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## The Nexus of Climate Change and Human Rights in Nigeria: Assessing the Impact of the Climate Crisis on Vulnerable Communities and Strategies for Mitigation

Judith Manjel Jabbe\*

### Abstract

*This paper investigates the intricate relationship between climate change and human rights in Nigeria, specifically focusing on vulnerable populations and mitigation strategies. It emphasizes Nigeria's susceptibility to extreme weather events, sea-level rise, and desertification, urging urgent action on climate change. The study delves into the vulnerabilities of rural communities reliant on agriculture, coastal communities facing sea-level rise, and indigenous populations at risk of losing their traditional lands. Examining various dimensions of human rights – right to life, food security, water access, health, and cultural preservation – the research highlights how climate change amplifies inequalities and undermines human rights in Nigeria. Employing empirical evidence and case studies, it showcases the adverse impacts of climate change. The paper explores adaptation and mitigation measures within Nigeria's socio-economic and cultural contexts, emphasizing resilience-building, sustainable practices, and equitable resource access. It underscores the crucial need for collaborative efforts among government entities, civil society organizations, and international partners. Policy interventions, legal frameworks, and public awareness campaigns are advocated*

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*to foster a climate-friendly environment that respects and safeguards human rights. By offering insights to inform decision-making and foster sustainable solutions, this research aims to protect human rights amidst the challenges posed by a changing climate.*

**Keywords:** Climate Change, Human Rights, Nigeria, Vulnerable Communities, Mitigation Strategies.

## 1 Introduction

Climate change is an imminent global threat to human rights, notably impactful in countries like Nigeria, where marginalized and vulnerable groups (those who are socially, economically, culturally, politically or institutionally marginalized or vulnerable.<sup>1</sup>) bear a disproportionate burden. Situated in a continent characterized by high exposure and limited adaptive capacity,<sup>2</sup> Nigeria grapples with multifaceted challenges due to climate change's intersecting implications for human rights. This study meticulously explores the intricate relationship between climate change and human rights within Nigeria's context. Examining international, regional, and municipal legal frameworks, this paper scrutinizes their efficacy in addressing climate change concerns and their consequential impacts on human rights. Within the Nigerian context, it scrutinizes the ramifications of the climate crisis on vulnerable communities and delineates effective strategies for mitigation.

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<sup>1</sup> NE Ebele, and NV Emodi, 'Climate Change and Its Impact on the Nigerian Economy' (2016) 10 Journal of Scientific Research and Reports 2, available at <<http://www.journaljsrr.com/index.php/JJSRR/article/view/21917/40737>> (last accessed 10 May 2023).

<sup>2</sup> Intergovernmental Panel on Climate Change (IPCC) 'R5 Climate Change 2014: Impacts, Adaptation, and Vulnerability' IPCC's Working Group II's 5th Assessment Report (AR5) 1205.

Divided into four parts, this paper starts with an introductory section. The subsequent part will provide a succinct overview of international, regional, and municipal legal frameworks concerning climate change, alongside an exploration of their intersection with human rights. Following this, the third segment will delve into Nigeria's susceptibility to climate change, emphasizing its effects on indigenous communities and other vulnerable groups. Lastly, the fourth part will propose targeted recommendations and strategic interventions to alleviate the adverse effects of climate change on human rights.

### **1.1 Conceptual Clarification**

By clarifying these key terms and concepts, the paper aims to provide a comprehensive understanding of the interplay between climate change and human rights in Nigeria and the strategies required for effective mitigation and protection of vulnerable communities.

#### **1.1.1 Climate Change**

According to the UN Framework Convention on Climate Change (UNFCCC), climate change means “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods”.<sup>3</sup> It refers to a long-term shift, an alteration in the type of climate prevailing over a specific location, a region or the entire planet.<sup>4</sup> Although a major feature of climate change is variability, an argument has been put forward that “[t]he most crucial things about the concept

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<sup>3</sup> Art 1(2) United Nations Framework Convention on Climate Change.

<sup>4</sup> JO Ayoade, *Climate Change* (2004) 45-66.

of climate change is not only the time periods involved but also the degree of variability that the change is subjected to as well as the duration and impact of such variability on man and the ecosystem".<sup>5</sup> This implies that the concept cannot be discussed fully without having regard to its impact on human life. Two major factors have been identified as triggering climate change. These are biogeochemical (natural events and processes) and anthropogenic influences (human activities).<sup>6</sup> Although a detailed discussion of these factors is outside the scope of the paper, it is generally agreed among scholars that the anthropogenic factors are the major cause of global warming and other climate change situations.<sup>7</sup>

### 1.1.2 Human Rights

Human rights are the basic rights and freedoms that belong to every person in the world from birth.<sup>8</sup> Human rights are universal entitlements and protections afforded to all individuals based on their inherent dignity and worth. They are indivisible and inalienable rights. They apply to all humans irrespective of sex, race and nationality. Human

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<sup>5</sup> E Ikpe, BA Sawa, and LU Ejeh, 'Evidence of climate change and adaptation strategies among grain farmers in Sokoto State, Nigeria' (2017) in 11 *IOSR Journal of Environmental Science, Toxicology and Food Technology*, 1.

<sup>6</sup> AO Jegede, *Climate Change as a "Constitutional Eessential": Trend and Significance for Africa* in M Addaney, and AO Jegede. (eds.), *Human Rights and the Environment Under the African Union Law* (2020), 233; PAO. Odjugo. 'The Impact of Climate Change on Water Resources: Global and Nigerian Analysis' (2009), 4, *FUTY Journal of the Environment*, 61.

<sup>7</sup> HD Matthews, *et al* 'National Contributions to Observed Global Warming' (2014), 9 in *Environmental Research Letters* 1. Also see J Wang, and B Chameides, *Global Warming's Increasingly Visible Impacts: Environmental Defense* (2005); NP Gillett *et al* 'Improved Constraints on 21st Century Warming Derived Using 160 Years of Temperature Observations' (2012), *Geophysical Research Letters*, 39.

<sup>8</sup> AM Yusuf, 'Community Relations in Military Operations in Nigeria: Human Rights in Perspective' (2022), 8 *NNHRCJ*, 165.

rights include civil, political, economic, social, and cultural rights, which are legally protected and which promote equality, justice, and well-being for all people. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more.

### **1.1.3 Nigeria**

Nigeria is a country located in West Africa, known for its diverse population, natural resources, and significant contributions to Africa's economy. Nigeria faces various socio-economic and environmental challenges, including climate change impacts.

### **1.1.4 Vulnerable Communities**

These are communities that are particularly susceptible to the adverse effects of climate change due to their socio-economic characteristics, geographical location, or limited capacity to adapt. These communities often face increased risks to their livelihoods, health, food security, water access, and other aspects of human well-being. In the Nigerian context, this research focuses on the rural farming communities in Northern Nigeria and the coastal region of the Niger Delta. This seeks to highlight the varied impacts and vulnerabilities of climate change, illustrating the extensive challenges present across different geographical and socio-economic contexts. These aspects will be thoroughly explored in the paper, taking into consideration Nigeria's vulnerability to climate change.

### **1.1.5 Mitigation Strategy**

This refers to a set of actions and measures designed to reduce or prevent the negative impacts of climate change. In the context of this article, it pertains to the strategies and approaches implemented to address the adverse effects of the climate crisis on vulnerable communities in Nigeria. These strategies may include measures such as implementing renewable energy solutions, promoting sustainable agriculture practices, enhancing climate resilience, and adopting policies to reduce greenhouse gas emissions. The aim is to mitigate the social, economic, and environmental consequences of climate change and protect the human rights of affected communities.

## **2 International and Regional Framework on Climate Change**

The need for a collective action and international cooperation in addressing the global challenge of climate change birthed international, regional and municipal legal frameworks aimed to guide efforts in mitigating greenhouse gas emissions, adapting to changing climatic conditions, and protecting vulnerable populations. These frameworks promote cooperation, transparency, and outline commitments and obligations of nations. By establishing a shared framework, countries can work together towards a sustainable and resilient future. Some key international, regional and municipal legal instruments that address various aspects of climate change, ensuring a comprehensive and coordinated global approach will be discussed briefly.

### **2.1 International Legal Framework**

- (1) United Nations Framework Convention on Climate Change (UNFCCC): The UNFCCC is an international

treaty that provides a framework for global efforts to address climate change. It was adopted in 1992 and has been ratified by almost all countries. The treaty sets the overall goals and principles for international cooperation on climate change. The UNFCCC entered into force on 21 March 1994. Today, it has near-universal membership. The 198 countries that have ratified the Convention are called Parties to the Convention. Preventing “dangerous” human interference with the climate system is the ultimate aim of the UNFCCC.<sup>9</sup>

- (2) Kyoto Protocol: The Kyoto Protocol is an international treaty that was adopted under the UNFCCC in 1997. It sets binding emission reduction targets for developed countries and establishes mechanisms for carbon trading and project-based activities to reduce emissions.<sup>10</sup>
- (3) Doha Agreement: The Doha Agreement also known as the Doha Climate Gateway, refers to the outcome of the 18th session of the Conference of the Parties (COP 18) to the United Nations Framework Convention on Climate Change (UNFCCC) held in Doha, Qatar, in 2012. While the Doha Agreement encompasses various aspects of climate change negotiations, it primarily focuses on extending the Kyoto Protocol, which is an international treaty aimed at combating climate change.<sup>11</sup> The Doha

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<sup>9</sup> United Nations Framework Convention on Climate Change (UNFCCC), 'About the UNFCCC' available at <<https://unfccc.int/about-us>> (last accessed 9th May 2023)

<sup>10</sup> United Nations Framework Convention on Climate Change (UNFCCC), 'Kyoto Protocol' available at <[https://unfccc.int/kyoto\\_protocol](https://unfccc.int/kyoto_protocol)> (last accessed 9th May 2023)

<sup>11</sup> United Nations Framework Convention on Climate Change (UNFCCC), 'Outcome of the Doha Climate Gateway – Doha Amendment to the Kyoto

Agreement played a significant role in extending the Kyoto Protocol and setting the stage for subsequent climate change negotiations. It recognized the need for both developed and developing countries to contribute to addressing climate change and emphasized the importance of financial support and mechanisms for addressing loss and damage.

- (4) **Cancun Agreement:** The Cancun Agreement refers to the outcome of the 16th session of the Conference of the Parties (COP 16) to the United Nations Framework Convention on Climate Change (UNFCCC) held in Cancun, Mexico, in 2010. The agreement encompasses a range of decisions and provisions aimed at addressing climate change. The Cancun Agreement marked a significant step forward in international climate change negotiations by addressing key issues such as mitigation, adaptation, financing, technology transfer, and Reducing Emissions from Deforestation and Forest Degradation (REDD+). It laid the foundation for subsequent climate change agreements and set the stage for continued global efforts to combat climate change.<sup>12</sup>
- (5) **Paris Agreement:** The Paris Agreement is an international treaty adopted under the UNFCCC in 2015. It aims to strengthen the global response to climate

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Protocol and Decisions adopted by the Conference of the Parties', Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012 (2013) available at <<https://unfccc.int/resource/docs/2012/cop18/eng/o8a01.pdf>> (last accessed 9th May 2023).

<sup>12</sup> United Nations Framework Convention on Climate Change (UNFCCC), 'Outcome of the Conference of the Parties – The Cancun Agreements: Draft decision -/CP.16' (2010) available at <<https://unfccc.int/resource/docs/2010/cop16/eng/o7a01.pdf>> (last accessed 9th May 2023).

change by keeping the global temperature rise well below 2 degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius. The agreement sets out obligations for both developed and developing countries and emphasizes the importance of adaptation, mitigation, and financial support.<sup>13</sup>

## 2.2 Regional Legal Frameworks

- (1) European Union Emissions Trading System (EU ETS): The EU ETS is a regional cap-and-trade system established by the European Union to reduce greenhouse gas emissions.<sup>14</sup> It covers various sectors, including energy, industry, and aviation, and operates through the trading of emission allowances. The European Union Emissions Trading System (EU ETS) is a policy initiative by the European Union (EU) to address climate change by reducing greenhouse gas emissions in a cost-effective manner. It is the world's largest carbon market and operates on the "cap-and-trade" principle. The EU ETS sets a limit, or cap, on the total amount of greenhouse gas emissions that can be released by installations in sectors such as power generation, industrial manufacturing, and aviation. Within this cap, companies are allocated or must purchase emission allowances, which represent the right to emit a specific amount of greenhouse gases.

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<sup>13</sup> United Nations Framework Convention on Climate Change (UNFCCC), 'The Paris Agreement' available at <<https://unfccc.int/process-and-meetings/the-paris-agreement>> (last accessed 9th May 2023)

<sup>14</sup> European Commission, 'The EU Emissions Trading System (EU ETS)' available at <[https://ec.europa.eu/clima/policies/ets\\_en](https://ec.europa.eu/clima/policies/ets_en)> (last accessed 9th May 2023)

These allowances can be bought, sold, or traded among participating entities, thereby creating a market for emissions. The EU ETS serves as a cornerstone of the EU's climate change mitigation efforts, providing a mechanism to incentivize emission reductions, promote innovation, and contribute to the transition towards a low-carbon economy.<sup>15</sup>

- (2) Regional Greenhouse Gas Initiative (RGGI): RGGI is a cooperative effort among several states in north-eastern United States to cap and reduce greenhouse gas emissions from power plants. It sets a regional cap on emissions and requires power plants to purchase allowances for their emissions.<sup>16</sup>
- (3) African Union Framework for Addressing Climate Change: The African Union has developed a framework to address climate change, which includes initiatives and strategies to enhance adaptation, mitigation, and capacity-building efforts across the continent. It aims to promote sustainable development and resilience to climate change impacts in Africa.<sup>17</sup>

These are just a few examples of the international and regional frameworks on climate change. In addition, there are other agreements, initiatives, and policies at both global and regional levels that contribute to the collective response to climate change.

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<sup>15</sup> Ibid.

<sup>16</sup> Regional Greenhouse Gas Initiative (RGGI), 'About RGGI' available at <><https://www.rggi.org/about> (last accessed 9th May 2023).

<sup>17</sup> African Union Commission, 'Climate Change and Sustainable Development' available at <<https://au.int/en/climate-change>> (last accessed 9th May 2023).

## **2.3 Municipal Legal Framework for Combating Climate Change in Nigeria**

### **2.3.1 Nigeria Climate Change Act 2021**

This legislation can be said to be the major comprehensive municipal legal framework, enacted to address the issue of climate change in Nigeria. It provides a legal and institutional framework for the reduction of greenhouse gas emissions into the atmosphere by ensuring the formulation of programs and policies for such purposes. The Act's objectives are in line with Nigeria's international climate change commitments, aiming to achieve net-zero greenhouse gas emissions between 2050 and 2070.<sup>18</sup> The National Council on Climate Change was established by the Climate Change Act as a perpetual corporate body with a common seal, capable of legal action in its corporate name. It is entrusted with the authority to formulate policies and make decisions concerning all aspects of climate change in Nigeria.<sup>19</sup> The Council has been entrusted with numerous responsibilities related to climate change, including the coordination of sectoral targets and the development of guidelines for regulating greenhouse gas emissions and other human activities contributing to climate change. As provided by the law, the Federal Ministries of Environment and Land Use Planning are required to create a carbon budget to restrict the average global temperature increase to 2 degree Celsius and strive to limit it to 1.5 degree Celsius above pre-industrial levels. In collaboration with these ministries, the Council through its Secretariat, is also obligated to develop a national action plan on climate change

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<sup>18</sup> Nigeria Climate Change Act 2021, s 1 (f).

<sup>19</sup> Nigeria Climate Change Act 2021, s 3 (1).

every five years. The initial plan is expected to be completed within 12 months of the Act's commencement.<sup>20</sup>

The Climate Change Act provides a robust framework for addressing climate change and achieving Nigeria's short-, medium-, and long-term climate goals. It places obligations on both public and commercial institutions to promote a low-carbon economy and sustainable lifestyles. The Act emphasizes collaboration with relevant stakeholders, including civil society organizations, and offers a solid legal foundation for potential climate-related legal disputes.<sup>21</sup> While implementing the Act requires further steps, it demonstrates Nigeria's commitment to addressing climate change seriously. Being the first comprehensive climate change law in West Africa and one of the few globally and regionally, it has the potential to serve as a strategic tool for promoting climate change activism and providing a legal basis for climate litigation in Nigeria.

### **2.3.2 Constitution of the Federal Republic of Nigeria 1999**

The Nigerian Constitution as the national legal order, emphasizes the objective of the State to improve and protect the environment, including the air, land, water, forests, and wildlife of Nigeria.<sup>22</sup> This demonstrates the recognition of the

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<sup>20</sup> T Akaluzia, 'The Nigerian Climate Change act' – key highlights' *BusinessDay NG*. (2022) available at <https://businessday.ng/opinion/article/the-nigerian-climate-change-act-key-highlights/>> accessed 12th May, 2023.

<sup>21</sup> A review of Nigeria's 2021 Climate Change Act: Potential for Increased Climate Litigation. Available at: <<https://www.iucn.org/news/commission-environmental-economic-and-social-policy/202203/a-review-nigerias-2021-climate-change-act-potential-increased-climate-litigation>> accessed 24th September, 2022.

<sup>22</sup> Nigerian Constitution 1999, s 20.

Nigerian State's responsibility to take measures to address climate change and mitigate its impacts.

Furthermore, Section 12 of the Constitution implies that international treaties, including environmental treaties, ratified by the National Assembly should be implemented as law in Nigeria. This indicates the State's obligation to adhere to international agreements related to climate change and underscores its responsibility to take actions in line with global efforts.

Moreover, Sections 33 and 34 of the Constitution guarantee fundamental human rights to life and human dignity, respectively. These rights have been argued to be linked to the need for a healthy and safe environment to effectively realize them. This highlights the State's responsibility to ensure a conducive environment that safeguards the rights and well-being of its citizens, including protection from the impacts of climate change.

Overall, the Nigerian State bears the responsibility, as outlined in the Constitution, to address climate change, implement international environmental treaties, and protect the environment to secure the rights and welfare of its people in the face of climate challenges.

### **3 Climate Change and Human Rights**

From the global perspective to the localized impact, the relationship between climate change and human rights is profound and multifaceted. Recognized internationally,<sup>23</sup> the dire implications of climate change on various aspects of human rights underscore the urgency of addressing this intricate interconnection. Delving into the dimensions of

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<sup>23</sup> United Nations Human Rights Council, Resolution on Human Rights and Climate Change (2019) available at <<https://digitallibrary.un.org/record/3834953?ln=en>> (last accessed 9 May 2023).

human rights in the context of climate change unravels the profound impacts this environmental shift has on critical rights such as life, food security, water access, health, and cultural preservation:

- (1) **Right to Life:** Climate change amplifies risks to human lives through intensified extreme weather events, elevated temperatures, and heightened environmental hazards. Natural disasters like hurricanes, floods, and wildfires have become more frequent and severe, resulting in loss of life and displacements. Health risks stemming from climate change, including the spread of vector-borne diseases and heat-related illnesses, further jeopardize this fundamental right.
- (2) **Food Security:** Altered climate conditions disrupt food production and availability, leading to decreased crop yields, shifts in growing seasons, and disruptions in agricultural practices. Vulnerable communities, especially, face food shortages, price volatility, and reduced access to nutritious food due to these impacts, necessitating sustainable agricultural practices and robust social safety nets.
- (3) **Water Access:** Climate change significantly affects water resources, causing scarcity, erratic rainfall patterns, and heightened water pollution. Such changes limit access to safe and clean water, adversely affecting sanitation, hygiene, and overall well-being. Protecting water sources and ensuring equitable access become pivotal in upholding the right to water amidst climate change.

- (4) **Health:** Climate change contributes to a spectrum of health risks, from increased incidence of heat-related illnesses to respiratory problems from heightened air pollution. Vulnerable populations including children, the elderly, and those with pre-existing health conditions, face escalated risks. Addressing these risks demands resilient healthcare systems, early warning mechanisms, and adaptive measures tailored to health vulnerabilities.
- (5) **Cultural Preservation:** The impact of climate change extends to cultural heritage, disrupting the ability of communities to maintain their cultural practices. Rising sea levels, erosion, and natural disasters threaten cultural sites, erode traditional knowledge systems, and displace communities from their ancestral lands. Safeguarding cultural heritage entails supporting indigenous knowledge, preserving cultural sites, and securing the rights of indigenous peoples to their lands and territories.

Tackling these impacts necessitates a comprehensive, rights-based approach encompassing mitigation to reduce greenhouse gas emissions, adaptation to enhance resilience, and addressing the unique needs of affected communities. Active inclusion of marginalized groups, respect for indigenous rights and knowledge, and fostering international cooperation are pivotal for safeguarding and upholding human rights amid climate change.

### 1.11.2 *Nigeria's Vulnerability to Climate Change*

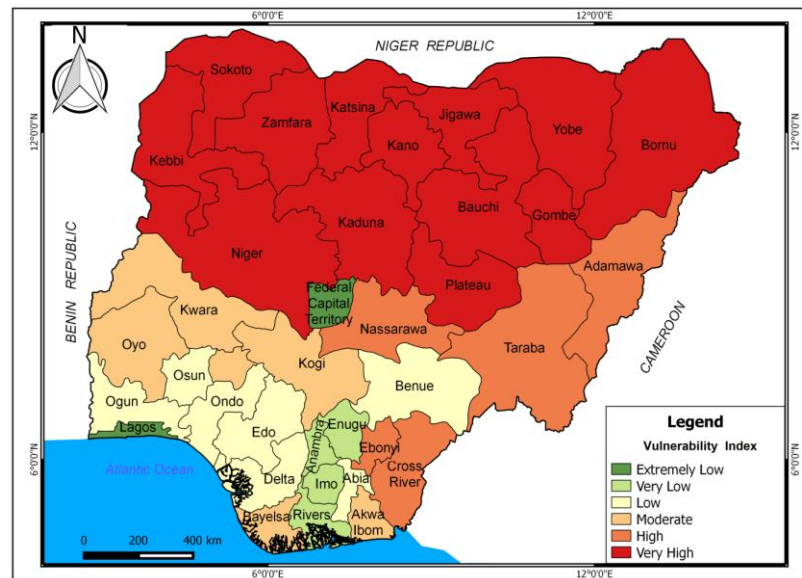


Fig. 1.1: Patterns of climate change vulnerability in Nigeria<sup>24</sup>

Vulnerability is a function of the character, magnitude, and rate of climate variation to which a system is exposed, its sensitivity, and adaptive capacity<sup>25</sup>. The vulnerability of Nigeria to climate change is undeniable and varies across different regions due to the diverse geographical and ecological characteristics. Figure 1 above depicts the vulnerability pattern in Nigeria.

<sup>24</sup> Al Madu, 'Rurality and Climate Change Vulnerability in Nigeria: Assessment towards Evidence-Based Rural Development Policy' (Paper presented at the 2016 Berlin Conference on Global Environmental Change, Freie Universität Berlin, (May 23-24, 2016).

<sup>25</sup> IPCC, 'Climate Change 2014: Impacts, Adaptation, and Vulnerability,' Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (eds.), C.B. Field *et al* (Cambridge, UK and New York, NY: Cambridge University Press, 2014), 11.

According to susceptibility analysis, the northern states exhibit higher vulnerability to climate change compared to the southern states. The northern regions of Nigeria particularly the northeast and northwest, grapple with a convergence of climate stressors, including dwindling precipitation, escalating temperatures, aridity, and desertification. Studies conducted by the Ministry of Environment in Yobe state, have concluded that sand dunes and desert encroachment have covered from 25,000 hectares to more than 30,000 hectares with negative impacts on food and livestock production.<sup>26</sup> These challenges instigate the shrinkage of wetlands, diminish surface water availability, and erode the biodiversity within numerous northern ecosystems. Compounded by a heavy reliance on agriculture and forest resources, rural communities in these areas face heightened vulnerability to climate-induced changes, impacting their livelihoods and exacerbating existing economic fragility. However, despite these challenges, these communities often employ traditional knowledge and adaptive measures to cope with changing climate conditions.

Conversely, the Niger Delta's coastal communities in Nigeria encounter a different set of vulnerabilities. According to a study conducted by the Nigerian Environmental Study/Action Team (NEST) on climate change in Nigeria, it was noted that several regions in the southern parts of the country exhibited significant adverse effects of climate change on coastal communities.<sup>27</sup> In Akwa Ibom state, a prominent coastal area in Nigeria, the Ikot Ibom Itam community

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<sup>26</sup> Yobe State Ministry of Environment (2001) as quoted in A Niasse, A Afouda, A Amani, Reducing West Africa's vulnerability to Climate Change Impacts on Water Resources, Wetlands and Desertification. IUCN Regional office for West Africa; 2004.

<sup>27</sup> Nigerian Environmental Study /Action Team. Facts on Climate Change in Nigeria #5: Repercussions for Coastal Zones and Marines Ecosystems; 2008.

encountered intense rainfall resulting in the disappearance of approximately four local streams, flooding numerous homes, and causing substantial erosion damage.<sup>28</sup>

These communities face imminent threats from coastal erosion, sea-level rise, and oil pollution. With a 1-metre rise in sea level, up to 600 km<sup>2</sup> of land would be at risk. This area includes parts of Lagos and smaller towns along the coast. The periodic overflow of the Atlantic Ocean across the Bar beach bank is an indication of a phenomenon that may accelerate as climate change intensifies and the sea level rises even further.<sup>29</sup> The Niger Delta is one of the most important wetlands in Nigeria, the largest in Africa and the third largest in the world.<sup>30</sup>

These ecological shifts endanger not only the physical landscape but also the economic stability and cultural integrity of these communities. The dependence on fisheries and agriculture as primary livelihoods exposes them to income disruptions and food insecurity due to environmental changes. Moreover, health issues arising from water pollution further challenge community well-being. The rich cultural heritage of the Niger Delta communities, closely intertwined with their environment, faces significant risks due to Industrial activities and climate disruptions.

Analyzing these communities reveals their vulnerabilities across environmental, socio-economic, and cultural dimensions. Coastal communities confront existential threats from environmental degradation and industrial activities, while

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<sup>28</sup> Building Nigeria's Response to Climate Change (BNRCC) Report of National Adaptation Strategy and Plan of Action on Climate Change for Nigeria. Prepared for the Federal Ministry of Environment Special Climate Change Unit; 2011.

<sup>29</sup> EE Nebedum, and VE Nnaemeka, 'Climate Change and its Impact in Nigerian Economy,' *Journal of Scientific Research & Reports*, 10 6: 2016: 1-13.

<sup>30</sup> Ibid.

rural farming communities in the north grapple with agricultural disruptions and resource scarcities. Understanding these nuances is pivotal to tailoring effective climate adaptation strategies that cater to the unique challenges faced by each community type.

Nigeria grapples with a compounded vulnerability, wherein its physical susceptibility is exacerbated by economic fragility. Despite marked strides in social and economic domains, the country's Human Capital Development lags due to inadequate investment.<sup>31</sup> This is reflected in a persistently low Human Capital Index rating. The efforts to broaden the economic base, while commendable, still grapple with a heavy reliance on crude oil, perpetuating developmental hurdles and infrastructure constraints.

Moreover, the aftermath of COVID-19 has amplified Nigeria's economic susceptibility to the impacts of climate change.<sup>32</sup> The adverse effects of climate change resonate most profoundly in Nigeria's coastal regions, desert-prone zones, and the north and south wetlands. Among those hit hardest by these shifts are farmers, fishermen, the elderly, women, children, and impoverished urban residents, all of whom face heightened vulnerability to climate change's ramifications.

### **3.1 Impact of Climate Change on Indigenous People and Vulnerable Communities in Nigeria**

The impact of climate change on indigenous and vulnerable communities in Nigeria is far-reaching, affecting various aspects of their lives. These communities face multi-faceted

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<sup>31</sup> CH Mbanyeude, 'Climate Change in Nigeria- Impacts, Risks, Challenges, Vulnerability', available at <[https://www.linkedin.com/pulse/climate-change-nigeria-impacts-risks-challenges-mbanyeude/?trk=pulse-article\\_more-articles\\_related-content-card](https://www.linkedin.com/pulse/climate-change-nigeria-impacts-risks-challenges-mbanyeude/?trk=pulse-article_more-articles_related-content-card)> (last accessed 12 May, 2023).

<sup>32</sup> Ibid.

challenges due to environmental shifts and socio-economic vulnerabilities, magnified by the climate crisis.

- (1) **Erosion of Traditional Knowledge and Culture:** Climate change disrupts age-old practices of indigenous communities, altering migration patterns and seasonal cues crucial for hunting and gathering. This disruption weakens their cultural continuity and knowledge transmission. Moreover, environmental degradation threatens the close ties these communities have with their natural surroundings, eroding traditional practices and cultural identities.<sup>33</sup> Urgent measures are needed to preserve these invaluable aspects of indigenous heritage.
- (2) **Environmental Degradation:** The climate crisis accelerates environmental degradation in indigenous territories, leading to the loss of ecosystems, biodiversity, and medicinal plants integral to their culture.<sup>34</sup> This degradation also fuels social and political instability, as competition for resources escalates, exacerbating vulnerability and tensions within these marginalized communities.
- (3) **Displacement and Relocation:** Rising sea levels and extreme weather events force indigenous and vulnerable communities, especially those in coastal regions, to flee their homes. Displacement disrupts social structures and

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<sup>33</sup> UNDP Nigeria, 'Climate Change in Nigeria: Impacts and Adaptation Options' (United Nations Development Programme, 2018) available at <[https://www.ng.undp.org/content/nigeria/en/home/library/environment\\_energy/environment/climate-change-in-nigeria--impacts-and-adaptation-options.html](https://www.ng.undp.org/content/nigeria/en/home/library/environment_energy/environment/climate-change-in-nigeria--impacts-and-adaptation-options.html)> (last accessed 13th May 2023)

<sup>34</sup> United Nations Permanent Forum on Indigenous Issues, 'Climate Change and Indigenous Peoples' (United Nations) available at <[https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf)> (last accessed 13th May 2023)

governance systems, leading to identity loss and increased susceptibility to poverty.<sup>35</sup> Addressing these challenges demands comprehensive strategies that prioritize community protection and support.

- (4) **Health Risks:** Changing climate patterns contribute to the spread of diseases like malaria, dengue, and cholera, disproportionately affecting these communities. Limited access to quality healthcare exacerbates these health risks, amplifying vulnerability and reducing resilience in the face of climate-induced health threats.<sup>36</sup>
- (5) **Livelihood Loss and Poverty:** Climate change disrupts traditional livelihoods such as farming, fishing, and herding, leading to reduced yields and limited access to resources. This economic instability deepens poverty and inequality among these communities, widening socio-economic disparities.

Addressing these intricate issues necessitates a holistic approach. Respecting the rights of indigenous peoples, involving them in decision-making processes, and implementing context-sensitive adaptation and mitigation measures are crucial steps. Supporting these communities in adapting to climate change, preserving their heritage, and enhancing their capacity for sustainable development is paramount for their resilience and well-being.

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<sup>35</sup> International Union for Conservation of Nature (IUCN), 'Climate Change and Indigenous Peoples, available at <[https://www.iucn.org/sites/dev/files/import/downloads/climate\\_change\\_and\\_indigenous\\_peoples.pdf](https://www.iucn.org/sites/dev/files/import/downloads/climate_change_and_indigenous_peoples.pdf)> (last accessed 13 May, 2023).

<sup>36</sup> United Nations Development Programme (UNDP), "Climate Change in Nigeria: Impacts and Adaptation Options," (United Nations Development Programme, 2018), available at <[https://www.ng.undp.org/content/nigeria/en/home/library/environment\\_energy/environment/climate-change-in-nigeria--impacts-and-adaptation-options.html](https://www.ng.undp.org/content/nigeria/en/home/library/environment_energy/environment/climate-change-in-nigeria--impacts-and-adaptation-options.html)> (accessed 13 May, 2023).

### 1.13 Enhancing Nigeria's Resilience to Climate Change

Nigeria's efforts to fortify its resilience against climate change have been exemplified through initiatives like the Nigeria Erosion and Watershed Management Project (NEWMAP). Launched in 2012, NEWMAP harnessed innovative, community-centric strategies. By its completion in 2022, the project established a critical link between poverty alleviation, sustainable ecosystems, and heightened disaster-risk management. The far-reaching impact extended to over 12 million individuals across 23 Nigerian states, significantly improving their livelihoods and safety.<sup>37</sup>

NEWMAP's strategies were proactive, aiming to shield Nigerians from impending climate change repercussions. The project's focus on restoration encompassed addressing 90 gully sites and erecting nearly 60 catchments to curb erosion. Implementing warning systems and 103 automated weather and flood early-warning systems offered crucial data for catchment planning, rainfall prediction, and flood surveillance in five River Basin Development Authorities. Plans were devised to divert storm water, forestalling gully formation, managing urban flood risks, and adapting to increased rainfall. Concurrently, enhancements in solid waste management aimed to mitigate flooding during heavy rains.<sup>38</sup>

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<sup>37</sup> The World Bank, 'Land, soil and climate change: How Nigeria is enhancing climate resilience to save the future of its people' 19 October, 2022 available at <<https://www.worldbank.org/en/news/feature/2022/10/18/land-soil-and-climate-change-how-nigeria-is-enhancing-climate-resilience-to-save-the-future-of-its-people>>(last accessed 12th May, 2023).

<sup>38</sup> Ibid.

### **3.2 Strategies for Mitigating the Impact of Climate Change on Indigenous and Vulnerable Communities in Nigeria Entail a Multifaceted Approach**

- (1) Promoting Renewable Energy: Embracing solar, wind, and hydropower sources can diminish fossil fuel dependency, curtail greenhouse gas emissions, and provide clean energy access, especially to remote communities.
- (2) Enhancing Climate Resilience: Strengthening infrastructure, constructing climate-resistant homes, establishing early warning systems, and employing nature-based solutions like reforestation bolster communities against climate-induced challenges.
- (3) Sustainable Agriculture and Land Management: Encouraging sustainable farming practices enhances food security, soil health, and diminishes emissions by promoting techniques such as agroforestry and efficient irrigation.
- (4) Water Resource Management: Effective water conservation measures, efficient irrigation systems, and rainwater harvesting ensure sustained access to water for agriculture and human use, particularly during droughts.
- (5) Community Engagement and Capacity Building: Inclusive decision-making processes, knowledge-sharing, and adaptation strategies empower communities to actively participate in climate change mitigation.
- (6) Policy and Legislative Frameworks: Formulating policies integrating climate change considerations into national

development plans safeguards the rights of indigenous people and vulnerable communities.

- (7) International Cooperation and Financial Support: Collaborating with global stakeholders for financial resources and technological aid strengthens Nigeria's climate change mitigation initiatives.

Drawing from an assessment of the intricate ties between climate change and human rights in Nigeria, several strategic recommendations emerge to mitigate these impacts on vulnerable communities:

- (1) Strengthen Policy Frameworks: Enhance existing policies by integrating climate change mitigation and adaptation strategies with a specific focus on safeguarding the human rights of vulnerable groups. This involves crafting climate-responsive policies, establishing legal safeguards, and ensuring robust implementation and enforcement mechanisms.
- (2) Increase Access to Climate Information: Improve the dissemination of accurate and timely climate information to vulnerable communities. Establishing community-based weather monitoring systems, early warning mechanisms for extreme weather events, and providing accessible climate-related resources are key to achieving this goal.
- (3) Enhance Community Engagement: Empower vulnerable communities, including indigenous groups, by actively involving them in the development and execution of climate change policies and programs. Forge partnerships between governmental bodies, civil society organizations, and local communities to ensure their

representation in climate-related forums and decision-making processes.

- (4) **Promote Sustainable Livelihoods:** Support vulnerable communities, particularly those reliant on agriculture and natural resources, in transitioning to sustainable livelihood practices. This involves offering training, technical support, and financial resources to promote climate-smart agriculture, sustainable forestry, and alternative income-generating activities.
- (5) **Strengthen Resilience and Adaptation:** Invest in measures that enhance the adaptive capacity of vulnerable communities against climate change impacts. This includes developing infrastructure, restoring ecosystems, and implementing nature-based solutions to mitigate the effects on water resources, food security, and disaster risk.
- (6) **Raise Awareness and Education:** Increase public awareness about the nexus between climate change and human rights through targeted awareness campaigns, educational programs, and capacity-building initiatives. Disseminate information about specific risks faced by vulnerable communities, their rights in the context of climate change, and available support systems.
- (7) **Foster International Cooperation:** Engage in international collaborations to access financial resources, technology transfer, and capacity-building aid for climate change mitigation and adaptation efforts. Seek support from international organizations, donor agencies, and climate funds to bolster the implementation of strategies and programmes.

Implementing these recommendations would enable Nigeria to more effectively address the impact of climate change on vulnerable communities while upholding their human rights. It's crucial to prioritize awareness creation to ensure informed and empowered community participation in climate action, fostering a sustainable and inclusive response to the climate crisis.

#### **4 Conclusion**

The complex intersection of climate change and human rights in Nigeria underscores the urgent need for comprehensive mitigation strategies. These strategies not only curb greenhouse gas emissions but also protect vulnerable communities' rights, ensuring resource access, resilience, and participation in decision-making processes.

However, these strategies must be context-specific, respecting Nigeria's diverse communities. International cooperation and financial backing are crucial for sustainable and equitable mitigation. By prioritizing vulnerable communities' well-being and rights, Nigeria can lead towards a climate-resilient future. Effective collaboration among stakeholders is imperative to minimize climate change impacts and safeguard human rights for all.

## Environmental Sustainability and Human Rights in Nigeria: The Way Forward

Amy Ada Onuorah\*

### Abstract

*Environmental discourse has, from international agreements to regional and national law and policy, increasingly adopted the language of human rights. Human rights scholars and activists have shown interest in environmental values and principles to further advance human rights, especially economic and social ones. The right to a healthy environment is today included in numerous new constitutions, particularly in developing countries. There are ecological limitations on human rights. The interrelationship of human rights with each other, which includes nature as well as boundaries of sustainability, needs to be the starting point for interpreting human rights. Many human rights are dependent on the environment. The crux of this article posits that sustainable management of the environment requires governance systems where the legal, policy, and institutional requirements of environmental management are seen as the joint responsibilities of not only the shareholders but also various stakeholders. Human rights and environmental sustainability are two critical issues that are essential for the development and prosperity of Nigeria. This article examines these issues, challenges and the way forward to ensure a brighter future to all Nigerians.*

**Keywords:** Human Rights, Environment, Sustainability, Sustainable development, Preservation.

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## 1 Introduction

A clean, healthy, and sustainable environment is a human right that is recognized by the UN Human Rights Council and more than 150 countries.<sup>1</sup> The right to a healthy environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water, and sanitation. Environmental crises can result in violations of these and other human rights. All persons have the right to a secure, healthy and ecologically sound environment and to freedom from pollution, environmental degradation and activities that adversely affect the environment. The need to sustain the natural environment, which may also be referred to as 'the natural habitat', is the determinant factor in the enactment and enforcement of environmental policies. To this end, McCormick (2001:21) averred that environmental policy is any action deliberately taken to manage human activities with a view to prevent, reduce, or mitigate harmful effects on nature and natural resources, and ensuring that man-made changes to the environment do not have harmful effects on humans or the environment.

Under Section 20 of the 1999 Constitution of the Federal Republic of Nigeria (As amended), the State is given the power to protect and see to the improvement of the environment. The State is also given constitutional power to secure the water, land, air, forest and wildlife in Nigeria. This implies that the basis of Nigeria's environmental policy is the 1999 Constitution. Section 2 of the Environmental Impact Assessment Act of 1992 (EIA Act) provides that: "the public or private sector of the economy shall not undertake or embark on, or authorize projects or activities without prior

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<sup>1</sup> Katarina Zimmer, 'The human Rights that Benefits Nature' (2001) <The Human Right that Benefits Nature - BBC Future> accessed 23rd August, 2023.

consideration of the effect on the environment”. Consequently, the Nigerian government has promulgated various laws and regulations to protect the Nigerian environment. These include: Federal Environmental Protection Agency Act of 1988 (FEPA Act) repealed by the National Environmental Standards Regulation Agency (NESREA) Act 2007.

The states of the Federation and the Federal Capital Territory (FCT), are also at liberty to do likewise in their respective jurisdictions. The major essence of environmental sustainability is to ensure sustainable development.

## **2 Conceptual Clarification**

### **2.1 Human Rights**

Human rights are rights that belong to an individual or group of individuals simply for being human, or as a consequence of inherent human vulnerability, or because they are requisite to the possibility of a just society. Whatever their theoretical justification, human rights refer to a wide continuum of values or capabilities thought to enhance human agency or protect human interests and declared to be universal in character, in some sense equally claimed for all human beings, present and future. All human rights, civil, political, cultural, economic, and social are recognized as universal, indivisible and interdependent body of rights, as originally foreseen in the 1948 Universal Declaration of Human Rights.<sup>2</sup> A comprehensive approach to the promotion and protection of human rights, which include economic, social and cultural

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<sup>2</sup> The Universal Declaration of Human Rights enshrines civil and political rights and economic, social and cultural rights and was intended to be the precursor to a single human right covenant. Political ideology and other factors, however, precluded this and two international Covenants were eventually adopted – nearly two decades after the promulgation of the Universal Declaration.

rights, ensures that people are treated as full persons and that they may enjoy simultaneously all rights and freedoms and social justice.

According to Arnold Lien, human rights are universal rights attaching to the human being wherever he appears without regard to time, place, colour, sex, percentage or environment.<sup>3</sup> Conceived in this regard, human rights are derived from the inherent dignity of the human person. They are rights accruing to an individual because he is a human being.

Human rights have been categorized under three generations, viz: first generation, second generation, and third generation of human rights. First generation refers to the civil and political rights. Such rights include right to freedom of speech, of religion, of press, and from torture. These rights are meant to ensure a duty of non-interference by government against individuals. The second generation rights require affirmative government action for their realization. These are social and economic rights which pertains to the wellbeing of the whole society. Examples include, right to education, right to work, to social security, food, to self-determination and adequate standard of living. The third generation of rights are the most recently recognized category. This category has been distinguished from other categories of human rights because their realization is not dependent on both affirmative and negative duties of the state, but also upon the behaviour of each individual. Rights in this category includes; right to development, right to peace, and to a healthy environment.

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<sup>3</sup> CJ Dakas, "Implementation of the African Charter on Human and Peoples' Rights in Nigeria" (1986-1990) University of Jos L.J., Vol. 3, p. 39.

## 2.2 Environment

The term environment is derived from the French word, *Environia*<sup>4</sup> which means “to surround”. In other words, environment can be defined as the sum total of all the living and non-living things and their effects that influence human life. It is the living ecosystem that maintains the existence of human life. Destruction of the environment can lead to various calamities. In order to prevent such disaster or calamities, laws are implemented to protect the environment for the livelihood of present and future generations.

Environment is an essential element in the lives of humans. Destruction of environment can affect the livelihood of the people. Environmental laws are essential to protecting the environment from exploitation by man-made activities. Such laws ensure and provide guidelines to the people on conducting activities that might harm the environment. The laws are amended according to the problems faced by the country. Environmental laws are not constant; they evolve.

In accordance with Section 37 of the NESREA Act,<sup>5</sup> environment includes “Water, air, land and all plants and human beings or animals leaving therein and the inter-relationships which exist between these or all of them”. The definition also has a striking semblance with the definition of the word as offered by the Environmental Impact Assessment (EIA) Act.<sup>6</sup> In the express wordage of the EIA Act, environment basically comprises “the totality of physical, economic, cultural, aesthetic and social circumstances, which

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<sup>4</sup> Lawbhoo, ‘Introduction to environment and Environmental law’ (2021) available at <Introduction to Environment and Environmental Law (lawbhoomi.com)> (last accessed 25th August, 2023).

<sup>5</sup> Extra-Ordinary Official Gazette of the Federal Republic of Nigeria No 92, Vol. 94 of 2007.

<sup>6</sup> CAP E12 VOL. 6, LFN 2004. Ss. 2, 3, 39(7).

affect the durability and value of life and property”. These statutory definitions contrast aptly with the definition of the word by the Supreme Court of Nigeria in *Attorney-General of Lagos State v. the Attorney-General of the Federation*.<sup>7</sup> In that case, Court stated that, “the environment connotes the natural conditions, for example land, air, and water in which people, animals and plants live”.

### 2.3 Sustainability

Sustainability is the long-term viability of a community, set of social institutions, or societal practice. In general, sustainability is understood as a form of inter-generational ethics in which the environmental and economic actions taken by present persons do not diminish the opportunities of future persons to enjoy similar levels of wealth, utility, or welfare. The idea of sustainability rose to prominence with the modern environmental movement, which rebuked the unsustainable character of contemporary societies where patterns of resource threatened the integrity of ecosystems and the well-being of future generations. Sustainability is presented as an alternative to short-term, myopic, and wasteful behaviours.<sup>8</sup> Nigeria’s sustainability goals are focused on poverty reduction, an inclusive economy, health and wellbeing, education, gender equality, peace and security, and partnerships. The specific goals include:

- (1) End poverty in all its forms everywhere
- (2) End hunger, achieve food security and improved nutrition and promote sustainable agriculture

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<sup>7</sup> (2003) 12 NWLR (Pt. 833) 1 SC, see particularly p. 180. Paragraph D-E

<sup>8</sup> James Meadowcroft, ‘History and Society’ (2023) <Sustainability | Description, Theories, & Practices | Britannica> (last accessed 25th August, 2023)

- (3) Ensure healthy lives and promote well-being for all at all ages;
- (4) Achieve gender equality and empower all women and girls; and
- (5) Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.<sup>9</sup>

#### 2.4 Sustainable Development

The term “sustainable development” has been defined as development that meets the needs and aspirations of the current generations without compromising the ability to meet those of future generations.<sup>10</sup> In a more holistic definition of sustainable development, it may be seen as the facilitator for balancing the conservation of nature’s resource with the need for development. In other words, sustainable development means improving the quality of human life while living within the carrying capacity of supporting ecosystem.<sup>11</sup> The concept of sustainable development in the exploitation and management of nature’s resources assumes the indisputable facts that all life on earth forms part of one single interdependent system, which influences and depends on the non-living components of the planetary rocks, soil water and the atmosphere.

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<sup>9</sup> UN, ‘Sustainable development goals knowledge platform’ (22nd December) <Nigeria: Sustainable Development Knowledge Platform (un.org)> (last accessed 25th August, 2023).

<sup>10</sup>Saba Abdul, Rasheed K., “After Rio-What Next” in *Environmental law and Sustainability Development in Nigeria*.

<sup>11</sup> W Ajai, “Achieving Environmental Protection through the Vehicle of Human Rights: Some Conceptual, Legal and Third World Problems” (1995) *U.B.L.J.*, Vol. 2, No. 1 p. 41.

Every human being has equal rights within the limits of the earth to the resources needed for a decent standard of living, and no individual or group should deprive another of his (their) means of subsistence. Each person or society is obligated to the protection of these natural resources for the mutual benefit of all.<sup>12</sup>

Ajai opines that the principle of sustainable development requires that the environment be managed so as not to irreversibly damage the procession of nature or over-tax them. This opinion can hardly be faulted in the light of the global manifestation, in recent years, of the consequences of man's activities that are detrimental to the environment. The emission of greenhouse gases and their impact on the ozone layer,<sup>13</sup> the consequential phenomenon of global warming, the rising sea levels worldwide<sup>14</sup> and the advent of acid rain and increased desertification, are but a few examples of the consequences of laissez faire in the management of nature's resources.

## 2.5 Preservation

Preservation is the process that protects the environment. The goal of preservation is to protect the environment from the harmful effects of human activity. Preservation of the environment:<sup>15</sup>

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<sup>12</sup> *ibid.*

<sup>13</sup> RA Malcom, *A Guide Book to Environmental law*.

<sup>14</sup> Coastal cities such as Lagos Nigeria, and whole countries like Bangladesh, said to lie below sea level are likely to assume the status of another Atlantis should the rate of the current increase in sea level remain unchecked.

<sup>15</sup> Important India, "Environmental protection" (2016) available at <Environmental Protection: Meaning, Importance, and Protective Measures - ImportantIndia.com> (last accessed 20th 19th August, 2023).

- (1) protects the environment from harmful human activities.
- (2) involves sustainable practices to minimize deforestation.
- (3) involves setting aside part or even all of the forest from human development.
- (4) refers to practices that do not alter the environment.
- (5) aims at keeping the environment safe and healthy.

### **3 Some Factors Impeding Environmental Sustainability and Human Rights in Nigeria**

#### **3.1 Pollution**

There have been several definitions of “pollution”. As early as 1924, at a conference of the International Law Association, pollution of the sea was defined as:<sup>16</sup> “an act whereby the inoffensive use of the water becomes impossible either for animal life or human use, or create a danger to such life”. The FEPA Act in Section 38 defines “pollution” as man-made or man-aided alteration of chemical, physical or biological quality of the environment to the extent that is detrimental to that environment beyond acceptable limits. The 1972 UN Conference in Stockholm defines pollution as, “The discharge of toxic substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment as to render them harmless”. Another definition that is of general acceptance is that given by the OECD regarding Trans-Frontiers pollution: “pollution” means the introduction by man, directly or indirectly, of substances or energy into the environment resulting in deleterious effects of such a nature as to endanger human health, harm living

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<sup>16</sup> PV Heijnsbergen, “The Pollution Concept in International Law” (1979) 5 in *Environmental Policy and Law* at 11.

resources and ecosystem, and interference with amenities and other legitimate uses of the environment.

In Nigeria, one of the major causes of pollution is the prospecting activities of the oil companies. The effect and problems of oil pollution are now well known.<sup>17</sup> The need of protecting the environment from the hazards of oil pollution has been recognized, particularly in the oil producing communities of the Niger Delta. Apart from the problems suffered by blow-outs and oil spills and from the devastation caused by constant gas flaring, they suffer from ravages of day to day production activities.<sup>18</sup> It is reported<sup>19</sup> that one quarter of the available land in delta area of former Bendel State has been rendered barren due to the spillage and leakages. Furthermore, the beaches at the mouth of the big rivers have been polluted by oil deposits from nearby off-shore platforms.<sup>20</sup>

### 3.2 Deforestation

It is a well-known maxim that for every “cause” there’s is an “effect” and for every “action”, there is a “consequence”, positive or negative. Thus, the effect of deforestation cannot be underestimated. Economically, the Federal Ministry of Environment estimated the economic losses as a result of depletion of the forest cover in Nigeria at US\$750 million annually at 1989 price. The ministry forecasted that by 2030 the country is expected to lose all potential revenues and future employment that could be derived from forest sustain-

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<sup>17</sup> Y Omorogbe, *Regulation of Oil Industry Pollution in Nigeria* in New frontiers in Law, (Benin Oliz Publishers, 1993) at 47.

<sup>18</sup> Ibid.

<sup>19</sup> Hazards of Oil Explorations in Bendel State, Pamphlet, published by the Bendel State Government, (1987) p. 6, referred to by Omorogbe, Ibid.

<sup>20</sup> Ibid.

able management if the current rates of forest depletion persist. Meanwhile, the most immediate social impact of deforestation in Nigeria occurs at the local level with the loss of ecological services provided by the forests. Forests are valuable to humans; they help in preventing erosion, control of flood, water management, fisheries protection and pollination functions that are of importance to the poor people who rely on the natural resources for their daily survival.<sup>21</sup> Also in Nigeria, many trees, shrubs, herbs, and assorted animals have been depleted while some are endangered. Deforestation, fragmentation, and degradation destroy the biodiversity as a whole and habitat for migratory species including the endangered ones as forest, especially those in the tropics that serve as storehouses of biodiversity vis-a-vis supporting about two-thirds of all known species and contain 65 percent of the world's 10,000 endangered species<sup>22</sup>. Mfon<sup>23</sup> reported that several plant species have been over-exploited especially those with edible seeds, nuts and kernels are now endangered. The heavy fragmentation of the forest also increases the incidents of human-animal conflict<sup>24, 25</sup>.

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<sup>21</sup> S Chakravarty, SK Ghosh, CP Suresh, AN Dey, G Shukla. *Deforestation: Causes, Effects and Control Strategies Global Perspectives on Sustainable Forest Management*; 2012.

<sup>22</sup> N Myers, and RA Mittermeter, *Biodiversity Hotspots for Conservation Priorities*. *Nature*, (2000) 403, pp. 853-854.

<sup>23</sup> P Mfon, OA Akintoye, G Mfon, T Olorundami, U Ukata, and TA Akintoye, "Challenges of Deforestation in Nigerian and the Millennium Development Goals." (2014) *International Journal of Environment and Bioenergy* 9 (2): 76-94.

<sup>24</sup> R Sukumar, N Baskaran, G Dharmrajan, M Roy, HS Suresh, K Narendran. *Study of the Elephants in Buxa Tiger Reserve and Adjoining areas in Northern West Bengal and Preparation of Conservation Action Plan. Final Report*. Center for Ecological Sciences, (Indian Institute of Science, Bangalore; 2003)139.

<sup>25</sup> HR Mangave. *A study of the Elephant Population and its Habitats in Northern West Bengal, North East India*. (M.Sc. Thesis, Bharathidasan University Unpub.) 2004.

Oguntala, Soladoye, Ugbogu, and Fasola<sup>26</sup> surmised the adverse effects of deforestation in Nigeria under three main headings as follows:

- (a) Effect on agriculture which revealed that with the removal of forest cover, the land is deprived of protection, i. e. predisposing the land to climatic agents such as rainfall, wind, sunshine and its heating effect. The result is that soil organic matter is rapidly mineralized and nutrients are leached, leading to the destruction of the soil structures.
- (b) Soil erosion: in which exposure of the soil to sun, rain, and wind lead to soil erosion, thus decreasing further productivity; and
- (c) Impact on water resources – deforestation adversely impacts water resources through a reduction in the amount of water that is intercepted by vegetation and evaporated back to the atmosphere. The lower portion of rainwater that infiltrates the soil adversely affects groundwater recharge and storage, ultimately turning perennial rivers into seasonal or ephemeral streams. The following water resources elements are said to be affected by deforestation: drinking water, fisheries, and aquatic habitats, flood/drought control, and damage to crops and irrigation systems from erosion and turbidity.<sup>27</sup>

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<sup>26</sup> AB Oguntala, MO Soladoye, OA Ugbogu, and TR Fasola, *A Review of Endangered Tree Species of Cross River State and Environs. Proceedings of the Workshop on Rain Forest of South Eastern Nigeria and South Western Cameroon*, (October 20-24, 1996), Calabar, Nigeria, pp. 120-125.

<sup>27</sup> LA Bruijnzeel, M Bonell, DA Gilmour, and D Lamb, *Forest, Water and People in the Humid Tropics: An Emerging View* M Bonell, and LA Bruijnzeel, (Cambridge 15 | Page University Press, Cambridge United Kingdom; 2005) 31  
SN Eluozo, *Predictive Model to Monitor the Migration of klebsiella Influenced*

### 3.3 Unsafe Disposal of Waste

Unsafe disposal of waste is a significant environmental and public health issue in Nigeria of which impedes Environmental Sustainability and Human rights. Improper waste management practices contribute to air and water pollution, soil degradation, and the spread of diseases. Here are some key points regarding the unsafe disposal of waste in Nigeria:

- (a) Open Dumping: This is a common practice in many Nigerian cities and towns, where waste is disposed of in open areas without proper containment or treatment facilities. This leads to the leaching of toxic chemicals into groundwater, air pollution from the burning of waste, and the proliferation of disease-carrying vectors.
- (b) Inadequate Waste Collection and Treatment: Many areas in Nigeria lack sufficient waste collection and treatment infrastructure. This results in waste being dumped on the streets, in drainage systems, and in water bodies, further exacerbating environmental pollution.
- (c) Electronic Waste: Nigeria is a destination for electronic waste (e-waste) from developed countries. Informal recycling activities in e-waste recycling centres often involve hazardous practices, such as open burning and the use of toxic chemicals, which pose health risks to both workers and nearby communities.
- (d) Health Impacts: Improper waste management has severe health implications for communities living near

waste disposal sites. Exposure to toxins and contaminants from waste can lead to respiratory problems, diarrhoeal diseases, skin infections, and other illnesses.

The defunct Federal Environmental Protection Agency (FEPA) catalogued 27 examples of human disaster caused by improper management of waste between 1921 and 1988.<sup>28</sup> Some of these include:

- (a) Minimata, Japan 1953-1960: Methyl mercury poisoning of people eating fish polluted by mercury. This resulted in 120 deaths, numerous injuries and many were hospitalized.
- (b) Bhopal, India December 4th 1984: Accidental release of poisonous methyl isocyanate gas from the pesticide plant of American multinational company (Union Carbide Corporation) due to a faulty pump and negligent operational policy. This resulted to over 30,000 deaths, 200,000 injured and many with irreversible deformities.
- (c) Onne, Port Harcourt, Nigeria: Industrial influent containing a high level of ammonia from NAFCON, a fertilizer company, was discharged into Okrika River. This resulted in massive fish killing and socio-economic problems for the fishing industries in the surrounding villages. Over ₦30m compensation was claimed.

Addressing the unsafe disposal of waste in Nigeria requires comprehensive strategies and actions that include:

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<sup>28</sup> FEPA, Guideline and Standard for Environmental Pollution Control in Nigeria (1991).

- (1) Improving waste collection and treatment infrastructure to ensure proper containment and disposal of waste.
- (2) Promoting public awareness and education campaigns to encourage responsible waste management practices among individuals, communities, and industries.
- (3) Strengthening regulations and enforcement mechanisms to ensure compliance with waste management policies and penalize offenders.
- (4) Encouraging investment in recycling and waste-to-energy technologies to reduce the amount of waste being disposed of improperly.
- (5) Supporting informal waste workers by providing training, protective equipment, and alternative livelihood opportunities to minimize their health and environmental risks.

By addressing the unsafe disposal of waste in Nigeria, the country can reduce environmental pollution, protect public health, and promote a sustainable environment.

### 3.4 Poverty

Poverty manifests when household resources prove insufficient to secure the essentials of dignified living. The consequences of persistent poverty include insufficient food, children being out of school, diminution of household back-up resources and exclusion from valuable social networks.<sup>29</sup> Poverty is a huge threat to humanity in particular and African economy in general. It is a bane of economic growth and

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<sup>29</sup> Kaplinsky, R. (2001).

development and has simultaneously frustrated and undermined the dreams and aspirations of people owing to its obvious negative consequences.

In addition, the outbreak of COVID-19 pandemic which took toll on the economies of nations globally, has further aggravated the problems of poverty and inequality in Nigeria, making progress in the attainment of the sustainable development goals more difficult. The severity of poverty in the country was further brought to the fore when the youths took to the streets on 3 October, 2020 to protest against police brutality.

However, it later became apparent that the purpose of the protest went beyond police brutality to include hunger, poverty and inequality that pervaded the land. Those youths in their thousands looted shops and warehouses and carted away food items and other essentials. All these make the discussion on poverty as a factor that impedes environmental sustainability in the country more relevant and imperative.

### **3.5 Corruption**

Corruption remains one of the fastest growing social problems in Nigeria. It is virtually becoming a way of life that permeates both private and public sectors of the economy. Over the years, this has earned the country the status of one of the most corrupt nations in the world. Despite seemingly concerted efforts of the governments to combat corruption, the problem remains indigenous with tragic consequences for the Nigerian society.

The menace of corruption by Nigerian leaders has certainly emerged as one of the main impediments to national development. Corruption by Nigerian leaders has caused the country severe economic, political and social problems, and these facts are responsible for the decayed infrastructure and

downturn of indicators of national development. Human Rights Watch (2007:40) states that Nigeria has some of the worst socio-economic indicators in the world and the overall picture has not improved since the end of military rule.

### 3.6 Climate Change

Climate change constitutes a major threat to environmental sustainability in Nigeria. The issues surrounding climate change have been at the centre of all international, diplomatic, and local discussions for the simple reason that the planet is suffering due to environmental degradation, deforestation, loss of biodiversity, and all sorts of pollutants that are being injected into the air. All these ills have gone a long way to threaten world peace and development. The UN Framework Convention on Climate Change defines climate change as “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.” This is why Art. 6 of the Convention stipulates that there should be constant implementation of educational and public awareness programmes on climate change and its effects.<sup>30</sup>

These adverse effect of climate change in our environment has seen the organization of many treaties, such as the 1992 Rio de Janeiro Earth Summit, the 1997 Kyoto Protocol, where most industrialized countries agreed to reduce greenhouse gas emissions by 6 to 8 percent below 1990 levels between 2008 and 2012. World leaders met again from 30 November to December 12th in Paris to negotiate on the

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<sup>30</sup> Adewale Daniel Omojowo, ‘Climate change: A Result of Human Unsustainable Activities (2016) <Climate Change: A Result of Human Unsustainable Activities Threatens Word Peace and Development – The Organization for World Peace (theowp.org)> (last accessed 19th August, 2023).

issues governing climate change reduction measures by 2020 and the adoption of the Paris Agreement. According to technicians and scientific researchers, this agreement can become fully effective only if 55 countries which produce at least 55 percent of the world's greenhouse gas emissions ratify it.<sup>31</sup>

It is also clearly seen that climate change is a serious threat to world peace and security as mentioned by a former UN Secretary-General Ban Ki Moon during a Security Council debate about shifting weather patterns. In his speech he said that, "climate change . . . not only exacerbates threats to international peace and security, it is a threat to international peace and security." The Lake Chad basin and the River Niger in Nigeria are clear evidence that climate change is still continuing its devastation of the landscape and agricultural spaces. If a community that solely relies on agriculture experiences constant droughts, this community will be forced to settle in another community in order to practice its agricultural activity. But if the new community refuses to accommodate them, then the other community will have no choice but to fight for its survival and that alone can result into inter communal war, loss of properties and lives.<sup>32</sup>

#### **4 Recommendations**

Human rights and environmental sustainability are two critical issues that are essential for the development and prosperity of Nigeria. However, these issues are often neglected, and it is essential to address them to ensure a brighter future for all Nigerians. Here are some ways forward:

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

- (1) Awareness and Education: Educating Nigerians on their human rights and the importance of environmental sustainability is crucial. This can be done through media campaigns, community outreach programmes, and educational programmes in schools and universities.
- (2) Citizen Participation: Encouraging citizen participation in policy-making and decision-making processes is crucial. This can be done through public hearings, town hall meetings, and other forms of public participation.
- (3) Collaboration: Collaboration between government agencies, NGOs, civil society organizations, and other stakeholders is critical. Working collaboratively can lead to the development of more comprehensive policies that address both human rights and environmental sustainability. Nigeria also needs to collaborate with the other countries to address these challenges. Environmental issues, in particular, are global problems that require a coordinated effort. Working with other countries and organizations can help Nigeria access resources and expertise that it may not have on its own.
- (4) Technology and Innovation: The use of technology and innovation can help address environmental sustainability challenges in Nigeria. For example, renewable energy technologies such as solar and wind energy can reduce reliance on fossil fuels.
- (5) Corporate Responsibility: Corporations operating in Nigeria have a responsibility to ensure that their activities do not violate human rights or harm the environment. Authorities should enforce environ-

mental regulations in order to hold corporations accountable for their actions.

## **5 Conclusion**

This chapter has examined some of the ways in which environmental issues affect human rights, and ways in which human rights are relevant to environmental sustainability. A key issue in the relationship between human rights and the environment is the economy, its character and how it is structured. This chapter has shown how economic globalization has had profoundly negative impacts on the environment and, by extension, on certain human rights. There are continuing theoretical/philosophical issues concerning the compatibility of human rights and environmental sustainability, particularly in relation to ongoing issues of the implementation of environmental human rights. Human rights are firmly embedded as constitutive aspects of environmental sustainability in general.

It is essential for Nigeria to take steps towards addressing human rights and environmental sustainability issues. Encouraging awareness and education, legislative reforms, citizen participation, collaboration, technology and innovation, and corporate responsibility can all contribute to a more sustainable future for Nigeria.

## The Psychological and Emotional Implications of Aggression in Domestic Violence

Olanrewaju Musa Murtala\*

### Abstract

*Domestic violence is a widespread problem with serious physical, psychological, and emotional consequences for victims. This paper examines the psychological and emotional implications of aggression in domestic violence, highlighting its impact on fear, anxiety, depression, and PTSD among victims. Perpetrators of domestic violence also experience psychological responses, often stemming from childhood trauma or a need for power and control. Effective intervention and treatment should consider these implications, offering counselling for victims and cognitive-behavioural therapy for perpetrators. Prevention efforts should focus on promoting healthy relationships and challenging societal norms condoning violence. Various government agencies and civil society organizations in Nigeria are actively addressing these social ills. Several agencies of government including the National Human Rights Commission (NHRC), National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Legal Aid Council of Nigeria and Civil Society Organizations such as International Federation of Women Lawyers in Nigeria (FIDA) are doing greatly in addressing the social ills. In conclusion, understanding and addressing the psychological and emotional consequences of aggression in domestic violence is crucial for intervention and prevention efforts.*

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**Keywords:** Psychological, emotional, implications, aggression, domestic violence.

## 1 Introduction

Domestic violence is the result of aggressive behaviour commonly experienced in the home involving physical abuse, sexual abuse, emotional and psychological abuse against intimate partners or married couples.<sup>1</sup> According to the Council of Europe Convention on Preventing and Combating Violence Against Women, domestic violence is “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”<sup>2</sup> In 2008, Barber discussed the various dimensions through which domestic violence can be defined, encompassing emotional, financial, and physical aspects. Additionally, there are additional red flags to watch out for, such as abusers exerting control over their victims’ financial buoyancy, thereby destroying valuable possessions belonging to the victim and making threats against both the victim and their family members (Montgomery, 2010).<sup>3</sup> The expression of unequal power relations in couple relationship is linked to issues of social domination and economic control. Therefore, any successful response to domestic violence must deal with gender-related issues, inequalities and stereotypes that

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<sup>1</sup> M Vakeke and others, Effects of Domestic Violence on Students in University of Fiji (*International Journal of Interdisciplinary Research and Innovations* ISSN 2348-1226) (online) Vol. 5, Issue 3, pp: (14-19), Month: July – September 2017, available at <[www.researchpublish.com](http://www.researchpublish.com)> (last accessed 17 June 2022).

<sup>2</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Art 3(b).

<sup>3</sup> RaMon B. Younger, *East Tennessee State University* (*The Effects of Domestic Violence: The Male Victims Perspective* (2011).

underlie it. Aggression and negative emotions appear to be driven by income inequality and intolerable partners. Many countries that report high income inequality also happen to be the countries that report a lot of negative emotions, such as anger.<sup>4</sup> This may result to severe aggression that will in turn lead to domestic violence among intimate partners. The socio legal method of analysing the relationships between partners was used. The socio-legal method is valuable in analysing partner violence resulting from aggression due to its multidisciplinary approach, which considers legal, social, and cultural factors, empowering victims and informing policy development. This approach recognizes power dynamics, intersectional identities, and longitudinal analysis, offering a comprehensive understanding of the complex issue and facilitating effective strategies for intervention and support.

The purpose of this study is to examine the increase in aggression and violence in the home from different related perspectives. The main goal of this research is to identify the psychological and emotional implications of aggression in domestic violence mostly prevalent among intimate partners. This study's exploration of aggression in domestic violence adopted collections of relevant information based on existing documented cases of domestic violence at the National Human Rights Commission, Nigeria, mass media prints including newspaper articles and internet sources. The research revealed that majority of female partners and their children are the victims of domestic violence. Most couples have experienced physical, sexual, emotional and psychological abuses. The challenge of stress, fear and tension involving low self-esteem aggravate domestic violence in most homes. This research also focused on addressing aggression in

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<sup>4</sup> See Gallup Global Emotions 2021, 2.

domestic violence and awareness of its prevention and redress mechanisms in laws, primarily for families as it affects children and other concerned people in the society. It was also found that the majority of people did not have enough information about how to act in the face of an aggression and violence in the home and their implications on the children involved.

## **2 Conceptual Framework**

### **2.1 Prevalence of Domestic Violence in Nigeria**

Regrettably, the degree of domestic violence in our society is high. The Nigerian National Human Rights Commission alone received over 1.5 million complaints in 2021, and its worst case was during the COVID-19 pandemic between 2019 and 2020. It is estimated that between 2 to 4 million women are victims of domestic violence every year. It is probable that in every 18 seconds someone is a victim of domestic violence. In one research study, it was determined that approximately 80.8 percent of accused abusers were male as compared to 19.2 percent of female offenders.<sup>5</sup> The fact also reflected in women with developmental disabilities who experience significantly high rates of physical, sexual and emotional violence perpetrated by their intimate partners and family members.

Disabled individuals are at a greater risk of severe physical and sexual violence compared to those without disabilities. Therefore, disabled victims endure multiple assaults. Furthermore, domestic abuse victims with disabilities often face increased dependency on their careers, thus making it challenging for them to report abuse and access support services. Even when these victims do seek help, they often

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<sup>5</sup> *Domestic Violence and Disabilities* available at <[https://www.niwrc.org/sites/default/files/images/resource/fact\\_sheet\\_pdfs.pdf](https://www.niwrc.org/sites/default/files/images/resource/fact_sheet_pdfs.pdf)>

encounter obstacles as many domestic violence programmes lack the necessary equipment and training to provide proper care for disabled victims.<sup>6</sup> Additionally, research indicates that over 80 percent of women with disabilities have been victims of sexual assault and half of them have experienced this assault more than ten times. Furthermore, women with disabilities face more frequent and severe acts of violence compared to women without disabilities, as suggested by the research.<sup>7</sup> While females do abuse, most reported offenders are male.<sup>8</sup> This is because the state of unhappiness keeps rising and negative experiences continued to rise too in 2021 and positive experiences dropped for the first time in three years. In fact, overall last year, people worldwide felt more worried, stressed and sad than at any time in the past 16 years which culminated in aggression and domestic violence.<sup>9</sup>

World Health Organization researchers found that 1.6 million people's death from wars, murder by gangs, youth violence, child abuse, elderly abuse, domestic violence, sexual abuse and suicide in violent ways occur every year. Besides the people dying a violent death, many millions of people have been injured by violence and or left to suffer the long-term consequences of violent acts including events that are never reported in homes.<sup>10</sup>

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<sup>6</sup> *Domestic Violence and Disabilities* available at [https://www.niwrc.org/sites/default/files/images/resource/fact\\_sheet\\_pdfs.pdf](https://www.niwrc.org/sites/default/files/images/resource/fact_sheet_pdfs.pdf)

<sup>7</sup> Violence against women with disabilities. Office of Women's Health U S Department of Health and Human Services in *Domestic Violence and Disabilities* available at <[https://www.niwrc.org/sites/default/files/images/resource/fact\\_sheet\\_pdfs.pdf](https://www.niwrc.org/sites/default/files/images/resource/fact_sheet_pdfs.pdf)>

<sup>8</sup> Etter & Birzer, *'The impact of domestic violence on society'* (Colleen Peace) West Texas A&M University (2007).

<sup>9</sup> Gallup's, Global Emotions Report (2022).

<sup>10</sup> WHO report 2002 available at <[http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/](http://www.who.int/violence_injury_prevention/violence/world_report/en/)>

## 2.2 Human Aggression

Human aggression is any untoward by one person to another that is carried out with the intent to cause instant harm. “In addition, the perpetrator must imagine that the behaviour will harm the target and that the target will strive to avoid the behaviour”.<sup>11</sup> Anger can be the result of hurt, pride, unreasonable expectations, repeated hostile fantasies that also lead to a manifested aggression in varying ways. For instance, attacking someone or a group with intent to harm through verbal attack - insults, threats, sarcasm - or attributing nasty motives to them, infliction of physical punishment or restriction, humiliation and brutal assaults.<sup>12</sup> This is buttressed by the wise counsel of Prophet Muhammad (Peace and Blessings be Upon Him) to the man who requested his admonishment. The Prophet replied, “Do not get angry” three times. The man, not knowing the meaning analytics, asked for the Prophet’s admonition three times before he was told what irreparable damages anger could cause if not controlled.

Understanding how people feel is essential for partners who strive to create thriving relationships to avoid anger and aggression that could lead to emotional outbursts with unhealthy psychological implications. Indeed, aggressive acts tend to have repercussions that may result in greater negative effects in the long run.<sup>13</sup> According to social learning theories, people acquire aggressive responses the same way they acquire other complex forms of social behaviour, either by

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<sup>11</sup> Bushman and others 2001, Baron and others 1994, Berkowitz 1993 and Geen 2001 in Craig and others, ‘*Human Aggression*’ (Department of Psychology, Iowa State University, Ames, Iowa 50011-3180).

<sup>12</sup> “Anger and Aggression”.

<sup>13</sup> Chester and others (2017). Combating the sting of rejection with the pleasure of revenge: A new look at how emotion shapes aggression. *Journal of Personality. and Social Psychology*, 112, 413-430.

direct experience or by observing others.<sup>14</sup> The observational learning processes provide the basis for understanding the beliefs and expectations that guide social behaviour. Patterson's work on family interactions and the development of antisocial behaviour patterns relies heavily on observable behaviours. Therefore any situation that frustrates another person while unconsciously using anger to blame others for one's shortcomings, to justify oppressing others, to boost one's own feelings about self while concealing other's feelings and emotions, is antisocial.<sup>15</sup> The long-term effect of antisocial aggression in relationships is often misconstrued to be an appropriate pattern of behaviour by a child watching closely and learning unconsciously by imitation and exhibiting same when he or she grows older.<sup>16</sup> An attempt to explain intense human hatred and cruelty to others has led to genocide and brutality and other patterns of conflict which psychologically still exist in the dark ages.<sup>17</sup> This underscored an amazing findings that a long-term but important early prenatal influence on adult personality traits measure, as just one small factor influencing physical aggression of the young ones.

### **2.3 Physical Abuse in Domestic Violence**

Partners tend to stay in abusive relationships for the same reasons that they blame themselves for the abuse, because there are children involved and who still have some type of dependency as it relates to the abuser. Physical abuse is thus

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<sup>14</sup> Bandura 1983, 2001; Mischel 1973, 1999 and Mischel and others 1995 (n) 6.

<sup>15</sup> Sue Hughes, 'Anger & Aggression – Emotion & Response'.  
*Psychotherapist In Advanced Clinical Training & Senior Management Consultant.*

<sup>16</sup> Olanrewaju, M.M. (2022). 'Aggression in Domestic Violence: The Psychological and Emotional Implications'.

<sup>17</sup> Storr 1994 in 'Anger and Aggression'.

“using physical force to control an intimate partner by pushing, shoving, slapping, biting, punching, choking, throwing objects at the partner, or assaulting them with a weapon”. Scholars also defined physical abuse “as the intentional use of physical force with the potential for causing death, disability, injury or harm.”<sup>18</sup>

The struggle to gain control of the home by a dominant family member may also lead to physical abuse of the other person perceived as resisting control. This is evident in a few cases reported as: “Man sets estranged wife ablaze, burning wife grabs suspect and both died”. The couple who resided in Otun-Akute, Ogun State, was said to have been married for 3 years before the woman, Lateefat, decided to leave her husband, Ponle Adebajo when she could no longer cope with the domestic violence.<sup>19</sup> In an alleged vicious physical assault by one Ndezebe Chinonso, a lawyer on his wife, Roseline Nwogo, the Nigerian Police filed a 6-count charge, number CR/104/2022 against the respondent Mr. Ndezebe, for allegedly cutting off the ears of his wife with a pair of pliers. Consequently, an Abuja High Court ordered his arrest.<sup>20</sup> In a similar vein, the Federal Government of Nigeria slammed homicide and filed a 23-count charge, number CR/199/2022 against Mr. Peter Nwachukwu, husband of late Gospel artiste Osinachi, who died on April 8 after he allegedly assaulted her. It was noted that the respondent caused various acts of violence and aggravated assault on Osinachi making him culpable of homicide punishable with death.<sup>21</sup>

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<sup>18</sup> Rohrbaugh 2006 and Polsky and Markowitz (2004) 1, in RaMon B, *The Effects of Domestic Violence: The Male Victims Perspective* (East Tennessee State University).

<sup>19</sup> Punch Newspaper 4 July, 2022.

<sup>20</sup> Sahara Reporters 1 June, 2022 available at <https://bit.ly/3M6uD1F> (accessed on 13 July, 2022).

<sup>21</sup> Punch Newspaper 27 May, 2022.

From these cases, it can be seen that there were triggers of physical violence rooted in anger and aggression that led to the death of the other persons, leaving irreparable and colossal damage, emotional and psychological implications on the victim and the children left behind.

### **3 Abuse/Child Neglect in Domestic Violence**

The family is the most critical institution in our society. Family's internal dynamics have both positive and negative effects on the development of the child.<sup>22</sup> In modern societies, there is a perception that violence occurs only in socially disadvantaged families, but research shows that domestic violence occurs in all sectors of society, regardless of cultural, religious, social, legal and economic aspects. Violence causes disorders and affects all levels of a child's personality development, his or her emotional and cognitive spheres, as well as behaviour. One of the negative aspects of family life or intimate relationship is the impact of domestic violence on the children as witnesses or victims of conflict. Accordingly, domestic violence is the most deadly violence to which children can be exposed. However, children are not always victims of bullying and violence. They often witness violence towards their mother and younger members of the family.<sup>23</sup>

In any home where domestic violence occurs, those that suffer a high risk of domestic violence are the children themselves. Regardless of whether or not they are physically abused, the emotional effects of witnessing domestic violence are very similar to the psychological trauma associated with

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<sup>22</sup> See Alshareefa and others 2015 in Almajali, S. and Alsrehan, H. (*The impact of family violence on the social and psychological development of the child*).

<sup>23</sup> See Christian and others 2015; Noble Carr and others 2019 in Almajali, S. and Alsrehan, H. (*The impact of family violence on the social and psychological development of the child*).

being a victim of child abuse. Each year, an estimated minimum of 3.3 million children witness domestic violence.<sup>24</sup> A major study of more than 900 children in battered women's shelters found that nearly 70 percent of the children were themselves victims of physical abuse or neglect. Researchers found that approximately 90 percent of children are aware of the violence directed at their mothers, while others are present in 41-55 percent of homes where police intervene in domestic violence calls.<sup>25</sup> The exposure to violence and abuse significantly impacts the cognitive abilities of victims. A comprehensive study was conducted, encompassing both minors and adults who had experienced adverse childhood experiences. The study revealed that any form of violence serves as a catalyst, triggering changes in physiological and neurobiological processes, ultimately leading to lasting disruptions in brain structures of the victims.<sup>26</sup>

It is widely acknowledged that violence within an intimate partnership has detrimental effects on children. However, the precise impact of such violence on a child's psychopathology remains unclear. Multiple studies have established a connection between family violence and various adverse outcomes in children, including behavioural issues, traumatic stress, internalization problems and social difficulties.<sup>27</sup> While most research focused on the effects of domestic violence on school-age children and young adults, fewer studies have delved into these processes in younger children.<sup>28</sup> Moreover, questions persist about whether

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<sup>24</sup> *'Effects of Domestic Violence on Children' (Hands are for helping, not hurting)*

<sup>25</sup> Rohrbaugh (n 19).

<sup>26</sup> See Turner and others 2012 in Almajali, S. and Alsrehan, H. (*The impact of family violence on the social and psychological development of the child*), <<https://www.redalyc.org/journal/279/27962050025/html/>>

<sup>27</sup> Ibid 19

<sup>28</sup> Alshareefa (n 23).

younger children experience the effects of family violence to a similar or even greater extent than their older counterparts.<sup>29</sup>

Findings from the study shed light on children who had previously experienced domestic violence, exhibited heightened emotional responses when confronted with conflict compared to those who had not grown up in such an environment, such emotional responses were experienced in conflict compared to those who had not grown up in such an environment.<sup>30</sup>

Evidently, some abuses on children are explicitly stated in cases documented by the National Human Rights Commission, Nigeria. For instance, in cases registered as follow:

C/2021/178/KD

The Commission received a complaint on 22 November 2021 from X who alleged that her ex-husband abandoned her and the children after their divorce. X further alleged that there has not been any maintenance in respect of feeding allowance and school fees for the children.

C/2021/196/KD

The Commission received a complaint on 22 December 2021 from X who alleged denial of access to her children by her husband after they were separated due to domestic violence. She alleged further that he took the children to an unknown place and all effort to see the children have proved abortive.

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<sup>29</sup> Rohrbaugh (n 19).

<sup>30</sup> Alshareefa (n 23).

C/2021/191/KD

The Commission received a complaint on 13 December 2021 from X who alleged that her ex-husband divorced her and left her with the responsibility of feeding and paying school fees without any help from him.

C/2021/602/KN

The Commission received a complaint dated 6 August 2021 from X who alleged battery and neglect of his responsibilities on their children.

C/2021/604/KN

The Commission received a complaint dated 9 August 2021 from X who alleged that her parents fight always because their father abandoned his responsibilities towards his family.

C/2021/6961-6964/PSO

The Commission received a complaint dated 3 August 2021 from X who resided along Bauchi ring road, Jos, Plateau State. She was married to the Respondent and they had 3 children together who were 7-, 4- and 1-year old. X alleged domestic violence in her marriage and that the Respondent had refused to enrol their children into school and he had also abandoned his responsibility to the family.

C/2021/7237-7239/PSO

The Commission received a complaint dated 23 August 2021 from X who resided at Bukuru, Plateau state. She was married to the Respondent and they had two children together who were 5 years and 2 years old. She alleged domestic violence and that the Respondent had not been providing for the family, the children's school fees.

The apparent neglect of children due to domestic violence and irresolvable differences between couples or intimate partners as analysed have cost them the right to survival and development, the rights to adequate protection and to education and good upbringing under a conducive atmosphere of peace by both parents. However, in most cases, the parties were in disagreement due to unnecessary and inappropriate habit of acting out in anger between themselves at the mercy of aggression, letting it to control them and their lives. These often inform targeted interventions by the Commission that promote prosocial behaviours and set children on a more positive developmental trajectory.<sup>31</sup>

#### **4 Sexual Abuse in Domestic Violence**

In most cases, it is found that 30 to 60 percent of women had been the victims of domestic abuse, 15 to 71 percent with physical and sexual violence being the most common respectively. They determined that domestic violence against women was common across the world, that women were more likely to suffer abused by a partner than by an unknown perpetrator.<sup>32</sup>

In some circumstances sexual harassment include where the harasser and the victim are of the same sex. A member of the opposite sex does not necessarily have to be the victim. The offender can be the victim's employer, co-worker, or a relative and non-relative. The victim can be anyone affected by the aggressive conduct and not necessarily the harassed person, money may and may not be involved in unlawful sexual harassment to the victim. In all, what is important is to

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<sup>31</sup> Alshareefa (n 23).

<sup>32</sup> See Garcia-Moreno and others 2006 in Mary V and others 'Effects of Domestic Violence on Students: A Case Study of the University of Fiji Students' available at <[www.researchpublish.com](http://www.researchpublish.com)> (accessed on 13 July, 2022).

condemn the undesirable act by the harasser. Therefore, it is pertinent to let an offender know that certain actions are undesirable.<sup>33</sup>

The reactions to being harassed may include psychological, physical and emotional consequences on the victim and the society. Hence, the victim and the society must hold the harasser accountable and also resist giving him or her any protection for him following a claim that the act did not take place. Silence enables the harassers, speaking out weakens their plots and acts.<sup>34</sup> This is a methodical gift of change for an abuser and a command by the Messenger of Allah, Prophet Muhammad (May Peace and Blessings Be Upon Him) who said: "Whoever of you sees an evil action, let him change it with his hand [by taking action], and if he cannot, then with his tongue [by speaking out], and if he cannot, then with his heart [by feeling that it is wrong] though that is the weakest of faith."<sup>35</sup>

## 5 Psychological and Emotional Implications

Philosophers and psychologists have argued that because violence occurs around us every day, it may be concluded that people have an innate, or even an instinct, to be aggressive. Human beings are naturally evil and can only be constrained by the society of their aggressive tendencies.<sup>36</sup> In the same vein, some believe that humans are naturally gentle creatures who are aggressive only because they are taught to be so by

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<sup>33</sup> *US Equal Employment Opportunity Commission* available at <<http://www.eeoc.gov/index.html>> (accessed on 24 July, 2022).

<sup>34</sup> Center for Victim Advocacy and Violence Prevention 'Sexual Harassment' available at <[www.sa.usf.edu/advocacy](http://www.sa.usf.edu/advocacy)> (accessed on 24 July 2022)

<sup>35</sup> Reported by Muslim in his *Saheeh*, 1/69.

<sup>36</sup> *Principle of Social Psychology* available at <<https://open.lib.umn.edu/socialpsychology/chapter/10-2-the-biological-and-emotional-causes-of-aggression/>> (accessed on 13 August, 2022).

society. Psychologists have equally argued that people do have a “life instinct”, as though they have a “death instinct”, an impulse toward destruction of themselves and others.<sup>37</sup> This has spiritedly endeared human beings to display aggression in domestic violence with unfortunate implications for the aggressor and the one who suffers it. Experiencing a traumatic event, whether it’s shocking, scary, or dangerous, can have profound emotional and physical effects on an individual who suffers aggression. Such events may include acts of violence like assault, abuse, or terror attacks.

Feeling afraid during and after a traumatic situation is a natural response, as fear is part of our body's “fight-or-flight” mechanism that helps us respond to potential danger. After trauma, people may experience a range of reactions, such as feeling anxious, sad, or angry, having trouble concentrating and sleeping and continually thinking about the event. In most cases, people will recover from these symptoms over time and their reactions will gradually lessen. However, those who continue to experience symptoms may be diagnosed with post-traumatic stress disorder (PTSD).<sup>38</sup>

If symptoms persist and begin to interfere with daily life while still in abusive relationship, seeking professional help is crucial. It is imperative to note the signs that indicate the need for assistance including excessive worrying, intense anxiety or fear, frequent crying, difficulty to think clearly, having frightening thoughts or flashbacks, feeling angry or irritable, experiencing nightmares or sleep disturbances, avoiding triggers and withdrawing from family and friends, suicidal and murder attempt. Suffice it to say that reaching

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<sup>37</sup> Sigmund Freud.

<sup>38</sup> *National Institute of Mental Health*, available at <<https://www.nimh.nih.gov/health/topics/coping-with-traumatic-events>*National*>

out for professional help is essential in promoting healing and resilience after a traumatic experience. This was evident when a Lagos man, Akpos, allegedly burned his wife, Risikat, to death over an argument that degenerated leading to the perpetrator's annoyance that reached out for petrol, poured it on his wife and set her ablaze.<sup>39</sup>

The populations of interest encompass a wide range, including children, youth, adults and the elderly, representing diverse genders, races and ethnic backgrounds. The research focuses on victims/survivors of interpersonal violence such as child abuse, neglect, sexual assault and family violence.

Given the complex consequences of violence and traumatic stress, the National Institute of Mental Health (NIMH) research portfolio takes a multidisciplinary approach. This includes animal studies investigating the biological and behavioural effects of unpredictable and uncontrollable stress, as well as mechanistic and descriptive studies exploring behavioural and biological dysregulation in humans. Clinical studies have delved into the link between the severity of post-traumatic symptoms and neural functioning, memory processing, and trauma interpretations.<sup>40</sup> Accordingly, certain traits predispose individual child to high levels of aggression due to personality traits, attitudes and genetic predispositions and knowledge structures which influence what situations a person will selectively seek out and what situations will be avoided in future. Further contributing to trait-like consistency in a child is the recent discovery that certain types of people who frequently aggress against others do so in

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<sup>39</sup> Punch Newspaper, available at <<https://www.google/amp/s/punchng.com/lagosian-burns-wife-to-death-flees/%3famp>> (accessed on 11 November, 2022)

<sup>40</sup> US National Institute of Mental Health (NIMH), < <https://www.nimh.nih.gov/funding/grant-writing-and-application-process/research-on-the-mental-health-consequences-of-violence-and-trauma>>

large part because of susceptibility towards hostile attribution, perception, and expectation biases. Therefore, person factors comprise an individual's preparedness to aggress.<sup>41</sup> Children in homes where domestic violence occur may experience cognitive or language problems, developmental delay, stress-related physical ailments (such as headaches, ulcers, and rashes) and hearing and speech problems. Studies found out that, boys who witness domestic violence is more likely to batter their female partners as adults than boys brought up in non-violent homes. There is no evidence, however, that girls who witness their mothers' abuse have a higher risk of being battered as adults rather they develop low self-esteem for their sexes or live to avoid men due to trauma suffered.<sup>42</sup>

In a study supported in part by NIMH, researchers found that low social affiliation, parental bonding and low social engagement are hindered and may be a precursor that identifies children as early as age 2 years who are likely to develop callous-unemotional behaviours resulting from detachment of parents due to domestic violence. It further emphasized that parental positivity may act as a protective factor against the increased risk typically associated with domestic violence.<sup>43</sup>

One measure that appears promising is Multi-Systemic Therapy, (MST), which offers a valuable measure in curtailing aggression in domestic violence by targeting multiple systems

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<sup>41</sup> Craig A and others '*Human Aggression*'(Department of Psychology, Iowa State University, Ames, Iowa 50011-3180) available at <arjournals.annualreviews.org> (accessed on 13 July, 2022).

<sup>42</sup> Rohrbaugh (n 19).

<sup>43</sup> National Institute of Mental Health (NIMH) available at <<https://www.nimh.nih.gov/news/research-highlights/2022/low-motivation-for-social-bonding-may-signal-behavior-problems-in-early-childhood>> (accessed on 10 August, 2022).

surrounding the individual involved. Its evidence-based effectiveness, as demonstrated in studies such as those by Borduin *et al* (1995) and Henggeler *et al* (1998), showcasing its potential as a powerful tool in addressing domestic violence and fostering healthier family dynamics.<sup>44</sup> The essence of addressing the root causes of aggression and involving various support systems makes MST contributory to breaking the cycle of violence and promoting lasting positive changes in domestic violence cases. This comprehensive approach empowers families to build healthier relationships, develop effective communication skills and establish appropriate boundaries, leading to a reduction in aggressive behaviours and promoting long-term positive changes.

The solution driven by family-based approach to issues of domestic violence can be very useful except when it is seriously life-threatening. However, leaving such a relationship can be a challenging process, but there are essential steps that the victims should take if family intervention does not work, including seeking assistance by calling for help, finding a safe place to go, maintaining distance from the abusers and enlisting support from other people and institutions.<sup>45</sup>

In examining the factors contributing to the violent behaviours of the individual undergoing complaint treatment at the National Human Rights Commission, issues such as socio-economic imbalances, biological tendency, educational disparity, third party influences, family rejection, neighbourhood comparison are often a trigger to aggression and violence. Intervention is then channelled to hearing both parties at no distance time and at different times, before a

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<sup>44</sup> Borduin and others (1999).

<sup>45</sup> Gleason (2008).

scheduled mediation is conducted to identifying grey areas. The resolution is drafted to accommodate the triggers of violence and how the abused person will refrain from being susceptible to aggression of the abuser. The parties who are identified for counselling are also referred to the counselling unit of the Commission to enable them towards a better way of figuring out solution-pathways in their homes.

The most important contributing factors is, checking the abusers by laws that are applicable in Nigeria to address the excesses of both parties devoid of unhealthy implication for the children in their care and the society. Restriction is achieved for observance of further violent offenses which is criminalized in Nigeria laws. It is pertinent to state that the aspects of prosocial behaviour opportunities are greatly enhanced when alternative dispute resolution (ADR) gives effect to further relationship management. Both the long-term, success rate and the cost-benefit ratio of this approach have greatly exceeded other attempts such as litigation in court at treating cases of violent individuals.<sup>46</sup> This research thus sets a precursor for understanding aggression in domestic violence and exposes the aggressive personality. Finally, it provides a lead for engaging interventions of the National Human Rights Commission and other notable agencies such as NAPTIP, Legal Aid Council and other CSOs activities designed to curtail unnecessary aggression and its resultant effects on another person. The activation and full implementation of extant laws such as Violence Against Persons Prohibition Act (VAPP 2015, Child's Rights Act (CRA 2003), Disability Rights Bill (2018) and African Charter African

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<sup>46</sup> (n 20) 45-46.

Charter on Human and Peoples' Rights (Ratification and Enforcement Act 1983).

Despite the legal developments already mentioned, international laws such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Optional Protocol to the African Charter on Human and Peoples Rights (Maputo Protocol) continue to be behind social changes.

## **6 Recommendations**

- (1) Parents should focus on early prenatal and postnatal influences of their tendency for aggression on the children's personality traits as contributory factor to influencing their physical aggression in later life.
- (2) Intimate partners with anger issues should seek professional help to overcome anger tantrum display in the home.
- (3) Government agencies and civil society organizations that have similar mandates with the National Human Rights Commission should relentlessly provide the needed impetus for reportage of domestic violence.
- (4) Stakeholders should promote the "speak-out aggression" by homes to disenable the abusive relationships.
- (5) Government should be insistent on its readiness to take responsibility on children of abusive parents where emotional and psychological effects have hit such children and capable of impacting their future roles in life.
- (6) Everyone should pay attention to "certain adverse childhood experiences" that he or she suffered as parents and seek to redress the transfer on the innocent children through aggression.

## Enforcement of SDG 3 – Good Health and Well-being – in Nigeria

Bolarinwa Levi Pius\*

### Abstract

*Criticism against the Millennium Development Goals (MDGs) was its lacking clear ownership and institutional structures among African state actors because developing countries' involvement in the initial framework was minimal. It was criticized for not aligning with the continental developmental policies, obligations, and directives. Hence, the Sustainable Development Goals framework should seek to address these. The focus on human rights reminds us that this is about people; it is not just about people in any regard, but first and foremost about the most fundamental needs of people: the needs – the rights – without which their ability to enjoy the fruits of development is at best reduced and at worst cut off entirely. This paper aims at examining the embedded human rights logic contemplated by the framers of SDGs in attaining the SDG 3 - Good Health and Well-being - particularly among the developing nations. It further examines through the lens of statutory provisions and judicial activism, how the SDG 3 is being contextualized within the framework of human rights in Nigeria. It therefore conceptualizes the fusion of health-life as natural theory of African foundation to drive enforceability of and attaining SDG 3-Good Health and Well-being in Nigeria. Further advocacy is made in this paper for gravitating enforcement activism of Anti-Discriminatory Act as passed by the parliament to*

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*further create compulsory and equal accessibility to good health and well-being in Nigeria.*

## **1 Introduction**

The UN Millennium Development Goals (MDGs) was a popular policy document formulated to cushion the effects of hedonism, to entrench peace and abundance of life on all countries who were signatories to the draft document, and the state actors who would implement its recommendations. The endpoint for MDGs was 2015, while the sustainability of its remaining objectives, if any, was included in the current SDGs. In this millennium, wealth and poverty are always in conflict, flexing their potentialities and vulnerabilities. The conviction to face this diversity emerged through cooperation among state actors promoting development in cooperation with the achievement of the SDGs.

It is a fundamental radar of the proponents of the SDGs that many of the development goals could not be attained without simultaneously fixing human rights and humanitarian issues. It is now an inherent logic of the proponents of the concept of the nation-state that the global application and attainment of SDGs are erected on human rights for seamless and conscientious recognition and enforcement of the 17-point goals. The 17 goals of the SDGs framework provide for “a shared blueprint for peace and prosperity for people and the planet”.<sup>1</sup> The common mandate of the goals is championing the basic needs of mankind through human rights.

The MDGs lacked critical human rights linkages, although they did serve as a proxy for certain economic, social, and cultural rights. However, the cluster of the

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<sup>1</sup> United Nations SDG homepage [accessed: 27th February 2019].

instruments of human rights around the world now drive SDG-3 towards its enforcement and attainment in 2030.

The Nigerian cluster of statutes having accommodated international instruments, strongly reveal embedded human rights logic contemplated by the framers of the SDGs in attaining SDG 3: good health and well-being and support attainment of the SDG-3 on or before 2030 timeline. Health is only listed in Cap 2 of the Constitution,<sup>2</sup> whose provisions are unenforceable in spite its robust welfarist contents. However, a critical examination of our laws will reveal that indeed, certain legislations support the view that the right to health and more particularly, access to health, is legally protected in Nigeria. The National Health Act<sup>3</sup> and the National Health Insurance Authority Act<sup>4</sup> are principal legislations in this regard.

The paper further examines how SDG 3 is being contextualized within the framework of human rights in Nigeria. Further advocacy is for the enforcement of Anti-Discriminatory Act as passed by the parliament, to further create compulsory and equal accessibility to good health and well-being in Nigeria.

## **2 Contextualization of Right to Health**

The right to health was originally recognized as a basic human right in Africa, but the idea fizzled out during colonialism. However, the first international instrument to recognize the right to health in its document is the World Health Organization (WHO) Constitution of 1946.<sup>5</sup> The

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<sup>2</sup> Section 17 (3) (c) and (d).

<sup>3</sup> Enacted in 2014.

<sup>4</sup> Enacted in 2021.

<sup>5</sup> The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the

Preamble to the 1999 Constitution of the Federal Republic of Nigeria (as amended) elaborates on the right to health as “the enjoyment of the highest attainable standard of health”. It further alludes to other rights, including promotion and protection of health, control of diseases, access to standard medical knowledge and healthy development of the child.

Another international instrument that captures the right to health is the Economic, Social and Cultural Rights which,

interprets the right to health, as defined in art. 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health . . .<sup>6</sup>

In addition, it shows that the right to health is not just limited to the right to healthcare, but that it extends to a wide range of socio-economic factors required for a dignified and healthy life. It is important to state that the right to health also includes the right to be in control of one’s health and body, including sexual and reproductive freedoms and the right to be free from interferences such as torture and non-consensual treatment.<sup>7</sup> Availability of health facilities, services, and access to them also necessitates fundamental right to health. The nexus will help various stakeholders to hold governments

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representatives of 61 States (Off. Rec. WldHlth Org., 2,100), and entered into force on 7 April, 1948.

<sup>6</sup> Contained in Document E/C.12/2000/4, Comment 11. Adopted in 2000 to guide the implementation of the right to health under the International Covenant on Economic, Social and Cultural Rights.

<sup>7</sup> General Comment No. 8 made by the Committee on Economic, Social and Cultural Rights.

accountable to promoting sound health policies with necessary obligations to enforce them under.

There are four basic elements that sum up the right to health in all its ramifications. These are utilitarian constituents consisting of availability, accessibility, acceptability, and quality. *Availability* as an element of the right to health saddles government with responsibility to promote operational public health and healthcare facilities, trained medical professionals and essential drugs. The *accessibility* element of the right obliges the government to guarantee access to health. *Access* to health warehouses four key elements of non-discrimination, physical accessibility, economic accessibility and information accessibility.

In fact, citizens of all classes, particularly those with endangered health, must have seamless access to health facilities and services without any reason or form of discrimination. Health facilities, services and medical supplies must also be relatively proximate for the reach of the entire citizenry. This contemplates that health facilities must be located within the reach of the grassroots and perhaps the philosophy behind the establishment of primary healthcare units across the country. However, some communities in Nigeria are yet to benefit from functioning health units in their environment. Economic accessibility entails the affordability of healthcare services. It is not just enough for the government to provide health facilities, health services should be highly subsidized for the rest of the population, and free for the vulnerable.<sup>8</sup> Information accessibility is another

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<sup>8</sup> The National Health Insurance Authority Act, 2021 has keyed into this with the establishment of the Vulnerable Group Fund for the subsidization of cost of health services to the vulnerable in Nigeria. Whether this will be effectively implemented by the government is a matter of time

key component of access to health and involves the right to seek and receive information on health issues.

The National Health Act 2014 gives legal backing to information accessibility when it provides that every patient is entitled to full information about his state of health and necessary treatment.<sup>9</sup> Whether or not that provision received compliance from relevant healthcare providers is a subject of a discourse not contemplated in the present article. Apart from the four key elements briefly enumerated above, other elements exist. Respect for medical ethics and culture of the individual, and gender are also fundamental elements of the right to health. The right to health also contemplates that the health facilities, goods and services are scientifically and medically appropriate and of good quality.<sup>10</sup>

## **2.1 Right to Good Health and Well-Being Erected on International Legal Instruments**

The SDGs document gives pre-eminence to human rights as the basis for attainment of 2030 SDG transformation agenda. The goals conformed to the Universal Declaration of Human Rights and international human rights treaties, and restates that state actors' fidelity respect, protect and promote human rights and fundamental freedoms devoid of discrimination to all.<sup>11</sup> The necessity of this responsibility is re-echoed from the relevant paragraph of the 2030 SDG Transformation Agenda thus: The new Agenda is grounded in the Universal Declaration of Human Rights, international human rights

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<sup>9</sup> National Health Act 2014, s 23.

<sup>10</sup> 6 Comment 12 by the Committee on Economic, Social and Cultural Rights.

<sup>11</sup> United Nations General Assembly resolution 70/1, Transforming our world: the 2030 Agenda for Sustainable Development, paras 10 and 19; [www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

treaties . . . <sup>12</sup> The basic content of the 2030 SDG Transformation Agenda recognizes the importance of human rights and various international instruments in attaining the mandates set for the Sustainable Development Goals.<sup>13</sup> The effect of this proposition is that nation-states should see it as necessary obligation to domesticate these all-important UN human rights instruments as the fundamental essence of attaining the 17-point SDGs. This work also alludes to the relevant paragraphs of the 2030 SDG Transformation Agenda thus: “We reaffirm the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law.”<sup>14</sup>

Similarly, the responsibilities of countries to carry out integrated enforcement of the 17-point SDGs as contained in the Universal Declaration of Human Rights are also referred to, thus:

We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.<sup>15</sup>

It was clear that the attainment of the 2030 SDG transformation agenda is a logic contemplated by the framers of SDGs in attaining the SDG 3 – Good Health and Well-being, particularly among the developing nations. The right to good health and well-being is an international and regional human rights instrument as a fundamental right. The legal instruments include the International Covenant on Economic,

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<sup>12</sup> Para 10 of the SDG 2030 Transformation Agenda.

<sup>13</sup> Part of Paragraph 19 of the SDG 2030 Transformation Agenda.

<sup>14</sup> Para. 19 of the 2030 SDG Transformation Agenda.

<sup>15</sup> Second Part of Para.19 of the 2030 SDG Transformation Agenda.

Social and Cultural Rights, the Convention Against the Elimination of All Forms of Discrimination against Women 1979, the Convention on the Rights of the Child 1990, the Convention on the Elimination of All Forms of Racial Discrimination, the African Charter on Human and Peoples Rights.

These instruments guarantee human rights approach to the right to health, good health and well-being embodying ecosystem of rights and its attendant utilitarian obligations. This approach places an obligation on every government to protect and fulfil the health rights contained in SDG-3. The citizens also have the right to invoke legal institutions to compel the government's compliance with its obligation. Art. 12.1 of the International Covenant on Economic, Social and Cultural Rights reinforces the concept of health right and adumbrates on its enforceability. Further, Art. 12.2 of the Covenant highlights a list of obligations of state actors to the beneficiaries (the right holders/the citizens).

It is therefore, opined that these legal obligations cover key players like health care professionals working in the health sector who also have legal duties to promote seamless delivery of health rights to their patients. The enactment of two health legislations: the National Health Act<sup>16</sup> and the Compulsory Treatment and Care of Victims of Gunshots Act<sup>17</sup> is a substantial step taken to ensure that healthcare professionals are responsible for the attainment of the right to healthcare. The relevant sections of the legislations define the obligation of the healthcare provider to promote access to healthcare by treating medical cases with urgency.<sup>18</sup> As

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<sup>16</sup> Act No 8 of 2014.

<sup>17</sup> Act No 6 of 2017.

<sup>18</sup> National Health Act, s 20; Compulsory Treatment and Care of Victims of Gunshots Act s 1.

laudable as these legislations are, it is doubtful if they have produced any positive outcome. Before the adoption of the International Covenant on Economic, Social and Cultural Rights<sup>19</sup>, the Universal Declaration of Human Rights 1948 made a passing reference to health rights by stating that: “Everyone has the right to a standard of living adequate for the health and well-being of his family . . .”<sup>20</sup> The right to health, a bedrock of the SDG-3, is entrenched as necessary component of women’s rights. Thus, art 12 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979 states that:

State parties shall take all appropriate measures to eliminate discrimination against women in the field of health care services, on a basis of equality of men and women, access to health care services, including those related to family planning.

Furthermore, the Convention on the Rights of Persons with Disabilities 2006 equally protects right to health of persons living with disabilities. The Convention states that:

State Parties recognize that persons living with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. State Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation.<sup>21</sup>

All these instruments have legal implications and they form the bulk of international human rights law. In countries

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<sup>19</sup> The Covenant was adopted on December 16, 1966.

<sup>20</sup> Article 25.

<sup>21</sup> Article 25.

where they have been domesticated, they have the force of law.

## **2.2 Statutory Relegation of SDG-3 as Unenforceable Health Right in Nigeria**

Right to health and wellness belongs to a second-generation right of non-justiciability. The right to health is classified as socio-economic right provided for in Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Chapter II of the Constitution framed as Fundamental Objectives and Directive Principles of State Policy enshrines corpus of social rights which further implies and interprets Chapter II rights as unenforceable even by any court in Nigeria. In fact, the extant provision of the Constitution conspicuously ousts the jurisdiction of the courts on matters relating to the Fundamental Objectives and Directive Principles of State Policy.<sup>22</sup> The ouster section provides:

The judicial powers vested in accordance with the foregoing provisions of this section – shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

By literal interpretive effect, no person in Nigeria can approach the courts for the purpose of the material provisions of Chapter II of the Constitution to force or coerce the state actors to implement and promote health rights, or to make

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<sup>22</sup> Constitution of the Federal Republic of Nigeria 1999, s 6 (6) (c).

adequate provision for medical and health facilities.<sup>23</sup> Nigeria has been labelled the common violator of basic rights of man. In fact, the health deficit is so huge that other continental/regional citizens are averse to accessing our health facilities. Worse still, the ladder of social stratification has been institutionally erected by state actors such that they consider it infra dig patronizing Nigerian health facilities which they have destroyed and abandoned as relics.

Also, it is sad that the respect and protection for those rights remain a deceit, Nigeria being a nation divided along religious, racial, language and ethnic lines. Hence, access to sexual and reproductive health and rights despite being an international human right priority, have been discounted and are now observed with scorn. In fact, essential rights of man in Nigeria have been bifurcated or trifurcated down to the rights of either second or third generation. Elements of rights like sexual and reproductive health rights which are reflected in multiple international conventions, such as the right to the highest attainable standard of health, the right to life, the right to education, the right to privacy, the right to be free from torture and the right to non-discrimination, have all remained abused within the set of fundamental objectives and directive principles of state policies.<sup>24</sup>

However, there is now a radical departure from the classical meaning of the provisions of Chapter II of the Constitution considering its logical and substantial linkage or connection with the provisions of Chapter IV. The nexus is that rights in Chapter IV are necessary implications of rights in Chapter II of the 1999 Constitution.

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<sup>23</sup> Constitution of the Federal Republic of Nigeria 1999, s 17 (3) (d).

<sup>24</sup> Constitution of the Federal Republic of Nigeria 1999, Chapter II.

### 3 Justiciability of SDG-3 via Judicial Activism in Nigeria

It is now becoming a judicial pastime in Nigeria that the corpus of rights captured in Chapter II of the Constitution can be made justiciable, harnessing the combined reading with corpus of rights in Chapter IV. By logic of set and substantial modern judicial deduction, right to good health and well-being may now be made practicable/enforceable by the right holders against the state. Right holders can now invoke various provisions in international instruments as domesticated in Nigeria to enforce right to health, *in extenso*, right to good health and well-being against the Nigerian state actors in the courts. There is currently a progressive and radical interpretation of Chapter II by our courts to enforce the jurisprudence of its welfarist contents. In fact, Section 13 of the 1999 Constitution succinctly espouses the philosophical objective of Chapter II thus:

It shall be the duty and responsibility of all organs of Government, and of all authorities and persons exercising legislative, executive and judicial powers to conform to, observe and apply the provisions of this chapter of this Constitution.

Thus, by interpretation, the cited provision can be understood as implying that right holders (the citizens) can bring an action relating to health right (SDG-3 action) in court to compel state actors *to conform to, observe and apply the provisions of this chapter of this Constitution*. SDG-3 is a prerequisite to right to life since the rights to life and dignity of the human person cannot be realized without the right to health. What is life without access to quality health-care, access to medical facilities at affordable rates? Furthermore, Part IV of Indian Constitution has its own “Directive

Principles of State Policy”, but the courts in India by creative, courageous and forward-looking interpretations have held in *Kesavananda Bharati v. State of Kerala*<sup>25</sup> per Hodge and Mukharja JJ held that:

The purpose of the Directive Principles of State Policy is to fix certain social and economic goals for immediate attainment thus bringing about a non-violent social revolution. Through such social revolution, the constitution seeks to fulfil the basic needs of the common man, and to change the structure of our society. Without faithfully implementing the Directive Principles, it is not possible to achieve the welfare state contemplated by the constitution

In India, organizations like Peoples’ Union for Democratic Rights and Peoples’ Union for Civil Liberties can now bring actions in courts to redress breaches of Fundamental Rights provisions of the constitution as these relate to common man. The Court per Dayel J. held in *Peoples’ Union for Democratic Rights v Minister of Home Affairs*:<sup>26</sup>

Following English and American decisions, our Supreme Court has of late admitted exception from the strict rules relating to locus standi and the like in the case of a class of litigations which acquired classification known as “public interest litigation”, that is where the public in general are interested in the enforcement of fundamental rights and other statutory rights. Today, it is perhaps a common place to observe that as a result of series of judicial decisions since 1950, there has been a dramatic and radical change in the scope of judicial review. the change has been described . . . as an upsurge of judicial activism.

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<sup>25</sup> (1973) 4 SCC 225.

<sup>26</sup> (1986) LRC (Const.) 548.

Indian Courts, led by their Supreme Court, have shaken off the shackles of outmoded Anglo-Saxon procedures or else adopting them to suit the local needs of a developing society with different social conditions, different norms and mores. Similarly, the preamble to the African Charter on Human and Peoples Rights (ACHPR) clearly lends credence to this argument when it provides that:

civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.<sup>27</sup>

The domestication of the African Charter on Human and Peoples Rights (ACHPR) in Nigeria has expanded the jurisprudential frontier and enforcement of socio-economic rights and by extension, good health and well-being as human rights. This has brought with it some positive impacts on the Nigerian legal system. The African Charter is a regional human rights instrument that has been recognized and domesticated in Nigeria, thus it forms part of the bulk of Nigerian laws. Under the Nigerian Constitution,<sup>28</sup> international treaties, regional treaties inclusive, have the force of law when they are assimilated into domestic laws. Hence, it has been argued that since the African Charter has been enacted into the Nigerian legal framework, the applicability and enforceability of socio-economic rights as human rights have become law and policy in Nigeria.

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<sup>27</sup> African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990.

<sup>28</sup> Constitution of the Federal Republic of Nigeria 1999 s 12.

Corpus of judicial decisions supports the above interpretive proposition. The Court of Appeal in *Ubani v. Director SSS*<sup>29</sup> held that:

the African Charter is applicable in this country. The Charter entrenched the socio-economic rights of person. The Court is enjoined to ensure the observation of these. A dispute concerning socio-economic rights such as the right to medical attention requires the Court to evaluate State policies and give judgment consistent with the Constitution.

The above reasoning as applied by the Court of Appeal in *Ubani's* case was previously taken cognizance of by the Supreme Court in *Ogugu v. Bello*<sup>30</sup> when the then Chief Justice of Nigeria held that:

it is apparent that the human and peoples' rights of the African Charter are enforceable by several High Courts depending on the circumstances of the case and in accordance with the rules and practices of each court. Flowing from the above, it is clear that an individual can approach the courts in Nigeria, on the strength of the African Charter, to enforce his right to health.

Therefore, although the right to health cannot be enforced through Chapter 2 of the Nigerian Constitution, a pathway was created for its enforceability through art. 16 of the African Charter. Currently, there are two principal legislations entrenching right to health in Nigeria and by extension, right to good health and well-being. These are the National Health Act<sup>31</sup> and the National Health Insurance

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<sup>29</sup> (1999) 11 NWLR PT 129.

<sup>30</sup> (1994) 9 NWLR PT 366 1 at 26-27.

<sup>31</sup> National Health Act 2004, Preamble.

Authority Act,<sup>32</sup> offering some respite as a few of their provisions appear to recognize the right to health.

The first comprehensive health statute in Nigeria was National Health Act of 2014 which provides a framework for the regulation, development and management of a national health care system.<sup>33</sup> The institutional National Health System provides a framework for standards and regulation of health services in Nigeria.<sup>34</sup> For the purpose of enforcing SDG-3, the National Health System will ensure the protection, promotion and fulfilment of the rights of Nigerians to have access to health care services, and the provision by the government of the best possible health services within the limits of available resources while streamlining the obligations of health care providers.<sup>35</sup>

Furthermore, Section 2(1) (i) of the Act makes it the responsibility of government to make available to the right holders (the Nigerian citizens) the nucleus of SDG-3, being good quality, safe and affordable essential drugs, and medical commodities. This is indeed, not only a commendable provision but also an enforceable provision by the right holders. Another appreciable feature of the National Health Act is the provision that all Nigerians shall be entitled to a basic minimum package of health services.<sup>36</sup> This provision reiterates the right of the average Nigerian to access to health care services. Thus, responsibility is placed on the government as the duty holder, to ensure the attainment of what will suffice as basic minimum package of health services

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<sup>32</sup> The National Health Authority Act enacted to repeal the National Health Insurance Scheme Act, Cap N42 Laws of the Federation of Nigeria 2004.

<sup>33</sup> National Health Act, Preamble.

<sup>34</sup> National Health Act, s 1.

<sup>35</sup> National Health Act s 1 (c) (d) (e).

<sup>36</sup> Section 15 (1) (3).

having regard to the available resources. It has been argued that ‘The use of the word “right” [in the Act] to denote the entitlements of Nigerians to a healthcare system is illustrative of the legislators’ recognition of healthcare as an essential human right’.<sup>37</sup>

Similarly, the 2021 enactment of the National Health Insurance Authority Act (NHIAA) 2021 is also a laudable one which is aimed at the promotion, regulation and integration of health insurance schemes in Nigeria; and for related matters.<sup>38</sup> The Act provides for a regulatory institution called the National Health Insurance Authority (the Authority)<sup>39</sup> whose objects are: to promote, regulate and integrate private sector insurance schemes, improve and harness private sector participation in the provision of health care services, and do other things that will assist the Authority to achieve Universal Health Coverage for all Nigerians.<sup>40</sup> Section 3 of the Act list a number of functions of the Authority which are manifestly seen to be in furtherance of the right of all Nigerians to basic health care. The functions of the Authority include:

- (i) ensure that health insurance is mandatory for every Nigerian and legal resident;<sup>41</sup>
- (ii) enforce the basic minimum package of health services for all Nigerians across all health insurance schemes operating within the country;<sup>42</sup>

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<sup>37</sup> Mike J.H, ‘Access to Medicines to Guarantee Women’s Rights to Health in Nigeria’ (2019) 86 *Journal of Law, Policy and Globalization* 41-51 in P. E. Oamen, ‘Realisation of the right to health in Nigeria: The prospects of a dialogic approach’ <https://ssrn.com/abstract=3673480>

<sup>38</sup> See the Long Title of the Act.

<sup>39</sup> Section 1(1).

<sup>40</sup> Section 2.

<sup>41</sup> National Health Insurance Authority Act s 3(b).

<sup>42</sup> National Health Insurance Authority Act s 3(c).

- (iii) promote, support and collaborate with state health insurance schemes to ensure that Nigerians have access to quality health care that meets national health regulatory standards;<sup>43</sup>
- (iv) ensure the implementation and utilization of the basic Health Care Provision Fund as required under the National Health Act and any guidelines as approved by the Minister under the Act;<sup>44</sup>
- (v) devise a mechanism for ensuring that the basic health care needs of the indigents are adequately provided for.<sup>45</sup>

Also in attaining the SDG-3, the Authority is mandated by the Act to strengthen linkages with the states to provide a basic minimum package of care to all residents of Nigeria.<sup>46</sup> There is a need for the Authority is to implement the Basic Health Care Fund to achieve the statutory aim.<sup>47</sup> In ensuring that the government as the duty-bearer lives up to its obligation, the Act directs the establishment of state health insurance schemes or contributory schemes by the various state governments to cover their residents.<sup>48</sup> While this provision is a laudable one as it places a duty on the various state governments, it is argued that it is a defeatist provision. The use of the word “may” in the wordings of the provision presupposes that the duty is not a mandatory one. Thus, while the state governments have the responsibility to establish health insurance schemes or contributory schemes, they are not bound to do so. In a bid to facilitate access to

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<sup>43</sup> National Health Insurance Authority Act s 3(d).

<sup>44</sup> National Health Insurance Authority Act s 3(e).

<sup>45</sup> National Health Insurance Authority Act s 3(n).

<sup>46</sup> National Health Insurance Authority Act s 24(1).

<sup>47</sup> National Health Insurance Authority Act s 24(2).

<sup>48</sup> National Health Insurance Authority Act s Section 13 (1).

health for vulnerable Nigerians, the states and the Federal Capital Territory are required to provide coverage for vulnerable persons under the state health insurance and contributory schemes through the Basic Healthcare Provision.

### **Selected Health Indices, MDGs Achievements, SDG 3 Targets and Current Statistics for Nigeria**

<b>S/N</b>	<b>Health Index</b>	<b>MDGs Achievement</b>	<b>SDGs Target</b>	<b>Current (Available) Statistics</b>
1	Under-five mortality rate	89/1000	<25/100,000 live births by 2030	117.2/100,000 live births in 2019
2	Infant Mortality Rate	58/1000 live births in 2014	N. A	74/1000 live births in 2019
3	Neonatal Mortality Rate	N. A	12/1000 live births by 2030	35.9/1000 live births in 2019
4	Maternal Mortality Rate	243/1000 live births in 2014	70/100,000 live births by 2030	917/100,000 live births in 2017
5	Birth attended to by skilled health personnel	58.6% in 2014	N. A	43.4% in 2018

### **4 Enforceability of SDG-3 – Right to Good Health and Well-Being in Nigeria**

With the corpus of health legislations in Nigeria and their entrenchment of human rights, there is a strong hope that Nigeria can still achieve SDG-3 within the timeframe of 2030; even though it is not constitutionally recognized. Why are Nigerians, as the right holders, not demanding accountability from the government at various levels and other stakeholders

in the health care sector. However, with the noble provisions of the 2030 SDGs Transformation Agenda with more radical and potent judicial push or activism with rigorous human rights campaign, re-contextualization and re-integration of health by extension SDG-3 among corpus of enforceable rights in Chapter IV of the Constitution will make SDG-3 – Good Health and Well-being attainable in Nigeria on or before 2030 timeframe.

Similarly, activism by the right-holders must be increasingly entrenched to compel government to guarantee this all-important health services and *in extenso* SDG-3 – Good Health and Well-being. A greater number of Nigerians are not aware of the relationship between them as the right-holders and government and other key players as the duty-bearers when it comes to accountability and enforcement of the right. This ignorance could account for the negligible attitude of the governments, particularly the Federal Government, in achieving basic health care package, SDG-3, for the average Nigerian. There is continued evidence of disparity at how the government, the main duty-bearer approaches its duties in relation to the right to health. Its failure to rise to the occasion can be traced to the ignorance of the average Nigerian, the right-holder. Thus, it is not just sufficient to have the laws in the statute books, the individuals for whom the laws are made must be aware and derive benefit thereof if the laws are to have any impact. Clearly, much work is required to create awareness among the right-holders to stir some form of interest in holding the duty-bearers accountable.

Nigerian health right-holders must compel state actors and their relevant institutions to implement the Ghanaian model as captured in the Ghanaian Constitution of 24 September, 1979. The Constitution contained the Directive

Principles of State Policy. The interesting feature in the provision is that the Constitution included the requirement that the Executive should report yearly to the Legislature what progress government has made in the year just ended, to ensure the realization of the various Principles. This is a pointer to the fact that government was to take those principles seriously considering the useful impact those principles can make on the lives of the people. The plea of this paper is – if we cannot make our own Directive Principles actionable at least some means of monitoring their implementation/enforcement should be provided. This is realizable if all the health institutions and enforcers of SDG-3 are yearly held accountable through their report of the level of implementation before the National Assembly.

## **5 Complementary Enforcement of Anti-Discrimination Act in Nigeria**

Humanism and dignity of man is the foundation upon which any legislation or policy is erected. Without recognition of health as life-support and by expansive interpretation as co-fundamental right with life, the dignity of the human person being the central objective of the Act would amount to superfluity of nothingness. The material content of Section 1 of the Act is echoed thus:

- (1) The purpose of the Act is to protect the right and dignity of people living with and affected by HIV and AIDS by–
  - (a) eliminating all form of discrimination based on HIV status;
  - (b) creating a supporting environment so that people living with HIV and AIDS are able to

- continue working under normal conditions for as long as they are medically fit to do so;
- (c) promoting appropriate and effective ways of managing HIV in the workplace, community, institutions and other fields of human endeavour;
  - (d) creating a safe and enabling working and learning environment for all persons;
  - (e) creating a balance between a rights and responsibilities of all persons in the society; and
  - (f) giving effect to human rights guaranteed in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and obligations under international and regional human rights and other instruments.

The material couching and interpretation of Section 1 (f) reinforces the effect that right to health remains the touchstone for implementing the laudable material provisions therein. The obligation of the supervisory Minister and his responsibility to the Agency to monitor compliance as rightly provided for under the Act<sup>49</sup> must be enforced by the right holders for the good health and well-being.

## 6 Recommendations

There is a corpus of health laws upon which SDG-3 – Good Health and Well-being is erected although without constitutional recognition. There have been radical, progressive and proactive judicial actions trying to assimilate health right and its enforcement into the rights captured under Chapter IV. However, to speed up enforcement of SDG-3 in Nigeria in

support of the judicial effort currently being made, the following steps are recommended:

- (i) urgent need for constitutional amendment to capture rights in Chapter IV among rights in Chapter II;
- (ii) enforcement of Ghanaian model in Nigeria by making the health institutions of government to comprehensively make a quarterly report to the parliament on the level of enforcement of the material obligations of SDG-3;
- (iii) More activism is needed by the right-holders and rights activists to compel state actors to enforce the material provisions of SDG-3; and
- (iv) More of judicial activism, enforcement of judgment should be increased. In fact, the tool of activism lies with various right activists-social, environmental and human right activists must be awake to their responsibilities as direct watchdogs on government; and where necessary to invoke actions in court to compel government to implement the content of SDG-3. Further, the right holders should be courageous and radical enough to bring committal/contempt proceedings against any institution of government that fails to enforce the material contents of SDG-3 in Nigeria.

## **7 Conclusion**

Health in the Nigeria setting is a fundamental human right as conceived from nature and before the African ancestors. Africa's existence is founded on nature and the earth from which our ancestors derived their living. There is a fusion between our life and our health as pride of our melanin before

the advent of modern fragmentation of health. There is currently corpus of health laws in Nigeria to drive full attainment of SDG-3 – Good Health and Well-being in Nigeria. The progressive judicial activism being witnessed within the frontiers of our health jurisprudence remains a testimony if all the recommendations made above are implemented.

## Protection of Rights of Persons Living with Disability and Internally Displaced Persons in Nigeria: A Critical Examination

Dennis Udeh Ekumankama\*

### Abstract

*The fate of persons living with disability as well as internally displaced persons has become a contemporary issue that has taken aggressive discussions concerning their political, socio-economic and constitutional rights. Unfortunately, African governments including Nigeria (in particular) have not positively addressed the issues at play. Until 2018, there was no domestic legislation in Nigeria that squarely dealt with discrimination against persons living with disability except the provisions of Sections. 34 and 42 of the 1999 Constitution (As Amended). The relevant provisions of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 and the 1999 Constitution are examined in this paper. Generally, the legal and institutional frameworks on the subject are largely discussed hereunder. Furthermore, we have also prominently situated notes for conceptual clarifications on meanings of “disability”, “persons with disability”, “internally displaced persons” and “refuges”. A fair appraisal has also been made with a view to giving insight on what is the situation in some other jurisdictions vis-à-vis the negative disposition of Nigerian government on the matter. In conclusion, effort has been made to proffer solutions for a better approach towards protecting the*

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*rights of persons living with disability and internally displaced persons in Nigeria.*

**Keywords:** Persons with disability; internally displaced persons; refugees, discrimination; Legal and Institutional Frameworks; Human rights.

## **1 Introduction**

The increasing prevalence of people living with disability in Nigeria is caused by various factors, including armed conflict through incessant attacks by bandits, unknown gunmen, Boko Haram groups armed robbers and even vehicular accidents. Other causes are those arising from pre-natal and post-natal medical deficiencies resulting in health challenges, like polio meningitis, blindness, deaf-mute and other forms of deformity, mental retardation or imbecilic. No matter the shape it takes, disabled persons as human beings ought to be accorded equal rights as enshrined in the 1999 Constitution, the African Charter on Human and Peoples' Rights (OAU) 1981, also known as the "Banjul Charter"; the United Nations Charter that propels the Universal respect for human rights devoid of discrimination as encapsulated under the Universal Declaration of Human Rights. Fundamental human rights as entrenched in the 1999 Constitution of the Federal Republic of Nigeria (As Amended) are contained in Chapter IV and seriously emphasises the inalienable natural rights of every "human being" that must be upheld by government and persons without discrimination but on equal basis. The rights include right to life, right to dignity of human person, right to personal liberty; right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to

acquire and own immovable property anywhere in Nigeria and right to be paid adequate compensation if property is compulsorily acquired (taken over) by government for reasons of overriding public interest.<sup>1</sup> Concomitantly, we can safely opine that Sections 34 and 42 of the Constitution are apposite as safeguards for protection of the rights of persons living with disability and internally displaced persons.

Section 34: Right to dignity of human person:

- (1) Every individual is entitled to respect for the dignity of his person and accordingly.
  - (a) No person shall be subjected to torture or to inhuman or degrading treatment.

S.42: Right to freedom from discrimination:

- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

Sections. 34 (1) and 42 (2) of the Constitution as reproduced above are prohibitive against any form of discrimination or inhuman or degrading treatment of any person by virtue of any disability.

However, it is clear that Sections 34 and 42 as reproduced above are not adequate to protect the rights of persons living with disability as specifically and elaborately provided in the Constitutions of Uganda and Rwanda.

For purposes of proper understanding of the subject matter of this paper, we venture to examine relevant, terms and their meanings:

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<sup>1</sup> Constitution of the Federal Republic of Nigeria 1999, s 33 to 44.

In doing that resort would be had to Section 57 which is the interpretation section of Discrimination Against Person With Disability (Prohibition) Act 2018 to wit:

- (1) Discrimination means differential treatment and its verbs and infinite form, discriminate, to discriminate have the corresponding signification.
- (2) “Disability” includes long term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder full and effective participation in Society on equal basis with others.
- (3) Persons with disability means:
  - (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 persons functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, raising, 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 and sensory impairment which in interaction with various barriers may hinder their full and effective participation in society on equal basis with others.”

We humbly hold the view that the definition of “disability” and the second leg (b) of the definition of “person with disability” are word to word the same, without any difference. It is therefore, not necessary that it should be there and should be expunged from the statute. The draughtsman should import less words into legislations to avoid confusion.

The proclamation on “The right to Employment of Persons with Disability 2008 Federal Democratic Republic of Ethiopia has defined “person with disability” and “Discrimination” as follows:

- Person with disability means an individual whose equal employment opportunity is reduced as a result of his physical, mental or sensory impairment in relation with social economic and cultural discrimination.
- Discrimination means to accord different treatment in employment opportunity as a result of disability, provided, however, that only inherent requirement of the job or measures of affirmative actions may not be considered as discrimination.

From the foregoing we can appreciate the fact that the progenitors or precursors of the Ethiopian declaration covered only discrimination in respect of employment. Again, that is inadequate because as it can be understood not many disabled persons need employment, but there are many areas where they desire to be protected as we have catalogued in this paper.

Consequently, Ethiopia and indeed, all African countries should produce a holistic model of legislation that provide protection for the rights of persons living with disability. For instance, Chapter 4 of the Constitution of Uganda which was

adopted in 1995 and amended in 2005, holistically raised a bill of rights for marginalized groups like women, children and persons with disabilities.<sup>2</sup>

The provisions of Chapter 4 of the Ugandan Constitution were modelled in line with the UN Convention on the Rights of Persons with Disability (CRPD) and its Optional Protocol (OP).<sup>3</sup>

We shall come back to this when we discuss the legal framework of this paper.

There is no universally accepted definition of “internally displaced persons” (IDPs) and its prominence in Nigeria is a recent development. However, there is an existing working definition the UN has adopted for internally displaced persons (IDPs):

Displaced persons are persons or group of persons who have been forced or obligated to flee or to have cause to leave their homes or place of habitual residence in particular, as a result of or in order to avoid the effect of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and they must have either remained within their own national borders (as internally displaced persons) or they must have crossed an internationally recognized state border (as refugees).

Following the above working definition by the UN, two things emerge, *viz*: firstly, there are two types of internally displaced persons namely: those who are within their region but outside their place of habitual residence (internally displaced) and those who are outside their international borders and are called refugees. For us, this distinction is

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<sup>2</sup> Constitution of Uganda 1995, art 32-35.

<sup>3</sup> Tobias Pieter Van Rienen and Helene Combrink: the UN Convention on the Rights of Persons with Disabilities in African, page 14.

faulty in the sense that our understanding is that once a person is forced to leave his or her home to a place where he or she will be a stranger without a residence, he or she is internally displaced and also qualifies to be called a refugee.

Accordingly, to classify displaced persons to be of two categories, i.e. refugees and internally displaced persons, is a misnomer. The principal element should be the fact of fleeing one's habitual home to a place, whether within or outside his state of residence. During the Nigerian civil war, people who fled from their homes, (which were war-zones) to neighbouring villages and towns were treated as refugees. Accordingly, the international community supplied relief materials to them as palliatives, to cushion their suffering. Articles of the OAU Convention state that the term refugee, "shall also apply to every person who owing to external aggressive, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his (or her) country of origin or nationality, is compelled to leave his (or her) place of habitual residence in or to seek refuge in another place outside his (or her) county of origin or nationality".

This definition is similar to that of UN Convention except that the OAU Convention was concerned with refugees and not IDPs. According to Grace W. Akuto, under the working definition developed by the Special Rapporteur on IDPs, displaced persons are deemed as:

persons or group of persons who have been forced to flee their homes or places of habitual residence suddenly or unexpectedly as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made

disasters, who have not crossed an internationally recognized state border.<sup>4</sup>

Although we recognize the fact that the general or internationally accepted definition of refugee is characterized by fleeing from one country to another country for safety, with due respect, we beg to stand alone in this. Our position is that, “a refugee is a person who has cause arising from extreme fear or danger of being killed or maimed under a tense situation prevalent and uncontrolled in his area of habitual residence to flee to another safe area either within his original state or nationality or outside the borders of his state.” There is therefore, no difference between being internally displaced and a refugee as the ancient definitions suggest.

Having done with definition of terms in this paper, it is paramount to note there are many internally displaced persons and or refugees as well as persons living with disability.

## **2 Legal Framework**

In Nigeria, the law is not yet developed in this area of study, because cases of persons living with disability and those displaced from their original places of habitual residence in Nigeria had not assumed the prominence it has today. Before the serial killings and attacks by bandits with all sorts of names given to them, Nigeria was a lovely place to live and enjoy life. But with the incidence of Boko Haram attacks, kidnappers, unknown gunmen and people engaged in all forms of lethal activities, the situation changed. This explains

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<sup>4</sup> Grace W. Akuto, *Challenges of Internally Displaced Persons (IDPs) in Nigeria: Implications for Counseling and the Role of the Stake Holders*, Seahi Publications, 2017 [www.seahipaj.org](http://www.seahipaj.org), p. 22.

why until the 1999 Constitution was passed, there was no operative legislation in Nigeria to protect the rights of persons living with disability and displaced persons. Sections 34 and 42 of the 1999 Constitution are already reproduced under the introductory part of this paper. We have also stated that the provisions are not adequate to offer the protection required in both cases under consideration. Before the 1999 Constitution was passed, Nigeria was being guided by various international conventions to be mentioned hereunder namely:

- (i) African Charter on Human and Peoples Rights 1981 which was similar to the American Declaration of the Rights and Duties of Man (Organization of American States) 1948:
  - Article 2 of the African charter provides that individuals are entitled to enjoy the rights and freedoms recognized and guaranteed in the charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.
  - Article 18(4) provides that the aged and the disabled have the rights to special measures of protection in keeping with their physical or moral needs.
  - Article 13 of the African Charter on the Rights and welfare of the child, 1990 (ACRWC) which is similar to the UN convention on the Rights of the Child affords every child who is mentally or physically disabled the rights to special measures of protection in keeping with his physical and moral needs and under conditions that ensure his dignity, promote his self-reliance and active participation in the

community. Accordingly, State Parties must use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled persons to movement and access to public highways, building and other places to which the disabled may legitimately want to have access to.<sup>5</sup>

This provision/declaration in the ACRWC is a welcome development and by the time the proposed protocol to the charter is produced by member states it will be a panacea for the protection of rights of persons with disability both in the young and elderly.

- (2) The UN Convention on the Right of Persons with Disabilities (CRPD) and its optional Protocol, 2006: The intention of the makers of this Convention was to change the narrative on the rights of persons with disabilities. Countries which signed as participants in the operations of this Convention were enjoined to domesticate the essential components in their regime of laws relating and concerning disability rights as mandatory. It is believed that this spirit operated in the minds of the makers of the Nigerian Laws (National Assembly) to have contributed in causing Nigeria to ratify this Convention in 2007 and its optional Protocol in 2010.
- (3) Discrimination Against Persons with Disabilities (Prohibition) Act 2018 – Nigeria.

This Act was long overdue. Activists and disability groups in Nigeria had persistently advocated for the enactment of

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<sup>5</sup> Ibid (5) ( Reenen), (Combrink).

laws that would consciously promote the protection of rights of persons living with disabilities to no avail.

The Act is a step towards fulfilling Nigeria's obligations under the CRPD of the UN. Anietie Ewang, commenting on the passing of the Nigerian Act, said it took 9 years of relentless advocacy for the Act to be passed. According to the World Health Organization in 2011 World Disability Report, about 15 percent of Nigeria's population, or at least 25 million people have disability.<sup>6</sup>

Section 1 of the 2018 Act states:

- (i) A person with disability shall not be discriminated against on the ground of his disability by any person or institution in any manner or circumstances.
  - Contravention of this provision attracts a fine of ₦1,000,000 for corporate bodies and ₦100,000 or six months' imprisonment or both for individual offender. But very fundamentally;
  - Section 2 provides:  
The Federal Ministry of Information shall make provisions for promotion or awareness regarding the:
    - (a) Rights, respect and dignity of persons with disabilities; and
    - (b) Capabilities, achievements and contributions of persons with disabilities to the society.

## 2.1 Rights of Persons with Disability

The 2018 has copiously provided for the rights of persons living with Disabilities thus:

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<sup>6</sup> Anietie Ewang: Nigeria Passes Disability Rights Law: <https://www.hrw.org>

- (a) Right to access the physical environments and buildings.<sup>7</sup>
- (b) Right to accessibility aids in public buildings.<sup>8</sup>
- (c) Right to road side-walks and special facilities.<sup>9</sup>
- (d) Right to accessibility of vehicles, parks, bus stops to persons with disability including those on wheel chairs.<sup>10</sup>
- (e) Right to parking lots, suitable spaces properly marked and reserved for persons with disabilities.<sup>11</sup>
- (f) Right to accessibility of seaports and railway stations.<sup>12</sup>
- (g) Right to easy accessibility of aircraft with functional wheelchairs, physically assisted to get on and off board in safety and reasonable comfort and accord priority while boarding and disembarking from the aircraft.<sup>13</sup>
- (h) A person shall not:<sup>14</sup>
  - (a) Employ, use or involve a person with disability in begging;
  - (b) Parade persons with disabilities in public with the intention of soliciting for alms; or
  - (c) Use conditions of disability as a disguise for the purpose of begging in public:
- (i) Right to education without discrimination or segregation in any form and in particular right to free education to secondary school level.<sup>15</sup>

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<sup>7</sup> Discrimination Against Persons with Disabilities (Prohibition) Act 2018, s 3.

<sup>8</sup> Ibid 4.

<sup>9</sup> Ibid 5.

<sup>10</sup> Ibid 10 ,11.

<sup>11</sup> Ibid 12.

<sup>12</sup> Ibid 13.

<sup>13</sup> Ibid 14.

<sup>14</sup> Ibid 16.

<sup>15</sup> Ibid 17 (1) (2) (3).

- (j) Right for government to ensure that education of persons with disabilities, particularly, children who are blind, deaf or with multiple disabilities is delivered in the most appropriate language, mode and means of communication for the individual and in environments which maximize academic and social development.<sup>16</sup>
- (k) Right to unfettered access to adequate health cares without discrimination on the basis of disability and in particular persons with mental disability shall be entitled to free medical and health service in all public institutions.<sup>17</sup>
- (l) Right to Permanent Certificate of Disability for mental disability issued by the Commission.<sup>18</sup>
- (m) Right to be given first consideration in providing accommodation for student workers, service providers for customers etc.<sup>19</sup>
- (n) Right to equal opportunity for employment and participation in politics and public life.<sup>20</sup>

On this, it is mandatory for employees in public organisations to as much as possible have persons with disabilities constituting at least 5 percent of their workforce.<sup>21</sup> The above provisions of the 2018 Act are highly commendable but when will they be implemented? For instance, there is no evidence of free education and no provision of facilities for persons living with disability. Our streets are still filled with people parading disabled persons for purposes of soliciting for

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<sup>16</sup> Ibid 20.

<sup>17</sup> Ibid 21.

<sup>18</sup> Ibid 22.

<sup>19</sup> Ibid 27 .

<sup>20</sup> Ibid 28 and 30 (1) (a) (b) (c).

<sup>21</sup> Ibid 29.

alms very embarrassingly. Persons with mental impairment are allowed to roam about cities without government intervention.<sup>22</sup>

On a general note, the Instruments adopted by the UN General Assembly for purpose of dealing with the protection and welfare of people living with disability included the following:

- (a) The Declaration on the Right of Disabled Persons (United Nations, 1975).
- (b) The World Programme of Action Concerning Disabled Persons (United Nations, 1982).
- (c) Principles for the Protections of Persons with Mental illness and the improvement of Mental Health care (United Nations, 1991).
- (d) The standard Rules on the Equalization of Opportunities for Persons with Disabilities (United Nations, 1993).
- (e) Instruments adopted by the General Conference of the International Labour Organization (ILO).
- (f) The Recommendation Concerning Vocational Rehabilitation of the Disabled (International Labour Organization 1955).
- (g) The Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons) (International Labour Organisation, 1983a).
- (h) The Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons) (International Labour Organisation 1983).<sup>23</sup>

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<sup>22</sup> The problem with Nigeria is not tardiness or absence of laws but the absence of political will to implement laws.

<sup>23</sup> This is as contained in Tobias Pieler Van Reenen and Helene Combrink: The UN convention on the Rights of Persons with Disabilities in Africa.

## 2.2 Institutional Frameworks

As we have observed, this is an aspect of Nigerian jurisprudence that has not been developed including the area of establishment of institutions.

- (i) National Commission for Persons with Disabilities: Under the Discrimination Against Persons With Disabilities (Prohibition) Act 2018 (Nigeria), there is to be established the National Commission for Persons with Disabilities to be placed under the Presidency.<sup>24</sup> Furthermore, there is to be established a nineteen - member Governing Council for the Commission which shall conduct the affairs of the Commission and sections 32 (1) (2) (3) which shall include representatives each from the 6 geographical zones of Nigeria. Section 38 of the 2018 Act stipulates the functions of the commission to include:
  - (a) To formulate and implement policies and guidelines for the education and social development of persons with disabilities;
  - (b) To prepare schemes designed to promote social welfare of persons with disabilities and the estimated cost of implementing the scheme.
  - (c) To promote and uplift the general social well-being of persons with disabilities by encouraging the public to change their attitude towards persons with disabilities.
  - (d) To make available not less than 5% of the workforce to qualified persons with disabilities
  - (e) To enlighten the public and encourage persons with disabilities

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<sup>24</sup> Discrimination Against Persons with Disabilities (Prohibition) Act 2018, s 31.

- (f) To facilitate the procurement of scholarships awards for persons with disabilities up to university level.
- (g) To establish and promote inclusive schools, vocational and rehabilitation centres for the development of persons with disabilities
- (h) To receive complaints of persons with disabilities on the violation of their rights:
- (i) To support an individual rights to seek redress in court, investigation, prosecution or sanctioning, in appropriate cases, the violation of the provisions of this Act;
- (j) To ensure research, development and educations on disability issues and disabled persons;
- (k) To collaborate with the media to make information available in accessible format for persons with disabilities and
- (l) To procure assistive devices for all disability types.

Furthermore, Section 39 (1) of the 2018 Act empowers the commission to do any lawful thing which will facilitate carrying out of its functions as enumerated above and in particular:

- Enter into contract for the education and welfare of persons with disabilities.
- Pursue or acquires any assets, business or property considered necessary for the proper conduct of its functions.
- Sell, let, lease or dispose of any of its properties.
- Undertake or sponsor research where necessary for the performance of its fractions.

- Train managerial, technical or other category of staff for the purpose of running the affairs of the Commission.

From the forgoing catalogue of functions and powers of the Commissions, it shows that the Commission is statutorily well equipped with the presidential backing. We find comfort in this conclusion with reference to Section 39 (3) which provides:

The Commission shall not be subject to a direction, control or suspension by any other authority or person in the performance of its functions under this Act except the President.

In other words, the Commission is not under the supervision or oversight function of anybody or ministry as the case is with the other Commissions saddled with supervising ministries and even the National Assembly. This is very encouraging; at least, it makes for the avoidance of unnecessary bureaucracy. However, robust as the provisions may appear, the problem is the required political will of state actors to ensure that all logistics, facilities or equipment and funding for the smooth running of the Commission towards realizing its objects may not be a mirage.

It is heart-warming to note that some states in Nigeria, for example Plateau, Kwara, Ondo, Ekiti, Nasarawa, Lagos, Enugu and Bauchi, have passed Disability laws and well-modelled policies. The adequacy or otherwise of those laws are not necessary here in view of the scope of operation and or application of the Discrimination Against Persons with Disabilities (prohibition) Act 2018 under consideration. Some State governments are doing their best, for instance, Anambra state government has collaborated with the United Nations Development Programme (UNDP) to commence a “Special

Target Enterprise Development and Monitoring Initiatives” for persons with disabilities. It is gratifying to note that this initiative is targeted at empowering 30 participants with vocational skills in four trade areas; shoe making, hair dressing, tailoring, computer management, adult education, etc.

- (ii) Nigerian National Human Rights Commission: This is one of the major institutions that has done a lot in creating awareness in all respects concerning and affecting persons with disabilities. For instance, on the 6th Day of December, 2011, the Commission in commemoration of the International Day of Persons with Disabilities collaborated with the International Republic Institute (IRI) and the Joint National Association of Persons with Disabilities (JONAPD), organized a sensitization walk along with some State governors between eagle square Abuja to the national Assembly. Other activities embarked by the Commission is constant visit to internally Displaced persons at various centres in the country to assess the situation.
- (iii) United Nations High Commission for Refugees (UNHCR).

The UNHCR has joined the other agencies to provide assistance for refugees with focus on protection, shelter, non-food items like blankets and camp coordination/management. UNHCR works with the Nigerian authorities especially the National Commission for Refugees, Migrants and internally displaced persons, stakeholders as well as parliament on policy and legislative matters regarding refugees, internally displaced persons to provide legal

assistance, issuance of identity cards, provisions of shelter, non-food items for livelihood assistance, psychosocial support, registration, voluntary repatriation and a range of protection services.

The UNHCR also collaborate in registration of refugees in Nigeria, with the neighbouring countries and border-States like, Benue State, Cross-River State, Taraba State, etc. on asylum seekers along with National Commission for Refugees, Migrants and IDPs. The identity cards issued to refugees accords them the freedom to move across Nigeria; access to health facilities and schools alongside their Nigerian neighbours. Also, the registration of refugees and asylum seekers is a protective tool used to protect them from arbitrary arrests, forceable recruitment and detention.<sup>25</sup>

(iv) International Organisation for Migration (IOM/UN Migration) has through their monitoring capacity informed as follows:<sup>26</sup>

- Over 1.5m internally displaced persons in immediate need of shelter as flood ravages camps in Northeast, Nigeria.
- The IOM/UN Migration in Nigeria is providing emergency shelter and other assistance to some of the deadly flooding in the Northeast, North Central with over 1.5m in immediate<sup>27</sup> need of accommodation.
- About 200 people: died in Bauchi in September 2022 (DTM Report).
- According to IOM Nigeria Acting Chief of Mission, Prestige Murima, Flood prone

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<sup>25</sup> <https://www.UNHCR.orgidps>.

<sup>26</sup> [iom.int/news/over 15000 Oct; 2022](https://www.iom.int/news/over-15000-Oct-2022)

<sup>27</sup> RC Chhangari, and Praveen Kumar Chhangani <https://www.jstor.org/stable/45148546>, March 2011. Refugee Definition and the Law in Nigeria.

- communities could face protracted food insecurity if their farmlands are affected.
- In Borno state, six camps hosting 15,618 IDPs were destroyed thereby increasing dependence of humanitarian assistance for over 8,400 household affected.
- (v) The Nigerian National Human Rights Commission is also partnering with the UNHCR to implement an IDP protection monitoring project in Adamawa, Boma and Yobe States of Nigeria. The project which commenced in 2015 started with 9 States of the North, East, North Central and FCT, Nigeria. It was later scaled down to six and currently to three.
- According to OCHA's latest Humanitarian Needs overview, 8.4 million people in the Northeast States of Borno, Adamawa, Yobe were in need of humanitarian aid in 2022. The 12 years' conflict in the region has spread to areas surrounding Lake Chad, causing one of the world's most severe and complex humanitarian crisis.
  - According to Mutima (*supra*), the situation has added new challenges and complexities for the displaced populations like camp congestions and delays in delivery of basic services".
  - Also, according to Doris Dokua Sasu (Dec. 12, 2012), "Nigeria has the third highest number of internally displaced persons (IDPs) in Africa. In 2020, it counted 2.7 million internally displaced people while overall Africa has the largest number of IDPs in the world."<sup>28</sup>

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<sup>28</sup> <https://www.statista.com/statistics>

- International Committee of the Red Cross (ICRC) had estimated 2m to flee from their homes as refugees to neighbouring countries. Several camps are needed to house thousands of persons.<sup>29</sup>
- (vi) International Displacement Monitoring Centre (IDMC): It monitors the activities of Boko Haram, Fulani Herdsmen and farmers class through non-state armed groups (NSAGs) who have reported that a total of 1,556 displaced persons in Zamfara State, Nigeria in 2022 (according to Displacement Tracking Matrix (DTM)). In 2022 Benue had 254 displaced persons.
- (vii) National Commission for Refugees.

Established by the National Commission for Refugees (Establishment Act) 1989. Under this Act the office of the Secretary to the Federal Government shall, subject to the provisions of this Act, be charged with the responsibility for matters relating to the refugee status.<sup>30</sup> Section 3 of the Act further provides for the establishment and composition of the National Commission for Refugees.<sup>31</sup>

The major functions of the commission include:

- (a) To lay down general guidelines and overall policy on general issues relating to the refugees and persons seeking asylum in Nigeria.
- (b) To advise the Federal Government on policy matters in relation to refugees in Nigeria.

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<sup>29</sup> <https://www.icrc.org/africa>

<sup>30</sup> Discrimination Against Persons with Disabilities (Prohibition) Act 2018, s 2.

<sup>31</sup> Ibid 3 (1) (a) – (e).

- (c) To consider such matters as the secretary to the Federal Government may, from time to time refer to it and make recommendations therein to the Secretary to the Federal Government as appropriate.

From the foregoing list of functions of the National Commission for Refugees, we observe that:

- (i) Apart from laying general guidelines and policies relating to refugees, the bulk of the functions/decisions are vested in the office of the Secretary to the Federal Government.
- (ii) The Act is not definitive in providing the rights, protection welfare of refugees etc.
- (iii) It does appear that a separate working document in the form of regulation distinct from the Act has to be packaged to make the necessary provisions for the protections of rights and welfare of refugees. With due respect, this is not acceptable. The Act is the basic instrument for everything concerning refugees in Nigeria. It is not sufficient to merely state that the Commission may give relief assistance to refugees while they are waiting for admission under Part VIII miscellaneous provisions.

Another problem or lacuna inherent in the Act, is its failure to define who is a refugee. Section 20 merely provides thus:

Meaning of “refugee”, etc.

- (i) For the purposes of this Act, etc, a person shall be considered a refugee if he falls within the definition provided by–
  - (a) Article 1 of the 1951 United Nations Convention set out in the First Schedule to this Act.

- (b) Article 1 of the 1967 Protocol Relating to the status of Refugees set out in the Second Schedule of this Act.
- (c) Article 1 of the 1969 organization of African Unity convention governing the specific aspects of Refugee problems in Africa, set out in the Third Schedule to this Act.

It is unfortunate that the makers of the Act were lazy to the extent that instead of formulating an acceptable definition of “refugee” that suits the circumstances in Nigeria, they adopted very old foreign definitions. We suggest that a model of laws and regulations should be drafted to attune to the Nigerian prevailing circumstances as we observed earlier in this paper. In doing that, it would help to actually determine who IDPs are, and who is a refugee away from ancient meanings given to them locally and internationally.

### 3 Conclusion

In this brief conclusion we leverage on the comments made by Tobias Pieter Van Reenen and Helene Combrinks<sup>32</sup> when they said:

On a formal level, it is somewhat disconcerting to note the terminology in these instruments varies from “handicapped”, to “challenged” to the “disabled”. It is axiomatic that terminologies may shift as political consciousness (both nationally and internationally) develops. It is nevertheless important for human rights instruments which are potentially enormously powerful in shaping public awareness, to keep track with, and reflect human rights approaches that are steeped in a recognition of the capabilities rather than the

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<sup>32</sup> The UN Convention of the Rights of persons with Disability in Africa (Ibid) page 8.

limitation of persons with disabilities (United Nations, 2006, article 8).

Earlier in this paper, we suggested a potential shift from hitherto ancient definitions of terms especially affecting human rights to acceptable, holistic and contemporary definitions that would support and sustain current workable documents.

To that effect, we suggest a more futuristic and robust definitions of “persons with disabilities”, “Disabled persons”, “Displaced persons” “Physically challenged persons” and “Refugees”.

For instance, we are forced to query the definitions of “refugee”, which simply means a person who is forced by incidences of war or crisis occasioning threat to life, flees his country of origin to another country for safety. We humbly say that this approach is ancient as being chanted in dictionaries (legal and non-legal), Conventions and Protocols. A review is urgently needed internationally to include a person who is forced with the same conditions but flees to another state or region for safety within the same country. During the Nigeria/Biafra war of 1966-1970, many Nigerians were forced to flee their homes where the civil war was seriously affected to neighbouring towns that were safer.

Reliefs were sent from outside Nigeria to those people who left their original homes and they were correctly treated and named “refugees”.<sup>33</sup> Section 10 of the National Commission for Refugee Act 1989 makes things worse in that it did not attempt to define “refugee”, but referred to international Conventions of centuries back. What should be

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<sup>33</sup> The author of this paper was treated and christened a “refugee” during the civil war because he fled from the present Edda Local Government of Ebonyi State to Ebam in Bende Local Government of Abia State, Nigeria and stayed there until the end of the war (3 years) in early 1970.

paramount in the minds of the law makers is the fate of the person who fled his home to another location whether locally or internationally.

From the foregoing, it is our view and conclusion that Section 153 of the Nigerian Constitution should be amended to include the establishment of National Commission for Persons with Disabilities and National Commission for Displaced Persons and Refugees among the federal bodies. The idea is to give proper attention and prominence to these two Commissions and to make adequate provisions for them to function effectively.

Finally, we suggest that states like Plateau, Kwara, Ondo, Ekiti, Nasarawa, Lagos, Enugu, Bauchi, etc. which have already enacted Disability laws should ensure their consistency with the Discriminations Against Persons with Disabilities (Prohibition) Act 2018 or any other federal legislation on the subject.

## Child Rights Protection in Nigeria: A Mirage or Reality Twenty Years After the Child Rights Act 2003

Ndumdi Okechukwu Nnodim\*

### Abstract

*Children are gifts from God. In these little creatures lie the joy of parents, the continuity of humanity and the preservation of values. To translate these lofty aspirations into reality, excellent diet and nurturing is central. Early childhood is characterized with frailty yet portend lots of opportunity to shape the future of a child. Hence, the Nigerian state, in 2003, took a strategic step with the passage of Child Rights Act into law. This came with lots of enthusiasm considering its laudable provisions on the benefits that should accrue to each child irrespective of creed, colour, or circumstances of birth. To put it more succinctly, 'the welfare of the child shall be the paramount consideration in every matter involving a child'. Accordingly, this paper considered the level of child right protection in Nigeria from four broad categorizations. These are the survival rights of a child, the developmental rights of a child, child protection and the participatory rights of a child. Extensive literature review was carried out, coupled with critical analysis of several Multi-Indicator Cluster Surveys. Some of the findings show that, 20 years down the line, the country's out of school children has steadily risen to a staggering twenty million. Also, it was found out that over two million Nigerian children are unvaccinated. These findings are without doubt indications of government failures to enforce the rights of children. Consequently,*

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*far-reaching recommendations were made to address these failures. Among which is the establishment of a national programme to empower care givers who will, in turn, ensure the welfare of their ward(s).*

## **1 Introduction**

Child rights protection has been a burning issue at the socio-cultural, economic and political spheres of life. Consequently, several policies, programmes, and legislations have been adopted to address these delicate issues that affect one of the most vulnerable groups. At the global level, the UN first adopted the Universal Declaration of Human Rights which recognized the humanity of all in 1948.<sup>1</sup> In 1989, the UN Convention on the Rights of the Child (CRC) was adopted. This was done in recognition of the child's need for harmonious development in an atmosphere of love, happiness and understanding, special safeguard and care. This Convention enjoined all State Parties to ensure that each child within their jurisdictions enjoyed the provisions.<sup>2</sup> Equally, the Millennium Declaration was adopted by all 191 UN Member States in September 2000, and the Plan of Action of A World Fit For Children, adopted in May 2002. The goal is to ensure full national immunization of children less than one year of age at 90 percent. Both of these commitments built upon promises made by the international community at the 1990 World Summit for Children. The MDGs which ended in 2015, and the ongoing SDGs aimed partly at addressing the developmental needs of children. At the regional level, there is the African Charter on the Rights and Welfare of the Child and the Dakar Consensus. There is also the National Program

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<sup>1</sup> Universal Declaration of Human Rights 1948, art 1.

<sup>2</sup> United Nations Convention on the Rights of the Child 1989, art 2 (1).

of Action. All are geared towards tackling the health, nutritional and educational needs of children among others.

Interestingly, Nigeria is signatory to the above-mentioned treaties, policies and programmes. To further show its commitment, Nigeria transformed the UN Convention on the Rights of the Child. This resulted in the Child Rights Act (CRA) 2003. Twenty years after, thirty-five (35) states, except Gombe, have further transformed the Act.<sup>3</sup> Admittedly, legal transplant has been one way of achieving social transformation, transmission of new values and uniformity of conduct. However, the law cannot operate itself. The setting up of efficient institutions, availability of political will and social reorientation are necessary conditions for the effective actualization of the spirit and letter of a piece of legislation or policy.

For a proper understanding of the child rights implementation level in Nigeria, four broad categorizations shall be adopted in this research. The above categorization notwithstanding, these rights are interrelated, interdependent and interconnected. Under developmental rights, it was found that every child is entitled to right to free and compulsory universal basic education, which translates to mental and spiritual development. Survival rights guarantee every child's right to life, good health, adequate nutrition, social security, and adequate standard of living. This translates to physical development. Under participatory rights, every child is entitled to right to rest, leisure, engagement in sports, recreational activity, cultural and artistic activities. This results in social development. Under protection rights, it was found that every child is entitled to

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<sup>3</sup> Child Rights Act Tracker, Gombe is the only that that is yet to pass it. Available at <https://www.partnersnigeria.org/childs-rights-law-tracker/> (accessed 15 June 2023).

safeguard from marriage, tattoos, sexual violence, exploitative labour and military enlistment. This ensures the integrity of the child's body.

Regrettably, the existing literature in this field of study show that most rights of the Nigerian child are far from being realized. Research findings further reveal that the situation has gone from bad to worse as the number of out-of-school children has risen to 20 million. It was also found that the violations of the Nigerian child rights are deeply rooted in lack, deprivation and overall poverty of parents and care givers alike. Hence, the recommendation that care-givers be empowerment amongst others.

## **2.1 Definition of Terms**

### **2.1 Human Rights**

The *Black's Law Dictionary* defines human rights as "the freedoms, immunities, and benefits that, according to modern values all human beings should be able to claim as a matter of right in a society in which they live".<sup>4</sup> Consequently, these are privileges which accrue to all individuals by virtue of their humanity. They have their origins in the natural law theory. However, steps have been taken in several legislations to enshrine them. This takes away doubt and ambiguity, while ensuring that they are not only respected by individuals but protected by the state. To further ensure that peculiar vulnerabilities of certain groups of people are not trampled upon, other bodies of human right legislations have emerged. Examples are; UN Convention on the Rights of the Child 1989, Convention on the Elimination of all forms of Discrimination against Women 1979, and United Nations Convention on the Rights of Persons with Disabilities 2006.

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<sup>4</sup> Garner B, *Black's Law Dictionary* (8th edn, Thomson West, 2004), 758.

## 2.2 Child

According to the *New International Webster's Comprehensive Dictionary*, a child is defined as “an offspring of either sex of human parents; a son or daughter”, or “any young person of either sex at any age but less than maturity, but most commonly one between infancy and youth”.<sup>5</sup> Section 277 of the Child Rights Act defines a child as “a person under the age of eighteen years”.<sup>6</sup> The Labour Act, on its part, defines a child as a person who is under the age of 12 years and, so, incapable of working unsupervised in any industry.<sup>7</sup> The above provisions make the definition of a child ambiguous to say the least. The confusion is further heightened by the provision of Section 29 (2) (b) of the 1999 Constitution of Nigeria which presumes any married woman to have attained the age of majority.<sup>8</sup> This, without doubt, gives a subtle support to child marriage. However, one can find solace in Section 274 of the CRA which provides that the Act supersedes the provisions of all enactments relating to children; adoption, fostering, guardianship and ward ship; approved institutions, remand centres and borstal institutions; and any other matter pertaining to children already provided for in the Act.<sup>9</sup>

## 2.3 The Multiple Indicator Cluster Survey

The Multiple Indicator Cluster Survey (MICS) is a public survey carried out to capture data on household. The data

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<sup>5</sup> The New International Webster's Comprehensive Dictionary of the English Language (Trident Press International, Encyclopedic edn. 2004) 230.

<sup>6</sup> Child Rights Act 2003 s. 19.

<sup>7</sup> Labour Act 1971 s. 91.

<sup>8</sup> Constitution of the Federal Republic of Nigeria 1999 s 29 (2) (b).

<sup>9</sup> Child Rights Act 2003 s. 274.

generated is used by policymakers in programming, monitoring and evaluation. The first survey in Nigeria was conducted in 1995 by the Federal Office of Statistics (FOS), now National Bureau of Statistics (NBS). There were technical and funding assistance from United Nations Children's Fund (UNICEF). Ever since, MICS has been institutionalized within the National Integrated Survey of Households (NISH) in the National Bureau of Statistics, as a process of collecting regular, reliable and timely social statistics. As at 2023, there has been 6 surveys under MICS series. For the purpose of this research, there shall be heavy reliance on data emanating from MICS starting from 2011.

### 3 Literature Review

The issue of the protection of the Nigerian child has long agitated the minds and thoughts of many scholars, writers and jurists alike. Consequently, several literatures have been published to portray the needs, challenges and the most suitable approach to these problems. The paper shall review some of these works for proper understanding of the knowledge that already exists and the gap thereof.

Ina examined the transition from the traditional way of raising children which involves children moving from the nuclear families to the extended families. The aim was solely for the purpose of care and educational development. However, under the current system, children are moved to live with employers who are not in any way close relatives. The author found that the current arrangement breeds exploitation, discrimination, enslavement and neglect on the part of guardians who double as employers.<sup>10</sup> This is fair

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<sup>10</sup> Tambo I, *Child Domestic Work in Nigeria: Conditions of Socialization and Measures of Intervention* (2014 WaxmannVerlag).

attempt by the author at looking at the developmental needs of a child. The author however failed to avert the mind to the child right provision that no child shall be separated from the parents except for the purpose of the child's education.

Braimah's work considered the implication of Part 1, Section 61 of the Second Schedule of the 1999 Constitution. This section reserves the formation, annulment, and dissolution of marriage other than marriage under Islamic law and Customary law, including matrimonial causes relating thereto, under the exclusive legislative list. The author argued that the implication of this provision is that child marriage is not illegal in Nigeria, if contracted under customary and Islamic laws. Finally, the paper proffered three possible solutions. First, is for the amendment of the instant section. Second proposal is for there to be a fixed uniform minimum age for marriage. The third approach is to enact a law prohibiting child marriage which will have general application in Nigeria.<sup>11</sup>

Olusegun and Ajiboye in their work titled, "Realizing the Rights to Development in Nigeria" sought to unravel how the economic, social, and cultural rights (ESCR) of every individual can be realized. The work discussed some challenges associated with the enforcement of the economic and social cultural rights (ESCR) of every individual which includes poverty, corruption, internal conflicts, wrong policies, maladministration. Finally, they opined that ESCR can be realised when the living condition of the people improves. This is hinged on the premise that a society cannot

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<sup>11</sup> Braimah T, *Child Marriage in Northern Nigeria: Section 61 of part 1 of the 1999 Constitution and the Protection of Children against Child Marriage* (2014) 14 AHRLJ; 474-475.

be said to be developed, if the people are denied the basic necessities of life.<sup>12</sup>

A Udoh and E Edem in their 2011 paper conducted empirical research to determine how Civil Servants, Industrialist and Teachers assess the implementation level of the Child Rights law in Nigeria. Their findings show that there was 68.55 percent implementation which is far from optimum. This result according to them is corroborated by other research findings and observations. For instance, Etuk (2006) opine that girl-child still faces the problem of female genital mutilation.<sup>13</sup> Umemoto (2008) finds that marriage of children and adolescents below the age of 18 years was still in practice.<sup>14</sup> Ugodulunwa, Ankwe and Mustaph's (2004) study indicates that street hawking by children was still in practice.<sup>15</sup> Etuk (2007) also affirms that school children were exploited in hawking.<sup>16</sup> This denies them the right to free and compulsory Basic Education and higher education.<sup>17</sup> This is commendable work in the level of child right protection in Nigeria. However, it is pertinent to note that the findings are narrow and does not reflect the generality of the population. This is hinged on the limited sample group.

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<sup>12</sup> Olusegun O and Ajiboye O, 'Realizing the Right to Development in Nigeria: An Examination of Legal Barriers and Challenges' (2015) 6(1) Afe Babalola University: *Journal of Sustainable Development, Law and Policy*, 145-163,

<sup>13</sup> Etuk, EU. (2006: Jan) Pose of Women in Leadership the Akwa Ibom Experience: paper delivered at the 2nd Akwa leadership Retrieval,

<sup>14</sup> Umemoto S. H. (2006). Early Marriage: Retrieval June 2008 from <http://www.UNICEF.in> Early Marriage in research Centre,

<sup>15</sup> Ugodulunwa, EA., Anakwa, A. I. & Mustaph Y. A. (2004). Hawking children in metropolis. *Journal of the Nigeria society for Educational Psychologist*, 3 (1) 24-32,

<sup>16</sup> Etuk, EU. (2006: Jan) Pose of Women in Leadership the Akwa Ibom Experience: Paper delivered at the 2nd Akwa Leadership Retrieval.

<sup>17</sup> Udoh, A. and Edem, E., Analysis of the Implementation of Child Rights Law in Nigeria (2011 Pp 129-138), *African Review Journal*.

Salim Magashi in his 2015 research looked at the Federal government policy of reforming the almajiri system by integrating the Western educational system. He found out that the reason while the almajiri is sent into the 'wilderness' in search of knowledge without any parental care is neglect by parents and governments. Another reason for this child neglect is poverty, ignorance and bandwagon following. Closely related to this challenge is the issue of polygamy which is unregulated and practiced without care. Furthermore, the work found out that the structural adjustment programme of government which saw the withdrawal of subsidies in health, education and other services worsened the economic condition of Nigerians during the 1980s.<sup>18</sup>

He suggested that the state should criminalize any act of parental neglect of their children's welfare, coupled with loss of custody as penalty. Two is that each state should rely on credible data to build enough schools to cater for pupils across their territory. The above research and findings are quite commendable. However, considering the failure of government to protect several child rights, one wonders what will become of children put under its custody.

For the purpose of this work, several child rights provisions shall be identified and critically analysed. Secondly there will be statistical analysis of government interventions on the Nigerian Child. This will reveal the extent of child right protection in Nigeria, 20 years after the Child Rights Act. Finally, solutions shall be proffered on how to further realize the intent and purpose of the Act.

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<sup>18</sup> Magashi S, *Education and the Right to Development of the Child in Northern Nigeria : A Proposal for Reforming the Almajiri Institution* Africa TODAY pg. 65 83 (2015) <285236872\_Education\_and\_the\_Right\_to\_Development\_of\_the\_Child\_in\_Northern\_Nigeria\_A\_Proposal\_for\_Reforming\_the\_Almajiri\_Institution> accessed 13 April, 2023.

#### 4 The Survival Rights of the Nigerian Child

Health, according WHO is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.<sup>19</sup> Further research in this area has shown that there exists a fourth dimension. This covers the state of being where an individual is able to deal with day-to-day life issues in a manner that leads to the realization of one’s full potential, meaning and purpose of life and fulfilment from within – spiritual health.<sup>20</sup> Early investment in the health of a person, has shown that it carries not only immediate benefit, but a longitudinal gain. Long-term studies show that the benefits of healthy childhood development extend to older ages: birth weight, infant growth, and peak physical and cognitive capacities in childhood are associated with or predictive of older adults’ physical and cognitive capacities, muscle strength, bone mass, lens opacity, hearing capacity, skin thickness, and life expectancy.<sup>21</sup> A meta-analysis of 16 independent studies concluded that one standard deviation advantage in cognitive test score assessed within the first two decades of life is associated with a 24 percent lower risk of death over a follow-up period of 17 to 69 years.<sup>22</sup>

The Child Right Act in Section 13, provides that “every child is entitled to enjoy the best attainable state of physical, mental and spiritual health.” These ensure the survival of

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<sup>19</sup> World Health Organization, constitution available at <<https://www.who.int/about/governance/constitution>> (accessed 17 July 2023)

<sup>20</sup> Dossey L, *Healing Beyond the Body: Medicine and the Infinite Reach of the Mind*. London: Shambhala; 2001 as cited in Dhar SK, Chaturvedi, Nandan D, *Spiritual Health, the Fourth Dimension: A Public Health Perspective* WHO South-East Asia J Public Health 2013;2:3-5.

<sup>21</sup> Dodds Richard and others, *Birth Weight and Muscle Strength: A Systematic Review and Meta-Nalysis* J Nutria Health Aging (2012), 1 6: 609-15.

<sup>22</sup> Calvin C.M, *Intelligence in Youth and all Cause Mortality: Systematic Review with Meta-analysis* Int J Epidemiol (2011) 40: 626-44.

every child. It is achieved through good health, adequate nutrition, social security, and adequate standard of living. Under MICS 4, conducted in 2011, infant mortality rate (IMR) which is the probability of dying before the first birthday was estimated at 97 per thousand, while the probability of dying under age 5 years, that is under five mortality rate (U5MR) was 158 per 1000.<sup>23</sup> Under-nourishment was gauged. Weights and heights of all children under 5 years of age were measured, using anthropometric equipment recommended by UNICEF. The indices were: weight for age, height for age, and weight for height. The result showed that more than one in five (15 percent) of children under age five in Nigeria were found to be moderately underweight and 9 percent were classified as severely underweight. More than one in five children (17 percent) were moderately stunted or too short for their age and 7 percent were moderately wasted or too thin for their height. Severely stunted and severely wasted were 19 percent and about 3 percent, respectively.<sup>24</sup>

Looking at the data emanating from the most recent MICS 6 conducted in 2021/2022, IMR was found to be at 63 deaths per 1,000 live births for five years preceding the survey, while U5MR for the same period was 102 deaths per 1,000 live births. Neonatal mortality rate is 34 deaths per 1,000 live births. Child mortality is 42 deaths per 1,000 live births. This implies that about 1 in 10 children in Nigeria die before their fifth birthday. The U5MR for children living in rural areas is almost double at 123 per 1,000. The U5MR for children living in urban areas is 67 per 1,000. Similarly, the U5MR of children born in the poorest households is 133 per 1,000 while that of children born by mothers with no education is 142 per 1,000. The figure for children born in the richest households is 47

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<sup>23</sup> Multiple Indicator Cluster Survey, Nigeria, (2011) Main Report, 16-18.

<sup>24</sup> MICS Nigeria, 2011; Main Report (n 21), 22.

per 1,000 and those born by mothers with tertiary education or higher is 40 per 1,000.

The U5MR in Sokoto, Kebbi, Jigawa, and Katsina states is more than four-fold the U5MR for children living in the Federal Capital Territory-Abuja, Benue, Kwara and Ebonyi states which have the lowest U5MR.<sup>25</sup>

Good nutrition in childhood as found in breastfeeding is the basis for good health, which provides a personalised medicine to the new-born.<sup>26</sup> This protects the child from infection, provides an ideal source of nutrients, and is economical and safe. However, many mothers stop breastfeeding too soon and are pressured to switch to infant formula, which can contribute to growth faltering and micronutrient malnutrition and is unsafe where clean water is not readily available. WHO/UNICEF have the following feeding recommendations: Exclusive breastfeeding for first six months, continued breastfeeding for two years or more, safe and age-appropriate complementary foods beginning at 6 months. The frequency of complementary feeding: 2 times per day for 6-8 months old and three times per day for 9- to 11-month old.<sup>27</sup>

The administration of well tested vaccines are major ways of ensuring child health protection. This is fully realized when children receive all recommended vaccine doses in a timely manner. Under the 2011 MICS, approximately 62 percent of children aged 12-23 months received a Bacillus Calmette-Guerin (BCG) vaccination by the age of 12 months and the first dose of Diphtheria-pertussis-tetanus (DPT) vaccine was

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<sup>25</sup> National Bureau of Statistics and United Nations Children's Fund *Multiple Indicator Cluster Survey 2011, Statistical Snapshot Report* (August, 2012, Abuja, Nigeria: National Bureau of Statistics and United Nations Children's Fund) 12.

<sup>26</sup> The Lancet (February 22, 2012) Vol 379 607.

<sup>27</sup> National Bureau of Statistics, *Nigeria Multiple Indicator Cluster Survey 2011 Main Report* (2011 ABUJA), 25.

given to 60 percent. The percentage declines for subsequent doses of DPT to 56 percent for the second dose, and 45 percent for the third dose. Similarly, 76 percent of children received Polio 1 by age 12 months and this declines to 68 percent by the second dose (Polio 2) and to 49 percent by the third dose (Polio 3). The coverage for measles vaccine by the time of survey is 56 percent while those vaccinated for yellow fever by 12 months of age is 40 percent.<sup>28</sup> The analysis reveals that only 11 percent of children of mothers with no education had vaccination cards as against 48 percent of children of mothers with secondary education or higher.<sup>29</sup>

The 2021 MICS shows that only 36 percent of children aged 12-23 months received all recommended vaccines in Nigeria. Substantially more children are fully vaccinated in the southern zones compared to northern zones.<sup>30</sup> Further analysis of 2021 MICS reveals that Children are significantly less likely to have received 3 doses of pentavalent vaccine if they are from poor families or rural families or if the child's mother is younger than 25 years of age or has a low level of education.<sup>31</sup> A 2023 UNICEF report shows that about 2,200,000 Nigerian children are unvaccinated.<sup>32</sup>

The clear and express provision of section 13 of the Child Rights Acts is that every Nigerian child shall enjoy the best attainable state of physical, mental and spiritual health. The phrase "best attainable" is the defining factor in this provision. However, the above findings speak volume of the country's commitment to the health of its children. For the

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<sup>28</sup> *ibid* 51.

<sup>29</sup> *ibid* 52.

<sup>30</sup> MICS 2021 (n 36) 31.

<sup>31</sup> 2021 MICS & NICS (n 36) 32.

<sup>32</sup> Ojoma Akor, '2.2 Million Nigerian Children Unvaccinated Yearly — UNICEF' *Daily Trust* Newspaper available at <<https://dailytrust.com/2-2-million-nigerian-children-unvaccinated-yearly-unicef/>> (accessed 7 June 2023).

purpose of clarity, it is important to look at the global standard which Nigeria is signatory to. According to the WHO data, the global U5MR as at 1990 was 93 deaths per 1000 live births while year 2021 data is 38. This represents 59 percent decline in U5MR.<sup>33</sup> Nigeria 2021 country data stands at 102 per 1,000 live births. Thereby exceeding the global average by 64. This finding also show that the Nigeria cannot meet the SDGoal 3.1, which is to end preventable death of all new born and children under five years by 2030. Indeed, lot of Nigeria children are suffering and dying under preventable circumstances.

Finally, the recurrent negative impact of poverty and illiteracy as found under 2011 and 2021 MICS's indicates that it is an inter-generational burden that not only affect the mother's chances of development, but extends to the child. Accordingly, the health need of the child cannot be appropriately addressed without adequately empowering the care giver. Secondly, there is need to tackle the issue of rural health infrastructure collapse to stem the rising cases of unvaccinated rural children and child mortality.

## **5 Developmental Rights of a Child**

### **5.1 Early Child Development**

Early child development is an orderly, predictable process along a continuous path in which a child learns to handle more complicated levels of moving, thinking, speaking, feeling and relating with others. During these years which span up to 8 years, a child's newly developing brain is highly

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<sup>33</sup> SDG Target 3.2: End preventable deaths of newborns and children under 5 years of age available at <[https://www.who.int/data/gho/data/themes/topics/sdg-target-3\\_2-newborn-and-child-mortality](https://www.who.int/data/gho/data/themes/topics/sdg-target-3_2-newborn-and-child-mortality)> (accessed 2 December, 2023).

plastic and responsive to change.<sup>34</sup> Physical growth, literacy and numeracy skills, socio-emotional development and readiness to learn are vital domains of a child's overall development.<sup>35</sup> The early years of life is a well-recognized period of rapid brain development and the quality of home care is the major determinant of the child's development during this period. Thus, children should be physically healthy, mentally alert, emotionally secure, socially competent and ready to learn. Activities that support early learning have been identified under MICS<sub>4</sub> to include adult involvement with children in: book reading or watching pictorial books, telling stories, singing songs, sightseeing outside the home or compound, playing with children, and spending time with children naming, counting, or drawing things. All these forms the basis for overall future human development.<sup>36</sup>

Under Section 15 of the Child Rights Act, "every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education". A ten-item module benchmark which every child must possess to show that he/she is developmentally on track was used during 2011 MICS. They are: Literacy-numeracy: this is the ability to identify/name at least ten letters of the alphabet, read at least four simple, popular words, and know the name and recognize the symbols of all numbers from 1 to 10. If at least two of these is true, then the child is considered developmentally on track. Physical domain: this is the ability to pick up a small object

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<sup>34</sup> Early childhood development *UNICEF DATA available at* <<https://data.unicef.org/topic/early-childhood-development/overview/>> (accessed 10 July 2023).

<sup>35</sup> MICS Nigeria, 2011; Main Report 161.

<sup>36</sup> MICS 2011 (n 46).

with two fingers, like a stick or a rock from the ground and/or the mother/caretaker does not indicate that the child is sometimes too sick to play. Social-emotional domain: is the ability of the child to get along well with other children, without kicking, biting, or hitting other children or if the child does not get distracted easily. Learning: this is the ability of the child to follow simple instructions correctly and/or to work independently. Early child development index (ECDI) is arrived at by calculating the percentage of children who are developmentally on track in at least three of these four domains.<sup>37</sup>

The 2011 MICS result shows that 61 percent of children aged 36-59 months are developmentally on track. Regional analysis shows that South-West has the highest figure at 84 percent while North-East is least with 43 percent. The quintile shows 83 percent for children living in the richest households, as opposed to 46 percent for those in the poorest.<sup>38</sup> Under 2021 MICS6, 38 percent of children aged 3-4 years are attending early childhood education programmes. This attendance is 21 times more in Lagos State with 84 percent than in Kebbi State with 3 percent.<sup>39</sup>

## 5.2 Primary and Secondary Education

Early child education is immediately followed with primary and secondary school education. Under 2011 MICS the percentage of children of primary school age (6 to 11 years) who are attending primary or secondary school is about 3 out of every 5 (70 percent).<sup>40</sup> Primary school net attendance ratio is 49 percent in the Northeast, 50 percent in the Northwest,

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<sup>37</sup> *ibid* 161.

<sup>38</sup> *ibid* 164.

<sup>39</sup> MICS 2021 (n 36) 42.

<sup>40</sup> MICS Nigeria, 2011; Main Report 174.

73 percent further South in the North-Central and over 90 percent in most of the Southern zones. More than ninety percent of children of primary school age by mothers with at least secondary education are attending school as against 50 percent of such children whose mothers have no education and 84 percent for the same category of children having mothers with primary education. The primary school net attendance ratio for children in richest households is 94 percent; the figure declines quite systematically to 33 percent in the case of counterpart children in the poorest households.<sup>41</sup>

The secondary school aggregate attendance ratio was 54 percent. In the urban area 2 out of every 3 (72 percent) children of secondary school age are in school as against more than 2 out of every 5 (45 percent) in the rural areas. The secondary school net attendance ratio for children in richest households is 81 percent; the figure declines quite systematically to 15 percent in the case of their counterparts in the poorest households.<sup>42</sup>

Under 2021 MICS primary school total attendance rate is 68 percent, while Junior Secondary and Senior Secondary net attendance is 48 percent and 47 percent respectively. Household inequalities in early childhood education attendance shows 75 percent attendance in richest families and 11 percent in poorest homes. Urban and rural ECD attendance shows 58 percent and 26 percent attendance respectively. Inequalities in primary school attendance shows that richest home attendance is 88 percent while poorest homes attendance is 39 percent. The disparity in urban and rural primary school attendance shows 82 percent and 60 percent respectively. Inequalities in junior secondary school

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<sup>41</sup> MICS Nigeria, 2011; Main Report page 176-7.

<sup>42</sup> Ibid.

attendance shows that richest homes attendance is 81% while poorest homes attendance is 15 percent. The disparity in urban and rural junior secondary school attendance shows 66 percent and 34 percent in that order. Inequalities in senior secondary school attendance shows that richest home attendance is 78 percent while poorest homes attendance is 13 percent. The disparity in urban and rural senior secondary attendance shows 62 percent and 35 percent respectively.

The above analysis shows poor enrolment into early child development programme (ECDP). There is increase in primary and secondary school enrolment coupled with low completion rate of primary and secondary school attendance in Nigeria. The global implication is that the country has not only failed to meet the MDGs but is far from attaining the SDGs. This dangerous trend is primarily fuelled by poverty and ignorance on the part of the care giver and inadequate infrastructure on the part of government. These factors have persisted despite the obvious role of education in human capital development. Regrettably, a large number of Nigerian children are missing out in this decisive factor. To make matters worse, UNESCO in a report published in September 2022 by the UNESCO Institute for Statistics (UIS) and the Global Education Monitoring (GEM), said Nigeria had about 20 million out-of-school children.<sup>43</sup> Also, that 75 percent of Nigerian children aged seven to fourteen years cannot read simple sentences or solve basic mathematics.<sup>44</sup> Nigeria

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<sup>43</sup> 'Adamu Adamu's 20 Million Out-Of-School Children' Daily Trust Newspaper (April 5 2023) available at <<https://dailytrust.com/adamu-adamus-20-million-out-of-school-children/#:~:text=Meanwhile%2C%20the%20United%20Nations%20Educational,for%20any%20country%20in%20Africa>> (accessed 20 July 2023).

<sup>44</sup> 'UNICEF says 75 percent of Nigerian children can't read simple sentence' *The Guardian* (24 January 2023) available at <<https://guardian.ng/>

appears to have abandoned its developmental role to one of the most vulnerable group that hold the key to the country's greatness. This is happening at a time when global emphasis has shifted from access and completion of school to the quality of the education, with particular emphasis on environment and the ethical values being inculcated.<sup>45</sup> Furthermore, these alarming figures are supported by both country population that is projected to grow to 223 million in 2023, with 52 percent as children<sup>46</sup> and Universal Basic Education Commission (UBEC) student enrolment figure that is currently above 48,010,008.<sup>47</sup> The above figures are alarming and, in fact, a threat to national security, considering the critical nature of education in human development, decision making and productivity. The huge burden of ignorance and illiteracy, coupled with the attendant consequences, is one the nation may not survive long under. Surprisingly, these alarming figures are emanating at the backdrop of UBEC which was established by the Compulsory, Free Universal Basic Education Act of 2004. This is operational across all States of the Federation to eradicate illiteracy and ignorance. Also, there is the National Commission for Mass Literacy, Adult and Non-Formal Education. Not left out are such government programmes like Safe School Initiative Intervention Programme, and National

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news/unicef-says-75-percent-of-nigerian-children-cant-read-simple-sentence/>

<sup>45</sup> Overview: MELQO: Measuring Early Learning Quality and Outcomes, UNESCO, UNICEF, Brookings Institute and the World Bank, 2017 page 10.

<sup>46</sup> 'Nigeria's population to hit 223.8 million in 2023 - UN' *Business Day Newspaper*, (April 19 2023) available at <<https://businessday.ng/news/article/nigerias-population-to-hit-223-8-million-in-2023-un/#:~:text=Nigeria's%20population%20is%20estimated%20to,rapid%20growth%20of%20Nigeria's%20population.>> (accessed 27 march 2023).

<sup>47</sup> Universal Basic Education Commission website available at <<https://ubec.gov.ng/>> (accessed 25 July, 2023).

Home-Grown School Feeding Programme that have received billions of Naira by way of budgetary allocation.<sup>48</sup>

Accordingly, it is suggested that a serious audit of the UBEC be carried out to find both the immediate and remote cause(s) of this monumental failure. Also, there should be mass sensitization on the importance of childhood education in combating poverty, empowering women, protecting children from hazardous and exploitative labour and sexual exploitation, promoting human rights and democracy, and protecting the environment. The idea of incentive should be considered to attract more children from rural areas and poor homes to school which should be free in letter and practice. Finally, good spirited individuals should take up public interest litigations to challenge the failure of government to provide not only access to education but quality education. Commendably, this is now possible by virtue of CRA and UBEC Act.<sup>49</sup>

## 6 Child Protection

Child protection is a safeguard put in place to shield children. This is central considering the predatory and exploitative nature of some persons. Another factor is the gullibility of children that make them vulnerable. Thus, the law makes several provisions to protect children. Examples are sections 21, 24, 31, 28 of the CRA, which prohibit child marriage, tattoos, sexual violence, exploitative labour, and exposure to drug.

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<sup>48</sup> 'Nigeria budgets 141.9 billion for school feeding programme' *Educeleb* (28 November, 2020) available at <<https://educeleb.com/nigeria-budgets-2021-school-feeding-programme/>> (accessed November 27, 2023).

<sup>49</sup> *Attorney General of Ondo v. Attorney General of the Federation* (2002), 9 NWLR (Pt.772) 222 SC.

### 6.1 Child Marriage

Child marriage is any formal marriage or informal union between a child under the age of 18 and an adult or another child. This prohibited act goes on despite the known fact that sexual activity and early childbearing carry significant risks for people round the world. Two major factors have been identified in the past as being major contributory factors to this abnormally. These are adequate legislative framework with an accompanying enforcement mechanism to address cases of child marriage; and the existence of customary or religious laws and practices that condone the practice.<sup>50</sup> The 2011 MICS surveyed the percentage of women married before 15 years of age and percentage married before 18 years of age. About one in five young women age 15-19 years were married. This represents 20 percent prevalence rate. This proportion varies much between urban (8 percent) and rural (28 percent), but is strongly related to the level of education.<sup>51</sup>

By 2013 the number of child brides before age 18 rose to 58.2 percent. In 2015 the result showed that 48 percent of women were found to be married in Nigeria before age 18 while 18 percent were married before age 15.<sup>52</sup> The 2021 MICS showed a further decline of 30 percent women aged 20-24 getting married by age 18, while 2 percent of men in the same age bracket got married. The data also reveal that 20 and 46 percent of women aged 20-49 years in rural and urban areas got married before age 18, respectively. The wealth index shows 10 and 57 percent in the richest and poorest households, respectively. The state prevalence rate of women aged 20-49 years who were first married or in union before

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<sup>50</sup> MICS 2011 (n 46) 199.

<sup>51</sup> Ibid.

<sup>52</sup> Situation Analysis of Children in Nigeria: *Ensuring equitable and sustainable realization of child rights in Nigeria* (Federal Republic of Nigeria, 2022), 66.

age 18 is as follows: Bauchi (75 percent), Katsina, (73 percent), Jigawa (71 percent), Kebbi (62 percent), Zamfara (60 percent), Borno (7 LGAs) (58 percent), Kano (57 percent), Sokoto (54 percent), Gombe (50 percent), Taraba (47 percent), Kaduna (45 percent), Yobe (43 percent), Niger (42 percent), Bayelsa (38 percent), Adamawa (36 percent), Plateau (34 percent), Benue (31 percent), Nasarawa (30 percent), Kogi (25 percent), Ogun (24 percent), Akwa Ibom (23 percent), Delta (23 percent), Cross River (23 percent), Ekiti (23 percent), FCT Abuja (22 percent), Ondo (20 percent), Kwara (19percent), Osun (17 percent), Rivers (14 percent), Edo (14 percent), Oyo (13 percent), Enugu (13 percent), Ebonyi (13 percent), Anambra (13 percent), Abia (9 percent), Imo (9 percent), and Lagos (8 percent).<sup>53</sup>

The above analysis on child marriage in Nigeria spanning over a decade holds some promising findings. First is that the 2011 survey showed a 20 percent prevalence rate. This was followed with a spike in 2013. This figure has steadily dropped ever since. However, the current rate of 30 percent girls and 2 percent boys is still dangerously high considering Nigeria's population of over 200 million. Finally, the issue of child marriage breeds sexual and emotional abuse, limited education and employment opportunities which culminates in multi-dimensional poverty thereby robbing survivors of both current and future opportunities.

## 6.2 Child Labour

Child labour is any exploitative or hazardous work that affects a child. Section 28 of the CRA prohibits any child forced or exploitative labour; adverse work, domestic work outside the home or industrial work. These provisions have their

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<sup>53</sup> MICS 2021 (n 36), 66.

exception in s. 29, which incorporates ss. 59-63 of the Labour Act.<sup>54</sup>

In the MICS questionnaire, a number of questions addressed the issue of child labour, that is, children aged 5-14 years being involved in labour activities. A child is considered to be involved in child labour activities at the time of the survey, if during the week preceding the survey, he/she performed the following activities: Ages 5-11: at least one hour of economic work or 28 hours of domestic work per week. Ages 12-14: at least 14 hours of economic work or 28 hours of domestic work per week. This definition allows differentiation between child labour and child work to identify the type of work that should be eliminated.

A national average show that 27 percent of Nigerian children aged 5-17 are involved in economic exploitation while 11 percent are involved in household chores. Out of this figure, 29 percent of children are involved in hazardous working conditions.<sup>55</sup>

### 6.3 Participatory Rights of a Child

The participatory rights of a child are contained in section 12 of the CRA. This entitles the child to rest, leisure, and engagement in sports, recreational activity, cultural and artistic activities appropriate to his or her age. However, there is little data to show the extent to which Nigerian children actually enjoy these rights. Notwithstanding, a look at the extent of child labour as captured above shows that a large number of Nigerian children are missing out on this. Also, the country out of school data shows that a lot of children are

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<sup>54</sup> Labour Act 2004 s. 29.

<sup>55</sup> MICS 2021 (n 36) 63.

missing out on the cultural and artistic activities of Nigerian, African and world communities.

## **7 Conclusion**

Childhood is a special time characterized with vulnerability and great opportunity to set a child on the path to success and greatness. Pregnant women and girls are vulnerable to biological and social risks that increase their susceptibility to disease, disability, and preventable mortality. Interventions during pregnancy, childbirth, and infancy can have a major effect on the health of both mother and child.

After birth, breastfeeding provides personalised food and medicine to the infant. This is immediately followed with vaccination to protect the child from infectious diseases. Not left out is early child education. The aim is to stimulate the brain and inspire the child towards a better understanding of his/her environment. The deciding factor is an atmosphere filled with love and care. Equally important is proper nutrition to ensure a child's bodily and mental development. All these wonderful provisions are by virtue of the Child Rights Act 2023 guaranteed the Nigerian child. The indicators of these laudable provisions are physical growth, literacy and numeracy skills, socio-emotional balance and protection from abuse.

In the case of Nigeria, the country is faced with steady population growth. According to the Nigeria Common Country Analysis Report, the population is projected to rise to 223 million by mid-2023. Over 55 percent of the population is estimated to be children. However, population growth has not translated to shared prosperity and equitable progress. On a whole, child poverty is estimated at 75 percent (and reaching 90 percent in some northern states). This translates to lack of access to sanitation, education, health, water, food

and shelter. Indeed, this is a far cry from the express provisions of the Child Rights Act which guarantees every child right to health, education, development and protection from bodily harm. Consequently, the commendable provisions of the Child Rights Act, 2003 has turned into a marriage for lots of Nigerian children.

Countries that seek to be great or remain great place high priority on their children's need by delivering benefits like paid parental leave, free primary health care at the point of delivery, access to affordable health care – and sufficient amounts of – food, state funded or subsidised education, and other social protection measures. These countries make sure children grow up in safe and healthy environments, with clean water and air and safe spaces to play.

## **8 Recommendations**

It is obvious that the current approach towards addressing the problem of Nigerian children have failed woefully. This portends great danger for both the current and future generations of Nigerians. No resource of the state should be spared in addressing this growing problem. Accordingly, the following recommendations are made:

- (1) There should be a national programme to empower care givers through productive ventures. This will ensure that they care for their ward(s).
- (2) Child programming and development should start with the mother while she is yet to bear children. Hence child marriage must be prohibited and punished to ensure that every mother is prepared mentally, socially, physically and emotionally before marriage and subsequent child birth.

- (3) There should be a national programme to teach mothers and fathers on early child care. This should include locally sourced infant formulas, hygiene, and early child education.
- (4) On immunization, it is recommended that the possession of Child Health Card be made mandatory for admission into first level of child education and the receipt of government intervention programmes by care givers.
- (5) There should be an immediate comprehensive audit of all government intervention programmes for children and a new and coordinated approach adopted without trying to patch the current leaky and dysfunctional system.
- (6) Section 29 (2) (b) of the 1999 CFRN which gives support to child marriage by providing that “any woman who is married shall be deemed to be of full age” should be completely deleted from the Constitution through amendment. This will strengthen the nation’s drive towards eradicating all forms of child marriage and its negative impact on the Nigerian state.

Quality health service with universal healthcare coverage should be implemented without further delay. The establishment of National Child Rights Implementation Committee, State Child Rights Implementation Committee, and Local Government Child Rights Implementation Committee with the necessary resources and monitoring indicators should be put in place.