



HUMAN RIGHTS PERSPECTIVES TO SUSTAINABLE DEVELOPMENT GOALS: THE CASE OF NIGERIA

By

Dr. Alawa Stephen Tombari*
Chukwu, Chinedu Peter**

Abstract

The pursuit of development is a top priority for every society. However, the limited capacity of human and natural resources to sustain developmental patterns in perpetuity has continued to raise serious concerns. There is fear that natural resources which provide the bedrock for development may become depleted or extinguished over time. Already, human developmental needs are believed to have exceeded the capacity of the ecosystem. In response, there has been an increasing effort to integrate sustainability into development patterns. This effort resulted in the adoption of the United Nations Sustainable Development Goals in 2015. However, the adoption of Sustainable Development Goals in 2015 has not been effectively translated into development patterns in Nigeria. The aim of this article was to contribute towards the implementation of the SDGs in Nigeria as a necessary part of human rights. The objective was to critically examine human rights which provide rights basis for the enforcement of SDGs. This is because human rights provide necessary physical, social, economic and political conditions for the individual and peoples' development. Therefore, human rights are crucial legal mechanisms for the achievement of SDGs. The doctrinal method of research was adopted. The article found that the SDGs of zero poverty and no hunger cannot be enforced under any human right in Nigeria. The responsibility of the State to secure the welfare of the people is mere policy direction and the right to life does not contemplate zero hunger. Furthermore, there is no right to the SDGs of good health. Right to life under the Constitution does not cover healthy life. However, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1981 guarantees a human right to best attainable physical and mental health. On the other hand, there is a human right to compulsory, free and universal basic education. The human right of freedom from discrimination also provide basis for the SDGs of gender equality. Furthermore, the African Charter protects the human right to generally satisfactory environment which is very relevant to the SDGs of climate action. The conclusion of the article was that although the relationship between SDGs and human rights can always be logically established, the relationship is much more limited and sometimes non-existent in law. This is because human rights in the context of the article refer to constitutionally or statutorily recognised rights. With regard to Nigeria, human rights perspectives to SDGs are weak, inadequate and incapable of engineering the achievement of the SDGs. The recommendations of the article are that the National Assembly should amend the provisions of chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to effectively integrate the UN SDGs into human rights under the Constitution; the National Assembly should also amend the Compulsory, Free Universal Basic Education Act 2004 to extend the right to education beyond basic education which terminates at junior secondary school. Furthermore, the National Assembly should enact a Climate Change Act to provide effectively legal framework for addressing the SDGs of climate action.



Introduction

Nigeria has extensive legal framework that guarantees human rights.¹ In Nigeria also, there are statutory provisions relevant to other issues of human development such as health,² environment and education.³ The totality of these rights is directly related to the drive for national development. However, the extent of relationship between development and human rights is a subject of controversy.

Historically, the idea of development was largely understood as implying the development of critical infrastructure. It also included the expansion of power through conquest and annexation and the expansion of the economic base of the State.⁴ The classical approach to development however focuses on the economic growth as the fundamental feature of a developed State. This economic growth is conceptualized to occur in phases and is characterized by a transformation of subsistent agricultural practices into mechanized production chains with different outputs which improve the standard of living of the people through mass production of goods and services with less human labour.⁵ Development is a process whose output aims to improve the quality of life and increase the self-sufficient capacity of economies.⁶ The fundamental purpose of this process is a creation of enabling environment in which people will enjoy and have long, healthy and creative life.⁷

Lele,⁸ describes development as a process of targeted change, which includes goals and resources to achieve these goals. Development involves the positive changes that society has experienced throughout history, and still experiences.⁹ The various indicators of development include:

- a) structural transformation
- b) human development
- c) development of democracy and governance
- d) development as environmental sustainability.¹⁰

Development always involves the utilization of resources which may be referred to as factors of production. These factors are land, labour capital and entrepreneurship. All of these factors may be loosely referred to as environment. This is because environment encompasses the physical, social and cultural spaces in which the human species live, reproduce and die. It consists of water, the atmosphere,

* LLB (RSU); BL (Abuja); LLM (RSU); PhD (RSU); Lecturer Department of Jurisprudence and International Law, Faculty of Law, Rivers State University Port Harcourt; Email: alawa.stephen@ust.edu.ng; Tel: 07037732836

** LLB (RSU), BL (Abuja), LLM Candidate Faculty of Law, Rivers State University Port Harcourt; Tel: 08036685585; Email: edutex2006@yahoo.com

¹Constitution of the Federal Republic of Nigeria 1999 (as amended) chapter IV.

²National Health Act 2014 s 20.

³Compulsory, Free and Universal Basic Education Act 2004.

⁴ G Estevo, 'Development' in W Sachs (ed), *The Development Dictionary: A Guide to Knowledge as Power* (2ndedn, Zed Books 2010) 2.

⁵M P Todaro and S C Smith, *Economic Development* (8thedn, Pearson Education Ltd 2003) 3.

⁶K Willis, *Theories and Practices of Development* (Routledge 2005) 27.

⁷(n 6).

⁸ S M Lele 'Sustainable Development: A Critical Review' [1991] (19)(6) *World Development* 609.

⁹ R Sharpley, *Tourism Development and the Environment: Beyond Sustainability?* (Earthscan 2009) 30.

¹⁰ S T Vázquez and A Sumner, 'Revisiting the Meaning of Development: A Multidimensional Taxonomy of Developing Countries' [2013] (49)(12) *The Journal of Development Studies* 1728.



land and all living and non-living things that inhabit these spaces.¹¹ Environment refers to the totality of natural and human surroundings and activities including; biophysical components and processes of natural environment of land, water, and air, including all layers of the atmosphere, all inorganic and organic matters, both living and dead; socio-economic components and processes of the human environment including social, economic, technological, administrative, cultural, historical, archaeological, land and associated resources, structures, sites, human health, nutrition and safety.¹² The point becomes obvious that there is a correlation between development and environment as development happens within the environment.

The World Commission on Environment and Development,¹³ puts the relationship thus:

The environment does not exist as a sphere separate from human actions, ambitions, and needs, and attempts to defend it in isolation from human concerns have given the very word ‘environment’ a connotation of naivety in some political circles. The word ‘development’ has also been narrowed by some into a very limited focus, along the lines of ‘what poor nations should do to become richer’, and thus again is automatically dismissed by many in the international arena as being a concern of specialists, of those involved in questions of ‘development assistance’. But the ‘environment’ is where we live; and ‘development’ is what we all do in attempting to improve our lot within that abode. The two are inseparable.

Traditionally, there was no concern over the long-term adverse effects (if any) of development on the living and non-living aspects of the environment and the complex web of interactions within the environment. Development was not considered a threat due to the traditional understanding of environmental resources as infinite, perpetually self-sustaining and self-renewing.¹⁴ De-Sadeleer,¹⁵ puts it as follows:

Natural resources appeared inexhaustible, following Lavoisier’s Law: ‘Nothing is lost’. Nature seemed to be endowed with an almost limitless capacity to assimilate and purify the waste produced by human societies. As Anglo-Saxon decision-makers are fond of stating, ‘The solution to pollution is dilution’. Natural phenomena, taking their course, would eliminate production and consumption residues.’... Cleared forests grew again, polluting substances were borne away by wind and water.

¹¹ V Johnson, ‘What is Environmental Education’ in MAtchia (ed), *Environmental Education in the African School Curriculum* (African Curriculum Organization 1992) 1.

¹² O Okotoni, ‘Awareness and Environmental Management in Oil Companies in Nigeria’ [2004] (15)(1) *Journal of Human Ecology* 13-17.

¹³ World Commission on Environment and Development (WCED), *Our Common Future* (Oxford University Press 1987) xi.

¹⁴ N De-Sadeleer, *Environmental Principles* (Oxford University Press 2002) 14.

¹⁵ *Ibid.*



Over time, events have shown that environmental resources are very limited and lack a perpetual capacity to sustain development and the ecosystem. Thus, Ehrlich and Holdren,¹⁶ rightly pointed out that growing increase in human population creates a corresponding decrease in environmental capacity. Similarly, it has been noted that the adverse impacts of development especially with regards to environmental pollution arising from production and consumption has created a near environmental crisis situation directly threatening ecosystem functionality in its entirety.¹⁷

According to Daniel and Others,¹⁸ the global economy and development pattern has over time, become a stress on the global ecosystem such that current human socio-economic activities have transgressed many of the planetary boundaries (PBs). Thus, the environment is not only stressed beyond its elastic limits but there is a real and imminent risk of environment becoming counter-productive and thus threatening the entire ecosystem including human existence. Ross,¹⁹ adds that 'humanity's demand on the planet's living resources—its ecological footprint—exceeded the earth's ecological limits by the 1980s and has continued to rise.'

Paragraph 1.1 of Agenda 21 of the United Nations Conference on Environment and Development 1992 captures the reality thus:

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being.

Considering the above, the importance of the need to align development with environmental sustainability cannot be overemphasized. This is because the environment provides food, shelter, oxygen and every other thing that humans depend on for survival.²⁰ In response to the above concerns over sustainability, there is a growing national and international attention towards sustainable development.²¹ This climaxed with the adoption of the United Nations Sustainable Development Goals in 2015 with 17 priority areas. There is also the 2030 Agenda for sustainable development.²²

Conceptual Framework

There are different concepts which are relevant to better appreciation of the analysis in this article. This section provides a review of the relevant concepts.

¹⁶P R Ehrlich and J P Holdren, 'Impact of Population Growth' [1971] (171) *Science* 1212, 1217.

¹⁷ A Paulus, *The Feasibility of Ecological Taxation* (Antwerp-Apeldorn 1997) 27.

¹⁸D M Danniel and Others, 'Measuring Sustainable Development- Nation by Nation' [2008] (64) *Ecological Economics* 470, 474.

¹⁹ A Ross, 'It's Time to Get Serious—Why Legislation Is Needed to Make Sustainable Development a Reality in the UK' [2010] (2) *Sustainability* 1101, 1127.

²⁰C T Emejuru, 'Human Rights and Environment: Whiter Nigeria?' [(2015) (35) *Journal of Law, Policy and Globalization* 108, 112.

²¹ N Carter, *The Politics of the Environment: Ideas, Activism, Policy* (Cambridge University Press 2001) 56.

²²*Ibid.*



Right

A Right refers to power, entitlement or immunity which a person enjoys under the law.²³ Enforceability at law is a major hue that distinguishes a right from a privilege or moral injunction.²⁴ A right may occur naturally such as human rights,²⁵ it may also be created by private arrangement or statute.²⁶ A right may be absolute in that it admits of no exception or qualification. The right is independent, unqualified and cannot be limited or extinguished.

Human Rights

Human rights incorporate the body of entitlements which humans enjoy or should enjoy in law by the reason that they are humans.²⁷ The rights are vested humans naturally based on their humanity.²⁸ Human rights include the entirety of physical, socio-political and economic conditions suitable to the preservation and productivity of the human race. Human rights exist in nature and not by creation of political authority. This way, the codification of the rights by political authority is a mere formal recognition and guarantee of the rights. In *Ransome-Kuti v The Attorney General of the Federation*,²⁹ the Supreme Court stated that by the nature of human rights, they stand above ordinary laws of the land and are antecedent to political society.

Sustainable Development

Sustainable development derives from the word sustainability. Sustainability literally means a capacity to maintain some entity, outcome, or process over time and carrying out activities that do not exhaust the resources on which that capacity depends.³⁰ Shrivastava,³¹ on the other hand described sustainability as 'offering the potential for reducing the long-term risks associated with resource depletion, fluctuations in energy costs, product liabilities, pollution and waste management'. Tamin and Kamaldeen,³² found that sustainable development became a global priority as early as 1980 when the International Union for Conservation of Nature and Natural Resources adopted the World Conservation Strategy titled 'Living Resource Conservation for Sustainable Development'.

Sustainable development is the conservation of the ecosystem as a perpetual source of natural resources for the support of life. It incorporates the meeting of human developmental goals while at the same time sustaining the ability of the natural systems to provide the resources upon which society depends.³³ The

²³ BA Garner, (ed), *Black's Law Dictionary* (9thedn, Thompson Reuters 2009) 1436.

²⁴ F Kamm, 'Rights' in Coleman Jules and Scott Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford University Press 2002) 476.

²⁵ B Tierney, 'Origins of Natural Rights Language: Texts and Contexts, 1150-1250' [1989] (1) *History of Political Thought* 615.

²⁶ J Kaur, *Contemporary Political Thought* (Madan Publications 2003) 8.

²⁷ R J Vincent, *Human Rights and International Relations* (Cambridge University Press 1986) 1.

²⁸ L W Sumner, *Moral Foundations of Rights* (Clarendon Press 1987) 13.

²⁹ (1985) 2 NWLR (Pt. 6) 211

³⁰ W Jenkins, (ed), *Berkshire Encyclopedia of Sustainability: The Spirit of Sustainability* (Berkshire Publishing Group 2018) 330.

³¹ P Shrivastava, 'The Role of Corporations in Achieving Ecological Sustainability' [1995] (20)(4) *Academy of Management Review* 936, 955.

³² I Tammim and M Kamaldeen, 'Challenges of Sustainable Development in Nigeria: Legal Perspectives' in M Wahab and Others (eds), *Law and Sustainable Development in Africa* (Al-Fattah Publications 2012) 17.

³³ S Malouki, 'Role and Relationship Between Leadership and Sustainable Development to Release Social, Human, and Cultural Dimension' [2012] (41) *Procedia- social and Behavioral Sciences* 92-99.



Brundtland Commission Report, (1987) defines the term generally as development that meets the needs of the present generation without compromising the ability of the future generation to meet their own needs. Two key dimensions are expressed:

- a) Meeting the developmental needs of the present generation and;
- b) Not compromising the ability of future generations to meet their own developmental needs.

The concept of sustainable development is hinged on three pillars: environmental sustainability, social sustainability and economic sustainability necessary to maintain the natural, social and human capital required for income and living standards.³⁴

Goals

Goal is generally defined as “aim” or “objective”.³⁵ Goals perform different functions. First, goals provide a conceptual framework for planning and implementation of activities that are necessary to achieve the desired results.³⁶ Second, they are the monitoring benchmarks that enable objective appraisal of progress of the organisation.³⁷ Third, they are the rational tools for evaluating the relevance and overall value of policies, services and projects at the end of implementation, which allows empirical judgment of the effectiveness, efficiency and success of work, and demonstration of management accountability for expended resources at all levels.³⁸

Goal expresses dissatisfaction with existing situation and an aim for change.³⁹

According to Locke and Latham,⁴⁰ goal has two attributes or components: goal content – that is, the specific quantifiable performance result to be achieved, and goal intensity – that is, the goal-setting practice factors including the mediating goal-setting effort, the moderating individual goal commitment, and the goal hierarchy. Yearta, Maitlis, and Briner,⁴¹ simply explain the goal content as the structure that makes a goal-specific and difficult, while the goal intensity as the needed goal commitment as well as the other factors of goal-setting practices.

³⁴*Ibid.*

³⁵ Oogbeiji, ‘General Concepts of Goals and Goal-setting in Healthcare: A Narrative Review’ [2018] *Journal of Management and Organization* 1.

³⁶ L J Mullins, *Management and Organisational Behaviour* (5thedn, Financial Times Prentice 1999) 23.

³⁷ T Bipp and A Kleingeld, ‘Goal Setting in Practice: The Effects of Personality and Perceptions of the Goal Setting Process on Job Satisfaction and Goal Commitment’ [2011] (40)(3) *Personal Review* 306.

³⁸ G Fitzsimmons, ‘Time Management Part 1: Goal Setting as a Planning Tool’ [2008] (21)(2) *The Bottom Line* 61-63.

³⁹ T Day and P Tosey, ‘Beyond SMART? A new Framework for Goal Setting’ [2011] (22)(4) *The Curriculum Journal*, 515

⁴⁰ E A Locke and G P Latham, ‘Goal Setting Theory’ in E A Locke and G P Latham (eds), *New Developments in Goal Setting and Task Performance* (Routledge, 2013) 3-15

⁴¹ S K Yearta, S Maitlis and R B Briner, ‘An Exploratory Study of Goals Setting in Theory and Practice: A Motivational Technique that Works?’ [1995] (68) *Journal of Occupation and Organisational Psychology*, 237

Human Rights Perspectives To Sustainable Development Goals

This section provides a legal discussion of human rights perspectives to Sustainable Development Goals (SDGs). Although there are a total of 17 SDGs, this article uses five goals as the basis of the analysis. This is in order to allow for a more in-depth analysis. The focus of the legal analysis is Nigeria. That is, the article examines how and the extent to which SDGs may qualify as enforceable human rights under the Nigerian law. It however provides a comparative overview the position in South Africa particularly to draw lessons from the foreign jurisdiction for Nigeria.

i. Human Rights Perspectives to No Poverty and Zero Hunger Goals

In Nigeria, the security and welfare of the people is the primary purpose of government.⁴² This reflects the importance the Nigerian State attaches to security and welfare as fundamental purpose of government. Government here refers to the three tiers to government to wit: Federal, State and Local Government.⁴³ Security is generally agreed to be about feeling of being safe from harm, fear, anxiety, oppression, danger, poverty, defence, protection and preservation of core values.⁴⁴ Section 14 of the constitution is focused on the security of the people and therefore takes a human perspective to security.

It is important to point out that human security includes protecting fundamental freedoms that are the essence of life; protecting people from serious and persistent threats and situations; creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.⁴⁵ This way, security of the people includes security from poverty and hunger. Welfare on the other hand derives from “wel fare” that is from “well” in its still familiar sense and “fare” primarily understood as a journey or arrival.⁴⁶ The word welfare has historically been related to happiness and prosperity. It includes all publicly provided and subsidized services, statutory, occupational and fiscal.⁴⁷

It is in the above context of welfare that section 16(1)(b) of the Constitution requires the State to control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen. In addition, subsection (2)(d) requires the State to direct its policies towards ensuring that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens. Based on the above, this dissertation submits that the Goal of no poverty and zero hunger falls squarely as the primary responsibility of government as inherent aspects of security and welfare. The above duties of government have translated into a more detailed policy framework: National Economic Empowerment and Development Strategy (NEEDS) 2004. The Strategy covers poverty reduction and employment generation.

⁴² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 14(2)(b).

⁴³ *A G Ondo State v A G Federation* (2002) 9 NWLR (Pt. 772) 22.

⁴⁴ D O Bodunde and Others, ‘Internal Insecurity in Nigeria, The Irony of Multiplicity of Security Outfits and Security Challenges’ [2014] (2)(5) *International Journal of Research, Arts and Literature* 213.

⁴⁵ A Adedoyin, ‘An Appraisal of the Multidimensional Nature of Security in the Post-Cold War Africa’ [2013] (7)(2) *African Journal of Stability and Development* 113 , 125.

⁴⁶ R Williams, *Keywords: A Vocabulary of Culture and Society* (Fontana 1976) 281-285.

⁴⁷ B Greve, ‘What is Welfare’ [2008] (2)(1) *Central European Journal of Public Policy* 50, 54.

It must be pointed out that although sections 14 and 16 create a duty on the government to address poverty and hunger, the sections do not qualify as human rights perspectives to the SDGs of no poverty and zero hunger. It should be recalled that enforceability at law is a major hue that distinguishes a right from a privilege or moral injunction.⁴⁸ Sections 14 and 16 are not enforceable and therefore in the context of this dissertation not human rights. This is by virtue of section 6(6)(c) of the constitution which provides that the judicial powers of the Courts shall not except as otherwise provided by the Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the Constitution. Sections 14 and 16 fall under the said Chapter II. Consequently, in *Adewole v Jakande*,⁴⁹ the court held that the provisions in Chapter II of the Constitution are mere “cosmetic constitutional provisions”.

Section 33(1) of the Constitution states generally that every person has a right to life, and no one shall be deprived intentionally of his life. The issue whether this provides a human rights perspective to addressing poverty and hunger is debatable. Jackman,⁵⁰ describes poverty as comprising mainly ‘substandard housing, inadequate diet, reduced health, poor education and employment prospects, social stigma, and political marginalization’. Similarly, Okafor,⁵¹ describe poverty as ‘any incidence of the fundamental deprivation, or the serious lack of basic needs (such as food, water, shelter, education, clothing and essential medicines).’ If poverty is taken in this broad context, it undermines human life and the enjoyment of other rights. Accordingly, the United Nations,⁵² observes as follows:

Poverty is a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and clothe a family, not having a school or clinic to go to; not having the land on which to grow one’s food or a job to earn one’s living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation.

Tura,⁵³ submits that the right to food is a human right that protects an individual’s access to sufficient, safe and nutritious food. This is because hunger constitutes a breach of the right to life and dignity of the human person.

⁴⁸ F Kamm, ‘Rights’ in J Coleman and S Scott (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford University Press 2002) 476-513.

⁴⁹(1981) 1 NCLR 152.

⁵⁰ M Jackman, ‘Constitutional Contact with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination under the Canadian Charter and Human Rights Law’ [1994] (2) *Review of Constitutional Studies* 76, 77.

⁵¹ O C Okafor, ‘Poverty, Agency and Resistance in the Future of International Law: An African Perspective’ [2006] (27) *Third World Quarterly*, 799, 800.

⁵²United Nations, Statement of June 1998, Available at <<http://www.helium.com/items/1587576-poor-service-delivery>>. Accessed 6 September 2022.

⁵³ H A Tura, ‘Achieving Zero Hunger: Implementing a Human Rights Approach to Food Security in Ethiopia’ [2019] *Third World Quarterly* 1, 3.



The above notwithstanding, this article submits that under the Nigerian constitution, there is no human rights perspective to the SDGs of no poverty and zero hunger. This is because what section 33 of the Constitution protects against is intentional deprivation of life. It does not guarantee protection against poverty. In *Mabamije v Otto*,⁵⁴ the Supreme Court re-iterated that where words of a statute are clear, it is not within the power of a court to embellish it or adopt any other meaning. A court cannot add to, subtract, divide or multiply clear provisions of a statute. Section 33(1) is clear, unambiguous and must therefore be given its ordinarily meaning. Death as a result of poverty or hunger does not qualify as intentional deprivation of life under section 33(1).

Intentional deprivation of life requires a human or institutional actor. Death resulting from poverty or hunger cannot be directly attributed to any person. It should be recalled as Wigwe,⁵⁵ submits that it is only in the world of duties that rights can exist. That is, for a human rights perspective to no poverty and zero hunger to exist, there must be legal duty to ensure no poverty and zero hunger. This does not exist under section 33(1) of the constitution. Thus, there is no human right to no poverty and zero hunger under the constitution of Nigeria.

Within the African region, there is no commitment in the African Charter on Human and Peoples' Rights 1981 to address poverty and hunger. "Agenda 2063: The Africa We Want" which was adopted in 2015 by the African Union, merely notes in paragraph 9 of the Agenda the determination to eradicate poverty in one generation and build shared prosperity through social and economic transformation of the continent. It does not provide any human rights basis for addressing poverty and hunger.

At the international level however, article 25 of the Universal Declaration on Human Rights 1948 recognises the right of all people to adequate food, as part of the right to an improved standard of living. Similarly, article 11(1) of the International Covenant on Economic, Social and Cultural Rights 1966 stipulates the right of everyone to an adequate standard of living, which also includes the right to adequate food. Furthermore, article 11(2) of the Covenant recognises 'the fundamental right of everyone to be free from hunger. It needs to be stated that an international instrument to which Nigeria is a Party does not have the force of law except to the extent which the instrument has been passed into law by the National Assembly.⁵⁶ Accordingly, since the above instruments have not been passed into law in Nigeria, they are only of persuasive effects. This article submits therefore that under the Nigerian law, human rights does not cover SDGs no poverty and zero hunger.

ii. Human Rights Perspectives to Good Health and Well-being Goal

According to the World Health Organisation (WHO), health is 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'⁵⁷ The emphasis here is on completeness of wellbeing in all ramifications and trans-sending the mere absence of disease. This

⁵⁴ (2016) All FWLR (Pt. 828) 883 at 894 para A.

⁵⁵ C Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers 2011) 400.

⁵⁶ (n 1) s 12.

⁵⁷ WHO, 'Constitution of the World Health Organization' <www.who.int/governance/eb/who_constitution_en.pdf> Accessed 6 September 2022.

incorporates very particularly physical health, mental health and social health.⁵⁸ Health and human rights are complementary approaches for defining and advancing human well-being. There dimensions of interaction between health and human rights have been identified. The first interaction involves the impact (positive and negative) of health, health policies, programs and practices on human rights. The second interaction posits that violations of rights have important health effects. The third and most fundamental interaction proposes that promotion and protection of health are inextricably linked to promotion and protection of human rights and dignity.⁵⁹

Omorieg and Momodu,⁶⁰ argue that section 33 of the constitution guarantees a right to health as follows:

It is conceded that Nigeria's Constitution of 1999 does not make explicit provision guaranteeing a right to health care. However, it is possible to locate this right within the provision of section 33(1) of the Constitution whose opening clause declares that "Every person has a right to life..." The tendency has been to confine this very fundamental provision which is the very first guarantee of right in Nigeria to the bare fact of having the right to be alive, except under certain conditions of derogation stated in section 33(2)(a)(b) and (c). Viewed from all its ramifications, this restrictive perception of the right to life appears untenable and unsustainable. The right seems to be meaningless if it is not coupled with the right to have the necessary means of survival including food and health care.

Similarly, Kolawole,⁶¹ insists that the right to life is dependent on the right to health and therefore a necessary feature of the right to life.

This article submits that the above arguments represent a misapprehension of the content of the right to life under section 33(1) of the constitution. For the avoidance of doubt, section 33(1) provides inter alia: 'Every person has a right to life, and no one shall be deprived intentionally of his life'. In *Federal Republic of Nigeria v Dariye*,⁶² the Court stated that 'in ordinary usage, "and" is conjunctive'. Accordingly, this article submits that the two parts of section 31(1) cited above must be read together and that the legal meaning of right to life is that 'no one shall be deprive intentionally of his life'. There are two legal implications of the above: what section 33 of the constitution guarantees is a right to life, not a right to healthy life; the guarantee is only against intentional deprivation of life and nothing more.

From the above, death arising from causes such as ill health is not intentional and can therefore not amount to breach of right to life. This position is fortified by a long line of judicial authorities to the

⁵⁸ R Smith, 'The End of Disease and the beginning of Health' <<http://blogs.bmjjournals.com/bmjjournals/2008/07/08/richard-smith-the-end-of-disease-and-the-beginning-of-health/>> Accessed 6 September 2022.

⁵⁹ J M Mann and Others, 'Health and Human Rights' [2014] (1)(2) *Health and Human Rights* 7, 13.

⁶⁰ E B Omorieg and D Momodu, 'Justifying the Right to Healthcare in Nigeria: Some Comparative Lessons' [2014] (12) *The Nigerian Juridical Review* 13, 23.

⁶¹ A K A Kolawole, 'The Right to Life and The Right to Health : Any Nexus?' [2010] (2)(5) *OIDA International Journal of Sustainable Development* 95.

⁶²(2013) All FWLR (Pt. 673) 1902 at 1940 para.C-D.



effect that clear provisions of a law must be given their literal and ordinary meaning.⁶³ The reduction of human rights into statutory provisions evidences the extent and nature of each particular human right under the law of the respective State. This is the law as it is distinct from moral sentiments of the law as we will like it to be. Thus, although there is a logical co-relation between life and health, there is no legal recognition of the co-relation under the constitution.

Under the National Health Act 2014 which is the principal legislation regulating health care in Nigeria, there is equally no human right to health. It is admitted that section 1(1) of the National Health Act 2014 established the National Health System with functions which include providing the best possible health within available resources for persons living in Nigeria. In addition, it is saddled with the responsibility of protecting, promoting and fulfilling the rights of people of Nigeria to have access to health care services.⁶⁴ Nevertheless, the above does not amount to a right to health. The closest which the Act comes to human rights perspectives to health is section 3 which empowers the Minister of Health to prescribe conditions subject to which categories of persons may be exempted from payment for health services in public hospitals. Here, it is only a legal empowerment for the Minister to exempt certain categories of persons from paying for health services in public hospitals. It does not entitle others as of right to free health care in public hospitals. Thus, there is no human rights perspectives to health under the Act.

Interestingly however, the National Health Promotion Policy 2006 (as Revised) takes a rather different approach to health. The objective of the Policy is to deliver health care that is preventive, promotive, protective, restorative and rehabilitative to every citizen of the country.⁶⁵ This takes a comprehensive approach to health care service delivery in Nigeria. The Guiding Principles and Values of the National Health Promotion Policy suggest a human rights perspective to health as it provides *inter alia*:

a) Government Accountability and Responsibility;

All levels of government have a responsibility and are accountable for protecting, maintaining and improving the health of its citizens; as health is a global public good.⁶⁶

Here, government is both accountable and responsible for protecting, maintaining and improving health of the citizens. This would have ordinarily amounted to a human rights perspective to health. However, the provision is grossly inadequate to qualify as a human right. In order to better appreciate the inadequacy of the National Health Promotion Policy (Revised 2019) as a human rights basis for health, it is necessary to highlight the nature of a policy. Anderson,⁶⁷ submits that a policy is 'a relatively stable, purposive course of action followed by an actor or set of actions in dealing with a problem or matter of concern'. This article does not agree with the view expressed above. It contends that relatively stable and purpose has never been definitive of State policies in Nigeria. On the contrary, the article agrees

⁶³ *A G Lagos State v Persons Unknown* (2016) All FWLR (Pt. 815) 245.

⁶⁴ National Health Act 2014 s 1(1).

⁶⁵ National Health Promotion Policy 2006 (as Revised) para 2.1.

⁶⁶ *Ibid*, para 2.2.1.

⁶⁷ J E Anderson, *Public Policy Making* (5th edn, Houghton Mifflin Company 2003) 2.



with the view of Egonmwan,⁶⁸ that policy is merely “whatever government chooses to do or not to do”. Therefore, since the supposed human right to health under the Policy does not go beyond what the State decides to do or not to do, this article submits that same does not amount to a right but a mere statement of good intentions.

Besides, policy implementation in Nigeria has always been marked by inconsistencies, contradictions, insincerity and corruption.⁶⁹ In addition, policy formation in Nigeria is always marked by insufficiency of data. There are also inadequate resources to translate the policies into real life experiences. Consequently, public policy failure is a recurring decimal of successive governments in Nigeria.⁷⁰ This is in addition to corruption and wholesale diversion of resources which occasion gap between policy and actual implementation.⁷¹ Moreover, policy continuity remains a serious problem in Nigeria. Successive governments abandon the policy they inherited from their predecessors and go on to establish new policies on the same or similar subject matter. The above further re-enforces the position of this article that there is no human right to health under the Policy.

It must be noted however, that under African Charter on Human and Peoples' Rights (ratification and Enforcement) Act 1983, there is a human right to health. Article 16 of the Charter provides that every individual shall have the right to enjoy the best attainable state of physical and mental health. At the surface, this may seem a proactive human rights approach to health. Moreover, section 1 of the Act reads:

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

The legal implication is that the African Charter has the full force of law in Nigeria.⁷² This has been judicially noticed in *Peter Nemi v AG of Lagos State & Ano*,⁷³ where the Court stated:

It is not enough that we (Nigeria) have ratified the African Charter. We must move with the rest of the human race in the implementation of those rights. While the Executive may take steps to examine or set in motion ways of improving human rights situations, the Judiciary should actively show its impetuous readiness to complement or indeed

⁶⁸ J AEgonmwan, *Public Policy Analysis: Concepts and Applications* (S M O Aka & Brothers Press 1991) 1.

⁶⁹ G Wilson and AEpelle, ‘Public Policy Formulation and Implementation in Contemporary Nigeria’ [2018] (8)(6) *International Journal of Research in Social Sciences* 175, 178.

⁷⁰ A Epelle, ‘Public Policy Failure in Nigeria’ in F Allen (ed), *Public policy analysis: Themes and issues* (Shapee Publishers 2011) 53-57.

⁷¹ A T Shehu, ‘The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience’ [2013] (2)(1) *Afe Babalola University: Journal of Sustainable Development Law and Policy* 101, 117.

⁷² A Enabulele, ‘Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts’ [2009] (17)(2) *African Journal of International and Comparative Law* 326.

⁷³(1996) 6 NWLR 42, 58.

surpass the efforts of the Executive by an inspiring judicial approach to, or definition and recognition of, circumstances of human rights where appropriate and feasible.

However, this article submits that a closer scrutiny, the right to health under the Charter is weak and hardly existent. The reason is herein explained. The concept of ‘health’ under the Charter is very limited. Whereas the WHO (as already pointed out), defines health in terms of “complete” physical, mental and social well-being, the African Charter merely guarantees a right to “best attainable state of physical and mental health.” First, the Charter is limited to physical and mental health. Social health which incorporates a broader framework of health issues is not included. Second, the Charter does not contemplate “complete” well-being. It is only limited to best attainable physical and mental health not complete physical and mental health. What is “best attainable” is subject to each State Party to the Charter and may not amount to good health for the respective person affected. Moreover, there is no yardstick for determining the best attainable physical and mental health which each State can afford for its citizens. Practically therefore, the supposed right to health under the Charter is fluid and totally at the discretion of the State. This is very weak human rights framework. Once each State asserts that the health care available is the best it can attain, article 16 of the Charter is satisfied. Thus, while purporting to provide for a human right to health, the Charter adopts a loose end approach that allows a State to avoid any real health duty to its citizens.

The Universal Declaration of Human Rights 1948 takes a more person centered approach to human right to health. Article 25 guarantees that 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, 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. Unfortunately, the Declaration does not form part of the law of Nigeria haven not be domesticated in accordance with section 12 of the Constitution.

iii. Human Rights Perspectives to Quality Education Goal

Education is a long-term strategic approach to addressing poverty and underdevelopment. Aidelunuoghene, states the importance of education as follows: ‘Education is not just a commodity for sale. It is a social good. It is the social responsibility of any government to its people. It is the engine of growth, development and transformation of any society... education restores to mankind its humanity.’ At the national level, education is the fulcrum of sustainable national development as it engineers a knowledge based economy wherein science, technology and innovations thrives. In addition, education provides institutional framework for self, professional and character development.⁷⁴ A human right to education emphasises both a right to access education and a duty to make education available and within the reach of all citizens.⁷⁵

⁷⁴ E T Ehiometor, ‘Issues of Access and Equity and Private Sector Participation in the Deregulation of Education’ in G O Akpa, S U Udo and E O Fagbanmiye (eds), *Deregulating the Provision and Management of Education in Nigeria* (The Nigerian Association for Educational Administration and Planning 2005) 48.

⁷⁵ J A Dada, ‘Access to Education in Democratic Nigeria: Issues and Problems’ in D Denga, J Emeh and J Okoro (eds), *Education for Sustainable Democracy: The Nigeria Experience* (University of Calabar Press 2004) 15.



Constitution Section 18(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides that

- (1) Government shall strive to eradicate illiteracy; and to this end Government shall and when practicable provide-
 - a) Free, compulsory and universal primary education;
 - b) Free university education; and
 - c) Free adult literacy programme.

The legal implication of Chapter II of the constitution which this section falls under has already been discussed. It will be needless to repeat the discussion. Nevertheless, it is important note closely the choice of words that drive the fundamental education objectives of Nigeria. First, government is to “strive” to eradicate illiteracy. Government does not have any mandate to eradicate illiteracy. All that the section requires is striving, that is trying. Government is merely to try to. Second, government is to provide free education “practicable”. When practicable is an open-ended time frame. In reality therefore, government can always justify its failure to provide free education on a flimsy ground that it is not practicable. Thus, under the constitution, there is no human right to education.

The Compulsory, Free Universal Basic Education (UBE) Act 2004 however provides a human right to basic education. Section 2(1) of the UBE Act provides that every Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary, school age. Importantly, section 3(1) of the UBE Act, the services provided in public primary and junior secondary schools shall be free of charge. The human rights to education here is a right to free education basic education which is compulsory and universal. The compulsory nature of the education is secured by section 2(2) which mandates every parent to ensure that his child or ward attends and completes his basic education.

It should be noted that the operative word in the UBE Act is “shall”. In *Sogbesan v Chief of Naval Staff*,⁷⁶ the Court held that the use of the word “shall” in a Statute or Rules expresses command and makes it mandatory that the provision must be obeyed unless there is a qualification to it. In *Salik v Idris*,⁷⁷ it was held thus:

The word ‘shall’ denotes obligation or a command and gives no room for discretion.

By its nature, it is mandatory and one cannot wriggle out same. It imposes a duty. Where a thing shall be done, it goes without equivocation that a pre-emptory mandate is enjoined.

From the above, there is a human right to education which is backed by mandatory duty on the government to provide free universal basic education. It has to be emphasized that what is guaranteed is a human right to basic education which stops at junior secondary school. There is no right to senior secondary school or university education. This is rather very limiting since junior secondary school education does not provide sufficient education and skills for life term survival. It does not represent long term strategic empowerment and human capacity development.

⁷⁶(2015) All FWLR (Pt. 803) 1918.

⁷⁷(2015) All FWLR (Pt. 790) 1307, 1318.



The Universal Declaration of Human Rights 1948 takes a more purposeful approach to the right to education. The right to education under the Declaration includes the following:

- i. education shall be free, at least in the elementary and fundamental stages;
- ii. elementary education shall be compulsory;
- iii. technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit; and
- iv. education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

Compulsory, free and universal basic education in Nigeria does not address technical and professional education. In addition, the direction of education to full development is a very important perspective which is missing in the Nigerian approach.

iv. Human Rights Perspectives to Gender Equality Goal

In order to properly appraise the human rights perspectives to gender equality, it is important to highlight the meaning of equality and to balance it against the rights provided under the Nigerian law. Generally, there are two approaches to equality: formal approach and substantive approach. Formal approach to equality is focused on treatment of persons in the same way regardless of differences such as sex, economic or socio-political status.⁷⁸ Formal equality is only interested in treating ‘men and women alike, irrespective of whether they are treated equally badly or equally well’.⁷⁹ As long as they are treated same way, equality is realized. On the other hand, according to Albertyn and Goldblatt,⁸⁰ substantive theoretical approach to equality is based on the treatment of individuals equally, taking into cognizance their peculiar circumstances and needs. It strives at creating a level playing ground for all irrespective of their socio-economic background, gender or race. Substantive equality aims to equalize the starting point. Generally, a substantive approach to equality is founded on the core value of accommodating people’s differences with the aim of achieving equality of outcome. Substantive equality is said to aim at realizing equality of result and equality of opportunity.⁸¹

The most direct human rights perspectives to addressing SDGs gender equality in Nigeria is section 42 of the Constitution. The said section provides as follows:

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:

⁷⁸ E Durojaye and Y Owoseye, ‘Equally Unequal or Unequally Equal’: Adopting a Substantive Equality Approach to Gender Discrimination in Nigeria. [2017] (17)(2) *International Journal of Discrimination and the Law* 70, 74.

⁷⁹ S Fredman, ‘Less Equal than others-Equality and Women’s Rights’ in C Gearty and A Tokins (eds), *Understanding Human Right* (Mansell 1996) 197-202.

⁸⁰ C Albertyn and B Goldblatt, ‘Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality’ ([1998] (14) *South African Journal on Human Rights* 248.

⁸¹ *Ibid.*

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 which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or b. be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

This article submits that primarily, what the section protects against is discrimination based on factors such as gender. This protection is necessary especially as a constitutional response to cultural notions and practices that discriminate against women while glorifying male preference syndrome. For instance, in *Mojekwu v Mojekwu*,⁸² the Court invalidated a customary rule of inheritance that discriminated against women. This article holds the view that section 42 of the constitution does not promote gender equality. The concept of gender equality under the SDGs 5 includes empowerment of all women and girls which is lacking under section 42 of the Constitution.

Empowerment is a broad long-term approach which involves identifying all forms and sources of oppression throughout society and liberating those individuals, groups, and communities who are oppressed to reach their full potential. Empowerment extends to political, economic, intellectual and social relations.⁸³ Primarily, empowerment includes addressing disadvantaged position of the affected person/group situation and taking action in order to improve their access to resources.⁸⁴ In the long term, empowerment results in elevation and sustained increment of the standard of living.⁸⁵ Empowerment incorporates equipping a person/group with various skills, values, attitudes, and orientation that will impact on their lives in the long term and make them more economically and socially responsible and self-reliant.⁸⁶

However, section 42 of the Constitution takes a formal approach to equality through same treatment and makes no provision for empowerment of women and girls. Thus, in the long term, the provision does not promote gender equality. This is because equality goes beyond non-discrimination to

⁸²(2000) 5 NWLR (Pt. 657) 402.

⁸³ B K Snehendu, A P Catherine, and L C Kirstin, 'Empowerment of Women for Health Promotion: a Meta-analysis' [1999] (49)(11) Social Science & Medicine 1431.

⁸⁴ P E Chike and V Onyene, 'Youth Restiveness in the Niger Delta of Nigeria: Implication for Education and Leadership' [2010] (18)(2) *European Journal of Social Sciences* 286.

⁸⁵ M A Olatunle, A M Gumus and L Z Wanjuu, 'Impact of Corporate Social Responsibility on Youths Empowerment in Niger Delta Region of Nigeria' [2020] (8)(1) *Journal of Human Resource Management* 39, 40.

⁸⁶ E Ocran, 'The effect of Corporate Social Responsibility (CSR) on Profitability of Multinational Companies: A Case Study of Nestle Ghana Limited' [2011] (8)(1) *Kwame Nkrumah University of Science and Technology: Business Enterprises* 136.



empowering historically disadvantaged groups such as women to ‘catch-up’ with men. This ensures equality of outcome and not equality of treatment.

v. Human Rights Perspectives to Climate Action Goal

Climate action is informed by the global concern over climate change.⁸⁷ Climate change is generally understood as change of climate which is caused directly or indirectly by human activity and alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.⁸⁸ The Intergovernmental Panel on Climate Change (IPCC),⁸⁹ describes change as change in the state of the climate evidenced from changes in the mean and/or the variability of its properties, and that persists for an extended period, typically decades or longer. It refers to any change in climate over time, whether due to natural variability or as a result of human activity. Climate change results in several adverse effects which threaten the sustainability of the entire ecosystem. The often-cited examples global warming of the atmosphere and ocean, diminishing snow and ice, rising sea level, crop failures, changing rain patterns, flood and extreme weather conditions.⁹⁰ Climate change also results in extinction of organisms and threatens the biodiversity of the ecosystem.⁹¹

Human rights perspectives relevant to the SDGS of climate action include the rights to life and dignity of the human person. First, section 20 of the Constitution mandates the State to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria. Climate action comes under this duty of protecting and improving the environment. Moreover, section 7 (1) (h) of the NDDC Act 2000 (as amended) provides that the NDDC shall tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the Federal Government and member States on the prevention and control of oil spillages, gas flaring and environmental pollution.

Section 33 of the constitution as earlier discussed guarantees the right to life. Similarly, section 34 guarantees the right to dignity of the human person. Both rights provide strong perspectives for climate action. The indisputable fact is that the environment provides all life support systems with air, water and land as well as the materials for fulfilling all developmental aspirations of man without which life or dignity cannot exist.⁹² Accordingly, environmental degradation such as climate change caused by human activities, amount to intentional deprivation of life and a violation of human dignity. It is

⁸⁷ G Burak and C E Nathwani, ‘A “Regional Energy Hub” for Achieving a Low-carbon Energy Transition [2018] (113) *Energy policy*376.

⁸⁸ United Nations Framework Convention on Climate Change 1992 art 1(2).

⁸⁹ Intergovernmental Panel on Climate Change (IPCC) , ‘Special Report on the Ocean and Cryosphere in a Changing Climate’ [2019] <<https://www.ipcc.ch/srocc>> Accessed 2 September 2022.

⁹⁰ (n 48).

⁹¹ R Warren and Others, ‘The implications of the United Nations Paris Agreement on Climate Change for Globally Significant Biodiversity Areas’ [2018] (147) *Climate Change* 395, 397.

⁹² C T Isife, ‘Environmental Problems In Nigeria - A Review’ [2012] (4)(1) *Sustainable Human Development Review*21, 22.



contended that the environment provides the basic condition without which human right cannot exist or be enjoyed. Johnston,⁹³ captures this inter relationship as follows:

The problems of environmental degradation cannot be effectively tackled without considering its impact on the human components of that environment nor can one state unequivocally that his rights, especially to life, is adequately protected by law, when he still faces and stands helpless against the menace of environmental pollution... the time has indeed come for a firm decision by the international community to encourage the enforcement of a recognizable right to a safe, healthy and decent environment.

This link between environment and human rights seem to have received international consensus. For instance, in 2021, the United Nations Human Rights Council adopted the Resolution on the Human Right to a Clean, Healthy and Sustainable Environment.⁹⁴ The Resolution in its preamble recognised that the protection of the environment, including ecosystems, contribute to and promote human well-being and the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for present and future generations. The Resolution states that the right to a clean, healthy and sustainable environment is a human right that is important for the enjoyment of human rights.⁹⁵

African Charter on Human and Peoples' Rights in article 24 states that all peoples shall have the right to a general satisfactory environment favorable to their development. Under the ECOWAS Revised Treaty 1993, Member States undertake to protect, preserve and enhance the natural environment of the region and co-operate in the event of natural disasters. This includes an undertaken to adopt policies, strategies and programmes at national and regional levels and establish appropriate institutions to protect, preserve and enhance the environment, control erosion, deforestation, desertification, locusts and other pests.⁹⁶ Principle 1 of the United Nations Conference on Human Environment (The Stockholm Declaration) 1972, states:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Environmental protection is therefore overwhelmingly recognised as a human either as an independent right or a necessary aspect of the right to life and dignity of the human person. This is supported by the

⁹³ B R Johnston, 'Environmental Degradation and Human Rights Abuse' in B R Johnston, (ed), *Who Pays the Price? The Socio-cultural Context of Environmental Crisis* (Island Press 1994) 112.

⁹⁴ A/HRC/RES/48/13.

⁹⁵ *Ibid*, para 1.

⁹⁶ ECOWAS Revised Treaty 1993, art 29.



decision of the Court in *Joanh Gbemre v SPDC (Nigeria) Limited*,⁹⁷ where it was held that gas flaring by the Respondents in the course of oil exploration was a gross violation of the Applicant's right to life and dignity of the human person. Similarly, in *SERAC v Nigeria*,⁹⁸ the African Commission on Human Rights held that articles 16 and 24 of the African Charter on Human and Peoples' Rights recognise the importance of a healthy environment as a close link to economic and social rights in so far as the environment affects the quality of life and safety of the individual. Consequently, the Commission held further that an environment degraded by pollution is contrary to satisfactory living conditions. The Court hinged its decision on the fact that human life and dignity, including socio-economic rights cannot exist in an unhealthy environment.⁹⁹

The Indian Supreme Court specifically stated in *Surya Dhungel v Godavary Marble Industry*,¹⁰⁰ held that a clean and healthy environment is a part of the entirety of life and therefore, a polluted environment is a threat to life. Emejuru,¹⁰¹ in his contribution states:

There is little doubt that the idea of protecting environmental right is essential to maintaining the dignity of human beings. Section 34(1) of the Nigerian Constitution provides that "every individual is entitled to respect for the dignity of his person". The dignity of a human being cannot be maintained and honoured in the absence of the environment rightly characterized as a human right. It will be proper to say that the importance of safe and adequate environment is so significant to maintaining the human dignity, which has been a right.

The SDGs on tackling climate change is therefore strongly rooted in human rights to life and dignity of the human person.

Lessons from South Africa

The following lessons can be drawn from the legal approach in South Africa:

- i. Binding obligation on the State to respect, protect, promote and fulfill human rights in the Constitution. This is by virtue of section 7(2) of the Constitution of South Africa. Nigeria does not have this direct State duty approach to human rights protection. Importantly, the duty is four dimensions: duty to respect, protect, promote and fulfill. The implication is that every case of human rights violations in South Africa can be maintained against the State.
- ii. Substantive constitutional approach to gender equality. This is by virtue of section 9 of the Constitution which permits fair discrimination in order to advance the status of historically disadvantaged groups such as women- *Harsken v Lane*.¹⁰² From the above, unlike in Nigeria,

⁹⁷ Suit No. FHC/B/CS/53/05 unreported, judgement delivered on November 14, 2005

⁹⁸ Communication 155/96 The Social and Economic Rights Action Center and Another Nigeria (Fifteenth Annual Activity Report, SERAC Case).

⁹⁹ K S AEbeku, 'The Right to Satisfactory Environment and the African Commission' [2003] (3) *African Human Rights Journal* 155, 161-163.

¹⁰⁰Case No.35, Judgement of 31 October, 1995, 169.

¹⁰¹C T Emejuru, 'Human Rights and Environment: Whiter Nigeria?' [(2015] 35 Journal of Law, Policy and Globalization 108, 112.

¹⁰²*Harksen v Lane NO and others* 1999(1) SA 300(CC)

South Africa only prohibits discrimination that is unfair. In *Hugo* case,¹⁰³ the Court stated as follows:

The prohibition of unfair discrimination in the interim Constitution seeks not only to avoid discrimination against people who are members of disadvantaged groups. It seeks more than that. At the heart of the prohibition of unfair discrimination lies recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups.

- iii. Express constitution provision for environmental right under section 24 of the Constitution of South Africa. In Nigeria, environmental protection is merely stated under the unenforceable directive principles.
- iv. Constitutional recognition and protection of the right to health under section 27 of the constitution of South Africa. This includes reproductive health care; sufficient food and water; and social security.
- v. Again, unlike in Nigeria where the right to education stops at junior secondary, section 29 of the constitution of South Africa guarantees the right to education for everyone. This includes basic education, adult basic education and further education.
- vi. Another progressive approach which South Africa adopts is in section 39 of its constitution which is to the effect that when interpreting the Bill of Rights, a court, tribunal or forum must consider international law. This is directly opposed to section 12 of the Nigerian Constitution which shields Nigeria from legal obligations under international law unless and only to the extent that such international law is passed into domestic law by the National Assembly. South Africa on the other hand allows its law to develop and be consistent with international human rights best practices. Here the Court “must” consider international law. That allows easy alignment of the South African Bill of Rights with international human rights law. The totality of the above is very important lesson for Nigeria.

Conclusion

The unsustainability of development patterns has continued to stress the global ecosystem. In response, the international community through the United Nations adopted the Agenda 2030: The World We Want, otherwise known as Sustainable Development Goals. There is a total of 17 SDGs in all which cover a broad range of developmental issues. Nevertheless, implementation of the SDGs has remained challenging especially for developing countries such as Nigeria. This Article critically examined human rights perspectives to SDGs. Under the doctrinal research method, the Article employed qualitative analysis of primary and secondary information. It relied heavily on statutory provisions using the literal rule of interpretation which is further expounded by judicial decisions.

The point remains that the direct link between human rights and sustainable development cannot be overemphasised. All of the SDGs are logically connected to human rights. For instance, without

¹⁰³*President of Republic of South Africa and others v Hugo* 1997 (3) SA 1012.

achieving the SDGs of no poverty and zero hunger, the rights to life, dignity, expression, association and all other human rights remain seriously undermined. The relationship between SDGs and human rights are therefore twofold: achievement of the SDGs provides the necessary socio-economic, physical and political conditions for enjoyment of human rights; and human rights provide a strong legal mechanism for enforcement of SDGs. Accordingly, SDGs and human rights are mutually self-re-enforcing.

Although the relationship between SDGs and human rights can always be logically established, the relationship is much more limited and sometimes non-existent in law. This is because human rights in the context of this Article refer to constitutionally or statutorily recognised rights. Consequently, the meaning, nature and extent of each human right are as defined constitutionally or statutorily by each State and does not enjoy universal validity. Put differently, the legal relationship between SDGs and human rights are subjective to each State even though the logical relationship may receive universal validity. Regards must therefore always be had to the legal framework of each State in delineating the relationship.

Human rights perspectives to sustainable development in Nigeria are very limited and weak. For instance, there is no human right to no poverty and zero hunger. Existing obligations exist only at a policy level. This has traditionally remained a weak approach to critical issues in Nigeria considering policy summersaults, lack of policy continuity, lack of adequate policy funding, corruption and generally poor approach to policy implementation. Similarly, although the Nigerian constitution guarantees a right to life, it takes a disappointingly narrow approach to life which practically protects against only intentional deprivation of life. It fails to take into consideration necessary conditions that are required for life. In addition, the right to life does not include life to healthy life or happy life. It guarantees only naked life without more. Equally disappointing is the fact that while the African Charter on Human and Peoples' Rights purports to protect a right to health, its mischievously limits it to "best attainable" thus given State Parties unrestricted discretion in matters of health protection and promotion. Human rights perspectives to SDGs in Nigeria is therefore weak, inadequate and incapable of engineering the achievement of the SDGs as a necessarily feature of human rights.

Recommendations

This Article recommends as follows:

- i. The National Assembly should amend chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to make express constitutional provision for human rights approach to addressing poverty and hunger. Poverty and hunger are twin problems which seriously undermine the enjoyment of all other human rights. The human rights perspective to poverty and hunger should create a mandatory duty on the State to generate employment. This should be complemented by a constitutional provision for social security which should guarantee a minimum monthly payment for those unemployed. It is further recommended that implementation should begin with the development of reliable national data base. This will allow for sustainability and transparency in implementation.



- ii. The National Assembly should amend the right to life under section 33 of the constitution of the Federal Republic of Nigeria 1999 (as amended) to extend the right to life to cover basic health. This should be matched with a legal duty on the State to provide free basic health facilities and services in constitutional defined phases up to the ward level. A right to free basic health can then over time be extended to comprehensive health. Two related options are recommended for funding this basic health right: a national basic health insurance framework part funded by the State and beneficiaries or a national health tax which should be a statutorily defined percentage of profit tax of all businesses.
- iii. It is further recommended that the National Assembly should amend the Compulsory, Free Universal Basic Education Act to extend the right to education beyond basic education which terminates at junior secondary school. This is because junior education is not adequate educational empowerment to sufficiently equip a person for a productive life in the long term. Right to free education should be extended to senior secondary school level including the free Senior Secondary School Certificate Examinations such as West African Senior School Certificate. Right to education should also be extended to technical education and skills acquisitions which will equip beneficiaries to earn a living.
- iv. It is also recommended that section 42 of the constitution should be amended by the National Assembly to reflect a substantive approach to gender equality. Specifically, a gender character system should be adopted in employment and political office occupation. This will allow for a more strategic empowerment of women through employment and political office gender quota system.
- v. Further to the climate obligations of Nigeria as a State Party to the Paris Agreement 2015, it is recommended that the National Assembly should enact a Climate Change Act which will provide extensively for tackling climate change.