihood of an event that may affect adversely the health of human populations, with an emphasis on one which may spread internationally or present a serious and direct danger	Not defined in relevant legislation	No. Does not cover international spread of diseases	
<b>Quarantine</b>	Restriction of activities and/or separation from others of suspect persons who are not ill or of suspect baggage, containers, conveyances or goods in such a manner as to prevent the possible spread of infection or contamination	Relevant extant legislation does not define this	No	
<b>Reservoir</b>	Animal, plant or substance in which an infectious agent normally lives and whose presence may constitute a public health risk	Not defined in any IHR-relevant legislation, suggesting a gap in coverage relative to the requirements of the IHR	No	

<b>Surveillance</b>	Systematic ongoing collection, collation and analysis of data for public health purposes and the timely dissemination of public health information for assessment and public health response as necessary	The Quarantine (Ships) Regulations adopt a very narrow and perhaps obsolete meaning of 'surveillance': 'Means that persons are not isolated, that they may move about freely, but that the health authorities of the places to which they are proceeding are notified of their coming; they may be subjected, in the places of arrival, to a medical examination and such enquiries as are necessary with a view to ascertaining their state of health, and may be required to report on arrival and afterwards at such intervals during continuance of surveillance as may be specified to the health officer of the city, town, district or place to which they proceed'	No. It is very narrow and perhaps obsolete	
<b>Suspect</b>	Persons, baggage, cargo, containers, conveyances, goods or postal parcels considered by a State party as having been exposed, or possibly exposed, to a public health risk and that could be a possible source of spread of disease	The Quarantine (Ships) Regulations made under the Quarantine Act define the term 'suspect' as 'a person (not being an infected person) who is considered by the port health officer to have been exposed to infection by a quarantinable disease and to be capable of spreading the disease'	No. 'Quarantinable diseases' as used in the regulation is limited to ships, while the IHR's definition anticipates a broader range of vessels and transportation, including transport for postal parcels	
<b>Traveller</b>	Natural person undertaking an international voyage	Not defined in relevant legislation. However, the Quarantine (Ships) Regulations make reference to 'passenger' in some of its provisions in the context of the IHR definition of 'traveller'	The term is not defined and the related term 'passenger' is not defined as well	

<b>Vector</b>	Insect or other animal which normally transports an infectious agent that constitutes a public health risk	This definition is not provided in relevant legislation. However, the Nigeria Civil Aviation Authority Regulation used it once in one of its provisions in the same context as provided in the IHR's definition: 'The Airport Operator shall ensure that passengers and crew in transit can remain in premises free from any danger of infection and insect vectors of diseases and, when necessary, facilities should be provided for the transfer of passengers and crew to another terminal or airport nearby without exposure to any health hazard. Similar arrangements and facilities shall also be made available in respect of animals.' (Regulation 18.8.21.4)	Context where it is used in the Nigeria Civil Aviation Authority Regulation is compliant with the definition of the IHR	
<b>WHO IHR Contact Point</b>	Unit within WHO which shall be accessible at all times for communications with the National IHR Focal Point	Not defined in relevant legislation	No	

## Definitions—Analysis

### Event

This is defined in the IHR as 'a manifestation of disease or an occurrence that creates a potential for disease.' This is an important definition because the word 'event' is a key part of the definition of other important issues in the IHR, such as in the definition of a 'public health emergency of international concern' or a 'suspicious event' where information sharing is required. This is not defined under the Nigerian legislation that has been investigated.

### De-ratting

This is the procedure whereby health measures are taken to control or kill rodent vectors of human disease present in baggage, cargo, containers, conveyances, facilities, goods and postal parcels at the point of entry. Nigerian laws do not include a definition of de-ratting. But the Quarantine Act and the Regulations (drawn from the former International Sanitary Regulations) thereunder provide the procedure for obtaining a 'de-ratting certificate'.<sup>92</sup>

<sup>92</sup> Quarantine Act 1926, Section 14; and Quarantine (Ships) Regulations.

## Disease

The definition of 'disease' in the IHR is broad: 'an illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans'.<sup>93</sup> The closest definition to this in the Quarantine Act is the definition of a 'dangerous infectious disease,' which is defined as 'cholera, plague, yellow fever, smallpox and typhus, and includes any disease of an infectious or contagious nature which the president may, by notice, declare to be a dangerous infectious disease within the meaning of this Act'.<sup>94</sup> In an exercise of this declaratory power, sleeping sickness was added as a dangerous infectious disease by virtue of one of the subsidiary pieces of legislation to the Act.<sup>95</sup> This limits the definition of infectious disease to these specific diseases. Lassa fever, cholera, meningitis, Ebola and monkey pox, infectious diseases that have affected and continue to afflict Nigerians, are therefore not considered dangerous infectious diseases under this act. The definition of what constitutes a 'disease' or a 'dangerous infectious disease' is limiting.

## Free pratique

Under the IHR, this means 'permission for a ship to enter a port, embark or disembark, discharge or load cargo or stores; permission for an aircraft, after landing, to embark or disembark, discharge or load cargo or stores; and permission for a ground transport vehicle, upon arrival, to embark or disembark, discharge or load cargo or stores.' A close term, 'radio pratique', is found in the Quarantine (Ships) Regulations, subsidiary legislation under the Quarantine Act. It is not defined, but the provision related to it allows the port health officer to permit a ship to land, discharge or load when the officer is satisfied with information received by radio or through other means that the arrival of the ship will not lead to a spread of infectious disease. This is essentially the same meaning under the IHR; however, it is restricted to ships. This term is not used in the Civil Aviation Act. However, omnibus clauses allowing the Minister to take measures relating to protecting public health may be said to cover this.<sup>96</sup>

## Health measures

means procedures applied to prevent the spread of disease or contamination; a health measure does not include law enforcement or security measures. This is not defined under Nigerian legislation, although the term is used in the Civil Aviation Regulations made under the Nigerian Civil Aviation Act 2006, where it stipulates that if the Civil Aviation Authority is considering introduction of 'health measures' in addition to those recommended by WHO, it shall do so in accordance with the IHR (2005).<sup>97</sup>

## Ill person

means an individual suffering from or affected by a physical ailment that may pose a public health risk. This is described in various ways in Nigerian legislation. The Quarantine Act describes 'infectious person' as 'a person who is suffering from a quarantinable disease or is considered by the port health officer to be infected with such a disease'.<sup>98</sup> (See below for analysis of 'quarantinable disease—cholera, plague, relapsing fever, smallpox, typhus or yellow fever.) This is narrower than envisaged under the IHR.<sup>99</sup>

## Infection

means the entry and development or multiplication of an infectious agent in the body of humans and animals that may constitute a public health risk. This is not defined in Nigeria's body of laws. Given its

93 IHR 2005, Article 1.

94 Quarantine Act 1926, Section 2.

95 See Subsidiary Legislation; Declaration of Dangerous Infectious Disease.

96 Civil Aviation Act 2006, Sections 64 and 65.

97 Civil Aviation Regulations 2015, Regulation 18.8.17.3.

98 Quarantine Act 1926, Section 2.

99 The Nigeria Public Health Bill, which was not passed, does not define the term but uses the phrase 'persons who are ill.' Section 3 of the Nigeria Public Health Bill.

importance in determining what public health risk is, it is necessary to address this gap in any future legislation such as a new public health bill.

### **Inspection**

means the examination, by the competent authority or under its supervision, of areas, baggage, containers, conveyances, facilities, goods or postal parcels, including relevant data and documentation, to determine whether a public health risk exists. Inspection is used in Nigerian the context of examination of ships to check for quarantinable diseases. It makes provision for the detention of ships and 'medical inspection.'<sup>100</sup> But it is not defined in the Quarantine Act or the Quarantine (Ships) Regulations, the Nigerian Postal Service Act or other Nigerian legislation. It is not defined in the Civil Aviation Act or Regulations made thereunder. This is problematic because the context of inspection in Nigerian legislation is more limited than provided under the IHR (for example, quarantinable diseases [under the Quarantine (Ships) Regulations] as opposed to public health risk as required by the IHR), and inspections are essential in the IHR context in a range of areas including but not limited to inspection of goods, cargo and baggage at points of entry.

### **Isolation**

is defined in the IHR as 'separation of ill or contaminated persons or affected baggage, containers, conveyances, goods or postal parcels from others in such a manner as to prevent the spread of infection or contamination.'<sup>101</sup> The Quarantine Act does not define the term.

### **Point of entry**

means a passage for international entry or exit of travellers, baggage, cargo, containers, conveyances, goods and postal parcels as well as agencies and areas providing services to them upon entry or exit. This is not defined in the pieces of legislation that have been reviewed. It is a key term for IHR implementation. It is recommended that it be defined in line with the IHR definition, possibly in new public health legislation.

### **Public health emergency of international concern**

means an extraordinary event which is determined, as provided in these IHRs: '(i) to constitute a public health risk to other States through the international spread of disease, and (ii) to potentially require a coordinated international response.' Notification of such matters is required to be made by State Parties, thus underlining the importance of such events. This is not defined in Nigerian legislation.<sup>102</sup> However, the NCDC is the lead agency for implementing the IHR under the Nigeria Centre for Disease Control and Prevention (Establishment) Act 2018, and as such will be required to identify public health emergencies of international concern. Specifically, the NCDC is required by law to prevent, detect, monitor and control diseases of national and public health importance.<sup>103</sup> In our view, it is important to have this definition inserted into perhaps new public health legislation, in part because this may prove helpful to the NCDC. Also, this will help in creating a distinction between a 'state of emergency' as envisaged but not defined under Section 305 of the Constitution and a 'public health emergency of international concern,' as in the IHR.

100 Quarantine (Ships) Regulations, Regulations 3 and 15.

101 IHR 2005, Article 1.

102 Public health emergency is, however, defined in Section 3 (m) of the Public Health Bill 2013: 'an occurrence or imminent threat of an illness or health condition that is believed to be caused by bioterrorism; the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; natural disaster, chemical attack or accidental release or nuclear attack or accident and poses a high probability of a large number of deaths, large number of serious or long-term disabilities in the affected population or widespread exposure to an infectious or toxic agent. This is limited, in essence to local public health emergency.'

103 NCDC Act, Section 3 (a).

### Public health observation

means the monitoring of the health status of a traveller over time for the purpose of determining the risk of disease transmission. This is not addressed in Nigerian legislation, although the definition of 'surveillance' under the Quarantine (Ships) Regulations appears to refer to this concept.<sup>104</sup>

### Public health risk

means the likelihood of an event that may affect adversely the health of human populations, with an emphasis on one that may spread internationally or present a serious and direct danger. This is not specifically defined in Nigerian legislation, although 'public health risk' is a phrase used in the Nigerian Civil Aviation Regulations in the context of making a contingency plan and for which flight crews have to provide information to appropriate authority<sup>105</sup> and on the basis of which the Nigerian Civil Aviation Authority (NCAA) can introduce health measures,<sup>106</sup> and the management of 'public health risks' on the ground after a report is made by the pilot.<sup>107</sup> Given these usages and the importance of the term in taking action, it is important that this term be defined in future legislation or amendments.

**Quarantine** The IHR defines 'quarantine' as 'the restriction of activities and/or separation from others of suspect persons who are not ill, or of suspect baggage, containers, conveyances or goods, in such a manner as to prevent the possible spread of infection or contamination.'<sup>108</sup> Interestingly, the Quarantine Act does not define the term 'quarantine'. 'Quarantinable disease' is defined under the Quarantine (Ships) Regulations as meaning 'cholera, plague, relapsing fever, smallpox, typhus or yellow fever'.<sup>109</sup> The Civil Aviation Regulations provide for quarantine measures, including plant and animal quarantine, but do not define them or otherwise distinguish quarantine of humans from quarantine of animals. The Nigerian Agricultural Quarantine Service Act of 2018 does not define 'quarantine', nor does the Nigeria Centre for Disease Control (Establishment) Act of 2018. A standard definition of quarantine is therefore beneficial in the Nigerian context.<sup>110</sup>

### Reservoir

defined by the IHR to mean an animal, plant or substance in which an infectious agent normally lives and whose presence may constitute a public health risk. This is not defined in any IHR-relevant legislation, nor is it used in such legislation, suggesting a gap in coverage relative to the requirements of the IHR.

### Surveillance

means the systematic ongoing collection, collation and analysis of data for public health purposes and the timely dissemination of public health information for assessment and public health response as necessary. In contrast, the Quarantine (Ships) Regulations adopt an obsolete meaning of 'surveillance': 'means that persons are not isolated, that they may move about freely, but that the health authorities of the places to which they are proceeding are notified of their coming; they may be subjected, in the

<sup>104</sup> Quarantine (Ships) Regulations, Regulation 2: "Surveillance" means that persons are not isolated, that they may move about freely, but that the health authorities of the places to which they are proceeding are notified of their coming; they may be subjected, in the places of arrival, to a medical examination and such enquiries as are necessary with a view to ascertaining their state of health, and may be required to report on arrival and afterwards at such intervals during continuance of surveillance as may be specified to the health officer of the city, town, district or place to which they proceed.'

<sup>105</sup> Nigerian Civil Aviation Regulations 2015 provide that: The flight crew of an aircraft shall, upon identifying a suspected case(s) of communicable disease or public health risk onboard the aircraft, promptly notify the ATS unit with which the pilot is communicating, giving the information listed below: (i) aircraft identification; (ii) departure aerodrome; (iii) destination aerodrome; (iv) estimated time of arrival; (iv) number of persons on board; (v) number of suspected case(s) on board; and (vi) nature of the public health risk, if known.

<sup>106</sup> Nigerian Civil Aviation Regulations 2015, Regulation 18.8.17.3.

<sup>107</sup> Nigerian Civil Aviation Regulations 2015, Regulation 18.8.22.4. 'Risk' is also a concept used in the Nigeria Public Health Bill in the definition of public health emergency. Section 3 (m) (2) (iii), Nigeria Public Health Bill.

<sup>108</sup> IHR 2005, Article 1.

<sup>109</sup> Quarantine (Ships) Regulations, Section 2.

<sup>110</sup> The Public Health Bill provides a definition for the term 'quarantine', however it restricts it to the separation of persons alone Section 3 (o), Nigeria Public Health Bill.

places of arrival, to a medical examination and such enquiries as are necessary with a view to ascertaining their state of health, and may be required to report on arrival and afterwards at such intervals during continuance of surveillance as may be specified to the health officer of the city, town, district or place to which they proceed.' This definition relates more to public health observation<sup>111</sup> (discussed above).

### **Suspect**

is defined under the IHR as 'those persons, baggage, cargo, containers, conveyances, goods or postal parcels considered by a State Party as having been exposed, or possibly exposed, to a public health risk and that could be a possible source of spread of disease.'<sup>112</sup> The Quarantine (Ships) Regulations define the term 'suspect' as 'a person (not being an infected person) who is considered by the port health officer to have been exposed to infection by a quarantinable disease and to be capable of spreading the disease.' As discussed elsewhere, the regulations provide a limited definition of 'quarantinable disease.' Further, the definition is confined only to ships, while the IHR's definition anticipates a broader range of vessels and transportation, include transport for postal parcels.

### **Travellers**

natural persons undertaking an international voyage. The Quarantine (Ships) Regulations make reference to 'passenger', using it in a similar way to 'traveller' as defined under the IHR.<sup>113</sup> The Nigeria Civil Aviation Authority Regulations also makes reference to 'passenger' throughout in a similar manner. But neither the term 'traveller' nor the term 'passenger' is defined in relevant Nigerian legislation.

### **Affected/infected area/person**

The 'affected' under the IHR is known as 'persons, baggage, cargo, containers, conveyances, goods, postal parcels or human remains that are infected or contaminated, or carry sources of infection or contamination, so as to constitute a public health risk.' While under the Quarantine (Ships) Regulations, the closest to this definition is that of an 'infected person' defined as 'a person who is suffering from a quarantinable disease or is considered by the port health officer to be infected with such a disease.' As noted before, the definition of 'quarantinable disease'<sup>114</sup> is limited, nor does this definition cover other elements of transportation by sea as seen in the IHR's definition.

### **Gaps**

The definitions of key terms in Nigerian legislation indicate several gaps, as noted above. Not only are several definitions not IHR-compliant, but also these gaps suggest that some of these areas may not be covered within the legislation as required by the IHR, for example, quarantine of parcels and baggage.

### **Recommendation**

The gaps in the definitions require a revision/amendment of current legislation. In particular, it is recommended that a new public health bill be considered to ensure that these definitions are captured. New public health legislation should also capture the key definitions currently contained in the legislation that it proposes to repeal, in particular the Quarantine Act, and include a clause which will provide that all definitions in the new legislation supersede all other meanings ascribed in any other legislation.

111 IHR 2005, Article 30.

112 Ibid, Article 1.

113 For example in its interpretation section (while interpreting the term 'valid' as used for required certificates in the Regulations, it provides: 'For the purposes of these Regulations a ship shall not be deemed to have been in an infected area if, without having itself been in contact with the shore, it has brought there only mail, passengers and baggage, or has taken on board there only mail, fuel, water or stores, or passengers with or without baggage who have not themselves been in contact either with the shore or with any person from the shore.' Regulation 3 of the Quarantine (Ships) Regulations.

114 Quarantine (Ships) Regulations, Regulation 2.

## 8. IHR National Focal Point

The IHR defines a National IHR Focal Point (NFP) as ‘the national centre, designated by each State Party which shall be accessible at all times for communications with WHO IHR Contact Points under these Regulations.’<sup>115</sup> In essence, it is an office (not an individual) which should be in communication with the WHO in relation to the IHR. The IHR in Article 4(1) provides that States shall designate or establish an NFP, and the authorities responsible within their respective jurisdictions for the implementation of health measures. This indicates that the State Parties can choose to establish new structures or designate existing ones as soon as they fulfill the required functions under IHR.

The establishment or designation of an NFP by State Parties is an essential factor in the implementation of the provisions of the IHR. The NFP is specifically charged (along with other responsible authorities) with the responsibility of implementing health measures of the IHR.<sup>116</sup> Establishing an NFP is one of the first steps a State Party to the regulation must take for its implementation. Under the IHR, a key function of the NFP is to serve as a direct link of information between the State Party’s health system and WHO<sup>117</sup> through the WHO IHR Contact Point<sup>118</sup> designated specifically for this purpose.

Thus, designating or establishing an IHR NFP by State Parties is a key requirement under the IHR. Apart from the fact that it is required by the IHR, it is a key component of the ‘prevent’ aspects of the IHR. It is also the link between the national public health system and the international community. The NFP will also be involved in the response to public health risks by reporting any health measures implemented to WHO and/or by receiving information and guidance from WHO.

Nigeria has established the NCDC by law under the Nigeria Centre for Disease Control and Prevention (Establishment) Act, 2018 (NCDC Act). The JEE Report identified the presence of the NCDC as a strength, but recommended an enactment to provide a legal mandate in line with IHR requirements.<sup>119</sup> The enactment of the NCDC Act is therefore a significant step towards compliance with the provisions of the IHR.

The Act expressly designates the NCDC in Section 10 (c) as the NFP.<sup>120</sup> The Act provides that NCDC shall lead Nigeria’s implementation of the IHR and serve as the NFP.<sup>121</sup> NCDC being Nigeria’s NFP, has as one of its key functions to ‘prevent, detect, monitor and control diseases of national and international public health importance, including emerging and re-emerging diseases.’<sup>122</sup>

### 8.1 Functions of the NFP

The NFP has several functions which are articulated in the IHR. The WHO National IHR Focal Point Guide itemizes the functions given to the NFP throughout the IHR, and the following functions are drawn directly from the guide, with each provision followed by a consideration of the adequacy of the NCDC Act with respect to meeting the requirement.

#### 1. Remaining accessible at all times for communication with WHO IHR Contact Points (via e-mail, telephone and/or fax): In order to ensure coverage of the post around the clock, it is

115 IHR 2005, Article 1.

116 Ibid, Article 4 (1).

117 Ibid Article 4 (2).

118 Article 1 of the IHR defines the WHO IHR Focal Point as, ‘the unit within WHO which shall be accessible at all times for communications with the National IHR Focal Point.’

119 World Health Organization, National Focal Point Guide, <<https://www.who.int/ihr/English2.pdf>> accessed 6 November 2019.

120 NCDC Act, Section 10 (c).

121 Ibid, Section 1 and 10 (c).

122 Ibid, Section 3 (2) (a).



envisioned that NFPs will not be individuals but rather offices, including potentially a designated government position supported by a functional structure. It is critical that the NFP be contactable at all times, and it will not be possible for a single individual to carry out this function. Functional and reliable telephone, e-mail and fax lines are essential. The NFP should be contactable by direct telephone or fax and via a generic institutional e-mail address, preferably one indicating its affiliation with the IHR. In compliance with this provision, the NCDC has in place an official e-mail address: IHRNFP@NCDC.GOV.NG, showing its affiliation with the IHR.

**2. On behalf of the State Party concerned, sending to WHO IHR Contact Points urgent communications arising from IHR implementation**, in particular under Articles 6-12 of IHR(2005). In summary, Articles 6–12 cover the following communications:

- i. Notification:<sup>123</sup> Notifying WHO IHR Contact Points of all events which may constitute a public health emergency of international concern within a State Party's territory in accordance with the Annex 2 decision instrument, as well as any health measure implemented in response, and, following notification, continuing to give WHO public health information about the notified event;

In essence, State Parties have a duty to notify WHO on events that may constitute a PHEIC. The language of this provision indicates that this is a mandatory obligation. In this respect, the NCDC Act confers the responsibility of leading Nigeria's IHR implementation, maintaining close communication with relevant international health organisations.<sup>124</sup> The requirement to notify WHO is not specifically provided for, although one may arguably bring it within the ambit of communication with relevant international organisations or the omnibus clause under Section 3 of the Act, which allows NCDC to undertake any activities that will enable it to carry out its functions. But it does not specifically include the provision of notification to WHO. The NCDC Act empowers the NCDC to develop regulations.<sup>125</sup> Thus this gap can be addressed in regulations. Standard Operating Procedures could also provide more detail about the mechanisms and processes for implementing communications. At the present time, NCDC has yet to create Standard Operating Procedures (SOPs) to implement this requirement.

- ii. Information-sharing during unexpected or unusual public health events.<sup>126</sup> Providing WHO IHR Contact Points with all relevant public health information if there is evidence of an unexpected or unusual public health event within a State Party's territory which may constitute a public health emergency of international concern;
- iii. Consultation:<sup>127</sup> If the State Party so chooses, keeping WHO advised on events occurring within a State Party's territory which do not require notification, and consulting with WHO on appropriate health measures. In this regard, in the case of events occurring within its territory not requiring notification as provided in Article 6, in particular those events for which there is insufficient information available to complete the decision instrument, a State Party may nevertheless keep WHO advised thereof through the National IHR Focal Point and consult with WHO on appropriate health measures. Such communications shall be treated in accordance with paragraphs 2 to 4 of Article 11. The State Party in whose territory the event has occurred

123 IHR 2005, Article 6.

124 Ibid, Article 4 (2) (a).

125 NCDC Act, Section 25.

126 IHR 2005, Article 7.

127 Ibid, Article 8.

may request WHO assistance to assess any epidemiological evidence obtained by that State Party.<sup>128</sup>

This function is not specifically provided for in the NCDC Act. However, it is also not mandatory. Regulations/SOPs will be helpful in implementing this function within Nigeria's legal framework.

- iv. Other reports:<sup>129</sup> Responding to WHO requests for consultations and attempts to obtain verification for reports from sources other than notifications or consultations on events occurring within the territory of the State Party; and informing WHO of receipt of evidence of a public health risk identified outside the State Party's territory that may cause international disease spread, as evidenced by imported/exported human cases, or contaminated vectors or products;

This function is also not specifically provided for in the NCDC Act.

- v. Verification:<sup>130</sup> Responding to WHO requests for verification of reports from sources other than notifications or consultations of events which may constitute a public health emergency of international concern allegedly occurring in the State's territory;

This is not specifically provided for in the NCDC Act. Again, this should be included in regulations to be made by NCDC under its powers in Section 25 of the NCDC Act.

- vi. Provision of information by WHO: serving as focal point for information sent by WHO under Article 11.1, and consulting with WHO as to making information available under this article;
- vii. Determination of a public health emergency of international concern:<sup>131</sup> Consulting with the WHO Director-General on determination and termination of a public health emergency of international concern under this article.

3. **Disseminating information to relevant sectors of the administration of the State Party concerned**, including those responsible for surveillance and reporting, points of entry, public health services, clinics and hospitals, and other government departments: NFPs will ensure that all relevant sectors are provided with information received from WHO IHR Contact Points necessary for performance of the State Party's functions under the IHR(2005), including information on public health risks, events potentially constituting public health emergencies of international concern, and temporary and standing recommendations, as well as other information provided by WHO under the IHR.

Section 3 of the NCDC Act empowers the NCDC to perform these functions. It specifically provides that the NCDC shall develop and maintain a communication network with all public health institutions.

4. **Consolidating input from relevant sectors of the administration of the State Party concerned**, including those responsible for surveillance and reporting, points of entry, public health services, clinics and hospitals, and other government departments: NFPs will need to identify relevant sectors of the administration within their countries, and to establish efficient and functional channels of communication, in order to receive and consolidate input that is necessary for the analysis of national public health events and risks.

128 IHR 2005, Article 8.

129 Ibid, Article 9.

130 Ibid, Article 10.

131 Ibid, Article 12.

The NCDC Act covers this requirement in Sections 3 and 4. It makes specific provision in Section 4 (e) where it empowers the NCDC to coordinate relevant institutions in the health sector and establish channels for networking and liaising with relevant establishments both within and outside Nigeria for the performance of its functions.

## 8.2 Other Obligations for NFP under the IHR

### Accessibility

The IHR provides that the NFP shall be accessible at all times for communication with the WHO Contact Points.<sup>132</sup> The WHO National IHR Focal Point Guide interprets this to mean a round-the-clock (7/24/365) accessibility of the WHO Contact Points to the NFPs.<sup>133</sup> To ensure feasibility, the Guide provides that the NFP will be structured to be offices with designated government positions having functional and reliable e-mail, telephone and facsimile lines through which such office can be contacted at all times by the WHO Contact Points.<sup>134</sup>

The IHR also provides that State Parties will provide WHO with contact details of their IHR NFP and continuously update and annually confirm such contacts.<sup>135</sup> Although this provision is not specifically included in the NCDC Act, it must be undertaken as an administrative duty and must therefore be included in regulations made under Section 25.

The NCDC Act, a federal law, provides for the Centre's commitment to establishing and maintaining close communication and collaboration with relevant international health organisations.<sup>136</sup> 'Relevant international health organisations' must be interpreted to include WHO (through the WHO Contact Point).

### Dissemination of Information

Apart from the requirement to maintain a close link of communication with WHO, the IHR also provides that the NFP is expected to be up-to-date with information concerning public health risks in their countries and to maintain constant communication with the relevant sectors for the purpose of carrying out this function. It specifically provides that NFPs are expected to be involved in:

'disseminating information to, and consolidating input from, relevant sectors of the administration of the State Party concerned, including those responsible for surveillance and reporting, points of entry, public health services, clinics and hospitals, and other government departments.'<sup>137</sup>

The NCDC Act provides the legislative framework for meeting these IHR requirements through its provisions which impose responsibilities on the NCDC to develop information networks for the reporting and notification of communicable diseases,<sup>138</sup> and communicate information to the public.<sup>139</sup>

The provisions of the NCDC Act empower the NCDC to coordinate information networks, collect data, and communicate information on public health threats to the public.<sup>140</sup> The power to 'consolidate capabilities' given to the NCDC may be considered wide enough to include the other requirements of the

132 IHR 2005, Article 4 (2).

133 World Health Organization, National Focal Point Guide, <<https://www.who.int/ihr/English2.pdf>> accessed 6 November 2019.

134 Ibid.

135 IHR 2005, Article 4 (4).

136 NCDC Act, Section 1 (g).

137 IHR 2005, Article 4 (2) (b).

138 NCDC Act, Section 1 (d).

139 Ibid, Section 1 (f).

140 Ibid, Sections 1 (f) and (g); Section 3 (1) (c).

IHR, such as consolidating input from other relevant sectors. Further, in compliance with the provision of the IHR that requires the NFP to disseminate information to and consolidate input from public health services, clinics and hospitals, the NCDC Act makes provision for an omnibus clause that enables the NCDC to: ‘develop and maintain a communication network with all public health institutions, with roles in mitigating the impact of diseases.’<sup>141</sup> This clause is omnibus in the sense that it does not make specific provision for the institutions to be communicated with as in the IHR, but it covers this with the use of the term ‘public health institutions’. Beyond consolidating inputs concerning national public health risk, the NFP is also required to disseminate information to relevant sectors of the administration.<sup>142</sup> The NCDC Act extends the provision for communication to the obligation to make information regarding public health risks available to the public through multiple platforms.<sup>143</sup>

Provisions relating to dissemination of information to the public are also found in the earlier Public Health Bill 2013, but only in the context of a public health emergency. The Bill provides in Section 29 that:

“The public health authority shall inform the people of the State when a state of public health emergency has been declared or terminated, how to protect themselves during a state of public health emergency, and what actions are being taken to control the emergency.”<sup>144</sup>

That Bill defines a public health authority as, “[insert the title of the state’s primary public health agency, department, division, or bureau]; or any local government agency that acts principally to protect or preserve the public’s health; or any person directly authorized to act on behalf of the [insert title of state’s primary public health agency, department, division, or bureau] or local public health agency.’ In essence, a public health authority may be a state or local government department or division, but does not appear to include a federal agency such as the NCDC.<sup>145</sup> With the NCDC Act in place, new public health legislation should be enacted to place the agency at the centre of public health actions, including dissemination of information.

Another important aspect of the provision for dissemination and consolidation of information is the need to involve authorities responsible for points of entry.<sup>146</sup> The NCDC Act does not provide for the exchange of information between such authorities. However, the Act empowers the Centre to collaborate with Port-Health Services for the purpose of carrying out quarantine services and management of quarantine stations at points of entry into Nigeria.<sup>147</sup> Omnibus clauses such as those allowing coordination of IHR efforts under Section 1 of the NCDC Act, and carrying out any activities expedient for its functions under Section 3 of the NCDC Act provisions, however, indicate that the NCDC may share information if necessary. Specific responsibilities would have been more helpful, however, given that other authorities, including port authorities and aviation authorities, are given wide powers over ports of entry. Recognising the clear role, authority and responsibility of the NCDC in other legislation is especially important, particularly in view of the lack of specificity in the NCDC Act.

The NCDC is allowed to make regulations under the Act.<sup>148</sup> This provides an avenue to offer clarity and address these gaps by crafting specific regulations on matters such as notification and other functions required by the IHR.

141 Ibid, Section 3 (1) (k) Nigeria Centre for Disease Control and Prevention (Establishment) Act, 2018.

142 IHR 2005, Article 4 (2) (b).

143 NCDC Act, Section 3 (1) (h).

144 Nigeria Public Health Bill 2013, Section 29.

145 Ibid.

146 Ibid 142.

147 NCDC Act, Section 4 (c).

148 Ibid, Section 25.

Competent authorities are needed to communicate with the NFP on public health measures taken by the State Party pursuant to the Regulations.<sup>149</sup> This is a mandatory requirement in the IHR. In addition, the IHR requires that additional health measures implemented by the competent authority to affected conveyances should be reported to the NFP.<sup>150</sup> However, these provisions are conspicuously missing in most of the current legislation dealing with competent authorities (primarily because the NCDC is new). The Nigerian Civil Aviation Regulations require that certain public health issues be communicated to the Federal Ministry of Health.<sup>151</sup> It is also missing in the NCDC Act, although under the NCDC Act, authorities can demand information.<sup>152</sup> This is an important gap that should be addressed. Given Nigeria's federal context, with authority shared between the federal government and the states, and with different authorities responsible for different aspects of IHR implementation, much relevant information could be kept in silos. This would be unhelpful for IHR implementation and for protection of citizens even within the country. It is essential that the law provide for communication to the NFP.

### 8.3 Additional Functions of the NFP<sup>153</sup>

The National IHR Focal Point Guide also details other provisions that may aid effective implementation of the IHR but which are not directly or expressly stated in the IHR. These functions are also contained in the IHR but are optional in nature:

- Engaging in collaborative risk assessment with WHO regarding public health events, risks and public health emergencies of international concern:

While the NCDC Act does not make specific provision for collaboration with WHO, the Act does enable the Centre to collaborate with relevant international health organizations, including those in other countries, for the purpose of implementing IHR,<sup>154</sup> and the NCDC is empowered to implement the IHR, which in our view is sufficient for IHR compliance.

- Coordinating analysis of national public health events and risks
- Coordinating closely with the national emergency response systems
- Coordinating the provision of public messages by WHO and national authorities
- Advising senior health and other government officials on notifications to WHO
- Advising senior health and other government officials on the implementation of WHO recommendations to prevent international disease spread: WHO may issue temporary recommendations under Article 15 of the IHR(2005) and make standing recommendations for routine or periodic application under Article 16
- Ensuring the assessment of existing surveillance and response capacity and identification of improvement/development needs, including training needs at the national level
- Cooperating with WHO to support intervention programmes that prevent or respond to epidemics and other public health emergencies: Same as above
- Reporting on progress with assessment, planning and establishment of IHR (2005) capacities
- Coordinating the provision of public messages by WHO and national authorities
- International or regional coordination and information exchange—provided under the NCDC Act

149 IHR 2005, Article 22.1 (i).

150 Ibid, Article 27 (1).

151 Nigerian Civil Aviation Regulations, Regulation 18.

152 NCDC Act, Section 4.

153 World Health Organization, National Focal Point Guide, <<https://www.who.int/ihr/English2.pdf>> accessed 6 November 2019.

154 NCDC Act, Section 1 (g).

The NCDC may carry out these functions under the Act, utilizing the omnibus clause in Section 3 of the NCDC Act. To ensure such implementation and adopt other helpful but non-mandatory legal procedures, the NCDC should adopt regulations under powers conferred on it by section 25 of the Act. Regulations would be helpful to provide clarity for implementation.

### **Gaps**

- There is no specific provision in the NCDC Act for notification of PHEIC to WHO as required by the IHR and other communication mandates.
- There are no specific provisions requiring competent authorities to report information to the NCDC.
- The Public Health Bill of 2013, which was not passed in the last legislative year, does not refer to the NCDC specifically. The reason is fairly clear: the NCDC Act was only enacted in 2018, whereas the Public Health Bill of 2013 was drafted in the wake of Ebola in 2014–2015. In light of the crucial position and functions of the NCDC, any new public health legislation should recognize the central role of the NCDC Act.
- Another gap worthy of note is the absence of the provision for information dissemination and sharing between the NCDC, Port Health Services and other such authorities in the states. While new public health legislation should clearly recognize the NCDC and its functions, the NCDC Act also needs to be revised to specifically provide for the functions as seen in Article 4 of the IHR.

### **Recommendations**

- Regulations under the NCDC Act should be developed to address the ambiguity in the area of functions of the NCDC as the National Focal Point, specific provisions for its functions (including the need for communication with the WHO) in line with the requirements of the IHR.
- Regulations should also contain provisions on other non-obligatory but potentially helpful provisions in the IHR Focal Point Guide.
- SOPs are another avenue through which the NCDC can meet its obligations under the IHR, including obligations relating to communication and notification mechanisms.
- The enactment of a new public health legislation and any amendment of other laws relating to competent authorities is required to provide legal obligation for competent state authorities to report to the NCDC, public health concerns provided in the IHR.

Key words	International Health Regulations		National legislation	Recommendation
	Obligations	Article	Assessment	
<b>Designation</b>	Designate or establish a National IHR Focal Point.	4 (1)	The Nigeria Centre for Disease Control is charged with the responsibility of leading the implementation of the provisions of the International Health Regulations, which Nigeria is a party to (Sections 1 and 10 [c] Nigeria Centre for Disease Control Establishment Act). The agency is designated as the National Focal Point in accordance with the provisions of the IHR.	<p>New public health legislation should recognize the role of the NCDC as the NFP.</p> <p>Regulations under the NCDC Act should be made to address the ambiguity in the area of functions of the NCDC as the National Focal Point, specific provisions for its functions (including the need for communication with WHO) in line with the requirements of the IHR should be made.</p>
<b>Functions</b>	National IHR Focal Point shall be accessible at all times for communications with WHO.	4 (2); 6-12	While there is no specific provision for this in the Nigeria Centre for Disease Control Establishment Act, Section 1 (g) of the Act provides that the agency shall maintain close communication and collaboration with relevant international health organisations. Also, the agency is charged with this function, having been designated as the National IHR Focal Point.	The enactment of new public health legislation and any amendment of other laws relating to competent authorities is required to provide legal obligation for competent State authorities to report to the NCDC, public health concerns provided in the IHR.
	National IHR Focal Point shall send, on behalf of the State Party, urgent communications concerning the implementation of IHR.	4(2)(a)	This assessment is the same as above.	

	<p>National IHR Focal Point shall disseminate information to, and consolidate input from, relevant sectors, including those responsible for surveillance and reporting, points of entry, and other health services.</p>	4(2)(b)	<p>Sections 1 (f) and (g) and Section 3 (1) (c) of the Nigeria Centre for Disease Control and Prevention (Establishment) Act 2018 empower the agency to coordinate information networks, collect data and communicate information on public health threats to the public. The power to 'consolidate capabilities' given to the NCDC may be considered wide enough to include the other requirements of the IHR such as consolidating input from other relevant sectors.</p> <p>Further, in compliance with the provision of the IHR that requires the NFP to disseminate information to and consolidate input from public health services, clinics and hospitals, the Act makes provision for an omnibus clause which enables the agency to: 'develop and maintain a communication network with all public health institutions, with roles in mitigating the impact of diseases' (Section 3 [1] [k]).</p>	
<b>Contact Details</b>	<p>Provide, continuously update, and annually confirm contact details of National IHR Focal Point to WHO.</p>	4 (4)	<p>The functions of the Nigeria Centre for Disease Control align with this communication with relevant International Health Organizations as stated earlier.</p>	



## 9. Implementing IHR in a Collaborative Manner and with Full Respect for Human Rights

The IHR requirements are to be implemented by States in a collaborative manner, working with other State Parties. They are also to be implemented within a human rights framework, respecting the rights of persons in the process of implementing effective public health processes and procedures.

### 9.1 Respect for Human Rights

Under the IHR, measures to implement IHR into national legislation shall fully respect the dignity, human rights, and fundamental freedoms of persons.<sup>155</sup> These include measures relating to respect for travellers' dignity, gender sensitivity to faith, ethnic concerns, adequate food and water, and appropriate medical treatment. The IHR also requires that national law make provisions to ensure that all travellers are treated with respect for their dignity, human rights and fundamental freedoms, and with a minimum of discomfort or distress. Under Nigerian law, the following provisions are relevant:

As noted above, human rights are enshrined in Chapter 4 of the Nigerian Constitution (1999) as amended, giving the highest form of protection, that is, constitutional protection. As noted above, several of these rights are derogable on the grounds of public health. It is important to consider the provisions of Nigeria's IHR-related laws to evaluate their alignment with human rights. This is critical, since several of these laws, including but not limited to the Quarantine Act, National Health Act and the Nigeria Data Protection Act of 2019, to some degree restrict human rights such as the right to liberty, right to privacy, etc. These laws will be discussed with a focus on their provision for the respect of human rights in public health emergency situations, especially as provided in the IHR.

Other laws outside the Constitution are also relevant. However, neither the Quarantine Act nor Quarantine (Ships) Regulations has specific provisions for human rights. However, certain provisions in the Quarantine (Ships) Regulations allude to matters concerning right to freedom of movement. They provide restriction for the duration of time the port health officer may detain persons to carry out health measures such as surveillance, vaccination or inoculation.<sup>156</sup> The Quarantine (Ships) Regulations empower the port health officer to detain for examination persons who are reasonably suspected to have been exposed to infectious disease.<sup>157</sup> To prevent abuse of this power, the Regulation provides

<sup>155</sup> See IHR 2005, Article 32: "To implement health measures in respect with travelers' dignity, human rights and fundamental freedoms, States Parties shall (a) treat all travelers with courtesy and respect; (b) take into consideration the gender, sociocultural, ethnic or religious concerns of travelers; and (c) provide or arrange for adequate food and water, appropriate accommodation and clothing, protection for baggage and other possessions, appropriate medical treatment, means of necessary communication if possible in a language that they can understand and other appropriate assistance for travelers who are quarantined, isolated or subject to medical examinations or other procedures for public health purposes."

<sup>156</sup> Such provisions are found in Regulation 23 (1) (on surveillance), where it provides: Where these Regulations permit a port health officer to place a person under surveillance, the period of such surveillance shall not exceed such of the following periods as may be appropriate:

- (a) in respect of cholera—five days;
- (b) in respect of plague—six days;
- (c) in respect of relapsing fever—eight days;
- (d) in respect of smallpox—14 days;
- (e) in respect of typhus—14 days;
- (f) in respect of yellow fever—six days.

Also, Regulation 18 (2) of the Regulation provides: 'An authorised officer may detain until the arrival of the port health officer or for three hours, whichever is the shorter period, any person who is unable to produce any of the certificates referred to in paragraph (1) of this regulation.'

<sup>157</sup> Regulation 17 (2) (a), Quarantine (Ships) Regulation.

limitations as to the number of days for which such persons may be detained for specific diseases stated in the Regulation. The highest number of days for such detention for surveillance as provided in the Regulations must not be more than six days. But apart from this, the Regulations are silent on some important provisions relating to the treatment of travellers who the IHR obligates State Parties to take into consideration in implementing health measures.<sup>158</sup> These provisions include the need for the competent authority to take into consideration the individual's religious, ethnic and sociocultural views, the need to provide means of communication in the language the individual understands, the obligation to treat such person with respect and dignity, and the obligation to provide basic needs in the form of water, food and protection of possessions.<sup>159</sup> An individual reasonably suspected to have been exposed to an infectious disease is not merely detained as provided for in the Regulation. The Regulation also authorizes the port health officer to examine such individuals at his discretion and at the request of the master of the ship. In addition to this, the Regulation obligates individuals coming into Nigeria to produce a valid certificate of vaccination and inoculation, without which such individual may be vaccinated or inoculated by the port health officer. In contrast with the provisions of the IHR, these provisions do not expressly require the informed consent of the concerned individual to be sought for examination, vaccination or inoculation carried out by the port health officer. The absence of the provision for informed consent overrules the option for the concerned individual to refuse examination or any other health measure and the option for the State Party to deny entry to the individual in such situation. While the Regulation leaves no room for informed consent to be sought, it also does not expressly state that such individual shall be compelled to undergo any health measure. However, leaving the administration of health measures solely to the discretion of the port health officer and the discretion of the master of the ship does not fully recognise any rights that the individual may have in such situations. A right to information is also not provided. The Regulations also do not make provision for the need to inform the traveller of any health risks that may follow such health measures. This does not align with the provisions of the IHR, which creates an obligation on State Parties to inform travellers of any risks associated with vaccinations or any other health measures that such traveller has to undergo.<sup>160</sup>

The eighth schedule to the Regulation provides the list of charges for the medical services provided under the regulation (for example, vaccinations and issuance of certificates). Regulation 24, which makes provision for charges for these services, does not provide for the 10 days' notice obligation which the IHR says must be published in such circumstance.

Further, the Regulations are silent on the manner in which the port health officer should administer the health measures. The IHR provides for the manner in which health measures should be administered to travellers, generally. It states that health measures should be administered with respect, dignity, with minimal discomfort, and with adherence to the provisions of human rights. It also allows for the need to obtain express informed consent from travellers when they are to undergo any health measure. Where consent is withheld and necessary conditions that allow a State Party to compel a traveller are present, the IHR obligates State Parties to examine travellers in the least invasive and intrusive way. The Regulations are silent on such provisions. There are no conditions or obligations the port health officer needs to take into consideration when exercising the powers as a competent authority in the Regulations.

The earlier Public Health Bill 2013 made some provisions worth considering if and when a new Bill is considered. For instance, the Bill made specific provisions on the human rights of persons during public health emergency and provided for situations where the president may declare a 'State of Public Health

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158 Especially concerning medical examinations, vaccines and quarantine.

159 Article 32, IHR, 2005.

160 Article 23 (4), IHR, 2005.

Emergency” as defined in Section 3 of the Bill.<sup>161</sup> As such situations entail the limitation of the human rights of persons to a significant extent, the protection of these rights is also provided alongside this.

Recognizing the right to acquire and own immovable properties, a fundamental right recognized under the Nigerian Constitution,<sup>162</sup> the Bill provides for the compensation of persons who have had properties lawfully taken or appropriated by a public health authority during public health emergencies.<sup>163</sup> However, this provision excludes compensation for the destruction of properties during public health emergencies for the protection of public health.<sup>164</sup> The Bill has laid down procedure for the destruction of properties during public health emergencies, the summary of which is that such must be done in accordance with the existing laws and as determined by a competent Court.<sup>165</sup>

The Bill provides for the protection of the subjects from acts that may reasonably cause harm in the course of administering medical tests, treatments and vaccinations.<sup>166</sup> The Bill also provides for the protection of human rights of persons subject to public health risks as also seen in its provision for the freedom and welfare of persons. Section 25 (b) (v) of the Bill provides for the immediate release of persons who have been isolated or quarantined but found not to be of any threat to the public; while subsections (vi-viii) provide for the provision of food, shelter, means of communication and other basic needs for isolated or quarantined persons, the need to keep isolation or quarantine centers safe and hygienic to prevent further spread, and the provision for the respect of religious and cultural beliefs of individuals in maintaining isolation and quarantine premises.

Importantly, on the disposal of human remains, the Bill creates an obligation for the public health authority to respect the religious, cultural, family and individual beliefs of the deceased person or his or her family.<sup>167</sup>

The IHR also provides that health measures taken shall be initiated and completed without delay and applied in a transparent and nondiscriminatory manner.<sup>168</sup>

The Constitution provides for the right to freedom from discrimination on specific grounds. These grounds do not include health grounds.<sup>169 170</sup>

Furthermore, the Quarantine (Ships) Regulations empower the port health officer to detain for examination persons who are reasonably suspected to have been exposed to infectious disease.<sup>171</sup> For the prevention of abuse of this power, the Quarantine (Ships) Regulations made under the Quarantine

161 The Nigeria Public Health Bill 2013 made some specific provisions on the human rights of persons during public health emergency. The Bill provides for situations where the president may declare a ‘State of Public Health Emergency’ as defined in Section 3 of the Bill. A ‘public health emergency’ is an occurrence or imminent threat of an illness or health condition that: (1) Is believed to be caused by any of the following: i. Bioterrorism; ii. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; iii. [a natural disaster;] iv. [a chemical attack or accidental release; or] v. [a nuclear attack or accident]; and (2) Poses a high probability of any of the following harms: i. A large number of deaths in the affected population; ii. A large number of serious or long-term disabilities in the affected population, or iii. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population. See Section 3 (m) of the Nigeria Public Health Bill 2013.

162 Constitution 1999, Section 43.

163 Nigeria Public Health Bill 2013, Section 20 (1).

164 Nigeria Public Health Bill 2013; Section 15 and 20 (2); and Constitution 1999, Section 44 (2) (f).

165 Nigeria Public Health Bill 2013, Section 21.

166 Ibid, Sections 23 (b); 23 (a) (iii); 23 (b) (ii).

167 Ibid, Section 2013, 18 (c).

168 IHR 2005, Article 42.

169 Constitution 1999, Section 42; See also, Cheluchi Onyemelukwe, Discrimination on the Basis of HIV status: An Analysis of Recent Developments in Nigerian law and Jurisprudence, 2017 International Journal of Discrimination and the Law; Under the earlier Public Health Bill, 2013, a provision in the Bill which may give room to disparity during a sensitive period such as a public health emergency is found in Section 19. It provides for the control of health care supplies through rationing, control of distribution, and prioritizing health care providers. While this purports to ensure public safety even in situations where there is a shortage of supplies, as stated in the Bill, this ought to be specifically guided by nondiscrimination. The IHR provides for the administration of health measures to be done in a nondiscriminatory manner. Art 42, IHR.

170 IHR 2005, Article 42.

171 Quarantine (Ships) Regulation, Regulation 17 (2) (a).

Act provide limitations as to the number of days for which such persons may be detained for specific diseases stated in the Quarantine (Ships) Regulations. The highest number of days for such detention for surveillance as provided in the Quarantine (Ships) Regulations must not be more than six days. But apart from this, the Quarantine (Ships) Regulations are silent on some important provisions relating to the treatment of travellers which the IHR obligates States Parties to take into consideration in implementing health measures.<sup>172</sup> These provisions include the need for the competent authority to take into consideration the individual's religious, ethnic and sociocultural views, the need to provide means of communication in the language the individual understands, the obligation to treat such person with respect and dignity, and the obligation to provide basic needs in the form of water, food and protection of possessions.<sup>173</sup>

- An individual reasonably suspected to have been exposed to an infectious disease is not merely detained as provided in the Quarantine (Ships) Regulations. The port health officer is authorized to examine such individuals at his discretion and at the request of the master of the ship. In addition to this, the Quarantine (Ships) Regulations obligate individuals coming into Nigeria to produce a valid certificate of vaccination and inoculation without which such individual may be vaccinated or inoculated by the port health officer. In contrast with the provisions of the IHR, these provisions do not expressly require the informed consent of the concerned individual to be sought for examination, vaccination or inoculation carried out by the port health officer. The absence of the provision for informed consent rules out the option for the concerned individual to refuse examination or any other health measure and the option for the State Party to deny entry to the individual in such situation.
- While the Quarantine (Ships) Regulations leave no room for informed consent to be sought, they also do not expressly state that such individual shall be compelled to undergo any health measure. However, leaving the administration of health measures solely to the discretion of the port health officer and with the discretion of the master of the ship does not fully recognise any rights that the individual may have in such situations.
- A right to information is also not provided. The Quarantine (Ships) Regulations also do not make provision for the need to inform concerned travellers of any health risks that may follow such health measures. This does not align with the provisions of the IHR, which creates an obligation on State Parties to inform travellers of any risks associated with vaccinations or any other health measures which such traveller has to undergo.<sup>174</sup>
- The eighth schedule to the Quarantine (Ships) Regulations provides the list of charges for the medical services provided under the regulation (for example, vaccinations and issuance of certificates). Regulation 24 of the Quarantine (Ships) Regulations, which makes the provision for charges for these services, does not provide for the 10 days' notice obligation which the IHR says must be published in such circumstance.

Further, the Quarantine (Ships) Regulations are silent on the manner in which the port health officer should administer the health measures. The IHR provides for the manner in which health measures should be administered to travellers, generally. It stipulates that health measures should be administered with respect, dignity, with minimal discomfort and with adherence to the provisions of human rights. It also provides for the need to obtain express informed consent from travellers when they are to undergo any health measure. Where consent is withheld and necessary conditions that allow a State

172 Especially concerning medical examinations, vaccines and quarantine.

173 IHR 2005, Article 32.

174 IHR 2005, Article 23 (4).

Party to compel a traveller are present, the IHR obligates States Parties to examine travellers in the least invasive and intrusive way. The Quarantine (Ships) Regulations are silent on such provisions. There are no conditions or obligations the port health officer needs to take into consideration when exercising the powers as a competent authority.

## 9.2 Data Protection

Under the IHR, health information collected or received pursuant to the IHR from another State Party or from WHO that refers to an identified or identifiable person is required to be kept confidential and processed anonymously. Further, personal data may be disclosed and processed when essential for the purposes of assessing and managing public health. In such cases, personal data must be:

- processed fairly and lawfully, and not further processed in a way incompatible with that purpose;
- adequate, relevant and not excessive in relation to that purpose;
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete are erased or rectified, and
- not kept longer than necessary.<sup>175</sup>

Under Nigerian law, the Quarantine Act and the Quarantine (Ships) Regulations are silent on the provisions for the dealings concerning health data during public health emergencies. However, other pieces of Nigerian legislation make provisions for the processing of health data generally, such as the National Health Act 2014 and the Nigeria Data Protection Regulation 2019. In addition, the Nigerian Constitution provides for an omnibus clause on the guaranteed protection of privacy of persons.<sup>176</sup>

The Nigeria Data Protection Regulation 2019 (NDPR) is a set of rules made by the National Information Technology Development Agency (NITDA), which regulates the use of information technology in Nigeria. The provisions cover all electronically processed data across all fields in Nigeria. The provisions may be considered omnibus in nature as far as obligations regarding the protection of electronic health data are concerned. However, its specific reference to health data is made in the definition section where health data are defined as 'sensitive personal data'.<sup>177</sup> A few provisions in the NDPR make direct reference to such data and how they may be used.

Article 45 of the IHR provides for the obligations that States Parties must take into consideration when processing personal health data that refers to an identified or identifiable person, among which is the need to ensure confidentiality.<sup>178</sup> In a similar vein, the NDPR requires a conspicuous privacy policy for dealings with the collection and processing of all personal data.<sup>179</sup> This is in addition to the obligation for anyone who deals with personal (specifically sensitive or confidential) data to have in place security measures for the protection of such data.<sup>180</sup> These obligations extend to the transfer of personal data to foreign countries or international organizations with additional obligations such as the need for such foreign country to have similar data protection regulation, or be a party to legally binding international conventions or instruments on data protection (such as the IHR).<sup>181</sup>

175 IHR 2005, Article 45 (1) and (2).

176 Constitution 1999, Section 37.

177 Nigeria Data Protection Regulation 2019, Section 1.3.

178 IHR 2005, Article 45 (1).

179 Nigeria Data Protection Regulation 2019, Section 2.5.

180 Ibid, Section 2.6.

181 Ibid, Section 2.11.

The provisions of the IHR in Article 45 (2) regarding the disclosure of personal data is provided in the GDPR as its governing principles. The GDPR provides amongst other things (as also seen in the IHR) that personal data has to be processed in a lawful manner, must be accurate, and must be stored only for the specific period for which it is reasonably needed.<sup>182</sup>

One of the conditions for the lawful processing of data in the GDPR is the use of data for the completion of tasks for 'public interest' or in the exercise of an 'official public mandate'.<sup>183</sup> These terms are not defined in the GDPR, thus leaving room for ambiguity in the interpretation of what may constitute 'public interest' or an 'official public mandate' in processing electronic health data. However, 'public health risks'<sup>184</sup> can reasonably be argued to come within the meaning of these terms. Thus the NCDC may use data obtained in the course of its mandate under the NCDC Act.

Apart from the absence of the definition of these important terms, another important limitation of the GDPR is its restriction to electronically processed personal data only. This means that any other data that is not electronic in nature is not covered under this GDPR. The IHR covers a broader scope of personal data, defining it as 'any information relating to an identified or identifiable natural person'.<sup>185</sup> In sum, the provisions of the GDPR, to a significant degree, reflect the provisions of the IHR regarding the treatment of personal data but is limited to only electronic data. Other kinds of public health data may be protected by the National Health Act.

The National Health Act provides for an omnibus clause for confidentiality of health data in Section 26 (1), where it referred to health data as 'all information' concerning a user<sup>186</sup> which includes specific information regarding the user's health status, treatment or stay in a health establishment. It says such information may not be disclosed except under certain exceptions, including the written consent of the user. However, a specific reference to public health risk is seen in the provisions for exceptions to confidentiality where such information constitutes a 'serious threat to public health'.<sup>187</sup> A similar exception is contained in the IHR. However, the exception under the IHR is more specifically couched: Such disclosure has to be for 'assessing and managing a public health risk'.<sup>188</sup>

An additional obligation for data protection is provided in Section 29 (1), which states that a health establishment shall set up control measures to prevent unauthorized access to health records.

The earlier Public Health Bill specifically provided for the manner in which protected health information<sup>189</sup> is to be used. The Bill protects the use of health data belonging to isolated or quarantined individuals by restricting the access to such data to those who legitimately need the data to provide treatment to the data subject, conduct epidemiologic research, and investigate causes of such disease.<sup>190</sup> The disclosure of protected health data under the Bill may only take place when such disclosure is to be

182 Ibid, Section 2.1 (1).

183 Ibid, Section 2.2.

184 'Public health risk' means a likelihood of an event that may affect adversely the health of human populations, with an emphasis on one which may spread internationally or may present a serious and direct danger; see IHR 2005, Article 1 (1).

185 IHR 2005, Article 1 (1).

186 National Health Act 2014, Section 64 defines a 'user' as 'the person receiving treatment in a health establishment, including receiving blood or blood products, or using a health service...' (The Act includes the relatives of a user.).

187 National Health Act 2014, Section 26 (2) (e).

188 IHR 2005, Article 45 (2).

189 'Protected health information' is any information, whether oral, written, electronic, visual or any other form, that relates to an individual's past, present or future, physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual. See Section 3 (k), Public Health Bill 2013.

190 Nigeria Public Health Bill 2013, Section 28 (a).

made to the data subject, where the data subject consents specifically in writing, disclosure is made to an appropriate federal agency pursuant to a federal law, or on the order of a court, and for the identification of deceased or determination of cause of death.<sup>191</sup> This may provide the basis for further development of this issue in a new Public Health Bill.

### 9.3 International Collaborations in Response to Public Health Emergencies in Nigeria

The IHR provides that, to the extent possible, States Parties shall collaborate with other State Parties in:

- the detection and assessment of, and response to, events as provided under the IHR;
- the provision or facilitation of technical cooperation and logistical support, particularly in the development, strengthening and maintenance of the public health capacities required under the IHR;
- the mobilization of financial resources to facilitate implementation of their obligations under the IHR, and
- the formulation of proposed laws and other legal and administrative provisions for the implementation of the IHR.<sup>192</sup>

States Parties impacted by additional health measures taken by another State Party may request consultations to clarify the scientific information and public health rationale underlying the measure and to find a mutually acceptable solution.<sup>193</sup>

In line with the provisions of the IHR for State Parties to collaborate with each other and the WHO in response to public health risks,<sup>194</sup> the NCDC, being the designated NFP, has as one of its objectives the collaboration with international health organizations or other countries for the implementation of international health regulations in response to public health risks.<sup>195</sup> In addition to this, one of the functions of the NCDC as provided in its enabling Act is the provision of trans-border support in response to public health risks and the implementation of the IHR.<sup>196</sup>

Though not specifically stated in the NCDC Act, the NCDC as any other government agency may execute agreements with both local and international institutions on matters within the sphere of its functions. This might be useful for matters such as laboratories, coordination of ports of entry, information exchange, etc. A couple of sections in the Act make allusion to the powers of the NCDC to make such agreements. Section 1 (g) of the NCDC Act provides that the NCDC shall lead Nigeria's collaboration with other countries in the implementation of the IHR. This may be interpreted to mean that the NCDC may execute agreements with relevant public health authorities in other State Parties for the facilitation of its functions and objectives under the Act. Section 2 permits the NCDC to enter into contracts. However, given the context of this provision, it may be argued that the provision is focused on vendors rather than on international agreements with other authorities. A clearer provision conferring this power on the NCDC in its enabling Act will be helpful to consider in any future amendments to the Act.

Apart from the NCDC, the Minister, under the National Health Act, is required to make regulations for human resources management within the national health system in order to '(i) prescribe

191 Nigeria Public Health Bill 2013, Section 28 (b).

192 IHR 2005, Article 44 (1).

193 IHR 2005, Article 43 (7).

194 Ibid, Article 44 (1) and (2).

195 NCDC Act, Section 1 (g).

196 Ibid, Section 3 (1) (i) and (j).

circumstances under which health care personnel may be recruited from other countries to provide health services in the Federation.<sup>197</sup> This provision may include waiving aspects of Nigerian law relating to license requirements in order to enable foreign health professionals to provide services in Nigeria during PHEICs.

## 9.4 Treatment of Biological Substances

Article 46 of the IHR requires States Parties to facilitate the transport, entry, exit, processing and disposal of biological substances and diagnostic specimens, reagents and other diagnostic materials for verification and public health response purposes.<sup>198</sup>

In line with the IHR requirements, the NCDC is charged with developing guidelines for the collection of specimens and their transportation to WHO standard reference laboratories in Nigeria. Significantly, the Act is silent on the disposal of such substances as provided under the IHR. Likewise, the NCDC Act is silent on the handling of biological substances for public health response as provided under the IHR, although it has the power to demand clinical samples.<sup>199</sup>

Public Health Bill 2013, however, made provisions for the safe handling of specimens<sup>200</sup> for treatment:

**Contamination.** Specimen collection, handling, storage and transport to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration and provide for the safe collection, storage, handling and transport of such specimen.

**Chain of custody.** Any person authorized to collect specimens or perform tests shall use chain-of-custody procedures to ensure proper recordkeeping, handling, labelling, and identification of specimens to be tested. This requirement applies to all specimens, including specimens collected using on-site testing kits.<sup>201</sup>

This addressed several current gaps in Nigerian law. A new Public Health Bill with more robust requirements will bring Nigeria closer to compliance with the IHR if the bill is enacted into law. The IHR requires States Parties to facilitate activities with biological substances for verification and public health response purposes. Thus, States Parties need to have a robust biosafety/biosecurity legal framework providing not only for the control of activities with biological substances, but also exception clauses or flexibility when activities with biological substances are required for verification and public health response purposes. At the present time, Nigeria lacks such a robust legal framework. This should be considered in new legislation on public health.

Infectious disease waste would also benefit from provisions in new legislation on public health. The earlier Public Health Bill also empowers the public health authority<sup>202</sup> to develop measures to dispose of infectious waste and human remains in response to public health emergency.<sup>203</sup> As an addition to

197 National Health Act 2014, Section 43 (i).

198 IHR 2005, Article 46.

199 NCDC Act, Section 4.

200 Specimen means, 'but are not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues and cultures necessary to perform required tests.' See Section 3 (p) of Nigeria Public Health Bill 2013.

201 Nigeria Public Health Bill 2013, Section 27 (b) and (c).

202 This is defined under the Bill as, '[insert the title of the state's primary public health agency, department, division or bureau]; or any local government agency that acts principally to protect or preserve the public's health; or any person directly authorized to act on behalf of the [insert the title of the state's primary public health agency, department, division, or bureau] or local public health agency.' See Section 3, Nigeria Public Health Bill 2013.

203 Nigeria Public Health Bill 2013, Section 17 (a) and 18 (a).



the measures to be developed by the public health authority, it specifically provides for the authority to possess such human remains and order their disposal through burial or cremation within 24 hours.

## 9.4 Biosafety and Biosecurity

Several pieces of legislation address biosafety and biosecurity issues in Nigeria, namely: the National Environmental Standards and Regulation Enforcement Agency Act, and the Harmful Waste (Special Criminal Provisions) Act. The Harmful Waste Act prohibits the dumping of harmful waste. However, there is need for a more comprehensive legal framework for addressing biosafety and biosecurity in line with IHR requirements. The NAPHS proposes the enactment of legislation on biosafety and biosecurity to address dangerous pathogens and toxins.

### Gaps and Recommendations

- In sum, there is need to replace the Quarantine Act with legislation that is stronger on human rights and contains better provisions on data collection, especially given that the NITDA Data Protection Regulations are limited only to electronic data.
- It would also benefit from a review with respect to the role of the NCDC in providing oversight/guidance over transport of biological specimens from the local/state public health authorities and laboratories to WHO standard laboratories and, in general, to demand clinical samples.
- There is need for the enactment of legislation on biosafety and biosecurity to meet IHR requirements.

Key words	International Health Regulations		National legislation	Recommendation
	Obligations	Article	Assessment	
<b>Respect for Human Rights</b>	Measures to implement IHR into national legislation shall fully respect the dignity, human rights and fundamental freedoms of persons.	3 (1)	Neither the Quarantine Act nor Quarantine (Ships) Regulations have specific provisions for human rights. However, certain provisions in the Quarantine (Ships) Regulations allude to matters concerning right to freedom of movement. They provide restriction for the duration of time that the port health officer may detain persons in order to carry out health measures such as surveillance, vaccination or inoculation. <sup>204</sup>	There is need for more robust human rights provisions in the implementation of health measures to be set out in new public health legislation in the implementation of health measures.
	Health measures taken shall be initiated and completed without delay and applied in a transparent and nondiscriminatory manner.	42	Relevant legislation does not make provisions for the transparency and nondiscrimination as provided in the IHR.  Section 42 of the Nigerian Constitution provides for the right to freedom from discrimination on specific grounds. These grounds do not include health grounds.	New public health legislation should address the gap in the area of rationing of health supplies. The relevant provision should be made to take into consideration the provision of the IHR on transparency and nondiscrimination.

204 Such provisions are found in Regulation 23 (1) (on surveillance), where it states: Where these Regulations permit a port health officer to place a person under surveillance, the period of such surveillance shall not exceed such of the following periods as may be appropriate:

- (a) in respect of cholera—five days;
- (b) in respect of plague—six days;
- (c) in respect of relapsing fever—eight days;
- (d) in respect of smallpox—14 days;
- (e) in respect of typhus—14 days;
- (f) in respect of yellow fever—six days.

Also, Regulation 18 (2) provides: 'An authorised officer may detain until the arrival of the port health officer or for three hours, whichever is the shorter period, any person who is unable to produce any of the certificates referred to in paragraph (1) of this regulation.'

<p><b>Data Protection</b></p>	<p>Health information collected or received pursuant to the IHR from another State Party or from WHO which refers to an identified or identifiable person shall be kept confidential and processed anonymously.</p>	<p>45 (1)</p>	<p>While the Nigerian Constitution provides for an omnibus clause on the guaranteed protection of privacy of persons,<sup>205</sup> the only legislation that has specific provision on health data protection is the National Health Act 2014 and the Nigeria Data Protection Regulation 2019.</p> <p>Section 2.2 of the Regulation requires a conspicuous privacy policy for dealings with the collection and processing of all personal data. Personal data include health data that the Regulation classifies as 'sensitive personal data'.</p> <p>Section 26 (1) of the Act provides for the confidentiality of health information. The obligation for confidentiality is, however, limited to some exceptions provided in Section 26 (2), which includes the written consent of the user (the owner of the data) and where nondisclosure constitutes a serious threat to public health.</p> <p>The National Health Act also outlines the obligation for a health establishment to set up control measures to prevent unauthorized access to health records (Section 29 [1]).</p>	<p>New public health legislation should address this gap by making specific provisions for the manner in which data may be handled, with emphasis on data protection while implementing health measures as delineated in the IHR.</p> <p>It is also important that the definition of 'data' be couched in compliance with the definition found in the IHR.</p>
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<sup>205</sup> Constitution 1999, Section 37.

	<p>Personal data may be disclosed and processed when essential for the purposes of assessing and managing a public health issue. In such cases, personal data must be:</p> <p>processed fairly and lawfully, and not further processed in a way incompatible with that purpose;</p> <p>adequate, relevant and not excessive in relation to that purpose;</p> <p>accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete are erased or rectified; and</p> <p>not kept longer than necessary.</p>	45 (2)	The provisions of the IHR in Article 45 (2) form the guiding principles of the Nigeria Data Regulation as seen in its provisions in Section 2.1 (1).	New public health legislation should be considered on the provision on data protection as recommended above should also cover the provisions in the Article 45 (2) of the IHR.
<b>Facilitation of Activities with Biological Substances</b>	Subject to national law and taking into account relevant international guidelines, the transport, entry, exit, processing and disposal of biological substances and diagnostic specimens, reagents and other diagnostic materials for verification and public health response purposes under the IHR shall be facilitated.	46	There are no guidelines or policies that provide for these obligations.	New public health legislation should extend to cover provisions of the IHR regarding the transport, entry, exit, processing and disposal of diagnostic materials and others as provided in the IHR.

<p><b>Collaboration and Consultation with other States Parties</b></p>	<p>To the extent possible States Parties shall collaborate with other States Parties in:</p> <p>the detection and assessment of, and response to, events as provided under the IHR;</p> <p>the provision or facilitation of technical cooperation and logistical support, particularly in the development, strengthening and maintenance of the public health capacities required under the IHR;</p> <p>the mobilization of financial resources to facilitate implementation of their obligations under the IHR, and</p> <p>the formulation of proposed laws and other legal and administrative provisions for the implementation of the IHR.</p>	<p>44</p>	<p>There are no specific provisions in the NCDC Act relating to collaboration with other State Parties, but Section 1 (g), (i) and (j) of the Act, which provides for the objectives of the agency, lists collaboration with international health organizations or other countries for the implementation of international health regulations in response to public health risks as one objective. In addition to this, one of the functions of the NCDC as provided in its enabling Act is the provision of trans-border support in response to public health risks and the implementation of the IHR.</p>	<p>The NCDC Act should be revised to provide for collaborations in terms of offering expertise to state parties in response to disease outbreaks, providing for the NCDC and other competent authorities concerned to collaborate with other State Parties, especially with respect to finances and legal administrative provisions.</p>
	<p>States Parties impacted by additional health measures taken by another State Party may request consultations to clarify the scientific information and public health rationale underlying the measure and to find a mutually acceptable solution.</p>	<p>43 (7)</p>	<p>There are no specific provisions for this in the NCDC Act, though the agency is charged with leading responses and communications surrounding public health risks.</p>	<p>The revision of the NCDC Act should include the addition of this provision as a function of the Centre. The functions of the NCDC should include serving as a liaison not only with WHO but also with States Parties as provided for in the IHR.</p>

	When requested by WHO, States Parties should provide, to the extent possible, support to WHO-coordinated response activities.	13 (5)	This assessment is the same as above. The NCDC being the National IHR Focal Point.	A good way to provide this support is the collaboration of the NCDC with WHO and enabling communication in this regard as provided for in the IHR (on provisions for functions of the National IHR Focal Point).
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## 10. Detection, Assessment and Notification of Events

State Parties are required under the IHR to develop, strengthen and maintain their capacity to detect, assess, notify and report public health events.<sup>206</sup> From a legal perspective, this requires that the domestic legal framework provide the requisite authorization and resources to fulfill their obligations in these respects. In addition, the capacity to detect, assess, notify and report events should also be thought holistically and consider one health aspects, as well as chemical and radiological emergencies.

Thus, the subject matters covered under this heading are broad and will likely be covered under various pieces of legislation. This Report attempts to identify the legislation, assess it in line with IHR requirements and identify gaps.

### 10.1 Detection—National Surveillance and Detection Core Capacities

Under Article 5 (1) and Annex 1 of the IHR, the following are required from States Parties:

- detection
- reporting essential information
- notification
- information sharing
- reports of foreign public health risks
- verification

#### a. Detection at local community or primary public health level:

Local community level and/or primary public health response level shall detect events involving disease or death above expected levels for the particular time and place in all areas within the territory of the State.<sup>207</sup> Under the NCDC Act, one of the functions of the NCDC is to prevent, detect, control and monitor diseases of national and international public health importance.<sup>208</sup> However, in line with the IHR, detection must also occur at the local community level. Given the division of powers as discussed

<sup>206</sup> IHR 2005, Article 5(1).

<sup>207</sup> Ibid, Article 5 and 6.

<sup>208</sup> NCDC Act, Section 3 (1)(a).

above, these are matters that are covered by State public health law which will be discussed in the second part of this Report.<sup>209</sup>

However, the earlier Public Health Bill 2013 also provides for measures to detect and track public health emergencies.<sup>210</sup> These measures include reporting measures requiring all health care professionals to report any illness or health condition that may lead to a public health emergency,<sup>211</sup> tracking all sources of illnesses that may lead to a public health emergency,<sup>212</sup> and notification measures requiring public safety authority or other state or local government agency to share information with the public health authority on reportable diseases.<sup>213</sup> A new public health law should address surveillance in depth.

## b. Reporting Essential Information

Under the IHR:

- Local community level shall report all available essential information immediately to local community health-care institutions or the appropriate health personnel.
- Primary health response level shall report all available essential information immediately to the intermediate or national response level, depending on organizational structures.
- Local community level and/or primary public health response level shall implement preliminary control measures immediately.
- Intermediate public health response level shall confirm the status of reported events and support or implement additional control measures.
- Intermediate public health response level shall assess reported events immediately and, if found urgent, report all essential information to the national level.
- Assess all events within its territory by using the decision instrument annexed to the IHR. In case of urgent events, the assessment of reports from the national surveillance system shall occur within 48 hours.<sup>214</sup>

209 It was difficult to locate the Public Health Ordinance, 1917, 1958, though there are many references to it online. These provisions confer power under the law to officials at local, State and Federal levels to detect public health emergencies, including putting in place the requisite infrastructure for surveillance. The definition of a health emergency is, however, limited (as discussed under Definitions) and does not correlate with detecting 'events' as required by the IHR: 'a manifestation of disease or an occurrence that creates a potential for disease.' By contrast, the definition of health emergency under the earlier Public Health Bill 2013 is:

'public health emergency' is an occurrence or imminent threat of an illness or health condition that:

(1) Is believed to be caused by any of the following:

- i. Bioterrorism;
- ii. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;
- iii. [a natural disaster;]
- iv. [a chemical attack or accidental release; or]
- v. [a nuclear attack or accident]; and

(2) Poses a high probability of any of the following harms:

- i. A large number of death in the affected population;
- ii. A large number of serious or long-term disabilities in the affected population; or
- iii. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

By a literal interpretation of these provisions, the detection capacities at the local level do not kick in unless it meets these criteria, which may prevent community surveillance officers from reacting quickly. Section 2 (c) and (g) of Nigeria Public Health Bill 2013.

210 Nigeria Public Health Bill 2013, Part 3.

211 Ibid, Section 7

212 Ibid, Section 8.

213 Ibid, Section 9.

214 IHR 2005, Article 5.

These will be analysed in more detail in the State public health legislation that are in currently in force. New public health legislation should ensure harmonization and uniformity with IHR obligations at States level.

### **c. Notification to WHO<sup>215</sup>**

The IHR requirements here include:

- Notifying WHO, through the National IHR Focal Point, of all events which may constitute a public health emergency of international concern within its territory and any health measure implemented in response to those events. This notification must occur by the most efficient communication means available and within 24 hours of assessment of public health information.
- Communicating to WHO timely, accurate, and sufficiently detailed public health information available on an event notified including where possible, case definitions, laboratory results, source and type of the risk, number of cases and deaths, conditions affecting the spread of the disease and the health measures employed. Report the difficulties faced and the support needed in responding to the potential PHEIC.

This has been addressed under the section on Detection. It bears reiterating here that the omnibus clauses under the NCDC Act allow such communication to the WHO. However, the details are not as clear, for example, the 24-hour requirement for notification. It may be presumed, however, that if the NCDC is the primary implementer of the IHR as required under its Act, that it will conform to the timeline and detailed information requirements contained therein.

It is recommended that the NCDC make regulations to address these issues to ensure clarity rather than rely on omnibus clauses.

### **d. Information Sharing in A Timely Manner<sup>216</sup>**

The requirements include that State Parties shall:

- Provide to WHO all relevant public health information if State has evidence of an unexpected or unusual public health event within its territory, which may constitute a public health emergency, irrespective of origin or source
- Public health risk identified outside their territory that may cause international disease spread, as manifested by exported or imported human cases; vectors which carry infection or contamination; or contaminated goods.

This has been addressed under the section on Detection. It bears reiterating here that the omnibus clauses under the NCDC Act allow such communication to the WHO. However, the details are not as clear, for example, the 24-hour requirement for notification. It may be presumed, however, that if the NCDC is the primary implementer of the IHR as required under its Act, that it will conform to the timeline and detailed information requirements contained therein. Regulations should be made under the NCDC Act to address these requirements.

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215 Ibid, Article 6.

216 Ibid, Article 5.



### e. Reports of foreign public health risks<sup>217</sup>

Under the IHR, State Parties are required to inform WHO, as far as practical, within 24 hours of receipt of evidence of a public health risk identified outside their territory that may cause international disease spread, as manifested by exported or imported human cases; vectors which carry infection or contamination; or contaminated goods.

Again, timelines are not specifically provided for, nor is such a report specifically required under the NCDC Act. However, the Nigerian Civil Aviation Regulations, 2015 require that in line with the IHR, the WHO shall be consulted on all matters related to passenger health.<sup>218</sup>

### f. Verification<sup>219</sup>

The IHR requires State Parties to verify and provide within 24 hours, an initial reply to, or acknowledgement of, the request for verification from WHO regarding reports about events which may constitute a public health emergency of international concern, along with available public health information on the status of events referred to in WHO's request.

Further, on WHO request, provide information relevant to the assessment of identified events which may constitute a public health emergency of international concern, including case definitions, laboratory results, source and type of the risk, number of cases and deaths, conditions affecting the spread of the disease and the health measures employed; and report, when necessary, the difficulties faced and support needed in responding to the potential public health emergency of international concern.<sup>220</sup>

#### Gaps

- The NCDC Act confers power on it to lead the implementation of the IHR but does not specifically address details relating to timelines, information sharing, verification, requesting assistance from the WHO etc.

#### Recommendations

- New public health legislation is necessary to ensure information sharing by the States and local governments with the NCDC.
- Regulations should be made under the NCDC Act to address timelines, information sharing, verification, requesting assistance from the WHO.

217 IHR 2005, Articles 5(1); 9(2); and Annex 1.

218 Nigerian Civil Aviation Regulations 2015, Regulation 18.8.18.

219 IHR 2005, Article 10 (2) (a) – (c).

220 IHR 2005, Article 10.

Key words	International Health Regulations		National Legislation	Recommendation
	Obligations	Article	Assessment	
<b>National Surveillance and Detection</b>  <b>Core Capacities</b>	Local community level and/or primary public health response level shall detect events involving disease or death above expected levels for the particular time and place in all areas within the territory of the State	5(1) and Annex 1	Given the division of powers as discussed earlier in this report, there are matters that are covered by State public health laws which will be discussed in the second part of this Report.	
	Local community level shall report all available essential information immediately to local community health-care institutions or the appropriate health personnel.		There is no provision for such obligations in relevant national legislation. This is considered a gap in public health related legislation. However, legal provisions regarding this will be analysed in more detail in the State public health legislation that are in currently in force.	<p>It is important to extend the obligation regarding surveillance new public health legislation to cover obligation to make reports of surveillance and other essential information to the NCDC, the NFP.</p> <p>This provision should be contained in State public health laws which will be considered in another Report. State public health laws should be revised accordingly.</p>
	Primary health response level shall report all available essential information immediately to the intermediate or national response level, depending on organizational structures.		This is the same assessment as above.	Same recommendations as above.
	Local community level and/or primary public health response level shall implement preliminary control measures immediately.		Same as above.	This provision should be contained in State public health laws which will be considered in another Report.

	Intermediate public health response level shall confirm the status of reported events and support or implement additional control measures		Same as above.	State public health laws should be revised accordingly.
	Intermediate public health response level shall assess reported events immediately and, if found urgent, report all essential information to the national level.		Same as above.	Same recommendation as above.
<b>Assessment</b>	Assess all events within its territory by using the decision instrument annexed to the IHR. In case of urgent events, the assessment of reports from the national surveillance system shall occur within 48 hours.	5(1); 6(1); and Annex 1	Analysis is the same as the above on legal obligations in national laws concerning response of relevant health authorities in the States to public health risks.	New public health legislation should include specific provisions in relation to this.
<b>Notification to WHO</b>	Notify WHO, through the National IHR Focal Point, of all events which may constitute a public health emergency of international concern within its territory and any health measure implemented in response to those events. This notification must occur by the most efficient communication means available and within 24 hours of assessment of public health information.	5 (1); 6 (1) and Annex 1	The omnibus clauses under the NCDC Act allow such communication to the WHO. However, the provisions are not as specific, for example, the 24-hour requirement for notification.	Regulations should be made under the NCDC Act to include this function, specifically.

	<p>Communicate to WHO timely, accurate, and sufficiently detailed public health information available on an event notified including where possible, case definitions, laboratory results, source and type of the risk, number of cases and deaths, conditions affecting the spread of the disease and the health measures employed. Report the difficulties faced and the support needed in responding to the potential PHEIC</p>	6(2)	Same analysis as above.	Same recommendation as above.
<b>Information -Sharing on Unusual Public Health Event</b>	<p>Provide to WHO all relevant public health information if State has evidence of an unexpected or unusual public health event within its territory, which may constitute a public health emergency, irrespective of origin or source</p>	5 (1); 7; and Annex 1	<p>Timelines are not specifically provided for, nor is such a report specifically required under the NCDC Act. However, the Nigerian Civil Aviation Regulations, 2015 require that in line with the IHR, the WHO shall be consulted on all matters related to passenger health. (Article 18.8.18)</p>	<p>The revision of the NCDC Act to make specific provision for the communication with the WHO should extend to this obligation.</p>
<b>Reports of Foreign Public Health Risks</b>	<p>Inform WHO, as far as practical, within 24 hours of receipt of evidence of a public health risk identified outside their territory that may cause international disease spread, as manifested by exported or imported human cases; vectors which carry infection or contamination; or contaminated goods.</p>	5 (1); 9 (2); and Annex 1	Analysis is the same as above.	Same recommendation as above.

<b>Verification of Information from External Sources</b>	Verify and provide within 24 hours, an initial reply to, or acknowledgement of, the request for verification from WHO regarding reports about events which may constitute a public health emergency of international concern, along with available public health information on the status of events referred to in WHO's request	10 (2) (a-b)	The NCDC Act does not specifically address verification or response to WHO's request for further information.	Same recommendation as above.
	On WHO request, provide information relevant to the assessment of identified events which may constitute a public health emergency of international concern, including case definitions, laboratory results, source and type of the risk, number of cases and deaths, conditions affecting the spread of the disease and the health measures employed; and report, when necessary, the difficulties faced and support needed in responding to the potential public health emergency of international concern.	10 (2) (c)	Though this is not specifically provided in the NCDC Act, the omnibus clauses under the Act allow such communication to the WHO. This is coupled with its functions as the National IHR Focal Point.	Same recommendation as above.

## 11. Public Health Capacities at Points of Entry

The IHR is particularly concerned with the international spread of disease. Thus, it is concerned with the points of entry as they are portals through which disease spread or enter countries. Points of entry include designated ports, airports and ground crossings. Below, the Report provides an analysis of Nigeria's federal legislation relating to points of entry in line with the IHR requirements, including provisions on designation, core capacities, ship sanitation certificate and information sharing.

### a. Designation

Under the IHR the following requirements are made regarding designation of points of entry:

State parties are to designate the airports and ports that shall develop the core capacities under IHR. Further, where justified for public health reasons, designate ground crossings that shall develop the core capacities under IHR taking into account the volume and frequency of the various types of international traffic at the ground crossing which might be designated, as compared to other points of entry; and the public health risks existing in areas in which the international traffic originates, or through which it passes, prior to arrival at a particular ground crossing. Core capacities for ground crossings are the same for both ports and airports.<sup>221</sup>

At the present time, airports and seaports where the core capacities shall be developed as provided under the IHR are not designated under the law. Under the Ports Authority Act, the Minister of Transport is empowered to declare any area a port.<sup>222</sup> This is, however, to be distinguished from designating a port for the purpose of the IHR, is not provided for in the Ports Authority Act. Designation is therefore perhaps most appropriately considered under the Quarantine Act, which provides for a designated port. Under the Quarantine (Ships) Regulations, a designated approved port means 'a port approved by the minister in accordance with paragraph 1 of Article 17 of the International Sanitary Regulations *for the issue of De-ratting Exemption Certificates only*.'<sup>223</sup> The International Sanitary Regulations are clearly and narrowly defined in the Quarantine Act as: 'the International Sanitary Regulations (World Health Organization Regulations No. 2) adopted by the Fourth World Health Assembly on 25 May 1951, and as subsequently amended by any World Health Assembly.'<sup>224</sup> The International Sanitary Regulations had been replaced by 1969. Currently, the operating framework is that provided by IHR 2005, so this provision can be said to have lost its force in light of the cessation in force of the International Sanitary Regulations. However, the designation is also important for the purposes of the De-ratting Exemption Certificate and not for the purposes of determining ports that have the core capacities as required under the IHR. That said, although it can be argued that current law suggests that designation can be incorporated in the law, no process is currently provided for the designation and no ports have been designated thus far for the issue of de-ratting exemption certificates only.

It is important to note that while the IHR requires designation, it does not specify the process of designating points of entry, merely stating that States shall designate points of entry. Some materials from the WHO provide an understanding of what may assist a country in making the determination to designate a point of entry in line with IHR requirements. These include: population density around the point of entry; volume and frequency of traffic (travellers, cargo and conveyances); public health risks existing in areas in which the international traffic originates, or through which it passes, prior to arrival at the particular point of entry (risk analysis of the route); epidemiological situations in and around the point of entry; potential for dissemination of public health risks in a transportation chain involving the particular point of entry; and potential joint designation of ground crossings with a neighbouring country.<sup>225</sup>

Other existing laws do not specifically address designation or related process. The National Health Act 2014 states that the Federal Ministry of Health shall ensure and promote the provision of quarantine and port health services.<sup>226</sup> The NCDC Act also requires the NCDC to collaborate with Port Health

221 IHR 2005, Article 20.

222 Nigerian Ports Authority Act, Section 30.

223 Section 1 of the Quarantine Act. (Emphasis mine.) Article 17 (1) of the International Sanitary Regulations provide that each health administration shall send to the organization: (a) a list of the ports in its territory approved under Article 15 for the issue of: (i) De-ratting Exemption Certificates only, and (ii) De-ratting Certificates and De-ratting Exemption Certificates.

224 Quarantine Act 1926, Section 1.

225 WHO Europe: International Health Regulations - Points of entry: IHR, Annex 1b and relevant articles

< <http://www.euro.who.int/en/health-topics/emergencies/international-health-regulations/points-of-entry> > accessed on 6 November 2019.

226 National Health Act, Section 2 (1) (j).

Services to operate quarantine services including inspection, isolation, detection and management of quarantine stations at points of entry into Nigeria.<sup>227</sup>

Even so, recognizing the key requirement of the designation in the IHR, designation of points of entry is one of the key priority actions in the JEE and in the NAPHS. The WHO has been working with the Port Health Services of the Federal Ministry of Health to designate points of entry and assess them to align with IHR requirements and significant progress has been made in this regard.<sup>228</sup>

Although there are as yet no designated ports in relevant legislation, in practice, there are ports in which the Port Health Services are located.

In line with the NAPHS, the Federal Ministry of Health has recently designated four points of entry through an administrative process: –

- Murtala Mohammed International Airport, Lagos,
- Nnamdi Azikiwe International Airport, Abuja – FCT.
- Mallam Aminu Kano International Airport, Kano Apapa Port, Lagos.<sup>229</sup>

It is important to note that designation of the points of entry is one of the key priority actions in the JEE and in the National Action Plan on Health Security.<sup>230</sup> WHO is currently working with the Port Health Services of the Federal Ministry of Health to designate points of entry and assess them to align with IHR requirements, and significant progress has been made in this regard.<sup>231</sup>

None of the reviewed legislation contained any provisions related to developing core capacities for ground crossings, despite the extensive use of ground crossings such as the Cameroon, Semé and Idiroko ground crossings.

### Gaps

- The current legislation and other legal measures do not designate airports and seaports in accordance with IHR requirements on designation of ports of entry, nor do they require an entity to designate as such. However, it must be noted that, while desirable, designation through legislation is not a specific requirement of the IHR.
- International border crossings are not designated in any of the relevant legislation. This creates a gap in the area of provisions regarding ground crossing in legislation. Ground crossings have not been designated either in legislation or administratively.

### Recommendations

- The designation of points of entry, including ground crossings, may be done in new public health legislation or any other legislation domesticating the IHR.

227 NCDC Act, Section 4.

228 Communication from NCDC July, 2019.

229 Information from Port Health Services, Federal Ministry of Health, November 2019. For an earlier observation on ports where Port Health Services are present, see Enitan Adosun, 'Port Health Services in Nigeria' (2011), presented at the Second International Civil Aviation Organization (ICAO)/Cooperative Arrangement for the Prevention of Spread of Communicable Disease through Air Travel (CAPSCA) Global Coordination Meeting, online:

230 Nigeria NAPHS 2018-2022, p. 66.

231 Communication from NCDC, July 2019.

- The designation of airports, on the other hand, should be done by the relevant authority in the reviewed Nigeria Civil Aviation Authority Regulations. This should be coupled with the obligation to ensure that core capacities already provided in the Regulation in addition to those under the IHR are developed and on par with WHO's standards at all times.

## b. Core Capacities

According to the IHR, the capacities for points of entry include: '(a) to provide access to (i) an appropriate medical service, including diagnostic facilities located so as to allow the prompt assessment and care of ill travellers, and (ii) adequate staff, equipment and premises; (b) to provide access to equipment and personnel for the transport of ill travellers to an appropriate medical facility; (c) to provide trained personnel for the inspection of conveyances; (d) to ensure a safe environment for travellers using point of entry facilities, including potable water supplies, eating establishments, flight-catering facilities, public washrooms, appropriate solid and liquid waste disposal services, and other potential risk areas, by conducting inspection programmes, as appropriate; and (e) to provide as far as practicable a programme and trained personnel for the control of vectors and reservoirs in and near points of entry.'

Under Nigerian legislation, the Nigeria Civil Aviation Regulations 2015 require international airports to maintain certain facilities, specifically facilities for first aid and for referrals. It also provides for waste disposal services.

The Authority, in cooperation with airport operators, shall ensure that international airports maintain facilities and services for first-aid attendance on site, and that appropriate arrangements are available for expeditious referral of the occasional more serious case to prearranged competent medical attention.

The Authority, in cooperation with airport and aircraft operators, shall ensure that a safe, sanitary and efficient system is instituted, at international airports, for the removal and disposal of all waste, waste water and other matters dangerous to the health of persons, animals or plants, in compliance with the International Health Regulations 2005 and relevant guidelines of WHO, the Food and Agriculture Organization and national airport regulations.<sup>232</sup>

International airports should have available access to appropriate facilities for administration of public health and animal and plant quarantine measures applicable to aircraft, crew, passengers, baggage, cargo, mail and stores.<sup>233</sup>

The Airport Operator shall ensure that passengers and crew in transit can remain in premises free from any danger of infection and insect vectors of diseases and, when necessary, facilities should be provided for the transfer of passengers and crew to another terminal or airport nearby without exposure to any health hazard. Similar arrangements and facilities shall also be made available with respect to animals.<sup>234</sup>

The Regulations also make several other provisions for the comfort of passengers.

<sup>232</sup> Nigerian Civil Aviation Regulations 2015, Regulation 18.8.21.6.

<sup>233</sup> Ibid, Regulation 18.8.21.3.

<sup>234</sup> Ibid, Regulation 18.8.21.4.



In relation to core capacities, under the Merchant Shipping Act, there are provisions regarding medications, medical doctors, medical guidelines, referrals to nearby permanent hospitals, and disinfectants. Several related provisions covered in the Regulations may be cited as the Merchant Shipping (Health Protection and Medical Care for Seafarers) Regulations 2010. These provisions include a requirement for each ship to carry a medicine chest with essential medications as listed in the WHO Essential Medicines List,<sup>235</sup> and for precautions to be taken when dangerous goods are carried onboard a ship, such as demanding requisite information on nature and risk of substances, protective equipment, relevant medical procedures and antidotes,<sup>236</sup> the requirement of a medical doctor on board or a person who has completed a prescribed course of training to act in place of a medical doctor<sup>237</sup> and a medical report for seafarers for use by ship doctors or doctors ashore and to be kept confidential.<sup>238</sup> These requirements are, however, not related to the port itself, that is, the point of entry. Moreover, the 2010 Regulations seem to deal with the occupational health of employees on merchant ships and would only be partially relevant for IHR.

In regard to the capacities for points of entry, the Quarantine (Ships) Regulations made under the Quarantine Act provide that the administration of a State shall, if required by the president, '(a) appoint such registered medical practitioners as may be necessary for the proper enforcement and execution of these Regulations; (b) give directions from time to time as to duties which are to be performed by any medical practitioner so appointed, or any other officer authorised to enforce and execute these Regulations; (c) arrange for the provision of (i) premises or waiting rooms for the medical inspection and examination of persons; (ii) premises for the temporary isolation of persons in accordance with these Regulations; (iii) apparatus or other means of cleansing, disinfecting or disinfecting ships, persons or clothing, and other articles; (d) arrange for the reception into hospital of persons requiring to be removed thereto pursuant to these Regulations; (e) arrange for the provision of means of transport for the conveyance of persons to any such premises as are referred to in paragraph (c) of this regulation, or to a hospital; (f) do all such other things as in their opinion or the opinion of the president, as the case may be, are necessary to enable the provisions of these Regulations to be complied with.'<sup>239</sup> This section indicates that these capacities are not a standing requirement. Rather, the provision of the capacities is dependent on the president issuing a mandate to that effect. Thus, while there appears room for setting out such requirement, it is not a standing requirement. Beyond this, the capacities that the president may require under the Quarantine Act do not include, for instance, a safe environment for travellers using point-of-entry facilities, including potable water supplies, eating establishments, flight-catering facilities, public washrooms, appropriate solid and liquid waste disposal services, and other potential risk areas, by conducting inspection programmes or a vector control programme as required under the IHR.

(It should be noted that Port Health, while mentioned under certain statutes, is not established as an entity by them. It is a division under the Federal Ministry of Health, and is separate from the Ports Authority, which governs all seaports under remit provided by the Nigerian Ports Authority Act.)

### Gaps

- There is no provision for core capacities for seaports under the Quarantine Act and the Ports Authority Act.
- The current requirements for port health under the Quarantine (Ships) Regulations are outdated.

235 Merchant Shipping (Health Protection and Medical Care for Seafarers) Regulations 2010, Section 3.

236 Merchant Shipping (Health Protection and Medical Care for Seafarers) Regulations 2010, Section 11.

237 Ibid, Section 6.

238 Ibid, Section 15.

239 Quarantine (Ships) Regulations, Regulation 6.

## Recommendations

- Though the Civil Aviation Regulations make provision with respect to the development of core capacities at international airports as provided in the IHR to a significant extent, there is need for some specific provisions and SOPs. The Regulations should be revised to provide for immediate responses to public health risks at the airports. For example, areas should be designated for medical examination of travellers suspected of being infected with a communicable disease.
- The Civil Aviation Regulations obligate the air operators to ensure the safe transfer of travellers and animals to avoid danger to health. While this obligation complies with the provision of the IHR core capacities, the definition of the air operator in the Regulations does not fit into the description of one charged with this obligation under the IHR. There is need to revise this provision in the Regulations to capture the requirements in the IHR. Alternatively, this is one area where Port Health Services should be considered within the Regulations.
- Provisions for such core capacities at seaports as provided in the IHR should be made under new public health legislation for such capacities.

## c. Competent Authorities at Points of Entry

The IHR requires that national legislation identify the competent authorities at each designated point of entry in the territory.<sup>240</sup> A competent authority under the IHR means ‘an authority responsible for the implementation and application of “health measures” ’ (that is, procedures applied to prevent the spread of disease or contamination not including law enforcement procedures).<sup>241</sup> These encompass procedures identified under Article 22, including supervision of any de-ratting, disinfection, disinfection or decontamination of baggage, cargo, containers, conveyances, goods, postal parcels and human remains, or sanitary measures for persons.

For the purposes of this section, it is important to state from the outset that it addresses the position of the law regarding competent authorities. Practice may diverge from the provisions of the law. However, this being a primarily legal report, it focuses on the provisions of the law or gaps in the law. Thus, as is clear from the laws and regulations considered below, while the law confers authority on Civil Aviation Authority, in practice, Port Health exercises significant authority. Indeed, it is this divergence between the extant law and current practice that makes this review essential at this time.

With respect to identifying competent authorities in Nigeria for seaports, the Quarantine (Ships) Regulations under the Quarantine Act confer authority on port health officers to carry out several tasks in pursuance of public health maintenance. Port health officer is defined under the Act as ‘the registered medical practitioner appointed pursuant to Regulation 6 of these Regulations.’<sup>242</sup> Regulation 6 provides that the health administration of a State can, if allowed by the president, ‘appoint such registered medical practitioners as may be necessary for the proper enforcement and execution of these Regulations.’ Port health officers are thus registered medical practitioners. This is somewhat affirmed by the Merchant Shipping Act 2007, where it states that ‘port health officer’ includes the chief medical adviser of the Federation and any officer for the time being performing the duties of a port health officer.<sup>243</sup>

Port health officers under the Quarantine (Ships) Regulations have several functions and powers, including the power to inspect ships in the port or on arrival, notifying health authorities when there is

240 IHR 2005, Article 19 (b).

241 Ibid, Article 1.1.

242 Quarantine (Ships) Regulations, Regulation 2.

243 Merchant Shipping Act 2007, Section 444.

a quarantinable disease on a ship;<sup>244</sup> prepare and keep a list of ports which have quarantinable diseases and provide the list to ship pilots;<sup>245</sup> execute the regulations when appointed by the state governor to do so;<sup>246</sup> give permission by radio to a ship free of disease to proceed to mooring,<sup>247</sup> and supervise and ensure that the port areas are kept in a satisfactory, sanitary condition by inspecting food and canteens, and notifying the port authority about removal of rodents.<sup>248</sup> The Merchant Shipping Act of 2007 also provides that ‘the port health officer may inspect a passenger ship on arrival in order to ascertain the sanitary condition of the ship and the officer shall, for that purpose, have all the powers of an inspector under this Act.’<sup>249</sup> Thus, for ships, the competent authority is the port health officer, working under the port health services. (However, the Merchant Shipping Act is also relevant here.)

Regarding airports, the competent authority is the Nigerian Civil Aviation Authority. Section 64 of the Civil Aviation Act 2006 provides that: ‘The Authority in consultation with other relevant government agencies may make regulations for the prevention of danger arising to public health by the introduction or spread of any infectious or contagious disease from aircraft arriving at or being at any aerodrome and for the prevention of the conveyance of infection or contagion by means of any aircraft leaving an aerodrome.’ This may diverge from practical realities where Port Health exercises significant authority at the airports in relation to public health matters. However, this is not explicitly recognized in the Civil Aviation Act or in the Regulations made thereunder, although ‘other relevant authorities’ may be said to Port Health Authority.

The Nigerian Civil Aviation Regulations made in accordance with this power provide that ‘The Authority, in cooperation with airport operators, shall ensure the maintenance of public health, including human, animal and plant quarantine at international airports.’<sup>250</sup> It also requires the Authority to comply with the IHR in taking any health measures.<sup>251</sup> If considering introduction of health measures, the Authority must do so in accordance with the IHR (and in certain instances in consultation with the Federal Ministry of Health),<sup>252</sup> and establish a national aviation plan in preparation for an outbreak of a communicable disease posing a public health risk or public health emergency of international concern.<sup>253</sup> There is as yet no plan in place. Several provisions require reports to be made to the Civil Aviation Authority and to the Port Health Authority.<sup>254</sup>

The National Health Act of 2014 provides that the Federal Ministry of Health shall ensure and promote the provision of quarantine and port health services.<sup>255</sup> It does not detail the powers of the port health services. However, in practice, the Port Health Services (PHS), a division of the Public Health Department of the Federal Ministry of Health established in 1925, is responsible for the provision of health services at Nigeria’s ports of entry. The division is required to ensure that Nigeria meets the standards of public health preparedness required by WHO at various POE and to implement the IHR, and the provisions of various laws including the Quarantine Act.<sup>256</sup> As noted above, it is conferred with functions in both the Quarantine (Ships) Regulations and the Nigerian Civil Aviation Regulations. Port Health is recognized

244 Quarantine (Ships) Regulations, Regulation 3.

245 Ibid, Regulation 7.

246 Ibid, Regulation 5.

247 Ibid, Regulation 9.

248 Ibid, Regulation 27.

249 Merchant Shipping Act 2007, Section 188(2).

250 Nigerian Civil Aviation Regulations 2015, Regulation 18.8.21.1.

251 Ibid, Regulation 18.8.17.3.

252 Ibid, Regulation 18.8.22.1.

253 Ibid, Regulation 18.8.23.1.

254 See for example, Regulation 8.5.1.29, which states that when a passenger is suspected to have a communicable disease, a report is to be made to the Authority and to the Port Health Authority.

255 National Health Act 2014, Section 2 (1) (j).

256 Nigeria NAPHS 2018-2022, p. 66.

under the Nigerian Civil Aviation Regulations as part of the Federal Ministry of Health responsible for making available adequate stocks of the Passenger Locator Card for use at international airports and for distribution to aircraft operators, for completion by passengers and crew for the purpose of contact tracing,<sup>257</sup> and for receiving notifications when a passenger is sick and suspected of having a communicable disease.<sup>258</sup> It is also one of the members of the Civil Aviation Authority's National Facilitation Committee, responsible for implementing the Chicago Convention.<sup>259</sup> (Under the Merchant Shipping Act, port health officers are conferred with power to inspect ships and take actions relating to the health of shipping personnel.)

In summary, two key competent authorities are identified under Nigerian legislation, namely: the Nigerian Civil Aviation Authority and Port Health.

### Gaps

- The Quarantine (Ships) Regulations identify port health officers as the competent authority. However, their authority is limited to the specific activities captured under the Regulations. (The section on responsibilities explains this further.)
- There is currently no legislation that establishes port health authority and its functions in a comprehensive manner and in line with the IHR.
- There is currently no legislation providing competent authorities for ground crossings.

### Recommendations

- The Civil Aviation Regulations should be reviewed and reworked so as to give a legal mandate to the functions of the Port Health Authority.

## d. Responsibilities of Competent Authorities

The responsibilities of competent authorities under the IHR include:

- Competent authorities shall monitor baggage, cargo, containers, conveyances, goods, postal parcels and human remains departing and arriving from affected areas, so they are free of sources of infection or contamination.<sup>260</sup>
- Competent authorities shall supervise de-ratting, disinfection, and disinfection or decontamination of any baggage, cargo, containers, conveyances, goods, postal parcels and human remains, especially for affected conveyances, using a technique with adequate level of control as determined by WHO or the competent authority.
- Competent authorities shall ensure sanitary condition of facilities used by travellers at points of entry and supervise sanitary measures for persons.<sup>261</sup>
- Competent authorities shall advise conveyance operators of intent to apply control measures and provide written information concerning methods employed.<sup>262</sup>

257 Nigerian Civil Aviation Regulations, Regulation 18.8.22.5.

258 Ibid, Regulation 8.5.1.29.

259 Ibid, Regulation 18.8.14.

260 IHR 2005, Article 22 (1) (a).

261 Ibid, Article 22 (1) (b-c).

262 Ibid, Article 22 (1) (d).

- Competent authorities shall supervise removal and safe disposal of any contaminated water or food, human or animal dejecta, wastewater, and any other contaminated matter from a conveyance.<sup>263</sup>
- Competent authorities shall monitor and control the discharge by ships of sewage, refuse, ballast water and other potentially disease-causing matter that might contaminate waters of a port or waterway.<sup>264</sup>
- Competent authorities shall supervise service providers for services at points of entry, conducting inspections and medical examinations as necessary.<sup>265</sup>
- Competent authorities shall have contingency arrangements to deal with unexpected public health events.<sup>266</sup>
- Competent authorities shall communicate with NFP on relevant public health measures taken.<sup>267</sup>
- Competent authorities shall inform the point of entry at destination of a suspect traveller who on arrival was placed under public health observation, but allowed to continue an international voyage, as he or she did not pose an imminent public health risk.<sup>268</sup>
- Competent authorities may require a Maritime Declaration of Health and any information from the master of ship or the ship's surgeon as to the health conditions on board during an international voyage. The Maritime Declaration of Health shall conform with Annex 8 of IHR.<sup>269</sup>
- Competent authorities may require a Health Part of the Aircraft General Declaration from the pilot in command of an aircraft or the pilot agent. The Health Part of the Aircraft General Declaration shall conform with Annex 9 of IHR.<sup>270</sup>

Some Nigerian legislation discussed in the foregoing pages provides for the responsibilities of health authorities at various POEs, including determining control measures to prevent domestic and international spread of diseases. The Port Health under the Quarantine Act and the Nigerian Civil Aviation Act and the Regulations made under them direct Port Health officers and the Civil Aviation authority to ensure sanitary conditions and receive information concerning passengers' ill health, etc.

### Gaps

- The Quarantine Act and the Nigerian Civil Aviation Act do not require competent authorities to communicate with the NFP on relevant public health measures.<sup>271</sup>
- The power to monitor posts and postal parcels is limited to situations in which an infection of cholera is suspected.<sup>272</sup>

263 Ibid, Article 22 (1) (e).

264 IHR 2005, Article 22 (1) (f).

265 Ibid, Article 22 (1) (g).

266 Ibid, Article 22 (1) (h).

267 Ibid, Article 22 (1) (i).

268 Ibid, Article 22 (1) (j).

269 Ibid, Article 22 (1) (e).

270 Ibid, Article 22 (1) (e).

271 Ibid, Article 22 (1) (i).

272 Quarantine (Ships) Regulations, Section 25: 'Nothing in these Regulations shall permit the application of any sanitary measure to letters, newspapers, books and other printed matter, which are part of any mail. (2) Postal parcels may only be subjected to sanitary measure if they contain (a) any of the goods referred to in the Fifth Schedule that the Port Health Authority has reason to believe come from a cholera-infected local area; or [Fifth Schedule.] (b) linen, wearing apparel or bedding which has been used or soiled and to which the provisions of the Fifth Schedule are applicable.'

- Other provisions under the Quarantine Act and Regulations are restricted to plague, cholera and smallpox.
- The language of the provisions of the Quarantine Act is less specific than the requirements of the IHR. For example, when it comes to supervision of service providers as required in the IHR, there is a blanket provision requiring port health officers to ensure sanitary conditions. This might suffice, but it will be best to more closely align with the IHR requirements, especially if an amendment of relevant legislation is likely to occur for other reasons.
- Certain IHR requirements are not contained in the Quarantine Act. For example, provision such as those requiring competent authorities to advise conveyance operators of intent to apply control measures and provide written information concerning methods employed.
- The Maritime Declaration of Health in the Quarantine Act does not conform with Annex 8 of IHR.

### Recommendations

New public health legislation may provide room to address the identified gaps which span a variety of areas. In particular, Port Health Authority should be recognized in a comprehensive manner as a competent authority at the airports, seaports and ground crossings.

### c. Information Sharing on Sources of Contamination

The IHR requires competent authorities to furnish WHO with relevant data concerning sources of infection or contamination, including vectors and reservoirs, at points of entry, that could result in international disease spread. This data should be provided to the extent possible when requested in response to a specific potential public health risk.<sup>273</sup>

The Quarantine Act does not contain a related provision. The Civil Aviation Regulations provides for consultation with the IHR on all matters related to passenger health.<sup>274</sup> The Regulations also require compliance with the pertinent IHR requirements provisions on IHR requirements.<sup>275</sup> This would ostensibly include sharing information.

#### Gaps:

- The Quarantine Act does not contain a provision on information sharing on sources of contamination.
- The Civil Aviation Regulations does not contain a specific provision on providing data to WHO or the NFP on sources of contamination. However, blanket provisions requiring compliance with the IHR may suffice.

#### Recommendations:

- The Civil Aviation Regulations needs to be reviewed to contain specific provision of the IHR. Specifically, on communication with the WHO, the Port Health Authority may be obligated to communicate with the NFP in this regard.
- Similar provision should also be made in a new regulation made under new public health legislation to cover port health.

<sup>273</sup> IHR 2005, Article 19 (c).

<sup>274</sup> Civil Aviation Regulations, Regulation 18.8.21.7.

<sup>275</sup> Civil Aviation Regulations, Regulation 18.8.22.1. The Authority shall comply with the pertinent provisions of the WHO International Health Regulations (2005).

#### **d. Ship Sanitation Certificate and Ship Sanitation Exemption Certificate**

The IHR requires that the competent authority issue Ship Sanitation Certificates and Ship Sanitation Exemption Certificates in accordance with the requirements of IHR, Article 39, and the model set out in Annex 3. Each State Party is required to send to WHO a list of ports authorized to offer the issuance of Ship Sanitation Control Certificates and the provision of the services referred to in Annexes 1 and 3; the issuance of Ship Sanitation Control Exemption Certificates only, and extension of the Ship Sanitation Control Exemption Certificate for a period of one month until the arrival of the ship in the port at which the Certificate may be received.<sup>276</sup> At the present time, no legislation specifies the list of ports authorized to provide the Certificates and it is not clear that such a list has been sent to WHO.

Under the IHR, Article 39 provides certain requirements for Ship Sanitation Control Exemption Certificates and Ship Sanitation Control Certificates:

- Both types of certificate are valid for six months, though this may be extended by one-month inspection or control measures that are required but cannot be accomplished at the port.
- If a valid Ship Sanitation Control Exemption Certificate or Ship Sanitation Control Certificate is not produced, or evidence of a public health risk is found on board a ship, the State Party may proceed as provided in paragraph 1 of Article 27.
- The certificates shall conform to the model in Annex 3.
- Whenever possible, control measures shall be carried out when the ship and holds are empty. In the case of a ship in ballast, they shall be carried out before loading.
- When control measures are required and have been satisfactorily completed, the competent authority shall issue a Ship Sanitation Control Certificate, noting the evidence found and the control measures taken.
- The competent authority may issue a Ship Sanitation Control Exemption Certificate at any port specified under Article 20 if it is satisfied that the ship is free of infection and contamination, including vectors and reservoirs. Such a certificate shall normally be issued only if the inspection of the ship has been carried out when the ship and holds are empty or when they contain only ballast or other material, of such a nature or disposed in a way that makes a thorough inspection of the holds possible.

If the conditions under which control measures are carried out are such that, in the opinion of the competent authority for the port where the operation was performed, a satisfactory result cannot be obtained, the competent authority shall make a note to that effect on the Ship Sanitation Control Certificate. Under Nigerian law, the Quarantine Act 1926 does not provide for Ship Sanitation Certificates. The Quarantine (Ships) Regulations instead provide for the older De-ratting Certificate which, for the most part, relates to sanitizing a ship specifically of rodents. The Sanitation Certificate is wider in scope and provides a more intensive inspection regime, detailing all the areas to be inspected and various risks to be inspected for: Evidence of infection or contamination, including: vectors in all stages of growth; animal reservoirs for vectors; rodents or other species that could carry human disease, microbiological, chemical and other risks to human health; signs of inadequate sanitary measures and information concerning any human cases (this also include in the Maritime Declaration of Health). While the Quarantine Act also makes several provisions relating to information of any infection on the ship to be provided to the port health officer, for the power of the port health officer to detain and investigate a ship which

<sup>276</sup> IHR 2005, Article 20 (2).

has been in an area where quarantinable diseases are present,<sup>277</sup> it does not require the provision of a Ship Sanitation Certificate. At the present time, this certificate is not being issued.<sup>278</sup>

However, the Merchant Shipping Act provides that a 'Port Health Officer may inspect a passenger-carrying ship on arrival in order to ascertain the sanitary condition of the ship, and the officer shall, for that purpose, have all the powers of an inspector...'.<sup>279</sup> It does not provide the manner in which the inspection is to be done or for the issuing of a Ship Sanitation Certificate or the Ship Sanitation Control Exemption Certificate.

### Gap and Recommendation

- The Quarantine Act does not provide for the Ship Sanitation Control Certificate or the Ship Sanitation Control Exemption Certificate. Neither does any other law. It is recommended that new regulations be made in this respect under new public health legislation or the Nigeria Ports Authority to provide for the Ship Sanitation Certificate in line with the IHR.
- There is need to send a list of ports authorized to issue the certificates to WHO.

The discussion on Reinforcing Public Health Capacities at Points of Entry is summarized in the table below:

Key words	International Health Regulations		National legislation	Recommendation
	Obligations	Article	Assessment	
<b>Designation</b>	Designate the airports and ports that shall develop the core capacities under IHR.	20 (1)	<p>At the present time, airports and seaports where the core capacities shall be developed as provided under the IHR are not designated under the law.</p> <p>Section 30 of the Nigerian Ports Authority Act empowers the Minister to declare any area a port (Section 30 of the Nigerian Ports Authority Act).</p> <p>Although there are as yet no designated ports, in practice, there are ports in which the Port Health Services are located: 5 international airports (Murtala Mohammed International Airport Lagos. – Port Harcourt International Airport, Port Harcourt. – Margaret Ekpo International Airport, Calabar – Aminu Kano International Airport, - Kano – Nnamdi Azikiwe International Airport, Abuja – FCT.) and 5 seaports (Apapa Port – Lagos – Tin Can Island Port, Lagos (TCIP) - Lagos – Warri Port – Warri – Port Harcourt Port – Calabar Port – Calabar)</p>	<p>New public health legislation should be revised to provide for an obligation to ensure the core capacities in the IHR are developed at the areas declared as ports under the Act.</p> <p>For the designation of airports, on the other hand, this designation should be done by the relevant authority in the reviewed Nigeria Civil Aviation Authority Regulations. This should be coupled with the obligation to ensure that core capacities already provided in the Regulation in addition to those under the IHR are developed and align with WHO's standards at all times.</p>

<sup>277</sup> Regulations 14, 15 and 16 of the Quarantine (Ships) Regulations.

<sup>278</sup> Information from NCDC.

<sup>279</sup> Section 188 (2) of the Merchant Shipping Act.



	Where justified for public health reasons, designate ground crossings that shall develop the core capacities under IHR, taking into account the volume and frequency of the various types of international traffic at the ground crossing that might be designated, as compared to other points of entry; and the public health risks existing in areas in which the international traffic originates, or through which it passes, prior to arrival at a particular ground crossing.	21 (1)	None of the reviewed legislation contained any provisions related to developing core capacities for ground crossings, despite the extensive use of ground crossings such as the Semé and Idiroko ground crossings.	There is need to designate ground crossings where core capacities under the IHR will be developed with the collaboration of the NCDC in new public health legislation.
<b>Core Capacities</b>	Ensure that points of entry have access to appropriate medical services, equipment and trained personnel to develop their core capacities under IHR.	19 (a); and Annex 1	<p>On the development of these capacities at seaports, the Merchant Shipping (Health Protection and Medical Care for Seafarers) Regulations 2010 provide certain health measures which are not related to the port itself, that is, the point of entry. The requirements are related to health measures onboard a ship.</p> <p>Also, the Quarantine (Ships) Regulations made under the Quarantine Act provide some obligations which will contribute to capacity development as provided in the IHR but for the dependence on the president's issue of mandate to their effectiveness.</p>	New public health legislation should make specific provisions for such core capacities as provided in the IHR.

<p><b>Competent Authorities</b></p>	<p>Identify the competent authorities at each designated point of entry in the territory.</p>	<p>19 (b)</p>	<p>With respect to identifying competent authorities in Nigeria for seaports, the Quarantine (Ships) Regulations under the Quarantine Act confer authority on port health officers to carry out several tasks in pursuance of public health maintenance. Such individuals are qualified medical doctors. See Regulation 6, Quarantine (Ships) Regulation.</p> <p>Also, in the Merchant Shipping Act 2007, the 'Port Health Officer includes the Chief Medical Adviser of the Federation and any officer for the time being performing the duties of a Port Health Officer.'</p> <p>Regarding airports, the competent authority is the Nigerian Civil Aviation Authority. See Section 64 of the Civil Aviation Act 2006.</p>	<p>1. There is need to address the gaps identified earlier, clearly identify the competent authorities at seas and airports in new public health legislation.</p> <p>2. The review of the Civil Aviation Regulations should be made to give legal mandate to the functions of the Port Health Authority.</p>
<p><b>Role and Responsibilities of Competent Authorities</b></p>	<p>Competent authorities shall monitor baggage, cargo, containers, conveyances, goods, postal parcels and human remains departing and arriving from affected areas, so they are free of sources of infection or contamination.</p>	<p>22 (1) (a)</p>	<p>Quarantine Act (additional measures—quarantinable diseases).</p> <p>For Civil Aviation Regulations, there is a blanket requirement for compliance with IHR requirements.</p>	<p>Regulations under the relevant laws, the Nigeria Ports Authority Act, the National Boundary Commission Act should be issued.</p>

	Competent authorities shall supervise de-ratting, disinfection, and disinfection or decontamination of any baggage, cargo, containers, conveyances, goods, postal parcels and human remains, especially for affected conveyances, using a technique with an adequate level of control as determined by WHO or the competent authority.	22 (1) (c); 27 (1)  (a-b)	While other relevant pieces of legislation are silent on this, the Civil Aviation Regulations and the Quarantine Act make provisions for this and these obligations, but these laws are silent on the technique to be used.	Same recommendation as above.
	Competent authorities shall ensure sanitary condition of facilities used by travellers at points of entry and supervise sanitary measures for persons.	22 (1) (b-c)	Also in this regard, the Civil Aviation Regulations and the Quarantine (Ships) Regulation made provision for these obligations, while other relevant laws are silent.	Regulations made under the National Boundary Commission Act should address this gap as regards ground crossings.
	Competent authorities shall advise conveyance operators of intent to apply control measures and provide written information concerning methods employed.	22 (1) (d)	This is absent in relevant legislation.	Regulations made under the Nigeria Ports Authority Act, the National Boundary Commission Act and the provision of this obligation in the review of the Civil Aviation Regulations will address this gap.

	Competent authorities shall supervise removal and safe disposal of any contaminated water or food, human or animal dejecta, wastewater and any other contaminated matter from a conveyance.	22 (1) (e)	Quarantine Act, section 27; removal of human dejecta (Part 1—Cholera), but not of animal dejecta.  The Civil Aviation Regulations also make provision for the disposal of waste in compliance with the requirements of the IHR.	Same recommendation as above.
	Competent authorities shall monitor and control the discharge by ships of sewage, refuse, ballast water and other potentially disease-causing matter that could contaminate waters of a port or waterway.	22 (1) (f)	This is also provided in the Quarantine Act, but limited to the specific diseases of cholera, plague, typhus and smallpox.	Regulations under the Nigeria Ports Authority Act or new public health legislation should be made to address this gap.
	Competent authorities shall supervise service providers for services at points of entry, including inspections and medical examinations as necessary.	22 (1) (g)	Relevant legislation is silent on this.	As recommended earlier in this Report, regulations made under the Nigeria Ports Authority Act, the National Boundary Commission Act and the provision of this obligation in the review of the Civil Aviation Regulations will address this gap.
	Competent authorities shall have contingency arrangements to deal with unexpected public health events.	22 (1) (i)	This is not contained in any of the relevant legislation.	It is recommended that this be captured in new public health legislation and existing regulations such as the Nigerian Civil Aviation Regulations.
	Competent authorities shall communicate with NFP on relevant public health measures taken.	22 (1) (j)	Not contained in the Quarantine Act or in the Civil Aviation Regulations, but there is a provision in the Aviation Regulations that requires communication with the Federal Ministry of Health.	Same recommendation as above.

	Competent authorities shall inform the point of entry at destination of a suspect traveller who on arrival was placed under public health observation, but allowed to continue an international voyage, as he or she did not pose an imminent public health risk.	30	Not contained in the Quarantine Act. Contained in the Civil Aviation Regulation 8.5.1.29 and 18.8.22.4, but does not address situation in which the passenger is allowed to continue the journey.	Specific provisions that comply with the provisions of the IHR in Article 30 may be made in the new public health legislation. In addition, the Civil Aviation Regulations may be reviewed to provide for the gaps identified in the Regulations.
	Competent authorities may require a Maritime Declaration of Health and any information from the master of the ship or the ship's surgeon as to the health conditions on board during an international voyage. The Maritime Declaration of Health shall conform with Annex 8 of IHR.	37(1-3)	Quarantine (Ship) Regulations, Section 12, provides for Maritime Declaration of Health. However, the form of the Declaration which shall be employed under the Act is outdated and different from that contained in Annex 8 of the IHR.	Provisions should be made in the new public health legislation.
	Competent authorities may require a Health Part of the Aircraft General Declaration from the pilot in command of an aircraft or the pilot agent. The Health Part of the Aircraft General Declaration shall conform with Annex 9 of IHR.	38	Contained in the Civil Aviation Regulations, Regulation 8.5.1.29. (The Pilot in Command shall complete the General Declaration form and submit copies to the Authority and the Port Health Authority.) There is however no provision for the document to conform with the form in Annex 9 of the IHR.	A review of the Civil Aviation Regulations is needed to address this gap.

<p><b>Information-sharing on sources of infection or contamination</b></p>	<p>Furnish to WHO relevant data concerning sources of infection or contamination, including vectors and reservoirs, at points of entry that could result in international disease spread. This data should be provided to the extent possible when requested in response to a specific potential public health risk.</p>	<p>19 (c)</p>	<p>The Quarantine Act does not contain a related provision.</p> <p>The Civil Aviation Regulations provide for consultation with the IHR on all matters related to passenger health. The Regulations also require compliance with the pertinent IHR requirements provisions on IHR requirements. This would ostensibly include sharing information (Regulation 18.8.21.7, 18.8.22.1).</p>	<p>The Civil Aviation Regulations must be reviewed to contain specific provision of the IHR. Specifically, on communication with WHO, communication with the Port Health Authority, and that Authority should be obligated to communicate with the NFP in this regard.</p> <p>Similar provision should also be made in a new regulation made under new public health legislation.</p>
<p><b>Ship Sanitation Certificates</b></p>	<p>State Party shall ensure that Ship Sanitation Control Exemption Certificates and Ship Sanitation Control Certificates shall conform with Annex 3 of IHR.</p>	<p>20 (2)</p>	<p>The Quarantine Act 1926 does not provide for a Sanitation Certificate. The Quarantine (Ships) Regulation instead provides for the older De-ratting Certificate, which for the most part relates to sanitizing a ship specifically of rodents. This is more limited in scope.</p> <p>The Merchant Shipping Act also does not provide for this, though it states that a 'Port Health Officer may inspect a passenger ship on arrival in order to ascertain the sanitary condition of the ship, and the officer shall, for that purpose, have all the powers of an inspector...' (Section 188 [2] of the Merchant Shipping Act).</p>	<p>It is recommended that new public health legislation to provide for the Ship Sanitation Certificate in line with the IHR.</p>
	<p>Send to WHO a list of ports authorized to offer the issuance of Ship Sanitation Control Certificates, issuance of Ship Sanitation Control Exemption Certificates only, services referred to in Annexes 1 and 3. Any changes to the status of the listed ports shall also be communicated.</p>	<p>20 (3)</p>	<p>Relevant legislation is silent on this.</p>	<p>The recommendation is same as above.</p>

## 12. Responding to Public Health Risks and Emergencies

Under IHR, States Parties are required to develop their capacity to respond promptly and effectively to public health risks and public health emergencies. As part of this capacity, States will implement public health measures. For these measures to be effective and immediately implemented, powers need to be granted to public health authorities through legislation. Similarly, IHR imposes some limitations to the public health measures taken by its States Parties. These limitations are rooted in the purpose and scope of the IHR to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade. In line with the structure of IHR, the obligations in this section have been divided between general or WHO-induced public health measures, public health measures implemented at points of entry, and additional health measures that might be implemented by States Parties under specific conditions.<sup>280</sup>

### Designation

Under Article 4 (1) of the IHR, States Parties are required to ‘designate or establish a National IHR Focal Point and the authorities responsible within its respective jurisdiction for the implementation of health measures under these Regulations.’

Nigeria has done this to a degree at the national level:

- The IHR-relevant laws identified earlier in this Report established various bodies which all play certain roles in the prevention of spread of diseases or contamination.<sup>281</sup>
- Amongst these bodies and according to the requirements of the IHR:<sup>282</sup>
- The NCDC, established by the NCDC Act, is charged with the implementation of the provisions of the IHR.<sup>283</sup>
- Other competent authorities, judging from the roles they are expected to perform in implementing the provisions of the IHR, are: the NAFDAC, an agency responsible for the inspection of imported food;<sup>284</sup>
- the Nigeria Agricultural Quarantine Service, an agency responsible for addressing plant health in relationship with public health;<sup>285</sup>
- the National Primary Health Care Development Agency (NPHCDA), established under the National Primary Health Care Development Agency Act, plays a critical role in emergencies (polio and measles particularly) for vaccine-preventable diseases through immunisation campaigns and providing technical support to states via the State Primary Health Development Agencies (SPHCDA);
- the Nigeria Civil Aviation Authority, responsible for overseeing the transport of goods by air, including the inspection of cargo carrying goods dangerous to human health;<sup>286</sup>

<sup>280</sup> This is drawn directly from the RSTL, Draft IHR Legal Assessment Guide.

<sup>281</sup> The IHR defines ‘health measures’ as ‘procedures applied to prevent the spread of disease or contamination; a health measure does not include law enforcement or security measures.’ See IHR 200, Article 1.

<sup>282</sup> IHR 2005, Article 4 (1).

<sup>283</sup> Section 1 of the NCDC Act sets out the responsibilities of the Centre that surround addressing communicable diseases in Nigeria.

<sup>284</sup> NAFDAC Act, Section 5 (d).

<sup>285</sup> Nigeria Agricultural Quarantine Service (Establishment, etc.) Act, Part II, Section 6.

<sup>286</sup> Nigeria Civil Aviation Authority Regulations 2015, Part 15.

- the National Emergency Management Agency, responsible for the general management of emergencies (that is, including but not limited to public health emergencies);
- and the port health officers<sup>287</sup> designated to carry out inspection of goods and persons transported by sea are also competent authorities empowered by the provisions of the Quarantine (Ships) Regulations,<sup>288</sup> the Civil Aviation Regulations and the Merchant Shipping Regulations.

Additionally, there are certain State bodies and agencies with IHR responsibility that will be discussed in the second report.

### WHO- Induced Public Health Measures

These are measures for implementing temporary or standing recommendations issued by the WHO Director-General, including on health measures to be taken when a PHEIC is determined to be occurring.<sup>289</sup>

Under Article 15, where it has been determined that a PHEIC is occurring, the Director-General of the WHO shall make temporary recommendations regarding persons, baggage, cargo, containers, conveyances, goods and/or postal parcels to prevent or reduce the international spread of disease and avoid unnecessary interference with international traffic. The IHR emphasizes that these recommendations are temporary and expire after three months, although an additional three months may be added.

In addition to temporary recommendations, WHO can also make standing recommendations in relation to appropriate health measures regarding persons, baggage, cargo, containers, conveyances, goods and/or postal parcels for specific, ongoing public health risks in order to prevent or reduce the international spread of disease and avoid unnecessary interference with international traffic.<sup>290</sup>

Under Nigerian law, the Nigerian Civil Aviation Regulations make provision for the implementation of public health measures induced by WHO. The Nigerian Civil Aviation Regulations do not specifically refer to compliance with WHO recommendations, but this can be reasonably inferred from other provisions. They state, 'The Authority shall comply with the pertinent provisions of the International Health Regulations (2005) of the World Health Organization.'<sup>291</sup> Further, they also provide that measures on public health grounds such as preventing a plane from landing or suspending air transport service operations cannot be taken without reference to WHO and the IHR.<sup>292</sup> Moreover, they also provide that the Aviation Authority can introduce additional health measures, *in addition to*<sup>293</sup> WHO recommendations, noting that 'if, in response to a specific public health risk or a public health emergency of international concern, the Authority is considering introduction of health measures in addition to those recommended by WHO, it shall do so in accordance with the International Health Regulations (2005)...'<sup>294</sup>

The Quarantine (Ships) Regulations do not provide for compliance with measures or recommendations by WHO.

The NCDC Act does not make specific provision for the implementation of WHO public health measures. However, it has an omnibus provision in Section 3 (1) (m) where it provides for the implementation of international guidelines and recommendations on disease prevention and control. In our view, this is

<sup>287</sup> Quarantine (Ships) Regulations, Regulation 2 define a port health officer as 'a registered medical practitioner appointed pursuant to regulation 6 of these Regulations.'

<sup>288</sup> A subsidiary legislation under the Quarantine Act.

<sup>289</sup> IHR 2005, Article 15 and 16.

<sup>290</sup> Ibid, Article 16.

<sup>291</sup> Nigerian Civil Aviation Regulations 2015, Regulation 18.8.22.1.

<sup>292</sup> Ibid Regulations 18.8.17.1 and 18.8.17.2.

<sup>293</sup> As allowed under IHR 2005, Article 43.

<sup>294</sup> Nigerian Civil Aviation Regulations 2005, Regulation 18.7, 17.3.



not sufficient to cover compliance with IHR. As suggested elsewhere, this is another issue that should be addressed in regulations to be made by the NCDC.

### Limitations

Under Article 32, the IHR requires that all travellers be treated with respect for their dignity, human rights and fundamental freedoms, with a minimum of discomfort or distress. As discussed in the foregoing pages, the Constitution provides generally for the protection of human rights. Under Nigerian law, authorities in charge of ports of entry and travel have certain obligations that bind them under each of their establishing instruments. Most of the institutions are empowered to carry out functions that may limit an individual's human rights, such as freedom of movement. Attached to this power is an important obligation to respect the fundamental human rights of individuals while fulfilling the obligation to carry out health measures in the prevention of the spread of disease with as little interference with international traffic as possible. Nigeria's public health laws are, however, silent on some limitations provided in the IHR for the protection of travellers. The Quarantine (Ship) Regulations place a limitation on the power of the port health officer to detain travellers for examination by restricting the amount of time a traveller may be detained to six days. It also restricts the period for which a traveller can be detained to three hours, or until the arrival of the port health officer, whichever is shorter. where such individual has not arrived in Nigeria with a certificate of vaccination. But the Quarantine (Ship) Regulations are silent on other provisions of the IHR such as the need for the competent authority to take into consideration the individual's religious, ethnic, sociocultural views, the need to provide means of communication in the language the individual understands, the obligation to treat such person with respect and dignity, and the obligation to provide basic needs in the form of water, food and protection of possessions.

The Civil Aviation Regulations do not specifically provide for limitations in the same manner as the IHR, but they require compliance generally with the IHR. For the protection of travellers' health and in recognition of the provision of the IHR on the treatment of travellers, the Regulation provides for the obligation to disinfect aircraft in a manner not injurious to the passenger and which causes them minimum discomfort. Aside from these provisions, the Regulation is silent on specific provisions relating to the manner in which aircraft passengers should be treated as provided in Article 32 of the IHR. Instead, there is an omnibus provision for the Civil Aviation Authority to comply with all relevant IHR provisions.<sup>295</sup>

Thus there is a significant gap in the articulation of the rights of travellers and the limitations to be placed on the authorities in implementing public health measures in Nigerian law.

### Gaps

Other gaps that may not have been captured in the foregoing pages include:

- The Quarantine (Ships) Regulations do not provide for compliance with measures or recommendations by WHO.
- The NCDC Act does not make specific provision for the implementation of WHO public health measures.

<sup>295</sup> Civil Aviation Regulations, 18.8.22.1. The Authority shall comply with the pertinent provisions of the IHR (2005) of WHO.

- The provisions of the Quarantine (Ships) Regulations are limited to only a few diseases specified therein. These are cholera, plague, smallpox, typhus and yellow fever. It makes no provision for public health emergencies involving other infectious diseases.
- The sanctions regime of the Quarantine Act and the Civil Aviation Act, and the regulations made under them, is inadequate. In respect to civil aviation, although there is an extensive sanction regime, issues related to IHR and public health are not included. The Quarantine Act's sanction regime is outdated.

### Recommendations

- Repeal the Quarantine Act as proposed by the now-overtaken Public Health Bill 2013. However, new provisions covering all the relevant areas previously addressed in the Act and the regulations made under it should now be covered in the new public health legislation.
- New public health legislation ideally should make provisions for implementing public health measures by the competent authorities in the states in collaboration with the NCDC, and more generally, include IHR requirements.
- Include compliance with WHO temporary and standing recommendations in regulations to be made by the NCDC.

Several other matters relating to public health measures in the IHR are addressed in the table.

Key words	International Health Regulations		National legislation	Recommendation
	Obligations	Article	Assessment	
<b>General and WHO-induced public health measures</b>				
<b>Designation</b>	Designate authorities responsible within the State's jurisdiction for the implementation of health measures under IHR.	4 (1)	Nigeria's IHR-relevant laws designate specific authorities to play certain roles in the prevention of spread of diseases or contamination. The NCDC leads the implementation of the obligations of the IHR.	New public health rules should recognize the central role of the NCDC.

<p><b>WHO-Induced Public Health Measures</b></p>	<p>Measures to implement temporary or standing recommendations issued by the WHO Director-General, including health measures regarding persons, baggage, cargo, containers, conveyances, goods and/or postal parcels to prevent or reduce the international spread of disease and avoid unnecessary interference with international traffic.</p>	<p>15, 16</p>	<p>Most of the public health related legislation does not make provision for the implementation of these measures.</p> <p>The Civil Aviation Regulation is one of the two pieces of legislation that provides for the implementation of WHO's public health measures, though not specifically. Regulation 18.8.22.1 provides for the compliance with all the provisions of the IHR in responding to public health risks.</p> <p>In the same manner, the NCDC Act also makes an omnibus provision for the NCDC to implement international guidelines and recommendations on disease prevention and control.</p> <p>The Quarantine (Ships) Regulations are silent on this.</p>	<p>New public health legislation should be reviewed to make provision for the implementation of these measures by the competent authorities in the states in collaboration with the NCDC.</p> <p>The NCDC Act should be reviewed; alternatively, NCDC should develop regulations to address this.</p>
<p><b>Limitations</b></p>	<p>Treat all travellers with respect for their dignity, human rights and fundamental freedoms, and minimize any discomfort or distress.</p>	<p>32</p>	<p>Nigeria's public health laws are silent on some limitations provided in the IHR.</p> <p>The Quarantine (Ships) Regulations places a limitation on the power of the port health officer to detain travellers for examination by restricting the number of days for which a traveller may be detained to 6 days. It also restricts the period for which a traveller can be detained to 3 hours or until the arrival of the port health officer, whichever is shorter, where such individual has not arrived in Nigeria with a certificate of vaccination. The Quarantine (Ships) Regulations are, however, silent on other provisions of the IHR in this regard.</p>	<p>New public health legislation should set out the procedure for the implementation of health measures with emphasis on competent authorities to uphold human rights provisions such as provided in the IHR.</p>

Public health measures implemented at points of entry				
<b>Condition of Entry</b>	Prohibit medical examination, vaccination or other prophylaxis as a condition of entry of any traveller, unless necessary to determine whether a public health risk exists, applicable to those seeking temporary or permanent residence, or otherwise imposed by additional health measures taken by the State Party.	31 (1)	<p>The Quarantine (Ships) Regulations to a significant extent provide conditions for entry to the possession of certificates of vaccination against smallpox and inoculation against yellow fever. It also empowers the port health officer to vaccinate and inoculate traveler that cannot provide these certificates. It does not differentiate between the categories of travelers as provided in the IHR, neither does it differentiate between situations where additional health measures are to be applied. This provision applies to 'every' person coming into Nigeria by ship.</p> <p>The Civil Aviation Regulations, on the other hand, are silent on this.</p>	New public health legislation or any legislation to replace the Quarantine Act should take these provisions into account in line with IHR requirements.
<b>Informed Consent</b>	Prohibit any medical examination, vaccination, prophylaxis or health measure to be carried out on travellers without their prior express informed consent.	23 (3)	The Quarantine (Ships) Regulation Act does not provide for informed consent when a traveller is to be subject to a public health measure. Neither do the Civil Aviation Regulations of the NCAA make specific provisions for this.	This recommendation is the same as above.
<b>Failure to Consent and Refusal Consequences</b>	When a traveller fails to consent to or refuses any medical examination, vaccination, prophylaxis or health measure lawfully required under IHR, the State Party may deny entry to that traveller.	31 (2)	Nigeria's laws regarding public health are silent on such situations.	The recommendation is the same as above.

	When a traveller fails to consent to or refuses any medical examination, vaccination, prophylaxis or health measure lawfully required under IHR, and there is evidence of an imminent public health risk, the State Party may compel that traveller to undergo such measures.		The laws applicable to public health do not make provisions for this.	The recommendation is the same as the above.
<b>Associated Risks</b>	Ensure that all medical practitioners inform the travellers to be vaccinated or offered prophylaxis of any risk associated with the health measure.	23 (4)	While the Quarantine (Ships) Regulations empower the port health officer to give vaccines or other health measures, it does not provide for the concerned traveller to be informed of any associated risks to such health measures.  The Civil Aviation Regulations are silent on this.	This should be contained in new public health legislation.
	Ensure any medical examination, procedure, vaccination or other prophylaxis which involves a risk of disease transmission is only performed on, or administered to, a traveller in accordance with established national or international safety guidelines to minimize risk.	23 (5)	Same as above.	This recommendation is same as the above.
<b>Free of Sources of Infection or Contamination</b>	Take all practical measures to ensure that conveyance operators permanently keep conveyances free of sources of infection or contamination, and otherwise comply with, and inform travellers of, the health measures recommended by WHO and adopted by the State Party.	24 (1)	Specific provision in compliance with this provision of the IHR is seen in Regulation 14, Quarantine (Ships) Regulations, where masters of ship are obligated to possess a De-ratting or a De-ratting Exemption Certificate, the precursor of the Shipping Sanitation Certification. It does not make further provisions for the treatment of ships aside this.	This should be contained in new public health legislation.

<p><b>Public Health Measures Applicable to Ships and Aircraft</b></p>	<p>Unless authorized by international agreements or additional health measures, prohibit health measures that apply such measures to a ship not coming from an affected area that passes through a maritime canal or waterway in the territory of a State Party on its way to a port in another State; ships that pass through without calling at a port or on a coast; and aircraft in transit within the jurisdiction of a State Party with no embarking, disembarking, loading or discharging.</p>	<p>25</p>	<p>The Quarantine (Ships) Regulations are silent on how public health measures apply to ships in transit. Neither do they make any provisions as to whether they are to be subject to the health measures provided in the Regulations or not.</p> <p>The provisions of the Civil Aviation Regulations are silent on this.</p>	<p>This should be contained in new public health legislation.</p>
	<p>A ship or an aircraft shall not be prevented for public health reasons from calling at any point of entry, unless provided in applicable international agreements or additional health measures, or if the point of entry is not equipped for applying health measures, and the ship or aircraft is able to proceed to the nearest suitable point of entry available to it.</p>	<p>28 (1)</p>	<p>In compliance with the provisions of the IHR, regulation of the NCAA prohibits airport operators from preventing an aircraft from landing at any international airport for public health reasons (Part 18, Regulation 18.8.17.1).</p> <p>The Quarantine (Ships) Regulations are silent on this.</p>	<p>There is a need to review the Civil Aviation Regulations to contain the conditions attached to preventing an aircraft from landing for public health reasons.</p> <p>New public health legislation needs to outline this obligation.</p>
	<p>A ship or an aircraft shall not be refused <i>free pratique</i> for public health reasons unless based on scientific principles, available scientific evidence of a risk to human health, available guidance, or advice from WHO, and provided in applicable international agreements and additional health measures.</p>	<p>28 (1); 43 (2)</p>	<p>In addition to the provision in Part 18, Regulation 18.8.17.1 of the Civil Aviation Regulations, the Regulation also provides for the administration of additional health measures in compliance with the provisions of the IHR. Regulation 8.8.17. (18.8.17.3.)</p> <p>The provisions of the Quarantine (Ships) Regulations are silent on this.</p>	<p>This recommendation is the same as the above.</p>

	<p>Authorize the granting of <i>free pratique</i> by radio or other communication means to a ship or aircraft when the State believes, based on received information, that the arrival will not result in the introduction or spread of disease.</p>	28 (3)	<p>In this regard, the Quarantine (Ships) Regulations provide for the grant of <i>free pratique</i> to a ship where communications have been made via radio to the effect that the arrival of such ship will not contribute to the spread of communicable diseases (Regulation 9).</p> <p>The Civil Aviation Regulations are silent on this.</p>	<p>The Civil Aviation Regulations need to be changed to this requirement.</p>
	<p>Ensure as far as practical, that international traffic containers and loading areas are kept free from sources of infection or contamination, particularly during packing and (when the volume of container is sufficiently large) take all practicable steps to assess the sanitary condition of container loading areas and containers, including carrying out inspections, to ensure that IHR obligations are implemented.</p>	34 (1-3)	<p>The Quarantine (Ships) Regulations do not provide specifically for inspection of containers and the sanitation of container loading areas but it makes an omnibus provision for the inspection of ships and the sanitation of port areas.</p>	<p>New public health legislation should make provision for this requirement.</p>

	<p>Prohibit charges, except in prescribed circumstances, for any medical or supplementation examination, any vaccination or other prophylaxis requirement that was published fewer than 10 days before, appropriate isolation or quarantine requirements, certificates, and health measures applied to baggage accompanying the traveller.</p>	40 (1)	<p>There are no provisions for charges applicable to health measures that travellers are subject to in the Civil Aviation Regulations as there no provisions for the port health authority to carry out such measures in the Regulations.</p> <p>It is assumed that the Nigeria National Facilitation Programme (NNFP) created in the Regulations and charged with the duties to: 'establish, review and amend as necessary, the national policies regarding prevention of the spread of contagious diseases by air, for example, aircraft disinfection, public health-related quarantine programmes and screening measures to be applied in a health emergency' also has the duty to publish notice of charges, if there are any. (See Regulation IS: 18.8.14.)</p> <p>The eighth schedule to the Quarantine (Ships) Regulations provides the list of charges for the medical services provided under the regulation (for example vaccinations and issuance of certificates). Regulation 24 specifically makes the provision for charges for these services but does not provide for the 10 days' notice obligation that the IHR says must be published in such circumstance.</p>	<p>The Civil Aviation Regulations need to be reviewed to contain this requirement. While new regulations made under new public health legislation and the National Boundary Commission Act should make provision for this.</p>
	<p>Prohibit applying health measures to civilian lorry, train or coach that is not coming from an affected area which passes through a territory without embarking, disembarking, loading or discharging unless authorized by applicable international agreement or additional health measures.</p>	26	<p>Relevant public health laws are silent on this provision.</p>	<p>New public health legislation should make provisions for this.</p>



<p><b>Information-sharing on Additional Health Measures</b></p>	<p>Report to National IHR Focal Point any additional health measures implemented, including isolation of the conveyance, as necessary to prevent the spread of disease.</p>	<p>27 (1)</p>	<p>The Quarantine (Ships) Regulations do not make provision for this, though the regulations provide for the use of additional health measures in some circumstances (Regulation 20).</p> <p>The Civil Aviation Regulations, however, enable the NCAA to use additional health measures to prevent disease spread. Though no specific provision is made for the NCAA to inform the NCDC of such measures as provided in the IHR, and the next steps after such measures have been applied, the regulations provide for the administration of such measures in accordance with the provisions of the IHR. See Regulation 18.8.17 (18.8.17.3).</p>	<p>New public health legislation should make provision for the recognition of the role of the NCDC and specific provision for this.</p>
<p><b>Affected Conveyances</b></p>	<p>When additional health measures have been effectively carried out and there are no conditions on board that could constitute a public health risk, the competent authority should no longer regard a conveyance as affected.</p>	<p>27 (3)</p>	<p>The Civil Aviation Regulations do not provide for the steps to be taken after additional measures have been applied. Their provisions are silent on this. However there is an omnibus clause for such measures to be carried out in accordance with the provisions of the IHR. See Regulation 18.8.17 (18.8.17.3).</p> <p>There are no such provisions on affected ships subject to additional health measures by port health officers.</p>	<p>This should be contained in new public health legislation.</p> <p>The Civil Aviation Regulations too should be revised to make provision for this.</p>

<b>Transit and Transshipment of Goods</b>	<p>Goods, other than live animals, in transit without transshipment shall not be subject to health measures under IHR, or detained for public health purposes, unless authorized by applicable international agreements or subject to additional health measures, and provided that it achieves the same or greater level of health protection than WHO recommendations would, and is not more restrictive to international trade than other alternative measures that would achieve an appropriate level of health protection.</p>	<p>33; 43 (1)</p>	<p>Neither the Quarantine (Ships) Regulations nor the Civil Aviation Regulations make provision for the administration of health measures to goods in transit.</p>	<p>This recommendation is the same as the above.</p>
<b>Travellers Under Public Health Observation</b>	<p>Subject to additional health measures and applicable international agreements, State Parties may allow a traveller under public health observation to continue his or her international voyage if does not pose an imminent threat, but must inform the competent authority of the point of entry at destination. The traveller should report to that authority.</p>	<p>30</p>	<p>The Civil Aviation Regulations provide that such case(s) shall be reported by the pilot to the Air Traffic Services (ATS) unit which reports the case to the ATS unit of the destination country. The ATS unit also has the obligation to notify the public health authority of the destination country.</p> <p>There is no similar provision for this in provisions relating to international travel by ship.</p>	<p>This recommendation is the same as the above.</p>

<b>Health Documents</b>	State shall not require other health documents beyond those provided for under the IHR or in recommendations issued by WHO, unless the traveller is applying for temporary or permanent residence, or documents requirements concerns the public health status of goods or cargo in international trade pursuant to applicable international agreements.	35	The provisions of the Civil Aviation Regulations on documents are in compliance with those of the IHR. Regulation 18.8.20 provides for the request of certificates of vaccination and prophylaxis only as provided by the IHR.	This recommendation is the same as the above.
	The competent authorities may request that travellers complete contact information forms and questionnaires on the health of travellers to determine whether the traveller was in or near an affected area, had possible contact with infection or contamination prior to arrival, and in order to be able to contact the traveller.	35; 23 (1)	While the Quarantine (Ships) Regulations are silent on this, the Civil Aviation Regulations provide that a suspected case of communicable disease must accompany the general declarations that the pilot in command is obligated to submit to the port health authority upon arrival. This report shall include the afflicted person's name and contact information in addition to those seated close to such person. See 8.5.1.29 (b) (i) (ii) of the Regulation.	New public health legislation should address this.
	State Parties shall inform shipping operators of their agents of the maritime declaration of health requirements in place.	37 (4)	While the Quarantine (Ships) Regulation provide for Maritime Declaration of Health Certificate as provided in the IHR, it does not provide for the obligation to inform incoming ship operators of this requirement. (Regulation 12)	New public health legislation should make provision for this requirement.
	State Parties shall inform aircraft operators or their agents about the Health Part of the Aircraft Declaration requirement that is in place.	38 (3)	The Civil Aviation Regulations, Regulation 8.5.1.29 (b) (i).	The Civil Aviation Regulations must be revised to make provision for this requirement.

<p><b>Charges for Public Health Measures</b></p>	<p>Except for travellers seeking temporary or permanent residence, no charges should be made pursuant to IHR for the following measures: (a) any medical examination provided for in the IHR, or any supplementary examination which may be required by States to ascertain the health status of the traveller examined; (b) any vaccination or other prophylaxis provided to a traveller on arrival that is not a published requirement or is a requirement published less than 10 days prior to provision of the vaccination or other prophylaxis; (c) appropriate isolation or quarantine requirements of travellers; (d) any certificate issued to the traveller specifying the measures applied and the date of application, or (e) any health measures applied to baggage accompanying the traveller.</p>	<p>40 (1)</p>	<p>The provisions of the regulation only outline the charges for each health measure administered to concerned travellers. They do not provide for the conditions attached to charges in the IHR, such as the need for 10 days' notice, the obligation not to exceed the actual cost of services and other conditions in the IHR.</p> <p>The regulations have no provisions as to charges for medical examinations or other health measures which the public health authority may offer to travellers. However, this may be covered under omnibus clauses requiring the Authority to comply with 'pertinent' IHR requirements.</p>	<p>New public health legislation needs to make provision for this requirement.</p> <p>The Civil Aviation Regulations must be revised to make provision for this.</p>
	<p>Health measures other than those referred to above can be charged by States, including those primarily for the benefit of the traveller. However, those charges shall have only one tariff (published at least 10 days in advance of any levy) for such charges, and every charge shall: (a) conform to this tariff; (b) not exceed the actual cost of the service rendered, and (c) be levied without distinction as to the nationality, domicile or residence of the traveller concerned.</p>	<p>40 (2-4)</p>	<p>The Quarantine (Ships) Regulations do not provide for the publication of tariffs as provided in the IHR.</p> <p>The regulations are also silent on this as they are on charges, generally.</p>	<p>This recommendation is the same as the above.</p>

	Travellers and conveyance operators shall not be denied the ability to depart from the State's territory pending payment under that article.	40 (6)	The relevant public health laws are silent on this.	This recommendation is the same as the above.
	State Parties may charge for applying health measures to baggage, cargo, containers, conveyances, goods or postal parcels under the IHR, to have only one tariff for such charges, and every charge shall: (a) conform to this tariff (published at least 10 days in advance of any levy); (b) not exceed the actual cost of the service rendered, and (c) be levied without distinction as to the nationality, flag, registry or ownership of the baggage, cargo, containers, conveyances, goods or postal parcels concerned. In particular, there shall be no distinction made between national and foreign baggage, cargo, containers, conveyances, goods or postal parcels.	41	The provisions of the regulation only outline the charges for each health measure administered to concerned travellers. They do not provide for the conditions attached to charges in the IHR, such as the need for 10 days' notice, the obligation not to exceed the actual cost of services, and other conditions in the IHR.	This recommendation is the same as the above.

Additional Health Measures				
<b>Conditions</b>	In accordance with their national law and obligations under international law, State Parties can implement health measures in response to specific public health risks, or public health emergencies of international concern, which achieve the same or greater level of health protection than WHO recommendations or would be otherwise prohibited under IHR, provided that such measures are not more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection.	43 (1)	<p>The Quarantine (Ships) Regulations empower the port health officer to carry out additional measures but is silent about the conditions attached as provided in the IHR. For example, it does not provide for the need to report such measures to WHO.</p> <p>The Civil Aviation Regulations have an omnibus clause for additional health measures to be administered in line with the provisions of the IHR.</p>	<p>This should be contained in new public health legislation.</p> <p>The Civil Aviation Regulations too should be revised to make provision for this.</p>
<b>Rationale and Provision of Information to WHO</b>	When implementing additional health measures, State Parties shall provide to WHO the public health rationale and relevant scientific information for the implementation of measures which significantly interfere with international traffic.	43 (3)	<p>This obligation is not stated in the Quarantine (Ships) Regulations.</p> <p>There is no specific provision for this in the Civil Aviation Regulations but this comes under an omnibus clause for compliance with the IHR where additional health measures are to be administered.</p>	<p>This should be contained in new public health legislation.</p> <p>The Civil Aviation Regulations too should be reviewed to make provision for this.</p> <p>This review should require competent authorities to report to the NCDC, which in turn communicates with WHO.</p>

	When implementing additional health measures that significantly interfere with international traffic, State Parties shall inform WHO, within 48 hours, of such measures and their health rationale unless these are covered by a temporary or standing recommendation.	43 (5)	The Quarantine (Ships) Regulations are silent on this, though makes provision for additional health measures to be administered where necessary.  On the other hand, the Civil Aviation Regulations provides for the administration of additional health measures according to the dictates of the IHR.	This recommendation is the same as the above.
<b>Review</b>	State Party shall review within three months additional health measures implemented considering WHO's advice or guidance, scientific principles, and available scientific evidence of a risk to human health.	43(6)	This is same as the above analysis on the provision for administration of additional health measures.	This obligation on competent authorities should be contained in new public health legislation. The Civil Aviation Regulations also needs to be reviewed accordingly.

## 13. Public Health Measures Relating to Animals

The IHR addresses issues relating to 'one health' matters, including food safety, environment and zoonotic diseases. A One Health approach to addressing matters relating to IHR implementation involves 'including, from all relevant sectors, the national information, expertise, perspectives and experience necessary to conduct the assessments, evaluations, reporting and preparedness activities.'<sup>296</sup> This section focuses on animals in relation to the IHR and analyses current Nigerian law in this respect.

Amongst other provisions, the IHR provides some obligations on health measures to be administered when animals are transported internationally. An example of the latter obligation is found in Annex 1, which provides that States shall provide assessment of and care for affected animals by establishing arrangements with local veterinary facilities for their isolation, treatment and other support services that may be required.<sup>297</sup> There are currently two main federal statutes that make specific provisions regarding the administration of health measures on animals. The Animal Disease (Control) Act of 1988 and the Nigeria Quarantine Service (NAQS) Act, which was recently passed in 2017, provide for such public health measures where the transportation of animals through international travels are concerned.

The Animal Disease (Control) Act makes provision relating to imported animals. It provides for the subjection of animals transported into Nigeria by land, air or sea to such examination, disinfection, inoculation and quarantine as may be determined by the director.<sup>298</sup> The Act provides that on no occasion shall animals be imported into Nigeria except on the receipt of permit issued under the Act.

<sup>296</sup> Strengthening the IHR Through a One Health Approach: <https://extranet.who.int/sph/one-health-operations>

<sup>297</sup> IHR 2005, Annex 1, B, 2 (b) states: 'For responding to events that may constitute a public health emergency of international concern, the capacities: to provide assessment of and care for affected travellers or animals by establishing arrangements with local medical and veterinary facilities for their isolation, treatment and other support services that may be required.'

<sup>298</sup> Animal Diseases (Control) Act, Sections 1 (2) and (3); see also Section 23 (Interpretation) which provides: 'Director' means a veterinary officer who has overall responsibility of the Federal Livestock Department.

Further, the Act makes strict provisions on the transportation of animals from anywhere outside Nigeria. Animals transported into Nigeria are to be taken to established control posts with facilities for inspection, examination, vaccination and treatment of trade animals.<sup>299</sup> Control posts are defined as 'an established area along trade cattle routes at international and inter-State borders or within the States with facilities for inspection, examination, vaccination and treatment of trade animal.'<sup>300</sup> These are in compliance with the provision of the IHR in Annex 1 on the development of core capacities aimed at assessing affected animals at points of entry.

In compliance with the provision of the IHR on the designation of areas close to the point of entry (but other than the point of entry) where public health measures such as examination may be carried out, the Animal Disease (Control) Act provides for Control Posts and Quarantine Stations where public health measures such as disinfection, treatment and examination may be done.<sup>301</sup> These are provided in the Second and Third Schedules to the Act. These Quarantine Stations are designated areas at international points of entry such as Murtala Mohammed International Airport in Lagos, Apapa Tin Can Island Sea Ports, Warri Sea Port, and any other air or seaports as may be declared in Nigeria at any time by the Minister.<sup>302</sup> Some inspection stations and control posts have recently been created by the Minister under the Act. Some ground crossings are not yet included. This means that animals coming through land crossings such as the Seme border may not be inspected or quarantined, due to a lack of quarantine stations.

On the disposal of animal waste, Article 22 (1) of the IHR makes provision for the requirement for safe removal and disposal of animal dejecta from conveyances. While the Animal Disease (Control) Act makes provision for the disposal of carcasses of slaughtered animals or dead animals infected with disease by burning or in such manner as may be prescribed by the veterinary officer, it does not make express provision for the manner in which its waste may be disposed.<sup>303</sup>

The provisions of the NAQS Act, on the other hand, require the enforcement of legislation such as the Animal Disease (Control) Act regarding the administration of public health measures where animals infected with diseases are transported into Nigeria.<sup>304</sup> The Act does not create new obligations in the interest of public health measures; it instead empowers the Nigeria Agricultural Quarantine Service to carry out obligations created under established legislation. It is important to note that the functions of the Service overlap with the functions of the veterinary officer, the competent authority under the Animal Disease (Control) Act. This is especially important to note, since the recently passed NAQS Act does not repeal the Animal Disease (Control) Act either wholly or in part. Example of this overlap is seen in the provision of Section 8 (x), where the Act states that the Service is charged with the duty to subject all import of live animals to quarantine inspection and certification at designated quarantine stations. This duty is also exercised by the veterinary officer, an identified competent authority under the Animal Diseases (Control) Act.<sup>305</sup>

## Gaps

- The overlap in duties of the competent authorities in the NAQS and the Animal Diseases (Control) Act

299 Ibid, Section 12 (4).

300 Ibid, Section 23.

301 IHR 2005, Annex 1, B, 1.

302 Animal Disease (Control) Act, Second Schedule.

303 Animal Disease (Control) Act, Section 9 (1).

304 See for example, Section 8 (1) (d), which says, 'The Service shall enforce compliance with any legislation on the disposal of plants, plant products, animals, animal products, aquatic resources and its products, biologics, and regulated articles at the ports of entry and Agricultural Quarantine Station.'

305 See footnote 210.



- Some ground crossings are not included. This means that animals coming through some land crossings such as the Seme border may not be inspected or quarantined.
- The absence of provision for disposal of animal dejecta as provided in the IHR

### Recommendations

Regulations need to be made under the Animal Diseases (Control) Act to address the gaps. Addressing this in the new Animal Diseases (Repeal and Reenactment) Bill would be helpful. An Animal Diseases (Repeal and Reenactment) Bill 2018 addressed issues of penalties, provided for the establishment and maintenance of electronic animal identification system throughout the Federation, provided for the prevention of the introduction and spread of infectious or contagious diseases amongst animals, poultries and hatcheries in Nigeria, control of animal diseases using essential veterinary drugs, pesticide, biologics, veterinary medical devices or products of biotechnology. It did not address the gaps identified. The Bill was passed by the National Assembly in the last legislature but was not signed into law by the President. Going forward, it would be necessary to revise the provisions of the Bill to include provisions on ground crossings and address any overlap in the authority of NAQS and authorities under the bill.

### Note on the Nigeria Agricultural Quarantine Service Act 2017

The Nigeria Agricultural Quarantine Service Act established the Nigeria Agricultural Quarantine Service (also known as 'Service'<sup>306</sup>) for the purpose of 'preventing the entry, establishment and spread of exotic pests and diseases of plants, animals and aquatic resources and their products into Nigeria and for other related matters.'<sup>307</sup>

The functions of the Act are centered on the enforcement of legislation, policies or regulations on health measures relating to plants, animals and aquatic resources.<sup>308</sup> The Act empowers the Service to enforce such agricultural quarantine procedures provided under such laws.

However, it is important to note that not only is the Service empowered to carry out enforcement duties, but it also has the authority to carry out quarantine services on imported plants, animals and aquatic resources. This also includes those meant for export from Nigeria.<sup>309</sup> These functions extend to the determination of charges for agricultural quarantine procedures, establishment of laboratories, and quarantine stations, amongst others.<sup>310</sup>

These functions clearly overlap with those of the competent authority in the Animal Diseases (Control) Act. There is a need for harmonisation of the provisions of these pieces of legislation, and this can be done in the Animal Control (Repeal and Reenactment) Bill which is pending before the National Assembly.

306 Nigeria Quarantine Service Act 2017, Section 1.

307 Nigeria Agricultural Service Act 2017, Commencement Section and Section 1.

308 Nigeria Agricultural Quarantine Service Act 2017, Section 8 (d).

309 Nigeria Agricultural Quarantine Service Act 2017, Section 8 (t), (u) and (x).

310 Ibid, Section 8 (n), (o), and (aa).

Key words	International Health Regulations		National legislation	Recommendation
	Article	Obligations	Assessment	
<b>Assessment of Animals</b>	Annex 1, B, 2 (b)	<p>For responding to events that may constitute a public health emergency of international concern</p> <p>The capacities:</p> <p>(b) to provide assessment of and care for affected travellers or animals by establishing arrangements with local medical and veterinary facilities for their isolation, treatment and other support services that may be required.</p>	There is an overlap in duties of the Services established in the Nigeria Agricultural Quarantine Service Act and the veterinary officer identified in Animal Diseases (Control) Act.	Regulations need to be made under the Animal Diseases (Control) Act to address the gaps. This Regulation should also recognise the NAQS as the competent authority to carry out public health measures with respect to animal quarantine at the ports of entry.

## 14. Certificate of Vaccination in IHR-Relevant Laws

As earlier discussed, the IHR makes provisions relating to recommendations that may be made by WHO.<sup>311</sup> One of the recommendations that WHO can make to State Parties is to review proof of vaccination. WHO can also recommend requiring vaccination and other prophylaxis of passengers.<sup>312</sup> Proof of vaccination can be provided through a certificate. If State Parties require vaccination at the ports of entry, it must be with informed consent.<sup>313</sup>

State parties are permitted to require proof of vaccination as a condition for entry if a public health risk exists.<sup>314</sup>

The IHR requires that vaccines and prophylaxis for travellers administered pursuant to its provisions must conform to the provisions of Annex 6 and, when applicable, Annex 7 with regard to specific diseases. The IHR specifies that in Article 36:

311 IHR 2005, Articles 15 and 16.

312 Ibid, Article 18 (1).

313 Ibid, Article 23.

314 Ibid, Article 31.

A traveller in possession of a certificate of vaccination or other prophylaxis issued in conformity with Annex 6 and, when applicable, Annex 7, **shall not be denied entry** as a consequence of the disease to which the certificate refers, even if coming from an affected area, unless the competent authority has verifiable indications and/or evidence that the vaccination or other prophylaxis was not effective.<sup>315</sup>

The certificate of vaccination in the format prescribed by the IHR is thus an essential document for which a State Party's legislation must make provision, so that travellers from a country, even one where an identified public health risk exists, can take advantage of it.

Under Nigerian law, both the Civil Aviation Regulations and the Quarantine (Ships) Regulations make provisions for certificates of vaccination which may be presented by travellers to gain entry into the country. However, the certificates are different in form and content. The Civil Aviation Regulations adopt the provisions of the IHR in its provisions on the model of a certificate of vaccination. It states that the 'Authority shall accept the International Certificate of Vaccination or Prophylaxis prescribed by the World Health Organization in the IHR (2005)' where such is required.<sup>316</sup> Adopting other related provisions in Article 36 (cited above) and Annex 6 of the IHR,<sup>317</sup> they state:

The Authority shall take all possible measures to have vaccinators use the Model International Certificate of Vaccination or Prophylaxis, in accordance with Article 36 and Annex 6 of the International Health Regulations (2005), in order to assure uniform acceptance.<sup>318</sup>

The Authority shall make arrangements to enable all aircraft operators and agencies concerned to make available to passengers, sufficiently in advance of departure, information concerning the vaccination requirements of the countries of destination, as well as the Model International Certificate of Vaccination or Prophylaxis conforming to Article 36 and Annex 6 of the IHR (2005).<sup>319</sup>

On the other hand, while the Quarantine (Ships) Regulations require persons arriving by ship to Nigeria to provide a valid international certificate of vaccination, they limit this provision to only vaccination against smallpox.<sup>320</sup> Smallpox vaccinations are no longer given, and international certificates of vaccination are not provided. Though it provides a model for the certificate of vaccination against cholera along with a model for vaccination against yellow fever, the Regulations do not mandate the use of these models, nor do they provide an omnibus provision regarding vaccination against other kinds of diseases and presentation of certificates for these diseases at the point of entry.<sup>321</sup> The model certificate provided in the Quarantine (Ships) Regulations does not comply with the IHR model in certain respects: It does not require information on whether vaccination or prophylaxis is necessary, nationality, and the option to fill complete the form in English, French or any other language for travellers' ease and convenience as provided in the IHR. Also, the Regulations do not include IHR requirements in Annex 6 such

315 Ibid, Article 36.

316 Nigeria Civil Aviation Authority Regulations 2015, Regulation 18.8.20 (18.8.22).

317 Ibid, Regulations 18.8.22 (18.8.22.2).

318 Civil Aviation Authority, Regulation 18.8.22.2.

319 Civil Aviation Authority, Regulation 18.8.22.3.

320 Quarantine (Ships) Regulation, Regulation 18 (1).

321 Ibid, Sixth Schedule.

as the language the certificate may be completed in, the individuality of each certificate, and provisions on certificates issued to children.<sup>322</sup>

### **Gaps**

The model of a certificate of vaccination provided in the Quarantine (Ships) Regulations does not provide for the following features and provisions seen in the IHR:

- It does not require information on whether vaccination or prophylaxis is necessary,
- does not give the option to complete the form in English, French or any other language for travellers' ease and convenience as provided in the IHR, and
- the individuality of each certificate and provisions on certificates issued to children.

### **Recommendations**

It is recommended that the new public health legislation be revised to adopt the model provided in the IHR alongside the provisions in Annex 6.

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322 IHR 2005, Annexes 5-8.

Key words	International Health Regulations		National legislation	Recommendation
	Article	Obligations	Assessment	
<b>Proof of Vaccination</b>	Article 36 (1); Annex 6, 3-8	<p>Vaccines and prophylaxis for travellers administered pursuant to these Regulations, or to recommendations and certificates relating thereto, shall conform to the provisions of Annex 6 and, when applicable, Annex 7 with regard to specific diseases.</p> <p>Certificates under this Annex are valid only if the vaccine or prophylaxis used has been approved by WHO.</p> <p>Certificates must be signed in the hand of the clinician, who shall be a medical practitioner or other authorized health worker, supervising the administration of the vaccine or prophylaxis. The certificate must also bear the official stamp of the administering centre; however, this shall not be an accepted substitute for the signature.</p> <p>Certificates shall be fully completed in English or in French. They may also be completed in another language, in addition to either English or French.</p> <p>Any amendment of this certificate, or erasure, or failure to complete any part of it, may render it invalid.</p> <p>Certificates are individual and shall under no circumstances be used collectively. Separate certificates shall be issued for children.</p> <p>A parent or guardian shall sign the certificate when the child is unable to write. The signature of an illiterate shall be indicated in the usual manner by the person's mark and the indication by another that this is the mark of the person concerned.</p>	<p>The Civil Aviation Regulations adopt the provisions of the IHR in its criteria for valid certificates of vaccination or prophylaxis.</p> <p>The Quarantine (Ships) Regulations provide to an extent the requirements in the IHR. They however do not make provisions for certificates to be issued to children, or for the language travellers are expected to complete relevant forms in.</p>	<p>New regulations made under the Ports Authority Act, or new provisions, should be made in new public health legislation as recommended earlier in this Report, and needs to adopt the model provided in the IHR alongside the provisions in Annex 6.</p>

## 15. Conclusion

Nigeria has made some progress in its implementation of the IHR through law since 2017, for instance, in making NCDC foundations stronger through the enactment of the NCDC Act in 2018. The JEE underscored the need to strengthen the legal framework of IHR implementation.

The NAPHS also notes the high priority need to conduct a comprehensive assessment of existing legislative frameworks to identify gaps that impede the country's ability to comply with IHR requirements. This Report has therefore aimed to provide a comprehensive analysis of federal power to enact law and examined current law and pending bills.

The extensive analysis undertaken here reveals that significant gaps remain. Many of these are a result of outdated laws which do not comply with IHR requirements. Revisions, amendments and repeal of some legislation, development of regulations under powers conferred by extant legislation, and enactment of new laws, are recommended on various issues.

In particular, new public health legislation remains necessary to tackle previously unaddressed public health issues and IHR implementation. It also presents an opportunity to address domestically relevant issues outlined in the IHR, adopt key IHR-compliant definitions, foster the recognition of the NCDC's central role and relationship with the States, and include human rights considerations. It may be recalled that one of the priority actions under the NAPHS was the:

Completion of pending legislative actions (NCDC Bill 2017; Public Health Bill 2013) to give key public health institutions (e.g Nigeria Centers for Disease Control) the legal mandate needed to accomplish national goals.<sup>323</sup>

The NCDC Act has been enacted. The Public Health Bill 2013 has now been overtaken by the passage of time and critical events such as the enactment of the NCDC Act. New public health legislation should be considered to take into account the issues mentioned above.

In this Report, suggestions have been made about potential routes through which the IHR can be fully integrated domestically in Nigeria—through enacting new public health legislation and through revision/replacement of other extant legislation and regulations, including the Quarantine Act and Quarantine (Ships) Regulations, and the Nigerian Civil Aviation Regulations, amongst others. Revision of key legislation to recognize the role of the NCDC is also crucial.

More immediate recommendations include developing regulations under the NCDC Act to address the gaps identified in this Report and developing standard operating procedures to meet several IHR requirements.

In the table below, this Report summarizes the considerable analysis in the foregoing pages.

Key Assessments	National Legislation	Gaps
<b>Definitions</b>	Quarantine Act, 1926  Quarantine (Ships) Regulations  Nigeria Civil Aviation Authority Regulations 2015.	The definitions of key terms in Nigerian legislation indicate several gaps noted in the Report.
<b>IHR National Focal Point</b>	NCDC Act	No communication link between the NCDC and other relevant stakeholders in key legislation.
<b>Implementing IHR in a Collaborative Manner and with Full Respect for Human Rights</b>	NITDA Data Protection Regulations  Quarantine Act  National Health Act  Nigeria Civil Aviation Authority Regulations	Quarantine Act NITDA Data Protection Regulations and other relevant laws are weak on human rights provisions.
<b>Detection, Assessment and Notification of Events</b>	NCDC Act	No provision for communication between States and the local government and the NCDC.  The NCDC Act does not specifically address details relating to timelines, information sharing, verification, requesting assistance from WHO etc.

<b>Public Health Capacities at Points of Entry</b>	<p>The Nigeria Ports Authority Act</p> <p>The Quarantine (Ships) Regulations</p> <p>The National Health Act</p> <p>Nigeria Civil Aviation Authority Regulations</p> <p>Merchant Shipping Act 2007</p> <p>Civil Aviation Act 2006</p>	<p>The current legislation does not designate ports as points of entry, nor are international border-crossing points recognized. The designation process should be articulated in law to provide clarity.</p> <p>Current legislation does not make provision for core capacities relating to points of entry, including the requirements on port health.</p> <p>There is currently no legislation that establishes port health authority and its functions in a comprehensive manner and in line with the IHR.</p> <p>Current legislation is silent on the competent authority responsible for the implementation and application of health measures at various POEs.</p> <p>There is currently no legislation designating competent authorities for ground crossings.</p> <p>The power to monitor posts and postal parcels is limited only to situations in which an infection of cholera is suspected.</p> <p>No requirement for competent authorities to advise conveyance operators of intent to apply control measures.</p> <p>The Maritime Declaration of Health in the Quarantine Act does not conform with Annex 8 of IHR.</p> <p>Current legislation is silent on the roles and responsibilities of competent authority for the implementation and application of health measures at various POEs.</p>
<b>Responding to Public Health Risks and Emergencies</b>	<p>Quarantine (Ships) Regulations</p> <p>Nigeria Civil Aviation Authority Regulations</p>	<p>The provisions of the Quarantine (Ships) Regulations are limited to only a few diseases specified therein.</p> <p>The sanctions regime made under relevant regulations is inadequate.</p>

## Recommendations

A summary of the recommendations is provided below:

Key Assessments	Recommendations
<b>Adopting Definitions Consistent with IHR</b>	<p>The gaps in the definitions<sup>324</sup> require a revision of current legislation. It is recommended that new public health legislation should capture key IHR compliant definitions.</p> <p>Legislative drafters should also ensure that the newly adopted definitions will not conflict with existing laws</p>

<sup>324</sup> Such gaps include the absence of IHR compliant definitions for terms such as public health event, derating, health measure, infection, inspection, isolation, point of entry, public health emergency of international concern, public health risk, quarantine, reservoir, suspect, traveler, affected area or person, etc.

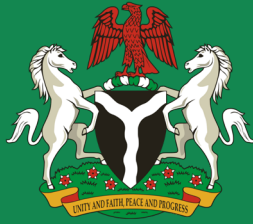


<p><b>Implementing IHR in a Collaborative Manner and in Full Respect for Human Rights</b></p>	<p>New public health legislation should expressly provide for human rights provisions in the implementation of health measures under the Act and other relevant legislation. The revisions should specifically address transparency, non-discrimination and data protection as provided in IHR.</p> <p>It is also important that the definition of “data” should be couched in compliance with the definition found in the IHR.</p> <p>The existing provision on handling of specimens in new public health legislation should cover provisions of the IHR regarding the transport, entry, exit, processing and disposal of diagnostic materials and others as provided in IHR.</p> <p>New public health legislation should also include provisions on collaborations with other state parties.</p> <p>In addition, the NCDC Act should be revised to provide for collaborations in terms of offering expertise to IHR State Parties in the response to disease outbreaks.</p> <p>The revision of the NCDC Act should include the addition of this provision as a function of the Centre. The functions of the NCDC should include serving a link of communication not only with the WHO but also with IHR State Parties as provided in IHR.</p>
<p><b>Establishing a National IHR Focal Point</b></p>	<p>Although the NCDC has been designated as the National IHR Focal Point by the NCDC Act, other relevant legislation do not make express provision for this designation given the recent passage of the NCDC Act in December 2017. These should now be revised to recognise the NCDC as the NFP.</p> <p>A revision of the NCDC Act should address the ambiguity in the area of functions of the NCDC as the NFP, specific provisions for its functions (including the need for communication with the WHO) in line with the requirements of IHR should be made.</p> <p>New public health legislation should provide for the legal obligation for competent authorities in the States to report to the NCDC, public health concerns as provided in IHR.</p>
<p><b>Ensuring the Detection, Assessment and Notification of Events</b></p>	<p>It is important to extend the obligation regarding surveillance in the new public health legislation should cover obligation to make reports of surveillance and other essential information to the NCDC, the NFP.</p> <p>This provision should be contained in State public health laws which will be considered in another report.</p> <p>State public health laws should be revised accordingly.</p> <p>The revision of the NCDC Act to make specific provision for the communication with the WHO should extend to this obligation.</p>

<p><b>Reinforcing Public Health Capacities at Points of Entry</b></p>	<p>New public health legislation should be revised to provide for an obligation to ensure the core capacities in the IHR are developed at the areas declared as ports under the Act.</p> <p>For the designation of airports on the other hand, this designation should be done by the relevant authority in a reviewed Nigeria Civil Aviation Authority Regulations. This should be coupled with the obligation to ensure that core capacities already provided in the Regulations in addition to those under IHR are developed and meet up with WHO's standards at all times.</p> <p>New public health legislation should be enacted to clearly designate ground crossings where core capacities under the IHR will be developed with the collaboration of the NCDC.</p> <p>The revision of the Civil Aviation Regulations to provide for and acknowledge the authority of Port Health Authority to manage public health risks at the airports. For example, the designation of areas for medical examination of travelers suspected of being infected with a communicable disease.</p> <p>In general, these regulations need to be reviewed to ensure that the role of key competent authority in practice is recognized, that is, Port Health Authority.</p> <p>The above recommendation is also applicable to the NFP – NCDC, including the provision of appropriate information.</p> <p>Regulations should be made under new public health legislation to make specific provisions for such core capacities as provided in the IHR.</p> <p>New Regulations made under new public health legislation to address the gaps identified earlier in addition to the clear definition of competent authorities to carry out public health measures at ground crossings and seaports, respectively. These Regulations should also cover gaps identified in this regard.</p>
<p><b>Responding to Public Health Risks and Emergencies</b></p>	<p>Public health laws of each state should ordinarily address the designation of competent authorities within their jurisdiction. The analysis of state public health laws will be done in another Report and recommendations provided where necessary.</p> <p>New public health legislation should be reviewed to make provision for the implementation of WHO induced measures by the competent authorities in the states in collaboration with the NCDC.</p> <p>New public health legislation should be reviewed to set the procedure for the implementation of health measures with emphasis on competent authorities to uphold human rights provisions such as provided in the IHR.</p> <p>New public health legislation should also cover procedures for the implementation of health measures in line with the requirements on informed consent, and associate risks to health measures.</p>
<p><b>Certificate of Vaccination</b></p>	<p>It is recommended that the new public health legislation should adopt the model provided in the IHR alongside the provisions in Annex 6.</p>
<p><b>One Health Issues</b></p>	<p>It is necessary to revise the Animal Disease Control (Amendment) Bill to include provisions on ground crossings and address any overlap in the authority of Nigeria Agricultural Quarantine Service (NAQS) and authorities under the Bill.</p>

### Short Summary of Legal Measures to be Taken for IHR Implementation

Legislation	Measures
<b>NCDC Act</b>	<p>Develop Regulations under the Act to address the ambiguity in the functions of the NCDC as the National IHR Focal Point and provide for its specific functions (including the communication with the WHO) in line with IHR requirements.</p> <p>Develop SOPs to facilitate the fulfillment of National IHR NFP functions by NCDC (e.g. communication with WHO, reporting and notification of public health events, etc.).</p>
<b>Quarantine Act Quarantine (Ships) Regulations</b>	<p>Repeal. Relevant provisions contained in the Quarantine Act and the Quarantine (Ships) Regulations should be included in the new public health legislation.</p>
<b>New Public Health Legislation</b>	<p>Domesticate IHR requirements still to be translated into Nigeria legislation as per report findings.</p> <p>Include provisions formerly covered by the Quarantine Act and the Quarantine (Shipping) Regulations</p> <p>Establish and articulate functions of the Port Health Authority</p> <p>Revise current provisions in line with IHR and extant law</p> <p>Include provisions on human rights, treatment of travelers, data protection, as well as limitations foreseen by IHR for the protection of international traffic and trade.</p> <p>Include key definitions</p>
<b>Nigerians Civil Aviation Regulations</b>	<p>Amend to address identified gaps, including for the response to public health risk at airports.</p>
<b>Animal Diseases Control (Amendment) Bill</b>	<p>Revise to address gaps in IHR implementation</p> <p>Revise to address the overlap in the authority of NAQS and authorities of veterinary officers.</p>
<b>National Boundary Commission Act</b>	<p>Amend to address gaps in designating ground crossings.</p>



## **ABOUT NCDC**

The Nigeria Centre for Disease Control (NCDC) is the government agency with the mandate to lead the prevention, detection, and control of communicable diseases. Its functions are to prevent, detect, investigate and control communicable diseases of national and international public health importance.

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