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Towards Enforcement of Rights to Adequate Health-Care in Nigeria Today

Ikenga K.E. Oraegbunam, Ph.D*

Abstract

Principle of self-preservation is the basic law of especially human nature. Part of the ways in which man obeys this principle is by submitting himself to a genuine and adequate health care. Therefore, every nation which has the interest of its citizens at heart must endeavour to invest heavily on the health sector. No doubt, this demand borders on the maintenance and protection of the individual's right to life, which is the most basic of all the fundamental rights. Yet within the mosaic of Nigeria's multifaceted problems, health-care delivery has enjoyed one of the most important positions. Though the most populated black nation endowed with enormous natural and human resources, yet. the socio-economic and political ills that today plague Nigeria do always take their tolls on the individual's health in all its ramifications. This paper seeks to examine some fundamental problems of health-care delivery system in Nigeria in the light of the individual's right to health-care. It will finally make some suggestions that may enhance the enforcement of this important human right.

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Introduction

One of the not so popular areas of the law in Nigeria today is health rights law or, narrowly, medical law. The reasons are quite obvious. Health rights law does not form part of the curriculum of legal education in Nigeria today. Again, the constitutional provision on health matters is a part of the fundamental objectives and directive principles of state policy housed, as it were, in the non-justiceable chapter 2 of the constitution.[1] Recently too, the controversy surrounding the passage and presidential assent to the National Health Bill is quite much. As at the time of writing, this Bill is yet to be given presidential assent months after the passage of same by the National Assembly. This is in spite of the fact that some analysts believe the Bill if passed into law would, inter alia, enhance the efficiency of the system of health-care delivery in Nigeria. Understandably, however, the withholding of the presidential assent might have been as a result of mounting pressures from stakeholder and pro-life groups[2]

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1 See section 6(6) of the constitution of the Federal republic of Nigeria 1999 (as amended).

2 Various health professional bodies in Nigeria, including the pharmaceutical Society of Nigeria, PSN, Health Workers Association of Nigeria, Association of General and Private Medical Practitioners of Nigeria, AGPMPN, and the Association of Medical Laboratory Scientists of Nigeria, AMLSN urge the President not to assent to the Bill. But the greatest opposition comes from the Knights of St. Mulumba. They are not happy with Section 51 (1 and 2) of the said Bill, which provides that: "(1) A person shall not without the prior written approval of the Minister:- (a) manipulate any genetic material, including genetic material of human gametes, zygotes or embryos; or (b) engage in any activity, including nuclear transfer or embryo splitting, for the purpose of the reproductive cloning of a human being, and that (2) No person shall import or export human zygotes or embryos without the prior written approval of the Minister on the recommendation of National Ethics Research Committee."According to the Knights, the above provisions enable the Minister to play God, with unbridled powers to grant life and death to human embryos, harvest human egg and sperm, and even do business with them. In their words: "Simply, the section is aimed at legalizing the manipulation, aggression and violence against Nigerian children, embryos and zygotes. A mere written permission from the Health Minister is all that is required for any person to have full legal backing to manipulate any genetic materials, including genetic material of human gametes, zygotes and embryos, import and export human embryos, as well as conduct any experimentation for human cloning and other purposes. "Section 51 grants unquestioned and unaccountable powers to the Minister of Health. Through his written permission, he allows whomsoever he wishes to engage in any activity such as nuclear transfer, embryo splitting for the purposes of the reproductive cloning of a human being. These are activities that are morally and socially objectionable and a cause of serious concern, conflict and regulation in developed countries."The Health Bill empowers the Minister, through his written permission, (with or without the non-binding recommendation of National Ethics Research Committee), to grant a license to any person or group of persons to import or export Nigerian human zygotes or embryos to foreign countries for whatever purposes including cloning (therapeutic or otherwise), sale or as a gift to communities in countries with restrictive laws against such practices."Introducing Section 51 through the back door is treacherous and lacking in respect for the life of Nigerians and human society. This enigmatic clause is an affront on the dignity of man. The merchandising and trafficking on human gametes, zygotes, embryos or human cloning should be banned outright and not left to the whims and caprices of the Minister of Health."The Knights also condemned other activities of

who protest against certain provisions of the Bill. One would expect that now the President can no longer assent to it due to constitutional restraint (30 days after the presentation of the Bill to him having elapsed), the National Assembly would have reviewed the Bill and expunge all the inherent anti-life and anti-human provisions and pass the all-important Bill. No doubt, adequate health care provision is one of the millennium development goals. Yet, not a few cases of issues recorded border on medical negligence, lack of diagnostic and therapeutic equipment, manufacture and distribution of adulterated drugs, insufficient funding of the health sector, improper remuneration of medical officers and health workers, and sundry problems which constitute avoidable clawback to the enjoyment of right to genuine health- care in particular and right to life in general.

The right to health is part of the concept of a right to an adequate standard of living in article 25 of the *Universal Declaration of Human Rights* (UDHR). This right is provided for in section 17 (3) (d) of the *Constitution of the Federal Republic of Nigeria, 1999*. Thus, the Nigerian "state shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons." The right to the enjoyment of the highest attainable standard of physical and mental health is also codified in article 12 of the International Covenant on Economic, Social and Cultural Rights to which Nigeria is a signatory. Article 16 of the African Charter on Human and Peoples Rights provides to the same effect and enjoins states parties to the Charter to take necessary measures to protect the health of their people and ensure that they receive medical attention when they are sick. It is happy to note that the African Charter has long since been domesticated as part of Nigerian body of laws with its attendant justiceable implications.[3] Enjoyment of this right will include access to health supporting conditions, primary, secondary and tertiary healthcare, access to

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the Health Minister, whom they alleged has been hobnobbing with the United Nations Population Funds, UNPFA, and promoting various questionable projects and programmes that have nothing to do with the health needs of Nigerians, like aggressive free distribution of contraceptives, including injectable contraceptives, in all public health centres and institutions in Nigeria which he flagged off in April 2011.In conclusion, the Knights of St. Mulumba restated the deplorable state of the health sector in Nigeria, arguing that as it is, attaining the health-related Millennium Development Goals (MDGs) is virtually elusive, given that health indicators in the country remain abysmal. While calling on the President not to succumb to the intense pressure from self-serving groups from within and outside Nigeria who are asking him to sign the Bill, but to withhold his assent until all the anti-life and other retrogressive clauses are expunged, they insisted that "the Health Bill in its present form is an invitation to more crises in the health sector. Nigerians deserve a Health Bill that will guarantee the health of all Nigerians." See http://nigerianorientnews.org/2011/10109/the-national-health-bill-controversy. Retrieved on 06/03/1 2.

3. See African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, cap A9, Laws of the Federation of Nigeria 2004. See also the cases of *Ogugu v The State* (1994) 9 NWLR (pt 366) 1, *Abacha v. Fawehinmi* (2000) 6 NWLR (pt 660) 228.

immunization and general child care, support for maternal health, health insurance, etc. It will also include access to clean water, the prevention, treatment and control of epidemic, occupational and other diseases.

Shortly before the birth of the third millennium, a lot was preached and orchestrated about the goodies that would befall humanity by the 2151 century. In Nigeria for instance, among the supposed and alleged glad tidings of the 2151 century as envisioned by many is also the provision of health and health facilities for all. Hence, ever since the dawn of the present democratic process, attention of no mean nature, even if of a lip service type, has been paid to the health care delivery sector by the emergent government. Health care has always occupied an important position with regard to national discussion.

However, it is one thing to envision health for all and even allot money for it, but it is quite another to have and experience that health. Sickness and diseases have ravaged Nigeria. Many die of preventable ailments due to lack of adequate health care system. Nigerians have had more than a fair share of AIDS pandemic that constitutes the most important scourge of our time. In fact, all is not well with the health care system in Nigeria. Therefore, it becomes appropriate and necessary to make a foray into the nations health care system with a view to identifying its problems. It may also be useful to make some recommendations with regard to solving our pathological predicament.

The Definition and Meaning of Health Care Delivery

According to World Health Organization (WHO), health is defined as:

> *... a slate of complete physical, mental and social well-being and not merely the absence of disease or infirmity.*[4]

In the light of this definition, health can be thought of in various ways. Hence Fagothey in his book Right and Reason writes:

i) in a mechanical-physical sense, health is the adequate functioning of the parts of our bodies.
ii) in a chemical sense, health is an appropriate balance of the chemical substances and processes within us.
iii) in a biological sense, health IS the appropriate interaction of the self as an organism with its total environment, and this includes work, rest, movement, food, and so on.
iv) in a psychological sense, health is a good balance between a secure sense of personal identity and an ability to care for and be involved with others.

4. http://www.businessdictionary.com/definition-and -meaning-of-health. Retrieved on 03/03/12.

v) in a social and historical sense, health is the creation of a society's traditional style in the art of living, celebrating, suffering, and dying, so that the understanding of personal health depends in some measure in the ideology of one's society and its culture; and
vi) in a spiritual sense, health is an awareness of and a capacity to relate to the source and meaning of life that transcends us and yet is immanent to our inmost being.[5]

The impression created by Fagothey's description is that the above senses of health point to the fact that man being a multi-dimensional unity can only be said to be healthy only insofar as all the various dimensions of health are guaranteed.

In the same vein, making allusion to the definition of health given by the World Heath Organization, Peschke says that:

> *Public health care and medical therapy concern themselves above all with man's biological health which consists in the integrity and harmonious functioning of the biological organism. Yet also the care for man's psychic health pertains to the medical art, first of all in the branch of psychiatry, but also in that of psychotherapy. The medical concept of health therefore comprises man's bodily as well as mental well-being. A still wider concept of health also includes man's spiritual and social well-being...*[6]

Hence according to Haring, "the overall criterion for human Health is not mere physical utility. It is rather a person's best possible aptness for his total vocation."[7]

There is no gainsaying then that any nation which creates a system that takes care of man's vocation within the totality of his physical, psychological, social, historical and spiritual dimensions of health has a good health care delivery system. Therefore:

> *Health-care is defined as an organized effort of all agencies in a community that are geared towards promoting health.*[8]

Hence, any good health care delivery system must have as its scope:
i) Activities focusing on the presentation of the sanitary and safety standards:
   a) Supervision of community food, milk and water supply as well as medication, household products and equipments.

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5 A. Fagothey, Right and Reason, Ethics in Theory and Practice, London, Merrill Public Co., 1985, p. 262.
6 Peschke, K. H. Christian Ethics, Vol. 2. Bangalore, Theological Publications in India, 1994, p. 245
7 Haring, Medical Ethics, England, St. Paul Publication, 1973, pp. 152 155
8 Anyaegbunam, I.U. Unpublished Lecture on Community Health, University of Nigeria, Nsukka, 2000

b) Insects, rodents, and other vector control
c) Control of environmental pollutions, prevention of radiation hazards.

ii) Activities designed for the prevention of illness, disability or premature death from:
a) Communicable diseases
b) Dietary deficiency
c) Behavioral disorders of alcoholism, drug addiction, prostitution, etc.
d) Mental illness
e) Allergic reactions and their common sources, etc.

iii) Activities related to comprehensive health-care:
a) Training of health personnel
b) Availability of health facilities and infrastructure
c) Operation of programme for early detection of diseases.
d) Promotion of emergency medical service system.
e) Operation of treatment centers,

iv) Activities concerning the collection, preservation and analysis of vital records (birth, death, marriages, etc).

v) Comprehensive health planning and evaluation.

vi) Research - scientific, technical and administrative.

vii) Linkage to international aids: Health problems in the community maybe cumbersome that international aids are resorted to.

Jurisprudential Foundation of Health-Care Delivery System

Health is a good that requires reasonable care. It is a good each of us needs if we are going to be able to pursue our goals in life. Thus, if among our life goals there are one or more that we have a moral obligation to achieve, we also have a moral obligation to maintain our health because it is one of the necessary means to achieve the goals we are obliged to achieve. We need to be alive in order to achieve anything. Therefore, the very first idea of the ethical foundation of health-care is that set by the life-goals of man's existence. Hence, according to the Pastoral Constitution of the Church in the Modern World, Gaudium et Spes, of Vatican Council II:

> *Everyone is bound to maintain the life, health, and integrity of his members and to provide what is necessary for this end... everyone has to drive off from himself or from others what might injure life and health. Civil legislation in matters of hygiene and health binds in conscience to the degree in which it is concerned with an important service for health.*[9]

9 Vatican II, Gaudium et Spes (n.30) in Austin Flannery, ed, Vatican Council II, Minnesota, Liturgical Press, 1975

Another ethical basis for the health-care delivery system is that which hinges on the sacredness of human life. Human life is sacred, right to which is very inalienable. Thus the United States Declaration of Independence alludes to the sacredness of human life, especially by using the phrase "the right to life". It is in this light that Philip S. Keane in his book, health Care Reform holds.

> *From very early in human history, it has been popular to say that the greatest sin is murder, because murder takes a human life. Without doubt, therefore, life makes a very primal claim on human consciousness.*[10]

Perhaps this is why health-care and its delivery are such a pressing moral issue. We are not dealing with just any human value but with life. This is also why in the end it seems more reasonable to think of medicine, nursing and other type of health care work as vocations rather than mere professions:

> *Medicine, nursing, etc are clearly professions, but as ministries to human life, they are even more clearly vocations.*[11]

It is also from this sacredness or sanctity of life and light to it that we can begin to talk about right to basic health care delivery. Thus, the case that all persons have a right to a basic standard of health care seems to be coherent with official church teaching. In his famous encyclical Pacem in Terris, Pope John XXIII lists both medical care and security during sickness as elements in his listing of human rights.[12] And in Laborem Exercens, Pope John Paul II speaks about the right of people especially the working people to health-care which is cheap or even free.[13] In 1981, the Catholic bishops of the United States spoke of health care as "a basic human right that flows from the sanctity of human life".[14]

We should also note that Article 25 of the famous United Nations Universal Declaration of Human Rights 1948 explicitly speaks both about a right to medical care and about a right to a standard of living adequate for the health and well-being of self and family.

It is perhaps in the light of these ethical bases of health care that one can begin to talk of adequacy or inadequacy of Nigerian health-care delivery system.

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10 Keane, P.S.I. Health Care Reform (USA, Paulist Press, 1993) p. 71.
11 Ibid
12 Pope John XXIII, Pacem in Terris, n.11.
13 Pope John Paul; II, Laborem Exercens, n. 19
14 NCCB, "Health and Health Care" (Nov. 19, 1981), n.2 in Pastoral Letters of the United States Catholic Bishops 4, Washington, USCC, 1984, p. 469

Health-Care Policy in Nigeria

The national health policy aims to achieve health for all Nigerians based on the national philosophy of social justice and equity. A health system based on primary health care (PHC) is adopted as the means of achieving the goal.[15]

The national philosophy of social justice and equity is clearly enunciated in the second National Development Plan (1970-74), which described the five national objectives to make Nigeria:

a) a free and democratic society
b) a just and egalitarian society
c) a limited, strong, and self-reliant nation
d) a great and dynamic economy
e) a land of bright and full opportunities for all citizen.

The national health policy was formulated in the context of these national goals and philosophy. Since health development contributes to and results from socio-economic development, the sectors, it is argued, shall be mutually supportive and together contribute to the ultimate goals of the nation. Hence according to Alma-Ata Declaration of 1978, the development of this national health policy has as its key the primary health care. Thus PHC is defined as:

> *The essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally acceptable to individuals and families in the community and through their full participation and at a cost that the community and country can afford to maintain at every shape of their development in the spirit of self-reliance and self-determination. It forms an integral part both of the country's health system of which it is the central function and main focus, and of the overall social and economic development of the community. It is the first level of contact of the individual, the family and the community within the national health system bringing health care as close as possible to where people live and work and constitutes the first element of a continuing health care process.*[16]

Ever since, a lot of modifications and revisions have been made of the national health care policy based on the primary health care. But one thing that has remained constant is that it has always been formulated with the integrated development of the

15 Ransome-Kuti O., et al, (eds), Strengthening Primary Health Care at Local Govt. Level, Nigerian Experience, (Lagos: Academy Press, 1991) p. 4
16 Ibid, p. 5.

nation in mind. Hence in the light of this policy, let us we consider the problems militating against the basic health care attainment in Nigeria.

Problems Militating against Health Care Delivery in Nigeria

Insufficient Health Manpower

There is no gainsaying the fact that health manpower needed in Nigeria for adequate health care delivery has not been enough. In a study conducted by federal ministry of health in 1986, it was discovered that as of then, a total of 16,003 physicians and dentists were registered in Nigeria. If we deduct those who have died, retired, emigrated, changed profession or become administrators, we are left with about 10,000 doctors for the entire population of 102, 295,500 in such a way that a doctor / population ration is 1/10,000.[17]

Nurses and midwives form the bulk of the health manpower in Nigeria. With a total of 50,946 registered nurses and 42,423 registered midwives, it is intimated that the number of nurses/midwives who are still in active service is about 40,000. This gives a nurse or midwives/population ratio of 1/2573. This is poor, and it has not changed by now. Added to this problem is that of brain drain syndrome by which many of Nigerian experts including health personnel emigrate from Nigeria to oversea countries in search of greener pastures, all in response to the bad socio-economic situation at home.

The result is that most of our health institutions are devoid of manpower especially specialists in various medical branches.

Lack of Health Facilities

From a study done by the Directorate of Food, Roads and Rural Infrastructure in 1987, Nigeria has about 100,000 villages and autonomous communities but there are about 10,711 health establishments at the primary health level including health and maternity centers, clinics and dispensaries.[18] This means there is roughly one facility for every 10 villages and communities. Who knows what the statistics and records are now? This makes accessibility to health services very poor especially in rural areas.

Lack of Drug

The effectiveness of health services III Nigeria is severely handicapped by the shortage of drugs. Most of our hospitals lie fallow and are overgrown by weeds not because Nigerians arc no longer sick but because drugs are not supplied. But it is clear that health services without drugs easily lose credibility.

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17 Ibid, p. 37.
18 Ibid, pp. 37-38.

High Cost of Medical Treatment

Apart from the fact that drugs and medical equipment are lacking in most of our hospitals, the cost of treatment is very high if available at all. There is no doubting the fact that this is consequent upon the nation's battered economy, which nonetheless is artificial.

Corruption

Just as in every facet of our national life, corruption has also eaten deep into the very fabric of our health sector. Most of the times, the money allocated for the health development is embezzled by crocked elites. This grinds every meaningful development in the health institution to a halt.

Loss of the Sense of Duty

The fact that the nation's labour life has recently suffered loss of the sense of duty cannot be gainsaid; this is also true in the health sector. Doctors, nurses and other members or health team hardly look at medical service as something of a vocation but instead a mere profession. Most of them do not principally see themselves as being charged with the duty of saving life; rather they see their occupation as mere means of livelihood. This explains why in defiance of the demands of the Hippocratic Oath, some doctors and nurses still perform abortions and euthanasia which acts are still illegal in Nigeria.[19] This explains also why a doctor for instance can refuse treatment to a fatally wounded person simply because an initial or consultation fee has not been paid.

Quackery

One of the most important wars against health care delivery in Nigeria is the practice of quackery. Everybody claims he can treat or cure every ailment even when he does not have the slightest knowledge of the technique. Many have lost their sight, for instance, because mere physicians have claimed to be ophthalmologists and opticians. Many have died of appendicitis because doctors who are not surgeons have claimed they can perform surgical operations. There is little or no culture of respect for specialization in Nigerian health sector.

Poor Funding

It is true that corruption and embezzlement have been the bane of our health engineering. But it is also true that Nigerian health sector has never been finely financed. According to the recommendation of the World Health Organization, eleven percent of every national budget should go to health development. This has

19 See sections 311 & 328 of the Criminal Code, cap. C38, Laws of the Federation of Nigeria 2004.

never happened in Nigeria, as the health sector has been one of the ministries that receive the least financial attention. This explains why the Federal Ministry of Health has not been seen or regarded as a plum or financially buoyant sector by our crooked elites who fight tooth and nail to milk dry the national coffers.

Poor Community Co-operation in P.H.C.

There is the poor co-operation by our communities in Primary Health Care. People especially in rural areas are still suspicious of certain health practices like immunization, inoculation and so on. This is consequent upon lack of awareness or enlightenment programme that ought to be organized by the Ministry of Health.

Poor Environmental Sanitation and Waste Management

An important dimension of the Primary Health Care is environmental sanitation and waste management/disposal. This is because a dirty and filthy environment promotes disease and death. But it is very much the case that most of our urban cities are dirty and domestic and other wastes not well managed and disposed. That militates against the enhancement of the health of the citizens.

Dearth of Adequate Health Ethics

Ethics is the science of right and wrong. It urges one to do what is right and avoid what is wrong. There is ethics attached to every aspect of human life. Health has got its own. But in Nigeria where it seems there is the "philosophy of anything can go", cases of health ethical violations abound. Abortions, poor doctor-patient relationship, breach of confidentiality are instances.

Need for Genuine Health Ethics and Practice in Nigeria

Given the inadequacies in our health care delivery system, it is important that we make an attempt at evolving a genuine health care engineering in the light of Nigerian health- care policy. To do that certain conditions are sine qua non:

Accessibility

An effective health care system should allow easy access between the provider and the consumer of the services. This requires good road network, efficient transport system, a reliable telecommunication system and ability to pay for the services. These will also promote effective and efficient referral system as recommended in the National Health Policy.

Availability

There is no doubt that citing of health facilities has been haphazardly done in the past even in locations, which are sparsely populated and less need, the facilities. A

common hindrance to effective health care services in the rural areas is often lack of health personnel's interest to stay in rural communities. Rural posting policies and incentives for working in the rural areas as recommended by the National Health Policy should be provided.

Acceptability

This relates to the tradition and culture of the consumer, his level of education and his economic status. A person that does not accept the existing health care system will refuse help through such a source, or may even be hostile to it. Traditional medicine has come to find a place in the World Health Organization (WHO) programme. WHO acknowledges the potential value of traditional medicine for the expansion of health services and the escalating cost of orthodox medicine.[20] This leads to the need for creation of awareness with regard to the advantages and disadvantages of both orthodox and traditional medicines.

Continuity

Continuity has to do with a smooth link throughout the health care delivery system, starting from PHC through secondary to the tertiary care. There may be need for a follow up which requires the services of medical social workers.

Cost Containment

Health Care is one of the social services. Government subsidizes it with taxpayers' money and wastages should be curtailed. Measures should then be taken to ensure a cost, effective management of financial, material and human resources. This presently calls for decentralization of hospital management for prudent management of resources and effective control.

Expanded programme on Immunization (EPI)

Immunization against common communicable but preventable childhood diseases such as tuberculosis, diphtheria, measles, poliomyelitis, etc has been conducted in Nigeria since the colonial days. But the immunization programme has been tragically under-utilized, so that some of these diseases are responsible for the high mortality and morbidity in children, especially those under fire years of age.

In the fourth National Development Plan of Nigeria, emphasis has been laid on preventive medicine on the ground that vaccination is the cheapest and the most effective way of controlling these common communicable diseases. Hence the present practice whereby the National Programme on Immunization has adopted

20 Akpabio, T.E. A Handbook of Medical Ethics (Uyo Patson Press, 1995) pp. 65 - 74

house-to-house strategy [or adequate immunization coverage is highly commendable.

Adequate Health Ethics

Nigerian health personnel should be able to observe the professional ethics and etiquette with regard to health care delivery. This ethics must be guided by the intention to save life. Hence confidentiality, medical consent, the contents of the Hippocratic Oath must be observed.[21] Abortion, Euthanasia and some forms of genetic engineering repugnant to the dignity of the human person must be churned. The Medical and Dental Practitioners Disciplinary Committee should stand tall to its responsibility of disciplining the erring professionals.

Towards an Enforcement of Health-Care Rights in Nigeria Today

A profound consideration of the right to health care will certainly underscore its connexion with the enhancement of human life. Man is a person. Boethius had defined the word "Person" (prosopon, persona) as an individual or unique substance of a rational nature. Rationality then becomes the distinguishing mark of the "Persona". The human person is of a composite nature. Among all persons (including God and angels), man is the only one gifted with the union of body and soul. It is this hylemorphic unity, to use Aristotle's language that forms the metaphysical and anthropological foundation of the theory of interconnectedness of rights that arc enjoyed by man. As one right leads to the other, none is severable from the other. Right to life, for instance, will be meaningless if it is isolated from the right to adequate security and health facilities.

Be that as it may, this interdependency of human rights seems not to be recognized by Nigerian constitutional jurisprudence. The Constitution of the Federal Republic of Nigeria, 1999 harbours a dichotomy between civil-political or the so-called fundamental rights, and another group of rights which the Constitution does not refer to as rights but as mere fundamental objectives and directive principles of state policy. These latter rights are called socio-economic and cultural rights one of which is the right to adequate health-care facilities. This constitutional dichotomy is equally demonstrated by collecting the former rights under chapter four while putting the latter under a different chapter, namely, chapter two. To perfect the deal, section 6 (6) (c) of the Constitution ousters the jurisdiction of the court on any matter under the said chapter two of the Constitution. Section 6 (6) (c) provides as follows:

> *The judicial powers ... shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or*

21 Ibid

omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objective and Directive Principles of State Policy set out in chapter II of this Constitution.

The implication is that those rights contained therein are rendered non-justiceable and cannot be enforced through the courts. This is in spite of the constant use of the word' shall' in virtually all the sections of the chapter, a word that in normal judicial interpretative parlance imports an obligation.[22] While this is the case in most African countries, these ESC rights have been entrenched as enforceable in the enterprising Basic Law of the Federal Republic of Germany, for instance, and those of most Euro-American countries.[23]

Another bottleneck to the enforceability of the relevant rights is the effect of section 12 (1) of the 1999 Constitution. It provides that "no treaty between the federation of Nigerian 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." What this means is that provision of International Law do not bind Nigeria and Nigerians save and except if the law has been domesticated and incorporated into Nigerian *corpus juris* by an act of the National Assembly. It is immaterial that Nigeria is a signatory to such International treaty or convention. This jurisprudence is, no doubt, contrary to the naturalist monistic orientation that sees International law as binding on any country that is a party to it especially without reservation (pacta sunt servanda). This is in line with article 27 of the Vienna Convention on the Law of Treaties whereby a state party to a treaty cannot plead its domestic law to circumvent her international obligation. But the domino effect of the Nigerian dualistic approach to international law is that the economic, social and cultural rights enshrined in them are neither justiceable nor enforceable. Fortunately, however, the African Charter on Human and Peoples Rights (1981) had so been domesticated as part of Nigerian municipal laws. Presently, it is incorporated as chapter A9 of the Laws of the Federation of Nigeria, 2004. This means that Nigerians can now enforce the basic rights as contained in the Charter, which enforceability has received some judicial blessings in a long life of decided cases.[24]

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22 See the cases of Katto V Central Bank of Nigeria (1991) 9 NWLR (pt. 214) 126 at 147; Okpala V Director-General of National Museum and Monuments & Ors (1996) 4 NWLR (pt 444) 587. But see also Burknor-Macleans v. Inlaks (1980) 8 - 111 SC I at 23. In all these cases, the general rule is that the word 'shall' imports obligation. But the courts also held in the above cases that, in some circumstances, obligation is not intended.

23 See Bahlla R,, Fundamental Objectives and Directive Principles of State Policy under the Constitution of Nigeria" In Nigerian Bar Journal (1982) Vol. 18,p.9.

24 See Ogugu v. The State (supra); Abacha v. Fawehinmi (supra).

Nigerian Jurisprudence should properly entrench the principle of indivisibility of human rights in its justice system. Happily, this was what happened in Okogie's case where it was held that right to freedom of expression will be rendered nugatory if the facilitating right to education is trampled upon. In **Archbishop Okogie v. Attorney General of Lagos State,**[25] the trial judge agrees with the plaintiff that the defendant's policy to abolish private primary education in Lagos State would be in breach of the right to freedom of expression and the press under section 36 of the 1979 Constitution. This is because any respect for the individual freedom of expression would be dependent on whether one's right to receive ideas and information and to own, establish and operate any medium for the dissemination of information, ideas and opinion, is adequately protected. The court found for the plaintiff that running of private educational institutions of any level is one of such media of information dissemination. The decision of the court is equally premised on the individual's right to receive information and ideas from wherever he desires. Again, right to human dignity generally and freedom from inhuman treatment as guaranteed by section 34 of the 1999 Constitution would be grossly endangered if human rights to adequate housing, food, healthy environment and other social amenities are not protected. The above are instances of how human rights are connected with one another. Respect for them must form a continuum.

Again, the domestication of the African Charter that guarantees most of the social rights including right to health-care could have constituted an added fillip. Yet, not a few voices are being raised on whether the enforceability of the human right contents of the African Charter will not be inconsistent with the provisions of section 6 (6) (c) of the 1999 Constitution. The reason for this allusion to section 6 (6) (c) is that it is the section that ousters the courts' jurisdiction on any matter concerning the content of chapter 2 of the Constitution which provides for most of the ESC rights almost in the same wordings with those of the African Charter. These voices anchor their argument on the inconsistency clause in section 1 (3) of the Constitution, which is construed to the effect that any law that is inconsistent with the Constitution is null and void to the extent of the inconsistency. But the Constitution itself seems to solve the problem. The said paragraph (c) of ouster section 6 (6) begins with the exceptive clause" ... except as otherwise provided by this constitution ... " So the implication is that the Constitution has provided the otherwise and invariably guarantees the enforceability of the international law that will be domesticated by an Act of the National Assembly by virtue of section 12 of the Constitution even if such International law contains similar provisions with those of chapter 2 of the Constitution. In summary, the adjectival law is that insofar as a Nigerian citizen goes the way of the African Charter and not of chapter 2 of the Constitution, he can enforce

25 (1981) 1 NCLR218 HC;(1981)2 CLR337 CA.

his rights to adequate basic infrastructure.

The following suggestions may be quite germane. First and foremost, let the economic, social and cultural rights as embedded in chapter 2 of the Constitution be transferred to chapter 4 and made enforceable in the same way as the so-called fundamental rights. In the alternative, let section 6 (6) (c), the ouster clause, be expunged from the Constitution and be replaced with right of enforcement clause. Secondly, political philosophy, especially those of the social contract theorists such as Hobbes, Locke and Rousseau, has taught us that there is a purpose for the formation of a state. This purpose consists in protecting and promoting the citizens' right to basic infrastructure which, left to the citizens alone, will be greatly endangered. This is perhaps the underlying philosophy that informs the Limburg principles[26] by which 'states are obligated regardless of economic development, to ensure respect for minimum subsistence rights for all." finally, we have been speaking of citizens' right as if citizens have no duties. Duties of Nigerian citizens as provided in section 24 of the 1999 Constitution include, inter alia, "the respect for the dignity of other citizens and the rights and legitimate interest of others.[27] Therefore, the Government cannot be expected to do everything for all. It is not even possible. Citizens have the duty of obeying the laws, paying taxes and respecting the rights of others. It is in this government citizen interplay in respect for human rights that Nigerian democracy will thrive.

Conclusion

We have been able in our present study to give an integral understanding to health, the jurisprudential foundation of health care delivery system, the Nigerian health care policy, the problems of health care delivery and our recommendations. Our study too delineates the fact that in the present, the health care system in Nigeria is most inadequate, unable to meet the demands of the swelling populace of Nigeria. The need for a good primary health care system is certainly a major concern for any good government whose chief emphasis on development is people-oriented. A good basic health care system cannot be separated from the political and economic system of the country.

Okonkwo observes that curative medicine had always been the main thrust of Nigerian health care policy which meant that with the growing high cost of medical care, proper health is only available to the elite population.[28] The position of the

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26 See the Limburg Principles on the Implementation a/the ICESCR, UN Document E/CN.4119871 17.

27 See section 24 (c) or 1999 Constitution of Nigeria.

28 Okonkwo J.E.R, Youths and the Development of Nigeria's Third Republic (Enugu: Intern Production and Communications Ltd, 1990) p. 26.