
ACCESS TO HEALTHCARE AS A FUNDAMENTAL RIGHT IN NIGERIA: LEGAL CHALLENGES AND POLICY IMPLEMENTATION

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Abstract

This paper examined the legal and policy dimensions surrounding access to healthcare as a fundamental human right in Nigeria. The study analyzed the constitutional framework, relevant national laws, and international obligations underpinning the right to health. It also explored the conceptual foundations of healthcare rights, distinguishing between international legal commitments and domestic legal interpretations. The research found that while the Nigerian Constitution acknowledges health as a directive principle under Chapter II, its non-justiciable nature significantly impedes enforcement. Key legal challenges identified included weak legislative frameworks, judicial reluctance, and the absence of constitutional clarity. Policy implementation issues such as regional disparities, poor infrastructure, underfunding, and governance bottlenecks further constrained equitable access. Comparative insights from South Africa and Kenya demonstrated that the enforceability of health rights was more robust in contexts where legal reform had elevated socio-economic rights to the status of justiciable entitlements. Based on these findings, the paper recommended constitutional reform, stronger legislation, judicial engagement, increased health investment, institutional restructuring, and public legal empowerment. The study contributed to knowledge by exposing the legal-policy disconnect in health governance, proposing a framework for reform, and advancing the discourse on socio-economic rights enforcement in Nigeria. Overall, the paper reinforced the argument that access to healthcare should be treated not as a discretionary policy goal but as a legally binding human right demanding structural and institutional transformation.

Keywords Healthcare access, fundamental rights, legal framework, policy implementation

Introduction

Access to healthcare remains one of the most contested and urgent development challenges in Nigeria. Despite its vast population and abundant natural resources, the country continues to grapple with profound inequalities in the availability, quality, and affordability of health services. These disparities are particularly visible across rural and urban areas, among socio-economic classes, and in the delivery of public health programs. According to Okafor, the Nigerian healthcare system is characterized by underfunding, infrastructural decay, shortage of medical personnel, and weak institutional coordination.¹ These structural weaknesses have made access to essential health services increasingly difficult for large segments of the population, especially the poor and vulnerable. In international human rights discourse, healthcare is recognized as an inalienable right linked to the dignity and wellbeing of every individual. The International Covenant on Economic, Social and Cultural Rights, to which Nigeria is a signatory, explicitly affirms the right of everyone to the highest attainable standard of physical and mental health. Similarly, the African Charter on Human and Peoples' Rights, which has been domesticated in Nigeria, guarantees the right to health as part of broader socio-economic

¹ Okafor, C. E. (2020). Healthcare inequality and public health financing in Nigeria: A constitutional dilemma. *Nigerian Journal of Socio-Legal Studies*, 12(1), 34–49.

rights. As emphasized by Ocheni and Ijeoma, access to healthcare is not merely a matter of service delivery but a legal entitlement that should be protected and promoted by the state.² However, the Nigerian legal framework presents a paradox: while the Constitution provides for the right to health in its directive principles, these provisions remain non-justiciable, meaning they are not legally enforceable in courts.

Conceptual Clarifications

The idea of healthcare as a right is grounded in the belief that access to health services is essential for preserving human dignity and social justice. In modern constitutional and human rights thinking, healthcare is not just a service or a privilege extended by the state; it is a core entitlement that every individual should enjoy by virtue of citizenship or humanity. When healthcare is conceptualized as a right, it becomes a legally recognized claim that imposes duties on governments to provide, fund, and regulate health systems to serve all citizens equitably. Ogunyemi described the right to healthcare as the entitlement of every individual to timely, acceptable, and affordable medical services that meet a basic standard of quality, rooted in legal protections and moral obligations.³ In a similar vein, Adewole explained that healthcare is not merely a component of public policy but a legal requirement that mandates state action in ensuring both preventive and curative services are available to all citizens, regardless of status.⁴ According to Umeora, the right to healthcare involves both positive obligations, such as building hospitals and employing medical personnel, and negative obligations, including eliminating discriminatory practices that limit access for vulnerable populations.⁵ In the context of this paper, the right to healthcare will be understood as a legally grounded and socially protected entitlement to comprehensive, equitable, and accessible medical services, which governments are obliged to respect, protect, and fulfil. This foundational concept serves as the legal and normative anchor of the discussion and connects directly to the need to evaluate the structures within which these rights are either enforced or rendered ineffective.

A major issue in the realization of health rights in Nigeria stems from the disconnect between the country's international obligations and its domestic legal arrangements. While global human rights instruments have firmly situated healthcare within the framework of enforceable rights, the Nigerian constitutional and legislative system has yet to fully internalize and operationalize these obligations within its legal architecture. Eze asserted that under international law, the right to health is not optional but obligatory.⁶ Instruments such as the International Covenant on Economic, Social and Cultural Rights place a duty on states to progressively realize this right through concrete legislative and policy actions. Nnamani added that although Nigeria is party to numerous international treaties that guarantee the right to healthcare, including the African Charter on Human and Peoples' Rights, these instruments often remain weak in terms of

² Ocheni, S. I., & Ijeoma, E. M. (2018). Legal perspectives on healthcare as a fundamental human right in Nigeria. *African Journal of Law and Policy*, 4(2), 55–71.

³ Ogunyemi, K. A. (2012). Health and human rights: A socio-legal perspective. *African Journal of Medical Ethics*, 4(1), 12–24.

⁴ Adewole, D. O. (2019). The constitutional basis of healthcare rights in Nigeria. *Nigerian Journal of Health Law and Policy*, 11(2), 35–49.

⁵ Umeora, C. U. (2021). Rethinking healthcare as a fundamental right in Nigeria. *Journal of Contemporary Law and Governance*, 15(1), 29–43.

⁶ Eze, P. A. (2014). International treaties and domestic enforcement of socio-economic rights: A Nigerian perspective. *Journal of International Legal Studies*, 6(1), 21–36.

enforcement unless they are domesticated into national law.⁷ Furthermore, Onyekwere emphasized that Nigeria's constitutional framework, particularly Chapter II which addresses socio-economic rights, lacks enforceability in court because it is classified as non-justiciable.⁸ This constitutional limitation poses a significant barrier to holding government accountable for health service failures. For the purpose of this study, the legal framework for the right to healthcare refers to the comprehensive system of norms, statutes, treaties, constitutional provisions, and case law that determine the status, protection, and enforceability of healthcare entitlements. This understanding reveals why legal recognition alone is insufficient without deliberate and sustained implementation efforts, which leads to the next crucial concept: policy implementation.

While legal frameworks and policy statements may recognize healthcare as a right, it is only through effective implementation that such rights are made real in the lives of citizens. In Nigeria, the gap between health policy formulation and service delivery has remained a recurring issue due to systemic inefficiencies, corruption, and weak institutional capacity. Ibrahim defined policy implementation as the actualization of government intentions and plans through administrative action, legal instruments, and institutional processes.⁹ Mordi explained that implementation entails transforming policy statements into programs and outcomes by coordinating actors, allocating resources, and evaluating performance.¹⁰ Uzochukwu and Mbachu further clarified that in the health sector, successful implementation depends on multi-level coordination, political will, funding, accountability, and inclusive governance mechanisms.¹¹ This paper adopts the view that policy implementation refers to the practical steps and institutional activities taken by governmental and non-governmental actors to translate the legal recognition of health rights into accessible, affordable, and equitable healthcare services. Understanding implementation in this way bridges the gap between constitutional rhetoric and real-life access, thus highlighting the need to examine not just legal declarations but also how they are executed within Nigeria's complex policy environment. Together, these three concepts healthcare as right, legal frameworks for health, and policy implementation form the analytical foundation for this paper's exploration of access to healthcare in Nigeria. Their interconnection underscores the importance of legal enforceability, institutional functionality, and policy coherence in realizing healthcare as a fundamental right.

Despite numerous policy pronouncements and international commitments, access to healthcare in Nigeria remains deeply constrained by weak legal enforceability and fragmented implementation. The absence of a clearly defined, justiciable right to healthcare within the country's constitutional framework continues to undermine equitable health outcomes, particularly for vulnerable populations. This gap in enforceable legal backing and institutional coherence has limited the realization of healthcare as a fundamental right. Against this backdrop, the present paper critically investigates the legal

⁷ Nnamani, E. U. (2016). Health rights and constitutional barriers in Nigeria. *Nigerian Review of Legal Studies*, 9(3), 101–115.

⁸ Onyekwere, O. C. (2021). Justiciability of socio-economic rights in Nigeria: A constitutional review. *Nigerian Journal of Public Law*, 14(2), 91–106.

⁹ Ibrahim, A. S. (2015). Policy implementation and service delivery in Nigeria's healthcare system. *African Journal of Public Administration*, 8(2), 66–80.

¹⁰ Mordi, F. A. (2018). Institutional frameworks and healthcare implementation in Nigeria. *Public Policy Review*, 10(1), 45–59.

¹¹ Uzochukwu, B. S. C., & Mbachu, C. O. (2020). Governance and implementation challenges in Nigeria's health policy: A systems-based approach. *African Health Policy Journal*, 5(2), 23–38.

and policy architecture governing healthcare access in Nigeria. It identifies the key structural and normative challenges hindering progress and offers reform-oriented recommendations. The analysis aims to evaluate the extent to which Nigeria has recognized healthcare as a right in both law and practice, highlight the deficiencies in its current frameworks, and propose actionable strategies for bridging the access gap across the country.

Legal Framework for the Right to Healthcare in Nigeria

The legal foundation for the right to healthcare in Nigeria is anchored in both domestic and international legal instruments. While several frameworks exist that recognize or imply the existence of this right, significant tensions remain between constitutional ideals, enforceability, and practical implementation. Understanding the legal landscape is crucial to determining whether healthcare in Nigeria is a guaranteed right or merely a policy aspiration. The 1999 Constitution of the Federal Republic of Nigeria recognizes healthcare as a fundamental objective of the state, but not as an enforceable right. Chapter II of the Constitution outlines the Fundamental Objectives and Directive Principles of State Policy. Specifically, Section 17(3)(d) states that the state shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons. However, this provision is not enforceable in a court of law because Chapter II rights are classified as non-justiciable under Section 6(6)(c) of the Constitution. In contrast, Chapter IV of the Constitution guarantees civil and political rights such as the right to life, dignity, and freedom from discrimination, which are enforceable. Legal scholars like Onyekwere have argued that the failure to elevate healthcare to the status of an enforceable right reflects a structural weakness in Nigeria's constitutional design, undermining efforts to hold the state accountable for health-related violations.¹²

Beyond the Constitution, several national laws and health-sector regulations provide a legal framework for healthcare governance in Nigeria. The National Health Act of 2014 stands as the most comprehensive health law in the country. It establishes the legal foundation for the delivery of health services, the roles of federal, state, and local governments, and the creation of a Basic Health Care Provision Fund. According to Nwafor and Emeka, the Act was a major step forward in giving legislative effect to health policy priorities, though its implementation remains uneven across states.¹³ In addition to the National Health Act, the Child Rights Act (2003) and the Employees Compensation Act (2010) also embed healthcare-related rights, particularly for children and injured workers. However, these sectoral laws often lack coherence and fail to create a unified legal guarantee of health rights for all citizens. Nigeria's legal commitments are not confined to national instruments; they extend to regional and international human rights obligations. As a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Nigeria has committed to the progressive realization of the right to health under Article 12 of the Covenant. Moreover, Nigeria has domesticated the African Charter on Human and Peoples' Rights through the African Charter Act, which has the force of law in Nigeria. Article 16 of the Charter explicitly guarantees the right of every individual to enjoy the best attainable state of physical and mental health. According to Eze, these international and regional commitments impose binding duties on Nigeria to

¹² Onyekwere, O. C. (2021). Justiciability of socio-economic rights in Nigeria: A constitutional review. *Nigerian Journal of Public Law*, 14(2), 91–106.

¹³ Nwafor, C. I., & Emeka, U. K. (2020). The National Health Act and the realization of health rights in Nigeria. *Nigerian Journal of Health Law and Policy*, 12(1), 52–68.

take legislative, administrative, and budgetary actions to ensure equitable access to healthcare.⁶ However, in practice, these obligations are not always reflected in national policy priorities, and courts have been reluctant to interpret these instruments as enforceable guarantees without clear domestic translation. This layered legal framework comprising constitutional directives, sector-specific legislation, and international commitments creates a complex environment for realizing the right to healthcare in Nigeria. While the country has made strides in articulating health rights within its legal and policy frameworks, the absence of justiciability and weak enforcement mechanisms continue to hinder their practical effect.

Challenges in Legal Recognition and Enforcement

The realization of healthcare as a fundamental right in Nigeria is hindered by a complex interplay of legal, institutional, and political challenges. Despite formal recognition of the state's responsibility in health service provision, structural deficiencies and interpretative ambiguities undermine enforceability and access. This section examines ten major impediments that limit the recognition and enforcement of health rights in Nigeria.

- **Non-justiciability of Chapter II of the Nigerian Constitution:** One of the foundational legal challenges is that the Nigerian Constitution does not make health a justiciable right. Chapter II, which includes Section 17(3)(d) on healthcare, outlines socio-economic obligations of the state but is explicitly made non-enforceable by Section 6(6)(c). This provision states that courts shall not have jurisdiction over matters contained in Chapter II, thereby preventing judicial enforcement of these rights. As Onyekwere explained, while the state is encouraged to provide adequate healthcare, citizens cannot compel compliance through legal action.¹² This constitutional design turns the right to healthcare into a moral rather than legal obligation, weakening its enforceability in law.
- **Weak legislative backing for health rights:** Nigeria's legislative framework lacks a comprehensive legal recognition of healthcare as a fundamental right. Although the National Health Act (2014) provides for access to basic health services and establishes funding mechanisms like the Basic Health Care Provision Fund, it does not declare health as a justiciable human right. In many states, the Act has not been effectively domesticated, resulting in uneven application. Nwafor and Emeka argued that without consistent and binding legislative authority at all government levels, health rights remain policy statements rather than actionable entitlements.¹³
- **Institutional fragmentation and capacity gaps:** Several key institutions involved in the health sector suffer from fragmentation, duplication of roles, and lack of clear accountability structures. For instance, the Federal Ministry of Health, state ministries, and regulatory agencies often operate in silos without harmonized strategies. This institutional disconnection undermines policy implementation and complicates oversight. Uzochukwu and Mbachu highlighted that institutional inefficiencies contribute significantly to poor service delivery, weak monitoring, and underutilization of legal frameworks intended to guarantee access to care.¹¹
- **Judicial conservatism and interpretive limitations:** Nigerian courts have traditionally adopted a conservative approach when interpreting socio-economic rights. The judiciary rarely uses creative interpretation to link healthcare to the right to life or dignity under Chapter IV, even when health-related violations result in life-threatening consequences. As Ezeani noted, there is an absence of bold judicial activism that

would elevate access to healthcare within the scope of enforceable rights, particularly in cases involving negligence, systemic failures, or discrimination.¹⁴

- **Lack of strategic litigation and precedent:** Public interest litigation has played a transformative role in expanding health rights in jurisdictions like India and South Africa, yet such cases are rare in Nigeria. There are few landmark judgments challenging government failures in health service delivery. The absence of strategic legal actions means there is limited jurisprudential development on the interpretation and enforcement of healthcare as a right. Legal practitioners have not fully explored avenues for using litigation to compel state action or reinterpret non-justiciable provisions creatively.
- **Gap between international commitments and domestic law:** Nigeria is a party to several international and regional treaties that recognize the right to health, including the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights. However, these treaties have limited domestic effect unless incorporated into local legislation. Courts are often reluctant to apply international law directly unless it is explicitly domesticated. Nnamani explained that this dualist approach creates a disconnect between Nigeria's global obligations and its domestic legal enforcement mechanisms, leaving treaty-based rights largely aspirational.⁷
- **Low public awareness and weak rights consciousness:** A significant obstacle to health rights enforcement is the lack of public awareness about the legal dimensions of healthcare. Many Nigerians are unaware that access to healthcare can be linked to constitutional, legislative, and international protections. As a result, there is minimal civic pressure on government institutions to comply with health obligations. Community members often resort to coping strategies or political patronage rather than legal recourse. This weak rights consciousness undermines demand-side accountability and reduces the political cost of state failure in health service delivery.
- **Stalled constitutional reform efforts:** Constitutional amendment processes in Nigeria have not prioritized the elevation of socio-economic rights into justiciable guarantees. Several panels and committees have proposed amendments to make Chapter II rights enforceable, but none have succeeded. Okonkwo attributed this failure to political resistance and budgetary fears, with many legislators viewing enforceable social rights as a potential financial burden on the state.¹⁵ This legislative inertia has perpetuated the marginalization of health rights within Nigeria's constitutional hierarchy.
- **Political instability and inconsistent health policies:** Healthcare policy in Nigeria is often subject to the uncertainties of political transitions. Changes in leadership frequently lead to policy discontinuity, with new administrations abandoning or restructuring existing health programs. This political instability undermines long-term strategies and weakens the legal and institutional mechanisms needed to realize healthcare rights. The absence of a bipartisan or legally anchored national health

¹⁴ Ezeani, E. O. (2018). Human rights and access to healthcare in Nigeria: Legal and institutional barriers. *Journal of African Law and Policy*, 9(1), 47–63.

¹⁵ Okonkwo, I. C. (2017). Constitutional reform and socio-economic rights in Nigeria: Prospects and constraints. *Nigerian Journal of Constitutional Law*, 5(2), 71–85.

policy makes healthcare delivery vulnerable to political manipulation and short-term electoral calculations.

- **Weak enforcement and regulatory oversight:** Even when health-related laws and court orders exist, their enforcement remains inconsistent. Regulatory bodies lack the autonomy, capacity, or political backing to impose penalties for non-compliance with health standards. Corruption, poor monitoring, and weak legal infrastructure contribute to an environment where laws are ignored without consequences. Mordi noted that enforcement failure not only undermines the credibility of legal institutions but also discourages civic engagement, as people lose faith in the efficacy of legal remedies.¹⁰ Hence, these ten challenges spanning constitutional design, legislative inertia, institutional weakness, judicial passivity, and political instability highlight the structural barriers preventing the recognition and enforcement of healthcare as a fundamental right in Nigeria. Addressing these obstacles requires multi-level legal reform, strategic litigation, stronger civic awareness, and a committed effort to bridge international norms with domestic realities.

Policy Implementation Issues

While legal frameworks and policy declarations may suggest a commitment to healthcare access in Nigeria, actual implementation reveals significant shortcomings. These implementation gaps stem from systemic, infrastructural, financial, and governance issues, resulting in persistent inequality and inefficiency in healthcare delivery.

- **Disparities in access across regions and socio-economic groups**
Healthcare access in Nigeria is marked by significant geographic and socio-economic disparities. Urban areas are often better served by medical infrastructure and personnel, while rural communities suffer from under-resourced facilities, long travel distances to care centers, and inadequate staffing. Socio-economic inequality further compounds this divides, as wealthier individuals can afford private healthcare or seek care abroad, while the poor are left to rely on overstretched public systems. According to Uzochukwu and Mbachu, these disparities persist despite national health policies aimed at equitable service delivery, indicating implementation failures at both federal and state levels.¹¹

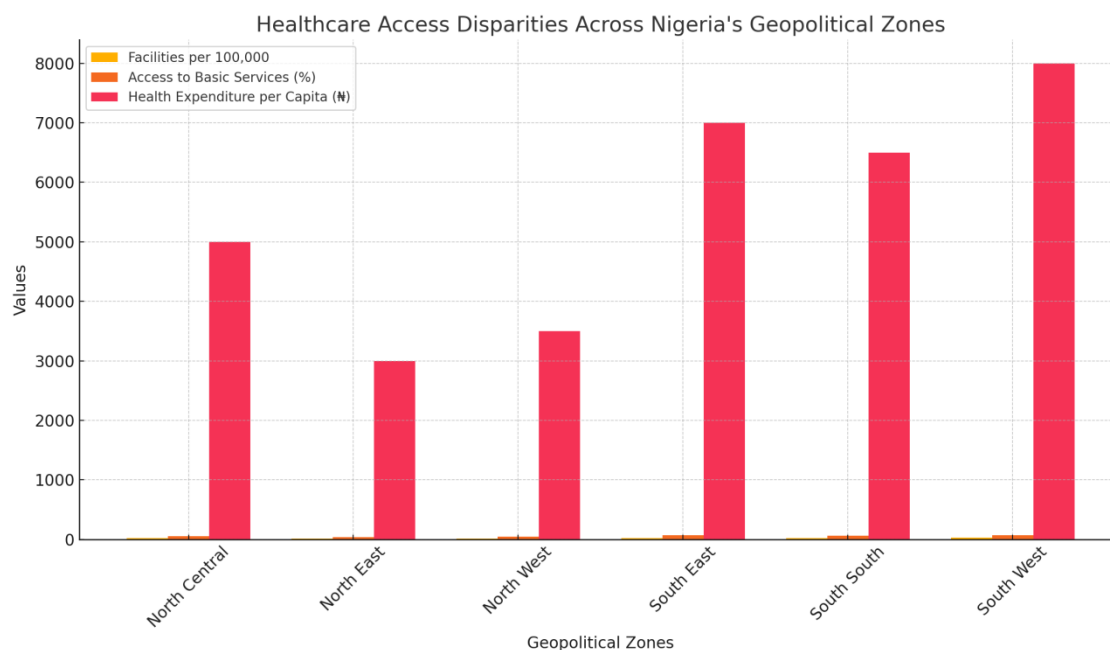


Figure 1: Healthcare Access Disparities across Nigeria's Geopolitical Zones

The above chart illustrates the uneven distribution of healthcare infrastructure, access, and funding across Nigeria's six geopolitical zones. It shows that regions such as the South West and South East have higher access to basic health services and receive more per capita health funding, while the North East and North West remain underserved. These disparities reinforce the argument that healthcare policy implementation in Nigeria is not only fragmented but also structurally unjust, necessitating targeted legal and fiscal reforms to promote equity and accountability in health governance.

- **Funding limitations and corruption in the health sector:** Chronic underfunding remains a central barrier to effective policy implementation. Although Nigeria pledged to allocate 15% of its annual budget to health following the 2001 Abuja Declaration, actual spending has consistently fallen short. Moreover, available funds are frequently mismanaged. The diversion of health funds through procurement fraud, ghost workers, and inflated contracts undermines the quality and reach of services. Nwafor and Emeka argued that without financial accountability mechanisms and adequate investment in public health systems, policy commitments cannot translate into tangible healthcare outcomes.¹³
- **Poor infrastructure and health workforce challenges:** Many health facilities in Nigeria lack essential equipment, electricity, water supply, and sanitation, particularly in rural regions. In addition, there is a critical shortage of trained healthcare workers, exacerbated by brain drain, poor remuneration, and limited training opportunities. According to Mordi, these deficiencies not only reduce the capacity of the health system to meet basic needs but also contribute to low morale and service delivery inefficiencies.¹⁰ Without investment in both physical and human infrastructure, health policies remain difficult to execute effectively.
- **Fragmentation of responsibilities and poor intergovernmental coordination:** Nigeria's federal structure assigns overlapping responsibilities for healthcare to federal, state, and local governments. However, coordination between these tiers is often lacking, leading to fragmented implementation. For example, while the Federal Ministry of Health may design national policies, states may delay or decline adoption due to differing priorities or lack of capacity. This has resulted in inconsistent service quality and duplication of roles. Uzochukwu and Mbachu emphasized the need for institutional alignment and shared accountability to overcome coordination bottlenecks.¹³
- **Weak monitoring, evaluation, and data systems:** Effective implementation depends on robust monitoring and evaluation systems, but Nigeria's health sector often lacks reliable data for planning, tracking, and resource allocation. Incomplete or inaccurate health records make it difficult to assess progress, identify service gaps, or evaluate the impact of interventions. As noted by Ezeani, this information deficit undermines evidence-based policymaking and contributes to inefficiencies and misallocation of resources.¹⁴
- **Lack of continuity due to political transitions:** Frequent changes in political leadership at both national and subnational levels often disrupt ongoing health programs. Each administration tends to introduce new priorities or abandon existing initiatives, leading to waste and discontinuity. This politicization of healthcare undermines long-term policy sustainability. Okonkwo observed that institutional

memory and multi-year planning are weak in the Nigerian public sector, making it difficult to maintain momentum in health policy implementation.¹⁵

- **Limited community participation and public engagement** Another critical issue is the marginal involvement of communities in health planning and policy execution. Public health interventions often lack the input of intended beneficiaries, resulting in poor community ownership and non-compliance. Moreover, health education and rights awareness campaigns are underfunded or inconsistently implemented. Onyekwere noted that increasing civic participation can improve transparency, ensure accountability, and enhance the responsiveness of health services to local needs.¹² Together, these seven policy implementation challenges illustrate the complex dynamics that undermine access to healthcare in Nigeria. Legal recognition alone is insufficient unless supported by functional systems, adequate funding, accountable institutions, and inclusive governance mechanisms.

Comparative Insight

Examining comparative experiences of countries that recognize healthcare as a legally enforceable right provides useful insight into how Nigeria might strengthen its own legal and policy frameworks. Both South Africa and Kenya serve as leading African examples where constitutional provisions, judicial activism, and institutional mechanisms have significantly advanced the right to healthcare.

- **South Africa: Constitutional Justiciability and Judicial Enforcement** - South Africa's Constitution of 1996 explicitly recognizes access to healthcare as a fundamental right. Section 27(1) of the South African Constitution states that "everyone has the right to have access to health care services, including reproductive health care." More importantly, Section 27(2) imposes a duty on the state to take reasonable legislative and other measures to achieve the progressive realization of this right. This constitutional provision is justiciable and has been actively interpreted by South African courts. A landmark example is the case of *Minister of Health v. Treatment Action Campaign* (2002), where the Constitutional Court ruled that the government's refusal to make antiretroviral drugs available for preventing mother-to-child HIV transmission was unconstitutional. The court held that the government had a duty to take reasonable steps to progressively realize the right to healthcare. As noted by Durojaye, this case signaled the power of the judiciary in shaping public health policy and demonstrated how constitutional provisions can be translated into enforceable entitlements.¹⁶
- **Kenya: Legal Guarantees and Expanding Access** - Kenya's 2010 Constitution also enshrines the right to health. Article 43(1)(a) provides that "every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care." Unlike Nigeria, where socio-economic rights are found in a non-justiciable chapter, Kenya's constitutional design permits direct enforcement of these provisions through the courts. In *Francis Kariuki Muruatetu v. Republic* (2017), although the case focused on sentencing reform, the Kenyan Supreme Court affirmed the enforceability of socio-economic rights, including healthcare, noting the judiciary's role in ensuring the Constitution's transformative aspirations. As Mbote explained, Kenya's legal

¹⁶ Durojaye, E. (2011). Litigating the right to health in South Africa: A model for sub-Saharan Africa? *Comparative and International Law Journal of Southern Africa*, 44(2), 225–245.

system has evolved toward a more activist role in compelling the government to deliver on health-related obligations, supported by an expanding legal infrastructure and strategic litigation efforts.¹⁷

- **Lessons for Nigeria:** Nigeria's Constitution falls short of these models due to its non-justiciability clause, judicial conservatism, and weak legislative and institutional support for health rights. While South Africa and Kenya provide legal avenues for individuals and advocacy groups to challenge violations and demand state action, Nigerian citizens are often left without legal remedies. Moreover, the success in both countries is underpinned by a combination of robust constitutional guarantees, independent judiciary, public interest litigation, and active civil society engagement. The Nigerian experience can be enriched by learning from these countries, particularly through constitutional amendment, greater integration of international human rights standards, and promotion of judicial innovation in interpreting existing rights frameworks.

Contribution to Knowledge

This paper contributes to the growing body of scholarship on the intersection of law, policy, and socio-economic rights in Nigeria by drawing attention to the enduring gap between legal recognition and actual enforcement of the right to healthcare. It critically highlights the disconnection between constitutional provisions, national policies, and the lived realities of citizens, emphasizing how the non-justiciability of Chapter II of the 1999 Constitution undermines the enforceability of health-related obligations. This gap remains a major obstacle to equitable healthcare access, and the paper brings new clarity to the institutional and legal mechanisms that sustain it. In addressing this gap, the study proposes a rights-based framework for constitutional and policy reform. It outlines specific recommendations that could strengthen the legal enforceability of health rights, including constitutional amendments, legislative reform, and judicial activism. The paper also stresses the importance of increased public sector investment, decentralization, and civic education, thereby offering a coherent strategy for translating policy declarations into enforceable and equitable healthcare outcomes. These proposals offer a practical and adaptable roadmap for stakeholders engaged in health governance and legal reform. Further than the specific issue of healthcare, the paper advances the broader discourse on the enforcement of socio-economic rights in Nigeria. Through comparative insights from jurisdictions such as South Africa and Kenya, it demonstrates the transformative potential of justiciable rights, strategic litigation, and civic engagement. By situating the Nigerian experience within a wider legal and human rights context, the study not only fills a notable gap in legal literature but also encourages future research and advocacy aimed at strengthening socio-economic justice through constitutional and institutional innovation.

Recommendations

To address the legal and policy constraints hindering access to healthcare in Nigeria, coordinated reforms are needed across constitutional, institutional, and operational levels. The following five recommendations are proposed to support the realization of health as a fundamental right:

1. **Constitutional reform to elevate the right to healthcare:** Amending the 1999 Constitution to include the right to healthcare under Chapter IV would establish

¹⁷ Mbote, P. K. (2020). Realizing the right to health in Kenya: Opportunities and challenges under the 2010 Constitution. *Kenya Law Review*, 11(1), 33–54.

enforceability through the courts. Such reform would align Nigeria's legal obligations with global human rights standards and create a stronger foundation for demanding accountability in health service delivery.

2. **Stronger legislation and judicial activism:** A more coherent legal framework is required to embed the right to health in national law. This includes the effective domestication of international treaties and the expansion of judicial interpretation to view access to healthcare as integral to the rights to life and human dignity. Courts should adopt a more proactive stance in holding the state accountable for health rights violations.
3. **Increased public health investment and decentralized implementation:** Adequate financing is essential to operationalize healthcare policies. Nigeria should meet or exceed the 15% budgetary allocation to health and ensure proper fund management. Additionally, decentralizing health governance allows states and local governments to respond more effectively to local needs and enhances service accessibility.
4. **Institutional strengthening and anti-corruption measures:** Healthcare institutions must be restructured to function more efficiently and transparently. Strengthening regulatory oversight, streamlining procurement processes, and promoting merit-based personnel management can reduce inefficiencies. Anti-corruption frameworks must be embedded in all aspects of healthcare financing and delivery.
5. **Civic education and legal empowerment of citizens:** Educating the public about their healthcare rights will foster greater demand for accountability and participation. Community engagement, grassroots sensitization, and the use of legal empowerment tools such as public interest litigation can enhance enforcement and promote equitable access to services.

Conclusion

This paper examined the legal and policy dimensions of access to healthcare as a fundamental right in Nigeria. It explored the constitutional, statutory, and international instruments that reference health rights, while identifying the persistent gaps between formal recognition and practical enforcement. Despite numerous policy declarations and legal commitments, access to healthcare in Nigeria remains deeply unequal, underfunded, and structurally constrained particularly due to the non-justiciability of socio-economic rights under Chapter II of the 1999 Constitution. The study further analyzed the challenges of policy implementation, including disparities across regions and socio-economic groups, poor infrastructure, underinvestment, and weak institutional capacity. Through a comparative review of countries like South Africa and Kenya where healthcare rights are both justiciable and actively enforced this paper demonstrated that legal reform, judicial engagement, and strategic litigation can play a transformative role in advancing health equity. The analysis also emphasized that healthcare should not merely be viewed as a policy aspiration but as a legally enforceable obligation grounded in constitutional and human rights law. In light of these findings, it is clear that aligning Nigeria's health policy with its legal obligations requires a multidimensional approach: one that strengthens constitutional protections, empowers the judiciary, ensures sufficient public investment, and enhances civic participation. Such reforms would not only promote better health outcomes but also reinforce the legitimacy of governance and the rule of law. Ultimately, securing the right to healthcare for all Nigerians is not only a legal imperative but a moral and developmental necessity that demands urgent and sustained commitment across all levels of government and society.