

## **League of Women Voters of Nigeria**

### **OLD PEOPLES ACCESS TO HUMAN RIGHTS IN TERMS OF WORK, LABOUR MARKET AND JUSTICE.**

#### **Preamble**

Human rights refer to the universal and non-negotiable rights of every individual that falls within the category of people who should enjoy certain rights. It is therefore applicable to everyone regardless of their sex, age, religious affiliation, disability, sex, etc. They are commonly understood as the inalienable, fundamental rights to which a person is inherently entitled simply because she or he is a human being. It is applicable to all human beings regardless of their nationality, location, language, religion, ethnic origin, or any other status. They are universal in the sense that they are supposed to be applicable to everyone, at every time. The Bill of Rights is an international document that protects the rights of all persons, including the aged. Article 25(1) of the UDHR specifically provides that everyone has the right to security and a standard of living adequate for the health and well-being of himself and his family.

The Committee on Economic, Social and Cultural Rights (CESCR) in 2009 in its released General Comment No.20 stated in paragraph 29 that 'Age is a prohibited ground of discrimination in several contexts'. The CESCR emphasises the need to address discrimination against older persons in finding work in professional training, and against those living in poverty with unequal access to pensions. The right to social security is firmly established in international human rights law and several treaties specifically refer to old age protection through social security. However, while all human beings are equal, there is the natural tendency for differentials in the mode of application of the guiding laws, when age differences occur. The Rights of teenagers would not be at par with the Rights of the elderly. With this preamble on the Human Rights especially of the ageing, the work uses the Nigerian situation to demonstrate the following questions; (1)How far have Old Persons been able to access Human Rights in terms of Work and access to the labour market?(2)How far have Old Persons been able to access Human Rights in terms of Justice?

#### **The Nigerian Background**

The issue of protecting the rights of the aged in Nigeria does not really have constitutional backing which is regarded as the most fundamental document for protecting rights that are very essential to human existence. There are certain provisions of the 1999 Constitution of Nigeria that seem to ascribe some rights to the aged in Nigeria within its social milieu. For instance, as part of the economic objective of the country, it is provided that the country shall direct its policy towards ensuring that suitable and adequate shelter, food, old age care and pension, sick benefits and welfare of the disabled are provided for all citizens. Section 16(2)(d) of the 1999 Constitution of the Federal Republic of Nigeria (FRN). The aim of the above provision is to protect the vulnerable in the society from hardship that may occur to them due to their weak or disadvantaged nature (Section 17 (2)(b) of the 1999 Constitution of the FRN). It is also stipulated that every citizen shall have equality of rights, obligations and opportunities before the law (Section 17(2) (a) of the Constitution of FRN).

It is encouraging to see in the Constitution that the government will direct its policies towards ensuring that there are adequate medical and health facilities for all persons; and that the children, young persons and the aged are protected against any exploitation whatsoever, and moral and material neglect (Section 17 (3) (d) and (f) of the 1999 Constitution of FRN). In furtherance of the assurance of providing basic needs for the vulnerable groups in the society section 17(3)(g) of the 1999 Constitution of FRN provides that the State shall direct its policy towards ensuring that provision is made for public assistance in deserving cases or other conditions of need. As elegant as the above provisions are, the

unfortunate reality is that the rights encapsulated therein are not justifiable because they fall within the provisions contained in Chapter II of the 1999 Constitution.

Despite the provision of section 13 of the Constitution that it shall be the duty and responsibility of all organs of government and all authorities and persons exercising governmental powers to conform to, observe and apply the provisions of Chapter II of the 1999 Constitution containing fundamental objectives and directive principles of state policy, which consists political, economic, social, educational, foreign policy, and environmental objectives among others, the provisions of section 6(6)(c) of the Constitution preclude the judiciary from entertaining matters brought there under. It is arguable that the provisions of Chapter II are like giving something with a right hand and collecting it back with the left hand by the provisions of section 6(6)(c) of the same Constitution. Regardless of the importance of the provisions of the Chapter II of the Constitution they remain largely evasive due to their non-justiciability. There is, therefore, no solid legal footing or foundation upon which the rights of the aged in Nigeria are placed.

## **WORK AND LABOUR MARKET**

Older people are often denied access to services, jobs, treated without respect because of their age, gender or disability. For instance, there are some banks in Nigeria that have it as a matter of policy not to grant loan facilities above certain amount to people who are advanced in age. Social security policies for old age are yet to be formulated in Nigeria as the visible state policy in Nigeria affecting the old people is in the area of retirement benefits. Even the contributory pension scheme as produced by the Pension Reform Act 2004 does not cover many older people, but mainly designed for those who work in the formal sector. The informal sector of the economy represents the major employer of labour and majority of poor older people – especially women – have worked all their lives in the informal sector, and are those who perhaps, are most in need of the limited social security benefits that pension schemes provide, but they are not envisaged in the scheme..([www.helpage.org](http://www.helpage.org) April 2008) are left in the cold fists of poverty and suffering.

The concept of social security is therefore predicated on vision of a fairer arrangement of the society in which the government assumes a general responsibility to ensure that the individual is secured by organized collective action against the risk of social and economic life. Notably, there is no such thing in the strict sense of it. Like social security in Nigeria which may involve securing an individual against loss, poverty, destitution, disease and idleness which may come as a result of varied hazards and vicissitude of social life. There is no clear policy statement regarding it, and little is spent by the State on it except in the capacity of its being an employer. Lack of protection by the State leaves people to their own devices in the fight against the risk of social life. Without doubts, the old people may fall into this category of people that need immediate help.

## **JUSTICE**

Provisions are enshrined in the Criminal Code Act of Nigeria for the protection of the rights of the older people to enjoy the necessities of life. In the Nigerian context, the class of person that can be criminally responsible for breach of duty to provide necessities of life to the old people who are unable to fend for themselves and others in that category goes beyond the biological or adopted children of the old people to cover those, either by contract or by imposition of the law, or by lawful or unlawful acts are required to take charge of them. The provisions of the Criminal Law in this respect give assurance of protection to

the old people in broad terms where the issue of providing for the necessities of life is involved. However, this aspect of protection is limited by contractual relationship involving the care of the old persons or through imposition of the law (Section 300, Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004).

Though some attempts have been made in terms of proposing legislative reforms to create beneficial rights to the senior citizens in Nigeria, there is yet any substantive achievement in terms of law that will protect the rights of the old people not to be treated as a lesser human being. One of such attempts is the Bill, Maintenance of and Welfare of Senior Citizens Bill, (MWSCB) 2011, that was once proposed for enactment at the National Assembly of the federation. The Bill is aimed at establishing special privileges for senior citizens of Nigeria; provide penalties for breach there under and matters connected there with. The Bill also proposes the establishment of a special tribunal for adjudicating on the plights of the senior citizens on issue bordering on their maintenance to be known as the Senior Citizens Maintenance Tribunal. The Bill was read for the first time in the Senate of the National Assembly but could not go beyond this level.

## **CONCLUSION**

There appears to be a normative gap in the protection of the rights of the older people, especially as they are not given special recognition of protection by the law as other vulnerable groups. In view of the non-justiciability of the provisions of Chapter II of the 1999 Constitution of Federal Republic of Nigeria the provisions of the Maintenance and Welfare of Senior Citizens Bill 2011 could be a good take off point for developing legislation that will address the rights of the aged in Nigeria.