

## **Poverty, Inequality and National Health Insurance Scheme: Reconstructing the Right to Health in Nigeria**

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### **Abstract**

*The National Health Insurance Scheme (NHIS) was established in Nigeria to provide accessible and affordable healthcare to the citizens. However, the inherent weaknesses and poor implementation of the NHIS Act hampered the objectives which the scheme sought to achieve. There is glaring evidence that citizens living in poverty, lack access to healthcare services. This brings to the fore the commitment of the government towards protecting the right to health in Nigeria. Sadly, the right to health is not stated as a Fundamental Human Right (FHR) in the 1999 Constitution of Nigeria. In 2022, the government passed the National Health Insurance Authority (NHIA) Act. The Act which came into effect on 19 May 2022 repeals the NHIS Act, 2004. However, the implementation of the NHIA Act is slow. Consequently, analyzing the NHIS Act, and the complexities that militated against its effective implementation still hold much relevance. The paper utilizes secondary sources of data derived from journal articles, newspaper publications, institutional websites, books and policy documents. Furthermore, it adopts vulnerability theory as its theoretical framework. It emphasizes that beyond enacting a national health insurance law, the right to health must importantly be recognized and implemented as a fundamental human right. The paper concludes that in order for the NHIA Act to be fully implemented, the right to health must be recognized as a justiciable right in the Nigerian legal jurisprudence. Significantly, Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs) must provoke legislative advancement towards the reworking of the constitution in this regard.*

**Key Words:** Poverty, Vulnerability, Healthcare, Health Insurance Scheme, right to health, Fundamental Human Right, Justiciability

## **Introduction**

The idea of a National Health Insurance Scheme (NHIS) was first conceived in 1962, when the then Minister of Health, Dr. Moses Majekodunmi sponsored a bill in the Nigerian Parliament (Adaba & Baiye, 2006). However, the bill was rejected on the ground that Nigeria lacked quality healthcare services providers. During the military regime, a former Minister of Health, Professor Olikoye Ransome kuti, set up a committee in 1988 to look into the commencement of the National Health Insurance scheme, and in 1989, the Federal Executive Council approved that the NHIS should commence in 1993 (National Primary Health Care Development Agency, 2010). Despite these efforts, the then military government could not establish the NHIS. The NHIS was eventually established under Decree No. 35 of 1999, to provide healthcare delivery to all Nigerians at an affordable cost (NHIS Act, 2004). It was officially launched on 6 June 2005 and commenced operations in September 2005. Broadly, the NHIS was designed to cover employees in the formal sector, self-employed/informal sector, children under 18 years, students in higher institutions, pregnant women, and vulnerable groups (NHIS Act, 2004). Subscribers to the scheme register with an approved Health Maintenance Organization (HMO), and subsequently with a primary healthcare provider from a list provided by the HMO. The premium paid is a contributory payment between the employer and the employee. A subscriber employed in the formal sector pays 5% of his/her monthly basic salary as contribution for premium, while the employer contributes 10% of the employees monthly basic salary. The contribution covers the principal, the spouse and four children under the age of 18 (NHIS Act, 2004). On the other hand, to cover dependants above 18 years, the principal beneficiary must pay an additional sum. Children above 18 years in tertiary institutions, are covered by the Tertiary Institution Social Health Insurance Scheme (NHIS Act, 2004). The overriding objective of the NHIS Act was to achieve Universal Health Coverage (UHC), and ensure equitable access to healthcare in Nigeria by 2015. However, the scheme did

not achieve the desired impacts envisaged at inception. The challenges that affected the effective implementation of the NHIS Act include; low coverage of the scheme, poor funding, corruption, poor healthcare services, low interest in the scheme amongst the citizens, poor legal and regulatory framework, as well as Poverty (Eneanya, 2018; Balogun, 2022; Odunyemi, 2022).

The above exposes the poor state of the healthcare system in Nigeria and lays credence to the plight of poor and vulnerable citizens. Relatedly, the non-justiciability of the right to health in Nigeria exacerbates the low quality of healthcare services in Nigeria. The implementation of the NHIA Act, 2022 is slow. Consequently, discussing the NHIS Act, as well as its attendant complexities still hold much relevance. More so, analyzing the challenges that encumbered the effective implementation of the NHIS Act, will in juxtaposition, give a clear understanding of the inherent potentials of the NHIA Act. Sequel to the introduction, this paper explores existing literature on the subject matter. Subsequently, it examines the theoretical framework utilized. Furthermore, the paper discusses inequality as it relates to healthcare delivery in Nigeria. In addition, the paper evaluates the right to health in Nigeria, vis-a-vis the health insurance scheme. Ultimately, this paper seeks to justify that the justiciability of the right to health in Nigeria will provoke the implementation of a national health insurance law/scheme that will benefit every citizen.

## **Literature Review**

Health insurance is an insurance policy that subsidizes the cost incurred by an individual or group of people for healthcare services. Given the enormous benefits of health insurance, it is ideal for every Nigerian citizen to be a beneficiary of national health insurance. However, the percentage of subscribers to the national health insurance is 5%, and 70% of Nigerians still pay for healthcare services through out-of-pocket expenses (Alawode & Adewole, 2021; Balogun, 2022; Tulchinsky,

2023). The low coverage of the scheme was triggered by the exclusion inherent in the NHIS Act, which made health insurance voluntary. In addition, the low number of subscribers to the national health insurance can be attributed to the poor sensitization about the existence and benefits of the scheme. Generally, there exist a low awareness of national health insurance amongst the citizens. The government and other relevant stakeholders have failed to generate the awareness required to attract majority of the citizens to enroll for the scheme (Balogun, 2022). As it is, the national health insurance enjoys a wider coverage in the formal sector. In fact, studies conducted by Ele et al (2016); Eyong et al (2016); Akinyemi et al (2021) reveal that a large percentage of subscribers to the scheme find it beneficial because it reduces the cost of healthcare services. In addition, there is strong awareness of the scheme among employees in the formal sector (Eyong et al, 2016). On the contrary, there is low awareness of national health insurance among informal sector workers. The voluntary approach adopted to extend health insurance coverage to the informal sector was not effective. Although, there are Community-Based Health Insurance Schemes (CBHIS) in Nigeria established to provide healthcare for individuals, families and occupation-based groups at the community level. However, there is low awareness of the scheme among community members (Adeneye et al, 2021). Furthermore, these schemes are not sustainable because poor people at the community level, most especially, those in rural areas cannot afford the premium/contribution. The poor quality of healthcare services rendered by healthcare providers has been identified as a factor that affected the effective implementation of the NHIS Act. These poor services include; rude health workers, outright denial of treatment because HMO failed to remit funds or pay monthly capitation to the healthcare provider, delay in attending to patients, drugs getting out of stock, shortage of healthcare workers and lack of information to enrollees on the limit of what their premium could access (Eneanya, 2018; Ajayi & Akpan, 2019; Balogun, 2022). Some subscribers

to the scheme were discouraged to recommend the scheme to potential subscribers due to the poor services provided.

Related to the above, is the issue of government's poor funding of the health sector (Eneanya, 2018; Balogun, 2022; Odunyemi, 2022). Clearly, the low level of funding reflects the lack of political will to tackle the degrading state of the health sector in Nigeria, despite the Abuja declaration of 2001. Apart from the lack of political will and poor funding by the government, the NHIS as a regulatory body did not function effectively. As such, there were several deficiencies with respect to performing its responsibilities. One of these deficiencies was poor supervision of the HMOs and healthcare providers by the NHIS. The consequence of this is that, services pertaining to healthcare services were poor and below professional standards (Eneanya, 2018). Corruption is a bane to the growth and development of the health sector in Nigeria. Over the years, funds allocated for the implementation and operation of the national health insurance scheme have been mismanaged and embezzled. Consequently, the implementation of the NHIS Act was hampered by the snowballing effect of systemic and institutional corruption. In March 2021, the Executive Secretary of the NHIS (as it then was), Professor Mohammed Nasir Sambo disclosed that the sum of ₦11 billion naira was trapped in the federation account and the organization was making frantic efforts to retrieve same (Thisday Newspaper, 2021). It is strange how funds in this magnitude will be trapped in an account owned and controlled by the Federal Government if not for sabotage and corruption. Similarly, NHIA as an institution is collaborating with the Economic and Financial Crimes Commission (EFCC) to recover the sum of ₦10 billion naira deposited in a commercial bank by the previous leadership of the NHIS (Thisday Newspaper, 2021). In less than a year (August 2022 – February 2023), the EFCC has recovered billions of naira, that were meant for the implementation of the NHIS Act, but were illegally withheld by deposit money banks.

Furthermore, the voluntary enrollment approach was an impediment to the effective implementation of the scheme (Balogun, 2022). The idea of making enrollment for national health insurance voluntary, largely affected the expansion of the scheme as well as its scope of coverage. This weak legal framework served as a challenge that negatively affected the implementation of the NHIS Act at the Sub-national levels of government. While few States, such as Lagos adopted the State Health Insurance Scheme, the majority of the State governments were not practically committed towards implementing the health insurance scheme in their respective States (Odunyemi, 2022). Apparently, this reveals the low level of commitment from State governments with respect to providing access to quality and affordable healthcare to the residents of their respective States. Importantly, there is need to address the disconnect between the three tiers of government (Federal, State and Local governments) in order for any national health insurance scheme to achieve its maximum potentials. Beyond the Sub-national levels, employers and employees in the low and medium scale enterprises of the formal sector, as well as informal sector workers chose not to enroll for the NHIS because of the weak legal framework that made health insurance voluntary (Aka & Balogun, 2022). Clearly, there is no way the NHIS Act would have achieved its policy thrust without a comprehensive legal framework which encourages and supports every citizen to enroll for national health insurance scheme.

Obviously, the menace of poverty had a negative impact on the implementation of the NHIS Act. In a country where the vast majority of citizens live below the poverty line, it should be understandable that enrollment for national health insurance will be low (Odunyemi, 2022). Citizens living in poverty are preoccupied with daily survival, and enrolling for national health insurance is a herculean task. To be realistic, citizens who are poor and vulnerable, cannot afford to enroll for national health insurance due to poverty (Aka & Balogun, 2022). The NHIS Act failed

to make adequate provision towards providing access to quality and affordable healthcare for poor and vulnerable citizens. The commitment of the government to provide healthcare services forms part of the Fundamental Objectives and Directive Principles of State policy stated in Chapter II of the 1999 Constitution of Nigeria. In real terms, the provisions contained in the Fundamental Objectives and Directive Principles are deemed as socio-economic rights. As positive rights, the fulfillment of socio-economic rights is subject to the judicious utilization of resources available to the government (Smith, 2022). Clearly, the right to health is not expressly stated as a fundamental human right in the Nigerian constitution. This signifies that the right to health is not a justiciable right under the Nigerian legal jurisprudence. The non-justiciability of the right to health in Nigeria further strengthens the poor quality of healthcare services, and the inequality in access to healthcare. According to Chukwudozie (2015), the inequality in access to health, often have dire consequences on the poor and vulnerable. Although, there exist a catalogue of literature on national health insurance in Nigeria (Chukwudozie, 2015; Ele et al, 2016; Eyong et al, 2016; Eneanya, 2018; Asakitikpi, 2019; Adeneye et al, 2021; Akinyemi et al, 2021; Balogun, 2022; Odunyemi, 2022). However, these literature focus on the themes of poverty, inequality and the perceptions of subscribers to the scheme. To be specific, none of the existing literature examines national health insurance from the purview of the right to health in Nigeria. This paper addresses that lacuna. It makes a significant attempt to justify the relevance of recognizing the right to health as a justiciable right in the Nigerian context.

### **Theoretical framework**

This paper adopts Martha Fineman's vulnerability theory as its theoretical framework. The theory posits that vulnerability is universal, constant and deeply rooted in the human condition (Fineman, 2008). In Fineman's view, vulnerability is not restricted to a particular group. It is therefore

fallacious to particularize vulnerability to a particular group or socio-economic class. Vulnerability theory emphasizes that every individual is vulnerable at one point or the other. Given this view, vulnerability is relative and determined by social, economic, cultural and historical factors (Fineman, 2004). The theory of vulnerability stresses that recognizing vulnerability as universal and perpetual derides the liberal ideology that propagates the independence and autonomy of individuals. Vulnerability theory is not focused on specific individuals, groups or human and civil rights, neither is it a concept that serves as a metaphor to describe weakness, disadvantage or discrimination. Fineman (2004) underlines that vulnerability theory upholds the principle that social justice is achievable through the establishment and sustenance of social institutions that promote justice and equity. Therefore, vulnerability theory emphasizes the need to revise institutional frameworks that promote privilege and discrimination. To this end, addressing human vulnerability should entail a deep rooted understanding of the values and norms that bind us as humans. It equally focuses on our expectations of the laws, the principal social structures, as well as the relationships/interactions that shape the society and impact the lives of everyone in the society. In essence, vulnerability theory demands for a State that recognizes and attends to universal human needs (Fineman, 2008). The theory emphasizes that legally existing structures in a State which elevate individual or group vulnerability to the detriment of human vulnerability and dependency must be reorganized.

Despite its strengths, vulnerability theory has faced certain criticisms. Kohn (2014), explained that the paternalistic philosophy that vulnerability theory espouses is vague. Kohn argues that Fineman opposed the idea of conceiving vulnerability through the lens of an individual or a targeted group, because this approach does not address the weaknesses of underlying social structures (Kohn, 2014). Fineman argues against strategies to law reform that emphasize on the needs of particular



groups, because such approaches tend to focus on discrimination as the real issue, instead of focusing on the societal structures that promote discrimination. According to Kohn (2014), in moving beyond the abstract explanation of vulnerability theory, Fineman suggested specific laws, such as older adults' protection policies to justify the theory. Consequently, Fineman contradicted the fundamental ideal on which vulnerability theory is conceived. In the words of Kohn (2014, p. 11), Fineman embraces an approach that singles out older adults for special protections on the basis of the perceived vulnerability of the group. Similarly, Davis & Aldieri (2021), argue that one of the limitations of vulnerability theory is its proposition to galvanize citizens against neoliberal ideas. As the authors opined, resilience to neoliberalism portends a form of individualized self-management, which negates the paternalistic philosophy of vulnerability theory. Cooper (2015) argues that individuals and people define who they are through the scope of identity, and this social culture will continue to persist. Consequently, the notion that vulnerability should be defined in universal terms, rather than through the lens of individuals or specific social group is not tenable. Cooper concludes that a revised vulnerability approach must recognize the doctrine of relative privilege. Privilege in this regard connotes; permission, immunity, benefit or right granted to or enjoyed by an individual, or particular group or class (Cooper, 2015). These criticisms notwithstanding, the objective of vulnerability theory to promote effective and efficient social institutions justifies its applicability in the context of this paper.

### **Poverty, Inequality and National Health Insurance Scheme**

In a recent report titled 'The Nigeria Multidimensional Poverty Index (MPI)', the National Bureau of Statistics, NBS (NBS, 2022), stated that 133 million Nigerians suffer from multidimensional poverty. This figure represents 63% of the population, estimated to be over 200 million. The report by NBS emphasizes the challenges of citizens living in poverty with respect to access to healthcare.

Apparently, there exist a relationship between poverty and health outcomes. Having good health enables individuals to develop their social and economic capital, thereby building the capacity to live above the poverty threshold (World Health Organization, 2004). Conversely, poor health can lead to poverty, because an unhealthy person is less productive and this will have a negative impact on his/her livelihood and level of income. Healthcare is financed by government budget, donor funding, out-of-pocket payments as well as health insurance scheme. However, achieving successful healthcare financing remains a challenge in Nigeria. The rising cost of healthcare services as well as the urgent need to provide equitable access to quality healthcare services propelled the Nigerian government to set up the NHIS (NHIS Act, 2004).

People living in poverty find it difficult to respond to health challenges due to lack of funds. Citizens suffering from poverty live in slums and shanties, and are exposed to health hazards due to the prevalence of negative environmental factors where they reside and/or work. Vulnerability due to environmental factors means that citizens living in poverty are susceptible to sicknesses and diseases (Coninck, 2009). Indeed, poverty is a barrier that impedes the poor and vulnerable from having access to quality healthcare. Given the prevalence of poverty in Nigeria, the idea of establishing the national health insurance scheme is noble and commendable. However, poor and vulnerable citizens in Nigeria still lack access to affordable and quality healthcare. In practical terms, the poor and vulnerable could not have benefitted from the national health insurance scheme due to financial constraints. The policy thrust of the NHIS Act sought to provide a fundamental shift of government's approach of delivering health services. Thus, the legislative framework that established the national health insurance scheme sparked the assurance that sickness would no longer have devastating consequences on the finances of every citizen. An integral objective of the

NHIS Act was to ensure equity in access to healthcare. Sadly, the NHIS Act failed to achieve the desired objective to address the inequality in healthcare services (Odunyemi, 2022).

In 2019, the commissioner for health in Lagos State, Professor Akin Abayomi stated that 66% of Lagos residents are yet to subscribe to the state insurance scheme, because they live in poverty and cannot afford healthcare services (Vanguard Newspaper, 2019). The health commissioner stated further that the equity contribution from Lagos State government can only cater for the health needs of 5% of the underprivileged population. In fact, for their inability to access quality and affordable medical care, citizens suffering from poverty mostly resort to self-medication, and take all sort of herbal concoctions (Asakitikpi, 2019). Although, traditional medicine is not condemnable, but it should be noted that the majority engage in taking herbs without any proper diagnoses of the ailment afflicting them. In addition, there is also the issue of quantity and dosage of herbs required, as most of the consumers of herbal concoction consume same without prescription by a traditional medicine practitioner. Over the years, equity in the financing of healthcare in Nigeria has not received the much deserved attention and priority. In the real sense, the implementation failure of the NHIS Act exposed the vulnerability of citizens living in poverty. The NHIS Act as a policy was built on a legal framework that encouraged citizens that had the financial capacity to subscribe to the health insurance scheme. This is expressly so, as it sought to provide healthcare for those who voluntarily chose to participate in the scheme, without adequate provision to support citizens living in poverty. Equity in health is an integral feature of an adequately functioning healthcare system. Equity in healthcare should be based on horizontal equity. Horizontal equity promotes equal access for patients with equal health needs regardless of differentials and disparities in socio-economic status (O' Donnell et al, 2008). The lack of access to healthcare services for poor and vulnerable citizens reflects the socio-economic inequality gap

in Nigeria. Clearly, there is no way the NHIS Act would have achieved its policy thrust without a comprehensive legal framework which mandates and supports every citizen to subscribe to the scheme.

### **Reconstructing the Right to Health in Nigeria: Beyond the National Health Insurance Scheme**

The significance of the right to health creates the assurance that everyone will be entitled to affordable healthcare services of the highest attainable standard. There are several international treaties that proselytize the right to health. These include; Universal Declaration of Human Rights, UDHR (1948), International Convention on the Elimination of All Forms of Racial Discrimination, ICERD (1965), International Covenant on Economic, Social and Cultural Rights, ICESCR (1966), Convention on the Elimination of All Forms of Discrimination against Women, CEDAW (1979), Convention on the Rights of the Child, CRC (1989), Convention on the Rights of Persons with Disabilities, CRPD (2006). Nigeria being a party to these treaties recognizes and acknowledges the right to health ((Odikpo & Durojaye, 2015). Given this, Nigeria has committed itself to promoting the right to health. In this vein, the government established the National Health Insurance Scheme (NHIS) towards achieving equity in healthcare services. However, the scheme could not fulfil its policy thrust. Apart from the NHIS Act, the government enacted the National Health Act in 2014 with the objective of improving the quality of healthcare delivery in Nigeria (Eneanya, 2018). The National Health Act provides a legal framework for the regulation and management of Nigeria's health system. Despite these legal instruments, the healthcare sector in Nigeria is in a decrepit state. The implication of this, is that, the objective to protect and fulfill the right to health in Nigeria is in jeopardy. Significantly, the commitment of the government to ensure that every citizen has access to healthcare forms part of the Fundamental Objectives and Directive

Principles of State policy in Chapter II of the 1999 Constitution of Nigeria. The Fundamental Objectives and Directive Principles serve as guide for policy focus with respect to socio-economic and other related issues in Nigeria. To be specific, section 17(3)(d) provides that the State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons. However, these Fundamental Objectives and Directive Principles are not expressly defined as rights in the 1999 Constitution of Nigeria. In many ways, the provisions of the Fundamental Objectives and Directive Principles are deemed as socio-economic rights. But it must be noted that the fulfillment of these rights is subject to the resources available to the government (Smith, 2022). In other words, while the government seems to recognize the right to health, its fulfillment is practically hinged on the availability of resources (Nnamuchi & Metiboba, 2015). In the Nigerian context, where corruption and bad governance are rife, and the economy is in dire straits, subjecting the fulfilment of the right to health to the availability of resources presupposes that the right to health may not be adequately fulfilled. As it is, the provisions of Chapter II have been excluded from adjudication by the court. Thus, no right of action can ensue from the breach of the provisions of the aforementioned chapter by the government (Owoeye, 2021). Worst still, section 6(6)(c) of the Constitution, expressly states that the powers vested in the Nigerian courts do not extend to issues relating to whether the Directive Principles have been observed or complied with, except as otherwise constitutionally provided (Owoeye, 2021). The government cannot be held accountable judicially, for failure to comply with the Directive Principles under which section 17 provides for the right to health. Hence, the right to health is generally speaking, a non-justiciable right under the Nigerian Constitution.

The failure to recognize the right to health as a fundamental human right, in the Nigerian legal jurisprudence, serves as albatross to the realization of the right to health (Nnamuchi & Metiboba,

2015; Odikpo & Durojaye, 2015). Clearly, it must be emphasized that without recognizing the right to health as a fundamental human right, it will be difficult for the government to fulfill the right to health in Nigeria (Odikpo & Durojaye, 2015). The need to elevate the right to health to the status of fundamental human rights lays credence to the importance of health in terms of individual as well as collective well-being. Consequently, recognizing the right to health as a fundamental human right draws attention to the importance of quality healthcare and good health to human existence. Obviously, the government does not commit itself to protecting and fulfilling the citizens right to health (Asakitikpi, 2019). Equity in healthcare and access to healthcare for poor and vulnerable citizens will remain a mirage, unless the government recognizes the right to health, as one that is fundamental to the very existence of human life (Odikpo & Durojaye, 2015). Logically, what value does a human right has, if it cannot be exercised as of right, or enforced through a statutory authority.

The legal framework that established the NHIA Act, 2022 makes it mandatory for every Nigerian and legal resident to enroll for health insurance. It stipulates that all employers and employees in the public and private sectors with five staff and above, Informal sector employees, and all other legal residents in Nigeria must subscribe to the health insurance scheme (NHIS Act, 2022). The main thrust of the NHIA Act is to ensure that all Nigerians, regardless of socio-economic status have access to quality healthcare services. Significantly, it is expected that health insurance scheme in Nigeria will be strengthened to deliver quality and affordable healthcare services. In particular, institutional challenges that obstruct poor and vulnerable citizens from subscribing to health insurance will be eliminated. To this end, the NHIA Act provides for the creation of a vulnerable group fund, separate and distinct from the NHIA fund. The purpose of the vulnerable group fund is to provide subsidy and funds for vulnerable and indigent citizens in order for them to benefit

from national health insurance (NHIS Act, 2022). Given the above, the coverage of health insurance scheme is expected to reach its optimum potentials, as every citizen becomes a beneficiary. Although, the NHIA Act does not mandate all State governments in Nigeria and the Federal Capital Territory to establish health insurance schemes in their respective states (NHIS Act, 2022). However, the legal framework that established the NHIA Act finds relevance in the fundamental principle of vulnerability theory. Objectively, any social health insurance scheme must as a matter of priority have a structured plan to implement the scheme towards making a positive impact on the health outcome of every citizen (Aka & Balogun, 2022). Fundamentally, the theory of vulnerability advocates that laws should serve as a conduit through which every citizen would benefit from social institutions. As a result, laws and policies must not be established on inequality or discrimination. Fineman (2008) maintains that the State/Government plays a fundamental role in creating and maintaining an egalitarian society. Most fundamental, is that, it is through the enactment of non-discriminatory laws that a society can achieve egalitarianism. Thus, by strengthening the national health insurance scheme, i.e making national health insurance mandatory, the legislative arm adopted a vulnerability approach that recognizes the instrumentality of the law in achieving egalitarianism. In addition, by creating a poor and vulnerability fund, the law makers recognize poverty as a factor that will inhibit the poor and vulnerable from participating in the mandatory scheme. This approach strengthens the NHIA as a social institution towards implementing a comprehensive health insurance scheme that will have positive impact on the health outcome of every citizen. As Fineman (2008) argues, laws must provide legal equality that protects against subordination, discrimination and domination. Therefore, implementation of a health insurance scheme must be implemented in a comprehensive manner that will effectively protect every citizen, regardless of socio-economic status.

Public policies are susceptible to failure in Nigeria due to several factors such as corruption, government bureaucracy, as well as policy somersault. Furthermore, an unreliable and unresponsive government, will argue that the scarcity of resources, serves as a challenge to the effective implementation of the health insurance scheme. This argument is not tenable considering the vast and abundant resources in Nigeria. The socio-economic quagmire witnessed in Nigeria over the years is the consequence of bad governance, lack of visionary leadership, and mismanagement of public resources (Olanrewaju, 2020). As it is, there is no overriding legal framework to ensure the full implementation of the NHIA Act, other than the Act itself. Certainly, it becomes difficult for the citizens to hold the government accountable for its failure to fully implement the NHIA Act, since the right to health is not a justiciable right in the Nigerian constitution. It is particularly important to activate a legal mechanism through which citizens can hold the government accountable for failure to effectively implement the NHIA Act and protect the right to health. In this respect, citizens will be able to address issues relating to poor healthcare delivery (Odikpo & Durojaye, 2015). For example, aggrieved citizens that are victims of poor healthcare services, can approach the court to challenge the violation of their fundamental human right to health. Similarly, poor and vulnerable citizens that lack access to healthcare will leverage on legal aid and pro bono services to hold the government accountable. This becomes practicable when the right to health is expressly recognized as a fundamental human right in health rights litigation (Odikpo & Durojaye, 2015). The failure to recognize the right to health as a justiciable right means that achieving the right to health in Nigeria, remains an illusion.

Practically, it is pertinent to activate a constitutional legal framework that will ensure the justiciability of the right to health. Although, as in many other countries, there could be challenges with respect to amending the Constitution to project the right to health as a fundamental human



right. However, Nigeria can take a cue from countries, such as Colombia and South Africa. These countries, in their respective constitutions made provision for the justiciability of the right to health. Although, scholars have advocated that the right to health can be enforced in Nigerian Courts through the application of international and regional human rights legal instruments, such as the African Charter on Human and Peoples' Rights (Odikpo & Durojaye, 2015). However, judicial activism is way beyond the Nigerian judiciary due to its lack of financial independence and reliance on the executive arm of government for the appointment of Judges. In addition, judicial activism potentially raises the debate on the political question, and the involvement of the judiciary in matters exclusive for legislative deliberation. Significantly, the onus is on Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs) to provoke legislative advancement towards the reworking of the constitution in this regard. In simple terms, the justiciability of the right to health, is a key fundamental factor in promoting, protecting and fulfilling this right (Odikpo & Durojaye, 2015). To put it differently, the conception of the right to health is meaningless in concrete and practical terms, without a legal and obligatory framework to ensure its enforcement. Again, the right to health presupposes that every citizen regardless of socio-economic status is entitled to quality healthcare. Therefore, the justiciability of the right to health serves as a two edge sword that suppresses discrimination, and drives social inclusion of every citizen in consonance with vulnerability theory. The justiciability of the right to health will place a strict obligation on the government, as duty bearer to fulfil the right to health in Nigeria. Ultimately, poor and vulnerable citizens will continue to lack access to healthcare, should the right to health remain non-justiciable in the Nigerian legal jurisprudence.

## Conclusion and Recommendations

The implementation failure of the NHIS Act, 2004 necessitated the enactment of the NHIA Act, 2022. To reiterate, the NHIA Act makes health insurance mandatory for every citizen. This should in many ways, raise the assurance that the cost of healthcare services will no longer serve as a challenge to the numerous Nigerians living in poverty. However, the menace of bad governance poses a serious threat to the effective implementation of the NHIA Act. Progressively, beyond enacting the NHIA Act, the statutory legal framework in Nigeria must recognize the right to health as a fundamental human right/justiciable right. Significantly, it is pertinent to empower citizens as right holders, to demand the right to health from the government (duty bearer), under the express obligation to respect, protect and fulfil same. CSOs and NGOs must intensify campaigns and advocacy for the justiciability of the right to health. In addition, these organizations must sensitize and enlighten the citizens to persistently demand for the right to health in court, regardless of its non-justiciability. These conscientious approaches will in the long run, provoke legislative advancement towards the constitutional provision for the justiciability of the right to health in Nigeria.

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