JURISPRUDENTIAL ANATOMY OF THE RIGHT TO HEALTH OF THE ELDERLY AND AGING POPULATION; CHALLENGES AND OPPORTUNITIES FOR IMPROVING HEALTHCARE FACILITIES IN AFRICA

Agbo Friday Ojonugwa* Dennis Amobi Ugwuja* Khadijat Ahmed**[1]

Abstract

The right to health is a fundamental human right enshrined in various international and regional instruments, including the African Charter on Human and Peoples' Rights. However, the realization of this right remains elusive in Africa, where inadequate healthcare facilities, poor infrastructure, and limited access to quality healthcare service persist. This paper undertakes a jurisprudential assessment of the right to health in Africa, examining the challenges and opportunities for improving healthcare facilities on the continent. The right to health is recognized as a cornerstone of human dignity and well-being. In Africa, however, the enjoyment of this right is compromised by numerous factors, including inadequate funding, brain drain, and insufficient healthcare infrastructure. The right to health is a fundamental human right enshrined in various international and regional instruments, including the Universal Declaration of Human Rights and the African Charter on Human and People's Rights. In Africa the realization of this right remains elusive due to numerous challenges. The Africa region faces significant healthcare challenges, including inadequate infrastructure, shortage of healthcare professionals, and limited access to essential medicines. These challenges are exacerbated by poverty, inequality and poor governance. International law imposes obligations on states to ensure the progressive realization of the right to health. However, African countries face difficulties in implementing this obligation due to resource constraints and competing priorities.

Keywords: Jurisprudential Anatomy, Right, Challenges, Opportunities, Healthcare, Elderly and aging, Facilities in Africa.

1.0 Introduction

The right to health is universally recognized as a fundamental aspect of human dignity and well-being. It constitutes a key component of economic, social, and cultural rights, reflecting the interdependence of all human rights. Article 25 of the Universal Declaration of Human Rights

[1] * **Agbo Friday Ojonugwa** LLB, BL, LLM, MIMHL, MMLP, CGAN, Ph.D, Lecturer Faculty of Law Veritas University Bwari, Abuja, Nigeria. kingschild4you@gmail.com, agbofr@veritas.edu.ng Phone Number: +2347033963763

** **Dennis Amobi Ugwuja** LLB, BL, LLM, Ph.D. in view, Lecturer, Faculty of Law, Veritas University Abuja – ugwujad@veritas.edu.ng – 09023877298

*** **Khadijat Ahmed ,** LLB, BL, LLM, Ph.D., Usmanu Danfodiyo University Sokoto Khadeejatahmed@gmail.com Phone number: +2348035877057

(1948)[2] provides that everyone has the right to a standard of living adequate for health and well-being, including medical care. Similarly, Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966)[3] recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Within the African context, Article 16 of the African Charter on Human and Peoples' Rights (1981)[4] obliges state parties to ensure the protection of the health of their people and to provide medical attention when they are sick.[5]

Despite these normative guarantees, the realization of the right to health remains elusive in Africa, particularly for the elderly and aging population. Africa's population is rapidly aging due to improved life expectancy, demographic transition, and declining fertility rates. According to the World Health Organization (WHO, 2023)[6], the number of persons aged 60 and above in Africa is projected to double by 2050, exceeding 200 million. Yet, health systems across the continent remain under-resourced and poorly adapted to geriatric care. In Nigeria, for example, inadequate funding, shortage of health personnel, poor infrastructure, and weak implementation of health policies have continued to hinder the realization of the right to health for older persons (Federal Ministry of Health [FMoH], 2022)[7].

From a jurisprudential standpoint, the right to health transcends mere access to healthcare services; it embodies state obligations to respect, protect, and fulfill the conditions necessary for a healthy life. For elderly persons, this entails special protection against vulnerabilities arising from aging, disability, poverty, and discrimination. The National Health Act 2014[8] and the National Policy on Ageing 2021[9] in Nigeria attempt to address these obligations, yet their enforcement remains minimal. Consequently, there is a need for a comprehensive legal, ethical, and policy re-examination of how the right to health of elderly Africans can be meaningfully realized within resource-constrained systems.

While the normative frameworks establishing the right to health are well-articulated, the practical enjoyment of this right by the elderly population in Africa remains precarious. Most healthcare systems are designed to respond to infectious diseases and maternal health, with limited focus on geriatric medicine or chronic-disease management. The lack of specialized facilities, inadequate social security mechanisms, and low prioritization of aging in national development agendas further compound the situation.

---

[2] Universal Declaration of Human Rights, 1948.

[3] International Covenant on Economic, Social and Cultural Rights, 1966.

[4] African Charter on Human and Peoples' Rights, 1981.

[5] Nigeria Health Watch, 'The UHC Gap: Where are Older Citizens in Health Sector Reforms?' (1 October 2021) <https://nigeriahealthwatch.medium.com/the-uhc-gap-where-are-older-citizens-in-health-sector-reforms-f49ae1e14690 >accessed 26 January 2026.

[6] World Health Organization. (2023). World report on ageing and health in Africa. Geneva: WHO.

[7] Federal Ministry of Health (FMoH). (2022). Nigeria health sector performance review report 2022. Abuja: FMoH.

[8] . National Health Act (No. 8) of 2014 (Nigeria).

[9] National Policy on Ageing (2021) (Nigeria).

In Nigeria, the absence of justiciable health rights under Chapter II of the 1999 Constitution (as amended) significantly weakens legal enforcement. Although the Fundamental Rights (Enforcement Procedure) Rules 2009 broaden the scope of rights litigation, courts have been reluctant to interpret socio-economic rights expansively. Consequently, the elderly often depends on informal family networks for care, which are themselves eroding due to urbanization and economic hardship. This creates a jurisprudential gap between the normative commitments of the state and the lived realities of older citizens.

This research adopts a doctrinal and analytical methodology, utilizing primary legal instruments such as treaties, statutes, and judicial decisions and secondary sources, including books, journal articles, policy documents, and credible internet resources. The geographical focus is on Africa, with Nigeria serving as the principal case study. The study covers developments up to 2025, incorporating recent policy measures such as the National Policy on Ageing (2021), the National Health Act (2014), and regional efforts under the African Union Protocol on the Rights of Older Persons (2016).

2.0 Theoretical and Jurisprudential Framework

2.1 Concept of the Right to Health

The right to health has evolved as a central component of international human rights law, emphasizing that every individual is entitled to the highest attainable standard of physical and mental well-being. It does not guarantee perfect health but obliges states to ensure access to timely, acceptable, and affordable healthcare, as well as to address the underlying determinants of health such as nutrition, housing, safe water, and a healthy environment (Office of the United Nations High Commissioner for Human Rights [OHCHR] & World Health Organization [WHO], 2008)[10]. The World Health Organization Constitution (1946)[11] was the first international instrument to recognize health as a fundamental human right. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) subsequently codified this right, requiring states to take steps necessary for its progressive realization. In the African context, Article 16 of the African Charter on Human and Peoples' Rights (1981)[12] guarantees the right to enjoy the best attainable state of physical and mental health.

In Nigeria, although the 1999 Constitution (as amended) does not expressly guarantee the right to health as a fundamental right, section 17(3)(d) under Chapter II directs the state to ensure adequate medical and health facilities for all persons. This provision, while non-justiciable, serves as a constitutional directive principle of state policy. The National Health Act 2014[13] operationalizes

[10] Office of the United Nations High Commissioner for Human Rights (OHCHR), & World Health Organization (WHO). (2008). The right to health: Fact sheet No. 31. Geneva: United Nations.

[11] World Health Organization Constitution, 1946.

[12] African Charter on Human and Peoples' Rights, 1981.

[13] National Health Act, No. 8 of 2014 (Nigeria).

this principle by establishing a framework for equitable access to quality health services and by recognizing the health rights of vulnerable groups, including the elderly.[14]

2.2 Theories Underpinning the Right to Health

The right to health is rooted in multiple jurisprudential and ethical theories that collectively inform its legal recognition and normative character.

a. Natural Law Theory:

Natural law theorists such as Thomas Aquinas and John Finnis view human rights as deriving from the inherent dignity of the human person. Under this view, the right to health is not a creation of positive law but a moral imperative flowing from the natural obligation of society to protect life and welfare. This theory aligns with the African communitarian ethos, where health and well-being are considered collective responsibilities (Omatseye, 2016)[15].

b. Utilitarianism:

The utilitarian approach, associated with Jeremy Bentham and John Stuart Mill, supports the right to health as a means of maximizing societal welfare. Public health policies that ensure access to healthcare for the elderly enhance productivity, reduce dependency, and promote overall social happiness.

c. Social Justice Theory:

John Rawls' theory of justice as fairness provides a philosophical justification for redistributive policies that address inequalities in health. According to Rawls (1971)[16], justice requires prioritizing the needs of the least advantaged. Applying this to healthcare implies that the elderly, being among the most vulnerable should receive special protection and equitable access to medical care.

d. Capabilities Approach:

Amartya Sen and Martha Nussbaum's capabilities approach shifts the focus from mere access to healthcare to the ability of individuals to achieve functional well-being. This framework emphasizes creating conditions that allow elderly persons to live dignified, active, and healthy lives (Nussbaum, 2011)[17]. It is particularly relevant in African societies where social, cultural, and economic factors intersect to influence health outcomes.

2.3 Jurisprudential Basis for Protecting the Health of the Elderly

The jurisprudence of the right to health for the elderly is grounded in the recognition of human dignity and the evolving understanding of socio-economic rights. The elderly constitute a unique demographic group with specific vulnerabilities arising from age-related ailments, social exclusion,

---

[14] S Tarfa, 'The Right to Health Under the Nigerian Constitution: Myth or Reality?' (16 January 2021) <https://www.lawyard.org/opinions/the-right-to-health-under-the-nigerian-constitution-myth-or-reality/>accessed 26 January 2026. S Tarfa, 'The Right to Health Under the Nigerian Constitution: Myth or Reality?' (16 January 2021) <https://www.lawyard.org/opinions/the-right-to-health-under-the-nigerian-constitution-myth-or-reality/> accessed 26 January 2026.

[15] Omatseye, J. N. (2016). African philosophy and the ethics of communalism. Ibadan University Press.

[16] Rawls, J. (1971). A theory of justice. Harvard University Press.

[17] Nussbaum, M. (2011). Creating capabilities: The human development approach. Harvard University Press.

and economic dependency. Protecting their right to health therefore reflects both a moral and legal duty of the state.

In SERAP v. Federal Republic of Nigeria[18], the ECOWAS Court of Justice affirmed that the right to health is enforceable in Nigeria through international obligations under the African Charter, which is domesticated as national law via the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9, Laws of the Federation of Nigeria, 2004)[19]. This jurisprudential development bridges the constitutional gap by rendering the right to health justiciable through regional legal instruments.

Additionally, the Protocol to the African Charter on the Rights of Older Persons in Africa (2016)[20] explicitly guarantees older persons' right to enjoy the best attainable standard of health, mandating states to provide age-friendly healthcare services. Nigeria's National Policy on Ageing (2021)[21] echoes this obligation, seeking to integrate geriatric care into the national health system and to ensure social protection for older adults.

2.4 Human Dignity and the Aging Population

Human dignity is the philosophical cornerstone of all human rights. The aging process, while natural, often subjects individuals to vulnerability and dependency, making the protection of dignity central to geriatric health jurisprudence. In the African worldview, the elderly are repositories of wisdom and culture, deserving respect and care. Yet modernization and economic pressures have eroded traditional family-based care systems, leaving many elderly persons neglected or destitute.[22]

The jurisprudence of dignity therefore demands a rights-based approach to aging, where the state is obligated to create institutional frameworks that safeguard health, autonomy, and participation. This aligns with Section 42 of the 1999 Constitution of Nigeria, which prohibits discrimination on the basis of circumstances, and with the UN Principles for Older Persons (1991), which advocate for independence, participation, care, self-fulfillment, and dignity for older persons.

2.5 Interrelationship Between the Right to Health and Other Human Rights

The right to health is interdependent with several other rights, including the right to life, social security, and freedom from discrimination. In Gbemre v. Shell Petroleum Development Company[23], the Federal High Court of Nigeria recognized that environmental degradation violating the right to a healthy environment also infringes upon the right to life and dignity under Sections 33 and 34 of the Constitution. This case underscores the interconnectedness of rights and the necessity of a holistic approach to health.

---

[18] SERAP v. Federal Republic of Nigeria, ECW/CCJ/APP/08/09 (ECOWAS Court of Justice, 2010).

[19] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004.

[20] Protocol to the African Charter on the Rights of Older Persons in Africa, 2016.

[21] National Policy on Ageing (2021) (Nigeria).

[22] Aboderin, I., & Beard, J. (2015). Older people's health in sub-Saharan Africa. The Lancet, 385(9968), e9–e11. <https://doi.org/10.1080/16549716.2019.1608249 > accessed 26 January 2026

[23] Gbemre v. Shell Petroleum Development Company (2005) AHRLR 151 (NgHC 2005).

Similarly, the African Commission on Human and Peoples' Rights in Purohit & Moore v. The Gambia[24] emphasized that the right to health extends beyond medical care to encompass the conditions that promote well-being. For the elderly, this means access to social welfare, housing, and community support—all of which constitute essential determinants of health.

3.0 Legal And Institutional Framework For The Protection Of The Right To Health Of The Elderly And Aging Population

3.1 International Legal Framework

3.1.1 Universal Declaration of Human Rights (UDHR) 1948

The UDHR remains the foundation of all human rights discourse. Article 25(1) recognizes everyone's right to a standard of living adequate for health and well-being, including medical care and necessary social services. Although not legally binding, it sets a moral and customary standard that has influenced subsequent international instruments. Its relevance for the elderly lies in affirming that age should not diminish entitlement to health and social protection (United Nations, 1948)[25].

3.1.2 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

Article 12 of the ICESCR imposes on states the obligation to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights (CESCR), in General Comment No. 14 (2000)[26], clarified that states must ensure non-discriminatory access to healthcare services, including for vulnerable groups such as the elderly. It also established the "AAAQ" framework availability, accessibility, acceptability, and quality as the standard for evaluating health systems (CESCR, 2000).

Nigeria ratified the ICESCR in 1993, thereby assuming obligations under Article 2(1) to progressively realize the right to health through domestic measures. Although Nigeria has not domesticated the Covenant under Section 12 of its Constitution, the African Charter (which incorporates similar provisions) bridges this gap through direct enforceability.

3.1.3 United Nations Principles for Older Persons (1991)

Adopted by UN General Assembly Resolution 46/91, these principles articulate five core values for elderly protection: independence, participation, care, self-fulfillment, and dignity. They provide a soft-law framework for guiding national policies and have inspired the African Union's regional initiatives on aging. While non-binding, they establish normative expectations that states should integrate into domestic law and policy (United Nations, 1991)[27].

---

[24] Purohit and Moore v. The Gambia (2003) AHRLR 96

[25] United Nations. (1948). Universal Declaration of Human Rights. UN General Assembly Resolution 217 A (III).

[26] Committee on Economic, Social and Cultural Rights (CESCR). (2000). General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant). UN Doc. E/C.12/2000/4.

[27] United Nations. (1991). United Nations Principles for Older Persons. UN General Assembly Resolution 46/91.

3.1.4 The Madrid International Plan of Action on Ageing (MIPAA) 2002

The MIPAA represents the global policy blueprint for addressing aging-related issues, emphasizing the need for health promotion, disease prevention, and equitable access to healthcare for older persons. It urges states to mainstream aging into national development strategies and to strengthen social protection mechanisms. Nigeria and most African states have adopted elements of MIPAA in their national frameworks, including through the National Policy on Ageing (Federal Ministry of Humanitarian Affairs, 2021)[28].

3.2 African Regional Legal Framework

3.2.1 African Charter on Human and Peoples' Rights (1981)

Article 16 of the African Charter guarantees the right to enjoy the best attainable state of physical and mental health and obliges states to take necessary measures to protect this right. Uniquely, the Charter also recognizes collective rights and duties, reflecting the communal nature of African societies.

In Purohit & Moore v. The Gambia (2003)[29], the African Commission on Human and Peoples' Rights affirmed that the right to health encompasses both the availability of healthcare services and the underlying determinants of health. This decision has had far-reaching implications for interpreting the Charter as an enforceable instrument.

3.2.2 Protocol to the African Charter on the Rights of Older Persons in Africa (2016)

This Protocol, adopted by the African Union, represents a landmark step toward recognizing the rights of the elderly. Articles 10 and 11 guarantee the right of older persons to health and require states to provide age-appropriate, affordable, and accessible healthcare. It further mandates governments to train healthcare professionals in geriatric care, establish health insurance schemes, and protect elderly persons from abuse and neglect.

Although the Protocol has not yet entered into force due to insufficient ratifications, Nigeria's National Policy on Ageing (2021) reflects its provisions, signaling a commitment to eventual ratification and implementation (African Union, 2016)[30].

3.2.3 African Union Policy Framework and Plan of Action on Ageing (2002)

This policy framework calls on member states to integrate the concerns of older persons into national development planning. It emphasizes that aging should be viewed not as a liability but as a resource, advocating for the social inclusion of elderly persons and for adequate healthcare funding. The framework has influenced national legislations across Africa, including South

[28] Federal Ministry of Humanitarian Affairs. (2021). National Policy on Ageing. Abuja: Government of Nigeria.

[29] Purohit & Moore v. The Gambia, (2003) AHRLR 96 (ACHPR 2003).

[30] African Union. (2016). Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa. Addis Ababa: African Union.

Africa's Older Persons Act (2006) and Ghana's National Ageing Policy (2010) (African Union, 2002)[31].

3.3 Nigerian Legal and Institutional Framework

3.3.1 Constitutional Provisions

The Constitution of the Federal Republic of Nigeria (1999, as amended) contains several provisions relevant to the right to health, though not expressly justiciable. Section 17(3)(d) under Chapter II obliges the state to ensure adequate medical and health facilities for all persons. Section 14(2)(b) establishes that the security and welfare of the people shall be the primary purpose of government. While Chapter II is non-justiciable under Section 6(6)(c), Nigerian courts have, in some cases, adopted a purposive interpretation that gives indirect effect to socio-economic rights.

In SERAP v. Federal Republic of Nigeria (2010)[32], the ECOWAS Court held that the right to health is enforceable in Nigeria through the African Charter, thus bridging the constitutional limitation. This jurisprudential development underscores the potential of regional courts to strengthen domestic accountability.

3.3.2 National Health Act (2014)

The National Health Act 2014 provides the statutory framework for regulating and managing Nigeria's health system. Section 1 declares that the Act seeks to provide for a framework for standards of health services delivery and to protect the rights of health service users. Section 3 establishes the Basic Health Care Provision Fund (BHCPF) to ensure equitable access to health services, particularly for vulnerable groups. However, the Act lacks explicit provisions on geriatric healthcare, and implementation of the BHCPF has been inconsistent (Federal Ministry of Health, 2023)[33].

3.3.3 National Policy on Ageing (2021)

The National Policy on Ageing is Nigeria's first comprehensive framework addressing the needs of older persons. It aims to promote healthy aging, ensure income security, and integrate elderly care into the national healthcare system. The policy aligns with both the African Union's 2016 Protocol and the Madrid Plan of Action on Ageing (2002). However, as a policy document, it lacks legal enforceability. Without enabling legislation, its implementation depends largely on political will and budgetary allocations.

3.3.4 Institutional Mechanisms

The Federal Ministry of Health (FMoH), the National Primary Health Care Development Agency (NPHCDA), and the National Senior Citizens Centre (NSCC) established under the National Senior Citizens Centre Act (2017) are the main institutions responsible for elderly care. The NSCC

[31] African Union. (2002). AU Policy Framework and Plan of Action on Ageing. Addis Ababa: African Union Commission.

[32] SERAP v. Federal Republic of Nigeria, ECW/CCJ/APP/08/09 (2010).

[33] Federal Ministry of Health. (2023). Basic Health Care Provision Fund Implementation Report. Abuja: Government of Nigeria.

specifically coordinates activities aimed at enhancing the welfare and well-being of older persons. Nonetheless, inter-agency coordination remains weak, and funding constraints impede the institutionalization of geriatric services nationwide.

4.0 Challenges To The Realization Of The Right To Health Of The Elderly And Aging Population In Africa

4.1 Inadequate Health Infrastructure and Funding

A central challenge to the realization of the right to health in Africa is the chronic underfunding of healthcare systems. The 2001 Abuja Declaration on Health required African governments to allocate at least 15% of their annual budgets to the health sector. However, Nigeria's budgetary allocation to health has consistently fallen below 6% (Federal Ministry of Health [FMoH], 2023)[34]. The consequence is a poorly maintained health infrastructure incapable of meeting the needs of a growing elderly population.

Health facilities in many rural areas lack essential medical equipment, trained personnel, and geriatric units. The National Health Act 2014[35] established the Basic Health Care Provision Fund (BHCPF) to address these deficiencies, but its coverage remains limited, with inconsistent disbursement and accountability challenges. The neglect of primary healthcare facilities disproportionately affects elderly persons, who are less able to travel long distances for specialized care.

4.2 Shortage of Skilled Healthcare Professionals and Brain Drain

Another significant barrier is the shortage of healthcare workers, aggravated by the continuous migration of medical professionals to developed countries. According to the Nigerian Medical Association (NMA, 2023)[36], over 15,000 Nigerian doctors practice abroad, leaving an estimated doctor-to-patient ratio of 1:9,000 which is far below the WHO's recommended ratio of 1:600. This human resource crisis has critical implications for elderly healthcare, as geriatrics and chronic-disease management require specialized and continuous medical attention.

Few medical institutions in Africa offer geriatric training programs, and the limited number of geriatricians further constrains the capacity to manage age-related illnesses such as dementia, hypertension, diabetes, and arthritis (Eboh, 2021)[37]. The absence of institutional support and incentives for training in elderly care perpetuates a vicious cycle of neglect and inadequate service delivery.

4.3 Weak Policy Implementation and Institutional Coordination

While most African countries, including Nigeria, have adopted comprehensive health and aging policies, the gap between policy formulation and execution remains wide. The National Policy on Ageing (2021)[38], for instance, outlines progressive strategies for elderly welfare but lacks a

[34] Federal Ministry of Health (FMoH). (2023). Nigeria Health Sector Review Report 2023. Abuja: FMoH.

[35] National Health Act, 2014 (Nigeria).

[36] Nigerian Medical Association (NMA). (2023). Health workforce migration report. Abuja: NMA.

[37] Eboh, A. (2021). Human resources for health and aging populations in Nigeria. Nigerian Journal of Health Policy and Management, 6(1), 33–48.

[38] National Policy on Ageing, 2021 (Nigeria).

corresponding legislative framework to ensure enforceability. Similarly, the National Senior Citizens Centre (NSCC), established to coordinate programs for older persons, faces operational challenges due to limited funding, bureaucratic delays, and weak inter-agency collaboration (NSCC, 2024)[39].

Institutional fragmentation among the Federal Ministry of Health, National Primary Health Care Development Agency (NPHCDA), and Federal Ministry of Humanitarian Affairs and Social Development further hampers a unified response. This lack of synergy results in duplication of efforts, poor data management, and ineffective monitoring and evaluation mechanisms.

4.4 Poverty, Economic Inequality, and Social Exclusion

The economic realities in Africa present formidable obstacles to realizing the right to health for the elderly. High levels of poverty and income inequality limit access to healthcare services. The majority of elderly Africans lack pension or social security coverage, relying instead on informal family networks that are increasingly weakened by urban migration and modernization (Aboderin, 2019)[40].

In Nigeria, less than 10% of the population is covered by health insurance, and the National Health Insurance Authority Act (2022) has yet to achieve universal coverage. Out-of-pocket expenditure accounts for over 70% of total health spending (World Bank, 2023)[41], making healthcare unaffordable for many elderly individuals who have no regular income. Consequently, the elderly are often forced to forgo treatment, resort to self-medication, or depend on traditional remedies.

4.5 Corruption and Governance Deficits

Corruption and mismanagement within the health sector remain significant challenges undermining the right to health in Africa. Funds earmarked for healthcare development are often diverted, and procurement processes lack transparency (Transparency International, 2022)[42]. The misappropriation of the Basic Health Care Provision Fund and donor-supported health programs in Nigeria illustrates how governance failures erode the effectiveness of otherwise sound legal frameworks.

The absence of accountability mechanisms also limits citizen participation and public oversight in health governance. As a result, the elderly, who are among the least empowered to demand accountability, bear the brunt of inefficiencies and corruption within the health system.

4.6 Lack of Data and Research on Elderly Health

A recurring institutional challenge is the absence of reliable data on elderly health demographics. Most African countries lack disaggregated data on aging populations, making it difficult to design targeted interventions. The National Bureau of Statistics (NBS) in Nigeria has yet to institutionalize

[39] National Senior Citizens Centre (NSCC). (2024). Institutional performance review 2024. Abuja: NSCC.

[40] Aboderin, I. (2019). Toward age-inclusive health systems in Africa. Global Health Action, 12(1), 160–172. <https://doi.org/10.1080/16549716.2019.1608249 > accessed 26 January 2026

[41] World Bank. (2023). World development indicators 2023: Health expenditure and aging. Washington, DC: World Bank.

[42] Transparency International. (2022). Corruption perception index 2022. Berlin: TI.

a comprehensive aging database, which hinders effective planning, monitoring, and evaluation of elderly health policies (NBS, 2024)[43].

Without accurate data, policymakers cannot determine the scope of need, allocate resources efficiently, or measure progress toward achieving health equity for older persons. The absence of research and data-driven decision-making perpetuates policy inertia and reactive governance.

4.7 The Non-Justiciability of Socio-Economic Rights

Perhaps the most profound jurisprudential obstacle to realizing the right to health for the elderly in Nigeria is the non-justiciability of socio-economic rights under Chapter II of the 1999 Constitution. Section 6(6)(c) explicitly bars courts from entertaining claims based on the Directive Principles of State Policy. This has left vulnerable populations without an enforceable legal remedy for violations of their health rights.

Although regional mechanisms such as the ECOWAS Court of Justice have recognized the enforceability of the right to health under the African Charter (SERAP v. Nigeria, 2010)[44], the absence of domestic constitutional justiciability continues to weaken accountability. Judicial restraint and political reluctance to amend the Constitution further entrench the status quo, making the right to health aspirational rather than practical for many elderly citizens.

5.0 Opportunities And Strategies For Improving The Right To Health Of The Elderly And Aging Population In Africa

5.1 Strengthening Legal and Institutional Frameworks

A foundational step toward improving the right to health of the elderly is the establishment of a robust, enforceable legal framework. While the 1999 Constitution of Nigeria recognizes the state's duty to provide adequate medical and health facilities (Section 17(3)(d)), this provision is non-justiciable. Hence, a constitutional amendment or the enactment of an Elderly Persons Rights and Welfare Act could give enforceable expression to the right to health for older citizens.

The National Health Act (2014)[45] and the National Policy on Ageing (2021)[46] already provide a normative basis, but stronger institutional backing through the National Senior Citizens Centre (NSCC) can enhance implementation. Strengthening the NSCC's capacity financially, legally, and operationally would ensure better coordination among ministries, departments, and agencies involved in elderly health (NSCC, 2024)[47].

At the regional level, the African Union Protocol on the Rights of Older Persons (2016) offers a legally binding framework, though only a handful of states have ratified it. Accelerated ratification

[43] National Bureau of Statistics (NBS). (2024). Annual demographic and health indicators report. Abuja: NBS.

[44] SERAP v. Federal Republic of Nigeria, ECW/CCJ/APP/08/09 (ECOWAS Court of Justice, 2010).

[45] National Health Act, 2014 (Nigeria).

[46] National Policy on Ageing, 2021 (Nigeria).

[47] National Senior Citizens Centre (NSCC). (2024). Institutional performance review 2024. Abuja: NSCC.

and domestication across African states, including Nigeria, would provide a continental standard for elderly healthcare and human dignity (African Union, 2016)[48].

5.2 Enhancing Health Financing and Resource Allocation

Health financing remains the lifeline of any effective healthcare system. The underfunding of the health sector has consistently undermined service delivery. To address this, African governments should fulfill the Abuja Declaration (2001) commitment of allocating at least 15% of national budgets to health. In Nigeria, this should include earmarking a portion of the Basic Health Care Provision Fund (BHCPF) specifically for geriatric healthcare facilities, mobile clinics, and preventive health services.

Furthermore, the National Health Insurance Authority Act (2022)[49] provides an opportunity for universal coverage. Integrating the elderly and retirees into the health insurance scheme, perhaps through subsidized premiums funded by the federal and state governments, would ensure access to essential services. Public-private partnerships (PPPs) can also play a crucial role in financing community-based elderly care facilities, health education, and telemedicine infrastructure (World Bank, 2023)[50].

5.3 Building Human Resource Capacity and Geriatric Specialization

The shortage of skilled healthcare workers particularly in geriatrics requires deliberate policy intervention. Medical training institutions across Africa should incorporate geriatric medicine into their curricula. Nigeria's Postgraduate Medical College and Nursing and Midwifery Council can introduce specialized programs focused on aging populations and chronic disease management.

To mitigate brain drain, governments must improve remuneration, working conditions, and research opportunities for medical professionals. Incentive-based retention schemes, such as housing, professional development grants, and scholarships for geriatric specialization, can encourage retention within the country. Regional training hubs could also be established under the auspices of the West African Health Organization (WAHO) to build capacity across ECOWAS states (WAHO, 2023)[51].

5.4 Mainstreaming Geriatric Care into Primary Health Systems

A transformative approach lies in integrating elderly healthcare into primary healthcare systems. This model ensures accessibility, continuity of care, and cost-effectiveness. The elderly often suffer from multiple chronic conditions requiring continuous management; hence, community-based health centers should include specialized units for non-communicable diseases (NCDs) such as diabetes, hypertension, and dementia.

The National Primary Health Care Development Agency (NPHCDA) could revise its operational guidelines to prioritize geriatric screening, routine medical outreach, and home-based care

[48] African Union. (2016). Protocol on the Rights of Older Persons in Africa. Addis Ababa: AU Commission.

[49] National Health Insurance Authority Act, 2022 (Nigeria).

[50] World Bank. (2023). World development indicators 2023: Health expenditure and aging. Washington, DC: World Bank.

[51] WAHO. (2023). West African regional health workforce development report. Abuja: WAHO Secretariat.

programs. Mobile health units and digital health platforms can extend medical services to rural elderly populations who are often excluded from urban healthcare facilities (FMoH, 2023)[52].

5.5 Promoting Research, Data Collection, and Evidence-Based Policy

Reliable data is essential for designing and evaluating effective elderly health policies. Nigeria's National Bureau of Statistics (NBS) should institutionalize regular collection of age-disaggregated health data. Research institutions and universities must also prioritize aging-related studies to generate evidence that informs policy decisions.

Partnerships between academia, government, and international organizations such as the World Health Organization (WHO) can enhance the development of evidence-based interventions and national ageing indices. Establishing a National Geriatric Health Observatory could facilitate continuous monitoring, evaluation, and policy innovation.

5.6 Leveraging Technology and Innovation in Elderly Healthcare

Digital health technologies provide immense opportunities to address access and quality gaps. Telemedicine, electronic health records, and remote monitoring devices can be used to manage chronic diseases among the elderly, especially in rural communities. The Nigeria Digital Health Framework (2022)[53] encourages the integration of e-health services into primary care, which can be adapted for geriatric healthcare delivery (Federal Ministry of Communications, 2022).

Moreover, mobile applications tailored to medication reminders, health education, and nutrition guidance can enhance the autonomy and well-being of elderly citizens. Collaborations with tech startups, NGOs, and health ministries can yield scalable solutions that bridge the infrastructure gap.

5.7 Strengthening Governance, Accountability, and Anti-Corruption Mechanisms

Good governance and transparency are prerequisites for the effective realization of the right to health. Establishing independent monitoring frameworks for health funds, as well as community-based accountability mechanisms, can reduce leakages and mismanagement.

The adoption of open contracting systems for healthcare procurement, alongside periodic audits by the Office of the Auditor-General of the Federation, would ensure that resources allocated to elderly healthcare are properly utilized. Strengthening the role of civil society organizations (CSOs) and professional associations in oversight functions would further promote accountability (Transparency International, 2023)[54].

5.8 Fostering Social Support Systems and Community-Based Care

Social protection remains a key pillar for elderly well-being. The establishment of community care centers, home support services, and social pensions can reduce the vulnerability of older persons. The National Social Investment Program (NSIP) and Conditional Cash Transfer Scheme could be expanded to include specific components for elderly healthcare.

[52] Federal Ministry of Health (FMoH). (2023). Nigeria Health Sector Review Report 2023. Abuja: FMoH.

[53] Federal Ministry of Communications. (2022). Nigeria Digital Health Framework 2022. Abuja: Government of Nigeria.

[54] Transparency International. (2023). Corruption perception index 2023. Berlin: TI.

Faith-based and community organizations have historically provided informal care for older persons. Strengthening partnerships between government and these community structures can improve social inclusion and ensure holistic care for the elderly (Aboderin, 2019)[55].

5.9 Role of the Judiciary and Civil Society

Judicial activism can play a transformative role in actualizing the right to health for the elderly. Courts in Africa, through a purposive interpretation of the African Charter on Human and Peoples' Rights (domesticated in Nigeria via Cap A9, Laws of the Federation 2004), can expand the scope of enforceability of socio-economic rights. In SERAP v. Nigeria (2010)[56], the ECOWAS Court affirmed that the right to health is justiciable under the Charter, setting a precedent for domestic application.

Civil society organizations should leverage this jurisprudence to advocate for constitutional reforms, strategic litigation, and public interest suits that compel government accountability in elderly healthcare delivery.

6.0 Recommendations

The realization of the right to health of the elderly and aging population in Africa requires deliberate legal, institutional, and policy reforms that move beyond aspirational commitments to enforceable guarantees. In Nigeria, the non-justiciability of socio-economic rights under Chapter II of the 1999 Constitution remains a fundamental barrier to accountability. A constitutional amendment making the right to health enforceable, or alternatively the enactment of a comprehensive Elderly Persons Rights and Welfare Act, would provide a firm legal foundation for protecting older persons against systemic neglect. Such legislation should expressly guarantee access to healthcare, social security, and protection from discrimination, while giving domestic effect to international and regional instruments, particularly the African Union Protocol on the Rights of Older Persons in Africa (2016). Domestication and effective implementation of this Protocol would align national practice with continental standards and strengthen the normative status of elderly rights within Nigeria's legal system.

Beyond legal reform, effective institutional coordination and capacity-building are essential. The National Senior Citizens Centre (NSCC) should be strengthened through enhanced financial autonomy, statutory authority, and structured collaboration with key agencies such as the Federal Ministry of Health, the National Primary Health Care Development Agency, and the National Health Insurance Authority. Institutionalizing inter-agency cooperation and empowering the NSCC to maintain a comprehensive national database on elderly persons would facilitate evidence-based planning, monitoring, and evaluation of elderly healthcare programs. Without reliable data and coordinated governance structures, policy interventions risk remaining fragmented and ineffective.

Sustainable health financing remains central to improving healthcare access for the elderly. Nigeria and other African states must demonstrate genuine commitment to the Abuja Declaration by allocating a minimum of 15% of national budgets to the health sector, with a clearly defined portion

[55] Aboderin, I. (2019). Toward age-inclusive health systems in Africa. Global Health Action, 12(1), 160–172.

[56] SERAP v. Federal Republic of Nigeria, ECW/CCJ/APP/08/09 (ECOWAS Court of Justice, 2010).

dedicated to geriatric healthcare. The Basic Health Care Provision Fund should be strategically utilized to support age-friendly primary healthcare facilities, mobile clinics, and community-based services tailored to elderly needs. In addition, the National Health Insurance Authority Act should be operationalized in a manner that ensures mandatory or heavily subsidized health insurance coverage for older persons, particularly those without formal employment histories. Reducing out-of-pocket expenditure is critical to preventing financial hardship and healthcare exclusion among the elderly.

Finally, the realization of elderly health rights must be supported by broader social and cultural interventions. Community sensitization campaigns should promote respect, inclusion, and shared responsibility for the care of older persons, countering social exclusion and age-based discrimination. Social protection mechanisms, including pensions, conditional cash transfers, and community support programs, should be expanded to cover informal-sector workers and rural dwellers who constitute a significant proportion of the elderly population. At the regional level, African states should deepen cooperation through the African Union, ECOWAS, and the World Health Organization by sharing best practices, harmonizing policies, and strengthening collective capacity to address the health needs of aging populations across the continent.

7.0 Conclusion

The right to health of the elderly and aging population in Africa is an indispensable component of human dignity and social justice. Its realization demands more than rhetorical commitment, it requires deliberate legal, institutional, and fiscal action. Africa, and particularly Nigeria, stands at a crossroads: either to continue in the cycle of policy inertia or to pursue genuine reform that secures health justice for its elderly citizens.

To achieve this, governments must move beyond aspirational policies toward binding legal guarantees and sustainable health financing. The jurisprudence of human rights compels states not merely to recognize the right to health but to actualize it through accountability, equity, and inclusivity. Only by doing so can Africa ensure that its elderly population lives, not in neglect and despair, but in health, dignity, and peace.