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An Examination of the Right to Health of People Living with HIV/AIDS in Nigeria

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Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) is a serious public health challenge in Nigeria, and the world at large. Anyone and everyone can become its victim as it can be contacted sexually or otherwise such as through blood transfusion, blade, pin or needle. However, some groups of people are more vulnerable to contact the disease than others, and unfortunately, the former's human rights, particularly, their rights to health have been denied by their loved ones, communities and the government, thus, exposing them to various forms of discrimination and social exclusion. Thus, this article shall discuss the concepts of human rights, right to health, and HIV/AIDS. It will also discuss the complicated relationship between HIV/AIDS and human rights, specifically right to health; and also examine the legal framework on the right to health in Nigeria provided for by international and regional treaties of which Nigeria is signatory, and her local laws. Furthermore, it will consider the vulnerable groups of people living with HIV/AIDS (PLWHA) in Nigeria. Additionally, it will examine the extent to which rights to health are enjoyed by PLWHA in Nigeria. Finally, it will conclude by recommending solutions to the denial of treatment in Nigerian health care institutions.

Keywords: HIV/AIDS, Right to Health, People Living With HIV/AIDS (PLWHA), Nigeria.

1.0.Introduction

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination.[1] According to the United Nations, some human rights to include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more.[2] From the definitions above, the terms 'any other status' or 'many more' can be implied to extend beyond the rights expressly mentioned to some other rights like right to

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[1] The Office of the High Commissioner for Human Rights (OHCHR), 'What are Human Rights?' <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> accessed on 25 September 2017.

[2] United Nations (UN), 'Human Rights' <http://www.un.org/en/sections/issues-depth/human-rights/> accessed on 25 September 2017.

health. Furthermore, human rights are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.[3] Hence, human rights are the fundamental, inalienable, universal and indivisible rights of a person who guarantee and protect a person's position as a human being, free from any form of discrimination, and irrespective of his/her class, nationality, sex, or any other status.

Ladan[4] in his work is of the opinion that the 'earliest conceptualization of the right to health did not so much emanate from a human right organ, but from an international health authority – the World Health Organization (WHO)' and according to the latterin its Constitution, 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.'[5] Also, according to Article 25 of the Universal Declaration of Human Rights, 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services…'[6]Therefore, health can be considered to be a person's most vital attainment or possession in life as ill health can hinder us from engaging in our day-to-day activities and responsibilities like working, schooling, running some errands for the family, community or government. Thus, right to health refers to the right to the highest attainable standard of medical living enjoyed by a person and his/her family including the right to control one's health and body (e.g. sexual and reproductive rights), access to apt and affordable health care services(e.g. access to antiretroviral (ARV) treatment[7]), nutritious foods, safe working conditions, adequate housing, and the right to be free from interference (e.g. free from torture and from non-consensual medical treatment and experimentation).

On the other hand, HIV, according to National Agency for the Control of AIDS (NACA),is a virus that gradually attacks the immune system, which is our body's natural defence against illness.[8] The virus destroys a type of white blood cell called a T-helper cell and makes copies of itself inside them.[9]Likewise, HIV is found in the bodily fluids of a person who has been infected - blood, semen, vaginal fluids and breast milk. It can be transmitted through unprotected sexual contact. It is also spread among people who inject drugs with non-sterile injecting needles, as well as through unscreened blood products. It can spread from mother to child during pregnancy, childbirth or breast feeding when the mother is HIV-positive.[10]

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[3]OHCHR (n. 1).

[4] M.T. Ladan, 'The Role of Law in the HIV/AIDS Policy: Trend of Case Law in Nigeria and Other Jurisdiction'(2008) Ahmadu Bello University Press, Zaria, <http://kubanni.abu.edu.ng:8080/jspui/bitstream/123456789/6984/1/AN%20ANALYSIS%20OF%20THE%20LEGAL%20AND%20INSTITUTIONAL%20FRAMEWORK%20FOR%20THE%20REALIZATION%20OF%20THE%20RIGH%20TO%20HEALTH%20IN%20NIGERIA.pdf> accessed on 25 September 2017.

[5] WHO, 'The Constitution of the World Health Organization', (1946)<http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf> accessed on 25 September 2017.

[6] The 1948 Universal Declaration of Human Rights(UDHR), <http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed on 25 September 2017. It is the first international document that sets out the fundamental human rights of people and how such rights are to be universally protected.

[7]Antiretroviral treatment/drugs are used in the treatment and prevention of HIV infection. They fight HIV by stopping or interfering with the reproduction of the virus in the body, reducing the amount of virus in the body.

[8] NACA,<https://naca.gov.ng/about-hivaids/> accessed on 25 September 2017.

[9] AVERT, 'WHAT ARE HIV AND AIDS?' <https://www.avert.org/about-hiv-aids/what-hiv-aids>accessed on 25 September 2017. T-helper cells are also referred to as CD4 cells.

[10] UN, 'AIDS', <http://www.un.org/en/sections/issues-depth/aids/index.html> accessed on 25 September 2017.

Furthermore, NACA defines AIDS as a syndrome caused by the HIV virus. It is when a person's immune system is too weak to fight off many infections, and develops when the HIV infection is very advanced. This is the last stage of HIV infection where the body can no longer defend itself and may develop various diseases, infections and if left untreated, death.[11] Similarly, WHO defines AIDS as a term which applies to the most advanced stages of HIV infection. It is defined by the occurrence of any of more than 20 opportunistic infections[12] or HIV-related cancers.[13] Therefore, HIV is a virus that spreads through certain body fluids and attacks the white blood cells, also known as CD4 cells of a person and makes it impossible for such cells to protect the body against infections and diseases while AIDS is the most advanced stage of HIV infection which renders a person's immune system badly damaged to the extent that the person can get an increasing number of severe illnesses.

Since the inception of AIDS epidemic in June 1981 and the discovery of HIV in 1983, around 78 million (71 million–87 million) have become infected with HIV and around 35 million (29.6 million–40.8 million) people have died of AIDS-related illnesses.[14]Moreover, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and WHO gave a global estimate of people living with HIV (PLWH) in 2016 to be 36.7 million. Out of them, 25.6 million were Africans, 3.3 million were Americans, 3.5 million were South-East Asians, 2.4 million were Europeans, 360,000 were from Eastern Mediterranean, and 1.5 million from Western Pacific.[15]Also, adults constituted up to 34.5 million of the total 36.7 million number of PLWH, women were about 17.8 million, men- 16.7 million, and children (<15 years) were 2.1 million in number.[16]Likewise, the World Fact Book gave an estimate of the percentage of adults (aged 15-49) living with HIV/AIDS in Nigeria to be 2.9%, with Swaziland having 27.2% which is the highest percentage in the world in the year 2016.[17]

Furthermore, UNAIDS/WHO estimated the number of people newly infected with HIV in the year 2000 to be 3.0 million and 2.2 million in 2005,[18] while the number of people dying from HIV was 1.5 million in 2000 and 1.9 million in 2005.[19]Fortunately, infection and death rates of HIV/AIDS have reduced significantly from3.0 million and 1.9 million in the years 2000 and 2005to 1.8 million and 1.0 million respectively in 2016.[20] These achievements, including reduction in death rates of PLWHA are due to the vigorous responses of various organizations like UNAIDS, WHO, NACA; advancement in medicine and research; international, regional treaties, and local laws aimed towards the total eradication of HIV/AIDS globally.

1.1. Legal Framework on the Right to Health in Nigeria

The right to health is relevant to all countries, also called States Parties, who have ratified International Human Right and applicable Regional Treaties that recognize right to health. Majority of these international, regional treaties, and local laws are responsible for the

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[11] NACA, (n. 8). Such infections are referred to as Opportunistic Infections, such as Cancer.

[12] Opportunistic infections (OIs) are infections that occur more frequently and are more severe in individuals with weakened immune systems, and their examples include: tuberculosis, mycosis, Candidiasis, Cryptococcosis, Toxoplasmosis, e.t.c.

[13] WHO, 'HIV/AIDS,' <http://www.who.int/features/qa/71/en/>accessed on 25 September 2017.

[14] UN, (n. 10).

[15] WHO, <http://www.who.int/hiv/data/epi_plhiv_2016_regions.png>accessed on 25 September 2017.

[16] WHO,<http://www.who.int/hiv/data/epi_core_2016.png>accessed on 25 September 2017.

[17] Central Intelligence Agency, FIELD LISTING: HIV/AIDS - ADULT PREVALENCE RATE<https://www.cia.gov/library/publications/the-world-factbook/fields/2155.html#105> accessed on 25 September 2017. The adult prevalence rate is calculated by dividing the estimated number of adults living with HIV/AIDS at yearend by the total adult population at yearend.

[18] WHO,<http://www.who.int/hiv/data/incidence_targets_2016.png> accessed on 25 September 2017.

[19] WHO,<http://www.who.int/hiv/data/mortality_targets_2016.png> accessed on 25 September 2017.

[20] WHO, (no. 19).

noticeable decline in the future eradication of AIDS in Nigeria, and in the world. This is achieved via their rules and regulations that provide for and protect the fundamental human rights of people, especially the right to health of PLWHA in Nigeria. They also promote responses to HIV/AIDS that mirror comprehensive public health principles and documented best practices. Some of those laws and treaties are discussed below.

1.1.1. International Treaties

As mentioned earlier, the chief international treaty safeguarding the right to health of people is the Constitution of the World Health Organisation. In its Preamble,[21] 'the enjoyment of the highest attainable standard of health' was provided as one of the principles that are basic to the happiness, harmonious relations and security of all peoples.

Subsequently, the Universal Declaration of Human Rights[22] also enshrines in everyone the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.

1.1.1.1. International Covenant on Economic, Social and Cultural Rights (ICESCR)[23]

This treaty focuses on economic, social and cultural rights of people as part of their fundamental human rights. Auspiciously, right to health was contained within the specified rights. Hence, article 12 provides:

> 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
> 2. The steps to be taken by the States Parties...shall include...
> (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
> (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Therefore, this article identifies the enjoyment of a good standard of health as a fundamental right which should be honoured by every country that is a party to the covenant. Fortunately, right to health under this covenant is not limited to availability of medical servicesin the event of sickness alone but extends to the prevention, treatment and control of epidemic and other diseases, of which HIV/AIDS is inclusive.

1.1.1.2. The Convention on the Elimination of all Forms of Discrimination Against Women (Cedaw)[24]

CEDAW is a convention on the eradication of discrimination against women due to their sex which lowers their equality to men and invariably affects the enjoyment of their human rights. Thus, according to its article 12:

> 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
> 2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services

[21] WHO, (n. 5).

[22] The UDHR, article 25 (n. 6).

[23] International Covenant on Economic, Social and Cultural Rights (ICESCR). Adopted in 1966 and entered into force in 1976<www.who.int/hhr/Economic_social_cultural.pdf> 01 October 2017.

[24] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf> 01 October 2017.

where necessary, as well as adequate nutrition during pregnancy and lactation.

CEDAW encourages States Parties and their citizens to abolish discrimination against women in the enjoyment of their right to health, while placing them on the same footing with men when it comes to their health. Although, it makes no express mention of the right to health of women living with HIV/AIDS, however, discrimination against women living with HIV/AIDS can be read into the broad context of article 12.

1.1.1.3. The Convention on The Rights of The Child (CRC)[25]

Children are not excluded from the class of people entitled to the enjoyment of their human right to health. Under its Article 2, States Parties are expected to respect and ensure the rights set forth in the Convention to each child without discrimination or punishment of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, disability, or other status. Specifically, Article 25 applies to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Furthermore, reliance is placed on countries to ensure the provision of necessary medical assistance to all children, particularly, the development of primary health care; the delivery of appropriate pre-natal and post-natal health care for mothers; and the development of preventive health care. Therefore, it can be inferred from the provisions above[26] that children living with HIV/AIDS are expected to be well taken care of medically, and not neglected or discriminated against because it is part of their right to health.

1.1.2. Regional Treaties

1.1.2.1. The African Charter on Human and Peoples' rights[27]

Article 2 provides for the enjoyment of the rights and freedoms of every African without distinction of any kind like race, ethnic group, colour, sex, language, religion, political, birth or any status. Also, its Article 16 enshrines the right to health of persons to the enjoyment of the best attainable state of physical and mental health, while it encourages State Parties to the Charter to take necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Thus, PLWHA are implied to be included as part of the people expected to enjoy the best physical and mental health treatment whenever they so require and never to be discriminated against.

1.1.2.2. The African Charter on The Rights and Welfare of the Child[28]

This Charter is the African version of the Convention on the Rights of the Child (CRC), so, similar to the latter, with little addition is the inclusion of spiritual health to 'the best attainable state of physical, mental and spiritual health' to be enjoyed by an African child.[29] Furthermore, States Parties are also expected to integrate basic health service programmes in their national development plans[30]which should include immediate medical care/assistance (a sort of first aid) to children living with HIV/AIDS in Africa, Nigeria inclusive.

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[25]The Convention on the Rights of the Child (CRC). Adopted in November 1989 and came into force in 1990 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> 01 October 2017.

[26]CRC. Articles 2 and 25.

[27]The African Charter on Human and Peoples' Rights (African Charter)adopted in 1981, came into force in 1986 <http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf> 01 October 2017.

[28]The African Charter on the Rights and Welfare of the Child.It was adopted in 1990 and entered into force in 1999 <https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf> 01 October 2017.

[29]The African Charter on the Rights and Welfare of the Child(n. 25), article 14 (1).

[30]The African Charter on the Rights and Welfare of the Child(n. 25), article 14 (2).

1.1.2.3. The Protocol to the African Charter on Human And Peoples' Rights on the Rights of Women In Africa.[31]

The Protocol is also known as Maputo Protocol. Under its article 14:

> 1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes…
> c) the right to choose any method of contraception;
> d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
> e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices…

This is a direct protection of an African woman's right to health, especially, right to be personally protected against sexually transmitted infections, including HIV/AIDS, and where a woman has contacted HIV/AIDS, she has the right to be informed about her health status and that of her partner in accordance with internationally recognised standards and best practices. So far, this is the richest African treaty protecting citizens of States Parties, however, its application is restricted to African women alone.

1.1.3. Local Laws

1.1.3.1.The 1999 Constitution as Amended 2011[32]

The right to health of every Nigerian citizen is recognized and protected by Chapter II of the Constitution: Fundamental Objectives and Directive Principles of State Policy. However, the provisions of this Chapter are non-justiciable, that is, they are incapable of being determined or settled by a court of law. Thus, the government cannot be held accountable for violating the right to health of her citizens.

Furthermore, section 13 makes it the 'duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution,' part of which includes the security and welfare of the people being the primary purpose of government, under its section 14. Furthermore, section 17 provides:

> (a) every citizen shall have equality of rights, obligations and opportunities before the law;
> (b) the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced;
> (3) The State shall direct its policy towards ensuring that-
> (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;
> (d) there are adequate medical and health facilities for all persons…

Also, section 42 of the Constitution, under Chapter IV provides:

> (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to

[31]The protocol was adopted by the African Union in 2003, and adopted in 2005.<http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf> 01 October 2017.

[32]The Constitution of the Federal Republic of Nigeria 1999, as amended 2011, cap. C23, Laws of the Federation of Nigeria, 2004.

which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject…

These provisions protect the sacredness of the human person, guarantee the right to health of all Nigerians, and discourage restriction or discrimination of any form against any person.

1.1.3.2. HIV And AIDS (Anti-Discrimination) Act, 2014

This Federal Law was enacted in 2014 to provide for the prevention of HIV/AIDS-based discrimination and protect the human rights and dignity of PLWHA in Nigeria.

Sections 3 and 4 state thus:

> 3(1) People living with or affected by HIV or AIDS have a right to freedom from discrimination on the basis of their real or perceived HIV status concerning access to and continued employment, conditions of employment, employment benefits, comprehensive health services, education, use of public facilities and other social services, provided by the employer, individual community, government or any other establishment.
>
> (2) Individual, communities, institutions, employers and employees have a mutual responsibility to prevent HIV-related stigma and discrimination in the society.
>
> (3) No culture, practice or tradition shall encourage practices that expose people to the risk of HIV infection.
>
> 4(1) Every individual, community, institution and employer shall take steps to protect the human rights of people living with or affected by HIV or AIDS by eliminating HIV-related discriminations in all settings, including employment, health and educational institutions, policies and practices.

From the foregoing, the right to freedom from discrimination provided by Section 3 can be enjoyed by a person that has been medically certified to have HIV/AIDS, and a person not yet certified but is perceived to be. Also, the freedom cuts across various areas such as employment, education, health care, and other social services. Thus, whether PLWHA are relating with individuals, communities, or government, their rights to health are certainly protected. Furthermore, section 6 makes it an offence to discriminate against PLWHA either by denying or removing from them any treatment or supporting facility responsible for their functioning in the society, or refusal to accept and offer treatment by a qualified medical personnel, except in cases when special care and/or facilities required for treatment of HIV/AIDS do not exist in that health facility.

The Act proceeds to criminalise discrimination against PLWHA, threat to the latter, the prevention of their right or promise of favour to anyone in exchange for that person not exercising a right to formally report a contravention under this Act or participate in any proceeding under this Act.[33] Furthermore, penalties are provided for which makes any person or institution, who contravenes any of the provisions of this Act to have committed an offence and consequently liable on conviction to a fine of not less than N500,000 for individuals and N2,000,000 for organizations, or imprisonment for a period of not less than one year or to both such fine and imprisonment but in the case of an organization, the head or representatives of the board of the organization shall be held liable.[34]Thus sections 22 and 23 are included to discourage anyone, institution or organization from discriminating against fellow human beings or obstructing them from enjoying their right to health based on their medical status.

[33]HIV and AIDS (Anti-Discrimination) Act, section 22 (1)(a), (b) and (c).

[34]HIV and AIDS Act, (n. 34) section 23.

1.2. Vulnerable Groups of Plwha in Nigeria

1.2.1. Prisoners

Prisoners in Nigeria are often neglected by the whole society and the government regularly protect the public from them to the exclusion of concern about their rights and well-being. The attitude of 'locking them up and throwing away the key' is reflected in how the inmates are treated, and their right to health and medical care are regularly denied. They are also denied right to confidentiality of medical information. Furthermore, HIV is transmitted in prisons through unsafe sex and unsafe use of needle, such as sharing needles for drug injection, tattooing, or body piercing. Thus, some prisoners with HIV/AIDS elect to enter into protective custody due to stigmatization and discrimination while others remain in the general population intentionally to spread the virus. Unfortunately, what the society often forget is that prisoners form a big part of them because after serving their punishments at the correctional centres, they return back to live and interact with the society.

In view of inmates' right to health denials, the WHO Guidelines on HIV Infection and AIDS in Prisons, revised in 1993,[35]provide that:

1. All prisoners have the right to receive health care, including preventive measures, equivalent to that available in the community without discrimination, in particular with respect to their legal status or nationality…
4. Preventive measures for HIV/AIDS in prisons should be complementary and compatible with those in the community…notably needle sharing among injecting drug users and unprotected sexual intercourse…

Correspondingly, failure to provide accessible HIV testing; to protect the confidentiality of prisoners with HIV/AIDS; to provide a standard of HIV/AIDS care equal to that in the community; to provide a range of drug treatment programs comparable to those available in the community; to introduce measures that reduce the harms of injecting drugs (such as provision of bleach and sterile syringes); to make condoms and dental dams easily and discreetly available to prisoners; and to provide education and information about HIV/AIDS, safer sex, and ways to reduce the harms of drug use would constitute discrimination in terms of the WHO Guidelines.[36]

Therefore, according to the WHO Guidelines, the government, via prison administrators should put in place policies/practices that will create a safer environment and diminish the transmission of HIV to prisoners, and as such, prisoners should not be discriminated against but should also enjoy treatment, care, and support received by the general society. Compulsory testing of prisoners should be discouraged and prohibited; HIV related prevention information, such as, education and counselling, and HIV related prevention materials for safer-sex including condoms, dental dams, latex gloves, water-based lubricant, and bleach should be made available to them.

1.2.2. Women

Gender is an inextricable part of the HIV/AIDS equation. Young women are disproportionately vulnerable to infection; elderly women and young girls are also disproportionately affected by the burden of care giving in the epidemic's wake. Globally, females make up to 50% of People Living with HIV (PLHIV) while in sub-Saharan Africa, 60% of PLHIV are females. In low and middle-income countries worldwide, HIV is the

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[35] WHO, 'WHO Guidelines on HIV Infection and AIDS in Prisons.'<http://www.unaids.org/sites/default/files/media_asset/jc277-who-guidel-prisons_en_3.pdf> accessed on 3 October 2017.

[36]The Centre for the Right to Health for the POLICY Project, 'HIV/AIDS and Human Rights in Nigeria.'Background Paper for HIV/AIDS Policy Review in Nigeria (2003) p. 19. <file:///C:/Users/LENOVO/Downloads/HIV%20AIDS%20articles/HIV%20AIDS%20and%20Human%20Rights%20in%20Nigeria%20.pdf> accessed on 3 October 2017.

leading cause of death and diseases in women of reproductive age. Gender inequality and poor respect for the human rights of women of women and girls are key factors in the HIV/AIDS epidemic: both from the point of view of effectiveness and from the call of social justice.[37]

Apart from increased biological susceptibility to infection, women's subordinate status in Nigeria limits opportunities to be informed about HIV/AIDS, making them more vulnerable to infection and impairing their ability to deal with possible consequences of infection that require care and support (e.g., violence and abandonment by family). Violence against women in all its forms during peacetime and in conflict situations increases their vulnerability to HIV infection. Such violence includes, inter alia, sexual violence, rape (marital and other) and other forms of coerced sex, as well as traditional practices affecting the health of women and children. States have an obligation to protect women from sexual violence in both public and private life.[38]

Furthermore, grave discrimination against women in all facades of life, especially, right to health, education, and employment, property ownership/succession increases women's risks of infection. Occasionally, women lack the right to negotiate safer sex or leave their partners because of social, economic and legal norms. The idea that 'motherhood is the ideal form of self worth and identity for women' increases their vulnerability to HIV/AIDS and pressurize HIV positive women into making unhealthy reproductive choices.

Hence, norms, cultures, and laws discriminating against women should be discouraged, while laws imposing harsher punishments on violence against women should be enacted. Girl-child education should be encouraged while the economic empowerment of women should be established. Men should also be sensitised to respect the human rights of women, particularly, their right to health including good health care treatment for HIV positive women, safe sex, reproductive rights; and discouragement of domestic violence.

1.2.3. Sex Workers

Female Sex Workers (FSW) are those women who engage in consensual sex for money or payment in kind, as their principal means of livelihood.[39]Sex workers live and work in an environment that stigmatises and marginalises them in many ways. Personal and public disapproval of sex work is expressed in the attitudes of communities, politicians, and service providers; in local bylaws and police surveillance; and in the criminal status of prostitution. Many sex workers are further marginalised by involvement with the street, poverty, race, alcohol, and drug use, and, as with bisexual or transgender sex workers, sexual identity. Furthermore, the HIV epidemic has heightened and exposed the vulnerability of sex workers to discriminatory attitudes, attention, and regulation. Sex workers have been characterised as "vectors of transmission," a phrase that ignores the fact that many sex workers use condoms more consistently than other populations, that they frequently exercise more responsibility than their clients, and that they are generally at a higher risk of infection from their clients than vice versa.[40]

Also, abusive and discriminatory attitudes, and laws criminalising prostitution in Nigeria affect the health, well-being, and safety of sex workers and increase their vulnerability to HIV/AIDS infection. Thus, the criminalisation of prostitution should be reviewed as it hinders the provision of HIV/AIDS prevention and care by driving people engaged in the

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[37] NACA, 'Fact Sheet Women, Girls, Gender Equality and HIV in Nigeria' <https://naca.gov.ng/fact-sheet-women-girls-gender-equality-hiv-nigeria/> accessed on 3 October 2017.

[38] The Centre for the Right to Health for the POLICY Project (n. 33) p. 21.

[39] National Aids Control Organisation (NACO), 'National Integrated Biological and Behavioural Surveillance (IBBS) 2014-15. High Risk Groups' (2015) p. 90. <http://aidsdatahub.org/sites/default/files/highlight-reference/document/India_IBBS_report_2014-15.pdf> accessed on 3 October 2017.

[40] The Centre for the Right to Health for the POLICY Project (n. 33) p. 23.

industry underground. Sex work should also be decriminalised where it involves no victimisation. Further, government should regulate and provide occupational health and safety guidelines/conditions to protect sex workers and their clients.

1.2.4. Men Who Have Sex with Men (Msm)

MSM are also referred to as homosexuals or gay. MSM are known to have higher rates of unprotected anal sex, engage with large number of partners (both male and female), indulge in substance abuse and have poor health seeking behaviour, making them highly vulnerable to HIV infection.[41] Unfortunately, the number of MSM who are living with HIV in Nigeria is increasing notwithstanding the fact that the Nigerian law frowns against it. This group now bears the heaviest HIV burden in the country whereas, before 2013, sex workers were the worst affected group. In 2007, 13.5% of men who have sex with men were living with HIV. In 2015, prevalence had risen to 23%.[42] Men who have sex with men are thought to account for 10% of all new HIV infections in the country.[43]

In 2014, the Nigerian government increased the punishment for homosexuality to 14 years in jail.[44] Anyone 'assisting couples' may face up to 10 years in prison.[45]Despite NACA stating that 'no provision of this law will deny anybody in Nigeria access to HIV treatment and other medical services,' many Nigerian men who have sex with men do not access HIV services. In 2010, only 18% of men who have sex with men were reached with HIV prevention programming.[46]Thus, the effect of criminalisation of same sex marriage in Nigeria is a challenge hindering MSM from accessing medical care or undergoing HIV/AIDS treatment.

1.2.5. Children and Those Orphaned by Aids

An estimated 260,000 children (0 to 14 years) in Nigeria are living with HIV.[47] However, only 12% have access to antiretroviral treatment.[48]An estimated 1.8 million children have been orphaned by AIDS, which has had a huge impact on the health, safety and well-being of these children.[49] Around 20% of orphans and vulnerable children do not attend school regularly and around 18% have been sexually abused.[50]

HIV also has an indirect impact on children in Nigeria whereby they become the caregivers for parents who are living with HIV. Often, this responsibility lies with girls rather than boys.[51]This reflects the imbalance in schooling between the two genders in Nigeria, with girls

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[41] NACO (n. 39) p. 26.

[42]NACO (n. 39).

[43] NACA, 'Global AIDS Response. Country Progress Report. Nigeria GARPR' (2014) <http://www.unaids.org/sites/default/files/country/documents/NGA_narrative_report_2014.pdf> accessed on 3 October 2017.

[44] Same Sex Marriage (Prohibition) Act, 2014.

[45] NACA, 'Global AIDS Response. Country Progress Report. Nigeria GARPR' (2015) <http://www.unaids.org/sites/default/files/country/documents/NGA_narrative_report_2015.pdf> accessed on 3 October 2017.

[46] Federal Ministry of Health, 'HIV Integrated Biological and Behavioural Surveillance Survey (IBBSS)'(2010) <http://www.popcouncil.org/uploads/pdfs/2011HIV_IBBSS2010.pdf> accessed on 3 October 2017.

[47] UNAIDS, 'HIV and AIDS Estimates (2016)' <http://www.unaids.org/en/regionscountries/countries/nigeria> accessed on 3 October 2017.

[48] UNAIDS, 'Prevention Gap Report,' <http://www.unaids.org/sites/default/files/media_asset/2016-prevention-gap-report_en.pdf> accessed on 3 October 2017.

[49] UNAIDS, (n. 47)

[50] NACA, 'End-Of-Term Desk Review Report of the 2010-2015 National HIV/AIDS Strategic Plan (2015) <http://naca.gov.ng/wordpress/wp-content/uploads/2016/11/NSP-2010-2015-end-term-desk-review-report_0.pdf> accessed on 3 October 2017.

[51]NACA, (n. 43).

missing out on HIV education that could teach them how to protect themselves from infection.[52]

1.2.6. Young People

About 4.2% of young people (ages 15-24) are living with HIV.[53]Young women have a higher HIV prevalence and are infected earlier in life than men of the same age group[54] because awareness of HIV prevention is higher among young men than women. UN discovers HIV to be the leading cause of death for women of reproductive age worldwide; and now, AIDS as the leading cause of death among adolescents (aged 10–19) in Africa and the second most common cause of death among adolescents globally.[55]

Unfortunately, early sexual debut is common in Nigeria, which begins at less than 15 years old for 15% of Nigeria's youth. This is one factor that increases HIV vulnerability among young people, alongside very low HIV testing rates - only 17% of young people know their HIV status.[56] Thus, sexual development and the urge to sexually explore are the predominant factors that expose young people to HIV/AIDS infection. This can only be curbed by conducting sex education at all levels, starting from the home; and promoting/ making available family planning facilities like condom which limits/hinders the transmission of HIV virus during sexual intercourse.

1.2.7. People who Inject Drugs (PWID)

It is thought that 9% of new HIV infections in Nigeria every year are among PWID. In 2015, NACA reported that around half (52.7%) of people who inject drugs share needles and syringes.[57]Although these statistics are lower than in 2010, however, they remain extremely high as PWID are in the habit of sharing needles and syringes almost all the time. Hence, HIV/AIDS reduction services such as opioid substitution therapy[58] and clean needle exchanges should be made available in Nigeria to target PWID.

1.3. The Complicated Relationship Between HIV/AIDS and Human Rights (Right To Health)

As mentioned earlier, human rights are interdependent, indivisible and inter related. One important connection between health and human rights is that health is vital to a person's total wellbeing, hence, the statement, 'health is wealth'. Health is so essential and central that without it, one cannot copiously enjoy other human rights, for instance, right to life, right to freedom of movement and accordingly, 'people who are healthy may be best equipped to participate fully and benefit optimally from the protections and opportunities inherent in the International Bill of Human Rights.'[59]

Furthermore, the violation of the right to health will definitely mutilate the enjoyment of other human rights, like rights to privacy, work, social security and education, that is, the deprivation of one right will adversely affect the others. Therefore, OHCHR submits that the importance given to the 'underlying determinants of health', that is, the factors and

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[52] Avert, 'HIV and AIDS in Nigeria,' <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/nigeria#footnote26_g2x3173> accessed on 3 October 2017.

[53] NACA, (n. 45).

[54] NACA, (n. 50).

[55] UN, Sustainable Development Goals, 'Goal 3: Ensure healthy lives and promote well-being for all at all ages' <http://www.un.org/sustainabledevelopment/health/> accessed on 3 October 2017.

[56] NACA, 'National HIV&AIDS and Reproductive Health Survey (NARHS Plus II, 2012)' (2013) <http://naca.gov.ng/wordpress/wp-content/uploads/2016/11/NARHS-Plus-2012-Final-18112013.pdf> accessed on 3 October 2017.

[57] NACA, (n. 45).

[58] Opioid substitution therapy supplies illicit drug users with a replacement drug, a prescribed medicine such as methadone or buprenorphine, which is usually administered orally in a supervised clinical setting.

[59] J Mann et al,'Health and Human Rights' (1994) *An International Quarterly Journal, Vol.1 No. 1 Harvard School of Public Health* p. 22.

conditions which protect and promote the right to health beyond health services, goods and facilities, show that the right to health is dependent on, and contributes to, the realization of many other human rights. These include the rights to food, to water, to an adequate standard of living, to adequate housing, to freedom from discrimination, to privacy, to access to information, to participation, and the right to benefit from scientific progress and its applications.[60]Also, according to Mann, public health policies, programs and practices have an impact (negative or positive) on human rights. For instance, states policy on mandatory HIV testing could violate the human right to privacy, and security of the person.[61] Also, states may violate human rights by compulsorily isolating individuals for the protection of the larger community due to communicable disease without necessarily taking the human rights perspective of it thereby, violating their freedom of movement.[62] The state could also violate human rights in developing and implementing health policies by neglecting or refusing to acknowledge the health needs and priorities of marginalized or vulnerable groups thereby violating their right to non-discrimination and their right to security in the event of sickness.[63] Thus, the right to health is a fundamental part of our human rights and of our understanding of a dignified life, and the links between health and human rights are complex and multi-directional particularly as violations of right to health often increase people's susceptibility to HIV infection especially for young people, women, prisoners and other vulnerable groups. Unfortunately, PLWHA deal with the medical impact of HIV/AIDS, which have negative consequences on their human rights both socially and economically.

1.4. The Extent to Which Rights to Health Are Enjoyed by Plwha in Nigeria

The right to health is an emerging right whose content and meaning is just being elucidated. Nnamuchi, observed the key health indicators in Nigeria and finds that although Nigeria is a party to the major international and regional instruments protecting the right to health, the Nigerian government is in violation of its international obligation to protect the right to health of its citizens.[64] Furthermore, past and present experiences of PLWHA in Nigeria reveal that majority of them are not enjoying their right to health which is one of their fundamental human rights. The worst forms of abuses they encounter are those perpetrated by health care workers in the course of duty. The breaches within health care institutions include HIV testing without consent, denial of access to proper care and treatment, denial of access to antiretroviral (ARV) drugs, reduced standard of care, and breaches of privacy and confidentiality. Other forms of gross violations of human rights frequently experienced by PLWHA in Nigeria include ejection from housing apartment, termination of employment, denial of or discontinuation of education, and other forms of discrimination and social exclusion. Sadly, these violations do not affect PLWHA only, they extend to their family members.[65]

Consequently, a female PLWHA has this to say:

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[60]OHCHR, 'The Right to Health. Fact Sheet No. 31' p. 6, <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> accessed on 25 September 2017.

[61] J Mann (n. 58) p. 13.

[62] A Haruna, 'An Analysis of the Legal and Institutional Framework for the Realization of the Right to Health in Nigeria ', a PhD Thesis submitted at Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria. (2015), p. 41.

[63] The UDHR,(n. 6), Art. 25. See also J Mann (n. 20), and F Haigh,'Human Rights Approach to Health' (2002) *Croat Med J Vol. 42* p. 92.

[64]Nnamuchi, O. 'The Right to Health in Nigeria' (2007) <http://ssrn.com/abstract=1622874> accessed on 29 September 2017.

[65] The Centre for the Right to Health for the POLICY Project, 'HIV/AIDS and Human Rights in Nigeria. Background Paper for HIV/AIDS Policy Review in Nigeria' (2003) <file:///C:/Users/LENOVO/Downloads/HIV%20AIDS%20articles/HIV%20AIDS%20and%20Human%20Rights%20in%20Nigeria%20.pdf> accessed on 29 September 2017.

> In 2007 I had a slight fever and went to a hospital for treatment. The nurses took my blood for laboratory investigations. When I came back on my next appointment the nurses refused to give me treatment, everybody was looking at me with disgust and hatred. One of the nurses who know me and my family scolded me and told me to go home calling me "HIV". She brought out my test file and was showing my test result to people around, that was where it dawned on me that I was HIV positive. The nurse that took my blood must have been requested by the doctor to conduct an HIV test on me without even informing me.[66]

Sadly, this case reflects the violation of people's right to health, particularly, the right to freely give or withhold consent to medical examination or treatment. Furthermore, there is the story of Eby, that mirrors how badly PLWHAs, especially, pregnant women, are treated, with regards to how their rights to confidentiality of information are being denied by their medical practitioners, and their subsequent refusal of access to medical care in Nigerian health care facilities.

> Everybody in that hospital, from the doctor to the cleaner, knew I had HIV. Some of them come to my room masked, gloved, and gowned, as if HIV flies in the air. No matter their fear, I cannot forgive them for keeping me on the delivery couch unattended to for over two hours after my delivery because no one was willing to suture my episiotomy and clean my baby and me up. My mother did the cleaning, and my episiotomy was never sutured. I paid dearly with recurrent infection and heavy antibiotics. I feel very bitter about the way I was treated.[67]

Similarly, Maddy, another person living with HIV/AIDS, was denied access to treatment. His experience was at a General Hospital where he went to have his teeth pulled. He told the dental surgeon that he is HIV positive and paid dearly for it.

> On hearing I have HIV, the surgeon told me outright that they cannot attend to me because it is risky. I challenged him, threatening to report to the authorities concerned as I am entitled to treatment. He eventually asked me to come back in two weeks' time to enable them to prepare well. Again I was messed up; even though I came before other patients, I was the last patient they attended to. Still they found a reason to ask me to come back two days later. Meanwhile, they were busy passing my case note from one person to the other, during which I found out that they wrote "HIV positive" on top of my case note. Again I objected strongly to such labelling, threatening to go to the media with the way they are treating me. (Already I had gone public about my HIV status.) They went on about wanting to warn other doctors to be careful. I asked them if they knew the sero-status of all the patients they had been attending to, what about universal precaution, is this the price I pay for being open about my status? My tooth was finally extracted in circumstances that should have been filmed rather than discussed. People were wearing four gloves, masks and goggles, and moving about on tip toe, as if the virus would jump at them.[68]

Thus, these disturbing stories are few of the numerous cases in which the rights to health of PLWHAs were and are still being denied. Regrettably, these discrimination and denials of medical care for PLWHA by health care practitioners/workers do not only violate the

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[66] Network of People Living with HIV and AIDS in Nigeria (NEPWHAN), Global Network of People Living with HIV (GNP), and UKaids, 'Human Right Count! Nigeria. Country assessment 2009' p. 19-20.

[67] The Centre for the Right to Health for the POLICY Project, (n. 36), p. 11.

[68] The Centre for the Right to Health for the POLICY Project, (n. 36), p. 11.

Nigerian Constitution and other international and regional treaties but also constitute breaches of professional codes of conduct, that is, misconducts contained in the Rules of Professional Conduct for Medical and Dental Practitioners in Nigeria. Hence, it is unethical and unlawful for a health care practitioner/worker to refuse treatment to a person because he/she is HIV positive, or attach conditions to the provision of care the former will give to the latter. Similarly, it is an offence and a violation of right to life of a PLWHA to be denied access to antiretroviral (ARV) by health care institutions. However, majority of PLWHA in Nigeria do not enjoy this right or have access to ARV drugs because they are too expensive and are manufactured by companies in developed countries. Even when the Nigerian government ordered importation of ARV drugs from India, the method of distribution via teaching hospitals in the country is questionable and uncertain.

Furthermore, the denial of access to treatment is not limited to Nigeria alone. It cuts across some other African countries too, for instance, South Africa. In the case of *Treatment Action Campaign (TAC) v Minister of Health (herein TAC)*.[69] The case involved the distribution of Naviraphine drug. The government of South Africa had developed a policy for the testing of Naviraphine drug in pilot cites which consisted of three provinces in South Africa. This policy limited the distribution of the drug to the designated pilot sites thereby neglecting the majority of HIV positive pregnant women from having access to the drug which also affected the unborn who may likely be born infected with the virus. The government policy was challenged as violating s. 27(1) of the South African constitution.

Therefore, it is submitted that in spite of the decline in the number of PLWHA in Nigeria and in the world, discrimination of their human rights, particularly, right to health still persist, so, to a great extent, rights to health of PLWHA in Nigeria are violated rather than enjoyed.

1.5. Conclusion

The right to health is a fundamental right of a person which should not be denied him/her. This right enshrines enjoyment of medical treatment by PLWHA in Nigeria. This article discusses certain groups of people including Prisoners, Women, Sex Workers, MSM, Children and those orphaned by Aids, Young People, and PWID as the most vulnerable set of persons to contact HIV/AIDS in Nigeria. Unfortunately, it discovers that PLWHA in Nigeria are discriminated against and deprived of access to health care and antiretroviral treatment in health care institutions. Sadly, the epidemic has not been eradicated. In lieu of this, the article recommends:

Firstly, the right to health should be made actionable, that is, the Constitution of the Federal Republic of Nigeria should be amended while the objectives in Chapter II of the Constitution be transferred to its chapter IV thereby making them justiciable. This will make the government committed and liable for any denial of the right to health of her citizens. Similarly, punitive provisions of laws such as the Same Sex Marriage (Prohibition) Act, 2014 should be amended as they discourage MSM from accessing HIV prevention services. Thirdly, anti-discriminatory laws on PLWHA, like, sections 22 and 23 of HIV and AIDS (Anti-Discrimination) Act, 2014 should be enforced on non-compliance. This will be effective as it will discourage all citizens, including health care practitioners, from denying PLWHAs of their right to adequate medical care and attention in Nigeria.

On another hand, the government should promote viable public health awareness, services and facilities. There should be national access to sexual and reproductive health-care services, including early sex for children, sexual information for adults; free and available family planning, and the integration of reproductive health into national strategies and programmes. Antiretroviral treatment for PLWHAs should also be made available by the government.

[69] *Treatment Action Campaign v Minister of Health* (2002) (5) SA 703, 721 (herein TAC Case).

Finally, in support of Vision 90-90-90 of UNAIDS, and because it will be impossible to end HIV/AIDS epidemic without bringing HIV treatment to all who need it, the Nigerian government, all stakeholders and the entire world should build a powerful momentum so that by 2020, 90% of all people living with HIV will know their HIV status, 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy, and 90% of all people receiving antiretroviral therapy will have viral suppression.