

## Right to Health of the Nigerian Child: Challenges and Prospects

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### Abstract

*Health is the most basic and essential asset of every human being. The right to health is akin to the right to life. Children are the future of every nation and this future is defined by the health of children in the society. Healthy children are more likely to become healthy adults who will constitute productive citizens. The right of children to health is provided for in various international and national legal frameworks. However, these laws have not fully impacted the health of children in Nigeria as evidenced in a high mortality rate of children prevalent in the country. This research examined the right of children to health in Nigeria, the legal frameworks that provide for this right and the challenges and prospects to its realization. This research was conducted using the doctrinal methodology. The study found that the right to health is in Chapter 2 of the 1999 Constitution is not justiciable; but the National Health Act and Child's Right Act protect this right. However, the latter Act is yet to be adopted in all the States of the Federation. The study identified the socio-economic and cultural barriers which limit access and deny a child the right to health, inadequate funding of the primary health care system in Nigeria, as well as inadequate supply and access to essential children vaccines. The study recommended that subsidies on vaccines (e.g the Rota Virus vaccines) should be increased, to ensure that every child irrespective of social status is fully immunised. The study also recommended proper funding of the health-care system in general and the primary health care in particular. It is expected that the full implementation of these recommendations will help in enhancing the health of our children and ensuring that for every child, the right to health is guaranteed.*

**Key words:** Child Right to Health, child vaccines, child immunisation, child morbidity rate,

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## **1. Introduction**

All that a man has losses value once his health is attacked. The desire to be in health is primary to every human being irrespective of age, nationality, colour and all. This is why health is foremost in the agenda of the global community. The right to health as a part of human rights has been echoed through the years as it cannot be denied that every human being is entitled to “the highest attainable state of health”.<sup>1</sup> Over the years, concerted efforts have been made to ensure the protection of the right to health.

The Universal Declaration of Human Rights (UDHR) and various international covenants on human rights recognise that everyone is entitled to all the rights and freedoms, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>2</sup> The UDHR guarantees among other things the right to a standard of living adequate for human health and wellbeing. It also states the need for special care for children.<sup>3</sup>

## **2. Right to Health for Children**

The World Health Organization (WHO) is charged with the responsibility of ensuring the right to health globally. It stresses the fundamental nature of the right to health and the need for protection of same. It states that governments have responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures. Article 1 of its Constitution stated that the attainment by all peoples of the highest possible level of health is the objective of the Organization. Protecting and improving the health of children is of fundamental importance to the Organisation. The functions of the Organisation, includes among other things the promotion of maternal and child health and welfare<sup>4</sup>.

The African Charter on Human and Peoples’ Right<sup>5</sup> recognizes the right of all individuals to enjoy the highest attainable state of health. The mandate of the United Nations Children's Fund

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<sup>1</sup> The World Health Organization Constitution 1946 <[www.who.org](http://www.who.org)> accessed on 6th May 2021.

<sup>2</sup> See Article 2 of the Universal Declaration of Human Rights 1948 <[www.un.org/en/about-us/universal-declaration-of-human-rights](http://www.un.org/en/about-us/universal-declaration-of-human-rights)> accessed on 1 June 2021.

<sup>3</sup> See Article 25 of the Universal Declaration of Human Rights 1948 <[www.un.org/en/about-us/universal-declaration-of-human-rights](http://www.un.org/en/about-us/universal-declaration-of-human-rights)> accessed on 1 June 2021.

<sup>4</sup> Article 2 of the The World Health Organization Constitution 1946

<sup>5</sup> See Article 16 of the African Charter on Human and Peoples’ Right 1981 <<https://www.achpr.org>> accessed on 6th May 2021

(UNICEF), originally known as the United Nations International Children's Emergency Fund, is to safeguard the rights of all children, everywhere.<sup>6</sup> The United Nations Sustainable Development Goals (SDG)<sup>7</sup> promotes health and well-being, specifically Goal 3 of the SDG (SDG3) is to “ensure healthy lives and promote well-being for all at all ages”.<sup>8</sup> The SDG3 is underpinned by 13 targets which include among other targets, the target for ending preventable deaths of new-borns and children under-5 years of age, by 2030.

The 1989 United Nations Convention on the Rights of the Child (CRC) provides for the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.<sup>9</sup> Under the Convention, State Parties are to ensure that no child is deprived of his or her right of access to such health care services, including the provision of medical assistance and health care to all children with emphasis on the development of primary health care. States Parties are also to take appropriate measure to diminish infant and child mortality and ensure appropriate pre-natal and post-natal health care for mothers. The right of the child to health also extends to the provision of adequate nutritious foods and clean drinking-water, breastfeeding, hygiene, environmental sanitation and the prevention of accidents.<sup>10</sup>

Among the international conventions and declarations of the rights of the child, the CRC is all-encompassing and was domesticated in Nigeria as the Child's Rights Act<sup>11</sup> (CRA) 2003. The Act provides for the protection of the right of children to health in Section 13. This Section provides for the right of the child to health and health services, including reduction of infant and child mortality rate, ensuring appropriate health care for expectant and nursing mothers and immunisation of children which is made compulsory. Specifically, Section 13(4) provides that a parent, guardian or person having the care and custody of a child under the age of two years shall ensure that the child is provided with full immunisation. Section 13(5) of the Act stipulates the penalties against parent, guardian or person having the care of a child who fails in the duty

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<sup>6</sup> UNICEF, 'UNICEF Data on Child Health' <<https://data.unicef.org/country/nga/#child-health>> Accessed on June 8, 2021.

<sup>7</sup> The United Nations, 'Sustainable Development Goals' <<https://sdgs.un.org/goals/goal3>> accessed on 6th May 2021.

<sup>8</sup> *Ibid.*

<sup>9</sup> See Article 24 of Convention on the Rights of the Child, 1989

<sup>10</sup> *Ibid.*

<sup>11</sup> Child's Right Act 2003, Cap 50 Laws of the Federation of Nigeria 2004.

imposed on him under subsection (4) of this section. Under Section 13(6) of the Act, the court is empowered to make an order compelling the parent or guardian of a child to get the child immunised.

There are challenges in the enforcement of these laws and healthcare affordability. The provisions of the Nigerian Constitution recognise the right to health, however, the non-justiciability of the right to health in the Constitution, has made the right unenforceable. However, despite these challenges the Federal Government of Nigeria has taken steps to strengthen the national health system and initiate programmes to facilitate access to health by the child. One of such programmes to ensure that no child is deprived of his or her right of access to health care services is to ensure that vaccines are made available and that children are properly vaccinated. Access to healthcare services including vaccination comes with a cost. Besides the issue of cost, there are several socio-economic and cultural factors such as level of income, education, beliefs, and location, etcetera, that constitute barriers to the right of child to health and immunization. At various times, the Federal Government of Nigeria has made effort in the financing of Primary Health Care and interventions directed at maternal, new-born and child health, especially in the area of increasing the level of vaccine coverage and immunization. Yet despite the progress, many infants in Nigeria have insufficient access to vaccines and the high incidence of under-five mortality is still prevalent in the country. The global vaccination coverage has remained the same over the past few years.<sup>12</sup> Although trends in under-five mortality rate shows that it is declining, however, under-five infant mortality rate is still high in Nigeria. In 2018, the under-five mortality rate in Nigeria was estimated at 132 per 1,000 live births<sup>13</sup>. In 2019 an estimate of 5.2 million children under-five years died of preventable causes like pneumonia, malaria and diarrhoea among others<sup>14</sup>; while Nigeria has the highest under-

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<sup>12</sup> World Health Organisation, 'Vaccines and Immunisation' <[https://www.who.int/health-topics/vaccines-and-immunization#tab=tab\\_1](https://www.who.int/health-topics/vaccines-and-immunization#tab=tab_1)>, Accessed on June 8, 2021.

<sup>13</sup> World Health Organisation, 'Report of collaboration between WHO and Nigerian Government to curtail child mortality in the country', [2019] <<https://reliefweb.int/report/nigeria/who-and-nigerian-government-collaborate-curtail-child-mortality-country>>. Accessed June 8, 2021.

<sup>14</sup> World Health Organization, 'Children: Improving Survival and wellbeing' [2020] [www.who.int/news.room/factsheet](http://www.who.int/news.room/factsheet) accessed on 28th April 2021

five mortality rate in sub-Saharan Africa with the rate of 117 deaths per 1000 live births.<sup>15</sup>

### 3. Conceptual Framework

#### 3.1 *Who is a Child?*

The United Nations Convention on the Right of the Child (hereinafter referred to as CRC) defines a child as ‘every human being below eighteen years unless under the law applicable to the child, majority is attained earlier’<sup>16</sup>. The African Charter on the Rights and Welfare of the Child defines a child as ‘every human being below the age of eighteen years’<sup>17</sup>.

Although the 1999 Constitution of the Federal Republic of Nigeria does not provide a statutory age, it prescribes eighteen years as the age of voting<sup>18</sup>. The Child’s Right Act 2003 (CRA) defines a child as a person under the age of eighteen years.<sup>19</sup> However, under the Children and Young Persons Act, a child was defined by the law as “a person under the age of fourteen years”, while a young person is “a person who has attained the age of fourteen years and is under the age of seventeen”<sup>20</sup>. The Criminal and Penal Codes, set the age of demarcation for absolute lack of criminal responsibility for capital offences, and latter serious felonies. The governing rule is that an infant under the age of seven years could not be guilty of felony. Thus, the Criminal Code, S.30, provides that “a person under the age of twelve years is not criminally responsible for any act or omission...”, while the Penal Code, S.50, provides that no act is an offence which is done “by a child under 7 years of age; and by a child above 7 years of age but under 12 years of age...”.<sup>21</sup>

A child is ‘a young person especially between infancy and puberty or person yet to attain majority’<sup>22</sup>. The Blacks Law Dictionary<sup>23</sup> defines the term ‘child’ as ‘a person under the age of

<sup>15</sup> UNICEF, ‘Sub national Under-five Mortality Estimates 1990-2019(2021) <[data.unicef.org/resources/sub-national-under-five-mortality](https://data.unicef.org/resources/sub-national-under-five-mortality)>

<sup>16</sup> See the United Nations Convention on the Right of the Child 1989, Article 2

<sup>17</sup> See Article 1 of African Charter on the Rights and Welfare of the Child 1999

<sup>18</sup> See Section 77(2) of the Constitution of the Federal Republic of Nigeria 1999.

<sup>19</sup> See Section 277 of the Child’s Right Act, 2003.

<sup>20</sup> Section 2 CYPA Cap 21 Laws of the Northern Nigeria 1963

<sup>21</sup> UNICEF, ‘State Party Reports -Definition of the Child’<[https://www.unicef-irc.org/portfolios/documents/424\\_nigeria.htm](https://www.unicef-irc.org/portfolios/documents/424_nigeria.htm)>Accessed on July 9, 2021.

<sup>22</sup> Merriam Webster, ‘Definition of a Child’ <[www.merriam-webster.com](https://www.merriam-webster.com)> Accessed on 13<sup>th</sup> June 2021

<sup>23</sup> Bryan Garner, ‘Black’s Law Dictionary’ (8<sup>th</sup> ed. Thomson West, Minnesota, 2004)254

majority'. This definition has been seen as inconclusive as it does not indicate how to determine the age of majority<sup>24</sup>.

### 3.2. Definition of the Right to health

The fundamental right to life, the right to personal liberty and other civil and political rights are all geared 'towards ensuring that certain aspects of our lives which impact directly on our health are not taken away except as may be sanctioned by law'<sup>25</sup>. The issue of health is primary in both international and national discourse and the diverse perspectives have brought about different definitions of the term 'health'. Health is defined as 'the state of being physically or mentally healthy'<sup>26</sup>. Health is also defined as 'how well one's body is'<sup>27</sup>; 'the extent of an individual's continuing physical, emotional, mental and social ability to cope with his or her environment'<sup>28</sup>; or 'the state of complete physical, mental and social well-being and not merely the absence of infirmity'<sup>29</sup>. The term 'right' is defined as 'something that is due to a person by just claim, legal guarantee or moral principle'<sup>30</sup>. It is also defined as 'a legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong'<sup>31</sup>. It may also mean something in accordance with law, morality and justice. As a norm, it may mean that to which a person has a valid and just claim<sup>32</sup>.

The right to health is an important aspect of human rights and it is a fundamental part of various international, regional and national legislations. The Universal Declaration of Human Rights 1948 (UNDHR) provides that "everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his

<sup>24</sup> Ibu Otor, Alubo A.O., A.M. Izang, D.N. Dashe, 'Episiotomy of Child Rights Act and Child's Right to Education (BIU Law Journal) 2015 1(1) 72

<sup>25</sup> Uwakwe Abugu, 'Principles and Practice of Medical Law and Ethics' (Pagelink Nigeria Limited, Abuja 2018) 23

<sup>26</sup> A.S. Hornby, 'Oxford Advanced Learners Dictionary of Current English' (9<sup>th</sup> Ed., Oxford University Press, Oxford, 2015) 726

<sup>27</sup> Addison Wesley, 'Longman Primary Dictionary' (2<sup>nd</sup> Ed. Pearson Education Limited, Essex, 1998) 130

<sup>28</sup> Britannica, 'Health' <www.britannica.com> accessed on 10<sup>th</sup> June 2021.

<sup>29</sup> World Health Organization, the Constitution (Geneva: WHO, 1948)

<sup>30</sup> Garner (n.56) 1347.

<sup>31</sup> *Ibid.*

<sup>32</sup> Nwakpu Iruka Wilfred, 'Overview of the Legal Framework for the Protection of the Rights of the Child in Nigeria' Ebonyi State University Law Journal [2013] (5)(1) 33

family, including food, clothing, housing and medical care and necessary social services...”<sup>33</sup> It also provides that “motherhood and childhood are entitled to special care and assistance...”<sup>34</sup> The World Health Organization(WHO) in its constitution recognizes that “the enjoyment of the highest attainable standard of health is one of the fundamental right of every human being without distinction of age, race, religion, political belief, economic or social condition”<sup>35</sup>.

The 1999 Constitution (as amended) recognizes the right to health. It provides that one of the primary purposes of government shall be the welfare of its people<sup>36</sup>; and that the social objectives of the state are to ensure adequate medical and health facilities for all persons.<sup>37</sup>The Constitution also affords special protection for children, young people and the aged.<sup>38</sup> These provisions are merely objectives “meant to guide the social organization and progress; to help government to procure optimal delivery for the greater good for the governed...”<sup>39</sup> It is common knowledge that these provisions are not justiciable although government through legislation can implement specific items<sup>40</sup>, but their entrenchment in the constitution shows the willingness of the state to prioritize the health needs of the people<sup>41</sup>.

The African Charter on Human and Peoples Right 1986(ACHPR)<sup>42</sup> provides for the right of every individual to enjoy the best attainable state of physical and mental health<sup>43</sup>. State parties are also mandated to take necessary measures to protect the health of the people and to ensure that they receive medical attention when they fall sick<sup>44</sup>. In granting special protection for the child, the Charter provides for the protection of the rights of the child as stipulated in international declarations and conventions<sup>45</sup>.The Charter

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<sup>33</sup> See Article 25 (1) UNDHR 1948

<sup>34</sup> See Article 25(2) UNDHR 1948

<sup>35</sup> See the Preamble to the WHO Constitution 1948

<sup>36</sup> See Section 14(2)(b) 1999 CFRN

<sup>37</sup> Section 17(3)(d) 1999 CFRN

<sup>38</sup> Section 17(3)(f) 1999CFRN

<sup>39</sup> E. Okolocha, 'Lecture Notes on Fundamental Objectives and Directive Principles of State Policy' (2019) 1(Unpublished)

<sup>40</sup> *Olafisoye v. Federal Republic of Nigeria*(2004) 4 NWLR Pt. 4 at 580

<sup>41</sup> Abugu (n. 58) p.23

<sup>42</sup> Cap 10 LFN 1990; See *Fawehinmi v. Abacha & ors*(1996)9 NWLR (Pt.475) 710 where it was established that provisions of the Charter is an international obligation that states which are signatory to it are bound by.

<sup>43</sup> Article 16(1) ACHPR

<sup>44</sup> Art16(2) ACHPR

<sup>45</sup> Art18(3) ACHPR

therefore protects generally the right to health and right of children to health specifically.

The Convention on the Rights of a Child recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health<sup>46</sup>. The Child Rights Act 2003 in recognizing the right to health states that every child is entitled to enjoy the best attainable state of physical, mental and spiritual health.<sup>47</sup>

The right to health is an inclusive right, it not only includes timely and appropriate healthcare; it also extends to the underlying determinants of health<sup>48</sup> which include:

- i. An adequate supply of safe food, nutrition and housing;
- ii. Access to safe and portable water and adequate sanitation;
- iii. Healthy occupational and environmental conditions; and,
- iv. Access to health-related education and information, including on sexual and reproductive health.<sup>49</sup>

The right to health contains both freedoms and entitlements<sup>50</sup>. Freedoms include the right to control one's health, which includes the right to be free from non-consensual medical treatment and experimentation. Entitlements include the right to a system of health protection (i.e. healthcare and the underlying social determinants of health) that provides equal opportunity for the enjoyment of the highest attainable standard of health.

The right to health is a broad concept that has within it the rights to<sup>51</sup> :

- i. Maternal, child and reproductive health;
- ii. Informed consent, bodily integrity and freedom from torture, ill health and harmful practices;
- iii. Healthy natural and workplace environments;

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<sup>46</sup> Article 24 of the Convention on the Rights of a Child(CRC)

<sup>47</sup> Article 13 of the Child Rights Act 2003 (CRA)

<sup>48</sup> Office of the United Nations High Commissioner on Human Rights(OHCHR) and World Health Organization(WHO), 'The Right to Health' Fact Sheet No.31(United Nations, Geneva 2003) <[www.ohchr.org/factsheet31](http://www.ohchr.org/factsheet31)> accessed on 29th June 2021

<sup>49</sup> The Committee on Economic, Social and Cultural Rights, 'The Right to the Highest Attainable Standard of Health, General Comment 14' (2000) <[hrlibrary.umn.edu](http://hrlibrary.umn.edu)>; See generally Article 12 of the International Covenant on Economic, Social and Cultural Rights.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*



- iv. The prevention, treatment and control of diseases, including access to essential medicines; and,
- v. Access to safe and portable water.<sup>52</sup>

The right to health is not the right to be healthy but the right to a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health<sup>53</sup>.

#### 4. The Right to Health, Health Care and Medical Care

Healthcare and medical care are aspects of the right to health. Healthcare refers to the works done in primary, secondary and tertiary care, as well as in public health.<sup>54</sup> Medical care is the provision of services related to the maintenance of health, prevention of illness and treatment of illness or injury by medical practitioners.<sup>55</sup> The right to health or the right to “the highest attainable standard of physical and mental health”<sup>56</sup> is not confined to just the right to healthcare or medical care, it encompasses other socio-economic factors and underlying determinants of health such as food and nutrition, housing, access to safe and portable water and adequate sanitation, safe and healthy working conditions; and a healthy environment.<sup>57</sup>

##### 4.1. Medical Rights of Children

In law, a child is called a minor. A minor is a person yet to attain the age of majority or maturity<sup>58</sup>. In Medical Law, minors are categorized into three for the purpose of consent<sup>59</sup>:

- 1. Those between 16 to 18 years of age. These children have an independent right of consent over their parents’ objection but in cases of emergency, parental consent can be used to override the child’s objection<sup>60</sup>.

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<sup>52</sup> *Ibid.*

<sup>53</sup> OHCHR and WHO (n.81)

<sup>54</sup> Difference all, ‘Difference between health and Medical care’ <[www.differenceall.com](http://www.differenceall.com)> accessed on 12<sup>th</sup> June 2021.

<sup>55</sup> *Ibid.*

<sup>56</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights 1966

<sup>57</sup> OHCHR and WHO (n.81)

<sup>58</sup> F.O Emiri, ‘Medical Law and Ethics in Nigeria’ (Malthouse Press Limited, Lagos 2012)304

<sup>59</sup> Abugu (n.58) p.191

<sup>60</sup> *Ibid.* See also Rule 21(1) of the Code of Medical Ethics 2008

2. Those younger than 16 but not below 13, though considered as minors may be allowed to give valid consent on the basis of “Gillick Competence”. This principle stems from the case of *Gillick v. West Norfolk Area Health Authority*<sup>61</sup> where it was established that minors over the age of 16 may effectively give consent to medical treatment without parental consent ‘where the child achieves sufficient understanding and is intelligent to enable him or her fully understand what is proposed’<sup>62</sup>.
3. Children under 13 years – Practitioners can override parental objection in cases of emergency by obtaining court order to enable them do what is necessary in the best interest of the child<sup>63</sup>.

The establishment of doctor/patient relationship brings about certain rights and duties just as in every contract<sup>64</sup>. And for a child their legal representatives create this contract on their behalf.

The rights of patients as provided in the Declaration of Lisbon, 1981<sup>65</sup> are:

1. Right to medical care of good quality. This includes non-discrimination, right to a physician that is free to make clinical and ethical judgments without any outside interference and the right to be treated in his best interest among others.
2. Right to freedom of choices. This includes the right to choose freely and change his physician or hospital and the right to ask for the opinion of another physician at any stage.
3. Right to be treated in accordance with his best interest.
4. Right to confidentiality
5. Right to health education that will assist him/her in making informed choices about personal health and about the available health services.
6. The patient's dignity and right to privacy
7. The right to receive or to decline spiritual and moral comfort including the help of a minister of his/her chosen religion<sup>66</sup>.

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<sup>61</sup> Ian Kennedy and Andrew Grubb, ‘*Medical Law: Text and Materials*’ (Butterworths, London 1987)1; Amechi Uchegbu, Sadiq Ogwuche, *Nkem Agu, ‘Compendium on Medical Law under the Commonwealth and United States Legal Systems’* (1stEd.Maiyah Chambers) 69; *Gillick v. West Norfolk Area Health Authority* (1985)3 All ER 402

<sup>62</sup> Abugu (n. 58) p.262

<sup>63</sup> *Esabunor v. Faweya* (2008)12 N.W.L.R. (pt 1102)794; (2019)7 N.W.L.R. (pt.1671)316

<sup>64</sup> Abugu (n. 58) p.54

<sup>65</sup> *Ibid.* at 122

Other rights include:

1. Right to Autonomy and self determination
2. Access to Medical Records
3. Right to treatment among others<sup>67</sup>.

#### *4.2. Vaccination, Immunization and Under-five Mortality*

The term vaccination and immunization are used interchangeably but there is a slight difference between the two words. Both words are related, although one describes an action while the other describes a process<sup>68</sup>. The WHO defines them thus<sup>69</sup>:

- i. Vaccination employs vaccines to stimulate the body's immune system to protect a person against subsequent infection or disease.
- ii. Immunization is the process wherein a person is made immune or resistant to an infectious disease, typically by the administration of a vaccine.
- iii. According to the American Centre for Disease Control (CDC)<sup>70</sup>:
- iv. Vaccination is the act of introducing a vaccine into the body to produce immunity to a specific disease.
- v. Immunization is a process by which a person becomes protected against a disease through vaccination.

Immunization services are an essential part of primary health care systems, and a key contributor to people's fundamental right to health. Immunization reaches more people than any other health or social services. It benefits individuals, communities, countries and the world. It is an investment in the future in many ways by saving lives and protecting the health of populations, improving productivity and ensuring global health security. Immunization is the foundation of a healthy, productive population. Preventing infections reduces the burden on health systems, and a healthier population is a more productive one. Children protected against infectious diseases have better educational attainment and contribute more to national

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<sup>66</sup> WMA Declaration of Lisbon on the Rights of the Patient 1981 <[www.wma.net](http://www.wma.net)> accessed on 22/06/2021

<sup>67</sup> Abugu (n. 58) pp.122-125

<sup>68</sup> Kristina Duda, 'Differences between immunization and Vaccination' <[www.verywellhealth.com](http://www.verywellhealth.com)> Accessed on 28<sup>th</sup> June 2021

<sup>69</sup> World Health Organization 'Vaccines' <[www.who.int/health-topics/vaccines](http://www.who.int/health-topics/vaccines)> Accessed on 28th June 2021.

<sup>70</sup> Center for Disease Control, 'Immunization Basics' Accessed on <[www.cdc.gov/vac-gen/imz-basics](http://www.cdc.gov/vac-gen/imz-basics)> assessed on 28th June 2021.

development and prosperity.<sup>71</sup> Immunization has reduced the number of deaths from infectious diseases dramatically.

Vaccines are critical to the prevention and control of many communicable diseases and therefore underpin global health security. Vaccines also prevent disability, which can impair children's growth and cognitive development, so that they not only survive but also flourish. Vaccines benefit not only infants and children but also older people.<sup>72</sup> Children Under-five is a term used to refer to children under the age of five. Under-five mortality refers to the probability of a child born in a specific year or period dying before the age of five<sup>73</sup>.

## 5. Legal Framework on the Right of Children to Health

### 5.1. *Convention on the Rights of the Child 1990*

In 1989, world leaders under the UN General Assembly, came together and made a historic commitment towards the protection of the rights of world's children by adopting an international legal framework – the United Nations Convention on the Rights of the Child (CRC). The Convention entered into force on 2 September 1990. The Convention contains a “profound idea that children are not just objects who belong to their parents and for whom decisions are made, or adults in training. Rather, they are human beings and individuals with their own rights”.<sup>74</sup> The Convention states that childhood lasts till eighteen years and is separate from adulthood. It is a special, protected time, in which children must be allowed to grow, learn, play, develop and flourish with dignity.<sup>75</sup>

The Convention embodies four general principles for guiding implementation of the rights of the child.<sup>76</sup> These principles include non-discrimination which ensures equality of opportunity for all children irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or

<sup>71</sup> Immunization Agenda 2030, 'The Case for Immunization' <[www.imunizationagenda2030.org](http://www.imunizationagenda2030.org)> Accessed on 25<sup>th</sup> July 2021.

<sup>72</sup> *Ibid.*

<sup>73</sup> World Health Organization, 'The Global Health Observatory' <[www.who.int/data/gho//indicator-metadata-registry/](http://www.who.int/data/gho//indicator-metadata-registry/)> Accessed on 28<sup>th</sup> June 2021

<sup>74</sup> UNICEF, 'Convention on the Rights of the Child' <<https://www.unicef.org/child-rights-convention/what-is-the-convention>> Accessed on July 7, 2021.

<sup>75</sup> *Ibid.*

<sup>76</sup> See Articles 2, 3, 6, and 12 CRC

other status.<sup>77</sup> The essential message is equality of opportunity. Girls should be given the same opportunities as boys. Refugee children, children of foreign origin, children of indigenous or minority groups should have the same rights as all others. Children with disabilities should be given the same opportunity to enjoy an adequate standard of living. The second principle is when the authorities of a State take decisions which affect children they must give prime consideration to the best interests of the child<sup>78</sup>. The third principle is

The right to life<sup>79</sup> The right-to-life article includes formulations about the right to survival and to development, which should be ensured to the maximum extent possible. The fourth principle is the views of the child<sup>80</sup>. Children should be free to have opinions in all matters affecting them, and those views should be given due weight taking the age and maturity of the child into consideration.

The rights of child to health-care provision under Article 24 of the Convention requires that the States Parties should ensure that all children have access to the enjoyment of the highest attainable standard of health and that no child is deprived of his or her right of access to such health care services. In particular, States have a responsibility to ensure the reduction of infant and child mortality; and provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care. It is the responsibility of the States to combat disease and malnutrition and provide adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution. States parties have a responsibility to implement children's right to health by encouraging education in child health and development, including about the advantages of breastfeeding, nutrition, hygiene and sanitation. Also, States are required to give priority to the provision of appropriate prenatal and post-natal health care for mothers and infants in order to foster healthy family child relationships, especially between a child and his or her mother (or other primary caregiver). The Convention also requires States Parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.<sup>81</sup>

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<sup>77</sup> Article 2 CRC

<sup>78</sup> Article 3 CRC

<sup>79</sup> Article 6 CRC

<sup>80</sup> Article 12 CRC

<sup>81</sup> See generally Article 24 CRC

In order to make the implementation of the Convention a reality, a Committee on the Rights of the Child was established to monitor the implementation of the Convention by State parties, through ongoing monitoring.<sup>82</sup> Governments that ratify the Convention or one of its Optional Protocols must report to the Committee, which is made up of 18 experts in the field of children's rights from different countries and legal systems. They are nominated and elected by States parties but act in a personal capacity, not as representatives of their countries.<sup>83</sup> The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word "ten" with the word "eighteen". The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).<sup>84</sup>

The Convention recognizes that some of the more costly reforms cannot take place overnight. It specifies, for instance, that the rights to health care (art. 24) and education (art. 28) may be achieved "progressively". It also makes it clear that there is an international duty to assist other States in their efforts to protect children's rights—although each State party always has its own obligations. Rich or poor, a State must allocate the maximum extent of its available resources for the implementation of the Convention<sup>85</sup>: priority should be given to children.

## 5.2. *African Charter on Human and Peoples Right*

The African Charter promotes various categories of rights such as civil and political, socio-economic and cultural, individual and collective rights<sup>86</sup>. It is the first regional mechanism to incorporate the different classes of human rights in a single document.

The African Charter on Human and Peoples Right 1986 (ACHPR)<sup>87</sup> provides for the right of every individual to enjoy the

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<sup>82</sup> Article 43 CRC.

<sup>83</sup> *Ibid.*

<sup>84</sup> Convention on the Rights of the Child. <https://www.unicef.org/child-rights-convention/what-is-the-convention>. Accessed on July 7, 2021.

<sup>85</sup> Article 4 CRC

<sup>86</sup> Eghosa Osa Ekhatior, 'The Impact of the African Charter on Human and Peoples' Rights on Domestic Law: A Case study of Nigeria' <[www.tandfonline.com](http://www.tandfonline.com)> Accessed on 8<sup>th</sup> July 2021

<sup>87</sup> Cap 10 LFN 1990; See *Fawehinmi v. Abacha &ors*(1996) 9 NWLR (Pt.475) 710 where it was established that provisions of the Charter is an international obligation that states which are signatory to it are bound by.

best attainable state of physical and mental health<sup>88</sup>. State parties are also mandated to take necessary measures to protect the health of the people and to ensure that they receive medical attention when they fall sick<sup>89</sup>. In granting special protection for the child, the Charter provides for the protection of the rights of the child as stipulated in international declarations and conventions<sup>90</sup>. The Charter therefore protects generally the right to health and right of children to health specifically. It also provides that state parties shall ensure the elimination of all discriminations against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

The Charter has become part of Nigerian law having been enacted as Cap.10 of the 1990 edition of the Laws of the Federation of Nigeria<sup>91</sup> in line with section 12(1) 1999 CFRN which states that ‘No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly’.

### ***5.3. African Charter on the Rights and Welfare of the Child***

The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted by the Organisation of African Unity (OAU) in 1990 (in 2001, the OAU legally became the African Union) and entered into force in 1999.<sup>92</sup> The ACRWC is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. The Charter states that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.<sup>93</sup>

States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures to reduce infant and child mortality rate; ensure the provision of

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<sup>88</sup> Article 16(1) ACHPR

<sup>89</sup> Article 16(2) ACHPR

<sup>90</sup> Art(18)3 ACHPR

<sup>91</sup> Section 1 of Africa Charter on Human and People's rights Cap. 10 LFN 1990 provides: "As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as there under provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria". See also *Abacha v. Fawehinmi* (2000) SC No. 45/1997

<sup>92</sup> Save the Children, 'African Charter on the Rights of the Child' <[www.resourcecenter.savethechildren.net](http://www.resourcecenter.savethechildren.net)> Accessed on 8<sup>th</sup> July 2021.

<sup>93</sup> Article 14 ACRWC

necessary medical assistance and health care to all children with emphasis on the development of primary health care; ensure the provision of adequate nutrition and safe drinking water; combat disease and malnutrition within the framework of primary health care through the application of appropriate technology and ensure appropriate health care for expectant and nursing mothers among others.

This Charter provides for the creation of the an African Committee of Experts on the Rights and Welfare of the Child<sup>94</sup> charged with the responsibility of promoting and protecting the rights enshrined in the Charter and in particular<sup>95</sup>; to formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa; cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child; to monitor the implementation and ensure protection of the rights enshrined in this Charter among others. These provisions comprehensively address the issue protection of the right to health of children. One of the issues will be the enforceability of these provisions. In Nigeria for instance, until they are domesticated, it does not have a force of law.<sup>96</sup>

#### ***5.4. The 1999 Constitution of the Federal Republic of Nigeria (CFRN)***

There is no express recognition of the right to health generally and that of children particularly, in the Nigerian Constitution but it mandates that that the policy of the state shall be directed towards ensuring:

- i. that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.<sup>97</sup>
- ii. the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;<sup>98</sup>
- iii. there are adequate medical and health facilities for all persons<sup>99</sup>.

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<sup>94</sup> Article 32 ACRWC

<sup>95</sup> Article 42 ACRWC

<sup>96</sup> Section 12 CFRN

<sup>97</sup> Section 16(2)(d)CFRN

<sup>98</sup> Section 17(3)(c) CFRN

<sup>99</sup> Section 17(3)(d)CFRN



Being in chapter 2 of the constitution, these provisions are on the face of it non-enforceable “their entrenchment in the constitution is an exhibition of the desire and willingness of the state to meet these objectives”<sup>100</sup>. These objectives are non-justiciable meaning that they cannot be enforced. This means that the executive does not have to comply with them unless and until the legislature enacts specific laws for its enforcement.<sup>101</sup> The courts have devised ways of enforcing Chapter 2 of the Constitution without breaching the express provisions of the Constitution. In *Archbishop Okogie v. Attorney General of Lagos State*<sup>102</sup> the court recognized the challenges relating to the enforceability of Chapter 2 of the constitution and states that by virtue of section 13 CFRN, it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution. The effect of which is that without prejudice to Section 6(6)(c) CFRN, the government has the duty to observe and apply these provisions. This can be done by legislations thus making them enforceable<sup>103</sup>. In *Abacha v. Fawehinmi*<sup>104</sup> the court held that the courts can enforce the rights in Chapter 2 of the Constitution where it results in violation of the fundamental rights provided in Chapter IV. The right to health is intertwined with the right to life<sup>105</sup>, dignity of the human person<sup>106</sup>, right to personal liberty<sup>107</sup> among others are some of the fundamental rights that bear on the right to health. Children are in no way exempted in their right, thus it is clear that the right to health is not only a fundamental part of our human rights, health is indispensable for the exercise of other human rights.

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<sup>100</sup> Abugu (n.44)

<sup>101</sup> J. Nnamdu Aduba & Sam Oguche 'Key Issues in Nigerian Constitutional Law' (NIALS Press, Abuja) (2010) p.158

<sup>102</sup> (1981) 1 NCLR 262.

<sup>103</sup> See also *Attorney General of Ondo State v. Attorney General of the Federation* (2002) 27 WRN 1 SC.

<sup>104</sup> (2000) 6 NWLR (Pt. 660) at 249

<sup>105</sup> Section 33 CFRN

<sup>106</sup> Section 34 CFRN

<sup>107</sup> Section 35 CFRN. See also UwakweAbugu, 'An Assessment of the Legality of the Covid-19 Regulations and Policies' <https://thenigerianlawyer/an-assessment-of-the-covid-19-regulations-and-policies-by-prof-uwakwe-abugu/> accessed on 28<sup>th</sup> June 2021.

### 5.5. *Child's Rights Act 2003*

Children have a set of fundamental rights, as set out in the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Nigeria gave a legal consent to both the CRC and the ACRWC through the enactment of Child's Rights Act (CRA) 2003.<sup>108</sup>

The ACRWC and the CRC were not made part of the domestic laws of Nigeria because Nigeria felt that those instruments did not take cognizance of the peculiar needs of Nigeria and make provisions in respect thereto in the instruments. Nigeria therefore preferred to produce an Act that in substance contains the salient provisions of the Charter and the Convention and further contains the provisions that shall take care of the peculiar needs of Nigerians as a people.<sup>109</sup>

The rights of the child to health and health services were covered in details under Section 13 of this Act. The section specifies that every child is entitled to enjoy the best attainable state of physical, mental and spiritual health and it is the responsibility of every Government, parent, guardian, institution, service, agency, organisation or body responsible for the care of a child, to make it happen. This legislation requires the Government to endeavour to reduce infant and child mortality rate and ensure the provision of necessary medical assistance and health care services to all children with emphasis on the development of primary health care. Further the Government is required to ensure the provision of adequate nutrition and safe drinking water, good hygiene and appropriate health care for expectant and nursing mothers. Also this Act requires the Government to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology. The responsibilities of every parent guardian or person having the care and custody of a child under the age of two years shall ensure that the child is provided with full immunization. This section follows, either wholly or in part, Article 24 of the CRC. The CRA also makes provisions for the penalty to be imposed on parent, guardian care of a child who fails to provide full immunization for a child under the age of two years.<sup>110</sup> The Court is also empowered by the Act, to make, in substitution for or addition

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<sup>108</sup> Child's Rights Act, 2003

<sup>109</sup> Aja Nwachukwu, M.A., 'The Nigerian Child and the Right to Participation: A Peep through the Window of "The Best Interest" Clause of the Child's Rights Act' *Beijing Law Review* (2017) 159 <<https://doi.org/10.4236/blr.2017.82009>> Accessed on July 9, 2021

<sup>110</sup> Section 13(5). CRA, 2003.

to any penalty stipulated under of this section, an order compelling the parent or guardian of a child to get the child immunized.<sup>111</sup> The Act established the National Child Rights Implementation Committee (National Committee). The Secretariat of the National Committee is the Ministry responsible for Women Affairs and Youth Developments. The States are also empowered by Sections 264-267 of the Act to make similar arrangement and establish the State Child Rights Implementation Committee, with the Secretariat at the Ministry responsible for children. At the local government level, the Act under Sections 268-271, empowers the local government to establish the Local Government Child Rights Implementation Committee, with the office of the Chairman of the Local Government as the Secretariat.

### ***5.6. The National Health Act***

It is a legal framework for the regulation, development and management of the Nigerian Health System. The Act contains provisions on access to health care, cost of health care, quality and standards. The Act established the Basic Health Care Provision Fund(BHCPF)<sup>112</sup> and provides that the BHCPF shall be financed from: Federal Government Annual Grant of not less than one per cent of its Consolidated Revenue Fund; grants by international donor partners; and funds from any other source. Money from the fund is to be used to finance amongst others:-

- (a) 20 percent of the fund to provide essential drugs, vaccines and consumables for eligible primary health care facilities
- (b) 15 per cent of the fund to be used for the provision and maintenance of facilities, equipment and transport for eligible primary healthcare facilities.

This provision of funds for vaccines and primary health care has a direct impact on the prevention of under-five morbidity and mortality if well implemented.

### ***5.6. National Primary Health Care Development Agency Act (NPHCDA) 1992***

This Act established the National Primary Health Care Development Agency (NPHCDA) in 1992 as a semi-autonomous Agency under the Federal Ministry of Health with the responsibility

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<sup>111</sup> Section 13 (6). CRA, 2003.

<sup>112</sup> Section 11 NHA 2014

of providing sustainable primary health care services to Nigerians in partnership with Government and Non-Governmental Organizations. The NPHCDA was merged with the National Programme on Immunization in 2007<sup>113</sup>. The Agency drives the primary health care services of the country. Immunization and maternal and child healthcare is a core element of PHC. The functions of the Agency include<sup>114</sup>, providing support to the National Health Policy and technical support to the planning, management and implementation of primary health care. The functions also include mobilising resources, nationally and internationally, for the development of primary health care in support of the programmes of the Agency.

## 6. Immunization Agenda 2030

Immunization services are an essential part of primary health care systems, and a key contributor to people's fundamental right to health. Despite tremendous progress, far too many people around the world – including nearly 20 million infants each year – have insufficient access to vaccines. In some countries, progress has stalled or even reversed, and there is a real risk that complacency will undermine past achievements.<sup>115</sup> The COVID-19 pandemic has reminded the world of the power of vaccines to fight disease, save lives, and create a healthier, safer, and more prosperous future. Moving forward, strong immunization systems will be needed to ensure that people everywhere are protected against COVID-19 and other diseases. The World Health Assembly, with the support of countries and partners, has endorsed a new global vision and strategy, called the Immunization Agenda 2030 (IA2030), to address these challenges over the next decade and save over 50 million lives<sup>116</sup>. The IA2030 strategy—to extend the benefits of vaccines to everyone, everywhere—is underpinned by four core principles: it puts people in the centre, is led by countries, implemented through broad partnerships, and driven by data. It aims to maintain hard-won gains in immunization, recover from the disruptions caused by COVID-19, and achieve even more – by leaving no one behind, in any situation or at any stage of life<sup>117</sup>. IA2030 was developed through a “bottom-up” co-creation process, with close engagement

<sup>113</sup> NPHCDA, 'About Us' <[www.nphcda.gov.ng/about-us/](http://www.nphcda.gov.ng/about-us/)>

<sup>114</sup> Section 3 NPHDA Act

<sup>115</sup> WHO Immunization Agenda 2030. <https://www.who.int/teams/immunization-vaccines-and-biologicals/strategies/ia2030>. Accessed on July 16, 2021.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

of countries to ensure that the vision, strategic priorities and goals are aligned with country needs. The IA2030 draws on lessons learned from implementation of the Global Vaccine Action Plan (2011-2020) and disease-specific initiatives such as polio and measles eradication efforts.

## **7. Challenges to Realization of Right to Health for Children**

### **Classification of the right to health as ‘second generation rights’**

The classification of human rights into first, second and third generation rights has affected the effective pursuit of other rights aside the civil and political rights that are termed ‘first generation’. The right to health is classified under economic, social and cultural rights. The second generation rights require institutional support from the state through legislation for it to be exercised. States are to take into consideration their available resources in the implementation of these rights. This loophole gives justification for the non-protection of the right to health on the basis of lack of adequate resources by the states thus states parties do not give their best in ensuring that these rights are protected. This is the reason for the infamous non-justiciability of the right to health. The provisions of Section 6 (6)(c) CFRN have been used to escape responsibility when it comes to holding the government and policy makers accountable on economic, social and cultural rights.

### *Lack of implementation and delay in the adoption of Child’s Rights Act by States*

Nigeria operates a federal system of government consisting of a central government and federating units. The constitution creates a unicameral legislature for each the states.<sup>118</sup> Until the Child’s Right Act is enacted into law in each of these legislative systems, it is not binding on the states. Hence, no court can prosecute violations of the Child Right Act in states that have not enacted it. Although majority of the State governments have adopted the Act, the execution and implementation of the child rights policy in some states across the nation is not encouraging. This evident in the way the rights of the children are abused in the different states where this policy has been domesticated, as against the highly expected gains that inspired to a great extent the passage of the bill into law. Since the CRA is not fully implemented by all the states of the federation, the implication

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<sup>118</sup> Section 90 of the 1999 CFRN.

is the application of inappropriate laws and flagrant denial of justice due to children.

#### *Inadequate and Unpredictable Supplies of Appropriate Affordable Vaccines*

One of the ways Governments ensure that no child is deprived of his or her right of access to health care services is to ensure that vaccines are made available and that children are fully vaccinated. However, Nigeria and some other countries do experience disruptions in their supplies of vaccines, often because of a mismatch between global production levels and needs. The price of vaccines is also a key barrier to access. For instance, the cost of pneumococcal vaccine, one of the essential children vaccines, was initially so high that many parents could not afford it for their children, until it was subsidized by the Federal Government of Nigeria.

#### *Lack of trust and Low vaccine use*

Another challenge is lack of trust and low vaccine usage. Considerable harm has been caused by anti-vaccine messages resulting in vaccine hesitancy, fear and distrust among the communities and traditional establishments. This also includes the refusal of parents to vaccinate their children, sometimes due to misleading characterizations of vaccine risks. The acceptance of vaccination depends on many factors, from the convenience and quality of facilities and services to the spread of misinformation about the safety and effectiveness of vaccines. These considerations must be understood and addressed to enhance and sustain trust in vaccines and immunization services in communities, to increase health literacy with a focus on vaccination at all levels, and to build resilience against misinformation. The side effect of some vaccines for instance the Pentavalent vaccine has heightened this fear and hesitancy.

#### *Inadequate Funding of the Healthcare System*

Another challenge is that of inadequate funding of the health system including the financing of Primary Health Care. Health system funding in Nigeria comes from various sources and from different financing agents, including the Federal and State Governments, development partners and donor agencies. The Government does not strictly implement the Basic Health Care Provision Fund (BHCPF) established under the National Health Act

2014. The challenges of implementation of the Basic Health Fund ranges from poor funding due to irregular and delayed release of the funds, corruption and lack of adequate supervision among others. The annual budget of BHCPF was ₦55.9bn<sup>119</sup>, out of which ₦13.78bn was approved and made available in Quarter 1 of 2018<sup>120</sup>.

#### *Inadequate State and Local Government Support*

The health system in Nigeria is decentralised. However, the burden of providing adequate healthcare including primary health care and immunisation, is borne by the Federal Government, with insufficient support from the State and Local government (Sub-national Government). This is one of the challenges of implementing effective primary healthcare and immunization programme in Nigeria.

#### *Socio-cultural, physical and resource - related barriers*

Another challenge to the child's access to complete immunization and right to health, manifests in the form of socio-cultural, physical and resource-related barriers. Evidence from some studies<sup>121</sup> indicated that these factors constitute substantial impediments to accessing health care in Nigeria and negatively impact upon child health and survival. These identified barriers include factors such as the level of household income, health facility delivery, place of residence, difficulty in getting to health facilities and other social and cultural norms<sup>122</sup>. The result of the Nigeria Demographic and Health Survey 2018<sup>123</sup> which included trends in childhood vaccinations indicated that children whose mothers have

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<sup>119</sup> Ezejiofor Chinwe and Olushola Ojo, 'An Appraisal of the National Health Act' (2020) *International Medical Malpractice and Ethics Law Course*, PG Law Programme, University of Abuja (12)

<sup>120</sup> Nigeria Center for Disease Control, 'A Report of the Implementation of Basic Health Care Provision Fund for Health Emergencies' (2020) <[ncdc.gov.ng/files/report\\_project](http://ncdc.gov.ng/files/report_project)>

<sup>121</sup> Sunday A. Adedini, Clifford Odimegwu, OlusinaBamiwuye, OpeyemiFademyibi& Nicole De Wet, 'Barriers to Accessing Health Care in Nigeria: implications for child survival, Global Health Action', [2016] <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3957799/>> accessed on 27<sup>th</sup> April 2021.

<sup>122</sup> Stella Babalola and AdesegunFatusi, 'Determinants of Use of Maternal Health Services in Nigeria; Looking Beyond Individual and Household actors' [2009] <<https://doi.org/10.1186/1471-2393-9-43https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/1471-2393-9-43>> accessed on 27<sup>th</sup> April 2021.

<sup>123</sup> See note 1

more than a secondary education are more likely than those whose mothers have no education to receive all basic vaccinations.

## **8. Recommendations**

From the foregoing, this paper recommends as follows:

There should be a constitutional amendment which fully makes the right to health, as well as other socio-economic rights, justiciable and enforceable. This will settle the issues on the definition of a child for the purpose of enforcement of these rights. There is a need for more judicial activism to ensure the realization of health right in Nigeria. Whenever the issue of justiciability arises in the enforcement of the right to health of the Nigerian Child, the courts should construe it in the best interest of the child.

Adoption of the CRA by states that are yet to adopt it. States that have domesticated the Child's Rights Act also have a role to play in challenging the remaining states to do the same by showing concrete evidence of the change in the lives of children in those states.

In order to address the challenge of inadequate supplies and high cost of vaccines for children, there is a need for the Government and its Agency to secure high-quality supply chains for vaccines and related commodities and effective vaccine management, within the primary health care supply system. This will ensure that high-quality vaccines are always available in the right quantity and form at the right time, in the right place and stored and distributed under the right conditions. The vaccines should also be made affordable by the Government. There is also a need to strengthen mechanisms for rapid access in emergencies, outbreaks or pandemics and for people who require vaccines.

There is a need to build and sustain strong political and financial commitment for immunization at all levels in order to address the challenge of inadequate funding of the healthcare system generally and primary health care system in particular. Government should also prioritize immunization in strategic and operational planning and in policy, fiscal and legislative instruments.

Healthcare funding including primary health care and immunisation should be given priority allocation in the Government's annual budget. Timely releases of money into the Basic Health Fund and strengthening of institutions will be a big boost to PHC implementation. It is also important to ensure good governance, stewardship and accountability of financing for



immunization programmes for optimal performance and best value for money.

There is a need for the States and Local governments to show more commitments, including funding, for effective implementation of primary health care programmes, such as immunization of children. This will help to complement the efforts of the Federal Government. There should be a comprehensive health response to ensure that national and sub-national coordination and governance mechanisms effectively support equitable, transparent, timely decision-making on the allocation of essential supplies and vaccines and mobilization of trained human resources.

Socio-cultural and physical barriers are substantial challenges to the right of a child to health. In order to mitigate these challenges, there is a need to identify and overcome the barriers to facilitate a child's access to health services such as vaccination. Also, the design, implementation and delivery of immunization services should take into considerations the needs of individuals and communities, as well as barriers to access to immunization services.

The causes of low vaccine use and vaccine hesitancy must be understood and addressed in order to increase people's demand for immunization services. There is a need to strengthen immunization information through strong community engagement, in order to build people's trust and increase community support, acceptance and use of vaccines for their children. Also, the national immunization programmes should be designed in such a way that will enable the Governments both the Federal and States, to detect and respond to any concern about vaccine safety by continuous monitoring and coordination among relevant stakeholders.

## **9. Conclusion**

Nigeria is not lacking in legal frameworks that protect the rights of children under five to basic immunization and good health care. Effective implementation of the relevant laws such as the CRA 2003 and other health policy frameworks, in Nigeria, on right of the child to health, will lead to reduction of infant mortality and morbidity from vaccine-preventable diseases for every child. There is a need to ensure good health and well-being for children under five by strengthening immunization within primary health care including adequate funding to ensure reliable supply of appropriate and affordable vaccines for immunization programmes.

Overall, it is imperative for the Federal Government of Nigeria, to commence the production of vital disease preventable vaccines for children, such as vaccines for polio, cholera, meningitis and other child-killer diseases, to increase local supplies and availability. In the past and in recent times, Nigeria has experienced a resurgence of outbreak of vaccine-derived polioviruses, even when the country had been declared as a polio-free country. Adequate supply of children vaccines will help Nigeria to control cases of resurgence of outbreak of diseases and boost the overall immunization programme. Increasing the rate of childhood vaccinations coverage in Nigeria will facilitate a child's right and access to health, resulting in the reduction of under-five mortality and morbidity rate.