

**THE RIGHT TO HEALTH UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF
NIGERIA (AS AMENDED): AN APPRAISAL**

**ONUIGBO, Christiana Nneka¹
OKWUMUO, Cosmas C.²
NWAKOBY, Ifeoma Priscillia³
EMEKA, Ngozi Eunice⁴
NWACHUKWU, Tochukwu Nkiruka⁵**

Abstract

This study appraised the right to health under the Constitution of the Federal Republic of Nigeria and the challenges in enforcing the said right. The right to health, just like other socioeconomic rights, is not negotiable in advanced countries of the world. The Constitution of the Federal Republic of Nigeria 1999 (As Amended) made provisions for the right to health but unfortunately, the right to health is non-justiciable under chapter two of the Constitution. It must be noted that all human rights are indivisible, interdependent and interrelated. Civil, political, economic, social, cultural and environmental rights are all interdependent upon one another and none of these rights is superior or inferior to the other. Though the right to life is a fundamental right, it has no value at all if the right to health is not upheld and protected. The aim of this research was to appraise legal framework for the protection of the right to health under the Constitution of the Federal Republic of Nigeria. It is obvious that Nigeria has refused to give the right to health its rightful place in chapter four of the Constitution. The methodology adopted was doctrinal and the approach is analytical in nature. The researchers also found that the problem associated with enforcing right to health is that many Nigerians are poor, illiterate and lack the will power to pursue litigation. It is recommended inter alia that there should be a constitutional amendment which will accommodate the right to health in chapter four of Nigeria's Constitution. Once that is achieved, that will be the first step in protecting the lives of Nigerians.

Keywords: Rights, Health, Health Rights, Constitution, Nigeria

1.0 Introduction

Ultimately, fundamental rights are those rights enshrined in the chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).⁶ They are inherent and inalienable save to the extent provided by the same Constitution. In hierarchy of the provisions of the Constitution, these rights take a sacrosanct position. However, an extensive perusal through the Constitution discloses other various rights and obligations. The contents of chapter II of the Constitution which deals on fundamental objectives and directives principles of state policy are considered second generation rights, otherwise known as socio-economic rights. To this extent, the fundamental right provisions in Chapter IV gives life to them in the sense that without Chapter IV, there will not be any basis for the enjoyment of such other rights. The right to health therefore forms part of these second-generation rights. The right to health is the totality of access to health facilities and its incidental needs. This right is arguably an extension of right to life. The right to health was first articulated in the World Health Organization (WHO) Constitution 1946 which states that

¹ ONUIGBO, Christiana Nneka, LL.B (Hons), BL, LL.M, PhD, Lecturer Department of Private and Public Law, Faculty of Law, University on the Niger, Umuaya, Anambra State. Email: christnekky@gmail.com, Tel: +2348138257999;

² OKWUMUO, Cosmas C., LL.B, BL (Hons), AICMC, MTI-AM, Legal Associate, Directorate of Legal Services Nigerian Army, Abuja. Email: chidiebereokwumuo2@gmail.com, Tel: 2348130514785.;

³ NWAKOBY, Ifeoma Priscillia, LL.B (Hons), BL, LL.M, PhD, Lecturer Department of Private and Public Law, Faculty of Law, COOU, Anambra State, Tel: +2347032939026, email: ifeomanwakoby890@gmail.com;

⁴ EMEKA, Ngozi Eunice, LL.B (Hons), BL, LL.M, PhD, Lecturer Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Anambra State, Tel: +2347035114683, email: ne.nwafor@unizik.edu.ng; and

⁵ NWACHUKWU, Tochukwu Nkiruka, LL.B (Hons), BL, PGD (Management), LL.M, PhD. Lecturer, St. Paul's University, Awka, Anambra State. Tel: +2348067673140, email: tochianaje@yahoo.com

⁶ Chapter IV of the Constitution of the Federal Republic of Nigeria, specifically from Section 33to Section 46

‘the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being...’ The preamble to the WHO Constitution defined health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’.⁷ The socio-economic rights particularly the right to health to which this discourse relates, although having a constitutional basis, was yet rendered impotent by the same Constitution thereby creating laxity on the parties on whom the responsibilities. In essence, the extent of the enforceability of the right to health in the limelight of the relevant constitutional provisions has been subjected to academic and judicial assessment and yet ineffectual.

2.0 Constitutional Highlight of the Right to Health in Nigeria

The Constitution of the Federal Republic of Nigeria (CFRN)⁸ is the supreme law of Nigeria with the mandate to protect the citizens of Nigeria and ensure the smooth running of government and organization of the statutory institutions in the country. The CFRN in its chapter four laid down fundamental human rights of citizens, including the right to life, privacy, dignity, fair hearing, right to acquire property and freedom from discrimination. Chapter II of the Constitution provides second generation rights known as fundamental objectives and directive principles of state policy. One of the second-generation rights which form the crux of this work is provided for in section 17(3)(d) which states that the state shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons. Further, section 6(6)(c) of the Constitution provides thus:

The judicial powers vested in accordance with the Constitution shall not, except as otherwise provided by the Constitution extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or judicial decision is in conformity with the fundamental objectives and directive in principles of state policy set out in chapter two of the constitution.⁹

The above-stated provision, in essence, literally ousts the jurisdiction of the court to hear claims arising from the second-generation rights, including the right to health, as contained in chapter II of the Constitution. However, amidst the ouster clause, section 13 of the Constitution sanctions all organs of government and all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of Chapter II of the Constitution.¹⁰

2.1.1 National health Act (NHA) 2014

The National Health Act 2014 set standard for rendering health services in Nigeria. Under the Act, a health care provider, health worker or health establishment shall not refuse a person emergency medical care for any reason. The Act also provides that prompt attention be given to all persons in need of emergency treatment. A person who contravenes this section commits an offence and is liable on conviction to a fine of one hundred thousand (₦100,000.00) or to imprisonment for a period not exceeding six months or to both.¹¹ Thus, by prohibiting the refusal of emergency treatment and penalizing the refusal of emergency medical care, the National Assembly underscores the gravity of the offence and a lot of attention was ascribed to emergency medical care by the Act owing to the fact that nothing should be more important than saving lives and thereby fulfilling the right to life. Furthermore, any industrial action in the health sector shall be resolved within fourteen days as health has been classified as an essential service by the Act. From the spirit and language of the National Health Act and in line with the case of *the Attorney General of Ondo State v*

⁷ World Medical Association, ‘Right to Health’ <<https://www.wma.net/what-we-do/human-rights/right-to-health/>> accessed on 2 August 2023.

⁸ Cap C 23, Laws of the Federation of Nigeria 2004.

⁹ JA Sokefun, Medical Ethics, Law and The Right to Health in Nigeria, <https://www.researchgate.net/publication/364122673_MEDICAL_ETHICS_LAW_AND_THE_RIGHT_TO_HEALTH_IN_NIGERIA_HUMAN_Rights_and_and_jurisprudence_Journal_HRJJ/citation/download> accessed on 24 July 2023.

¹⁰ Constitution of the Federal Republic of Nigeria, 1999 (as amended). s 13.

¹¹ National Health Act 2014, ss 20 (1) & (2).

Attorney General of the Federation & 36 Ors,¹² it is undisputable that the right to health has been raised to the level of a justiciable right as anyone denied of access to basic health has a non-negotiable right to seek redress in court. If tenaciously enforced by the citizens and religiously implemented by the federal government, the National Health Act (NHA) is going to tackle all preventable diseases including infant and maternal mortality.¹³

3.0 Judicial Attitude towards the Protection of the Right to Health

Chapter II of the Constitution gained judicial attention in *Archbishop Olubunmi Okogie v Attorney General Lagos State*¹⁴ where the Court of Appeal emphasized on the implication of the provision, stating that they constitute ultimate objectives of the nation. According to the court:

The fundamental objectives identify the ultimate objectives of the nation and the directive principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. While section 13 of the Constitution makes it the duty and responsibility of the judiciary among other organ of government to conform to and apply the provisions of chapter 11, section 6(6)(c) of the same constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the fundamental objectives and directive principles of state policy. It is therefore clear that section 17(3)(d) is not enforceable in any court in Nigeria.¹⁵

Although not on the social objective of health, the case of *the Attorney General of Ondo State v Attorney General of the Federation & 36 Ors*,¹⁶ was on the interpretation of section 15(5) of chapter 11 of the 1999 Constitution of the Federal Republic of Nigeria. The section provides that ‘the State shall abolish all corrupt practices and abuse of power’. In arriving at its decision, the Supreme Court of Nigeria utilized sections 4(2) and 5(5) of the Constitution and decided that in order to enforce section 15(5), there was the need to put a law in place and that exactly was what the National Assembly had done by promulgating the Corrupt Practices and other Related Offences Act 2000. This entails that where another enactment makes provision for the sanction of a second generation right; that right becomes enforceable under that law.

Guided by the decision in the case of the *Attorney General of Ondo State v Attorney General of the Federation and 36 others*,¹⁷ the Supreme Court held *inter alia* in *Olafisoye v Federal Republic of Nigeria*¹⁸ that the non-justiciability of 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 provided by the constitution’. This means that if the Constitution provides for any of the rights and duties in chapter II in another section, that right becomes enforceable as within the exception clause; and it will be so interpreted by the courts. In *Attorney-General of Ondo State v. Attorney-General of the Federation*¹⁹, the Supreme Court adopted the restrictive interpretation of the Court of Appeal on non-justiciability of the directive principles as seen in *Archbishop Olubunmi Okogie (Trustee of Roman Catholic Schools) & Ors v. Attorney-General of Lagos State*²⁰ However in the case of *Olafisoye v. Federal Republic of Nigeria*²¹ the Supreme Court reviewed its stance on the non-justiciability of the provisions of Chapter II of the Constitution. In adopting a progressive approach, the Supreme Court of Nigeria per Niki Tobi JSC, held thus:

¹² (2002) FWLR (111) 1972.

¹³ F Falana *op cit*.

¹⁴ (1981) 2 NCLR 337.

¹⁵ *Archbishop Olubunmi Okogie v Attorney General Lagos State* (1981) 2 NCLR 337 at 350.

¹⁶ (2002) FWLR (111) 1972.

¹⁷ (2002) 9 NWLR (Pt 772) 222.

¹⁸ (2004) 4 NWLR (Pt 864) 580.

¹⁹ (2002) 9 NWLR (Pt 772) 222 at 383

²⁰ *ibid.* (n 14)

²¹ (2005) 51 WRN 52

‘... the non-justiciability of section 6(6)(c) of the Constitution is neither total or sacrosanct as the subsection provides a leeway by the use of the words ‘except as otherwise provided by this Constitution’. This means that if the Constitution otherwise provides in another section which makes a section of Chapter II justiciable, it will be so interpreted by the court’.

As the State is required by section 15(5) of the Constitution to abolish all corrupt practices and abuse of power, Justice Niki Tobi stated that it could no longer be said that that Chapter II of the Constitution is ‘a toothless dog which could only bark but cannot bite’. It is the researchers’ view that Nigerians can now rely on the authority of the case of *Olafisoye*²² to circumvent the jurisdictional challenges that is bound to be encountered in enforcing the right to health in Nigerian courts. The undeniable and pragmatic inference to be gleaned from the cases of *Attorney General of Ondo State v Attorney General of the Federal Republic of Nigeria and Ors*²³ and *Olafisoye v Federal Republic of Nigeria*²⁴ is that the Nigerian Government must be responsive to remove health from a social objective to a fundamental human right or at best, a right capable of being enforced independently. In this respect, it should be borne in mind that democratic leadership and responsive governance are identified by the unwavering protection of the citizenry and any shift from that position will lead to a departure from democratic principles; constituting an affront to justice, equity and good conscience and be completely against the paternalistic role of the law and state.²⁵ The National Health Act has the complete potential to significantly redefine and refocus Nigeria’s Health System to a considerable extent, by influencing practice by health professionals, health care quality, and health care outcomes.²⁶ If the goals of the NHA are to be realized, then there must be active participation by health professionals, the government and the people or patients.

4.0 Factors Undermining the Realization of the Right to Health in Nigeria

There are many challenges to the realization and the enforcement of the right to health in Nigeria, just like other socio-economic rights. Some of these challenges stem from the fact that Nigeria is not economically ready to see to the realization of the right to health because of the menace of continuous bad leadership. It is noteworthy that there are strong links between the first generation and the second-generation rights. The right to health without rights to dignity, gainful employment, shelter and food is an empty right. In the same vein, the right to health is also very crucial to the realization of the right to life. For it is not only when a life is taken by violence that the right to life has been denied, an indigent person with terminal illness, but without state health support is like a condemned criminal awaiting the day of the execution of the death sentence.²⁷ Some of these factors undermining the right to health are specifically highlighted below.

4.1 Jurisdictional Setbacks

Jurisdiction is the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented before it in a formal way for its decision.²⁸ It is the foundation or bedrock of all trials, the presence of which validates the commencement of any trial and the absence of which also invalidates such a trial.²⁹ The authority of a court to assume jurisdiction over a case is generally determined by the

²² *ibid*

²³ (2002) 9 NWLR (Pt 772) 222.

²⁴ (2004) 4 NWLR (Pt 864) 580.

²⁵ JA Sokefun, Medical Ethics, Law and The Right to Health in Nigeria, <https://www.researchgate.net/publication/364122673_MEDICAL_ETHICS_LAW_AND_THE_RIGHT_TO_HEALTH_IN_NIGERIA_HUMAN_Rights_and_an_d_jurisprudence_Journal_HRJJ/citation/download> accessed 24 July 2023.

²⁶ O Enabulele and J E Enabulele, (2017) Nigeria’s National Health Act: An Assessment of Health Professionals’ Knowledge and Perception, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5036296> accessed on 26th July 2023

²⁷ A T Shehu, ‘The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience’ (2013) 2(1) Afe Babalola University: Journal of Sustainable Development Law and Policy 101 <<https://www.ajol.info/index.php/jsdpl/article/view/122603/112151>> accessed 31 August 2023.

²⁸ *Mobil Producing Nigeria Unlimited v Lagos State Environmental Protection Agency & Ors* (2002) 12 S.C (Pt 1) 26.

²⁹ *Madukolu v Nkemdilim* (1962) 2 SCNLR 341 @ 404.

enabling statute which creates the particular court and vests it with specified jurisdictions.³⁰ Any exercise of judicial power without jurisdiction is an exercise in futility.³¹

Furthermore, in cases involving the enforcement of the right to health, just like the enforcement of other socio-economic rights as contained in Chapter II of the Constitution of the Federal Republic of Nigeria 1999, the jurisdiction of the courts to entertain such matters is usually a challenge to the actualization of the right to health. It is tragic that section 6(6)(c) of the CFRN 1999 systematically ousted the jurisdiction of the courts in Nigeria to determine and make pronouncements on issues concerning the provisions of Chapter II of the Constitution. This provision gained judicial backup in *Archbishop Olubunmi Okogie (Trustee of Roman Catholic Schools) & Others v. Attorney-General of Lagos State*³² Thus, by section 6(6)(c), Chapter II of the Constitution is enfeebled as it is rendered non-justiciable³³ and ineffectual to the citizens of Nigeria. In order to give life to the provisions of Chapter II of the Constitution, it is for the courts to have recourse to section 13 of the Constitution which sanctions all relevant authorities to observe and conform to the provisions of chapter II of the Constitution. The case of *Olafisoye v Federal Republic of Nigeria*³⁴ relaxed the jurisdictional concerns but still raises a pragmatic concern.

4.2 Lack of Judicial Activism

Judicial activism is defined as the judicial vigour in enforcing constitutional limitations on the other branches of government and their readiness to veto those policies on the branches of government on constitutional grounds. Thus, the judiciary plays a crucial role as social activist in the Nigerian democratic reality. This growing role and level of judicial intervention depend on the Nigerian legal system where it operates a written Constitution. The role of the Nigerian judiciary is basically in the realm of disputes settlement and interpretation of Constitution or Statutes. There is a strong reason to view judicial activism as democratically legitimate in that it provides checks and balances as expected under the doctrine of separation of powers.³⁵

Noteworthy is the fact that it is only through the instrumentality of judicial activism that courts can give a broad interpretation and application of the human rights contained in Chapter II of the Constitution since human rights are interrelated and interdependent. In some jurisdictions, courts were bold enough to interpret the right to life as encompassing the right to health. In interpreting the constitutional right to health, the courts in many jurisdictions have also linked it with the right to life and dignity. For instance, in *Alvarez v. Caja Costarricense de Seguro Social*³⁶ the Constitutional Court of Costa Rica examined the right to life vis-à-vis the right to health care when it held:

If the right to life is essentially protected in each modern state with it the right to health, any economic criteria that pretends to deny the exercise of those rights, has to be of second importance without the right to life, all the remaining rights would be useless.

Judicial activism was also activated by the same Indian Supreme Court in the case of *Samity v. State of West Bengal*³⁷ when it held thus:

Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life, is, thus, of paramount importance. The government hospitals run

³⁰ *Arjay Ltd v AIMS Ltd* (2003) 7 NWLR (Pt. 820)

³¹ MA Lateef, Jurisdiction of Courts in Nigeria, In his book: Nigeria Legal System (University Press Plc, Ibadan, 2019) pp 157-209 <https://www.researchgate.net/publication/336903157_JURISDICTION_OF_COURTS_IN_NIGERIA> on accessed 1 September 2023.

³² (1981) 2 NCLR 337 at 350.

³³ S I Nwatu, 'Legal Framework for The Protection of Socio-Economic Rights in Nigeria' (2011-2012) vol 10 NJR p 32.

³⁴ (2004) 4 NWLR (Pt 864) 580.

³⁵ I Imam, 'Judicial Activism in Nigeria: Delineating the Extend of Legislative-Judicial Engagement in Law Making' ICLR (2015) 15(1) 109 <https://www.researchgate.net/publication/322706172_Judicial_Activism_in_Nigeria_Delineating_the_Extend_of_Legislative_Judicial_Engagement_in_law_Making> accessed on 1 September 2023.

³⁶ File 5778-v-97, 23 Court of Costa Rica.

³⁷ (1966) 4 SCC 37; 1966 AIR SCW 2964.

by the state and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21 of the Constitution.

But the tempo of the Indian courts' judicial activism is not the same as the lethargic response of Nigerian courts in protecting the right to health and other socio-economic rights. In *Femi Falana v. Attorney-General of the Federation*,³⁸ the Applicant prayed the court *inter alia* to direct the government to fix, repair and upgrade some hospitals in the country in order to protect the rights of the Nigerian people to health.³⁹ The court refused to grant any of the reliefs sought for want of jurisdiction, citing section 6(6)(c) of the Constitution. It is the researchers' view that Nigerian courts can do better in expounding the law as it relates to upholding the socio-economic rights, especially the right to health which gives value to the right to life and the right to dignity of the human person, since these rights do not exist in isolation.

4.3 Corruption in Nigeria's Health Sector

Corruption is a worldwide phenomenon, hardly is there any nation in the world today without one form of corruption or the other. But then, the menace of corruption seems endemic in Nigeria and it has defied almost all efforts at combating the menace. Corruption hinders the actualization of the right to health and other socio-economic rights. Recourse management and allocation is an important factor in ensuring enforcement of the right to health. Any negative action on the resources has negative impact on the right to health and other socio-economic rights. Corruption, particularly official and bureaucratic is an impediment to effective and efficacious management of the nation's resources is thus a serious setback to the actualization of the right to health.⁴⁰

The International Council on Human Rights Policy (ICHRP) has demonstrated how corruption is capable of impacting negatively on the enforcement of socio-economic rights, whether right to health, right to food, through diversion of essential resources from social spending and corrupt practices in relation to the possession and use of land and natural resources.⁴¹ It is conceded that a number of factors make health systems particularly susceptible to corruption. They include the vast quantities of resources flowing through these systems; the high level of uncertainty; asymmetry information; large number of actors in the health sector; the complexity and fragmentation of national health systems; and the globalized nature of supply chain for drugs and medical devices. These factors go a long way in hindering transparency and accountability and also create systematic opportunities for corruption.⁴² All these create barriers to the realization and enjoyment of citizens' right to health in Nigeria.

4.4 Poverty

Poverty is the inability to carter adequately for the basic needs of food, clothing and shelter. It reflects the inability to meet social and economic obligations like lack of gainful employment, skills assets and self-esteem. According to San, poverty is the lack of certain capabilities such as being able to participate with dignity in society.⁴³ One of the most significant development problems in Nigeria as in other parts of the developing world is the lack of adequate healthcare facilities in various parts of the country, especially in

³⁸ (Unreported) Suit No: FHC/IKJ/CS/M59/2010 of January 10, 2011.

³⁹ F Falana, *Nigerian Law on Socioeconomic Rights* (Lagos: Legaltex Publishing Co, Ltd, 2017) 15.

⁴⁰ A T Shehu, 'The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience' Afe Babalola University: Journal of Sustainable Development Law and Policy (2013) 2(1) 101-120 <<https://www.ajol.info/index.php/jsdlp/article/view/122603/112151>> accessed on 31 August 2023.

⁴¹ *ibid*.

⁴² K Hussmann, 'Health Sector Corruption: Practical Recommendations for Donors' <<https://www.u4.no/publications/health-sector-corruption.pdf>> accessed on 1 September 2023.

⁴³ OB Akpomuvie, 'poverty, Access to Health care Services and Human Capital Development in Nigeria' <<https://www.ajo/info/index.php/afirrer/article/view/60149/48400>> accessed on 1 September 2023

the rural areas. A large proportion of the population of Nigeria lives in the rural communities, yet in terms of health facilities, these are the most neglected segments of the population.⁴⁴ The few health centers in the rural areas are not well equipped and thus not functional. The poor rural dwellers cannot realize their right to health as a result of their inability to move to the urban areas to seek health care. The growing incidence of acute poverty in Nigeria have stratified and polarized Nigerian society between the haves and the have-nots, between the north and the south, between the educated and the uneducated in terms of their access to the basic things of life which health care is one.⁴⁵ This calls for a human rights approach to development planning and the government of the day must make healthcare available and free of charge at health centers located in rural areas.

4.5 Population Growth

Over the years, the population of Nigerians has skyrocketed. In 2006, the National Population Commission conducted national population and housing census between 21st and 27th March 2006, followed by post enumeration survey in June, 2006. The final result of the census showed that Nigerian's population has grown to 140, 431, 790 million as against the 88.9 million that was recorded in 1991.⁴⁶ Notably, high population growth has far reach-in implications on the health of people, development and quality of life. Over population exerts pressure on the ecosystem leading to food shortage, inadequate water supply and crisis in the health sector. Thus, population growth has a direct adverse impact on the right to health and other socio-economic rights. This is as a result of the fact that more fiscal burden is laid on the government to provide social and economic population growth.

According to Abubaka,⁴⁷ Nigeria faces numerous challenges in confronting both population growth and climate vulnerability ensuring a healthy future for its population. The country did not achieve any of the health-related Millennium Development Goals (MDGS).⁴⁸ Nigerians health outcomes are dismal with inadequate progress made over the past three decades for the majority of its population. It is vehemently submitted that if the modest resources allocated to ensure the health of Nigerians is well managed, then the problems occasioned by population growth will be managed also. As Nigeria's population remains on the rise, the potential gain from this expansion will only be possible if population growth is managed and supported by equitable distribution of resources. A rapidly rising population coupled with the absence of reliable access to high-quality healthcare, education and other public services will serve only to increase the potential for unrest, large scale unplanned migration.⁴⁹

4.6 Mass Illiteracy

Illiteracy is one of the challenges to the actualization and even the enforcement of the right to health just as other socio-economic rights in Nigeria. There is an impart link that lies between rates of birth and level of education. The importance of this is that with high level of education and reduction in the illiteracy level among the women of child-rearing age would stimulate positive response to modern methods of child spacing⁵⁰ which will ultimately enhance the health of women and children. It is only when people are aware of their rights and implications that they can seek for ways to protect and enforce same.

⁴⁴ibid.

⁴⁵ibid.

⁴⁶AT Shehu, The Enforcement of Social and Economic Rights in Africal: The Nigerian Experience, Afe Babalola University: *Journal of Sustainable Development Law and Policy* vol. 2 No:1 (2013), 101-120 <https://www.ajol.info/index.php/jsdlp/article/view/122603/112151> accessed on 31st August 2023

⁴⁷Abubakar and others, 'The Lancet Nigeria Commission: Investing in health and future of the Nation' <<https://www.nebi.nlm.nih.gov/pmc/articles/PMC8943278/>> accessed on 2 September 2023.

⁴⁸ibid.

⁴⁹ibid

⁵⁰ A T Shehu, The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience, Afe Babalola University: *Journal of Sustainable Development Law and Policy* vol. 2 No:1 (2013), 101-120 <https://www.ajol.info/index.php/jsdlp/article/view/122603/112151> accessed on 31st August 2023

5.0 Conclusion

The right to health constitutes a set of normative principles and standards which are usually invoked to justify a variety of fundamental political, social, economic and cultural claims. The right to health is recognized in many international, regional and national instruments.⁵¹ All other human rights lacks value without the realization of the right to health. The right to health is also clearly expressed and given credence in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (ACHPR). It is pertinent to mention that Nigerian is a signatory to the ACHPR and also domesticated same. Some courts in Nigeria has courageously applied the provisions of the ACHPR in deciding cases bordering on socio-economic rights, including the right to health. In the Nigerian case of *Joseph Odafe and Other v. Attorney-General of the Federation and Others*,⁵² the court upheld the applicants' right to health by applying the ACHPR. In the same vein, in the case of *El-Rufai v. Senate of the National Assembly of Nigeria*,⁵³ the Court of Appeal held amongst other things that the provisions of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983, have the force of law in Nigeria and shall be given full recognition and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria. It can be safely concluded that the right to health should be upheld and protected by Nigerian courts since the right to life cannot be fully enjoyed without good health.

⁵¹ Roux-Kemp. A. L., Realizing the Right to Health in Nigeria: Incongruities Between International Obligations and Domestic Implementation, 2014, *African Nazarene Law Journal Vol. 2, part 1*, https://www.academia.edu/7499998/Realizing_the_right_to_health_in_Nigeria_Incongruities_... Accessed on 12th September 2023

⁵² (2004) AHRLR 205

⁵³ (2016) 1 NWLR (Pt 1494) CA 504