

Human Right to Health: Changing the Narrative in Nigeria

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Abstract

The right to health care access is a basic and universal right. It has been recognised and articulated in many international and regional instruments. Nigeria, like many other States, has demonstrated a commitment to protect this right by ratifying those Conventions, Treaties and Agreements that guarantee the right to health. Unfortunately, Nigerian citizens do not have access to health care as there are currently no workable health care systems in place. The government has been accused of being non-responsive to this commitment as health care system remains weak as evidenced by lack of coordination, fragmentation of services, dearth of resources, inadequate and decaying infrastructure, and very deplorable quality of care. This Paper contends that the absence of a functional health care service for citizens is not only unacceptable but it is a major barrier to development. The Paper concludes that changing the narrative on the right to health will entail deliberate action on the part of government to show sincerity on its international obligation.

1.0 Introduction

From time immemorial, issues relating to food, education, shelter, work and health in particular have plagued mankind.¹ As human beings, our health and the health of those we care about is a matter of daily concern. Irrespective of our age, gender, socio-economic, ethnic background or religious affiliation, we consider our health to be our most basic asset. Everyone dreads to be ill or to have to care for a sick relative. This is particularly true because ill health can keep its victims from going to work or school, from attending to family responsibilities or from participating fully in the activities of their community.

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¹ E Udu, 'The Imperatives of Economic, Social and Cultural Rights in the Development of Nascent Democracies: An Inter-Jurisdictional View' (2014) *NAUJILJ*, 27.

The right to health is therefore a fundamental part of our human rights and of our understanding of living a life of dignity.²

The right to the enjoyment of the highest attainable standard of physical and mental health is not new. At the internationally level, it was first articulated in the preamble of the 1946 Constitution of the World Health Organization (WHO), where health is defined as ‘a state of complete, physical, mental and social well-being and not merely the absence of disease or infirmity.’ This Constitution also recognised that ‘the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.’ Today, almost 70 years after these words were adopted in the Constitution of the World Health Organization, they are more powerful and relevant than ever.³

Other international human rights treaties have recognised the right to health as an important right in the rights hierarchy. Because the right to health is relevant to all States, States have committed themselves to protecting this right through international declarations, domestic legislation and policies. Like other States, Nigeria has ratified the various conventions, treaties and agreements that guarantee the right to health. Unfortunately, there are key policy issues impacting upon the realisation of the right to health in Nigeria, and respective governments have been accused of being non-responsive to the deficiencies and continued rot of the health system.⁴

This Paper discusses the right to health and examines the applicable laws in ensuring the full realisation of this right in Nigeria. It also considers the influence of the International Covenant on Economic, Social and Cultural Rights on the protection of human rights in Nigeria vis-à-vis the domestic legal system. The Paper identifies the difficulties involved in the full implementation of this right and recommends a constitutional amendment to Chapter 11 of the Constitution of the Federal Republic of Nigeria 1999 to give full effect to the right to health, especially as it affects women and children.

2.0 Protection of Human Rights - Legal Framework

Human rights, as a tool of dignity and equality, are those rights which are inherent in our nature and are benefits to which people are entitled by virtue of being human. They are rights belonging to all human beings at all times irrespective of sex, race, colour, religion, or language.

² ‘The Right to Health’, *World Health Organization, Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 31* <<https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>> accessed 13 June 2023.

³ ‘Health is a Fundamental Human Right’ (2017), World Health Organisation Media Centre Statement by Dr Tedros Adhanom Ghebreyesus, WHO Director-General 10 December 2017 <<https://www.who.int/mediacentre/news/statements/fundamental-human-right/en/>> accessed 30 May 2023.

⁴ O Nnamuchi, ‘The Right to Health in Nigeria’ (2007) *Centre for Health, Bioethics and Human Rights*.

The first documentary use of the phrase, 'human rights' is found in the United Nations (UN) Charter which was adopted in San Francisco on June 25, 1945 immediately after the Second World War.⁵ The Charter was later ratified by a majority of its signatories in October of the same year.⁶

The acceptance and adoption of the Universal Human Rights Declaration 1948 (UDHR)⁷ by the UN General Assembly set a common universal standard on human rights. UDHR remains a milestone document in the history of human rights which sought to protect all forms of human rights irrespective of race, colour, sex, etcetera.⁸ The Declaration was inspired by the need to protect the fundamental human rights and inherent dignity of all members of the human family. The UDHR document therefore represents the modern international human rights framework created by governments, for governments.⁹ It goes further than traditional categories of human rights contained in various constitutional laws of the 18th, 19th and beginning of the 20th centuries.

The UDHR Declaration deals not only with civil and political rights but also with economic, social and cultural rights and states that 'all human beings are born free and equal in dignity and right'¹⁰ The UDHR was intended to be followed by an International Bill of Rights which could be legally binding on the covenanting parties. This culminated in the adoption of the 'twin covenants', the International Covenant on Civil and Political Rights 1966 (ICCPR), and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). These covenants came to cure the deficiency of the UDHR which was a mere expression that did not have the nature of a legally binding covenant and therefore had no machinery for enforcement.¹¹

Subsequently, the United Nations has adopted many legally binding international human rights Treaties, Conventions, Agreements, Charters, Protocols, etcetera, including the identified six core International Conventions.¹² These documents are used as a framework for discussing and

⁵ The U.N. Guiding Principles on Business and Human Rights: Analysis and Implementation, (2012) A Report from The Kenan Institute For Ethics at Duke University.

⁶ Udu (n3), 32.

⁷ Adopted and proclaimed by the General Assembly Resolution 217 A (111) of 10th December 1948.

⁸ E Akpan, *Human Rights Protection for Overworked Women and the Girl-Child Living in Traditional Rural Gambian Society* (Bencke og Syede Copenhagen Denmark 2002) 17.

⁹ *ibid* (n7).

¹⁰ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 1.

¹¹ Udu (n3), 32.

¹² They are: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (CESCR); International Convention on the Elimination of all Forms of Racial Discrimination (CERD); Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT); and the Convention on the Rights of the Child (CRC).

applying the human rights of every person including right of access to health care. Through these instruments, the principles and rights they outline become legal obligations on those States who have chosen to be bound by them. The framework also establishes legal and other mechanisms to hold governments accountable for human rights violations.¹³

The global human rights regime relies on national implementation of internationally recognised human rights.¹⁴ In Nigeria for instance, the rights of all citizens are protected by a legal framework, including national laws and international and regional Conventions or Treaties. Nigeria, has since ratified the six core international Conventions and other Regional Conventions such as the African Charter on Human and Peoples' Rights.¹⁵ The establishment of the National Human Rights Commission of Nigeria was borne out of a need to promote and protect human rights in Nigeria. The Commission was established by the National Human Rights Commission (NHRC) Act, 1995, as amended by the NHRC Act, 2010, in line with the resolution of the United Nations General Assembly which enjoins all member States to establish national human rights institutions for the promotion and protection of human rights.¹⁶ The Commission has been charged with the responsibility of examining 'any existing legislation, administrative provisions and proposed bills or bye-laws for the purpose of ascertaining whether such enactments or proposed bills or bye-laws are consistent with human rights norms.'¹⁷

In Nigeria, fundamental rights are guaranteed under Chapter IV of the Nigerian Constitution. Sections 33-44 list out the different kinds of rights that every citizen should rightfully enjoy devoid of all forms of discrimination.¹⁸

¹³ J Donnelly, 'The Relative Universality of Human Rights' (2007) 29 (2) Human Rights Quarterly, 282.

¹⁴ *ibid.*

¹⁵ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

¹⁶ See specifically Section 6 (a) which deals with all matters relating to the promotion and protection of human rights guaranteed by the Constitution of the Federal Republic of Nigeria, the United Nations Charter and the Universal Declaration of Human Rights, the International Convention on Civil and political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights, and other international and regional instruments on human rights to which Nigeria is a party. The Commission therefore serves as an extra-judicial mechanism for the enhancement of the enjoyment of human rights. Its establishment is aimed at creating an enabling environment for the promotion, protection and enforcement of human rights. It also provides avenues for public enlightenment, research and dialogue in order to raise awareness on human rights issues (National Human Rights Commission homepage <<http://www.nigeriarights.gov.ng>> accessed 10 June 2023).

¹⁷ National Human Rights Commission (Amendment) Act (2010) art 6 (k).

¹⁸ Section 33 deals with the right to life; Section 34 makes it unlawful for anyone to subject another to torture or to inhuman or degrading treatment; Section 35 guarantees personal liberty; Section 36 guarantees fair hearing within a reasonable time by a court or other

Additionally, the right to health is guaranteed under Section 17 (3) of Chapter 11 of the Constitution (otherwise known as 'Fundamental Objectives and Directive Principles of State Policy'). The State is to direct its policy towards ensuring that 'there are adequate medical and health facilities for all persons.'

tribunal established by law and constituted in such manner as to secure its independence and impartiality; Section 37 protects the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications; Section 38 guarantees every citizen the right and freedom to change his religion or belief; Section 39 guarantees the right of freedom to hold opinions and to receive and impart ideas and information without interference; Section 40 guarantees the freedom to form or belong to any political party, trade union or any other association for the protection of his interests; Section 41 guarantees every citizen of Nigeria the freedom to move freely throughout Nigeria and to reside in any part thereof; Section 42 prohibits discrimination of a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion; Section 43 gives every Nigerian a right to acquire and own immovable property anywhere in Nigeria;. Section 44 prohibits the compulsory acquisition of moveable property or any interest in an immovable property except with prompt payment of compensation thereof.

3.0 Legal Framework for the Right to Health

As noted earlier, the legal framework for protection of right to health dates back to the UHDR in 1948 and subsequently to 1966 when the ICESCR came into force at the international level.¹⁹ The right to health was given prominence in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR) to the effect that health is part of the right to an adequate standard of living.²⁰ In spite of the delay to give legal backing to the Declaration, the 'twin covenants' were unanimously adopted by the UN General Assembly. Both Covenants have been widely ratified by many States, including a vast majority of African States.²¹

For the purpose of this Paper, the most important Article of the ICESCR is Article 12 which establishes 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. The Article lists some of the steps to be taken by States parties such as: the reduction of stillbirths and infant mortality; ensuring the healthy development of children; improving environmental and industrial hygiene; the prevention, treatment and control of diseases; and access to medical care for all.²² Article 12 (2(b)) requires State parties to improve 'all aspects of environmental and industrial hygiene'. It also embraces adequate housing and safe and hygienic working conditions, and an adequate supply of food and proper nutrition.

The Committee on Economic, Social and Cultural Rights has, in its General Comment 14, extensively elaborated on what the right to health encompasses and States parties' obligations under Article 12. What follows is a brief overview of what the Committee has established in relation to the right to health. The Committee emphasises that the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions in order to achieve the highest attainable standard of health. The Committee also underscores that the right to health is an inclusive right which places an obligation on States parties to provide timely and appropriate health care, and to also address the underlying determinants of health, such as access to safe and potable water and adequate sanitation, adequate supply of

¹⁹ A Akwara, A Soyibo and M Agba, 'Laws and Children's Rights Protection: The Nexus For a Sustainable Development in Nigeria' (2010) 6 (2) Canada Social Science, 26-33 at 27.

²⁰ Article 25 states that; '(1) 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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.'

²¹ 'The Right to Health', World Health Organization, Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 31 <<https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>> accessed 13 June 2023

²² Icelandic Human Rights Centre website <<http://www.humanrights.is/en/human-rights-educationproject/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-health/right-to-a-healthyenvironment>> accessed 15 June 2023.

safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.²³ Furthermore, the Committee's General Comment 14 emphasises that the right to health is closely related to, and dependent upon, the realisation of other human rights contained both in the ICESCR and other human rights instruments such as the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, privacy, access to information, as well as to the prohibition against torture and the freedoms of association, assembly and movement.²⁴

Besides the ICESCR, another main instrument defining and protecting the right to health is the Constitution of World Health Organization which defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.' The right to health is also specifically enshrined in other international human rights instruments, such as is found under Article 5 (e (iv)) of the International Convention on the Elimination of All Forms of Racial Discrimination, Articles 11(1(f)) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women, Article 24 of the Convention on the Rights of the Child, Articles 28, 43(1(e)), 45(1(c)) and 70) of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.²⁵

Some Conventions of the International Labour Organisation also contain provisions on the health of workers. Specifically, the Geneva Conventions and Additional Protocols prescribe rules for conduct of warfare, including health-related obligations. Furthermore, there are also some non-binding international instruments (or 'soft laws') which address health issues, for example, the 1993 Vienna Declaration and Programme of Action, the Programme of Action of the 1993 UN International Conference on Population and Development and the 1995 Beijing Declaration and Platform for Action (UN Fourth World Conference on Women).²⁶

Also, regional organisations, on their part, drafted regional instruments on human rights. In Europe, there is European Convention for Human Rights, while in America the applicable instrument is American Convention on Human Rights. It is worthy of note to mention that economic, social and cultural rights were comprehensively contained in European Social Charter (for Europe) and the Additional Protocol to the American Convention dealing

²³ General Comment 14, *The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 11 August 2000 <[www.unhchr.ch/tbs/doc.nsf/\(Symbol\)40d009901358b0e2c1256915005090be?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)40d009901358b0e2c1256915005090be?Opendocument)> accessed 16 June 2023.

²⁴ 'Health and Human Rights. International Covenant on Economic, Social and Cultural Rights' World Health Organization, Regional Office for Eastern Mediterranean <http://www.who.int/hhr/Economic_social_cultural.pdf> accessed 15 June 2023.

²⁵ *ibid.*

²⁶ *Nnamuchi* (n6).

with economic, social and cultural rights.²⁷ In Africa, the ICESCR has been incorporated into regional laws such as the African Charter on Human and Peoples' Rights, as well as the domestic laws of many countries in the form of constitutional rights and national or local legislation as the case may be.²⁸ Under the regional human rights system, the African Charter on Human and Peoples' Rights deals comprehensively with economic, social and cultural rights. Article 24 of the African Charter on Human and Peoples' Rights states that 'all peoples shall have the right to a general satisfactory environment favourable to their development.'²⁹ The right to enjoy the best attainable state of physical and mental health is clearly enunciated in Article 16 (1)³⁰ of the African Charter on Human and Peoples' Rights while the right to a satisfactory environment favourable to development is guaranteed by Article 16 (3)).

4.0 Legal Commitment to the Right to Health

As noted earlier, the concept of a right to health has been enumerated in international and regional agreements. The right to health means that everyone should have free access to the health services they need, when and where they need them. This Paper contends that food, clothing, housing, health care and social services are essential components of a standard of living adequate for health and well-being. What this translates to is that no one should get sick and die just because they are poor, or because they cannot access the health services they need. It is important to emphasise that the right to health also means that everyone should be entitled to control their own health and body, including having access to sexual and reproductive information and services, free from violence and discrimination.³¹

The absence of a functional health care service for citizens is unacceptable and is a major barrier to development. Therefore, States are enjoined to take action to ensure that all citizens enjoy an adequate standard of living. However, it does appear that defining the precise standards that must evaluate these components is somewhat difficult since States with different economic and social histories and capacities have different understandings of an 'adequate standard of living'³² Regrettably, the world cannot be said to have achieved much despite its best effort at treaty and convention

²⁷ *Udu* (n3) 31.

²⁸ *ibid.*

²⁹ Icelandic Human Rights Centre website <<http://www.humanrights.is/en/human-rights-educationproject/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-health/right-to-a-healthyenvironment>> accessed 15 June 2023.

³⁰ 'Every individual shall have the right to enjoy the best attainable state of physical and mental health.'

³¹ 'The Right to Means for Adequate Health' University of Minnesota Human Rights Library <<http://hrlibrary.umn.edu/edumat/studyguides/righttohealth.html>> accessed 29 June 2023.

³² *ibid.*

adoptions.³³ For many countries, especially developing countries, many of the world's citizens do not have access to health care. Currently, Nigeria has no workable health care system in place. Despite her strategic position in Africa, Nigeria is greatly underserved in the health care sphere. Health facilities - Health Centres, personnel, and medical equipment - are inadequate, especially in rural areas. While various reforms have been put forward by the Nigerian government to address the wide-ranging issues in the health care system, they are yet to be implemented at the State and Local Government levels.³⁴

However, since there are no real performance measures for governments, and no mechanisms for individuals to make complaints about the breach of these rights, Rayner argues that it is far easier to respect or acknowledge a right such as the right to vote, than it is to promise that 'no child will live in poverty' or to make good the promise of a free and compulsory education for all children. Respective governments are expected to act 'to the maximum of available resources', to achieve 'progressively' the full realisation of the rights contained in the ICESCR. Unfortunately, because state parties have a discretion as to how they spend their money, many have every reason to state that they just cannot afford the required facilities.³⁵

Under the Nigerian Constitution of 1999, the ICESCR rights are provided for in Chapter 11 (Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24) and classified as Fundamental Objectives and Directive Principles of State Policy section. Cultural rights otherwise referred to as Policy Directive Rights are generally and mostly non-justiciable³⁶ as government claims it is difficult to implement due to lack of funds.³⁷ With respect to the applicability of these treaties within domestic framework, it is significant to note that with the exception of the African Charter on Human and Peoples' Rights, which has been incorporated into domestic legal order, no other treaty bordering on the

³³ Health is a Fundamental Human Right' (2017), World Health Organisation Media Centre, Statement by Dr Tedros Adhanom Ghebreyesus, WHO Director-General 10 December 2017 <<https://www.who.int/mediacentre/news/statements/fundamental-human-right/en/>> accessed 30 May 2023.

³⁴ M Welcome, 'The Nigerian Health Care System: Need for Integrating Adequate Medical Intelligence and surveillance Systems' (2011) 3 (4), *J Pharm Bioallied Sci*.

³⁵ M Rayner, *International Covenant on Economic, Social and Cultural Rights* <<http://www.universalrights.net/main/world.htm>> accessed 15 June 2023.

³⁶ See Section 6 (6(c)) of the Constitution of the Federal Republic of Nigeria (as amended) which limits the extent to which the courts of law in Nigeria use their inherent powers to adjudicate on any matter and give sanctions where necessary to all matters between persons or between government, or authority and persons in Nigeria for the determination of any question as to civil rights and obligations of that person.

³⁷ O Ikpeze, 'Right to Education: Case of the Rural Poor and Globalization in Nigeria', (2008) 1(1), *Journal of Women and Minority Rights*. ⁴⁰ J Nwobike, 'The African Commission on Human and Peoples' Rights and the Demystification of Second and Third Generation Rights Under the African Charter: Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria', (2005) 2, *African Journal of Legal Studies*, p. 132.

right to health has direct application in Nigeria. Like most common law countries, Nigeria adopts a dualist approach in receiving international law; meaning that notwithstanding ratification, treaties acquire legal force only upon their enactment into law by the National Assembly. The provisions of Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) are to the effect that no treaty between the Federation and any other country shall have the force of law except the treaty has been incorporated into domestic law by the National Assembly.⁴⁰

Although the Constitution denies legal recognition to the right to health as well as other social and economic (socio-economic) rights, the domestication of the African Charter on Human and

Peoples' Rights in 1983³⁸ has introduced monumental changes to the legal status of these rights in the country. In fact, it has emboldened both the Nigeria Courts and other Courts to make decisions based on the provisions of the African Charter. In *Odofo & Ors v. Attorney General of the Federation*, the Court decided on the socio-economic rights of prison inmates to medicare based on the provisions of the African Charter.³⁹ Also, in *Ubani v. Director of Security Service*,⁴³ the court held that the State has a responsibility to the entire prison inmates regardless of the offence. Although the Court admitted that provisions under the Directive Principles of State Policy are not justiciable before the Court, it nevertheless reasoned that because the Plaintiff came under Article 17 of the African Charter, the matter was justiciable in the Court as the said Article is independent of the provisions of Chapter II of the 1999 Constitution.⁴⁰ No longer may constitutional denial of legal recognition to these rights be relied upon to shield the government or its agencies from obligations regarding the right to health.⁴¹

5.0 Changing the Narrative on Right to Health in Nigeria

From the plethora of international and regional treaties and conventions enumerated in preceding sections of this Paper, it is evident that the right to health care access is a basic and universal right, even if distinct communities have different rates of development and diverse availability of resources.⁴² There are many and complex linkages between health and human rights. In the first instance, violations or lack of attention to human rights (such as

³⁸ Cited as The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. It is an Act to enable effect to be given in the Federal Republic of Nigeria to the African Charter on Human and Peoples' Rights made in Banjul on the 19th day of January, 1981 and for purposes connected therewith.

³⁹ O V Ikpeze, 'Non-Justiciability of Chapter 11 of the Nigerian Constitution as an Impediment to Economic Rights and Development', (2015) 5 (18), *Development Country Studies*, 50. ⁴³ (1994) 6 NWLR 475.

⁴⁰ *Ikpeze* (n42) 53.

⁴¹ *Nnamuchi* (n6) 3-4.

⁴² R Nunes, S Nunes and G Rego, 'Health Care as a Universal Right' (2017) 25 (1), *Springer Open Choice*, 1.

inhuman and degrading treatment, abuse and violence, torture, harmful traditional practices, poor living conditions, lack of information, lack of health services) can have serious health consequences. Therefore, respecting, protecting and fulfilling human rights can reduce the vulnerability to and impact of ill health.

The health system can promote or violate human rights in the way it is designed and implemented (accessibility to service, provision of information, respect for integrity and privacy, cultural sensitivity, gender and age).⁴³ In Nigeria, apart from the inherent defect in the design of the health system, the constitutional limitation placed by Chapter 11 is hampering the commitment of the government to fulfill its international obligation in the health sector. The health care narrative in Nigeria has been anything but impressive and nowhere near conformity with international best practice. According to the 2009 Communique of the Nigerian National

Health Conference, health care system remains weak as evidenced by lack of coordination, fragmentation of services, dearth of resources, including drug and supplies, inadequate and decaying infrastructure, inequity in resource distribution, and access to care and very deplorable quality of care.⁴⁴ Also, a 2016 study conducted by Price Waterhouse (PwC) revealed that 90 per cent of respondents associate healthcare in Nigeria with low quality, while over 80 per cent and over 70 per cent respectively, associate it with words like 'rude' and 'fear'. Conversely, less than 20 per cent felt that the healthcare provided in Nigeria gave value for money, and less than 10 per cent felt that it was transparent.⁴⁵

No doubt, changing the narrative on the right to health will necessarily entail some deliberate action on the part of government to show sincerity on its international obligation. For instance, the government should adopt an inclusive approach to 'policy' by incorporating not only policy but also law, regulation, intervention and even practice.⁴⁶ Welcome posits that to achieve success in health care in this modern era, besides adequate management coupled with strong leadership principles, a system that is well grounded in routine surveillance and medical intelligence as the backbone of the health sector is necessary.⁴⁷

Furthermore, Nigeria must adopt a human rights approach to health. Generally, a rightsbased approach sets the focus on basic principles of human

⁴³ B Rubenson, 'Health and Human Rights' (2002) 2A, *Swedish International Development Cooperation Agency*.

⁴⁴ *Welcome* (n36).

⁴⁵ Z Hashim, 'Patient's Bill of Rights: Making Health a Human Right in Nigeria' *Premium Times*, April 14, 2019.

⁴⁶ J Cottingham, E Kismodi, A Hilber, Lincetto, M Stahlhofer and S Gruskin, 'Using Human Rights for Sexual and Reproductive Health: Improving Legal and Regulatory Frameworks' *Bulletin of the World Health Organization* <<https://www.who.int/bulletin/volumes/88/7/09-063412/en/>> accessed 19 June 2023.

⁴⁷ *Welcome* (n36).

rights, such as non-discrimination, participation, transparency, accountability and interdependence. It means that target-groups have to be analysed and disaggregated to discover their different needs and abilities. Gender, age, socio-economic background and other characteristics need to be considered and respected.⁴⁸ Therefore, a rights-based approach to health requires that health policy and programmes must prioritise the health needs of the population, especially vulnerable persons. The right to health must be enjoyed without discrimination on the grounds of race, age, ethnicity or any other status. Another feature of rights-based approaches is meaningful participation where national stakeholders - including non-state actors such as non-governmental organisations (NGOs) - are meaningfully involved in all phases of programming: assessment, analysis, planning, implementation, monitoring and evaluation.⁴⁹

Finally, the Nigerian State must show commitment in promoting human rights to health and strengthening legal recognition of human rights to health and rights. This calls for a constitutional amendment of the provisions of Chapter 11 of the Constitution of Nigeria where the right to health is non-justiciable. Sufficient financial and human resources should be allocated for designing and implementing legislative and policy measures and social initiatives to ensure the realisation of rights to health and through health and to facilitate universal access to health care.⁵⁰

6.0 Conclusion

The right to the highest attainable standard of health lies at the heart of the health and human rights movement.⁵¹ This right implies a clear set of legal obligations on States to ensure appropriate conditions for the enjoyment of health for all people without discrimination. The right to health is therefore one of a set of internationally agreed human rights standards, and is inseparable or indivisible from other rights.⁵²

Most developed societies recognise the existence of a basic right of access

⁴⁸ Rubenson (n47) 17-18.

⁴⁹ 'Human Rights and Health' (2017), *World Health Organization* <<https://www.who.int/news-room/factsheets/detail/human-rights-and-health>> accessed 30 June 2023.

⁵⁰ 'Leading the Realization of Human Rights To Health And Through Health' (2017) Report of the high-Level Working Group and the Health and Human Rights of Women, Children and Adolescents, *World Health Organization* <<https://www.ohchr.org/Documents/Issues/Women/WRGS/Health/ReportHLWG-humanrights-health.pdf>> accessed 03 June 2023.

⁵¹ 'Health and Human Rights' *The Lancet* <<https://www.thelancet.com/series/health-and-human-rights>> accessed 03 June 2023.

⁵² 'Human Rights and Health' (2017), *World Health Organization* <<https://www.who.int/news-room/factsheets/detail/human-rights-and-health>> accessed 30 June 2023.

to health care of appropriate quality, considering it a positive welfare right.⁵³ Delivery of medical services must answer to human rights principles. Akinbola and Chijioke emphasise that the effectiveness of rights lies in their enforceability. Rights cannot be rights properly so called if they cannot be enforced.⁵⁸ The right to health care access is therefore crucial to the pursuit of effective equal opportunities in a free and inclusive society. All citizens should have access to the necessary resources for an acceptable physical and psychological performance.⁵⁹ The government must demonstrate political will to ensure that citizens enjoy access to basic health care, especially at the primary health care level.

Furthermore, it is clear that there are so many gaps in the realisation of the right to health in Nigeria. This remains so despite Nigeria's ratification of the core human rights instruments including the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.⁵⁴ One of the greatest challenges to the realisation of the right to health comes by way of the limitation placed under Chapter 11 of the Constitution of the Federal Republic of Nigeria ousting the jurisdiction of the court to entertain matters on provision of health services. There is an urgent call for a change of narrative towards a constitutional amendment to Chapter 11 to give full effect to the right to health, especially as it affects women and children.

⁵³ *ibid.* ⁵⁸R Akinbola and C Chijioke, 'Environmental Right and Human Rights Enforcement in Nigeria: Visiting the Nexus and a Call for Reform', (2011) 2 (2) *Human Rights Review An International Human Rights Journal*, 208. ⁵⁹ Nunes et al (n46).

⁵⁴ M Ssenyonjo, 'The Influence of the International Covenant on Economic, Social and Cultural Rights in Africa' (2017) 64 (2) *Netherlands International Law Review*, 254.