journals.unizik.edu.ng/jcpl/index ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW Vol. 12(3), July, 2025

THE ROLE OF LAW AND NON-STATE ACTORS IN ENSURING ACCESS TO HEALTHCARE AND PROMOTING THE RIGHT TO LIFE IN NIGERIA

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Abstract
Nigeria currently operating a democratic system of governance, is without doubt observing rule of law. Right to life in Nigeria is considered sacrosanct and inalienable, needing adequate and constant promotion and protection. The right to life, as guaranteed under section 33 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, and reinforced by the regional and international human rights frameworks, inherently encompasses issues concerning access to adequate healthcare services. The challenge, however, to the effective realization of access to healthcare is deeply rooted in the systemic weaknesses currently being experienced in the Nigerian health sector, catalyzed by the general law inadequacies and continuous over-dependence on the operations of the non-state actors. In analyzing the role of law and non-state actors in ensuring access to healthcare and promoting the right to life in Nigeria, doctrinal methodology and qualitative research methodology were adopted, to buttress how constitutional provisions, statutory provisions, and judicial pronouncements have make or marred the realization of access to healthcare as an essential component of right to life in Nigeria. The research further evaluated the responsibilities and accountability of the non-state actors, which encompass private healthcare providers, Non-Governmental Organizations, and international donors, within Nigeria's multi-healthcare clime. By analyzing the intersection of law, policy, and health administration in Nigeria, this research identified legal and institutional gaps that undermine equitable access to healthcare. The research proffered certain recommendations geared towards strengthening the capacity of the state to improve on the adequacy of the legal framework and step up regulatory oversight on the operations of the non-state actors and promoting human right-based approach to healthcare matters in Nigeria, with the ultimate view to further improving and promoting right to life in Nigeria.

Keywords: Law, health system, non-state actors, access to health, right to life.

1. Introduction

This work centers on the triangular relationship or interface between the right to life, enshrined in the Constitution of the Federal Republic of Nigeria, which has equally provided for the right of individuals to health, even though non-justiciable in nature, but has demonstrated that the right as guaranteed under section 33 of the Constitution may only make meaning where the right to health is recognized and enforced as a fundamental right. The law governing the health sector in Nigeria includes the National Health Insurance Act, the National Health Act. These laws set up responsibilities for the state to provide healthcare services to Nigerians. Because of the systemic failure of the state structure for the provision of health to the teeming poor Nigerians, the law allows the non-state actors to come in to support and not substitute the state in its role of healthcare provision. The state makes use of the law to regulate the activities of the non-state actors in providing aids to provision of healthcare services.

This article adopts the right-based and accountability- centered theoretical perspective to examine the interaction between the law, the right to adequate healthcare provision and the activities of the non-state actors in safeguarding, promoting and protecting the right to life of the Nigerians. The right approach posits that the constitution of Nigeria provides everyone the right to life and also the right to health and access to healthcare. Nigerians are expected to enjoy health care as of right, but due to the lack of

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accountability, corruption and lack of political will in the health system of the country, health-base policies are not judiciously followed to ensure the accessibility of the right to health, which in turn affects the right to life. Access to health and protection of right to life depends not only on the extant or enabling legal framework but also on coordination, regulation and enforcement of both state and non-state actors within Nigeria's pluralistic health environment.

2. The Legal Framework on Access to Healthcare

The right to life and access to healthcare are fundamental to the survival of any nation. International human rights instruments and bodies have taken significant steps to ensure their promotion and protection by member states. Nigeria, as a signatory to these international instruments, has also made notable efforts to guarantee its citizens access to healthcare. These efforts are reflected in the various laws enacted by the Nigerian government for this purpose, including the National Health Insurance Authority Act, the National Health Insurance Act, and the National Primary Health Care Development Agency Act, among others. This paper will examine these laws to demonstrate how they have been strategically employed to promote the right to access healthcare and essential medicines in Nigeria.

2.1 National Health Insurance Authority Act

The National Health Insurance Authority Act, 2022 replaced the National Health Insurance Scheme Act, 1999 in Nigeria. The Act establishes the National Health Insurance Authority (NHIA) to regulate, promote, and integrate health insurance schemes, aiming for universal health coverage.[1] The implication of this is that the Authority now regulates the operations of all other health insurance schemes operating within the country, including Federal, States and Federal Capital Territory as well as private health insurance schemes.[2] According to Olomojobi, the scheme is:

> *To ensure access to quality health care services for Nigerian citizens and to avert suffering and privation faced by the financial obligations of the heath sector. The scheme is to be funded by contributions from employees for the formal sector and via terminal payments. The scheme covers a member, the spouse and four children under the age of Eighteen (18), and participants from the informal sector either make a monthly or terminal contribution which is determined by the agreement entered by the parties. The scheme is intended to ensure the equitable distribution of healthcare cost amongst the different income classes; to also maintain a high standard of healthcare delivery services while ensuring the adequate distribution of health facilities and the availability of funds to the healthcare sector for improved services.*[3]

This has indicated that the scheme is a pool of resources that is contributed by the people and coordinated by the state for the health benefits of the people. Whoever is having a health challenge may approach the service providers, and the individual shall have access to medical and other health care at no cost or a certain percentage, depending on the service providers and the agreement entered into. The desire for the equitable distribution of health accessibility inspired the Plateau State Government to establish a similar scheme in the State known as the Plateau State Contributory Healthcare Management Agency (PLASCHEMA).[4] This body is saddled with the responsibility and objectives of:

> *Ensuring that all residents of the State have good access to good healthcare services; ensure that all residents of the State have financial protection, physical access to quality and affordable healthcare services; protect families from the financial hardship of huge medical bills; regulate the cost of healthcare services; ensure equitable distribution of healthcare costs across different income groups; maintain high standard of healthcare delivery services within the health scheme; ensure efficiency in healthcare service delivery; improve and harness private sector participation in the provision of healthcare services; ensure adequate distribution of health facilities within the state ; ensure appropriate patronage at all levels of the healthcare delivery system; ensure the*

[1] Section 1, NHIA Act
[2] Section 3 (c), National Health Insurance Authority Act, Laws of the Federation of Nigeria, 2022.
[3] Y Olomojobi, *Medical Law & Health Law: The Right to Health*, (Princeton Publishing Co, 2019) P58.
[4] Section 3(1) Plateau State Contributory Health Management Agency Law, Plateau State of Nigeria Gazette No 10, Vol. 2, Jos, 23rd February, 2021.

> *availability of alternative source of funding to the health sector for improved services; and in cases where residents do not have available medical and other health services, to take such measures as are necessary to plan, organize and develop medical and other health services commensurate with the need of the residents.*[5]

That is a clear determination by the State Government to, "more than ever before, eliminate health challenges associated with the formal and informal sector, which constitute 70 per cent of the population in the hard-to-reach areas."[6]

2.2 The National HIV/AIDS Agency Act

HIV/Aids is one of the most dreaded diseases in the history of mankind. It is a chronic immune system disease caused by the Human Immunodeficiency Virus (HIV). It damages the immune system and interferes with the body's ability to fight infection and diseases. The disease can be spread through contact with infected blood, semen, or vaginal fluids.[7] There is currently no effective cure. Once infected, the infected person lives with it for life. But with proper medical care, HIV can be put under bearable control.[8] That informs the urgency and call by the international community to the national governments to take frantic steps for prevention and control of the virus from spreading and keeping those infected under control by use of drugs meant for that purpose. The drugs are, however, very expensive because of the patent rights on the pharmaceuticals.

Nigerian government, in a bid to stem the tide of the disease, enacted a law for the establishment of an agency to help contain the widespread of the virus.[9] According to the ILO National Workplace Policy on HIV and Aids, Nigeria has the second highest burden of HIV, with over 3.2 million people living with the disease.[10] Olomojobi pointed out concerning the Act that:

> *The Nigeria Government in response to the high incidence of HIV/AIDS enacted the National Agency for the Control of HIV/AIDS establishment Act in 2007. This was considered necessary in a bid to facilitate the element of various tiers of government and other sectors on HIV/AIDS prevention, treatment and support. The Agency had a mission to "plan and coordinate activities of the various sectors in the National Response Strategies Frame work," inclusive of a duty to advocate for the inclusion of an intervention in HIV/AIDS case in all sectors of the Nigerian society. The Agency is also mandated to formulate policies, regulations and guidelines on HIV/AIDS, while also encouraging research on the subject in Nigeria, mobilizing support, resources (including both foreign and local) and to also coordinate activities linking the system with the international community.*[11]

One must agree with Olomojobi because the stated functions are found backing in the Act under section 6 (1).[12] And in addition to the functions, the Nigerian government went further to enact another law to remove all forms of discrimination against persons living with HIV/AIDS, so that an individual is not only guaranteed his right to health and to live healthy with the disease, but also not to be discriminated in the society because of living with the virus was enacted to mainly: to "Protect the rights and dignity of people living with and affected by HIV/AIDS in work-place, community, institutions and other fields of human endeavor.[13] The law went further to state that:

> *Every individual, community, institution and employer shall take reasonable steps to protect the human rights of people living with or affected by HIV/AIDs by eliminating*

[5] Section 10(b-m), Plateau State Contributory Health Management Agency Law, Plateau State of Nigeria Gazette No 10, Vol. 2, Jos, 23rd February, 2021.
[6] The Plateau State Contributory Health Management Agency (PLASCHEMA), State Social Health Insurance Scheme. <www.plaschema.pl.gov.ng>. Accessed o12 November 2023.
[7] HIV Basics, <www.cdc.gov>. Accessed 28 November, 2023.
[8] Ibid.
[9] The National Agency for the Control of HIV and AIDS (Establishment) Act, 2007.
[10] National Work Place Policy on HIV and AIDS. <www.ilo.org. accessed> 28 November 2023.
[11] Olomojobi, (n3)
[12] Section 6(1) (a – l), National Agency for the Control of HIV and AIDS (Establishment) Act, 2007.
[13] Section 1(a-1), HIV/AIDs (Anti-Discrimination) Act, 2014.

> *HIV-related discrimination in all settings, including employment, health and educational institution policies and practices.*[14]

By eliminating all forms of discrimination, just as by their constitutional[15] rights, the persons living with the virus are further lifted to live just like any other person within the Nigerian society. This goes against the usual societal discrimination and stigma associated with the disease. The stigma alone is like a potential atomic bomb capable of killing the affected individual faster than the virus. So, the impact of the Act and that of the establishment of the NACA as agency is protective of the right to health of Nigerians. It is equally important to note that even though the drugs for the virus are expensive, the Nigerian government, in partnership with international organisations and often non-state actors, are making such drugs accessible to promote the right to life of the infected. The Anti-retroviral drugs are dispensed free of charge, monthly to about 9,000 registered HIV infected patients, including men, pregnant and non-pregnant women and children from different part of Nigeria.[16] This effort is commendable, but considering the statistics of persons living with the virus, it is an effort grossly insufficient and inadequate.

2.3 The National Primary Health Care Development Agency Act

Health, it is always said, is wealth. Perhaps this informed the Preamble to the Constitution of the World Health Organization which provides that 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social condition.'[17] Because health has been recognized as a right, there is the need for all concerned to have unhindered access to it. Thus, every government must take deliberate steps to install certain policies or laws that will be the driving force to provision of such health through health care facilities in local government areas and the districts and wards and even to the villages. Thus, 'Primary health care is a whole-of-society approach to effectively organized and strengthen national health systems to bring services for health and wellbeing closer to communities.'[18]

The Act establishes the agency called the National Primary Health Care Development Agency (NPHCDA),[19] which is an agency of the Nigeria's Federal Ministry of Health,[20] and the Ministry is responsible for the supervision of the Agency to achieve desired results. The Agency shall enjoy the legal status of a legal personality, capable of suing and being sued in its corporate name.[21] The Chairman of the Board of the Agency must be a highly respected primary health care practitioner[22] along with the Federal Director of Primary Health Care[23] and some representatives of health institutions and other bodies.[24] Among the functions of the Agency is to:

> *Provide leadership that supports the promotion and implementation of high quality and sustainable primary health care for all through resource mobilization, partnerships, collaboration, development of community based system and functional infrastructure*.[25]

The stated functions are geared towards strengthening the right of Nigerians to the enjoyment of their right to health and the protection of their right to life, without discrimination as to religion creed, social status and sex. For the purpose of effective discharge of its functions as contained under the Act, the

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[14] Section 4 (1), ibid.
[15] Section 34 and 42, Constitution of the Federal of Nigeria, 1999) as Amended.
[16] I A Oreagba, and S O Usman, 'Et al Pharmaco-epidemiology of Antiretroviral Drugs, in Teaching Hospitals in Lagos, Nigeria', (2014) 48 (4) *Ghana Med. Journal,* 194 – 302 – doi 10. 4314/gmj. V 48814.5. <www.ncbi.nlm.nih.gov>. Accessed 28 November 2023.
[17] Paragraph II, Preamble, Constitution of the World Health Organization, 2005.
[18] Primary Health Care, <www.who.int/health/>. Accessed 24 November 2023.
[19] Section 1(1), National Primary Health Care Development Agency Act, Laws of the Feration, 2004.
[20] Olomojobi, (n 3) p 60
[21] Section 2 (a-b), ibid.
[22] Section 2 (a), ibid.
[23] Section 2 (b), ibid.
[24] Section 2 (c) (i-vi) (d-k), ibid
[25] Olomojobi, (n 3) This is just but the summary of the functions. The comprehensive functions are provided for under Section 3 (a-j), National Primary Health Care Development Agency Act, Laws of the Deration, 2004.

entire country, Nigeria, is divided into four health zones: zone "A" with headquarters at Enugu State; Zone "B" with headquarters at Ibadan; zone "C" with headquarters at Kaduna; while zone "D" has its headquarters at Bauchi.[26] The Main aim of the Act is to provide a strong legal framework for the operation of primary health care in Nigeria with a sole vision to make Nigerians healthy and guarantee their health and ensure their right to life is protected.

2.4 The National Health Act

Healthcare by itself is a very important factor for well-being, not only for the rich but equally for the poor. It is very important because it vests in its beneficiary the ability to carry out other functions in the society and remains a factor upon which other rights exist. Without health care, many other rights may but be moribund. Thus, the Nigerian Government, in order to strengthen its ability and resolve to deliver good and affordable healthcare to its population, enacted the National Health Act.[27] The Act makes provision for a legal framework that determines the guidelines, growth and organization of Nigeria's Health System. It also provides for a minimum package of healthcare services for all Nigerians with a predictable and sustainable financing stream. The aim of this piece of legislation aligns with the right to access to health.[28] The Act provides for a legal framework that monitors the regulation, development and management of the National Health System, it sets standards for rendering health services in Nigeria and how to implement the provisions of the Act to achieve quality and accessible healthcare for all Nigerians.[29]

It is important to note that health care development and delivery are very vital and at the same time complex; the zeal to achieve its realization for the enjoyment of all is significant to the Nigerian government due to the rising population and the numerous health care needs, thus the promulgation of the Act. The Act establishes the National Health System,[30] which shall define and provide a framework for standards and regulation of health services, without prejudice to extant professional regulatory laws and shall, among other things, 'protect, promote and fulfil the rights of the people of Nigeria to have access to health care services.'[31] The Act further went on to place a great and very significant function on the part of the Federal Ministry of Health to among other things: 'promote the availability of good quality, safe and affordable essential drugs, medical commodities, hygienic food and water'[32] to the people of Nigeria. This is to improve on the rights of Nigerians to access medications and protect their rights to life.

Under the Act, the law provides for the establishment of the National Council, which is empowered to be the highest policy making body in Nigeria on matters relating to health. The Council shall among other things:

a. have responsibility for the protection, promotion, improvement and maintenance of the health of citizens of Nigeria and the formulation of policies and prescription of measures necessary for achieving the responsibilities specified;
b. ensure the delivery of basic health services to the people of Nigeria and prioritize other services that may be provided within available resources;
c. promote health and healthy lifestyles;
d. ensure that children between the ages of zero and five years and pregnant women are immunized with vaccines against infectious diseases.[33]

By these few functions enumerated, one could say that the National Health Act is a very significant piece of legislation in Nigeria because it has the potency of making major contribution to improving the

[26] Section 6(a-d), National Primary Health Care Development Agency Act, Laws of the Federation, 2004.
[27] National Health Bill which was introduced since 2004 and after 10 years passed into law now known as the National Health Act, 2014, Laws of the Federation of Nigeria.
[28] Olomojobi, (n 3).
[29] Ibid.
[30] Section 1(1) National Health Act, Laws of the Federation of Nigeria, 2014.
[31] Section 1(e) National Health Act, Laws of the Federation of Nigeria, 2014.
[32] Section 2(L) ibid.
[33] Section 5(a) (c) (g) (i), ibid.

rights of Nigerians to access essential medication that will not only make them healthier but also promote and protect their constitutionally guaranteed rights to life via quality and affordable health care provision. However, according to Bamidele,[34] the law has been criticized for being too complex and not being tailored to the specific needs of Nigerians. Some experts have argued that the law would be more effective if it were simplified and if it gave flexibility to the government to implement reforms.

This work may be right in pointing view and the perspective he sees the operation of the law, but it will be difficult to swallow hook, line and sinker such argument here because the point of view conversed in this work looks at the Act as coming to established avenue to make provisions for the improvement of access to essential drugs to the teeming Nigerians who needed such drugs for the promotion and protection of their right to life. Here, the law, as it is, has provided a veritable framework for the development of a more concrete, comprehensive and equitable health care system within the jurisdiction for its citizens. This is all that matters. But the effective implementation remains a different ball game altogether. In terms of the implementation, challenges have reared their heads dealing with corruption, mismanagement of funds, misappropriation of funds, lack of political and administrative will to prosecute the set goals, and there is equally the factor of poor knowledge of the Act by the health professionals and members of the public.[35] But arguably, the Act has improved the poor health indices of the country and has reduced much of the out-of-pocket expenditure for many who are now under the NHIS scheme.[36] Another significant improvement is seen in the provision of vaccines to children under the age of five and also to pregnant mothers against infectious diseases.

2.5 National Agency for Drugs Administration and Control Act

In the quest for access to medicine as part of the right to healthcare of individuals in Nigeria, the struggle does not end at the right to access to medicines, but also the right to access quality medicines. This is because any medicine that is fake or counterfeit is not just going to be harmful and injurious to human health, but also holds the potency and capability of affecting the right to life by causing the death of individuals. So, access to drugs is a crucial component of a suitable health system, and the significance of an available, affordable, accessible and good quality supply of important drugs for the treatment of diseases is indispensable - indeed, it is the cornerstone of an effective health system.[37] In Nigeria today, counterfeit drugs are being sold in the market, and the cases of self-prescription of drugs by individuals and non-qualified persons are high. That is the sole reason for the establishment of an agency called the National Agency for Food and Drugs Administration and Control (NAFDAC), through the Act of the National Assembly,[38] to stem the tide of misuse and sale of counterfeit drugs in the market. It was in this light that Nuga opined that:

> *Counterfeiting of pharmaceutical products is a global phenomenon; however Nigeria and several developing nations are more exposed to this crime than others. Noted that this has been a recurring problem for a long time in many of these countries affecting unsuspecting patients, counterfeit medicines were initially observed in Nigeria in the late sixties as soon as the crown Agents were deprived of being the only distributors of pharmaceuticals in Nigeria. The high rate of counterfeit medicines was the result of the disorganized ways importation authorizations on medicines were allotted by Nigerian government in the early 80s. The number of recipient of the license knew that importation business could make a lot of money and this encouraged them to become emergency medicines importers. The result effect was the beginning of importation of counterfeit medicines by some importers in the thriving market. The hostile economic effect in mid-1980's made situation worse and this went on until around 2001 when the National Agency for Food and Drugs Administration and Control (NAFDAC), the agency*

[34] S B Owaduge, 'Evaluation of the Health Policy Development in Nigeria, with Special Emphasis on the National Health Bill, (2023)' p. 8, <www.researchgate.net/publication/371161373/>. Accessed 21 November 2023.
[35] O Enabulele, 'Nigeria's National Health Act 2024: a Review of Some of its Implications and Challenges', *ajol. Vol. 16 No.2 (2017)*. <www.ajol.info/index.php/articles>. Accessed 21 November 2023.
[36] National Health Insurance Scheme. <www.ncbi.nhi.gov> PMC8935627. Accessed on the 21st November, 2023.
[37] J H Mike, *Women, Medicine, Law and the Trips Agreement on Right to Health*, (Princeton Associates, 2020) P.81.
[38] Section 1, National Agency for Food and Drugs Administration and Control Act Cap N.I Laws of the Federation of Nigeria, 2004.

> *responsible for the regulation and control of pharmaceuticals amongst other related products began an aggressive war against fake medicines*.[39]

The Nigerian situation was so pathetic that one could walk into a provisional store, local chemist, market square, vendors and even as low an wheel-borrow pushers could be selling medicines. The sale of medicines have become so common that it is seen as a general good that anybody can buy and sell in the open and anybody can own an unregistered store just for the sale of drugs. The reason behind the distribution of drugs in Nigerian is the money one can make out of it and not the protection of the rights to health of citizens. But with the establishment of NAFDAC, some levels of sanity started setting in, even though not significantly as one would witness in the developed and other saner climes. The preamble to the Act states[40] the reason for the establishment of the agency: "to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of foods, drugs, cosmetics, medical devices, bottled water and chemicals." These stated reasons are not far-fetched from the enumerated functions of the Agency provided under the establishment Act.[41] In addition, the Council of the Agency has been bestowed with the power to "advice the Federal government, generally on the national policies on the control and quality specifications of food, drugs, cosmetics, medical devices, bottled water and chemicals[42] the agency can equally designate, establish and approve quality specifications and to also establish relevant guidelines and measures for quality control, and to appoint, promote and discipline employees, and also establish committees that will help the agency carry out its function.[43] The agency is expected to fight harder in its fight against counterfeit medicines, and in the bit to empower the agency, the Act provides thus: Any person who contravenes the provisions of any of the regulations made under this Act is guilty of an offence and liable on conviction to the penalties specified in the regulation.[44]

This indicates that certain acts that contravenes the provision of this Act by anybody (rule of law) is subject of being prosecuted in the court[45] of law and that the officers of the agency have been empowered to prosecute such contravention,[46] but subject to the powers of the Attorney-General of the Federation as provided under the Constitution.[47] They have the power to make regulations on specific and general purposes to give full effect to the provisions of the Act. The overall effect of all the stated provisions is to ensure that there is some form of regulation over the sale of drugs or medicines, or consumables, to prevent harmful or injurious effects on human beings. This effort is a great effort towards ensuring that all Nigerians enjoy the right to health qualitatively that their right to life may be guaranteed.

2.6 Other Legal Frameworks on Access to healthcare

Other legal frameworks in Nigeria that gives impetus to quest for access to healthcare in Nigeria include but not limited to: the Child's Rights Act 2023, which recognizes right of a child to health especially in maternal/child policy matters.[48] It makes provision for the persons with disability to have access to free medical care in public health institutions.[49] The law on prohibiting violence against persons,[50] provides that that "A victim of violence is entitled to receive the necessary medical, psychological, social and

[39]O A Nuga, A Yusuf, et al, 'Accessing the likelihood of Counterfeit Medicines in Nigeria using Binary, Logistic Regression Model for Categorical Predictors', 24 October, 2023, *Scientific African Journal*. <https://www.ssrn.com> accessed 27 November 2023.
[40]Preamble to National Agency for Food, Drugs Administration and Control Act CAP N.1 Laws of the Federation of Nigeria 2001.
[41]Section 5 (a - t) ibid.
[42] Section 6, National Agency for Food, Drugs Administration and Control Act CAP N.1 Laws of the Federation of Nigeria 2001.
[43] Section 6 (b-g) ibid
[44] Section 25 (2) ibid.
[45]Section 25 (5) ibid. The section provides that the Federal High Court shall have exclusive jurisdiction to try offences under this Acts.
[46]Section 26 (1) ibid
[47]Section 174, Constitution of the Federal Republic of Nigeria, (1999) as Amended.
[48] Section 13 and 14, Child's Rights Act, 2023.
[49] Section 21 Discriminations against Persons with Disabilities (Prohibition) Act, 2018. The law reinforces the right to health as part of the right to life and dignity for persons with disabilities in Nigeria.
[50] Section 38 Violence Against Persons (Prohibition) Act, 2015.

legal assistance through governmental and non-governmental agencies providing such services." This law recognizes the right to access health as a booster to the right of individuals to life in Nigeria, with special mandate on not only the government healthcare facilities but also on the non-governmental organizations providing such services in Nigeria.

3. The Role of Non-State Actors on Access to Healthcare

Non-State actors include organizations and individuals that are not affiliated with, directed by, or funded through the government. These include corporations, private financial institutions, and NGOS, as well as paramilitary and armed resistance groups.[51] These non-state actors can function in different works of life and for different purposes. There are those concerned with human rights, others with the promotion of good governance, others for the promotion of sports and social activities and yet others are specifically established for the promotion of health and well-being of the people. The one we are most concerned with in this context is the latter and its nomenclature, going forward shall be referred to as non-governmental organizations, which is generally 'seen as a voluntary group or institution with a social mission, which operates independently from the government.'[52] Some of the institutions or groups we shall be looking at could be both international and national. This selection into a category is deliberate to have coverage that is desired and intended.

3.1 The World Health Organization (WHO)

The World Health Organization (WHO) is a specialized body set up by the United Nations to take care of global health-related matters. Equitable access to health and Health products by member nations, like Nigeria, is of topmost priority. The body ensures that "all citizens have access to essential medicines, vaccines and health products that they need."[53] The Constitution of WHO provides in its preamble that: that 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' and that the 'enjoyment of highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition'[54] this indicates that the body is so much concern with the health and well-being of citizens. And there is no way the citizens can attain this height but by having access to health products. It is a bit to attain this level of health that Nigeria keyed into the vision and established the Health Act 2014 with the resultant National Health Insurance Authority as a scheme.

It is well noted that 'the burning issue of access to medicines is a fundamental component to be resolved for the right to health to be fully realized. Equitable access to medical and health products is a priority worldwide. Therefore, the availability, accessibility, acceptability and affordability of these products of assured quality must be addressed to achieve the United Nations' Sustainable Development Goal.[55] Despite the progress made globally, millions of people still lack access to medicines in developing countries. And it is interesting to know that from the human rights point of view, 'access to medicines is linked to the principles of equality, non-discrimination, transparency, participation and accountability.'[56]

To have the entire world's citizen's access medicines or medical products, the World Health Organization convened a health programme called the Universal Health Coverage, which ensures that globally, people have continuous access to high-quality essential medicines and vaccines, and also financial security.[57] The Developing Countries like Nigeria are in high need of access to medicine largely due to the belief that there is inherent connection between poverty and right to health. This same

[51] Non-State Actors, <www.escr.net/sources/>. Accessed 24 November, 2023.
[52] What is NGO? <www.ngosourc.org/.> Accessed 23 November 2023.
[53] Access to Medicines and Health Products Programme: Annual Report, 2021. Available at <www.who.int/europe/publications/>. Accessed 22 November 2023.
[54] Preamble to the Constitution of the World Health Organization, 2005.
[55] V K Chattu, 'Access to Medicines through Global Health Diplomacy', (2023) 13(1) *Health Promotion Perspective Journal*, 40-46 Published online 2023 April 30. <www.ncbi.nlm.gov/pmc/articles>. Accessed 22 November 2023.
[56] Ibid.
[57] WHO: Universal Health Coverage. April 2021. <https://www.who.int/news-room>. Accessed 22 November 2023.

poverty undermines the human dignity and the foundation of all human rights, particularly the rights of all people to life, health and development. [58]

The WHO has visible presence in the Nigerian health sector. This could be seen in the earnest continuous pursuit of health programmes in the country, which according to WHO is:

> *To reach zero-dose children across Nigeria. SDG3 GAP partners are leveraging their previous investments in polio eradication and COVID-19 response to expand immunization coverage worldwide. These investments have not only established valuable infrastructure and skilled human resources but also fostered strong community network with trusted relationships with the local leaders. Leveraging these networks, partners are now facilitating the delivery of immunization services to zero-dose children across the entire country.*[59]

This has indicated that the WHO has put so much effort into the current efforts by Nigeria to promote the right to health of its citizens and to also promote access to basic and essential medicines that will help protect their right to life. The NGOS have helped so much in the push for the continuous dialogue and continuous engagement of relevant stakeholders towards achieving the needed goal of the right to life in Nigeria.[60]

3.2 The International Non-Governmental Organizations (NGOs)

One of the most dramatic developments within international human rights law over the past two decades has been the growing importance of a range of non-state actors.[61] These very important organizations have since assumed prominent roles in the enjoyment of human rights, especially the one that deals with the rights to health and access to medicines. Intellectual property rights to patents have given a leeway to so many of these organizations to act in furtherance of the objective of achieving access to essential medicines. In 2002, when the Commission for Intellectual Property Rights published its reports integrating intellectual property rights and development policy, a key finding was on the 'extent and influence of NGO activities about intellectual property rights. Specifically, the commission reported that NGOS have made, and can continue to make in the future, positive contributions to the promotion of the concerns of developing countries about the impact of intellectual property rights.'[62] Proceeding further, the IP-NGOS got a booster when the Commission stated that the 'role of NGOS has been particularly notable in: (i) public health and access to essential medicines; and (ii) agriculture, genetic resources and traditional knowledge.'[63]

From that time, International NGOS began to take greater interest in the activities of intellectual property for public health and access to medicines to this day. These International NGOS include: Consumer Project on Technology (CPTech); Health Action International (HAI); *Médecins Sans Frontières* (MSF); Oxfam and Third World Network (TWN). CPTech, which had become involved in access to medicines issues in the United States in 1991, began to play an international role in 1994 when it was invited to Argentina and to Brazil to talk about its work.[64] Even in the so-called third world countries, the NGOS played a very significant role in the push for the recognition of access to essential medicines as a right

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[58] Chattu. (n 55)

[59] World Health Organization: Breaking Barriers, Building Bridges; the Collaborative effort to Reach Every Child in Nigeria, (August 2023). <www.who.int/news-room/> accessed 22 November,2023. (SDG3 GAP is the Sustainable Development Goal for Global Action Plan for Healthy Lives and Well-being for All. It is a set of commitments by 13 agencies that play significant roles in health, development, and humanitarian responses to help countries accelerate progress on the health-related SDG targets.)

[60] D Umeh, and F Ejike, 'The Role of NGOs in HIV? AIDS Prevention in Nigeria', (2004) 28 (3) *Dialectical Anthropology*, p 339. JSTOR, <http://www.jstor.org/stale/29790718> Accessed 27 November, 2023.

[61] P Alston and R Goodman, *International Human Rights: Successor to International Human Rights in Context, Text and Materials*, (Oxford University Press, 2013) P1461.

[62] Commission on Intellectual Property Rights (2002) "Integrating Intellectual Property Rights and Development Policy." Page 165, in Matthews, D., NGOs, Intellectual Property Rights and Multilateral Institutions: Report of the IP-NGOs Research Project (2006) p. 4. < https://ssrn.com/abstract=963103>. Accessed 23 November, 2023.

[63] D Matthews, 'NGOs, Intellectual Property Rights and Multilateral Institutions: Report of the IP-NGOs Research Project (2006)' p. 4. <https://ssrn.com/abstract=963103>. accessed 23 November 2023.

[64] Ibid p. 8.

to health. So, activists in developing countries were an important catalyst in making explicit the link between intellectual property, public health and access to medicines. The potential impact of TRIPS was brought sharply into focus on 1st March 2001, when 39 global pharmaceutical companies, represented by the Pharmaceutical Manufacturers Association of South Africa, brought an action before the High Court of South Africa (Transvaal Provincial Division) objecting to provisions of the South African Medicines Act that gave the Health Minister the power to grant compulsory licences for patented pharmaceutical products when public health was at stake. In highlighting the implications of this case and the relationship between patents and access to anti-retroviral drugs, the South African NGO Treatment Action Campaign (TAC), supported by legal expertise, played a crucial role[65] in favour of the people of South Africa to have access to essential drugs.

The same month as the South African court case, on 7th March 2001, Brazilian HIV/AIDS Organizations, including *Grupo de Incentivo à Vida* (GIV) and the *Associação Brasileira Interdisciplinar de AIDS* (ABIA), began public demonstrations in front of the US consulate in Brazil to bring attention to WTO dispute settlement proceedings initiated by the United States against Brazil. The dispute, related to the compulsory licensing provisions of Brazilian legislation and although a mutually satisfactory solution was reached in June 2001 to end the dispute, since then NGOS in Brazil have continued to highlight the potential of compulsory licensing to reduce prices and increase access to anti-retroviral drugs for people living with HIV. ABIA participated in the intellectual property working group of the *Rede Brasileira pela Integração dos Povos* (REBRIP), a network that monitors the liberalisation of trade and its impacts in Brazil and other countries of the southern hemisphere. The NGO *Instituto de Direito do Comércio Internacional e Desenvolvimento* (IDCID), comprising academics based at the University of São Paulo Law School, also provides technical inputs on intellectual property issues concerning access to essential medicines in Brazil.[66]

In India, where reform of the Patent Act of 1970 has been a high-profile issue for over a decade, several groups have played an important role in highlighting the link between intellectual property and access to medicines. The National Working Group on Patent Law, for instance, which has links with the international NGO MSF, is an informal public interest expert group in India. The National Working Group on Patent Law has provided substantive inputs into the policy-making process through participatory communication channels such as the Parliamentarian Forum and has assisted with public understanding of patent law reform by convening People's Commissions on Patent Laws for India, four of which have been convened so far. The Lawyers Collective HIV/AIDS Unit, supported initially by funds from the European Commission and more recently by the Swedish International Development Agency (SIDA), is now also playing an important role, in collaboration with MSF, undertaking third-party pre-grant opposition about the issuance of patents for pharmaceutical products. The activities of NGOS in South Africa, Brazil and India have not only focused attention on the significance of intellectual property at a national level. They have also galvanised public opinion globally and, crucially, have provided important inputs into the work of international NGOS pushing for the people to have access to essential drugs as a right to health.[67]

Another prominent international NGO that has played a significant role in the fight for the right of the developed nations to access medicines for the treatment of diseases is the Bill & Melinda Gates Foundation (BMGF). The Gates Foundation was established in 1999 and initially endowed with a portion of Bill Gates' Microsoft riches. The Foundation is now by far the world's largest private foundation, dwarfing once-dominant players such as the Ford Foundation, the Rockefeller Foundation, and the Carnegie Corporation Foundation. It is a much larger international foundation targeting the developing world and is geared towards infectious diseases, agricultural policy, reproductive health and population control. It is said that in 2009 alone, BMGF spent more than $1.8 billion on global projects. BMGF is the prime mover behind prominent multi-stakeholder initiatives such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, and the GAVI Alliance (a Gates-funded PPP linking the World Health Organisation with the Vaccine industry).[68]

[65]S Sen, 'British NGOs Support Pretoria against Pharmaceutical Firms', (2021), <www.twn.my/title/pretoria.htm>. accessed 24 November 2023.
[66] Matthews (n 63).
[67] Ibid.
[68] J Levich, 'The Gates Foundation, Ebola and the Global Health Imperialism' (2015) 74 (4) *The American Journal of Economics and Sociology*, The Hidden Hands: How Foundations Shapes the Course of History (2015) 716.

During the Ebola virus pandemic, as the world's leading health foundation, the Foundation could not stay aside but contributed to fighting the virus with a sum of $50 million to support emergency response to the Ebola and as a way to strengthen national health systems.[69] In the more recent pandemic that rocked the foundation of global health, Coronavirus Disease (COVID-19). The BMGF, since 2020, has committed more than $2 billion to the global emergency response to the pandemic. The Foundation stated that:

> *In addition to contributing to the program funding, teams and individuals across the foundation have provided technical assistance and expertise to organisations around the world, in areas such as vaccine manufacturing and delivery, clinical trials, supply chains, and data modelling and analytics. The foundation will continue to work with national governments, multilateral organizations, the private sector, and civil society organizations to lend technical expertise, voice, and financial resources where they can be helpful in addressing the urgent needs expressed by its partners in low-and middle-income countries*.[70]

This alone has demonstrated the real commitment of the foundation towards ensuring that the world order in respect of the quest for access to medicine for the third world or the least developed nations is met. The BMGF is well known throughout the world, and its significant contributions to medicine and research and development for the discovery and manufacture of new drugs to fight life-threatening diseases are paramount.

3.3 The National Non-Governmental Organizations (NGOs)

By the Companies and Allied Matters Act,[71] any foreign company desirous of carrying on business in Nigeria shall take the necessary steps to register such a company in Nigeria and shall proceed to operate as a Nigerian company, except where an exemption is sought and granted by the minister. So, in essence, some of the NGOS are directly foreign but have taken up registration in Nigeria, and so for this purpose, we shall be considering them as national NGOS. Some of such NGOS are:

First, the Society for Family Health (SFH). The Society for Family Health is one of Nigeria's largest and most successful non-governmental organizations. It led the Department for International Development's (DFID's) Enhancing Nigeria's Response to HIV/AIDS (ENR) program and the Gates-funded maternal and child project in Gombe and Adamawa states of Nigeria. The program was taken from 2009-2016. The organization has a strong presence in Northern Nigeria and has developed a robust methodology to link the Maternal Newborn and Child Health (MNCH),[72] removing bottleneck that limits access to medicines. The organization brought about better management of human resources for health, task shifting, reducing cultural barriers to accessing services, and facilitating logistics access to facilities where there are none. By 2012, the SFH had over 450 employees in Nigeria and fully equipped offices in 18 states, including Kano, Kaduna, Sokoto and the Federal Capital Territory.[73]

Secondly, the Axios Foundation is another powerful NGO operating in Nigeria. This foundation was formed in 2001 by the health experts from the public and private sectors who shared the vision of an organization that could work effectively with clients and stakeholders from both sectors to improve access to quality healthcare. It has 13 offices and works in 64 countries worldwide. This organization has a strong track record in Nigeria, consistently delivering effective and improved health delivery services to Nigerians and citizens of other countries. It has also achieved much in the area of reduction of the cost of drugs to both private and public health facilities, through the Drug Revolving Fund.[74]

Another NGO is the AIDS Healthcare Foundation (AHF). This foundation has a national commitment to scale up access to HIV services by providing completely free quality antiretroviral therapy, TB/HIV co-infection Management, treatment of STIS/OIS and care and support to people living with HIV/AIDS. It mainly provides completely free HIV care and treatment services in remote locations across the states of operation.[75] The Organization commenced service provision in 2011 and now covers sixty-five (65)

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[69] Ibid.
[70] Bill & Melinda Gates Foundation: Funding Commitments to Fight COVID-19' <www.gatesfoundation.org.> accessed 24 November 2023
[71] Section 78-84, Companies and Allied Matters Act, Laws of the Federation of Nigeria, 2020.
[72] Maternal Newborn and Child Health <www.data.gffportal.org> accessed 23 November 2023.
[73] Maternal Newborn and Child Health: Society for Family Health, <www.mnch2.com/partners/> 23 November 2023.
[74] Maternal Newborn and Child Health: The Axios Foundation, <www.mnch2.com.partners> accessed 23 November 2023
[75] AIDS Healthcare Foundation<www.aidshealth.org/global/nigeria/>accessed 23 November 2023.

comprehensive and decentralized HIV clinics spread across six states: Anambra, Benue, Cross Rivers, Kogi, Nasarawa and FCT Abuja. To date, AHF has conducted over 2,007,830 million HIV tests, distributed over 8,026,259 million condoms and awarded financial support to its partners through the AHF GRANT FUND – about $ 362,937 to successful CSOs and CBOs since 2012 in Nigeria.[76] This has demonstrated that the NGOs are really a factor in the promotion of right for effective and sustainable health and access to essential medicines in Nigeria.

4. Conclusion

The Nigerian healthcare system continues to face numerous challenges, including legislative fragmentation in health governance and the persistent failure to meet the Abuja Declaration benchmark of allocating at least 15% of the national budget to the health sector. This non-compliance has fostered systemic corruption and underfunding. In addition, widespread poverty has made access to quality healthcare especially patented and essential medicines unaffordable for many Nigerians. The roles of legal frameworks and non-state actors such as NGOs, remain pivotal in bridging these gaps and promoting equitable healthcare delivery in the country.

5. Recommendations

Based on the foregoing analysis of the roles played by law and non-state actors in promoting healthcare access and the right to life in Nigeria, the following recommendations are made:

1. There should be a strong legal and policy framework that will ensure enshrining of the right to health explicitly in the constitution of Nigeria. In this case, a constitutional amendment or clear judicial pronouncement recognizing the right to health as justiciable and enforceable right with the same weight as those in the chapter four of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
2. The National Assembly should work out a Bill for an Act that will ensure harmonization of the numerous health-related laws in Nigeria to reduce the level of fragmentation in the laws. Unifying laws like the National Health Act and the National Health Insurance Authority Act, and others, will create a unified and coherent legal framework for the effective workability of the health system in Nigeria.
3. The Nigerian judiciary must wake up to its responsibility as not only a law interpreter but policy driven court. This will ensure that laws are interpreted with a view of shaping the policy and well being of the country. To this end, the judiciary is encouraged to interpret matters concerning health with a view to promoting and protecting the right to life of Nigerians.
4. There should be a deliberate action by the Nigerian government in partnership with the Non-state actors and other private organizations in the country to increase public and private investment in the health sector. They should be able to sustain a certain degree of pressure on the government to meet or exceed the Abuja Declaration of 5 percent budget allocation for the health sector in every fiscal year.
5. The primary healthcare system in Nigeria must receive a boaster to properly function because that is where the lager majority of healthcare seekers in Nigeria go to in terms of health challenges. This can be done by the effective and continuous improvement of the health facilities, infrastructure, and training of the healthcare providers and provision of incentives to avoid the mobility of health professionals outside the country as is recently experienced and described as “Jappa” syndrome.
6. The national health insurance program must be made to be more inclusive because most of the drugs or ailments are not covered by the scheme. The health insurance scheme should be upgraded to full health coverage for effectiveness of service and that will increase the confidence of the people in the health system in the country.
7. There should be strong public private-partnership that is backed by the law. The law should be able to engage the NGOs, CSOs, religious bodies and the private healthcare providers in both the rural and cities to mass mobilization and advocacy in health education and advocacy on the right to health and the right to life of citizens.
8. Nigeria must equally be able to leverage on technology and adopt the new concepts of ‘telemedicine.’ Nigeria can achieve this by the effective provision of requisite technological infrastructure like the 5G network, non-interruption of power supply, good road network and many more.

[76] Ibid.