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# JUDICIAL INTERPRETATION OF THE RIGHT TO HEALTH AND ACCESS TO MEDICINES: A PATHWAY TO PROTECTING THE RIGHT TO LIFE IN NIGERIA

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## Abstract

*This paper examined the role of judicial interpretation of the right to health and access to medicines in Nigeria as a vital mechanism for protecting and promoting the right to life. Interestingly, while the Nigerian Constitution does not explicitly recognized the right to health as justiciable, the courts have increasingly invoked provisions like the provisions of section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to spread the tentacles of the scope of health related rights. This study adopted the doctrinal cum analytical methodology in exhuming some relevant judicial pronouncements to demonstrate the manner Nigerian Courts have interpreted socio-economic rights within the broader human rights framework, stressing the relationship between access to essential medicines and the enjoyment of right to life. The paper argued that the role of the judiciary cannot be underestimated in advancing the course of health justice despite seemingly weak political will, comatose healthcare system and inexplicable migration of the healthcare providers in Nigeria. The paper found out that a robust and rights-based judicial approach can be the magic wand that will catalyze the needed legal reform and health policy accountability that will metamorphose into the promotion and sustainability of the right to life through improved health services. It is hereby recommended that the judiciary must not merely serve as an arbiter of disputes but must consistently serve as a constitutional guardian of the fundamental rights of people and the protector and promoter of human right to life in Nigeria.*

Key Words: *Judicial Interpretation, Right to Health, Access to Medicines, Right to Life and Fundamental Human Rights.*

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## INTRODUCTION

The right to life, universally acclaimed as the most fundamental of all human rights, is the bedrock upon which all other rights are built. In Nigeria, this right is constitutionally guaranteed and protected as a justiciable entitlement under the Constitution. However, the practical enjoyment of the right to life is linked to the right to health and access to essential medicines, which are ironically categorized under the non-justiciable Chapter II of the same Constitution as "Fundamental Objectives and Directive Principles of State Policy." This constitutional paradox creates a significant challenge, particularly within a nation grappling with a comatose healthcare system, inadequate funding, and a persistent exodus of medical professionals. The result is a landscape where the promise of life is often undermined by the reality of inaccessible and inadequate healthcare. This paper critically examines the emerging role of the Nigerian judiciary in bridging this constitutional gap. It argues that through purposive and activist interpretation, the courts are progressively weaving the non-enforceable right to health into the fabric of the enforceable right to life. By analyzing key judicial pronouncements, this paper demonstrates how judges are linking environmental protection, access to medical care, and patient autonomy directly to the preservation of life and human dignity, thereby creating a vital pathway for health justice

## 1.1 THEORETICAL FRAMEWORK AND CONCEPTUALIZATION

Going by the topic under discussion, certain basic theories could readily come to mind, but the key ones having direct bearing or relevance to the topic, shall guide the searchlight of this research. These include, but are not limited to, the ones anchored in constitutionalism, justiciability of socio-economic rights, and transformative constitutionalism. These theories provide the wherewithal and the intellectual basis for the understanding of the manner the courts play a proactive role in interpreting the right to health as integral to the right to life in Nigeria.

The Constitutionalism theory emphasizes the supremacy of the Constitution and the need for all branches of government, including the judiciary, to act within the limits of the constitutional mandates. The constitution is the supreme law in the state; it is the top of the pyramid, and it is the source of all legal documents and legal regulations.[3] It is pertinent to note that the Nigerian Constitution categorizes the Socio-economic rights as non-justiciable,[4] while the same Constitution, in another breath, guarantees the right to life of all citizens as a fundamental right.[5] This study situates its analysis within the broader framework of constitutionalism by arguing that the judiciary has both the authority and obligation to give constitutional guarantees through interpretative reasoning that aligns with justice, equity, and humanity.

The Justiciability theory, on the other hand, stresses the point that ordinarily the socio-economic rights, which include the right to health, have been viewed as non-justiciable rights, based on their constitutional description as directive Principles of state policies. This means that they remained aspirations by the government and their full observance depends on the wherewithal of the government. However, the contemporary human rights advocates and practitioners have continuously advocated for a rethink of the justiciability question. Here it is strongly advocated that rights should be justiciable and enforceable at the slightest encounter with any civil and political rights, especially the right to life. The court in Nigeria, through judicial activism, has gained ground in the application of purposive interpretation of the constitution to give health effect to health-related claims despite the glaring constitutional limitations.

On the theory of Transformative Constitutionalism, it is argued that constitutional interpretation of rights should serve as a tool for societal transformation, especially in the context of growing inequality, poverty, and systemic injustice. Whenever the courts interprete legal and equitable justice, it should be done in a manner that will promote the societal good and Nigeria, unlike South Africa, is lagging and must stand to

[3] Dragne, L., Supremacy of the Constitution, AGORA International Journal of Judicial Science, Available >www.judicialjournal.univagora.ro> No. 4 (2013), pp. 38. Accessed on the 25th June 2025.
[4] Chapter 2, Constitution of the Federal Republic of Nigeria (1999) as amended.
[5] Section 33, Constitution of the Federal Republic of Nigeria (1999) as amended.

appreciate and act as agent of transformation whenever they interpret the right to health and access to medicines as essential to the constitutional promise of right to life.

The Human Rights-based approach theory, argues that human rights issues are always interconnected, interdependent and indivisible. It is to the effect that access to medicines and access to healthcare, are not a matter of charity or benevolence but an entitlement for every citizen born a human being. The Nigerian judiciary must be seen interpreting the constitution and any other relevant law as meeting the international legal framework, like the International Convention on Economic, Social and Cultural Rights. This is possible under the constitutional mandate that gives the judiciary the power to interpret the constitution and any relevant law in force in Nigeria.

## 1.2 ASSESSMENT OF THE PUBLIC HEALTH STATUS OF NIGERIA

Considering the dynamism of national demography and population, Nigeria is currently the most populous nation in Africa.[6] There is therefore a need for the country to provide for its teeming population with health coverage that will be suitable and adequate. In a growing population such as Nigeria's, there will certainly be a high level of poverty; as such, the people groan under all forms of ailments that range from life-threatening to curable diseases. So, primary health care becomes the most desirable to prevent a whole lot of diseases. Primary health care delivery, describes the delivery of preventive services such as maternal and child health care, immunization, and the control of local endemic diseases, including vaccine-preventable diseases such as malaria, tuberculosis, polio, as well as prevention of HIV/AIDS infection.[7] Because of the importance attached to healthcare services in Nigeria, many legislations, including the National Health Insurance Scheme, were put in place. The delivery of effective service by the institutional

[6] Countries in Africa 23, World Population Review. Available at <www.worlpopulationreview.com>. Accessed on 12th November, 2024.

[7] V.B, Eno, Governance Constrain and Health Care Delivery in Nigeria: The Case of Primary Health Care Services in Akwa Ibom State. In P.A. Audu, *Access to Essential Medicines in Developing Countries and PPPs: The Case of Nigeria,* (Lambert Academic Publishing, 2018) P. 98.

framework becomes a challenge. There is usually no transparency in the administration and provision of health care services, which has complicated matters for the health sector. Corruption and proliferation of private health practice, which often involve the activities of non-licensed or quack health practitioners, is the bane of the sector. Thus, instead of improving the space to enjoy the right to life, so many preventable deaths occur as a result of gross negligence.

The state of the public hospitals is an eyesore. Being the most critical part of the health sector, it is expected that Nigerian hospitals should be a safe place for patients to access drugs and get cured of their various ailments. The reverse is the case here in Nigeria. Adenuga and Ibiyemi, opined that:

> The goal of every health institution is to provide patient care and to produce medical and health manpower. In furtherance of this goal, staff with expertise of the highest skill are motivated in an environment that is clean, conducive and patient-friendly. Hospital buildings have become a place where care and cure should be available to the public, but due to lack of maintenance public hospital buildings have become a place where people working in the building and patients have allergic-like reactions to unspecified stimuli: reactions like dizziness, nausea, irritation and sensitivity to bad odor from human waste, poor toilets facilities, and insufficient cleaning methods.[8]

Even though the above analyses were of hospitals in southeastern Nigeria, the situation might be worse in those of the Northern cities, towns and villages and in the other parts of the Country. So, the desire of all Nigerians to have access to health care facilities in the country that are cost-effective with specialist services that are safe and responsive to individual needs for the protection of the constitutionally guaranteed right to life is a mirage. And to worsen the already bad situation, the medical service providers are no longer interested in staying back in the country despite the huge resources expended on them for training in Nigeria. This movement of health personnel is in search of a better quality of standard of living

[8] O. Adenuga and A. Ibiyemi, An Assessment of the State of Maintenance of Public Hospital Buildings in Southwest Nigeria, doi: 10.5130/ajceb.v9i2.3021(April 2009). <https://www.researchgate.net/publication/262676983>, Accessed on the 20th November, 2024.

and higher salaries, access to advanced technology and more stable political conditions in different climes.[9] This has affected the quality of health provision in the country and rendered the state of public health pathetic. What is more disturbing is the fact that the Nigerian budget allocation for the health sector has been jacked-up "from N725.6 Billion in 2020 to N835 Billion in the fiscal year 2022." [10] by this budget it has shown that considering the 'estimated 211 million populations in Nigeria,' "the 838 billion total budgetary allocations to the health sector in 2022 shows that an estimated N3,967.81 will be expended per population in a year, N330 in a month, and N11 in a day."[11] According to Pam, in further describing the health status of Nigeria,

> Slightly less than one third(32%) of Nigerians have access to improved sanitation facilities; in addition, the country, is ranked second in the prevalence of AIDS (3.6%), rating it second in the entire world for this category and for fatalities attributable to the disease, currently estimated at 220,000 a year. Further, Nigeria is rated very high risk for dominant virulent ailments from major infectious diseases, ranging from foodborne, waterborne diseases; vector-borne diseases; respiratory disease, and it is among the highest endemic areas for Lassa fever; in addition, Nigeria is rated a very high risk for water-related diseases. Finally, more than one in every four Nigerian children aged 5 years and under are underweight, making this country the 24th globally in this category.[12]

The situation is so bad that even with the continuous increase in allocation by the government to improve the health delivery in the country, the worst results are being recorded daily. This might not be far from the barrage of misappropriation and mismanagement of public funds associated with government agencies

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[9] Y.A. Misau and N. Al-sadat "Brain Drain and Healthcare Delivery in Developing Countries" *Journal of Public Health in Africa* (2010), National Library of Medicine. Available at <www.ncbi.nlm.nlm.nih.gov/pmc/>. Accessed on the 20th November, 2024.

[10] Post-Pandemic Health Financing by State Governments in Nigeria 2020 to 2022. Available at <www.cdn.one.prg>. Accessed on the 20th November, 2024.

[11] DPRC 002, Abuja: Federal Government of Nigeria 2022 Approved Health Budget Analysis. <www.dprcngr.org>. Accessed on 20th November, 2024.

[12] A.A. Pam 'Access to Essential Medicines in Developing Countries and PPPs: The Case of Nigeria' (Lambert Academic Publishing 2008)P.99.

in the country. What seems to be of significant complement to the government efforts is the partnership with private sectors and the flow of foreign aids to health sector via the international non-governmental organizations, for example the DrugAids Africa,[13] AIDS Prevention Initiatives, MOCSOS: Mabel Oboh Center for Save Our Stars, Health Strategy and Delivery Foundation, TY Danjuma Foundation, and the World Health Organization.[14]

### 1.3 THE NATIONAL HEALTH POLICY IN PROMOTING THE RIGHT TO LIFE AND ACCESS TO MEDICINE

The Healthcare sector in Nigeria has had a long history of sequential progression of improvement in terms of driving policies. From time to time, the health policies change and the set programs also change to accommodate the new challenges in the healthcare sector. Thus, the National Health Promotion Policy was established by the Ministry of Health to bring about improvement in health delivery in the country.[15] It was established in 2016 and later reviewed in 2019 to strengthen the country's national and subnational policy and governance for strategic, equitable and sustainable health programming.[16] The Policy is established in furtherance of the National Health Act 2016. According to Olomojobi:

> The policy articulates the attendant factors towards a healthy country, including the environment, availability of water and good (health) education, reducing poverty levels, creating employment and improving the economic performance of Nigeria. It also analyses the progress in the overall health status of Nigerians, considering figures from potent health indicators such as infant, under-five mortality and maternal mortality rates. Health financing is also considered, with important areas of generating public and private health funding, combining and acquiring, innovations, vaccines and new health technologies are considered with a further analysis of health information management and the services

[13] DrugAid Africa. <www.drugaidafrica.org>. Accessed on 20th November 2024.
[14] Top 5 NGOs Making Real Impact in Nigeria's Health Sector. Available at <www.vanguardngr.com>. Accessed on the 20th November, 2024.
[15] In 2006, the Health Promotion Division of the Family Health Department, Federal Ministry of Health (FMoH), developed the National Health Promotion Policy (NHPP). The process was supported by the World Health Organization in collaboration with other development partners. See National Health Promotion Policy at <www.health.gov.ng>NHPP_2019>. Accessed on the 21st November 2023.
[16] Nigeria – Health Policy Project, available at <www.healthpolicyproject.com>. Accessed on the 21st November, 2023.

> available, including the information software and the **Integrated Disease Surveillance and Response** (IDSR). Research and development are also noted, with the National Health Research Policy being at the fore in regulating health research and training.[17]

This indicates that the policy is all encompassing health, and it is aimed at ensuring that individuals have the right to access medications that will improve their health and that will, in turn, protect their right to life, which the constitution of the land guarantees. Thus, one of the guiding principles of the policy is equality, equity and social inclusion, and it provides that:

> People have a right to equal opportunities and to good health and well-being. Interventions must take cognizance of generic, cross-cutting as well as the special needs of the under-reached and vulnerable members of the population; regardless of socio-economic status, gender, religion, ethnicity, literacy, race and location. Consequently, approaches determined by issues, population and settings must be carefully thought through, balanced and appropriately applied.[18]

A cursory look at the provision above, reveals that the policy acknowledges the rights of individuals to equal opportunities in Nigeria to access health facilities and to any intervention of health intervention without any discrimination. This is further giving effect and aligning with the status of the right of individuals under the Constitution – the right to life, which is the target and ultimate goal. The Policy further sets out its objectives to include measures to be taken by the government to:

> a. Foster health promotion interventions targeted at addressing social determinants of health, reducing inequities, and tackling priority burden of diseases in Nigeria;
> b. Facilitate health promotion interventions in support of government's efforts directed at ensuring and sustaining healthy behavior, healthy lifestyle, and enabling environment including healthy public policy;
> c. Enhance human resource and capacity strengthening for the delivery of health promotion intervention; and

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[17] Y. Olomojobi *Medical and Health Law: The Right to Health* (Princeton & Associates 2019), P. 68.
[18] Paragraph 2.2.2, National Health Promotion Policy, Federal Ministry of Health, Nigeria, (2019) as Revised.

d. Strengthen systems to monitor, evaluate and manage evidence related to health promotion interventions.[19]

The beautiful thing about the policy is that it has streamlined all areas and levels of focus with health promotion forums. It has made provision at the national level, state and local government and the ward levels to step down to the villages.[20] The bane of this policy is the high level of corruption even in the health sector, the government's lack of commitment to implementation, insincerity in accountability to the donor agencies and partners.

## 1.4 THE ESSENTIALS OF THE NATIONAL PROGRAM OF IMMUNIZATION ON THE PROTECTION OF THE RIGHT TO LIFE IN NIGERIA

The programme called The National Immunization Programme, is a part of the organizational component of the Ministry of Health, charged with preventing diseases, disability and death from vaccine-preventable diseases in children and adults. It operates within the framework of overall health policy.[21] The programme started in 1974 to provide vaccines to all the children in the world. It initially addressed six killer diseases in children. These six diseases, including tuberculosis, diphtheria, pertussis, tetanus, poliomyelitis and measles, were responsible for a high proportion of childhood mortality[22] in 1974 it The Expanded Program on Immunization (EPI), but now it is termed Essential Program on Immunization (EPI) by WHO standard. The program has been a highly successful and cost-effective public health intervention. Hundreds of millions of children have been protected from vaccine-preventable diseases, which include the near eradication of poliomyelitis[23] around the globe and in Nigeria. Immunization is currently responsible for the prevention of 3.5-5 million deaths every year from diseases. It has become a key component of primary

[19] Paragraph 3.2.1, National Health Promotion Policy, Federal Ministry of Health, Nigeria, (2019) as Revised.
[20] See Para. 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 5.1.2, National Health Promotion Policy, Federal Ministry of Health, Nigeria, (2019) as Revised.
[21] P. Ntasin, *National Policy on Immunization in Nigeria: A Short Overview* <www.grin.com/document/975385> Accessed in 27, November, 2024.
[22] Immunization: Pediatrics Association of Nigeria, <www.pan-ng.org>. Accessed on 27th November, 2024.
[23] National Immunization Program; UNICEF, available at <www.unicef.org>. Access on the 27th November, 2024.

health care and an indispensable human right, and one of the best health investments one can ever venture into.[24]

Nigeria has not recorded a long stable level of success in this programme due to numerous obvious factors of corruption, insufficient manpower, illiteracy, cultural beliefs and poverty. According to Phori and Tula, the programme:

> Immaterially recorded success but intermittent success. The optimum level was recorded by the early 1990s with the country achieving universal childhood immunization coverage of 81.5%. But since that period of success, Nigeria has witnessed gradual but consistent reduction in immunization coverage. By 1996, the national data showed less than 30% coverage for all antigens, and this decreased to 12.9% in 2003. This figure which is consistent with the 2023 national immunization coverage survey figure is among the lowest in the world and explains the poor health status of children in this country. It is the worst in the West African Region, only better than Sierra Leone.[25]

The report is not palatable to a nation with a high level of Natural resources and population strength. Access to medicine has been granted such an opportunity under the National Health Insurance. The nation must leverage that opportunity in order to win the battle for the right to access to health, which is a fundamental right for the citizens of this country.

## 1.5 LEGAL FRAMEWORKS ON THE RIGHT TO HEALTH

Right to health has been a subject of transformative constitutionalism across nations that are on the verge of rising from the least developed to a sophisticated nation. This is based on the realization of the fact that the health of every citizen in a given nation is a demonstration of the strength and wealth of that nation. No nation toys with the health of its citizens due to its importance. This has made the matters concerning

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[24] Vaccines and Immunization – World Health Organization, available at <www.who.intl/:/> Accessed on 7th November, 2024.

[25] F. A. Ophori and M. Y, Tula et al, 'Current Trends of Immunization in Nigeria Prospect and Challenges' *Tropical Medicine and Health,* (2014) (42 )(2): 67 – 75. doi:10. 21 49 htmh.2023-13. Available at <https://www.ndc.dlm.nih.gov/pme.article/>. Accessed on 27th November, 2024.

the right to health both a subject of national and international legal discourse. The international legal framework on the right to health encompasses the Universal Declaration on Human Rights, the International Convention on Economic, Social and Cultural Rights, and the African Charter on Human and Peoples' Rights. Other binding international treaties include: the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities.

### 1.5.1 The International Legal Frameworks

Under the international instruments providing for the right to health is the International Convention on Economic Social and Cultural Rights,[26] which Nigeria is a signatory to,[27] seems to expand the tentacles of rights which includes the right to health,[28] provides to the effect that: "The State parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[29] This has clearly shown that the right to health is recognized even though its justiciability in Nigeria is not guaranteed,[30] went further to establish certain steps that a country like Nigeria must take to ensure that its citizens attain the highest standard of health, to include: the provision for the reduction of the stillbirth-rate and of infant mortality and for the development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and the creations of conditions which would assure to all medical service and medical attention in terms of sickness.[31]

In a complementary posture, the Universal Declaration on Human Rights also made provision to the effect that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including food, clothing, housing and medical care and necessary social services.[32]

This is solidifying the right of individuals to not just health, but adequate health. Due to international principles of non-interference, its justiciability is left to the hands of the national laws and the adequacy of such health provision is in the hands of the individual countries by their ability and financial strength.

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[26] ICESCR, (1966).

[27] Sheagbe Mayumi Grigsby, Enforcing Economic, Social, and Cultural Rights: A Stack Dichotomy, *Northeastern University Law Review* (2017), <nulawreview.org/extralegalrecent/>. Accessed on 30 June 2025. Nigeria ratified the ICESCR on July29, 1993 and it entered in to force in Nigeria three months later.

[28] Stanley Ibe, Expanding the Space for Economic, Social, and Cultural Rights in Nigeria, Sabinet African Journals, available at www. <http://journal.co.za>. Accessed on 30 June 2025.

[29] Article 12, International Convention on Economic, Social, and Cultural Rights, 1966.

[30] Section 6(6) (c), Constitution of the Federal Republic of Nigeria, (1999) as Amended.

[31] Article 12(2), International Convention on Economic, Social, and Cultural Rights, 1966.

[32] Article 25, Universal Declaration on Human right, 1948.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[33] also makes provision for the promotion and protection of the right to health. The Law states that:

> The parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on the basis of equality of men and women, access to health care services, including those related to family planning.[34] Notwithstanding the provisions of paragraph 1 of this article, State parties shall ensure that women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.[35]

The law calls for the elimination of all forms of discrimination against women in areas concerning health. This means that women are to be considered in the same way and manner as their male counterparts are being considered for health in the society to enable them to be safe in the period of pregnancy, lactation and raising children. These are special periods in women's lives when they need special attention more than ever. This is in recognition of the fact that promotion and protection of the right to health is the foundation for the full attainment of the right to life, especially for the least developed countries, of which Nigeria is a part.

In the same vein, the Convention on the Rights of the Child (CRC), 1989, also recognizes the right of the child to the best and highest attainable standard of health and access to health services. The law places obligations on States Parties to ensure children have unhindered access to medicines and healthcare services to improve their right to health. The article states that: "the State Parties recognizes the right of the child to the enjoyment of the highest attainable standard of health and facilities for the treatment of

[33] CEDAW, 1979.
[34] Article 12(1), Convention on the Elimination of All Forms of Discrimination against Women, (1979).
[35] Article 12 (2), Convention on the Elimination of All Forms of Discrimination against Women, (1979).

illness and rehabilitation of health. State parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."[36] The law went ahead to provide practical and mandatory steps on how best the State parties may be able to ensure that a child's right to access health care services, as of right, is achieved:

> State Parties shall pursue full implementation of this right and, in particular, shall take appropriate measure: to diminish infant and child mortality; to ensure the provision of necessary medical assistance and health care to all children with emphasis on development of primary healthcare; to combat disease and malnutrition…through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risk of environmental pollution; to ensure appropriate pre-natal and post-natal healthcare for mothers; to ensure that all segments of society…are informed…about child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; and to develop preventive health care, guidance for parents and family planning education and services.[37]

The law also mandates the State Parties to take appropriate and practical measures that are considered effective in the circumstances, to abolish 'all traditional practices prejudicial to the health of children" especially those practised in the African settings, such as tribal marks, killing of twins, female genital mutilation, child sacrifice, etc.[38]

Another law is the Convention on the Rights of Persons with Disabilities (CRPD).[39] This law is specifically directed at the states to protect the rights of persons with disabilities, and among the

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[36] Article 24(1), Convention on the Right of the Child, (1989).
[37] Article 24(2) (a-f), Convention on the Right of the Child, (1989).
[38] Symphorosa Rembe and Kola Odeku, Violation of Children's Rights by Traditional and Cultural Practices by States in Eastern and Sothern Africa, *Journal of Psychology in Africa* (2009) DOI:0.1080/14330237.2009.10820259. Available at <www.researchgate.net/publication/>. Accessed on 1st July, 2025.
[39] Article 25, Convention the Rights of Persons with Disabilities, 2006.

protections is the provision of the same range, quality, and standard of free and affordable health care to persons with disabilities. Part of the law provides that:

> States shall prohibit discrimination against persons with disabilities in the provision of health insurance and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner; prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.[40]

The African Charter on Human and Peoples' Rights, equally made specific provisions on the right of Africans to access good and affordable healthcare services for the promotion and protection of their right to life. This is a Convention that is directly and specifically meant to address the matters concerning the rights of the people of Africa. The law, in a part, provides that: "Every individual shall enjoy the best attainable state of physical and mental health."[41] The law went further to impress by mandating the State parties to "take necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick." The African states, parties to the Charter, are to use all available institutions such as the legislative houses and policy bodies to ensure laws and policies are made that are favourable to the quest for the protection and promotion right to access health and the sustainability of the right of all Africans to life.

### 1.5.2 The National Legal Frameworks

Just like the situation at the international level, the Nigerian justice system, too, has promulgated laws and adopted most of the international conventions and protocols and has domesticated the same as laws in Nigeria, without which it may not have the force of law.[42] The right to health is recognized in various legal and policy documents, even though it is not constitutionally and explicitly made justiciable. There

[40] Article 25 (1e&f), Convention the Rights of Persons with Disabilities, 2006.
[41] Article 16 (1), African Charter on Human and Peoples' Rights, 1981.
[42] Section 12, Constitution of the Federal Republic of Nigeria, (1999), as Amended.

are a few noticeable judicial activism where the rights have been pronounced, one of which is fundamental, where it is juxtaposed with the promotion and protection of the right to life. Some of the laws making provision for the recognition of the right to health of Nigerians are hereby discussed under:

The Constitution of the Federal Republic of Nigeria, 1999, (as amended) makes provision for the Fundamental Human Right to Life,[43] which is made justiciable. The same constitution makes provision for the Fundamental Objectives and Directive Principles of State Policies,[44] which are not justiciable but mainly aspirations of the state to attend to the people of Nigeria.[45] The Constitution provides that: "The State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons."[46] The strength and inspiration for the provision and recognition of the right to health in the Nigerian Constitution is the provision of the Universal Declaration on Human Rights and the Convention on Economic, Social and Cultural Rights.

In addition to this, the National Assembly made laws to provide for the comprehensive health matters and healthcare needs of the Nigerian people, the National Health Act.[47] The law establishes the legal framework for the regulation, development, and management of the national health system in Nigeria. Section 3 of the law provides for the establishment of the Basic Healthcare Provision Fund (BHCPF), which shall be funded by annual grants received from the Federal Government of Nigeria, consisting of 1% of the Consolidated Revenue Fund.[48] The utilization of the Fund shall be towards: provision of essential drugs, vaccines, and consumables to eligible primary health care facilities; provide basic minimum package of health services to all Nigerians; providing maintenance to health facilities,

[43] Section 33, Constitution of the Federal Republic of Nigeria, (1999), as Amended.
[44] Chapter 2, Constitution of the Federal Republic of Nigeria, (1999), as Amended.
[45] Section 6(6)(c), Constitution of the Federal Republic of Nigeria, (1999), as Amended.
[46] Section 17(3)(d), Constitution of the Federal Republic of Nigeria, (1999), as Amended.
[47] The National Health Act, 2014.
[48] Section 3(2)(a), National Health Act, 2014.

equipment, and provision of transportation for emergency medical services at the primary healthcare level; to also strengthen human resource capacity at primary health care level.

The other laws that makes provisions for the recognition of the right to health of Nigerian, include: the Child's Right Act;[49] The Discrimination against Persons with Disabilities (Prohibition) Act.[50] These laws are, in all material facts, adopted and domesticated laws from the international convention on the same laws. The Federal Government has equally allowed states to domesticate the same laws with little modifications as the circumstances may permit, due to the peculiarities of each state.

## 1.6 HEALTH POLICIES AND FRAMEWORKS IN NIGERIA.

Besides the legal frameworks making provisions in full recognition of the right of people to health, there are some few policies on health that strongly gives impetus to the right to health, access to essential drugs and the protection of right to life of people, among which are:

One important document containing policies on health in Nigeria is the National Health Policy,[51] which was an improvement on the 2004 Health Policy document. The overall goal of the National policy is "to strengthen Nigeria's health system, particularly the primary healthcare sub-system to deliver effective, efficient, equitable, accessible, affordable, acceptable, and comprehensive health care services to all Nigerians."[52] The policy has recognized the right to health as a fundamental human right and has set it as a goal to achieve that status to improve the right to life of Nigerians. The policy provides, as part of its social value, principles that it is committed to:

> A right to the highest attainable level of health as a fundamental right of every Nigerian including access to timely, acceptable and affordable healthcare of highest quality and international best practice; maintenance of professional ethics through observance of

[49] Section 13, Child's Right Act, 2003.
[50] Section 21, Discrimination Against Persons With Disabilities (Prohibition) Act, 2018.
[51] National Health Policy, 2016.
[52] National Health Policy, (2016) xv. Available at <http://naca.gov.ng>. Accessed on 2nd July, 2025.

> human dignity, human rights, confidentiality and cultural sensitivity; shared responsibilities and mutual accountability of both the client and the provider in promotion, health-seeking, and service provision; gender equity and responsiveness, cultural sensitivity and social accountability to be taken into account by all actors in the health system; sustained political commitment to health through ensuring resource allocation to healthcare and commitment to national and international declarations; and equity in access and use of services.[53]

While the National Health policy is not in any way a legally binding document with the same status as a statute, it has great potency to guide law and policy implementation and equally serve as a foundation for holding the government accountable for health outcomes. The National Health Policy, helps in reflecting the progressive realization of health in Nigeria as contained in the International Convention on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.

Another document of importance is the National Strategic Health Development Plan II (NSHDP), which is a document developed by the Federal Government to strengthen Nigeria's health system towards achieving universal health coverage and improved health outcomes for all Nigerians. In a bid to show support and recognition for the right to health, the document provides for equity and access to health care in Nigeria. It does this, by ensuring that the vulnerable population (women, children, rural dwellers, and persons with disabilities) have access to health that is affordable and qualitative. It also emphasizes the matter of Universal Health Coverage captured under the National Health Act. It emphasizes a human rights approach in meeting its goal by stressing non-discrimination, equality, dignity and protection of the right to health of all Nigerians.[54]

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[53] Ibid. 26

[54] Federal Government of Nigeria, Second National Strategic Health Development Plan (2018-2022), <htt://extranet.who.int>. Accessed on 2nd July, 2025.

The next document is the National HIV/AIDS Policy, 2017, which is a document that the Federal Government developed as a strategic legal policy framework to guide Nigeria in an appropriate response to HIV/AIDS, grounded in public health principles and the right to health. It emphasizes prevention, treatment, care, support, human rights and non-discrimination. The main goal is to improve health and reverse the spread of HIV and mitigate its impact on the health and socio-economic development of Nigerians. It emphasizes the human rights-based approach to affirming access to HIV-related services as a human right deserving serious attention. It equally seeks to prevent all forms of stigma and discrimination against persons living with HIV. This is greatly helping in the promotion and protection of the Human right to life.

Other national health plans for the protection and eradication of all forms of killer-diseases on children, newborn, mothers and adolescents include the Maternal, Newborn, and Child Health Strategy; national strategy for scale-up of Maternal, Newborn and Child Health Intervention (2013-2015); National Strategic Health Development Plan II (2018-2022); and the Reproductive, Maternal, Newborn, Child, Adolescent and Elderly Health Plus Nutrition Strategy (2020-2022). All these are well-designed plans to ensure the right to health of Nigerians is protected and promoted to such an extent that the right to life of Nigerians shall be guaranteed.

## 1.7 REVIEW OF JUDICIAL PRONOUNCEMENTS ON THE RIGHT TO HEALTH IN NIGERIA

Right to health, in Nigeria, is contained in Chapter Two of the Constitution and that chapter falls under the Socio-economic rights that are considered non-justiciable. The Courts and the Civil Societies, have been on the verge of pushing for the justiciability of Chapter Two, which gives so much impetus and meaning to the rights enshrined under the Civil and Political Rights in Chapter Four of the Constitution.

Because of this continuous agitation, the right to health has gradually gained certain recognition via the interpretations of the courts.

In the Case of *Gbemre v Shell Petroleum Development Company of Nigeria and Ors*,[55] the Court in Nigeria had the opportunity to pronounce on the issue of environmental pollution and its effect on the health of people. The Applicant, Gbemre, a representative of the Niger Delta Iwherekan community, instituted an action against the defendants, an oil company, alleging massive and unceasing gas flaring in the community, in the course of its oil exploration and production activities. The Applicant argued that Shell failed to consider the environmental impact of its activities on the communities' means of livelihood, collective survival, as well as the gas flaring's contribution to the adverse and potentially life-threatening effects of climate change. The Applicant claimed that such gas flaring activities violated the community's right to life and human right and dignity as constitutionally guaranteed by section 33 and 34 of the 1999 Nigerian Constitution, and reinforced by article 4, 16, and 24 of the African Charter on human and peoples' Rights ( ratified and domesticated by Nigeria as Cap. A9, Laws of the Federation, 2004). The Court held that gas flaring violates the constitutional rights to life and dignity under sections 33 and 34 of the constitution, and further held that the right to life includes the right to a clean and healthy environment, which links directly to the right to health.[56] The impact of this case is the fact that the court has succeeded in establishing that, although the right to health is not expressly enforceable, it can be derived from other justiciable rights.

In yet another case of *Odafe & Ors v Attorney-General of the Federation* [57] the Applicants, who are detainees, seek to enforce their fundamental right to life, after being diagnosed with HIV/AIDS, sued over

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[55] Jonah Gbemre v Shell Petroleum Development Company (2005) AHRLR 151 (NgHC). <http:/climatecasechart.com>. Accessed on 4th July, 2025.

[56] Ibid.

[57] Festus Odafe & Ors v Attorney-General of the Federation (2004) AHRLR 205 (NgHC). Available at <http://www.globalhealthrights.org> pdf. Accessed on 5th July 2025.

the lack of medical care in prison. The court held that the failure to provide medical care violated the right to life and the prohibition against torture and inhuman treatment. This case has further given some ray of hope and direction on the judicial attitude towards the enforcement of the right to health, as it is strongly linked to the right to life. The impact is on the state to know that their inability to provide healthcare can amount to a violation of constitutional rights as provided in sections 33 and 34. Another case is the case of *Medical and Dental Practitioners Disciplinary Tribunal v Okwonko,*[58] where the Respondent, a medical practitioner, was found culpable at the tribunal but e Court of Appeal and supreme court allowed the appeal on the consideration that the patient, being adult and competent has the right to reject any treatment once his refusal will not be inimical to public interest. The Supreme Court ruling affirms the right to autonomy and bodily integrity in medical decisions. The impact of the decision is that the case created support for patients' rights and dignity within the healthcare context.

A case that deals with the Public Interest Litigation (PIL) is the case of *Social and Economic Rights Action Centre (SERAC) v Nigeria,*[59] not being a case handled, by Nigeria but was decided by the African Commission on Human and Peoples' Rights. The matter was filed by SERAC on behalf of the Ogoni people, alleging violations due to oil extraction. The Commission ruled that Nigeria was in violation of the right of the Ogoni people to Health, Life, environment, housing and food. This violation is contrary to the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. This case has further opened up the gateway for public interest litigation on socio-economic Rights.

**CHALLENGES AND FINDINGS**

[58] Medical and Dental Practitioners Disciplinary Tribunal v Okwonko (2001) 7 NWLR (Pt.711) 206. Available at <http://www.globalhealthrights.org> pdf. Accessed on 5th July 2025.

[59] Social and Economic Rights Action Center (SERAC) v Nigeria (2001) AHRLR 60 (ACHPR 2001).

Arising from the discussion, this work has been able to draw up certain challenges being key findings to which solutions may be proffered by way of recommendations for a better phase of push towards the realization of the right to health as justiciable rights in Nigeria:

1. It is worthy of note and equally commendable that the judiciary in Nigeria have started with a good and right approach on relating an aligning the right to health with the right to life, more need to be done in terms of active judicial engagement to push the narrative of the need for the justicialility of chapter two of the constitution.
2. The National Health Act has provided for the Basic Health Care Provision Fund (BHCPF), but the impact of it is not being felt. The medicines are not being provided or are selectively distributed that not all the healthcare service providers have the supply of such in the care-giving facilities.
3. The Nigerian health status is still at the stage of grappling with systemic issues like corruption, poverty, weak enforcement, political reluctance and underfunding. Due to the corruption, the 15% Abuja Declaration of 2001 on the budget for Nigeria has not been complied with in any way. The budget is still far below the agreed minimum, which has a ripple effect on the health status of the country.
4. The paper also revealed that there is still no consistent judicial framework across all the judiciary institutions for socio-economic rights.
5. It is also visibly noticed that, despite the efforts made by the judicial interpretations on linking the right to health with the right to life in Nigeria, there is still left a clock in the wheel regarding the constitutional provision in section 6 of the Constitution that oust the jurisdiction of the courts to try matters regarding the provisions of chapter two of the Constitution.

**CONCLUSIONS AND RECOMMENDATIONS**

The legal matter concerning the right to health is being considered as a universal, indivisible and interdependent human right (though not justiciable in Nigeria) enshrined in different international and regional human rights legal instruments. Even though the states that are parties to these legal frameworks have certain flexibilities in the application of the laws, the provisions of the various laws makes it mandatory upon the states parties to take progressive, reasonable, practicable steps to ensure the guarantee of non-discrimination of the provision of access to medicines, healthcare and right to life of the people. The judiciary, in the course of judicial interpretation of the provisions of the human rights legal instruments, pronounced the right to health as a human right deserving protection and promotion for the sustainability of the right to life of the people. As a result of the above findings, this work has recommended the following:

**a.** A proper checking Mechanism should be put in place to ensure full utilization of the Basic Health Care Provision Fund provided for in the National Health Act. This is because the Primary health facilities may not be getting what is due to those health facilities for the common man to benefit in improving his right to health and right to life. The perceived conflict between section 3(3)(a) and (b), be resolved. This is because subsection (a) seeks to provide basic minimum health to all Nigerians, while subsection (b) states that the essential drugs, vaccines and consumables shall only be provided to the "eligible Primary Health Facilities. The Right to health must be given to all with qualifications as to eligibility.

**b.** There is a need for the harmonization of the numerous laws, frameworks and policies on health rights to emit and birth a strong and formidable health framework to provide for the effective provision and protection of the right to health and life in Nigeria.

**c.** The constitutional provision of section 6 in the current Constitution, which seeks to oust the jurisdiction of the court entertaining matters regarding the provisions of chapter two of the Constitution be repealed to allow the socio-economic right to be justiciable.

**d.** There should be a consistent judicial framework on socio-economic rights, especially the right to health. This will help the judges in the interpretation of the various provisions of Chapter Two of the Constitution.

**e.** There is equally the need to put the provision of section 3 of the National Health Act, which seeks to provide a basic health care provision fund, into effective use. The fund should be utilized effectively to provide drugs to every primary health care facility in Nigeria. This would improve the health needs of the people, thereby improving their right to life.