

Human Rights of the Less Privileged Groups: Jurisprudential and Legal Issues in Global Human Rights

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Abstract

All human beings are born free and with equality of rights. Everyone is entitled to all the rights constitutionally guaranteed in the appropriate countries of the world. All are equal before the law and are entitled without any form of description to equal protection of the law. Articles 1, 2 & 7 of the universal Declaration of Human Rights 1948 make clear provisions to these issues. The article is aimed at articulating these human Rights issues.

Keywords: Human Rights, less privileged, vulnerable groups, marginalization, jurisprudence.

1. Introduction

It may be contended that to-speak of the human rights of the less privileged, vulnerable persons or groups in the context of human rights discourse is a contradiction of sorts in that a fundamental premise of the concept of human rights is that all human beings are born equal, owning equal rights, equally recognised and protected by law. Thus, vulnerable groups can have no more or less human rights than they are entitled to as human beings simply. After all, if human rights are universal rights and the equal entitlement of all human beings, then all persons, vulnerable or otherwise have human rights. Put another way, in so far as vulnerable persons or members of vulnerable groups are human beings they have human rights just as all other human beings. However, the reality is that not all human beings have or enjoy rights equally as others regardless of what else has been affirmed. Often times, those affected experience this not simply as individuals but because of their membership of particular social groups against whom there are entrenched social prejudices, which have also become institutionalised through an array of norms and practices sometimes including legal norms.

The result of entrenched social prejudices on rights for members of these groups is often one of two types. First, entrenched social prejudices may justify and support a system that sustains their exclusion or marginalisation in power relations in the society. Exceptions are thus made to notion of "equality always" and there is basis provided for the argument that all human beings are not equal. Type 1 result is exemplified in institutionalised discrimination based on sex/gender, race/ethnicity. Again, it needs to be pointed out that while law is often historically complicit in institutionalising the discrimination, law including human rights, law (whether or not constitutionally based) is often what is called upon to uproot discrimination. Type 2 result is that while it may be accepted that all human beings "have" equal rights human rights always, this is a merely a theoretical affirmation in that although their entitlement to the rights is legally affirmed (under principles such as the right of all human beings to equality before the law), often all do not enjoy these rights because of entrenched social prejudices against the groups.

As indicated in the discussions above, we see that contrary to the fundamental premises of modern law that the human specie is one and that the ultimate goal of law is the equalisation of all and their rights, law itself is often complicit in the embedding of social prejudices. Law is held complicit in that it "consciously" facilitates the institutionalisation of exclusions and marginalisation or "unconsciously" does same because of an inherent defect, in its conceptualisation of 'human' as one and same.¹ Human may be one but human is not same. Difference may be rooted in biology or social, but even-where it is root in biology, it is not biology that confers or denies value to difference but the "social" (de)valuation of the difference.²

Thus, the argument is that the denial of difference by law, including human rights law, makes law as it is premised on the notion of "human is same" inherently problematic for securing the interests and good of those "not-same". Law has thus been called upon to respond to the specific contexts of those historically excluded or marginalised and those vulnerable to denial of human rights. The goal here is 'substantive' equality where one is not made the measure of all so that difference is celebrated and not denigrated and law as the tool of governance pursues that realization of rights for all in a manner responsible to their contexts.

It is against this backdrop that particular attention has come to be given to the situation of such groups, generally known as vulnerable groups within human rights discourse. Let us emphasise that while it is true that all individuals are at risk of denial of human rights, the discourse around human rights of vulnerable groups in

¹ See generally, A. V. Atsenuwa, *Feminist Jurisprudence; Introduction*, (Florence and Lambard Published Ltd, 2001).

² *Ibid*

society addresses itself to how individuals become at risk by reason of membership of social groups that are on the fringes. They are rendered vulnerable by traditional and/or institutionalised social exclusion, disadvantage, stereotyping and prejudice on account of a group characteristic and are, by reason of this vulnerability precluded from equal enjoyment of the human rights.

Vulnerable groups include children, refugees and displaced persons, migrants, prisoners, people with disability, people living with HIV/AIDS (PLWHAs) and people affected by HIV/AIDS (PABA). It needs be emphasised that there can be straddling of groups with this fact heightening vulnerability. For example, there can be refugees who are children and/or disabled as there can be prisoners who are living with HIV/AIDS. Among children, those with disability are more vulnerable, among prisoners, those living with HIV/AIDS are more vulnerable and among refugees, children and those with disability are more Vulnerable.

It is important to emphasise that the discourse around human rights of vulnerable groups is different from those discourses which address how certain social factors such as gender, poverty and illiteracy can render individuals and groups within society more vulnerable to human rights violations. Indeed, gender, poverty, illiteracy, etc, may render some members of society vulnerable to rights violations but women, poor people and illiterates can hardly, be described as distinct social groups. This paper, nonetheless, takes cognisance of these considerations and adopts the approach, also, of analysing how the specific experiences of vulnerable groups are affected by some of these factors. For example, in considering the children as a vulnerable group, the paper examines how gender renders the girl-child even more vulnerable to violations of human rights and in considering refugees, it examines how disability renders the refugee with disability even more vulnerable.

2. Human Rights and the Need for Protection of Vulnerable Groups in Society: A Conceptual Framework

Human rights have at various times been described as the embodiment of human aspirations, tools of resistance, the window through which we can view an alternative reality, the justifying platform for resistance and compelling good governance. In conception, whether traced to the *Magna Carta* or the early natural rights theories of the 17th century of the human rights theories of the 18th century encapsulated in the French Declaration of the Rights of Man and Citizen and the American Declaration of Independence, or dated as recently as the United Nations Charter (1945) and the Universal Declaration of Human Rights (1948) human rights ,have always been conceptualised to facilitate inclusion for those hitherto excluded-or marginalize.¹

As stated, the historical trajectory of human rights is, indeed, one of incremental inclusion of social groups. We see how firstly, it hinged the rights of all free-born as citizens and was used to usurp the divine rights of the aristocracy. Next we see how it was used to expand citizenship to include women and later peoples of other races in the US. And ill the beginning of the 20th century we saw it used to include all sexes and races/nationalities in *human citizenship*. In achieving incremental inclusion, one thing that stands out is the adoption of the evidence-: based approach to inform inclusion. The goal of discourses around human rights of vulnerable people aims at bringing to light their group-based experiences, invalidating the premises upon which these experiences are sustained, and re-articulating the entitlement of all members of these groups to these rights as part of a *campaign* for social change. After all, rights are things, which give the rights-holder power over smile resources or some control over the behaviour of others whose action (including decisions) affect the rights-holder and nothing does these better human rights.

As Rosalie Silberman puts it, “human rights have appealed to all because, human rights is about fairness...[and] no one objects to fairness...It is an undisputed synonym to 'being humane', and humane is what we all want to be”.² However, Silberman notes that “however seductive its objective appeal may he, it can never be properly applied unless it is understood that it is anything but objective. What is fair to an Anglophone may not be to a Francophone; what is fair to a white male may not be to a black female; what is fair to an atheist may not be to a 7th Day Adventist: what is fair to any of them may not be to a disabled or aboriginal person. Each clamours for tolerance, each represents thousands more, each invokes the rhetoric of human rights, and each grows increasingly frustrated”.

How then are we to find solidarity in the tangled web of remedial pleas? How then are we to so define the issue that the web weaves a whole cloth rather than the tatters of good intentions? Silberman finds the answers to the questions she raises in empathy and generosity. Empathy ‘would’ make those who have achieved respectable levels of security look over their shoulders to see those whom they have left behind (which in this case would mean men qua women, adults qua children, persons without disability qua persons with disability, etc.) and ask ‘why?’ Empathy would mean also that in looking behind is done through the eye of the disadvantaged. Generosity would move the consideration away from “we cannot afford it to” to “we cannot afford *not* to”.

¹Atsenuwa, A. “Human Rights Protection of Vulnerable and Marginalised Groups”, in Obilade A. & Nwakwo, C. (eds.) *Text for Human Rights Teaching in Schools* (Lagos: CRP, 1999), p. 223. .

² *Op. cit.* p. 61.

Human rights remain particularly appealing because of its promise of respect for differences: Equality which human rights promises is not the same thing as sameness. If anything to presume sameness of an human beings can only engender inequality. But human rights do much more than simply assure respect for differences of individuals as individuals. They assure respect for *different* individuals as members of a group that is different. In this regard, human rights stand apart from, and far advanced to civil liberties. Civil liberties, with its liberalism-inspired emphasis on the individual, focuses on the claim of the individual qua another individual, giving equal value to each. However, human rights posit that *different* individuals may be different and may be treated differently because they are members of a group whose membership made up of the different. Silberman puts it succinctly when she states,

The civil libertarian emphasis on the individual is not a sufficiently broad framework in which to understand or analyze human rights. Human rights are no less about equal individuals but it is also about each individual's equal right to be free from discrimination. It is about individuals as members of a group, a group whose individuals experience disadvantage because they are members of that group. If we continue on focus on individuals, the claim of each individual is equal to that of every other individual. The claim of the non-white is equal to that of a white, the claim of someone who is blind is equal to the claim of someone with sight. This misses completely the issue of diversity and the hierarchy of historic disadvantage. If we want to include the widest possible number of individuals in the distribution of social amenities, we must appreciate that they are excluded not simply as individuals equally free to pursue legally sanctioned objectives, but as individuals whose group affiliation created physical and psychological prophylactics to access and outcome. Unless we come to terms with the sometime dichotomous relationship between civil liberties and human rights, we will be in policy rigormortis over remedy. If we allow ourselves to be chained to the pedestal of civil liberties, we will keep other tough issues under house arrest. The other tough issues are pluralism and diversity”.

Having established a conceptual basis for advancing the specific protection of human rights and vulnerable groups, we move to focus on what rule for government and what role for the government legal advisers. In this regard, we focus more on the notions of human rights as the embodiment of human aspirations and human rights as a tool for compelling good governance to provide a conceptual basis for arguing that human rights, especially the human rights, vulnerable groups, must be mainstreamed in governance.

2.1 Human rights as the embodiment of human aspirations

Czerny describes human rights as the non-negotiable elements which are necessary in order that life may be life.¹ In his view then, human rights embody not just the traditional civil and political liberties² but also the economic, social and cultural rights³ and in this regard, it needs to be emphasised that all human rights are indivisible and interdependent. Against this backdrop, the World Conference on Human Rights (1993) held in Vienna affirmed that the primary responsibility of government is the protection of human rights. It would appear that this is a view shared by Nigeria's constitutional framers. Section 14 (I)(b) Constitution of the Federal Republic of Nigeria (1999) provides that the security and welfare of the people shall be the primary purpose of government.

Michael Czerny also asserts that “human rights can be effective if, and only if, we are clear about their starting point, their subject and their goal”. He adds that although human rights enjoys a universal basis and expresses desires common to all peoples of the world, where the weakness of liberalism prevails end where economic and social Darwinism is the only real law of the land, human rights becomes “*a hidden way of protecting what has been achieved by the more powerful, merely another market place of so-called free competition?*”⁴ Therefore we need to move from the notion of civil liberties to human rights. That way, we get a clear understanding that human rights are not the maximum but the barest minimum which ensures that people will not have to live in fear of want and coercion and governance pursues none else but the realisation of these barest minimum. In terms of its implications for legal advice on governance, it means that we understand that laws, policies and programmes are advised and implemented from an approach that serves the purpose of realising human rights. In order not to do this disparately; there is then a need to mainstream human rights into governance.

¹ Michael F. Czerny, “Liberation Theology and Human Rights”, in Kathleen E. Mahoney and Paul Mahoney (eds.), (1993) *Human Rights in the Twentieth Century: A Global Challenge*, (Dordrecht: Martinus Nijhoff), p. 33.

² As contained in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR), both of which Nigeria has ratified.

³ See the International Covenant on Economic, Social and Cultural Rights (ICESCR) and also the ACHPR

⁴ *Ibid.*

2.2 Human Rights and Good Governance

Rhoda Howard finds the necessity of human rights as modern concepts with universal applicability in the social evolution of the entire world towards state societies.¹ As stated, the trajectory of human rights show how the progenitor rights under the *Magna Carta* and natural rights of Locke and others were conceptualised and deployed to circumscribe the excessive powers of the 'King' and aristocrats and mediate relations between the "government" and 'Citizens'. Hence, the earliest affirmations of human rights were of civil and political liberties designed to limit state power over the individual and regulate governance.²

The focus of this sub-section is to press the discussion of the relationship between governance and human rights with a view to calling attention to the need for a deeper order of relationship. A statement by the distinguished United Nations High Commissioner for Human Rights, Madam Mary Robinson provides my point of departure: In a UNHCHR document called *Human Rights in Development*, Madam Robinson defines the relationship between governance and human rights and poses the challenge this way:

Governance is the process whereby public institutions conduct public affairs, manage I public resources and guarantee the realization of human rights. Good governance, accomplishes this in a manner essentially free of abuse and corruption, and with due regard for the rule of law. The true test of "good governance" is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social' rights. The key question is: are the institutions of governance effectively guaranteeing" the right to health, adequate housing, sufficient food, quality education, fair justice and personal security?

Madam Robinson's question correctly links human rights to governance institutional performance in a way that presents human rights not simply as an outcome of governance but as an essential element in the process of governance: Human rights are not only outcomes of policy; they are essential elements of a mode of governance. It is my view that the good governance project in Africa as currently focused-may not be able to adequately address this question. The nature and magnitude of institutional reform essential to ensure the institutionalization of human rights as both a mode of governance and an outcome of policy require a deepening of the good governance agenda beyond the establishment of capable states, which is its ultimate objective. It requires an agenda designed for the attainment of democratic self-governance, a democratic order in which people functioning as *citizens* are in fact governors as well as beneficiaries of outcomes of policy. Put differently, in the contemporary formulations about *good governance*, human rights are pursued as policy outcomes to be extracted from the state. The point is that if human rights are considered fundamental, their protection and promotion must be rooted in the mode of governance itself and not solely pursued as concessions to be extracted from the state.

To elaborate this point, we first briefly discuss the trajectory of the good governance project in Africa as we see it and how human rights advocacy is currently situated within it. The good governance project began as a set of macro-economic institutional reforms and an accompanying set of political institutional reforms considered essential to ensuring economic growth. The concept of good governance conveys the perspective that accountable, transparent and inclusive governance is both the best promoter and product of development. Good governance acknowledges three domains of governance, namely, government, the private sector and civil society, and strives to secure collaboration among them. With respect to human rights, the pursuit of good governance is also seen to be the best strategy for advancing human rights. Prominent among its concerns about human rights is the promotion, of rule of Law, the protection of fundamental rights as specified in the various international covenants, and particularly protection and promotion or rights of women and children as enshrined in the Convention on the Elimination of All Form of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), and of the mass media. The fight against impunity is also an emergent issue on the good governance agenda. Measures recommended to address these concerns typically include judicial reforms, establishment and revitalization of human rights commissions and civil society human rights monitoring groups, and pressure for prosecution of individuals accused of violation of the rights of others, especially those accused of committing atrocities such as crimes against humanity, war crimes and genocide. The establishment of the International Criminal Tribunal for Rwanda is one of several *ad hoc* responses to human rights advocacy against impunity. It is hoped that the establishment of sub-regional and regional judicial mechanisms such as an African criminal court and the strengthening of the African Commission for Human and People's Rights, among others would demonstrate permanent commitments to long-term measures.

Other good governance concerns associated with those having to do directly with human rights include

¹ Excerpt in H. J. Steiner & P. Alston, *International Human Rights Law in Context: Law Politics and Morals*. 2nd ed. (Clarendon Press, Oxford, 2000)

² Note that the major content of the *Magna Carta* were restraining rights relating to state powers of arrests, searches and seizures and detention.

initiatives designed to ensure representative and independent legislative bodies, electoral systems that are considered legitimate and operate with integrity, rationalized and efficient civil services, and executives whose tenures are restricted by term limits and whose performances fall always within the frame of the rule of law, among other initiatives advocated.

Good governance defines 'civil society' in terms of a range of groupings perceived as embodying the aspirations and activities of citizens and it strives to promote civil society's empowerment, and enhance its consultative voice with government. It also perceives the private sector as a partner in dialogue with civil society and government in pursuit of the common good. Within this framework, significant efforts have been made in pressing a human rights agenda at national, regional and international levels. These efforts have involved multiple actors from governments, civil society, private sector and an array of inter-governmental and non-governmental entities. There is a record of numerous solid accomplishments, especially over the last decade, The most readily noticeable accomplishment, in our view, is that human rights protection has become an accepted measure of governance output as human rights protection structures and processes are fast becoming standard features of governance arrangements in Africa states and African societies but beyond that, much less can be seen.

3. Human Rights of Vulnerable Groups

3.1 Children

A cursory review of the annual reports on the state of the world's children raise doubts as to whether children are, in fact, contemplated as included in the category of human beings with inherent dignity and rights.¹ Much as children are loved and valued in most cultures, the reality is that few regard children as full human beings who are holders of rights. Children's demonstrable physiological, intellectual, emotional and relational immaturity, which puts them in need of care, guidance and protection of adults challenges viewing them as full human beings with the full complement of rights as those upon whom they are dependent.² Children have not always had rights. In fact, at some historical points in time, a child had no legal personality and as such could not be a bearer of rights as rights were entitlements that were enforceable in law by persons known in law. In Roman law, a child was regarded as the property of the father. The earliest attempts at advocating rights for children were met with disdain. In 1799, Hannah More, in reaction to the wave of rights articulated by the American Declaration of Independence and the French Declaration of the Rights of Man and Citizen, sarcastically wrote:

It follows, according to the actual progression of human beings, that the next influx or irradiation which our enlightener are pouring on us, will illuminate the world with grave decants on the rights of the youth, the rights of the child, the rights of babies.³

Fortunately, the apprehensions of More and her ilk about articulating rights for children were not universally shared as there emerged at about the same time as she was writing enough concern with the treatment of children to generate changes in the law's perception and treatment of young offenders. Reformers expressed concern about the treatment of child-offenders as adults, which yielded the introduction of a juvenile justice system for the treatment of young offenders, even as they investigated the moral and philosophical questions about the obligations owed children arising from their dependent status.

3.1.1 Early Development of Rights of the Child

The development of child-centred instruments spanned 60 years before culminating in the adoption of the United Nations Convention on the Rights of the Child⁴ in 1989 at the international level⁵. In February 1924, the pleas of Eglantyne Jebb, the founder of Save the Children for a Code for Children dating as far back as 1922 began to yield fruit when the Declaration of Geneva, was adopted by all members of Save the Children International Union. The Declaration received a boost in September 1924 when the League of Nations adopted a resolution urging member states to be guided in dealing with issues of children by the Declaration, The Declaration was, in fact, described as the Chairman of the League, Guiseppe Motta as the League's Children Charter.⁶ The tone of the declaration has been described as 'paternalistic' and "firmly rooted in the dominant conceptualisation of the

¹ *Ibid*, p. 220.

² Oyajobi, A. "Better Protection for Women and Children Under the Law", in Beller (ed.) *Protection for Women and Children*, (Lagos, Federal Ministry of Justice, 1995) p. 15.

³ Strictures on the Modern System of Female Education (1799) Vol. 1. pp. 72-173 quoted in McGillivray, "Reconstructing Child Abuse: Western Definition and Non-Western Experience," in Freeman M. & Veerman, P.E.P. (eds.) *The Ideologies of Child's Rights* (Dordrecht: Martinus Nijhoff, 1992), p. 217.

⁴ GA Res. 44/25 of 20 Nov. 1989.

⁵ Other relevant instruments which have come into being since 1989 are the African Charter on the Rights and Welfare of the Child (1990), the European Convention for the Exercise of Children's Rights (1996) and the Child Rights Act in 2003 at the Nigerian national level.

⁶ See generally, Atsenuwa, *Op. cit.* fn.1.

child as vulnerable, powerless and thus in need of special care”.¹

The Second World War resulted in the collapse of the League and the United Nations Organisation was established at the end of the war in 1945. By 1946, the International Union for Child Welfare (IUCW)² began to advocate for the UN to adopt of the Declaration of Geneva. The UN responded quite positively albeit noting that tile developments since, the end of the war, especially in relation to the recognition of universal human rights dictated a different approach to the protection of children. The efforts were however slowed as ideological divides pitched member states or). different sides of conceptions of human fights and who could be a right holder³. It was not until 1959 that the Declaration on the. Rights of the was unanimously adopted by the UN General Assembly. The 1959 Declaration, though prefaced as a rights document, however, did not differ much from the 1924 Declaration as the former just like the latter treated children more as passive beneficiaries of protection as a result of a relationship rather than as the holders of specific rights. It was about thirty years later and about ten years after negotiations commenced on a treaty instrument on rights of children, that tile Convention on tile Rights of the Child was adopted.

3.1.2 Rights of the Child

It is argued that in so far as children are human beings, all human rights are the rights of children as well⁴. Indeed, most of these rights are re-affirmed as rights of children in the Convention on Rights of the Child, the African Charter on the Rights and Welfare of the Child and the child Rights-Act (2003). One of the earliest human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) 1966 addressed itself specifically to the issue of rights of the child in its article 24 thus:

- 1) Every child shall have without any discrimination as to race, colour, sex, language, religion, national or social origin. property or birth, the right to such measures of protection as are required by his status as minor, on the part of his family, society and the State.
- 2) Every child shall be registered immediately after birth and shall have a name.
- 3) Every child has the right to acquire a nationality.

However, these provisions, not only had little impact in advancing children's rights through the appropriate reporting system,⁵ they have been criticised for carrying on with the conceptualisation of children as weak and dependent which underpinned the earlier declarations rather than an autonomous being.⁶ As indicated earlier, one of tile challenges which confronted those who argued for rights of the child was that in many societies, the notion of "the autonomous child is an anathema and a perceived threat to tile family, with the latter prioritised as both the foundation of the society and a rights holder whose interests may trump those of individual members"⁷ Indeed, the prolonged period of negotiation of the Convention can be traced to the strong divisions on the notion of children as autonomous beings, equal in worth as adults who could be rights holders. However, by 1989, the world affirmed its acceptance of children as autonomous beings, equal in worth as adults with the adoption of the Convention by the consensus of 185 countries.⁸ Empirical studies spurred on by the seminal work of Kempe on child abuse had revealed not just the fact of children's vulnerability to abuse, but the scope of the problem especially in the homes. Fotrell argues that by "by asserting the equality of the child as a rights holder, the Convention deconstructs normative structures which have presented the interests of the child and the family as coterminous"⁹ Also, for the first time, children's rights were articulated as rights held by children themselves rather than solely as 'social goods' that adults within and without the family are enjoined to deliver. Although it can be said that the world, by the document, averred that it had come to terms with the reality that the rights of children and those of their parents or the family or the society at large were not always coinciding, the Convention nonetheless, re-affirms the conviction that the "...family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children,

¹Fotrell, D. "Children's Rights" in Hegarty, A & Leonard, S, (eds.) *Human Rights: An Agenda for the 21st Century* (London: Cavendish, 1999) p. 169. See also Van Bueren, G. *The International Law on the Rights of the Child* (Dordrecht: Kluwer, 1995) Chapter I.

² The IUCW emerged from a merger of the Save the Children International Union in Geneva and the International Association for Child Welfare in Belgium.

³Atsenuwa, *Op. cit.* fn.1 at p. 225.

⁴Preamble, paras. 2 & 3 of CRC.

⁵Fotrell, *Op. cit.* fn. 8 at 169

⁶ *Ibid.*

⁷ *Ibid.*

⁸ The Convention retains t ill today the record of the instrument that has been the fastest to come into force (which it did on 2 September 1990). Having received the required minimum number of ratifications for its coming into force in less than a year. It also retains the honour of being the most ratified' instrument with 191 states having ratified it as at I January 2000. United States of America and Somalia are the only two states outside the treaty regime

⁹ *Ibid.*

should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community".¹ The Convention does not completely do away with traditional parental rights and authority as Article 5 preserves the rights of parental and other members of the extended family or community recognised by custom as well as the rights of legal guardians or such other persons and enjoins states to respect these.

3.1.3 Rights of the Child in the CRC & ACRWC

According to Van Bueren, children's rights as contained in the CRC can be classified into four core groups, namely protection rights, prevention rights, provision rights and participation rights, which she calls "the four PS".² She adds that what remarkably distinguishes it (the Convention) from earlier instruments is that "*the initial focus for children's rights activists was on the first three Ps, reflecting a conceptualisation of the child as essentially weak and dependent...*". The Convention, in turn, introduced children as autonomous beings and participants in the wider society, independent of the family unit and consequently, a holder of participatory rights.³

Rights of children recognised by the Convention have been classified thus: survival rights, developmental rights, participation rights. Adopting Bueren's classification, children's rights recognized by the Convention include:

Protection Rights

- Right to life (Art 6), which has been expanded to include the right of the child to survival
- Right to be free from torture, cruel, inhuman and degrading treatment or punishment *expanded to include the prohibition of the use of life imprisonment and corporal punishment*
- Right to protection from being trafficked in and the right
- Right to protection from economic exploitation and hazardous work (Art 32).
- Right to protection from illicit use of drugs and narcotics (Art 37)

Prevention Rights

- Prevention of abduction of children

Provision Rights

- Right to education
- Right to benefit from social security (Art 27)

Participation Rights

- Rights to form views (for the child who is capable of forming his or her own views) and express same freely in all matters affecting the child. (Art 12)
- Right to freedom of expression which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally or in writing on print; in the form of art, or through any other media of the child's choice and subject only to restrictions necessary for the protection of the rights and reputation of others and the protection of national security, public order, public health morals (Art 13).
- Right to freedom of thought, conscience and religion subject only to the right of parents and legal guardians, where applicable to provide direction to the child ... in a manner consistent with the evolving capacities of the child. (Art 14)
- Right to freedom of association and peaceful assembly. (Art 15)
- Right to Privacy (Art 16)

It is however, noted that the adoption of the Convention does not suggest that all controversies around rights for children are settled. Although the CRC has been widely ratified, many of these ratifications are with expressed reservations to the treaty as exemplified below:

Malaysia

The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 1, 2, 7, 13, 14, 15, [...] 28, [paragraph 1(a), 37 of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.

United Kingdom

Where at any time there is a lack of suitable accommodation or adequate facilities, for particular individual in any institution in which young persons are detained, or where the mixing of adults and children is deemed to be mutually beneficial, the *United Kingdom reserves the right to not to apply article 37(c)* in so far as those provisions require children who are detained to be accommodated separately from adults.

¹ See Preamble to the Convention

² Van Bueren. G. "The Struggle for Empowerment: The Emerging Civil and Political Rights of Children", in Selected: Essays on international Children's Rights (Geneva: Defence of Children International. 1993) Vol. I. p. 49. Also, Vans Bueren, G. The International Law all Rights of the Child (Dordrecht: Kluwer. 1995) Chap. I.

³Fotrell, *Op. cit.* fn 8 at 167.

Singapore

The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society.

Although Nigeria adopted the Convention without any reservations, the process of domesticating the Convention has witnessed many reservations. Beyond these, the CRC itself has been criticised as inadequate in its response to some of the peculiar vulnerabilities of some children. For example, the provisions of Art 38 which addressed the issue of recruitment into the armed forces failed to raise the existing international standards and set the minimum recruitment age at 15 years contrary to the spirit of the Convention which put the age of a child at under 18 years.¹ The Convention has similarly been criticised for its failure to specifically address the particular circumstances of the girl-child. In the words of Fotrell, "...the Convention is silent on the particular circumstances of the girl. Child...; there is no mention of her needs...This must be viewed as lost opportunity, given the precarious and disadvantaged position of the girl child in many societies".² The CRC and the ACRWC create reporting mechanisms by the Committee on Rights of the Child.

Other relevant international instruments on rights of children are the Optional Protocol to the CRC on the involvement of children in armed conflict,³ Optional Protocol to the CRC on the Sale of children, child prostitution and child pornography.⁴ At the national level, relevant legislation include, the Child Rights Act (2003), National Agency for the Prohibition of Trafficking in Persons Act (2003) and the Universal Basic Education Act (2004).

3.2 People with Disability

As with children, historically contradictory views have prevailed about people with disability. While they have, at times, been presented as less than full human beings and the reaction to their being entailing calls for their extermination in order to protect the purity of the 'wholesome race', they have, at other times, been presented and treated as vulnerable persons deserving of even greater protection because of their limited ability to secure themselves from exploitation and abuse. From the latter perspective, the case is made for extended legal obligations to secure their protection. Regrettably, evidence abound to show that the former views were the historically dominant as exemplified by some of the events of the World War II era. Even when perceptions altered favourably, disability remained widely stigmatised and people with disability were denied equal treatment as others. It was as recently as the late 1970s that the international community.

Why should there be a critical concern with the human rights situation of people with disabilities? The disproportionate representation of people with disabilities challenges us to probe the systemic nature of exclusion and denial of rights which produces such outcome. Although the persons with disabilities usually constitute a relatively small percentage of populations in which they are found, they are disproportionately represented among the ranks of the unemployed and impoverished. They are commonly dependent and according to David Lepofsky, they "pervasively share in common the experience of discrimination" although "this discrimination does not necessarily take the form of hatred, scorn or antipathy, akin to that from which members of racial and religious minorities often suffer".⁵ It is often rooted in stereotypical, expectations that disability is equivalent to inability and is frequently disguised in attitudes of pity, patronization, condescension or over-protectionism. The result is a pervasive pattern of discrimination experienced as people with disabilities encounter attitudinal and structural barriers impediments in seeking access to education, employment, housing, goods and services.

Yet, the only way to break down the wall of discrimination that hems in disabled persons is to utilise the conception of human rights to break the vicious cycle of pervasive negative attitudes and stereotypes about disable persons that support their systemic exclusion from participating, in the mainstream and sustain a legacy of exclusion.⁶ To support this position, there is abundant evidence from different parts of the world indicating that as the conception of human rights has been used to open opportunities for persons with disabilities, they have increasingly developed and demonstrated their capacity to overcome barriers inherent in their mental or

¹ This issue has however been re-addressed in the Optional Protocol to the CRC on the involvement of children in armed conflict adopted in 2000. The Protocol puts the age of recruitment at 18 years bringing it in line with the age 18 years bar for childhood status.

² *Op. cit.* fn. 8 at p. 173.

³ GA Res 54/263 of 26 June 2000.

⁴ GA Res 54/263 01'20 June 2000.

⁵ Equality Rights of Persons with Disabilities in Mahoney, P. & Mahoney K. (eds.), *Human Rights in the Twenty-First Century: A Global Challenge* (Dordrecht, Martinus Nijhoff 1993).

⁶ *Ibid.*

physical conditions. For example, providing persons with disabilities with access to education have shown that it is not disability itself that is the problem but social inability or unwillingness to remove barriers that using 'the able' as the sole measure of human in planning and programming introduce. Hence, it is argued that the notion of human rights of people with disability will compel recognition of disability as 'difference' justifying different response to equalising the enjoyment of rights. For example, the UN Declaration on the Rights of Disabled Persons (1975) affirms as a human right the right to medical, psychological and functional treatment, including prosthetic and orthotic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.

While there is no doubt today as to the position that disabled persons have the human rights as others, it is debatable whether there can be the same conviction in answering the question, "if they, in fact, enjoy these rights?" In so far as the standards contained in the instruments making up the International Bill of Human Rights affirm the equality of all human beings and their equal: entitlement to all human rights, it can safely be said that persons with disability just as all other persons have all human rights.¹ This position is supported by the UN Declaration on the Rights of Disabled Persons (1975) which proclaimed that disabled persons have the same civil and political rights as other human beings.² Specifically, these include:

- Right to life. In other words, no person shall have his or her life terminated by reason of the fact only that he or she has a disability or more as is supported by the theory and practice of eugenics.
- Right not to be subject to torture or cruel, inhuman or degrading treatment punishment
- Right to personal liberty
- Right to fair hearing
- Right to privacy including the right to family life which entails also the right to marry and found a family.
- Right to participate in public office and decision making

However, it is significant to note that up till the present time, there is no specific treaty instrument, whether at the international or regional levels for the protection of rights of persons with disabilities as exist for women, children, migrant groups and refugees.³ While it can be argued that this is indicative of the level of political will present (absent) to change things, it necessary to point out as there was an increasing tendency towards the end of the 20th century to affirm the specific rights of special groups, international instruments adopted from that time started to reflect more concern with the specific context of disability so that the instruments adopted stated their specific their relevance to persons with disability. For example, the CRC specifically addresses itself to the situation of children with disabilities. States Parties to the Convention by means of Article 23 affirm the right of every mentally or physically disabled child to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Paragraphs 2 and 3 of the Article affirm further the "right of the disabled child to special care".

The scope of the rights of disabled persons under these instruments is elaborated by the provisions of the 1975 Declaration. Indeed, by its Resolution 31/82 of 13 December 1976, the UN General Assembly recommended that "all Member States should take account of the rights and principles in the Declaration on the Rights of Disabled Persons in establishing their policies, plans and programmes...".

3.3 People living with HIV/AIDS (PLWHA) and people affected by HIV/AIDS (PABA)

While mental and physical disabilities were well known as factors rendering some members of society more vulnerable to rights violations, diseases generally were not known to do so until the HIV I AIDS pandemic.

The world became painfully aware of the AIDS pandemic over twenty years ago. While there have been remarkable successes in the developed countries in containing the scourge, very little has been achieved in Africa relative to its devastating consequences for individuals, families, communities and nations. At the initial stages, official public response to the challenge ranged from denial to the application of the medical disease paradigm of infectious disease control. The focus of this paradigm was to increase public awareness of the risks of the infection. Unofficially, because of its prevalence among certain groups, HIV infection was blamed on individuals whose lifestyles were considered 'peculiar but self-determined' and morally reprehensible e.g., male homosexuals and prostitutes. The prevalence of HIV/AIDS among these groups also founded the view that HIV/AIDS was the 'just reward' of morally reprehensible lifestyles (Maluwa et al, 2002). In this view, it was

¹ UN, Centre for Human Rights, *Human Rights and Disabled Persons* (Study Series No 6) (New York. UN: 1993).

²*Op. cit.* n. 28 at p. 8.

³ In contrast, the ILO has a commendable history of specific response to the right of persons with disability having adopted in 1955, the ILO Recommendation No 99 of 1955 on Vocational Rehabilitation of the Disabled and in 1983, the Convention (No 159) and Recommendation (No. 168) also concerning rehabilitation of disabled persons.

'freedom' and 'choice' anchored on human rights that provided the peculiar lifestyle and so the latitude for HIV infection. Against this backdrop, those infected were stigmatized and there was clamor for curtailing the human lights of those already infected and those who were obviously 'at risk' by reason of their lifestyles. This view was not uncommon as it had tacit, if not express, official approval in many quarters. In fact, HIV/AIDS placed the whole concept of human rights itself at risk.

As an infection with no known cure, HIV infection sounded a death knell, ignorance, prejudice, fear and a sense of helplessness justified, at least in popular view, the separation of 'the haves' from the 'have-nots' in order to curtail the infection. It was also thought that there was no need to commit much resource to the care of HIV-positive people as they would eventually die. This justified neglect and abandonment of many PLWHAs as was done in many instances. However, as the disease ravaged, it crossed the lines of groups perceived as "at risk" and this challenged the stereotypes about vulnerability and risk. Nonetheless, the fact remained that members of certain social groups were more at risk than others. It, therefore became necessary to interrogate the correlation(s) between the characteristics of these groups and HIV infection. The common characteristic of these classes was that they were discriminated against and marginalized in society albeit on different grounds such as race, gender, social and economic status, sexuality, and behaviors and they little enjoyed their civil, political, economic, social and cultural rights.

In other words, the epidemic was focused increasingly and disproportionately on the poor and marginalized. As a result, there was a shift from a medical paradigm to the 'risk vulnerability' paradigm, which enabled addressing thenon-health factors that are determinants in the spread of HIV. In other words, the paradigmatic shift helped to identify the implications of discrimination and the denial of human rights for vulnerability to HIV infection. In time, it also became obvious that people with HIV/AIDS not only suffered the health consequences of the infection but HIV infection introduced and accentuated the experience of discrimination and other forms of violation of human rights. Thus, the multidimensional nature of the linkage between HIV / AIDS and human rights was brought forward. Affirming the connection between human rights and HIV / AIDS, the International Guide lines on HIV / AID and Human Rights jointly issued by the UN Office of the High Commissioner for Human Rights and the United Nations Joint Program on HIV / AIDS (UNAIDS) states:

In the context of HIV/AIDS, an environment in which human rights are respected ensures that vulnerability to HIV/AIDS is reduced, those infected with and affected by HIV/AIDS live a life of dignity without discrimination and the personal and societal impact of HIV infection is alleviated.

As admitting the linkage of human rights and HIV/AIDS provided basis for interrogating the differentials in the implications of HIV/ AIDS for different social groups on the one hand and the differentials in the implications of the context of different social groups for vulnerability to HIV /AIDS on the other hand, the particular implications of gender differences in the enjoyment of human rights came to light. For example, it became demonstrated that where heterosexual sex is the major-mode of transmission of HIV, socially entrenched gender inequalities which take away women's voice and power undermines negotiating safe sex in and out of marriage.

3.3.1 *Linking HIV/AIDS and Human Rights*

Linkage One:

To the extent that human rights are the rights of all human beings, human rights are the rights of people living with HIV(PLWHAs) and people affected by AIDS (PABAs) also. Yet HIV infection has provided the basis for violation of human rights in the form of discrimination or denial of other freedoms and rights of PLWHAs. Human rights are universal and inalienable rights, conceptualized, in fact, for the protection of those who are vulnerably placed in society such as people living with HIV/AIDS. The concept of human rights represents the only safeguard of their entitlement to life and human dignity in a world with entrenched prejudices and exclusionary tendencies.

Linkage Two:

Human rights are critical to the survival and human dignity of people living with HIV/AIDS. The burden of coping with the infection is heavy enough without the added burden of discrimination and being treated as sub-human or outcasts. Disregard for human rights also limits access to care, support and livelihood and social respect. How, for example, is a PLWHA who is denied a source of livelihood through unfair dismissal or denial of employment expected to cope with the financial cost of basic survival, much less cost of health care. Further, disregard for the human rights of PLWHAs fosters denial and discourages them from playing an active role in prevention. Many PLWHAs would rather keep quiet than reveal their positive status in order to avoid the additional burden of the ostracism and stigma that follows public knowledge. Accounts of two PLWHAs paint the picture vividly. (CRH, 2001)

...he told me I tested HIV-positive...and he gave me...a two week appointment. On returning all the nurses who used to be friendly to me were all cold to me and whispered among themselves while looking at me. I felt like I had shit on my body.

My fever had increased and I had not been eating because I was depressed. The doctor asked them to give injections, but the nurses were arguing amongst themselves who would do it, it was so bad that the doctor had to come and give me tile injection himself. I fell into labour ... and had to go to a traditional birth attendant, who took my-delivery. I did not tell her my HIV status because I was scared she would refuse to attend to me too. ...it has been very tough living in the neighbourhood, we will-move on once we find a better place further away. I only pray my employers do not find out soon.

Linkage Three:

Human rights are a critical component in reducing the risk of acquiring infection among those whose vulnerability is determined by inequalities and stigma associated with a host of attributes, including race, gender, social and economic status, sexuality, and behaviours. The absence of economic security and increasing poverty which constitute some evidence of denial of economic and social rights disposes women more to behaviour and choices that heighten their risk. Recognizing women's equal right to the fundamental freedoms of choice, opinion and thought, right to information and equal right to education is' critical to women's enjoyment of their right to sexual and reproductive self-determination. Also, providing women with equal access to economic resources will reduce women's dependency on men and their vulnerability to HIV infection in a cultural setting- that not only tolerates but actively supports multiple sex partnerships for males.

3.4 Refugees

Every millions of human beings – males, females, adults, young people and children are forced to flee from their countries of nationality or places of habitual residence due to fear for their lives and liberty. Such fleeing people are sometimes distinguished by reference to whether they have fled the territory of a country into another, whether they have fled for reasons of persecution or simply to found a better life. The international legal framework adopts these lines of distinction and categorizes, for example, only those who have fled from one country into another as refugees while those who flee from one part of a country to another but remain within the territory of the country are known as Internally Displaced Persons (IDPs). While there has developed an elaborate legal frame work to respond to the situation of the former, IDPs remain outside the purview of this framework.

Article 1 of the UN Convention Relating to the Status of Refugees (1951) as amended by Article 1(2) of the 1967 Protocol Relating to the Status of Refugees defines a refugee as:

a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable, or owing to such fear is unwilling to avail himself or herself of the protection of that country or who not having a nationality and being outside the country of his or her former habitual residence ...; is unable or owing to such fear is unwilling to return to it.

The Convention Governing Specific Aspects of Refugee Problems in Africa adopted by the Organisation of African Unity (now transformed into the African Union) in 1969, however, expands the definition of a refugee to accommodate the peculiar experiences of the African continent in the post-colonial era¹. While Article 1(1) adopts the definition of refugee provided by the UN Convention, Article 1(2) of the OAU Convention extends the term refugee to “any person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality”.

In 1984, the Latin-American region also adopted the Cartagena Declaration on Refugees which laid down the foundations for the treatment of Central American refugees. The Declaration adopted a definition of refugee similar to that of the OAU Convention extending the term, ‘refugees’ to “persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”².

When such fleeing individuals or people enter into another country, the way to regularise their stay is to apply for asylum.³ Article 14 of the UDHR provides for a right to seek and to enjoy in other countries asylum

¹ The AU Convention again differs from the UN Convention on its provisions on voluntary repatriation (Art 5) and on the prohibition of subversive activities by refugees (Art 3).

² Part III, para. 3.

³ All asylum seeker is a person who enters or remains in a country either legally as a visitor or tourist or student, or illegally, with no or with fraudulent documentation, and then claims refugee status under any of the international treaties.

from persecution. Article 12(3) of the ACHPR provides similarly that “every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions”. While admitting that historically, concern with refugees situation arose out of humanitarian concerns, it is here argued that the right to seek asylum as stated above is hinged on the notion of the fundamentality of human rights such as the right to freedom of movement including the right to leave any country including one’s own country and the right to life, right to be free from torture, inhuman and degrading treatment, right to be secure in one’s person, right to freedom of thought and opinion, right to freedom of religion, all of which are threatened when there is persecution or risk of the same. No one should be compelled to stay in a country where his or her life, limb or person is at risk and the only way to avoid imposing such compulsion is to provide safeguards for fleeing persons.

While fleeing may solve some problem, it introduces others. A refugee is a stranger in another land. The historical development of nations has ensured that the basis of entitlement of individuals within the territory of a country is citizenship. Further, in so far as human rights are universal and inalienable, not even refugee-status should be allowed to deprive a person of these rights.¹

Refugees have rights that should be respected prior to, during and after the process of seeking asylum. What the UN and AU Conventions do is to set minimum standards of treatment of refugees including the basic rights they are entitled to enjoy. Convention obligations arise as soon as an asylum seeker has entered a signatory country and fall on that country. The core obligation is that of *non-refoulement*; that is not sending a person back into a situation of possible persecution.² Another important obligation is not to penalise asylum seekers who have entered the country illegally. Also, an asylum-seeker has right to fair hearing in the determination of his application for asylum. Once a person satisfies the host country and is granted asylum, he or she also becomes entitled to number of specific rights namely, the rights to residence, education, freedom of movement, employment, social security, housing, access to courts and naturalisation.

The Conventional so establishes the juridical status of refugees and contains provisions for safeguarding their welfare in the host countries.³ However, as countries seek to discourage the in-flow of migrants into their countries, many of these rights go unprotected.⁴

However, the problem of recognition of rights for refugees is not usually around the issue of rights for persons to whom asylum has been granted. Rather, the problem is more related to the experiences of those who are “fleeing or have fled but are yet to be granted asylum” especially those who are prevented from landing in the territory of another country. What is clear from the definitions of refugee provided is that the treaty instruments envisioned refugee movements as isolated individual movements rather than the mass refugee flows known today. Rwanda According to Millbank, “at a time of intense migration pressure and limited opportunities, asylum system have come under increasing strain through their use as a migration channel”. It must be emphasised that the Convention confers no right-of assistance on refugees unless and until they reach a signatory country.⁵

While refugees as a group are vulnerable, refugee women, refugee children and refugees with disability are even more vulnerable within and without the group.

4. Human Rights Mainstreaming

Human rights mainstreaming has been recognized as a global strategy for the promotion of human rights towards reading a people-centred. Human rights, as said, were conceptualized to challenge/undermine the force of legal rights emerging out of positive law which were not interests of excluded or marginalised groups, Arguing this, Donnelly posits that “legal rights ground legal claims on the political system to protect already established legal entitlements”.⁶ Human rights ground moral-claims on the political system to strengthen or add to existing legal

¹ The general direction of the Conventions is to ensure that refugees are not treated worse than other aliens or citizens of the host countries, In other words, the goal is to ensure non-discrimination against refugees .

² Art 33 UN Convention as amended; The principle of non-refoulement finds further expression in Art 3 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which states that "No State Party shall expel, return ("fouler") or extradite a person to another State where there .arc substantial grounds for believing that he. would be in danger of being subjected to torture

³ See Arts 29, 23,

⁴ A few countries, however, present unique differences. Commenting on the situation of Australian refugees, Millbank notes that Australia is perhaps unique amongst Western countries in its capacity and willingness to remove "failed asylum seekers; in other countries most failed asylum seekers simply remain. Australia has however joined other countries in attempting to discourage new applicants. *The most minimal welfare payment, special benefit, is provided to illegally arrived asylum seekers even after they have been determined to be Convention refugees: they are provided with temporary visas with no family reunion entitlements; and they are denied access to settlement services tailored/or and provided free to off-shore refugees.*

⁵ *Ibid.*

⁶ *Ibid.*

entitlements.¹ However, this can only be realised through human rights mainstreaming in governance at all levels and we illustrate this with the context of people living with HIV/AIDS.

Mainstreaming human rights into HIV and AIDS responses means including human rights issues at each step of the response. It involves empowerment of people with knowledge of their rights and strategies necessary to implement them. Mainstreaming requires taking steps to ensure sectors/organizations are equipped with adequate funding, resources and knowledge to sustain human rights approaches in HIV and AIDS related activities. This would designing HIV and AIDS related policies, programmes and project cycles which promote and facilitate application of human rights issues.

A human rights-based approach to HIV / AIDS programming acknowledges the links between human rights violations and stigma and discrimination and brings into play the existing rights framework of responsibility and accountability for state and individual action. A human rights-based approach draws attention to the obligations of states to regulate the relationship between individuals living within their borders and to ensure that their laws, policies and practice do not directly or indirectly discriminate based on HIV or AIDS status. A rights-based approach provides and encourages the utilization of access to institutional mechanisms that are designed to enforce the rights of people living with HIV/AIDS and counteract and redress discrimination. According to Maluwa *et al.*, “while research has shown at best very limited results in influencing or changing stigmatizing attitudes through "empathy inducement", legal protection for people living with HIV and AIDS, together with appropriate monitoring, reporting and enforce mechanisms ... can powerfully and rapidly mitigate the worst effects of unequal power relations, social inequality, and exclusion that lie at the heart of HIV and AIDS-related stigmatization and discrimination”.

The rights-based approach will certainly help mitigate the impact of HIV/AIDS as it allow for the creation of a supportive policy, legal, social and cultural environment in which people infected or affected by HIV/AIDS are able to participate in, contribute to, and enjoy economic, social, cultural and political development despite their HIV status. Furthermore, a rights-based approach will enable programming for HIV/AIDS to confront the challenges of non-respect for human rights including gender inequalities, which inure in the HIV/AIDS crisis posing more serious challenges for women as a social group.

5. Conclusion & Recommendations

In order to develop effective capacity for mainstreaming human rights into all aspects of governance to ensure the protection of human rights of vulnerable people are secured, it will be necessary to advance some recommendations namely:

- Ensuring that the principles of equality and a rights-based framework, as embodied in international instruments, are mainstreamed into the policies, programmes and activities of all actors in development.
- Incorporating human rights perspectives into the conceptual frameworks and processes of macroeconomic planning and decision-making, in order to address the multiple dimensions of vulnerability factors such as HIV/AIDS status, disability, childhood and, other intersecting factors such as gender and poverty on people's lives.
- Ensuring that government officers gain an understanding of macroeconomics, including the planning and budgeting processes, to better enable them to engage in informed dialogue at all levels on economic issues and national policies from a human rights perspective.
- Supporting human rights-responsive approach to policy-making and programming such as human rights-responsive budgeting which mainstream into the processes of formulating budgets human rights defined goals and bench-marks through developing skills and disseminating methods and tools that build on existing experience and good practices.
- Promoting people-centred analysis of government policies and programmes that make visible their economic and social impacts and outcomes, particularly in terms of their congruence with larger national goals of equality and social justice.
- Developing capacities to address the political dimensions of promoting and sustaining human rights' mainstreaming and providing the necessary technical support to initiate, and expand human mainstreaming in strategic sectors and issues.

Enhancing and strengthening the range of mechanisms for supporting and implementing human rights mainstreaming, including high-level advisory groups, gender focal points and taskforces; training-including for top management; strategies for making human rights-based analysis mandatory; action plans; accountability mechanisms and monitoring and reporting mechanisms.

¹ It is however, often argued that in the political susceptibility of human rights lies the essential weakness of human rights. They becomes highly subject to the political struggles engaging the various interest groups in society (societies) at any particular time and even over time.

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