

REVIEW OF THE RIGHTS TO ACCESS EMERGENCY HEALTHCARE UNDER THE
1999 CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA

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Abstract

The Constitution of the Federal Republic of Nigeria 1999, is the foundational legislation which addresses key aspects of fundamental rights that have bearing on health of the people. The constitution is one tool through which the right to health and the laws linking health and human rights especially as it affects access to Emergency healthcare can be realized. The demand for emergency healthcare requires that adequate attention and priorities be given to its attainment especially considering the potential for significant reduction in loss of lives and disability when emergency treatment is provided in a timely manner. The concept of access to emergency healthcare as a right vis a vis its justiciability under the constitution was also taken a look at alongside with the different constitutional provisions. The research method adopted in this paper, is the normative doctrinal analysis which examines the provisions of the constitution and other related legislations as it affects access to healthcare in Nigeria during emergencies. It was revealed that the enabling laws in Nigeria that regulates access to emergency healthcare services, do not guarantee and protect the attainment of these rights especially with the fact that individuals cannot sue over the denial of the rights to access emergency healthcare. The paper concluded that despite the legal provisions that guaranteed the access to health in Nigeria, the need for access to emergency healthcare was not considered, and the paper recommended that there is need to amend the constitution to capture the need for access to emergency healthcare as a right.

Key words: Access to health, Bill of rights, Emergency health, Fundamental Rights, Justiciability.

Introduction

Every human being has the fundamental right to the highest possible level of health, irrespective of their race, religion, political views, economic situation, or social standing. Everyone should be able to obtain the health care they need, when and where they need it, and without facing financial hardship, according to the right to health. The World Health Organization came to this conclusion by urging all nations to guarantee healthcare access by offering assistance and putting policies and

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initiatives in place to do so without discrimination.² Nigeria as a country respects its inhabitants' right to health and has committed to protecting it by accepting commitments under international treaties such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Committee on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the African Charter on Human and Peoples' Rights, and local legislation demanding particular behavior towards the health of those within its authority. One of the fundamental human rights to which all people, regardless of status, are entitled is good health³. To do this, the 2014 National Health Act mandates that health services be provided by the primary, secondary, and tertiary healthcare systems⁴. Emergency healthcare is the process of giving medical attention, supplies, services, and accommodations to people who are hurt or ill at the beginning of a health crisis; if this care is delayed, the patient's condition might worsen⁵.

The goal of emergency healthcare is to lower death and morbidity rates by making sure that more people have access to the healthcare system, that it is staffed by qualified professionals, and that the process is supported by the appropriate legislation and funding⁶. Emergency medical care should be available and accessible to those who need it, such as the seriously injured and critically ill, at any time, in the appropriate location, at the appropriate time, and in the appropriate quantity⁷.

Access to Health as a Right

A right means that which a person has a just or valid claim to, be it land, a thing, or the privilege of either doing or saying something. It refers to an entitlement that can be asserted. It is an interest recognized and protected by the law: respect for that which is a duty and disregard of that which is a wrong⁸.

²World Health Organisation, "Human Rights and Health" <<https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>. Accessed 23 October 2022.

³ National Human Rights Commission, "Right to health" <<https://www.nigeriarights.gov.ng> accessed on 4 May 2025

⁴"Explanatory Memorandum – National Health Act, 2014" <<https://admin.theiguides.org>. Accessed on 4 May 2025

⁵Olaitan Olusegun, "Emergency medical care and the law in Nigeria: Towards protection of patients' rights". In *Journal of Health & Biomedical Law*, XIX (2023). Accessed on 3 May 2023

⁶Temitope Coker, "Emergency medical services in Nigeria-first response no longer a last resort". In *tchealthng.com*, <https://tchealthng.com>. Accessed on 3 My 2025

⁷Taylor W Burkholder and Lee A. Wallis, "Governing access to emergency care in Africa". In *African journal of emergency medicine*, volume 10, supplement 1, 2020, page S2-S6 in *sciencedirect*, <https://www.sciencedirect.com>. Accessed on 4 May 2025

⁸ R Bird (ed), *Osborn's Concise Law Dictionary* (7th edn, Sweet and Maxwell 1983).

The definition of rights has been expounded from different perspectives by many authors; two prominent schools are the interest and choice theorists. The interest theorists⁹ opine that a person has a right when others owe him/her the duty to protect his/her interests; hence, they associate human relations with rights. The choice theorists¹⁰ consider rights as the power to choose to do or not to do something, but this view has been countered because some rights impose obligations that cannot be waived. Rights are also considered by some scholars to be derivable from permissible or impermissible actions based on the ethical or moral philosophies of different societies and codified as law to be enforced by institutions or governments.¹¹

According to Burkholder,¹²the provision of emergency healthcare worldwide has been recognized as essential, especially in the reduction of the numbers of avoidable deaths and injuries. Nigeria, like most other 3rd world countries, is faced with lots of problems that arise from different facets of life, ranging from economic imbalance, political instability, social structural decay, bad roads, bad governance, environmental pollution, and poor health care facilities leading to a high mortality rate, low life expectancy, and high communicable diseases. All of these have impacted greatly on the ability of the people to have access to emergency health care services in.

In order to allow individuals to have access to healthcare services, the 1948 World Health Organization Constitution declares health as a fundamental right and commits to ensuring the highest attainable level of health for all¹³. The right to health is an internationally agreed human right standard to which every human is entitled. The attainment of this right is tied to the attainment and realization of other rights such as food, shelter, education, work, etc. This right also includes rights to freedom (this includes right to control one's health and body and to be free). from torture and non-consensual medical treatment and experimentation) and entitlements (which includes a right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health)¹⁴

Health is an essential fundamental right to which every man is entitled; this position is internationally acceptable by the comity of nations under the international human rights law. The right to health is thus referred to as an acceptable level of right to which every human is entitled to. As opposed to all other forms of rights, the right to health creates an obligation on the part of the state to ensure that the right to health

⁹D Lyons, *Rights, Welfare and Mills Moral Theory* (Oxford University Press 1994).

¹⁰H.L.A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Clarendon Press 1982).

¹¹Stelzig 1998 University of Pennsylvania Law Review, 901 - 904.

¹²Burkholder, Bergquist and Wallis (n 95).

¹³Burkholder, Bergquist and Wallis (n 95).

¹⁴ World Health Organization, 'Human Rights' <<https://www.who.int/news-room/factsheets/detail/human-rights-and-health>> accessed 21 October 2021.

is respected, protected, and guaranteed to all citizens. Every right has a corresponding duty to be fulfilled, as there can be no right without an element of duty¹⁵. It is also important to note that there are both positive and negative means of enforcing the right to health, and this includes the need for adequate protection by the state, provision of equal health facilities to each individual, and also creating a conducive atmosphere that can lead to the attainment of the right to health.

Article 25(1)¹⁶ of the Universal Declaration on Human Rights was the first international instrument that recognized and defined the right to health. This article states that 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in the circumstances beyond his control.' Similarly, Article 12 of the International Covenant on Economic, Social, and Cultural Rights recognizes the right to health as a human right, which came into operation in 1966 (ICESCR) and states the steps that must be taken by states in realizing this, including providing 'to the maximum available resources' the 'highest attainable' standard of health by ensuring that parties recognize the right of everyone to a reasonable standard of physical and mental health.¹⁷

The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1969 American Convention on Human Rights, and the 1981 African Charter on Human and People's Rights all recognized the right to health as a human right¹⁸. It is on record also that before the coming of the World Health Organization (WHO), several countries had recognized health as a fundamental right; this period could be attributed to the advent of the industrial revolution and its attendant effect on the employer-employee relationship, especially as it relates to the working conditions and health of the workers.

The demand for an improved health environment grew and eventually came to be treated as an important aspect of the fundamental and basic human right that everyone is entitled to. The¹⁹ right to health, having been adjudged as a fundamental right, is expected to set a clear principle for setting and evaluating health policy and services with the intention of eradicating discriminatory practices and unjust use of power associated with inequitable results. Human rights are universal and

¹⁵ *ibid.*

¹⁶ See AKA Kolawole, 'The Right to Life and the Right to Health: Any Nexus?' (2011) 2 OIDA International Journal of Sustainable Development 95.

¹⁷ *ibid.*

¹⁸ Choudhary, V. 'Denial of Treatment to Covid-19 Patients is a Human Right Abuse in Human Rights Abuse' <<https://www.humanrightspulse.com/mastercontentblog/denial-of-treatment-to-covid-19-patients-is-a-human-rights-abuse>> accessed 7 October 2021.

¹⁹ Anishajhawar (n 130).

inalienable; to achieve a human rights-based approach to health, certain core principles must be put in place, and they include the following:

a. **Accountability:** the states and other stakeholders in the health sector are expected to observe the tenets of human rights.

b. **Equality and non-discrimination:** this is aimed at guaranteeing the exercise of human rights without any form of discrimination based on race, gender, color, language, religion, age, disability, or economic or social situation. The principle of non-discrimination stipulated that the access to health care as well as means and entitlement for achieving this should be encouraged. Any form of discrimination that can prevent access to health care as well as the means to achieving this should be prohibited. It has also been adjudged that non-discrimination and equality are essential to address the social determinants affecting the enjoyment of the right to health, and this also needs up-to-date data in order to identify the most vulnerable groups with their diverse needs²⁰.

c. **Participation:** This involves the bringing together of all stakeholders in the health sector, both private and public, especially those who have influence over the development of the sector. It should be noted that participation here goes beyond consultation and technical input but must also include explicit strategies to empower the populace, the marginalized population most especially. Participation helps bring about accountability, checks, and balances within the system.

Others include human dignity, empowerment, and rule of law, all of which are essential to access the available health care services²¹.

Having identified the fact that access to health emergency is a right that must not be denied in that the deprivation of one right adversely affects another, it is thus important for government to put in place modalities to achieve the realization of this right without any form of discrimination, irrespective of the level of resources at the disposal of the government. Aside from this, the government should ensure the protection of the social, economic, and cultural rights of the people, except there is a strong reason to do otherwise. To do this, the state should put in policies and measures that will help achieve this within the available resources.

²⁰ See UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 2: Non-discrimination in Economic, Social and Cultural Rights (art 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)'

<<https://www.refworld.org/docid/4a60961f2.html>> accessed 21 July 2021.

²¹Gloppen,S. 'Operationalizing a Right-Based Approach to Health Service Delivery' <<https://www.cmi.no/projects/1791-operationalising-a-rights-based-approach-to-health>> accessed 21 October 2021.

The right to have access to healthcare is given the most attention in the South Africa Charter as it covers the following subheadings: timely emergency care, regardless of ability to pay once the facility is open; treatment and rehabilitation with the knowledge of the patient; and provision for special needs, which include patients who are children, women, pregnant, disabled persons, and persons living with HIV or AIDS²². Allied to this right to healthcare is also the 'right to counselling without discrimination, violence, or coercion on reproductive health, cancer, and HIV/AIDS.'

A patient, according to the South Africa Charter, also has a right to palliative care and a right to a positive disposition by healthcare workers following ethical standards of beneficence, showing empathy and tolerance²³. The patient also has a right to health information, in a language he or she understands, which gives him or her knowledge of healthcare facilities and how to use those facilities²⁴

Defining access to emergency health might not be as simple as it looks in that most of the available literature did not define access to emergency health but rather defined access to health. According to the National Library of Medicine, health emergencies 'may explain patient-seeking behavior when accessing emergency health resources, including hospital EDs and ambulance services. In another vein, emergency access is seen as access by a health care provider organization to an individual's health record to lessen or prevent a serious threat to his life, health, or safety²⁵. Similarly, the National Health Act²⁶ did not define what emergency healthcare is.

The 1999 Constitution of Nigeria and the right to health.

The Constitution is one tool through which the right to health and the laws linking health and human rights, especially as they affect access to healthcare, can be realized. The 1999 Constitution of the Federal Republic of Nigeria is the foundation from which all other law derives its credibility, and access to emergency health care is not an exception in this regard. Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria contains fundamental human rights that have been provided for and guaranteed. These include the right to life²⁷, the right to health²⁸, the right to dignity of the human person, and the right to freedom from discrimination²⁹.

²²SA Charter, s 2.

²³ *ibid*

²⁴ *ibid*.

²⁵My Health Record, 'My Health Record' <<https://www.myhealthrecord.gov.au/>> accessed 12 June 2021.

²⁶National Health Act 2014.

²⁷CFRN 1999, s 33(1).

²⁸ CFRN 1999, s 17(3)(d).

²⁹CFRN 1999, s 42.

Although there are other rights, the foregoing is particularly relevant to patients and the need to access healthcare, albeit emergency healthcare services.

The Right to Life

The right to life is one of the most fundamental rights guaranteed under the 1999 Constitution of the Federal Republic of Nigeria, and where this right is not available, it makes it difficult to attain other rights. The 1999 Constitution of the Federal Republic of Nigeria states that, every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offense of which he has been found guilty in Nigeria³⁰. This constitutional provision was, and the exception was pronounced in the case of *Musa v State*³¹, and also in the case of *Adeniji v State*³². Under the International Covenant on Civil and Political Rights (ICCPR), the right to life was stated as follows: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'³³

Similarly, the African Charter declares the right to life as follows: 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of these rights³⁴. It is pertinent to note that the right to access emergency health care can only be achieved if one is alive; thus, none of the other human rights can be attained when the right to life is denied. Every Nigerian is guaranteed the right to life³⁵. This was given a legal pronouncement in the case of *Akintade v MDPT*³⁶ where a doctor was suspended by the Medical and Dental Practitioners Tribunal for infamous conduct in a professional respect. The court held that the doctor caused the death of a patient, as he failed to attend to the patient promptly and was incompetent in the assessment and diagnosis of the patient, in addition to administering grave treatment and operational errors.

The Right to Health

Chapter Two of the Constitution sets out the fundamental objectives and directive principles of state policy, and the contents of this chapter are said not to be justiciable. This provision of this chapter of the Constitution offends the general provisions of the Constitution, which is said to have a binding force on all institutions, authorities, and persons. Any inconsistency is null and void as provided in section 1(1)(3) of the Constitution. Thus, any Nigerian constitutional provision that is made

³⁰CFRN 1999, s 33(1).

³¹ (1993)2NWLR Pt 277

³² (2000)2NWLR Pt 645

³³ICCPR, art 6(1).

³⁴ACHPR, art 4.

³⁵JO Lokulo-Sodipe, 'Withholding Treatment from disabled Newborns and its Effect on the Right to Life in Nigeria' (2009) 2 Journal of Law and Conflict Resolution 53.

³⁶[2005] 9 NWLR, part 930, 338.

non-justiciable ought not to be in the constitution so that the courts can carry out their constitutional duties. The provision of Chapter Two, section 17(3) of the 1999 Constitution of the Federal Republic of Nigeria directs those states must ensure that 'there are adequate medical and health facilities for all persons.'

However, because of the provision that no court of law is expected to adjudicate or interpret the contents of any of the provisions of chapter 2 of the Constitution, the government tends not to be bothered about its implementation. However, it is instructive to note that the provisions of the African Charter on Human and Peoples' Rights, which Nigeria is a signatory to, guarantee the right to health,³⁷ thus making it possible for the court to make a pronouncement on Chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria.

The case of *Odafe & ors vs AG & ors*³⁸ illustrates this the more, where the presiding judge held that the African Charter is applicable in this country and that the Charter entrenched the socio-economic rights of a person as contained in chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria and the court by implication is enjoined to enforce this right. The Court went further to state that a dispute concerning socio-economic rights such as the right to medical attention requires the court to evaluate state policy and give judgment consistent with the Constitution. The Court thus finds in favor of the Claimant. In arriving at the above decision, the court elevates the domestication of the African Charter to the status of a constitutional provision.

However, the Supreme Court in the case of *Abacha v Fawehinmi*³⁹ considered the status of the African Charter in the hierarchy of laws in Nigeria and stated that the provisions of the African Charter, though domesticated in Nigeria and supreme to other domestic statutes, are not superior to the Nigerian Constitution. Similarly, in the case of *Archbishop Anthony Olubunmi Okogie (Trustees of Catholic School v. Attorney General of Lagos State)*⁴⁰, the Supreme Court held that fundamental objectives and directive principles of state policy are non-justiciable and that Nigerian courts lack jurisdiction to adjudicate on them. It is incumbent on the state that has guaranteed its citizens the right to life to make provisions for healthcare facilities that are necessary to promote the physical and mental health of the citizens⁴¹.

³⁷ACHPR, art 16.

³⁸(2004) AHRLR 205.

³⁹(2000) 6 NWLR, part 228, 292.

⁴⁰(1981) 2 NCLR 337.

⁴¹Kolawole (n 132).

Chapter Two of the 1999 Nigerian Constitution is modelled after the 1948 Indian Constitution, and it first appeared in the 1979 Constitution of Nigeria⁴². However, unlike Nigerian courts, the Indian Supreme Court held that the right to life under the Indian Constitution encompassed protection from the background condition of good health as well as ensuring access to the required medical service. The case of *Paschim Banga KhetSamity v State of West Bengal*⁴³ further illustrates the requirement of the state to provide the necessary safeguard of its citizens' right to life, especially in respect of health and access to emergency health in particular. The petitioner fell off a train at Mathurapur station in West Bengal, suffering serious head injuries and brain damage. He was denied treatment in all six government-owned hospitals to which he was rushed. The reason adduced is the nonavailability of facilities, including bed space.

The Indian Supreme Court was called upon to decide whether the non-availability of hospital facilities to a person suffering serious injuries resulted in the denial of his right to life guaranteed under Article 21 of the Constitution of India. The Court held in the affirmative and stated there was a clear breach of the right of the petitioner as guaranteed under Article 21 when he was denied treatment at the various government hospitals that were approached even though he was in a critical condition and in need of emergency medical attention. It was further held that since the act as guaranteed under Article 21 was carried out by an official of the state and in a state-run hospital, the state cannot avoid its responsibility for such denial of the Constitutional right of the petitioner

Furthermore, because standard healthcare is costly to deliver, an evaluation of the level of adherence to this provision must be made in light of the financial and human resources available to the health system. A patient's right to obtain adequate healthcare may be jeopardized if obsolete medical apparatus is used due to the government's inability or unwillingness to buy modern equipment. Similarly, when health personnel leave for countries with greater benefits, the Nigerian patient's right to health cannot be guaranteed due to the low doctor-patient ratio.⁴⁴ Furthermore, though the government regulates health service provision, the bane of corruption has created a loophole that allows hospitals to breach the existing laws, policies, and

⁴² RN Nwabueze, 'The Legal Protection and Enforcement of Health Rights in Nigeria' in CM Flood and A Gross (ed), *The Right to Health at the public Private Divide: A Global Comparative Study* (Cambridge University Press 2014).

⁴³ (1996) Case No. 169 Supreme Court of India.

⁴⁴ N Mbanefoh, 'Brain Drain in the Health Sector of Africa: Examples from the University College Hospital (UCH), Ibadan Nigeria' <http://ahero.uwc.ac.za/index.php?module=cshe&action=viewtitle&id=cshe_382> accessed 12 March 2020.

regulations if they can offer financial inducement to convince the inspectors to ignore all lapses seen in their facilities⁴⁵.

The Right to Dignity of Human Persons

Human dignity stands above human rights, and as such, it has been adjudged as the core of all human rights⁴⁶. A dignified life can only be guaranteed where there is the enjoyment of fundamental rights, and the right to health is one of such. Dignity has been defined as the right of a person to be valued and respected for their own sake and to be treated ethically.⁴⁷ The Constitution preserves the right to dignity of a person, protecting him/her from torture, inhuman or degrading treatment⁴⁸. This provision of the Constitution was given a legal interpretation in the case of *Mogaji v Board of Customs*⁴⁹. In the process of doing this, it is essential for the state to provide a safe environment for human existence and, by extension, protect human dignity⁵⁰. To do this, the state must take positive actions to ensure quality of existence by recognizing every person as a subject of law and guaranteeing the minimum standard of living.

The right to health is one of the fundamental human rights, though not expressly provided for under the Constitution; it has been adjudged that other rights are meaningless without the right to health. The attainment of other rights, such as social, economic, and cultural rights, can only manifest when the health of the people is properly managed⁵¹. Article 21 of the Indian Constitution states that the right to life includes the right to live with dignity and decency,⁵² and this provision was given a legal interpretation in the case of *Bandhua Mukti Morch v Union of India*⁵³ where the court held that although the Directive Principle of State Policy holds a persuasive value, it should be duly implemented by the state, and it was in this case that the court interpreted the dignity and health within the ambit of life and liberty under

⁴⁵ DO Tormusa and AM Idom, 'The Impediment of Corruption on the Efficiency of Healthcare Service Delivery in Nigeria' (2016) 12 Online Journal of Health Ethics 1.

⁴⁶ E Venckiene, 'Relationship between the Right to Dignity and the Right to Healthcare' <<https://www.researchgate.net/publications>> accessed on 25 June 2022.

⁴⁷ N Akani, 'A Critical Appraisal of the Right to Human Dignity vis-a-vis the Rights of Women in Nigeria' <https://www.researchgate.net/publication/341464153_A_CRITICAL_APPRAISAL_OF_THE_RIGHT_TO_HUMAN_DIGNITY_VIS-A-VIS_THE_RIGHTS_OF_WOMEN_IN_NIGERIA> accessed 27 June 2022.

⁴⁸ CFRN, s 34(1)(a).

⁴⁹ (1982)3NCLR 552

⁵⁰ 'Responsibility of the State' <In Responsibility of the state-social protection and human rights <https://socialprotection-humanrights.org>> accessed 21 October 2021.

⁵¹ O Nnamdi, 'Kleptocracy and its many Faces: The Challenges of Justiciability of the Right to Health Care in Nigeria' (2008) 52 Journal of African Law 1.

⁵² 1950 Indian Constitution.

⁵³ *Bandhu Mukti Morchav Union of India & Ors* (1997) 10SSC549-ESCR

Article 21 of the Constitution of India. In a similar vein, the Court in the case of *Consumer Education and Research Centre v Union of India*⁵⁴ held that 'the right to health is an integral factor that leads to a meaningful life and for the right to life under Part III. The court went further to state that the right to health includes the access to medical care for the attainment of the highest living standard'.

In relation to an international law that has been domesticated in Nigeria, reference can be made to the provisions of the African Charter on Human and Peoples' Rights (ACHPR). This Charter recognizes human beings as inviolable and that every human being is entitled to respect for his life and integrity for his/her person⁵⁵. Similarly, every individual is entitled to respect of dignity inherent in the human person, and this includes the prohibition of all forms of torture, cruel, inhuman and degrading punishment, and treatment⁵⁶

The Right to Freedom from Discrimination

Section 42⁵⁷ of the Nigerian Constitution preserves the right of citizens to freedom from discrimination. The section states:

A citizen of Nigeria of a community, ethnic group, and place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions⁵⁸

The import of the above constitutional provision is to the effect that patients should not be discriminated against on the basis of sex, religion, ethnicity, political opinion, disability, disease, or circumstances of their birth. This constitutional provision was

⁵⁴ (1995) AIR 92, 1995 SCC (3)42.

⁵⁵ACHPR, art 7.

⁵⁶ *ibid*.

⁵⁷CFRN, s 42.

⁵⁸CFRN, s 42(1) (a-c).

upheld by the court in the case of *Salubi v Nwariaku*⁵⁹ and *Aderoumu v Aderoumu*⁶⁰. It is thus against the law for any medical practitioner or healthcare provider to refuse or deny a patient treatment based on any of those grounds⁶¹.

In the face of this obvious constitutional provision, most buildings hosting healthcare facilities are not designed to be accessible for disabled persons⁶² in line with the provisions of section 4 of the Discrimination against Persons with Disabilities (Prohibition) Act, 2018,⁶³ thus making access to emergency healthcare difficult for these categories of people. Article 2 of the African Charter Human and Peoples Right provide that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind, particularly sex⁶⁴

In a similar vein, Article 18(4) of the African Charter on Human and Peoples' Rights states that every individual shall have the right to enjoy the best attainable state of physical and mental health⁶⁵. Section 21 of the Discrimination against persons with disabilities (Prohibition) Act, states that government shall guarantee that persons with disabilities have unfettered access to adequate healthcare without discrimination on the basis of disability⁶⁶ Section 27(1) (2)⁶⁷ of the Lagos State Special Peoples' Law 2010 was also fashioned in line with the provisions of section 21 of the Discrimination against Persons with Disabilities (Prohibition) Act, 2018.

In the same vein, the HIV/AIDS Anti-Discrimination Act, 2014, makes it illegal to discriminate against people based on their HIV status. The Act states that people living with or affected by HIV or AIDS have a right to freedom from discrimination on the basis of their real or perceived HIV status concerning access to and continued employment, condition of employment, employment benefits, comprehensive health services, education, use of public facilities, and other social services, provided by the

⁵⁹ (1997)9NWLR Pt 505 p442

⁶⁰ (2003)2NWLR Pt 803 p1

⁶¹ S Iwuagwu, 'The Right to Health and Violation of Patients' Right in Nigeria: A Desk Review of Health Related Laws in Nigeria' <<https://www.crhnigeria.org/images/pdf/Patients-Rights.pdf>> accessed 21 October 2021.

⁶² CJ Eleweke and J Ebenso, 'Barriers to accessing Services by People with Disabilities in Nigeria: Insights from a Qualitative Study' (2016) 6 Journal of Educational and Social Research 113. See also TK Hamzat and O Dada, 'Wheelchair Accessibility of Public Buildings in Ibadan, Nigeria' <<https://www.semanticscholar.org/paper/WHEELCHAIR-ACCESSIBILITY-OF-PUBLIC-BUILDINGS-IN-Hamzat-Dada/20e07508548eef7c5b6df946302a3a061ed82d2f>> accessed 21 November 2021.

⁶³ Discrimination against Persons with Disabilities (Prohibition) Act 2018, s 4.

⁶⁴ ACHPR, art 2.

⁶⁵ ACHPR, art 18(4).

⁶⁶ Discrimination against Persons with Disabilities (Prohibition) Act 2018, s 21(1).

⁶⁷ Lagos State Special People's Law 2010, s 27.

employer, individual community, government or any other establishment⁶⁸

In all of these provisions, patients, regardless of their health status or means, are expected to be treated respectfully and without any form of discrimination by the healthcare providers, including those seeking emergency treatment. Where people are marginalized or discriminated against for one reason or the other, both their mental and physical health suffer, and this could make it difficult for them to access emergency healthcare⁶⁹.

There are other rights that are not captured by the Constitution but are still fundamental to the patients in the process of understanding their rights under the law. It is worthy of note that the Patients' Bill of Rights guarantees the right of a patient to urgent, immediate, and sufficient intervention and care in the event of an emergency, prioritizing such needed attention over other factors including cost and payment as well as law enforcement and requirements⁷⁰.

Patients' Bill of Right

The Patients' Bill of Rights is an amalgamation of the different patients' rights as contained in the 1999 constitution of the Federal Republic of Nigeria, the Child Right Act, the Freedom of Information Act, the National Health Act, and other regulations⁷¹. The Patients' Bill of Rights was presented to the public by the CPC, now FCCPC, in collaboration with the Federal Ministry of Health and other stakeholders⁷². The bill was publicly presented in July 2018, identifying rights that accrue to patients from various existing laws and charters and presenting it as a social contract in the form of a Patients' Right Bill.

The relevant provisions of the bill that has to do with access to emergency healthcare services are the following:

Patient's Dignity

A patient, according to the bill, has a right 'to be treated with respect and dignity without prejudice to gender, religion, race, ethnicity, allegation of crimes, geographical location, disability or socio-economic circumstances.' Advanced directives and proxy decision making are also provided for by the bill, as it states that, 'prior wishes of the patient or in the absence of same, of the next of kin (where

⁶⁸HIV and AIDs (Anti-Discrimination) Act 2014, s 3(1).

⁶⁹ Better Health Channel, 'Stigma, Discrimination and Mental Illness' <<https://www.betterhealth.vic.gov.au/health/servicesandsupport/stigma-discrimination-and-mental-illness>> accessed 21 November 2021.

⁷⁰FCCPC, 'Home – Federal Competition & Consumer Protection Commission' <fccpc.gov.ng> accessed 26 December 2021.

⁷¹ Z Hashim, 'Patients' Bill of Rights: Making Health a Human Right in Nigeria' *Premium Times* (Nigeria, 14 April 2019).

⁷²FCCPC (n 93).

legally applicable) are respected to the fullest extent practicable during last offices (at the time of death), including cultural or religious preferences, to the extent consistent with extant laws, including coroners' laws.⁷³

Access to Emergency Care

The patient bill of rights guarantees the rights of a patient to 'receive urgent, immediate, and sufficient intervention and care in the event of an emergency, prioritizing such needed attention over other factors including cost and payment, as well as law enforcement requirements.' This provision is in line with the provisions of Article 16 of the African Charter. It should, however, be noted that the Bill of Rights is not a statutory instrument and can only be enforced within the existing legal framework; thus, where a patient's rights as provided for under the Bill of Rights are breached, redress can only be sought from the extant laws that create similar rights and stipulate penalties for their breach.

Conclusion and Recommendations

The right to access emergency healthcare, like every other health-related right, should be expressly provided for in the present constitution of the Federal Republic of Nigeria. A look at the existing constitutional provisions falls short in respect of access to emergency healthcare, and the argument has been alluded to the difficulty associated with the enforcement of Section 33 of the Constitution, especially in relation to the non-justiciability of the fundamental objectives and directive principle of state policy. It is thus necessary to amend the constitution to capture this obvious gap. Also, since Nigeria is a signatory to many treaties and conventions while the process of amending Nigeria's present 1999 Constitution is at the desk, it is pertinent to embrace and ratify the relevant international charters so as to take care of emergency cases and prevent unnecessary loss of lives and permanent disability.

⁷³FCCPC (n 93).