

# Protecting the Rights of Old People in Nigeria: Towards a Legal Reform

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## Abstract

There are certain rights that are fundamental and should be enjoyed by everybody regardless of gender, tribe, colour, creed and age. The society sees some people as vulnerable and as such will require its protection. A category of such vulnerable in the society is the old people that need special attention because of their weak nature and low production capacity. The nature of the old people has no doubt captured the attention of the international community who offers some legal protections to them by the provisions of various treaties and conventions. The aim of this article is to consider the legislation, if any, and policy development in the care of old people in Nigeria. It therefore germane to review what the law offers to protect this category of people in Nigeria in comparison with the standard required at the international scene.

**Keywords:** old people, rights, protection, reform.

## 1. Introduction

Ageing, according to the Oxford Advanced Learner's Dictionary, is the process of growing old.<sup>1</sup> Ageing has become a global phenomenon and a policy issue that is receiving attention by governments globally. In Africa, countries are experiencing demographic and epidemiological changes which pose a unique policy changes and information need.<sup>2</sup> Ageing has posed a serious challenge to governments in Africa as seen in their inability to cope with regular payment of pensions to their retired work force who have served their land meritoriously, both civil servant and military men, and inability to provide social services and health facilities to cater for the needs of the teeming ageing population.

There is no universally accepted standard to numerically define who an aged person is but it is stipulated at the age of sixty by the United Nations.<sup>3</sup> The aged in Nigeria can be categorized as people who fall within the age bracket of sixty or sixty five and above. In most of the developing countries, the age of retirement is always put at sixty or sixty five and it is therefore assumed that old age starts at this age. It is believed that at the age of sixty or a little above a person is less productive and can only contribute a little to the economy, hence the need for such person to retire.

It is undisputable that Nigeria is the most populous black nation in Africa and there is a very high potential of rapid growth rate of the older population in the years ahead. Steady growth in the population of the aged implies change in the age structure of the society which may have serious implications for the economy. The bitter reality is that the hope of the aged people who have invested in their children in their hay days with the belief that they will have succor from them when they get old has been rudely dashed as most of the children find it difficult to secure a good job after their schooling. Some of these children even still depend on their old parents for livelihood or to engage in further studies after graduating from tertiary insitutions. Moreover, those who even have enough money to spend on their parents, due to the nature of their jobs and family arrangement, do not really have the time to render the care and attention needed to them.

In a clime where the human rights field has become increasingly specialised, less privileged groups such as children, migrant workers, persons with disabilities and women have had their particular needs specially recognised by the United Nations. The tide is now supposed to flow in the direction of older persons also identified as a distinct category, deserving special care and attention under human rights law.<sup>4</sup>

According to Fredvang and Biggs:

“The perception of old age as a social problem rests upon the assumption that older persons are in some way separate from those who are not yet old—that the aged and the non-aged are two different categories of human beings. Older persons are seen as segregated from society, producing a gap that must be bridged, while at the same time recognising the particular needs and contribution of this group.”<sup>5</sup>

<sup>1</sup> Oxford Advanced Learner's Dictionary, A.S. Hornby, 6<sup>th</sup> ed. Oxford University Press.

<sup>2</sup> Egunyomi, D.A. (2012) “The Adults and Aged: The Nigerian Situation” in Osinowo, O.O., Moronkola, O.A., and Egunyomi, D.A. (eds.), *The Adults and Aged in Nigeria: Issues and Researches*. Royal People (Nigeria) Ltd. p. 1.

<sup>3</sup> Ibid. p. 3.

<sup>4</sup> Fredvang, M. and Biggs, S. (2012) “The Rights of Older Persons: Protections and Gaps under the Human Right Laws.” P.5. Retrieved on July 4, 2014 from [http://www.bsl.org.au/pdfs/FredvangBiggs\\_Rights\\_of\\_older\\_persons\\_2012.pdf](http://www.bsl.org.au/pdfs/FredvangBiggs_Rights_of_older_persons_2012.pdf)

<sup>5</sup> Ibid. p.6.

This vulnerable group is often marginalised and certain things are considered prejudicial to their interests. In order to avert this abased position this group is placed, there are certain rights that need to be made explicitly applicable to this group.

## 2. Policy Issues Affecting the Aged in Nigeria

How a State is being run depends to a large extent on the policy driving the machinery of that State. What a State regards as important or needing a desired attention is a force propelling its policy developments. The issue of protecting the rights of the aged in Nigeria does not really have constitutional backing in Nigeria which is regarded as the most fundamental document for protecting rights that are very essential to human existence. There are certain provisions of the 1999 Constitution of Nigeria that seem to ascribe some rights to the aged in Nigeria within its social milieu. For instance, as part of the economic objective of the country, it is provided that the country shall direct its policy towards ensuring that suitable and adequate shelter, food, old age care and pension, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.<sup>1</sup>

The aim of the above provision is to protect the vulnerable in the society from hardship that may occur to them due to their weak or disadvantaged nature. The vulnerable in the society due to their shortcomings need the protection of the government and the society at large therefore the need for the government to direct its policies to ensure that such category of people are not exposed to danger by virtue of their weaknesses. The Constitution further provides that in furtherance of social order of the State, which is built on ideals of freedom, equality and justice, the sanctity of human person shall be recognised and human dignity shall be maintained and enhanced.<sup>2</sup> It is also stipulated that every citizens shall have equality of rights, obligations and opportunities before the law.<sup>3</sup>

It is encouraging to see in the Constitution that the government will direct its policies towards ensuring that there are adequate medical and health facilities for all persons; and that the children, young persons and the aged are protected against any exploitation whatsoever, and moral and material neglect.<sup>4</sup> This provision seems to give protection to the categories of people captured therein by providing basic supports to them in the areas of health and materials needed to live a decent life. In furtherance of the assurance of providing basic needs for the vulnerable groups in the society section 17(3)(g) of the 1999 Constitution of Nigeria provides that the State shall direct its policy towards ensuring that provision is made for public assistance in deserving cases or other conditions of need. As elegant as the above provisions are, the unfortunate reality is that the rights encapsulated therein are not justiciable because they fall within the provisions contained in Chapter II of the 1999 Constitution.

Despite the provision of section 13 of the Constitution that it shall be the duty and responsibility of all organs of government and all authorities and persons exercising governmental powers to conform to, observe and apply the provisions of Chapter II of the 1999 Constitution containing fundamental objectives and directive principles of state policy, which consists political, economic, social, educational, foreign policy, and environmental objectives among others, the provisions of section 6(6)(c) of the Constitution preclude the judiciary from entertaining matters brought thereunder. It is arguable that the provisions of Chapter II are like giving something with a right hand and collecting it back with the left hand by the provisions of section 6(6)(c) of the same Constitution. Obafemi Awolowo says of the Chapter as follows:

“The qualities of the social objectives are reduced to worthless platitudes .....and hollow admonitions which should have no place in a Constitution which is, first and last, a legal document whose provisions must ipso facto be justiciable and legally enforceable”<sup>5</sup>

A quick look at the provision of section 13 of the Constitution seems to point to the fact that the provision of the Constitution relating to fundamental objectives and directive principles of state policy should be strictly adhere to but the opposite is the case through the provision of section 6(6)(c). However, it is arguable that since section 1 of the same 1999 Constitution provides that the Constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria, it means that the framers of the Constitution regard this chapter as important. Regardless of the importance of the provisions of the Chapter II of the Constitution they remain largely evasive due to their non-justiciability. There is, therefore, no solid legal footing or foundation upon which the rights of the aged in Nigeria are placed.

According to Ajomale, since 2002, there have been other policy frameworks at the regional level such as: African Union Policy Framework and Plan of Action on Ageing (2003); National Policy on Care and Wellbeing of the Elderly (Draft 2003); National Policy on Aging (Draft 2006) and the United Nations Economic

<sup>1</sup> Section 16(2)(d) of the 1999 Constitution of the Federal Republic of Nigeria (FRN).

<sup>2</sup> Section 17(2)(b) of the 1999 Constitution of the FRN.

<sup>3</sup> Section 17(2)(a) of the 1999 Constitution of the FRN.

<sup>4</sup> Section 17(3)(d) and (f) of the 1999 Constitution of the FRN.

<sup>5</sup> The Great Debate- Nigerian Viewpoints on the Draft Constitution. A Daily Times Publication based on the debate on the 1979 Constitution p.3.

Committee for Africa: The State of Older People in Africa (Draft 2007), but there is none for Nigeria.<sup>1</sup> Even though the government of Nigeria has developed various policies to better the lots of individuals in Nigeria, in terms of policies shaping the well being of the elderly in Nigeria, it seems not to be the priority of the government to address issues bordering on the welfare of the old people. Also there is lack of political will and prioritization of the special rights of other disadvantaged groups at the expense of the old people.

The visible state policy in Nigeria affecting the old people is in the area of retirement benefits. Pensions have shifted from the defined pension system to financial plans based on deferred income and investment for financing retirement known as Contributory Pension Scheme.<sup>2</sup> The informal sector of the economy represents the major employer of labour and those who, perhaps, are most in need of the limited social security benefits that pension schemes provide, but they are not envisaged in the scheme.<sup>3</sup> Even before the new contributory pension scheme was designed by the federal government of Nigeria, the former pension regime put the senior citizens who have served their country meritoriously in a pitiable condition and most of them would have to queue up endlessly to collect the pittance they were paid as pension in manifold arrears. Not minding the condition of health of most of them, the old pensioners would have to appear in person to collect their pension and often time they collapse and died while queuing up under unfavorable conditions for their dues. Sometimes they would have to pay a kickback to encourage those who manage their files and/or their accounts to do their work.<sup>4</sup>

A writer once observed that:

“People in the public service sector continue to manipulate their ages so that they will, not attain the retirement age quickly. This is why some of them ‘die in active service’ The ‘fear of the unknown’ associated with a very bleak future has culminated in the entrenchment of corruption in the social and economic system of Nigeria.”<sup>5</sup>

Indeed, the fear of the unknown and lack of adequate provision for workers after their retirement has caused many aged civil servants to die in active service when they ought to be resting after long years of service to the government. The concept of social security is therefore predicated on vision of a fairer arrangement of the society in which the government assumes a general responsibility to ensure that the “individual is secured by organized collective action against the risk of social and economic life.”<sup>6</sup>

Notably, there is no such thing, in the strict sense of it, like social security in Nigeria which may involve securing an individual against loss, poverty, destitution, disease and idleness which may come as a result of varied hazards and vicissitude of social life. There is no clear policy statement regarding it and little is spent by the State on it except in the capacity of its being an employer.<sup>7</sup> Lack of protection by the State leaves people in this category to their own devices in the fight against the risk of social life. Without doubts, the old people may fall into this category of people that need immediate help.

### 3. Consideration of Rights of the Old People

While lack of political will and different priorities are the factors directly underlying Nigeria’s failure to ratify let alone implement the draft National Ageing Policy, it has been observed that a closer look suggests that the law makers are not sufficiently sensitized to the scope, nature or seriousness of older people’s problem nor to the broad economic and social development implications of leaving these problems unaddressed in the context of rapid population ageing.<sup>8</sup> The key cause of Nigeria’s failure to act on ageing is thus the ominous lack of comprehensive, high quality evidence of the magnitude, nature and implications of the population ageing challenge that would serve to sensitize policy makers.<sup>9</sup>

<sup>1</sup> Ajomale, O. (2007) Elder Abuse: The Nigerian Experience. Retrieved July 4, 2014 from [http://www.inpea.net/images/YinkaPaper\\_ElderAbuse\\_Nigeria\\_Dec07.pdf](http://www.inpea.net/images/YinkaPaper_ElderAbuse_Nigeria_Dec07.pdf)

<sup>2</sup> Obashoro-John, O. (2011) Global Aging Issues: The Nigerian Situation. *The Journal of Aging in Emerging Economies*, p.62. Retrieved on July 4 2014 from <https://www.kent.edu/sociology/resources/jaee/upload/obashoro.pdf>

<sup>3</sup> Ibid. p. 63.

<sup>4</sup> Eme, O.I. and Ugwu, S.C. (2011) “The Laws and Administration of Retirement in Nigeria: A Historical Approach,” *Kuwait Chapter of Arabian Journal of Business and Management Review*, Vol. 1, No. 2, p. 1. Retrieved July 10, 2014 from [http://www.arabianjbmr.com/pdfs/KD\\_VOL\\_1\\_2/1.pdf](http://www.arabianjbmr.com/pdfs/KD_VOL_1_2/1.pdf)

<sup>5</sup> Odumosu, O. “Improving the Socio-Economic Status of Elderly People in the Society,” Nigerian Institute of Social and Economic Research (NISER), Ibadan. Retrieved on July 4, 2014 from <http://caringhandsnigeria.com/Workshops/IMPROVING%20THE%20SOCIO-ECONOMIC%20STATUS%20OF.pdf>

<sup>6</sup> Nwabueze, Ben O. Social Security in Nigeria. Nigerian Institute of Advanced Legal Studies, being the Institute’s 10<sup>th</sup> Anniversary Lecture delivered on the 7<sup>th</sup> September, 1989. p.3.

<sup>7</sup> Ibid. p.1.

<sup>8</sup> Asagba A. (2005), Research and the Formation and Implementation of Aging Policy in Africa: The Case of Nigeria. *Generations Review*, vol. 15(2), pp. 39-41

<sup>9</sup> Mudiare, P.E.U. (2013) Abuse of the Aged in Nigeria: Elders Also Cry. *American International Journal of Contemporary*

Abuse of vulnerable old people is not a phenomenon that is new in Nigeria, likewise other parts of the world. Older persons should be able to live in dignity- free of exploitation and physical or mental abuse. Anything else is quite simply a breach of their human rights. Human rights are possessed by everybody – older age is not a ground for denying a person their human rights or restricting their enjoyment of them.<sup>1</sup>

There are many international agreements guaranteeing basic human rights to all people, without discrimination. The Universal Declaration on Human Rights (UDHR) is one of the best-known agreements and the most influential of the agreements. Human rights impose duties on the State to ensure fair and appropriate treatment of her subjects. They also require the State to make sure that it protects its subjects from unjust interfering with their rights.<sup>2</sup> When the UDHR was signed in 1948, there was broad agreement in favour of translating the principles into legally binding instruments at a later time. What followed was the creation of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both Covenants were adopted by the General Assembly in 1966, and entered into force in 1976. Taken together, the UDHR, the ICESCR and the ICCPR with its two additional protocols constitute the ‘International Bill of Human Rights’.

Article 25 of the Universal Declaration of Human Rights makes reference to right to security in the event of old age. In addition to Bill of Rights, there are seven other core UN human rights treaties: the Convention on the Elimination on All Forms of Racial Discrimination, CEARFD (1965); the Convention on the Elimination of All Forms of Discrimination against Women, CEAFDW (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CTOCIDTP (1984); the Convention on the Rights of the Child, CRC (1989); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990); the Convention on the Rights of Persons with Disabilities (2006); and the Convention for the Protection of all Persons from Enforced Disappearance (2006).

Human rights are universal and non-negotiable rights of every individual that falls within the category of people who should enjoy certain rights, therefore applicable to everyone regardless of their sex, age, religious affiliation, disability, sex, etc.<sup>3</sup> The Bill of Rights is an international document that protects the rights of all persons, including the aged. Article 25(1) of the UDHR specifically provides that everyone has the right to security and a standard of living adequate for the health and well-being of himself and his family. The Committee on Economic, Social and Cultural Rights (CESCR) in 2009 in its released General Comment No.20 stated in paragraph 29 that ‘Age is a prohibited ground of discrimination in several contexts’. The CESCR emphasises the need to address discrimination against older persons in finding work, in professional training, and against those living in poverty with unequal access to pensions.<sup>4</sup>

The right to social security is firmly established in international human rights law and several treaties specifically refer to old age protection through social security.<sup>5</sup> Several instruments at the Regional level also emphasize the right of social security for older people. These are the African Charter on Human and Peoples’ Rights; the Revised European Social Charter; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; and several International Labour Organization (ILO) conventions and declarations, including Convention C102 concerning Minimum Standards of Social Security (1952) and Convention C128 concerning Invalidity, Old-Age and Survivors’ Benefits. Convention 102 establishes globally agreed minimum standards for all nine branches of social security: medical care, sickness benefit, unemployment benefit, old-age benefit, employment and injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors benefit.

Article 25(b) of the Convention on the Rights of Persons with Disabilities (CRPD) 2008 makes reference to ‘Older persons’ on the right to health services, and in Article 28(2)(b) on the right to access to social protection and poverty reduction programs.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) sets out specific commitments on the right to social security:

- States are obliged to progressively ensure the right to social security to all individuals within their territories,

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*Research*, Vol. 3(9), p.81.

<sup>1</sup> Williams, J. (2011) “Protection of older People in Wales: A Guide to the Law,” p.5. Retrieved on July 4, 2014 from [http://www.olderpeoplewales.com/Libraries/OPCW\\_Publications/Protection\\_of\\_older\\_people\\_in\\_Wales\\_A\\_guide\\_to\\_the\\_law.sflb.ashx](http://www.olderpeoplewales.com/Libraries/OPCW_Publications/Protection_of_older_people_in_Wales_A_guide_to_the_law.sflb.ashx)

<sup>2</sup> Ibid.

<sup>3</sup> Fredvang, M. and Biggs, S. (2012). Op. cit. p. 10.

<sup>4</sup> Ibid.

<sup>5</sup> The right to protection in old age is embedded in articles 9, 10 and 11 of the ICESCR, article 11 of the CEDAW, article 26 of the Convention on the Rights of the Child, article 5 (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 28 of the Convention on the Rights of Persons with Disabilities, article 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.



providing specific protection for disadvantaged and marginalised individuals and groups.

- States must develop a national strategy for the full implementation of the right to social security in old age, and allocate adequate fiscal and other resources at the national level.
- States cannot rely only on contributory systems for old age pensions, as all individuals do not have sufficient means to maintain an adequate standard of living. Therefore:
- States should, within the limits of available resources, provide non-contributory old age benefits to assist, at the very least, all older people who, when reaching the retirement age, are not entitled to an old age insurance-based pension.

There have been documents calling for the declaration of the rights of older persons that have been introduced to the United Nations bodies and their specialized organs. These are the Declaration of Old Age Rights, presented by Argentina in 1948 advocating the rights to assistance, food, accommodation, clothing, care of physical and moral health, recreation, work, stability and respect. The preamble to the Declaration preserved old age rights as essential universal safeguards for the improvement of the living conditions of the workers and for his welfare when his physical strength is at an end and he is exposed to poverty and neglect. Also, the International Federation of Ageing and the Dominican Republic submitted a draft Declaration of the Rights of Older Persons adopted by the General Assembly in 1991. The declaration emphasizes that rights do not lessen with age, and because of the marginalization and impediment old age entails, older persons run the risk of losing their rights and being rejected by the society unless those rights are reaffirmed and respected.

The Human Rights Council Advisory Committee released a report in January 2010 discussing the global impact of demographic ageing and the increasing number of human rights violations suffered worldwide by the older people in the areas such as physical and moral integrity, susceptibility to poverty, employment, social security and health care.<sup>1</sup> The Committee in its Report canvassed for the need for a human rights treaty for older people to enhance the visibility of older person in human rights law. It submitted that lack of explicit reference to old people in the general human rights law applicable to everyone attracts discriminatory attitude and practice to the old persons, and as a result old persons are invisible as a group within the law.<sup>2</sup> The Committee concluded that older persons would become more visible:

If they were internationally recognised as holders of universal human rights, just as women, children, indigenous groups, and persons with disabilities were recognised as distinct groups requiring special care and concern under the existing human rights regime.

The UN Secretary-General's report (2011) on the follow-up to the Second World Assembly on Ageing observes that some good measures with regard to older persons' rights have been introduced since 2002. However, there are inconsistencies on these policies among nation-states and the policies do not indicate the presence of a comprehensive legal, policy and institutional framework for the protection of the human rights of older persons:

Particularly lacking are mechanisms of participation and accountability. In varying degrees, contributions underline deficits in implementation of policies, when available, while others note measures may be effective but insufficient when confronted with large and growing demands. In situations where more structural measures are required, some governments have chosen a welfare approach which may not ensure sustainability or long-term impact on the enjoyment of human rights without discrimination (UN Secretary-General 2011).

According to Fredvang and Biggs, implementation gap occurs when nation-states fail to pass domestic legislation, or do not establish procedures and institutions that are required to implement an international standard.<sup>3</sup> Nigeria stands at a strategic position in Africa being the most populous black nation in the continent and also having a likelihood of progressive increase in the number of her senior citizens as the population swells. Implementation of policies that will favour and protect the older people is therefore very germane to help in reducing the unnecessary hardship and discrimination faced by these people due to the disability based on age.

#### **4. Developing Policy Strategy for the Protection of Rights of the Older People in Nigeria**

It has been observed that lawmakers have not been sensitive to the scope, nature and seriousness of older persons' plight in Nigeria; neither are they sensitive to the broad economic and social development implications of leaving these problems unaddressed in the context of rapid population ageing.<sup>4</sup> Coupled with adequate sensitization of the policy makers of the need to help the ageing population to live decent life, there may also be

<sup>1</sup> Human Rights Council, Advisory Committee, *The Necessity of Human Rights Approach and Effective United Nations Mechanism for Human Rights of Older People*, 2010 (Chung Report).

<sup>2</sup> Chung Report (2010), paras 45-46.

<sup>3</sup> Op. cit. p.16.

<sup>4</sup> Asagba, A. (2005). "Research and the Formulation and Implementation of Ageing Policy in Africa: The Case of Nigeria," *Generations Review*, Vol.15, No.2. p. 40.

need to develop informed policy strategy that will aid in protecting the rights of the teaming population of the aged in Nigeria. Policy on ageing should be viewed as a society-wide concern and not merely a question of caring for vulnerable minority.<sup>1</sup> As rightly observed, treating older people with respect and putting them on equal basis with younger people creates the conditions that enable all people in the society to participate in and contribute to their own development.<sup>2</sup>

From different international and national instruments, the term human rights of older person include the following: the rights to adequate social security, assistance, and protection; right to freedom from discrimination based on age or any other status, in all aspects of life including employment and access to housing, health care, and social services; right to good health or healthcare; right to protection from neglect and all types of physical or mental abuse. Other rights include right to be treated with dignity; right to full and effective participate in decision - making concerning their well-being; and to full and active participation in all aspects of political, economic, social and cultural life of society.<sup>3</sup>

Basically the older people are presumed to enjoy all the rights that are recognised by the law without any form of discrimination. These rights include right to life, right to privacy, right to education, right to own or inherit property, right to work, right to housing, right to private life, etc. However, there are some of the rights that are very important to the status of the older people that will now be considered.

a. Right to be protected from discrimination

Right to be protected from discrimination is about the first right to be considered for the older people. Article 1 of the Universal Declaration of Human Rights states that ‘all human beings are born free and equal in dignity and rights.’ This provision emphasizes the rights of all human being regardless of the age. Hence, no person should be discriminated against on account of his or her age. Some of the rights of the old people are encapsulated in the right to be free from discrimination. Examples are right to education; right to own property; right to work; and right to participate in government. Older people are often denied access to services, jobs, treated without respect because of their age, gender or disability.<sup>4</sup> For instance, there are some banks in Nigeria that have it as a matter of policy not to grant loan facilities above certain amount to people who are advanced in age. This is a form of discrimination against the older people in enjoying the same economic benefits as people who are younger in age.

The issue of discrimination against the older people has not really been helped in the documents addressing the protection of human rights at the international level. Article 2, para. 1 of the Universal Declaration of Human Rights, which has been replicated in some other international human rights documents, provides that “every individual is due all the rights and all the liabilities proclaimed in this declaration, without any distinction for reasons of colour, sex, language, religion, political or other opinion, national or social origin, wealth, birth or other condition.” This provision identified certain basis upon which human being should not be discriminated against but discrimination based on age is not specifically mentioned, therefore making discrimination based on age imperceptible in human rights law.

b. Right to be protected against abuse

In all human societies, the issue of abuse has permeated the ranks and files of the categories of people ranging from children, adolescents, adults, women, and girl child. However, over the years attention has been focused on child abuse and domestic violence more than adult abuse, though the concept of old people abuse is now gaining recognition in the public and medical domain.<sup>5</sup> Older people are often subjected to abuse which may include psychological, sexual, verbal and financial abuse. The most vulnerable to abuse among the old people in Nigeria are the indigent and disadvantaged ones in both rural and urban areas; though the educated and the uneducated ones are not free from abuse.<sup>6</sup>

Some of the various ways old people are abused in Nigeria need to be addressed here. These include psychologically abusing the aged. The aged may be abused through the words of mouth, acts or gestures that demean, dehumanize, intimidate or threaten them.<sup>7</sup> Forcing the elders to refrain from participating in the spiritual

<sup>1</sup> Odumosu, O. Op. Cit.

<sup>2</sup> HelpAge International, “Strengthening Older People’s Rights: Towards a UN Convention” 2010. Retrieved on July 4, 2014 from [http://www.inpea.net/images/Strengthening\\_Rights\\_2010.pdf](http://www.inpea.net/images/Strengthening_Rights_2010.pdf)

<sup>3</sup> Mandal, S.N. (2011) “Protecting the Rights of Oldage Person in India: A Challenging Facet of Human Right” *Global Journal of Human Social Science*, Vol. 11, Issue 5, p. 25.

<sup>4</sup> HelpAge International, “Strengthening Older People’s Rights: Towards a UN Convention” 2010. Op. cit. p.4.

<sup>5</sup> Adeniji, D.O. and Oladejo, D.A. (2012) “Developing a Positive Attitude towards De-phasing Elder Abuse and its Health Implications” in Osinowo, O.O., Moronkola, O.A., and Egunyomi, D.A. (eds.), *The Adults and Aged in Nigeria: Issues and Researches*. Royal People (Nigeria) Ltd. p. 168.

<sup>6</sup> Ibid.

<sup>7</sup> Egunyomi, D.A. op. cit. p. 9.

religious ceremonies of their choice, or forcing them to participate in ceremonies they do not believe in are also abusive of the aged. Another form of abuse of the aged in Nigeria is physical abuse, which include intentionally causing pain or injury to them. The older people's right to be free from torture or cruel, inhuman or degrading treatments is also often threatened. People in old age, particularly women are often victims of neglect, physical and psychological abuse.

Apart from the underage girls that are always reported in the media as being sexually abused in Nigeria, sexual abuse of old people is also becoming a common place. In reality, aged women are often subjected to sexual abuse in the hands of their care givers or people living in their neighborhood. Sexual abuse may in the form of sexual assault, sexual harassment, exhibitionism or sexual exploitation. Economic abuse is also another form of abuse of the older people in Nigeria and this may involve financial manipulation and exploitation, including theft, fraud, forgery, and extortion. Also in the village settings, economic abuse may include selling of the real property of the old persons without their consent. Stealing or cajoling the old people to part with their money or property, and forcing them to work, like baby sitting or caring for children without pay are also some of the ways the elders are abused in Nigeria.<sup>1</sup>

Moreover, total neglect is perhaps the most common form of abuse of the aged people in Nigeria, which may include not rendering care for those who do not have the capacity to care for themselves; failing to provide proper nutrition or clothing for them; or leaving incapacitated old people attended to for a long time.<sup>2</sup>

### c. Right to Social Security

Articles 22 of the UDHR 1948 makes provision for ensuring social security of individual by stating that: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."<sup>3</sup>

Furthermore, article 25(1) makes a special case for assurance of well being of the aged and other categories of people so protected. It stated that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." The provisions of articles 22 and 25 of the UDHR 1948 have been subsequently reproduced in other international human rights treaties.<sup>4</sup> Right to social security of old people are entrenched in regional human rights instruments, including the African Charter on Human and Peoples' Rights, which is applicable to the African region.<sup>5</sup>

The African Charter on Human and Peoples' Rights (Banjul Charter) makes provision for the social security of the aged in article 18 paragraph 4, which states that "the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs." Likewise, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) makes provision for special protection of elderly women in article 22. Accordingly, this provision points to the importance issue of interchange between age and gender, minority status, marital status, health status, citizen and migrant status.<sup>6</sup> The philosophical basis of this is on the belief that individual categories of people who have experienced enduring social-economic discrimination during their youthful of adulthood would likely experience deeper discrimination and harsher living condition as they get old.<sup>7</sup>

The issue of social security of the aged has not been taken seriously in most African nations, including Nigeria. It was reported that most Africans are still denied their right to social security in old age. The majority of poor older people – especially women – have worked all their lives in the informal sector, with no access to contributory pensions or other forms of formal social security.<sup>8</sup> It is recorded that few African countries adopt

<sup>1</sup> Ibid. pp. 10-11.

<sup>2</sup> Ibid. p. 11.

<sup>3</sup> Article 22 of the UDHR 1948.

<sup>4</sup> Examples include article 11 of the CEDAW, articles 27 and 54 of the International Convention on the Protection of the Rights of Migrant Workers and the Members of Their Families, and article 24 of the United Nations Convention on the Status of Refugees 1951.

<sup>5</sup> Some other regional instruments on human rights include Protocol of San Salvador 1988, European Social Charter 1996, the Reversed European Social Charter 1996, and the Andean Charter 2002.

<sup>6</sup> De Hert, P. and Mantovani, E. (2011) "Specific Human Rights for Older Persons?" *European Human Rights Law Review*, Issue 4, p. 409.

<sup>7</sup> CEDAW, Draft general recommendation on older women and protection of their human rights, May 12, 2009. CEDAW/C/2009/II/WP.1/R.

<sup>8</sup> HelpAge International (April 2008). "Protecting the Rights of Older People in Africa". Retrieved on August 20, 2014 from [www.helpage.org](http://www.helpage.org)

non-contributory or ‘social’ pension, despite the fact that evidence from those that do – such as South Africa, Lesotho and Botswana – shows that this is a practical and affordable way of averting or tackling poverty, as well as of reducing the devastating impact of HIV and AIDS.<sup>1</sup>

Social security policies for old age are yet to be formulated in Nigeria. hence there is need to develop a social security policy now that there is a measurable decline in the adequacy of family support for the old people in recent times and the stricken poverty the older people are exposed to.<sup>2</sup> Even the contributory pension scheme as produced by the Pension Reform Act 2004 does not cover many older people, but mainly designed for those who work in the formal sector. The majority of the older people who cannot earn an income and are not covered by the contributory pension scheme are left in the cold fists of poverty and suffering. Social pensions reduce old age poverty and support the household; it aids regeneration of local economies and wealth distribution, improves the household health and nutrition.<sup>3</sup>

#### d. Right to health care

Right to health care is considered as a very important aspect of the human right of the old people. Health, according to the World Health Organisation (WHO) is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”<sup>4</sup> Accessing healthcare is posited to be one of the most challenges faced by old people in Africa.<sup>5</sup> The reasons for this may include the concentration of hospitals or clinics in urban areas far from where most older people live; inability to afford fees for medical services; the cost of transportation; lack of information about services and entitlements; poor management of health services; lack of trained medical personnel in care of old people; negative attitude of medical staff; and shortage of supply, among others.<sup>6</sup>

Earlier recorded in this work, the Constitution of the Federal Republic of Nigeria 1999 provides that the state shall direct its policy towards ensuring that the health, safety and welfare of all persons in employment are safeguard and not endangered or abused; there are medical and health facilities for all persons.<sup>7</sup> Also, article 16 of the African Charter on Human and People’s Rights, of which Nigeria is a Party, provides that “every individual shall have the right to enjoy the best attainable state of physical and mental health”. It provides further that State Parties to the Charter shall take necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.<sup>8</sup> Similarly, Article 12(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), of which Nigeria is also a Party, provides that “State Parties to the Covenant recognize the right of everyone to the enjoyment of highest attainable standard of physical and mental health.”

The right of access to health care services is predicated on the obligation of the states to organize accessible, adequate and basic health care services to all without discrimination. The implication of this is that the states should be no discrimination in the provision of health care services based on the old age of the ailing person, and that the peculiar characteristics and health care needs of the old persons should be given consideration.<sup>9</sup>

Though the provisions of the three legal instruments mentioned above create avenues for the government of Nigeria to take adequate care of the health of its citizens by provision of adequate facilities and accessibility to health care, however, most Nigerians do not have access to medical and health care facilities. Therefore, Nigerian governments at local, state and federal levels need to put more resources in the provision of adequate medical care to the citizens.<sup>10</sup>

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<sup>1</sup> Ibid.

<sup>2</sup> Gesinde, A.M., Adekeye, O.A. and Iruonagbe, T.C. (2012) “Poverty and Old Age: The Nigerian Situation,” in Osinowo, O.O., Moronkola, O.A., and Egunyomi, D.A. (eds.), *The Adults and Aged in Nigeria: Issues and Researches*. Royal People (Nigeria) Ltd. p.139.

<sup>3</sup> Ajomale, O. (2007). Country Report: Ageing in Nigeria – Current State, Social and Economic Implications. ISA RC II, Sociology of Ageing.

<sup>4</sup> WHO Constitutive act of 1946.

<sup>5</sup> HelpAge International (April 2008). “Protecting the Rights of Older People in Africa”. P.4. Retrieved on August 20, 2014 from [www.helpage.org](http://www.helpage.org)

<sup>6</sup> Ibid. p.4.

<sup>7</sup> See section 17(3)(c) and (d) of the 1999 Constitution of the FRN.

<sup>8</sup> Article 16(2) of the African Charter on Human and People’s Rights.

<sup>9</sup> De Hert, P. and Mantovani, E. (2011), Op. cit. p. 414.

<sup>10</sup> State of Human Rights in Nigeria 2005-2006 Being a Report of Human Rights Violation Monitored in Nigeria by Network of Human Rights Violations Monitors in collaboration with the National Human Rights Commission UNDP and NORAD, p. 59. Retrieved on August 21, 2014 from [http://web.ng.undp.org/publications/governance/STATE\\_OF\\_HUMAN\\_RIGHTS\\_REPORT\\_IN\\_NIGERIA.pdf](http://web.ng.undp.org/publications/governance/STATE_OF_HUMAN_RIGHTS_REPORT_IN_NIGERIA.pdf) see also Abiona, I.A. “The Challenges of Social Security for the Aged in Community Development Programmes



## 5. Legal approach to the protection of rights of the older people

### a. Protection under Criminal Law

Human rights impose duty on the states to treat their subjects appropriately and fairly. The States are also required to protect their subjects from unjust interference with their rights by other people.<sup>1</sup> One of the ways these can be achieved is through the use of criminal law. In view of the fact that criminal law can be used to check and control behaviour some countries adopt criminal justice system to protect the rights of the vulnerable in the society. For instance, under the Criminal Procedure Code (CPC) 1973 of India, chapter IX orders for maintenance of wives, children and parents. Section 125 of that chapter provides that if any person having sufficient means neglects or refuses to take care of his father or mother who is unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such a person to make a monthly for the maintenance of his father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.<sup>2</sup>

One obvious lacuna in the chapter IX of the CPC is that definitions are not given of father and mother which leave the expressions begging for meaning in terms of scope. However, under the relatively recent Maintenance of Parents and Senior Citizens Act 2007 the definition of parents is broad and explicit enough to determine the scope. The term is defined in section 2(d) of the Act as meaning “father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen.” Moreover, the Act also covers senior citizens who are parents or grandparents, or childless senior citizens.<sup>3</sup>

Section 125(3) of the Criminal Procedure Code of India further provides that if anybody ordered by the Magistrate in accordance with subsection (2) of that section fails without sufficient reason to comply with such order, the Magistrate may, for the breach of the order, issue a warrant for levying the amount due in manner provided for levying fine, and may sentence such person, for the whole or any part of each month’s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.<sup>4</sup>

However, the Maintenance of Parents and Senior Citizens Act provides that the obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.<sup>5</sup> Any person being a relative of a senior citizen who is childless and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen.<sup>6</sup> Where, however, there are more than one relatives entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.<sup>7</sup>

Similar provision is enshrined in the Nigerian Criminal Code Act of Nigeria for the protection of the rights of the older people to enjoy the necessities of life. Section 300 of the Code provides that it is an offence for every person having charge of another who is unable to provide for himself the necessities of life, by reason of age sickness, unsoundness of mind, detention or any other cause, to withdraw himself from such charge,

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in Nigeria” in Osinowo, O.O., Moronkola, O.A., and Egunyomi, D.A. (eds.), *The Adults and Aged in Nigeria: Issues and Researches*. Royal People (Nigeria) Ltd. pp.n368-370.

<sup>1</sup> Williams, J. (April 2011) “Protection of Older People in Wales: A Guide to the Law.” Older People’s Commissioner for Wales, p. 5.

<sup>2</sup> Section 125(1)(d) of the Criminal Procedure Code 1973 of India. Note that the power of the Magistrate seems to have been overtaken by the tribunal established under the Maintenance of Parents and Senior Citizens Act no. 56, 2007 of India which provides an amended version of the provision of section 125(1)(d) of the Criminal Procedure Code 1973. It provides in section 9(1) that if children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct. Furthermore, section 9(2) of the Maintenance of Parents and Senior Citizens Act provides that The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.

<sup>3</sup> See section 4 of the Act. Senior citizen is defined under section 2(h) of the Act as anybody above sixty years of age.

<sup>4</sup> Section 125(3) of the Criminal Procedure Code 1973 of Indian. Note that there is now established special tribunal, known as Maintenance Tribunal, to entertain matters relating to the order of maintenance of parents and senior citizens under the Maintenance of Parents and Senior Citizens Act, No. 56 of 2007.

<sup>5</sup> See section 4(3) of the Act.

<sup>6</sup> See section 4(4) of the Act. Note that section 4(1)(ii) of the Act provides that a childless senior citizen unable to maintain himself or herself can claim against his or her relative who is not a minor and is in possession of or would inherit his property after his death.

<sup>7</sup> Ibid.

whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessities of life; and he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.<sup>1</sup>

The scope of the criminal law protection for the older people under the Nigerian law seems to be broader than that of India. In the Nigerian context, the class of person that can be criminally responsible for breach of duty to provide necessities of life to the old people who are unable to fend for themselves and others in that category goes beyond the biological or adopted children of the old people to cover those, either by contract or by imposition of the law, or by lawful or unlawful acts are required to take charge of them. It is not certain whether the interpretation of the provision of section 300 of the Nigerian Criminal Code covers the children of the old people in question, as their might not be any contractual obligation nor any imposition of the law for the children of the old people to take charge of their parents. Assuming the children of the old parents are more than one what yardstick will be considered in putting the charge of such parents under a particular child? There is no clear law on this.

Even if it is assumed that the law imposes it on the children of the aged parents to take charge of the responsibility of caring for their parents there is no qualification in the Criminal Code to exclude children who are not financially capable to care for their parents as seen in the Criminal Procedure Act of India. In view of the reality of the harsh economic situation of Nigeria, even where graduates who are unable to secure jobs are still dependent on their aged parents, it is difficult for such children to provide financial support to their aged parents.<sup>2</sup> The care of parents by their children is more of a moral obligation than a legal obligation, and should not even be in the province of criminal law. Even before the coming into force of the Criminal Procedure Code of India in 1973, the Law Commission was not disposed to making provision compelling the children to take care of their parents in the Code. According to its Report, the Criminal Procedure Code is not the proper place for such provision but more desirable to be left for adjudication in civil courts.

Moreover, the social environment of India is quite different from that of Nigeria. Most of the Indians are regulated by the Hindu personal law, which makes it obligatory for children to provide for the need of their parents who are not able to maintain themselves out of their earnings or properties; and this obligation is enforceable by the sovereign or the State.<sup>3</sup> There is no personal law in Nigeria that makes it incumbent on the children to maintain their old ones, but out of moral justification and obligation, it is important to do so. The change in the family structure from the traditional extended family system to the nuclear setup in the Nigerian societies has also aggravated the problem of lack of care for the older people.<sup>4</sup>

Under the Nigerian Criminal Code Act contractual obligation of care may be assumed in cases where the old people are put under the care of a care giver or organisation that runs such business, or even a hospital where health care services are to be rendered. A breach of the duty to provide the necessities of life by the care givers may thus lead to an offence under the Code. The Criminal Code also provides that when a person undertakes to do any act the omission of which is or may be dangerous to human life or health, it is his duty to do that act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.<sup>5</sup> Similarly, section 305A (2) of the Criminal Code offers that any person who maliciously breaks a contract of service knowing or having reasonable cause to believe that the probable consequences of his action, either alone or in combination with others, will be to endanger human life or seriously to endanger public health, including the health of the inmates of a hospital or similar institution, or to cause serious bodily injury shall be guilty of an offence.<sup>6</sup>

In another breadth, if there is an imposition to take charge of the old people on anybody, that person must not shuck his or her responsibility in so doing. Examples may include the hospital in charge of sick persons, the prisons or other correctional facilities, the police stations for people in custody, government established old people's homes, etc. The provisions of the Criminal Law in this respect give assurance of protection to the old people in broad terms where the issue of providing for the necessities of life is involved. However, this aspect of protection is limited by contractual relationship involving the care of the old persons or through imposition of the law.

<sup>1</sup> Section 300 of the Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN), 2004.

<sup>2</sup> Egunyomi, D.A. op. cit.p. 12.

<sup>3</sup> See section 20 of Hindu Adoption and Maintenance Act 1956.

<sup>4</sup> See Ajomole, O. (2007) "Country Report: Ageing in Nigeria – Current State, Social and Economic Implications" ISA RC11, Sociology of Aging. P.2. Retrieved May 4, 2014 from [http://www.rc11-sociology-of-aging.org/system/files/Nigeria%202007\\_0.pdf](http://www.rc11-sociology-of-aging.org/system/files/Nigeria%202007_0.pdf)

<sup>5</sup> Section 304 of the Nigerian Criminal Code Act, op. cit.

<sup>6</sup> Section 305A(2) of the Nigerian Criminal Code Act, op. cit.

#### b. Governmental Policy

The government should, as a matter of policy, create enabling environment for ideal living standard for the old people in Nigeria. Quite a number of nations, especially in the western world have some sort of programmes for their elderly citizens by way of support. Many of the problems faced by the senior citizens can be addressed through legislation and policy development as some countries have done. A good example is India with some policy objectives that address the special situations of the old people in India. The Ministry of Social Justice and Empowerment is the ministry responsible for the welfare of the old people in India. People above 60 years of age are recognised by the National Policy on Old Persons scheme in India and the scheme covers the following policy issues:<sup>1</sup>

- (i) Setting up of a pension fund for ensuring security for those persons who have been serving in the informal or unorganized sector;
- (ii) Construction of old age homes and day care centers for every 3-4 districts;
- (iii) Establishment of resource centers and re-employment bureaus for people above 60 years;
- (iv) Enacting legislation for ensuring compulsory geriatric care in all the public hospitals;
- (iv) Concessional rail/air fares for travel within and between cities, i.e., 30% discount in train and 50% in Indian Airlines.

On the establishment of old people's homes, the law dedicated to protection of rights of the old people in India provides that the State Government may establish and maintain such number of old people's homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent.<sup>2</sup> Further provision is also made that the State Government may, prescribe a scheme for management of old people's homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes.<sup>3</sup>

Some states in India also give concessions in fare to old people in road transport system, while some provide special model buses for them. Moreover, State Road Transport Undertakings have made provision for senior citizens for reservation of 2 seats in the front row of all buses.<sup>4</sup>

The government policy in India also encourages a prompt settlement of pension, provident fund, gratuity, etc. in order to save the superannuated persons from hardship and also makes the taxation policy elder-sensitive.<sup>5</sup> Also in the health care sector, the government of India has made it a matter of policy a provision for separate queues for senior citizens at hospitals and health care centers when they visit for any health related concerns or clinical examinations. Furthermore, the Delhi Government runs special clinics for Senior Citizens in most of its hospitals in Delhi.<sup>6</sup>

As part of the policy to protect the rights of the older people in India, the Government also gives a higher rate of interest to senior citizens on certain Savings schemes which it runs through its large network of Post Offices (Senior Citizens Savings Scheme) and Public sector Banks.<sup>7</sup> On the long run, the policy direction of India has shown the government disposition to help the weaker nature of the old people in the society so that they can enjoy basic rights.

Nigerian government has not really taken the bull by the horn in addressing the challenges faced by the old people in Nigeria, particularly due to their vulnerability. Though some attempts have been made in terms of proposing legislative reforms to create beneficial rights to the senior citizens in Nigeria, there is no yet any substantive achievement in terms of law that will protect the rights of the old people not to be treated as a lesser human being. One of such attempts is the Bill, Maintenance of and Welfare of Senior Citizens Bill, (MWSCB) 2011,<sup>8</sup> that was once proposed for enactment at the National Assembly of the federation. The Bill is aimed at establishing special privileges for senior citizens of Nigeria; provide penalties for breach thereunder and matters connected therewith.<sup>9</sup> The Bill was read for the first time in the Senate of the National Assembly but could not go beyond this level.<sup>10</sup>

<sup>1</sup> The policies were formulated by the Ministry of Social Justice and Empowerment and adopted by the Union Cabinet on February 13, 1999.

<sup>2</sup> Section 19(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, No. 56 of 2007, India.

<sup>3</sup> Section 19(2) of the Maintenance and Welfare of Parents and Senior Citizens Act, No. 56 of 2007, India.

<sup>4</sup> Mandal, S.N. 2011. "Protection of Rights of Old Age Person in India: A Challenging Facet of Human Rights," *Global Journal of Human Social Science*, Volume XI, Issue 5, Version 1, p. 30.

<sup>5</sup> Ibid. p. 29.

<sup>6</sup> Ibid. p. 30.

<sup>7</sup> Ibid.

<sup>8</sup> Hereinafter referred to as the Bill.

<sup>9</sup> See the long title to the Maintenance and Welfare of Senior Citizens Act, 2011.

<sup>10</sup> The bill was introduced to the Upper Chamber of the National Assembly by Senator Gilbert Nnaji and was read for the first time in the Senate on the 17<sup>th</sup> of November, 2011 but has not gone beyond this level.

MWSCB is more or less a replica of the Indian Maintenance of Parents and Senior Citizens Act, 2007. In fact it is based on the same legal philosophy of protection of rights of the elderly as the Indian Act. It could in fact be said that the Bill was imported from India and adapted to suit the Nigerian situations. The Bill, just like the Indian Act, also proposes the establishment of a special tribunal for adjudicating on the plights of the senior citizens on issue bordering on their maintenance to be known as the Senior Citizens Maintenance Tribunal. The Bill also proposes the establishment of a commission, which shall be an arm of the Ministry of Internal Affairs, to be known as Senior Citizens Welfare Commission with headquarter in Abuja and offices in all the States of the federation.<sup>1</sup>

Part 2 of the Bill itemized the functions and powers of the Commission as follows:

The Commission shall be the principal and apex regulatory organization in respect of the rights of senior citizens and shall carry out the functions and exercise the powers prescribed in this Act, and in particular, shall:

- (a) Regulate and manage the monies and funds from which the social security and other benefits accruable to senior citizens.
- (b) Form, register, regulate and update a data base comprising of all senior citizens in Nigeria.
- (c) Regulate all benefits, entitlement and privileges to be enjoyed by senior citizens.
- (d) Regulate/act as intermediary in respect of all offers by interested persons, groups and stakeholders wishing to contribute to the fund and/or have dealings with senior citizens.
- (e) Collaborate and liaise with the Ministry of Health, local government units and other concerned organizations involved in the care and welfare of the elderly.
- (f) To liaise with the relevant authorities to ensure that an Office for Senior Citizens Affairs is established in all cities and municipalities, and a senior citizen's ward in every government hospital.

Part of the objectives of the Bill is to create special monthly benefits in form of money to the senior citizens as social security measure.<sup>2</sup> Every senior citizen will receive this old-age benefit each month without prejudice to any other welfare/retirement package such a senior citizen may be entitled to under any other law/scheme such as Disability Insurance or Pension scheme and notwithstanding that such a senior citizen never worked in the public sector or for the government.

The Bill also creates special privileges for the senior citizens covering free vaccinations for indigent senior citizens for diseases associated with old age;<sup>3</sup> exemption from payment of individual income tax;<sup>4</sup> free dental and medical services in government facilities;<sup>5</sup> exemption for training fees for socio-economic programmes;<sup>6</sup> provision of medicare programmes to provide basic healthcare benefits, which is divided into hospital insurance programmes and a supplementary medical insurance programme. Further privileges are also ascribed to the older people under the Bill, which include the provision that the government shall establish and maintain such number of old age homes with a required standard at accessible places as it may deem necessary in a phased manner, beginning with at least one in each district to accommodate a maximum of 120 senior citizens who are indigent.<sup>7</sup> Limiting the functionality of the homes to the benefits of the indigent old people does not suffice in view of the limited private and public old people's home in Nigeria which facilities cannot accommodate those whose relations are even ready to pay for the services rendered.

Section 26 of the Bill imposes certain obligations on the children, biological or adopted, of the old persons, or in case of a childless old person, on his or her relative who has sufficient means and he is in possession of the property or will inherit the property of such old person, to provide for his or her basic needs. This goes in line with the standard adopted under the Maintenance of Parents and Senior Citizens Act 2007 of India. In the humble opinion of this writer, the imposition on the children of the old people to care for their aged parents is not warranted. There ought to be no legal obligations to do so, rather it is a moral and cultural value to take proper care of one's old parent and should not be the business of the law.

Educational right of the senior citizens is also assured under the Bill by providing that educational assistance shall be granted to senior citizens to pursue post secondary as well as vocational or technical education in both public and private schools through provision of scholarships, grants, financial aid, subsidies and other incentives to qualified senior citizens, including support for books, learning materials, and uniform allowance, to the extent feasible, on the condition that senior citizens shall meet minimum admission

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<sup>1</sup> Section 4 of the Bill.

<sup>2</sup> Section 12 of the Bill.

<sup>3</sup> Section 13 of the Bill.

<sup>4</sup> Section 14 of the Bill.

<sup>5</sup> Section 16 of the Bill.

<sup>6</sup> Section 15 of the Bill.

<sup>7</sup> Section 21 of the Bill.



requirements.<sup>1</sup>

On the protection of the senior citizens from criminal activities the Bill provides that due to the physical vulnerability of the old people, the government shall provide a comprehensive action plan providing protection of lives and properties of the old people.<sup>2</sup>

The Bill, though have some overbearing and bogus provisions, still contains some provisions that can help secure and protect the rights of the old people in Nigeria.<sup>3</sup> It is suggested that the Bill should, subject to adequate amendment, be enacted into law to address the plights of the old people in Nigeria. The provisions of the Bill, to some extent, assure some of the protections under Chapter II of the 1999 Constitution which provide for some fundamental objectives and directive principle of state policy which are not justiciable as such. By enacting the Bill into law some of the rights entrenched therein can be enforced in the court of law without the limitations imposed by the Constitution on the rights in Chapter II.

## 6. Conclusion

The rights due to the old people need to be protected by the State through policy development and legislation. There appears to be a normative gap in the protection of the rights of the older people, especially as they are not given special recognition of protection by the law as other vulnerable groups like the women, people with disabilities, the children, etc. Efforts at the international level on the protection of people's rights have been addressed in this work, though there is no specific treaty dedicate to the protection of rights of the aged as there are for some other vulnerable groups. This is why it has become an issue at the international scene on a need to come with a document entrenching such rights. For instance, the 2010 proposal of the Advisory Committee of the United Nations Human Rights Council suggests the necessity of having a treaty specifically dedicated to the protection of the rights of the old people.<sup>4</sup>

According to the 2008 Draft National Policy on Ageing, the number of people above 60 is said to be increasing in the country. From an estimated 5.8 million in 2005, it has been projected to rise to 16 million by 2030 and 47 million in 2060.<sup>5</sup> Many of the available old people's homes in Nigeria can only accommodate few people ranging from 20 to 40 people. Even most of the facilities are overstretched and at breaking points; and the standard is far from ideal. There is lack of social planning for old people in Nigeria.<sup>6</sup> It is obvious that old age in Nigeria is mostly dreaded because of the fear of the unknown due to lack of policy direction and legislative backing in protecting the rights of the aged.

Pending the adoption of a treaty that will specifically address the right of the senior citizens, or in the absence of such instrument, there is need for countries to put in place policy measures and legislation to protect the vulnerable old people's rights. Nigeria is yet to adopt policy that will address the plights of the old people in Nigeria who as a result of their vulnerability are missing out in the enjoyment of basic rights and privileges. In view of the non-justiciability of the provisions of Chapter II of the 1999 Constitution of Federal Republic of Nigeria, enactment of a law that will serve to protect the rights of the senior citizens will go a long way to be an effective measure of protection. The provisions of the Maintenance and Welfare of Senior Citizens Bill 2011 could be a good take off point for developing legislation that will address the rights of the aged in Nigeria. It is incumbent on the government and the civil society at large to give the elderly adequate support to live meaningful life. If this is done with the support of the law and policy the society will be better for it.

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<sup>1</sup> Section 17 of the Bill.

<sup>2</sup> Section 22 of the Bill.

<sup>3</sup> Like section 25 of the Bill which deals with the compensation of the nearest relative of the senior citizen in case of the death of the latter, among other provisions.

<sup>4</sup> The Chung Report.

<sup>5</sup> Arukaino Umukoro (August 18, 2013) "Old People's homes: Mixed Fortunes of Nigeria's Senior Citizens." Retrieved on August 14, 2014 from <http://www.punchng.com/feature/old-peoples-homes-mixed-fortunes-of-nigerias-senior-citizens/&hi=en-NG&ei=T9n4U6jllEq5yAP31oDABA&wsc=Id&ct=np&whp=3143>

<sup>6</sup> Ibid.

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