

RIGHT TO HEALTH IN AFRICA: AN EXPOSITION

Omezue-Nnali Eberechukwu Ekemma

Legal Studies Department,
Akanu Ibiam Federal Polytechnic, Unwana.
ukpabie3@gmail.com

&

Egwu, Wisdom Chizitere

Legal Studies Department,
Akanu Ibiam Federal Polytechnic, Unwana.
egwuwisdom@gmail.com

Abstract

Human rights can be ordinarily referred to as natural rights. These are the moral rights that human beings everywhere ought to have simply as human beings with morality and rationality. It is of universal application and is also unchangeable. However, certain rights are treated specially to demonstrate that human beings are special beings and need to be treated fundamentally special. There are several of these fundamental rights of man, but we shall concentrate on the right to health. Everyone has the right to enjoy the highest attainable standard of physical and mental health. The World Health Organization recognizes the right to health as one of the fundamental rights of every human being, without any form of distinction based on race, religion, and political belief, economic or social condition. Right to health does not function in isolation, other basic human rights have to be put in place, such as access to safe drinking water and adequate sanitation, nutritious foods (safe food), adequate nutrition and housing, health-related education and information, gender equality and safe environment. The African Charter on Human and People's Rights (Banjul

Charter) also recognizes the right of every individual to enjoy the best attainable state of physical and mental health and urges every state to take measures to protect the health of their people. In Africa today, is this right to health a myth or reality? Do African states provide sufficiently for their citizens as to guarantee their right to health? In this work, we shall consider some African states as per their observance of their citizens' rights to health. This shall be carried out by appraising the constitutional provisions of these African states.

Keywords: Rights, Bill of Rights, health, constitution, fundamental human rights

Introduction

One may wonder why lawyers are interested in health which is medical and scientific. Law is all-encompassing and it pierces the diverse spheres of man, his existence and essence in the community and state. There exist diverse health laws, policies and programmes in our communities and states. Law and medicine are like brothers, the same applies to health and human rights. Any violation of man's human rights has a negative effect on his health, physically, psychologically, socially or otherwise. Also, it takes one's right to health to be intact so that the same man can enjoy so many other of his fundamental rights, such as right of movement, right to dignity of human person, right to vote, right of association and so many other rights as contained in the constitution. Thus, the right to health ensures that a man is healthy and strong and only then can he even seek the enforcement of his human rights when violated. Therefore, the right to health of a person should take a right-based approach, instead of being policy-based (A publication of the AIDS Legal Unit, Right to Health-OHCHR. P. 1).¹

¹A publication of the AIDS Legal Unit. Right to Health- OHCHR.
<https://www.ohchr.org>publications>factsheet31>

Human rights are human entitlements by virtue of one being a human being. They are guaranteed by international standards. Thus, it has the protection of the law so it cannot be waived or taken away (p. 3). The right to health can be seen as an effective and integrated health system encompassing health, which is responsive to national and local priorities and accessible to all. The United Nations Special Rapporteur sees right to health as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2006).

The right to health was first articulated in the World Health Organization (WHO) Constitution, 1946, which provides that it is ‘the enjoyment of the highest attainable standards of health is one of the fundamental rights of every human being....’

Afterwards, in 1948, the Universal Declaration of Human Rights (UDHR), in its Article 25, identified health as part of the right to an adequate standard of living.²

The right to health entails everything that must be put in place for one to enjoy good health. It was thus narrowed out in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). Thus, to realize and make right to health practicable in reality, the government must put other underlying factors in place, such as right to housing, nutrition, sanitation, clean water and air, access to sufficient health care (medical, preventative and mental), access to information, non-discrimination, job-related health

²World Medical Association . Right to Health. Retrieved from <http://www.wma.net/what-we-do-/human-rights/right-to-health/#>

consequences (resulting from unhealthy and dangerous working conditions).

The Human Rights Council, in 2002, created the Special Rapporteur which are independent experts appointed to examine and report back on a country's situation on observance of their human rights in that population. This is usually when the abuse involves women, children, migrants and persons with disabilities (WHO op.cit).

Human Rights and Fundamental Human Rights

Human rights are entitlements that are accruable to human beings because they are humans existing in a certain state. Human rights are universal and inalienable. Some of the rights are fundamental which means there are some of these human rights that are core and of utmost importance to human existence and livelihood. Thus, among the human rights, there are others classified or separated by each country's constitution as the 'Fundamental Human Rights' (Surbhi S. (Sept. 15, 2017).

Surbhi S. (2017) pointed out some differences between fundamental rights and human rights; human rights have global acceptance; thus, every human being enjoys these rights. They are basic to a real life and have international recognition. Thus, human rights emerge from the ideas of civilized nations. Whereas, fundamental rights are derived democratically from the views of the citizens; thus, they are guaranteed under the constitution of the country and are specific to each country. The enforceability of human rights is by the United Nations Organization.

Both fundamental rights and human rights are only the entitlements of human beings and both are essential for the livelihood and development of the citizens in each state.

Right to Health: An Overview

It has been generally accepted that ‘Health is Wealth’! As human beings, we care a lot about our health, as it is our basic and essential asset; this is regardless of our differences in gender, age, ethnicity, social strata, age or any other disparity. The right to health is a fundamental part of our human rights.³

Health is seen by the World Health Organization as ‘A state of complete physical, mental and social well-being and not merely the absence of disease.’ On the other hand, right can be seen as a moral or legal entitlement to have or do something.

Putting the two definitions together, the right to health means the legal entitlement of a person to enjoy a state of complete physical, mental and social well-being, not minding the presence or eminence of diseases.

The right to health was first articulated in the 1946 Constitution of the World Health Organization. In 1948, the Universal Declaration of Human Rights, in its Article 25, identified health as part of the right to an adequate standard of living.

In 1966, the International Covenant on Economic, Social and Cultural Right, in its Article 12, also identified the right to health as a human right. The right to health is relevant to all states. This is because every state must have ratified the International Human Rights Treaty recognizing the right to health. This could be international declaration, domestic legislation and policies and international conferences.

³Office of the United Nations High Commissioner for Human Rights OHCHR.

World Health Organization on the Right to Health. P.

<https://www.ohchr.org>publications>factsheet31>

This right to health does not exist in isolation; there are underlying determinants of health. They ensure that health is upheld in reality. They include:

- a. Safe drinking water and adequate sanitation
- b. Safe food
- c. Adequate nutrition and housing
- d. Healthy working and environmental conditions
- e. Health-related education and information
- f. Gender equality

When these determinant factors are fully put in place by the government, same would help to reduce sicknesses, especially among the needy ones whose source of income is minimized and cannot afford safe food and water, adequate nutrition and housing. The government ought to provide adequate housing for her citizens. Working environment should be healthy and free from any environmental hazards. Also, no gender should be discriminated against, as this discrimination could lead to emotional breakdown and other health challenges. There should be functional public health care facilities and they must be readily provided for by the government. No state can be reasonably excluded from having to take action to realize the right to health on the complaint of the country's poor economy. Thus, all states must work towards its realization.

Human Rights and Fundamental Objectives and Directive Principles of State Policy

Okere Obinna (1983, p. 214)⁴ observed the definition of the Constitution Drafting Committee which defined fundamental objectives as the identification of the ultimate paths which lead to those objectives, whereas directive principles lay down the policies

⁴Okere Obinna (1983): Fundamental Objectives and Directive Principles of State's Policy under the Nigerian Constitution, 1979. *International & Comparative Law Quarterly*. 32 (1). <http://doi.org/10.1093/iclqaj/32.1.214>. <http://doi.org/10.1093/iclqaj/32.1.214>. Pp. 214-228 @ p. 214

which are expected to be pursued in the efforts of the nation to realize the national ideals.

Uwais Maryam (2005, p. 276- 297)⁵ observed that in the Nigerian Constitution of 1999, chapter 2, which is titled ‘Fundamental Objectives and Directive Principles of State Policy,’ was meant to actualize the promises as stated at the preamble to CFRN, 1999 by providing for the socio-economic welfare of the citizen.

This chapter 2 of the Constitution (Chapters 13 -24) provides for the political, economic, social, educational, foreign policy and environmental objectives. It also includes Nigerian cultures, obligation of the mass media, national ethics and duties of the citizens. However, the enforcement of this socio-economic human rights of Nigerian citizens, as contained in chapter two is not enforceable per se in the law court. This is as stipulated in Section 6 (6) (c) which provides that judicial powers shall not extend to any issue or question as to whether any law or any judicial decision is in conformity with the provisions of chapter 2. This chapter has been discriminated by scholars. Many have seen these rights in chapter 2 as unattainable and unachievable rights. However, Uwais M. (2005, P. 278-279) highlighted the views of some Jurists like Dennis Lloyd, Goodhart and Roscoe Pound, who believe that a sanction is not an essential element of the law and its functions.

He further noted that although the court cannot enforce the provisions of chapter II in the court of law, but it can be enforceable by the public

⁵ Uwais Maryam (2005) Fundamental Objectives and Directive Principles of State Policy: Possibilities and Prospects (Sections 13 -24 of the 1999 Constitution) in Eds. Okpara Okpara & ors. Human Rights Law & Practice in Nigeria. Chenglo Ltd. Enugu. Pp. 276- 297)

through public opinions and elections. This chapter 2 in its Sections 13 stated that it shall be the duty and responsibility of all organs of government and of all authorities and persons to apply the provisions of this chapter of the 1999 constitution. Thus, the right to health is provided for in Section 17 (3) (b-d); however, it is not enforceable in the court of law.

The Constitutional Provisions of the Right to Health in African States

Every state is guided by the constitution as her grund norm. In this work, we shall review the constitutional and other statutory provisions that relate to the right to health in African states. We shall divide it into four regions: Northern Africa, Southern Africa, Eastern Africa and Western Africa.

Northern Africa

The following four selected states in Northern Region of Africa, which we shall review in this work, include the following states: Morocco, Algeria, Egypt and Libya.

Right to Health in Morocco

Morocco is a democratic Muslim state which is guided by Morocco's Constitution of 2011. In its Article 1 of the 2011, Morocco's Constitution stated that 'Morocco is a Constitutional, democratic, parliamentary and social monarchy'.

Article 31 of Morocco's Constitution, 2011, provides for the right to health care. It states thus, 'the State, the public establishments and the territorial collectivities work for the mobilization of all the means available to facilitate the equal access of the citizens (feminine) and the citizens (masculine) to conditions that permit their enjoyment of the right:

- Right to healthcare
- To social protection, to medical coverage and to the mutual or organized joint and several liability of the state

Edited by: Ikechukwu Anthony KANU, PhD,

Ejikemeuwa J. O. NDUBISI, PhD, Obinna Victor OBIAGWU

- To decent housing
- To the access to water and to a healthy environment
- To lasting (durable) development and so on.

The WHO (2018)⁶ observed that Moroccan health system is composed of a public and private sectors. The public health which comprises the local, provincial, regional and tertiary level has about 2689 primary health care facilities and 144 hospitals; whereas the private sector comprises 6763 private practices and 439 clinics (WHO estimates as at May, 2018).

Thus, we have seen that in Morocco, the right to health is constitutionally provided for and the government is as well trying in its various policies, schemes and programmes to ensure every citizen enjoys this right maximally.

Right to Health in Algeria

Algeria got her independence on 1st November, 1954. Islam is the religion of the state, while Arabic is the national and official language of the state.

The right to health is provided for in Article 54 of the Constitution of the People's Democratic Republic of Algeria, 1989 (Amended in 1996), where it stipulated thus, "All citizens have the right for the protection of their health. The state ensures the prevention and the fight of endemics and epidemics."

This shows that the state/country has the obligation to protect the right to health of her citizens. This was provided for under chapter IV of the Constitution, titled 'Rights and Liberties.'

⁶WHO (2018) Morocco: Country Cooperation Strategy at a glance. <https://www.who.int/iris/handle/>

Right to Health in Libya

Libya is an Islamic state, whose constitution came into being on 7th October, 1951. It entrenched the rights of the citizens therein in its chapter 2 of the 1951 Libyan Constitution.

The Libyan Constitution was subsequently amended in 2011 through 2012. The right to health seems not to have been specifically provided for in the Libyan Constitution. However, it has been observed that in Libya, several rights to health are said to have been violated, more especially the access to healthcare, and this has been consequent upon the premise of several years of armed conflict in Libya.

Right to Health in Egypt

This state is guided by the Egypt Constitution of 2014. Egypt is very significant in world history, as the wonders of civilization were created there. Egypt is also the cradle of religions.

Egypt is an Islamic state (Article 2) that practices a democratic republic system which is based on citizenship and the rule of law (Article 1).

The right to health is enshrined in Article 18 of the constitution, and it is titled 'Health Care'. Article 18 states that every citizen is entitled to health and to comprehensive healthcare with quality criteria. The state guarantees to maintain and support public health facilities that provide health services to the people and work on enhancing their efficiency and their fair geographical distribution. The state commits to allocate a percentage of government expenditure that is not less than 3% of gross Domestic Product (GDP) to health. The percentage will gradually increase to reach global rates. The state commits to the establishment of a comprehensive health care system for all Egyptians, covering all diseases. The contribution of citizens to its subscriptions or their exemption there from is based on their income rates. Denying any form of medical treatment to any human in emergency or life-threatening situations is a crime. The state commits

Edited by: Ikechukwu Anthony KANU, PhD,

Ejikemeuwa J. O. NDUBISI, PhD, Obinna Victor OBIAGWU

to improving the conditions of physicians, nursing staff and health sector workers and achieving equity for them. All health facilities and health-related products, materials and health-related means of advertisement are subject to state oversight. The state encourages the participation of the private and public sectors in providing health care services as per the law.

This is a relatively comprehensive provision on the rights to health so far seen in Africa. This Egyptian Constitution recognizes right to health as a fundamental human right.

The World Health Organization (2018), however, recognized that there are a few challenges on healthcare in Egypt and they are equity in access to health services, equity in health financing, etc. But generally, Egypt is doing very well as per health care delivery services to her citizens.

African States in the South Right to Health in Namibia

Namibia is a sovereign, secular, democratic and unitary state, and it recognizes her constitution as the supreme law of Namibia (Article 1 of the Namibia's Constitution of 1990 with Amendments through 2010).

According to the publication of the AIDS Law Unit, Legal Assistance Centre (p. 12),⁷ there are certain obligations placed on government, as it relates to the right to health. The government should respect, protect and fulfill the citizens' rights to health and protect it from violation; there should be proper implementation of same.

⁷AIDS Law Unit, Legal Assistance Centre (). Right to Health, <http://www.lac.org.na/project/sjp/pdf/right-to-health.pdf>. retrieved on 20th May, 2021

In Namibia, the following national and international instruments regulate their observance of the right to health:

1. The Namibian Constitution: The Constitution did not specifically provide for the right to health. However, Article 95, which is in chapter 2 titled Principles of State Policy, stipulated in its paragraph 'b' of Article 95 of the Namibian Constitution that 'the state shall actively promote and maintain the welfare of the people by adopting inter alia, the enactment of legislation to ensure that the health and strength of the workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength.
2. In furtherance of this, the government enacted two policies:
 - a. National Policy on HIV/AIDS
 - b. Patient Charter and others
 - c. The Namibian Public Service Charter
3. International Instruments: The Namibian Constitution provided in Article 144 thus 'Unless otherwise provided by this constitution or Act of Parliament, the general rules of public international law international agreements binding upon Namibia under this constitution shall form part of the law of Namibia.' Thus, Namibia recognizes international agreements as binding on the country. They include:
 - a. The African Charter on Peoples and Human Rights
 - b. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Right to Health in Zambia

Zambia is a sovereign democratic state that recognizes her constitution as the supreme law. Zambia gained independence from the United Kingdom in 1964.

‘It is my aspiration that health will finally be seen not as a blessing to be wished for, but as a human right to be fought for’- United Nations Secretary General, Kofi Annan ⁸

Mabika A. H. & London L. (2007, p. 3) recognized that Zambia’s health services are composed of mostly public sector and few private sector.

The Constitution of Zambia does not enshrine the right to health in its Bill of Rights. However, it makes such similar provisions relating to health in its Article 112 which is under Part IX of the constitution, which is titled ‘Directive Principles of State Policy and the Duties of a Citizen.’ The provisions set out under this Directive Principles of State Policy are not justiciable, that is, they cannot be referred to as rights in certain instances; they cannot be legally enforceable in any court, tribunal or administrative institution or entity. That is to say a Zambian citizen cannot go for the enforcement of the right to health in the law court.

Right to Health in Lesotho

Lesotho is a sovereign democratic state whose supreme law is the Lesotho’s Constitution of 1993 with Amendments through 2011. Lesotho gained independence from the United Kingdom on 4th October, 1966. The government is a parliamentary constitutional monarchy.

The National Health Strategic Plan (2016, p. 11) noted that in Lesotho, there are three levels of delivering health services, There are

⁸United Nations Secretary General, Kofi Annan in Mabika A. H. & London L. (2007). Zambia: The Right to Health and International Trade Agreements, University of Free State Law Faculty and the Ford Foundation. Retrieved from <https://www.equinet africa.org>files>. P. 3

primary or community level, secondary or district level, and tertiary levels of health care.⁹

Mulumba M., Kabanda D., & Nassuna V. (2010, P. 8)¹⁰ observed that the constitution of Lesotho did not provide for right to health in its Bill of Right; rather, the health-related provisions are contained under the part on Principles of State Policy which is non-justiciable (Sections 28, 30b and 36 of the Lesotho's Constitution).

Right to Health in South Africa

The supreme law in force in South Africa is The Constitution of the Republic of South Africa, 1996, which was adopted on May 8th, 1996 and amended on 11th October, 1996. South Africa is a sovereign and democratic state.¹¹

Section 27 of the South African Constitution, 1996, is titled 'Health care, Food, Water and Social security' and it provides in its subsection (1) thus, "Everyone has the right to have access to –

- (a) health care services, including reproductive healthcare
- (b) sufficient food and water and
- (c) social security, including, if they are unable to support themselves.

Subsection 3 states that 'No one should be refused emergency medical treatment'. This is part of the Bill of Rights of the citizens of South Africa.

⁹<http://www.childrenandaids.org>lesotho>

¹⁰Mulumba M., Kabanda D., & Nassuna V. (2010, P. 8). 'Constitutional Provisions for the Right to Health in East and Southern Africa, EQUINET Discussion Paper 81, Centre for HEALTH, Human Rights and Development (CEHURD) in the Regional Network for Equity. Health in East and Southern Africa (EQUITNET) <https://equinetafrica.orgs> Diss81-ESACConstitution.pdf

¹¹ Article 1 of the South African Constitution, 1996

Thus, the government is under constitutional obligation to respect, protect, promote and fulfill the right to health and other rights as enshrined in the Bill of Rights (Chapter 2 of the South African Constitution).

In order to run an effective health care system, the government created:

1. The South African Human Rights Commission (SAHRC)- as an independent institution to help promote and monitor the observance of human rights in South Africa
2. National Health Act 13 of 2013, which gives effect to the right to access health care services in South Africa

African States in the East

Right to Health in Ethiopia

The Federal Democratic Republic of Ethiopia is guided by the 1994 Constitution of the Federal Republic of Ethiopia.

Chapter 3 of the constitution provides for the fundamental rights, and there is no right to health contained therein. However Article 90, which falls within chapter 10- National Policy Principles and objectives - provides that to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food, and social security. Thus, in Ethiopia, the right to health is not a fundamental human right and is thus not justiciable.

Right to Health in Kenya

The supremacy of the constitution is recognized by Section 2 of the Constitution of Kenya, 2010.

The Bill of Rights is contained in chapter 4 of the constitution. Section 43 (a) –(f) provided that every person has the right to the highest attainable standard of health, to accessible and adequate housing and to reasonable standards of sanitation, to be free from hunger, to clean and safe water, to social security and to education.

We commend Ethiopia, as this is complete in all sense of the elements attached to ensure right to health.

The Kenyan Constitution also provides for the right to health of children by Article 53 (1) (c) and (d) which provides that ‘Every child has the right to basic nutrition, shelter and health care and to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labour.’

Right to Health in Rwanda

Rwanda is a democratic and secular state. It is guided by the Constitution of the Republic of Rwanda which was adopted on 26th May, 2003.

Chapter one of the Rwanda Constitution provides for the fundamental human rights, which comprises right to life, right to private property, right to asylum, right to movement, etc.

Chapter two of the said constitution provides for the rights and duties of the citizens, and it includes the following: right to participate in the government of the country, right to relate to other persons without discrimination, right to activities that promote national culture, right to a healthy and satisfying environment, etc.

The right to health is not directly mentioned in the Bill of Right; however, Article 49 states that ‘Every citizen is entitled to a healthy and satisfying environment and that every person has the duty to protect, safeguard and promote the environment.’

Right to Health in Uganda

The 1995 Constitution of the Federal Republic of Uganda does not expressly guarantee the right to health; however, it protects maternal health rights. Objective XIV (b), which is under the National Principles and Objective of National Policy, sets out the duty of the government to ensure access to health.

Edited by: Ikechukwu Anthony KANU, PhD,

Ejikemeuwa J. O. NDUBISI, PhD, Obinna Victor OBIAGWU

Article 39 affirms the right to a clean and healthy environment. Objective XIV states that, ‘The state shall endeavor to fulfill the fundamental rights of all Ugandan to social justice and economic development as shall in particular ensure that all Ugandan enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

African States in West Africa

Right to Health in Mauritania

Mauritania is an Islamic and democratic Republic. It is guided by the Mauritania’s Constitution of 1991 with Amendments through 2012. There is no constitutional provision in Mauritania’s constitution on the right to health. However, Article 10 provides for human rights, such as freedom of expression, freedom of assembly, presumption of innocence, right to strike, etc.

Right to Health in Senegal

The Republic of Senegal is a French-speaking democratic state (Article 1 of the Constitution of the Republic of Senegal, 2001). The Senegalese Constitution provides for several human rights in the constitution, such as right to life (that the human person is sacred and inviolable (Article 7), right to individual freedoms, economic and social rights as well as group rights (Article 8).

This same Article 8 further enumerated that these freedoms and rights include Freedom of opinion, civil and political liberties, freedom of association, union freedom, freedom of enterprise, the right to education, right to work, right to health, the right to a healthy environment and the right to a variety of information, etc. and that these freedoms and rights shall be exercised under the conditions provided by the law.

Right to Health in Ghana

The Ghana's Constitution of 1992 with Amendments through 1996 is the supreme law of Ghana, and any law inconsistent with it is to the extent of its inconsistency null and void.

Chapter 5 provides for the fundamental human rights and freedom. They include protection of right to life, protection of personal liberty, respect for human dignity, protection from slavery and forced labour, and so on.

In Chapter 6 of the constitution titled 'The Directive Principles of State Policy', it stated in Section 34 (2), that the President shall report to Parliament at least once a year, all the steps taken to the realization of the policy objectives contained in this chapter and in particular, the realization of basic human rights, a healthy economy, the right to work, the right to good healthcare and the right to education.

Right to Health in Nigeria

Health is a fundamental human right and it indicates majorly the existence of sustainable development of a state.

The right to health extends to ensuring clean water, sanitation, food nutrition and comprehensive healthcare.

The fundamental human rights are provided for under chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria. However the right to health is not provided for among these fundamental rights. In Nigeria, the right to health is better covered by Section 17 (3) (c) of the 1999 Constitution which falls under chapter 2 of the constitution titled 'Fundamental Objectives and Directive Principles of State Policy.'

Section 17 (3) (c) provides that the state shall direct its policy towards ensuring that '... the conditions of work and work and humane, that the health, safety and welfare of all persons in employment are

Edited by: Ikechukwu Anthony KANU, PhD,

Ejikemeuwa J. O. NDUBISI, PhD, Obinna Victor OBIAGWU

safeguarded and not engendered or abused, that there are adequate medical and health facilities for all persons, etc.’

It should be noted that these provisions are not justiciable- you cannot enforce it in a law court.

Recommendation/ Conclusion

Having considered the constitutional provisions of various African states, one is left to wonder whether some countries or states love their people much more than others. Why would some states make the right to health a fundamental right, while others do not see it in the same perspective?

Our exposition shall, however, lead us to further research work as to discover the rationale and historical background that propelled the countries that specifically provided for right to health as a fundamental right to do so. Relying on the background that health is wealth and health is everybody’s concern, why would African states not make it a matter of necessity to make the right to health a fundamental human right, with constitutional backup? It surely seems to the researchers that some states love their citizens more than others and are really ready to provide the basic needs of her citizens and protect their fundamental human rights, especially when it relates to health.

Every individual has the inherent right to health, and ignorance of this right or non-provision of this right in the constitution does not in any way mean that the right is nonexistent. Thus, we recommend that individuals/citizens at different levels play their part in ensuring that the right to health is observed. This is by engaging in the little daily activities that would promote our complete wellness, physically, socially, economically and otherwise. Individuals can also help one another in providing adequate accommodation, adequate food and others within their reach. Since government is under no enforceable

obligation (in most African states) to provide these basic amenities to her citizens, citizens should strive to prioritize the need to promote and protect the universal right to health. Communities should strive through community-based projects to provide safe drinking water and adequate environmental sanitation in the respective communities. This would in turn lead to a healthier environment. Also, health workers and enlightened people at different levels or spheres of life can also utilize opportunities at social and religious gatherings to chip in sensitive health talks as a way of enlightening the public. Thus, we believe that as time goes on and as the sensitization on the core value of right to life reaches the grassroots, even the state would see the need to legitimize the right to health as a fundamental right and not just as a non-justiciable provision of the constitution.

We, therefore, conclude by adopting the statement of Kofi Annan (Former Secretary General of the United Nations) as a prophesy which we align ourselves with that it would manifest soonest in Africa. He stated thus: “It is my aspiration that health will finally be seen not as a blessing to be wished for but as a human right to be fought for.” We hope to see the reality of that assertion in Africa where right to health will be seen as a human right to be fought for, especially in the event that the government fails to make provisions for those underlying determinants of health. However, we believe that our government would as well change for the better and make available for her citizens safe drinking water, adequate food, adequate accommodation, sanitation, health education, safe working environment and gender equality so as to promote the health of her citizens and thus reduce mortality rate in Africa.

References

- AIDS Law Unit, Legal Assistance Centre. Right to Health, <http://www.lac.org.na/project/sjp/pdf/right-to-health.pdf>. Retrieved on 20th May, 2021
- Mulumba M., Kabanda D., & Nassuna V. (2010, P. 8). 'Constitutional Provisions for the Right to Health in East and Southern Africa, EQUINET Discussion Paper 81, Centre for HEALTH, Human Rights and Development (CEHURD) in the Regional Network for Equity. Health in East and Southern Africa (EQUITNET) <https://www.hst.org.za>
- Okere Obinna (1983): Fundamental Objectives and Directive Principles of State's Policy under the Nigerian Constitution, 1979. *International & Comparative Law Quarterly*. 32 (1). <http://doi.org/10.1093/iclqaj/32.1.214>. <http://doi.org/10.1093/iclqaj/32.1.214>. Pp. 214-228 @ p. 214
- Office of the United Nations High Commissioner for Human Rights OHCHR (). World Health Organization on the Right to Health. <http://www.lac.org.na/project/sjp/pdf/right-to-health.pdf>
- Surbhi S. (Sept. 15, 2017). Difference between Fundamental Rights and Human Rights: Key Differences. <https://keydifferences.com/difference-between-fundamental-rights-and-humasn-rights.html#> ..Retrieved on 8/5/2021)
- United Nations Secretary General, Kofi Annan in Mabika A. H. & London L. (2007). Zambia: The Right to Health and International Trade Agreements, University of Free State Law Faculty and the Ford Foundation. Retrieved from <https://www.equinetafrica.org>files>.
- Uwais Maryam (2005) Fundamental Objectives and Directive Principles of StAate Policy: Possibilities and Prospects (Sections 13 -24 of the 1999 Constitution) in Eds. Okpara Okpara & ors. Human Rights Law & Practice in Nigeria. Chenglo Ltd. Enugu. Pp. 276- 297)

WHO (2018) Morocco: Country cooperation Strategy at a glance.
<https://www.who.int/iris/handle/>

World Medical Association. Right to Health. Retrieved from
<http://www.wma.net/what-we-do/human-rights/right-to-health/#>

STATUTES

Constitution of the Federal Republic of Ethiopia, 1994

Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

Constitution of the Federal Republic of Uganda, 1995

Constitution of the People's Democratic Republic of Algeria, 1989
(Amended in 1996)

Constitution of the Republic of Rwanda, 2003

Constitution of the Republic of Senegal, 2001

Constitution of the Republic of South Africa, 1996

Constitution of Kenya, 2010

Egypt Constitution of 2014

Ghana's Constitution of 1992

International Covenant on Economic, Social and Cultural Rights
(ICESCR, 1966)

Lesotho's Constitution of 1993

Mauritania's Constitution of 1991

Morocco's Constitution of 2011

Namibia's Constitution of 1990

South African Constitution, 1996

Universal Declaration of Human Rights (UDHR) 1948

World Health Organization (WHO) Constitution, 1946