



RECONSIDERING THE RIGHT TO HEALTH AND WELL-BEING AND THE CHALLENGE OF HEALTHCARE DELIVERY IN NIGERIA: NIGERIA'S TRAJECTORY TOWARDS SDG3 BY 2030

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Abstract:

Sustainable Development Goal 3 (SDG3) aims to ensure healthy lives and promote well-being for all ages by 2030. It focuses on the right to health which is a fundamental human right at international law. This goal is premised on the fact that good health is an essential pre-requisite for the persistent and adequate functioning of every individual and every human society. The study uses doctrinal methodology in engaging in a systematic analysis of primary legal sources like relevant provisions of the Constitution, health statutes and judicial decisions. The article provides a survey into Nigeria's trajectory towards SDG3 amid persistent challenges including the legal status of the right to health in Nigeria and inadequate healthcare infrastructure, drawing from statutory frameworks like the Constitution of the Federal Republic of Nigeria, National Health Act 2014 and the National Health Insurance Authority Act 2022 as well as Nigeria's behaviour towards its healthcare obligations. It analyses gaps in policy implementation and the challenge of funding for the purpose of drawing a conclusion whether Nigeria is truly committed to the 2030 Sustainable Development Plan or just paying lip service to the international community on the SDGs obligation on states.

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1. INTRODUCTION

The concept of enforceable right to health is still shrouded in incongruities¹ in Nigeria even though the said right has been articulated in the World Health Organisation's (WHO) Constitution² far back in 1946 and in many universal and regional legal instruments to which Nigeria is a signatory.³ Nigeria has also enacted a sizeable number of legislations,⁴ supposedly, in response to the nation's critical healthcare demands with a modicum of healthcare programmes⁵ initiated by the government at all levels. It is unarguable that there is a constant demand on modern governments to promote and sustain sound economy, to provide housing and meet other human and capital needs.⁶ However, modern governments are equally striving hard to respond effectively to the healthcare demands of their citizens.⁷ While the Nigerian government is pursuing the agenda of industrialisation and fiscal advancement, health values are gradually losing their appeal as government healthcare services do not match the

¹ Andra le Roux-Kemp, 'Realising the Right to Health in Nigeria: Incongruities between International Obligations and Domestic Implementation' (2014) 2 (1) *Africa Nazarene University Law Journal* 120.

² See the Preamble of the Constitution of the World Health Organisation, adopted at the International Health Conference (New York, 19–22 June 1946).

³ International Covenant on Economic, Social and Cultural Rights Adopted 16 December 1966, 993 U.N.T.S. 3, (hereafter, ICESCR) <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>? accessed 12 November 2025; Universal Declaration of Human Rights G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st Plen. Mgt., U.N. Doc. A/810 (10 Dec 1948) (hereafter UDHR).

⁴ Examples are the National Health Act 2014 and National Health Insurance Scheme Act Cap N42 Laws of the Federation of Nigeria (LFN) 2004.

⁵ Some are Covid-19 Vaccination Drive, Polio Eradication Programme and Oral Cholera Vaccine (OVC) Campaign. See WHO-Nigeria, 'WHO conducts training on the integration of oral cholera vaccine in emergency and preventive situations' <https://www.afro.who.int/countries/nigeria/news/who-conducts-training-integration-oral-cholera-vaccine-emergency-and-preventive-situations> accessed 12 November 2025.

⁶ Brown Etareri Umukoro and Oghenerukevwe Ituru, 'Conceptual Challenges to the Recognition and Enforcement of the Right to Clean, Safe and Healthy Environment' (2022) 2 (2) *Journal of Environmental Law and Policy* 1. <https://doi.org/10.33002/jelp02.02.01>

⁷ This is because the attitude of a clean and healthy life is very vital to the functioning of an individual and the society at large. Rr. Herini Siti Aisyaha *et al*, 'The Community Empowerment Policy to Lead a Clean and Healthy Life in Indonesia' (2022) 6 (1) *Sriwijaya Law Review* 175. <http://dx.doi.org/10.28946/slrev.Vol7.Iss1.1367.pp173-188>

current spate of healthcare needs.⁸ Conversely, these economic agenda put pressure on the natural resources, on the environments and man himself and the resultant effect is the unsolicited social conditions that create ill health. The concept of sustainable development demands that in meeting with his needs, man must not compromise the ability of future generations to meet their own needs.⁹

The Nigerian health care system has been described as an *ad hoc* arrangement as it is a layering of community healthcare systems.¹⁰ It is also a pluralist system of healthcare. The fallout is that Nigerians helplessly seek healthcare services from ‘medical personnel and auxiliaries, community health workers, medicine vendors, marabouts and spiritual healers, traditional birth attendants, and other informal providers’.¹¹ This is in addition to the fact that the laws do not place any enforceable duty on the government to secure healthcare for the people. This article examines Nigeria’s trajectory towards SDG3 amid persistent challenges including the legal status of the right to health in Nigeria and inadequate healthcare infrastructure. It evaluates the relevant health legislations like the National Health Insurance Authority Act 2022, National Health Act

⁸ Ibid.

⁹ GH Brundtland Report of the World Commission on Environment and Development: Our Common Future (20 March 1987), para. 27. <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> accessed 13 November 2025. See generally Wilfred Beckerman, ‘Sustainable Development: Is it a Useful Concept?’ (1994) 3 (3) Environmental Values 191-209. https://www.environmentandsociety.org/sites/default/files/key_docs/beckerman_3_3.pdf accessed 13 November 2025.

¹⁰ Ibrahim Abubakar, *et al.*, ‘The Lancet Nigeria Commission: Investing in Health and the Future of the Nation’ (2022) Lancet 3999, 1155 <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2821%2902488-0> accessed 13 December 2025.

¹¹ Ibid. However, this pluralist system has its own advantage in developing countries where there is always a shortfall in orthodox medicine. During the Covid-19, foreign pharmaceutical companies monopolised the production of vaccines, notwithstanding, developing countries survived the pandemic, majorly through herbal medicines and local products. See Fatou Diagne Mbaye and Agus Sardjono, ‘The Patent System During Global Pandemic and the Access to Medications and Vaccines’ (2022) 6(1) *Sriwijaya Law Review* 56. <http://dx.doi.org/10.28946/slrev.Vol6.Iss1.1233.pp55-69>

2014 and the Nigerian Constitution as well as Nigeria's behaviour towards its healthcare obligations.

The article uses the doctrinal research method which is library-based research in the analysis of health-related policies, statutes, and case laws.¹² The choice of doctrinal methodology in this research is based on 3 reasons: One, to effectively analyse the constitutional constraint to health right in Nigeria. Since the right is technically non-justiciable, a doctrinal approach allows the study to analyse the tension between constitutional provisions and local legislation on health. Second, the method helps the research to align international instruments with domestic laws in identifying shortfalls within the Nigerian healthcare system. Third, the research uses the method for an effective evaluation of legal consistency, in this regard, by providing a critical look at existing judicial precedents to ascertain how Nigerian courts have interpreted health-related claims. Besides, doctrinal research provides the tools to argue for a shift in legal interpretation without needing to conduct field surveys or clinical trials. Flowing from the above, the study, through a systematic analysis of laws and certain 'entrenched practices and other biases'¹³ within the health care system, attempts to investigate the preparedness of the Nigerian government towards the realisation of SDG3 which is about good health and well-being, judging by the attitude of the government and the current state of the laws on healthcare, healthcare institutions and implementation culture in Nigeria.

2. THE STATUS OF THE RIGHT TO HEALTH IN NIGERIA

Though health is a human right at international law,¹⁴ there is no explicit guarantee of the right to health and other socio-economic rights under the

¹² See generally T Hutchinson and N Duncan, 'Defining and Describing what We Do: Doctrinal Legal Research' (2012) 17 (1) *Deakin L. Rev.* 83-119 and Rhuks Ako and Damiola S. Olawuyi, 'Methodology, Theoretical Framework and Scholarly Significance: An Overview of International Best Practices in Legal Research' (2017) 8 (2) *Journal of Sustainable Development Law and Policy* (The) 225-241. <https://dx.doi.org/10.4314/jsdlp.v8i2.11>

¹³ Theresa Montini and Ian D Graham, "'Entrenched Practices and other Biases": Unpacking the Historical, Economic, Professional, and Social Resistance to De-implementation' (2015) 10 (24) *Implementation Science* 1-8. <https://doi.org/10.1186/s13012-015-0211-7>

¹⁴ Para 1. ICESCR Comment 14: Some countries like Indonesia and South Africa guarantee the right to healthy environment in their Constitutions which invariably supports an

Nigerian Constitution.¹⁵ While the study acknowledges that healthcare right is already firmly entrenched at international law, this research does not intend to include an in-depth analysis of international instruments on health right for the simple reason that most of these treaties are not yet domesticated in Nigeria and thereby face constitutional challenges as to their application and enforcement in Nigeria.¹⁶ The issue of the non-justiciability of health right has been a foundation of intense legal controversies amongst scholars including human rights advocates and health practitioners for a while in Nigeria.¹⁷ The Nigerian Constitution makes diverse references to the issue of health, although, attention most time is fixed on the health provisions in the non-justiciable Chapter of the Constitution. The two prominent provisions relating to health in Chapter II are in section 17(3) (c) and (d) of the Constitution. Section 17 (3) (c) of

actionable right to health. See Achmad Romsan, *et al*, 'Can the Right to a Good and Healthy Environment be Claimed as a Human Right?' (2024) 8 (1) Sriwijaya Law Review 197-212. <http://dx.doi.org/10.28946/slrev.Vol8.Iss1.1537.pp197-212> and Ruth Krüger, 'The Silent Right: Environmental Rights in the Constitutional Court of South Africa' (2019) 9 Constitutional Court Review 473-496. <https://doi.org/10.2989/CCR.2019.0018>

¹⁵ Much energy has been dissipated by scholars in Nigeria in condemning the relegation of the right to health under Chapter II of the Nigerian Constitution. See AKA Kolawole, 'The Right to Life and the Right to Health: Any Nexus?' (2020) 2 (5) OIDA International Journal of Sustainable Development 95-106. See also Roux-Kemp (n1)133.

¹⁶ Omodara B. Olawumi, David Andrew and James O. Onoja, 'Effect of Non-Domestication of International Treaties: A Case for Sustaining Piracy of Copyright Works in Digital Environment in Nigeria' (2023) 5(2) International Journal of Comparative Law and Legal Philosophy 122 -126. It is worthy of note that section 12 of the Constitution forbids the application of treaties in Nigeria except the same have been domesticated. See *Attorney General of Federation v. A-G of Abia State & Ors* (2002) FWLR (Pt. 102) 1, 92-93. By an amendment of the Constitution in 2010, labour treaties have been excluded from this provision. It is important to note that after domestication, the treaties still rank as every other municipal law and continue to face constitutional limitation if they do not fall within the justiciable provisions of the Constitution. For instance, even though the African Charter on Human and People's Rights 1981 has been domesticated in Nigeria, its health provisions have not been recognised in Nigeria as providing actionable or self-executing health right. This notwithstanding, international instruments on health rights have been used persuasively to agitate for a stand-alone right to health in Nigeria. See Ebenezer Durojaye and Olabisi Ayankogbe, 'A rights-based approach to access to HIV treatment in Nigeria' (2005) 5 African Human Rights Law Journal 287 and Philip Oamen, 'Realisation of the Right to Health in Nigeria: The Prospects of a Dialogic Approach' (August 13, 2020).<https://ssrn.com/abstract=3673480> or <http://dx.doi.org/10.2139/ssrn.3673480> accessed 12 February 2026.

¹⁷ See generally Kolawole (n15) 95-105.

the Constitution provides that the State shall direct its policy towards ensuring that the ‘health, safety and welfare of all persons in employment are safeguarded and not endangered or abused.’ While the health concerns in section 17(3) (c) are limited to those in employment, section 17 (3) (d) makes a general provision for the right to health. It provides that the State shall direct its policy towards ensuring that ‘there are adequate medical and health facilities for all persons.’ These provisions are part of the Directive Principles of State Policy and as such by section 6(6)(c) of the same Constitution are not ordinarily justiciable.¹⁸

The Supreme Court of Nigeria has at different times interpreted the status of the category of rights defined in Chapter II restrictively and literally¹⁹ reinstating the constitutional constraints in section 6 (6) (c).²⁰ As a result of the above constitutional limitations and the position of the courts, most discussions on economic, social and cultural rights including right to health in the Constitution usually end with the conclusion that these rights are not enforceable in Nigeria. Unfortunately, not many inquirers or stakeholders are asking why categorize healthcare rights as economic, social and cultural(ESC) rights. This article argues that the right to health is larger than what is contemplated in section 17(3)(c) and (d) and as such it is not correct to continue on the basis of the non-justiciability principle, to contend that there is no right to health in Nigeria.²¹ The right to health

¹⁸ *Okogie v Attorney General of Lagos State* [1981]2NCLR 350. Ikpeze describes this provision as aberration and improper in a democratic setting. Ogugua VC Ikpeze, ‘Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development’ (2015) 5 (18) *Developing Countries Studies* 50. See also Bolanle Oluwakemi Eniola and Dauda Momodu, ‘Fundamental Right to Health: A Nascent Deconstruction of Health Right under the Nigerian Legal Milieu’ (2023) 5 (4) *International Journal of Law, Policy and Social Review* 13-18

¹⁹ See University Edith and Basil Ganagana, ‘Justiciable or Non-Justiciable Rights: A Debate on Socio- Economic and Political Rights in Nigeria’ (2020) 8 (4) *Global Journal of Politics and Law Research* 85.

²⁰ In *Okogie v Attorney General of Lagos State* (see note 15) the Supreme Court held that the right to education is non justiciable being a right provided for in Chapter II of the Constitution. In *Attorney General of Ondo State v Attorney General of the Federation* (2002) 9 NWLR (Pt 772) 22, the Supreme Court again held that the Fundamental Objectives and Directive Principles of State Policy are mere declarations.

²¹ Eghosa O Ekhatior, ‘Improving Access to Environmental Justice under the African Charter on Human and Peoples’ Rights: The Roles of NGOs in Nigeria’ (2014) 22 (1) *African Journal of International and Comparative Law* 63-79. <https://doi.org/10.3366/ajicl.2014.0080>

is more than the right to access healthcare and the building of hospitals.²² The normative content of health right includes adequate supply of safe water and basic sanitation, freedom from serious environmental health threats,²³ access to health information and participation in health decisions. There is nothing in the Constitution that forbids the realisation of these rights. In Nigeria, the Federal High Court held in the case of *Festus Odafe & Ors v Attorney General of the Federation*,²⁴ that inmates in correctional centres have right of access to medical treatment. In *Lazarus Anyanwu v. South East Zone of the Nigeria Police Force & Ors*,²⁵ the Court of Appeal equally held that the Police is accountable for the health of the suspect in their custody. The court held further that fundamental rights including the right to life and dignity of the human person do not stop at the prison or cell gates. In both cases, the executive arm of the government was held liable to provide medical treatment in compliance with the provisions of the Prison Act. This further confirms that where there exists a legislation recognizing a right over any of the matters covered by Chapter II, the Court is enjoined to so enforce such right.

Recently, the Supreme Court of Nigeria in an *obiter* has started to link public health and human lives to the use of the environment. That is to say that a healthy environment is not a luxury but a prerequisite for staying alive. This is the case of *Centre for Oil Pollution Watch v. NNPC*.²⁶ In this case, the apex court, heavily influenced by comparative foreign modern practices within commonwealth countries, held that ‘a contaminated water and impaired environment by noxious toxicant material such as crude hydrocarbon oil not only destroys environment and the entire ecosystem, it is injurious to public health and human lives.’²⁷ This article

²² Right to Health: OHCHR Fact Sheet No. 31
<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>.
 accessed 13 November 2025.

²³ *Elvira Dominguez*, “The Right to Health,” *Icelandic Human Right Centre*’
<https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-health> accessed 13 December 2025.

²⁴ *Festus Odafe & Ors v Attorney General of the Federation* (2004) AHRLR 205

²⁵ (2010) LPELR-4424 (CA)

²⁶ (2019) 5 NWLR (Pt. 1666) 518, 601, Per Eko JSC

²⁷ On the analysis of *Centre for Oil Pollution Watch v. NNPC*, See Brown Etareri Umukoro, ‘On the Nexus Between Climate Change, Poverty and Failure of Justice’ (2024) 8 (1) Chinese Journal of Environmental Law 44-71. <https://doi.org/10.1163/24686042-12340116>

argues that by using words like ‘injurious to public health and human lives,’ the court was minded to link environmental integrity to both non-justiciable right to health and actionable right to life in the Constitution. This further demonstrates that there can be no meaningful right to life in the absence of an actionable right to health.²⁸ It is also an indication that the Nigerian judiciary is likely to recognise the direct link between Chapters II and IV of the Constitution in very critical circumstances in the future.²⁹

Furthermore, the Nigerian Constitution contains some pockets of provisions with public health concerns. Some comparative rights scholars have argued whether Sections 44 and 45 of the 1999 Constitution can plausibly be read as creating some form of right to public health. These advocates broadly fall into two groups: those who treat the prospect of fundamental rights protection in those section as an overstatement of those provisions, and those who argue that the constitutional provisions of sections 44 and 45 can support a more robust, enforceable right-to-health claim.³⁰ Scholars who see it as an overstatement caution about reading a fundamental right to public health directly into Sections 44 and 45. They stress that the Constitution locates health concerns mainly in the non-enforceable provisions of Chapter II. Instead, they treat the normative content of sections 44 and 45 as mainly performing its traditional function as limitation clauses. They argue that these provisions allow the Nigerian State to restrict some of the fundamental rights in Chapter IV in the interest of defence, public safety, public order, public morality or public health demonstrating that public health protection in these provisions do not translate into a stand-alone fundamental right by

²⁸ Jennifer H. Mike, ‘Enhancing the Right to Health in Nigeria through Judicial Intervention’ (2023) 67 (3) *Journal of African Law* 409-430. <https://doi.org/10.1017/S0021855323000116> ; J. Nnamdi Aduba, ‘The Right to Life under Nigerian Constitution: The Law, The Courts and Reality’ in SMA Belgore Chair Series (NIALS Press, 2011) 2. <https://nials-nigeria.org/Library/THERIGHTTOLIFEUNDERNIGERIANCONSTITUTIONTHELAWTHECOURTSANDTHEREALITYBYJNNAMDIADUBA.pdf> accessed 4 February 2026; See also Eniola and Momodu, (n18).

²⁹ See the highly celebrated Indian case of *Minerva Mills Ltd. v The Union of India* (1980) AIR 1789, 208. See generally, Brown E. Umukoro, ‘Revisiting the Non Justiciability Issue in Environmental Rights Dialogue in Nigeria’ (2023) 25 (2) *Environmental Law Review* 101-119. <https://doi.org/10.1177/14614529231168491>

³⁰ Mike (n 28).

themselves.³¹ Those who see the provisions as donating some form of right argue that the same portion of the Constitution permits enforcement of the policy obligation in certain circumstances provided by the Constitution.³² This class of advocates have always urged the courts to read Chapter II values including health rights into Chapter IV rights instead of limiting them to sterile policy statements. They contend that public-health references in sections 44 and 45 can be part of a broader constitutional fabric supporting enforceable health claims, even if not textually explicit.³³

First, these provisions do not fall within the Directive Principle of State Policy, so whatever they donate in the name of right or duty ought to be directly enforceable. Second, it is correct that they do not directly donate justiciable or actionable right to public health to individuals akin to the rights in Chapter IV of the Constitution; however, they do not exist as merely referencing public health or legitimising the ground for limiting or derogating from other rights. By section 44(1) of the Constitution, all moveable property and all interest in immovable property in Nigeria cannot be acquired compulsorily without the prompt payment of adequate compensation. This section provides that the government can pass laws that limit certain fundamental rights like freedom of expression or movement in the interest of public health, safety, or order. Besides the fact that this treats public health as a justification for the government to curtail the liberties of some individuals, it also places obligation on the government to protect public health, an obligation for which the State becomes accountable to affected individuals who may not have an enforceable right to demand for healthcare under Chapter II.

Furthermore, section 44(2) states that this fundamental right provision shall not affect ‘any general law...providing for the taking of possession of property that is in a dangerous state or injurious to the health of human beings, plants or animals.’ This provision appears to be concerned with a

³¹ Tunde Salman, Eze Onyekpere and Ofoegbu Donald Ikenna, 'Right to Health in Nigeria' (Centre for Justice, 2014) <https://csj-ng.org/wp-content/uploads/2022/04/Right-To-Health-In-Nigeria.pdf>

³² Edoba B. Omoregie and Daud Momodu, 'Justifying the Right to Healthcare in Nigeria: Some Comparative Lessons' (2014) 12 *The Nigerian Juridical Review* 32.

³³ Mike (28).

situation where the health and wellbeing of the people is under jeopardy as a result of the state of any property. In the same vein, the provision does not vest any individual with actionable right to health, but a right to call on the State to protect the public health of individuals. These provisions are an advancement of public health law which lawmakers have made several legislations to protect.³⁴ Interestingly, public health legislation ranks above fundamental rights. This is found in Section 45(1) of the Constitution which provides that “[n]othing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health”. The study contends that Sections 44 and 45 recognise the right to public health and freedom from injury to health of human beings, plants or animals. It also elevates the right to public health and freedom from injury to health of human beings above certain fundamental rights. However, the right of action against violation is vested on the government and not on the people. Though the Constitution seems to fortify the government against claims for the provision of adequate medical and health facilities it is under obligation not only to refrain from acts capable of undermining the health of the people but also to protect people’s right to health. While the people may not have an explicit fundamental right to health under the Constitution, they do have the right to demand accountability from the government over obligation towards healthcare and public health in other enforceable health instruments. If some of these instruments are read alongside with the Constitution, they could guarantee actionable right to health. For instance, Item 17 under Part II of the Constitution states that the National Assembly may make laws for the federation or any part thereof with respect to: ‘the health, safety and welfare of persons employed to work in factories, offices or other premises or in inter-State transportation and commerce including the training, supervision and qualification of such persons.’ To this extent, the Nigerian National Assembly has enacted several labour statutes with provisions protective of the right of employees to health.³⁵ These legislations do not only place

³⁴ Such health laws include the public health instruments and sanitation laws of the States.

³⁵ Sections 59(6) of the Labour Act Cap L1 Laws of the Federation of Nigeria (LFN) 2004. See also section 7 of the Factories Act Cap F1 LFN 2004 which states that every factory shall

duties on employers of labour, but they also provide employees with the right to work in a healthy environment within the scope of the statutes concerned. They guarantee enforceable rights on the part of the workers to insist on practices and work environments compatible with good health and well-being. This consortium of duties on the employers translates into an enforceable corresponding right to health on the part of the workers.

The question therefore is: does section 6(6) (c) of the Constitution oust the jurisdiction of the court to enforce health obligations³⁶ in sections 44(1) and 45 (1) of the Constitution and the health rights in some of the labour statutes³⁷ The answer is in the negative. The obligation imposed in sections 44(1) and 45 (1) of the Constitution, including the derogations or exceptions recognised in these sections are enforceable. The provisions of the labour statutes on health are also enforceable whether as labour rights or as health rights relying on item 17 of Part II of the Constitution which gives the National Assembly power to make laws for the federation or any part thereof with respect to -(a) ‘the health, safety and welfare of persons employed to work in factories, offices or other premises...’ The Nigerian Supreme Court in *Attorney General of Ondo State v Attorney General of the Federation & 35 Ors*³⁸ stated that the Directive Principle are not mere declarations but can be rendered enforceable by legislation if constitutionally authorised.

In the same vein, it was held in *Federal Republic of Nigeria v Anache & 3 ors*,³⁹ that ‘section 6 (6) (c) of the Constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words ‘except as otherwise provides by this Constitution.’ This means that if the Constitution otherwise provides in another section, making a section or sections of Chapter II justiciable, it will be so interpreted by the courts.

be kept in a clean state free from effluvia arising from the drain, sanitary conveniences or nuisance.

³⁶ For example, the obligation to uphold public health requires the state to cut down the enjoyment of private individual rights, including fundamental rights for the enforcement of public health.

³⁷ For example, sections 7, 8, 9 etc of the Factory Acts which impose obligation on employers to ensure factories are kept clean, not overcrowded and have allowance for adequate ventilations in workrooms.

³⁸ (2002) 9 NWLR (Pt 772), 222

³⁹ 2004) I SCM 36,78.

Though the pronouncement in *AG Ondo State v AG Federation* represents the true spirit of the Constitution, the interpretation in Anache's case of the phrase 'except as otherwise provided by this Constitution' in section 6 (6) (c) is preferable. In other words, enactment of a legislation alone does not make Chapter II justiciable. In fact, such could render such law unconstitutional. Rather, Chapter II becomes enforceable where there is another provision in the Constitution to that effect or a provision in Constitution which directs the National Assembly to make law for the enforcement of any of the directive principles.⁴⁰ The position therefore is that once the National Assembly enacts a law in respect of any of the items under Chapter II as discussed above, such aspect of Chapter II becomes justiciable. The Corrupt Practices and other Related Offences Act⁴¹ which makes the law relating to anti-corruption enforceable in Nigeria even though corruption is a matter under Chapter II and the case of *Olafisoye v Federal Republic of Nigeria*⁴² have often been cited in support of this proposition.⁴³ From the foregoing, it can be argued that by virtue of sections 44(1) and 45(1) of the Constitution, the duty to uphold public health is a fundamental obligation in the Constitution. Public health has been defined as including the 'art of promoting health, preventing disease and prolonging life, to maintain a healthy and economically productive life...' ⁴⁴ The provisions of sections 44(1) and 45 (1) of the Constitution derogating from certain fundamental rights in the Constitution on the ground of public health, *inter alia*, are constitutional duties on the part of the state, capable of derogating from the normative content and realization of certain fundamental rights. An effective and deliberate enforcement of these duties on behalf of the public could

⁴⁰ See Umukoro (n 29) and Brown Etareri Umukoro, 'Looking Beyond the Constitution: Legislative Efforts toward Environmental Rights in Nigeria: A Review of some Salient Legislations' (2022) 9 (2) Brawijaya Law Journal: Journal of Legal Studies 141- 164. <http://doi.org/10.21776/ub.blj.2022.009.02.03>

⁴¹ Cap C31 LFN 2004.

⁴² (2004) 4 NWLR (Pt.864)

⁴³ Some have also argued that health legislation like the National Health Act renders the health provisions in Chapter II of the Constitution justiciable. See Babafemi Odunsi and Adebisi Raimi, 'Right to Health: Interfacing Nigeria's National Health Act and the Constitution' (2017) 1 Crescent University Law Journal 124-133.

⁴⁴ FU Ahmed, 'Defining Public Health' (2011) 55 (4) Indian Journal of Public Health 243.

promote deeper respect for the right of the citizens to health and wellbeing.

3. LEGAL FRAMEWORK FOR HEALTH CARE RIGHT IN NIGERIA

As in some other countries,⁴⁵ health law and practice in Nigeria is fragmented. The practice of different healthcare approaches by different healthcare practitioners has been accused as accounting for the fragmentation.⁴⁶ Nigeria, in particular, has witnessed intense and consistent legislative reforms in the healthcare system though it has been postulated that the success of health care reforms, policies and practices is dependent on the ability of the designers of health care delivery systems to replace fragmentation and waste with coordination and cost-effectiveness across disciplines.⁴⁷ While it cannot be ascertained if there is any level of coordination of the different healthcare practices in Nigeria, it is a common knowledge that different legislations have been put in place at different time to respond to the evolving healthcare needs. This section is a review of the few recent statutes on healthcare in Nigeria to the extent of their contribution to the realisation of health right.

3.1 National Health Insurance Authority Act 2022

The National Health Insurance Authority Act⁴⁸ is the most recent legislation relating to healthcare in Nigeria. It ended the National Health Insurance Scheme (NHIS).⁴⁹ The Act, instead, establishes the National Health Insurance Authority. The new legislative approach is a complete

⁴⁵ Ziyu Liu, 'Cohering Health Law in China: Problems and New Development' (2018) 37 (5) *Med and Law* 450.

⁴⁶ Emem Agbiji and Christina Landman, 'Overcoming Fragmentation and Waste in Health Care Systems in Africa: Collaboration of Health Care Professionals with Pastoral Caregivers' (2014) 70 (2) *HTS Teologiese Studies/Theological Studies* 1. <http://dx.doi.org/10.4102/hts.v70i2.2654>

⁴⁷ *Ibid*.

⁴⁸ Federal Republic of Nigeria Official Gazette Vol.109, No. 95, Govt. Notice No, 73 of 24 May 2022 (hereafter NHIA Act). On the general overview of the Act, see Marcus Fatunmole, 'Key issues in Nigeria's new National Health Insurance Authority Act' *Health Reporters*. <https://healthreporters.info/key-issues-in-nigerias-new-national-health-insurance-authority-act/> accessed 12 February 2026.

⁴⁹ National Health Insurance Scheme Act Cap N42 LFN 2004 (hereafter NHIS).

repeal of the National Health Insurance Scheme Act.⁵⁰ This is not unconnected with the volume of complaints against the former Scheme. The NHIS came with some level of expectations given its mouthwatering objectives. Some of the objectives were to ‘(a) ensure that every Nigerian has access to good health care services; (b) protect families from the financial hardship of huge medical bills; (c) limit the rise in the cost of health care services; (d) ensure equitable distribution of health care costs among different income groups.’⁵¹ In spite of these objectives, the preponderance of claims is that the Scheme was most ineffective. There were issues of ‘non-availability of some prescribed drugs, lack of expensive drugs, inadequate coverage⁵² and poor attitude of health workers.’⁵³ The most recent event is the death of a young lady in Abuja, the Federal Capital Territory of Nigeria, over snake bite in her house after struggling to get to Federal Medical Centre, Abuja alive but had no access to treatment because the hospital did not have anti-venom drugs.⁵⁴ These are ugly drawbacks which question the quality of healthcare being provided and the sustainability of the Scheme.

The NHIA Act, on the other hand, is vested with power to: (a) promote, regulate and integrate health insurance schemes; (b) improve and harness private sector participation in the provision of health care services; and (c) do such other things that will assist the Authority in achieving Universal

⁵⁰ Cap N42 LFN 2004. See section 58 of the NHIA Act.

⁵¹ See section 5 of the NHISA. Some claim that the scheme reduced the financial burden of staff because of its contributory nature. Tanimola Makanjuola Akande, *et al.* ‘National Health Insurance Scheme and its Effect on Staff’s Financial Burden in a Nigerian Tertiary Health Facility’ (2012) 2 (12) *International Journal of Asian Social Science* 2175-2185. <https://archive.aessweb.com/index.php/5007/article/download/2383/3643> accessed 15 January 2026.

⁵² There is the complaint that the scheme is limited to only the formal employment sector which constitutes a small fragment of the Nigerian population. See OE Onwujekwe, ‘Health Insurance: Principles, Models and the Nigerian National Health Insurance Scheme’ (2011) 16 (1) *Journal of College of Medicine* 52. <http://dx.doi.org/10.4314/jcm.v16i1.8>, It was also reported that only about 4.2 percent of Nigerians were covered under the Social Health Insurance Scheme. See Fidelis Onyejebu, ‘Towards universal health coverage in Nigeria’ (Punch, 24 October 2022). <https://punchng.com/towards-universal-health-coverage-in-nigeria/> accessed 15 April 2025.

⁵³ Akande (n 51) 2180.

⁵⁴ Makuochi Okafor, ‘Aspiring Nigerian singer dies after being bitten by a snake’ BBC Africa, <https://www.bbc.com/news/articles/c77k0nlvx3yo>

Health Coverage to all Nigerians. As part of its functions, the Authority has the responsibility to ensure that health insurance is mandatory for every Nigerian and legal residents and enforce the basic minimum packages of health services for all Nigerians across all health insurance schemes operating within the country including private health insurance schemes.⁵⁵

Very notably, the Act makes copious provisions for the vulnerable group. The Act defines vulnerable group to include children under five years, pregnant women, the aged, physically and mentally challenged and indigent persons.⁵⁶ The States and Federal Capital Territory (FCT) are mandated to provide coverage for vulnerable persons under the State Insurance and Contributory Scheme through the Basic Health Care Provision Fund (BHCPF). The NHIA Act precludes States and the FCT from receiving premium from the indigent. The Act also establishes the Vulnerable Group Fund to subsidize the cost of provision of healthcare and for the payment of healthcare premium for the indigents.⁵⁷ This is a notable improvement on the previous law and will widen health coverage if properly implemented. The sources of financing the Fund are gradually being operationalized.⁵⁸ There are reports of international donors like World Bank, Global Financing Facility (GFF) and other foreign donors

⁵⁵ Section 3(a) and (b) NHIA.

⁵⁶ Section 59 NIHA Act. Child's right to health has been identified as very crucial in ensuring survival, preventing mortality, and fostering physical, emotional, and social development of the child. This places greater duty on the government to ensure effective universal coverage in its health care system. Eghosa O Ekhaton and Brown E Umukoro, 'Climate Change, Human Rights and the Nigeria child' (2025) 1 African Journal of Climate Law and Justice 192-221. <https://doi.org/10.29053/ajclj.v2i1.0009>

⁵⁷ Ibid. Section 25(1) and 26(2)(b).

⁵⁸ Right to Health Cluster, 'Improving the Implementation of the National Health Insurance Authority Act' (September 2022). <https://csj-ng.org/wp-content/uploads/2022/11/ADVOCACY-MEMO-ON-THE-NHIAA.pdf> accessed 4 February 2026. The BHCPF is funded by 1% of the Consolidated Revenue Fund (CFR) as well as donor grants, and other sources to strengthen Primary Health Care (PHC) facilities. See About BHCPF, [https://nphcda.gov.ng/bhcpf/#:~:text=The%20funding%20for%20BHCPF%20is,Disease%20Control%20\(NCDC\)%20Gateway.](https://nphcda.gov.ng/bhcpf/#:~:text=The%20funding%20for%20BHCPF%20is,Disease%20Control%20(NCDC)%20Gateway.) accessed 12 February 2026. At the moment, the CFR has been the major source of funding.

making substantial contribution to the Fund.⁵⁹ This notwithstanding, the priority of the Nigerian government on health funding is low and this has been a major challenge from year to year. In the proposed 2026 budget for Nigeria, the federal government has allocated about ₦2.48 trillion to the health sector.⁶⁰ This represents about 4.2 percent of the total ₦58.47 trillion budget.⁶¹ Though, there is increase in the 2026 proposed funding, the allocation remains low and falls short of the expectations of health financing experts and the Abuja Declaration.⁶² The Abuja Declaration which was made by African leaders over 25 years ago puts the minimum percentage of national health budget at 15 percent across Africa.⁶³ While Nigeria is still grappling with underfunding, recent reports reveal delays in disbursing fund from the BHCPF to support the health needs of vulnerable groups.⁶⁴ Besides, funds already disbursed are facing accountability issues.⁶⁵ The International Centre for Investigative

⁵⁹ Basic Health Care Provision Fund (BHCPF) & Global Financing Facility (GFF) Performance Score card from January to December 2018. <https://nigeriahealthwatch.com/resources/download/838> accessed 12 February 2026.

⁶⁰ Appropriation Bill, 2026. <https://budgetoffice.gov.ng/index.php/2026-appropriation-bill/2026-appropriation-bill/download> accessed 12 February 2026.

⁶¹ Azeez Kareem, 'Health Sector gets N2.1tr as NMA Condemns Allocation' (The Guardian, 11 January 2026). <https://guardian.ng/features/health/health-sector-gets-n2-1tr-as-nma-condemns-allocation/#:~:text=At%20recent%20health%20forums%2C%20he,Tags> accessed 12 February 2026

⁶² The Abuja Declaration 2001 is a landmark commitment by African Union (AU) member states to allocate at least 15% of their annual budgets to improve the health sector, specifically targeting HIV/AIDS, tuberculosis, and other infectious diseases. Unfortunately, Nigeria has never met this target till date. See Zainab Adewale and Fortune Eromonsele, '2026 Proposed Budget: Tinubu raises health allocation but misses Abuja declaration target' Premium Times, 4 January 2026. <https://www.premiumtimesng.com/health/health-interviews/847409-2026-proposed-budget-tinubu-raises-health-allocation-but-misses-abuja-declaration-target.html?tztc=1> accessed 12 February 2026.

⁶³ Kareem, (n61).

⁶⁴ Anthonia Obokoh, 'FG to begin 2024 audit of basic health fund in July to boost transparency in primary healthcare funding' <https://nairametrics.com/2025/06/30/fg-to-begin-2024-audit-of-basic-health-fund-in-july-to-boost-transparency-in-primary-healthcare-funding/>

⁶⁵ Ibid. See also Abubakar Sadiq Mohd, 'FG vows to track monies released for BHCPF implementation in North-West' Daily Trust 1 November 2025. <https://dailytrust.com/fg-vows-to-track-monies-released-for-bhcpf-implementation-in-north-west/?fbclid=IwY2xjawP58lhleHRuA2FlbQlxMABzcnRjBmFwcF9pZBAyMjIwMzIxNzY0MjAwODkyAAEe6wVK-9YwDjjowhN8->

Reporting (ICIR) in its report published in January 2026, on the strength of interviews with some users of primary health centres (PHCs) across Nigeria, showed that healthcare delivery outcomes do not represent similar statistics across Nigeria. The report shows that while some healthcare centres are receiving as much as ₦300,750 quarterly for Direct Facility Funding and providing drugs and acquiring health facilities, some respondents in the interview complained that their visit to the primary health centres in their locality always ends in prescription without drugs.⁶⁶ A respondent said:

Women die here because of small things like medicines and equipment ... This persists despite Kano State receiving about N2.67 billion from the BHCPF in 2024 alone. At Yandadi PHC in Kunchi LGA, records show that ₦425,790 was released for drug procurement in October 2025, yet only a few cartons of basic supplies were visible weeks later.⁶⁷

Also, delays in disbursement of funds and a number of other factors including 'lack of sufficient training, inadequate manpower and ineffective utilisation of funds; continue to militate against effective implementation of the Direct Health Facility Funding of primary health centres across Nigeria, including Plateau State.⁶⁸ Since the inception of the BHCPF in 2019, the Federal Government has disbursed about ₦159.2 billion across

Y2v4vrCYEBT_uOhr399n0K0QyT4ktUgd6eOXBfIM_aem_5SNREUTsnU3S7ugPCPK Lqw accessed 11 February 2026.

⁶⁶ Billions committed, uneven results: how Nigeria's primary healthcare reform is working and failing at the frontlines (ICIR, 31 January 2026). <https://www.icirnigeria.org/billions-committed-uneven-results-how-nigerias-primary-healthcare-reform-is-working-and-failing-at-the-frontlines/> accessed 12 February 2026.

⁶⁷ Ibid.

⁶⁸ Christopher Bewa, 'An Analysis of the Challenges in the Implementation of Direct Health Facility Funding in Primary Health Care Centres in Plateau State' (2025) 13 (2) *Texila International Journal of Public Health*. https://www.texilajournal.com/adminlogin/download.php?category=article&file=58_TJ3218.pdf

various gateways to support primary healthcare delivery.⁶⁹ This follows that the federal government disburses an average of ₦26.5 billion annually if we spread the total fund released across 6 years - 2020 to 2025. While this is commendable, health delivery outcomes have remained palpably dissatisfactory because of lack of accountability. There is also inadequate data collection, poor monitoring system, lack of performance tracking as reports across PHCs show that all PHCs are not evenly progressing. It is hoped that the recently launched PHCPF operational guidelines would strengthen PHC financing and effectively transit expected healthcare services to the targeted groups.

Furthermore, the NHIA Act places a responsibility on the government. There is also a corresponding right on the part of vulnerable people to insist on subsidised or free healthcare. Before now, free healthcare for this category of persons was run based on politically motivated health programmes in a manner that suggested that it was a privilege and not a right.⁷⁰ This position is expected to change with time as the major target of the NHIA Act is the requirement for quality healthcare. Section 37 of the NHIA Act charges the Authority to ensure that beneficiaries enjoy quality healthcare services. Accredited Healthcare Providers are also charged to provide quality healthcare while HMOs are required to establish quality assurance system to ensure that qualitative care is given by Healthcare Providers to enrollees.⁷¹ From the Authority to HMOs and

⁶⁹ FG reviews BHCPF guidelines, begins 2024 audit (Premium Times, 30 June 2025). <https://www.premiumtimesng.com/health/health-news/804346-fg-reviews-bhcpf-guidelines-begins-2024-audit.html#:~:text=While%20presenting%20the%20Secretariat's%20update,out%20meeting%20will%20be%20held.> accessed 12 February 2026

The BHCPF is funded by 1% of the Consolidated Revenue Fund (CFR) as well as donor grants, and other sources to strengthen Primary Health Care (PHC) facilities.

⁷⁰ For instance, the free maternal healthcare in some States in Nigeria which was part of political campaign may not continue after the tenure of the initiator. Even where they are available and supposedly free, the services are grossly inadequate and grossly dissatisfactory. MS Ekpenyong, 'Breaking the Silence: Barriers to Maternal Healthcare Utilisation among Women in South-South Nigeria' (2025) 22 (6) *Front Glob Womens Health* 1623067. <https://doi.org/10.3389/fgwh.2025.1623067>

⁷¹ Section 34(1) NIHA Act

healthcare providers, quality healthcare is now mandatory, and beneficiaries have the right to insist on it.

Another notable provision of the NHIA Act is section 14 which requires everyone resident in Nigeria to obtain health insurance whether he be employee in the public or private sector provided the staff are up to 5 and above in the establishment. This also applies to informal sector employees and other residents. This is a very laudable objective, but it is not clear how the Authority intends to realise this especially with regards to the informal sector which constitutes the larger part of the population. It has been suggested that there is need for mandatory enrolment of all Nigerians including the informal sector as well as some forms of incentives to encourage participation.⁷² In order to widen health coverage, the NHIA Act places responsibility on states to establish and implement a state health insurance and contributory scheme to cover all residents in that state.⁷³ The NHIA Act, no doubt, is a finer piece of legislation judged against the repealed NHISA. Some of the lapses in the NHIS, especially with respect to coverage and regulation of HMOs, were taken care of in the NHIA Act, however, 3 years or so into the application of the Act, it is still difficult to quantify the gains of the new Act in comparative terms.

3.2 The National Health Act 2014.

The National Health Act⁷⁴ was on the lawmakers table for about 10 years before its final passing in 2014. It is intended to serve as a legal framework for the regulation, development, and management of the health system in Nigeria.⁷⁵ It provides for a National Health System which shall define and provide a framework for standards and regulation of health services. It has been observed that if the provisions of the NHA are well implemented,

⁷² Daniel Chidike Nwuzor, 'The National Health Insurance Authority Act 2022: Analysis, Challenges and Prospects' (2022) 6 (2) *African Journal of Law and Human Rights* 113; TM Ipinnimo et al, 'The Nigeria National Health Insurance Authority Act and its Implications towards Achieving Universal Health Coverage' (2022) 29 (4) *Niger Postgrad Med J.* 281-287. https://doi.org/10.4103/npmj.npmj_216_22

⁷³ Section 13 NIHA Act

⁷⁴ FRN Official Gazette vol. 101, No. 145, Government Notice No. 08 of 27 October 2014 (Hereafter, NHA).

⁷⁵ D Adegboye and TM Akande, 'The Role of National Health Act in Nigeria Health System Strengthening' (2017) 6 (1) *Savannah Journal of Medical Research and Practice* 1.

they will have a tremendous impact on health-care access and universal health coverage, health-care cost, quality and standard practice by health-care providers, as well as patient care and health outcomes.⁷⁶ The National Health System (NHS) under the NHA encompasses public and private provider of health services, aiming to promote the spirit of cooperation and shared responsibility among all providers of health services as well as providing persons living in Nigeria the best possible health services within the limit of available resources. The NHA also sets out the right and obligations of health care providers, health workers, health establishments and users while protecting, promoting and fulfilling the rights of the people of Nigeria to access health care services.⁷⁷ The NHA attempts to address the complaints of the fragmentation of the healthcare system by setting standards for traditional and alternative healthcare providers in Nigeria.⁷⁸

The NHA provides that all Nigerians shall be entitled to basic minimum packages of health services. This has no fixed definition under the Act. It is rather defined in the Act as set of health services as may be prescribed from time to time by the Minister after consultation with the National Council of Health (NCH).⁷⁹ What amounts to basic minimum packages of health services therefore is not static. It is based on what the Minister in consultation with the NCH declares to be basic minimum packages of health services. Basic minimum packages of health services have been described as ‘a comprehensive package of preventive, curative, and rehabilitative provision including education for the prevention of illnesses and the promotion of health of Nigerians.’⁸⁰ Section 11 of the Act

⁷⁶ Osahon Enabulele and Joan Emien Enabulele, ‘Nigeria’s National Health Act: An Assessment of Health Professionals’ Knowledge and Perception’ (2016) 57 *Nigerian Medical Journal* 261.

⁷⁷ Section 1 (1) NHA.

⁷⁸ Christiana Nneka Onuigbo, ‘The Right to Health under the Constitution of the Federal Republic of Nigeria (as amended): An Appraisal’ (2025) 7 (2) *Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law* 132

⁷⁹ See sections 11 and 64 NHA for the meaning of Basic Minimum Healthcare.

⁸⁰ ‘Nigerian govt disburses N86 billion from Basic Healthcare Provision Fund’ (premium Times, 21 June 2022). <https://www.premiumtimesng.com/health/health-news/538304-nigerian-govt-disburses-n86-billion-from-basic-healthcare-provision-fund-official.html> accessed on 26 November 2025.

establishes the Basic Minimum Healthcare Fund (BMHF) for the purpose of funding and delivery basic minimum health services to citizens. The NHA conspicuously set out some provisions recognising the rights of the users in the NHS. Under the NHA a user has the right to medical treatment in emergency situation, and the healthcare provider shall not refuse for any reason.⁸¹ This aligns with the provisions of the Compulsory Treatment and Care for Victims of Gunshot Act 2017 which makes treatment for victims of gunshot compulsory. This provision is a very important device for curtailing the very frequent cases of deaths arising from the refusal by healthcare providers to attend to users who are in critical situation whether or not they have been able to respond to their bills or whether or not the wound or injuries (in the case of gunshot or similar injuries) may have arisen from a criminal involvement. Violation of this provision is a criminal offence, and the offender is liable to the fine of ₦100,000 or imprisonment for not longer than 6 months.⁸² The study contends that these punishments are too mild given the seriousness and prevalence of the complaints of failure of healthcare providers to provide healthcare services for diverse reasons. While these penal provisions are important, litigating healthcare rights is still not popular in Nigerian and that is affecting accountability in the health sector.

Besides medical treatment, healthcare providers are under obligation to give users relevant information pertaining to their health except disclosure is injurious to the user.⁸³ Patients' right to health information is not often canvassed in Nigeria. The NHA re-entrenches the rule of confidentiality between healthcare providers and the patients.⁸⁴ Similarly, by the Code of Medical Ethics in Nigeria⁸⁵ disclosure of information of the patient by the doctor can only be made following an informed consent of the patient, preferably in writing. However, the rule is relaxed where the patient is a

⁸¹ Section 20 (1) NHA.

⁸² Section 20 (2) NHA.

⁸³ Ibid. Section 23. Titilayo O. Aderibigbe and Bankole Sodipo, 'Patient's Medical Records, Privacy and Copyright in Nigeria: On-Going Research' (2017) 42 (2) University of Western Australia Law Review 67.

⁸⁴ Ibid. section 26.

⁸⁵ See Rule 44 of the Code of Medical Ethics in Nigeria (Rules of Professional Conduct for Medical & Dental Practitioners, 1995 as reviewed). <https://www.mdcnigeria.org/downloads/code-of-conducts.pdf> accessed 16 December 2025.

minor, upon the request of his parent or guardian or where there is a court order or statute giving legal backing or where non-disclosure can cause serious threat to public health.⁸⁶ A user under the NHA can lodge a complaint against a healthcare provider if the user is not treated fairly and the complaint shall be investigated.⁸⁷ The Act, however, does not state directly to whom the complaint should be lodged. The Minister, or Commissioner for Health at the State level or any appropriate authority can establish the procedure for laying such complaints. It is suggested that every Local Government Council should have a Healthcare Complaint Department and there should be healthcare users' protection helplines across the nation. The Minister of Health or Federal Ministry of Health alone should establish a uniform complaint procedure across the country, and its viability must be taken seriously because the satisfaction of the healthcare user is an integral part of his right to health. There are widespread complaints of dissatisfactions from healthcare users against health workers across several public hospitals in Nigeria ranging from poor attention to discrimination, verbal abuse, unnecessarily prolonged waiting at the reception while the health attendant is doing nothing, idling away or fondling with phones.⁸⁸ If the right to health must be taken seriously, the functionality of the complaint department should be used as a hanger for judging Nigeria's respect for health right at international level.⁸⁹

⁸⁶ Section 26(2) NHA. The rule is also relaxed where it "is necessary to protect the patient or the community from danger. It will also be relaxed where there is statutory obligation to disclose the disease. See Rule 44 of the Code of Medical Ethics in Nigeria.

⁸⁷ Ibid, section 30.

⁸⁸ Ifedayo Ogunyemi, 'Attitude, not underfunding, biggest problem in Nigeria's healthcare' (Nigerian Tribune, 1 September 2022). <https://tribuneonline.ng/attitude-not-underfunding-biggest-problem-in-nigerias-healthcare/> accessed 22 April 22, 2025. This appears a general challenge in developing countries. Istiana Heriani Gunarto and Anis Masdhurohatun, 'Legal Protection of Patient Rights in Indonesia' (2019) 3 (1) Sriwijaya Law Review 75-85. <http://dx.doi.org/10.28946/slrev.Vol3.Iss1.134.pp75-85>

⁸⁹ It is suggested that Individual people and community organisations can send complaints to the United Nations (UN) Special Rapporteur on the Right to Health. This Special Rapporteur is a person appointed by the UN to investigate, monitor and recommend solutions to problems around the world about the right to health. See A Guide for Healthcare Users and Community-Based Organisations, August 2016 at 26. https://hivlawcommission.org/wp-content/uploads/2017/07/Using-Complaints-to-Address-Healthcare-Violations_Draft-7.pdf accessed 16 December 2025.

4. HEALTHCARE RIGHT IN NIGERIA AND SDG3

The third Sustainable Development Goal (SDG3) provides an ambitious and comprehensive plan of action for the good health and well-being of the people and a global metrics for ending the injustices that underpin poor health and development outcomes. In September 2000, the UN General Assembly adopted the Millennium Declaration⁹⁰ which established a global partnership of countries for the pursuit of an 8-point agenda which were to be achieved by 2015. The Millennium Development Goal (MDGs) eventually came to the end of their term in 2015. Several MDG targets were not met by various countries though it was reported that an unprecedented progress was made.⁹¹ It is the unfinished agenda of the MDG that culminated in the 2030 Agenda for SDGs.

The SDG3 seeks to achieve universal health coverage (UCH), access to safe and effective medicines and vaccines for all⁹² as well as provide the parameters for the monitoring of a country's specific health targets.⁹³ Less than 4 years to the close of the sustainable development goals, several health indices show that Nigeria is still far from realising, in particular, the SDG3.⁹⁴ The National Development Plan 2021-2025 reveals that Nigeria's Universal Health Coverage (UHC) is still at 5% of the population and it is expected to grow to 25% by 2025.⁹⁵ As was aptly noted, '[d]evelopment shortfalls, such as low earnings for individuals, poor social indicators, and

⁹⁰ See UN General Assembly Resolution, *UN Millennium Declaration*, 2000, A/RES/55/2 adopted 18 September. <https://www.refworld.org/docid/3b00f4ea3.html> accessed 22 December, 2025.

⁹¹ WHO, 'The SDGs: Reflections on the Implications and Challenges for Health' in *Health in 2015: from MDGs, Millennium Development Goals to SDGs, Sustainable Development Goals* <https://cdn.who.int/media/docs/default-source/gho-documents/health-in-2015-mdgs-to-sdgs/health-in-2015-from-mdgs-to-sdgs.pdf?sfvrsn=8ba61059_2> accessed 13 May 2025.

⁹² Ibid, para 26.

⁹³ WHO (n91).

⁹⁴ Onyejebu concludes that much is still required to be done in Nigeria to realise SDG3 ahead of 2030. Onyejebu (n52).

⁹⁵ A Review of Nigerian National Development Plan (NDP) 2021-2025: Implication for the Women Economic Empowerment, 12. <https://drpcngr.org/wp-content/uploads/2022/03/A-Review-of-Nigerias-National-Development-Plan-NDP-2021-2025-Implications-for-the-Women-Economic-Empowerment-Formatted-02-1.pdf> accessed 14 December 2025.

disparities by income, gender and location, persist in Nigeria.⁹⁶ In a study on the outcomes of pregnancies among women across selected health facilities in Nigeria between 2008 -2016, it was revealed that Fetal Mortality Ratio (FMR)⁹⁷ in Nigeria was substantially high compared to the global average. The Maternal Mortality Ratio (MMR) in that same study shows ‘a clear but sad indication that Nigeria lags behind in attempts to achieve the Sustainable Development Goal 3 (SDG 3), namely to reduce the global MMR to less than 70 per 100,000 live births by 2030.’⁹⁸ That study showed that between 2008 to 2016 MMR was 708 per 100,000 live birth as against 70 per 100,000 births under the SDG3. In 2017 MMR in Nigeria rose to 917.⁹⁹ According to the 2024 Nigeria Demographic and Health Survey (NDHS) released in late 2025, the MMR in Nigeria has dropped to 512 deaths per 100,000 live births.¹⁰⁰ This is still very far from SDG3 target. This same slow improvement is the experience with respect to other child’s mortality ratios in Nigeria, whether under -5 mortality, infant mortality or neonatal mortality. The article contends that with the slow rate of improvement, it is unlikely that SDG3 target for MMR and other mortality ratios will be accomplished in Nigeria by 2030 in the absence of massive intervention. It has also been observed that Nigeria may likely fail to achieve the Sustainable Development Goal for Health and Well-being ‘if the government, at all levels, fails to take proper course-correction mechanisms before the 2030 deadline.’¹⁰¹ According to Ogundeji there are still a number of capacity gaps to be addressed ahead of 2030 in Nigeria, particularly in the area of creating wider UHC. These

⁹⁶ Nigeria- United Nations Sustainable Development Partnership Framework (UNSDPF) 2018-2022, para 7 at 12. https://www.unicef.org/nigeria/media/1556/file/Nigeria-UNSDPF-2018-2022_0.pdf accessed 19 January 2026.

⁹⁷ This is the ratio of death of fetus to live births.

⁹⁸ Hadiza Galadanci, 'Cesarean Section and Maternal-fetal Mortality Rates in Nigeria: An Ecological Lens into the Last Decade' (2020) 9 (1) *International Journal of Maternal and Child Health and AIDS* 134.

⁹⁹ See 'Sustainable Development Report-Nigeria: Performance by Indicator' <https://dashboards.sdgindex.org/static/profiles/pdfs/SDR-2022-nigeria.pdf> accessed 22 January 2026.

¹⁰⁰ Nigeria Demographic and Health Survey, 2024. <https://dhsprogram.com/pubs/pdf/FR395/FR395.pdf> accessed 12 February 2026.

¹⁰¹ Stephen Angbulu and Lara Adejoro, 'Nigeria may miss SDG on Health, Report Warns' (Punch 27 August 2022) at <https://punchng.com/nigeria-may-miss-sdg-on-health-report-warns/> accessed 22 January 2026.

gaps are identified as including insufficient information for effective health decision making, poor capacity for health insurance implementation and inadequate training of stakeholders on health financing and economics for UHC.¹⁰²

The National Development Plan (NDP) of Nigeria 2021-2025 reveals that Nigerian health indices are very weak.¹⁰³ Access to vaccines, medicines and other health products in Nigeria is disturbingly poor with poorer health outcomes for women and girls, persons living in poverty [and] persons with disabilities.¹⁰⁴ The result is that healthcare in Nigeria has not significantly progressed beyond the primary healthcare system.¹⁰⁵ Only very influential and rich ones as well as top government officials are privileged to enjoy medical tourism overseas. Sometimes, government officials travel for medical treatment for ailments that can be resolved by local health service provider in Nigeria. It does also appear that since most top Nigerian political leaders do not patronize local medications the officials do not appreciate the dearth of health facilities and infrastructures in Nigeria.¹⁰⁶

5. CONCLUSION

The study demonstrates that while health is unequivocally recognised as a human right in international law, its constitutional status in Nigeria remains ambivalent and fragmented, with the right to health only partially reflected through Directive Principles and pockets of enforceable provisions of the Constitution as well as sectoral legislation such as the

¹⁰² Yewande Kofoworola Ogundeji, 'Is Nigeria on Course to Achieve Universal Health Coverage in the Context of its Epidemiological and Financing Transition? A Knowledge, Capacity and Policy Gap Analysis (A Qualitative Study)' (2023) 13 *BMJ Open*, 1-9, e064710, <http://dx.doi.org/10.1136/bmjopen-2022-064710>. See also AI Okpani, and S Abimbola, 'Operationalizing Universal Health Coverage in Nigeria through Social Health Insurance' (2015) 56 *Niger Med J* 305-310. <https://www.nigeriamedj.com/text.asp?2015/56/5/305/170382> accessed 22 January 2026.

¹⁰³ National Development Plan (NDP) 2021-2025, vol. 1, 120. https://nationalplanning.gov.ng/wp-content/uploads/2021/12/NDP-2021-2025_AA_FINAL_PRINTING.pdf accessed 26 January 2026.

¹⁰⁴ OHCHR, <https://www.ohchr.org/en/special-procedures/sr-health/access-medicines-and-right-health>, accessed 22 April 2025.

¹⁰⁵ NDP (n103), 120.

¹⁰⁶ Even at that, oversea treatment should not be at the expense of the government.

Labour Act, Factories Act, National Health Act 2014 and National Health Insurance Authority Act 2022. Through a purposive reading of sections 44 and 45 of the 1999 Constitution, recent Supreme Court dicta on environmental degradation and public health, and the relevant health legislation, it is arguable that elements of an actionable right to health already exists, particularly for workers, vulnerable groups and the general public seeking health care services. However, persistent underfunding of the health sector, weak implementation of the NHIA Act and NHA, limited coverage of Universal Health Coverage, poor accountability, and entrenched attitudes within health institutions collectively undermine the realisation of this important right and place Nigeria off-track in relation to the core targets of SDG 3.

Normatively, the article contends that without transforming the right to health from a largely aspirational norm into a concretely enforceable rights—through constitutional interpretation, targeted legislative reform, institutional strengthening and meaningful complaint and redress mechanisms—Nigeria’s commitment to SDG 3 risks being perceived as rhetorical rather than substantive. The first genuine step at correcting these anomalies would require a sustained increase in health financing, operationalisation of the Vulnerable Group Fund, expansion of health insurance to the informal sector, effective regulation of providers, and the mainstreaming of rights-based approaches to health in judicial reasoning and administrative practice. Only by aligning its legal framework, budgetary priorities and implementation culture with its international obligations can Nigeria credibly demonstrate that it is not merely paying lip service to the 2030 Agenda but is truly committed to ensuring good health and well-being for all persons within its jurisdiction.