'RIGHT TO HEALTH' AND UNIVERSAL HEALTH COVERAGE IN NIGERIA'S NATIONAL HEALTH INSURANCE AUTHORITY ACT 2022: THE CHALLENGE OF IMPLEMENTATION*

Abstract

The third Sustainable Development Goal (SDG 3) focuses on the provision of 'Good Health and Well-being', imposing an obligation on states to provide healthcare to citizens. From the first internationalised human right instrument: Universal Declaration of Human Rights (UDHR) 1948, 'right to life' has been seen as fundamental in any democracy. That right remains a mere declaration unless the proper accoutrements for its enjoyment are accessible. Global exertion has, as such, progressively refines the prerequisites for right life. The World Health Assembly has, in that vein, focused attention on making health a human right in itself, even though it is acknowledged to be expensive. To get around affordability and accessibility of health rights, the concept of 'Universal Health Coverage' (UHC) was formulated through the years. Nigeria's journey towards achieving UHC, espoused since 1962, found expression in 2005/6, in the establishment of the National Health Insurance Scheme (NHIS, 2005), and in the formulation of the National Health Promotion Policy (NHPP, 2006). Also resulting from the efforts, the National Health Act, 2014 and several other regulations have been put in place, leading up to the recent National Health Insurance Authority Act (NHIAA, 2022). This paper, through a doctrinal approach and a focus on human rights theory traced the trajectory of Nigeria's strides. Nigeria laws, though up-to-date, were found wanting due to corruption, lack of political will and unequal implementation. These factors limit the achievement of UHC in Nigeria. In view of the foregoing, the paper made recommendations which include maintaining a strict rule of law regime; as well as enabling citizens' participation in implementation of laws and policies, among others. Mass education of the citizens on their rights; pro bono public interest litigation and other mass actions, were also recommended to bridge the gap on behalf of the indigent population.

Keywords: Right to Health, Sustainable Development Goal 3, Universal Health Coverage, National Health Act 2014, National Health Insurance Authority Act 2022

1. Introduction

The *Constitution of the Federal Republic of Nigeria (CFRN)*[1] provides for the fundamental right to life in Chapter Four, section 33. However, the 'right to health', the chief indicator for quality of life of a citizen, is provided for in Chapter Two,[2] under the non-justiciable 'Fundamental Objectives and Directive Principles of State Policy'. Chapter Two typically, contains the outdated 'second generation rights' categorization of Karel Vasak, which has held sway in human rights discourse for forty years. Currently, learned authors like Jensen[3] have called for trashing the theory which has given leeway for States to couch rights in language that offers them the latitude to self-regulate on *what, when, and to what extent* citizens may enjoy certain rights. Developments in the world have overtaken such doctrinaire pigeon-holing of rights. Through the activities of the United Nations and its agencies, the constraints belabouring the domestic law regimes have been whittled down through globally engaging obligations and best practices. States parties are thereby, obligated to abide by these developments reflecting the international precept of *pacta sunt servanda*. Nigeria, like other States, has had to leapfrog into commitments to health rights under the World Health Organisation (WHO). 'Right to health' thereby, moved from being 'non-justiciable' into the realm of fundamental human rights, similar to the rights comprised under Chapter Four. Government became bound to provide healthcare as a matter of course. In search of how best to make health accessible to all, WHO has established the benchmark[4] for what it terms 'Universal Health Coverage' (UHC) defined as *'access to key promotive, preventive, curative and rehabilitative health interventions for all at an affordable cost, thereby achieving equity in access'*.[5] UHC is deliverable through the insurance scheme mode, but because, as Nnamuchi et al have detailed, affordability becomes a problem. Akiko Maeda et al[6] identify UHC as having 'three interrelated components: (1) the full spectrum of health services according to need; (2) financial protection from direct payment for health services when consumed; and (3) coverage for the entire population.' According to the authors, countries like Brazil, France, Japan, Thailand, and Turkey have already achieved UHC. They however, emphasise that even at that, these countries must continuously apply themselves to improving on technological infrastructure. Other obstacles that the authors identify, include managing 'entrenched interest groups which often stand in the way of reforms', as well as possible 'market failure, owing to difficulties in measuring and accounting for the use of resources and these resources' impact on quality, safety, and effectiveness.'[7] UHC is definitely a cost intensive venture in every ramification. 'Right to health' does not mean that citizens expect governments to offer health provisions free of charge, but continuous engagement of citizens and the State in a symbiotic enterprise remains *sina qua non* for success.

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[1] *Constitution of the Federal Republic of Nigeria (CFRN*), 1999.

[2] Ibid, section 17(3) (c) and (d).

[3] Steven L. B. Jensen, 'Putting to rest the Three Generations Theory of human rights', November 15, 2017, <www.openglobalrights.org > accessed 13/11/22.

[4] Obiajulu Nnamuchi, Samuel Nwatu, Miriam Anozie, and Emmanuel Onyeabor, 'Nigeria's National Health Act, National Health Insurance Scheme Act and National Health Policy: A Recipe for Universal Health Coverage or What?' in *Medicine and Law- World Association for Medical Law, Evolution of Healthcare Systems and Medical Law/Legal Medicine*; *Med Law* (2018) 37:4:645-682 (copy in file of this writer) (for in-depth discussion on this)

[5] WHO, World Health Assembly, Sustainable Health Financing, Universal Coverage and Social Health Insurance, (The Fifty-Eighth World Health Assembly, Ninth Plenary Meeting), 25 May 2005, para <http://www.who.int/health_financing/HF%20Resolution%20en.pdf > in n.4, [Footnote 10].

[6] Akiko Maeda, Edson Araujo, Cheryl Cashin, Joseph Harris, Naoki Ikegami, Michael R. Reich, *Universal Health Coverage for Inclusive and Sustainable Development: A Synthesis of 11 Country Case Studies*, July, 2014, <https://elibrary.worldbank.org/doi/full/10.1596/978-1-4648-0297-3_ch1 > accessed 17/11/22.

[7] Ibid.

The United Nations system has tackled the question of health rights through other initiatives like the *Millennium Development Goals* (MDGs);[8] and the *Sustainable Development Goals* (SDGs).[9] SDG 3 provides for 'Good Health and Well-being' with the target to 'Ensure healthy lives and promote well-being for all at all ages'[10] On the continent, the *African Charter on Human and Peoples' Rights* (ACHPR), also provides for right to health.[11] A Working Group under the African Commission has drawn up '*Guidelines and Principles on Economic, Social and Cultural Rights'*,[12] in which health right was considered place of great importance. Discussing right to health under international law, with regards to the position in the United States of America, Alicia Ely Yamin [13] agrees that in addition to ICESCR, many international and regional documents recognize 'health as a rights issue' and a reflection of convergence of minds on its importance. Since 2005/6, Nigeria has been on a slow journey towards achieving meaningful and effective entrenchment of UHC through the *National Health Promotion Policy* (NHPP)[14] and other efforts. Introducing NHPP, 2019, Prof Adewole, who was then the Minister for Health of Nigeria stated that:[15]

> The management and implementation of Health Promotion in Nigeria will be consistent with the National Health Act (2014), National Health Policy (2016) and other health-related policies; Resolutions of the World Health Assemblies, Regional Strategy for Health Promotion, Sustainable Development Goals (SDGs) and other international frameworks and best practices…

In order to assess Nigeria's strides towards UHC, this paper is divided into five parts. This introduction - Part I, is followed by Part II, which delves into a discussion on the developments in international law that led to health rights. Nigeria's obligations as a signatory of these international instruments are examined, as well as an exploration of the meaning and significance of the concept of UHC to health systems. In Part III, actions taken by Nigeria, which include laws, regulations and policies to enable UHC are examined, including the recently enacted Health Insurance Authority Act.[16] These domestic policy documents and legal frameworks are juxtaposed against known principles, concepts and international best practices, to determine whether there is sufficient synergy between them to warrant a conclusion that UHC is achievable in Nigeria. Part IV discusses the state of health in Nigeria by taking stock of successes and weaknesses recorded for Nigeria in her efforts to make healthcare accessible and affordable for its citizens. SDG 3 is employed as a measure to examine whether Nigeria is up to date on ensuring that citizens have healthy lives and that wellbeing is promoted for all at all ages. There appears to be a dissonance between the official reports on successes in the healthcare sector, and the impact of actual implementation. This creates unease that UHC could be a mirage as far as Nigeria is concerned. The paper however, finds optimism in recent developments, largely the provisions of the new law, and concludes in Part V, with observations and recommendations, bearing these developments in mind. In the main, it observes that even though NHIAA and NHPP have robust provisions to actualise the realisation of UHC, the malaise bedevilling implementation of good intentions could come into play.

In this regard, the paper goes on to challenge the legal profession and other stakeholders to play a central role in corporate governance matters, to keep government on its toes to ensure commitment to the obligations and expectations of the relevant stipulations in each of the frameworks examined in this paper. The approach of the paper is doctrinal, adopting library-based research of comparative literature on the subject matter. Based on the theory that all human beings are entitled to the right to life, which can only be meaningful if they also have access to a meaningful and effective healthcare system, conclusions are drawn through observable parameters and reports of experts in the field. These observations are juxtaposed with official/ government's assessment of the impacts of its exertion on the populace, in order to discover the schisms that ought to be addressed to improve healthcare. Questions like whether Nigeria has done enough to secure a workable healthcare system that accords with international best practices have arisen. The answers that emerge from comparing statistics on various heads of the recognised indicators as enumerated by Pascale[17] which include: '… access to safe and potable water; adequate supply of safe food; healthy housing, occupational and environmental conditions; access to health-related education and information, including sexual health; the freedom from unwarranted medical treatments; the fruition of an effective national healthcare system….' Pascale does capture the WHO categorisation for UHC. The WHO definition being more concise, in addition to the definitive action points itemised under SDG3, form the tapestry of international regime of the 'right to health' benchmarks against which Nigeria's strides are evaluated. The paper notes further, that developments in international law with regards to the normative definition[18] of the right to health, includes the concepts of both 'healthcare' and 'conditions conducing to good health'. The existing framework shifts the analysis of issues like 'disparities in treatment' from questions of quality of care to matters of social justice'. As the author posits, 'health laws, policies, and practices are expected to sustain a functional democracy that thrives on

[8] UNDP, 'The Millennium Development Goals Report 2014' November, 4, 2015, <https://www.undp.org/publications/millennium-development-goals-report-2014?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=Cj0KCQiA1NebBhDDARIsAANiDD2dHGOHJ76xfB4M7s5YOKDk9QpsdY5BroPGAtRQzRgG6s2ZzAVFQ0QaAk6JEALw_wcB> accessed 18/11/22.

[9] United Nations, 'The Sustainable Development Goals (SDG)' <https://www.undp.org/sustainable-development-goals?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=Cj0KCQiA1NebBhDDARIsAANiDD2rPtPORX0AqOU85bezdJnh9pr84IlPEklV83WxxLmtfU-3Ey9pBFMaAhqPEALw_wcB > accessed 18/11/22.

[10] SDG 3 < https://sdgs.un.org/goals/goal3> accessed 18/11/22.

[11] African Charter, article 16.

[12] Giuseppe Pascale, 'The Human Right to Health in Africa: Great Expectations, but Poor Results', *Völkerrechtsblog*, 20 April 2016, doi: 10.17176/20180115-161439.

[13] Alicia Ely Yamin, 'The Right to Health Under International Law and Its Relevance to the United States', in *Critical Concepts for Reaching Populations at Risk*, American Journal of Public Health | July 2005, Vol 95, No. 7. 1156 – 1161; 1156/7; available at < https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449334/pdf/0951156.pdf > Accessed 1/06/2022.

[14] Federal Ministry of Health, 'National Health Promotion Policy' (2006).

[15] Federal Ministry of Health, 'National Health Promotion Policy', revised 2019 in the 'Foreword', [4].

[16] *National Health Insurance Authority Act* (NHIAA) 2022.

[17] Pascale (n.12 above); [para 3].

[18] Yamin, (n.13 above), [1156].

accountability'.[19] International law has developed along lines that invariably provide a standard for evaluating governmental conduct as well as the mechanisms for setting the measure for such accountability.

2. International Obligations of Nigeria to Deliver on Health Rights

Following the UDHR which declares that everyone has 'a right to life',[20] the first internationally recognised call for right to health in the world is in the ICESCR[21] which provides in Article 12(1) that States to recognize 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' and other basic health indices. It may be argued that the provisions of the UDHR have crystalised into customary international law for some countries.[22] It has been suggested that,[23] the customary international law nature of provisions of the UDHR was suggested in a judgment of the International Court of Justice where it was stated that "although the affirmations of the Declaration are not binding qua international convention ... they can bind the states on the basis of custom ... whether because they constituted a codification of customary law ... or because they have acquired the force of custom through a general practice accepted as law."[24] Clearly, the UHC's requirements have been the measure for the obligation to provide for the right to health for States since 1966, long before the concept was formalised by the WHO World Assembly. However, the achievement of the right to health was not mandatory under ICESCR. States were only urged to 'take steps' towards its attainment. That position has changed. States must now emplace UHC and report periodically on levels of implementation, just as they do for other rights to which they are signatories.

The 2015 – 2030 Sustainable Development Goals,[25] especially SDG 3 – 'Good Health and Well-being' echo these commitments. SDG3 has twenty-three thematic areas which the world aims to achieve by 2030. Examples include to: reduce the global maternal mortality ratio to less than 70 per 100,000 live births; and end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births.[26] The African Charter[27] also provides for right to health in article 16. Both the African Commission on Human and Peoples' Rights, and the African Court, have given judgments and pronouncements on the obligations of States to provide healthcare. For instance, the AU's 'Working Group, referred to above,[28] which according to Pascale, raised the hope of activists on effectiveness of the soft law espoused in that document. The African Charter on Human and Peoples Right (ACHPR) is the most important international agreement for any discussion of the right to health in Nigeria because it has been domesticated by an Act of the National Assembly. The African Charter on Human and Peoples' Right (Ratification and Enforcement) Act 1983 (The ACHPR Act), domesticates the ACHPR in its entirety. Therefore, the human right to enjoy the best attainable state of physical and mental health as stipulated by the ACHPR is applicable in Nigeria. In essence, there is a human right to health in Nigeria.[29] Decisions in which the African Court promoted health rights include: the case of the 'Lunatic Detention Act'[30] of the Gambia, where the Court took umbrage at that country for violating the human right to health and other rights of its citizens who were ordered to be jailed in psychiatric jails. The Court took the opportunity to declare that insane persons did not lose the human rights due to them for the mere fact of their insanity. The other example is the case brought by NGOs[31] on behalf of four women journalists who complained of violations of their rights, including being raped while documenting a strike in Egypt. The right affected in such a case, beyond the crime of rape, is the violation of their right to protection from diseases; in other words, right to health.[32] These decisions and regulations are binding on Nigeria and have influenced the enactments, regulations and laws put in place in Nigeria, as will be seen presently. Generally, domestic courts and regional bodies that have addressed the question of international obligations of States with regards to right to health, have generally agreed on the minimal standards governments can be required to meet. These include that states have an obligation not to adopt retrogressive measures to avoid responsibility under the instruments. Likewise, Nigeria should not fall back on a discarded 40-year-old suggestion by Vasak, to avoid accountability to citizens who seek to enforce such rights.

Secondly, health policies and programs must not be discriminatory. States must also, provide effective regulation for the conduct of third parties from interfering with the right to health, such as those responsible for environmental pollution.[33] Finally, governments are required to develop national policies and plans of action to respond to health concerns.[34] These international obligations have been the umbrella under which Nigeria has encapsulated its obligations to her citizens too. The *Constitution of the Federal Republic of Nigeria's* provision of right to life in section 33, and right to health in section 17(3) (c) and (d) do not assure rights to health as such. The realisation that health must necessarily bear costs kept the world toiling towards attaining sustainable healthcare.[35] As at 1978, the principle of 'health

[19] Ibid.
[20] UDHR, article 3.
[21] ICESCR, 1966.
[22] Virginia A. Leary, 'The Right to Health in International Human Rights Law' (1994) 1 Health and Human Rights 24-56.
[23] Elijah Oluwatoyin Okebukola et al Human Right To Health And Corporate Responsibility In Africa Geneva/St. Gallen, January 30-31, 2023
[24] 'Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ Reports 1971, separate opinion of Vice-President Ammoun at 76.
[25]United Nations, Sustainable Development Goals (SDG 3) – Goal Three – 'Good Health and Well-being', available at UNDP, <https://www.undp.org/sustainable-development-goals?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=CjwKCAjwrZOXBhACEiwA0EoRD4f9K7kmMKlJCES9jQqfjxhmMsffgJPmjVrOWwTwf-NOW5Fd99GqJhoCkf4QAvD_BwE#good-health > accessed 12 July, 2022.
[26] Culled from the United Nations Website, (SDG 3, 2015 – 2030) see also (n.9 above).
[27] African Charter, 1981.
[28] Pascale, (n.12 above).
[29] Elijah Oluwatoyin Okebukola et al (n, 23 above).
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Item 12 SDG3, (n.23 above).
[34] Yamin, (n.9 above).
[35] Gbadegesin O. Alawode and David A. Adewole, 'Assessment of the design and implementation challenges of the National Health Insurance Scheme in Nigeria: a qualitative study among sub-national level actors, healthcare and insurance providers', BMC Public Health (2021) 21:124; See also Nnamuchi et al (n.4 above) and Yamin (n.9 above).

for all' was espoused in the Declaration of International Conference of Primary Healthcare that held in Alma-Ata.[36] Aside from reaffirming that health is a fundamental human right, the Declaration prescribes 'the attainment by all peoples of the world by the year 2000, a level of health that would enable citizens lead a socially and economically productive life.'[37] That 'health for all' paradigm set the stage for the drive to UHC.

In making the firm declaration for UHC, WHO stated that 'everyone should be able to access health services and not be subject to financial hardship in doing so.'[38] The world body was not unmindful of the challenges involved in achieving this, but it regarded them as not insurmountable. The observed challenges WHO sought to address ranged from financial constraints to excessive reliance on direct payment for healthcare services, to inefficient and inequitable management of resources. These recurring problems are observable in varying degrees in every country and are attributes that divide countries into developed, developing or outright poor nations. SDG 3 has factored in the concerns of all nations, big and small, in its action points. According to Alawode and Adewole[39] the World Health Assembly has, since 2005, continued to lay emphasis on devising efficient and cost-effective funding mechanisms for health systems, through the health insurance scheme. According to the duo, different models of financing have evolved through the years, ranging from the tax-based *Beveridge model* method of health financing; the Social Health Insurance (SHI), the 19th Century German -*Bismark model*; the Medical Savings Account (self-reliant / funding) model in Singapore; the Affordable Care Act (*ObamaCare*) USA Community-Based Insurance; to the Private Health Insurance model. The aim in all is to reduce out-of-pocket payment in all forms and reduce equity of access to healthcare, especially for the poorest of the poor. The need for pro-poor access is critical, especially in Africa, where there is more challenge to UHC, in ensuring financial protection and access to those outside the formal sector. Tax regimes in many countries in Africa are inefficient and often exclude the poorest of the poor, and it is this same population that is often exposed to the most debilitating state of health from epidemics and poor sanitary conditions. Nigeria is no exception.

3. A Review of Nigeria's Domestic Laws on Healthcare

Health Insurance has been part of Nigeria's policy direction as far back as 1962,[40] but became operational in 2005/6 as a tripartite public-private arrangement of NHIS, HMOs and Healthcare Providers as its operators. The enrolees, as beneficiaries, formed the fourth arm stakeholders and recipients of the right to health. That goal was a ten-year plan (2005 - 2015), having galloped past the famous 'Year-2000' mark. The 'First National Strategic Health Development Plan 2010-2015'[41] was drafted with a progressive vision. The resulting scheme provided different programmes for different population groups, such as the formal and informal Sector Social Health Insurance, championing a pro-poor policy. However, opinion is polarized among stakeholders on the efficacy of the scheme in addressing the health situation and poor health outcomes in the country. Thus, there was a growing demand to correct the persistent poor coverage of the scheme by addressing its design and implementation challenges. The hope was that such reassessment would provide an objective view of the situation to aid better policy implementation. The core functions of NHPP, 2006 'to maintain and operate a health insurance fund'; 'promote and ensure the quality of health insurance scheme…'; 'regulate the activities of health insurance actors' etc.[42] With a view to achieving its functions, the NHIS, 2006 expressed commitment to service delivery to her customers: 'develop, update and maintain database of all registered enrolees daily' among other records which would make for ease of accountability.[43] Further refinements and reviews in line with international best practices, led to Federal Government of Nigeria, 'Second National Strategic Health Development Plan' (2018 – 2022), tagged 'Ensuring healthy lives and promoting the wellbeing of Nigerian populace at all age' and backed by a Service Charter[44] and currently the 'National Health Insurance Scheme', (2020 – 2030). The NIPP 2016 provided a better compass for the country's health system and aligns with the *National Health Act* (2014) which provides 'a framework for the regulation, development and management of the health system, as well as set standards for rendering health services in the federation'. As at 2019, leading to the *National Health Insurance Authority Act, 2022,* the structure for health delivery became stabilised to reflect the federal structure of Nigeria, with a view to reaching every nook and cranny and every citizen of Nigeria. A Health Promotion Division exists at the Federal Ministry of Health, and in each State Ministry of Health, while the Local Government Areas (LGAs) operate Health Promotion Units. Across Nigeria, NIPP 2019 provides for community structures such as Ward Development Committees, Village Development Committees and Health Facility Committees. The target of NHPP, 2019 is that all Health Promotional interventions, including materials to be administered on the Nigerian public, MUST satisfy certain minimum standards, which include sensitivity 'to religion, culture and gender'.[45] These conditions should conduce towards achieving UHC because they involve actions that are multi-dimensional. The structures established go right down to the ward levels, the committees have the responsibilities for creating demand; monitoring the accessibility and quality of health service delivery; community mobilization; and direct participation in health programme implementation, among others. Nigeria can therefore, be seen as having covered all the bases. NHPP, 2019 achieves international best practice of committing to healthcare delivery that is 'preventive, promotive, protective, restorative and rehabilitative', at least in terms of effective policy and legal frameworks. What remains to be determined is whether there is effective implementation of these precepts. Does the average Nigerian enjoy what the laws and policies promise? For effective coverage, NHPP, 2019, in Chapter Four, reiterates the structure and organisation which spreads from national, states and local government councils; and to include NGOs, CSOs faith-based organisations and the Media to facilitate accountability. Development Agencies and Implementing Partners are part of the structures to support the mobilization and provision of resources, sustainable funding mechanism external to government and serve as agents for promoting global standards and best practices.

[36] WHO, 'International Conference on Primary Healthcare', Alma-Ata, USSR, 6-12 September 1978; See in Nnamuchi et al, (n.4 above).
[37] Ibid.
[38] Ibid.
[39] Alawode and Adewole, (n.29 above), [2].
[40] Olawode and Adewole, (n. 32 above).
[41] Federal Government of Nigeria, 'First National Strategic Health Development Plan 2010-2015'
[42] NHPP, (n.13 above) [6].
[43] Ibid, [8]
[44] National Health Insurance Scheme, 'Service Charter for National Health Insurance Scheme' available at <https://www.nhis.gov.ng/2022/05/24/national-health-insurance-authority-nhia_-news-release/ > Accessed 15/06/2022
[45] NHPP, 2019, [4].

The assessment of implementation leading to NHPP, 2019, revealed that funds were inadequately and arbitrarily allocated for health promotion programmes at all levels. Nnamuchi et al[46] catalogue the many corruption cases that bedevilled the NHIS, including the allegations that led to the dismissal of the NHIS boss. To do better, the 2019 Policy restates government's duty to maintain the guiding principles of: accountability and responsibility; equality, equity and social inclusion; ethics; professional-gold standard; efficiency; regulation and legislation; community ownership and multidimensional collaboration.[47] For effective monitoring and evaluation, NHPP, 2019 in Chapter Six, aims to employ the strategies of: Routine Reporting System (SRR); Planned Preventive Maintenance (PPM) and National Health Conferences.[48]

But the fine words in Nigeria's policies and legal frameworks, like those of other African States, have been adjudged through several studies and official statistics, to merely raise great expectations about the right to health, but failing woefully to meet their target in practice.[49] Pascale accuses African countries of failing to fully implement, and in some cases, not implementing at all, the human right to health, whereby 'the main national practices … show a clear tendency that in practice neither concrete nor targeted steps are taken in order to realise the human right to health.' He identifies many factors to be responsible for this state of affairs to include 'acute shortage of expertise in almost all the African States … (which) is linked to the management of the capitals invested by international donors for the development of the continental welfare.[50] Nnamuchi *et al* also state that many African governments seem either unwilling or unable to come to the aid of their populations by means of the resources granted from abroad.' The authors[51] go into great details on the Nigerian situation, in total agreement with Pascale. But the test for human rights is stated in the Latin phrase: *ubi jus ibi remedium* - wherever there is a claim of right, there must be a remedy. The judicial system of the country must be availed the opportunity to provide relief whenever a citizen has any reason to seek protection under the law.

The 2014 *National Health Act* (NHA) came in to establish the right to health, along with sanctions, which include prison terms for breaching them. The Act sets 'standards for rendering health services in the federation; and for related matters'.[52] It establishes the 'National Health System'[53] which encompasses public health providers from the federal through the states, local governments and wards and includes traditional health providers. In addition, it specifically provides for the rights of users and for the protection of those rights.[54] A notable provision of NHA, is in 'Part III- Rights and Obligations of Users and Healthcare personnel' which include 'Emergency Treatment,'[55] failure to grant which attracts up to a hundred thousand Naira fine and/ or six months' imprisonment; 'Rights of healthcare personnel'[56] and to 'set standards to minimize injury or damage to healthcare personnel working in health establishments and their property, including transmission of diseases'. In section 22, the Act provides for 'indemnity for healthcare providers in any proceedings, whether civil or criminal which occur in connection with their work, unless they were found negligent'. The Act thereby, also takes care of those in the field working to ensure access to health. Most importantly, there is a 'Complaints and Complaints Procedure'[57] which the Act mandates all healthcare providers / establishments to display visibly to users of their services so that they have clear directions about how to report any breach of their rights to the appropriate authorities. Many Nigerians do not know their rights under the Act and do not pursue them. Besides, lack of implementation of the laws and policies, as well as corrupt practices bedevil the assurance of the right to health of Nigerians.

4. Towards Improved Healthcare in Nigeria

Adewole[58], as the then Minister for Health in Nigeria, had lamented the country's avalanche of problems in the healthcare area, which include both communicable and non-communicable diseases. Nigeria's spending on the Health Sector was reported to have fallen short of the 15 per cent commitment set out in the Abuja Declaration of 2001,[59] which the African Union mandated its member States to commit to in their annual national budget for health. According to the minister, knowing inequities in healthcare provisions have direct bearing on the linkage between peoples' health, their economic status and social conditions, made Nigeria take steps to remedy the situation. Governments through the years proved unable to adequately address the social determinants of health in Nigeria. The minister made reference to the position of the Ottawa Charter of 1986 which declared that achieving adequate healthcare is possible where a country progressively enables its people to take ownership of the process. The country has had its work cut out for it to improve the status of healthcare in Nigeria. In fact, the *Country Voluntary Reviews on SDGs of 2017* exposed the reality of failed implementation on SDGs.[60] Only in isolated cases where the communities were supported, were people able to demand for services.[61] Important achievements of the 2019 document include: the 'Primary Healthcare under One Roof Policy'; the 'Basic Healthcare Provision Fund for Universal Health Coverage' and the launching of a 'Comprehensive National Health Policy'.[62] Many of the anomalies observed in the earlier policy documents have been remedied. Sources of funding have been enlarged; and citizens now have increased roles for

[46] Nnamuchi et al, (n.4 above).
[47] NHPP, 2019, [4-5].
[48] Ibid, [19].
[49]Pascale, (n. 12 above).
[50] Ibid, [paras 6 – 9].
[51] Nnamuchi, (n.4 above).
[52] NHA, 2014, Preamble.
[53]Ibid, section 1.
[54] Ibid, section 1 (1) (e) and (f).
[55]Ibid, section 20 (2).
[56] Ibid, section 21(2).
[57] Ibid, section 30.
[58] See n.15 above.
[59] Ibid.
[60] Federal Government of Nigeria, 'Implementation of the SDGs - A National Voluntary Review', June 2017
< https://sustainabledevelopment.un.org/content/documents/16029Nigeria.pdf >accessed, 12 July, 2022; and
Federal Government of Nigeria, 'SDGs, Nigeria, A Voluntary Review, 2020', <https://sustainabledevelopment.un.org/memberstates/nigeria > accessed 12, July, 2022.
[61] Please see Nnamuchi et al, (n.4 above) for a detailed situation report of the assessment of the situation of healthcare pre-2019 improvements in the law and policy in this area.
[62] The First National Health Strategic Development Plan (2010 – 2015 and the Second National Strategic Development Plan 2018 – 2022.

participation at all stages of the healthcare system. It is hoped that with better implementation, Nigerians may begin to feel the effect of a healthcare that provides and protects the right to health for all citizens. The recent enactment of the National Assembly of Nigeria seeks to draw all the elements unto one table. The NHIAA, 2022 has repealed the *National Insurance Scheme Act*, 2004. Its stated aim is the furtherance of the 'promotion, regulation and integration of health insurance schemes in Nigeria' and for related matters.[63] The Act pools into one document, the different bodies; schemes; guidelines and regulations that have been continuously churned out since 2004, in order to harmonize the operation of health insurance in Nigeria, by placing their regulation under one 'Authority'. The Authority is charged with the duty to work towards better accessibility and clarity in the frameworks for implementation at all levels. All existing operations will have to undergo reregistration, under harmonized regulations to be made by the newly created Nigerian Insurance Authority (NHIA).

NHIA Act makes many novel provisions[64] which will hopefully bridge the observed deficiencies in the practices of health insurance in Nigeria. To begin with, section 14 has created an obligation on all Nigerians to obtain a health insurance, whether they are involved in the public or private sector, or in informal employment, including being merely resident in Nigeria. In other words, health insurance is no longer optional in Nigeria. When fully implemented, Nigeria will have adopted the best international practice which makes it incumbent on even those visiting Nigeria, to mandatorily acquire health insurance, so that no one is left without recourse when they fall sick, whether they have personal funds or not. Part II of the Act provides for 'Types of Health Insurance Schemes'. Section 13(1), for instance, creates the 'States Health Insurance or Contributory Scheme.' According to the Act,[65] 'A state and the FCT shall provide coverage for vulnerable persons under the State Health Insurance and Contributory Scheme through the Basic Healthcare Provision Fund and other sources and not require the payment of premiums for such coverage by vulnerable persons defined by this Act'. 'Vulnerable Group' has been defined in the Act to include 'children under five, pregnant women, the aged, physically and mentally challenged and the indigent as may be defined from time to time'. In this manner, the Act has ensured a truly universal health coverage as prescribed by WHO and in SDG 3. Section 15(3) introduces 'Private Health Insurance' Scheme which will be companies duly registered at Corporate Affairs Commission and accredited by the Authority. Section 20(1) provides for 'Third Party Administrators (TPAs): 'any organisation with expertise and capability to administer all or a portion of the insurance claims process, including administrative activities, which is registered by the Authority.'

The entrance of TPAs into the field of play should promote healthy competition and more choices are now available to Nigerians, unlike in the past where the systems struggled under multifarious bottlenecks which left the poorest of the poor bereft of protection. Legal practice is currently expanding into this area. Part III of the Act provides for 'Implementation of the Basic Healthcare Provision Fund and Establishment of Vulnerable Group'. Section 25(1) creates the Vulnerable Group Fund which will subsidise the cost of provision of healthcare to vulnerable persons in Nigeria. The subsidy will be funded from various funds and levies, including telecommunication tax; 'Basic Healthcare Provision Fund; grants and donations; among others:[66] Part VIII provides for alternative dispute resolution among all stakeholders to be offered by the Authority.[67] Mediation, conciliation and arbitration are to be provided in accordance with the Arbitration and Conciliation Act, 2004.[68] The Authority will require a trained panel of neutrals to be on hand to settle disputes seamlessly. Litigation is provided for in Part IX: 'Offences, Penalties and Legal Proceedings'. For instance, failure to provide care to a duly registered enrolee by a healthcare provider[69] attracts prosecution under relevant extant laws financial transactions.[70] The Act satisfies the cardinal principle that rights can be demanded for, and that failure to provide them will be punished. The challenge of enforceability is amply addressed. It is this writer's respectful view that well-crafted challenges against non-implementation of the Act, will be necessary to break the jinx of perpetual problem of lack of implementation by government, and assist in emplacing UHC to function optimally.[71] Indeed, Nigeria has positioned herself well to deliver on health rights, armed with the state-of-the art policies and laws. Prof Mohammed Sambo, the Director-General of NHIA has assured the world community that the new Act is the clincher this time around.[72] What remains to be ascertained is whether professionals working across sectors will ably step up and play their roles to enthrone due process. Ten years down the road, further studies may prove this writer's hypothesis right, if proactive steps are immediately taken by professionals to operationalize the provisions of the NHIA Act.

5. Conclusion and Recommendations

The WHO insisted on establishing a global obligation that no State can derogate from providing UHC based on the rationale that no country is so poor that it is incapable of providing basic health services for its citizens. Of what value is right to life if there is no support for safeguarding health? This position was affirmed by the Maastricht Guidelines in 1997[73] which imposes 'minimum core obligations' on States; also emphasising that: '…all countries can do more to raise funds for health or to diversify their sources of funding, to reduce the reliance on direct payments . . . and to use funds more efficiently and equitably… (if) 'the political will exists.' Direct payment is not encouraged because it imposes more difficulty on the poor who cannot be sure of ready funds in hand when sickness occurs. If

[63] NHIAA, 22, Preamble.
[64] Marcus Fatunmole, 'Key issues in Nigeria's new National Health Insurance Authority Act', June 20, 2022, <https://www.icirnigeria.org/key-issues-in-nigerias-new-national-health-insurance-authority-act/>
[65]Ibid, section 13(7).
[66] Ibid, section 26(1).
[67] Ibid, section 47(1).
[68] This will now have to be the Arbitration and Mediation Act, 2023.
[69]Ibid, section 48(1)(f).
[70] Ibid, section 48(3).
[71] Maeda et al, (n.6 above).
[72] Kazeem Biriowo, 'NHIA Act to Accelerate Nigeria's Universal Health Coverage ― DG', *Nigerian Tribune*, 5 October, 2022. <https://tribuneonlineng.com/nhia-act-to-accelerate-nigerias-universal-health-coverage-%E2%80%95-dg/> accessed 21 November, 2022.; See also, Tope Michael Ipinnimo1, Kabir Adekunle Durowade, Christiana Aderonke Afolayan, Paul Oladapo Ajayi, Tanimola Makanjuola Akande, 'The Nigeria national health insurance authority act and its implications towards achieving universal health coverage', *Nigerian Postgraduate Medical Journ*al, Volume 29, Issue 4, 27 October, 2022 [281-287] <https://www.npmj.org/article.asp?issn=1117-1936;year=2022;volume=29;issue=4;spage=281;epage=287;aulast=Ipinnimo> accessed 21 November, 2022.
[73] WHO. 'Maastricht Guidelines, 1997/1998.

Nigeria can follow through with making healthcare more accessible and affordable for the average citizen, no one would notice if those who can afford it choose to travel abroad for medical treatment. There would be more peace and development in the nation. From all accounts, it has been observed that Nigeria is often quick to adopt resolutions of international bodies, but ends up with botched operations, not unlike many African countries as stated by Pascale.[74] Government officials rate Nigeria high on achieving the criteria set out for healthcare by SDG3[75] but perception of the common person in the street should be the measure of success. Nnamuchi et al[76] and Pascale[77] have answered those questions in the negative. This writer insists that government can no longer be left to its devices. The issue of non-justiciability has been settled in favour of the citizens with the enactment of the *National Health Act, 2014* and now the *National Health Insurance Authority Act, 2022.* Nnamuchi et al[78] decry massive problems with tax evasion and policy somersaults in governance, as part of the malaise that have notoriously plagued the country for the longest time and resulted in government's failure to raise funds for healthcare. In a recent conference of the Nigerian Society of Anaesthetists,[79] it was observed that Anaesthesia was not included in 'Intensive Care and Pain Management' in NHIS. Even though the representatives of government at the event promised to address the issue, this writer finds it disturbing that such an important aspect of healthcare delivery was excluded. What manner of UHC could Nigeria aim for if a vital component of surgery is ignored?

Gloomy as the healthcare situation might appear, this writer celebrates that the new Act has provided a window through which civil society organisations can more actively participate to enlarge the coast to deliver on health rights. The legal profession should be at the forefront of this journey by embarking on *pro bono* litigations test cases of breaches of the provisions of the Act. The public needs to be apprised of the mandatory nature of health insurance under the current law. Citizens need to be taught how best to key into taking benefit of health insurance. Multi-sector collaborations are definitely the way to go. The National Orientation Agency (NOA), the Ministries of Information and Education should synchronise their activities to give priority to meaningful sensitization of Nigeria's rural population to understand the benefits of health insurance. The bottom line is that health rights are no longer optional for governments. They have evolved into fundamental rights that must be provided and protected.

[74] Pascale, (n.12 above).
[75] Government of Nigeria Launches Nigeria SDGs Implementation Plan 2020-2030 with Support from UNDP, posted June 7, 2021, <https://www.undp.org/nigeria/press-releases/government-nigeria-launches-nigeria-sdgs-implementation-plan-2020-2030-support-undp > accessed, 12 June, 2022.
[76] Nnamuchi, et al, (n.4 above).
[77] Pascale, (n.12 above).
[78] Nnamuchi, et al, (n.4 above).
[79] See Elizabeth Ogboli Nwasor, President's Address at the Annual Scientific Conference and General Meeting of the Nigerian Society of Anesthetists NSA) in Collaboration with World Federation of Societies of Anesthesiologists (WFSA), which held in Abuja, 21 - 23 November, 2022.