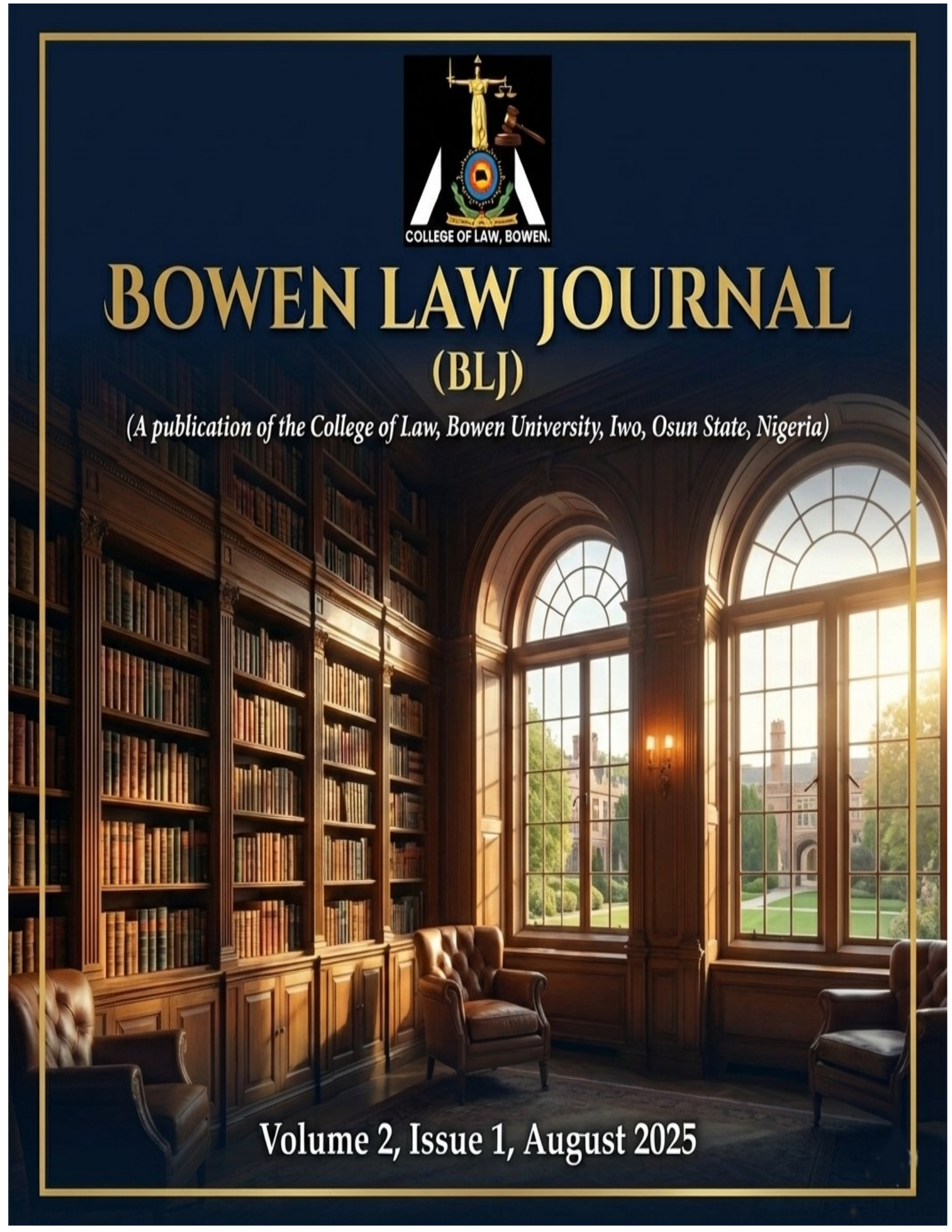
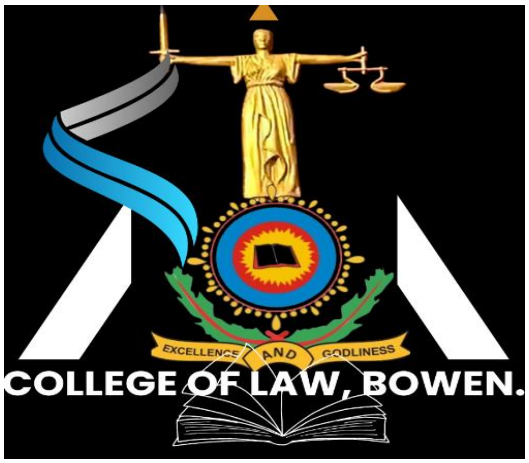

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Editorial

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College of Law, Bowen University, Iwo, Osun State, Nigeria.

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This edition of *Bowen Law Journal* is not only a resuscitation of the publication but its first online edition. It is appearing at a time that the world has become a global village, interconnected and observable by technological means. The journal, the content of which is peer reviewed, is therefore purposed for global impact through the projection of the dignified visibility of its contributors.

The journal accepts contributions on all areas of the law as is apparent from the present contents that span the areas of criminal law and criminology, human rights, employment law, law and medicine, security, peace, and tourism as well as business law generally, including taxation.

The thematic coverage of this journal accommodates impactful and scholarly contributions towards the advancement of the knowledge of law and its application in society. Significantly, the journal is interested in contributions that ensure that law addresses the intricacies of human relations and dealings as well as order in the world we live in.

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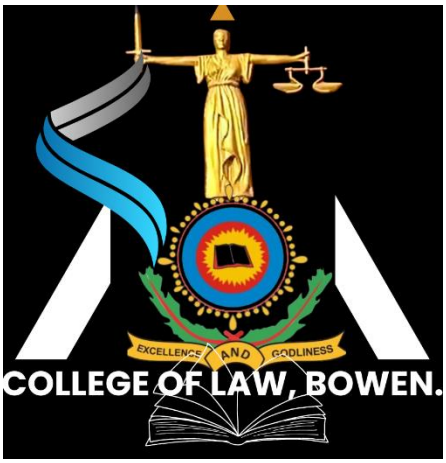
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Towards Excellence: A Journal of the College of Law, Bowen University, VOL 2, ISSUE 1; Cynthia Chukwufumnanya Izu, Esq.[1], Olayide Oladipo Dara, Esq.[2] Samson Akinlola Oyediran, Esq[3] Page 104-118.

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Promoting Elderly Rights and Combating Discrimination: An Examination of the Legal Framework for Sustainable Reforms in Nigeria

Cynthia Chukwufumnanya Izu[1],
Olayide Oladipo Dara[2],
Samson Akinlola Oyediran[3],

Abstract:

The growing population of elderly individuals in Nigeria presents a critical challenge for human rights advocacy and legal protection. With approximately 4.5% of the population over 60 as of 2015, and projections indicating this figure will rise to 6.3% by 2050, the protection of elders' rights has become a pressing issue. However, despite the uniqueness of elders, Nigeria still lacks adequate and comprehensive legislation for the protection and promotion of human rights. There is a large population of elders whose rights are not protected due to inadequate legislative structure. This study explores the human rights entitlements of elderly Nigerians, such as the right to life, health, dignity, social security, and protection from abuse. It critically analyzes the existing legal provisions, including the Nigerian Constitution and relevant international human rights instruments, to assess their efficacy in addressing the needs of elderly citizens. The study identifies challenges in enforcement, the lack of comprehensive laws, and socio-economic factors contributing to neglect and abuse of elders and their rights. Finally, the study proposes recommendations for strengthening legal protections and creating a more inclusive and supportive environment for the elderly in Nigeria. This includes adopting international human rights standards and the development of robust policies to ensure the dignity and well-being of older Nigerians. It is on this note that this study suggests that an appropriate and supportive legislative framework based on internationally accepted human rights standards is required to ensure the highest quality of respect, protection, and fulfillment of the rights of elders in Nigeria.

KEYWORDS: Elders, Rights, Legislations, Protection, Nigeria

1.0 INTRODUCTION

All over the world, the population of elders are increasing every day[465]. Statistics confirm that over 962 million people living on earth today have reached the age of 60years.[466] A plethora of research have described elders as vulnerable persons within any system.[467]They are vulnerable in various ways especially physical abuse and maltreatment with utmost disregard.[468] While the guarantee, fulfillment, and respect of all human rights are fundamental for elders, certain rights, entitlements, and freedoms are inalienable to them. These rights include; the right to life, and an adequate standard of living including access to adequate, nutritious, and quality food, clothing, and housing. Others are; the highest possible standard of physical and mental health, work and fair working conditions for those still working, right to human security, human dignity, right to be safe and free from violence, cruel, inhuman, or degrading treatment including neglect, and all forms of physical and psychological abuse. In addition to the above, other array of rights such as privacy and family life; right to own and inherit property; freedom from discrimination based on sex, age, or any other status, movement; access to adequate social security assistance and protection; and the right to liberty, redress, and fair hearing and so on are largely significant. The opportunity and freedom to make effective decisions concerning their well-being and to fully participate based on equality in all spheres of society are also central to their fundamental human rights and needs.[469]

Recently, reports revealed that Nigeria ranks high among countries with the highest proportion of elders in Africa.[470] By 2030, 1 in 6 people in the world will be aged 60 years or over. At this time the share of the population aged 60 years and over will increase from 1 billion in 2020 to 1.4 billion. By 2050, the world's population of people aged 60 years and older will double (2.1 billion). The number of persons aged 80 years or older is expected to triple between 2020 and 2050 to reach 426 million. [471] Also, the United Nations in the 1980s, projected that by the year 2025, Nigeria's position would rise from 27th to 11th.[472] Yet, the government has failed to map out any strategy for the protection and promotion of elders in Nigeria. Therefore, elders in Nigeria require extraordinary attention towards ensuring that their rights, welfare, and well-being are protected and guaranteed as the population of aging adults is on the increase, hence, there is a need for laws and regulations addressing and ensuring that the rights of elders are adequately respected and protected. Despite the necessity for the protection, care and welfare of elders, the human rights of elderly persons in Nigeria are yet to receive adequate human

[465]Aging adults over the age of 60 are referred to as elders in this study.
[466]United Nations, 'World aging population' (2017) 1, <https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/May/un_2017_worldpopulationageing_report.pdf> accessed on April 19th, 2024.
[467]E Langmann, "Vulnerability, Ageism, and Health: is it Helpful to Label Older Adults as a Vulnerable Group in Health Care?" (2023), 26(1) PMID 134
[468] J H Mike, "Nurturing a positively sensitive society: A Human Rights Framework for the Protection of Older Persons in Nigeria" (2020), 4(6) IJRISS 289.
[469]M. Fredvang and S Biggs, "The Rights of Older Persons: Protection and Gaps under Human Rights Law"(2016), Social Policy Working Paper no. 16 at 5-21
[470]J H Mike, "Nurturing a Positively Sensitive Society: A Human Rights Framework for the Protection of Older Persons in Nigeria" (2020), 4(6) *IJRISS* 287
[471] World Health Organization, 'Ageing and Health' (2024)< https://www.who.int/news-room/fact-sheets/detail/ageing-and-health> accessed 10th March 2025
[472] J. I. Ani, "Care and Support for Elderly in Nigeria" (2020), 12(1) *NJSA* 10

rights attention and legislative intervention. Many elders suffer human rights violations ranging from discrimination, social and political exclusion, poverty, neglect, isolation and abuse. This is worse for the poorer ones who are forced to live in deplorable accommodations and environments, especially in rural areas or urban ghettos and slums. The government is yet to develop suitable policies, laws and socio-economic and welfare programs that will effectively cater for the human rights and interests of the elders.

The Constitution[473] of Nigeria provides for the rights of persons including that of elders. Although it stipulates actions to be taken to guarantee their right, the provisions are limited and rarely implemented. The Constitution promotes the fundamental objectives and principles of state policy for every citizen. In section 14 (2) (b)[474], it provides that; "the security and welfare of the people shall be the primary purpose of the government."[475] Also, section 16 (2) (d) insists "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."[476] It is rather sad that the above provision of the law is not enforceable by section 6(6)(c)of the Constitution. The Nigerian courts have adopted the same attitude to the non-justiciability of the socio-economic provisions in Chapter II and have upheld the unenforceability of its provisions. For example, in the case of *Olubunmi Okogie (Trustee of Roman Catholic Schools) & ors v. Attorney General of Lagos State*[477], the Court reaffirmed the provisions of Section 6(6)(c). Unfortunately, despite the high significance of the socio-economic and cultural provisions in Chapter II, their practical enforceability has been undermined by the Constitution that guaranteed to promote and protect the welfare and wellbeing of all persons in Nigeria. Impliedly, the few laws existing in Nigeria are largely inadequate and unenforceable.

Therefore, this study will examine the rights of elders, appraise the existing legal framework in Nigeria for the protection and promotion of elder's rights, assess the challenges inhibiting legislative intervention in Nigeria and proffer recommendations for better policy formulation and laws for protection and promotion of elder's rights and welfare in Nigeria.

To achieve this study, international conventions like the Universal Declaration of Human Rights (UDHR),[478] African Charter on Human and People's Rights,[479] Convention on the Rights of Persons with Disabilities (CRPD),[480] International Covenant on Economic, Social, and Cultural Rights (ICESCR)[481] among others will be examined.

1.1 Methodology

This study is centered on elder's rights and welfare in Nigeria. The study adopted a doctrinal research approach. Resources from both primary and secondary sources specifically within the

[473]Constitution of the Federal Republic of Nigeria, 1999 (as amended), C29, LFN 2004
[474] Ibid.
[475] Ibid.
[476] ibid
[477](1981) 1 NCLR 218
[478]Universal Declaration of Human Rights (UDHR), 1948
[479]African Charter on Human and People's Rights (Banjul Charter), 1981
[480]United Nations Convention on the Rights of Persons with Disabilities, 2007
[481]International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1976

subject matter of this study were utilized. Some of the primary sources consist of the Constitution of the Federal Republic of Nigeria 1999, Criminal Code Act,[482] And Older Persons (Rights and Privileges) Bill, 2019. In addition, International Conventions such as the Universal Declaration of Human Rights (UDHR), the African Charter on Human and People's Rights, the Convention on the Rights of Persons with Disabilities (CRPD), International Covenant on Economic, Social, and Cultural Rights (ICESCR) were examined. The study also relied on secondary resource materials such as books, cases, newspapers, internet materials, articles and journals from diverse scholars in the field of Human Right Law.

2.0 Conceptual Clarification

2.1 Who is an Elder?

The Oxford Advanced Learner's Dictionary defines 'Aging' as the process of growing old.[483]An elder is defined by the Cambridge dictionary as "an older person, especially one with a respected position in the society."[484] In today's parlance, the term "elders" can be interchanged as senior citizen, the aged, the elderly and older persons. However, this study adopts the term "elders". "Ageing" has evolved into a worldwide conversation and a policy concern attracting the focus of governments on international, regional, and local levels. In Africa, countries are experiencing demographic and epidemiological changes which pose a unique policy changes and information needs.[485]

In Article 1 of the Universal Declaration on Human Rights,[486] it states that "all human beings are born free and equal in dignity and rights."[487] Therefore, this equality does not change with age: older men and women have the same rights as people younger than themselves.[488] Although there is no universally accepted standard definition of who an aged person/elder is, the United Nations stipulates the age of sixty.[489] In Nigeria, the aged can be categorized as people who fall within the age bracket of sixty or sixty-five and above.[490]In many developing nations, the retirement age typically falls between sixty and sixty-five, marking the onset of old age. This assumption stems from the belief that individuals aged sixty or older are less productive and have limited economic contributions, prompting the necessity for retirement at

[482]Nigerian Criminal Code Act, Cap C38, Laws of Federation of Nigeria (LFN) 2004.
[483]A S. Hornby 'Oxford Advanced Learner's Dictionary' (6th ed. Oxford University Press)
[484]Cambridge Dictionary, "Elder" (2024), <https://dictionary.cambridge.org/dictionary/english/elder#:~:text=an%20older%20person%2C%20especially%20one%20with%20a%20respected%20position%20in%20society> accessed on April 19th, 2024.
[485] Helen O Osinowo et al, *The Adults and Aged: The Nigerian Situation* (Royal People Nigeria Ltd. 2012) 1.
[486] The Universal Declaration of Human Rights, established in 1948, is now recognized as customary law that is binding on every country in the world. The UN has compiled translations of the Universal Declaration on Human Rights in over 300 languages and dialects.
[487] ibid.
[488]Help page International, "Strengthening Other Peoples' Right Towards a UN Convention", at 4, online:<https://social.un.org/ageing-working-group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf> accessed on 10 April 2024.
[489] Ibid at 3
[490] Marcus AyodejiAraromi, "Protecting the Rights of Old People in Nigeria: Towards a Legal Reform"(2015), 40 JLPG 131, online: <https://core.ac.uk/download/pdf/234650285.pdf> assessed on April 20th, 2024.

this stage.[491] Certainly, Nigeria stands out as the most populous nation of African descent, and there's a clear indication of a significant rise in the elderly population in the foreseeable future.[492] This consistent increase in the number of elders signals a notable transformation in the age makeup of society, potentially leading to adverse effects on the economy. Sadly, the expectations of older generations who raised their children with the hope of receiving support in their old age have been dashed, as many of these children struggle to secure suitable employment after completing their education. Consequently, a significant portion of these young adults still rely on financial assistance and care from their elderly parents.[493]Furthermore, even those who have the financial means to support their parents often find themselves unable to provide the necessary care and attention due to the demands of their jobs and family obligations.

In a context where the field of human rights advocacy has become increasingly specialized, marginalized groups such as children, migrant workers, persons with disabilities, and women have received specific recognition for their unique needs by the United Nations.[494]It is now imperative for this focus to extend to aging adults, acknowledged as a distinct demographic deserving of specialized care and attention under human rights law.[495]According to Fredvang and Biggs[496],

> *The perception of old age as a social problem rests upon the assumption that older persons are in some way separate from those who are not yet old—that the aged and the non-aged are two different categories of human beings. Thus, elders are seen as being segregated from society, producing a gap that must be bridged, while at the same time recognizing the particular needs and contributions of this group.* [497].

2.2 Rights of Elders in Nigeria:

2.2.1 Right to be protected from discrimination:

One of the significant rights that elders should be given consideration is the right to be free from discrimination. As stated earlier in this study, it is largely agreed upon that "all human beings are born free and equal in dignity and rights,"[498] This clause highlights that every person has rights, regardless of age. The Constitution of the Federal Republic of Nigeria expressly prohibits all forms of discrimination in section 42[499]. Therefore, age should not be a reason for discrimination against anyone. The right to be free from discrimination encompasses some of the rights of the elderly. The rights to employment, property ownership, education, and political participation are a few examples. Due to their age, older adults are frequently denied from

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[491] Ibid.
[492] Marcus Ayodeji Araromi, "Protecting the Rights of Old People in Nigeria: Towards a Legal Reform" (2015), 40 JLPG 131, online: <https://core.ac.uk/download/pdf/234650285.pdf> assessed on April 20th, 2024.
[493] Ibid
[494] Ibid
[495] M Fredvang and S Biggs "The Rights of Older Persons: Protections and Gaps under the Human Right Laws" (2012), at 5.
[496]Ibid at 6
[497] Ibid
[498] Universal Declaration of Human Rights 1948, Art. 1, online:<https://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf> accessed on April 20th, 2024.
[499] The Constitution of the Federal Republic of Nigeria, Chapter IV, s. 42

denied access to services, and jobs, and treated without respect because of their age, gender, or disability.[500]

2.2.2 Right to be protected from abuse:

The problem of abuse has crept into the ranks and files of all human cultures, affecting a wide range of individuals ranging from young girls, ladies, adults, and teenagers. However, over time, marital violence and child abuse have received more attention than adult abuse, even though the idea of elder abuse is now gaining acknowledgment in both the medical and popular spheres.[501] Abuse of older adults can take many forms, including financial, verbal, sexual, and psychological. All elders have the right to be protected from all forms of abuse. Even those with higher levels of education are not immune to abuse; the poor and disadvantaged elderly in Nigeria are particularly susceptible to it.

2.2.3 Right to Social Security:

This is firmly established in international human rights law and several treaties specifically refer to old age protection through social security.[502] Several instruments at the regional level also emphasize the right to social security of older people. These instruments include the African Charter on Human and Peoples' Rights;[503] the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights[504]; and several International Labour Organization (ILO) conventions and declarations. These conventions include Convention C102 concerning Minimum Standards of Social Security (1952) and Convention C128 concerning Invalidity, Old-Age and Survivors' Benefits. Convention 102 establishes globally agreed minimum standards for all nine branches of social security: medical care, sickness benefits, unemployment benefits, old-age benefits, employment and injury benefits, family benefits, maternity benefits, invalidity benefits, and survivor benefits. Article 25(b) of the *Convention on the Rights of Persons with Disabilities (CRPD)*[505] makes reference to 'Ageing adults' on the right to health services, and in Article 28(2)(b) on the right to access social protection and poverty reduction programs.

2.2.4 Right to Health Care:

One of the most significant components of elders' human rights is their access to health care. World Health Organization (WHO) defined health care as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity".[506] The concentration

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[500]Help Age International, "Strengthening Older People's Rights: Towards a UN Convention" (2010) at 4.

[501] D. O. Adeniji, and D. A. Oladejo, "Developing a Positive Attitude towards De-phasing Elder Abuse and its Health Implications" in O. Osinowo et al., (eds.), The Adults and Aged in Nigeria: Issues and Researches (Royal People Nigeria Ltd. 2012) at 168.

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

[503]*African Charter on Human and Peoples Rights on the Rights of Older Persons in Africa 1982.*

[504] *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988*

[505] *Convention on the Rights of Persons With Disabilities, 2008*

[506]*WHO Constitutive Act, 1946.*

of clinics and hospitals in urban areas far from the majority of older people's homes, the inability to pay for medical services, the expense of transportation, a lack of knowledge about available services and entitlements, poor health service management, a shortage of medical professionals with the necessary training to care for the elderly, and the unfavourable attitude of medical professionals are some of the possible causes of the abuse or infringement of the right to health care of elderly persons.[507] The Federal Republic of Nigeria's 1999 Constitution stipulates that the state will focus its policy on guaranteeing that the welfare, health, and safety of all individuals employed are protected and not mistreated; all individuals have access to medical care and health facilities.[508] Furthermore, "every individual shall have the right to enjoy the best attainable state of physical and mental health."[509] According to Article 16 of the *African Charter on Human and People's Rights*, to which Nigeria is a party. It further stipulates that State Parties to the Charter must take the required actions to safeguard the health of their citizens and guarantee that they receive medical care when they are sick.

2.2.5 Right to Social Protection:

Various states in Nigeria have been saddled with the responsibility of developing policies that would ensure that elders who retire from employment are provided with adequate pensions and other forms of social security.[510] Also, these states are to ensure that the processes and procedures of accessing pensions which are majorly the first aging adults resort to meeting societal demands are decentralized, simple and dignified.[511]

2.3 Theoretical Framework

Here, theories that support the care and administration of elders' needs will be discussed. This will help to lead credence to the study and expose the necessity of strengthening any subject matter in any Jurisdiction. The theories discussed are:

2.3.1 Human Rights Approach:

Relatively, issues pertaining to elders should be treated as a human right as enshrined in Article 25(1) of the *Universal Declaration of Human Rights*[512]thus:

> *Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*.[513]

The Human Rights Council Advisory Committee published a report in January 2010 outlining the global impact of demographic aging and the growing instances of human rights violations

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[507] ibid at 4
[508] *Constitution of the Federal Republic of Nigeria*, 1999, C 20, s 17(3)(c) and (d).
[509] *African Charter on Human and People's Rights*, Art 16
[510] *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa*, 2016, Art. 7(1)
[511] Ibid, Art. 7(3)
[512] Universal Declaration of Human Rights 1948, art 25(1)
[513] Ibid.

against the elderly, encompassing issues such as physical and moral integrity, vulnerability to poverty, and employment.[514] In its report, the Committee advocated for the creation of a specialized human rights treaty to amplify the visibility of older individuals within legal frameworks. The rationale behind this proposal was to explicitly address the rights of the elderly within general human rights laws, thereby combating discriminatory practices and attitudes targeted towards them, which currently render them unseen as a collective under the law.[515]

The phrase "human rights of aging elders" refers to a variety of international and state agreements, including the rights to sufficient social security, help, and protection; the freedom from discrimination based on age or any other status in all spheres of life, including work, housing, and health care; as well as social services; the right to healthcare or excellent health; and the right to be shielded from abuse, both physical and psychological. Additional rights include the right to full and effective participation in decisions pertaining to their well-being, the right to be treated with dignity, and the right to fully and actively participate in all facets of society's political, economic, social, and cultural life.[516]

2.3.2 Maslow's Theory:

This theory concentrates on the fundamental needs of humans and their emergence. The theory is also known as "Maslow's hierarchy of basic needs theory." This is a result of his description that the basic needs of humans are hierarchical in nature. It has been agreed upon that when the basic needs of humans become met, they begin to strive for other needs in order to get satisfaction for their higher-level needs.[517] The essence of this theory is to measure/understand the value of life and the well-being of the elders.[518] Maslow's theory, classified human needs as safety, love, physiological, esteem and self-actualization. The theory justifies that elders' physiological needs comprise air, water, food and sleep, which are considered the most significant of any other needs and can be satisfied even if the income is very low.[519] Maslow's theory also concludes that once psychological needs are met, safety needs precede them. Safety needs include medical care, financial security required for their day-to-day activities and shelter to serve as care homes.

According to Maslow, psychological and this need is more psychological in nature, which implies that unless a person feels secure and safe the next set of needs won't emerge. After the examined needs, the next sets of needs are called higher-level needs. Immediately the lower-level needs are satisfied, and the quest or **desire** for love and belongingness becomes necessary for aging adults. Aging adults start seeking warmth, acceptance, love from their family

[514]Human Rights Council, Advisory Committee, The Necessity of Human Rights Approach and Effective United Nations Mechanism for Human Rights of Older People, 2010 (Chung Report).
[515] ibid
[516]S N Mandal, (2011) "Protecting the Rights of Old Age Person in India: A Challenging Facet of Human Right" *Global Journal of Human Social Science* (2011) 11 (5) at 25.
[517]Pradipty Bhardwaj, A Critical Analysis of Senior Citizens' Rights in India, Amity International Journal of Juridical Sciences (2020) ISSN.2395-4019, at 68
[518] H U, Rizwan, "Life Satisfaction and Basic Needs among Elderly People in Pakistan: Evidence from the PSES Data"; PDR, (2012) 51(4) at 519-540
[519]Pradipty Bhardwaj, A Critical Analysis of Senior Citizens' Rights in India, Amity International Journal of Juridical Sciences (2020) ISSN.2395-4019, at 68

members, relatives and friends.[520] Confidence and status of senior citizens form the next set of needs called the Esteem needs. It implies the extent to which the elder members of the family are involved in the decision-making process of the household. If their role in the decision-making is primary or is jointly involved with their children, then it satisfies their esteem needs. Self-actualization is the last need in Maslow's hierarchy of basic needs that implies the state when a person feels that he/she has been able to satisfy or achieve all the needs, which shows one's life satisfaction.

Issues therefore may arise due to the inability of most aging adults to satisfy or reach their needs due to the lack of food, shelter, safety, love and confidence.[521]

3.0 Legal Framework for Elders Protection

3.1 National Legal Framework

The rights, welfare and needs of the aged in Nigeria are yet to be given significant legal backing despite their vulnerable nature. However, some of our laws were able to segmentally introduce the essence of the rights, needs and welfare of the aged thus;

a) **The Constitution:**

The Constitution[522] recognizes the rights of the aged. This very right was encapsulated in Chapter II of the Constitution. It provides thus:

> *Providing all citizens with adequate housing, food, a reasonable national minimum wage, elderly care, pensions, as well as support for the unemployed, sick and disabled*.[523]

Significantly, the state shall direct its policy towards ensuring old age care and pensions, and unemployment, sick benefits and welfare of the disabled.[524] Although it is a blanket provision, it seeks to protect old people from economic hardship and care-related impediments due to their vulnerable nature. Also, Section 17(3)[525] provides that the state has the directives to provide policies that would ensure securing adequate means of livelihood, just and humane conditions of work, protect the health, safety and welfare of all persons in employment; and ensure equal pay for equal work without discrimination on any ground whatsoever, including age. Interestingly, Section 17(3)(d) and (f)[526] aims to ensure that there are adequate faculties and health facilities for all persons to live decent and dignified lives. The section further reiterates the commitment of the State to the people, particularly the disadvantaged and vulnerable persons. Also, the State is to direct its policies towards granting public assistance and social security in deserving cases or other conditions of need.[527]

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[520]Pradipty Bhardwaj, A Critical Analysis of Senior Citizens' Rights in India, Amity International Journal of Juridical Sciences (2020) ISSN.2395-4019, at 67

[521] ibid

[522] The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[523] Ibid, s.16(2)

[524] Ibid, s.16

[525]The Constitution of the Federal Republic of Nigeria, 1999, c 20, s 17(3).

[526] The Constitution of the Federal Republic of Nigeria, 1999, c 20, s 17(3)(d)and (f)

[527] Ibid at s. 17(9) d

Despite the provisions in Chapter II, the provisions are non-justiciable, hence unenforceable by or on behalf of the aged. Section 6(6) (c) of the Constitution[528] provides thus;

> *Shall not except as otherwise provided by the Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision conforms with the fundamental objectives and Directive Principles of State Policy set out in Chapter II of this Constitution*.[529]

The provision of the above section ousts the jurisdiction of the court as it relates to Chapter II of the Constitution. By implication, the courts lack jurisdiction to entertain matters concerning socio-economic and cultural aspirations and the Fundamental Objectives and Directive of Principles of State Policy of the Constitution. The question that agitates the mind of every Nigerian citizen is why would rights be included on one hand and their enforcement be invalidated on the other hand.[530] The import of this provision as a non-justiciable entitlement bereft the applicability of the provisions of judicial recourse to compel government compliance.[531] Thus as it stands, the provisions are mere political objectives and goals, devoid of a concrete redress mechanism against the duty bearers to guarantee the enjoyment of these important provisions by the senior citizens of Nigeria. The Nigerian courts have generally adopted the same attitude to the non-justiciability of the socio-economic provisions in Chapter II and have upheld the unenforceability of its provisions.

In the case of *Okogie (Trustee of Roman Catholic Schools) & ors v. Attorney General of Lagos State*[532], the Court reaffirmed the challenge that Section 6(6)(c) poses to the judicial application of the Chapter II. The Court held that it is rather unfortunate that despite the importance of the socio-economic and cultural provisions in Chapter II, their practical enforceability has been undermined by the same Constitution that pledged to promote the welfare and well-being of all persons in Nigeria. Also, it must be noted that the provisions in the Constitution are largely inadequate to capture all the dimensions of socioeconomic rights of the aged. The provision in Section 16(3)(d)[533] simply obliges the state to direct its policies and resources toward the welfare objectives. This language of the law simply does not guarantee all the dimensions of the rights of the elderly. The text of the law does not provide for the availability and accessibility of the necessary services and facilities, mechanisms, and means of guaranteeing their rights in a gender-sensitive and non-discriminatory manner. Nevertheless, it is encouraging to note that the Constitution guarantees the civil and political rights of elders. From the foregoing, it is pivotal that section 6 of the Constitution be expunged or amended in order to facilitate the enforcement of socio-economic rights that are barred under the law.

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[528] The Constitution of the Federal Republic of Nigeria, 1999, c 20, s 6(6) (c)
[529] Ibid
[530]J Akande, *Introduction to the Constitution of Nigeria (1999)* (Imprint: Ebute-metta, Lagos: MIJ Professional Publishers 2000) at 271
[531]O. Nnamuchi, "Kleptocracy and its Many Faces: The Challenges of Justiciability of the Right to Health Care in Nigeria" (2008), 52(1) *JAL* 1-42 at 2
[532] (1981) 1 NCLR 218
[533] The *Constitution of the Federal Republic of Nigeria*, C 20, s 16(3)(d)

b.) Criminal Code:

Section 341 of the *Criminal Code*[534] further penalizes the abandonment of children under the age of seven. However, the laws are yet to expressly focus on elders who also fall within the category of vulnerable persons. Older women may be the victims of section 55(1)(d) of the Penal Code[535] that permits a man to physically chastise his wife as no exception is provided for the wives that are advanced in age. Nevertheless, the criminal statutes make provisions that can be interpreted in the interests of elders and prosecute any abuse and neglect. For example, section 300 of the *Criminal Code*[536]provides that it is an offense for any person having the charge of another who is unable to provide for himself the necessities of life, because of age, sickness, unsoundness of mind, detention, or any other cause, to withdraw himself from such charge. The law further adds that it is immaterial whether the charge is undertaken under a contract, imposed by law, or arises because of any act, whether lawful or unlawful, of the person who has such charge to provide for that other person the necessities of life. The law also imposes a punitive measure for a breach of the duty to provide the necessities of life by caregivers.[537]

Similarly, section 305 (a) (2) of the Code[538] provides that anyone who maliciously and intentionally breaches a contract of service knowing fully well (or having reasonable cause to believe) that the action will endanger the health or human life is guilty of an offense. What this portends is that contracted caregivers may be liable where they unlawfully and maliciously break their contracts in a manner that exposes the life and health of older persons to danger. This protection is reinforced by section 305 which provides that when a person undertakes to do any act, the omission of which is or may be dangerous to human life or health, it is the person's duty to ensure that the duty as contracted is dutifully carried out. Such a person who fails in his/her performance of duty is held to have caused any adverse consequences which result to the life or the health of anyone by reason of any omission to perform that duty. Noticeably, however, the law does not expressly impose this duty on relatives of elderly people to undertake and effectively carry out this duty, it only makes it an offense for those who have assumed this duty. Notwithstanding, these provisions of the law can be relied upon for the prosecution of those who maltreat, neglect, and abuse the elderly.

Apart from the Federal Republic of Nigeria's Constitution, there's a noticeable absence of specific legislation directly protecting the rights of the elderly in the nation.[539]. While efforts are made by the government to address this issue, during President Muhammadu Buhari's tenure[540], the Senior Citizens Centre Bill was introduced in the House of Representatives[541]. This bill aims to establish senior citizens' centers in the Federal Capital Territory (Abuja) and other interested states throughout Nigeria[542]. These centers are designed to cater to the needs of

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[534] *Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN)*, 2004
[535] *Nigerian Penal Code Act, Cap. C53, Laws of the Federation of Nigeria (LFN)*, 2004
[536] *Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN)*, 2004
[537]*Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN)*, 2004, s.*339*
[538] *Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN)*, 2004
[539]Kunle Azebajo, "Older Person's Days: Eights months after Law's passage, Nigerian Senior Citizens still out of sight" (2018), online: premium times <https://www.premiumtimesng.com/features-andinterviews/287659-older-persons-day-8-months-after-lawnigerias-senior-citizens-centre-not-effected.html> accessed on April 20th, 2024.
[540] 8 years from 2015-2023
[541] Ibid
[542] Ibid

senior citizens by organizing various activities such as recreation, sports, healthcare, education, counseling, and social programs. Projections suggest that the establishment of these centers could potentially create around 720,000 job opportunities nationwide, benefitting both the elderly and unemployed youths. Despite being signed into law, there's been a noticeable lack of communication or action from the federal government regarding the implementation of this legislation.[543] Other unsuccessful attempts have been undertaken to ensure that the rights of elders are protected by the appropriate legislation. One such is the Bill for an Act to provide social security for unemployed graduates and elders in Nigeria and for purposes connected thereto that was sponsored by Senator Anyim Ude.[544] Also, the Welfare of Senior Citizens Bill,[545] Which sought to protect and establish special privileges for senior citizens of Nigeria was presented to the National House of Assembly in 2011. It made provision for penalties for breach thereunder and matters connected therewith. The Bill was never passed into law after its first reading at the National Assembly of the Federation. The Bill was read for the first time in the Senate of the National Assembly but could not go beyond that level.

c.) **National Policy for Older Persons:**

This was signed into law and officially endorsed by the Federal Executive Council in February 2021. Its primary aims include ensuring security, independence, active involvement, comprehensive care, and the preservation of dignity for elders. Additionally, it establishes channels to reinforce traditional support structures for the elderly, sets up a regulatory framework for aging-related matters, ensures sufficient and lasting income, and security, and promotes healthy aging.[546] Moreover, it emphasizes the protection and promotion of the basic human rights of older individuals. Furthermore, it mandates the establishment of an efficient data management system to facilitate effective research, planning, monitoring, and evaluation of aging-related initiatives. However, although the above policy is a step in the right direction, policies are not law and consequently do not have a binding effect but are merely persuasive.

4.0 Challenges of the Enforcement of the Right of Elders in Nigeria:

4.1 Lack of political will and commitment:

Although constitutional rights are guaranteed by Nigerian law, there has been minimal effort to improve the living conditions of elders in Nigeria. The issues surrounding elders are seldom considered significant in the development policy agenda.[547] Sadly, the many policies and/or legislations in Nigeria do not address the issues and challenges of elders, despite the country's growing percentage of elderly citizens.[548] The Nigerian government has been doing little to nothing to provide for the welfare of elders because of the syndrome that views this as the

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[543] Ibid

[544]Patience Edirin Mudiare, "Abuse of the aged in Nigeria: Elders also cry" (2013) 3(9) AIJCR 79- 87 @ 81

[545] A Bill for an Act to establish special privileges for senior citizens in Nigeria, provide penalties for breach there under, and other matters connected therewith.

[546] William Ukpe, "FG approves National Policy on Ageing for Older Persons" (2021**),** online: Nairametrics<https://nairametrics.com/2021/02/12/fg-approves-national-policy-on-ageing-for-older-persons/> accessed on April 20th, 2024.

[547]Patience Edirin Mudiare, "Abuse of the aged in Nigeria: Elders also cry" (2013) 3(9) *AIJCR* 79- 87 at 84

[548] Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, ''State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*

family's responsibility. For instance, when they are eligible for a pension, this is very frequently not paid, and when it is, it is frequently not paid on time.[549]

Due to the lack of access to retirement-oriented occupations that provide pensions upon retirement for elders, the majority of elderly Nigerians are faced with social neglect and desertion. In Nigeria, the bulk of the elderly population resides in rural areas and their major occupation is subsistence farming.[550] Many elderly people who reside in metropolitan areas are essentially self-employed and must work until they are unable to work anymore to support themselves.[551]

4.2 Social and economic factors:

A serious challenge posed by the actualization of the rights of elders is the government's inability to meet the regular payment of pensions to retirees who had diligently worked within the public service sector and, the inability to provide social services and health facilities to cater for the needs of the aged. [552] In Nigeria, poverty is still a significant issue; it is believed that over 60% of the country's population makes less than $1 per day.[553] The nation suffers from widespread poverty, with older people potentially more vulnerable due to their retirement from the workforce and the lack of financial support provided by the social security systems.[554]

Because of the lack of social services and economic hardship, the majority of Nigeria's senior citizens are at risk of poverty.[555] Elders in Nigeria not only have shorter life expectancies but also spend a larger percentage of their lives in bad health as a result of poverty and inadequate infrastructure development. Many elderly persons have been unable to achieve adequate well-being and life satisfaction due to poverty. According to estimates, 70% of Nigerian workers are employed in the unorganized sector, which offers no social security or protection of any kind.[556] After a lifetime of hardship, lack of access to healthcare, and poor nutrition, a large number of elderly persons reach retirement age.[557] They don't have enough personal funds in these circumstances to cover their everyday expenses.

4.3 Health issues of older people and inadequate access to health care:

Statistics show that a plethora of studies provide information regarding the increasing prevalence of chronic diseases and disability among certain elders in Nigerians.[558] Health issues

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[549] Ibid at 37
[550] Ibid at 37
[551] A D Shofoyeke and P A Amosun, ''A Survey of Care and Support for the Elderly People in Nigeria" (2014) 5(23) *MJSS* 2553
[552] Marcus Ayodeji Araromi, "Protecting the Rights of Old People in Nigeria: Towards a Legal Reform" (2015), 40 *JLPG* 131 -143, at 1 online: <https://core.ac.uk/download/pdf/234650285.pdf> assessed on April 20th, 2024
[553] Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, ''State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*
[554] *Ibid at 37*
[555] Ibid at 37
[556] Ibid at 37
[557] Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, "State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*
[558] C. E. Ekpenyong et al., "Double burden, non-communicable diseases and risk factors evaluation in sub-Saharan Africa: The Nigerian experience" (2012), 1(2) EJSD 249-270 at 250 cited in Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, "State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*

and a decline in functional ability are common aspects of elders that typically impact their sense of financial security. A study conducted in southeast Nigeria found that the most prevalent non-communicable diseases among elderly people were diabetes, mellitus, dyspepsia, musculoskeletal disorders, cardiovascular disorders, and visual impairment.[559] In Nigeria, the current distribution of resources has been heavily skewed towards maternal and child health as well as biased attention directed to the three big infectious diseases (malaria, tuberculosis, and HIV/AIDS), this has left geriatric non-communicable diseases with little attention.[560] All of this takes place against a backdrop of extremely restricted access to healthcare for the elderly in the nation due to a lack of personnel and facilities as well as out-of-pocket payment arrangements.

4.4 Social protection structure and systems:

Nigeria's elderly population is under-served in terms of social support, and as their numbers grow, so does the need for social assistance. The bulk of Nigeria's aged population resides in rural areas and are primarily subsistence farmers who do not get government social assistance or pension payments.[561] There are few elderly people in Nigeria who are insured under the contributory pension scheme. The informal economy like farming, trading, carpentry, and palm wine tapping is the main source of employment and may be the group most in need of the limited social security benefits that pension plans offer, but they are not included in the scheme. In contrast, this pension plan is primarily intended for people who work in the formal sector of the economy.[562] The social security arrangement in Nigeria faces many challenges, which include: poor coverage, inadequacy, lack of administrative efficiency and transparency, and poor governance and regulation.[563] The pension scheme is major flooded by the corruption of officers which in turn, adversely affects elders from having access to their money/finances when needed.[564]

4.5 Lack of enforcement mechanisms

The redundancy of Chapter 11 of the Constitution by S. 6(6)[565] accounts for the low effectiveness of some of the sectoral laws. Thus, the laws are more of a rubber stamp without any effect on the maintenance and protection of the rights of aging adults.

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[559] Gabriel Uche, "Burden of non-communicable diseases among geriatric Nigerians in a rural hospital in the resource-constrained setting of Eastern Nigeria"(2013), 1(1) SJPH 141- 146 cited in Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*

[560] Ibid at 37

[561] M. O. Adedokun, "Caring for the elderly: Towards a better community" (2010), 2(3) *EJES* 283-291 at 290

[562] O. Obashoro-John, "Global Aging Issues: The Nigerian Situation" (2011), *JAEE* 62 cited in Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ at 37*

[563] Yetunde Aluko, "Old Age and Social Security in Nigeria: The Challenges of the New World Order" (2007), 1(1) *IJMSS* 73-87 cited in Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ at 37*

[564] Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ at 38*

[565] *Constitution of the Federal Republic of Nigeria, 1999 (as amended*)

5.0 Conclusion

This study shows that Nigeria is yet to develop a robust law for the care, rights, and protection of elders, which in turn accounts for the diminishing status of the elderly in Nigerian society. This is detrimental to the well-being of the elderly population in Nigeria and poverty among the elderly is imminent. Therefore, there is a need for a well-structured legal framework for the care, welfare, and protection of aging elders in Nigeria.

5.1 Recommendations

These include the need for a single codified specific law on the protection and promotion of the rights and welfare of aging adults in Nigeria. There is a need for a monitoring and evaluation committee or commission whose aim would be majorly to collate data and assess the effectiveness of government schemes put in place for the protection and promotion of the rights of aging adults. Furthermore, effective care centers need to be established in the 36 states of Nigeria with special units on counseling, medical, legal and any other psycho-social support. The government must ensure that there is a budgetary allocation for aging adults not just for pension after retirement but for their welfare particularly to help those who are not within any formal sectors or family members.