

A human rights approach to the protection of older persons in Nigeria

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ABSTRACT

The constancy of change is evident in the different stages of human development, from birth to death. Responsibilities, needs and vulnerabilities, vary at these stages. The African traditional system reveres the elderly. Nigeria's Constitution protects her citizens and at the regional level, there is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (Older Persons Protocol), yet, many elderly persons seem excluded from intervention programmes. In view of this reality, this work questioned the protection of elderly rights in Nigeria. It adopts the doctrinal methodology from analytical and comparative approaches. Data is sourced from primary and secondary data sources. It found that the African traditional system and human rights framework have merits and demerits and that omission of age as a ground for nondiscrimination in the Nigerian Constitution leaves their human rights protection on a shaky ground, particularly with non-ratification of the Older Persons Protocol. It recommends ageing awareness, constitutional amendment, ratification and domestication of Older Persons Protocol, the enactment of a concrete law that will unpack elderly rights, and criminalizing care responsibility, i.e., holding dependents criminally liable for their older wards in the same way that children are protected.

Keywords: Abuse of older persons, human rights approach, protection, rights of elderly persons, Africa, Nigeria.

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INTRODUCTION

Human existence is characterized by different stages of development, from birth to death. These stages come with responsibilities, vulnerabilities as well as needs. For instance, obligation and protection requirements, for children are shaped by their peculiar needs, so also that of the youths, and the elderly. These justify the creation of specific human rights instruments and institutions. Despite the existence of the Universal Declaration of Human Rights (UDHR)¹, applicable to all humans, external circumstances called attention to issues of special groups based on biological differences of sex and

its social connotations of gender², childhood³, disability⁴, among others.

There is a time to actively contribute to the economy and a time to receive from the same economy. This time is during retirement when people are deemed aged, characterized by change from active to sedentary life

¹ Universal Declaration of Human Rights adopted and proclaimed by UN General Assembly Resolution 217A (III) December 10, 1948.

² The International Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981.

³ The Convention on the Rights of the Child (CRC) Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

⁴ The Convention on the Rights of Persons with Disabilities and Optional Protocol entry into force 3 May 2008.

style which could impact on health. For instance, they are said to use 70 percent of available healthcare services (Dowd et al., 1997). They may become poorer due to reduced economic activity making it impossible to access healthcare and other requisite goods and services for good life, in the absence of social protection. It is common that everyone will grow old; yet, issues of the elderly receive scant attention. This group had a universal numerical strength of 771 million as at 2022, constituting almost ten percent of the global population⁵. This number is expected to get to 16 percent in 2050⁶. As at 2020, Africa, with 5.6 percent had the fewest number of people aged 60 years and above⁷. Unfortunately, the figure is expected to increase by over 200 percent, surpassing that of Latin and Northern America and approximating that of Europe by the year 2050⁸. Nigeria, being the most populous country in Africa, shares the typical African trajectory of rapid growth rate of the elderly (Ayodeji, 2015). This has the effect of impacting the societal age structure, which could be a blessing or a curse depending on how the elderly are viewed- as fragile humans demanding support or a group with great wealth of life experiences that could be tapped into for the good of all.

In sub-Saharan Africa, less than one in five older persons receives old-age pension, serving as old age security (International Labour Organization, 2014). Retirement is a privilege of a few, fortunate, formal-economy workers. Consequently, most elderly persons have to work as long as they are physically able for their survival, or rely on insufficient provision from family and charity. Unfortunately, urbanization has affected the kinship upon which they previously relied, worsening their situation⁹. Also the Nigerian peculiar factors like migration due to herdsmen attack / Boko Haram killings, climate change disasters and poverty, among others, pose additional challenges (Ayodeji, 2015). This situation contrasts with the global social contract embodied in human rights instruments and international labour standards, under which everyone has a right to at least minimum income security in old age. This could be the reason for the endemic corruption as people need to

amass enough wealth that will guarantee good lives in old age while others who have no opportunity will keep falsifying their age in formal documents and probably die in active service.

In view of this state of affairs, this study will appraise the protection of the elderly in Nigeria, considering merits and demerits of the signed Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (African Older Persons Protocol)¹⁰. It calls on Nigeria to ratify and domesticate the Protocol because the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), legally enforce only domesticated treaties¹¹. This study is topical because the global population growth rate impacts all facets of life, demanding urgent attention, thus the declaration of years 2021-2030, decade of healthy aging¹². The global south have over time, prepared for this change, Africa to which Nigeria belongs, has not and lacks the luxury of time for a gradual move. It must move at a high speed otherwise, it will grow old while grappling with the issues of the elderly.

CONCEPTUAL FRAMEWORK

The global dimension on ageing

Ageing, a normal process, is gradual, continuous progression that begins in early adulthood as many bodily functions begin to slowly decline¹³. It is also seen as the process of growing old, a natural and irreversible phenomenon with challenges and opportunities¹⁴. Older persons, also known as elderly, aged, and senior citizens, among others, are variously described. For instance, the United Nations (UN) stipulates it to be the age of 60¹⁵. The African Older Persons Protocol sees

⁵ P Alvarez, 'Charted: The World's Aging Population from 1950 to 2100' <<https://www.visualcapitalist.com/cp/charted-the-worlds-aging-population-1950-to-2100/#populationacrosscountries>..TheWorld'sAgingPopulationfro201950to202100,andeventually202100> accessed 26 February 2025.

⁶ Ibid.

⁷ W He, 'Why Study Aging in Africa, the Region with the World's Youngest Population?' <<https://www.census.gov/library/stories/2022/04/why-study-aging-in-africa-region-with-worlds-youngest-population.html#Africa'spopulationisexceptionallyyoung,everyotheeworldregion>> accessed 26 February 2025.

⁸ Ibid.

⁹ CJ Abba, 'The Youths and Perceptive Challenges of Cultural Values and Orientations among the Igbo Society of Nigeria' (2015) 3 *Archives of Business Research* <http://dx.doi.org/10.14738/abr.35.1423> accessed 26 February 2025.

¹⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa adopted by the twenty sixth ordinary session of the Assembly, held in Addis Ababa, Ethiopia 31 January 2016 and entered into force on 4 November 2024 au/2016/en/148312; ACHPR, Resolution on the entry into force and Implementation of the Protocols on the Rights of Older Persons and Persons with Disabilities in Africa,ACHPR/Res.617 (LXXXI) 2024.

¹¹ Constitution of the Federal Republic of Nigeria (Promulgation) Act, (as amended) 1999, Cap C23, Vol. 3, LFN, 2004. s 12.

¹² UN, 'Decade of Healthy Ageing: 2021-2030' <<https://social.desa.un.org/sdn/decade-of-healthy-ageing-2021-2030:text=TheUnitedNationDecade,ofolderpeopletheirfamilies>> accessed 25 February 2025.

¹³ RG Stefanacci, 'Overview of Ageing' <https://www.merckmanuals.com/home/older-people-s-health-issues/the-aging-body/overview-of-aging#Life-Expectancy_v837953> accessed 20 February 2025.

¹⁴ Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development, National Policy on Ageing (Abuja, FMOHAD&SD 2020), Chapter One.

¹⁵ D Egunyomi, 'Issues on Adults and Aged: The Nigerian Situation' (2012) *The Adults and Aged in Nigeria: Issues and Researches* 3; UNHCR, 'Older Persons' <<https://emergency.unhcr.org/protection/persons-risk/older-persons.Aolderpersonisdefined,orageDrelatedhealthconditions.>> accessed 20 February 2025; United Nations Department of Economic and Social

them as people who are 60 years and above.¹⁶ The Nigeria's National Senior Citizens Centre Act (NSCCA) of 2018 describes them as person's above 70 years of age¹⁷. The Nigeria's National Policy on Ageing maintains the 60 years and above definition of the elderly¹⁸. It further distinguishes them into three categories, classifying the first group within the age range of 60-74 as the young old, the second group of 75-79 as the aged and the last group of 80 years and above as the oldest old¹⁹.

Ageing is the continuous buildup of changes in a person life, little wonder Ingrid Bergman said that 'getting old is like climbing a mountain; you get a little out of breath, but the view is much better'²⁰. It is a complex process with many dimensions, which Elizabeth Broderick calls the consciousness of global ageing²¹. The National Institute on Ageing identifies the dimensions of ageing to include chronological, that is the number of years since birth; biological being the physical changes that slows one down as he or she gets into middle or older years; psychologic as changes in mental functioning and personality; social as changes in roles and responsibilities within formal and informal relationships²².

This subject is imperative as it is believed that the elderly have reduced energy and low productivity, requiring retirement. However, improved medical research is increasing life expectancy. This means that people are most likely to live and work for longer years now (Dowd et al., 1997). This affirms that these dimensions affect people differently for instance, on chronologic ageing, some 70 years old are more fit than some 30 years old. The same is true of biological ageing which is dependent on habits like exercise, what is eaten or drank as well as where one resides, thus ageing can be slowed or accelerated, implying that some young people will look older than the elderly. On psychological ageing²³, some elderly still have sharp minds, thus are

considered psychologically young and fit even when they are chronologically and biologically aged (Togonu-Bickersteth and Akinyemi, 2014; Ani, 2017)²⁴.

The spiritual dimension is hardly spoken about but it is significant (Menassa, 2023). Nigerians are highly religious and spiritual, and are considered the most religious and happiest people as many things take religious coloration²⁵. Religion permeates every aspect of life including ageing, even if viewed as hypocritical because of the high rate of corruption²⁶. A global research links religiosity, spirituality and longevity (Zimmer et al., 2016). A Nigerian research states that older adults experiencing emotional challenges are comforted and encouraged as they draw close to God by their involvement in religious and spiritual activities (Ukeachusim et al., 2024). This confirms the postulation that the level of spirituality and religious participation impact on psychological wellbeing of the elderly (Ede et al., 2023).

Protection of the elderly under the African traditional system

Traditions are people's shared belief and behavior passed down from one generation to another. Africa has a rich tradition consisting of cultural practices, beliefs and customs, influenced by the histories of the different ethnic groups. They reflect the African values of communal living, respect for elders, among others. From time immemorial, the elderly, especially men occupied a special place in Africa and were associated with wisdom, power and authority. They were dignified people wielding unchallengeable authority in the community, counselors to the young, society arbiters and repository of community knowledge and wisdom (Mbele, 2004). They commanded a lot of respect because, assisting rulers, they governed individually or collectively as council of elders (Mbele, 2004). Their retirement otherwise known as 'igboto mma' was celebrated in different parts of Nigeria. Examples include Edda Local Government Area (LGA) of Ebonyi State and Ohafia LGA of Abia State, where communities traditionally celebrate retiring elderly men and women by showering them with gifts, signifying that henceforth, their children and relations would take care of them²⁷.

With imperialism came a clash between African and

Affairs, *Population Division* (World Population Prospects 2019) (ST/ESA/SER.A/430).

¹⁶ African Older Persons Protocol (n 14), Art 1.

¹⁷ National Senior Citizens Centre Act of 2018 (NSCCA).

¹⁸ National Policy on Ageing (n 18), para 1.6.

¹⁹ Ibid.

²⁰ M Thomas, 'Getting old is like climbing a mountain; you get a little out of breath, but the view is much better' <<https://www.thedubrovniktimes.com/lifestyle/opinion/item/10867-getting-old-is-like-climbing-a-mountain-you-get-a-little-out-of-breath-but-the-view-is-much-better>> accessed 18 February 2024.

²¹ E Broderick 'Is it Time for a Convention on the Rights of Older People' <<https://www.humanrights.gov.au/news/speeches/it-time-convention-rights-older-people-2010>> accessed 20 February 2025.

²² AHCJ, 'Dimensions of Ageing' <<https://healthjournalism.org/glossary-terms/dimensions-of-aging/>=Everyoneagesdifferently..theNationalInstituteonAgeing.> accessed 19 February 2025.

²³ Madalyon, 'Is There Such a Thing as Psychological Aging?' <<https://madalyonklinik.com/en/articles/is-there-such-a-thing-as-psychological-aging/>> accessed 20 February 2025.

²⁴ A Adesina, 'The Concept of Ageing-Four Dimensions of Ageing' <<https://ganathealthcare.com/the-concept-of-ageing-four-dimensions-of-ageing/>> accessed 19 February 2025.

²⁵ J Campbel, 'The Pervasive Influence of Nigeria's Religious Leaders' <<https://www.cfr.org/blog/pervasive-influence-nigerias-religious-leaders>> accessed 20 February 2025.

²⁶ TeamTrue, 'I've had Enough of Nigeria's Perplexing Religiosity' <<https://trueafrica.co/article/ive-had-enough-of-nigerias-perplexing-religiosity>> accessed 21 February 2025.

²⁷ N Uche, 'Igboto Mma (Dropping the Machete) in Igere' (2021) <<https://www.nduche2021.com/igbere>> accessed 20 February 2025.

western values, resulting in waning of respect for elders (Madukwe and Madukwe, 2010). Despite the decline in respect for elders, most African regional treaties recognize holding the elderly in high esteem. For instance the African Charter²⁸ and the African Youth Charter²⁹ maintain that children take care of their aged parents. This was reiterated in Kenya's state report which noted that there is no 'major problem' with regard to the protection of older persons as, under traditional African systems, children are to take care of their aged parents³⁰. However, this protection is theoretically commendable but practically thorny, raising some concerns- children respecting parents and assisting them in times of need is too simplistic as it ignores the fact that some elderly are childless; while some children are not working. In the pre-colonial times, agriculture was the mainstay of economy and the African traditional economy through communal agricultural labour ensured that most families had shelter and food (Madukwe and Madukwe, 2010). This non-monetized economy made it easy to collectively cater for the elderly as they lived in family houses and were fed from family food. In fact it was not a case of their human rights but of respect and value system which made needs very few. However, in the absence of measurement index, it lacked standardization making monitoring and evaluation impossible. Consequently, the protection enjoyed by elder A will be different from that of elder B.

Globalization has taken a toll on African norms as the western individualistic setting is weakening the communal African structure (Akpanika, 2019). This individualism is evident in the redefinition of family, substituting traditional extended family system with the nuclear setup thereby aggravating neglect of the elderly (Ayodeji, 2015). In addition, economic realities pull most young persons that ordinarily would care for their elderly to urban areas in search of greener pastures, leaving the elderly to care for themselves in the rural areas with little or no amenities. The increased global urbanization is worse in Africa, where it is proposed to reach 64 percent by the year 2050 due to the push factors of better work opportunities, access to healthcare goods and services as well as advantageous marriage partners, among others³¹.

Another area influenced by westernization is gender roles (Adaki, 2023). Westernization promotes gender equality and women's rights hitherto unrecognized in the African traditional system. With better education, women

enjoy career development opportunities outside their homes, enabling them renegotiate power, manifesting in shared responsibilities and decision making at homes (Adaki, 2023). Accordingly, women who worked in the care economy, caring for every member of the family including the elderly became unavailable for such.

This gender dynamics has made many women question acts which were not considered as patriarchal, such as regarding elderly men more than women. They called attention to acts neglected by the African traditional system like the effect of patriarchy on older women evident in female disinheritance, workplace discrimination of employing fewer women in formal sector and paying them lesser than their male colleagues, translating to little pension at retirement. Also, family responsibilities condemning most women to informal sector of the economy disentitling them from pension, exposing them to higher risk of poverty (International Labour Organization, 2014). Reproductive functions often take its toll on women as they age. A research noted that women spend a greater proportion of the older years in poor health than men (Adebowale et al., 2012). Further, older women are stigmatized as witches and blamed for societal ills, making old age traumatic for them rather than the expected golden period of tranquility, enjoyment and satisfaction (Mba, 2007; Godiya et al., 2021).

The African traditional system abhors the idea of sending the elderly to old people's homes³². In the global south, old people's homes abound, set up by government. However, with westernization, Nigerians and indeed many African countries are at a cross road because while many people are embracing individualism and urbanization, they are not at home with sending their elderly to institutions where strangers will look after them. Many will prefer to have their elderly in the family settings in the rural areas, thus exposing them to all forms of hazards. This is worsened by the government's loud silence. It is either they are undecided on the way forward or bedeviled by resources to take necessary actions.

Protection of the elderly under the human rights framework - the African Older Persons Protocol

Nigeria signed the African Older Persons Protocol thereby affirming its interest in strengthening their protection³³. A UN expert opined that Nigeria ought to implement the Protocol to protect the elderly from

²⁸ Adopted and opened for signature, ratification and accession by Assembly of Heads of State and Government Decision 115(xvi) in Kenya 27 June 1981, entry into force 21 October 1986, Arts 29(1).

²⁹ African Youth Charter adopted on 2nd July 2006 during The 7Th Ordinary Session of the Assembly of the African Union, held in Banjul, The Gambia, Art 26(c).

³⁰ J Kollapan 'The Rights of Older People- African Perspectives' (2008) <http://www.globalaging.org/elderrights/world/2008/africa.pdf> accessed 20 February 2025.

³¹ A Aliyu and L Amadu, 'Urbanization, Cities, and Health: The Challenges to Nigeria – A Review' (2017) 16(4) *Ann Afr Med* 149.

³² Caring for the aged: Why are homes for the elderly still 'taboo' in Nigeria? < <http://venturesafrica.com/caring-for-the-aged-why-are-homes-for-the-elderly-still-taboo-in-nigeria>> > accessed 19 February 2025.

³³ Amnesty International, 'Nigeria: Ratification of protocol to protect the rights of older people 'a vital step forward' (2023) <<https://www.amnesty.org/en/latest/news/2023/10/nigeria-ratification-of-protocol-to-protect-the-rights-of-older-people-a-vital-step-forward/>=BysigningtheProtocolto,abindingregionalegalinstrument./> accessed 20 February 2025.

prevalent old age discrimination³⁴. While agreeing with this, this study posits that, its non-ratification and domestication is stultifying its effectiveness. It is however expected that with its ratification by Nigerian government, it will enhance the protection of the rights of the elderly.

Unlike the informal protection under the African traditional system, the Protocol in guaranteeing specific rights seems to have embraced western ideology and answered the questions of protection offered, the rights that accrue to the elderly, duty bearers and special measures required of States Parties.

The Protocol guarantees the elderly, right to freedom from discrimination and freedom from employment based discrimination³⁵. It is submitted that this right cannot be totally guaranteed without exceptions because simply taking occupational requirements into consideration will make the retirement age contained in most national laws contradictory. In view of this article, the NSCCA will be considered discriminatory. This is because this elderly persons-specific protective law discriminates against the mentally challenged elderly by barring them from using the centre³⁶. Again, the centre is not mandatory but is sited in the Federal Capital Territory (FCT), Abuja, and replicable in states that desire them³⁷. It follows that while the elderly in the states whose governors desire them benefit from it, and those in other states will lose the benefit it offers because of the choice of the state governor.

On the right to work, it will be beneficial to keep the elderly as busy as their strength allows through volunteer work and or consultancy of mentoring younger ones in their proficient areas³⁸. They can also be retrained and engaged in specific industries especially skills acquisition or handiwork where they can maximally contribute to development.

It guarantees them access to justice and equal protection before the law³⁹. Equal protection applies to everyone but will need to be redefined as to what it means for the elderly. On access to justice, the question is whether the elderly can stand the rigors of the present administration of justice system which takes a long time, meaning that such cases may outlive them. It also means that there may be need to deliberately establish elderly justice system just as the Child's Rights Act (CRA) which

established the juvenile justice system for children.

Again, drafters of laws relating to the elderly need to tighten all loose ends thereby ensuring that litigation is eliminated or reduced to the barest minimum. For instance, one of the provisions left porous in the Nigeria's Pension Reform Act of 2014 (PRA)⁴⁰ is section 7 which permits a retiree to withdraw a lump sum from retirement savings, leaving the balance for monthly or quarterly withdrawals throughout the remaining lifespan. Neither the PRA nor PenCom specified the workable life expectancy leaving retirees at the mercy of Pension Fund Administrators (PFAs). This became the subject matter for the determination of the court in *Mr. Ofunlana Oladimeji v Pensions Alliance Ltd*⁴¹. In this case, the PFA disallowed the applicant from withdrawing 50 percent of his retirement savings on the pretext that the remainder will be insufficient to cover his lifespan, without showing the index it relied on in coming to that conclusion. The court agreed that the Claimant could not be benchmarked for 25 percent withdrawal because the Defendant did not justifiably establish why the Claimant cannot withdraw 50 percent, since there is no indication of the life expectancy used for the computation of programmed monthly withdrawal. If the PRA is not amended or PenCom issues guideline to prescribe the standard life expectancy that PFAs should rely on, every retiree will be compelled to go to court for its determination. The legal fees will depreciate the inflation-depreciated pension.

It guarantees them right to make decisions or mandate another to make such decisions for them⁴². It means that the elderly must participate in decisions that concern them whether individually or collectively through their representatives. The NSCCA constitutes a board which unfortunately has no elderly person as a member. This means that others will discuss their affairs and it is possible that salient issues will be ignored because none of the members wears elderly lenses. It follows that the NSCCA falls below the requirement of this article.

It guarantees them social protection, urging ratifying states to ensure that retirees access adequate pensions through a simplified process while providing incomes to those who had no opportunity of contributing to social security provisions⁴³. Beyond pension, Nigerian elderly have no other form of social protection. Even the pension amount is rendered near worthless by inflation. It behooves on the government to find a way of ensuring that retirees collect pension that is at the least equivalent in terms of value, to the amount saved. Again, the devalued pensions are not collected in manners that dignify the elderly.

It guarantees them protection from abuse and harmful traditional practices and pays special attention to older

³⁴ M Olubode, 'Nigeria Must Implement Policies to Protect Older Persons Says UN Expert' < <https://www.thisdaylive.com/index.php/2022/09/12/nigeria-must-implement-policies-to-protect-older-persons-says-un-expert/amp/> > accessed 19 February 2025.

³⁵ African Older Persons Protocol (n 14) Arts 3 & 6.

³⁶ NSCCA (n 21) s 18.

³⁷ *Ibid* s 2(4).

³⁸ UF Echeta and EI Eze, 'The Igbo Care for the Elderly in Contemporary Times: an Old Testament Evaluation' (2017) 12 *NJOEMAR* 140; TM Nhongo, 'The Changing Role of Older People in African Households and the Impact of Ageing on African Family Structures, (HelpAge International's Regional Representative for Africa, the Ageing in Africa Conference, Johannesburg 18th to 20 August, 2004) 4.

³⁹ African Older Persons Protocol (n 14) Art 4.

⁴⁰ The Nigeria's Pension Reform Act 2014, s 1.

⁴¹ Suit No. NICN/LA/180/2023

⁴² African Older Persons Protocol (n 14) Art 5.

⁴³ *Ibid* Art 7.

women⁴⁴. Researches show that older women suffer more from harmful traditional practices than older men. For instance, a woman narrated how her aged mother was branded a witch and tortured to death⁴⁵. In the case of *Nzekwu v Nzekwu*⁴⁶, a widow whose husband's relatives disinherited by selling the house she occupied with her late husband sought court's intervention. The Supreme Court deprecated the custom that disallowed a widow from occupying her late husband's house as repugnant to natural justice, equity and good conscience but maintained that the interest of the widow in the house was possessory and not proprietary, as Onitsha customary law allows a widow without a son to occupy the deceased husband's building or part of it, only subject to good behaviour. Even the highest court in the land acted contrary to this article.

The Protocol guarantees the right to care and support through strengthening the traditional support system that cater for the elderly, incentivizing family members to care for their elderly and preferential treatment in service delivery by States Parties⁴⁷. It also guarantees them right to residential care, which is long term geriatric care in settings other than their homes⁴⁸. This study submits that strengthening traditional communal care and incentivizing family members to care for their elderly will be better for Nigerian elderly. The reason is that it will be cheaper and cost effective for the government and satisfying for the elderly who remain in their usual environment. Again, it will enable the government perform its duty of supporting the elderly persons with disabilities⁴⁹ and those who care for their vulnerable children⁵⁰. The incentive could be applied to profitable venture by family member thus addressing their economic need. Further, most elderly cannot afford residential care with their depreciated pension.

It guarantees older persons protection in conflict situations⁵¹. This will be necessary for victims of *Boko Haram* attack, displaced communities, inter-tribal community clashes and other emergencies. Taking care of this group in internally displaced persons (IDP) camps among their own people will provide beneficial support system for them.

It guarantees them access to healthcare goods and services⁵², a major need of humans for a satisfying life. The African Commission in *Purohit and Another v The*

*Gambia*⁵³, stated that health is important to all aspects of life and aids the realization of all other rights and freedoms. Healthcare is especially important to the elderly because ageing diminishes many bodily functions, affecting the eye, tooth, blood sugar, mental functioning, hearing, back and neck, among others⁵⁴. With increased life expectancy, the elderly will need access to healthcare services if the long life will be satisfying. Nigeria, like most countries, aspire to guarantee her citizens universal health coverage (UHC) which is access to necessary promotional, preventative, treatment, rehabilitative and palliative healthcare services, where and when they need them, devoid of financial hardship⁵⁵. UHC is guaranteed in the Nigeria's National Health Act (NHA)⁵⁶, UHC is best achieved through primary healthcare (PHC), positioned to provide person-centered and community-based care. Unfortunately Nigeria's PHC is more focused on maternal and childcare to the detriment of the elderly (Ogunyemi et al., 2024). Although the NHA identifies the elderly as a vulnerable group who can enjoy exemption of fees for healthcare access, they are yet to be exempted because they have not been recognized as a priority population with targeted PHC services (Ogunyemi et al., 2024).

It guarantees them right to access to education and information, communication and technology (ICT) skills⁵⁷. The CFRN guarantees free adult literacy programme when practicable⁵⁸. The CRA makes it possible for Nigerian children to enjoy right to free and compulsory basic education. It behooves on the government to take similar step with regards to the elderly as education is a lifelong process and is necessary to keep them updated with adaptation information in the ever changing world, if they will enjoy the longer life. The elderly can learn just like the young ones though they may take some time but they retain easily (Dowd et al., 1997). They must learn and relearn if they must remain useful since technological changes may affect their lived experience. Education will keep them mentally sharp, reduce the risk of dementia and other mental sicknesses thereby reducing the cost that government would have expended in providing healthcare for them⁵⁹.

It guarantees them right to participation in socioeconomic activities as well as access to

⁴⁴ Ibid Arts 8 & 9.

⁴⁵ C Ukong, 'Exhibition highlights persistence of witch killing in Nigeria' (2023) *Premium Times* <<https://www.premiumtimesng.com/news/top-news/655206-exhibition-highlights-persistence-of-witch-killing-in-nigeria.html?tzc=1>> accessed 20 February 2025.

⁴⁶ [1989] 2 NWLR (pt. 104) 373.

⁴⁷ African Older Persons Protocol (n 14) Art 10.

⁴⁸ Ibid Arts 11 & 1.

⁴⁹ Ibid Art 13.

⁵⁰ Ibid Art 12.

⁵¹ Ibid Art 14.

⁵² Ibid Art 15.

⁵³ [2003] AHRLR 96 (ACHPR 2003).

⁵⁴ WHO, 'Ageing and Health' <<https://www.who.int/news-room/fact-sheets/detail/ageing-and-health>> Although some of the variations, ethnicity, Corsocioeconomic status.> accessed 19 February 2025.

⁵⁵ WHO, 'Universal health coverage (UHC)' <[https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-\(uhc\)](https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-(uhc))> accessed 14 February 2025.

⁵⁶ NHA(n 64) ss 1(c) & (e).

⁵⁷ African Older Persons Protocol (n 14) Art 16.

⁵⁸ CFRN (n 15) s 18(3).

⁵⁹ Buckner Retirement Services, 'Why Education is Important for Seniors' <<https://bucknerretirement.org/blog/why-education-is-important-for-seniors/>> accessed 19 February 2025.

infrastructures⁶⁰. There may be need to design identity cards for the elderly that will give them priority access in public transport like the buses and trains.

This groundbreaking Protocol has a normative gap fueling its non-implementation because it welcomes reservations by States Parties⁶¹. Reservation rubbishes an otherwise progressive provision as no state will be held accountable on it. Again, its existence is of no moment when states fail to ratify and establish procedures and institutions required to implement an international standard (Ayodeji, 2015). Unless Nigeria ratifies and domesticates the Protocol, Nigerian elderly will only have theoretical protection as there will be no monitoring of the intervention programmes and many of them will keep suffering⁶².

What will elderly rights mean for the Nigerian elderly?

It is irrelevant to Nigerian elderly the route chosen by the government for their protection - African traditional system or human rights framework offered by the African Older Persons Protocol as long as they are guaranteed a satisfactory remainder of their life. This is because both systems have merits and demerits. The elderly in Nigeria would want to enjoy two broad based rights - rights to dignity and respect and right to safety and security.

Right to dignity and respect will address the entitlements like access to healthcare goods and services, education, employment and support services. Right to safety and security will cover right to freedom from violence and to participate in decisions that concern them.

Nigeria is poorly ranked on the quality of livelihood of the aged (Mike, 2020). The Protocol offers Nigeria an opportunity to marry the human rights framework contained therein with the current African traditional system in practice especially as paragraph 11 of the preamble to the Protocol took African values, traditions and practices of communal elderly care as well as their educating the younger generation, into consideration.

Recognizing the reality of scarce resources, it is submitted that increased number of the elderly could be viewed as a blessing or burden. The cost of caring for the elderly could be a burden while additional workforce and increased productivity due to increased age of retirement could be a blessing. Nigeria will fare better if it takes advantage of the continued contribution of the elderly to productivity thereby seeing the cost as an investment.

⁶⁰ African Older Persons Protocol (n 14) Arts 17 & 18.

⁶¹ Ibid Art 27.

⁶² HelpAge international 'Why it's time for a convention on the rights of older people' <<http://www.helpage.org/what-we-do/rights/towards-a-convention-on-the-rights-of-older-people/>> accessed 26 February 2025

LEGAL INSTRUMENTS

International legal instruments

Elderly rights favorable instruments, exists at the different levels of human existence. Globally, there are instruments that protect the rights of the elderly- the UDHR guarantees right to security in old age⁶³. The UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶⁴ and International Covenant on Civil and Political Rights (ICCPR)⁶⁵ do not contain age as a ground for nondiscrimination, rather, 'other status' which can be interpreted to mean any other unspecified ground. However, ICESCR's General Comments (GC) No. 6 of 1995⁶⁶ and No. 20 of 2009 prohibit age-based discrimination in the economic, social, and cultural rights⁶⁷. The GC No. 6 requiring States Parties reports to include situation of older persons. This is important as they often face discrimination in areas such as employment, social security, and access to basic necessities. The CEDAW guarantees social security to aged women⁶⁸.

While there is no global treaty on elderly rights, pointers to it exists. For instance, the UN Resolution of 1978 called attention to the issues of ageing⁶⁹. This led to the adoption of Vienna International Plan of Action on Ageing, a non-binding international response to aging, aimed at enabling the elderly live their remaining years in health, peace and security⁷⁰. It serves as a standard for the development of policies for the elderly by governments and nongovernmental organizations⁷¹. The UN Human Rights Council adopted the Principles for

⁶³ UDHR (n1) Art 25.

⁶⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

⁶⁵ International Covenant on Civil and Political Rights (ICCPR) Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

⁶⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.6* adopted on the thirteenth session of the Committee on Economic, Social and Cultural Rights, 8 December 1995, E/1996/22. <www.refworld.org/docid/4538838f11.html> accessed 16 February 2025, para 12

⁶⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights* (art 2 para 2 of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para 29. <<https://www.refworld.org/docid/4a60961f2.html>> accessed 16 February 2025.

⁶⁸ CEDAW (n 2) Art 11(e).

⁶⁹ UN General Assembly Resolution 33/52 adopted at the Thirty Third Session, the 84th Plenary Meeting of 14 December 1978.

⁷⁰ UN International Plan of Action on Ageing adopted at its 15th and 17th plenary meetings on 5 and 6 August 1982.

⁷¹ Human Rights and Equality Institution of Turkiye, 'Elderly Rights' (2022) 4 <<https://www.tihek.gov.tr/public/editor/uploads/VeB0aR2O.pdf>> accessed 26 February 2025.

Older Persons (UNPOP) of 1991⁷². The UNPOP consists of 18 principles covering issues of their independence, participation, care, self-fulfillment and dignity. They should have access to resources for maximizing their potential and live a life of dignity⁷³.

The changes driven by globalization, urbanization, migration and increased life expectancy, necessitated the adoption of the Madrid Plan of Action on Aging in 2002, aimed at changing governmental and NGO's perception on the issues of the elderly⁷⁴. It focuses on three areas - development, health and supporting environment. To strengthen elderly protection, the General Assembly created Open-Ended Working Group on Ageing⁷⁵. Further, the Sustainable Development Goals (SDGs) have indicators relating to the elderly. For instance SDG 1 on no poverty has indicator 1.3.1 on proportion of population covered by social protection⁷⁶. SDG 2 on ending hunger has target 2.2 that includes addressing nutritional needs of older persons. SDG 11 on making cities and human settlements inclusive, safe, resilient and sustainable has targets 11.2 and 11.7 call attention to the vulnerable, among whom are older persons⁷⁷.

Regional legal instruments

At the African regional level, the African Charter on Human and Peoples' Rights (African Charter), pays attention to the protection for the aged⁷⁸ and imposes on the children, duty of parental maintenance in case of need⁷⁹, just like African Youth Charter⁸⁰. The Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) guarantees elderly women dignity and freedom from age-based discrimination⁸¹.

The African Older Persons Protocol entered into force in 2024⁸², it guarantees them freedom from discrimination in employment, rights to access to justice, social security, decision making, healthcare, education, residential care, freedom from harmful traditional practices, incentivized

homecare, paying special attention to women, those with disabilities and those affected by conflict situations⁸³. It imposes on them the duty of mentoring the younger generation and assisting in mediation and conflict resolution⁸⁴.

Domestic legal instruments

At the domestic level, Nigeria has laws that directly and indirectly relate to the elderly. They include the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), which section 14, provides that 'the security and welfare of the people (including the elderly) shall be the primary purpose of the government'⁸⁵. Further, section 16 provides that 'suitable and adequate shelter and food, reasonable minimum living wage, old age care and pensions and unemployment, sick benefits and welfare of the disabled are provided for all citizens'. The probable purpose of these provisions is to protect the aged from hardship.

Relying on section 6(6)(c), the ouster clause in the CFRN, the Nigerian courts have consistently upheld the unenforceability of these provisions, belonging to chapter II -Fundamental Objectives and Directive Principles of State Policy, raising questions about their fundamentality (Mike, 2020)⁸⁶. However, these attitudes are changing to accommodate a more liberal approach towards socio-economic rights, contained under chapter II. In *Bamidele Aturu v Minister of Petroleum Resources*⁸⁷, the court deemed the Nigerian government's deregulation of the downstream petroleum industry unconstitutional, as it contradicts the socio-economic objectives of the Nigerian Constitution. Akintayo⁸⁸ suggests that *the Aturu case* humanizes neo-liberal policies by prioritizing citizens' welfare, happiness, and freedom, aligning with scholars' views that human capability development strategies are the best route to robust economic development. Nnamuchi et al⁸⁹, argue further that international human rights law has shifted the balance toward the justiciability of socioeconomic rights, humanizing them. However, it is not yet *uhuru* for the the elderly because beyond the hurdle of non-justiciability, section 42 of the CFRN that prohibits discrimination on a plethora of grounds does not recognize age as a ground for nondiscrimination, leaving their issues on a shaky ground (Nnamuchi et al).

⁷² United Nations Principles for Older Persons adopted on 16 December 1991 by General Assembly Resolution 46/91.

⁷³ Ibid para 10.

⁷⁴ Madrid Plan of Action on Ageing adopted by the Second World Assembly on Ageing, Madrid, Spain 8-12 April 2002.

⁷⁵ UNDESA, 'Open ended Working Group on Ageing for the Purpose of Strengthening the Protection of the Human Rights of Older Persons' <<https://social.un.org/ageing-working-group/>> accessed 25 February 2025.

⁷⁶ European Commission, 'Know SDGs' <[https://knowsdgs.jrc.ec.europa.eu/sdg/1text=SDGD%20Endpovertyinresilience\(1.5\).>](https://knowsdgs.jrc.ec.europa.eu/sdg/1text=SDGD%20Endpovertyinresilience(1.5).>) accessed 25 February 2025.

⁷⁷ UN Statistics Division, 'SDG Indicators' <<https://unstats.un.org/sdgs/metadata/>> accessed 20 February 2024.

⁷⁸ African Charter (n 40) Arts 18(4).

⁷⁹ Ibid Art 29(1).

⁸⁰ African Youth Charter (n 41).

⁸¹ Adopted by the 2nd Ordinary Session of the African Union General Assembly in 2003 in Maputo CAB/LEG/66.6 (2003) entered into force 25 November, 2005, Art 22.

⁸² African Older Persons Protocol (n 14).

⁸³ Ibid, Arts 9, 13 & 14.

⁸⁴ Ibid Art 20.

⁸⁵ CFRN (n 15), s 14 (2) (b)

⁸⁶ *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt 200) 708, para A – D.

⁸⁷ Suit No: FHC/ABJ/CS/591/09).

⁸⁸ AE Akintayo, 'Good thing from Nazareth? Stemming the tide of neo-liberalism against socio-economic rights Lessons from the Nigerian case of *Bamidele Aturu v Minister of Petroleum Resources and Others*' (2014) 15 *ESR* 8.

⁸⁹ O Nnamuchi and Others, 'Justiciability of Socioeconomic Rights in Nigeria and Its Critics: Does International Law Provide Any Guidance?' (2022) *The Age of Human Rights Journal* 137 <<http://dx.doi.org/10.17561/tahrj.v19.7561>>.

The Pension Reform Act of 2014 (PRA) ensures that workers in public service and private sector save during their productive years in order to cater for livelihood in old age and receive their retirement benefits as and when due⁹⁰. Envisioning a good elderly living will ordinarily serve as motivation for contribution into the pension scheme. This vision will be sustained where pension scheme lives up to its promises, in that the elderly who put money aside during their economically active days receive their pension timely. It established the National Pension Commission (PenCom) to administer the PRA and ensure effective administration of pension matters and retirement benefits⁹¹. To boost confidence of workers, PRA stiffened penalty for misappropriation of pension funds by making it ten years imprisonment plus fine to the tune of thrice of the amount misappropriated plus refund of the amount misappropriated as well as forfeiting to the federal government, the proceeds of such misappropriation⁹².

The National Health Act (NHA) of 2014 guarantees Nigerians the enjoyment of the right to health, within available resources⁹³. Healthcare is particularly important to the elderly because of the natural gradual weakening of body organs functionality with age. Little wonder, this age group is considered as part of the vulnerable group, which the Minister of Health may consider for exemption from payment for healthcare services⁹⁴.

Nigeria enacted the National Senior Citizens Centre Act (NSCCA) of 2018 to address issues of the elderly⁹⁵. Its section 2 established the National Senior Citizens Centre (NSCC) as a place with recreational, educational, health and social programmes and facilities designed for the full enjoyment and benefit of senior citizens⁹⁶. Being an Act of the National Assembly on a subject matter outside the exclusive legislative list, the Act applies only within the FCT⁹⁷. Neither the NSCCA board nor the Centre is tasked with the function of assisting the elderly recover their retirement benefit. This is a grave omission considering that most things are paid for through out of pocket expenses. It failed to tie up their health issues with the NHA.

Among other things, the NSCC was formed to facilitate the development of a National Policy on Ageing through strategic innovation and as a roadmap for the future. The NSCC developed a National Policy on Ageing in 2020, reviewable every five years, to address the special needs of the elderly by providing an age-friendly environment

that will enable them maximize their potentials⁹⁸. Relying on it, Nigeria addressed issues of the elderly as an investment rather than a cost by affording them an opportunity of social and economic contribution.

A COMPARATIVE PERSPECTIVE AND CASE LAW AND STATUTORY SUPPORT

Now that the NSCC Act is in place and its Board is functional, opportunities abound for stakeholder to test the waters with appropriated litigation on the protection of the rights of senior citizens. It is also time for the Nigerian courts to be active and develop a clear-cut approach to interpreting and applying relevant legal instruments for the protection of the human rights of the elderly. This segment of the paper reviews existing judicial approach from an international comparative perspective.

At the regional level, European Court of Human Rights (ECHR), in *Brincat and Others v Malta*⁹⁹, considered the human rights implication of exposing older retired shipyard workers to asbestos. It held that the State failed in its duty to protect workers' right to life and health. This decision is significant for strengthening the link between state responsibility and long-term health care risks affecting older populations and lending weight to the latter. State practices bear out this regional approach to the protection of the rights of the elderly. In *R (McDonald) v Royal Borough of Kensington and Chelsea*¹⁰⁰, the issue before the court was whether reducing a disabled elderly woman's overnight care breached her rights under the European Convention on Human Rights (ECHR). The UK Supreme Court held that while the local authority's decision to cut services was lawful, it raised important concerns under Article 8 (right to respect for private and family life). This decision highlighted the balance between limited public resources and right of the elderly to care and protection.

Developed countries are ready to calibrate criminal procedure law to protect the rights of senior citizens. *R v Khelawon*¹⁰¹ was a case of elder abuse in which the admissibility of testimonial evidence from an elderly care home resident who died before trial was in issue. The Supreme Court of Canada allowed hearsay evidence under certain safeguards. This case highlights how evidentiary rules are adjusted to protect the vulnerable elderly population in criminal proceedings.

In *United States Olmstead v LC*¹⁰², the issue before the court was whether the unjustified institutionalisation of persons with disabilities (including older persons) violated

⁹⁰ The Pension Reform Act (n 60), s 1.

⁹¹ Ibid s 18.

⁹² PWC, 'Pension Reform Act 2014 Key Highlights and Salient Points' <<https://pwc-nigeria.typepad.com/files/the-new-pension-reform-act-2014-key-highlights-salient-points-1.pdf>> accessed 20 February 2025.

⁹³ National Health Act 2014.

⁹⁴ Ibid s 3(2) (d).

⁹⁵ NSCCA (n 21).

⁹⁶ Ibid s 20.

⁹⁷ Ibid, s 2 (4).

⁹⁸ National Policy on Ageing (n 18), paras 3.5 and 9.0.

⁹⁹ [2014] Applications Nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11.

¹⁰⁰ [2011] UKSC 33.

¹⁰¹ [2006] 2 SCR 787.

¹⁰² 527 US 581 (1999).

the Americans with Disabilities Act (ADA). The US Supreme Court ruled that states must place persons with disabilities in community settings rather than institutions when appropriate. This landmark case supporting aging in place and deinstitutionalized elder care is in congruence with the Nigerian, nay, African worldview that it is improper for children to ship their aged parents to care homes instead of providing for them in the community setting.

Protection of the human rights of the elderly is entrenched in the South African constitutional framework. Section 27 of the Constitution of South Africa guarantees the right to access healthcare, food, water, and social security. In *Grootboom v Government of the Republic of South Africa*¹⁰³, the Right to adequate housing for vulnerable groups, including the elderly was in issue. Although the decision did not focus solely on older persons, the judgment emphasized the state's duty to implement reasonable policies for vulnerable populations, which includes older adults. In addition to this, South Africa enacted Older Persons Act 13 of 2006, which is a comprehensive law aimed at protecting and empowering older persons. It includes provisions on residential facilities, abuse prevention, and community-based care¹⁰⁴.

While *KS Puttaswamy v Union of India* (2017) 10 SCC 1 primarily established the right to privacy, its implications are wide for elderly persons - especially in care homes or with respect to autonomy in medical decisions. Under the Maintenance and Welfare of Parents and Senior Citizens Act 2007, Indian courts have consistently held that children must provide care and support to elderly parents, with many state-level cases enforcing these duties¹⁰⁵.

Likewise in Kenya, in *the Matter of Zipporah Wambui Mathara*¹⁰⁶, the rights of elderly women in debt and vulnerability were in issue. The court acknowledged the vulnerability of older persons and the need for special protection under Article 57 of the Kenyan Constitution 2010, and mandated the State to take measures to ensure the rights of the elderly, as well as social inclusion, access to healthcare, and protection from abuse.

In this connection, Nigeria seems to be catching up with South Africa and Kenya. In *Minister of Health and Another v New Clicks South Africa (Pty) Ltd* (2005) (2) SA 311 (CC) the issue before the court was access to affordable medicine for all, including older persons reliant on chronic treatment. Though not solely focused on elderly rights, the judgment reaffirmed socio-economic rights as enforceable under the Constitution, which are

¹⁰³ (2000) (11) BCLR 1169 (CC).

¹⁰⁴ S 1.

¹⁰⁵ An example is the case of *Shuchi Goel v Shashi Goel & Ors* W.P.(C)-15291/2022 where the Delhi High Court affirmed the legal obligation of children to provide maintenance and care to their elderly parents.

¹⁰⁶ [2010] eKLR.

critical for aging populations. Similarly, in *Philippines Republic v Sandiganbayan* (GR No. 96028, 1991), though a corruption case, the court emphasized the importance of prioritizing funds for health and welfare, including for senior citizens. The Expanded Senior Citizens Act of 2010 of the Philippines has led to several enforcement actions on elder rights in terms of healthcare, discounts, and social protection.

In Tanzania, the National Policy on Ageing 2003 has been instrumental in raising awareness about the rights of the elderly and empowering older persons to report cases of abuse¹⁰⁷. The policy also establishes special courts to handle cases of violation of the rights of elders and provides for the establishment of tribunals to adjudicate on matters affecting older persons¹⁰⁸. These examples highlight the importance of comprehensive legal frameworks, community involvement, and specialized institutions in addressing elder abuse effectively. Nigeria can draw valuable lessons from these best practices and adapt them to its own context.

RECOMMENDATIONS

Everyone who does not die prematurely would face the psychological challenge of growing old (Nilsson, 2022). If in the words of Cindy Joseph, 'ageing is just another word for living' people should prepare to live¹⁰⁹. To live, this study proffers the following recommendations:

The need for citizenry understanding of the positivism of ageing

There is a terrible perception that the aged are mentally unfit, fueling prejudice and unfair assumptions and discrimination. Meanwhile, ageing is not a negative situation. Seeing that aging is not lost youth but a new stage of opportunity and strength, it can be prepared for¹¹⁰. Some ways of preparing for it is by educating law and policy makers and key officials on healthy ageing experience to enable them make progressive laws and policies. Gerontology related courses can be introduced in schools for law students, those in health studies and

¹⁰⁷ MJ Mwaikokesya, 'The Tanzania's Policy on Aging: A Critical Review on Existing Gaps towards Promoting Education for Older Adults' (2022) 1 *Glob J Aging Geriatr Res*. DOI: 10.33552/GJAGR.2022.01.000523

¹⁰⁸ P van Eeuwijk, 'Older people providing care for older people in Tanzania: against conventions – but accepted', in J Hoffman, and K Pype (eds), *Ageing in Sub-Saharan Africa: Spaces and Practices of Care* (Bristol, 2016; online edn, Policy Press Scholarship Online 2017), <https://doi.org/10.1332/policypress/9781447325253.003.0004>.

¹⁰⁹ C Joseph, 'That's not My Age' <<https://thatsnotmyage.com/beauty-at-any-age/cindy-joseph-on-pro-ageing/#:~:text=Thereisanewkind,>> accessed 19 February 2025.

¹¹⁰ B Friedan, 'Quotes' <https://www.goodreads.com/author/quotes/21798.Betty_Friedan#:~:text=Nowomangetsanorgasmfromshiningthekitchenfloor.&text=Ageingisnot'lostyouth,stageofopportunityandstrength.&text=Ita siertolive,haveeverfaceditbefore> accessed 18 February 2025.

social protection. The populace must be enlightened to understand that habits like eating nutritious diet, shunning cigarette smoking and alcohol abuse, regular exercise and staying mentally active will sustain healthy ageing. This will help Nigeria cope with the short-term and long-term implications of ageing and abide with the provisions of the Protocol¹¹¹. This will make it easier for the elderly to perform their Protocol compelled duties of mentoring the younger generation and participating in conflict resolution¹¹².

Redefinition of the elderly

There are various descriptions of the elderly. For instance the African Protocol on the Elderly, as well as the National Policy on Aging defines the elderly as a person over 60 years while the NSCCA defines senior citizen as anyone who is above the age of 70 years¹¹³. It will make better sense to adopt a definite age of the elderly informed by Nigerian-specific researches.

Ratification, domestication and legislation are crucial

There are laws protecting other vulnerable groups like women, children, and persons with disabilities, neglecting the elderly (Ibrahim, 2021). It follows that unlike issues of children guaranteed in the CRA, the elderly are left at the mercy of the federating states¹¹⁴. Again, unlike the issues of women, which section 42 of the CFRN guarantees by prohibiting discrimination on the ground of sex, the elderly are constitutionally neglected. Though there is in existence the NSCCA, with the NSCC serving as an agency for the elderly, rendering the replication of NSCC optional to the states that desire them reduces its capacity to attain its purpose and makes it less than an agency. This is because it will fuel discrimination based on the ideology of the state governor. Further, preventing mentally challenged elderly from using the Centre is akin to having a law made for a group, discriminate against some members of that same group. If NSCCA must serve as specific legislation, it needs to be amended urgently to offer holistic protection to the Nigerian elderly. This is especially so as it came into being before the coming into force of the African Older Person's Protocol. It must be amended to reflect the spirit of the Protocol.

Again, the specific legislation will unpack issues of access to justice for the elderly, considering the fact that they may not have the luxury of time in the face of prolonged litigation. It will also take their peculiarity of waning physical strength into consideration in designing

the administration of justice that applies to them. It must also tie elderly issues to NHA. Most importantly, this elderly specific law should have elderly people as members of the board or in decision making position so as to ensure that their relevant issues get desired attention.

This specific law for the elderly will work best with the ratification and domestication of the African Older Persons Protocol as well as the amendment of the CFRN to include age as a ground for nondiscrimination in section 42.

Need for UN Convention on the Rights of Older Persons

It has become necessary to call for a UN Convention on the protection of the rights of senior citizens. The goal is to produce a multilateral treaty on the protection of the elderly that will be binding on member states. This global treaty will aid the implementation of the regional treaties.

Criminalizing care responsibility

Nigeria has the Criminal Code which criminalizes the non-provision of necessities by one who has the duty of care over another whom by reason of age, among others, lacks the ability to provide for them¹¹⁵. The authors of this paper are not aware of any case in which a Nigerian child is prosecuted for not providing necessities for their aged parent. Yet, there is a multitude of such parents languishing and dying of hunger in the remote areas. Instead of recognizing elder abuse and violations as human rights issues, these laws tend to view ageing solely as a matter of social welfare¹¹⁶. The situation looks like the aged parents are left at the mercy of their children and the children are at liberty to help or not to help. This paper recommends renewed vigor on the part of law enforcement agents to prosecute these offenders so as to deter such acts.

Specified interest rate for pension

Nigeria has enacted the PRA to ensure that retirees receive their money as and when due. However, many of them receive pensions that have been devalued by inflation. Unfortunately, PenCom lacks the capability to address the national inflation that renders received pension almost worthless and thus unable to meet the financial needs of pensioners as planned (Fiiwe, 2020). It

¹¹¹ African Older Persons Protocol (n 14) Art 19.

¹¹² Ibid Art 20.

¹¹³ NSCCA (n 21) s 20.

¹¹⁴ Child's Rights Act 2003.

¹¹⁵ Criminal Code Act LFN (1990) s 300.

¹¹⁶ CK Wamara, 'Social Work Response to Elder Abuse in Uganda: Voices from Practitioners' (2021) 65 *Journal of Gerontological Social Work* 361 <<http://dx.doi.org/10.1080/01634372.2021.1968093>>.

is here recommended that Nigerian government should devise a way of reversing this trend. This could be by engaging economists to propose an interest rate that will ensure that what is saved during active days is what is available to retirees at retirement. This is more so as the relevant agency invests the pension funds and makes returns. Such returns should be ratably distributed to the pensioner to help cushion the effect of inflation.

Access to social protection

Beyond the pension which is not available to most Nigerian elderly, there is need to avail them with access to social protection like free and accessible geriatric care, free or reduced transportation costs on buses and trains. In the absence of social security and welfare system to aid the elderly, they will remain the poorest of the poor (Gureje, 2008).

CONCLUSION

The paper offers a crucial and timely examination of elderly rights protection through the lens of human rights law. It contributes to the growing body of literature advocating for the protection of aging populations, especially within the framework of existing human rights instruments. The paper underscores the systemic gaps in protection and the need for legal reforms, particularly in developing countries. It raises awareness of protection of the elderly from a human rights perspective rather than merely a social or medical issue. It critiques existing legal frameworks, offering insight into their (in)adequacy in addressing elder-specific concerns. It contextualizes rights of the elderly in Africa, which adds to the scant regional literature and elevates the discourse within global south perspectives. The paper's originality lies in its framing of the protection of the elderly as an urgent human rights concern and its effort to integrate elder law with mainstream international legal instruments. While elder abuse is a well-discussed issue in social sciences and healthcare, its human rights dimension remains underexplored, this paper fills that gap. It makes a case for the rights of older persons from an African-oriented perspective. It provides a comparative analysis among domestic, regional and international efforts to improve the protection of elderly rights. It highlights normative gaps in existing instruments like the African Charter on Human and Peoples' Rights, and makes a compelling case for a UN Convention on the Rights of Older Persons. Ageing is a symbol of experience and wisdom, offering Nigeria a cheap 'know how' on life¹¹⁷.

This is significant because the global perception of ageing has changed from the traditional belief that all

older persons are helpless. While it is true that many older persons need assistance, some of these senior citizens are not only healthy but have skills that can secure them economically; and some have resources that could make a difference in national development if properly harnessed. The elderly are happiest when they stay active and maintain social interaction (Fiiwe, 2020). This makes the elderly a double edged sword that is beneficial both ways. It behoove on the government to find a way of keeping them productively active. This leaves them in better health, reducing the cost of medical care.

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¹¹⁷ UN International Plan of Action on Aging (n 95) para 25 (k).

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