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AN EXAMINATION OF THE LEGAL FRAMEWORK FOR HEALTHCARE IN NIGERIA

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Abstract

The ability of any national healthcare system to serve the interest of its citizen depends on the strength of its legal framework, and this is because it is only a viable legal framework in the national healthcare that can guarantee a standard, professional and adequate healthcare delivery services, and easy access to adequate healthcare. Nigeria's healthcare system is regulated by several legislations, regulations, and health policies. In ensuring that the citizens have access to quality healthcare, all the three tiers of government share the legislative competence to legislate on healthcare. In exercise of these legislative functions on healthcare, there are several legislations on healthcare at the Federal and State level which regulate different aspect of healthcare in Nigeria, including one or two international treaties which are already domesticated as municipal legislations. This study sought to critically examine few of the Federal legislations that have direct impacts on healthcare in Nigeria. This article further sought to answer the following questions: how effective are these legislations on healthcare in Nigeria, and what impacts have those legislations on the healthcare system in Nigeria. In addressing some of the issues raised in this article, doctrinal method is adopted by which few legislations are examined. This study concluded that although there are legislations on healthcare in Nigeria, many of them require an amendment on the account of certain defects and their age in order to really address health concerns in Nigeria. Recommendations are therefore made for their amendment and/or repeal.

Keywords: Healthcare, Health legislations, Legal framework, public health

1.0 Introduction

A good healthcare law, in addition to the adequate investment in healthcare, improves the population of a country. Healthcare law is regarded to be a reasonable macroeconomic policy tool for economic growth in low- and middle-income countries;[1] An improved health status has a positive impact on economic performance. A good healthcare system is that which is backed with good legal architecture. The strength of law and regulations comes from its power to create and recognise rights, impose obligations and penalties, and establish permanent institutions and institutional arrangements.[2]

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1. Good Healthcare Law: A Link to Economic Growth in Nigeria, https://www.bamandgadsolicitors.com.ng. (Last accessed on 18/5/2020).
2. [2]Clarke David, "Law, Regulation and Strategizing for Health" Strategizing National in the 21st Century in Gerard Schmets, Dheepa Rajan, and Sowmya Kadandale (eds), *Strategizing national health in the 21st Century*: *a Handbook*", (World Health Organization. Switzerland 2016)491

Governments use laws and other forms of regulations in three broad ways. First, countries regulate to establish the legal architecture for the health system to ensure cohesion and efficiency. A health systems law establishes legal responsibility and accountability for the performance of key health-system functions in terms of planning, priority setting, financing, service provision, integrity and supervision.[3]

In health systems where contracts are used to govern the provision and receipt of services, governments will also make laws to establish the legal basis for contracting in the system, and to establish the rights and responsibilities of the patients and healthcare providers. This legal framework may be set out in a country's general contract and commercial laws, and in specific health laws.[4] Governments regulate healthcare through legislations and policies in order to advance important policy objectives for their health systems. These objectives include provision of universal access to health services, establishment of social protection, encouraging the efficient and equitable use of resources, or ensuring compliance with a country's obligations.[5]
In fulfilling their constitutional and statutory responsibilities, governments regulate also to protect members of the public from harm or from the adverse effects of unconstrained business activities in the health system, and to address market failure and inefficiencies in the health system.

However, the Nigerian health laws are fragmented, as there is no specific or single enactment either from the National Assembly or the State legislature that solely regulates the healthcare system.[6] The enactment of the National Health (NH) Act 2014,[7] was the best and serious attempt by the Federal Government at providing a legislative framework for the protection and advancement of health in Nigeria in the health sector, thereby contributing towards the protection and advancement of access to quality healthcare in Nigeria. Unfortunately, the National Health Act, 2014 is yet to be fully implemented by the Federal government through adequate funding. This position was confirmed by Ogirima[8] when he said as follows:

> *Non-implementation of the National Health Act 2014 which provides for not less than one per cent Consolidated*

3. [3] Ibid.
4. [4] Ibid.
5. [5] For example, the International Health Regulations.
6. [6] Henry Okeke, H, "Critical Review of Nigerian Health Laws: Making a Case for Legal Framework on Patient Safety in Nigeria, *Cavendish University Law Journal* , (2023), vol.2, p2.
7. [7] Act No.8 of 2014.
8. Mike, Ogirima, 'The Non-implementation of Nigeria's National Health Act' *The Punch* (Lagos, November 2, 2016), www.punchonline.com, last accessed on the 9th August, 2025.
9. Bala Audu, 'Partial Implementation of National Health Act Impedes Health Care Delivery", https:kapitalfm.gov.ng/2024/12/10/partial-implementation-of nalt-health-act-impedes-health-care-delivery-nma/
10. Cheluchi Oyemelukwe, "The Law as Compass, lev, or Stumbling Block? Harnessing the Power of Law to Reify and Realise the Right to Health" Being the Babcock University's 52nd Inaugural Lecture delivered on the 6th March, 2025.
11. (n.8).

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> *Revenue Fund as Basic Healthcare Provision Fund has further worsened the travail of the health sector particularly at the grass roots, where the greater burden of the health disease resides. It has also added to the financial burden of the citizens in their quest to seek quality health care which in most cases is non-existent.*

In the same vein, it has also been argued that the partial implementation of the key provisions of the NH Act, 2014 is an impediment to the enhancement of the healthcare delivery system in Nigeria.[9]

Cheluchi Onyemeluekwe,[10] while delivering the 52nd inaugural lecture of Babcock University, Ilisan, Remo, also stressed that although several legislations such as: NH Act, 2014,[11] Child Rights (CR) Act, 2003,[12] the Anti-HIV/AIDS Discrimination (AHD) Act, 2014,[13] and the National Health Mental Health (NHMH) Act,[14] recognise the right to health, they however remain ineffective without proper implementation.

Although, there are several legislations in Nigeria, regulating different aspects of the health system, these legislations are either too old or outdated to address modern health concern, or keep pace with modern technological developments in the health system. Hence, there is urgent and crucial need to address those gaps in various health legislations through legislative reformations.

The scope of this study is restricted to examining few federal legislations on healthcare in Nigeria, to identify both their weakness and strength, and advocate for the reformations of those legislations. This study also examines the division of legislative power under the 1999 Constitution (as amended).

2.0 The Division of Legislative Powers under the 1999 Constitution (As Amended) and Healthcare

The Nigerian Constitution is the supreme and overriding law of the land and which provisions are binding on all persons and authorities in Nigeria.[15] It is also a source of health laws in Nigeria. Some of the provisions of the Constitution which to the provision of healthcare are the division of legislative powers, the adoption of international law, fundamental human rights, and a declaration of a state of emergency in the event of any public health crisis.[16] The Constitution further provides

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12 12. Child Rights (CR) Act, No.26 of 2003.

13 13. HIV/AIDS (Anti-Discrimination) (H/AAD) Act, No.125 of 2014.

14 14. National Health Mental Health (NHMH) Act, No. 46 of 2023.

15 15. S.1(1), 1999 Constitution (as amended), Cap C23, LFN, 2004.

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16. Cheluchi Cheluchi Oyemelukwe, IHR Implementation in Nigerian Law, Nigerian Centre for Disease Control, p.12.
17. S. 20, 1999 Constitution (as amended).

that "the state shall protect and improve the environment and safeguard the Water, Air and Land, Forest and Wild life of Nigeria.[17]

Health in Nigeria, is generally protected in the Constitution as a mere statement of state policy. Section 17(3)(c) of the 1999 Constitution specifically provides for protection of health, safety and welfare of persons in employment, while section 17(3)(d) of the Constitution provides for adequate medical and health facilities for all persons. This presupposes the responsibility of the three tiers of government under the Constitution in ensuring the provision of good quality healthcare services that are accessible, and affordable by all.

The Constitution places a heavy duty and responsibility on all "organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of the fundamental objectives, by ensuring the provision of equitable, quality and accessible healthcare delivery to the populace.

The Federal Government has a greater responsibility to ensure the provision of quality and accessible healthcare delivery in view of her international and regional obligations to respect, protect and fulfill right to health.

The constitutional provisions on division of legislative powers within the federation relates to healthcare. Under the 1999 Constitution (as amended), both the Federal Government and the States share legislative powers.[18].The National Assembly is constitutionally vested with the power to make laws in respect of the items listed in the Exclusive Legislative list set out in Part I of the second schedule to the Constitution.[19]The National Assembly is further vested with the constitutional power to legislate on any of the items set out in Part II of the second schedule to the Constitution.[20]

The State Houses of Assembly on their own part, are constitutionally vested with the power to legislate on any matter not included in the Exclusive Legislative List as set out in Part I of the Second Schedule to the Constitution, and any matter included in the Concurrent Legislative List set out in the Part II of the second schedule to the Constitution.[21]

There is also the Residual List, which is not provided for in the Constitution, but captures all the items that are not listed in the Exclusive and Concurrent Lists. It is only the Houses of Assembly of each States that are vested with the authority to legislate on those matters[22].The National

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18 18. Ibid, s..4(1), and 4(6).

19 19. Ibid, s. 4(2) and (3).

20 20. Ibid, s. 4(4).

21 21. Ibid, s. 4(6) and (7).

22 22. *PRP &Ors KESIEC &Anor,* (2024) LPELR-62560 (CA).

23. *AG Abia State v AG Federation* (2006) 16 NWLR (Part 1005) 265 at 380-381, paras. D-C.

24. 1999 Constitution (as amended), Second Schedule, Part 1, Paragraph 21, 49, and 54.

25. Ibid, Second Schedule, Part 1, Paragraph 21.

26. Ibid, Second Schedule, Part 1, Paragraph 49.

27. Ibid, Second Schedule, Part 1, Paragraph 54.

28. Ibid, s. 12(2), Second Schedule, Part 1, Paragraph 31.

29. Ibid, Second Schedule, Part 1, Paragraph 67.

30 Ibid, Second Schedule, Part 1, Paragraph 68.

Assembly has the authority to legislate at the Federal level, including on exclusive, concurrent and residual matters.

The State House of Assembly retains the authority to enact law for the States. The National Assembly also has authority to make law for the Federal Capital Territory, acting in the same manner as a State House of Assembly, using its residual authority.[23] Both the National Assembly and the Houses of Assembly of the States can legislate on the Concurrent Legislative List bearing in their legislative mind the doctrine of covering the field.
The Federal Government is constitutionally empowered to enact laws on all health-related matters on the exclusive legislative list,[24] such as such as drugs and poisons[25], professional occupations,[26] quarantine[27], including the domestication of treaties that relate to the Exclusive List,[28] or any other matter with respect to which it has power to make laws in accordance with the provisions of the Constitution,[29] and any incidental or supplementary to any matter mentioned on the legislative list.[30]

The only provision relevant to health in the Concurrent Legislative List, specified in Schedule 2, Part 2 is on health, safety, and welfare of persons employed to work in factories, offices, or other premises.[31] The matters on the Concurrent List are those over which both the Federal government and the State government share legislative competence.[32] Both the Federal and State government are also legislatively competent to make laws for peace, order and good government.[33] However, in accordance with Section 4(5) of the Constitution, and the doctrine of covering the field, the House of Assembly of a State cannot make law conflicting with a Federal legislation on any of the items in the Concurrent List if the Federal government has made a valid law covering those areas. Thus, the Federal Government, through the National Assembly, alone can make valid law regarding matters on the Exclusive List.[34]

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[31]31. Ibid, Second Schedule, Part 2, Paragraph 17(a).

32. Ibid, s.4 (4) and (7).

33. Ibid, Sections 4 (2) and (3). See also *A.G Lagos State & Others v A.G Federation & Others (2024) LPELR-80160 (SC).*

34. *A.G Lagos State & Others v A.G Federation & Others* (n.33*).*

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[34] 35. Ibid..

36. (n.12).

37. (n.7).

The States can however make a law to further the objectives of a law made by the Federal Government, but no more than that. The effect of this is that health-relevant matters on the Concurrent List can be legislated upon by both the States and the Federal Government, with the Federal legislation taking precedence.

The Residual List provides for all other matters that do not fall within the Exclusive and Concurrent Lists, and the States have absolute authority to legislate over those matters.[35] It should be noted however, that the Federal Government sometimes enacts legislations on matters that are residual in nature in other to encourage uniformity, and set down standards across the federation. Such legislations include the CR Act,[36] the NH Act,[37] National Health Insurance Authority (NHIA) Act,[38] and Nigeria Centre for Disease Control and Prevention (Establishment) Act 2018.[39] Each State of the federation is however at liberty to adopt any or all of these legislations through the enactment of a law at the State level, but this however, does not rob each State of the federation its legislative powers to make new laws provided the subject matter is residual.

There are other legislations on health which were enacted at the Federal level, but are applicable throughout the federation. Some of these legislations include: Quarantine Act,[40] National Agency for the Control of HIV/AIDS Act,[41] HIV and AIDS (Anti-Discrimination) Act,[42] National Drugs

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38. National Health Insurance Authority (NHIA) Act, No. 17 of 2022. This Act repealed erstwhile National Health Insurance Act, Cap N.42, LFN 2004.

[36]39. The Nigeria Centre for Disease Control and Prevention (Establishment) Act, No. 18 of 2018.

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[40]40 Quarantine Act, No. 18 of 1926, Cap Q2 LFN 2004.

41. National Agency for the Control of HIV/AIDS (NACA) Act, No. 1 of 2006
42. (n.13).
43. National Drugs Formulatory and Essential Drugs Act, No. 43 of 1989, Cap. N29, LFN 2004.
44. Dangerous Drugs Act, No. 12 of 1935, Cap. D1, LFN, 2004.
45. Food and Drugs Act, No. 35 of 1974, Cap. F32, LFN, 2004.
46. National Primary Health Care Development Agency Act, No.29 of 1992, Cap N69, LFN 2004.
47. Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, No.25 of 1999, Cap C34, LFN, 2004.
48. National Agency for Food and Drug Administration Act, No. 15 of 1993, Cap N1, LFN, 2004.
49. National Drug Law Enforcement Agency Act, Cap N30, LFN, 2004.
50. National Tobacco Control Act, No. 73 of 2015.
51. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, No. 25 of 2007.
52. Animal Diseases (Control) Act, No. 10 of 1988, LFN 2004.
53. Compulsory Treatment and Care For Victims of Gunshot Act, No. of 2017
54. Violence Against Persons Act, 26 of 2015.

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Formulatory and Essential Drugs Act,[43] Dangerous Drugs Act,[44] Food and Drugs Act,[45]National Primary Health Care Development Agency (NPHCDA) Act,[46] Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act,[47] National Agency for Food and Drug Administration Act,[48] National Drug Law Enforcement Agency Act,[49] National Tobacco Control Act,[50] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act,[51] and Animal Diseases (Control) Act,[52] Compulsory Treatment and Care For Victims of Gunshot Act,[53] Violence Against Persons Act.[54]

All these legislations are not only applicable across the country, but also have direct impact on human health. It should be noted however that some of these legislations are too old and require amendment in order to realistically address modern health related issues. The legislations further show that the legal framework for healthcare in Nigeria is fragmented as there is no uniform legislation on healthcare in Nigeria.

In situating the various constitutional provisions on exercise of legislative powers within the context of healthcare, the correct view is that healthcare is not clearly mentioned either in the Exclusive or Concurrent Legislative List, meaning that it is residual affair, and it is only the State and Local government that are legislatively competent to legislate in healthcare in Nigeria. This however, does not divest the Federal Government its power to enact laws on all health related matters on the exclusive legislative list

3.0 Exercise of Legislative Power and the Implementation of International Treaties on Health

Nigeria, like many common law countries, adopts a dualist approach to the reception of international law. Nigeria, might have ratified many international treaties, such ratification does not accord legal validity on such treaties unless they are domesticated and become an Act of the National Assembly. This means that the Nigerian Constitution provides for the domestication and implementation of international law and treaties entered into by Nigeria. No treaty between Nigeria and any other country, can have any force of law except such treaty has been enacted into law by the National Assembly.[55]

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[55]55. S. 12, 1999 Constitution (as amended)

56. *Abacha & Others v Fawehinmi* (2000) LPELR-14 (SC).

The exercise of legislative power and the implementation of international treaties are vested in the National Assembly, and any international law that is not domesticated in Nigeria cannot be enforced as law by Nigerian courts without any domestication through a municipal legislation.[56]

Furthermore, the National Assembly is permitted by the Constitution to make laws for the entire country with respect to implementing a treaty. The reason being that, it only the Federal government that is constitutionally empowered to enter into any treaty on behalf of the whole country and domesticate same.

However, in order to get the consent of the other federating units, the 1999 Constitution also provides that such a treaty shall be ratified by a majority of all the House of Assembly in the Federation. A health-related treaty for instance, cannot be enacted as law and presented for assent to the President without such ratification.[57]
By virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) (ACHPR) Act, 2004,[58] the African Charter on Human and Peoples' Rights of 1981,[59] was domesticated in Nigeria.

Furthermore, certain key provisions of the Convention on the Rights of the Child (CRC),[60] relating to health of the Child, have been incorporated into the Child Right Act, 2003, thereby making the right to health of the child now enforceable in Nigeria.[61]
However, apart from the African Charter on Human and Peoples' Rights, which has been domesticated in Nigeria, no other treaty relating to healthcare has direct application in Nigeria. The refusal or unwillingness of the federal government to ratify various international treaties and conventions on healthcare shows the government's lack of commitment to healthcare.

4.0 Emergency Power of the President on Health
Another Constitutional provision which relates to healthcare, is the power of the president of the country to issue a proclamation of a state of emergency where there is a threat or a clear and danger of an actual breakdown of public order and public safety, or occurrence of any disaster or natural calamity affecting the community or a section of the community in the declaration.[62]
The exercise of the emergency power in this regard is to enable the governmental intervention in public health crisis. The declaration of a state of emergency must be published in the country's official gazette, and the president is required to immediately notify the speaker of the House of Representatives and the president of the Senate.[63] The consequences of declaring a state of emergency may take one or two form. The country's legislature may either adopt laws that restrict

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57 57. S.12, 1999 Constitution (as amended).

58 58. Cap A9, LFN 2004.

59 59. The Charter also known as "Banjul Charter", was adopted June 27, 1981

60 60. The CRC was adopted on November, 20, 1989, but entered into force on September, 2, 1990.

61 61. Esabunor & Anor v Faweya & Ors (2019) LPELR-4696 (SC).

62 62. Ibid, s.305(3)(c)(d)(e)(f).

63 63. Ibid,s.305(1) and (2).

certain fundamental rights guaranteed under the constitution, or also allow the executive to take certain actions that restrict such constitution and rights.[64]

5.0 Legal Framework for Healthcare in Nigeria

As noted above, there are several health legislations in Nigeria regulating several aspect of healthcare. However; these legislations are not without their strength and weaknesses. The quality of a healthcare system depends on the strength of its legal framework. It is therefore essential to examine those legislations that stand as foundation upon which the healthcare system rest.

5.1 The 1999 Constitution of the Federal Republic of Nigeria (As Amended) and Healthcare

The Nigerian Constitution is the supreme and overriding law of the land and which provisions are binding on all persons and authorities in Nigeria,[65] and is also a source of health laws in Nigeria. It addresses key aspects that are relevant to provisions of healthcare such as: the division of powers, the adoption of international law, fundamental human rights, and a declaration of a state of emergency in regard to public health crisis.[66]

The Constitution further places responsibility on the government to ensure that "there are adequate medical and health facilities for all persons.[67] The Constitution does not however impose any obligation on the government to guarantee healthcare as a right in Nigeria. This is because the overriding power of the judiciary to interpret the Constitution to guarantee healthcare as a right has been clipped by the same Constitution.[68] The same Constitution bans the enforceability of those provisions in the following words:

> *The Judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether by any law or any Judicial decision is on conformity with the Fundamental objectives and Directive Principles of State Policy set out in chapter II of this Constitution.*[69]

Notwithstanding the unenforceability of the constitutional provisions on fundamental objectives and directive principles, the Court in *Archbishop A.O Okogie v The Attorney-General of Lagos State*,[70] held that the directive principles of state policy in chapter 2 of the constitution have to conform to and run subsidiary to the fundamental rights provision in chapter 4 of the then 1999

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64. Ibid, s.35(1)(e).

[65]65. S.1(1), 1999 Constitution (as amended).

[66]66 Cheluchi Oyemelukwe, (n.16), p.12.

[67]67. S. 17(3)(d), 1999 Constitution (as amended).

[68]68. Samuel Uchenna Ortuanya, *Public Health Law & Policy in Nigeria*, (Princeton & Associates, 2022), p.95

[69]69. S..6(6)(c), 1999 Constitution (as amended).

[70]70. (1981) 1NCLR, pp.229-231.

71. (2025) LPELR-80874 (SC)

Constitution, and chapter 2 is subject to the exercise of the legislative powers of the State, to legislate on the items provided therein.

It is hereby submitted that non-justiciability of the directive principle of healthcare in chapter II of the 1999 constitution in preposterous in view of the recent pronouncement of the Supreme Court in *SPDC (Nig) Ltd v Okeh & Ors*,[71] where the Obande Festus Ogbuinya (JSC) emphasized on the importance of socio-economic rights to the citizens in the following words:

> *My noble Lords, let me place on record, perforce, that the importance of socio-economic rights cannot be overemphasised in the life of any citizen. A citizen's inalienable fundamental right to life, which is enshrined in Section 33 of the Constitution, as amended, the tons et origo of our laws, cannot be properly harnessed in the absence of corresponding hospitable environment, water, air, land, forest and wild life, social lubricants, which the State, as a matter of duty and responsibility, shall protect, improve and safeguard under the provision of Section 20 of the selfsame Constitution, as amended, for the benefit of its citizenry. Hence, the two species of rights share a symbiotic relationship. It smells of impossibility for any person to actualise and enjoy his right to life when his environmental rights, which oxygenate and nourish life, have fallen into eclipse. Thus, the grant of special damages, which was aimed to mitigate the corrosive and toxic effects of the oil spillage against the respondents, was a quintessence of a judicial and judicious award which cannot magnet any ounce of reprobation from this Court.*

The importance of right to health to the citizens, being a socio-economic right, cannot equally be overemphasised. Health is the foundation of every other fundamental right including the right to life. Health as a right, and right to life are inseparable Siamese twins which are inseparable. Of what use is the fundamental right to life when a person cannot enforce a right to healthcare? In the Indian case of *Francis Coralie v Union Territory of India*,[72] the Court held that the right to health is connected to the right to life.

Failure of the 1999 Constitution to guarantee health as an enforceable right undoubtedly constitutes a serious impediment to access to healthcare by all.

5.2 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act LFN 2004

Human right to health in the African context is enshrined in section 16 of the African Charter. Article 16 (1) of the Africa Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health. The State Parties are obligated under the Charter to

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[72]72. AIR 1978 SC 746.

take the necessary measure to protect the health of their populations, and to ensure that they receive medical attention when they need.

Nigeria, being a State Party to the African Charter, and having domesticated same by virtue of African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,[73] has become a source of health law in Nigeria, guaranteeing the right of every Nigerian to the best attainable physical and mental health.[74]

As argued above, right to health should ordinarily be an enforceable right in Nigeria under the African Charter, however, its weakness lies in the non-recognition of health as a fundamental and enforceable right under the 1999 Constitution of the Federal Republic of Nigeria (as amended). While both the civil and political rights are guaranteed under the 1999 Constitution, the right to health and other socio-economic rights enjoy no legal protection under it. Chapter II of the 1999 Constitution only characterizes the healthcare as one of the fundamental objectives and directives principles of state policy.

Another challenge of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act with regard to health as a right is that, the scope of the application of the African Charter itself is not clearly delineated, and it lacks a specific enforcement procedure applicable in a domestic forum.

5.3 National Health Insurance Authority (NHIA) Act, 2022

The NHIA Act 2022,[75] replaced the National Health Insurance Scheme of 1999. The overall functions of the Authority are among others to promote, integrate and regulate all health insurance schemes that operate in Nigeria, and ensure that health insurance is mandatory for every Nigerian and legal resident.[76]

The NHIA Act 2022 has been described to be a fantastic and promising legislation, which provides for mandatory participation in health insurance for all legal residents of Nigeria, and integration for all legal residents of Nigeria.[77] However, weak enforcement mechanism, limited funding, non-provision for digital health, corruption, poverty, absence of legal right to healthcare have been identified as major challenges facing the implementation of the NHIA Act, 2022.[78]

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[73] 73. See the short title to the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, LFN 2004.

[74] 74. Ibid, art. 16.

[75] 75. (n.38).

[76] 76. Ibid, section 3(a) and (b). The overall functions of the Authority are listed in section 3(a) to (z)(aa) and (bb) of the Act.

[77] 77. Tope Michael Ipinnimo, Kabir Adekunle Durowade, 'The Nigeria National Health Insurance Authority Act and its Implications towards Achieving Universal Health Coverage, *Nigerian Postgraduate Medical Journal*, 29(4), p.283.

[78] 78. Ibid, p.284.

5.4 National Health (NH) Act, 2014

The NH Act, 2014 was signed into law on October 31st, 2014. The Act provides a legal framework for the regulation, development and management of Nigeria's health system,[79] and set standards for rendering health services in Nigeria and for related matters.

The Act, provides for health and eligibility for health services, and establishment of National Health System, Health Establishments and Technologies, Rights and Obligations of Users and Healthcare Providers, National Healthcare Research and Information System, Human Resources for Health, Control use of Blood, Blood Products, Tissues and Gametes in human, and Regulation and Miscellaneous Provisions.[80]

One of the major highlights of the Act, is the provision for emergency treatment.[81] Hitherto, the healthcare providers hardly attended to patients on emergency, and this conduct had resulted into avoidable death of so many patients. Under the Act, it is now a punishable offence for any healthcare provider, worker, or establishment to refuse a person an emergency treatment for any reason. Such a refusal is punishable on both conviction or fine or both.[82]

However, the NH Act, 2014 is not free from challenges. The major challenges of the Act have been identified to include: unavailability of resources to effectively implement the Act, the unresolved professional rivalries that existed in the national health system during the process of enacting the law, the slow attitude of the States in implementing the relevant parts of the Act, and low awareness of the stakeholders of the contents of the Act.[83]

Other identified weakness of the NH Act are its failure to provide for sexual reproduction right of women, failure to set out any requirements, standard, and formal regulations for the practice of traditional medicine or alternative healthcare practice.

Furthermore, certain provision of the Act such as the one relating to the removal of tissue, blood, or blood product without an informed consent for medical investigation and treatment in emergency cases, have been said to be violating certain provisions of the 1999 Constitution and ACHPRRE Act.[84]

Other provisions which appear to be more scandalous are those that permit the removal of a tissue or an organ of a living person for transplantation in another living person without any consent clause,[85] authorisation of a registered medical practitioner or dentist to carry out the act stated in

[79] 79. See the preamble to the NH Act, 2014.

80. Ibid, Part I-VII, ss 1 -65.

81. Ibid, s.20(1).

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[82]82. Ibid, s.20(2)

[83] 83. O.D Adegboye. and T.M Akande, 'The Role of National Health Act In Nigeria Health System Strenghening', Savannah *Journal of Medical Research and Practice*, (2017) (6)(1).9.

[84]84. Ekwulusi, S, m. guardian.ng/features, (last accessed on 9th May, 2021). See also S.48(1)(b) of NH Act, 2014.

[85]85. S.51, NH Act, 2014,

section 51 of the NH Act, 2014,[86] and authorization of the sale or trade in human tissues like female eggs cells, sperms, cornea.[87]

In *MDPDP v Okonkwo*,[88] the Supreme Court has held that failure to extract a patient's informed consent before administrating a blood transfusion on him constitutes a violation of his fundamental right to privacy and freedom of religion, good thought and conscience.

The Supreme Court reached a similar decision in *Okekearu v Tanko*,[89] where the finger of a 14-year-old was amputated without his consent. The Supreme Court awarded damages against the medical doctor for wrongful amputation.

5.5 Quarantine Act, 1926

The Q Act, 1926 is a colonial legislation, passed into law in 1926. The Act remains the active national law on disease surveillance, and governing public health in Nigeria.[90] The Act is a specific public health and safety legislation, containing special provisions which empower the President of the country to make regulations to contain and manage infectious diseases.

The primary objective of the Act is to provide for and regulate the imposition of quarantine and to make other provisions for preventing the introduction into and spread in Nigeria, and the transmission from Nigeria, of dangerous infectious diseases.[91] These include "cholera, plague, yellow fever, smallpox and typhus", and any "disease of an infectious or contagious nature which the President may, by notice, declare to be a dangerous infectious disease within the meaning of this Act."[92]

Similarly, the Act authorizes the President to declare any place in or outside of Nigeria to be an infected local area.[93] The Act further authorizes the President to issue regulations for the purpose of preventing or suppressing a dangerous infectious disease in an infected local area, any other area in Nigeria, or any area outside of Nigeria.

The State governors are accorded the same powers as the President to categorize diseases as dangerous infectious diseases, declare a particular location an infected local area, or issue regulations for any of the above-stipulated purposes in the absence of presidential action on a particular matter.[94]

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[86] 86. Ibid, s.52.

[87] 87. Ibid, s.53.

[88] 88. (2001) 85 LRCN 908.

[89] 89. (2002) LPELR-SC 73/1998.

[90] 90. Olusesan Ayodeji Makinde and Clifford Obby Odimegwu , 'A Qualitative Inquiry on the Status and Adequacy of Legal Instruments Establishing Infectious Disease Surveillance in Nigeria,' *Pan African Medical Journal*, 31(22) 2018.

[91] 91. The Preamble to the Q Act, Cap Q2, LFN 2004.

[92] 92. Ibid, s.2

[93] 93. Ibid, s.2

[94] 94. Ibid, s.8

95. The Quarantine (Ships) Regulations and COVID 19 Regulations 2020. The Lagos State Government also issued its own COVID 19 Regulations, 2020.

The major weakness of the Q Act, 1926 lies in its scope of the definition of dangerous infectious diseases. Indeed, most of the aliments like cholera, plague, yellow fever, smallpox and typhoid that warranted the enactment of the Quarantine Act of 1926 do not require the same quarantine measures. Furthermore, the penalty allotted to defaulters of the Act is Two Hundred Naira (₦200) or a six-month imprisonment or both,[95] and this can make the enforcement of the regulations made pursuant to the Act quite unrealistic.

The Quarantine Act, 1926 is regarded as archaic having been made in 1926, and one of the diseases identified in the document was eradicated over 35 years ago, highlighting the need for amendment and revision.[96]

6.0Conclusion/Recommendations

The study has found that there are various health related legislations in Nigeria, with each having different objectives. Many of those legislations however, are either too weak or old to confront modern health challenges. Other factors such as limitation of funding, lack of political will, poor enforcement mechanism, corruption, contribute to the weaknesses of some of these legislations, and render their provisions ineffective, thereby foisting negative consequences on the overall healthcare system. Constant law reforms and amendments are therefore required to strengthen those legislations.

The study also reveals that, as important as healthcare is, it is neither on the concurrent not exclusive legislative list, thereby making it a residual matter. This means that, the States should shoulder more responsibilities of funding healthcare. The absence of healthcare in the Exclusive and Concurrent Legislative List, should not relieve the Federal government of its responsibilities in view of its commitments to various health related international treaties. It is therefore recommended as follows:

a. The 1999 Constitution be amended in order to put healthcare on the Concurrent Legislative List, and make health an enforceable right
b. The Quarantine Act be amended in order to be able to confront sudden outbreak of epidemics.
c. The National Health Act be amended, and scandalous provisions such as section 51,52, and 53 be removed from the Act.
d. Full implementation of the National Health Act, 2014, and National Health Insurance Act, 2022.

[95] 96. Olusesan Ayodeji Makinde and Clifford Obby Odimegwu, (n.84).

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