Universal Health Coverage and The Right to Health in Nigeria

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Abstract

This research paper scrutinizes the concept of universal health coverage (UHC), the nature, purpose and its relevance within the framework of the right to health, particularly in respect of persons suffering from non-communicable diseases in Nigeria. By relying on the objectives of the universal health coverage as a necessary fulfilment of the right to health, this paper argues that the concept of universal health coverage is still highly restricted especially within the concept of non-communicable diseases in Nigeria. In order to situate the rights of NCD sufferers within the rights framework, the paper examines the realization of the right to health in Nigeria and it suggests critical interventions as appropriate response to NCDs.

Keywords: universal health coverage, right, health, non-communicable diseases (NCDs)

Introduction

In a bid to eradicate poverty occasioned by catastrophic health expenditure and improving the quality and equitable distribution of health and health services, the World Health Organization (WHO)[2]; the United Nations'

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2 World Bank Group. Tracking universal health coverage. Global Monitoring Report. [2017] http://documents.worldbank.org/curated/en/640121530958612 5/Tracking-universal-health-coverage-2017-global-monitoring-report accessed 6 March 2019; World Health Organization. Making fair choices on the path to universal health coverage. Final Report of the WHO Consultative Group on Equity and Universal Health Coverage. 2014. Geneva: World Health Organization.

Sustainable Development of Goals (SDG)[3] and the UN high level meeting (UN HLM) of September 30, 2019[4] focused on universal health coverage (UHC). These organisations considered the UHC as goals to be achieved by health systems around the world[5] to make health care accessible to individuals and to reduce the impact of poverty caused by calamitous catastrophic health spending. Poverty, it has been explained, is both a cause and the outcome of ill health.[6] Poverty arises where individuals are pushed into indebtedness as a result of catastrophic health spending, a situation where by out of pocket (OOP) spending exceeds more than 50% of non-food expenditure[7], the economic consequences of which are that it impedes people from receiving the care they need; postpone the care or reduce the quality of care and also leads to the exclusion of majority from accessing the health care system or pushes them into indebtedness because of the health shock.[8]

This is particularly so in the case of non-communicable diseases (NCDs), which are leading causes of global mortality and morbidity, and are now responsible for more deaths worldwide than all other causes combined.[9] They account for over 70% of all deaths worldwide,[10] and, by WHO

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3 Sustainable Development Goals (SDG) 3.8 available on https://www.undp.org/ assessed 30 June 2020

4 World Health Organization: Health financing available on https://www.who.int accessed 13 October 2021 at 1.57pm

5 World Health Assembly Doc A58/20 (25 May 2005).[World Health Assembly

6 The African Health Strategy: 2007-215, Third Session of the African Union Conference of Ministers of Health, Johannesburg, South Africa, April 9–13, 2007, CAMH/MIN/5(III), 4, available at http://www.africa-union.org/root/UA/Conferences/2007/avril/SA/913%20avr/doc/en/SA/AFRICA_HEALTH_STRATEGY.pdf (accessed 28 August 2013) [hereinafter African Health Strategy]. Cited in Nnamuchi Obiajulu, 2014. Health and Millennium Development Goals in Africa: Deconstructing the Thorny Path to Success in B. Toebes et al. (eds.), The Right to Health, Asser Press. Springer Publishing

7 World Health Organization. 2000. Health systems: Improving performance. The World Health Report. accessed 6 August, 2019 from https://www.who.int/whr/2000/en/

8 Ichoku, Ementa Hyacinth and Fonta, William, The Distributional Impact of Healthcare Financing in Nigeria: A Case Study of Enugu State (October 1, 2006). PEP working paper series 2006-17, :[2006] https://ssrn.com/abstract=3173203 or http://dx.doi.org/10.2139/ssrn.3173203 accessed 19 September 2019,

9 World Health Organization. 2019. World Statistics Report. Available on http://www.who.int/chp/chronic=diseases=report/en/ accessed 13 October 2021.

10 World Health Organization 2011. Global status report on non-communicable diseases. Geneva: World Health Organization available on https://www.who.int/nmh/publications/ncd_report2010/en/ accessed 15 July 2019.

projection, by 2030, 52million deaths will be caused by NCDs.[11] NCDs are incurable but can only be managed through expensive, continuous and lengthy treatment for months or years and drive families into extreme poverty.[12] Among non-communicable diseases, special attention has been devoted to cardiovascular disease, diabetes, cancer and chronic pulmonary disease. The burdens of these conditions affect countries worldwide but with a growing trend in developing countries. The WHO reports that cancer is the first or second leading cause of death before the age of 70years in most West African countries including Nigeria,[13] where statistics of hypertension, diabetes, cancer, cardiovascular diseases, dyslipidemia and other forms of chronic diseases are on the increase.[14] The rise in NCDs stifles development and stultify the attainment of MDG as regards poverty reduction, and the Sustainable development agenda (SDG) particularly catastrophic expenditures on health care for NCDs. Due to the complexity of the nature of NCDs, treatment is costly and a contributory factor to poverty and hunger.[15] Invariably, this inhibits the attainment of the Sustainable Development Goals (SDGs 2030). On the other hand, improved health care in ill health increases rate of survival of sick people, increases quality of life in ill health and aids the compression of morbidity. It is with this challenge in mind that there is a renewed focus on the use of UHC as a means of achieving population health and reducing poverty. This paper focuses on the status of UHC and how the coverage can expand to NCD sufferers. It also considers the pathways to crystalize for NCDs. To meet this objective, this paper is divided into five sections. The first section is the definition section;

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11 United Nations. 2011. Prevention and control of non-communicable diseases. Report of the United Nation General Secretary: New York. Available on http://www.un.org/ga/search/view_doc.asp/symbol-A/66/83&Lange=E accessed 15 July 2021.

12 Knaul, F. M. 2015. Achieving effective health care with a new approach to caring for chronic illnesses available on https://www/sciencedaiy.com/releases/2015/09/150911164207.htm accessed 19 October, 2020.

13 Hyuna Sung et.al. 'Global Cancer Statistics : GLOBOCAN Estimates of Incidence and Mortality Worldwide for 36 Cancers in 185 countries.' [2020](7)(3) *A Cancer Journal for Clinicians*, 209-249. See also, Global strategy towards eliminating cervical cancer as a public health problem. Geneva: World Health Organization; 2020 available on (https://www.who.int/initiatives/cervical-cancer/strategy).

14 Idris, I.O., Oguntade, A.S., Mensah, E.A., et.al.. 'Prevalence of Non-Communicable Diseases and its Risk Factors among ijegun-isheri Osun residents in Lagos State: a community based cross-sectional study;.[2020](20) *BMC* Public Health 1258. See also, Ayomikun, M., Oladele Ruth, Iyinoluwa, I. et.al.. Addressing the High Burden of NonCommunicable Diseases in Nigeria: a commentary [2020] (35). Journal of Health Research. 2

15 Paragraph 31 Political Declaration

section 2 discusses the reasons for the creation of the UHC, section 3 discusses the legal status of the UHC. In section 4, the paper discusses the scope of the right to health and the overlap between the UHC and the right to health. Lastly, section 5 discusses non-communicable diseases and the possibility of implementing a right to health through the UHC in Nigeria. In addition, this paper considers the limitations on the enforcement of the right to health of NCD sufferers.

The Concept of Universal Health Coverage

According to the WHO, 'Universal health coverage means that all people have access to the health services they need, and where they need them, without financial hardship[16]. According to the WHO, the goal of UHC is to ensure that all persons obtain the health services required without suffering financial hardship.[17] Also, "that all people can use the promotive, preventive, curative, rehabilitative and palliative health services they need, of sufficient quality to be effective, while also ensuring that the use of these services does not expose the user to financial hardship".[18]

The UN General Assembly offered a fuller multidimensional goal of UHC that:

> [all] people have access, without discrimination, to nationally determined sets of the needed promotive, curative and rehabilitative basic health services and essential, safe, affordable, effective and quality medicines, while ensuring that the use of these services does not expose the user to financial hardship , with a special emphasis on the poor, vulnerable and marginalized segments of the population.[19]

In summary, three critical aims can be deduced from these definitions. The first aim is to ensure that everyone within a country have access to quality healthcare services, according to needs and preferences, regardless of income, social status or residency. Secondly, people are empowered to use

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16 WHO: Universal Health Coverage available on https://www.who.int/health-topics/universal-health-coverage#t accessed 14 October 2021.

17 World Health Organization. 2000. *op. cit.*

18 World Health Organization: Health Financing available on. http://www.who.int/health_financing/universal_coverage_ accessed 17 October, 2020

19 United Nations General Assembly, Global Health and Foreign Policy, UN Doc. A/67/L.36 920120 para. 10

those services, the outcome of which is to guarantee access, financial protection, health status, equity, quality and efficiency[20] Thirdly, individuals and communities receive health services they need without suffering financial hardship and it includes the full spectrum of essential quality health services from health promotion, prevention, treatment, rehabilitation and palliative care. WHO has captured the tripartite dimensions of the UHC as: the health services that are needed, the number of people that need them and the costs to whoever must pay – users and third party funders.[21]

Reasons for the Creation of the Universal Health Coverage

A synthesis of literature reveals three distinct but interlocked dimensions which are critical to the establishment of Universal Health Coverage from which there has emerged several interpretations. These dimensions, as adopted by Sustainable Development Goals (SDG) 3.8 views UHC as financial risk protection, access to quality essential health care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.[22]

A first dimension, which is the overarching aim of UHC is its efforts to reduce health inequities and protect against economic hardship. Margaret Whitehead, in her 1992 seminal publication[23], defined health equity to mean differences in health care which is unfair, unjust and unnecessary. She defines health equity to mean equal access, equal use for equal need and equal quality care for all. At its most fundamental level, to achieve health equity, there must be equal treatment all persons. UHC reduces existing inequalities between rich and poor communities by ensuring health equity through provision of accessible, preventive and clinical health care services to all. The goal of achieving health equity is more specifically stated in WHO's Report that the [UHC] is a 'practical expression of the concern for heath equity and the right to health'[24] with the goal of ensuring that all people obtain the health services required without suffering financial

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20 World Health Organization. 2010. Health systems financing: The path to universal coverage. The World Health Report. https://www.who.int/whr/2010/en/ accessed 5 September, 2019

21 Ibid. 2.

22 United Nations. Sustainable development. https://sustainabledevelopment.un.org/sdgs accessed 12 September, 2016

23 Whitehead M. The concepts and principles of equity and health. [1992] (22) (3) International Journal of Health Services 429-45.

24 World Health Organization WHO Discussion paper. [2021] www.who.int › https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-(uhc) accessed October 13 2021

hardship when paying for them.[25] This it does, through seeking to ensure a strong, efficient, well run health system that meets priority health needs through people-centered care, encompassing preventive healthcare; early detection; rehabilitation and affordability. As a result of its importance, health equity has found expression in several constitutions and state policies. This reflects for example, in the NHS constitution of England[26], where the provision of comprehensive health care to all in need is the central tenet regardless of socioeconomic status, gender, ethnicity, sexual orientation or religion. The commitment to equity access is enshrined in the NHS policy plan to include NCDs,

A second dimension in the goal of the UHC is that it is a rights based approach. This is reflected in the definition of UHC which reflects a scenario where persons in need of health intervention have access to the services required. Secondly, the services are of sufficient quality to improve the health of the users. It is therefore argued that universal health coverage leads to better health and protects households from catastrophic expenditures. In order to ensure access to health, health system financing arrangements affect social goals as well as influence individual choices and options with regard to employment, especially countries, for instance the USA, where health insurance is linked to one's place of employment. The healthcare within the contemplation of UHC consists of goods and services designed to promote health, including preventive, curative and palliative interventions.[27] It also includes the building blocks of a health system to medical products, vaccines and technologies. Within this paradigm, availability of medical goods is very important to the achievement of health to all populations.

A third aspect is the economic aspect of implementing universal health care system. The definition of WHO concerning universal health coverage describes it to mean that everyone can use the quality health services they need without experiencing financial hardship at the point of use[28]. There are

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25 World Health Organization. 2014. Universal health coverage (UHC) Fact sheet No. 395. https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-(uhc) accessed 12 September, 2021

26 Department of Health. The NHS Constitution. 2009. London, Department of Health.

27 World Health Organization. 2000. *op. cit.* 6.

28 World Health Organization. Universal health coverage: Financial protection. www.euro.who.int/../health.../health.../universal-health-coverage-financial-protection accessed 8 November, 2018

a number of strategies that have been evolved in to reduce out of pocket spending, one of which is through the introduction of the health insurance. This involves the pooling of resources to allow spreading of financial risk associated with the need to use a health service. Insurance reduces the incidences of catastrophic spending across the low and middle income threshold levels in the target groups for the retired, disabled, poor and ethnic minority persons[29]. This is because a major cause of poverty among insured persons in the target groups is non-hospital costs (such as medication and travel).[30]

Remarkably, a lot of successes have been recorded in states such as the Philippines[31] that have established a mandatory insurance program to complement existing health insurance. In such jurisdictions too, there is also a risk protection through expansion of National Health Insurance Program along with improved access to quality hospitals and health care facilities and the attainment of health related MDGs.

The Legal Status of Universal Health Coverage

A school of thought has argued from the human rights based approach that the universal health coverage is a legal obligation that is deeply embedded in international law.[32] This position is grounded in WHO when it states that: "*UHC is firmly based on the WHO constitution of 1948 declaring health a fundamental human right and on the Health for All Agenda set by the Alma Ata declaration in 1978. UHC cuts across all of the health-related Sustainable Development Goals (SDGs) and brings hope of better health and protection for the world's poorest*"[33] According to scholars, such as Ngwaba[34], universal health coverage is enumerated as a core obligation for the right to health which imposes obligations on States to create legal

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29 World Health Organization. 2010. *op. cit.*

30 Palmer, M. 'Inequalities in universal health coverage: Evidence from Vietnam' [2018) available on http://dx.doi.org.org/10.2139/ssm.2524146 accessed 8 November, 2020

31 Bredenkamp, C. and Buisman, L. R. 'Universal health coverage in the Philippines: Progress on financial protection goals.' {2015] *Policy Research Working Paper* 7258 https://openknowledge.worldbank.org/handle/10986/21990 accessed 8 November, 2018

32 Sachs, J.. 'Achieving universal health coverage in low-income settings' [2012] (380)(9) *Lancet* 449

33 World Health Organization. What is universal coverage? Available on http://www.who.int/health_financing/universal_coverage_definitions/en accessed 17 October, 2018

34 Uchechukwu Ngwaba, 2018. 'A Right to Universal Health Coverage in Resource-Constrained Nations: Towards a Blueprint for Better Health Outcomes' (2018) 5 Transnat'l Hum Rts Rev 1

entitlements to health care for all their residents. Nwankwo et.al[35] also argue that the concept of universality is a core principle of both the UHC and human rights, and as an aggregate health goal, should be anchored in the right to heath framework. This argument is consistent with scholars such as Gorik Ooms,[36] who opines that universal health anchored in the right to health raises the bar for improving health care. To achieve the right to health through UHC, therefore, there is need to for a holistic approach towards realizing the objectives by ensuring the fulfillment of the underlying determinants.[37] Arguably, the universal health coverage is consistent with the requirements of the right to health, having the potential of providing individuals, access to health services, enforcing the principle of universality which is a fundamental principle of human right, regardless of the legal status of individuals.[38] From the foregoing therefore, it is important to consider the human rights principles related to the right to health that brings to bear the goals of formulating and implementing universal health coverage.[39]

State obligation under UHC

The basis of state obligation derives from both national and international sources. At the international level, state obligation is founded in Article 2.1 of the International Covenant on Economic Social and cultural Rights (ICESCR) which states that:

> *Each State party to the present Covenant undertakes to take steps, individually, and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including particularly the adoption of legislative measures.*

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35 Nwankwo, Aje-Famuyide and Olayinka. 2019. Driving equitable access to Healthcare for NCD Sufferers in Nigeria through a Legal Informatics Approach International Journal of Business and Applied Social Science 5:2 available on https://ijbassnet.com/

36 Gorik, O., & others.. Universal health coverage anchored in the right to health. 2013. World Health Organization Bulletin 91:2-2A. https://www.who.int/bulletin/volumes/91/1/12-115808/en/ accessed 17 October, 2018

37 Ibid.

38 Chapman, A. The contributions of human rights to universal health coverage. [2016] (18) (2) *Health and Human Rights* 5.

39 Forman, L., and others.. What core obligations under the right to health bring to universal health coverage. [2016](18) (2) *Health and Human Rights* 23

Moving towards UHC requires strengthening of health systems and achieving this depends on the availability, accessibility and capacity of health works to deliver quality people-oriented health care. As the UN System Task Team on the Post 2015-UN Development Agenda noted, 'ensuring people's rights to health and education, including through universal access to quality health and education services is vital for inclusive social development'. It further requires investment to 'close the gaps in human capabilities that help perpetuate inequalities and poverty across generations.' The 2010 World Health Report provides that in order to move towards UHC, mandatory pre-payment financing mechanisms must form the domestic health care financing[40] Mandatory pre-payment will include tax, other government revenues and mandatory health insurance contributions i.e. social health insurance models.

Nature and scope of the right to health

The right to health as a fundamental human right

Health and human rights are enshrined in the World Health Organization (WHO) Constitution that came into force in 1948. It sates that the enjoyment of the highest attainable standard of health is fundamental right of every human being, without distinction of race, religion, political belief, economic or social condition. It further states that health is a state of complete physical, mental and social (spiritual) well-being and not merely the absence of disease or infirmity.

The Vienna Declaration and Programme of Action (1993)[41], from the World Conference on Human Rights, states: "All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis" According to the World Health Organization (WHO), in its preamble, every person has a fundamental right to the enjoyment of the 'highest attainable standard of health'. The human right to health is not found in the UDHR as a separate article, instead, it is enshrined in Article 25, paragraph 1 which guarantees the right to an adequate standard of living which guarantees everyone's health and

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40 World Health Organization. 2010. *op. cit.*

41 UN General Assembly. Vienna Declaration and Programme of Action 12 July 1993 available on https://www.ohchr.org last accessed 23 September 2021.

wellbeing, including food, clothing, housing and medical care and necessary social services. The right to health is also provided under the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 which came into force in 1976.[42]

Other conventions that recognize the right to health includes the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) from 1966 (in force since 1969) enshrines the non-discriminatory right to public health, medical care, social security and social services[43]; the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[44]. Likewise is the UN Convention on the Rights of the Child[45] and the UN Convention on the Rights of Persons with Disabilities. Within the scope of regional human rights conventions on the right to health content are the Council of Europe Charter, the European Social Charter[46]; the African Charter on Human and Peoples' Rights[47] and the African Charter on the Rights and Welfare of the Child[48]

State obligations for the realization of the right to health

International law imposes a three-fold obligation on states for the realization of the right to health.[49] These obligations are the right to respect, protect and fulfill the human rights of individuals under their jurisdiction. This is similar to the provision under the African human rights system where the Banjul Charter provides that: member states of the Organization of African Unity who are parties to the present Charter shall recognize the rights, duties and

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42 Article 12 paragraph

43 Article 5

44 The CEDAW provides for measures to realize the right to health without discrimination in the area of health-related education, in the workplace, in relation to family planning, rural area and during pregnancy -See Article 12

45 Article 24 paragraph 1. It recognizes the right of the child to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health while the UN Convention on the Rights of Persons with Disabilities recognizes the right of persons with disabilities to the highest attainable standard of health without discrimination due to their disabilities.

46 (1961/1665) and the revised (1996/1998). In Article 10, para. 1 the supplementary protocol to the American Human Rights Convention (Protocol of San Salvador) contains the right to health which is defined as the highest level of physical, mental and social well-being

47 The African Charter and the guarantees of the best attainable state of physical and mental health – See Article 16

48 Article 14 para 1 provides for the right to the best attainable state of physical, mental and spiritual health

49 General Comment No. 12 and 14 ESC

freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.[50] The extent of these obligations is examined below:

The Obligation to Respect: requires states to refrain from interfering directly or indirectly with the enjoyment of the right to health.[51] In terms of measures to respect, the ESC indicates that the states must 'refrain from denying or limiting equal access' for all adults and children. With respect to non-communicable diseases, the obligations to respect require that states do not undertake actions which are contrary to the right to health of sufferers of NCDs. This encompasses all general actions which may impede the fulfillment of the right to health of sufferers, through non-implementation of policies, non-availability of healthcare, or even economic inequality as a result of state programmes.

The Obligation to Protect requires States to take measures to prevent third parties from interfering with article 12 guarantees. This duty to protect individuals from third party infringement is a positive one on the state to take measures to prevent others from interfering with guarantees under the right to health. This interpretation has been emphasized in the case of *Ximenes-Lopes v. Brazil*[52] a case which concerned the regulation of a private mental care body in Brazil that participated in the public health scheme set up by the state under its constitution. The court asserted that there is the duty to regulate, supervise and control health programs and services, carried out either directly or through third parties. The court held that: the states must regulate and supervise all activities related to the health care given to the individuals under the jurisdiction thereof, as a special duty to protect life and personal integrity, regardless of the public or private nature of the entity giving such healthcare. In view of this, the obligation to protect extends to regulating, monitoring and ensuring accountability for violations by states and other actors. It also includes ensuring a level of participation by the population, adopting legislations to guarantee equal access to health care and other health related services provided by third parties etc.[53]

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50 Article 1 of Banjul Charter.

51 Krennerich, M. The human right to health: Fundamentals of a complex right. [2017]. *Healthcare as a human rights issue*. S. Klotz, H. Bielefeldt, M. Schmidhuber, A. Frewer, Eds. Bielefeld: Transcript Verlag. 24-54.

52 Ximenes-Lopes v. Brazil. 2006, *IACtHR* Series C No. 149.

53 General Comment 14, paragraph 35 CESCR.

The Obligation to Fulfill: requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.[54] This means that the health needs of discrete groups must be mainstreamed into public health debate to ensure they remain visible and integrated in the development of national health agenda.[55] The mainstreaming of the health needs of NCDs sufferers into the development and implementation of national public health policies and strategies contributes to the practical realization of the rights of these people.

Right to health in Nigeria

The question that we seek to answer in this section is: Whether there is a basic right to health under the Nigerian constitution. In answering this question, it is necessary to review international and domestic legislations on health in order to know whether the right is recognized as a basic right. The Constitution forms the fulcrum of every right in Nigeria and it is upon the provisions of section 1 that all rights rest. The Nigerian constitution has recognized several rights to health clauses by ratifying these human rights treaties and covenants such as the International Covenant on Economic, Social and Cultural Rights (ICESCR)[56], the International Covenant on Civil and Political Rights (ICCPR)[57]International Convention on the Elimination of All Forms of Discriminations (ICERD)[58] Convention on the Elimination of all Forms of Discriminations Against Women (CEDAW)[59] and the Covenant on the Rights of the Child (CRC)[60]. Regarding the possibility of applying these treaties and conventions within domestic framework, it is significant to note that with the exception of the African Charter on Human and People's rights, which has been incorporated into domestic legal order[61], no other treaty bearing on the right to health has direct application in Nigeria.

The 1999 constitution of Nigeria does not have the right to health as one of its fundamental human rights as provided for in Chapter IV[62], but it is

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54 The right to the highest attainable standard of health. UN Doc. E/C.12.2000/4. General Comment 14 paragraph 33

55 J. Tobin, The right to health in international law. [Oxford: Oxford University Press 2012].

56 Ratified 29 October, 1993.

57 Ratified 29 October, 1993.

58 Ratified 4 January, 1969.

59 Ratified 4 January, 1985.

60 Ratified 19 April, 1991.

61 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (the African Charter Act'), now contained in Cap A.0,, Laws of the Federation, 2004.

62 Section 14(2) (b) Constitution of the Federal Republic of Nigeria, 1999 (as amended).

provided for under Fundamental Objectives and Directive Principles of State Policy[63] which merely sets out the directives and principles of national policy as merely directory[64], without any right to a legal remedy in case[s] of violation. Accordingly, section 17(3) (d), states one of the obligations of the government towards the realisation of the right to health is to make policies which shall ensure that there are adequate medical and health facilities for all persons in the country. Be that as it may, Nigerian policies have in one way or the other, gravitated towards the realization of health for all. In the next section, this paper discusses the different policies in place to fulfil the goal of a right to health which is accessible without discrimination and without impoverishing individuals.

Towards realizing right to health in Nigeria through the_Universal Health Coverage

The Nigerian government has put up different policies and institutions to fulfill its states obligation to protect the right to health care as entrenched in the various international and domestic laws. These policies focus on how to move closer to UHC with issues related to how and from where to raise sufficient funds for health. This section will consider the National Health Policy, Health Financing Policy, National Strategic Health Development Plan and the National Health insurance scheme put in place to fulfill state responsibility to protect and promote health care.

This section seeks to answer the question whether the NHA and other health policies in Nigeria is robust enough to actualize the right to health care.

National Health Financing Policy

The National Health Financing Policy[65] is a policy under the Federal Ministry of Health with the objective of promoting equity and access to

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63 The 1979 Constitution innovated Chapter II which is the fundamental objectives and directives of state policy. Fundamental objectives have been defined as the 'directive principles, laid down by the policies which are expected to be pursued in the efforts of the nation to realize the national ideals – see Akande, J. 'Fundamental objectives and directive principles of state policy within the framework of a liberal economy: A note'. In I. A. Ayua, D. A. Guobadia, A. O. Adekunle, eds *Nigeria – Issues in the 1999 Constitution.*. [Lagos: NIALS.] 198

64 It should be noted that the Supreme Court of Nigeria, in the case of *A.G. Ondo State v. A.G. Federation* (2002) [9] (NWLR) 362 (per Nwaifo JSC) had adopted a liberal construction of the Constitution, which suggests that a federal legislation could make Chapter Two provisions enforceable.

65 Federal Republic of Nigeria. 2006. National financing health policy. https://cheld.org National-health-financing.pdf accessed 23 October, 2018

quality and affordable health care. It also seeks to ensure adequate and sustainable funds for accessible, affordable, efficient and equitable health care provision in Nigeria. To increase fiscal space, the policy aims to mandate federal, state and local governments to allocate at least 15% of total budgets to health; establish social health insurance (SHI) and CBHI (community based health insurance) schemes towards assuring universal access, minimize the burden of OOP as it negates fairness in financing.

National Health Act

The National Health Act (NHA) has been described as 'one singular instrument required to unlock economy and provide the greatest transformation for the health sector in Nigeria'. In principle, it provides the best possible services within the limits of available resources for health care of persons living in Nigeria[66]; it also seeks to protect, promote and fulfill the rights of the people of Nigeria to have access to health care services.[67]

National Strategic Health Development Plan

The renewed effort to reform the Nigerian health system birthed a 5-year National Strategic Health Development Plan (NSHDP) 2010-2015 with 8 strategic priority areas. The NSHD is the overarching scheme represents progress and plan towards health delivery in Nigeria and was developed with the objectives of, among others, developing and implementing health financing strategies at federal, state and local levels consistent with the National Health Financing Policy; ensuring people are protected from financial catastrophic and impoverishment as a result of OOP health expenditures. The priority areas of the NSHDP are:

- Leadership and governance for health
- Financing for health
- Health service delivery
- Human resources for health
- National health management information system (HMIS)
- Partnerships for health
- Community participation and ownership
- Research

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66 Section 1 (c) National Health Act.
67 Section 1 (e) National Health Act.

Social health insurance

Nigeria adopted a social health insurance model in 2005 to enable individuals have access to much needed healthcare and to move towards universal health coverage at an affordable cost. The goals of the NHIS were, among many others, to ensure access to quality healthcare services; provide financial risk protection; reduce rising costs of healthcare services and ensure efficiency in health care.[68] To ensure effective coverage of the populace, the scheme has specific programs for different segments of the society. such as the formal sector social health insurance programme; mobile health, voluntary contributors social health insurance program, tertiary institution social health insurance program; community based social health insurance program; public primary pupils social health insurance program; and the provision of health care services for children under 5years, prison inmates, disabled persons, retirees and the elderly.

The operational guidelines of the NHIS introduced the formal, informal and voluntary health insurance schemes. Primary, secondary and tertiary health care facilities are also provided through the National Health Insurance Scheme (NHIS).

The coverage of the NHIS scheme, though substantial, is highly restrictive and shallow while focus is biased in the provision of economic access to healthcare for the Nigerian citizenry. Section 18 (1) of the NHIS defines the core of the NHIS when it provides that '….in consideration of a capitation payment in respect of each insured person registered with it, or for payment of approved fees for services rendered and to that extent, and in the manner prescribed by the Decree, provide:

(a) Defined elements of curative care'

(b) Prescribed drugs and diagnostic tests;

(c) Maternity care for up to four live births for every insured person;

(d) Preventive care, including immunization, family planning and ante natal and post-natal care;

(e) Consultation with defined range of specialists;

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[68] National Health Insurance Scheme. https://www/nhis.gove.ng accessed 16 October, 2020

(f) Hospital care in a public or private hospital in a standard ward during a stated duration for physical or mental disorder."

(3) In this section, 'defined' means, defined by the Council

From the above, the NHIS covers only routine illnesses while excluding high risk chronic illnesses that cost a lot of money such non-communicable diseases as cardiovascular illnesses, cancer, chronic kidney disease etc. Hospitalization provided by the NHIS is limited to 15 cumulative days in a year. Again, certain health care services, such as are required for the management of NCDs are not covered by the NHIS e.g. radiologic investigation, chemotherapy, Other procedures are given mere partial coverage.

The Formal Sector Programme covers employees of the formal sector i.e. the public sector and the organized private sector. As at second quarter 2020, there were 58527 federal civil servants in Nigeria[69]. Report also shows that over 170million Nigerians are without health insurance[70] In other words, majority of health services are private out-of-pocket spending at the point of delivery.

A lot of controversy and criticisms has trailed the scheme since its inception. Studies have reported low healthcare accreditation[71], low enrolment rate, 3% of Nigeria's population is covered under the scheme; the voluntary nature of the scheme[72]; the refusal of the Nigerian Labour Congress, and the Trade Union Congress to buy into the Scheme; low quality healthcare[73] and low political will. Other challenges identified includes, Nigeria is faced with a huge population, thus evolving a health insurance programme to cover this population has posed a big challenge. Again, the absence of a robust and functional Health Information System (e-NHIS enterprise system) and the lack of adequate modern Information Technology (IT) infrastructure as well

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69 See https://tradineconomics.com/nigeria/employed-persons

70 Chukwuma Muanya. 2020. Over 170 million Nigerians without health insurance. Available on https://guardian.ng/features/over-170million-nigerians-without-health-insurance/ accessed 13 October 2020.

71 Adewole, A. and Osungbade, K.. Nigeria national health insurance scheme: A highly subsided health care program for a privileged few.[2016] (19) *International Journal of Tropical Disease & Health* 19.

72 Olagbenga, E. O. Workable social health insurance systems in Sub-Saharan Africa: Insights from four countries. [2017] (42) (1) *Africa Development* 147

73 Okafor, C. Improving outcomes in the Nigeria healthcare sector through public-private partnership. [2016] (10) (4) (43) *African Research Review* 1.

as the acceptance of capitation at primary level and payment for secondary and tertiary care through fee-for-service has continued to be a challenge.

Back to the beginning: Is Nigeria implementing a right to health of NCD sufferers through the universal health coverage?

A critical factor in securing a universal health care is the health financing mechanism within a system, measured against the twin goals of guaranteeing access to care and advancing economic equity. However, a proactive engagement with the question of health system financing places right to health care squarely in the contested terrain of budget and revenue policies. Universal health care as a quintessential needs-based system entails the inversion of the budget process in order to secure equitable, sufficient and sustainable funding.[74]

However, the formulation of UHC remains unclear regarding NCD sufferers in Nigeria. Recently, the World Bank urged states to move towards UHC for all citizens, and particularly declares that UHC represents a commitment to cover 100% of the population[75] in order to end financial hardship as a result of OOP.[76] As it stands, the availability of a right to health of NCD sufferers' access to affordable health systems is left to ''states 'goodwill, where states take different approaches to UHC for NCDs. This goodwill is particularly problematic in the context of economic inequalities, lack of political will, and corruption as evident in Nigeria. A 2020 investigation on the cost of cancer treatment and its impact in Nigeria[77], revealed that treatment is still a major reason for the impoverishment of many patients, and cause of mortality, for those who could not afford the treatment. A similar report revealed that the cost of medicines for cancer treatment is extremely expensive. According to the report, '*Drugs are purchased as much as N300,000 monthly, while chemotherapy or radiotherapy goes for N200,000 or more, which obviously cannot be afforded by the common man. The increasing death rate of cancer in Nigeria is largely connected with*

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74 Rudiger, A. Human rights and the political economy of universal health care: Designing financing. [2016] (18) (2) *Health and Human Rights* 67

75 World Health Organization. 2010. *op. cit.* xvi-xviii.

76 The World Bank 2020. Available on https://www.worldbank.org/en/topic/universalhealthcoverage accessed 13 October 2020

77 Nike Adebowale 2020. How high cost of cancer treatment has badly affected patients in Nigeria. February 4, 2020 available on https://www.premiumtimesng.com/news/headlines/375628-how-high-cost-of-cancer-treatment-has-badly-affected-patients-in-nigeria.html

poor infrastructure. Currently, there are few comprehensive cancer centres, hence, patients are compelled to seek treatment in more than one hospital or simply travel abroad. Most of the cancer treatment machines are broken down and even the ones that are working are not performing optimally. ……. revealed there are only two functional linear accelerator machine in the country meant to serve over 165, 000 million people'[78]

It is crystal clear UHC cannot be clearly implemented without the accessibility to treatments, crucial medicines and other necessary technologies.[79] Indeed, there needs to be in place a functional health system robust enough to focus on accessible and affordable treatments so that financial hardships are alleviated and equity is achieved.

In the context of this understanding, the question arises - What is the consequence for NCD treatment and care? Firstly, non-discrimination is a key obligation of immediate effect in providing access to NCD services. When it comes to NCDs, the principle of non-discrimination plays a vital role in making fair decisions in the allocation of scarce resources. Financial accessibility requires that healthcare and treatment are affordable to everyone and that costs should not place excessive financial burden on individuals.[80] General Comment 14[81] states that the right to health facilities, goods and services includes timely access to basic preventive, curative or rehabilitative health services.

Limitations on rights under domestic laws to protect the public health

The main accomplishment of the Nigerian health system is the enactment of the National Health Act which is the umbrella act for the protection of health. Till date, health insurance is only a voluntary scheme, enjoyed by less than 10% of the Nigerian 200million population, while the rest 90% receive OOP health expenditure. Yet, while the health sector represents

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78 Chikwuma Muanya, Oluwatosin Areo. Addressing high cost of cancer treatment in Nigeria. 2018. Available on https://guardian.ng/features/focus/addressing-high-cost-of-cancer-treatment-in-nigeria/ accessed 15 October 2021.

79 Haider, M. and Bibb, K.. Universal health coverage and environmental health: An investigation in decreasing communicable and chronic disease by including environmental health. Advances in Health Management. Retrieved 2017 available on http://dx.doi.org/10.5772.intechopen.69922 last accessed 20 May 2021

80 Council of Europe. 2019. Digest of case law of the European Committee of Social Rights available on https://www.coe.int last accessed 15 October 2021

81 Paragraph 17

about 10% of economic activity, public expenditure consists of over 45%. As health expenditure remains constant, individuals are paying more OOP.

Despite its commitment to right to health, Nigeria has historically faced a contradiction in terms of its political will as seen in its fiscal responsibility. Since the pathway to achieving UHC is tailored to each national context, Nigeria's effort to realize the right to health through universal health coverage is fraught with challenges, the first of which is the content and enforcement of right to health. Socio-economic rights, under Nigerian law, (of which health is inclusive), and unlike many other national legal systems[82], is not justiciable. A second challenge in the implementation of UHC for the NCDs is that, majority of Nigerians live in extreme poverty[83], statistics show that in 2020, 40% or 83million Nigerians live in poverty, and estimated to rise to 45% by the end of 2021.[84] If these figures are anything to go by, many persons would be unable to pay premium for health insurance. Moreover, UHC is intrinsically tied to employment. This means that, the unemployment rate of 33.3% unemployed (representing a third of the country's total population[85] is unable to access UHC. The picture looks gloomier where, of the working population, 22.8% are underemployed. The UHC in Nigeria, as earlier stated, is voluntary for the informal sector whose size is about 65% of the working population, whose members are mostly uninsured.

Conclusion

The link between the legally binding nature of the right to health and the goals of the UHC presents an opportunity for the promotion of the right to affordable health care for NCD sufferers in Nigeria. For there to be universal health coverage, a functional healthcare system robust enough to focus on both communicable and non-communicable diseases as well as being affordable so that financial hardships are alleviated.

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82 For instance, South Africa, South America, much of Eastern Europe. In Chapter II, Title 1 and VIII of the 1988 Brazilian Constitution where a host of socioeconomic rights are elaborated. From El Salvador, Columbia to Argentina, most South American countries now include social rights in their Constitutions.

83 Umeh, Chukwuemeka

84 https://www.worldbank.org accessed October 13 2021 at 1.10pm

85 Nigeria Bureau of Statistics 2020 fourth quarter release available on https://nigerianstate.gov.ng/ accessed 13 October 2021 at 1.18pm

UHC cannot be clearly implemented without the accessibility to treatments, crucial medicines and other necessary technologies.[86] There are different dimensions of access within the context of NCD, UHC will be a pathway if cost effective and quality assured NCDs services are prioritized. A second key element of UHC is covering population. Within the NCD context, the NCD epidemic is rooted in disparities of vulnerability, risk, access to services and health outcomes which is often associated with low socio-economic status underscoring the need to reduce inequalities in key NCD outcomes. Thirdly, UHC poses challenges to the function of covering cost due to the expensive treatment and medical costs.

Recommendations

The emerging health threat of the 21st century identifies NCDs as top on the global agenda and every healthcare system must be one that is poised to address these emerging health concerns. The UHC refers to a state's duty to provide health services to all people under its jurisdiction; but the exclusion and/limited coverage, undermines the effectiveness of a scheme that fails to address health concerns as they emerge. Within the precinct of NCD, innovating financing mechanisms utilized within the NCD response for example tobacco taxation, fats and sugar sweetened beverages. [87] is suggested. The legal foundation of both the UHC and the right to health lies in a state's sovereignty, as provided for in its Constitution and legal framework. No matter the international framework, the constitution determines the extent of a state's 'commitment to the realization of these visions. Rather unfortunately, UHC and the right to health are still lofty dreams and social objectives in Nigeria. The basic weakness of this framework has prevented the full implementation of the right to health in Nigeria.

Realizing UHC and the right to health requires more than lip service as it is being done in Nigeria. Increasing coverage requires good governance, and an understanding of both the documented and practical gaps in UHC, the bottlenecks and weaknesses that prevent health systems from serving the entire population and from providing the full suite of priority services at an affordable and sustainable cost. It is suggested that the WHO should ensure

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86 Ibid.

87 Dain, K. Universal health coverage: An empty promise without focusing on chronic conditions. https://www.devex.com/news/universal-health-coverage-an-empty-promise-without-focusing-on-chronic-diseases-84761 accessed 22 September, 2018

governments have the essential package of NCDs; prioritization of essential packages for NCDs; well-functioning health system. The present kleptocracy[88] and corruption charges bedevilling the NHIS lends credence to the failure of the scheme to realize coverage even for its current 5% coverage. Nigeria's corruption profile prevents the garnering of resources that ensures equity and functionality of UHC

[88] Nnamuchi, O. Kleptocracy and Its Many Faces: The Challenges of Justiciability of the Right to Health Care in Nigeria. [2008]. *52*(1), *Journal of African Law,*1