



LEGAL LANDSCAPE ANALYSIS: TB LAWS AND LEGAL REMEDIES

NIGERIA

Lawyers Alert
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I. Introduction & Acknowledgements

This legal landscape analysis is part of the Lawyers Alert Challenge Facility for Civil Society (CFCS) round 11 regional project for Anglophone Africa. The project aims for greater accountability among tuberculosis (TB) decision-makers and access to justice for people affected by TB in five Anglophone African countries: Ghana, Kenya, Malawi, Nigeria, and Zimbabwe.

This memorandum outlines the TB legal framework in Nigeria, analyzing constitutional law, legislation, and administrative law to identify legal remedies and accountability mechanisms available to people affected by TB. The analysis further considers whether TB laws and policies adopt a human rights-based approach, fulfilling the right to health, prohibiting TB-based discrimination, and protecting privacy and confidentiality, among other things.

Brian Citro, CFCS 11 Expert Legal Consultant, researched and wrote this memorandum. Barrister Rommy Mom, President of Lawyers Alert, reviewed and contributed to the document.

II. Key Takeaways

This section lists the key takeaways from the Nigeria legal landscape analysis, highlighting existing legal remedies and accountability mechanisms, notable aspects of the legal framework, and gaps and opportunities for reforms.

1. People affected by TB have legal standing under the Constitution and the *Fundamental Rights (Enforcement Procedure) Rules* to bring claims for violations of their fundamental rights represented by Lawyers Alert or other non-governmental organizations acting on their behalf (see section IV(C) below). This standing is however, general standing applicable to everyone PATBs included .
2. The public health and public safety exceptions to the enforcement of rights in Chapter IV of the Constitution might present barriers to constitutional remedies for people affected by TB (see section IV below).
3. People affected by TB may bring court claims under the *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act* for violations of the right to health under article 16 of the law (see section IV(A)(1) below).



Additionally the ECOWAS Court now exist for PATBs to now Approach the court in the west Africa sub region for human rights related violations.

4. People affected by TB may seek constitutional remedies pursuant to rights in Chapter II of the Constitution, including sections 16 and 17, based on health rights, entitlements, or freedoms established in federal legislation, such as the *National Health Act*, read in conjunction with item 60(a) of the Exclusive Legislative List in Schedule II of the Constitution which provides an exception to the nonjusticiability of rights in Chapter II of the Constitution (see section IV(A)(2) below). It should be noted however that rights under Chapter II while no justiciable, may be enforceable where the said rights have been enacted in other legislations outside of the constitution. For example, Universal Basic Education Act 2004 confers rights to education at the Junior secondary school level even in the absence of the enforceability of the right to education.
5. People affected by TB may seek remedies under the constitutional right to life in conjunction with the right to health in the *African Charter (Ratification and Enforcement) Act*, in line with the Federal High Court's 2005 ruling in *Gbemre v. Shell Petroleum Development Company & Others* (see section IV(B) below).
6. Lawyers Alert should work with civil society partners and legislative sponsors to advocate for an expansion of the *National Tuberculosis, Leprosy and Buruli Ulcer Control Agency (Establishment) Bill's* ambit to establish more legal rights for people affected by TB and address other aspects of the TB response (see section V(A)(12) below). The Bill in its present format majorly transforms NTBLCP to an agency but very restrain and low on the issues of rights or stigma and discrimination.
7. Further research is required to determine if the *National Health Act's* complaints mechanism exists; if so, people affected by TB may use the tool to file complaints for stigmatizing or discriminatory treatment in healthcare facilities or other challenges, such as delayed diagnoses, treatment interruptions, or drug stock-outs, that occur before, during, or after their TB treatment (see section V(A)(13) below). This mechanism however, has not utilized in the context of TB. The Nigerian Medical and Dental Practitioner Disciplinary Tribunal also a mechanism for complaints referral in cases processional misconduct which investigate and enforces rules of professional conduct. The rules of conduct mandates Doctors and Dentists to uphold universally acceptable profession standards in relationship with patients amongst others.



8. If *National Health Act's* complaints mechanism has not yet been established, people affected by TB and their partners should conduct advocacy calling on the Ministry of Health to create and implement the mechanism; in doing so, they should refer to both the *National Health Policy* and the *NTBLCP National Strategic Plan, 2021-2025* both of which call for health accountability mechanisms and greater community participation (see sections V(A)(13) and VI(20) below).
9. People affected by TB may attempt to enforce their rights to health, information, and confidentiality established in the *National Health Act* in conjunction with item 60(a) of the Exclusive Legislative List in Schedule II of the Constitution, which provides an exception to the nonjusticiability of the Constitution's Chapter II rights (see sections IV(A)(2) and V(A)(13) below).
10. Further research is required to determine if the complaint mechanisms required under the *National Health Insurance Authority Act* have been established; if so, people affected by TB may use the tools to lodge complaints for stigmatizing or discriminatory treatment in healthcare facilities or other challenges, such as delayed diagnoses, treatment interruptions, or drug stock-outs, that occur before, during, or after their TB treatment (see section V(A)(14) below).
11. If the *National Health Insurance Authority Act's* complaint mechanisms have not yet been established, people affected by TB and their partners should conduct advocacy calling on the Ministry of Health to create and implement the mechanisms; in doing so, they should refer to both the *National Health Policy* and the *NTBLCP National Strategic Plan, 2021-2025*, both of which call for health accountability mechanisms and greater community participation (see sections V(A)(14) and VI(20) below).
12. People living with HIV/TB coinfection, TB survivors living with HIV, or their relatives, associates, or friends may seek protection against discrimination based on their HIV status under the *HIV and AIDS (Anti-Discrimination) Act* in court or by petitioning the Minister of Justice; they may also bring claims under similar state laws Cross River, Enugu, Lagos, and Rivers states (see section V(A)(15) below).
13. People affected by TB may seek legal remedies in court under the *African Charter on Human and Peoples' Rights* pursuant to the *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act* for violations of their rights to health, life, non-discrimination, dignity, information, work, education, and others (see section V(B)(17) below).



14. People with TB and TB survivors may qualify as persons with disabilities, obtain a Temporary or Permanent Disability Certificate, and receive protection against discrimination and recognition of other legal rights under the *Discrimination Against Persons with Disabilities (Prohibition) Act*, allowing them to file complaints with the National Commission for Persons with Disabilities and seek redress in a court of law for violations of the act (see section V(B)(2) below).
15. The parents and guardians of children affected by TB may seek remedies in High Court Family Courts for violations of their children's rights to health, non-discrimination, education, and privacy under the federal *Child's Rights Act* and in appropriate state courts for violations of corresponding state laws (see section V(B)(19) below).
16. People affected by TB may lodge complaints with the National Commission for Human Rights for violations of their right to health, employment or education discrimination, or abuses associated with gender or children's rights; they may use the online complaint form or contact the Commission by email or phone; the Commission may then investigate the complaint and seek appropriate redress and remedies on their behalf (see section VI(B)(21) below).
17. People affected by TB may use the Public Complaints Commission's online Complaints Management System to file complaints about discrimination, poor treatment, or other challenges during their health care, education, or other interactions with public or private institutions (see section VI(B)(23) below).

III. Legal System Overview

This section overviews Nigeria's government and legal system, highlighting the legislature's structure, court system, and executive bodies.

Nigeria is a federal republic with national and state governments for each of the 36 Nigerian states. The President of Nigeria is the head of state and the head of government. An elected Governor serves as the executive head of each state. Nigeria has a mixed legal system based on English common law stemming from its British colonial past. Nigeria has four separate legal systems: English law, common law, customary law, and Sharia law.

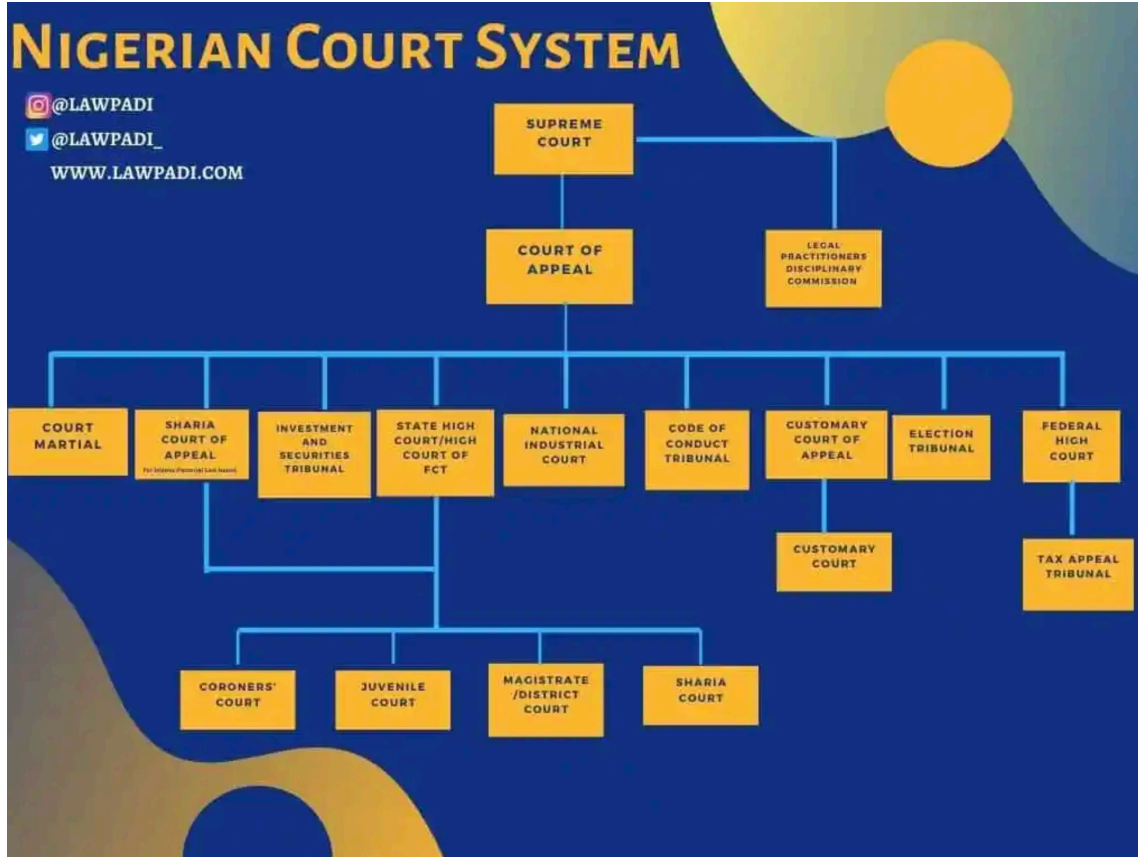


A. Legislature

Nigeria has a bicameral legislature at the national level – the National Assembly – made up of the Senate and the House of Representatives. Nigerian states have unicameral legislatures called state Houses of Assemblies. Each assembly has the power to make new laws, modify existing laws, and repeal laws.

B. Courts

The Nigerian courts are arranged at multiple levels, including federal and state courts and religious and customary courts. The Supreme Court of Nigeria is the highest court in the country, below which sits the Court of Appeal. Below the Court of Appeal is a system of courts, including the Federal High Court, State High Courts, National Industrial Court, Sharia Court of Appeal, and Customary Court of Appeal. The Magistrate and District Courts at the local level of the courts of first instance for most civil and criminal matters. Here is an organogram depicting the complete Nigerian court system:



C. Executive Branch

The President of Nigeria leads the executive branch. Executive powers in Nigeria extend to the execution and maintenance of the Constitution of Nigeria, laws enacted by the National Assembly, and all matters to which the National Assembly has the power to make laws. The executive powers of each state are vested in the state's Governor.

The federal executive branch comprises ministries headed by a minister responsible for health, education, security, the economy, and other government areas. Civil servants constitute the ministries and are responsible for administering government policies. State Governors are responsible for their states' administration, including providing education, health care, and other services.

IV. Constitutional Law



This section examines constitutional law in Nigeria, analyzing the text of the national constitution and judicial opinions. The Constitution of Nigeria is the supreme law of the country. Legislation, policies, and regulations enacted or promulgated at any level of government must conform with the Constitution. The rights established in the Constitution establish certain protections and entitlements for people affected by TB and corresponding government obligations.

Chapter IV of the Constitution enshrines a set of civil and political rights. These rights are fully justiciable, meaning people may bring legal claims for violations of these rights to courts of law. The rights in Chapter IV relevant to people affected by TB include:

- Right to life (§ 33)
- Right to dignity of the human person and to be free from torture and inhuman or degrading treatment (§ 34)
- Right to personal liberty (§ 35)
- Right to privacy (§ 37)
- Right to freedom of movement (§ 41)
- Right to freedom from discrimination (§ 42).

Section 46 of the Constitution establishes the right to redress for violations or likely future violations of Chapter IV rights in the High Court of the state where the violation occurred or is expected to occur. State High Courts have original jurisdiction to adjudicate these claims. However, section 45 of the Constitution allows for the derogation of Chapter IV rights in the interest of public safety, public order, public morality, or public health. The Constitution does not define the circumstances justifying derogation in the name of these interests. The public health and public safety exceptions to the enforcement of Chapter IV rights might present barriers to constitutional remedies for people affected by TB.

Chapter II of the Constitution – Fundamental Objectives and Directive Principles of State Policy – enshrines economic and social rights. Section 13 in Chapter II states that it “shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply” the provisions in Chapter II. However, section 6(6)(c) of the Constitution establishes that Chapter II rights are not justiciable, meaning courts may not adjudicate claims involving these rights. The provisions set forth in Chapter II relevant to TB include:



- § 16(2)(d), directing the state all citizens “suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled”
- § 17(2)(e), requiring “easy accessibility” to courts of law
- § 17(3)(b), requiring that “conditions of work are just and humane”
- § 17(3)(c), protecting the “health, safety and welfare of all persons in employment”
- § 17(3)(d), requiring that “there are adequate medical and health facilities for all persons”
- § 24, directing “every citizen” to “respect the dignity of other citizens and [their] rights.”

A. Right to Health

The Constitution does not explicitly enshrine a justiciable right to health. However, taken together, sections 16, 17, 33, 34, 35, 37, and 42 arguably establish a constitutional right to health. But they do not provide a clear path to legal remedies for health rights violations because some provisions are nonjusticiable, and others are not explicitly linked to health.

1. *African Charter Domestication Law*

The National Assembly enacted the *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act* in 1983, making the regional African Charter part of Nigerian domestic law. Article 16 of the Charter establishes the right to health. The Supreme Court of Nigeria has affirmed the binding status of the African Charter under Nigerian domestic law, establishing justiciable rights and corresponding government duties pursuant to the *African Charter (Ratification and Enforcement) Act*, unless the provisions are inconsistent with the Constitution of Nigeria or have been expressly suspended or repealed by subsequent law.¹ Two major HIV cases from the Federal High Court and Lagos State High Court, in 2004 and 2012, enforced the right to health in article 16 of the Charter via the 2004 legislation.²

The *Fundamental Rights (Enforcement Procedure) Rules* of 2009, promulgated by the Supreme Court of Nigeria, also call on courts to interpret and apply the African Charter. Preamble section 3(a) states:

¹ *General Sani Abacha & Others v. Chief Gani Fawehinmi*, [2000] 4 SCNJ 401.

² *Odafe & Others. v. Attorney General & Others*, FHC/PH/CS/680/2003 (2004); *Georgina Ahamefule v. Imperial Medical Centre & Dr. Alex Molokwu*, ID/1627/2000 (2012).



“The overriding objectives of [the] Rules are as follows: ... The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realising the rights and freedoms contained in them and affording the protections intended by them.”

The *Rules* further define “fundamental right” in Order 1(2) to include “any of the rights provided for in chapter IV of the Constitution and includes any of the rights stipulated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act.”

2. Item 60(a) of the Exclusive Legislative List in Schedule II

An alternative approach to accessing legal remedies under the right to health may be available through health rights established in legislation in conjunction with item 60(a) of the Exclusive Legislative List in Schedule II of the Constitution.³ This provision provides an exception to the nonjusticiability of Chapter II rights under section 6(6)(c). Item 60(a) establishes that legislative powers in Nigeria extend to the “establishment and regulation of authorities for the Federation or any part thereof ... to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.” In 2004, the Supreme Court of Nigeria affirmed this approach in ruling that the legislature had lawfully exercised its authority in the Exclusive Legislative List to “promote and enforce the observance of the provisions of Chapter 2 (II) of the Constitution” when it enacted the *Corrupt Practices and Other Related Offences Act*.⁴ Accordingly, people affected by TB may seek health-related constitutional remedies under sections 16 and 17 based on health rights, entitlements, or freedoms established in federal legislation read in conjunction with item 60(a) of the Exclusive Legislative List in Schedule II of the Constitution.

B. Right to Life

The Constitution of Nigeria enshrines the right to life in section 33. However, the Supreme Court has held that the right to life is not absolute but is instead qualified.⁵ By contrast, in 2005, in *Gbemre v. Shell Petroleum Development Company & Others*, the Federal High Court in the Benin Judicial Division held that the constitutional rights

³ For a discussion of this creative approach, see Jennifer Heaven Mike, *Enhancing the Right to Health in Nigeria through Judicial Intervention*, *Journal of African Law* (2023), 1–22.

⁴ *Olafisoye v Federal Republic of Nigeria*, [2004] 4 NWLR (Pt 864) at 580.

⁵ *Kalu v. State*, (1998) 13 NWLR (Pt. 583).



to life and dignity of the human person, in conjunction with the right to health in the *African Charter (Ratification and Enforcement) Act*, guarantees Nigerians the right to a “clean, poison-free, pollution-free healthy environment.”⁶ Accordingly, people affected by TB might seek remedies under the constitutional right to life in conjunction with the right to health in the *African Charter (Ratification and Enforcement) Act*.

C. Access to Justice (*Locus Standi*)

Administrative and other barriers restrict access to courts in Nigeria. These include delays in pending cases, sometimes for several years at a time, complex procedural rules, and high litigation costs, including filing and other fees that deter litigants from bringing suits in the first place. Notwithstanding these barriers to justice, section 36 of the Constitution of Nigeria guarantees people “a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.” In *Attorney General of Kaduna State v. Hassan* the Supreme Court held that “standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected.”⁷ However, the Court further held that “no action or other proceedings shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not any consequential relief is or could be claimed.”⁸

The *Fundamental Rights (Enforcement Procedure) Rules* direct courts to “encourage and welcome public interest litigations in the human rights field,” stating that “no human rights case may be dismissed or struck out for want of *locus standi*” (preamble 3(e)). The *Rules* further establish that “human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application [sic] on behalf of any potential applicant” (preamble 3(e)). In 2013, the High Court of the Federal Capital Territory (FCT) applied the *Rules*, granting standing for Lawyers Alert to file suit on behalf of a group of female sex workers claiming violations of their fundamental rights in the Constitution and African Charter.⁹ The Court held that an

⁶ *Gbemre v. Shell Petroleum Development Company & Others*, (2005) AHRLR 151 (NgHC 2005) at para. 5(3).

⁷ *Attorney General of Kaduna State v. Hassan*, (1985) NWLR (PT.8) 483 (page numbers not available).

⁸ *Ibid.*

⁹ *Lawyers Alert v. Minister of the FCT & Others*, Suit No. FCT/HC/CV/3816/12, High Court of the FCT, Abuja Judicial Division (2013).



“[a]ssociation acting in the interest of its members or other individuals or groups” may institute a lawsuit on their behalf.¹⁰

People affected by TB should therefore have legal standing under the Constitution and the *Fundamental Rights (Enforcement Procedure) Rules* to bring claims for violations of their fundamental rights represented by Lawyers Alert or other non-governmental organizations acting on their behalf.

V. Legislation

This section surveys legislation in Nigeria, considering TB and health laws, human rights and related laws, and other legislation.

A. TB and Health Laws

There is no TB-specific legislation in Nigeria, but a TB-specific bill is under consideration in the National Assembly. Notwithstanding the TB bill, the TB response is governed by other general health legislation at the federal and state levels. This section discusses the new TB bill and the *National Health Act*, *National Health Insurance Authority Act*, and HIV anti-discrimination laws.

1. *National Tuberculosis, Leprosy and Buruli Ulcer Control Agency (Establishment) Bill*

The *National Tuberculosis, Leprosy and Buruli Ulcer Control Agency (Establishment) Bill* of 2022 “seeks to establish the National Tuberculosis, Leprosy and Buruli Ulcer Control Agency to provide a legal and institutional framework” to enhance the TB response and protect the rights of people affected by TB (preamble).¹¹ As far as the authors of this memo know, the TB bill is currently under consideration in the National Assembly, possibly undergoing its second reading in the Senate. Further research and consultation with the bill’s legislative sponsors and civil society proponents, including Stop TB Partnership Nigeria and Mayowa Joel, are required to confirm this.

¹⁰ Ibid. at p. 5.

¹¹ The draft bill is available [here](#).



The TB bill's overarching aim appears to be to elevate the status and power of the institution charged with coordinating the national TB response. The bill would lift the national TB program from a department within the Ministry of Health under the Director of Public Health to a federal agency reporting directly to the President of Nigeria, with a Presidentially appointed Governing Board. Most of the bill – 14 of 20 sections – is dedicated to establishing this new TB agency. The bill also includes two short provisions on “diagnosis, treatment care and support” that simply direct the new TB agency to provide technical guidelines and “ensure the availability of the latest anti-tuberculosis ... drugs in all public hospitals” (section 15).

Lastly, the bill prohibits discrimination against people affected by TB on the following grounds (section 16):

- “(a) unfair treatment in, or in relation to employment or occupation;
- (b) denial or discontinuation of, or unfair treatment in, healthcare services;
- (c) denial or discontinuation of, or unfair treatment in educational establishments and services thereof;
- (d) denial or discontinuation of, or unfair treatment with regard to, the right of movement;
- (e) denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent or otherwise occupy, any property;
- (f) denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a person may be; and
- (g) unreasonable isolation or segregation of a tuberculosis, leprosy and buruli ulcer-affected person.”

The bill defines “unreasonable” in section 16(g) as “[i]solation or segregation ... without recourse to the law or due process.” The bill establishes penalties for violating section 16’s discrimination prohibition of “a fine of N2,000,000 or 6 months imprisonment or both fine and imprisonment” (section 17(1)). Persons violating other sections of the bill would be liable for “a fine of N1,000,000 or 3 months imprisonment or both fine and imprisonment” (section 17(2)).

Lawyers Alert should work with civil society partners and the bill’s legislative sponsors to advocate for expanding the bill’s ambit to establish more legal rights for people affected by TB and address other aspects of the TB response.

2. National Health Act



The *National Health Act* of 2014 (NHA) is the primary health legislation in Nigeria. The NHA does not address TB specifically, but it establishes a National Health System that, among other things, aims to “protect, promote and fulfil the rights of the people of Nigeria to have access to health care services” (sections 1(d-e)). The law commits the Ministry of Health to promote the “availability of good quality, safe and affordable essential drugs, [and] medical commodities” (section 2(1)(l)). The NHA also recognizes the rights to information and confidentiality in sections 23-34, 26, and 29. The law requires health authorities to ensure public and private healthcare providers display and disseminate “appropriate, adequate and comprehensive information” in health facilities (section 24). And it establishes that “[a]ll information concerning a [patient], including information relating to his or her health status, treatment or stay in a health establishment is confidential” (section 26). The NHA further requires health administrators to “set up control measures to prevent unauthorised access” to patient health records, including electronic files, or face fines and imprisonment (section 29).

The NHA creates a patient’s right to file a complaint “about the manner in which he or she was treated at a health establishment and have the complaint investigated” (section 30). The law directs health authorities to establish a complaints procedure, display information about it in health facilities, provide for the acceptance and acknowledgment of each complaint, and allow for the referral of certain complaints to external authorities. The NHA’s complaints mechanism has not yet been established based on information available online, but further research is needed to confirm this.

If the NHA’s complaints mechanism exists, people affected by TB should consider using the NHA’s tool to file complaints for stigmatizing or discriminatory treatment in healthcare facilities or other challenges, such as delayed diagnoses, treatment interruptions, or drug stock-outs, that occur before, during, or after their TB treatment. They may also attempt to enforce their rights to health, information, and confidentiality in the NHA in conjunction with item 60(a) of the Exclusive Legislative List in Schedule II of the Constitution, which provides an exception to the nonjusticiability of the Constitution’s Chapter II rights (see section IV(A)(2) above).

3. *National Health Insurance Authority Act*

The *National Health Insurance Authority Act* of 2022 repeals the *National Health Insurance Scheme Act* of 2004 and establishes the National Health Insurance Authority (NHIA) to promote, regulate, and integrate health insurance schemes in



Nigeria. Among other things, the act makes health insurance mandatory for Nigerians and directs the NHIA to “enforce the basic minimum package of health services for all Nigerians across all [public and private] health insurance schemes” (sections 3(b-c)). The act also requires the establishment of health complaint mechanisms. Section 3(h) directs the NHIA to “provide or require the establishment of mechanisms for receiving and resolving complaints by members of the schemes and Health Care Facilities, Health Maintenance Organisations, Mutual Health Associations and Third-Party Administrators.” The act also directs the NHIA to create a Basic Health Care Provision Fund “to provide a basic minimum package of care to all residents of Nigeria” and to “make regulations covering ... complaints handling ... [and] provide for the administration of an Ombudsman to handle complaints of enrollees” in the fund (sections 24(4)(a, c)). The act further creates a Governing Council that must “receive and investigate complaints of impropriety levied against any Health Maintenance Organisation, Mutual Health Association, or other relevant institutions” (section 5(j)). The Council can impose fines and suspend or revoke the institutions’ operating licenses. However, based on information available online, it is unclear whether these complaint mechanisms have been established; further research is required.

4. *HIV Anti-Discrimination Laws*

The federal *HIV and AIDS (Anti-Discrimination) Act* of 2014 prohibits discrimination against people living with or affected by HIV and AIDS. The law prohibits employers, individuals, and organizations from denying health care to people living with HIV or requiring HIV testing for employment or health services. The law also prohibits all public and private entities, including individuals and non-governmental institutions, from requiring disclosure of a person’s HIV status in contexts ranging from employment to private commercial services. The act protects the rights to privacy, confidentiality, and informed consent and establishes the “right to protection of data with respect to ... health and medical records” (section 13(1)).

The *HIV and AIDS (Anti-Discrimination) Act* assigns the Minister of Justice authority to enforce the act, allowing individuals to petition the Minister to conduct an inquiry. Section 26 of the law also creates a private right of action for individuals or groups to file civil claims in court for violations of the law. Courts hearing such claims may deliver “any appropriate order that is just and equitable in the circumstances,” including:



- (a) payment of compensation to the affected person or group;
- (b) payment of damages to the affected person or group;
- (c) an order directing the individual or institution to take steps to prevent discrimination or other contraventions occurring in the future in respect of others;
- or (d) an order directing the deregistration of a corporate body or withdrawal of an individual professional license. (section 27)

Section 28 also clarifies that nothing in the law precludes individuals from “seeking redress against any person or institution for any breach of his or her constitutional rights.”

Several Nigerian states have also passed HIV anti-discrimination laws. These include Cross River, Enugu, Lagos, and Rivers states.¹² The Akwa Ibom State House of Assembly passed the *Akwa Ibom State HIV/AIDS Anti-Stigma and Discrimination Bill* in 2021, but the state governor has yet to sign it into law.¹³ The Lagos State law, for example, prohibits discrimination and stigmatization of any person living with HIV or affected by AIDS and creates a private right of action to sue responsible parties in court.

People affected by TB are not directly protected under the *HIV and AIDS (Anti-Discrimination) Act* or similar state laws. However, people living with HIV/TB coinfection, TB survivors living with HIV, or their relatives, associates, or friends may seek protection against discrimination under the laws in court or by petitioning the Minister of Justice.

B. Human Rights Law

There are three main human rights laws in Nigeria relevant to people affected by TB – the *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act*, *Discrimination Against Persons with Disabilities (Prohibition) Act*, and *Child’s Rights Act*.

¹² *Cross River State HIV and AIDS (Non-Discrimination) Law, 2006; Enugu State HIV/AIDS Anti-Discrimination and Protection Law, 2005; Protection of Persons Living with HIV and Affected by AIDS Law, 2007; Rivers State HIV/AIDS (Non-Discrimination) Law, 2005.*

¹³ See *Association of Women Living with HIV/AIDS in Nigeria (ASWHAN) Calls for HIV Anti Stigma Law in Akwa Ibom* (May 8, 2023), <https://ifm1059.com/2023/05/08/association-of-women-living-with-hiv-aids-in-nigeria-aswhan-calls-for-hiv-anti-stigma-law-in-akwa-ibom/>.



1. *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act*

As discussed above, the *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act* of 1983 domesticates the regional *African Charter on Human and Peoples' Rights*, making it an enforceable part of Nigerian law. The law states that the provisions of the African Charter “have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers” (section 1). The law establishes the rights to health, equality, life, non-discrimination, dignity, information, participation, work, education, and others.

As noted above, the Supreme Court of Nigeria has affirmed the binding status of the African Charter under Nigerian law, establishing justiciable rights and corresponding state duties, unless the provisions are inconsistent with the Constitution of Nigeria or have been expressly suspended or repealed by subsequent law.¹⁴ Two major HIV cases from the Federal High Court and Lagos State High Court, in 2004 and 2012, enforced the right to health in article 16 of the Charter.¹⁵ The Supreme Court’s *Fundamental Rights (Enforcement Procedure) Rules* of 2009 also call on courts to interpret and apply the African Charter.

People affected by TB may seek legal remedies in court under the African Charter pursuant to the *African Charter on Human and Peoples Rights (Ratification and Enforcement) Act* for violations of their rights to health, life, non-discrimination, dignity, information, work, education, and others.

2. *Discrimination Against Persons with Disabilities (Prohibition) Act*

The *Discrimination Against Persons with Disabilities (Prohibition) Act* of 2018 prohibits discrimination “on the ground of his disability by any person or institution in any manner or circumstance” (section 1(1)). Disability discrimination is punishable under the law by fines and imprisonment, and the law explicitly allows for separate civil actions against the offending person or institution. The legislation establishes the National Commission for People with Disabilities and directs the Ministry of Information to promote “awareness regarding the ... rights, respect and dignity of

¹⁴ See note 1.

¹⁵ See note 2.



persons with disabilities” (section 2(a)). The law also recognizes and protects persons with disabilities' rights to liberty, education, health, work, and participation in public affairs, guaranteeing “unfettered access to adequate health care without discrimination on the basis of disability” (section 21(1)).

The act defines “person with disabilities” as follows:

“(a) a person who has received Temporary or Permanent Certificate of Disability to have condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person's functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, and includes any related function or any limitation due to weakness or significantly decreased endurance so that he cannot perform his everyday routine, living and working without significantly increased hardship and vulnerability to everyday obstacles and hazards; and

(b) a person with long term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder their full and effective participation in society on equal basis with others” (section 57).

Section 22 of the act establishes the procedure for obtaining certificates of disability. With the approval of the National Commission of People with Disabilities, a doctor may issue a Temporary Certificate of Disability valid for up to 180 days if they “suspect[] disability in the course of treatment of a person who before was not a person with disability” (section 22(2)). On the doctor’s recommendation, the Commission may issue a Permanent Certificate of Disability if the disability persists beyond 180 days.¹⁶

Read together, sections 8, 37(o), and 55 of the act appear to create a private right of action, allowing people with disabilities to seek redress in a court of law for violations of their rights under the law. Section 37(n) also empowers the Governing Council of the National Commission to “receive complaints of persons with disabilities of their rights.”

People with TB and TB survivors may qualify as persons with disabilities, obtain a disability certificate, and fall under the law’s protection against discrimination and

¹⁶ Section 22(4) states that a person with a Permanent Certificate of Disability “is entitled to all rights and privileges under this Act,” suggesting, but not clearly establishing, that a person with a temporary certificate may not be entitled to the law’s full protection.



recognition of other legal rights. In particular, people with drug-resistant TB undergoing long-term treatment may qualify for a Temporary Disability Certificate, and TB survivors with post-TB lung disease or other TB sequelae may be eligible for a Permanent Disability Certificate. People affected by TB who have these certificates may file complaints with the Governing Council of the National Commission for Persons with Disabilities and bring claims in court under the act.

3. *Children's Rights Legislation*

The federal *Child's Rights Act* of 2003 establishes that the "best interest of the child shall be the primary consideration" in all actions taken by public and private individuals and institutions concerning a child (section 1). Most Nigerian states have also adopted child's rights legislation, implementing the federal law with essentially the same language and provisions.¹⁷ The law enshrines children's right to health, stating that "[e]very child is entitled to enjoy the best attainable state of physical, mental and spiritual health" (section 13(1)). The right creates an obligation for "[e]very government in Nigeria" to ensure the provision of "necessary medical assistance and health care services to all children" and to "combat disease and malnutrition within the framework of primary health care through the application of appropriate technology" (section 13(2)). The act also recognizes children's rights to non-discrimination, education, privacy, and others.

The *Child's Rights Act* establishes "Family Courts" at the magistrate and High Court levels in each state and the FCT with unlimited jurisdiction to hear civil and criminal claims under the law. At the High Court level, Family Courts have the authority to hear "all matters relating to the enforcement of the rights of the child ... on the application for redress by a child who alleges that a right has been, is being, or is likely to be infringed" (section 152(4)). These courts have the power to deliver remedies, including imprisonment and fines, and petitioners may appeal the courts' decisions to the Court of Appeal.

¹⁷ It appears that 34 of 36 states have "domesticated" the federal *Child's Rights Act* through state legislation. See Maryam Abdullahi, *Child Rights Act now adopted in 34 states, says minister*, The Cable (Nov. 25, 2022), <https://www.thecable.ng/child-rights-act-now-adopted-in-34-states-says-minister>; Steve Aya, *FG: 34 States Have Domesticated Child's Rights Act*, This Day Live (Nov. 2022), <https://www.thisdaylive.com/index.php/2022/11/29/fg-34-states-have-domesticated-childs-rights-act>.



The parents and guardians of children affected by TB may seek remedies in High Court Family Courts for violations of their children's rights to health, non-discrimination, education, and privacy under the federal *Child's Rights Act* and in appropriate state courts for violations of corresponding state laws.

VI. Administrative Law

This section reviews administrative bodies, policies, and processes in Nigeria, focusing on the Ministry of Health, the national TB program, and other relevant ministries and agencies.

A. Ministry of Health and National TB Program

As noted above, the *National Health Act* of 2014 directs public health authorities to create a mechanism for patients to lodge complaints related to their healthcare. However, based on information available online, it appears that the mechanism has not yet been established. The Ministry of Health should be contacted directly to inquire into the status of NHA's complaint mechanism.

The *National Health Policy* of 2016 (NHP) presents a vision of Universal Health Coverage for all Nigerians under the *National Health Act's* legislative framework. The NHP's "Overall Policy Goal" is "to deliver quality effective, efficient, equitable, accessible, affordable, acceptable and comprehensive health care services to all" (section 3.3). The NHP is guided by a set of "Social Values and Guiding Principles," including the "right to the highest attainable level of health as a fundamental right ..., including access to timely, acceptable and affordable health care of highest quality" (section 3.4.1).

The NHP does not establish mechanisms for remedies or accountability. However, it highlights an "inadequate level of accountability and transparency" as a critical concern for health system governance (section 2.5.1). The policy further notes that, although the NHA provides for a Basic Health Care Fund, "accountability is a challenge as there is weak institutional capacity in public financial management and expenditure tracking" (section 2.5.3). The NHP also states that "communities are not adequately involved in the design and planning of health interventions and are often not in a position to hold government and service providers accountable" (section



2.5.9). In response, the NHP calls for the following policy initiatives (sections 4.2.1, 4.2.2.1):

- "Put mechanisms in place at all levels to enforce compliance with relevant legislation and regulations."
- "Institute a comprehensive accountability framework that promotes effective monitoring and evaluation of health sector performance, system audit, [and] a feedback system ..."
- "[Promote] community participation in the planning, management, monitoring and evaluation of the local health system ..."

The *National Tuberculosis, Leprosy, and Buruli Ulcer Control Programme's (NTBLCP) National Strategic Plan* for 2021 to 2025 does not establish mechanisms for remedies or accountability in the national TB program. However, like the NHP, it highlights concerns about accountability and community participation. The plan reports that the TB program's 2020 end-term evaluation raised concerns for "government ownership, accountability and stewardship of the TB response, particularly at sub-federal level" (section 4.2(a)). The plan also notes that a SWOT analysis identified "[l]ow consideration for gender and human rights in TB control" as a program weakness (section 4.1, Table 12). In response, the plan calls on the NTBLCP to strengthen "accountability, including community participation and engagement with civil society organizations" (section 3.1.9(a), Table 2) and "protect and promote human rights and genders related factors in provision of quality TB services" (section 5.3, Table 15).

B. Other Executive Bodies

This section reviews two other executive bodies with the authority to receive, investigate, and act on public complaints – the National Human Rights Commission and Public Complaints Commission.

1. *National Human Rights Commission*

The *National Human Rights Commission Act* of 1995 established the legal foundation and functions of Nigeria's National Human Rights Commission.¹⁸ The subsequent *National Human Rights Commission (Amendment) Act* of 2010 launched the

¹⁸ The information in this section derives primarily from the National Human Rights Commission's website: <https://www.nhrc.gov.ng/>.



Commission's operations. The 2010 act grants the Commission authority to "monitor and investigate all alleged cases of human rights violations ... and ... seek appropriate redress and remedies on [victims'] behalf" (section 5(b-c)). The Commission has four main units – the council secretariat, internal audit, complaints registry, and information and communication technology units – with state offices in all 36 Nigerian states and the FCT. The Commission's "thematic areas" of work include the right to health (see the next paragraph), labour, food and shelter, women's rights and gender, child rights, and the right to education. "Victims" of human rights abuses in Nigeria can file complaints through an online form on the Commission's website.¹⁹ The complaint form includes a field asking the complainant, "What remedy are you seeking for?"²⁰ The Commission website also provides an email address and toll-free phone number: info@nhrc.gov.ng, 08006472428.

The Commission has an "economic, social and cultural rights" department in line with the 2010 act's inclusion of the International Convention on Economic, Social and Cultural Rights (ICESCR) within the Commission's purview. ICESCR article 12 enshrines the right to health, placing the right within the Commission's scope. The Commission's website includes a page designating the right to health as a "thematic area." The page explains that the Commission has four dedicated staff "charged with ... promoting, protecting and enforcing the right to health," including through "liaising and cooperating with local and international organizations."²¹ The webpage lists the names of the four staff as follows: Fidelia Osemeata Oroh (Head), Fatima Abubakar Shamaki, and Valerie Duruh. The website highlights HIV/AIDS, sexual and reproductive health, access to essential medicines, and undernourishment as critical concerns. The page does not mention TB.

People affected by TB may lodge complaints documenting human rights violations with the National Commission for Human Rights using the online form or by contacting the Commission by email or phone. Complaints might report violations of the right to health related to their diagnosis or treatment, employment or education discrimination, or abuses associated with gender or children's rights. The Commission may then investigate the complaint and seek appropriate redress and remedies on their behalf.

¹⁹ Complaint Form, *National Human Rights Commission*, <https://nhrc.gov.ng/index.php/complaint-form> (accessed Aug. 11, 2023).

²⁰ Ibid.

²¹ Right to Health (Thematic Team), *National Human Rights Commission*, <https://nhrc.gov.ng/index.php/complaint-form> (accessed Aug. 11, 2023).



2. *Public Complaints Commission*

The *Public Complaints Commission Act* of 1975 established the Public Complaints Commission as a federal agency under the office of the President of Nigeria. The commission operates the Complaints Management System, which accepts and acts on complaints on various public services and institutions, including health facilities and services.²² Complainants must register and log in to an online account; then, they may file a complaint online and view and check the status of their complaints.²³ The Commission's primary function is "to provide impartial investigation on behalf of the complainants who feel aggrieved by the action or inaction of the government or local government or private companies."²⁴ Notwithstanding this function, the Commission's website explains that the Commission "does not participate in any formal judicial or administrative procedure or investigations, issue findings, or make or overturn administrative decisions."²⁵

People affected by TB may use the online Complaints Management System to file complaints with the Public Complaints Commission about discrimination, poor treatment, or other challenges during their health care, education, or other interactions with public or private institutions.

²² See, e.g., News Agency of Nigeria, *Nigerians complain so much about public hospitals: FG*, Peoples Gazette (May 17, 2023), <https://gazettengr.com/nigerians-complain-so-much-about-public-hospitals-fg/>.

²³ Complaint Management System, *Public Complaints Commission: The Nigerian Ombudsman*, <https://pcc.org.ng/> (accessed Aug. 11, 2023).

²⁴ Investigation Units, *Public Complaints Commission: The Nigerian Ombudsman*, <https://pcc.gov.ng/> (accessed Aug. 11, 2023).

²⁵ About Us, *Public Complaints Commission: The Nigerian Ombudsman*, <https://pcc.gov.ng/about-us/> (accessed Aug. 11, 2023).