

**AN ASSESSMENT OF THE ROLE OF LAW IN THE PROTECTION
AND PROMOTION OF RIGHTS OF CHILDREN LIVING WITH
HIV/AIDS IN NIGERIA**

BY

**Binta Musa MUHAMMED
LLM/LAW/9329/2010-2011**

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ZARIA**

MAY, 2017

DECLARATION

I solemnly declare that this thesis is the product of my personal endeavour and it has not been presented, to the best of my knowledge, anywhere before. All ideas from previous writers have been duly acknowledged. I remain solely responsible for all views expressed and errors therein.

Binta Musa Muhammad
LL.M/Law/9329/2010-2011

Date

CERTIFICATION

This thesis titled “ **An Assessment of the Role of Law in the Protection of the Rights of Children Living With HIV/AIDS in Nigeria**” by Muhammad, Binta Musa meets the regulations governing the award of master of laws (LL.M)-Degree of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

Dr. I.F. Akande
(Chairman, Supervisory Committee)

Date

Dr. K.M. Danladi
(Member, Supervisory Committee)

Date

Dr. K.M Danladi
(Head of Department, Public Law)

Date

Prof. S. Z. Abubakar
(Dean, School of Postgraduate Studies)

Date

DEDICATION

I dedicate this research work to my late father, my mother, my beloved husband and children.
To my brothers and sisters for their love, guidance, and support. Finally to children living
with or affected by HIV/AIDS around the world.

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LIST OF ABBREVIATIONS

1. **A.C.H.P.R:** African Charter on Human and People`s Right, (1983).
2. **A.C.R.W.C:** African Union Charter on the Right and Welfare of the Child, (2001).
3. **C.R.C:** Convention on the Rights of the Child, (1991).
4. **C.R.A:** Child Rights` Act, (2003).
5. **H.A.F:** HIV/Aids Fund.
6. **HIV/AIDS:** Immunodeficiency Virus/Acquired Immunodeficiency Syndrome.
7. **I.C.C.P.R:** International Covenant on Civil and Political Rights, (1993).
8. **I.C.E.S.C.R:** International Covenant on Economic, Social and Cultural Rights, (1993).
9. **I.C.E.R.D:** International Covenant for Elimination of Racial Discrimination.
10. **NACA:** National Agency for the Control of Aids, (2012).
11. **NGOs:** Non-Governmental Organisation.
12. **PEPFAR:** Us President`s Emergency Plan for AIDS.
13. **UDHR:** Universal Declaration on Human Rights (1948).
14. **O.V.C:** Orphans and Vulnerable Children.
15. **RRF:** Rapid Response Fund.

ABSTRACT

In Nigeria since the first case of HIV/AIDS was reported in 1986, HIV prevalence has increase significantly. This increase has become very worrisome to the Nigerian society because large number of children who are living with HIV/AIDS suffers from discriminatory practices and stigmatization. The concerns for these maltreatments at various levels despite the existing laws on the protection of these children generally constitute the problem of this research work. The research is therefore aimed at examining the role of law in the protection and promotion of rights of children living with HIV/AIDS in Nigeria, by analysing various provisions of international, regional and national laws regarding the subject matter of the study. However, part of the findings of this research work is that despite the availability of information on HIV/AIDS pandemic children with HIV/AIDS in Nigeria still faced a lot of challenges as it exposes them to different kind of discriminatory practises which include stigmatization, sexual abuse, exploitation, neglect, isolation, inaccessibility to health and public services and the Nigeria government has done little to protect and promote the right of these children. Also the existing laws that protect the rights of these children are inadequate and lack legal backing. The researcher concluded this work with recommendations that there was need to develop a national policy that will directly and effectively protect people living with HIV/AIDS in Nigeria. Also adequate legal protection should be given a great attention and consideration in relation to issue of protection of rights of children with HIV/AIDS in Nigeria. In doing so, legislation and policies in relation to issue of children in the context of HI/AIDS should be enacted and the existing ones should be review. Creating awareness by involving journalist and lawyers be will a great help and also people with HIV/AIDS should be educated on the impact of HIV/AIDS and the Laws and Policies that are in their favour which will help them to enforce their rights. Finally, government should budget more on HIV/AIDS issues and regarding issues of discrimination and stigmatization a law should be put in place to prosecute anyone who so ever discriminates against people with HIV/AIDS. The sources of information relied upon for this research is relevant text materials, statues, judicial authorities, journals and internet materials.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

There is no doubt that one of the greatest health problem threatening human races presently is the HIV/AIDS pandemic. The HIV/AIDS epidemic is a massive and rapidly mounting disaster for children.¹ Almost 3 million children are infected with the HIV virus or living with AIDS.² More than 14 million children under the age of 15 have lost one or both parents to AIDS, the vast majority of them in sub-Saharan Africa.³

Globally, it is estimated that 1,150 children become infected with HIV daily and 2.5 million children are living with HIV worldwide⁴ while 80% of these children are from sub-Saharan Africa.⁵ While many children are infected with HIV/AIDS many more are also affected by this epidemic as it is estimated that 15 million children under 18 years have lost one or both parents to AIDS with the majority of 12 million children whom are from sub-Saharan Africa.⁶

In Nigeria, according to UNICEF⁷ statistic it shows that 3.6 million people are living with HIV while 300,000 children are infected with HIV/AIDS.⁸ With over 3 million people living with HIV/AIDS in Nigeria, stigmatization and discrimination are rife against them. Studies have shown that on daily basis children with HIV/AIDS encounter human rights abuse.⁹

¹Children HIV and AIDS, (2011), P.4 www.avert.org/aids-hiv Retrieved on 25-5-2014, 18:26

² Ibid.

³ Laurie, A. G.: The Frame for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV/AIDS, (2004), P.10. www.unicef.icdc.org/research, Retrieved on 15-8-2014, 17:20.

⁴ Children HIV and AIDS, (2011), P.4 www.avert.org/aids-hiv Retrieved on 25-5-2014, 18:26

⁵ Ibid.

⁶ Folake, B. : The legal Protection of Children Orphaned by HIV/AIDS in Nigeria: An Appraisal. Faculty of Law Obafemi Awolowo University Ile-Ife Nigeria, (2014), P.g 3. <http://creativecommons.org/licenses/by/4.0/>, retrieved on 4-3-2015, 10: 50.

⁷ Ibid.

⁸ Ibid

⁹ Ibid.

HIV/AIDS is not a problem of some countries but of the entire world. The epidemic has drastically changed the world in which children live. Millions of children have been infected and have died and many more are gravely affected as HIV spreads through their families and communities. The epidemic impacts on the daily life of younger children, and increases the victimization and marginalization of children, especially those living in particularly difficult circumstances. To truly bring its impact on children under control will require concerted and well-targeted efforts from all countries at all stages of development. Initially children were considered to be only marginally affected by the epidemic. However, the international community has discovered that children are at the heart of the problem. Furthermore, children affected by HIV/AIDS or living with the disease are nearly invisible in the Nigeria government policy response. As these children infected/affected by HIV/AIDS are not only discriminated against in education, health and social care but they are being push onto the street and into the worst forms of child labour. So also gender discrimination makes young more vulnerable to the transmission and make it more difficult for them to get care, lack off confidentially, undermine prevention, care and treatment effort contribute and increase the impact of the epidemic in children.¹⁰

Therefore all the above mention forms of practices and discrimination are great violation of children rights as provided under the law. And Nigeria government has done little to protect and promote the rights of these children already living with or affected by HIV/AIDS, virtually ignoring the large and growing category of these children.¹¹

1.2 Statement of the Problem

The HIV/AIDS epidemic has drastically changed the world in which children live. Millions of children have been infected and have died and many more are gravely affected as HIV spreads through their families and communities. The epidemic impacts on the daily life

¹⁰ Odotolu, O, Ahonsi, B.A, Gboun, M & Jolayemi, O.M: AIDS in Nigeria: A nation on the threshold'. Chapter II: The National Response to HIV/AIDS. Harvard Center for Population and Development Studies, (2006), P.30.

¹¹Ibid.

of younger children, and increases the victimization and marginalization of children, especially those living in particularly difficult circumstances.

In Nigeria, since the first case of HIV/AIDS was reported in 1986 in a thirteen-year old child, HIV/ADS prevalence has increase significantly¹². This increase has become very worrisome to the Nigerian society, because a large number of children in Nigeria who are living with HIV/AIDS suffer from the following discriminatory practises:

- 1. Stigma:** this means the mark of disgrace or discredit; it is a form of violence as it causes psychological harm in children. When children are stigmatised they are set aside and prevented from having normal inter-personal relationship with others. Often they are made to feel that there is something wrong with them and they are worth nothing. While children are usually stigmatised by those with economic and mental power over them, including guardians, teachers and relatives other times who have influenced by those with power. Stigmatisation is violence because it is the “international use power... that result in.....psychological harm.”¹³
- 2. Discrimination:** it means unequal treatment of children with HIV/AIDS in comparison to other children. Discrimination and stigma are twin concept because they are closely related, as both concepts emerged as a result of HIV/AIDS epidemic. Usually the outcome associated with stigma so also applies to discrimination as far as HIV/AIDS issue is concern. Discrimination resulted to the following abuses which include physical and psychological abuse. Physical abuse include slapping, canning and hitting of children while psychological abuse include verbal abuse, name calling, belittling and negative comparisons to other children.

¹² M.T. Ladan; The Role of Law in The HIV/AIDS Policy:- Trend of Case Law in Nigeria and Other Jurisdiction, Ahmadu Bello University Press, Zaria, Kaduna State, Nigeria, (2008), P.3.

¹³ Leanne, M.G: Violence Against Children Affected by HIV/AIDS; A Contribution to the United Nations Study on Violence Against Children: A Case Study of Uganda, World Version International Africa, (2005) P.5. www.child-right.org, Retrieved on 6-05-2013, 12: 14, p.m.

3. Lack of Access to Health Care, Education and Social Services: Generally speaking the issues of health services in Nigeria is poor. Government do not provide adequate funds relating to the issue of health sectors. As such Children with HIV/AIDS lacks adequate and accessibility to health care services. they are also being discriminated from getting public services such as depriving them from getting education this is because HIV/AIDS reduces household earning power and caregivers which may make them agonize over which to send to school or health care centre. Adequate and accessible to health care services are protective because they prevent, treat illness, and may provide links to other services for children who suffers abuse and violence due HIV/AIDS.

4. Loss of Parental Care: Children affected by HIV/AIDS are at increased risk of losing the care of parent, even before one or both died and they are more likely than other children to be living with a step parent within an extended family or with an unrelated family, this exposes them to different kind of discriminatory practise. For instance they may receive an unequal share of household resources compared to biological children of their step-parent or whom they lived with, they can also be denied to go to school. It also exposes them to high risk of exploitation, abuse, neglect and emotional distress.

5. Economic and Sexual Exploitation, Trafficking and Child Labour: Children with/ affected by HIV/AIDS are at high risk of sexual and economic exploitation because due to illness or death of their parent older children are compelled to seek employment or even leave school to work in order to carter for their sick-parent or their younger ones. Similarly, they are vulnerable to trafficking and worst forms of child labour especially young girls whom are more likely to be trafficked for sexual exploitation and sent to work as domestic labourer.

6. Intra Household Neglects: due to HIV/AIDS children are being neglected in our society. Because one's person status is relieved to be HIV positive people runaway from them. Also family members neglects these children by failing to provide sufficient food, clothing bedding, educational opportunities, health care and protection from harm.

It also include guardians of children of HIV/AIDS taking for themselves or their children goods intended for these children, enrolment of children of HIV/AIDS in government schools while the guardian children in private schools and early marriages for young children of HIV/AIDS so that the guardian could relinquish their responsibility early.

7. Income Poverty: Apart from the physical and emotional risk faced by children due to HIV/AIDS, it increase children economic vulnerability as it leaves affected families poorer because when parents or care-givers fall sick, their health care cost increases which will resulted them into lost of wages and other income. It also makes them unable to take care of their children.

The burden of caring for sick and dying parents, coupled with loss of household income perpetuates poverty by disrupting the education of children or preventing them from developing a trade. A lack of access to education can put children at increased risk of exploitation and abuse.

All the above mentioned violations and practises against children with/affected by HIV/AIDS greatly impact on the lives of these children, and an emergency action need to be taken to protect these children from such violations.

The concerns for these maltreatments at various levels despite the existing laws on the protection of children generally constitute the problem for this research work.

1.3 Scope of the Research

The issue of children within the context of HIV/AIDS is perceived as mainly a medical or health problem, although in reality it involves a much wider range of issues. As regard to the scope of this research it shall focus on the following issues.

It shall examine some relevant key terms relating to the subject matter which include the meaning of a child, meaning and scope of HIV/AIDS, nature and scope of children rights under the Law.

Secondly, it shall analyze various legal frame work in the protection and promotion of rights of children living with HIV/AIDS. Under which various international, regional and domestic instruments on the protection and promotion of the rights of children living with HIV/AIDS shall be examine.

Territorially, this research work covers the federal Republic of Nigeria. But since we do not live in isolation and because of some problem that occur generally as the issues of HIV/AIDS is a global issue there by the discussion of the research work shall consider what is obtainable in some other parts of the world if possible how they impact to Nigerian situation. In this research work children living with HIV are children whom are infected with diseases while children affected by HIV/AIDS are those whom are not themselves infected with the diseases but who parents died of HIV/AIDS.

Finally the research work shall also examine various international, regional and national mechanisms for the enforcement of protection and promotion of the rights of children living with HIV/AIDS.

1.4 Aims and Objectives

The aim and objectives of this research work is to assess the role of Law in the protection and promotion of the rights of children living with or affected by HIV/AIDS in Nigeria and with the view to study following issues:-

1. To show that children living with HIV/AIDS have rights to be protected by government and individuals and any breach of such rights is subject to the wrath of law and it is remediable.
2. To examine the nature, scope, meaning and impact of HIV/AIDS.
3. To analysis the legal framework in the protection and promotion of the rights of children living with HIV/AIDS, by reference to international, regional and national instruments in the protection of the rights of these children.
4. To examine the challenges and prospects in the protection and promotion of the rights children living with HIV/AIDS in Nigeria.

1.5 Literature Review

The HIV/AIDS epidemic has become a popular theme of modern literature attracting series of studies worldwide. From these studies there appear to be agreement among various authors that HIV/AIDS epidemic has greatly affected millions of children worldwide, which exposes them to abuse, exploitation, neglect, discrimination. It also provokes stigma among families and communities in which these children live. In the light of the above, jurist of recent all over the world, focus on knowing whether the rights of these children living with or affected by HIV/AIDS are been protected and promoted.

In 2007, Aaron G, Michael M, and Mariam T in their paper titled: The framework for the protection and support of children with HIV/AIDS. He wrote that “realizing children’s right to protection requires systemic action by governments and protective attitudes and practices by all those who have an impact on children”. The Declaration of Commitment from the 2001 United Nations General Assembly Special Session on HIV/AIDS, for example, explicitly recognizes the role of governments in protecting children affected by AIDS. In the

declaration, States pledged to “protect orphans and vulnerable children from all forms of abuse, violence, exploitation, discrimination, trafficking and loss of inheritance.”¹⁴

They also state that, Children require special safeguards and care because of their evolving physical and mental immaturity and the complex and often criminal nature of protection violations. While all children require protection, greater vigilance is needed to protect those at greatest risk – including children and adolescents affected by poverty, orphaning or other loss of parental care, disability, natural disaster and conflict – and special attention should be paid to the particular risks to girls in these situations.

In 2004 Dan O. Donnell in his book titled “Child Protection” viewed that the term “Child Protection” is used in different ways in different originations and in different situations. He said the term in its simplest form, addresses every child’s rights not to be subjected to harm such as violence, abuse, exploitation, and discrimination.¹⁵

Child protection within the context of HIV/AIDS covers a wide range of important, diverse and urgent issues. Because due to HIV/AIDS, children suffers different kinds discriminatory practises. Violations of the child’s right to protection, in addition to human rights violations are also massive, under-recognized and underreported barriers to child survival and development. And failure to protect children it undermines national development .and has costs and negative effects that continue beyond childhood into the individual’s adult life. While children continue to suffer violence, abuse and exploitation, the world will fail in its obligations to children. It will also fail to meet its development aspirations.¹⁶ Commenting on Dan `s work above, John Snow, in 2011, in his paper titled “Protecting Children Affected by HIV/AIDS Against Abuse”: protecting children is essential to the success and sustainability of every nation; it also contributes to the achievement of several others key

¹⁴Aaron, G. M.M. : The Frame Work For the Protection, Care, and Support, of Orphans and Vulnerable Children Living in a World with HIV/AIDS, Candace Miller of Boston University, U.S.A, (2007), p.10.[http:// www.unicef.org](http://www.unicef.org)

¹⁵Mr. Dan, O.D. :” Child Protection” KundiQ Studio, Switzerland, (2004), P.8 www.ipu.org

¹⁶ Ibid. P.9.

health and development goals. Conversely failure to protect children can undermine these efforts.¹⁷ Further, he said child abuse occurs across socioeconomic, religious, cultural, racial and ethnic groups. But HIV/AIDS does weaken the system intended to protect children living with HIV or affected by HIV from abuse. As a result, many children affected by HIV may be more vulnerable to abuse and violence.

However it is evidently clear that all the authors mentioned above, in their related articles aim at examining and analysing the reason for the protection and promotion of the rights of children which include the rights of children living with /affected by HIV/AIDS worldwide., but they did not examine reasons for protecting and promoting the rights of children living/affected by HIV/AIDS in Africa. Therefore, in relation to this there various jurist and authors that examines the reasons for protecting and promoting the rights of these children with HIV/AIDS in Africa.

In 2006, Linda M. R. In her paper titled “Building Resilience: A Right Based Approach to Children and HIV/AIDS in Africa”. She examined that HIV/AIDS has devastating effects on African children, their families, and their societies. And it has impact severely on Africa.¹⁸

Furthermore, she adds that the infection rate has risen rapidly and the scale of prevalence is largely unabated. Moreover, the epidemic compounds existing problems that children and families face resulting from decades of exploitation, poverty, civil and regional conflict, and natural disasters. UNAIDS data indicates that Sub-Saharan Africa remains the hardest hit region in the world, with a total of 25 million people living with HIV/AIDS and many children in Sub-Saharan Africa, in addition to those who receive most media attention (i.e. orphans, child heads-of-household, and children living with HIV/ AIDS), are affected by

¹⁷ John, S.: Protecting Children Affected by HIV Against Abuse, Exploitation, Violence, and Neglect. Arlington VA: USAIDS AIDS Support and Technical Assistance Recourses, AIDSTAR One, Task order 1. (2011), P.8 aidstar.one.com

¹⁸ Linda, M.R.: ‘Building Resilience` A Rights- Based Approach to Children and HIV/AIDS in Africa . Save The Children Sweden, Elandar Stockholm, (2006), P.10,www.rb.se

HIV/AIDS, poverty, and social instability. They include already vulnerable children, especially children with disabilities and children living outside of family care, as well as children living with chronically ill or disabled adults, children in homes that have become poorer as a result of fostering in children from the extended family, and children in communities suffering a high burden of illness, dependency, destitution, and death. In all of these situations, children's health, economic and food security, family life connections to social institutions, opportunities to learn, human rights to development, and hopes for the future, are threatened and there is need to protect these children.

It has also been submitted that a large number of children are infected with HIV/AIDS, at the end of 2009 there were 2.5 million children living with HIV/AIDS around the world. But African children are the most affected by the epidemic with twenty countries in sub-Saharan Africa accounting for an estimated 69% of all new infected globally. Commenting on above, in 2011 Ann Strode in her paper titled "Regional Issue Brief Children, HIV, and the Law". Submitted that most of the children living with HIV/AIDS are almost nine out of ten live in sub-Saharan Africa with one out of every three young people newly infected with HIV/AIDS are from South Africa or Nigeria.¹⁹

She also adds that the impact of HIV/AIDS on children in Africa begins not only when their parents contracts HIV/AIDS, but include other factors which greatly affects the lives of these children. For instance, discrimination, stigma, and physical care for the ill parents, loss of family income and use of resources for medical care uncertainty and fear.

Finally, in 2008 M. T. Ladan in his paper titled: The Role of the Law in the HIV/AIDS Policy: Trend of case Law in Nigeria and other jurisdiction. Also submitted that since the first case of HIV/AIDS was reported in Nigeria in 1986 in thirteen-year old child HIV/ADS prevalence has increase significantly. Furthermore he adds that a large number of

¹⁹ Ann. S.: Regional Issues Brief; Children, HIV and the Law for the African Regional Dialogue. Global Commission on HIV and the Law, Pretori, South African, (2011), P.1, www.hivlawcommission.org.

children in Nigeria who are made extremely vulnerable to the impact of HIV/AIDS are as a result of abuse, exploitation and exclusion from basic health and education services.²⁰ He also adds that not only these factors mentioned above made these children vulnerable to the impacts of HIV/AIDS, but also discriminatory practises towards these children within their extended family, household render them highly susceptible to malnutrition and vitamin deficiency.

In conclusion, it appears that from the above studies it shows there is agreement among various authors that HIV/AIDS epidemic has greatly affected millions of children worldwide. As it expose them to different kind of discriminatory practises. This is a great violation of their rights which also need to be protected. however in light of the above, the researcher wishes to fill the gaps which were left untouched by the previous writers in relation to the subject matter of the study. By focusing on these issues as to whether these children have rights to be protected by the government and individuals. Furthermore to know whether there are cases of violations of such rights and if there is any breach of such rights is it subject to the wrath of the law and also is it remediable.

1.6 Justification

The challenges faced by children living with or affected by HIV/AIDS can never be over emphasis, as it has a numerous impact in lives of these children affecting their civil, political social and cultural rights²¹. Against theses backdrops the research work examines the adequacy of the Law on the subject matter vis-a vis the practice of neglect of children with HIV/AIDS in Nigeria.

This research work shall benefit children living with or affected by HIV/AIDS, by pointing out the various rights available to the children provided under international, regional,

²⁰ M.T. Ladan, *The Role of Law in The HIV/AIDS Policy:- Trend of Case Law in Nigeria and Other Jurisdiction*, Ahmadu Bello University Press, Zaria, Kaduna State, Nigeria, (2008), P.3.

²¹ Adeyi, et al, 'AIDS in Nigeria: "A Nation on the threshold" Chapter 2: The Epidemiology of HIV/AIDS in Nigeria. Harvard Centre for Population and Development Studies (2006), P.2.

and domestic instruments dealing with human rights especially those dealing with rights of children and how they are violated. It also points out the ways and mechanisms to protect the violation of such rights and also to promote the enforcement of such rights in HIV/AIDS related issues.

Similarly, the research work shall benefit the following persons namely ,parents of these children living with or affected by HIV/AIDS, Doctors, Nurses, Psychologist and other Health Workers, educationists, legislators, researchers, judges, executive, arms of government, international jurists on human right, law students, legal practitioners, legal academicians. It does that by pointing out various ways and mechanisms in protecting and promoting the enforcement of the rights of children living with or affected by HIV/AIDS in HIV/AIDS related issues.

1.7 Research Methodology

In undertaking this research work doctrinal and empirical methods shall be used, doctrinal method according to Y. Aboki,²² is called a visualised research, unpractical research, a visionary research, or a conceptual research paying attention to theory as opposed to practice, examples of doctrinal research method include primary and secondary sources.

Primary sources include;

- i. International, regional, and domestic instruments on the subject matter of the research.
- ii. Treaties, conventions, and non-binding standards relevant to the subject matter of the research.
- iii. National constitutions and legislative frameworks.
- iv. Case law.
- v. National policies.

²² Aboki, Y. Introduction to Legal Research Methodology. Tamaza Publishing Co. Ltd. Zaria, Nigeria, (2001) P.3.

Secondary sources include;

- i. Textbooks.
- ii. Journals.
- iii. Newsletters.
- iv. Workshop and seminar papers.
- v. Magazines and newspapers articles.

1.8 Organizational Layout

The organizational layout of this research work shall be categorized into five (5) chapters with sub-chapters to enhance better understanding of the work.

Chapter one deals with general introduction. It contains the background to the study, statement of the problem, aims and objectives, and scope of the research shall also be seen. It also discusses the research methodology, justification of the research, and a vivid literature review of some exiting literatures relating to the subject matter of the research and deals with the organisational layout of the research.

Chapter two, deals with the conceptual clarifications of key terms. It contains the meaning of a child. The meaning, nature, and scope of HIV/AIDS in which types, prevention, transmission, and prevention of transmission, treatment and care of children living with or affected by HIV/AIDS in children shall be considered. Finally, it discusses nature and scope of children rights to health under international, regional and domestic law.

Chapter three, deals with the analysis of legal framework. It will discuss the international, regional, and domestic instruments on the protection and promotion of the rights of children living with /affected by HIV/AIDS. It also discusses the mechanisms for the protection and promotion of the rights of children living with /affected by HIV/AIDS in doing so, it will consider the international, regional and domestic mechanisms for the protection and promotion of the rights of children living with /affected by HIV/AIDS.

Chapter four, deals with the challenges, importance's and prospers in the protection and promotion of the rights of children living with HIV/AIDS in Nigeria. Under which it shall discusses the challenges faced by children living with HIV/AIDS in Nigeria. It shall also discuss the importance of protecting and promoting the rights of these children and prospers in protecting the rights of these children.

Chapter five is the conclusion chapter, as it provides a vivid summary of the research, observations, and findings of the research. Finally, the chapter proffers recommendations and suggestions in lieu of the observations made. .

CHAPTER TWO
CONCEPTUAL CLARIFICATION OF TERMS AND HISTORICAL
DEVELOPMENT

2.1 Introduction

The chapter intends to discuss the meaning of a child, the meaning, nature, and scope of HIV/AIDS. It will also discuss the nature and scope of child rights to health under international, regional and domestic law and all the relevant terminology.

The chapter also intends to look at the meaning of a child, meaning and nature of HIV/AIDS, types of HIV/AIDS, transmission of HIV/AIDS in children. The chapter will consider prevention of transmission of the HIV/AIDS in children, care of children living with HIV/AIDS, finally treatment of HIV/AIDS in children.

2.2 Meaning of A `Child`

Today, half of all new HIV infections occur among children and young people under 25 years of age, the people who were born and who have grown up during the AIDS epidemic. The epidemic is straining resources in already impoverished communities and creating new obstacles to the realization of children's rights to survival, development and protection. The failure to ensure children's rights creates opportunities for HIV infection. At the same time,

HIV/AIDS creates opportunities for the violation of children's rights.¹ Unfortunately, most epidemiological data collection for HIV uses 14 as the cut-off age for children and labels all people above this age as adults, but to clear this confusion we have to know who is a child. Under Article 1 of the Convention on the Right of the Child defines, "a child as a

¹HIV/AIDS and Children's Rights, www.icad.cisd.com P. Retrieved on 30-10-2013, 9:23 p.m.

person below the age of 18, unless the law of a particular country set the legal age for adulthood younger.”²

Also to avoid discriminating against any portion of the global population of children, all persons under the age of 18 should be counted and referred to as children. This means that until all-inclusive data on children become available, references and statistics that count children between the ages of 15 and 18 together with adults should be clearly identified as being inclusive of children.³

A child is usually defined in relation to age; there are varying definitions of a child as there is varying of law.⁴ A child is a young human being who is not yet an adult. The customary definition of a child varies from one ethnic group to another as a result of non-unification of customary laws in Nigeria. Thus a boy child in one ethnic group remains a child until he is initiated into an age grade society or until he or she is old enough to contribute financially to community development while another childhood terminates upon attaining puberty.⁵

For the purpose of this research work, a child is defined under the African Charter on the right and welfare of the child, the United Nations Convention on the rights of the Child, and the Child Rights Act “as person under the age of eighteen years”.⁶

Similarly, under the convention a child means “every human being below the age of 18 years unless, under the law applicable to the child, majority is attainable earlier.”

2.3 Meaning and Nature of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)

The HIV/AIDS epidemic is a massive and rapidly mounting disaster for children. Almost 3 million children are infected with the HIV virus or living with AIDS. More than 14

² Convention on the Rights of the Child (1989)

³ibid. P.2.

⁴Okpalaobi, B. N.: Legal/Judicial Enforcement Approaches Towards Prevention and Protection of Children Infected and Living with HIV/AIDS in Nigeria. An International Multidisciplinary Journal Ethiopia, (2012), Vol.6, No.24, P.g 189.

⁵ibid.

⁶Convention on the Rights of the Child (1989).

million children under the age of 15 have lost one or both parents to AIDS, the vast majority of them in sub-Saharan Africa.⁷

By 2010, the number of children orphaned by AIDS globally was expected to exceed 25 million. But that is just a fraction of the number of children whose lives will have been radically altered by the impact of HIV/AIDS on their families, communities, schools, health care and welfare systems and local and national economies. With rates of HIV infection on the rise in many regions of the world, this crisis for children will persist for decades, even as prevention and treatment programmes are expanded.⁸

The impact of HIV/AIDS is most profoundly reflected in the lives of children, whose very survival and development are at stake. Almost 3 million children under the age of 15 are living with HIV or AIDS, over 2.7 million of them in sub-Saharan Africa. Another 14 million children have lost one or both parents to AIDS.⁹

2.3.1 The Meaning and Nature of Human Immunodeficiency Virus (HIV)

The primal origin of HIV is surrounded by several hypotheses varying in degrees of credibility. The disease was first observed among homosexual men in Los Angeles in 1981 and subsequently in San Francisco and New York of the United States of America. However, frozen blood samples taken from a Zairean man in 1959, several years later proved to be HIV- infected. As it indicated the presence of the disease in Africa long before the 80`s. In Nigeria the first two cases of HIV and AIDS were identified in 1985 and were reported at an international AIDS conference in 1986.¹⁰

HIV stands for Human Immunodeficiency Virus. It is a virus transmitted between human beings, which breaks down the immune system, resulting in the inability of the body

⁷ Laurie, A. G.: The Frame for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV/AIDS, (2004), P.10. www.unicef.icdc.org/research.

⁸Ibid.

⁹ Ibid p.15.

¹⁰ Adeyi, et al, `AIDS in Nigeria: "A Nation on the threshold" Chapter 2: The Epidemiology of HIV/AIDS in Nigeria. Harvard Centre for Population and Development Studies (2006), P.2.

to protect it from diseases. HIV is the virus that causes AID. If one has this virus, he/she is HIV positive. A virus is a tiny piece of biological material that attaches to the cells of another creature and uses them to make copies of it.¹¹ HIV attaches to one of the important types of cells that make up the human immune system. These cells make many copies of HIV and then die, releasing those copies to attach to other cells. When enough of these cells are dead, the immune system is weakened and can no longer fight off diseases as well as it could before.¹²

The way that a disease develops in a person is called progression. The progression of HIV/AIDS has three phases:

Phase 1: Acute Infection. A person who has just been infected with HIV may experience flu-like symptoms as her/his body reacts to the virus. The symptoms normally go away in 1-3 weeks¹³.

Phase 2: Asymptomatic Infection. During this phase, which usually lasts 8-10 years, the infected person will not appear to be ill, even though HIV is destroying the cells in the immune system faster than the body can replace them.¹⁴

Phase 3: Clinical AIDS: during this phase, the immune system becomes very weak and the infected person catches diseases and eventually dies.¹⁵

Research has shown that women who are infected with HIV often have fewer copies of the virus in their bodies than men do for at least the first five years of phase 2 (asymptomatic infection). Despite having fewer copies of the virus in their bodies, women are more likely than men to progress quickly to phase 3 (clinical AIDS) and die. This may be

¹¹ A. O. Lucas : Short Text Book of Public Health Medicine for the Tropics International Studies, Published by Arnold, Distributed by Oxford University Press Inc. 198 New York, (2003), P.109.

¹² Joint United Nations Programme on HIV/AIDS (UNAIDS). Gender and AIDS Almanac, (2002), P.1.

¹³ M. T. Ladan, : Law and Policy on Health, HIV/AIDS, Maternal Mortality and Reproductive Rights in Nigeria, Faith Printers and Publisher Congo, Zaria, Nigeria, (2007), P.137.

¹⁴ Ibid.

¹⁵Ibid. P.138.

because women in many parts of the world have poor access to medical care and receive lower quality care than men even when they do have access.¹⁶

HIV is present in the body fluids (such as blood, semen and vaginal fluids) of an infected person. People who are infected with HIV are sometimes referred to as “HIV positive,” or “HIV+,”¹⁷

2.3.2 Types of HIV/AIDS

There are two types or strains of the virus:

(A). HIV-1 which has nine subtypes. Each of these subtypes is most common in one or more specific parts of the world. For example, 93% of a sample of HIV positive people from Western Africa were infected with subtype A and less than 1% were infected with subtype C. Conversely, 94% of sample of HIV positive people from Southern Africa were infected with subtype C, and less than 1% with subtype A.

(B). HIV-2. Which is less infectious and found primarily in West Africa¹⁸

HIV-1 has shown a remarkable ability to exploit and adapt to changes in the social environment. At the molecular level, it has also been observe that the virus is constantly changing. In order to map the genetic variation of HIV-1, groups, including M (main), O (outlier) and N (non-M, non-O). The main group (M) is further classified into a number of subtypes and variants as a result of the combination of two or more subtypes known as `Circulating Recombinant Forms` (CRF).

2.3.3 Ways of Transmission of HIV/AIDS in Children

There are various ways in which children become infected with HIV virus, and this can be seen as follows: - Mother-to child-transmission, Blood transfusion, Infecting drug use and Sexual transmission.¹⁹

¹⁶Ibid

¹⁷ A. O. Lucas : Short Text Book of Public Health Medicine for the Tropics International Studies, Published by Arnold, Distributed by Oxford University Press Inc. 198 New York, (2003), P.112.

¹⁸ Ibid.

2.3.3.1 Mother-To-Child Transmission

Nine out of ten children infected with HIV were infected through their mother either during pregnancy, labour and delivery or breastfeeding.²⁰ Without treatment, around 15-30% of babies born to HIV positive women will become infected with HIV during pregnancy and delivery and a further 5-20% will become infected through breastfeeding. In high-income countries, preventive measures ensure that the transmission of HIV from mother-to-child is relatively rare, and in those cases where it does occur range of treatment options mean that the child can survive - often into adulthood. But in Africa, for example Nigeria the case seems to be different. This is because the preventive measures are not so adequate to prevent the transmission of HIV from mother to her child. However to prevent wide spread of the disease adequate funding, trained staff and resources are needed. The infection and deaths of many thousands of children could also be avoided.

2.3.3.2 Blood Transfusion

HIV infection can occur in medical settings for instance, through needles that have not been sterilised or through blood transfusions where infected blood is used. In wealthier countries this problem has virtually been eliminated, but in resource-poor communities it is still an issue. The largest scale case of infections among children resulting from contaminated injections and unscreened blood transfusion occurred in Romania between 1987 to 1991 when more than 10,000 babies and children were infected with HIV as a result of unsafe medical practices.²¹

Also unsafe blood transfusions have also led to hundreds of HIV infections in countries in the Central Asia region, namely Kazakhstan, Kyrgyzstan and Uzbekistan from 2006-2008. The widespread reuse of injection equipment as well as encouragement by doctors motivated by financial reasons to carry out 'unnecessary blood transfusions', led to

¹⁹ Children HIV and AIDS, (2011), P.3 www.avert.org/aids-hiv

²⁰ HIV and AIDS in Nigeria, (2011),P. www.Avert.org 2011

²¹Children HIV and AIDS, (2011), P.4 www.avert.org/aids-hiv Retrieved on 4-11-2012, 5:14 p.m.

the infection of at least 119 children in Kazakhstan and at least 150 in Uzbekistan from 2007-2008.²²

Although official statistics claim that unsafe injections account for a small percentage (2.5%) of HIV infections in sub-Saharan Africa, this is contested by a number of researchers. HIV prevalence in children can be 1 to 3 times higher than that of pregnant women in antenatal clinics and in one study as many as a fifth of children who were not sexually active had HIV negative mothers suggesting that the children were infected through contaminated medical procedures.

2.3.3. 3 Infecting Drug Use

In central and Eastern Europe, where injecting drug use fuels the spread of HIV, young people living on the street are found to be especially vulnerable to HIV through injecting drug use. For example in St Petersburg, a study of more than three hundred 15-19 year olds living on the street found that 40 percent of them were HIV positive. also in Ukraine, one study found a variety of HIV risk behaviours like sharing needles and unprotected and forced sex were prevalent among 10-19 year old street children, while a multicity study found an HIV prevalence of 18% among street youth (aged 15-24). Police harassment and the general attitude of society that sees street children as ‘outcasts’ and ‘criminals’ means that that they are difficult to reach with health and social services.²³ Similarly, in sub-Saharan Africa (Nigeria), injecting drug use also help in the transmission of HIV among young people this is because young children aging from 13-18 badly engages in different kind of drug abuse through injecting themselves.

2.3.3.4 Sexual Transmission

Sexual transmission does not account for a high proportion of child infections but in some countries children are sexually active at an early age. This is potentially conducive to

²²ibid

²³ Ibid.

the sexual spread of HIV among children, especially in areas where condom use is low and HIV prevalence is high. In sub-Saharan Africa 16 percent of young females (aged 15-19) and 12% of young males reported having sex before they were 15 in 2007. In Lesotho, these figures are 16% and 30%, respectively. Also the figures are In Kenya 15% and 31%. In developing countries overall it is estimated that 6% of boys and 11% of girls have had sex by age 15.²⁴ The lower the age of first sex and the higher the lifetime risk of HIV infection. This is because early sexual debut is often associated with older lifetime partners, higher rates of coerced sex and lower rates of condom usage.²⁵

Children are also at risk of becoming infected with HIV through sexual abuse and rape. In some parts of Africa, for example in Nigeria some people believe that HIV can be cured through having sex with a virgin girl and which has led to rapes, sometimes of very young children by infected men. In some cases, young children are trafficked into sex work, which can put them at a very high risk of becoming infected with HIV.

2.3.4 Prevention of Transmissions of HIV/AIDS in Children

There are various ways in which transmission of HIV/AIDS in children can be prevented.²⁶

1. Prevention of mother-to-child transmission.
2. Blood safety.
3. HIV/AIDS education.
4. HIV testing for children.

2.3.4.1 Prevention of Mother-To-Child Transmission

To prevent mother-to-child transmission of HIV, antiretroviral drugs are given to the mother before birth and during labour, and to the baby following birth. And safer infant feeding is also promoted. This approach can almost eliminate the risk of transmission from

²⁴ Ibid. P.6.

²⁵ Ibid. P.6.

²⁶ Ibid. P.7.

mother-to-child. Unfortunately, prevention of mother-to-child transmission services fail to reach most women in resource-poor countries. In 2010 for example, only around half of HIV-infected pregnant women in low- and middle-income countries received drugs to protect their babies from infection.

2.3.4.2 Blood Safety

In order to eliminate the risk of a child being infected with HIV in medical settings, either through contaminated needles or blood transfusions, a number of steps can be taken. These include adopting safer injecting practices for injections and screening all donated blood for blood borne viruses.

2.3.4.3 HIV/AIDS Education

HIV/AIDS education is an important way of reaching young people with knowledge on sexual health and drug abuse. There are many ways to reach young people which include through schools, media, and peer outreach. Whatever the medium, HIV/AIDS education should not only address the biological facts of HIV and STI transmission but provide information on how to prevent transmission. It should also take into account the realities of young people's lives - such as peer pressure or gender inequality.

2.3.4.4 HIV Testing For Children

It is important that HIV infected children are diagnosed as quickly as possible, so that they can be provided with appropriate medication and care. However, testing children for HIV can be complicated, especially for those recently born to HIV-positive mothers. Antibody tests, which are used to diagnose HIV in adults, are ineffective in children below the age of 18 months. Instead, children below this age are usually diagnosed through polymerase chain reaction (PCR) testing and other specialist techniques. This is referred to as early infant diagnosis and is important because mortality is very high amongst HIV infected infants who go untreated. However, among 65 reporting countries, it was found that only an

estimated 28 percent of children born to HIV positive mothers received an HIV test within the first two months of life.²⁷

2.3.5 Treatment of HIV/AIDS in Children

HIV treatment for children slows the progress of HIV infection and allows infected children to live much longer, healthier lives. Yet, almost three-quarters of the children who could be benefiting from this therapy in low and middle-income countries are not receiving it. Children ideally need to be given drugs in the form of syrups or powders, due to difficulties in swallowing. However, drug treatments involving syrups for children are generally more expensive. As a result, carers are often forced to break adult tablets into smaller doses, running the risk that children are given too little or too much of a drug. Studies suggest that breaking down adult tablets into smaller doses can work effectively although this should only really be seen as a last resort.

Although the cost of first line therapy for children has reduced dramatically due to the availability of generic drugs (\$50 a year on average in 2009 compared to about \$20,000 a few years before), when a child develops drug resistance and needs to begin a second course of drugs, treatment becomes far more expensive. More drugs suitable for children are qualified by the WHO every year, but without access to cheap generic versions of them the majority of HIV infected children will not benefit. The latest WHO guidelines recommend children to start treatment as early as possible after diagnosis and suggest that where necessary they can receive a complex set of drugs. Which include protease inhibitors to reduce the likelihood of drug resistance although this will require more resources and higher levels of funding.

Another major problem for children living with HIV is childhood illnesses, such as mumps and chickenpox. These illnesses can affect all children, but since children living with HIV have such weakened immune systems they may find that these illnesses are more

²⁷ *Ibid.* p.8.

frequent, last longer, and do not respond as well to treatment. Opportunistic infections, such as tuberculosis and PCP (a form of pneumonia), are also a serious risk to the health of children living with HIV.²⁸

Opportunistic infections can be prevented using drugs such as cotrimoxazole: a cheap antibiotic that has been proven to significantly reduce the rate of illness and death among HIV-positive children. Countless lives could be saved if cotrimoxazole were made more widely available, but at the moment it is estimated that only 14% of children who could be benefiting from the drug are receiving it. .²⁹

2.3.6 Care of Children Living/Affected By HIV/AIDS

The global HIV/AIDS pandemic has been changing human lives and the shape of societies for more than 15 years in the heavily infected countries of Sub-Saharan Africa, Asia, Latin America and the Caribbean. It has reversed decades of development gains in health, and slowed economic and social improvement across the board and in ways that will change relationships at family, community and national levels forever.³⁰

The challenges faced by children, families, communities, and their governments in managing the impact of HIV/AIDS are and will continue to be enormous. Therefore, comprehensive and cost-effective approaches, coupled with coordinated partnerships and community mobilization, are needed. It is also imperative to replicate, scale-up, and sustain these approaches to meet the short- and long-term care and support needs of children with HIV/AIDS, orphans and other vulnerable children.³¹ The means and ways to care and support for children living with/affected (orphans) by HIV/AIDS can be seen as follows: - Policy and law, providing medical care, socioeconomic support, psychosocial support, education, and human rights.

²⁸Ibid. P.9.

²⁹Ibid. P.9.

³⁰Care for Orphans Children Affected By HIV/AIDS and Other Vulnerable Children; A Strategic Framework, Family Health International HIV/AIDS Prevention and Care Dept, U.S.A, (2001), P.2.

³¹Ibid. P.5.

2.3.6.1 Policy and Law

Appropriate government policies are essential for the protection and well being of children living with HIV/AIDS. Also other children affected by HIV/AIDS (orphans) and other vulnerable children and their families. These policies must contain clauses to prohibit discrimination of access to medical services, education, employment, housing, and protect the inheritance rights of widows and orphans. While most countries have child welfare laws, their application for the protection of street children and other vulnerable children needs to be strengthened. Policy options include ensuring access to education and basic health services. protecting inheritance rights of widows and orphans, preventing inappropriate institutionalization, ensuring the provision of better alternative forms of care for children without adequate family care. Foster care, adoption, small group homes integrated in communities. Ensuring existing residential care meets children's developmental, psychosocial, and material needs, Protecting street children from abuse, protecting children from abuse and neglect. Also protecting children from sexual abuse or exploitation. preventing harmful child labour practices, improving access to limited resources land, labour, capital, draft animals, management skills. promoting optimal resources use improved technologies to improve productivity, economic support, income generating activities. Empowering affected groups (child-headed households, widows, grandparents, orphans, and youths) by developing their ability to support themselves. Formulation and revision of these policies and laws should fully consider. The challenges that are faced by people living with HIV/AIDS children and families affected by it. The potential for government action to have a significant impact, and be in line with the Convention on the Rights of the Child.

Some countries such as Malawi, have established a policy framework specifically to protect orphans, guide the way services are provided for them and define respective government and NGO areas of responsibility. Other countries, including Uganda, Thailand

and Senegal, have shown that open, committed leadership and political will can make a difference.³²

2.3.6.2 Providing Medical Care

For the maximum well-being of children infected with/ affected by HIV and other vulnerable children to be reached they and their guardians need to have access to appropriate health care. Including clinical and preventive health care services, nutritional support, palliative care and complimentary home-based care and full and relevant information. In the case of unknown HIV status of children born from HIV infected mothers, nutritional and infant feeding support is essential. And whenever the HIV status of the child is known to be positive, preventive therapy against common opportunistic infections is also recommended as the standard of care. The implementation of ARV regimens to improve and extend the lives of children infected with HIV is to be considered whenever accessible and feasible.

2.3.6.3 Providing Socio-Economic Support.

Children living with and those affected by HIV/AIDS (Orphans) and their families are confronted with severe threats to their well-being including isolation, loss of income, educational access, shelter, nutrition and other essential necessities. When families and children are forced to focus on daily basic needs to decrease their suffering, attention is diverted from factors that contribute to long-term health and well-being. It is widely recognized that most of the problems faced by AIDS-affected children and households result either directly or indirectly from the economic impact of AIDS.³³

To mitigate the socioeconomic impact of AIDS, communities must be able to identify children and households most in need, prioritize their needs, and use local and external resources to increase their well-being and strengthen community safety nets. There should also be special attention to child-headed households, families with young children headed by

³² Ibid.

³³ Ibid. P.6.

the elderly; families with young children headed by adolescents and abandoned newborns. Outreach programs in cooperation with social welfare can also provide human resources and technical assistance to households identified as taking care of orphans, headed by children and adolescents.

2.3.6.4 Providing Psychosocial Support

The psychosocial needs of children continue to be one of the most neglected areas of support. The HIV epidemic has increased the urgency to address psychological problems of children in an equal proportion to other interventions. Children infected with HIV virus experience psychological problems such as psychosomatic disorder, fear anxiety, depression and disturbed social behaviour. Also Children are affected by the changes in their parent's emotional and physical state. They may not know what is happening to the parent and become confused and frightened. When a parent becomes terminally ill, older siblings are often forced to take on a premature parenting role for their younger siblings and nursing care for their parents. Without proper support mechanisms upon the death of a parent children experience a profound sense of loss, grief, hopelessness, fear and anxiety. Long-term consequences can include psychosomatic disorders, chronic depression, low self-esteem, and low levels of life skills, learning disabilities, and disturbed social behaviour.³⁴

2.3.6.5 Providing Education on HIV/AIDS to Children

Education plays a vital role in the well being of children. It not only offers them a chance for their future but also provides developmental stimuli. The impact of HIV on the educational system has resulted in a decreasing number of teachers due to mortality, a growing number of children who are not able to attend or stay in school, and rising numbers of pupils whose ability to take advantage of schooling is undermined by other factors including poor nutrition, psychological stress etc. The quality of education also at risk of

³⁴ Ibid.

declining due to teacher shortages related to illness, and teachers' has to care for sick relatives, or attend funerals.³⁵

Each of the above areas of concern needs to be addressed to increase the access and quality of education for children. Different interventions to do so include accelerating actions to ensure that universal primary education is available to all children regardless of their social situation, community schools, incentives to schools to allow the most needy children access to education, and educating staff and students about HIV/AIDS including discussions about how children are infected with / affected by HIV/AIDS and how can students support each other. Educational activities need to be linked to other interventions, such as nutrition and psychosocial, to have a holistic program that addresses influencing factors on children's ability to attend school and maximize the benefits of education.

2.3.6.6 Human Rights

Human rights-based approaches have been increasingly recognized as essential to the success of HIV prevention and care programs, including those working with children and adolescents. Governments have committed themselves in respecting, protecting, promoting, and fulfilling human rights by ratifying human rights treaties, such as the Convention on the Rights of the Child. Additionally, many NGOs utilize human rights as a programming framework.³⁶

2.4 The Meaning of Acquired Immune-Deficiency Syndrome (AIDS)

AIDS stands for Acquired Immune Deficiency Syndrome. It is acquired this mean that it is a condition that has to be contracted. It cannot be inherited through the genes. It causes deficiency of the immune system because it hinders the proper functioning of the

³⁵ Ibid. P.7.

³⁶ Ibid. P.8.

immune system. It is referred to as a Syndrome because people with AIDS experience a number of different symptoms and opportunistic diseases.³⁷

AIDS is the most advanced progression of HIV infection. Untreated human immunodeficiency virus (HIV) disease typically progresses relentlessly in almost all infected persons from clinically silent infection; detectable only by laboratory tests to severely damaged immunologic function, resulting in the acquired immunodeficiency syndrome (AIDS). Without treatment, the disease progresses over a median interval of about ten years although with great individual variation, and eventually causes death in most, if not all cases. During the course of HIV disease, a variety of clinical syndromes may occur. Incompletely understood interactions between host, HIV and environmental factors determine the particular clinical manifestations and rate of disease progression for each individual.³⁸

The common syndromes that present as HIV advances to AIDS include:-

1. Pneumocystis carinii pneumonia
2. Toxoplasmosis.
3. Tuberculosis.
4. Extreme weight loss and wasting exacerbated by diarrhoea which can be experience in up to 90% of patients worldwide.
5. Meningitis and other brain infections.
6. Fungal infections.
7. Syphilis.
8. Malignancies such as lymphoma, cervical cancer and Kaposi's sarcoma.³⁹

³⁷ A. O. Lucas: Short Text Book of Public Health Medicine for the Tropics International Studies, Published by Arnold, Distributed by Oxford University Press Inc. 198 New York, (2003), p.109.

³⁸ Cohen, P.T. Understanding HIV Disease. In: Cohen et al. (eds.). The AIDS Knowledge Base, Lippincott Williams, & Wilkins Philadelphia, (1999), P.175.

³⁹ A. O. Lucas : Short Text Book of Public Health Medicine for the Tropics International Studies, Published by Arnold, Distributed by Oxford University Press Inc. 198 New York, (2003), p.111.

2.5 Nature and Scope of Child Right to Medical and Health Care under the International, Regional, and Domestic Law

In modern times, the earliest conceptualization of a right to health did not so much emanate from a human rights organ, but from an international health authority-the World Health Organisation (WHO)⁹ In the preamble to the Constitution of the WHO, which was written in 1946, the WHO proclaimed that ‘the enjoyment of the highest attainable standard of living is one of the fundamental rights of every human being, without distinction of race, religion, political belief, economic or social condition’.¹⁰ The WHO’s Constitution defines health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’.¹¹ The right to health has since become an integral part of most of human rights instruments at both an international and regional level.

The array of human rights instruments and documents that deal with the right to health is vast. At an international level, the following treaties contain provisions that address the right to health: Universal Declaration of Human Rights (1948), International Convention on the Elimination of All Forms of Racial Discrimination (CERD 1965), and Convention on the Rights of the Child (CRC 1989).

1) Rights Of A Child To Medical and Health Care Under The International Instruments

a) Universal Declaration of Human Right

The Declaration was the earliest modern human rights instrument that proclaims a right to medical and health care. As it provide for the right to everyone to adequate standard of living and adequate medical care. This is provided under Article 25 of the Declaration. It states as follows⁴⁰:

- 1) Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, and security in the event of unemployment, sickness,

⁴⁰ Universal Declaration on Human Rights (1948).

disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

- 2) Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection.

From the above provision, the Declaration sought to achieve a common standard of achievement for all people and all nations. Although the Declaration has come to acquire significant moral and legal force, and to provide the aspiration of many domestic constitution, but it was not intended to be a statement of law or legal obligation. Because it was not a treaty, it lacked normative force.

It was also exhortatory, based on existing commitments in national Laws rather than binding on member states. What was missing from the Declaration was a provision for corresponding obligation on member states to only protect and promote, but it fulfil the right accorded to individuals. The Declaration also did not impose a new obligation on part of the states to take positive measures aimed at enabling and assisting individuals and communities to realize the rights that it had proclaim. In respect to socio-economic rights including the right to health this lacuna has been primarily filled by other instrument on human rights.

b) International Covenant on Economic Social and Cultural Rights

CESCR put into normative form what the Universal Declaration had merely proclaimed. The covenant which Nigerian has signed and ratified, binds ratify states to discharge the obligation that have undertaken. The covenant state that states parties to the covenant has to recognise the rights provided under the covenant to everyone to enjoy the highest attainable standard of physical and mental health. And also to create conditions which will assure to all medical service and medical attention in the event of sickness. In this regard various articles of the covenant provide the following:

Article 12 provides that;

State parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

- 1) The steps to be taken by the states parties to the present covenant to achieve the full realization of this rights shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the health development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of condition which would assure to all medical service and medical attention in the event of sickness.

c) International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is another international instrument that proclaims the right to medical care and adequate health services. It proclaims that everyone has the inherent right to life which shall be protected by the law. Also it proclaims that no one shall be subjected to any kind of inhumane treatment or punishment. It is a fact that in Nigeria, when it comes to the issue of health care services the effectiveness, the issue is not appreciative especially as regard to health services to people with HIV/AIDS. however, to this the covenant proclaims and enjoys states parties which Nigeria is a state party to the covenant to provide adequate health and medical care to everyone without ant discrimination. In this regard the following Article provides;

Article 6 (1):

“Every human being has the inherent right to life. This right shall be protected by Law. No one shall be arbitrarily deprived of his life”.

Article 7:

“No one shall be subjected to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”.

d) Convention on the Rights of the Child

Convention on the rights of the child is the international convention that deals with the issue of children in a great deal. The convention proclaims the right to access information and material aimed at promotion of their social, moral well-being and physical and mental health. In this regard Article 17 of convention provides that

“The right to access information and material aimed at the promotion of their social, spiritual, moral well-being, physical and mental health”.

Article 24 of the Convention is however, central

1) Right Of A Child To Medical and Health Care Under The Regional Instruments

Mainly as a result of the influence of the Universal Declaration, there are also regional human and Peoples' Rights instruments. The following regional instruments, inter alia, address the right to medical and health care. For example under the convention on the rights of the child (1989), African Charter on Human and Peoples' Rights (1981), and African charter on the Right and Welfare of the Child (1990).

a) The African Charter on Human and People`s Rights (ACHPR)

The African charter on human and people`s rights is the charter at regional level that proclaim the right to medical and health care. The charter enjoys everyone to have every right to enjoy the best attainable state of physical and mental health. Also, it enjoys states parties to the convention to take necessary measures to ensure everyone receive adequate medical and health services. As provide under Article 16. It states that;⁴¹

(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.

(2) States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick. based on the fact that the provision of this law have signed into law in

⁴¹ African Charter on Human and People Rights (1993).

Nigeria under Cap.A9 L.F.N (2004), and by the decision in the case of (Abacha vs Fawehimi), (2000). The court held that “A child can conveniently bring an application for enforcement and prevention”.

b) The African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC is another regional instrument that proclaims the child right to medical and health care to children. Similarly like the ACHPR, the ACRWC also proclaim the right to every child to enjoy the best attainable state of physical and mental and spiritual health. Also the parties to the covenant are enjoys taking necessary measures to ensure full implementation the rights recognised under the covenant’s regard to the above;⁴² Article 14 provides:

“Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health care.

- (1) State parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - (a) To reduce infant and child mortality rate.
 - (b) To ensure the provision of necessary assistance and health care to all children with emphasis on the development of primary health care.
 - (c) To ensure the provision of adequate nutrition and safe drinking water.
 - (d) Combat disease and malnutrition within the framework of primary health care for expectant and nursing mothers.
 - (f) To develop preventative health care and family life education and provision of service.
 - (g) To integrate basic health service programmes in national development plans...”

3) Rights of a Child to Medical and Health Care under the Domestic Instruments

The 1999 constitution of the federal republic of Nigeria does not recognize the right to medical and health care directly. Though some provisions of the constitution allude to the right. And when one reads all such provisions making allusions to the rights, it may not be wrong for one to infer recognition of the right to medical and health care as a basic constitutional right. For example, section 14 of the constitution recognizes that the security

⁴²African Charter on the Rights and Welfare of the Child (1999).

and welfare of the people shall be the primary purpose of government. Section 17 dealing with the social objectives of the Nigerian states obligates government to direct its policies to ensure adequate medical and health facilities for all persons; ensure that the health, safety and welfare of all persons in employment are not endangered or abused. Further it provides that children, young persons and aged shall be protected against exploitation and against moral or maternal neglect; that provision is made for public assistance in deserving cases or other conditions of need; and the evolution and promotion of family life is encouraged.

CHAPTER THREE
ANALYSIS OF THE LEGAL FRAMEWORK IN THE PROTECTION AND
PROMOTION OF THE RIGHTS OF CHILDREN LIVING WITH HIV/AIDS IN
NIGERIA

3.1 Introduction

This chapter intends to analyze the legal framework in the protection and promotion of rights of children living with HIV/AIDS in Nigeria. In doing so, the chapter examines various provisions of the law at international, regional and domestic level in the protection and promotion of the rights of children living with HIV/AIDS.

It also examines mechanisms to be employed in the protection and promotion of rights of these children under international, regional and domestic instruments.

3.2 Nature and Scope of Rights of Children under International, Regional and Domestic Laws

As mentioned earlier, the aim of this research work is to examine the role of law in the protection of rights of children living with or affected by HIV/AIDS. This cannot be achieved without examining children rights provided under various laws. Children are recognised as one of the population groups that are at high risk to HIV/AIDS problems. Consequently, there is need to adequately make laws and policies that will take care of them.

Fundamental rights of children need to be protected, especially children with or affected by HIV/AIDS. Children experienced different discriminatory practices in society. In doing so, the chapter examines rights provided under international, regional and domestic laws protecting the rights of children in the context of HIV/AIDS.

3.2.1 International Instruments on the Protection and Promotion of the Rights of Children with HIV/AIDS

According to Encyclopaedia dictionary,¹ a right is defined as that done in accordance with or comparable to moral law or to some standard of rightness, equitable and just. It is also that which is comparable to a standard of propriety or to the condition of the case, proper fit, suitable and most desirable or preferable.

Also, the Black`s Law Dictionary,² defines rights inter alia as “a power, privilege or immunity guaranteed under a constitution, statute or decisional laws or claimed as a result of long usage”.

However apart from the definition given above, there are other instruments under international, regional and national that proclaims various rights of human beings.

3.2.1.1 The Universal Declaration of Human Rights

The United Nations Universal Declaration on Human Rights was the earliest modern human rights instrument that proclaims a right of any human being. As provided under Art. 1 of the declaration,³ its state that:

“All human being are born free and equal in dignity and rights”.

In the declaration, it declared that: “The child by reason of his physical and mental immaturity, need special safeguards and care including appropriate legal protection before as well as after birth”.

From the above Article of the declaration, it can be said that a child notwithstanding its HIV status has the right to be free and equal in dignity and in all aspect, and accord a special safeguards and legal protection.

¹The New International Dictionary of English Language, Encyclopaedic Ed. Typhorn Int, (2004), p.1084.

² Garner, B.A.; Black`s Law Dictionary, West Thomson Business U.S.A, (2001), p.188.

³ Universal Declaration of Human Rights (1948), Adopted by the UN General Assembly Resolution 217 A, (III).

One of the major problems faced by children with HI/AIDS in Nigeria is lack of access to health services as result of that large number of children died of HIV/AIDS. In relation to this, Article 25 of the Declaration provides for right to health as follows:

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, and security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection.

From the above provision, the Declaration sought to achieve a common standard of achievement for all people and all nations. Although the Declaration has come to acquire significant moral and legal force, and to provide the aspiration of many domestic constitution, but it was not intended to be a statement of law or legal obligation. Because it was not a treaty, it lacked normative force.

It was also exhortatory, based on existing commitments in national Laws rather than binding on member states. What was missing from the Declaration was a provision for corresponding obligation on member states to only protect and promote, but it fulfil the right accorded to individuals. The Declaration also did not impose a new obligation on part of the states to take positive measures aimed at enabling and assisting individuals and communities to realize the rights that it had proclaim. In respect to socio-economic rights including the right to health this lacuna has been primarily filled by other instrument on human rights.

3.2.1.2 International Covenant on Economic Social and Cultural Rights

The CESCR⁴ put into normative form of what the Universal Declaration had merely proclaimed. Is the covenant which Nigerian has signed and ratified, binds ratify states to discharge the obligation that have undertaken. However, the Covenant proclaims the following rights.

⁴International Covenant on Economic, Social and Cultural Rights (ICESCR), (1993).

1. The covenant enjoined state parties to take necessary steps and adopt legislative measure to achieved full realization of the rights recognised under the covenant.
2. It provide for everyone the right to social security and social insurance state.
3. The covenant enjoins states parties to the covenant to take special measures to help and protect young children from economic and social exploitation and child labour without any discrimination.
4. It also provides the right to everyone for adequate standard of living.
5. It provide for the right to everyone to enjoy the highest standard of physical and mental health.
6. Finally, the covenant provides the right to education to everyone that.

1. State parties to the covenant are enjoined to take steps by using their available resources and adoption of legislative measures in achieving progressively the full realization of the rights recognised under the covenant. In this regard Article 2 (1) of the e covenant provides:

“Each state party to the present covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including particularly the adoption of legislative measures”.

- (2) The state parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Article 9 of the covenant provide for the right of everyone to social security and social insurance state as follows;

“The state parties to the present covenant recognize the right of everyone to social security, including social insurance”.

3. Article 10 also enjoins state parties to the covenant to take special measures to assist and protect young children from economic and social exploitation and child labour without any discrimination as provided below,

The state parties to the present covenant recognize that... (3) Special measure of protection and assistance should be taken on behalf of all children and young people without any discrimination for reasons of parentage or other conditions. Children and young people should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by Law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by Law.

5. Article 11 of CESCR provides the right to everyone to adequate standard of living provide as follows;

“(1) The state parties to the present covenant recognizes the right of everyone to an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the conditions improvement of living conditions...”

6. Article 12 provides for the right to everyone to enjoy the highest attainable standard of physical and mental health state as follows:

“The state parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

“The steps to be taken by the states parties to the present covenant to achieve the full realization of this rights shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the health development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of condition which would assure to all medical service and medical attention in the event of sickness.”

7. Article 13 provide for the right to education, state as follows:

“(1) The states parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality

and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms...”

3.2.1.3 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR also elaborates on the provision of the Universal Declaration with respect to the following rights.

The right to life, is a right which is inherent in every human being, and which need to be protected by the law especially children with HIV/AIDS who need more special protection. This right is provided under Article 6 (1) of the covenant as it states;⁵

“Every human being has the inherent right to life. This right shall be protected by Law. No one shall be arbitrarily deprived of his life”.

Every human being should be treated with respect and dignity. Especially children with HIV/AIDS. Who are more vulnerable and who have being treated inhumanly in our society. However to reduce this inhuman treatments toward children with HIV/AIDS in our society. Article 7 provides that no one shall be subjected to inhuman and degrading treatment as is state;⁶

“No one shall be subjected to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”.

Due to HIV/AIDS children face discriminatory practises such as stigmatization and undue harassment in society. And by doing so is a great violation of their right to privacy as regard to this Articles 17 and 26 provides. As its state;

- i. No one shall be subjected to arbitrary or unlawful interferences with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation.
- ii. Everyone has the right to protection of the Law against such interference or attacks.

⁵International Covenant on Civil and Political Rights (ICCPR), 1993.

⁶ Ibid.

It is a fact that every human being are born equally into the world. although people with HIV/AIDS are being treated differently and not seen as human beings but as a typical virus and by doing this is great violation of Article 26 of the covenant as it provides:

All persons are equal before the Law and are entitled without discrimination to the equal protection of the Law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, National social origin, property, birth or other status

Generally, when it comes to issue of HIV/AIDS people infected with or affected by it considers privacy as very important. Especially when it comes to children their parents try to hide the status of such children to public. to this regard Article 17 provides that no one should be subjected to any unlawful interference of his/her privacy or arbitrarily interference of privacy family home or correspondence or to unlawful attack on his honour or reputation and such right shall be protected by the law against such interference and attack. This right is very important as regard to the rights of children with HIV/AIDS, as these children are being attacked in our society as result of their HIV/AIDS status. The article state as follows:

- i. No one shall be subjected to arbitrary or unlawful interferences with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation.
- ii. Everyone has the right to protection of the Law against such interference or attacks.

As mentioned earlier, one of the challenges faced by children with HIV/AIDS in Nigeria is discrimination and stigmatization and going by the provision of Article 26 of the covenant it shows how it protects these children against any discrimination by ensuring equal protection of the law to everyone without any discrimination. As its States:

All persons are equal before the Law and are entitled without discrimination to the equal protection of the Law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex,

language, religion, political or other opinion, National social origin, property, birth or other status.

3.2.1.4 International Convention on the Right of the Child

Convention on the rights of the child is the first international instrument that deals with the issue of children rights in general, The following Articles of the convention deal with the four (4) major rights of children within the context of HIV/AIDS. These rights are protected under the following articles mention as follows:

1. Right to non discrimination; under Article 2(1) (2) of the convention on the rights of the child, provides for the right to non discrimination. Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS, as well as seriously impacting the lives of children who are affected by HIV/AIDS, or are themselves HIV infected. Girls and boys of parents living with HIV/AIDS are often victims of stigma and discrimination as they too are often assumed to be infected. As a result of discrimination, children are denied access to information, education, health or social care services or community life. At its extreme, discrimination against HIV-infected children has resulted in their abandonment by their family, community and society. Discrimination also fuels the epidemic by making children in particular those belonging to certain groups like children living in remote or rural areas where services are less accessible, more vulnerable to infection. These children are thus doubly victimized and all the above-mentioned discriminatory practices are violations of children's rights under the Convention. as it state that;⁷

(1) state parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour. Sex, language, religion, political o other opinion, national, ethnic or social origin, property, disability, birth or other status.

⁷International Convention on the Rights of the Child (CRC) 1991.

(2) State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members.

2. Right in relation to the best interest of the child. Art 3 paragraph 1 of the CRC (Child's Right Act 2003), provides for the right of every child best interest to be given primary consideration, as states; "in every action concerning a child, whether undertaken by an individual, public or private body, institution or services, court of law, administrative or legislative authority. The best interest of the child shall be given the primary consideration"⁸ section 13 of the Child's Right Act also provides that a child has the right to bring an action against any person that caused that child any harm or injury as states; "A child may bring an action for damages against a person for harm or injury caused to the child"⁹

3. The third right is provided under Article 6 of the convention which protect right to life, survival, and development of every child and such right should be arbitrary taken. The article states as follows;

The right to life, survival and development, Children have the right not to have their lives arbitrarily taken, as well as to benefit from economic and social policies that will allow them to survive into adulthood and develop in the broadest sense of the word.

State obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform to what society determines to be acceptable under prevailing cultural norms for a particular age group. In this regard, the female child is often subject to harmful traditional practices, such as early and forced marriage, which violate her rights and make her more vulnerable to HIV infection, and such practices often interrupt access to education and information.

⁸ Child's Rights Act (2003).

⁹ Ibid.

4. Finally, the fourth right is provided under Article 5 of the convention. The right provided under the convention in relation to children with HIV/AIDS is the right to express views and have them taken into account. Children are rights holders and have a right to participate, in accordance with their evolving capacities, in raising awareness by speaking out about the impact of HIV/AIDS on their lives and in the development of HIV/AIDS policies, programmes, and Interventions have been found to benefit children most when they are actively involved in assessing needs, devising solutions, shaping strategies and carrying them out rather than being seen as objects for which decisions are made. In this regard, the participation of children as peer educators, both within and outside schools, should be actively promoted.

So also A variety of approaches are likely to be necessary to ensure the participation of children from all sectors of society, including mechanisms which encourage children, consistent with their evolving capacities, to express their views, have them heard, and given due weight in accordance with their age and maturity (Art. 12, para. 1) and Where appropriate, the involvement of children living with HIV/AIDS in raising awareness, by sharing their experiences with their peers and others, is critical both to effective prevention and to reduce stigmatization and discrimination.

In addition to the four most relevant rights mentioned above, there are other rights available to children with HIV/AIDS provided under the convention these are the following:-

1. The right not to be separated from parents (Art. 9)
2. The right to privacy (Art.16)
3. The right to access information and material aimed at the promotion of their social, spiritual and moral well-being and physical and mental health (Art.17).
4. The right to be protected from violence (Art.19).
5. The right to special protection and assistance by the state (Art.20).

6. The right of children with disabilities (Art.23).
7. The right to preventive health care, sex education, family planning education and services (Art.24 (f)).
8. The right to social security, including social insurance (Art. 26).
9. The right to appropriate standard of living (Art. 27).
10. The right to education and leisure (Art.28 & 31).
11. The right to be protected from economic and sexual exploitation and abuse and from illicit use of narcotic drugs (Art. 32, 33, 34, & 36).
12. The right to be protected from abduction, sale, and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment (Art. 35 & 37).
13. The right to physical and psychological recovery and social reintegration (Art.39).

3.2.2 Regional Instruments on the Protection and Promotion of the Rights of Children with HIV/AIDS

3.2.2.1 Tunis Declaration on HIV/AIDS and the Child in Africa

The first significant regional statement on HIV and children was the Tunis Declaration on HIV/AIDS and the Child in Africa.¹⁰ It was adopted in June 1994 by the Assembly of Heads of State and Government. The Declaration obligated governments to create a national policy framework to guide and support appropriate responses to the needs of affected children covering social, legal, ethical, and medical and human rights issues.

3.2.2.2 Abuja Declaration

Another relevant regional instrument that deals with issue of children within the context of HIV/AIDS was the Abuja Declaration. The **Abuja Declaration** was adopted in Nigeria on 27 April 2001 by the Heads of State and Governments of the Organisation of African Unity (OAU). Under Articles 4 and 6 of the declaration, it shows its concern on the

¹⁰ Ibid. P.6.

impact of HIV/AIDS in African children and employed strategy on how to protect these children from the epidemic. As article 4 and 6 of the declaration provides;

Article 4 states as follows;

We recognise the role played by poverty, poor nutritional conditions and underdevelopment in increasing vulnerability. We are concerned about the millions of African children who have died from AIDS and other preventable infectious diseases. We are equally concerned about the particular and severe impact that these diseases have on children and youth who represent the future of our continent, the plight of millions of children orphaned by AIDS and the impact on the social system in our countries. We are particularly concerned about the high incidence of mother to child transmission, especially given the challenges of infant breastfeeding in the context of HIV infection on the continent.

Article 6 also provides:

We recognise that special efforts are required to ensure that Africa's children are protected from these pandemics and their consequences and that the full and effective participation of young people in prevention and control programmes is essential to the success of these interventions.

3.2.2.3 Maputo Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Related Diseases

Similarly, the **Maputo Declaration** on HIV/AIDS, Tuberculosis, Malaria and Other Related Diseases (2003), although it does not deal with the impact of HIV on children in any great detail, but also noted:¹¹

The majority of those infected with and affected by HIV/AIDS in our continent are women, children and young people; especially the poor who have limited access to effective care and support. This reflects their vulnerability particularly in societies marked by gender inequality, where the burden of care for the sick and for the children orphaned by AIDS falls overwhelmingly on women. In this connection, we recognise the need to redouble efforts in giving particular attention to women and young people's participation and access to information, life skills and services. Recognise the urgent need to alleviate the impact of the HIV/AIDS on the lives of orphans and their long-term development prospects. In this regard,

¹¹ Ibid.

appropriate policies including legal and programmatic frameworks, as well as essential services for the most vulnerable children, should be adopted and applied at all levels. The challenge is to keep parents alive through effective treatment and prevention as a first vital step.

Apart from the three declarations mentioned above, ACHPR and ACRWC are the most significant regional instruments that deal with issue of rights of people at regional level. although both the ACHPR and ACRWC make no specific reference to protection of rights of people within the context of HIV/AIDS. However, going by some provision of these of charters it can be adduced that the following rights are protected under these charters and it can also be accorded and enjoyed by people living with HIV/AIDS including children.

3.2.2.4 The African Charter on Human and People`s Rights (ACHPR)

The African Charter is the regional charter on human rights that enjoined everyone, which include children with HIV/AIDS to all the rights and freedoms recognised and guaranteed under the charter as it provided under Article 2 of the charter.

Seen as follows:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter with distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status¹²

Also Article 4 also provides that life and integrity of every human being should be respected and no one should be deprived of this right. As provided below:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrary deprived of this right

Furthermore, Article 5 provides the right to respect dignity inherent in every human as stated below.

¹² Article 3, of the African Charter on Human and People`s Rights 1983.

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status...”

As mentioned earlier, one of the challenges faced by children with HIV/AIDS is social isolation. Children with HIV/AIDS are being discriminated against to associate freely with others and by doing, so is a great violation of their right provided under Article 11 of the Charter as its provides:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethnic, and rights and freedoms of other.

Article 16 provides for the right to attainable physical and mental health to everyone as its states;

- (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.
- (2) States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Another right provided in the charter is under Article 16(1)(2), of the charter the right of everyone to enjoy the best attainable state of physical and mental health and ensure that state parties to the charter take necessary measures to protect the health of their people. The provision of the article state as follows;

- (1) “Every individual shall have the right to enjoy the best attainable state of physical and mental health.”
- (2) “States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”

Finally under Article 18(3), it ensure state parties to the charter to eliminate any discrimination against women and children as its provides;

“The state shall ensure the elimination of any discrimination against women and also ensure the protection of the woman and the child as stipulated in international declarations and conventions”.

3.2.2.5 The African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC is another significant regional instrument that provides various rights in relation to welfare of every child which children with HIV/AIDS are inclusive in the enjoyments of all the rights recognised and guaranteed under the Charter. As provide under Art 3;¹³

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this charter irrespective of the child`s or his/her parents` or legal guardians` race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Also, Article 14 provides the rights to every child to have the right to enjoy the best attainable state of physical, mental and spiritual health. And also urge state parties to the charter to ensure the implementation of such rights. As seen below;

- (1) Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
- (2) State parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - (a) To reduce infant and child mortality rate.
 - (b) To ensure the provision of necessary assistance and health care to all children with emphasis on the development of primary health care.
 - (c) To ensure the provision of adequate nutrition and safe drinking water.
 - (d) Combat disease and malnutrition within the framework of primary health care for expectant and nursing mothers.
 - (f) To develop preventative health care and family life education and provision of service.
 - (g) To integrate basic health service programmes in national development plans...

Article 21(1) of the charter is calling on the state parties to the charter to take appropriate measures in elimination of harmful, social and cultural practise affecting the welfare, dignity, normal growth and development of every child.

¹³ African Union Charter on the Rights and Welfare of the Child (2001).

As it provides;

State parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular; (a) those customs and practises prejudicial to the health or life of the child; and (b) those customs an practice discriminatory to the child on the grounds of sex or other status.

3.2.3 Domestic Instruments on the Protection and Promotion of the Rights of Children Living with HIV/AIDS

3.2.3.1 The Constitution of the Federal Republic of Nigeria (1999)

The 1999 constitution of the federal republic of Nigeria does not recognize the right to health directly though some provisions of the constitution allude to the right and when one reads all such provisions making allusions to the rights, it may not be wrong for one to infer recognition of the right to health as a basic constitutional right. For example, section 14 of the constitution recognizes that the security and welfare of the people shall be the primary purpose of government. Section 17 dealing with the social objectives of the Nigerian states obligates government to direct its policies to ensure adequate medical and health, facilities for all persons; ensure that the health, safety and welfare of all persons in employment are not endangered or abused. Further it provides that children, young persons and aged shall be protected against exploitation and against moral or maternal neglect; that provision is made for public assistance in deserving cases or other conditions of need; and the evolution and promotion of family life is encouraged.

Similarly, section 33(1) of the constitution provides for the right to life thus:

“Every person has a right to life and no-one shall be deprived intentionally of his is life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria”.

The emergent trend in international law is that government, in protecting the right to life have to take positive measures that will include provision of adequate health facilities for

all, especially women and children. Thus, a situation wherein women and children die of preventable diseases is a clear violation of their right to life. It is therefore submitted that the constitutional provision that guarantee the right to life may be construed as guaranteeing also the right to health, which includes the provision of adequate health facilities accessible by all.

Furthermore, under the constitution human rights of persons including children within the context HIV/AIDS can be discussed under the following provisions.¹⁴

(a) Freedom From Discrimination

In the context of HIV/AIDS, discrimination is the greater problem faced by children living with HIV/AIDS. Discrimination occurs when a distinction is made against a person that results in his or her being treated unfairly and is unjustified on the basis of their belonging, or being perceived to belong to a particular group. Young children are denied health and social services, they may even be rejected by families and communities and also ostracised these children based on presumed or actual HIV status. Such discriminatory acts constitute a great violation of human rights.

With regard to such discriminations S.42 (1) of the constitution provides as follows:¹⁵

A citizen of Nigeria of a particular community, ethnic group, and place of origin, sex religion or political opinion shall not, by reason only that 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 which citizens of Nigeria of other communities, ethnic group, places of origin, sex, religion or political opinions are not made subject to; or
- (b) Be accorded expressly by; or in the practical application to any law in force in Nigeria, or any such executive or administrative action, any privilege or advantage that is not

¹⁴Constitution of the Federal Republic of Nigeria, 1999, L.F.N Vol.3 CAP, C23, (Amended 2011).

¹⁵Section 42, Ibid.

accorded to citizens of Nigeria of other communities, ethnic group, places or origin, sex, religion or political opinion.

Further S.42 (2) provides:

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

Discrimination or any of the grounds mentioned under S. 42(1) (2) is not only wrong in itself, but also sustains conditions leading to societal vulnerability to infections caused by HIV/AIDS in particular resulting in lack of access to an enabling environment that will promote behavioural change and enable people to cope with HIV/AIDS.

Commenting on S.42 (1) (2) of the constitution, the court held in the Nigeria case of *J.A. Adewale and others v. Lateef Jakande of Lagos State and Others*,¹⁶ it was held by the court that a proposal of government... which tended to make citizens of Nigeria in Lagos state to be subject to disabilities not available in other states of Nigeria is unconstitutional.

b) Right to Dignity of Human Person

S. 34(1) of the constitution provides for the right to dignity of human person, it state that:

“No person shall be subjected to torture, or inhuman, or degrading treatment, no person shall be held in slavery or servitude, and that no person shall be required to perform forced or compulsory labour”.¹⁷

And in a Nigerian case of *Uzoukwu v. Ezeonu*,¹⁸ an Enugu Court of Appeal defines “torture” to include mental harassment, as well as physical brutalization, while inhuman treatment characterizes any act “without feeling for the suffering of the other”. Degrading treatment was seen as “the element of lowering the societal status, character, value or position

¹⁶ (1981), 1 NCLR P, 262.

¹⁷section 34(1), *Ibid*.

¹⁸ (1991) Part200; 6 NWLR 708 at 764-778.

of a person”. From the perspective of HIV/AIDS it means that segregation and stigmatization of person living with HIV/AIDS because of their right to dignity.

c) Right of Peaceful Assembly and Association

In the context of HIV/AIDS the freedom of assembly and association with other is essential especially young children whom are kind of people who like to associate with others as such restricting their association with others based on their HIV status will constitute a great violation of this right. It also important to the formation of HIV-related advocacy, lobbying and creation of self-help group affected by HIV/AIDS, S.40 of the constitution provides in relation to above mentioned right;

“Everyone shall be entitled to assemble freely and associate with others persons, and in particular he may form or belong to any political party, trade union, or any other association for the protection of his interest.”¹⁹

(c) Right to Life

In the context of HIV/AIDS, the central idea of the human rights provision is the protection of life, and the constitution provides for a right to life under S.33 (1) (2) , and it stipulates that;

“Every person has a right to life, and that no one shall be deprived internationally of his, save in execution of the sentence of a court in respect to a criminal offence of which the person has been found guilty in Nigeria”.

The constitution also mentions certain exceptions to the above provisions, under which an individual’s life may be deprived for instance, for the defence of any person from unlawful violence, or for the defence of property, in order to effect a lawful arrest, or to prevent the escape of a person lawfully detained, or for the purpose of suppression a riot, insurrection or mutiny²⁰.

¹⁹ Section 40, of the Constitution 1991.

²⁰ Section, 33(2) of the 1999 Nigeria constitution.

(d) Right to Private and Family Life

The right to privacy involves obligation to respect physical privacy, including the obligation to seek informed consent to HIV testing and to safeguard privacy of information, including the need to respect confidentiality of all information relating to a person's HIV status. The individual's interest in his/her privacy is particularly compelling in the context of HIV/AIDS. Firstly, in view of the invasive character of a mandatory HIV testing. secondly, by reason of the stigma and discrimination attached to the loss of privacy and confidentiality if the HIV status is disclosed. The community has an interest in maintain privacy, so that people will feel safe and comfortable in using public health measures, such as HIV/AIDS prevention and treatment services. And the constitution provides that the privacy of citizens, their homes correspondences, telephone conversations and telegraphic communications is hereby guaranteed and protected.²¹

(e) Right to Freedom of Expression and the Press

This right includes the right to seek, receive, and impart HIV-related prevention and care information. Thus, the Nigerian government is obliged to ensure that appropriate and effective information on methods to prevent HIV transmission be developed, and disseminated for use by the entire population. The media should be respectful of human rights and dignity, especially the right of privacy and use appropriate language when reporting on HIV/AIDS. Media reporting on HIV/AIDS should be accurate, factual, sensitive, and avoid stereotyping and stigmatization. With regard to this right S.39 of the constitution provides that:

“Everyone shall be entitled to freedom of expression including freedom to hold opinion and to receive and impart ideas and information without interference.”

²¹ Ibid, section 37.

(f) Right of Peaceful Assembly and Association

In the context of HIV/AIDS the freedom of assembly and association with other is essential especially young children whom are kind of people who like to associate with others as such restricting their association with others based on their HIV status will constitute a great violation of this right. It also important to the formation of HIV-related advocacy, lobbying and creation of self –help group affected by HIV/AIDS. S.40 of the constitution provides in relation to above mentioned right;

“Everyone shall be entitled to assemble freely and associate with others persons, and in particular he may form or belong to any political party, trade union, or any other association for the protection of his interest.”

The Universal Declaration of Human Right also provides that, “Everyone has the right to freedom of peaceful assembly and association.”

(g) Right to Freedom of Movement

There is no public health rational for restricting liberty of movement, or choice of residence on the grounds of HIV status. According to current international health regulations, the only disease which requires a certificate for international travel is yellow fever.²² Therefore, any restriction on these rights based on suspected or real HIV status alone, including HIV screening of international travellers, is discriminatory, and cannot be justified by public health concerns. It is therefore, contrary to the rights of persons living with HIV/AIDS to restrict their movement throughout the federal republic of Nigeria.

Sections 41 of the constitution in relation to the above right stipulate that:

“Every citizen of Nigeria is entitled to move freely throughout Nigeria, and to reside in any part of the country, and no citizen of Nigeria shall be expelled from Nigeria, or refused entry.”

²² W.H.O International Health Regulation (1969)

Other fundamental rights guaranteed under the constitution include the right to freedom of thought, conscience and religion,²³ the right to fair-hearing,²⁴ and the right to acquire and own immovable property, anywhere in Nigeria.²⁵

It is important to point out that the constitution makes exception to the fundamental rights provision.²⁶ It provides that a law can be derogate from fundamental rights in the interest of defence, public safety, public order, public morality or public health,²⁷ or for the purpose of protecting the rights and freedom of others persons.²⁸ The above provision provides a general cover for all the public health regulations including isolation, quarantine or other forms of restriction.

3.2.3.2 National Policy on HIV/AIDS for Education Sector in Nigeria

Apart from the 1999 constitution of federal republic of Nigeria, the National policy on HIV/AIDS for the education sector also contribute immensely in protecting and promoting the right of children with HIV/AIDS specifically with respect to education in Nigeria. The policy addressed HIV/AIDS as a critical management problem that must be address as a matter of priority.²⁹ It also, provides the basis to address issues and complication from the epidemic as well as strategies to respond to them and these strategies will ensure prevention, access to treatment care and support for people living with HIV/AIDS as well as mitigating of impact arising from the epidemic.

Similarly, the policy provides the following guidelines with respect to orphans and vulnerable children, it state as follows:³⁰

²³Ibid, section 38.

²⁴ Ibid, section 36(1).

²⁵ Ibid, section 43.

²⁶ Ibid, section 45.

²⁷ Ibid, section 45(a).

²⁸ Ibid, section 45(b).

²⁹ The National Policy on HIV/AIDS For the Education Sector in Nigeria, (2005).

³⁰ Ibid. p.14.

1. The sector shall work to create linkage with the child development units of ministries of women affairs and other organisation and support groups working on OVC to ensure that they access the services.
2. The sector shall ensure that the HIV status of a child or parent is not used as a criterion for admission or exclusion from school activities.
3. The sector shall enforce the principle of non-discrimination and non stigmatization of OVC with the sector.
4. The sector shall sensitize all staff and learners to the special physical and psychosocial needs of OVC and provide medical, psychosocial support and counselling services for OVC.
5. The sector shall ensure that OVC have free access to education and advocate for the removal of all barrier that prevent OVC from obtaining quality education.
6. Heads of education institutions shall as far as possible accommodate the peculiar needs of orphans and vulnerable children by way of flexible school hours to enable them access treatment or attend counselling session when necessary.
7. The section shall work in collaboration with health ministry's to strengthen school based clinics and referral systems to ensure OVC who are adolescent to access reproductive health services.
8. The sector shall ensure that OVC have access to bursaries loan and scholarship for higher education.

3.2.3.3 Child Right Act

The Child Right Act is another national law that protect the rights of children in Nigeria. It is a compressive piece of legislation pass into law encompassing all aspect relating to the welfare and care of the child as well as the right of a child to health, health services and the right of a child in need of special protection measure which children living with

HIV/AIDS are part and parcel of this protection. Going by the provision of section 1 of the Act³¹, it emphasised on the protection of rights and interest of children in all aspect in Nigeria. As its provides;

“ In every action concerning a child whether undertaken by an individual public, or private body, institutions or services, court of law, administrative or legislative authority the best interest of the child shall be given the primary consideration”³²

Also, section 13 of the Act provides that a child has the right to bring an action against any person that caused that child any harm or injury as states; “A child may bring an action for damages against a person for harm or injury caused to the child”³³

And also going by decision in the case of *Abacha v. Fawehimi* (2000), the court Held that “A child can conveniently bring an application b for enforcement and prevention”³⁴

3.3 Mechanisms for Enforcement of the Protection and Promotion of the Rights of Children Living With/Affected by HIV/AIDS

The issue of HIV/AIDS epidemic remain grave, with a doubling of people living with HIV/AIDS worldwide especially young people (children) living with or orphaned by AIDS. HIV/AIDS prevalence has grown among these people who face different kind of human rights violations such as discrimination, sexual violence, stigmatization, exploitation and most marginalized in society. For these reasons there is need for intervention at international, regional and national level to create mechanisms for enforcement and to monitor the protection and promotion of the rights of these children.

3.3.1 International Mechanisms for the Enforcement of and Promoting the Rights of Children Living With/Affected By HIV/AIDS

As discussed earlier, the various international instruments dealing with human rights in general which include, Universal Declaration on Human Rights, the Covenant on Civil and Political Rights Covenant on Economic Social and Cultural Rights, and Convention on the

³¹ Ibid.

³² Child's Rights Act (2003).

³³ Ibid.

³⁴ NWLR Vol.2 p.456.

Right of the Child. The United Nation has created a number of mechanisms, and committees to the various conventions and treaties in the enforcement and monitoring the implementation of these instruments by state parties for the protection and promotion these human rights. For instance;

3.3.1.1 Commission on Economic, Social and Cultural Rights (CESCR)

Under the United Nations, One of the most important international mechanisms for defending and promoting ESCR is the Committee on Economic, Social, and Cultural Rights (CESCR) whose mandate is to specifically monitor state parties' fulfilment of their obligations under the International Covenant on Economic, Social and Cultural Rights.

³⁵Articles 16 and 17 of the ICESCR require states to prepare reports every five years on the situation of ESCR in their country, which are reviewed by the CESCR. The CESCR examines the extent to which ESCR are being achieved by state parties, serves as a base for formulating policies that promote ESCR via General Comments, and allows the public to learn about the work of their government concerning the achievement of ESCR. The CESCR overviews five or six reports every year. If a country fails to report, the CESCR may review the situation in that country using alternative sources. After examining a country's report and other sources, the CESCR then releases concluding observations which highlight the progress made in fulfilling ESCR, difficulties in achieving these rights, areas of concern, and recommendations. CESCR also accepts reports by members of the civil society on the situation of ESCR in their countries as part of the review process.

3.3.1.2 Committee on the Rights of the Child

Another important mechanism under the UN is the Committee on the Rights of the Child. The Committee monitors the implementation of the Convention on the Rights of the

³⁵Health and Human Rights: A Resource Guide, Open Society, Foundation,(2001), P.2. www.health/rights/open_society/foundation, Retrieved on 20-12-2012, 3:14 p.m.

Child (CRC) by member states.³⁶ The Committee meets in Geneva and holds three sessions a year. States parties to CRC are required to submit reports on the situation of children in their territory every five years. The Committee reviews these reports and makes recommendations to state parties. The Committee holds annual thematic discussions on issues that affect children.

3.3.3.3 Office of the United Nation Commission on Human Rights (OHCHR)

Beside the CESCR and CRC, other important mechanisms for the enforcement of human rights within the UN are the Office of the United Nation commissioner on Human Rights (OHCHR). The offices of the high commissioner protect and promote human rights.³⁷ It is the main office in the United Nations that deals with human rights and it works to ensure that human rights standards are applied in all of the UN's activities. It collaborates with governments to strengthen their human rights capabilities, encourages states to develop policies and institutions that are conducive to human rights, and provides advice and technical assistance to achieve these goals. For instance, the office of United Nations high commissioner for human rights and the joint United Nations programmes on HIV/AIDS jointly organized and convened international guidelines which include the 2nd international consultation on HIV/AIDS and human rights in 1996 which was published in 1998. In 2002 the OHCHR and UNAIDS also convened the 3rd international consultation on HIV/AIDS and human rights.³⁸

In 2006, the OHCHR and the UNAIDS consolidate the guidelines adopted at the 2nd consultation of 1996 and the revised guideline 6 of 2002. Both the (3) international consultation formulated 12 international guidelines which protect and promote human rights

³⁶ Ibid.

³⁷ Ibid.

³⁸ International Guidelines on HIV/AIDS and Human Rights, 2006, Consolidated Version; Joint United Nations Programme on HIV/AIDS (UNAIDS) 2006, P.9. www.unaids.org. Retrieved on 4-9-2013, 4:00 p.m.

in the context of HIV/AIDS³⁹. It discusses the most important human principles and concern in the context of HIV/AIDS as well as providing concrete measures that state could take to protect HIV/AIDS- related human rights. So also it assist states in creating a positive rights-based response to HIV/AIDS that is effective in reducing the transmission and impact of HIV/AIDS and is consistent with human rights and fundamental freedoms.

3.3.1.4 The US President's Emergency Plan for Aids Relief (PEPFAR)

Apart from the United Nations Committee on Human Rights which deal with issues of Human Rights in general. PEPFAR is another international organization which was specifically formed to deal with the issues of HIV/AIDS in general. PEPFAR programme was aimed to protect, care and support children with HIV/AIDS around the world. The programme also promoted resilience in children and have broader society by reducing, advertising and building services and systems that will reach people directly in their household and communities. With regard to child protection within the context of HIV/AIDS epidemic the programme aimed to develop appropriable strategies for preventing and responding to child abuse, exploitation, violence and family separation by the following;

1. Child Protection

1. implementing child safeguard policies.
2. integrating child protection activities.
3. Supporting communities to prevent and respond to child protection issues.
4. Strengthening linkage between the formal and informal child protection systems.
5. Building government capacity to carryout and improve child protection response.

³⁹ Ibid. P.10.

2. Legal Protection

PEPFAR programme aim to develop strategic to ensure basic legal rights registration and inheritance rights to improve access to essential services and opportunities through the following;

1. Raising awareness about both registration and success planning.
2. Linking birth registration and succession planning to other essential services.
3. Improving government birth registration system and legal mechanism for enforcing fair and equitable inheritance laws and guardianship.

PEPFAR has also complemented strong community level, with investment at the national level to care for millions of children through country-owned sustainable solution. For example there is result of PEPFAR systems strengthening efforts for the global social welfare workforce that has greatly expanded in numbers and capacity and 17 countries in sub-Sahara African have formulated national plans of actions for vulnerable children with robust coverage data.

Specifically, the following principles under all PEPFAR OVC programming aimed at following;

1. Strengthening to support country ownership including community ownership.
2. Strengthening family as primary care-givers of children.
3. ensuring procoritized and forced intervention that address children`s most critical care needs.
4. Working within there, continue of response to achieve an AIDS-free generation.
5. Stable caring families and communities and strong child welfare system are the best defence against the effect of HIV/AIDS in lives of children.

3.3.2 Regional Mechanisms for the Enforcement of and Promoting Rights of Children Living With/Affected By HIV/AIDS

There are various regional mechanisms established for the enforcement of human rights in Africa, although these regional mechanisms directly dealt with human rights issues in general, without making specific reference to the rights of people (children) living with HIV/AIDS. Nonetheless, the provision of the instrument establishing those bodies and mechanisms applies indirectly in protecting and promoting the rights of people (children) with HIV/AIDS.

3.3.2.1 African Committee of Experts on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child is the most significant regional charter on children. Its implementation is monitored by the African Committee of Experts on the Rights and Welfare of the Child. The Committee has begun to respond to HIV through the development of a Plan of Action on Orphans and Vulnerable Children. The Plan of Action emphasises resource allocation for implementing children's programmes; enhancing the life chances of children; overcoming HIV and AIDS to ensure child survival, developing the potential of children by realising their right to education, protecting children to ensure their development and survival and ensuring the participation of children.⁴⁰ This Action Plan also highlights the importance of:⁴¹

1. Developing national strategies to enable orphans and vulnerable children attain their physical, mental, spiritual, moral and social development.
2. Meeting the special needs of orphans and vulnerable children by strengthening the capacity of caregivers, providing orphans and vulnerable children with essential services, providing social protection and facilitating a supportive environment through child centred community development.

⁴⁰ Ann. S.: Regional Issue Brief: Children, HIV and the Law; For the African Regional Dialogue of the Global Commission on HIV and the Law, Global Commission on HIV and the Law, South Africa, (2011), P.5. www.hivlawcommission.org.

⁴¹Ibid.

3. Poverty elimination.
4. Developing broad partnerships.

3.3.2.3 African Commission on Human Right

The African commission on Human Rights is an intergovernmental constitution responsible for the implementation of the provision of the African Charter within the members state of the AU at an international level the commission does not have a programmatic strategy of addressing the HIV/AIDS pandemic in Africa which is very unfortunate as the commission is the only operational enforcement mechanism within African Human Rights system. However, what is needed of the commission is to give an impetus to the use of the charter provision in order to fights the HIV/AIDS pandemic on the continent. Therefore, the commission is tasked with (3) main functions which include:

1. The promotional function of the commission and HIV/AIDS.
2. the protective function of the Africa commission and HIV/AIDS
3. The interpretive functions of the Africa commission and HIV/AIDS.

1. Promotive Function

The promotive function is describes as the fundamental requirement for the respect and recognition of the rights provided in the charter. therefore, it logically follows that those human rights associated with HIV/AIDS pandemic can be recognised and respected through the promotional function of the commission and this function is divided into main activities;

1. It involves the collection of document undertaking studies and research on African problems in the feld of human and people`s rights. it also organised seminars, symposia and local institution concerned with human and people`s rights and giving recommendation to government. However the commission also undertake to include activities such as seminars, symposia relating to the issues of human rights within the context of HIV/AIDS.

2. It also involves the formulation and laying down principles and rules which aimed at solving legal problems relating to human and people`s rights and fundamentals freedoms upon which African governments may base their legislation. in doing so, the commission also undertake to formulate a date base of polices and legislations specifically dealing with HIV/AIDS in respect of its members states.
3. It involves the co-operation of the commission with other African and international institutions concerned with the promotion and protection of human and people`s rights in African. In doing so, the commission achieved this plan by educating and publicity the designated countries. It also adopts a method by appointing special rapporteurs in relation to different thematic areas as to ensure full implementation of the charter.

2. Protectative Functions

This involves consideration of individual communication or complains against members states to the charter as provided under article 55. It also involves any alleging violation of human rights associated with HIV/AIDS. It considered as a regional forum for individual to bring their cases relating to Human Rights associated with HIV/AIDS in accordance with the charter. It also through this mandates the commission interpret in extensor the provision of the charter especially those relating to the issue of HIV/AIDS.

3. Interpretative Function

The mandate of the commission is one avenue for the effective implementation of Human Rights provision of the Charter. In doing so, the commission enriches the African Human Rights Jurisprudence. Also the commission may also be called upon to by any member state or NGO`S to interpret any provision of the charter. For example, in the case of

Purohit and Moore V. The Gambia. (2001), H. 241, p.212. The court held that; the commission interpret the right to Health which is relevant to fight against HIV/AIDS, in the following way⁴²

“the enjoyment of the human right to health as it is widely know is vital to all aspect of a person`s life and well- being, and is crucial to the realisation of all other fundamental human rights and freedoms. This rights includes the right to health facilities, access to goods and service to be guaranteed to all without discrimination of any kind”

On this case the commission, state further that although most of African countries are faced with problem of poverty, however state parties to the Charter are obliged to take necessary and targed step to ensure the right to healthcare is full realised in all aspect without discrimination of any kind. Also in 2001, the commission adopted a resolution relating to the issue of HIV/AIDS pandemic under this resolution. The commission declared that HIV/AIDS pandemic is a human right issues and a threat to humanity which need a special attention in order to addresses the issue. Similarly the commission called upon state parties to allocate more national resources that will reflects a determination to fights the spread of HIV/AIDS. And also to ensure human protection of those living with HIV/AIDS are against any kind of discrimination. Also to provide support of families for those dying of HIV/AIDS. Also to device public health care programmes of education and to carry out public awareness especially relating to issues of free and voluntary HIV testing as well as appropriate medical intervention.

Finally, the commission declared HIV as a human right issue and called for compressive action on other state part of African governments. State parties to the Charter and international pharmaceutical industries and aid agencies.

⁴² Sabelo Gumedze: HIV/AIDS and Human Right; The Role of the African Commission on Human and People`s Rights. African Human Right Law Journal, (2004), Vol.4 P.21.

3.3.3 National/Domestic Mechanism for the Enforcement of and Promotion of the Rights of Children Living with HIV/AIDS

The government at various level has put in place various institutions for the protection of the rights of the children living with HIV/AIDS, notable among these institutions are discussed below;

3.3.3.1 National Agency for the Control of AIDS (NACA)

The National Agency for the Control of AIDS (NACA), is the monitory body that provide regulations and guiding principles on topics ranging from prevention of new infections and behaviour change, treatment, care and support for infected and affected persons, institutional architecture and resourcing, advocacy, legal issues and human rights, monitoring and evaluation, research and knowledge management and policy implementation by the various stakeholders in the national response.⁴³

The body also, provide local actions for prevention, care and support for HIV/AIDS. This includes activities for social mobilization, community empowerment and the provision of support in the form of grants and awards to facilitate the establishment and provision of care and support programmes at community level for HIV/AIDS control initiatives.⁴⁴ NACA uses (3) mechanisms to manage this process:

i. The HIV/AIDS Fund (HAF)

The HIV/AIDS Fund (HAF) was designed to expand responses in the non-public sector activities against HIV/AIDS and provide avenues for the provision of this support to communities organized and mobilized for HIV/AIDS control.

To date, NACA has announced 3 calls for proposals from non-governmental organizations, faith based organizations, umbrella coalition groups, private sector organizations, etc. At the federal level, NGOs/FBOs and PSOs can access funds to a

⁴³ National Agency for the Control of AIDS (NACA): NACA Strategic Information, (2012). P.2. info @naca.gov.ng.

⁴⁴ Ibid.

maximum of USD100, 000 while umbrella organizations can access up to a maximum of USD300, 000.

Under the first funding window, 38 CSOs received grants totalling about USD3, 400,000 and worked in 32 states across the federation while 65 CSOs worked directly in 34 states under the second funding window with a total commitment of USD6, 000,000. Altogether, some 1000 civil society organizations at national and state levels have accessed small grants to implement various HIV/AIDS interventions at community level across Nigeria.⁴⁵

ii. **Rapid Response Fund**

The Rapid Response Fund (RRF) is a small grant facility for an activity being implemented by a civil society organization, (including non-governmental organizations, support groups, community based organizations, faith based organizations, workers unions, professional associations or the private sector) with the aim of enhancing the National and State response to HIV and AIDS.

The RRF mechanism was designed to complement the normal HAF mechanism through providing small grants (maximum of 10,000 USD) to applications for the implementation of short-term innovative proposals which can be undertaken over a short period of time, (i.e. 1 week to 3 months).⁴⁶

iii. **Support to Community Based Initiatives**

NACA recognizes the value of supporting small community based ‘grass-roots’ projects. These projects need to be identified, funded and provided with support, including support for activity planning, implementation, reporting, financial management, monitoring and evaluation, and procurement.

⁴⁵ Ibid. P.3.

⁴⁶ Ibid.

At the state level, HAF has resources for supporting such projects, however the SACAs do not logistically have the time and human resources to provide the technical input and supervision that is required for the number of projects that need to be supported.⁴⁷

This mechanism was developed as a fund granting process under the HAF and decentralized to the Local Government Level. It is a process by which the Local Government LACA, will be supported by 2 local community mobilization officers (one male and one female), who will assist communities to develop proposals, provide support to the LACA to review proposals and also provide support to the implementation process at the community level.

For instance, the body have formulated various national policies on HIV/AIDS which include the 2003, 2009 and 2012 policy and the overall goals of the National Policies on HIV/AIDS which provide a framework for advancing the national multi-sectoral response to the HIV/AIDS epidemic in Nigeria so as to achieve effective control by reducing the rate of new infections, providing equitable care and support for those infected and affected, and mitigating the impact of the infection, thereby enabling all people in Nigeria to be able to achieve socially and economically productive lives free of the disease and its effects.⁴⁸

⁴⁷ Ibid.

⁴⁸ National Policy on HIV/AIDS 2009.

CHAPTER FOUR

IMPORTANCE AND CHALLENGES IN THE PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN LIVING WITH HIV/AIDS IN NIGERIA

4.1 Introduction

The chapter intends to look at the challenges, importance, and prospects in the protection and promotion of rights of children living with HIV/AIDS in Nigeria. In doing so, the chapter will examine problems encountered by these children in relation to fundamental rights and how they are violated in our society.

It shall also, discuss various alternative ways ranging from legal, social for protection and promotion of rights of children living with or affected by HIV/AIDS.

4.2 The Importance in the Protection of Rights of Children with or Affected by HIV/AIDS

As mentioned earlier, one of the objectives of this research work is to underscore the importance of. And also identify the challenges in protecting and promoting the rights of children living with or affected by HIV/AIDS against all forms of discrimination and stigmatization in society. Children have fundamental right to protection, especially children with/affected by HIV/AIDS from all forms of violation and promotive actions to prevent and eliminate such violations.

The term “child protection” refers to preventing and responding to violence, exploitation and abuse against children, including commercial sexual exploitation, trafficking, and child labour and harmful traditional practices such as female genital mutilation/cutting and child marriage.¹

HIV/AIDS continues to profoundly affect the lives of millions of children across the African continent (Nigeria) and is placing increasing numbers at risk, it also weakens such

¹Child Protection Information Sheet; what is Child Protection? (UNICEF), (2006), P.1, www.unisef.org, Retrieved on 6-11-2012, 1:00 p.m.

traditional protective mechanisms as parental care and support, intensifies vulnerability and income poverty, and provokes stigma and discrimination. This increases children's risk of exposure to abuse, exploitation and neglect. As the impact of the HIV/AIDS epidemic continues to be experienced most severely in Africa, orphaned and vulnerable children are often uninformed about their rights and have difficulty accessing the support which they are entitled to, particularly if they do not have the support of a caregiver. A number of overarching legal problems such as abuse, stigmatization, exploitation, violence and discriminatory inheritance laws, limited recognition of the evolving capacity of children and inadequate social protection measures continue to prevent a holistic legal response to the impact of HIV and AIDS on children.

Creating appropriate legal and policy responses to HIV for children requires a commitment in realising children's rights, an understanding of the impact of HIV on the rights of children of different ages, and identifying the legal rights of children living with and affected by HIV/AIDS as a major area of concern has remained absent in mainstream discourse on the rights of children. As a result of the disproportionate effects of HIV/AIDS on the rights of children, the need for legal frameworks that provide protection is incontestable. As such there is the need to raise awareness on how to facilitate the protection of the rights of these children through access to essential services which include health care, education, birth registration, prevention, care and treatment and also strengthen the capacity of governments and other stakeholders to protect the rights of these children through improved policy, legislation and national development frameworks on issues relating to children in the context of HIV/AIDS; and to contribute to already existing frameworks by undertaking an investigation as to how legislative tools can be used as a means of protecting the rights of children living with and affected by HIV/AIDS. Framing the

protection of children affected by HIV/AIDS within a legal rights context can provide a pragmatic tool towards the protection of children.

When discussing the issue of protection of the rights of children with HIV/AIDS, the issue is closely linked to protection of both human and children rights provided under the convention. The HIV/AIDS impact is heavily on the lives of all children and affects all their civil, political, economic, social and cultural rights. For instance the right to non discrimination, right of the child to have her/his interest to be a primary consideration, the right to life and survival and development and the right to have her/his views respected as provided under the convention. Also, stigmatization, abuse, exploitation, discriminatory inheritance violence is other important factors which need to be address when protecting the rights of children with HIV/AIDS.

Violation of the above mentioned rights seriously heightening the vulnerability of children to HIV/AIDS as well as impacting the lives of these children because as a result of these violation and practises, children are denied access to education, information, health or social care services or even abandoned by their family, community and society .therefore in order to avoid these violations and practises, effective measures such as law, policies strategies and programme should be employed to address these issues.

A large number of children living with HIV/AIDS in Nigeria suffer from the following problems which include; discrimination, stigma, neglect, child labour, sexual abuse, lack of access to health care, education, birth registration, and social services, loss of parental care, economic exploitation, child trafficking and child labour, violence, child marriage, and income poverty. The following problems are discussed below;

- 1. Stigma:** this means the mark of disgrace or discredit; it is a form of violence as it causes psychological harm in children. When children are stigmatised they are set aside and prevented from having normal inter-personal relationship with others, Often they

are made to feel that there is something wrong with them and they are worth nothing. While children are usually stigmatised by those with economic and mental power over them, including guardians, teachers and relatives other times who have influenced by those with power. Stigmatisation is violence because it is the “international use power... that result in.....psychological harm.”²

Similarly, stigma is also described as the notion of unfair and unequal treatment that lead to neglect. It creates fear in mind of children with HIV/AIDS on how their peers would relate to them if their parentless status and association with HI/AIDS are revealed.

2. Discrimination: it means unequal treatment of children with HIV/AIDS in comparison to other children. Discrimination and stigma are twin concept because they are closely related, as both concepts emerged as a result of HIV/AIDS epidemic. Usually the outcome associated with stigma so also applies to discrimination as far as HIV/AIDS issue is concern. Discrimination resulted to the following abuses which include physical and psychological abuse. Physical abuse include slapping, canning and hitting of children while psychological abuse include verbal abuse, name calling, belittling and negative comparisons to other children.

3. Neglect: neglect by guardians and extended family members is another type of violence, it is described as a failure to provide sufficient food, clothing bedding, educational opportunities, health care and protection from harm.

It also include guardians of children of HIV/AIDS taking for themselves or their children goods intended for these children, enrolment of children of HIV/AIDS in government schools while the guardian children in private schools and early marriages for young children of HIV/AIDS so that the guardian could relinquish their responsibility early.

² Leanne, M.G: Violence Against Children Affected by HIV/AIDS; A Contribution to the United Nations Study on Violence Against Children: A Case Study of Uganda, World Version International Africa, (2005) P.5. www.child-right.org, Retrieved on 6-05-2013, 12: 14, p.m.

4. Child Labour: it is also another act of violence as regard to rights of children with/affected by HIV/AIDS. For instance, children of HIV/AIDS undertake excessive and under age and inappropriate household tasks.

5. Sexual Abuse: it is a form of violence against children with HIV/AIDS, especially young girls who are more vulnerable to sexual abuse than other children. Young girls are targeted for sex because they do not have parent to protect them or they don't have a choice but to become prostitutes since there is no-one to care for or protect them.

6. Lack of Access to Health Care, Education and Social Services

Children with HIV/AIDS lacks adequate and accessibility to health care services, they are also being discriminated from getting public services such as depriving them from getting education this is because HIV/AIDS reduces household earning power and caregivers which may make them agonize over which to send to school or health care centre. Adequate and accessible to health care services are protective because they prevent, treat illness, and may provide links to other services for children who suffers abuse and violence due HIV/AIDS.

7. Loss of Parental Care

Children affected by HIV/AIDS are at increased risk of losing the care of parent, even before one or both died and they are more likely than other children to be living with a step parent within an extended family or with an unrelated family, this exposes them to different kind of discriminatory practise. For instance they may receive an unequal share of household resources compared to biological children of their step-parent or whom they lived with, they can also be denied to go to school. It also exposes them to high risk of exploitation, abuse, neglect and emotional distress.

8. Exploitation, Trafficking and Child Labour

Children with/ affected by HIV/AIDS are at high risk of sexual and economic exploitation because due to illness or death of their parent older children are compelled to

seek employment or even leave school to work in order to carter for their sick-parent or their younger ones.

Similarly, they are vulnerable to trafficking and worst forms of child labour especially young girls whom are more likely to be trafficked for sexual exploitation and sent to work as domestic labourer.

9. Violence, Sexual Abuse and Child Marriage

Children with/affected by HIV/AIDS are vulnerable to sexual violence, especially young girls whom are unable to negotiate safe sex and resulted them of being HIV positive and put them at increased risk of other infections which compound the violation of their fundamental human rights. Similarly young girls are more vulnerable to child early marriage because parents of these children seek to have their daughters marry to protect their health and honour. For instance, in Nigeria some communities believe that an infected man can be cured when he have sex with a young girl and our men marries young girls as wives as a means of curing themselves or a means to avoid becoming infected with HIV.

10. Income Poverty

Apart from the physical and emotional risk faced by children due to HIV/AIDS, it increase children economic vulnerability as it leaves affected families poorer because when parents or care-givers fall sick, their health care cost increases which will resulted them into lost of wages and other income. It also makes them unable to take care of their children.

The burden of caring for sick and dying parents, coupled with loss of household income perpetuates poverty by disrupting the education of children or preventing them from developing a trade. A lack of access to education can put children at increased risk of exploitation and abuse.

All the above mentioned violations and practises against children with/affected by HIV/AIDS greatly impact on the lives of these children, and an emergency action need to be taken to protect these children from such violations.

4.3 Challenges faced by International, Regional and National Organisations and Institutions in the Protection and Promotion of Rights of Children Living With/Affected by HIV/AIDS

The challenges faced by children living with or affected by HIV/AIDS can never be over emphasis, as it has a numerous impact in lives of these children affecting their civil, political social and cultural rights³. Once an infected child status is known to everyone, that child will start facing different attitude from people. For instance, children with HIV/AIDS are seen as a disease not as normal children. And people try to run away from these children by discriminating and stigmatization against them by limiting their interaction with them. They also, face social exclusion, exploitation and abuse, low access to health care services, low education enrolment rate, poor school performance, intra household neglect, maltreatment and undue harassment from other peers are cultural exigencies which these children encounter.

On the other hand, children affected by HIV/AIDS i.e. Children whom parents died of HIV/AIDS. Faces more challenges than children infected with HIV/AIDS. This is because as a result of death of their parents especially children who come from poor family they are pushed into street to carter for their need as a result of which they experience different kind of problems. Example, they experience sexual abuse, child trafficking and labour, lack of access to health services, and education, exploitation, lost of parental care, and inheritance dispute. All of which are great violation of their fundamental rights provided under the law which also need to be protected.⁴

³ Adeyi, et al, 'AIDS in Nigeria: "A Nation on the threshold" Chapter 2: The Epidemiology of HIV/AIDS in Nigeria. Harvard Centre for Population and Development Studies (2006), p.2.

⁴ Ibid. p.3.

Despite the existing law and measures on human rights within the context of HIV/AIDS, there are still gaps which need to be filled up regarding issues of children with or affected by HIV/AIDS in Nigeria.⁵ The fact is that, what is needed is not a new law. But rather means to enforce the ones that are already in place. Some of the challenges are:⁶

1. Dissemination of Information on the Rights of Children with HIV/AIDS:

This is of deep and general concern, a lot is not known concerning the prevention of transmission of these children by their already infected parents. Poor and lack of information on when to get tested for HIV/AIDS and the protection where the child had already got infected, effort should be made to educate the illiterate mother on what they should do when they are pregnant and even when they are not pregnant.

2. Inadequate Legal Protection: most of polices relating to issue of HIV/AIDS in

Nigeria are in adequate and lack legal backing policies and inadequate enforceable. For instance, the national policy on eradication and protection of HIV/AIDS was implemented in (2003). The guidelines developed under the policy include, curriculum to integrate HIV/AIDS in school, teaching programme and advocacy to work toward creating an enabling environment to secure and interrupted funding for HIV/AIDS. Thus these policies are not enough because they are laudable achievement. Also many policies relating to HIV/AIDS exist, but they are not enforced because they lack legal operating framework. for example the child`s right Act is not implemented nationwide.

3. Lack of Right Based Approach in HIV/AIDS Programming: non-discrimination,

stigmatization and other discriminatory practises mentioned earlier are human rights issues. Yet, discriminatory practise are the major challenges faced by children with

⁵ Okpalaobi B.N; Legal/Judicial Enforcement Approaches Towards Prevention and Protection of Children Infected and Living With HIV/AIDS in Nigeria: An International Multidisciplinary Journal, Ethiopia, Vol.6(1), Serial No 24, (2012). www. Afrievjo.net, Retrieved on 25-9-2014.

⁶ Ibid. P.194.

HIV/AIDS in Nigeria. For example the case reported in the media about a mother, whose declaration of her sero-status in public resulted in her child being dismissed from school. Although, the HIV/AIDS policy advocate for right based approach, reproductive right programme is still inadequate and there is need for behaviour change communication by experts.

4. **Lack of Public Awareness on the Impact of HIV/AIDS in Children:** Most of people in our society are not aware of the impact of HIV/AIDS in children. This is because, once the status of an infected child is known to the public. The child is not seen as normal “child” but as a “virus” and afterward he/she will start facing challenges. So also, most of the HIV/AIDS parents and their children are not aware and educated about the law and polices that in their favour.
5. **Lack of Adequate Funding Approach Regarding the Issue of HIV/AIDS:** The federal system of government advocates for decentralization, but in practise, things are highly centralized including funding of state governments. The states depend on federal government for revenue and funding for implementary programmes including that on HIV/AIDS.
6. **Lack of Legal Backing Policies And Inadequate Enforcement:** Many policies exist that are related o HIV/AIDS, but they are not enforced because they lack the legal operating framework. Example the Nigeria policy on HIV/AIDS for education sector in Nigeria, the policy is existence but is not adequately enforced. Another example is the Child’s Right Act that the family court has not come into existence and no matter has been filed in court against any person.
7. **The Role of Non-Governmental Bodies:** these bodies and organisation are not adequately involved in the protection of these children. the government alone cannot successfully prevent and protect these child, this because the NGO`s and the faith based are

not adequately creating awareness on the rights of these children towards the parent and the state. If these NGO`S and faith based seriously and adequately show concerned on the issue of these children it will contribute greatly in eliminating poverty, improve education and enforcement of rights where they are breach through public impact litigation mechanism.

8. Lack Of Adequate Unenforceability Of The Child’s Rights Act: in attempt to protect the specific rights of Nigerian children over the years, the Child`s Rights Act has been passed into law. it is a compressive pieces of legislation encompassing all aspect relating to the welfare and care of the as well as the rights of a child to health services and the rights of a child as in need of special protection measure which children with HIV/AIDS are part and parcel of this protection And also the rights of children with HIV/AIDS to be protected against any harm. Nigeria is therefore one the countries that has opted to include both protection and prevention measures. Notwithstanding the passing of the Child`s Rights Act, there are no concerned efforts and resources that are put in place for the implementation of the Act. Ladan⁷⁷, have commented on this, speaking on lack of adequate enforceability of the Act as he said; “the Child`s Right Act is a toothless bull dog, that can bark but cannot bite” This flaw could be attributed to non-functionality of the family court that was envisaged by the Act.

4.4 Effective Measures for the Protection and Promotion of the Rights of Children Living with HIV/AIDS

Fundamental rights of children need to be protected especially children with or affected by HIV/AIDS, as due to their HIV status experience different discriminatory practises in our society. Therefore in this regard the following measures will be a great help in making the law proactive particularly as regard to the implementation of the protection of the children living with or affected by HIV/AIDS in Nigeria.

⁷⁷ Ladan M.T.; The Structure of the Child`s Rights Act, (2003), Nigerian Bar Journal Vol. 3 No.3 p.79

1. **Enactment of Laws:** Adequate legal protection should be given a great attention and consideration in relation to issue of protection of rights of children with HIV/AIDS. For example, appropriate legislations and national policies in relation to the issue of children in the context of HIV/AIDS should be enacted and also the existing ones should be review and adequately implemented.
2. **Policy Development:** in Nigeria, there are national laws that are put in place regarding the issues of HIV/AIDS. For example, the national policy on HIV/AIDS (2003). It was approved in 2003 with mandate to eradicate HIV/AIDS as well as protect people living with HIV/AIDS in Nigeria. the aspect of the policy which are currently being implemented includes:
 - i. development of guidelines for example a curriculum to integrate HIV/AIDS in the school teaching programmes has been develop.
 - ii. advocacy to work towards creating and enabling environment to secure uninterrupted funding for HIV/AIDS control. However, these policies are not enough and effective in the protection of people with HIV/AIDS in Nigeria. There are just laudable achievements.

Therefore, there is the need to develop a national policy that will directly and effectively protect people living with HIV/AIDS in Nigeria. In developing this policy the involvement of these people in policy process should begin from local government level to up national level. Also, there should be grassroots involvement that will incorporate people already infected and parents of infected children to know what are the challenges and difficulties that they faced in the management of the virus.

- iii. **Creating Awareness:** There should be involvement of the media in creating awareness. The involvement of the journalist and lawyers will get the large populace to know the implications and consequences of bearing children with

HIV/AIDS. Furthermore, people and children should be educated on the impact of HIV/AIDS and about the laws and policies that are in their favour which help them in enforcing their rights. Creating awareness should also be done in different languages across the nation.

- iv. **Establishment of Appropriate Ministries for HIV/AIDS Children:** in Nigeria, the ministry that support and carter for young children and women is the ministry of women and youth development. Although in reality these ministries are not adequately taking care of these children. therefore, government both at national and state level should establish ministries that will not only support and carter for these children but a holistic ministry with specific portfolio to which complaints can be lodge on violations of rights of these children.
- v. **More Budgetary Allocation:** Government should budget more on HIV/AIDS victims. This will enable more parents and their children to have greater access to anti-retroviral drugs. Also government should be more committed, honest and responsible with government property. There should be sincere budget allocation to these children to wit the future leaders of our country.
- vi. There should be an active participating advocacy effort to address socio-cultural, legal and other barriers which includes cultural beliefs and attitudes which are held and promulgated by local leaders and institutions. A legal barrier which includes the absence of laws needed to enforce the implementation of the existing polices. Furthermore, regarding issue of discrimination and stigmatization, a law should be put in place to prosecute anyone whoever discriminates against people with HIV/AIDS.
- vii. The NGO`S and faith based should seriously and adequately show concerned on the issue of these children it will contribute greatly in eliminating poverty, improve

education and enforcement of rights where they are breach through public impact litigation mechanism.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Introduction

Finally this chapter is the concluding part of this research work. The chapter will summarize and conclude the whole of the study by making observations, suggestions, and recommendations regarding the subject matter of the research.

5.2 Summary

Despite the availability of information on the HIV/AIDS pandemic HIV/AIDS is still spreading in Nigeria. It has detriment effects on the lives of young children in Nigeria as it exposes them to different kinds of practices which include discrimination, stigma, sexual abuse, exploitation neglect, isolation, inaccessibility to health and public services. Thus denial of their rights makes children more vulnerable to HIV/AIDS. But when their right to survival, development, protection, promotion and participation are realized children are less likely to find themselves in situation not at the risk of HIV/AIDS infection. But also free from all kinds of violations and practices. Furthermore, the general protection of children`s rights which include healthy, physical, and emotional growth and development. And also special attention to children with/affected by HIV/AIDS in such areas as sexual exploitation, abuse, neglect. And the promotion of their rights among others to information, education, health and social services reduce the impact of HIV/AIDS in children and enhance HIV prevention and care strategic in children with/affected by HIV/AIDS.

Chapter one dealt with general introduction under which the background to the study was stated, statement of the problem, aims and objectives, and scope of the research were described. It discussed the research methodology, justification of the research, and a vivid literature review of some exiting literatures parting to the subject matter of the research and dealt with the organisational layout of the research.

Chapter two dealt with conceptual clarification of key terms, under which it discussed the meaning of a child, meaning, nature, and scope of HIV/AIDS in which types, prevention, transmission, and prevention of transmission, treatment and care of children living with or affected by HIV/AIDS in children. Finally, it discussed the nature and scope of children rights to health under international, regional and domestic laws.

Chapter three dealt with the analysis of legal framework under which it discussed the international, regional, and domestic instruments on the protection and promotion of the rights of children living with /affected by HIV/AIDS. It also discussed the mechanisms for the protection and promotion of the rights of children living with /affected by HIV/AIDS. It also considered the international, regional and domestic mechanisms for the protection and promotion of the rights of children living with /affected by HIV/AIDS.

Chapter four dealt with the challenges and importance's and prospers in the protection and promotion of the rights of children living with HIV/AIDS in Nigeria. It discussed the challenges faced by children living with HIV/AIDS in Nigeria. It also discussed the importance of protecting and promoting the rights of these children and prospers in protecting the rights of these children.

Chapter five dealt with the concluding aspects of the research work by providing a vivid summary of the research, observations, and findings of the research. Finally, the chapter proffers recommendations and suggestions in lieu of the observations made.

5.3 Findings

Most of the instruments dealing with protection and promotion of human rights do not make specific reference to issue of HIV/AIDS. However there are instruments both at international, regional and national level that indirectly deal with protection and promotion of rights of people living with HIV/AIDS especially when it comes to issue care and support, testing, prevention, transmission and treatment of HIV/AIDS. Thus even these instruments

mentioned do not take issue of children into consideration, for instance issues relating to counselling and information about HIV/AIDS most of these policies only refers to adult, also when it comes to issues of prevention young girls whom affected by HIV/AIDS do not have the idea on how to protect themselves from been infected with HIV/AIDS.

Similarly, literatures and policies dealing with the protection of children`s rights in the context of HIV/AIDS focus more on infected children leaving those children affected by the epidemic as forgotten ones and also not seen as a propriety. Children affected by HIV/AIDS need more protection and special attention because as a result of death of their parents due to HIV/AIDS, they faces a lot of problems more than children infected with HIV especially when they come from poor family and nobody to take care of them. They lost the right to go to school, access to health and public services, loss of inheritance, and exposes to all forms of abuse exploitation, stigma, discrimination, trafficking and neglect.

In view of these circumstances, the following observations are made;

1. Inadequate legal protection most of polices relating to issue of HIV/AIDS in Nigeria are in adequate and lack legal backing policies and inadequate enforceable. For instance, the national policy on eradication and protection of HIV/AIDS was implemented in (2003). The guidelines developed under the policy include, curriculum to integrate HIV/AIDS in school, teaching programme and advocacy to work toward creating an enabling environment to secure and interrupted funding for HIV/AIDS. Thus these policies are not enough because they are laudable achievement. Also many policies relating to HIV/AIDS exist, but they are not enforced because they lack legal operating framework. for example the child`s right Act is not implemented nationwide.
2. Lack of right based approach in HIV/AIDS programming, non-discrimination, stigmatization and other discriminatory practises mentioned earlier are human rights

issues. Yet, discriminatory practise are the major challenges faced by children with HIV/AIDS in Nigeria. For example the case reported in the media about a mother, whose declaration of her sero-status in public resulted in her child being dismissed from school. Although, the HIV/AIDS policy advocate for right based approach, reproductive right programme is still inadequate and there is need for behaviour change communication by experts.

3. Lack of public awareness on the impact of HIV/AIDS in children. Most of people in our society are not aware of the impact of HIV/AIDS in children. This is because, once the status of an infected child is known to the public. The child is not seen as normal “child” but as a “virus” and afterward he/she will start facing challenges. So also, most of the HIV/AIDS parents and their children are not aware and educated about the law and polices that in their favour.
- 4 Lack of adequate funding approach regarding the issue of HIV/AIDS. The federal system of government advocates for decentralization, but in practise, things are highly centralized including funding of state governments. The states depend on federal government for revenue and funding for implementary programmes including that on HIV/AIDS.
- 5 The role of non-governmental bodies, these bodies and organisation are not adequately involved in the protection of these children. the government alone cannot successfully prevent and protect these child, this because the NGO`s and the faith based are not adequately creating awareness on the rights of these children towards the parent and the state.

5.4 Recommendations

The HIV/AIDS epidemic is a condition that promotes the violation of children rights being also a significant indicator of human rights deprivations, health as well as a

developmental problem, is one that requires a multi-sectoral and multi-dimensional approach to prevention, control, and management.

The government of Nigeria under the international human rights treaties and international human rights standards bond itself to adequately safeguard the health of its citizens with the recourses available to its disposal. But unfortunately, Nigeria government has not fully awakened to the reality of the epidemic despite the progressive trend in its spread and consequent destruction. This is evidenced by the fact that the national assembly has not passed any Bill that addresses the need of people living with HIV/AIDS. Rather, national policies expressing statements of intent have been established. In lieu of the above, .backdrops mentioned above and the observations made therefore, the study proffers the following recommendations regarding the subject matter of the research work.

1. Adequate legal protection should be given a great attention and consideration in relation to issue of protection of rights of children with HIV/AIDS. For example, appropriate legislations and national policies in relation to the issue of children in the context of HIV/AIDS should be enacted and also the existing ones should be review and adequately implemented.
2. There should be an active participating advocacy effort to address socio-cultural, legal and other barriers which includes cultural beliefs and attitudes which are held and promulgated by local leaders and institutions. A legal barrier which includes the absence of laws needed to enforce the implementation of the existing polices. Furthermore, regarding issue of discrimination and stigmatization, a law should be put in place to prosecute anyone whoever discriminates against people with HIV/AIDS.
3. There should be involvement of the media in creating awareness. The involvement of the journalist and lawyers will get the large populace to know the implications and consequences of bearing children with HIV/AIDS. Furthermore, people and children

should be educated on the impact of HIV/AIDS and about the laws and policies that are in their favour which help them in enforcing their rights. Creating awareness should also be done in different languages across the nation.

4. Government should budget more on HIV/AIDS victims. This will enable more parents and their children to have greater access to anti-retroviral drugs. Also government should be more committed, honest and responsible with government property. There should be sincere budget allocation to these children to wit the future leaders of our country.
5. The NGO'S and faith based should seriously and adequately show concerned on the issue of these children it will contribute greatly in eliminating poverty, improve education and enforcement of rights where they are breach through public impact litigation mechanism.

In conclusion, despite the availability of information on the HIV/AIDS pandemic HIV/AIDS is still spreading in Africa (Nigeria). It has detriment effects on the lives of young children in Nigeria as it exposes them to different kinds of practices which include discrimination, stigma, sexual abuse, exploitation neglect, isolation, inaccessibility to health and public services. Thus denial of their rights makes children more vulnerable to HIV/AIDS, but when their right to survival, development, protection, promotion and participation are realized children are less likely to find themselves in situation not at the risk of HIV/AIDS infection, but free from all kinds of violations and practices. Furthermore, the general protection of children`s rights which include healthy, physical, and emotional growth and development and also special attention to children with/affected by HIV/AIDS in such areas as sexual exploitation, abuse, neglect, and the promotion of their rights among others to information, education, health and social services reduce the impact of HIV/AIDS in children and enhance HIV prevention and care strategic in children with/affected by HIV/AIDS.

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QUESTIONNAIRE

Faculty of Law,
Ahmadu Bello University,
Zaria.

Dear Respondent,

I am a final year student of the above named institution, conducting a survey on the topic “An Assessment of the Role of Law in the Protection and Promotion of Rights of Children Living With HIV/AIDS in Nigeria.” the research is in partial fulfilment of the requirement for the award of the master in law and for an academic purpose.

I will be glad if you will provide reliable information as required in the questionnaire and be rest assured that your response will be treated strictly confidential. Thanks for your cooperation.

Yours faithfully,

Binta Musa MUHAMMED

Instructions: Please tick (✓) as appropriate.

SECTION A: SOCIO DEMOGRAPHIC DATA

1. Age bracket (a) 18-25 [] (b) 26-35 [] (c) 36-45 [] (d) 46 and above [].
2. Sex: (a) Male [] (b) Female [].
3. Marital Status (a) Married [] (b) Single []
4. Educational Background (a) SSCE/NECO [] (b) National Diploma [] (c) HND []
(d) Degree and above [].
5. Occupation: (a) Academic Staff [] (b) Non- Academic Staff [].

SECTION B: Views of people on the protection of children infection and affected by HIV/AIDS.

1. Do you think children with HIV/AIDS in Nigeria experience some forms of discrimination. Yes [] No [] Not sure [].
2. Do you think children with HIV/AIDS in Nigeria experience stigmatization in our community? Yes [] No [] Not sure [].
3. Do you think Nigerian government have provided adequate or otherwise in protecting children with HIV/AIDS in Nigeria. Yes [] No [] Not sure [].
4. Do you think by discriminating and stigmatizing children with HIV/IDS, is there right being violated. Yes [] No [] Not sure [].
5. Do you think that violation of human rights of persons infected or affected by HIV/AIDS is still rampant? Yes [] No [] Not sure [].
6. Do you think encouraging people in our community to take care and show love and concern towards children with HIV/AIDS will help reduce or stop discrimination and stigmatization among these children? Yes [] No [] Not sure [].

SECTION C: Views of people in the protection of the rights of children with HIV/AIDS

1. Do you think that there exist a functional legal framework or legislation that address the issues of protection of children with HIV/IDS in Nigeria. Yes [] No [] No sure [].
2. Do you think policy of the legislation covers protection of children with HIV/AIDS Yes [] No [] Not sure [].
3. Does the legislation achieve its set objectives in the protection of children with HIV/AIDS? Yes [] No [] Not sure [].
4. Does this legislation perform up to its expectation? Yes [] No [] Not sure [].

5. In your opinion do you think that the control measures advocated by workers, NACA and ministry of health are sufficient and adequate? Yes [] No [] Not sure [].
6. Is there any new measures or approach that you will suggest for the legal framework for the protection of children with HIV/AIDS in Nigeria. Yes [] No [] Not sure [].
7. In your opinion do you think that adequate fund is made available in protecting children with HIV/AIDS? Yes [] No [] Not sure [].
8. Do you think NGO`S are better in terms of funding HIV/AIDS programmes than federal government of Nigeria. Yes [] No [] Not sure [].
9. Do you think that adequate legal protection has been given attention and consideration by our government? Yes [] No [] Not sure [].
10. Do you think that there should be an involvement of media in creating awareness regarding the issues of rights of children within the context of HIVB/AIDS? Yes [] No [] Not sure [].

SECTION D: Views on ensuring compliance with existing guidelines on ethical standards on HIV/AIDS issues.

1. Does NGO`S comply with ethical standard regarding HIV/AIDS issues. Yes [] No [] Not sure [].
2. In your opinion do you think production and dissemination of the existing national guidelines on ethical standard and practises regarding HIV/AIDS will help. Yes [] No [] Not sure []
3. Do you think establishing research ethic board on HIV/AIDS issues at federal, states, and local government level will ensure compliance. Yes [] No [] Not sure [].
4. Do you think organizing sensitization seminar for religious tradition leaders will help enhance compliance of existing national guideline on ethical issues. Yes[] No [] Not sure []