

**Child Labour and Human Right Violations: A Case Study of the Situation in
Nigeria**

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By

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DEDICATION

To my beloved husband and my children.



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LIST OF ACRONYMS

ACRWC:	African Charter on the Rights and Welfare of the Child
CEDAW:	Convention on the Elimination of All Forms of Discrimination Against Women
CRA:	Child Rights Act
CRC:	Convention on the Rights of the Child
CSOs:	Civil Society Organizations
ICCPR:	International Covenant on Civil and Political Rights
ILO:	International Labour Organization
NCRIC:	National Child Rights Implementation Committee
OAU:	Organization of African Unity
OHCHR:	Office of the High Commissioner for Human Rights
UDHR:	The Universal Declaration of Human Rights
UN:	United Nations
UNCRC:	United Nations Convention on the Rights of the Child
UNCHR:	United Nations Commission on Human Rights
UNICEF:	United Nations International Children's Emergency FUND
NACCRAN:	National Agency for the Prohibition of Traffic in Persons
SNA:	System of National Account
IPEC:	International Programme on Elimination of Child Labour
NAPTIP:	National Agency for the Prohibition of Trafficking in Person

CYPL:	Children and Young Person Law
CYPA:	Children and Young Person Act
MCA:	Matrimonial Causes Act
NLA:	Nigerian Labour Act
NCWP:	National Child Welfare Policy
CFRN:	Constitution of the Federal Republic of Nigeria
DRC:	Declaration of the Right of the Child
ICESCR:	International Covenant of Economics Social and Cultural Rights
CCA:	Criminal Code Act
PC:	Penal Code
NIS:	Nigeria Immigration Service
NPF:	Nigeria Police Force
NPC:	National Planning Commission
BIC:	Best Interest of the Child
NEP:	National Education Policy
UBE:	Universal Basic Education
FMWA:	Federal Ministry of Women Affairs
UNODC:	UN Office on Drugs and Crime
HDI:	Human Development Initiatives
FMEL & P:	Federal Ministry of Employment, Labour and Productive

WOCON:	Women Consortium of Nigeria
HDN:	Human Development of Nigeria
FOWASCIN:	Friends of Working and Street Children in Nigeria
CLL:	Child Lifeline
NACTAL:	Network of Non-Governmental Organizations Against Child Trafficking and Child Labour
WOTCLEF:	Women Trafficking and Child Labour Elimination Foundation
WARDC:	Women Advocates Research and Documentation Centre
CRAGON:	Child Rights Advocacy Group of Nigeria
AWEG:	African Women Empowerment Guide
GF:	Galilee Foundation
GPI:	Girls Power Initiative
HIV/AIDS	Human Immunodeficiency Virus, Acquired Immunodeficiency Syndrome
UNESCO:	United Nations Education Scientific and Cultural Organization
ECOWAS:	Economic Community of West African States
CEACR:	Committee of Expert on the Application of the Conventions and Recommendations

Legal Issues Related to Child Labour and Human Right Violations: A Case Study of the Situation in Nigeria.

Abstract

This study seeks to assess the level at which child labour constitutes a violation of the rights of the child. Child labour is a global trend and concerns the employment of children for jobs, particularly when it is illegal or perceived to be exploitative. For this study, statistical data were gathered and analyzed to assess the extent and determinants of child labour. In addition, six states have been randomly selected from the six geopolitical zones in Nigeria. Such states are Benue State, Abia State, Rivers State, Lagos State, Kaduna State, Bauchi State. A total of 460 participants were selected for this study, including 100 child labourers and 100 parents selected through accidental sampling techniques. Importantly, 100 police officers, 100 social welfare officers and 60 staff of the Ministry of Women's Affairs. It also discussed national and international laws and policies on the protection of children's rights in the society. In line with the main objective of this study, the rights of children under Nigerian law have been considered. Another critical topic which has been discussed is the adequacy of the legislation to protect children from child labour. In particular, future obstacles to the enforcement of the laws protecting children from abuse have also been investigated. The Ministry of Women Affairs was selected equally by means of a purposive sampling for observation, interview and questionnaire.

Based on the findings, this thesis argues that the primary reason why children are forced to work is poverty and therefore suggests that sustainable livelihood strategies should be in place to reduce poverty in the catchment area, particularly in the rural areas of Nigeria. Finally, this thesis makes recommendations that would ensure that children are protected from abuse, exploitation and infringement of their rights.

CHAPTER 1

1.0 Background and Introduction

1.1 Introduction

Nigeria has been criticized for human rights and child's rights abuses on its territory for several years. The unpleasant scenario of children working long hours in dehumanizing conditions has drawn considerable debate among academics, policy makers, non-governmental organizations (NGOs) and human rights activists in Nigeria. Every child in the society, irrespective of context, is regulated by a code of law on the protection of human life, the prevention of injury, the protection and preservation of human dignity and the enhancement of human development, among others.

Child labour is the employment of a child for a job, especially when it is illegal or considered to be exploitative. Pursuant to Article 32 of the Convention on the Rights of the Child (CRC), child labour occurs when children, especially young children, are exposed to long hours of work in a dangerous or unsanitary environment with too much responsibility for their age, especially when it is done at the expense of their schooling and social recreation. Nevertheless, child work should be differentiated from child labour. In line with the above definition, the International Labour Organization (ILO) convention on child labour, namely convention No 138 of 1973, which sets a minimum age for hazardous work, and convention No 182 of (1999), which seeks to eliminate the worst forms of child labour, cover all practices related to slavery, such as the sale and trafficking of children. Child labour will not only harm the children concerned and hinder the development of a skilled workforce, but will also lead Nigeria into a cycle of poverty.

The Government of Nigeria has put in place so many laws, policies and institutions concerned with the protection of children, including the protection of children from violence, such as National and State Child Rights Implementation Committees, Child Development Departments in the Federal and State Departments of Women's Affairs, National Council of Child Rights Advocates of Nigeria (NACCRAN). Nigeria also ratified the UN Convention on the Rights of the Child (CRC) in 1991. In 2003, the Act was domesticated by the Child Rights Act (CRA) after a long and tiresome struggle and

advocacy.¹The Act is divided into 24 parts with 275 sections. These sections seek to protect the child from all forms of abuse and discrimination.

However, these measures, both nationally and internationally, have persisted in child labour, and even on the increase to date. This raises certain questions about the extent to which the law has protected children's rights against child labour in Nigeria. Second, is child protection law, as it applies to child labour, properly enforced in Nigeria? In order to answer these questions, it is therefore urgent to investigate where there are gaps, loopholes and inadequacies in law and policy as well as in the field of implementation.

Against this background, this work will critically examine the legal issues related to child labour under Nigerian law. It will therefore investigate the root cause, effect and its legal implications both now and in the future. Based on the findings of the present research, the author will provide solutions and recommendations to reduce or possibly eradicate this monster in Nigeria.

1.2 Statement of Problem

Child labour has a very detrimental effect on the children in all ramifications as it denies them access to education, physical well being, good standard of living and enjoyment of their fundamental human right.

It also hinders the development of a skill workforce and leads Nigeria into a circle of poverty. Child labour has persisted in Nigeria despite numerous laws, policies and administrative measures put in place to curb the menace nationally and internationally.

1.3 The Proposed Title of the Doctoral Dissertation of the Author is as follows:

Legal Issues Related to Child Labour and Human Rights Violations: A Case Study of the Situation in Nigeria.

As the title indicates, the dissertation will focus on child labour in the context of human rights in Nigeria. It will consider the causes and effects of child labour. It will further examine the progress made towards the reduction or elimination of child labour, in the

¹T Nkoyo, 'Revisiting Equality as Right: The Minimum Age of Marriage Clause in the Nigerian Child Right Act' (2003) 27 Third World Quarterly 1299-1312

context of the development of domestic and international legislation that seeks to protect children in society.

1.4 Background Interest and Gaps

The research has developed an interest in this area of law as a result of the pitiful situation of the increasing incidence of child labour in Nigeria. Witnessing what is happening on “The streets of Nigeria’s” and reading media accounts of the unheard voices of children, the “author” is shocked by the scandalous conditions of child labour, and tries to examine the situation. Preliminary research suggests that there are flaws in the current legislation. Furthermore, current literature indicates that previous studies were primarily focused on the situation in urban areas, while neglecting the more complicated situation in rural areas in this regard. This thesis will explore the weaknesses and address identified gaps in existing legislation and will also examine the critical issue of the implementation of the relevant legislation, in particular as it relates to the rural areas of Nigeria.

1.5 Theoretical structure

This work adopts not only a rights-based approach, but also a Marxist approach. Maxism is a social, political and economic theory originated by Karl Marx . It is a critical perspective of how a capitalist economic system exploits workers while accumulating more capital for business owners. It considered the issues of child labour in the sense of slavery and human rights abuses. This approach sees a child as a human being and as such is entitled to its basic human rights, which can not be negotiated or violated. The rights of the child and infringements are therefore the focal point of this study.

In the Marxist point of view, the main problem is the oppression of workers by the wealthy capitalist class. The theory holds that the dominant party would use labour to their benefit at any point in time. In line with this, child labour activity in Nigeria may be seen from the point of view of abuse of underprivileged children engaged in tedious and dangerous work for peanut, in the interests of the wealthy ruling class.

Following the above approaches, this thesis examines the legal framework for the promotion of children's rights and the elimination of child labour in Nigeria. Although the study refers in particular to child labour in Nigeria, work in a broader context also

considered relevant international legal provisions and instruments as it relates to child labour.

1.6 Methodology

1.6.1 Research Design

This study adopted a mixed method of Quan-Qual sequential research design because the research is a combination of doctrinal and empirical research which requires the use of qualitative and quantitative method/tools for data collection and analysis.

1.6.2 Population

The target population of this study comprises of child labourers, parents/Guardians, and law enforcement agents such as Police and Officials of Social Welfare and Ministry of Women Affairs and human right activist in Nigeria.

1.6.3 Sample and Sampling Techniques

The sample size of this study is a total of 460 participants and six states. First, a random sampling technique was used to select six states each representing the six geopolitical zones of Nigeria.

Secondly, a purposive sampling technique and simple random sampling technique was used to select 100 child labourers, 100 parents/guardians, 140 officials of social service and ministry of women affairs, 60 police officials and 60 human right activists.

Table 1.1 *Sample States from the Geopolitical Zones in Nigeria*

No	Selected States	Geopolitical Zone	No of States
1.	Bauchi	North-East	1
2.	Kaduna	North-West	1
3.	Benue	North Central	1
4.	Abia	South-East	1
5.	Lagos	South-West	1
6.	Rivers	South-South	1
	Total		6

Table 1.2 Research participants selected from each state of the Geopolitical zone in Nigeria

No	Selected Participants	States	No
1.	Child Labourer	Bauchi, Kaduna, Benue, Abia, Lagos and Rivers	100
2.	Parents/Guardians	Bauchi, Kaduna, Benue, Abia, Lagos and Rivers	100
3.	Officials of Social welfare and Ministry of Women Affairs	Bauchi, Kaduna, Benue, Abia, Lagos and Rivers	140
4.	Police	Bauchi, Kaduna, Benue, Abia, Lagos and Rivers	60
5.	Human Right Activist	Bauchi, Kaduna, Benue, Abia, Lagos and Rivers	60
Total			460

1.6.4 Instrumentation

The instruments used for data collection was obtained from both primary and secondary sources.

Primary data sources instruments includes:

- i) Self-developed Questionnaire
- ii) Interview Schedule
- iii) Participant Observation

Challenges of Implementation of Child Rights Law Questionnaire (CICRLPQ)

This questionnaire was developed by the researcher to elicit information from the selected respondents which includes Child Labourers, Parents/Guardians, and Law enforcement agents on the causes, effects of child labour and the challenges in the implementation of the Child Protection Act to eradicate child labour in Nigeria. This questionnaire has been subjected to content validity and reliability test. It is a four likert scale type with response options and scores as follows; Strongly Agreed 4 points, Agreed 3 points, Strongly Disagreed 2 points and Strongly Disagreed 1 point.

This instrument also contains two sections, section A was designed to obtain information on respondents' demographic data while section B consists of eleven items with four likert response options.

Interview Schedule on Child Labour (ISCL)

The researcher developed three sets of interview schedule to elicit information from Child Labourers, parents/Guardians and law enforcement agents and officials of Social Services/Ministry of Women affairs, police and human right activist on the causes, effects of child labour especially on child labourers, and to determine the adequacy and effectiveness of the child protection laws as well as the challenges in the implementation of Child's Protection Laws. The ISCL instrument is made up of two sections. Section A consist of demographic data and Section B consist of question items to elicit responses from interviewee which the researcher takes note of and use for research purposes.

Validation of the Instrument

To determine the validity of the instrument, copies of the instrument were sent to three experts in the field. The validates carried out both content and face validity to ascertain the suitability of the items in the instrument. The validates reworded, deleted, added, and generally assessed and commented on the clarity and appropriateness of the instruments' items for improvement towards better realization of the study's objectives. The researcher effected all the corrections made by the validates before producing the final draft which was issued to the respondents.

Reliability of the Instrument:

The reliability of the instrument was determined using test-retest method. Copies of the instrument were distributed to thirty respondents who were not part of the sample used for the study. The instrument was administered to the respondents and after two weeks was re-administered to the same respondents. Pearson Product Moment Correlation was then employed which yielded a reliability of 0.94 indicating that the instrument was highly reliable.

Instruments for Secondary Data

This thesis adopted secondary sources of information, where investigations were conducted into the existing literature related to the subject of this research. In this respect,

books, journal articles and periodicals, etc., have been studied and used for the purposes of the relevant information.

1.6.6 Data Collection Procedure

The researcher presents a letter of introduction to the stakeholders concerned with the view to obtaining their consent and corporation. Four research assistants were co-opted and trained to participate in the distribution of the questionnaire as well as the retrieval and management of the instrument.

1.7 Objective of the Study

In specific terms, the objectives of the study are stated as follows;

1. To investigate whether there are sufficient laws to protect children's rights Under the laws of Nigeria
2. To Consider the adequacy of legislation to protect children from child labour.
3. To Investigate potential barriers / implementation of legislation to protect children from child labour.

1.8 The research questions are:

1. Are there sufficient laws to protect children's rights under Nigerian law?
2. How adequate are the laws for the protection of children against child labour in Nigeria.
3. What are the potential obstacles / challenges in the implementation of legislation to protect children from child labour?

1.9 Significance of the Study

The result of this study will be of immense benefit to the government, all stakeholders involved in the protection of children's right. This is because the findings of this study will provide better understanding of the root causes of child labour and the major obstacle to the effective implementation of the relevant laws protecting children against child labour.

The thesis will also serve as a research based material relevant for further studies in related field.

It will provide guidance to the government on appropriate measures to address the root causes of child labour.

1.10 Thesis Structure

The thesis was divided into seven chapters. This research did not only cover urban areas, but also covered areas ignored by previous studies, in particular rural areas in Nigeria. The following outline is briefly set out:

Chapter 1 elaborates on the objectives of the dissertation and justifies the theoretical framework and methodology chosen for the research. Importantly, it will lay the basis for the study of the focal points of the dissertation.

Chapter 2 seeks to locate the dissertation within the relevant theoretical framework, thus providing the theoretical background to the dissertation. To this end, a good number of related literature will be theoretical, showing the existing state of knowledge in the field of research.

Chapter 3 examines the concept of child labour. By doing so, the author has addressed the causes of child labour. In addition, the author seeks to find out why, despite numerous definitions and debates on child labour, there is still no consensus on the meaning or concept of child labour.

Chapter 4 considered a variety of legislative instruments related to child labour. Some of the enacted legislation discussed in this chapter includes the Child Rights Act (CRA) 2003, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, the Constitution of the Federal Republic of Nigeria 1999 as amended just to mention a few. The study will also consider issues related to children's rights within the broader framework of the Convention.

It also considered whether or not the existing legal instrument relating to child labour was adequate and, if so, the problem of its implementation.

Chapter 5 assesses the effectiveness of the UNCRC and the ILO Conventions, Laws and Policies on the Rights of the Child in Nigeria. The loopholes and weaknesses related to the effective implementation of child labour laws and legislation under Nigerian law will also be considered. In doing so, it will identify the challenges of implementation.

Chapter 6 presents and analyse the findings in this study.

Chapter 7 presents the conclusion. It seeks to summarize the findings and arguments in the preceding chapters and gave suggestions and recommendations for the reduction or eradication of child labour in Nigeria.

1.11 Ethical Issues Involved In Data Collection

During the field work, in the course of the collection of data, the researcher observed research ethics which helped her to win the support and co-operation of her respondents among whom were parents/Guardians, children engaged in child labour and officials of the law enforcement agents. E.g. Police, Social service workers and personnel of the ministry of women affairs. The ethical issues that were observed are enumerated below:

i. Notification And Consent

The researcher presented a letter of introduction to the research participants introducing herself, the purpose of the research and its relevance to them and the Nigerian society, thereby soliciting for their support in providing vital information that are relevant to the study to enable her achieve the objectives of the research. She also solicited for the consent or permission of parents to enable her have an interview with the children.

Especially those children that are engaged in one form of child labour or the other.

Based on the approval of parents and other sampled respondents the researcher was able to schedule a time and venue for the administration of the research instruments (questionnaire, interview) and also did a participant observation during the field work successfully and the respondents provided relevant information needed in this study willingly though some declined to do so for some personal reasons.

ii. Confidentiality

The researcher noticed that some respondents were not willing to provide some sensitive information relevant to the research because they were skeptical of her intention and may not want to be indicted especially the child labourers.

So she assured them of utmost confidentiality, as the information obtained will be used mainly for academic purposes.

They were more comfortable to speak when she informed them that their real names or identify was not necessary and their voices not recorded. During the interview section she listened and took note of their responses. The experiences the child labourers shared was very pathetic.

iii. Provision Of Incentives

The researcher recognized that the respondents were not under any obligation to participate in the study as they were only doing her a favour, hence she expressed her gratitude to them for their time and effort to participate in the research and also offered them some gift items and refreshment at the end of the exercise.

iv. Safety And Protection

The researcher made an arrangement for a quiet and safe environment where the respondents can feel relaxed and concentrate during the interview section. As part of safety measure, she employed three young men in addition to her research assistants and police to accompany her and ensure her safety and that of her respondents during the interview and administration of the questionnaire.

v. Time Management

The value of time was also taken into consideration as the researcher took control of the time and worked within the scheduled time, she co-ordinated the discussion during the interview and administration of questionnaire to the respondents and ensured that did not exceed the agreed time frame and some of the respondents commended the researcher for not taking much of their time.

vi. Avoiding Bias

The researcher allowed the respondents to express their various views on the subject matter without any interruption or engaging them in any form of argument.

She tried to understand the points they were making and co-ordinated the discussion to avoid digression from the subject- matter. Those who were not willing to speak were not compelled to do so.

Finally, the field work was successfully carried out despite the numerous challenges and practical issues at the various locations during the data collection process which was resolved.

Moreover, the research ethics that were duly observed also made room for the researcher to successfully complete the field work which also involved careful planning, time management, adequate safety measures, maintaining cordial relationship with members of the public especially the sampled audience/respondents application of various strategies to resolve challenges that arose in course of the field work, and provision of incentives amongst other.

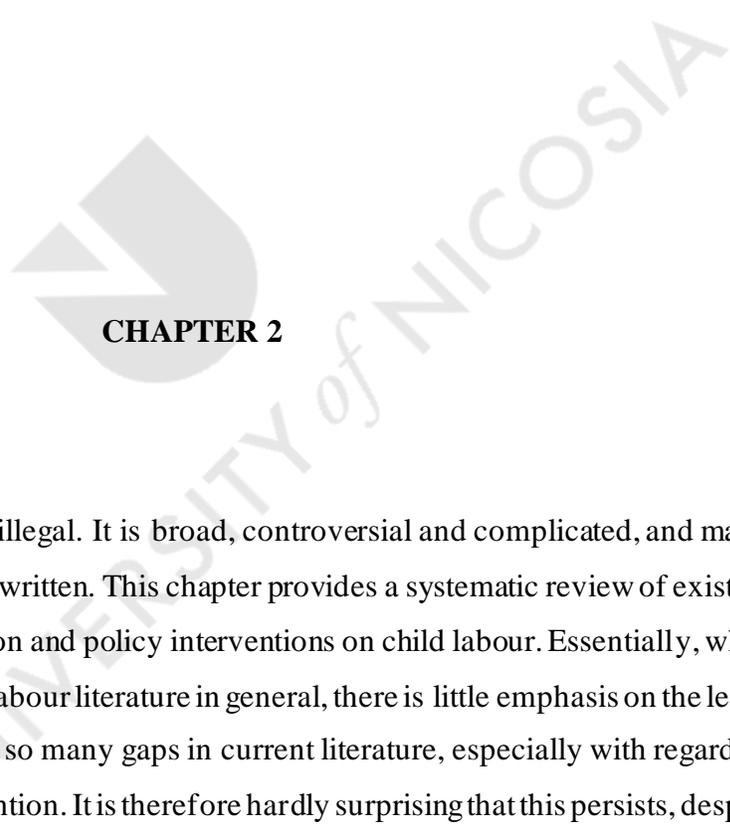
Also, trying to fix an appropriate time and venue for interview with parents and Law enforcement agents was not easily done due to their busy schedule.

Moreover some parents/ guardians were not willing to have a discussion with the researcher due to fear of being exposed and sanctioned especially those involved in the practice of child labour until they were assured of utmost confidentiality and protection of their interest. Similarly the researcher also witnessed a major challenge in carrying out her investigations among the rural dwellers due to language barrier as most of the parents were illiterates and could not speak English language, to resolve this problem, the researcher had to employ an interpreter to aid communication between the researcher and the respondents at various locations in the rural area which attracted extra cost.

Again, the researcher experienced much inconveniences and stress to access some remote villages with the bad roads though motorable to carry out research.

1.12 Limitations of the Study

It is no gain saying the fact that the this study has provided an indepth insight on the legal issues related to child labour and human rights violations particularly in Nigerian context, it is not without its limitations. The eletical nad methodological challenges the researcher experience cannot be undermined. This is because the aspect of of collection of data through questionnaire and interview administered during the COVID 19 pandamic when everyone felt unsafe to unsafe to interract with anymore. Thus a clear lack of cooperation created fruastration to the researcher as not all the qestionniare sent out were returned to the researcher for analysis. Again the several lockdown in various parts of the country at the time was a very big challenge. Again, some respondents especially parents and child laoburers were very skeptical about the intervention of the research and consequently were not willing and able to grant interview.



CHAPTER 2

2.0 Literature Review

2.1 Introduction

Child labour is immoral and illegal. It is broad, controversial and complicated, and many books and articles have been written. This chapter provides a systematic review of existing literature on various legislation and policy interventions on child labour. Essentially, while there is a wide body of child labour literature in general, there is little emphasis on the legal system. In addition, there are so many gaps in current literature, especially with regard to legislation and policy intervention. It is therefore hardly surprising that this persists, despite all the laudable efforts made at national and international level to control the incidence of child labour. Children are required to be protected from exposure to activities that can result in child labour. It is important to remember that whether or not a job may be called child labour depends on the child's age, the amount and hours of work done and the circumstance in which it is done.

Current research worldwide reports that, prior to the advent of child protection legislation, millions of children worldwide have been subjected to the worst forms of child labour, including exploitation and hazardous physical labour. As a result, most children suffer all kinds of violence, both physically and mentally. In 2006, (United Nations International Children's Emergency Fund) UNICEF reported that some 15 million children under the age of 14 worked in Nigeria. It has been revealed that many of these children have been subjected to long hours of work in dangerous and unsanitary conditions, engaging in job roles beyond their ages. In addition, it has been recorded that children have worked in unsafe environments with little food, no pay, little education and no medical treatment, in violation of children's rights. This chapter focuses on the definition of child labour in Nigeria and, in particular, the legal system for the protection of children.

2.2 Child Labour Concept

Child labour is a dynamic problem that needs to be abolished. However, in order to combat this scourge, you must begin by making an effort to understand clearly the definition of this concept. Different international conventions set universal limits on child labour, including the ILO Convention No 138 on the universal minimum age, the ILO Convention No 182 on the worst kind of child labour, and the UN Convention on the Rights of the Child. ILO Convention 138 describes a child as under the age of 16, whereas Convention 182 describes a child as under the age of 18 (ILO 1999a), while the child is under the age of 18 under the UN Convention.

The convention does, however, provides very few flexible clauses left to the discretion of the competent national authority, making it impossible to provide a single legal definition of child labour used worldwide. Nonetheless, the discussion about what child labour and child work is reveals a clear disagreement as to what the social issue is that should be eradicated. In addition to the conventions, individual researchers and countries try to address the definition of child labour in the context of their own unique knowledge, circumstances, culture, laws and institutions. In support of the above argument, Augendra noted in his article that it would be difficult to eliminate child labour without a clear understanding of exactly what child labour is and who the child is for that purpose. In his work, he noted that although it is agreed at international level that the worst forms of child

labour should be eliminated in order to promote the welfare of children, the consensus is broken when it comes to defining what constitutes both child labour and work. For example, in defining child labour, the ILO (2002) refers to the National Accounting System (SNA), which defines work in terms of economic activity. In fact, Augendra also noted that there is widespread agreement that paying wages would expose children to exploitation. However, the ILO recognizes categories of work that could harm the physical and mental development of the child and those that do not. The concentration in his work on the definition of the ILO shows the complexity of the problem of child labour. It is therefore suggested that until you understand who the child is and other related issues, and are able to deal with these complexities, it will be difficult to effectively eliminate child labour in our society².

In the same way, Leonard noted that the meanings of a child vary over time and place, and that factors such as chronological age, physical size and growth still count³. Similarly, Woodhead and Montgomery have argued that different cultures had different age-based meanings⁴. Thus, it is unfair to classify children based on physical age and can not be applied in all cultures and in all circumstances.

Basu considered that the definitional issues arise from two angles, at one point, any individual's non-educational and non-leisure time below a certain age may be considered child labour. On the other hand, only full-time employment would be counted in the economic activity⁵. Ashagrie also argued that if the child is economically involved, a child is regarded or listed as a labourer⁶. Folashade and Ukiri-Madiare have contributed as much to literature in the same vein. They gave a very deep insight into this concept and noted the difficulties surrounding this concept, including finding a clear definition of who a child is,

²B Augendra, 'Defining Child Labour: A Controversial Debate' (2008) 18 *Development in Practice* 385

³ M Leonard, 'Children, Childhood and Social Capital: Exploring the Link' (2005) *Sociology* 605

⁴M Woodhead and Montgomery, *Understanding Childhood: An Interdisciplinary Approach* (Wiley 2003)

⁵K Basu, 'Child Labour: Cause, Consequence and Cure, with Remarks from Economic Labour Standards' (1999) 37 *Journal of Economic Literature* 1083

⁶Ashagrie K, *Statistics on Child Labour, Bulletin of Labour: Statistics* No. (ILO Geneva, 1993)

at what point it can be made clear that a child is involved in child labour. For example, they pointed out the sociological qualities of child labour, which arise from the interaction between economic and domestic roles⁷.

From a broader perspective, Invernizzi believed that work encompasses different activities and should be viewed broadly covering both the material and the socio-cultural benefits. She defines work as a "social activity" that encompasses many interactions and meanings. She also noted that a number of factors influence people's decisions and preferences for certain types of work and, as a result, affect the meanings they give to work⁸. She added that children and adults view work as a means of acquiring and independence.⁹ However, her work is focused mainly on the sociological dimension of child labour definition, but ignored the human rights concerns.

Canagarajah and Nielse also define child labour as involving children for cash, kind or non-wage incentives in economic activities. Compared to them, an economic operation involves "employment in the home, fishing, market trading or manual labour." They concluded that even though the jobs and unpaid informal activities of children at home are not physical or dangerous, they may interfere with the education of children and therefore have a negative impact¹⁰.

Importantly, Boyden et al criticizes the concept of child labour, specifically in economic terms, as being too limited and exclusive to unpaid labour done at home within the household that takes up a substantial amount to child labour. They offered a more comprehensive description of working children, as those in paid jobs or engaged in money-

7B. O Folashade and Mudiare Ukiri, *Child Labour, Nigerian Institute of Legal Studies* (Intec Printers Ltd 1996)

8Invernizzi A Street Working Children and Adolescents in Lima: Work as Agent of Socialisation in Childhood, (2003) *Childhood – A Global Journal of Child Research*, 319-341

9*Ibid*

10S Canagarajah and H. S Nielsen, 'Child Labour in Africa: A Comparative Study, *The Annals of the American Academy*' (2001) 575 *Children's Rights* 71

making activities within or outside the home or participating in unpaid home maintenance for an average of 10 hours a week.”¹¹ .

A report published by International Information and Monitoring Programme on Child Labour (ILO/SIMPOC) also distinguishes between child-labour and child work and defines child-labour as:

“Paid or unpaid work that occurs in any sector, including the domestic, informal and agricultural sectors, that is harmful to the child's mental, physical, social or moral development of the child in modern society; or work which deprives children of the opportunity to attend school, obliges them to leave school permanently or require them to combine school attendance with excessively long and heavy work is categorized as child labour.”¹²

With respect to work, it defines child work as:

“Participation of children in jobs in any field which does not entail dangers and hazards that do not harm their safety and personal welfare or conflict with education.”¹³

One common characteristic of all these claims, however, is that children have the right to survive and the right to be protected when they partake in survival activities¹⁴.

Okoli admitted in her research observed that there is no single dimension to address such arguments neither is there a consensus about what work is dangerous or favourable to working children¹⁵. The UNCRC argues that the primary goal and best strategy should be targeted towards the best interests of children and to protect them from harmful activities

¹¹J Boyden, B Ling and W Myers, *What Works for Working Children* (RaddaBamen and UNICEF 1998)(n 46) 24-25

¹²Country Report Nigeria National Modular Child Labour Survey, Federal Office of Statistics, ILO/SIMPOC 2000/2001.

¹³*Ibid*

¹⁴S Muscroft, 'Children's Rights: Reality or Rhetoric? The UN Convention on the Rights of the Child: The First Ten Years. (Reflections and Critique of the first 10 years of the UNCRC by the International Save the Children Alliance London, 1999)'

¹⁵Okoli R.C.B, (2009) *Children's Work: Experiences of Street Vending Children and Young People in Enugu*, University of Edinburgh (Unpublished PhD Thesis 2009) 37

and conditions that will jeopardize their best interests, not to hold them entirely out of work or enforce mandatory interventions, because in some cases they might be counterproductive¹⁶.

This lack of consensus in definition finds expression in arguments regarding the economic and labour involvement of children and has generated opposing camps between child rights activists and development professionals. The former view child labour as a necessary evil which has both positive and negative consequences and is more interested in protecting children from unsafe workplaces, while the latter support keeping children out of employment and removing child labour, particularly for children under a certain age. ¹⁷.

2.2.1 Childhood and Child Labour Theory

According to Thomas in Fortune, there is no single definition attributed to childhood, which may contribute to the multiple theories of childhood¹⁸. Thomas has raised very crucial questions in the process. Some of the questions are, what is childhood? what kind of phenomenon is childhood? What are children like? How are they distinct from adults and, whether childhood is a social or natural construct?¹⁹ These unresolved questions could, in his opinion, cause one to believe that childhood is a disputed phenomenon. He indicated that the definition of childhood remains controversial and differs because of the various opinions and responses resulting from certain questions²⁰. According to Thomas, what constitutes childhood in various cultures is significantly varied²¹.

Similarly, Cree argued that the idea of childhood means different things to different individuals in various social, cultural and historical contexts, and children have varying

¹⁶*ibid*

¹⁷*ibid*

¹⁸Ihwa-Maduenyi, F. (2008) Considering the Rights and the Best Interest of a Child in a Multi-Cultural Civil Society with Special Reference to Nigeria, (Unpublished PhD Thesis) University of Leicester.

¹⁹*ibid*

²⁰*ibid*

²¹*ibid*

perspectives in different areas of the world. In addition, Stephens added that a modern concept of childhood, which is heavily influenced by Euro-American (Western) ideologies, sees childhood as a separate stage in the human life cycle when children should be completely detached from work and enabled to live a happy, safe and protected life²². However, Cree argues against this idea of childhood, as it generally does not translate into the realities of the lives and experiences of children²³.

In the same vein, Woodhead stipulated that children as active agents belong to the same economic and political world as adults, can negotiate relationships and make decisions, and can influence situations in which they live and grow²⁴. Once again, Bourdillon defines childhood as a transitory stage of life-cycle development ranging from a state of total infant disability and dependence to the level of adult independence, and notes that children gradually acquire skills as they grow and interact with others. For example, street hawking children, like most working children, are in some cases trusted with the responsibility to care for themselves, their families and younger siblings²⁵. In the process they gain more competencies and coping skills.

The question at this point is, at what level does a child become an adult? according to Morrow, Bourdillon and Stephens, the beginning and end of childhood differ across cultures and communities and every society describes childhood in terms of its own collection of expectations, beliefs, concepts, and behaviours. Childhood starts in certain cultures as children gain their freedom to take part in certain religious or cultural rites of passage. Rites may be performed in those societies to mark the transition from childhood to adulthood²⁶.

²² S Stephens, *Children and the politics of culture* (Princeton University Press 1995)

²³ V. E Cree, *Sociology for Social Workers and Probation officers* (Routledge 2000)

²⁴ M Woodhead, 'Combating Child Labour: Listen to what the Children Say' (1999) 6 27

²⁵ M. F. C Bourdillon, 'Children in Development' (2004) 4 *Progress in Development Studies* 99

²⁶ Morrow V. (2003) "moving out of Childhood" in Rosemary C.B.O, *Children's Work: Experience Of Street Vending Children And Young People In Enugu, Nigeria*, p 42

For certain countries, childhood legally ends at 18, some at 21, depending on where one is from, and for others childhood terminates when children start to develop some physical features. Some society associates adulthood with the time when children attain legal status and certain rights, such as the right to vote, drive or own a driving license, marry or when they are entitled to certain welfare benefits, such as in the UK and many Western societies.

However, it is pertinent to note that all these change over time in various cultures, making it difficult to implement a standardized paradigm of childhood. It should also be noted that rapid socio-economic changes among developing countries such as urbanization, capitalism, and westernization have led to contradictions on childhood conceptions.

Childhood was also influenced by developments in culture and community, modernisation, etc. In his research, Oloko argues that these social and economic developments have made it impossible to ensure that high quality schooling is possible, which would provide significant benefits to everyone. Ncube also suggests that the concept of infancy differs over time and place due to the interaction between infants, their parents and other adults. He added that the renewed focus of UNICEF on modern children as distinct entities whose freedoms have changed the way parents, adults and culture view and respond to children and have also influenced the way children see themselves²⁷. Punch also noted that the way in which society perceives children affects society's treatment of them²⁸.

2.3. Theories of Children's rights

Theory of rights in this section is considered in the perspective of moral, legal, political and human rights, as well as claims about who has a right, and what is usually disputed. That being said, it is therefore important to make a basic distinction between positive legal rights and moral rights, the latter being rights which a moral philosophy acknowledges. In most nations, civil rights of children are readily recognized as demonstrated by the almost

²⁷W Ncube, *Law Culture, Tradition and Children's Rights in Eastern and Southern Africa* (Ashgate 1998)

²⁸Punch, S (2001) "Negotiating Autonomy: Childhood in Rural Bolivia" in Rosemary C.B.O, (n 14) 23-26

universal ratification of the Convention on the Rights of the Child. The controversy over the rights of children usually gravitates around more fundamental questions about whether there is a credible account of the moral rights of children. Again, having positive rights for children does not necessarily settle the question of whether they have moral rights or should have them.²⁹

There are two fundamental theories, according to Buck, that grappled with a great insight into the nature, function and conception of children's rights. These are the rights theory of choice or will, as well as the interest theory of rights.³⁰ For clarity, both of them are discussed separately.

2.3.1 Choice and Will Theory of Rights

The will theory also known as the choice theory assumes that the person asserting those rights will have a choice as to when and whether to exercise those rights. The reason behind this theory of rights is to project and promote individual autonomy. Since children at different maturation stages are more likely not to have the competence to exercise such choices in all cases, it was argued whether they should be adequately represented as having rights at all. When rights are primarily based on the premise that the right holder must be willing and knowledgeable to make these choices, then it could imply that at least in situations where it is clear that a person will lack the competence to make chose, that child may not be rightly described as a right holder.³¹ This approach presents a number of difficulties. As remarks; "the claim that children, who are too young and incapable of claiming rights, thus have no rights, have an unattractive logic" Furthermore, if, for example, the same approach is applied to the position of an adult who is severely mentally ill or disabled, the unattractiveness of the logic is exposed.³² It was suggested that to circumnavigate such a strong conclusion it could be agreed that parents and other adults

²⁹ T Buck, *International Child Law* (2nd edn, Routledge 2011)

³⁰ *Ibid.*

³¹ *Ibid*

³² J Fortin, *Children's Rights and the Development of Law* (3rd edn, Cambridge University Press 2009)

or institutions may have correlative duties to provide remedies for children (or adults with severe mental illness or disabilities) who are not competent to make their choices.³³

One of the major criticisms of the theory of will is that the existence of remedies is over-emphasised.³⁴ Indeed, MacCormick claims that the moral obligation on parents and other entities to have the protection is permissible only if children have a right to care and nurture; that is, the presence of the right presupposes the solution.³⁵ Another problem is that the principle of will / choice has not established a safe standpoint for children in the face of parents or organizations who neglect to intervene in their correlative duties. The key question, crucially, is how will the recognition of children's choices representative be tested? It's suggested that the best choice would not be for parents. Evidence from earlier literature on child abuse indicates that the greatest threat to the mental, physical, and sexual identity of a child comes from parents and other immediate family members and friends.³⁶

2.3.2 Interest Theory of Rights

Interest theory otherwise known as the benefit theory of rights intended to address some of the want / choice theory's inadequacies and problems. Accordingly, this right exist for the interest of the right-holder. Thus, those rights are based on whether a child has an interest that should be protected, rather than simply based on whether the right holder is actually able to assert or waive his / her claim. The interest right theory is basically an instrumental approach to the justification of rights, as rights are instrumental in protecting human well-being. In addition, one of the founding fathers of the United States, Thomas Paine, articulated the importance of the principle of interest theory as he observed that, "he acquires knowledge of his rights by attending justly to his interest."³⁷

³³*Ibid*

³⁴*Ibid*

³⁵N MacCormick, *Legal Rights and Social Democracy* (3rd edn, Clarendon Press 1982)

³⁶ Buck, *International Child Law*(n 46) 24-25

³⁷ P. Greene Jack, 'Paine, America, and modernization of Political Consciousness' (1978)93 *Political Science Quarterly* 73

At this juncture, it is important to distinguish between the choice and interest theories, in line with a distinction between the content of rights into categories of "liberty rights" and "welfare rights." Archard described liberty rights as right to choose, such as to vote, practice a religion and to associate while welfare rights is been described as rights that protect important interests like health. The usefulness is that even if children lack the capacity or competence to choose, they obviously have fundamental interests that need to be protected and thus have 'welfare rights'. As soon as children's interests have been identified, it becomes easier to formulate a credible set of 'moral rights' that apply to children. Even if a collection of moral rights can be articulated in a consistent way, the question that still arises is the grounds on which moral rights can be translated into concrete legal rights.

However, the central point of interest theory is that children should not be refused access to concrete legal rights as some children may not be matured enough to make informed decisions. Nevertheless, the advocates of the interest theory would not possibly claim that the interests of every child is suitable for transformation into moral rights and subsequently legal rights. A major deficiency of the interest theory is the confusion regarding the identification of relevant interests and the mechanism that could be used to turn that interest into moral and legal rights.

2.3.3 Social Constructive Theory of Child Labour

It is believed that this theory stems from the well-researched work of the French historian, Phillip Aries. Aries gave an account of the children's transition from medieval to modern childhood. He suggests that childhood should be construed as a social construct.

In fact, Rogers discussed a three-pronged solution to child labour. He believes that there are broadly three ways of studying children; the scientific approach that uses theories conceived through experimentation and observation; the socially constructive approach that sees childhood as a product of different worldviews; and the applied approach used by organizations and institutions and child welfare practitioners. These approaches work hand

in hand because the three are interrelated and do not exclude each other³⁸. It is important to note that out of all three, the most important theory for the purpose of this study is social constructive approach of childhood. Woodhead also suggests in his writing that children are social actors, that childhood is a distinct phase in the human life cycle.

2.3.4 Exploitative Child Labour Policy

Child labour is generally assumed to be work undertaken by children that is inherently harmful. By the mid-1990s, it became more commonly understood that some work could be beneficial to children, as it could allow them to attain at least a level of subsistence or acquire skills³⁹. The term exploitative child labour is used to distinguish certain work which was clearly harmful and dangerous to the children involved⁴⁰. There are so many instances of child-headed households that, due to circumstances beyond their control, are forced to take serious responsibilities of feeding for their families. Some of them end up in exploitative and dangerous jobs owing to desperate situations.

Similarly, From the Marxist perspective, the main argument is hinged on exploitation of labourers by the privileged dominant class. The theory maintains that the dominant group will use labour to its own advantage at any point in time. In line with this, child labour practice in Nigeria could be viewed from the perspective of exploitation of underprivileged children who are engaged in tedious and hazardous work for peanuts for the interest of the dominant class.

2.4 Poverty Theory

³⁸Rogers C. A. and Swinnerton K.A, (2002) "Inequality Productivity and Child Labour: Theory and Evidence", Georgetown University Working Paper.

³⁹ *Ibid*

⁴⁰ *Ibid*

Economic studies address poverty as a casual factor for child labour⁴¹. While other people see poverty as a factor in child labour, in some cases it is a reverse. It is obvious that children who work do not go to school in any generation nor do they acquire the skills required to earn decent wages as adults. They send their own children to work for economic purposes, once they become parents themselves. Yet another generation is missing out on an education and sending their own children to work in their own turn. This vicious circle, known as the poverty trap, is one of the main reasons why child labour, despite the laws on child protection and the bane of child labour, still persists.

Likewise, Basu outlines a rudimentary model of a trap to poverty. The main argument is that it is not practical to do a piecemeal education. A pupil is engaged either full-time or not at all. He believes that sending a child to school means sacrificing a lump of income that the child could have earned through all those hours of work⁴². This is assumed that mainly parents with their own minimal ability level gain enough to be able to forsake this lump of money. Such parents bequeath their future generations a legacy of education and affluence. At the other hand, uneducated and unqualified parents promote child labour, shortage of employment and deprivation for decades to pass down.

In the same vein, Ranjan is connecting poverty traps to income distribution. He explained a scenario with two communities that have similar rate of aggregate income. One society begins with its equally distributed income, the other with a distribution which is greatly skewed in favor of the rich. It is possible that every parent has a minimum level of income in the first society to put children through school, while in the second society only a few households will be able to afford the sacrifice of the wages of their children. The implication is that the first society will evolve equitably over time and with universal

⁴¹*Ibid*

⁴²K Basu, 'Child Labour: Cause, Consequence and Cure, with Remarks on International Labour Standards' (1999) 37 *Journal of Economic Literature* 663

education for its children, while the second society will polarize into a dynamic, educated and stagnant, uneducated class⁴³.

Given the position of parents, Some economic theorist interpret the prevailing economic theory on child labour as an altruistic effort to increase the value of their offspring. Dessy and Pallage say that these children go for it because worst-form positions pay more than other work available. Families know the damage the worst forms can do to their children, but can send them to the worst forms of employment anyway if they see the higher pay offered by such occupations as compensating for the damage, particularly in the sense of extreme poverty, the compensating difference for the harm caused by the worst forms of child labour could be sufficient to make the harm superior to the harm that may be caused by them.⁴⁴.

In the other hand, some advocates of the exploitative child labour are of the view that while parents try to optimize the utility of their children, they do have insufficient knowledge when determining if their children will join the labour force. When those parents send their children to work, they hope to send them to a situation that will make them better off. They have that hope because they know there are working situations that can be of benefit to their children. Most times, however, this hope is not realized, and the children end up in a situation of exploitative work. That is, it may "trick" the parents. Since businesses and organisations are conscious that parents face incomplete knowledge when making decisions, some of them have the ability to manipulate child labourers in equilibrium.

In addition, Child labour literature also suggests various ways to achieve globally existing exploitative child labour. Firstly, it is suggested that once a child enters an exploitative situation, there may be various ways of preventing the child from leaving⁴⁵. For example,

⁴³P Ranjan, 'Credit Constraints and the phenomenon of Child Labour' (2001) 64 Journal of Development Economics 81

⁴⁴Dessy, S.E. and Stephane P "Child Labour and Coordination Failures", (2001) 65 Journal of Development Economics, 412-476.

⁴⁵Rogers C.A. and Swinnerton K.O, (2002), A Theory of Exploitative Child Labour.

the parents can prevent the children from accessing the financial and emotional support. In his work, Lim discussed the role of adult persuasion, deception or threats in removing children from their homes in the belief that the child will be offered training, educational or work opportunities which will eventually improve the situation of the child. Deception and theft are all the more common⁴⁶. The theory already discussed concerns instances where majority of the parents are tricked. It is important to note, however, that this principle is not modelled on 'full deception.' This is because in some situations parents have certain suggestions that might end up in an exploitative situation for their children. Therefore it has been stressed that sometimes the responsible adult is the parents of a child, but other times parents agree to any situation because of their financial situation. Having examined these ideas, what approach is more important to this research and why is the next issue to consider now.

Different theories have been explored in this work, but the most important approach for the purpose of this study is child labour abuse theory, as previous academic work has shown that child labour appears to be a problem related to poverty and complicated social conditions. Such children are vulnerable and feel helpless and at risk of exploitation. Moreover, under a dangerous and harmful condition, child labourers are paid less the value of the marginal product of labour. Considering this approach, one understands better the interrelationships between production modes and ethical responsibility. To encourage ethical actions and make the employees more accountable, the author needs to focus on that approach. Based on the findings of this work, the author will make practical suggestions for policy intervention that will enable the children to benefit from exploitative working conditions.

⁴⁶ Lim Lin Lean, *The sex sector: The Economic and social basis of prostitution in Southeast Asia*, (Geneva: International Labour Office 1998)

2.5 Legal Framework

Francoise in his article observed that the growth of child labour is a global crisis that requires urgent global response. It was noted that because solutions to end child labour is global and not easy, solutions as well have to be global and comprehensive in order to reach all levels of societies in which child labour is in use. For instance, in this article, it was noted that consumers, human rights groups, child rights activists, religious organizations, politicians, governments, international organizations such as ILO with its international programme on the elimination of child labour (IPEC) and (UNICEF) are joining the world campaign to stop the abuse of exploited child⁴⁷. It was therefore suggested that such international development organizations must take the lead to insure that the precious gift of childhood which is endangered at the moment for many of the indigent children in developing countries, be protected in every corner of the globe.

Importantly, Gogo in his article titled the legal responses to child labour in Nigeria examined the various national and international responses to child labour in Nigeria. He considered the concept and various forms of child labour. His study also covered both national and international conventions in the form of policies, legislations and conventions on various aspect of child labour. In his work, he observed that laws to protect children from exploitation and hazardous work have remained ineffective due to lack of enforcement of labour in the informal sector where the vast majority of children work. Again, he suggested that Nigerian Labour Laws should be reviewed and amended to strengthen protection for domestic work, agriculture, self-employment and informal sectors⁴⁸. In the same vein, Beuren in her book highlighted the complexities behind the global violations of children's rights. Her study shows that the exploitation of children is universal, in part due to the subordinate status of children. She added that exploitation normally involve cumulative breaches of several fundamental rights, the most common being unlawful interference with the right to education, health and leisure, all of which are also necessary for the health, development and survival of the child. Hence, she emphasised

47R.A Francoise, 'Global Crisis without a Global Response' (1996) 31 Economic and Political Weekly 3354

48G. O Gogo, 'Legal Responses to Child Labour in Nigeria' (2007) 1 Kogi State University Journal

that because of the vulnerability and immaturity of children, there is need for them to be protected against all forms of exploitation⁴⁹.

According to Ajanwachukwu the Nigerian child's right Act created participatory rights, however, in some of the rights, they did not employ words showing that such rights were participatory, thereby creating doubts in respect of enforcement. He suggested that although, the Act did not expressly provide for the right of the child to participate in certain rights in view of the omnibus provision of the Act that provides for the best interest of the child. He added that the legislature undoubtedly did not intend to exclude participatory rights of the child because non participation of children no longer represents the global state of the law on the rights of children⁵⁰.

Abdulumuni in his book, *The Law and Child Rights in Nigeria* has made remarkable contributions on issues relating to child rights in Nigeria. In so doing, he assessed some sets of legally protected human rights instruments ratified in Nigeria, which placed Nigeria under obligation to take steps to ensure their realization and also to ensure that local legislations in Nigeria adequately protect the human rights of the child⁵¹. He also considered some of the serious breaches of such rights with an in-depth analysis of the extent to which a Nigerian child enjoys the protection of his human rights.

Similarly, Ike Uzo in his book *Fundamental Rights Litigation*, postulated that Fundamental Human Rights are those rights, which attach to the individual and to which he is entitled to just for the mere fact that he is a human being children inclusive. He emphasized the need for all to be protected⁵². Although this book provided recent insight on the situation of human rights in Nigeria which is useful to the present study, however, not much was done on issues specifically relating to the protection of the right of children.

49V. G. Beuren, *The International Law on the Rights of the Child* (Martinus Nijhoff 1994)

50M. A Ajanwachuku, 'The Nigerian Child and the Right to Participation: A peep through the window of 'the best interest 'Clause of the Child's Right Act' (2017) 8 Beijing Law Review 159

51B. A Abdulumuni, *The Law and Child Rights in Nigeria* (Malthouse Press Limited 2015)

52D. U Ike, *Fundamental Rights Litigation* (Law Digest Publishing Co 2005)

In the same vein, Falana, in his book titled *Fundamental Rights Enforcement* opined that fundamental rights are generally regarded as those aspects of human rights which have been recognized and enshrined in the constitution and specially provided to enhance human dignity and liberty in every modern state. It is pertinent at this point to note that children's rights are human rights⁵³. These rights equally protect the children as human beings.

Furthermore, he pointed out that human rights and the right of the child is also enacted in the 1999 constitution of the Federal Republic of Nigeria as amended⁵⁴.

Apart from the 1999 constitution of the Federal Republic of Nigeria as amended, there are other human rights instruments and institutions for child protection that is relevant for the purpose of this study. The Universal Declaration of Human rights (UDHR) is one of those instrument. The UDHR lays down the foundation for all human rights related legislation internationally. It declares that "All human beings are born free and equal in dignity and rights". Article 25(2) provides that "motherhood and childhood are entitled to special care and assistance and, all children, whether born in or out of wedlock, shall enjoy the same social protection⁵⁵. Furthermore, Article 26 calls for the right to education for all⁵⁶.

Another important instrument is the African Charter on Human and People's Rights. Article 18 (3) of this charter provides that states parties should ensure the protection of the rights of the child as stipulated in international declarations and covenant. The internationally accepted principle on children's rights was effectively African Charter on the Rights and welfare of the child (ACRWA) and convention on the Rights of the child (CRC) which made provisions for the rights of the child.

This charter has been long ratified in Nigeria. This provision stipulates that "every child has the inherent right to life, and states shall ensure to the maximum child survival and development.

⁵³F Falana, *Fundamental Rights Enforcement* (2nd edn, Legaltex Publishing Company Ltd 2010)

⁵⁴The 1999 constitution of the Federal Republic of Nigeria.

⁵⁵Universal Declaration of Human Rights, 1948, Article 25

⁵⁶Universal Declaration of Human Rights, 1948, Article 26

Again in 1996 the Federal Military Government established the National Human Rights Commission based on the recommendation made at the Vienna Conference on Human Rights. Most importantly, the Child Rights Act was passed in 2003. The philosophy behind these rights is well founded in providing a legislation, which incorporates all the rights and responsibilities of children and which consolidates all laws relating to children in a single legislation.

The convention on the Rights of the child provides that:

“State parties shall undertake to disseminate the convention’s principles and take all appropriate legislative, administrative and other administrative and other measures for the implementation of the Rights recognized in the present convention”.

According to Akwara, Soyibo and Agba in their article law and children’s Rights protection, the legal framework for the protection of the children’s rights in Nigeria was very weak and uncoordinated before the enactment of the Child’s Rights 2003. Laws relating to the protection of the child was not child’s rights-specific nor did they make adequate provision for children’s right. They added that the federal constitutional arrangement does not specify issues concerning children within the legislative preview of the National Assembly but within state legislatures thereby making it difficult to establish an adequate legal framework applicable to the whole of Nigeria. Similarly in the various states, children and young persons’ laws are largely juvenile justice administration biased and not necessarily child’s rights-specific⁵⁷.

Furthermore, Osment reported that several policies and legislations have been adopted by the Federal Government of Nigeria to improve the welfare of children by eradicating child labour. It was also noted that Federal Labour Act have set the minimum age for the employment of children at twelve years and is in force in all the 36 states of Nigeria. He however stated that the Nigeria’s Labour Act Permits Children at any age to perform light work in domestic service or work with family members in agriculture. He stated that the

57A. F Akwara, A. G Soyibo and M.S Agba, 'Law and Children’s Rights Protection: The Nexus for a Sustainable Development in Nigeria' (2010) 6 Canadian Social Science 26

law prohibits employment of children under age of eighteen to work in harmful environment. Osment is of the view that these measures notwithstanding, child labour is still on the increase⁵⁸.

Crucially, Akpalaobi and Ekwueme in their study critically analyzed the general principles of implementing the rights of a child in Nigeria vis-à-vis provisions of the convention on the rights of the child. They were of the view that to realize the effectiveness of the convention on the Nigerian child, Nigeria domesticated the convention (UNCRC). However, they further explained that there still exist some inadequacies with the administrative and legal measures in place. These inadequacies in their view are the major challenge to the effective implementation of the United Nations Convention on the Rights of the child in Nigeria⁵⁹.

Tajudeen in his work considered the Nigerian legal system with respect to children. He examined the United Nations Convention on the Rights of the Child (UNCRC) and the Nigeria child Rights Act 2003. In his view, the CRC 2003 is constitutionally and culturally sensitive, progressive, compatible, relevant, problem solving and also in the best interest and welfare of the Nigeria child⁶⁰. More so, Jessica Selby carried out a research on how to eliminate abusive and exploitative child labour. In her view, the establishment of the convention on the Rights of the child provided hope that child labour would soon become a problem of the past. However, she added that the convention notwithstanding, abusive and exploitative child labour is still a prevalent problem today, affecting millions of children⁶¹. In addition, she stated that although the symbolic value of international law has

⁵⁸Osment L, *Child Labour: The Effect on Child, Causes and Remedies to the Revolving menace*, (Lunds University 2014)

⁵⁹Okpalaobi B.N, and Ekwueme C.O, *Implementation of Legal and Administrative Measures in Nigeria: United Nations Convention on the Rights of the Child*, (2015) 6 *NnamdiAzikiweU.J. Int'lL & Juris*, 120-127

⁶⁰I.O Tajudeen, 'Legal Framework for the Protection of Child Rights in Nigeria' (2015) 3 *Agora International Journal of Juridical Sciences* 46

⁶¹S Jessica, 'Ending Abusive and Exploitative Child Labour through International Law and Practical Action' (2008) 15 *Austl Int'l LJ* 165

facilitated real progress on the issue of child labour, the lack of enforceability of these instruments has weakened their efficacy⁶².

Obayelu and Victor in their reports observed that despite the child trafficking prohibition laws, the child labour laws and educational enforcement provisions that are in force in Nigeria, many are still violating the rights of these children. They noted that investigations of child trafficking has been hindered by corruption among government officials hence, commercial sexual exploitation of children is still on the increase in Nigeria. They added that Nigeria is not only a source and transit but also a destination country for trafficking of children.

Similarly, Iyabode in his article titled trafficking in children: the Nigerian experience carried out a study on the legal position relating to child trafficking in Nigeria. Based on his findings, he concludes that both the Act and child's rights are comprehensive in coverage but that there is need for aggressive enforcement on laws on human trafficking. He was also of the view that cases of lack of fund for thorough investigation have to be addressed⁶³.

Again, in a review of legislation and policies in Nigeria on Human Trafficking and Forced Labour, Oleru-Olagbegi, and Ikpeme examined extensively various cases of trafficking being prosecuted under NAPTIP Act and shows the difficulty in obtaining convictions due to the need for corroborating evidence by more than one witness in sex related offences. He added that the law lack sufficient provisions for the protection of victims, witnesses and their families against reprisals thereby making it difficult to obtain the relevant evidence. In addition, it also reviewed several international and regional treaties that Nigeria is a party to as well as the bi-lateral agreements entered into in Benin, Italy, Ireland, Spain, South Africa and the UK. From the findings, it would appear that the various laws

⁶²*Ibid*

⁶³O Iyabode, 'Trafficking in Children, The Nigerian Experience' (2009) 1 Olabisi Onabanjo University Law Journal 57

concerning trafficking and related offences is inadequate, and suggested that the issue need to be addressed urgently⁶⁴.

Rangita also carried out a study on Legislative Reform on Child Domestic Labour Laws where she considered the need for legislative reform in the area of child domestic labour. It was argued in her paper that laws and policies developed to protect and prevent child domestic labour cannot be developed in isolation from other laws that impact child domestic labour. Thus, she emphasized the need for a holistic approach to law making and legal policy and programme framework to regulate and protect the domestic child worker⁶⁵.

2.6 Summary/Conclusion of Literature Review

This chapter reviewed existing literature on issues relating to child labour. The scope of this present study limited the review to only two prong review of the existing literature. Firstly, on the concept and definition of the phenomenon (Child Labour) the evidence of which shows that there is no single definition of childhood instead, it depends on factors such as gender, age, and ethnicity, cultural and social context. Crucially, there is a remarkable difference between the western childhood and that of the African childhood. Secondly, this review also examined theories of childhood and child labour. In so doing, it was clear that exploitative theory of child labour is very relevant for the purpose of this work without undermining the importance of the social constructive theory. Furthermore, this review focused on legislations and policy intervention regarding child's rights and child labour. The evidence reviewed shows that there is gap in the existing literature and the legal provisions. Thus despite so many laws, regulations and policy intervention, the evil still persist. It is indeed the objective of this present study to fill the yawning gap in Literature. This explains the reason the researcher did not only review the legal framework

⁶⁴Olateru.Olagbegi B,Ikpeme. A Action Programme Against Trafficking and Forced Labour in West Africa, Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour.

⁶⁵Rangita de Silva-de-Alwis, Legislative Reform on Child Domestic Labour: A Gender Analysis Legislative Refom Initiative Paper Series, UNICEF, New York (2007).

which is the main aspect of this work but also considered the definition and concept of Child Labour. As indicated earlier any quality study on this subject needs to begin with effort to capture the definition of this concept. Thus, the review of the existing literature has given the researcher a way forward to carry out a research on this topic. The next chapter will discuss the concept of child labour in a more detailed manner.



CHAPTER 3

3.0 THE CONCEPT AND PRACTICE OF CHILD LABOUR IN NIGERIA

3.1 Introduction

The International Year of the Child 1979 may have passed, but the suffering and exploitation of the children of the world continue. Historically, child labour emerged as an issue during the beginning of the industrial revolution when children were compelled to work in farms, factories, mines, and similar establishments in dangerous conditions for as much as twelve (12) hours in a day. In 1860, 50 percent of children in England between the ages of 5 and 15 were said to be working¹. However, in 1919 the world systematically began to address the issue of child labour and the International Labour Organization (ILO) adopted standards to eliminate it. Throughout the 20th century a number of legally binding agreements and international conventions were adopted. Despite these measures, child labour continues to this day especially in the developing countries due to a combination of factors such as rapid population growth, high rate of unemployment, inflation, poverty, bad leadership, corruption and low wages². The highest number of child labourers are said to be in Asia-Pacific region but the highest percentage of children, as proportion of child population is evidently found in Sub-Saharan Africa with Nigeria having a significant proportion of same. With the sustained rise in population and poverty, the problem of child labour has been rising over the years.

Today globally, children are used as slaves, hawkers on the streets, while some toil under the sun in the fields, or work day and night on construction sites, shops and factories. Nigeria is no exception. With the end of oil boom and the introduction of the Structural Adjustment Programme (SAP) in the mid-eighties, many families resorted to the adoption of several measures to beef up their incomes. As a result, millions of children impair their health, are made to abandon their education and never experience the joy of childhood.

¹Nwokoro C.N, The Challenge of Child Labour to the Achievement of MDGS2: Case Study of South – East Nigeria. (Universita' Degli Studi " Roma Tre" 2011) 14

²*Ibid*

Large numbers of young children are commonly seen in motor-parks, market square, petrol stations, railway, around departmental stores or on the streets hawking, begging for alms, labouring strenuously for a stipend³. Based on studies carried out by the ILO and its social partners through the International Programme on the Elimination of Child Labour (IPEC) there is evidence that the number of working children is increasing and that child labour especially of hazardous and exploitative nature is rampant⁴. This makes it imperative for all stakeholders, national and international institutions to come together to address this menace.

Crucially, in this chapter the study will examine who a child is, what actually is child labour, and the forms of child labour for the purpose of this study.

3.2 Who is a Child?

A child is generally seen as any person that is not yet an adult. Postulations as to the nature of a child have been advanced in specific enactments as well as social and cultural perspectives. The United Nations Convention on the Rights of the Child defines a child as a person below the age of 18 years, unless under the law applicable to the child the age of majority is attained earlier. In *Re Carlton*⁵ Cohen J. said that the meaning of the word “child” must, in every case, depend on the context in which it appears.

Similarly, Article 2 of the African Charter on the Rights and Welfare of the Child states that a child is “Every human being below the age of 18 years”⁶. In the same vein, the Child’s Right Act 2003, passed into law in the Federal Capital Territory (Abuja),⁷ defines a child as a person who has not attained the age of eighteen years. However, s. 2 of Children and Young Persons Act, enacted in Eastern and Northern regions (CYPA) defines a child

³I.A. Ayua and I Okagbue, *The Right of the Child in Nigeria* (Institute of Advanced Legal Studies 1996)

⁴ILO, *Understanding the Concept of Child Labour*, International Programme for the Elimination of Child Labour (IPEC) 2009

⁵*Re Carlton*, 211 B.R. 468

⁶Article 2, African Charter on the Rights and Welfare of the Child 1990 Art 2

⁷Child’s Right Act 2003 s 277

as a person under the age of 14 years, while ‘young person’ means a person who has attained the age of 14 years and is under the age of 17 years⁸. ILO Convention 138 defines a child as anyone below the age of 16 while, Convention 182 defines a child as anyone below the age of 18 (ILO, 1999a).

In addition, the Immigration Act states that any person below the age of 16 is a minor, while the Matrimonial Causes Act puts the age of maturity at 21 years. With respect to penal responsibility, section 50 of the Penal Code (North) states that, no act is an offence which is done by a child under 7 years of age, or a child above 7 years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act⁹.

However, in Lagos State, s.2 of the Children and Young Persons Law 1973 provides that a child is a person under the age of fourteen years while a young person is one who has attained the age of fourteen years. Again, the Nigerian Labour Act 1974 defines a child as a person below fifteen years of age while the National Child Welfare Policy considers a child as a person who is twelve years of age and below¹⁰.

Apart from the statutory and treaty definitions, there is also a customary definition of a child. The customary definition varies from ethnic group to ethnic group. Under the Nigerian socio-cultural context, the definition of a child varies widely as a result of lack of uniformity in the cultural systems. In some ethnic groups, a boy is considered to be a child until initiated into an age-grade society or until he is old enough to contribute physically and financially to community development¹¹.

⁸Ogunsakin, 'Legal Prognosis of Child Labour Under the Child Rights Act: Labour Law Review' (2008) 2 Nigerian Journal of Labour Law and Industrial Relations 111

⁹Penal Code Section 50

¹⁰Akwara, Soyibo and Agba, 'Law and Children's Rights Protection: The Nexus for a Sustainable Development in Nigeria'

¹¹*Ibid*

Under the common law, the age of puberty is considered to be a boy of fourteen years, while that of girls is twelve years. This position was confirmed in the case of *Harrod v Harrod*¹²

The problem with age-based definitions is that they are always arbitrary and always risk being rendered obsolete by modern perceptions and findings on children. On the other hand, age represents the most objective criterion for ascertaining who falls within the framework of a child protection policy. Sadly, the disparity and uncertainty in minimum age in different circumstances and jurisdictions, which fluctuates between 7 to 21 years has made child protection a challenge. To be sure, these disparities may lead to interpretations which contradict the best interest of the child philosophy and also lead to severe discrimination of certain groups of children¹³. This uncertainty may also result in arbitrary decisions and impunity for abuses contained in the Convention on the Right of the Child (CRC).

From the foregoing, there appears to be general consensus that any person that is not yet 18 years of age is universally considered to be a child. Thus, for the purpose of this study, the author will rely on the definition of a child contained in section 274 of the Child Rights Act (2003) which defines a child as a person who has not yet attained the age of 18 years which is indeed in line with the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child both of which Nigeria is signatory.

It is worthy to note that signing and ratifying convention and treaties constitute the major means of entering into agreement to be legally bound by it at international law.¹⁴ However, the state will ensure that their domestic constitutionally required procedures have been fulfilled. Section 12 of the said Constitution of the Federal Republic of Nigeria requires the treaty so ratified to be transformed by the legislature before it can be admitted in

¹²Harrod v Harrod (1854) 69 ER 344

¹³O Bolaji and A Adedeji, *Overview of the Rights of the Child in Nigeria* (Nigerian Institute of Advanced Legal Studies 1996)

¹⁴I. O Babatunde, 'Treaty Making and its Application Under Nigerian Law, The Journey so Far' (2014) 3 International Journal of Business and Management Intervention 7

Nigeria's Court.¹⁵ Section 12 (1) of the 1999 Constitution of the Federal Republic of Nigeria provides that 'No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly'.¹⁶ Nigeria ratified the CRC on the 16th April 1991. However, by virtue of section 12 of the constitution, no international treaty will have the force of law in Nigeria except it has been passed by the National Assembly and ratified by a majority of the State Houses of Assembly in all the states of the Federation. Some writers have argued that the Child's Right Act is unconstitutional because the requirements of the constitution were not strictly adhered to in passing it into law.¹⁷ It is said that the Act was rather hastily passed at the National Assembly and assented to by the President without having it approved by the State Houses of Assembly hence unconstitutional and therefore void.

Although there was some initial uncertainty as to the status of a treaty vis-à-vis the Nigerian Constitution¹⁸, the Supreme Court clarified the position and in *Chief GaniFawehinmi v Sani Abacha*¹⁹ held that with respect to obligations and entitlements, the African Charter is below the constitution and where a conflict arises between them, the provisions of the constitution shall prevail. Thus, in the words of Ejiwunmi JSC, no matter how beneficial an international treaty seems to Nigeria or to its citizens, it cannot have the force of law if it is not domesticated in accordance with the provisions of the constitution.²⁰ The implication of this therefore is that international law cannot automatically be transformed into Nigerian Law without legislative intervention.

¹⁵*Ibid*

¹⁶Constitution of the Federal Republic of Nigeria 1999, Section 12

¹⁷Umar A.A, Abdul H.N, & Yussof C.S.Y, Analysis of Relevant Legal Frameworks on Child Protection in Malaysia and Nigeria.

¹⁸*Ogugu v State* (1996) NWLR (pt 316) 1, 30-31

¹⁹(2000) NWLR pt.(660) 228

²⁰Umar AA, Abdul Hak N & Yussof C.S.Y, Analysis of Relevant Legal Frameworks on Child Protection in Malaysia and Nigeria, (2016) 1 UNIMAID Journal of Private and Property Law, 184-199

3.3 What is Child Labour?

In order to understand the concept of child labour, it is first necessary to define what it is. The term child labour is pernicious, as it depends on the definition of both work and childhood, thereby complicating the task of reaching a precise definition. In addition, it is important to note that international law does not provide a clear and universal definition of child labour. This is not surprising in view of the heterogeneity of the international community and the different political agenda of its members, which are often difficult to reconcile.

Crucially, for the same political, economic and cultural reasons that have long impaired the adoption of effective measures against child labour, the agreement on a comprehensive definition has been an option even in recent time.²¹ It is usually the case that in highly controversial issues, identifying common ground can only be possible through an incremental approach. On this score, international law often crystallizes international consensus on a specific aspect of the matter when the time is ripe to do so, systematically, through the adoption of instruments that are limited in scope. As a result of the decentralized nature of the international community, various platforms and organizations are involved in the effort to achieve the desired consensus. Consequently, customary law may emerge, but the assessment must be made carefully, as the ratification of conventional instruments cannot be easily considered evidence of states opinion juris.²²

It can therefore be said that international definition of child labour has emerged through the stratification of various legal instruments having different scopes and objects. ILO and many other organizations at the global and regional levels took part in standard-setting. Along these lines, the United Nations Children's Emergency Fund (UNICEF) has provided some indices that can be used to define child labour. They include:

- a) Starting full-time work at too early an age.

²¹N Guiseppe, N Luca and P Marco, *Child Labour in a Globalized World: A Legal Analysis of ILO Action* (Ashgate Publishing Company 2008)

²²*Ibid*

- b) Too many hours spent on work within or outside the family leading to excessive fatigue.
- c) Depriving children of their right to education where schools are available or interfering with their education.
- d) Participating in work that results in excessive physical, social and psychological strains on the child.
- e) Working and living on the street.
- f) Too much responsibility for a child.
- g) Low wage and
- h) Work that does not facilitate the psychological development of the child²³.

Furthermore, a more specific definition emerges considering the view point of ILO Convention 138, on the minimum age for admission to employment, and Convention 182, on the worst forms of child labour. Accordingly International Labour Organization (ILO) defines child labour as referring to children working in contravention of ILO standards as contained in Conventions 138 and 182. This applies to all children working below certain age who are working in any economic activities and children engaged in worst forms of child labour²⁴.

The ILO instruments are clearly the more specific ones and widely ratified presently, and equally represent the legal and policy framework for the most active international actor operating in the field. Thus, Convention 138 prohibits economic activity performed by children below the age of 12(12 in developing countries) or in any case the age corresponding to the end of compulsory schooling. Certain flexible clauses are provided concerning the economic sector, the type of work and the level of economic development of the country concerned. Light work is permitted for those that have attained the age of 13 and 14 (12 and 13 in developing countries)²⁵.

²³Gogo, 'Legal Responses to Child Labour in Nigeria'

²⁴J. B Bello, 'BIU Law Series' (2013) 1 227

²⁵*Ibid*

The four worst forms of child labour by virtue of Convention 182 are defined as follows:

1. All forms of slavery or practices similar to slavery, such as a sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment for use in armed conflict;
2. The use, procuring or offering of a child for prostitution, for the production of pornographic performances;
3. The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, as defined in the relevant international treaties;
4. Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

A distinction is often drawn, within such worst forms, in the practice of the ILO, between two sub-categories. The first three worst forms as highlighted above are termed “unconditional” worst forms of child labour, while the last one is defined as “conditional”. This distinction is merely descriptive and does not reflect any difference in the legal regime regulating the four worst forms.

It explains the fact that, whereas the unconditional forms are usually unacceptable as they are per se incompatible with the health and development of children, the other conditional form reflects a category that is strictly dependent on the situation and the environment in which the work to be prohibited is carried out.

3.4 Distinction between Child Labour and Child Work

There have been several debates especially in developing countries on what constitutes child labour that is to be targeted for elimination. It has been argued that there are considerable differences between child labour and child work. It is suggested that not all work done by children should be classified as child labour. It is equally argued that one way of distinguishing between child labour and child work entails examining the nature of the work and its impact on children.²⁶

²⁶Mohammed Sadaat Bukht, *Child Labour or Child Care: A Comparative Study of Images of Child between South Asia and Nordic Countries*. (Unpublished Thesis) Oslo University College (2009) 6

Furthermore, with child labour being linked to socialization, the question is, where does socialization through work end and socialization through domestic chores within the family unit begin? Thus the concept of work or labour itself is very problematic to apply to many of the activities in which children are engaged. In traditional African societies, children normally participate in work roles to acquire specific skills which they would find useful when they become adults. Such work is generally regarded as part of the socialization process through which children are prepared for adult roles. However, the form of child labour for the purpose of this study has been stretched beyond the purview of the traditional African setting.

Indeed, a child is classified a labourer if the child is economically active, gainfully employed and in most cases exploited and work in hazardous and dangerous environment. It would appear that the earliest known form of child labour is slavery which relied on the support of network of big merchants and some well placed members of the society where it flourished. Thus, it is argued that children's and adolescent's participation in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as positive child work that is beneficial. This includes activities such as helping their parents to do household chores, assisting in a farming business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children's development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their life²⁷.

However, the distinction may be misleading as it hides the fact that children's work under the protection of their families may equally be harmful for children and thereby considered as child labour. A good example is where it is exploitative and hampers children's school attendance. In line with the above, it can be concluded that child work can be considered valuable for life skill and neutral or beneficial for children. Child work is non-hazardous,

²⁷International Labour Organization publication, available at <https://www.ilo.org/ipecc> accessed 13 January 2020.

and, in most cases, good for children and their development. It can help children prepare for productive adult life through skill training and building self-reliance, self-confidence and self-esteem.

On the other hand, child labour is a risky, harmful, hazardous and exploitative work that affects a child's enjoyment of his or her fundamental rights, civil, political, social, economic and cultural rights especially the right for survival and development of the child. Buck in describing child labour, based his argument on the wordings of the ILO which explains the term 'child labour' by distinguishing between the work that children do at home or for an employer, which may be beneficial and may contribute to their wellbeing and child labour that is exploitative.

“It is carried out full time at too early an age; the work is excessively long; it is carried out in inadequate conditions, it is not sufficiently well-paid; it involves excessive responsibility, it undermines the child's dignity and self-esteem. On the other hand, beneficial work is defined as that which promotes or stimulates the child's integral development without interfering in his/her scholastic or recreational activity or rest”.

Furthermore, a report published by ILO/SIMPOC equally distinguishes between child labour and child work and states that child labour is:

“Paid and unpaid work that occurs in any sector, including domestic, informal and agricultural sectors, is harmful to children's mental, physical, social or moral development of the child in the modern society, any work that deprives children the opportunity to attend school, obliges them to leave school permanently or requires them to attempt to combine school attendance with excessively long and heavy work is characterized as child labour. On the other hand it defines child work as forming a continuum which includes: children's participation in work in any sector that does not involve risks and danger, which does not affect their health and personal development or interfere with schooling”.

At this point it is important to consider the nature and form of work separately for purpose of clarity.

3.5 Culture, Traditional Values and Children's Rights

The convention on the rights of the child offers greater opportunities than most human rights instrument for balancing traditional value and international rights as it was not primarily the product of the industrialized West. Hence, the convention promotes the ethos both of cultural pluralism and universalism. However, there is an inherent paradox buried in the convention. The convention does not want to promote a single fixed universal image of childhood. Yet it wants to promote universal opportunities for children.²⁸ Thus with the exception of the preamble of the convention which acknowledges that due account should be taken of the importance of tradition and cultural values of each people for the protection and harmonious development of the child and article 5's reference to the extended family or community as provided for by local custom, there is little express reference to culture as a positive value in the convention on the right of the child. The reference which has mostly attracted attention is the prohibition of traditional practices prejudicial to the health of the child which focuses on eliminating the negative aspects of tradition. Such prohibition illustrates the role of international human rights law, which seeks to protect and preserve traditional values consistent with the human rights of the child while seeing to prohibit those inconsistent traditions.²⁹ Although it is the role of law to set standard aimed at eradicating all harmful traditional practices, the extent these efforts will go is questionable. This is because certain traditional practices by their very nature reach down into the heart of a community as a relevant tool in defining that community's identity. Thus, to implement children's rights and eradicate child labour is not simply a translation, attention must be paid to the role they perform in different traditions and develop alternatives.³⁰

Thus, the prevalence of child labour in African, Nigeria inclusive is not only a matter of economic constraints. Culture, tradition and social values are contributory. Some cultural perception about work is socialization, training, learning, character building and

²⁸D Gillian and S Leslie, *Child Rights and Traditional Values* (1st edn, Routledge 2016)

²⁹*Ibid*

³⁰Lubaale E.C, Human Rights based approach to Child Labour in Africa: Challenges and Prospects in South Africa. (LLM Dissertation, University of Venda, Limpopo 2011) available at <http://repository.up.ac.za/handle/2263/18624> accessed 23 march 2019.

acquisition of skills.³¹Culturally, Children are required to be exposed to some measure of hard work to enable them adequately manage their adulthood.

Abebe analyzed the debate on child labour within the purview of the global south. The perception of a work free childhood, which presents a child's engagement in work activities as a problem, is popular with organizations like ILO and UNICEF, and belongs to the images of proper childhood in the western world.³²

Abebe gave illustrations on the socio-cultural perspective of work. One notion is that children's work is intertwined with the social and cultural context of the place of occurrence. This approach recognizes the right of children to be protected from exploitations, but children's work is an integral part of daily life and should be viewed as indispensable to family existence, survival and general livelihood. In the second notion, the historical roots of child labour in the south are examined and Abebe found that Africa's triple heritage led to the cultural and traditional acceptance of child labour. The third and final view point is that children have the right to work and earn benefits commensurate to their effort. In addition, it was equally suggested that keeping children away from work is a disservice in many ways. It prevents children from learning essential life skills and limits their ability to contribute financially to their own education through the purchase of school uniforms and paying for school fees. Furthermore, it is asserted that knowledge acquired from work that school curricula does not teach prevents them from carry out the responsibility that Nero-liberal economic reforms from the IMF and World Bank have indirectly imposed on them. Abebe's conclusion therefore is that children's work can best be understood holistically with respect to social, cultural, economic, political, historical and geographical factors.³³

³¹*Ibid*

³²T Abebe, 'Child Labour in Global South' (2009) 27 A Review and Critical Commentary 3

³³*Ibid*

Again, another cultural factor that perpetuate child labour and child trafficking in West Africa and Nigeria inclusive is the practice of customary fostering.³⁴ This could be in form of child fostering in traditional kinship systems and customary transaction in parenthood.

Accordingly, Castle in her work refers to fosterage as all forms of childhood residence with persons other than the natural (biological) parents, involving the exercise of some parental rights and obligations by persons other than the natural parents, without surrendering the rights of the natural parents. She added that the outright surrender by the jura parents of all rights seems never to occur traditionally in West Africa except perhaps in cases of pawning and in instances where children have been removed from their parents to take on the role of slaves.³⁵

A good illustration is the case of the Fulani of West Africa where most first born male children are given to their paternal grandmothers to ensure that the child to is socialized and informally educated by his father's parent. Thus, the values and traditions of the agnatic family are protected from any exogenous cultural influence.³⁶ The practice includes kinship fostering, crisis fostering following the dissolution of the family of origin, apprentice fostering to learn a trade or skill, domestic fostering to assist with household tasks and educational fostering to attend a formal or organic school. However, no money is paid by the biological parents to the foster parents. The consequences of children taken away from the social and familial environment of their agnatic kin are very enormous.³⁷

Also Naidu (2002) gave an insight into social and cultural factors influencing the existence of child labour. He opined that "child labour largely depends upon normative attitudes towards children in society, the culturally determined roles and functions of children, the

34U. C Isiugo-Abanihe, 'Child Fostering in West Africa' (1985) 11 *Population and Development* 53

35S. E. Castle, 'Child Fostering and Children's nutritional Outcomes in Rural Mali: the Role of Female Status in Directing Child Transfers' (1995) 40 *Social Science and Medicine* 679

36E. Schildkrout, 'The Fostering of Children in Urban Ghana: Problems of Ethnographic Analysis in a Multi-Cultural Context' (1973) 2 *Urban Anthropology*

37*Ibid*

values by which the activities of children are judged and the nature of socialization process.³⁸ He added that in industrialized countries, there is general disapproval of participation of school age children in the formal labour force. He also observed that in many countries, participation in various types of economic activities from an early age is considered as an essential part of socialization. The prevailing modes of domestic organizations and system of kinship and marriage also affect child labour. What children might do is mostly influenced by what the system of kinship considers the rights and obligations of children. In many places, the delegation of aspects of parents roles and the institutionalized practice of fostering of children by non-parental kin, involve widespread transfers of the obligation to train and maintain children and the right to enjoy the services of the young. Such practices may involve some forms of apprenticeship and specialist trainings.³⁹

Again, Mishra (2001) in his study, has revealed that in a transitional society, the issue of child labour is also regarded as an economic practice because of the persistence of tradition-bound occupations and occupational mobility.⁴⁰

Also Weiner (1999) in his study observed that how economy, Socialization and the role of parents like cultural objectives causes child labour. He also revealed that the value by which the activities of children are judged and the nature of socialization process, the process of socialization and the cultural objectives to which it responds, are clearly inter-dependent with the structural economics system within which socialization occurs.⁴¹

Furthermore, Neera(1990) while explaining the cultural context of child exploitation noted that in the areas of child labour and child trafficking and discrimination against the female child, parents may not be in a good position to make judgments because of cultural social and economic reasons. He added that the veil of tradition and culture is often used to mask systematic exploitation of women and children.

³⁸*Ibid*

³⁹*Ibid*

⁴⁰Mishra, 'Supply of Child Labour: An Investigation' (1995) 1 Journal of Labour and Development 2001

⁴¹Weiner , Socialization of Childhood and Work, (1999) 23 Critique Anthropology, P.45-48.

3.6 Comparism of the Incidence of Child Labour between Europe and Nigeria

Firstly, it would appear that the incident of child labour is more objectionable in Europe such as United Kingdom than in the developing countries like Nigeria. This is evident in the rate of little children hawking and begging on the streets in Nigeria. Again, one of the major factors which have influenced discourses on children and children's rights is the differences between western and non-western notions of childhood and of children having rights each of which varies from place to place⁴².

Boyden in his work argues that the CRC mainly transmits popular western Euro-American values and notions of childhood which fail to address culture specificities and children's opinions⁴³.

Crucially Ncube argues vehemently that the lack of enforcement mechanisms is even more pronounced in the African region, Nigeria inclusive. African children, within the context of the African family, are almost helpless when it comes to asserting and enforcing their rights even though they have been recognized technically on paper as having rights and local legislations. Another crucial issue is that judicial processes are expensive, protracted and very inaccessible.⁴⁴

Furthermore, the African perception of the child is different from the autonomy, individuality and seclusion that the UNCRC accords the western child. Importantly, Ncube noted that convention's recognition of local contexts seems ineffectual because it uses western standards and definition to assess children in other cultures such as Nigeria⁴⁵.

⁴² R Burr and H Montgomery, *Children and Rights, Understanding Childhood: An Interdisciplinary Approach* (Wiley 2003)

⁴³J Boyden, *A comparative perspective on the Globalisation of Childhood, 184-215 in James A. and prout A. Constructing and Reconstructing Childhood: Contemporary Issues in Sociological Study of Childhood* (Falmer Press 1990)

⁴⁴Ncube, *Law Culture, Tradition and Children's Rights in Eastern and Southern Africa*

⁴⁵*Ibid*

In Nigeria, children conflict with law for many reasons ranging from poverty, social inequality, failed educational system, social and religious conflicts in which children are used as the foot soldiers. Unlike other jurisdictions, these child offenders are usually treated like adults. Many are convicted and jailed without contact with a psychologist or a social worker, neither are they given the opportunity to be heard⁴⁶. This is not the case with other jurisdictions in the Europe or the western world.

In 2003, Nigeria adopted the Child Right Act to domesticate the Convention on the Rights of the child. It would appear that this landmark legislative achievement has not yet translated into improved legal child protection the nationwide. The evidence of this statement is that Nigeria has been unable to deal with several issues hindering the protection rights of children such as children living on the street, children affected by communal conflict, drug abuse, human trafficking and weaknesses of the juvenile justice system, amongst others⁴⁷.

The event which led to child labour in Nigeria and most of the European countries are different. In the course of this research, it could be asserted correctly that poverty and other socio-economic problems are the major causes in Nigeria while in Europe the industrial revolution was the obvious event which could easily be handled than in Nigeria where the source is still endemic.

Furthermore, European countries quite early began to take necessary steps to eradicate this scourge which has indeed worked out for them. You can hardly see children hawking in their great numbers today in Europe. However, Nigeria is still struggling to effectively implement the national legal protection framework for combating child labour. In Nigeria today, fundamental rights of children are being encroached upon on a daily basis, possibly due to lack of social consensus and political will to successfully implement laws and policies. From the foregoing it is clear that European and other western countries are quite ahead, and a part that Nigerian government should follow by complying with the obligation

⁴⁶UNICEF Nigeria (2007) available at <http://www.unicef.org/nigeria/children> accessed 12 may 2017

⁴⁷*Ibid*

deriving from the conventions ratified and take every necessary measures to do so in accordance with international standards.

It is suggested by the author that there is a clear discrepancy of what the law says and what it actually does in Nigeria. It is therefore the authors aim in the course of this work to draw the attention of policy makers to comply with the international standards and to implement laws and policies adopted in the country.

Finally, it should be noted from the author's finding so far that literature on child labour has grown on both theoretical and empirical fronts. Empirical studies have uncovered some aspects of the problem which have not yet received attention in the theoretical literature. This will be evidenced in the subsequent chapters of this work.

3.7 Forms of Child Labour

According To the ILO48/UNICEF there are eight major types of exploitative child labour; hazardous work, domestic service, street traders (Hawking) child labour in the informal economy, child slavery, trafficking and commercial sexual exploitation, children in armed conflicts and illicit activities.

It is important to note that most child labour do not occur in the public and organized public sectors obviously because the Labour Act and other child protection laws prohibit various forms of child labour. Most child labour therefore occurs in agriculture and other informal sectors of the economy. The last four listed above by the ILO are considered by the ILO to be the unconditional worst forms of child labour. They will all be discussed below herein in order to put this work in proper context.

(i) Hazardous Working Condition

Work done by a child is considered hazardous if it causes harm or damage to the development of the child intellectually, psychologically, emotionally, physically and

⁴⁸ILO, Targeting the Intolerable A New International Convention to Eliminate the Worst Forms of Child Labour, Leaflet (Geneva : International Labour Office, (1999) 9, UNICEF, The State of the World's Children (1997) 32.

mentally. Hazards embody elements of work load, hours of work, working conditions (working tools etc) and the age at which the child is employed⁴⁹.

A good example of a hazardous work is a small-scale mining where the health of the child is endangered by deep and poorly reinforced pits, poor ventilation, excessive noise, vibrations from machine, excessive heat or cold, awkward positions and extremely appalling and arduous work⁵⁰.

Another work that may be underestimated as belonging to this category is agriculture. Thousands of children in Nigeria are engaged as farm workers especially in cocoa plantations⁵¹. Occupational health and safety experts considered agriculture to be one of the most dangerous occupations. In agriculture, children not only face work that is too heavy for young bodies and cuts from sharpened tools but also hazards associated with the use of toxic chemicals and motorized equipment without safety precautions. Furthermore, in hotels, restaurants, catering and tourism industry, children are also dragged into prostitution⁵².

(ii) **Domestic Service**

The child domestic servant is one of the most common and traditional forms of child labour. They have no access to the protection of their rights and dignity. The reason being that unlike other workers, they live behind closed doors, where no one witnesses their abuse and oppression. They start to work at an early age, shoulder excessive responsibilities such as cooking, cleaning, washing, caring for kids or old and infirm persons, handling fuel or gas stoves, sharp tool (knives, machete and scissors) working for hours with no rest period, with little or no remuneration. They are clearly deprived of access to education, play and

⁴⁹Understanding the Concept of Child Labour Book Series, Corporate Social Responsibility for Farmers, No. 1, ILO 2009.

⁵⁰ILO Targeting the Intolerable, Children in Mines and Quarries.

⁵¹Gogo, 'Legal Responses to Child Labour in Nigeria'

⁵²H Franziska, *The Challenges of Child Labour in International Law. Cambridge Studies in International and Comparative Law* (Cambridge University Press 2009)

leisure, love and affection of their family and friends⁵³. The main disparity between the child domestic workers is that it is difficult to detect abuse as compared to other forms of child labour. This is because child domestic workers generally remain within the four walls of the employer's houses and face all forms of exploitations which are invisible to the external world. They are usually subjected to sexual abuse, emotional and psychological abuse, physical and verbal abuse as well as economic abuse. Under this situation, the childhood gradually transforms into adulthood under the employers strict monitoring of the household tasks performed by the domestic servant. It is obvious that being confined to the employer's home deprives them of any physical, mental and economic growth⁵⁴.

(iii) **Street Children/Traders**

The street children refer to the children that live and work or sell on the street. They are homeless and live in a situation where there is no protection, supervision or direction from responsible adults. Most of them are involved in begging⁵⁵. Those who are vendors mainly hawk petty goods and services such as food and small consumer goods, shining shoes, scavenging etc. The hazard associated with this work stem from both the work itself, and more importantly, environmental hazard such as traffic, exhaust fumes, exposure to the elements, insecurity, harassment and violence⁵⁶. Living, begging and working on the street are themselves a violation of child rights. They also suffer abuse from family members, caregivers, police and other adults.

(iv) **The Informal Economy**

Many children are engaged in the informal sector, for which no official record is available. Children working in this sector of the economy are not recognized or protected under the legal and regulatory frameworks. The informal sector is sometimes linked to formal sector

⁵³ N. P Khan, *Child Rights and the Law* (Universal Law Publishing co 2012)

⁵⁴*Ibid*

⁵⁵*Ibid*

⁵⁶Franziska, *The Challenges of Child Labour in International Law. Cambridge Studies in International and Comparative Law*(n 52)

production. For instance, in a manufacturing company, the factory of a multinational or a national enterprise may contract out some production to small-scale family firm. Since most child labour occurs in the informal sector and beyond the reach of most formal institutions, it represents one of the principal challenges for the effective abolition of child labour.

(v) **The Unconditional Worst Forms of Child Labour**

According to ILO, the unconditional worst forms of child labour include the following:

- i. Forms of child labour such as sale and trafficking, debt bondage, serfdom and forced and compulsory labour;
- ii. Forced recruitment of children for use in armed conflict;
- iii. Commercial sexual exploitation of children
- iv. Children in illicit activities

In order to properly appreciate the context in which these are used, they are briefly discussed herein:

Child Slavery

Although there is the general belief that slavery no longer exists, an estimated five million children are in slavery worldwide. Child slavery is often confused with child labour, but is much worse. Whilst child labour is harmful for children and hinders their education and development, child slavery occurs when a child's labour is exploited for someone else's gain⁵⁷.

Child slavery includes:

- i. Children used by others for profit, often through violence, abuse and threats, in prostitution or pornography, forced begging, petty crime and drug trade.
- ii. Forced labourers are common in agriculture, factories, construction, mines, bars, the tourist industry or domestic work.

⁵⁷Anti slavery International available at <https://www.antislavery.org> accessed 20 May 2019

- iii. Children forced to take part in armed conflicts
- iv. Children forced to marry⁵⁸.

The conditions listed above under which some children work constitute slavery and are universally condemned. The ILO defines forced or compulsory labour as ‘all work or service which is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily’. Employers often enslave children as they are inherently weaker, more vulnerable and easily controlled. Children in this situation, for fear of punishment work up to eleven hours a day, seven days a week, and are severely punished and beaten into submission for the slightest mistake they make⁵⁹. This practice is a gross violation of the right of the child.

Children in Illicit Activities

The use of children in illicit activities, including but not limited to drug trafficking, is clearly defined as a worst form of child labour under Convention No.182.

Producing and trafficking drugs is an illicit activity that usually involve children. Children may do this against their will or with the belief that it may give them status without understanding the consequence. Children who are involved in illicit activities are often exposed to violence and abuse that may affect their mental and physical development⁶⁰.

Children in Armed Conflict

Armed Conflicts

Thousands of children, boys and girls find themselves fighting adult wars in at least 17 countries in various regions around the world. Some are used as fighters and take direct part in hostilities and guerrilla actions, while others are used in supportive roles (eg as cooks, porters, messengers or spies) or for sexual purposes. Some are abducted and forcefully recruited while others may personally decide to enroll in order to survive, or either for protection or vengeance. However, when the situation is being analyzed, it

⁵⁸*Ibid*

⁵⁹Convention Concerning Forced or Compulsory Labour, *ILO General Conference, 14th Session, arts 1*, vol 11 (1930)

⁶⁰ILO, The Worst Forms of Child Labour at <http://www.ilo.org>. accessed 16 May 2020

becomes obvious that they were taken under duress and in ignorance of the consequences⁶¹. The use of children in armed conflict is a worst form of child labour. ILO No.182 defines forced or compulsory recruitment of children for use in armed conflict as a worst form of child labour. The optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict prohibits all recruitment, voluntary or compulsory of children under 18 by armed forces or groups⁶². It is no gainsaying therefore, that armed conflicts violate the human rights of children who are involved in them, both directly and indirectly. Children can become victims of armed conflicts in several ways, ranging from being forcibly recruited to armed groups (either by official states' army or by other militias), suffering injury or death, or losing family members, to a secondary consequences, such as not having access to health care or education services.⁶³ Under Articles 38-39 of the Convention, the Committee focuses its attention on children who are victims of wars, including child soldiers. As at 2002, the rights of these children are mainly discussed as part of the monitoring process of the Optional Protocol on the involvement of Children in Armed Conflict.⁶⁴ Thus, the concluding observations on the implementation of the Convention published since 2002 give less attention to children in situations of armed conflict.

Notably, the Committee is concerned with the impact that 'an atmosphere of violence' has on children's 'development and right to life',⁶⁵ as well as with the impact that armed conflicts have on children's rights to survival and development.⁶⁶ The committee has paid particular attention to one kind of weapon- land mines- that pose a 'threat to the survival

⁶¹ International Programme on the Elimination of Child Labour and Armed Conflict at available at <http://www.ilo.org/ipecc> accessed 16 May 2020

⁶²*Ibid*

⁶³ UNCRC 'Concluding observations: Ecuador' (39 January 2010) UN Doc CRC/C/ECU/CO/4, paragraph 68

⁶⁴GA Resolution A/RES/54/263 (20 May 2000), entered into force on 12 February 2002.

⁶⁵UNCRC 'Concluding Observations: Peru' (2000) paragraph 18.

⁶⁶UNCRC 'Concluding Observations: India' (23 February 2000) UNCRC 'Concluding observations: Nigeria' (2010), paragraph 80.

and development of children.⁶⁷ Troubled by the ‘psychological trauma’⁶⁸ that armed conflicts cause for children, the committee has requested States Parties to ensure the protection and rehabilitation of children. Thus, children should receive ‘adequate assistance and counseling for their rehabilitation, physical and psychological recovery and social integration’.⁶⁹

Child Trafficking and Commercial Sexual Exploitation

Children are trafficked, for begging and for soliciting and for other types of child labour such as work on construction sites, factories, domestic services and similar engagements. Furthermore, child trafficking for sexual exploitation may be linked with other phenomena such as child prostitution, sex tourism and pornography⁷⁰. Child trafficking is a violation of the international human rights law and is totally condemned. Child trafficking has moved to the forefront of public concern and it has been proven to be contrary to the child’s right to life. This topic will be discussed in great detail in the next chapter.

3.8 Causes of Child Labour

In order to devise means and strategies to solve the problem of child labour, the root causes have to be understood and analyzed. This menace has been associated with a number of remote and immediate causes among which include the following:

(1) Migration

Migration due to natural disaster or armed conflicts increase children’s vulnerability and thereby makes it more probable that they become victims of child labour. Furthermore,

⁶⁷UNCRC ‘Conclusion observations: Iraq’ (26 October 1998) UN Doc CRC/C/15/Add. 94, Paragraph 28; UNCRC ‘Concluding observations: Angola’ (3 November 2004)

⁶⁸UNCRC ‘Concluding observations: Columbia’ (2000) paragraph 34.

⁶⁹UNCRC ‘Concluding observations: Angola’ (2005) paragraph 71.

⁷⁰Franziska, *The Challenges of Child Labour in International Law. Cambridge Studies in International and Comparative Law*, (n 52)

migration from poorer rural areas to the more prosperous rural or urban areas draws children into the labour market⁷¹.

(2) **Poverty**

Poverty has been identified as the main contributor to child labour. It is a multi-dimensional phenomenon which encompasses such issues as inadequate income, health, nutrition, education, and so on. Furthermore, poverty is characterized by low life expectancy, low purchasing power, insufficient access to social and economic services as well as vulnerability and exposure to risk⁷².

Poor households are compelled by circumstances to encourage their children to earn as they need the money for survival. It is generally assumed that the nature and extent of poverty in a country determines the quantum of its child labour. Various studies and investigations undertaken around the world, especially in economically developing and underdeveloped countries, proved that child labour and poverty are intimately linked even though there are many other factors and specific circumstances that lead to persistence of child labour. Since child labour occurs as a result of combination of several factors therefore no single cause can be isolated for the prevalence of menace⁷³.

Economic compulsions weigh so heavy on the poor parents who cooperate with the child's employers, thereby putting the child under the risk of exploitation⁷⁴. Importantly, due to poverty parents are not in a position to make any investment in their children's development, nor are they interested to support them. They rather encourage the child to support them, to fend for themselves as early as possible and even become a source of income to the family. Again, where the poor parents become incapacitated children become the sole bread winners.

⁷¹*Ibid*

⁷²*Ibid*

⁷³Khan, *Child Rights and the Law*, (n 53)135

⁷⁴*Ibid*

It is important to note that poverty is not purely an economic question without solution. This is because it is a problem that can be solved by government continuously generating employment and empowering the masses to alleviate poverty⁷⁵. There is no gainsaying, that while poverty is the reason most often given as the high incidence of child labour, child labour also perpetuates poverty, because children beginning work at early age often compromise their future earning potential.

Cheap Labour

For certain types of work, employers prefer to engage children than adults as children have less developed ego and status consciousness. Children can easily be put on non-status and demeaning jobs without much difficulty. In certain task, children are more active, agile, quick and feel less tired.⁷⁶ They are also preferred candidates for tasks of a helper in the grocer's shops or in an auto-garage where employer finds children more amenable to discipline and control. Children can be coaxed, admonished, pulled up and punished for defaults without jeopardizing relationship⁷⁷.

Child labour is also preferred as children may do almost the same amount of work as adult but costless in terms of wages and maintenance. The adaptive ability of a child is much superior to that of an adult. Furthermore, the child workers are also not organized on lines of trade unions which can fight for their causes and generally submit silently to the excesses visited on them by their masters.

In fact, the National Commission on Labour observed that it is a feeling of sympathy rather than the desire to exploit which weighed with employer-employees relationship on child labour⁷⁸. That instead of condemnation, the employers expect commendation from society for their benevolent act of saving the child from starvation and waywardness.

⁷⁵*Ibid*

⁷⁶*Ibid*

⁷⁷*Ibid*

⁷⁸*Ibid*

Education

There has been no proper legislation on early childhood education, although the National Council on Education (NCE) has approved a curriculum for early childhood education (nursery) with guidelines for its application.

Only a minority of children in developing countries Nigeria inclusive, that receives pre-primary education. Children who do not attend school early enough may drop out from primary school as they lack good foundation, which can sustain their schooling⁷⁹. Crucially, in most developing countries, education is underfunded and no adequate facilities. Some children who enrolled in primary school do not complete it as many are forced to stay.

(3) The Role of Social Protection

Poverty is so much related to the role of social protection. In many societies large parts of the population are involved in the informal economy which is not covered by the public provision of social security. In such situations, children serve as social insurance at home as their parents cannot afford the prescribed minima of uniform, books and stationery. Instead of staying at home to starve and become wayward, such children are compelled to work to earn a living. It is important to note that some parents encourage their children to drop out of school to work and earn money to help themselves and their family⁸⁰.

Poor Law Enforcement

Various policies and legal measures have been adopted by the federal government of Nigeria with the aim of improving the welfare of children by eradicating or reducing the problems associated with child labour. However, some of the legal measures and policies have been uncoordinated, not well implemented and largely un-enforced⁸¹.

⁷⁹FOS/ILO/SIMPOC Report on National Modular Child Labour Survey, Nigeria 2000/2001, 22

⁸⁰Franziska, *The Challenges of Child Labour in International Law. Cambridge Studies in International and Comparative Law*,(n 52)26

⁸¹FOS/ILO/SIMPOC Report (n 79) 29

3.9 Effect of Child Labour

Child labour can have adverse effect on children in a variety of ways. Indeed it can affect the child's psychological and physical well-being. This subsequently can also affect their development and future prospects in all ramifications. Psychological impact for children who are the victims of child labour may include feelings of neglect, marginalization, discrimination and alienation.

In the same vein, children victims are exposed to sexual abuse thereby exposing them to risk of contracting HIV/AIDs. It has been estimated that 19,000 African children die daily from easily curable diseases and that 80 percent of the world's HIV-Positive children under the age of 15 live in Africa⁸². The violations and impact are more serious where the victims are trafficked to be used as labourers. Most victims are deceived, coerced or through deceit cajoled to leaving their destination with the traffickers or their agents with the hope of better opportunities for their educational or economic empowerment. These victims are trafficked for farm work, domestic work and commercial sexual exploitation. They are treated as slaves with their movement curtailed and placed under bondage⁸³. The situation is more devastating for trafficked children who are normally not part of the decision relating to the transaction to traffick them. These trafficked children are forced into exploitative labour with the onerous terms usually determined by the traffickers with heavy repayment bondage. For the children in domestic servitude their parents hardly benefit from proceeds of their labour thereby recycling the poverty they initially set out to eliminate⁸⁴.

Furthermore, the children victims are denied education, physical well-being and good standard of living in negation of their human rights⁸⁵.

⁸²MireilleA. M, (2007) Regional Protection of Child Rights in Africa, available at <http://pambazuka.org/en/category/comment> accessed 20 March, 2019

⁸³An Appraisal of the Legal Framework for Combating Child Labour in Africa Kogi State 3 University, Bi-Annual Journal of Public Law

⁸⁴*Ibid*

⁸⁵*Ibid*

3.10 Status of Child Labour and Condition of Employment

Child labour is more common in the unorganized sector than the organized sector as there are a number of laws prohibiting the employment of children. As a result of this, the work conditions of children are very harsh. Most of them work in very deplorable condition with grossly inadequate pay.⁸⁶

Since they are in the informal and unorganized sector, child labourers do not enjoy formalized working conditions including fixed working hours. Indeed, the working hours also vary from one occupation to another. This means that the working conditions of child labourers are not uniform and vary according to organization. It would appear that child labour is a necessary evil that has come to stay in Nigeria. This is because child labour continues to increase with the increasing poverty in the country, notwithstanding the law banning it⁸⁷.

Similarly, Senkiwa et al revealed that most child labourers lack clear contracts stipulating the relevant terms and conditions of employment. Consequently, they worked longer than 8 hours per day yet they are either paid very little or not given meals and accommodation as well as other basic human needs such as clothes and medicine when they are ill. In most cases, their employers or customers refuse to pay them as (orally agreed) due to lack of clear contract⁸⁸. Some are forced into sexual relationship with their employers or other members of the family as they are helpless. They are exposed to other forms of exploitation and abuse. For purpose of clarity, the condition of work of child labour can be identified with the following:

Hazardous Condition

Children usually work in extremely hazardous conditions. The ILO recommendation defines “hazardous work as:

⁸⁶Shodhganga, Employment of Child Labour available at <http://shodhganga.inflibnet.ac> accessed 10 April 2020.

⁸⁷*Ibid*

⁸⁸Semkiwa H.H, Tweve J, Mwaituka I, Mlawa, H.M, Kawala E (2003) HIV and Child Labour in the United Republic of Tanzania: Rapid Assessment. A case Study of Dar es Salaam Arusha.

“Work which exposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or temperatures, noise levels, or vibrations damaging to their health; work under particularly difficult conditions such as work for long hours or during the night or work the child is unreasonably confined to the premises of the employer”⁸⁹.

Inadequate Child Wages

The employers usually have the motive to reap profit with minimal cost. The employment of a child labourer ensures the profit for the employer as child labourer with low and inadequate wage is cheaper than the adult employee. Childlabour is rooted in employers' desperate desire to maximize profits at cheap cost. Generally, child labour is cheap, agile, less troublesome, and easy to exploit⁹⁰. In most cases they are not entitled to fringe benefits which their counterpart adult labourers are entitled to.

Slavery and Forced Labour

Slavery is the most extreme form of child economic exploitation as it can only occur where purported powers of ownership are exercised over human beings including children. Indeed, it is prohibited in relation to both children and adults under all of the major global and regional human rights instruments.

Slaves have been forced into service in many different capacities. The most common form of slavery of particular relevance to children is debt bondage and specific aspects of child trafficking. The child labourer is compelled to work and in most cases under very appalling condition. To a child that labour under compulsion, slavery is alive and well especially as most of the job done by child labourer of this category is not voluntary. To be sure, employers find it easier to enslave children than adults because children are inherently

⁸⁹Madeliene G. B, Child Labour Prohibitions Are Universal, Binding, and Obligatory Law: The Evolving State of Customary International Law Concerning the Unempowered Child Labourer, (2002) 24 J. Int'l L. 152

⁹⁰Shodhganga, (n86)

weaker and more prone to be manipulated through scare tactics and discipline. Like the classic slavery model, the fear of punishment keeps children working up to eleven hours a week, seven days a week and they are severely punished for the slightest mistake. It is obvious that the lack of choice on behalf of a child labourer and the threatening tactics of some employers are tantamount to slavery, a practice that has been universally condemned.⁹¹

Furthermore, it is easy for the employers to enslave the children due to lack of political strength. The fact remains that employers know they take little or no risk by violating children's rights because the children's own domestic governments have historically ignored the plight of these children even though slavery is prohibited by customary international law and is universally proscribed⁹².

3.11 CONCLUSION

This chapter examined the concept and practice of child labour in Nigeria. In line with this, the legal definition of who a child is was analyzed. This is important in order to avoid confusion and uncertainty of the definition of a child and the need for a uniform definition of a child was suggested. Indeed, it was shown that lack of uniformity in this definition can result in arbitrary decision and impunity. It was stated that for the purpose of this study, the researcher would rely on the definition of a child contained in section 274 of the Child Rights Act and African Charter on the Rights and the Welfare of the Child both of which Nigeria is a signatory.

Furthermore, the meaning and forms, causes and effect of child labour was analyzed. It considered how child labour force is engaged and how children are exploited.

It was shown that there has been a problem with respect to differences in the perception about what constitutes child labour and child work. However, it is apt to conclude that child

⁹¹ Madeleine G.B, Child Labour Prohibitions are Universal, Binding, and Obligatory Law: The Evolving State of Customary International Law Concerning the Unempowered Child Labourer, (2001) 24 Houston Journal of International Law, 151

⁹²*Ibid*

labour revolves around some form of exploitation of children or activities that are likely to impinge negatively on the child's health, safety, education, dignity and development.



CHAPTER 4

4.0 LEGAL AND POLICY FRAMEWORK ON CHILD LABOUR IN NIGERIA

4.1 Introduction

This chapter seeks to explore the legal framework for the protection of children against child labour. As has been seen in the previous chapters, the problem of child labour is both national and international, in the sense that many children who are engaged in child labour are trafficked from another country. It is for this reason that the comity of states is and should be interested in the protection of children against child labour. Furthermore, at the international level, it would be shown that relevant instruments exist in this regard both at the national, regional and universal level.

For clarity and logical presentation, this chapter will first explain the relevant regional and international legal instruments before proceeding to consider the existing Nigerian Laws on the issue of child labour.

4.2 The Declaration of the Right of the Child 1924

The Declaration of the Right of the Child was the first attempt to address the rights of the child on an international level¹. In the preamble, it was stated that; humanity owes the child the best it has to give. The Declaration, which is also referred to as the Declaration of Geneva was the first document that directed international attention to children's rights². This Declaration was drafted by the Save the Children Fund, an organization established by Eglantyne Jebb³. The document was submitted and adopted by the League of Nations in November, 1924. The significance of this declaration is that it highlights the social and

¹Declaration of the Rights of the Child, League of Nations. Records of the Fifth Assembly 1924 O.J. spec supp. 23 (1924). League of Nation Official Journal.

² C Cohen, 'Introductory Note: United Nations Convention on the Rights of the ' (1989) 28 ILM 1448

³Personal Letters of Eglantyne Jebb cited in Van, Beuren G, The International Law on the Rights of the Child, (Dordrecht Martinus Nijhoff 1994) 8

⁴*Ibid*

economic entitlements of the child. It lays the foundation for setting future international standards for the rights of the child⁵.

The 1924 Declaration set out five principles aimed at fulfilling the rights of children⁶. The first principle provided that the child must be given the means requisite for his/her healthy development, both materially and spiritually. The second espoused that a hungry child must be fed; the sick child must be nursed. The third principle provided an element of what has come to be commonly known as the children first principle. It declared that a child must be the first to receive relief in times of distress. The fourth principle stated that the child must be protected from all forms of exploitation.

Furthermore, the fifth principle called on states to inculcate in children a spirit of service towards fellow humans⁷. However, the 1924 declaration was never intended to create binding legal obligation on states and corresponding legal rights for children⁸. Although it was called a Declaration of the Rights of the Child, the instrument emphasized the duties that men and women had in ensuring that humanity gave children the best it had got to give. In other words, children were regarded as recipients of welfare rather than holders of specific rights.⁹

These shortcomings, notwithstanding, the 1924 Declaration is vital in the development of the current children's rights framework in several ways. First, it debunks the perception that the international rights of the child are a recent development in international human rights law. It should be noted that the League of Nations initiative took place well before efforts to codify the Universal rights of all people. The Declaration also laid out the groundwork for the proposition of their rights, a proposition that has been borne out by the

⁵Beuren, *The International Law on the Rights of the Child*, 14

⁶K Kaime, *The African Charter on the Rights and Welfare of the Child: A Socio-Legal Perspective* (University Law Press 2009), 12

⁷*Ibid*

⁸*Ibid*

⁹*Ibid*

United Nations Convention on the Right of the Child (UNCRC) and the African Children's Charter.¹⁰ Crucially, by providing for a mixture of political, social and economic aspirations, the Declaration gives credence to the principle that asserts the indivisibility of rights between civil and political, on the hand; and economic, social and cultural rights, on the other¹¹.

4.3 Universal Declaration of Human Rights (UDHR) 1948

The UDHR which was adopted by the General Assembly of the United Nations (UN) in Paris on the 10th of December, 1948, lays down the foundation for all human rights-related legislation internationally¹². It was adopted without a dissenting vote, and with few abstentions, by all member states of the UN as at then.¹³ It proclaimed a catalogue of human rights that apply to all human beings and therefore implicitly to children.¹⁴ It emphasized the child's right to special care and assistance as was previously canvassed in the 1924 Declaration on the Right of the Child. It was noted that unlike the UN Charter, the UDHR mention children, within the context of declaring the family to be the 'natural and fundamental group unit of society' and as such entitled to protection by society and the state.¹⁵

Thus Article 25(2)¹⁶ states: "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." Again, Article 26 calls for the right to education for all, and deals both with

¹⁰Beuren, *The International Law on the Rights of the Child*, (n 5) 8

¹¹Kaime, *The African Charter on the Rights and Welfare of the Child: A Socio-Legal Perspective*, (n 6) 13

¹² UDHR adopted 10 December 1948, G.R. Res 217A,(III) U.N.Doc A/180 at 71 (1948).

¹³ Report of the working Group on the Draft Declaration on Human Right. Doc. E/CN.4/57, see also Summary Records of Group Meetings, Doc. E/CN.4/AC.2/1-9

¹⁴ Articles 24 & 26 UDHR.

¹⁵ A MacDonald, *The Rights of the Child: Law and Practice* (Jordan Publishing Ltd 2011), 18

¹⁶ Article 25(2) of the Universal Declaration of Human Rights, 1948

access to and the aims of education”.¹⁷ These provisions call for compulsory education, at least at early childhood development and primary education levels.

It establishes the principle that education should be directed to the full development of the human being, the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The declaration, however, acknowledges the right of parents to choose the kind of education they deem fit for their children.¹⁸ The legal value of UDHR reflects on its recognition and acceptance globally, even without binding legal effect it is regarded as ‘declaratory of accepted principles within the international community.’¹⁹

4.4 Declaration of the Right of the Child 1959

The Universal Declaration of Human Rights (UDHR) was followed by the Declaration of the Right of the Child,²⁰ which is an essential document in the history of the rights of children because it is child-specific. The League of Nations Declaration (1924) laid the foundation for the UN Declaration of the Rights of the child (DRC).²¹ The preamble notes that children need “special safeguards and care, including appropriate legal protection, before as well as after birth”. The Declaration proclaimed that the child should enjoy all the rights set forth in the Declaration without any exception whatsoever and without discrimination. The term ‘entitled’ used in the declaration arguably is analogous to the term ‘right’.²² The (DRC) reiterates the 1924 Declaration’s pledge that “mankind owes to the child the best it has to give” and calls explicitly on voluntary organizations and local

¹⁷ Article 26 UDHR 1948

¹⁸ Article 26 (3) UDHR.

¹⁹Beuren, A. G. (n 5)

²⁰Declaration on the Right of the Child, G.A. Res 1386 (XIV), 14 U.N. GAOR Supp (No 16) at 19 U.N. Doc. A/4354 (1959).

²¹September .J, A Comparative Study of Children’s Rights and Child Labour Legislation in South Africa, Brazil and India, University of Cape Town, (2014) 11

²² C Cohen, 'The Developing Jurisprudence of the Rights of the Child' (1993) 6 St Thomas L Rev 10

authorities to strive for the observance of children's rights".²³ The principles enshrined in the Declaration on the Rights of the Child are that "a child is to enjoy "special protection" as well as opportunities and facilities, by law and other means", for healthy and normal physical, mental, moral, spiritual and social development in conditions of freedom and dignity". The primary consideration in enacting laws for this purpose is the best interests of the child",²⁴ this is a standard feature in all children's rights instruments, and again, this is a principle that filters through to legislation at the national level as well. The various principles include that a child is entitled to a name and nationality; to adequate nutrition, housing, recreation, and medical services; to education; and for the disabled, to special treatment, education and care. Again, it protects children against neglect, cruelty, and it prohibits the exploitation, trafficking, as well as underage labour and discrimination.²⁵ The 1959 Declaration of the Right of the Child is the conceptual parent of the CRC.²⁶ This notion was further confirmed when Poland submitted the first draft of the Convention to the Commission on Human Rights in 1978, and the text was very similar to the 1959 Declaration. In the same vein, Alston and Tobin described the 1959 Declaration as ground breaking.²⁷ It is pertinent to mention that with these developments, children were beginning to emerge no longer as passive recipients but as subjects of international law, recognized as being able to enjoy specific rights and freedoms.²⁸

Crucially, the 1959 Declaration was the springboard for the initiative to draft a Convention which is very significant in the development of children's rights²⁹. Although all the

²³Zeldin W, *Children's Rights: International Law*(2014) The Law Library Congress.

²⁴Declaration on the Rights of the Child, 1959

²⁵*Ibid*

²⁶O Ekundayo, *Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC)'s Provisions? : Examining the Similarities and Differences between the ACRWC and the CRC*, vol5 (2015), 146

²⁷P. Alston and J. Tobin, *Laying the Foundation for Children's Rights* (UNICEF 2005), 5

²⁸Beuren, *The International Law on the Rights of the Child*, (n 5) 10

²⁹ Detrick et al, *A guide to TravauxPrepataires* (MartinusNijhoff 1993), 34

Declarations discussed so far have no legal binding force as CRC is the first legally binding international instrument to address children's rights comprehensively, these declarations are the foundation on which both the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC) were built.³⁰

4.5 International Covenant on Economic, Social and Cultural Rights 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is one of the conventions adopted by the General Assembly of the United Nations that followed the same trend to protect and promote the rights of children.³¹ There is also the International Covenant on Civil and Political Rights.³²

The ICESCR enjoins state parties to accord special measures of protection and assistance to children and young persons without discrimination. The Covenant also provides that children and young persons be protected from economic and social exploitation. In addition, it espoused that children should not be employed to work in a hazardous and harmful environment that can affect their morals, health or dangerous to their life or likely to hamper their healthy development. State parties are further required to set the limit below which the paid employment of child labour should be prohibited and punishable by law³³. The Covenant recognizes the indivisibility of human rights. It recognizes the inherent dignity, equal and inalienable rights of all members of the human family. Article 10 states that the broadest possible protection and assistance should be accorded to the family, particularly for its establishment, while it is responsible for the care and education of

³⁰Ekundayo, *Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC) 's Provisions? : Examining the Similarities and Differences between the ACRWC and the CRC*, (n 260 146

³¹K.S Ettor, 'Legal Framework for the Rights of the Child in Nigeria and the Imperative Question of Enforceability. Human Rights Review' (2006) 6 *An International Human Rights Journal*, An Annual Publication of the Department of Public Law, Ahmadu Bello University, Zaria 286

³²See General Assembly Resolution 2200 A (XXI) UN Doc. (1997) Cmnd 6707 (hereinafter ICCPR). This Covenant entered into force on 23rd March 1976.

³³Article 10 (3) ICESCR

children.³⁴ Article 13(1) of the ICESCR provides that everyone has a right to education, and in more specific terms, “primary education shall be compulsory and free for all by under Article 13 (2a)”.³⁵

Despite the ICESCR’s provisions to protect and promote the rights of children as well as its attempt to punish violators of the rights of the child against exploitation, it fails to set up the mechanism for achieving that purpose. More so, the use of terminologies like “children” and “young persons” did not in any way improve the provisions of ICESCR and like other similar conventions did not provide for the age limit of who a child or young person is, thereby leaving that power to state parties³⁶.

4.6 The United Nations Convention on the Right of the Child 1989

The UN General Assembly unanimously adopted the CRC on November 20 1986³⁷. The CRC is the most comprehensive document on the rights of children and the most widely ratified human rights treaty in the world. The CRC does not place children’s rights within a hierarchical framework. It is based on the notion that all human rights are indivisible as declared by the Vienna Declaration.³⁸ It is very peculiar as it protects the broadest scope within one treaty which includes economic, social, cultural, civil and political rights. It is equally the first binding treaty to incorporate civil, political, economic, social and cultural rights into one treaty, placing equal emphasis on all these rights. It was adopted by the UN General Assembly, to protect the civil and political rights and economic, social and cultural

³⁴*Ibid* Article 10 ICESCR

³⁵Article 13(2a) ICESCR

³⁶Ettor, 'Legal Framework for the Rights of the Child in Nigeria and the Imperative Question of Enforceability. Human Rights Review', (n 31) 291

³⁷Convention on the Rights of the Child. G.A. Res 14/25 UNGAOR, 44 Sess, Supp No 49 at 167, UNDOC A./44/49 (1989)

³⁸Vienna Declaration and Programme of Action. Adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

rights of all children.³⁹ It encompasses the rights contained in ICESCR and ICCPR though the rights recognized in the CRC are more comprehensive.⁴⁰

Crucially, there are some provisions of the CRC that contain a framework of rights relevant to child labour especially Article 32, which protects the child from economic exploitation and child labour.⁴¹

During the drafting process of the CRC, the Committee had held a day of general discussion on the issue of economic exploitation of children where situations of child-labour, including the question of domestic servants, child prostitution and pornography and sale of children, were considered by the participants⁴². The statement emanating from this event recorded that more than 100 million children are forced into jobs destroying their health or preventing them from going to school.⁴³ In some cases, their condition amount to slavery.⁴⁴ Article 34 highlights three specific aspects of sexual exploitation and abuse of children; the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices; and the exploitative use of children in pornographic performances and materials.⁴⁵ The Committee stressed the need for countries to consider how children could be protected and child labour prevented in programmes of economic reform.⁴⁶ The Committee also recommended the need for a review of education policy and to ensure free and compulsory primary

³⁹Ekundayo, *Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC) 's Provisions? : Examining the Similarities and Differences between the ACRWC and the CRC*, (n 26) 147

⁴⁰*Ibid* at 147

⁴¹Article 32 of UNCRC

⁴² Buck, *International Child Law*, 186

⁴³*Ibid*

⁴⁴*Ibid*

⁴⁵Article 34 UNCRC 1989

⁴⁶Buck, *International Child Law*, (n 42) 186

education.⁴⁷ Indeed, there are five provisions in CRC which support child labour. In article 1 CRC defines a child as a person under the age of eighteen.⁴⁸ Article 19 provides that children need protection from violence and exploitation⁴⁹ while Article 28 states that children need protection from sexual exploitation and abuse.⁵⁰

In addition, Article 32 stipulates that every child should be protected from exploitative and hazardous jobs which hinder children's education or harm their health and development⁵¹. Furthermore, Article 34 stipulates that all children have the right to access primary education⁵² while in Article 36, it is stated that a child has right to be protected from all forms of exploitation⁵³.

The UNCRC is not without criticisms. The arguments over the universality and enforceability of the UNCRC are well documented. However, it has been suggested that a notion of universal applicability can be problematic despite well-meaning intentions. Critics argue that because of the cultural differences, some aspects of the UNCRC are at variance with certain belief systems and values and that those variations conflict with the idea of universalism.⁵⁴

Thus Ncube in a discussion about universality states that:

“The difficulty with children's right is that while they are expressed in abstract formulation embodying universally accepted general norms and ideals, there remains a yawning gap in the understanding of the specific practices, laws, traditions and customs...thus there is often significant disagreement from one culture to another...on whether or

⁴⁷Ibid

⁴⁸Article 1 UNCRC 1989

⁴⁹Article 19 UNCRC 1989

⁵⁰Article 28 UNCRC 1989

⁵¹Article 32 UNCRC 1989

⁵²Article 34 UNCRC 1989

⁵³Article 36 UNCRC 1989

⁵⁴ Burr and Montgomery, *Children and Rights, Understanding Childhood: An Interdisciplinary Approach*

not a particular account or practice is in the best interest of the child”.⁵⁵

In addition, Ncube and Goodman argue that the major assumptions behind most international legislations emanate from Western ideologies which do not take cognizance of non-Western societies and that it creates a massive gap between the demands of local practice and those of international legislation.⁵⁶ The UNCRC’s near universal ratification demonstrates a consensus that children should be provided for and protected against any form of abuse and their welfare and best interest promoted at all times. However, the major challenge is how to implement this legislation and make it relevant within the various signatory countries. Various scholars cautioned that the near-universal acceptance of the UNCRC should not make one forget the social, economic and cultural diversities that exist in the participating societies. It is suggested, therefore, that the application of international conventions should be made with utmost sensitivity considering these diversities.⁵⁷ Furthermore, UNCRC has been too Western and too broad, thereby making application and enforcement to local situations and environment difficult.⁵⁸ It should be noted that one of the major factors which have influenced discourses on children and children’s right is the differences between western and non-western notions of childhood and of children having rights which varies from place to place, and which also depends on the child’s immediate community and family setting.⁵⁹ It was indeed argued that the CRC usually transmits popular western Euro-American values and notions of childhood, which fails to address cultural specificities and children’s opinions.⁶⁰

⁵⁵Ncube, *Law Culture, Tradition and Children’s Rights in Eastern and Southern Africa*, 2

⁵⁶*Ibid*

⁵⁷*Ibid*

⁵⁸ M Hill and K Tisdall, *Children and Society* (Longman 1997)

⁵⁹Burr and Montgomery, *Children and Rights, Understanding Childhood: An Interdisciplinary Approach*, (n 54) 157

⁶⁰Boyden, Ling and Myers, *What Works for Working Children*

Another critical issue with the UNCRC is the lack of consensus over what constitutes abuse, what kind of work is hazardous to a child, what practices are contrary to or in keeping with a child's best interest and who defines what is detrimental or discriminatory to a child. Nevertheless, it was noted that the CRC did not make provisions for local interpretations, however, acknowledges that the CRC does recognize that all children are not the same everywhere in the world and that as contained in UNCRC preamble II, some live in exceptional circumstances and need special consideration.⁶¹ Indeed, preamble 12 notes that differences exist in the traditions and cultural values of member states. It was also argued that although CRC recognizes that these rights should be adapted within the local laws of each state, it does, however, show that the international provisions should prevail over customary and cultural practices, especially those that are deemed discriminatory, prejudicial and out of tune within the universality treaty.⁶²

It is suggested, therefore, that the Conventions recognition of local contexts seems ineffectual because it uses Western standards and definitions to judge and assess other cultures' children.⁶³ Notwithstanding these criticisms, it has been noted that CRC remains the most comprehensive, global, binding human rights instrument for the protection of children globally.

It was the attempt to address these weaknesses and make the CRC more applicable and relevant to local circumstances that led to the drafting of the regional laws such as the African Charter on the Rights and Welfare of the Child, which will be next discussed.

4.7 Regional Framework

4.7.1 The African Charter on the Rights and Welfare of the Child

The attempt to prescribe the African Charter on the Right and Welfare of the Child can be traced back to 1924 when the League of Nations adopted the Declaration of the Rights of

⁶¹Boyden, *A comparative perspective on the Globalisation of Childhood, 184-215* in James A. and prout A. *Constructing and Reconstructing Childhood: Contemporary Issues in Sociological Study of Childhood*, (n 55) 14-15

⁶²*Ibid*

⁶³*Ibid*

the Child⁶⁴ which proclaimed that humanity owes to the child the best it has to give. As we saw earlier, this Declaration was subsequently followed by the 1959 Declaration.⁶⁵ However, at the time these documents (1924 and 1959 Declarations) were promulgated, the majority of African states were still under colonial rule.⁶⁶ The principles in these documents were arguably not intended to benefit children who found themselves under colonial rule despite the universalistic tones in which they were couched. Despite this short coming, when African states adopted the declaration on the Rights and welfare of the Child (African Children's Declaration)⁶⁷ in 1979 at the 16th ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in Liberia, Monrovia, they explicitly recognized the 1959 UN Declaration suggesting therefore that the OAU subscribed to the ideas enunciated in the 1959 UN Declaration. At the same time, the African Children's Declaration gave political force to an otherwise particularistic account of children's rights which did not have an African cultural foundation.

Crucially, the African Children's Declaration grounded the conception and implementation of children's rights within African socio-political context by declaring that African Children are inheritors and keepers of African cultural heritage and consequently called on member states that:

“Efforts should be made to preserve and develop African arts, language and culture and to stimulate the interest and appreciation of African children in the cultural heritage of their own countries and of Africa as a whole”.⁶⁸

⁶⁴Declaration of the Rights of the child, League of Nations Official Journal (1924). Records of the 5th Assembly. Supplement 23.

⁶⁵Declaration on the Rights of the Child. GA Res, 1386 (XIV), 14 UN GAOR Supp (No 16) 19, UN Doc A/ 4354 (1959).

⁶⁶B Ibhawoh, 'Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State ' (2002) 22 Human Rights Quarterly 839

⁶⁷Declaration on the Rights and Welfare of the African Child AHG/St 4 XVI Rev 1 1979. Text also available at <http://www.chr.upac.za/hr-doc/african/doc/ahsg/ahsg36.doc>

⁶⁸African Children's Declaration, Para 10.

The implication is that no conception of children's rights should deny African Children of their legacy and inheritance as children of the continent. At the same time, the Declaration was explicit on the fact that the recognition of cultural values should not assume primacy over the protection of children's rights. Instead, the two paradigms should complement each other and help achieve the adequate protection of African children.⁶⁹

Importantly, despite the total acceptance of the provisions of CRC, African states still sought to adopt a specific instrument which reflected African cultural values in dealing with the rights of children.

This concern became critical because of the desire to address certain peculiarities and African problems which had not been addressed by CRC. Among other issues, it was thought that the peculiar challenges of African children living under apartheid, their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, disadvantage facing the girl child, the problems of internal displacement arising from civil wars and domestic insurrections, were either omitted or not adequately addressed by the provisions of CRC.

This problem was attributed to the fact that African nations were grossly underrepresented during the drafting process of CRC where only Algeria, Morocco, Senegal and Egypt participated meaningfully in the drafting process.⁷⁰ It was noted that Africa was the lowest percentage in the continents, contrasting sharply with Western Europe 61% of the and even Latin America 29% participation over a similar period.⁷¹ Consequently, potentially divisive and emotive issues were omitted in the search for consensus between states from

⁶⁹African Children's Charter, Para 2

⁷⁰Ekundayo, *Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC) 's Provisions? : Examining the Similarities and Differences between the ACRWC and the CRC*, (n 26) 147

⁷¹F Viljoen, 'National Human Rights Instruments for the Protection of Children in Africa: The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31 *The Comparative and International Law Journal of Southern Africa*, 205

a diverse background.⁷² It was evident therefore that although CRC addressed every aspect of children's lives, specific provisions and aspects peculiar to Africa fell victim to the overriding aim of reaching a compromise. The African Children's Charter was therefore intended to fill that void in terms of African concerns. Accordingly, the African Children's Charter, not only, incorporates the universalistic outlook of the CRC but cloths its conception within the African cultural context. It is, obviously, a document with a cultural-universalist perspective and a perfect start point for the consideration and elucidation of children's rights in Africa.⁷³ This Charter, therefore, became the first regional treaty on children rights. Thus, State Parties to the African Children's Charter are to ensure that African children do not engage in hostilities and customs, traditions, cultural and religious practices that are inconsistent with the provisions of the treaty.⁷⁴ Importantly, Article 15 of the African Children's Charter deals specifically with child labour and provides that: 'Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development'.

The Charter charges that the concept of the rights and welfare of the child should be inspired and characterized by the virtues of African cultural heritage, historical background and the values of African civilization. The implication is that the charter requires that the rights and welfare of the child, which are derived from universal sources, must be alive to the reality of African children⁷⁵. Having said this, it may be mentioned that there is serious concern and criticisms about the drafting and provisions of the Charter. Without a clear and good understanding of the Charter, implementation will be difficult. Article 1 states that:

“Member States of Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake the

⁷² Ibid

⁷³ Kaime, *The African Charter on the Rights and Welfare of the Child: A Socio-Legal Perspective*, (n 6) 120-136

⁷⁴ African Children's Charter Articles 22 and 1(3) respectively

⁷⁵ Ibid

necessary steps, in accordance with their constitutional processes and with the provisions of the present Charter, to adapt such legislative and other measures as may be necessary to give effect to the provisions of this Charter”.⁷⁶

However, Article 1(2) states that:

“Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Covenant or agreement in force in that state”.⁷⁷

Article 1.1 stipulates that states must follow the provisions of the Articles enshrined within the Charter and make necessary adjustments to their constitution to suit these provisions. However, Article 1(2) added that if a state’s constitution accords children with a higher and more refined constellation of rights, then the provisions of the Charter can be overridden by the law of the State Party. The implication is that these two articles provide a loophole for states to undermine the provisions of the ‘blueprint’ under the pretext that their local laws accord children greater rights which could give room for the manipulation of the Charter and of course undermining the obligation previously imposed on the state in Article 1(1) of the Charter.

Again, Article 4 contains the provisions for the best interest of the child.

Article 4(1) stipulates that:

“In all actions concerning the child undertaken by any person or authority the best interest of the child shall be the primary consideration”.⁷⁸

In addition, Article 4(2) states that:

“In all judicial and administrative proceedings affecting a child who is capable of communicating his/or her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial

⁷⁶African Children’s Charter, Article 1, 1999

⁷⁷African Children’s Charter, Article 1(2), 1999

⁷⁸African Children’s Charter, Article 4, 1999

representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of the appropriate law”.⁷⁹

Considering Article 4(1), it is clear that the article is vague as it did not define or explain what is the ‘best interest of the child’. The implication is that States and other Parties are free to interpret these ‘best interests’ provisions in any way that suits them and in some cases to the detriment of the child’s physical, mental, emotional and spiritual development, under the guise of adhering to the ‘best interests’ provisions. For instance, some states in Nigeria may interpret female genital mutilation, early marriage and child labour as the best interest of the child. There is no doubt, therefore, that this Article can lead to various forms of child abuse. Furthermore, it would appear that Article 4(2) discriminate against children who are not capable of communicating. This article only provides for children capable of communicating in judicial and administrative proceedings. Unfortunately, Children who are physically and mentally impaired are more prone to abuse which is a clear case of discrimination and of course, the violation of the right of the child.

Article 7 covers the freedom of expression, which states that:

“Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinion subject to such restrictions as prescribed by law”.⁸⁰

This article is very contradictory. On the one hand, children are given the right to express themselves freely. However, their rights are then inhibited by restrictions imposed by municipal law by the level of freedom of expression.

Another issue is the provision of Article 11, which contains the right to education. This article stipulates that children must have access to education. Article 11(2a) is of paramount importance, and it states that:

⁷⁹African Children’s Charter 4(2) 1999

⁸⁰African Children’s Charter, Article 7, 1999

“The education provided to children shall be aimed at, upholding the preservation and strengthening of positive African morals, traditional values and cultures”.⁸¹

Again, there is no clear definition of what constitutes ‘positive African morals, traditional values and cultures’. This lack of clarity could lead to abuse of children as states are free to give their interpretations to suit them.

Furthermore, article 13 covered the rights of the disabled children and provides for special measures of protection aimed at meeting the physical and moral needs of such children and the creation of conditions which ensure the dignity, promote self-reliance and active participation of such children in the community. However, Article 13(2) states that:

“States Parties to the present Charter shall ensure, subject to available resource, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child’s condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving fullest possible integration, individual development and his cultural and moral development”.⁸²

This article seems to incorporate a double standard and contradictory. The implication is that it gives state parties room not to cater for the need of the children strictly. This assertion is indicated in the phrase ‘subject to available resources’ which shows that states can only go ahead to cater to the needs of disabled children when they have the resources to do so. It is suggested, therefore that, this phrase seem to relegate the importance of providing for the disabled children. The implication is that if a country claims not to have available resources, the disabled children will not be provided for as their issues are not treated as a priority. It is submitted that this provision should be one of the major priorities of the state considering their peculiar circumstances.

⁸¹African Children’s Charter, Article 11(a) 1999

⁸²African Children’s Charter, Article 13(2) 1999

*Another contradictory article is Article 31(b) and (e), which states that:*⁸³

The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty:

- (a) to serve his national community by placing his physical and intellectual abilities at its service;
- (e) to preserve and strengthen the independence and the integrity of his country.

One contradiction is the fact that children have been given the responsibilities to serve the state and the national community by ‘placing their physical and intellectual abilities at its service’ suggesting as though it has defeated the essence of the Charter. The tone and commitment of the State to the Charter seems to indicate that the state is a primary custodian of children and their right thereby eroding the institution of the family as the utmost actor in the provision of children’s right. In addition, Article 31(e) states that children should preserve and strengthen the independence and the integrity of his country. The primary way to fulfil this obligation is through acts of war and the use of force to ward off potential threats to the sovereignty, territorial integrity and independence of the state. Considering the combination of article 3(e) and 3(b), it would appear that article 31 is generally beaoning for the participation of children in armed conflict on behalf of the state thereby contradicting article 22 which stipulates that states must ensure that children are not recruited as soldiers.

4.8 National Legal Framework

4.8.1 The 1999 Constitution of the Federal Republic of Nigeria

In *Minister of Home Affairs v Fisher*,⁸⁴ the term Constitution was defined by the Privy Council as a legal instrument giving rise, among other things, to individual rights capable of enforcement in a court of law. On its part, the Nigerian Supreme Court in **Peoples Democratic Party v Independent National Electoral Commission**⁸⁵ defined the **constitution** as the organic law or grundnorm of the people. It is the law through which

⁸³African Children’s Charter, Article 31(b) and (e) 1999

⁸⁴*Minister of Home Affairs v Fisher*, (1980)Ac at. 319

⁸⁵*PDP v INEC* (1999) 11 N.W.L.R. (pt. 626) at 200

other laws derive their legitimacy. Any law in Nigeria, which is inconsistent with the provision of the constitution, is null and void to the extent of its inconsistency.⁸⁶

It is significant that the 1960 independence Constitution of Nigeria adopted Universal Declaration of Human Right. Subsequently, this has been maintained in all the Nigerian Constitution.⁸⁷ The 1999 Constitution committed itself to the promotion of good governance and welfare of all persons to the principles of freedom, equity and justice.⁸⁸ Since the adoption of the Universal Declaration on Human Rights in 1948, Nigeria has not only acquired global status and importance but have grown tremendously both in conception and content. Chapter IV of the 1999 Constitution has made adequate provisions in the form of fundamental rights which children are also beneficiaries. The fundamental rights include right to life, right to dignity of the human person, personal liberty, fair hearing, etc. These rights are being violated in cases of child labour, and their provisions in the constitution make them legally enforceable when violated.

It should be noted that the 1999 Constitution of the Federal Republic of Nigeria does not explicitly distinguish between the applicability of its provisions relating to children and adults. However, it sets out under its chapter IV, certain rights tagged the fundamental rights, children and young persons inclusive. These are rights to life, personal liberty, human dignity and freedom from slavery and torture, freedom of thought, opinion, conscience and religion, expression, association and peaceful assembly, as well as movement.⁸⁹

More specifically, these rights as they relates to children are discussed below:

⁸⁶Section 1 (1) of the 1999 Constitution as amended.

⁸⁷G. U kwagyang and G. M Murgan, 'Appraisal of the Legal Framework Against Child Trafficking in Nigeria' (2016) 1 UNIMAID Journal of Private and Property Law 37

⁸⁸Jacob A.D. 'Human Right Protection in Nigeria: The past, Present and Goal for Role Actors for Future (2013) 14 Journal of Law Policy and Globalization 1

⁸⁹O. M. O. A Dada, 'Sociological Investigation of the Determinant Factors and the Effect of Child Street Hawking in Nigeria: Agege, Lagos State, Under Survey' (2013) 39 International Journal of Asian Social Science 114

Section 17(3) of the 1999 Constitution⁹⁰ of the Federal Republic of Nigeria provides that the state shall direct its policy towards ensuring that:

- (a) All citizens (children inclusive), without discrimination of any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;
- (b) Conditions of work are just, human and that there are adequate facilities for leisure, social, religious and cultural life.
- (c) The health, safety and welfare of all persons in employment (children inclusive) are safeguarded and not endangered or abused;
- (d) That there are adequate medical and health facilities for all persons.
- (e) That there is equal pay for equal work without discrimination on any account of sex or any other ground whatsoever.
- (f) The children and young persons are protected against any form of exploitation whatsoever, and against any moral or material neglect. This addresses the protection of children against exploitation in form of child labour in all forms.

Again in Nigeria, the right to life, survival and development of such a child is guaranteed under the 1999 Constitution. It is argued that right to life guaranteed by the constitution requires the state not only to abstain from taking life but to take further steps to protect life.⁹¹

In addition, section 34(1) provides that, “Every individual is entitled to respect for the dignity of his person, and accordingly.

- (a) No person shall be subjected to torture or to inhuman or degrading treatment;
- (b) No person shall be held in slavery or servitude; and
- (c) No person shall be required to perform forced or compulsory labour.

⁹¹Section 40 of the 1999 CFRN

The constitution in this section has stipulated the acts that will be regarded as violating the dignity of the person of the child and torture as used in the constitution which could be physical brutalization of the human person or psychological or emotional agony.

By these provisions, every child in Nigeria is entitled to respect for the dignity of his person, and accordingly, no child should be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment. Besides, no child in Nigeria should be subjected to torture, inhuman or degrading treatment, particularly in the form of slavery, exploitation and child labour.

Furthermore, section 35 covers right to personal liberty. Section 35 provides that 'Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty'.⁹² By this provision every child is free from physical restraint on his body, such that he/she shall not be restricted on his body, except in justifiable circumstances which are clearly recognized by law.

In the same vein, section 39(1) provides that 'Every person shall be entitled to freedom of expression including freedom to hold opinion and to receive and impart ideas and information without interference'.⁹³

The freedom of expression is the right of the child guaranteed by the constitution. Children have the right to form and express their views. By this provision, children are recognized as citizens, as participants and as active contributors both to decisions with their own lives and also the wider society where they live.

4.8.2 The Nigerian Labour Act

The historical development of labour law in Nigeria is one that sprouted out of its colonial history which the British practiced and bequeathed to the post#-colonial independent Nigerian government.⁹⁴ Basically, the formal and semi-formal relationship was

⁹²Section 35 of the 1999 CFRN

⁹³Section 39(1) of the 1999 CFRN

⁹⁴M.A Adesola, 'History and Development of Industrial Relations in Nigeria: Hybridity of Western Models Versus Military Interventionism Culture' (2013) *Mediterranean Journal of Social Sciences* 687

established with the British in particular and the Europe in general under this system. This relationship led to the introduction of wage employment in a formal industrial setting in Nigeria, which is governed by labour law.⁹⁵

The Labour Act applies to all workers and all employers except the armed forces, the Police, Prisons and Intelligence Agencies. The Ministry of Employment, Labour and Productivity is responsible for enforcing legal provisions regarding working conditions and protection of workers, and there is a department in the Ministry in charge of this, with a unit dealing with child labour.⁹⁶

Specifically, the law governing the rights of a child in labour issues in Nigeria is the Labour Act. Section 59(b) of the Act provides that: ‘no young person shall be employed in any work which is injurious to his health or which is dangerous or immoral’.⁹⁷ The Act further provides that no child under the age of 16 years shall be employed in circumstances in which it is not reasonably possible for him to return each day to the place of residence of his parents or guardians.⁹⁸ This section forbids a child that is less than 16 years from working underground or on machines. It further prohibits a young person from working for a more extended period than four hours in one day. It places additional restrictions on the employment of a child or young person on a ship or vessel.⁹⁹ However, the Labour Act does not prohibit child labour, and rather, it only places restrictions on where, when, and how child labourer may be employed. Furthermore, Section 78 of the Labour Act¹⁰⁰ stipulates that in addition to other powers conferred on Labour Officers, an authorized Labour Officer may in order to ensure the enforcement of the Act, enter and inspect certain

⁹⁵*Ibid*

⁹⁶Olateru-Olagbegi, B. &Ikpeme, A. Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour: Action Programme Against Trafficking and Forced Labour in West Africa, International Labour Organization, Abuja 2006, at 31.

⁹⁷Section 59(b) Nigerian Labour Act

⁹⁸*Ibid*

⁹⁹*Ibid*

¹⁰⁰Section 78 of the Labour Act

premises including labour encampments, farms, hospital buildings, factories etc. Private homes are however, not included yet many children who are engaged in child labour are domestic workers. Since labour inspectors have the power to do whatever is needful to ensure the proper implementation of the Act, it is implied they have the ability to prosecute offenders, which covers the issues of child labour and forced labour. However, it does not include cases of domestic work since this is in the informal sector. Another problem is that there are few labour inspectors, and they need to be trained to be effective in the execution of their mandate.¹⁰¹

It should also be noted that unlike Article 32 of the UN Convention on the Rights of the Child which stipulates that the type of work done by the child should not affect his right to development especially as concerning education, the Labour Act did not address this issue. However, the closest provisions in the Labour Act is section 59(4) which states that the employment of a child should not prevent him from returning at the end of each day's work to the place of residence of his parents or guardian except there is a written contract to that effect with approval of an authorized Labour Officer.¹⁰² The focus of the Labour Act regarding child labour seems to be on the protection of the child from physical harm and immoral activities. The protection of the right of the child to education was not also explicitly addressed.

Crucially, Labour Act stipulates too many exceptions, which defeats the prohibitions and restrictions on child labour. For instance, there are no regulations to protect children engaged in domestic service as envisaged in section 64 of the Labour Act. It is crucial to make such regulations for the protection of children involved in domestic services and those children employed as apprentices. It seems that the Labour Act does not prohibit child labour, instead it restricts where and how they are employed.¹⁰³ It is obvious that due to the weakness of the mechanism for monitoring, investigation and law enforcement

¹⁰¹Olateru- Olagbeji (n 96) 13

¹⁰²G. G Otuturu, 'Legal Responses to Child Labour in Nigeria' (2007) 1 Kogi State University Law Journal 15

¹⁰³*Ibid*

under the Labour Act, only a few offenders are prosecuted. There is no doubt that the lack of labour restrictions could also encourage child labour. Again, most of our labour laws are obsolete and not strong enough to deter exploiters of child labour, as the penalty for contravention of labour restrictions is ridiculous. For instance, employers who violate the provisions of sections 59-62, meant to protect children against hazardous work, are liable to pay the absurd penalty of ₦100 fine upon conviction. Another striking gap in the Labour Act is that it does not adequately address the issue of exploitation by the parents or guardians, in cases where a child is meant to work for the parents.¹⁰⁴

Another major problem of the Ministry of Labour is lack of the adequate number of trained staff, and equipment needed to carry out the assignment. As a result of this problem, inspections are not carried out regularly and have not deterred violators. Furthermore, inspections are not specifically conducted to check violators of child labour, and there is hardly any recorded child labour inspection that resulted in fines, penalties or convictions.¹⁰⁵ It is suggested that there is need to strengthen the inspection and child labour units of the Ministry of Labour, and also employ and train staff to carry out their functions effectively.

4.8.3 The Child Rights Act (2003)

The situation of most Nigerian children remains critical due to the weak and uncoordinated legal framework for the protection of children's rights before the enactment of the Child's Right Act 2003. Laws relating to children were not child's right-specific, nor did they make adequate provision of children's rights.¹⁰⁶ The Federal Constitutional arrangement does not situate issues concerning children within the state legislature, which makes it difficult to establish a proper legal framework applicable in Nigeria. Similarly, in various states,

¹⁰⁴*Ibid*

¹⁰⁵*Ibid*

¹⁰⁶M. T Ladan, 'The Nigerian Child's Rights Act 2003: An Overview of the Rationale, Structure and Contents' (2004) 3 Ibadan Bar Journal 66

children and young persons laws are primarily juvenile justice administration biased and not necessarily child's right-specific.¹⁰⁷

Furthermore, even though the content of the Child's Rights Act 2003 were modeled from the African Charter on the Rights and Welfare of the Child 1990 and the UN Convention on the Rights of the Child 1989, they were not domesticated. Those instruments did not take cognizance of the peculiar needs of Nigerian children to make adequate provisions for those needs.¹⁰⁸

Nigeria, therefore, developed a legal framework that in substance contains the salient provisions of the African Charter and the UNCRC that shall subsequently take care of the peculiar needs of the Nigerian child.

Nigeria in 1996, submitted its first report on the implementation of the Child Rights Convention to the United Nations Committee on the Rights of the Child.¹⁰⁹ As a result of this, the Committee made recommendations to Nigeria for the domestication of the UNCRC to enable its full implementation under Nigerian law.¹¹⁰ Before this report was submitted in 1996, a Bill on Children's Rights was already submitted in 1993, however, it could not be passed into law by the military government due to opposition from religious groups and traditionalists. Hence, a special committee was set up to harmonize the children's Bill with Nigerian religious and customary beliefs.¹¹¹

In October 2002, a Bill providing for the rights and responsibilities of children in Nigeria and for a renewed system of juvenile justice administration, was proposed and was equally

¹⁰⁷Akwara, Soyibo and Agba, 'Law and Children's Rights Protection: The Nexus for a Sustainable Development in Nigeria', 30

^{108A.} A Michael, 'The Nigerian Child and the Right to Participate: A Peep Through the Window of the Best Interest Clause of the Child's Right Act' (2017) 8 Beijing Law Review 159

¹⁰⁹<http://www2.ohchr.org/english.law/pdf/crc.pdf>

¹¹⁰CRC, Concluding Observation of the Committee on the Rights of the Child, CRC.c.15/Add61, available at <http://www.unhcr.ch/tbs/doc.nsf> accessed 12 May 2019

^{111S.} A. A Olayinka, 'Legal Impediments on the Practical Implementation of the Child Right Act 2003' (2009) 37 International Journal of Legal Information The Official Journal of the International Association of the Law Libraries 385

rejected by the parliament as its content was believed to be contrary to religious, traditional and cultural values in various parts of Nigeria.¹¹² This decision by the parliament was vehemently opposed by various national and international NGO's as well as some sectors of the civil society in Nigeria who subsequently forced the legislators to reconsider its decision of rejecting the Child's Right Bill. Thus, in 2003, the Child's Right Act was finally adopted.¹¹³

The Act sets out the rights and responsibilities of the child in Nigeria and provides for a system of child justice administration and the care and supervision of children, amongst other things. The Act has been divided into 24 parts, 11 schedules and 278 sections which broadly address rights and responsibilities, protection and welfare of children, duties and responsibilities of government, institutions for children as well as other miscellaneous matters. The Child Rights Act culled its content from the UNCRC and OAU Charter in respect to the guiding principles for the promotion and protection of the rights of children.¹¹⁴

Various rights of Nigerian child are listed under the Child's Right Act 2003, but those that are relevant to this study are:

1. Right to dignity covered by section 11 of the Act provides that every child is entitled to respect for the dignity of his person and accordingly, "no child shall, among other things, be held in slavery or servitude".¹¹⁵ Every child has the right to parental care and protection, and no child shall be separated from his parents against the wish of the child.
2. Right to Education: By virtue of section 11 of the Act, "Every child has the right to free, compulsory and universal Basic Education at least up to junior secondary education".

¹¹²*Ibid*

¹¹³*Ibid*

¹¹⁴Tajudeen, 'Legal Framework for the Protection of Child Rights in Nigeria'

¹¹⁵Section 11 of the Child Right Act 2003

3. Right not to be exposed to narcotic drug.
4. Protection against abduction:
5. Protection against child labour Section 26 of the Act states that “no child shall be subjected to any forced or exploitative labour or employed to work in any capacity except work of domestic character”.¹¹⁶
6. Protection against buying, selling, begging and prostitution. Section 38 prohibits “buying, selling, hiring or dealing in a child. A child must not be used for the purpose of begging for alms, hawking of foods, guiding beggars, prostitution, domestic or sexual labour or any unlawful or immoral purpose or slavery or trafficking or debt bondage”.¹¹⁷
7. Protection against sexual abuses: section 29 provides that “no person shall have sexual intercourse with a child.¹¹⁸ Such offence is rape and is liable on conviction to imprisonment for life”.
8. Furthermore, the Act prohibits recruitment of children into the armed forces in Nigeria.

Perhaps these sections of the Child Rights Act are the most blatantly abused. On daily basis and even late in the evenings, little children are seen both in urban and rural areas hawking for their parents and guardians, far away from homes. Either such a child does not go to school at all since he has to make some money, or he attends school but as soon as he arrives from school a massive tray of oranges, apples, banana etc. is placed on his or her head for hawking. These helpless children are victims of fatal accidents and molestation that happen every day.

¹¹⁶Section 26 of the Child Rights Act

¹¹⁷Section 38 of the Child Rights Act

¹¹⁸Section 29 of the Child Rights Act

From the content of the CRA 2003, it is evident that the Act is pervasive and well informed, covering every aspect of the rights of children.¹¹⁹ The Act is the most standard provisions that best address the plight of children in Nigeria. More so, it was domesticated under the Nigerian constitutional provision which is the enabling law permitting any other law to be domesticated in Nigeria.¹²⁰ The major relevance of this Act is to enable the maximum protection and promotion of the rights of Nigerian children.

Thus, by the enactment of the CRA 2003, the welfare and responsibilities of children, as well as those of government and institutions towards children, became more defined. Furthermore, the Act makes provisions for the enforcement of these rights by imposing strict penalties for abusers, and family court was equally created¹²¹. The additional benefit to the child from the Act is the unlimited scope of who may enforce the rights of the child. These rights may be executed by a person who has parental responsibility for the child; by the state government or any civil society. It can be implemented by government at all levels, by neighbourhood societies and concerned neighbours, by educational institutions, by religious organizations, by political parties, by voluntary organizations and all other stakeholders with concern about the welfare, growth and development of the Nigerian child.¹²² It is important to note that the provisions of the Act supersede all other legislations that have a bearing on the rights of the child. Having been enacted at the national level, the states are meant to adopt the Act and domesticate it as state laws formally. This is because issues of child rights protection are on the residual list of the Nigerian Constitution, giving states exclusive responsibilities and jurisdiction to make laws

¹¹⁹I. E Alemika and K. K Salome, 'Translating the Legal Framework on the Rights of Child The Child Rights Act 2003 Into Effective Practice Through Human Rights Education in Nigeria' (2010) 3 Journal of Public Law and Constitutional Practice, Faculty of Law, University of Jos 4

¹²⁰*Ibid*

¹²¹Akware, Soyibo and Agba, 'Law and Children's Rights Protection: The Nexus for a Sustainable Development in Nigeria', (n 107) 30

¹²²Kolawole. K. O. and Lugman, A.L. Realizing the Rights of the Child Under the Nigeria Child's Rights Act 2003: an Exploratory Critique.

relevant to their specific situations. State laws contrary to the rights of the child are also to be amended to conform to the Act and the Child Rights Convention.¹²³

There is no doubt that in its rights and responsibilities approach, the Act is constitutionally and culturally sensitive, progressive, compactable, relevant, problem-solving and, more importantly, in the best interest and welfare of the child. Besides, the Nigerian child's right law was brought to the international standard by the enactment of this Act.

Critique of the Child Right Act of 2003

Despite all these features and protection provided by the Act, there is a wide gap between the provisions and the translation of the law into effective practice which is due to some factors militating against effective protection of these rights.

Nigeria operates a federal system of government in which each of the thirty-six states of the federation is autonomous and equal to each other. Each has its legislative policy as stipulated by the Nigerian Constitution. Thus, until the child's Right Act is enacted into law in each of these jurisdiction it is not binding on the states¹²⁴. The implication, therefore, is that no court can prosecute violations of the Child Rights Act in states that have not enacted it. Many states are reluctant to domesticate CRA 2003 that met the CRC standard. Some of such states claim that the ideas are incompatible with the cultural and religious practices of their communities.¹²⁵ More so, states that domesticated the Act are not implementing it effectively due to lack of political will, lack of fund, infrastructures, and lack of professionals to handle issues of children.¹²⁶

¹²³Olayinka, 'Legal Impediments on the Practical Implementation of the Child Right Act 2003', (n 111) 387

¹²⁴*Ibid*

¹²⁵*Ibid*

¹²⁶L Emily, *The Child's Best Interest: a general applicable Principle* (JanuszKorezak Lecture, Council of Europe 2008), (n 119)

Furthermore, the implementation may be difficult due to the cultural diversity and pluralistic legal nature in Nigeria, with various versions of state legislation on child rights, which serves as a reflection of preference of each state. However, the provisions of the Child Rights Act, 2003 supersede all other enactments on the rights of the child despite the cultural diversity and pluralistic legal nature in Nigeria. It seems, therefore, that the rights of Nigerian children are still at the mercy of legislators.¹²⁷

Crucially, it is challenging to have rights protected without a particular force.¹²⁸ The legislative issue with the CRA 2003 in Nigeria is also present since the rights of the child cannot be claimed in states that have not incorporated such Acts. However, Nigeria cannot be exempted from her legal obligation to protect child rights, having signed and ratified the Child's Rights Convention.¹²⁹

Nigeria has not only failed to ratify the Child Rights Convention in some states but has also failed to make a serious commitment in those states that have domesticated the CRA to implement it fully. It is important to note that Nigeria's signature of the United Nations Declaration on Human Rights puts an obligation on her to disseminate, display, and incorporate human rights in institutions of learning, but this is yet to be accomplished. Indeed, the commitment of the Nigerian state to educate its children on their rights under article 4,7,19²⁹ has also been shunned with impunity.¹³⁰

Again, most of the items declared by the CRA as the rights belonging to children seem not to be justiciable rights taken into account the provisions of the Nigerian Constitution.¹³¹ For instance, rights such as right to health, and health services, right to education, right to leisure, recreation and cultural activities etc, provided in part 11 of the Act, are recognized

¹²⁷Olayinka, 'Legal Impediments on the Practical Implementation of the Child Right Act 2003', (n 111)

¹²⁸J Donnelly, *1989* (Cornel University Press Universal Human Rights in Theory and In Practice), 9

¹²⁹Olayinka, 'Legal Impediments on the Practical Implementation of the Child Right Act 2003', (n 111) 392

¹³⁰*Ibid*

¹³¹Sections 33-46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

in chapter 11 of the Constitution as Fundamental Objectives and Directive Principles of State Policy in Nigeria and are not justiciable rights.¹³² For instance, provisions regarding education are couched in a way that did constitute an obligation on the part of the government, as section 18 of the constitution declares:

“Government shall direct its policy towards ensuring that there are equal and adequate educational opportunity at all levels (3) government shall strive to eradicate illiteracy and to this end government shall as at when practicable provide free compulsory universal primary education”.¹³³

It is clear from the above phrase ‘shall as and when practicable’ that the provisions on free education referred to in the foregoing provision is not binding on the government to provide at any point. The issue now is whether a Nigerian child can enforce the right to health services, right to education, offered by the Act, because of the express provision of the constitution.¹³⁴

Again, the CRA is adjudged to be the supreme law for the enforcement of the rights of the Nigerian child, given the constitution and other existing laws touching the rights of children. it provides:

“The provisions of this Act supersede the provisions of all enactments relating to: (a) children (b) adoption, fostering, guardianship and Wardship (c) approved institutions, remand centers and boastal institution and (d) any other matter pertaining to children already provided for in this Act. Accordingly, where any provision of this Act is inconsistent with that of any of the enactment specified in sub-section (1) of this section, the provision of this Act shall prevail and that other provision shall to the extent of its inconsistency be void”.¹³⁵

¹³²E. I Alemika, 'The Non-Justiciability of Chapter 11 of 1999 Constitution: Implication for development in Nigeria' (2011) 1 Benson Idahosa University Law Journal 368

¹³³ Section 18 of the Constitution of the Federal republic of Nigeria.

¹³⁴Ettor, 'Legal Framework for the Rights of the Child in Nigeria and the Imperative Question of Enforceability. Human Rights Review', (n 31) 307

¹³⁵ CFRN, Section 274(1) and (2)

The question that readily comes to mind is, whether rights such as the right to health and health services, right to education, right to leisure, recreation and cultural activities etc, provided for in part 11 of the CRA are enforceable rights by the child as already mentioned above. These rights are also contained in chapter 11 of the Constitution as the Fundamental Objectives and Directive Principles of State policy in Nigeria. It should be noted that they have been pronounced upon as non-justiciable and the fact that the CRA, guarantees these rights brings to the fore the issue of conflict between the provisions of the CRA and the Constitution. Importantly, the fact that the Constitution 136 declares its supremacy over other laws to the extent that the provisions of the constitution prevail over other laws in conflict with its provision, makes it imperative to resolve the conflict between the provision of the CRA and the provision of the Constitution in favour of the constitution.

Furthermore, non-establishment of the specialized children unit of police and the family court as provided for by the CRA and other child rights law of various states of the federation is another impediment. As long as the family courts are not established, children in conflict with the law in affected states will continue to be deprived of the benefits of the provisions on the child justice administration in Nigeria.¹³⁷

Importantly, the right to compulsory primary education of children guaranteed under the CRA may not also be possible for a child from a poor home. To be sure, most child labourers do not attend school because their labour is needed to either help at home or bring additional income into the family. Many families cannot afford the associated costs of sending their children to schools, such as uniforms and textbooks. While for others, the distance to the nearest school is an obstacle.¹³⁸ Some of them that enrol in schools, unfortunately, do not complete the primary cycle. Sadly, 30% of pupils drop out of primary school and only 54% transit to secondary schools because of economic hardship and early

¹³⁶*Ibid* Section 1(3)

¹³⁷Ettor, 'Legal Framework for the Rights of the Child in Nigeria and the Imperative Question of Enforceability. *Human Rights Review*', (n 31) 308

¹³⁸*Ibid*

marriage for girls. Indeed, the Act frowns at such situation tagging them as child abuse.¹³⁹ There is an urgent need for government to address this issue.

Again, there are various uncoordinated and obsolete legal provisions governing the definitions and the concept of who a child is in Nigeria.¹⁴⁰ The main reason being that Nigeria adopts a plural legal system, comprising of both statutory and customary law rules, with numerous interpretations of a child. Besides, Nigeria is a country with a diverse socio-cultural, religious and ethnic group with multiple and conflicting definitions of a child. Thus, the concept of childhood in Nigeria is tied to the context of an enactment or judicial interpretation on the one hand, and on the other, the customary law and socio-cultural and religious interpretation of the area under consideration. To buttress this point, an attempt shall be made to demonstrate some of the definitions hereunder.¹⁴¹

The National child welfare policy of 1989¹⁴² defines a child as anybody who is 12 years and below. However, Section 2 of the Children and Young Persons Act (CYPA 1958)¹⁴³ defines a child as a person less than fourteen years, while young person means a person who had attained the age of fourteen years but is below the age of seventeen years.

Again, under section 30 of the Criminal Code Act, a child for a conviction for unlawful carnal knowledge, is a person below the age of 12 as he is declared incapable of having carnal knowledge.¹⁴⁴ Under the same Act, outside the offence of unlawful carnal knowledge, there is a rebuttable presumption that any person below the age of 12 years is a child, and, is thus not criminally responsible. However, as for the penal responsibility, section 50 of the Penal Code (North) states that No act is an offence which is done by a

¹³⁹*Ibid*

¹⁴⁰Emily, I. A. & Kigbu. (n 119)

¹⁴¹*Ibid*

¹⁴²National Welfare Policy of 1989

¹⁴³The first Juvenile Justice established by colonial administration in 1943 CYPA was formerly an ordinance promulgated by the Colonial power enacted in Eastern, Western and Northern regions (hereafter referred to as CYPA 1958).

¹⁴⁴Section 30 of the Criminal Code Act Cap 38 Laws of the Federation of Nigeria, 2004.

child under seven years of age but less than 12 years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act.¹⁴⁵

Another definition is the Immigration Act¹⁴⁶ which states that any person below sixteen years is a minor, while the Matrimonial Causes Act 1970 puts the age of maturity at 21 years. However, the latter Act becomes irrelevant in practice as the individual states their age for marriage. Another contrary interpretation is the Labour Act. Section 59(2) of the Labour Act declares a person a child for employment in Nigeria, if he is below the age of 14 such a person cannot work in any industrial undertaking without supervision.

On the contrary, the Convention on the Rights of the Child (CRC) defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under a state own domestic legislation. Similarly, Section 277 of the Child Right Act (CRA) 2003¹⁴⁷ adopted the international standard and defines a child as a person who has not attained the age of eighteen years. It would appear that the 2003 Act has settled the matter of who a child is when it provided that the definition of child under section 277 of the Act supersedes all enactments relating to children.

It would also appear that age-based definition is considered as representing the most objective criterion for determining who falls within the framework of child protection policy. The argument may not be accurate as the definition of a child is compounded under the customary and African traditional setting whereby the definition of a child is not determined by a particular age or number but by physical maturity. This is further compounded by the fact that age of maturity is interpreted in different ways from different perspectives for different purposes under various laws and customs/religious practices.¹⁴⁸ For instance, in some African societies Nigeria inclusive, a boy or girl remains a child until

¹⁴⁵Section 50 of the Penal Code Cap 38 and 41 Laws of Federation of Nigeria 2004

¹⁴⁶Immigration Act Cap 11 2004

¹⁴⁷S.277 Child Rights Act (CRA) 2003

¹⁴⁸Alemika and Salome, 'Translating the Legal Framework on the Rights of Child The Child Rights Act 2003 Into Effective Practice Through Human Rights Education in Nigeria', (n 119)

initiated into age grade. There are different types of initiation rites from childhood to adulthood across various ethnic groups and cultures in Nigeria. In some, childhood ends at the stage of puberty. In most cases, the stage of puberty is ascertained by the appearance of pubic hair in boys and breast in girls or commencement of menstruation in girls. In the case of *Labinjo v Abake*, the court declares that a person is a child, if he has not reached puberty.

Another vital issue to note is that of cultural constraint. Although the Act frowns at child labour, however, under some cultures in Nigeria, there are some beliefs that engaging a child in certain labour prepares the child for adult roles. It is believed that this enables the child to learn a skill that will be useful and beneficial to him or her in the future. Thus, the delineating of certain labour by the adult on a child such as going to the farm to work as child abuse, for instance, seems to take cognizance of the cultural belief of adults that indulge a child in such practice.¹⁴⁹The various perceptions of who a child is as enshrined in a multitude of legal provisions and practices raise doubt as to whether the protection and promotion of the rights of the Nigerian child can ever be effectively achieved in the best interest of a child amidst these multi-dimensional approaches to the age range of a child.

Furthermore, while the numerous concepts of the age of a child may be resolved in the court of law for the juvenile criminal responsibility from time to time, this may not avail us the effective protection of the rights in all ramifications. More importantly, there is a clause in the CRC, which states that the definition of a child may be adjusted to accommodate the domestic laws under which a child attains maturity or adulthood at an early age. It appears that this will encourage and permit the local legislation and cultural and religious practices to strive, thus, militating against the best interest of the child. Although, the Child Right Acts 2003 had identified with the international standard best practice for the rights of the child and age 18, religious and socio-cultural practices still constitute bottleneck to practical application.

¹⁴⁹Kolawole, K.O. and La-Kadri, L.A. (n 122)

While from the foregoing, the definition of a child seems yet to be settled in Nigeria, the researcher shall for this study adopt the provisions of section 277 of the Act, that a child is a person below the age of 18 years.

Apart from the legal and administrative complexities, socio-economic problems have been a further worrisome snag to the implementation of the CRA. Socio-economic issues are linked to corruption, weak institutions, poor funding, and inadequate human and material resources. It should also be noted that the right of the child to reside with and be brought up by one's parents may not be feasible in a problematic situation where the family is faced with adverse economic hardship amounting to poverty. Under such circumstances, the child may either be sent to immediate or distant relation as domestic help, child minder, or may be forced to embark on child labour as an alternative source of improving the meagre family income.¹⁵⁰ While it is accepted that poverty is not the only cause of child labour, it remains a significant push factor for many children to work under exploitative conditions.¹⁵¹

4.8.4 Trafficking in Person (Prohibition) Law Enforcement and Administration Act, 2003.

On the 14th of July, 2003, the Federal Government of Nigeria enacted a specific law against human trafficking known as the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 (hereinafter referred to as the NAP TIP Act). The Act established the National Agency for the Prohibition of Trafficking in Person (NAP TIP), to oversee all matters relating to human trafficking and anti-trafficking laws. This law is the initial attempt to develop a national legal framework to combat the menace of human trafficking in Nigeria through legislation.¹⁵² It became the major platform for the efforts of the Nigerian Government against trafficking in persons in the past decade that earned Nigeria a Tier 2 rating in 2014 by the United States of America.

¹⁵⁰Kolawole K.O. and La-Kadri, (n 122)

¹⁵¹K Basu and T Tzannatos, 'The Global Child Labour Problem: What Do We Know And What Can We Do?' (2003)
¹⁷ World Bank Economic Review 166

¹⁵²Olateru-Olagbegi, (n 96) 23

The Anti-trafficking Act 2003 achieved two other goals apart from the establishment of NAPTIP. The first is that it warehoused the eight provisions in the Criminal Code Act Cap 77 (applicable to southern Nigeria) and the eleven provisions in the Penal Code Federal Provisions Act Cap 345 (applicable to Northern Nigeria) that has been gazetted as laws of the Federation (1990), that dealt with various offences in trafficking in women and children for prostitution, sexual exploitation, defilement, slave dealing and forced labour, into the main law. Secondly, the Act created the National Agency for the Prohibition of trafficking in persons, and other Related Matters (NAPTIP) saddled with the responsibilities of prosecuting traffickers, rehabilitating victims, collaborating with other countries agencies on trafficking issues and creating public awareness concerning the menace. Thirdly, it gave legal bite to the quest to prosecute and put behind bars notorious traffickers that had plunged the country into international embarrassment with the unsightly crowd of young girls and women forced into prostitution in Europe and other African countries.¹⁵³ Although the NAPTIP Act is specifically established to oversee matters relating to human trafficking and one of the first such laws in Sub-Saharan Africa, it is not a model, but rather a mixed bag of innovative provisions in some parts and lacuna in others.¹⁵⁴

The Palermo Protocol influenced the drafting of the NAPTIP Act and as can be seen from section 50 that incorporates the universally accepted definition contained in Article 3 of the Palermo Protocol with some slight changes. The Act defines “trafficking” as follows:

“Trafficking includes all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders purchases, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the persons, whether for or not in the involuntary servitude (domestic, sexual, or reproductive), in forced or bonded labour, or in slavery-like conditions”.¹⁵⁵

¹⁵³*Ibid*

¹⁵⁴*Ibid*

¹⁵⁵Section 50, Art 3, Palermo Protocol

This definition goes beyond the Palermo protocol definition in some aspects. The inclusion of the phrase “attempted acts” makes it easier to prosecute offenders who are caught in the act of trafficking without having completed the transaction. The Act also takes a further step in criminalizing commercial carriers who transport potential trafficked victims with knowledge of the trafficking transaction. However, the element of guilt due to expertise may be challenging to prove to obtain conviction of a commercial carrier.¹⁵⁶

Furthermore, the definition includes trafficking transactions involving transportation within and across the Nigerian borders thus, recognizing internal trafficking as well.¹⁵⁷ It is important to note that there are some weaknesses in the definition contained in the NAPTIP Act such as the omission of trafficking for the “removal of body organs” as stated in the UN Protocol and which has limited the application of the law to the extent that people are trafficked for this purpose.¹⁵⁸ Another critical issue is that no sanction for the whole act of ‘trafficking’, however, there are various acts like exportation and importation of persons, harbouring, transportation, etc. The punishments for these acts vary from five, ten or fourteen years with or without the option of fine and even to imprisonment. The deficiency in the NAPTIP Act concerning the protection of victims and witnesses has resulted in difficulty to effectively prosecute offenders as a result of lack of cooperation from victims and witnesses who fear reprisals. For instance, in its first two years of existence, only two cases were successfully prosecuted to conviction under the law despite the numerous of trafficking transactions taking place in Nigeria.¹⁵⁹

The New Anti-Trafficking Act 2015

NAPTIP Act has so far undergone two amendments since its enactment in 2003. It was first amended in 2005 and subsequently in 2015. These amendments were aimed at

¹⁵⁶Olateru-Olagbegi, B. and Ikpeme, A. (n 96) 23

¹⁵⁷*Ibid*

¹⁵⁸*Ibid*

¹⁵⁹ Global Alliance Against Traffic in Women (GAATW), Human Rights Standards for the treatment of Trafficked Persons, 1999

strengthening the Act to adequately and effectively fight child trafficking in Nigeria. In March 2015, the former President Goodluck Jonathan signed into law the new Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015, which repealed the 2003 Act as amended. The new Act has 82 sections, and defines trafficking or trafficking in persons in section 82 as “recruitment, transportation, transfer, harboring and receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power of a position whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery-Like conditions, the removal of organs or generally for exploitative purposes”.¹⁶⁰

It should be noted that in the new Act, the removal of organs has been criminalized unlike in the repealed legislation on human trafficking. In addition, the Act has new provisions on smuggling of migrants as an offence, which is stated in section 82 as “the arranging or assisting a person’s illegal entry into any country of which the person is not a citizen or permanent resident, including Nigeria, either knowing or being reckless as to the fact that the person’s entry is illegal, in order to obtain a financial or other material benefit”.¹⁶¹ The anti-trafficking agency could also deal with such issues like illegal or irregular competence of Nigeria Immigration Service (NIS). Crucially, concerning the operational structure of the agency that is authorized to enforce the provisions of the new law, the Governing Board has been streamlined. Unlike the repealed 2003 law which had a Chairman and two members each from the six geo-political zones of the country recommended by the Minister of Justice to the President, the new 2015 Act in section 3(2) provided for a nine-man team consisting of a knowledgeable Chairman, two representatives of civil society groups and one each from the government Ministries of Justice, Women Affairs, Labour and Productivity, Nigeria Police Force, National Intelligence Agency, Nigeria Immigration Service and National Planning Commission¹⁶².

¹⁶⁰ Trafficking in Persons (Prohibition, Law Enforcement and Administration) Act 2015

¹⁶¹ Section 82 of Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015

¹⁶² Section 3(2) of Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015

Examining the new Act, there is no doubt that the amendment was able to enlarge its scope in the area of investigation, prosecution of human traffickers, treatment of trafficked persons as well as seizure of properties and forfeiture, that were hitherto identified as challenges facing the Act in fighting the menace of child trafficking in Nigeria. Nevertheless, there are still some gaps and weaknesses in the Act which hinders adequate operation of the NAPTIP Act in fighting the threat of child trafficking in Nigeria.¹⁶³ For instance, the operational structure seems very defective. Sadly, the Agency does not have a representative on the Economic and Financial Crimes Commission (EFCC), or Central Bank of Nigeria 'board since trafficking in persons is an international criminal activity in which proceeds are either laundered or repatriated by the traffickers to Nigeria as the home country.¹⁶⁴ Thus, it is for this reality that section 5(n) charged NAPTIP with the responsibility of “adopting measures to identify, trace, freeze, confiscate or seize proceeds, property, funds, or other assets derived from trafficking in persons”.¹⁶⁵ It is also vital to point out that the agency should have a representative of the Federal Ministry of Foreign Affairs in view of the serious functions section 5(J-1 and S) which deal with high-levels governmental diplomacy, international cooperation, joint operations with international organizations and government authorities, implementation of bilateral and multilateral treaties and conventions, as well as extradition and deportation of persons involved in trafficking in persons.¹⁶⁶

Another weakness is that the NAPTIP personnel are not allowed or deployed to Nigeria's border posts and patrols, unlike some other security agencies like police, immigration, customs etc. Again, the NAPTIP Act 2015 expunged the provisions of section 25 of the repealed 2003 law which dealt with the principle of double jeopardy for traffickers convicted abroad. In the old law, a convicted trafficker abroad, on his return to Nigeria

¹⁶³Akpomera, E. and Amoyibo, K.U, International Human Trafficking: Critical Appraisal of Strength and Weaknesses of Nigerian's Legal Framework, (2006) 6 International Journal of Social Sciences, 11-18

¹⁶⁴*Ibid*

¹⁶⁵Section 5(n) Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015

¹⁶⁶Akpomera, E. and Amoyibo, K.U. (n 163) 15

after serving his sentence in the foreign country, was also liable to be tried in Nigeria for bringing the image of Nigeria into disrepute, and on conviction, forfeits his assets to the Federal Government along with serving a term of not exceeding two years in jail.¹⁶⁷ Again, under the NAPTIP Act 2015, the penalties of life imprisonment enshrined in the repealed 2003 law for most offences, have equally been expunged and replaced with prison terms and cash fines. For example, the 2003 law specified life imprisonment without an option of fine for offences that concerns the importation and exportation of persons with intent to force or induce into prostitution or other forms of sexual exploitation in Nigeria or while in transit. However, section 14 of the 2015 Act instead stipulates the penalty of a minimum of five years imprisonment and ₦1 million Naira fine for the same offence.¹⁶⁸

Furthermore, under the 2003 repealed Act, slave dealing which is to keep, purchase, sell, transfer any person for the purpose of treating that person as a slave, as a pledge, in servitude or security for debts or benefits, whether due or to be incurred, as practiced in trafficking in persons, attracted life imprisonment without option of fine. However, for the same offence, section 25(a-c) of the new law 2015 imposes a penalty of a minimum of seven years imprisonment and ₦2million naira fine. Again, unlike the 2003 law, there is no provision on the kidnapping of persons under 18 years or persons of unsound mind from the custody of unlawful guardianship, as well as kidnapping and abduction to commit culpable homicide, in the 2015 law.¹⁶⁹

More so, section 44 subsection 5 stipulates that “any officer of the agency or a duly authorized law enforcement officer who uses such force as may be reasonable necessary for any purpose in accordance with this Act, shall not be liable in any criminal or civil proceedings, for having by use of reasonable force, caused injury or death to any person or damage to, or loss of any property. The provision is silent in defining what constitutes reasonable force and under what circumstances that an official could unleash terror on a suspected trafficker that could lead to death. It would appear therefore that, the provision

¹⁶⁷*Ibid*

¹⁶⁸*Ibid*

¹⁶⁹*Ibid*

gives legal license and shields the agency officials to act above the levels of human decency and abuse rights of suspects. 170

Crucially, the 2015 Act is silent on penalty for severe issues of corruption of officials of government agencies and security services that traffickers compromise in the course of duty. This is important as it will serve as a deterrent to others, and reduce or eliminate the conspiracy to others, and reduce or eradicate the conspiracy of public officers in promoting trafficking in persons for financial gains. The illegal business of trafficking in persons and smuggling of migrants have continued to persist in Nigeria because of the endemic corruption of public officers. Sadly, the syndicate operates within a fluid network of corrupt personnel in public service.171

The Nexus between Child Trafficking and Child Labour

Child labour and abuse have become synonymous with child trafficking. Thus, child trafficking is seen as one of the worst forms of child labour by United Nations standards.172 Child trafficking is a serious crime under international law that is recognized as a distinct and severe violation of children's rights treaties dating back to the 1956 United Nations Convention on the abolition of slavery, slave trading, and institutions and practice similar to slavery.173

It is essential to point out that among the contemporary forms of human trafficking, trafficking for labour exploitation seems to be the most prominent form in West Africa. Although not all child labourers in West Africa, Nigeria inclusive, are supplied through human trafficking, the majority of them are indeed recruited through trafficking. Importantly, most child labourers migrate to wealthier West African countries to seek for

170 *Ibid*

171 *Ibid*

172 V.E Kalu, 'Child Trafficking, Abuse and Labour: Legal and Policy Implications for Africa' (2003) 1 Benin Journal of Public Law 71

173 *Ibid*

work. They usually migrate with their families. On this specific issue, the International Labour Organization (ILO) state that:

“Migrants may come from a different part of a country or be foreign workers. Where ever they come from, migrant workers are always heavily disadvantaged regarding pay, social protection, housing and medical protection. The migrant labour force often consists of whole families, although only the head of the family is formally employed. In many countries, children of migrant and seasonal workers work next to their parent but do not figure on the payroll. As much work is paid on a piece-rate basis, migrant and seasonal workers need their children to work in order to achieve a living wage”.¹⁷⁴

Similarly, in 2003, ILO reported that an estimated 660,000 children fell prey to trafficking rings or are subjected to hard labour in Cameroon alone. Children become victims after their desperately poor parents forsake them for payment ranging from 10,000 CFA Francs to 15,000 CFA Francs, to agents who promise to educate them and get them jobs to earn a living. These helpless children eventually end up working for exploitative farmers in Gabon, Cameroon, Nigeria and Ivory Coast. Initially, they are given paltry sums of money, then end up as slaves, forced to pay for their food and lodging or to go unpaid.¹⁷⁵ The labour force in cocoa farms in Cote d’Ivoire and other parts of the sub-region is enormous and mostly supplied by traffickers. Thus, to keep increasing the labour force on cocoa farms, children are trafficked from neighbouring countries in the ECOWAS region. The aspect of demand here is crucial in the debate about the displacement of children across the ECOWAS region.²⁰ The US Department of State reported that:

“Cote d’Ivoire is primarily a destination for children trafficked to labour as plantation and other agricultural labourers, as mine workers, and as domestic servants, under conditions in some cases approaching involuntary servitude. Foreign nationals are trafficked from neighboring countries, primarily Mali and Burkina Faso, but also Benin, Togo, Guinea, Ghana and Nigeria. An age-old pattern of child

¹⁷⁴ ILO/IPEC ‘Tackling Hazardous Child Labour in Agriculture, Guidance on Policy and Practice (Guidebook 2, International Training Centre of the ILO, Turin 2006) 4. Available at <http://www.ilo.org> accessed 23 June 2020

¹⁷⁵Kalu, ‘Child Trafficking, Abuse and Labour: Legal and Policy Implications for Africa’, (n 172) 71 -76

migration in search of a better life has been perverted in relatively recent times by intermediaries who “buy” children from families and then place them in jobs where they are often threatened, mistreated, and not free to leave”.¹⁷⁶

As most of these families, including children, migrate for economic reasons, children are sent to farms, quarries, workshops and other activities where they can gain economically. The truth, therefore, is that they chose to send them to work instead of sending them to school. Child trafficking serves as the most crucial supply vehicle for child labour in the West African sub-region, including Nigeria. One of the general observations about the nexus between child trafficking and child labour is that trafficked persons typically incur what is known as debt bondage. They are initially told that they must work to pay off the debt of the transport cost but have no idea how much the debt is, how much to earn, or how long they must work to pay it off. Thus, these children undergo extensive exploitation working in farms and plantations in the sub-region.¹⁷⁷

Crucially, because of lack of mechanized agriculture in most developing countries, alternative means such as manual work and the use of traditional tools are prevalent. This method of farming is the most utilized in cocoa plantations, coffee plantations or palm plantations in Cote d’Ivoire, Ghana, Nigeria and other West African countries.

Trafficked child labourers are preferred to adult labourers for numerous reasons. One of the primary reasons is that trafficked labourers usually have to work without a contract, and they have no time off, no insurance, nor access to health or social security services or pay, and often work excessively long hours. More importantly, on farms and other hazardous occupations employers or users exploit the ignorance of children about risks.¹⁷⁸ Thus, the ILO observes that due to lack of information and experience, children engaged

¹⁷⁶US Department of State Report. Available at <http://www.state.gov/j/tip/tiprpt/2002/10679.htm#cotedivore> accessed on 25 March 2020.

¹⁷⁷Diriwari, W.O, Efficacy of the Legal Frameworks for Child Protection in Nigeria. (Unpublished Thesis) Brunel University London (2016) 119

¹⁷⁸*Ibid*

in work do not always perceive danger correctly.¹⁷⁹ In most cases, they lack enough knowledge to judge a situation, anticipate what will happen and decide what is to be done. They are less likely to know what to do when accidents occur and are not familiar with the machines, tools and equipment they are expected to use.

In addition, while adult workers will be prone to put claim to their labour rights, demand for regular salary and other advantages, children will remain voiceless and powerless.¹⁸⁰ The plight and helpless situation of trafficked children can be better explained and understood through the ordeal of adult victim of trafficking experienced during the whole process. In that respect, Gueraldi observes that:

“Unlike the victim of smuggling, who, in general, becomes an illegal worker, even openly competing in labour markets abroad for the low cost service offered, the trafficked person becomes invisible, reappearing only in list of the expelled and deported. This invisibility is maintained by a number of factors. The victims are tied to criminal networks that exploit them by force, which prevents them from denouncing their oppressors to local authorities and asking for help from their consulates”.¹⁸¹

Indeed the hardship in manual work, the dangerous nature of some jobs, the lack of social security, the lack of career prospect in agricultural areas and other informal areas, actually discourage most adults. Hence, these desperate farm owners, quarry managers, workshops managers, etc, resort to employing children labour to keep their business up and running.¹⁸²

Sadly, modern traffickers treat children as commodities to abuse, sell and move across borders like illegal drugs or stolen weapons. In some cases in the West African sub-region,

¹⁷⁹ ILO/IPEC, Tackling Hazardous Child Labour in Agriculture, Guidance on Policy and Practice (International Training Centre of the ILO, Turin 2006) available at <http://www.ilo.org> accessed 3 February 2019

¹⁸⁰Diriwari W.O. note (177) 123.

¹⁸¹ G. Michelle, 'Human Trafficking and Challenges to States Compliance with International Human Rights Law' (2013) 25 The case of Brazil 165

¹⁸²Diriwari, W.O, (n 177) 123.

small children are moved across international borders in cargo sacks, overloaded trucks and boats in treacherous waters. More so, recent oral interview with an NGO official in the AkwaIbom State of Nigeria reveals that traffickers in some cases throw children overboard in the high seas when chased by law enforcement agents to destroy the evidence. However, if they successfully arrive at their destination, they are put to work in various settings, including hazardous and dangerous places.¹⁸³

From the foregoing, it is clear that there is a substantial nexus between child trafficking and child labour. It is also glaring that human trafficking is a violation of the fundamental rights of trafficked persons to human dignity. These helpless children are treated as commodities which are regularly abused and subjected to the inhuman conditions by force, threats and deceit.

Findings have shown that the Nigerian Government has made laudable effort towards fighting child labour through enactment of laws, strengthening the legislative frameworks as well as putting several administrative policies in place. However, because of corruption, poor funding and other related deficiencies, these measures have achieved very little as the traffickers capitalize on those loopholes and weaknesses of the laws and rather come up with more technical ideas and of course new forms of trafficking.

It is therefore imperative for the law to address these weaknesses and challenges, and make possible reform where necessary.

4.8.5 International Labour Organisation (ILO) and the Core Labour Standards

International Labour Organization (ILO) is a specialized agency saddled with the responsibility of promoting social justice and internationally recognized labour rights.¹⁸⁴ It is a tripartite body found in 1919, bringing together governments, employers' and workers' organizations.¹⁸⁵ It is devoted to advancing opportunities for women and men to

¹⁸³Kalu, 'Child Trafficking, Abuse and Labour: Legal and Policy Implications for Africa', (n 172) 39

¹⁸⁴ Mini Action Guide: Child Labour by the International Trade Union Confederation. June 2008 available at <http://issuu.com/ituc/docs/guide> accessed on 10 March 2019

¹⁸⁵*ibid*

obtain decent and productive work in conditions of freedom, equity, security and human dignity.¹⁸⁶ Their major aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues. Indeed, ILO adopts conventions that become binding international treaties after their ratification by the member states. National governments and employers' and workers' organizations agree on internationally relevant minimum standards at work. International labour standards are an illustration of these international tripartite agreements.¹⁸⁷

Based on the ratification of conventions, the ILO has a system of supervision and reporting to ensure that member states respect the international labour standards. Besides, parties can bring complaints on standard violations to the ILO.¹⁸⁸ Between 1919 and 1932 the ILO created five areas Specific Minimum Age Convention: Industry (1999),¹⁸⁹ Sea (1920),¹⁹⁰ Agriculture (1921),¹⁹¹ Trimmers and Stockers (1921)¹⁹² and Non-Industrial Employment (1932).¹⁹³

Furthermore, The ILO declared eight of its conventions as fundamental to workers' rights worldwide:¹⁹⁴

1. Convention 29-forced labour Convention, 1930

¹⁸⁶*Ibid*

¹⁸⁷*Ibid*

¹⁸⁸*Ibid*

¹⁸⁹ Convention fixing Minimum Age for admission of Children to Industrial Employment (ILO No.5) available at <http://ilolex.ch:1567public/english/doc>

¹⁹⁰Convention Concerning the Age of Children to Employment in Agriculture, (ILO No. 10) Adopted 16 Nov.1921 (Entered into force 31 August 1923) available at ILOLEX

¹⁹¹ *Ibid*

¹⁹² Convention Concerning the Age of Children to Employment in Agriculture, (ILO No. 15) Adopted 11 Nov.1921 (Entered into force 20 November 1922) available at ILOLEX

¹⁹³Convention Concerning the Age of Admission of Children to Non-Industrial Employment, (ILO No. 33), Adopted 30 April 1932. Available on ILOLEX, vol 33

¹⁹⁴See ILO website available at <http://www.dol.gov/dol/ilab/public/programme> accessed 24 November 2019

2. Convention 87-Freedom of Association and Protection of the Right to Organize Convention, 1948
3. Convention 98-Right to Organize and Collective Bargaining Convention, 1949
4. Convention 100- Equal Remuneration Convention, 1951
5. Convention 105-Abolition of Forced Labour Convention, 1957
6. Convention 111-Discrimination (Employment and Occupation) Convention, 1958
7. Convention 138-Minimum Age Convention, 1973
8. Convention 182-Worst Forms of Child Labour Convention, 1999.

These Conventions safeguard workers' rights as a condition for a society where social justice and social peace can be secured. The ILO Conventions and Recommendations are one of the most essential tools available in the fight against child labour. The most recent and comprehensive ILO standards on child labour are the Minimum Age Convention, 1973 (No.138),¹⁹⁵ and its accompanying Recommendation (No.146) and the Worst Forms of Child Labour Convention, 1999 (No.182) and its accompanying Recommendation (No.190).¹⁹⁶

The Critique of the ILO

Some critics raise doubt concerning the ILO's effectiveness because it has no sanctions at its disposal to safeguard compliance with the standards. Another shortcoming is the fact that ratification is voluntary. It is most likely that if conventions are ratified only by countries which meet the standard required in the convention, then ratification does nothing else but confirms the status quo.¹⁹⁷ Considering the focus of this study, it is proposed to assess and critique ILO's convention 138 and 182 respectively.

Convention 138 of the Minimum Age Convention

The 1973 Minimum Age Convention (Convention No.138) provides a broad policy framework and necessary policy measures to prevent and eliminate child labour. The

¹⁹⁵Minimum Age Convention 138 of 1973

¹⁹⁶Worst Form of Child Labour Convention 182 of 1999

¹⁹⁷Boockmann Bernhard, *The Effect of ILO Minimum Age Conventions on Child Labour and School Attendance. Discussion Paper, No 4-52*

purpose of the Convention, among others was the total abolition of child labour and progressive increases in minimum age standards.¹⁹⁸ Thus, Article 1 of the Convention sets out its purposes, which include is to encourage member states to ¹⁹⁹ undertake to pursue national policy is designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to work to a level consistent with the fullest physical and mental development.

It is important to note that this Article only encourages member states to draft legislation that abolishes child labour, but it does not define what child labour is in the Article or anywhere else in the Convention. Thus, it is very challenging for member states to eliminate or abolish child labour if they are not aware of the kind of work or practices they are targeting to abolish. The effect of this is that the definition of child labour will differ from country to country, thus hindering the universal implementation of the Convention.²⁰⁰ For instance, some cultures encourage children to work to support their families, developing a skill or trade that will assist them in the future. Member states, therefore, may define child labour in a less formal way than other countries, thus causing differences in the general implementation of the Convention.²⁰¹ In addition, Article 1 does not impose an obligation to take any specific measures beyond the drafting of legislation to ensure the effective abolition of child labour. It seems that to comply with the obligations established by the Convention, it would be sufficient to establish the required minimum age without engaging in other activities aimed at abolishing child labour. Unfortunately, the Convention does not provide much guidance as to what ought to be the form or content of any policy which is directed towards the attainment of its objectives.²⁰²

¹⁹⁸Article 1 of Convention 138 of 1973

¹⁹⁹Article 1 of Convention 138 of 1973

²⁰⁰D.M Smolin, 'Strategic Choices in the International Campaign Against Child Labour' (2000) 22 Human Rights Quarterly 942

²⁰¹R. A Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999' (2013) 16 Potchefstroom Electronic Law Journal 121

²⁰²*Ibid*

In addition, child labour is a complex problem that requires more than a simple legislative provision to abolish.²⁰³ It is asserted that one reason why legislation can fail to achieve the objective of reducing or eliminating child labour is that it often applies only to specific activities. It was argued that even if legislation were to cover the entire economy, it might not be enforced equally in all sectors, such as in domestic services or production, agriculture, and illegal employment activities and would, thus, prevent the effective implementation of the Convention.²⁰⁴

Again, Article 2(1) of this Convention states that:

“Each member who ratifies this Convention shall specify in a declaration appended to its ratification a minimum age for admission to employment or work within its territory...no one under that age shall be admitted to employment or work in any occupation”.²⁰⁵

This Convention places a positive duty on member states to specify a minimum age for employment in any occupation or sector.²⁰⁶ This Article refers to all labour performed by children whether or not it is performed under a contract of employment or while a child is self-employed is subject to the terms of the convention. However, it is not always easy to monitor the implementation of such legislation as many children work within informal sectors and domestic households.

Moreover, age is another major determining factor of when a child can be engaged in any work or employment. This provision is very problematic because in many African cultures, children of all ages are required to participate in some form of work to prepare them for the future. Nevertheless, it is suggested that the minimum age for work or employment should not be less than the age of completion of compulsory schooling, and of course, not

²⁰³*Ibid*

²⁰⁴B Boockmann, *The effect of ILO Minimum age Conventions on Child Labour and School Attendance: Evidence from Aggregate and Individual-Level Data 2009 World Development*, 678-692

²⁰⁵Article 2(1) of Convention 138 of 1973.

²⁰⁶*Ibid*

less than 15 years.²⁰⁷ The implication, therefore, is that the employment of children below the age of fifteen is illegal.

Furthermore, article 2(4) provides an exception for countries whose economy and educational facilities are not sufficiently developed.²⁰⁸ Such a member state may initially specify a minimum age of fourteen years after adequate consultation with the organizations of the employers and workers concerned.²⁰⁹ This particular provision has been praised for its so-called flexibility in attempting to consider countries whose economy and educational facilities are insufficiently developed. However, the provision includes the word “initially” which shows that the ILO expects member states eventually to increase the minimum age of employment. Unfortunately it does not indicate what factors ought to be considered in ultimately increasing the minimum age.²¹⁰

Article 3(1) states:

“The minimum age for admission to any type of employment or work which is by nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years”.²¹¹

Creighton argues that the primary purpose of this provision is to protect young persons against exposure to hazardous work before they can form the judgment necessary to undertake such work in safety. Employment of children before they have acquired the essential mental facility presents a danger not only to themselves but also to fellow workers. Unfortunately, this provision appears to be vague as it does not adequately describe or give examples of what kind of work fall within this category. Thus, to supplement Convention 138, the ILO established the Minimum Age Recommendation (63)

²⁰⁷T .C Nhenga-Chakarisa, 'Who Does the Law Seek to Protect and from What? The Application of International Law on Child Labour in African Context' (2010) 10 African Human Rights Law Journal 161

²⁰⁸Article 2(4) of Convention 138 of 1973

²⁰⁹*Ibid*

²¹⁰Mavunga, R.A. (n 201) 121-168

²¹¹Article 3 of Convention 138 of 1973

which is, sadly, a non-binding instrument. With respect of Article 10 of the Recommendation, member states are required to take into account work concerning dangerous substances, agents, or processes, the lifting of heavy weights and underground work.⁹ The Recommendation provides relevant guidance of some of the types of work to consider when determining if work is hazardous.

However, the Recommendation is not a legally binding instrument, and member states are therefore not obliged to comply with its provisions. Member states are therefore left in a position of determining this type of work without much help from the Convention.

Article 3(2) states that the types of work referred to in Article 3(1) are to be determined by national laws and regulations after due consultation with organizations of employers and workers. This Article, invariably, allows member states to assess the issues that may directly affect them. However, the convention does not give the member states guidelines relative to what factors they should consider in deciding whether or not such work is likely to cause harm.

Article 3(3) states that:

“Notwithstanding the provisions of Article 3(1), national laws or regulations or the competent authority may after consultation with the organizations or employers and workers concerned, authorize employment or work as from the age of 16 years on the condition that the health, safety and morals of the young person’s concerned are fully protected. Also, that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity”.

This Article encourages member states to permit children above the age of sixteen years to participate in work or employment so long as the children are fully protected and have acquired adequate instruction and vocational training to undertake such work. In line with this, the article is commended for its flexibility in allowing children above the age of sixteen years to be able to engage in such work. The condition of adequate instruction and vocational training is also commendable as it tends to protect these children from potential harm.

Article 4 allows the competent state authority after consultation with employers and workers, to exclude from the application of the Convention limited categories of employment or work in respect of which distinct and substantial problems of application arise.²¹² However, this provision is very comprehensive as there is no specification within the Convention as to which categories might be excluded.²¹³ It is argued that omission was intentional in order to allow the national authority a wide measure of discretion to apply the Convention appropriately to its national profile. Some of the possible exclusions mentioned during the preparatory steps were employment in family undertaking, domestic service in private households, homework and other work outside the supervision or control of the employer.²¹⁴ However, these forms of work are complicated to monitor due to their invisibility even though they are forms of work in which children are exploited. Unfortunately, it is challenging to implement this provision since there is insufficient detail on which member states can rely if they wish to conform to such provisions. This could create a serious confusion that may give Member States justification in abstaining from making the required list.²¹⁵

Article 4(2) states that:

“Each member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the constitution of the ILO any category which may have been excluded in pursuance of Article 4(1) giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been give or is proposed to be given to the convention in respect of such categories”.²¹⁶

²¹²Article 4 of the Minimum Age Convention 1973

²¹³ Buck, *International Child Law*, (n 42)

²¹⁴*Ibid*

²¹⁵Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999', (n 201) 121-168

²¹⁶Article 4 (2) of the Minimum Age Convention 138 of 1973

It was argued that the fact that Member states are required to list exclusions in the report is a sign that this particular provision is rigid.²¹⁷ Member states are expected to list exclusions in the first national report which is delivered in the first year of ratification of the convention. Member states must, therefore, determine and decide upon the possible exceptions in a concise period.²¹⁸ After the submission of the first national report, it would appear that member states can no longer modify the list of exceptions or provide one if no exceptions were included in the first report. The implications are that member states, having ratified the Convention, cannot adapt their regulations to suit socio-cultural and economic changes that might occur over the years.²¹⁹ It is therefore suggested that member states be given adequate time to apply this article accordingly.

Under Article 5(1), member states whose economy and administrative facilities are insufficiently developed may initially limit the scope of application of this Convention.²²⁰ A concession is given to the less developed countries by permitting the limitation of the Convention. The member states that adhere to this provision are required to declare the aspect of economic activity or types of undertakings to which they will apply the provisions of the Convention.²²¹ It is argued that this clause is problematic since it does not clearly describe the sector that can be excluded from the scope of the Convention.

Article 5(3) clearly stipulates that the Convention will apply to the following sectors: Economic activity in mining, quarrying, manufacturing, construction, electricity, gas, water and sanitary services, transport, storage and communications, and plantations and other agricultural undertakings mainly producing for commercial purposes but excluding

²¹⁷Borzaga, 'Limiting the Minimum Age : Convention 138 and the Origin of the ILO's Action in the Field of Child Labour' in M Pertile, G Nessi and L Nogler (eds), *Child Labour in a Globalised World: A Legal Analysis of ILO Action* (Ashgate 2008), 39-64

²¹⁸*Ibid*

²¹⁹*Ibid*

²²⁰Article 5 (1) of the Minimum Age Convention 138 of 1973

²²¹*Ibid*

family and small scale holdings producing for local consumption and not regularly employing hired workers.²²²

It is important to note that the Convention does not adequately describe the complexities of the agricultural sector. Agriculture is considered as one of the most important economic activities in most developing countries, and as such, the incidence of child labour is very prevalent in that sector. The provision states that the Convention applies to plantations and agricultural undertakings functioning primarily for commercial purposes, but children working on family holdings and small-scale holdings producing crops for local consumption and not regularly employing hired workers seem to be excluded from the application of the Convention.²²³ This provision tends to create confusion.²²⁴ Judging from the interpretation of this Convention, a child below the age of fifteen years involved in agricultural work for his or her household, even if the child is subjected to poor working conditions and for long hours, is not protected by the Convention.²²⁵

Confusion and misunderstanding have been created due to the poor drafting of the Convention. Large scale agriculture depends on hired workers who receive wages for their work, thereby making it part of the formal sector. However, family-based work is regulated by the internal family management, which makes it difficult for the government to regulate. It is no gainsaying that this exclusion does not work for the best interest of the child, as it does not protect the child from exploitative labour from such sectors. Sadly, employers could take advantage of such non-regulation and exploit and abuse children in those excluded or unregulated sectors.²²⁶

²²²Article 5 (3) of the Minimum Age Convention 137 of 1973

²²³Borzaga, M. (n 217) 39-64

²²⁴Article 5 (3) of the Minimum Age Convention 137 of 1873

²²⁵Mavunga, R.A. (n 201) 121-168

²²⁶*Ibid*

Article 6 provides for an exception to the application of ILO Convention No.138 of Minimum Age to the effect that it does not apply to work done by children and young persons in schools or other vocational or training institutions. 227 This provision is commended for its flexibility in providing children with the chance of learning through work. However, care must be taken in order that a training relationship should not be used as a ploy to enable an employer to put children to work before the legal minimum age.228 In line with this, the ILO Recommendation No. 146 provides that measures should be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training within undertakings, training institutions and schools for vocational or technical education and to create standards for their protection and development.229

Article 7 provides that Member states through their national laws can permit children between the age of 13 and 15 to undertake 'light work' on two conditions. One of such conditions is that the work should not be likely to be harmful to their health or development and should not prejudice their attendance at school, their participation in vocational orientation or training programmes or their capacity to benefit from the instruction received.230 Member States, through the national laws may also authorize the employment of persons who are at least 15 years old but have not completed their compulsory schooling. Developing countries are given further concessions to the general rule on light work by allowing them to specify 12 instead of 13 years and 14 instead of 15 years.231 However, there is a lack of clarity or definition of what qualifies as light work.232 The lack of definition and clarity could afford member states some form of flexibility in dealing with

227 Article 6 of the Minimum Age Convention 138 of 1973

228 Buck, *International Child Law*, (n 42)

229 Recommendations No.146, para. 12 (2)

230 Article 7 of the Minimum Age Convention 138 of 1973

231 *Ibid*

232 Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999', (n 201) 121-168

situations that are unique to themselves. Such definition may be influenced by environmental, cultural, social, political and economic circumstances. The absence of clarity may, however, lead to confusion and a general misunderstanding of the concept. This Article does not provide any operational guidance for assessing what work qualifies as light work.²³³

Article 8 provides a general concession to the prohibition of work or employment for children below the declared minimum age under article 2, for artistic performances. This provision places a duty on the competent authority to grant permits, and such permit must limit the number of hours during which employment or work is allowed, and prescribed the conditions under which it is allowed.²³⁴ No minimum age is laid down in the Convention for this type of work.²³⁵

The importance of Convention 138 and Recommendation 146 lies in the fact that, in them, the ILO recognized that minimum age legislation needed to be part of a comprehensive national policy aimed at abolishing child labour. However, it has been argued that its provisions are too complicated. Clear evidence is the fact that the regulatory provisions of the Convention are designed to simultaneously provide flexibility for developing nations while allowing for the progressive raising of national standards.

At this point, one can conclude that the issue of minimum age in Nigeria may be problematic as minimum age in Nigeria is not uniform due to the way the Nigerian legal system is structured. For instance, in some states in the northern part of Nigeria, the age of marriage for girls has been controversial and has generated a lot of debates in the National Assembly, in particular, and the society in general. Even where the CRA 2003 put the minimum age for a girl to be legally married at 18, the minimum age stipulated by the CRA is not binding on some states due to non-domestication of the CRC.

²³³*Ibid*

²³⁴Article 8 of the Minimum Age Convention 138 of 1973

²³⁵L Sweptson, 'Its Regulation by ILO Standards and National Legislation' (1982) *International Labour Review* 577

The fight against child labour has moved towards an approach of prioritization of goal through targeting the ‘worst’ forms of child labour. This new area includes criminal matters such as prostitution, pornography, drug trafficking and issue of minimum age limit for military service. These issues are included in the Convention on the Worst Forms of Child Labour, Convention 182 that will be discussed in the next subsection.

Worst Forms of Child Labour Convention 182 of 1999

The Worst Forms of Child Labour Convention 182, which was adopted on 17 June 1999 marks a significant shift in the international campaign against child labour, with the ILO acknowledging the impossibility of abolishing all forms of child labour at one go and therefore refocusing on certain specific forms of child labour.

Article 1 stipulates that: Each Member State which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.²³⁶

From the literary interpretation of this provision, it shows that there is an urgent need to eliminate the worst forms of child labour.²³⁷ The terms “immediate” and “effective measures” and as a matter of urgency are indicative of the need to make the worst forms of child labour a priority for elimination.²³⁸ However, it seems that current international campaigns tend to focus their attention more on the worst forms of child labour, while on the other hand, there seems to be a neglect of other forms of child work, such as the so called light work of children. Child work is prevalent in many African countries, where culture and tradition plays a major role. While it is accepted that worst forms of child labour need to be eliminated urgently, but other forms of light work should not be neglected but

²³⁶Article 1 of Worst Form of Child Labour Convention 182 of 1999

²³⁷ E.V Estacio, 'Child Labour and the International Labour Organizations Convention 182: A Critical Perspective' (2005) 10 Journal of Health Psychology 475

²³⁸Y Ngochi, '20 Years of Convention on the Rights of the Child and International Action against Child Labour' (2002) 18 International Journal of Children's Rights 515

rather revisited.²³⁹ It should also be noted that not all the countries ratifying the Convention have the resources to implement its requirement ‘urgently and effectively’. It is doubtful whether Nigeria can meet these requirements considering her present precarious economic situation.

Article 2

Concerning Article 2, the Convention applies to all persons under the age of 18 years.²⁴⁰ However, this does not imply a comprehensive ban on work for all lower than 18 years.²⁴¹ Importantly, such work is legitimate provided it does not fall foul of the criteria defining the worst forms of child labour. It is noteworthy that the ILO Convention No.182 does not make an exception to the 18 years limit. Besides, not all countries have an adequate system of birth registration. ²⁴²

Article 3 of the ILO Convention No.182 defines the meaning of worst forms of child labour which, comprises:

- (a) “All forms of slavery, or practices similar to slavery, such as the sale and trafficking of children, debt bondage and selfdom and forced or compulsory labour including forced or compulsory recruitment of children for use in armed conflict”;
- (b) “The use, procuring, or offering of a child for prostitution for the production of pornography or for pornographic performance”;
- (c) “The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties”, and,
- (d) “Work done which, by its nature or the circumstances in which it is carried out, it likely to harm the health, safety or morals of children”.

²³⁹Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999', (n 201) 121-168

²⁴⁰Article 2 of the Worst Forms of Child Labour Convention 182 of 1999

²⁴¹ Buck, *International Child Law*, (n 42)Buck, T. (n 42)

²⁴²*Ibid*

The first three categories (article 3) (a-c) are termed “unconditional” worst forms of child labour. They are termed ‘unconditional’ as improving the working conditions would never make them legitimate.²⁴³

On the contrary, the work described in article 3(d) is always referred to as hazardous work, or a conditional worst form of child labour. The condition of this nature of work can be improved by altering the conditions under which such work is performed. This can be illustrated with a child working in a factory using machinery without safety guards. This tends to harm the health or safety of such child. Thus, the fitting of a protective device to that machine would make such work non-hazardous, and this activity would subsequently cease to fall under the worst forms of child labour as defined by this Article.²⁴⁴

It is important to note that the wordings of article 3(d) of 138 are similar. However, there are slight differences. One of the major striking differences between Convention 182 and Convention 138 is that Convention 138 mentions specific industries, such as mining, quarrying, manufacturing, construction, electricity, gas and water. On the other hand, Convention 182 refers in general terms to slavery, trafficking, forced/compulsory military recruitment, child prostitution, and drug trafficking. Whereas Convention 138 categorizes industries that are not illegal, Convention 182 categorizes activities that are illegal and constitute criminal activity in nearly every country. However, it is not always easy to root out such work, especially, children working in home-based and other informal sectors of the economy since it is not always visible. Due to of the illegal nature of the trade, it can hardly be expected that standard labour practices could have any effect in this area.²⁴⁵

Another argument is that child pornography or prostitution is more of a criminal than labour matter which makes it very difficult for the labour movement to effectively

²⁴³Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999', (n 20) 121-168

²⁴⁴*Ibid*

²⁴⁵*Ibid*

eliminate these crimes. In the same vein, the cost associated with inspecting and monitoring work places may also be prohibitive for most developing countries.²⁴⁶

Furthermore, it was argued that Convention 182 has ventured into an area where there is a lack of experience and those who enforce such instruments such as labour inspectors, lack jurisdiction in military matters let alone control over acts of armed rebels or combatants in a civil war. Although ILO Convention 182 appears to have gone beyond Convention 138 and has been widely accepted, its practical implementation is extremely complex and difficult in a country like Nigeria where the labour law sector is neither sophisticated nor adequately equipped to handle such criminal matters.²⁴⁷

Article 4 states that: 248

1. “The types of work referred to under Article 3 (d) shall be determined by national laws or regulations by the competent authority after consultation with the organizations of employers and workers concerned taking into consideration relevant labour standards in particular paragraphs 3 and 4 of the worst forms of child labour recommendation 1999”.
2. “The competent authority after consultation with the organizations of employers and workers concerned shall identify where the types of work so determined”.
3. “The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary in consultation with the organizations of employers and workers concerned”.

This Convention encourages the determination of hazardous work at the national level. Thus, member states will take into account issues that are unique to them, and the definition of hazardous work will, therefore, differ from country to country. However, this provision refers only to worker and employer organizations but does not take into consideration the

²⁴⁶*ibid*

²⁴⁷*ibid*

²⁴⁸ILO Convention No. 182 Article 4

possibility of the involvement of other role players and non-governmental organizations which could positively influence such consultations. The fact that the majority of the worst forms of child labour are crimes, consultation with law enforcement organs, including the police could be necessary. There is need to ensure up-to-date policies by revising them periodically.

Article 5 stipulates that each member state should establish or designate appropriate mechanisms to monitor the effective implementation of the provisions, thereby giving effect to the Convention.²⁴⁹ Crucially, article 5 is very critical for the success of this Convention since the implementation is very important for the elimination of child labour.²⁵⁰ However, it is argued that such a mechanism could have financial implications for countries with minimal resources.²⁵¹

Article 6 states that:

1. “Each member state shall design and implement programmes of action to eliminate as a priority the worst forms of child labour”.²⁵²
2. “Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers’ and workers’ organizations taking into consideration the views of other concerned groups as appropriate”.²⁵³

Importantly, Convention 182 is commended for going beyond a simple prohibition of child labour”.²⁵⁴ Rather, it demands a comprehensive and integrated approach so that it can

²⁴⁹Article 5 of the ILO Convention 182 of 1999

²⁵⁰ M Davidson, 'The International Labour Organization's Latest Campaign To End Child Labour: 'Will it Succeed Where Others Have Failed?' (2011) 11 *Transnational Law and Contemporary Problems* 23

²⁵¹Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999', (n 201) 121-168 Mavunga R.A. (n 201) 121-168

²⁵²Article 6(1) of the ILO Convention 182 of 1999

²⁵³Article 6(2) of the ILO Convention 182 of 1999

²⁵⁴Ngochi, Y. (n 238) 515-534

break the vicious cycle of poverty, social inequality, and child labour.²⁵⁵ Governments are also required to collaborate not only with worker or employer organizations but also with other concerned groups. Convention 138 does not take into account other groups such as NGOs, however, the wording of Convention 182, and especially the wording of this provision suggests that other appropriate groups can be included.²⁵⁶ Some critics argue that sadly children are often given a passive role in such consultations.²⁵⁷

Article 7 stipulates that:

1. “Each member state shall take all necessary measures to the provisions giving effect to this convention including the provision and application of penal sanctions or, as appropriate, sanctions”.²⁵⁸
2. “Each member state shall, taking into account the importance of education in eliminating child labour, take effective and time bound measures to:
 - a. Prevent the engagement of children in the worst forms of child labour”,
 - b. “Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and their rehabilitation of social integration”.
 - c. “Ensure access to free and basic education and whatever possible and appropriate vocational training for all children removed from the worst forms of child labour”.
 - d. Identify and reach out to children as special risk
 - e. Take into account the special situation of girls²⁵⁹

There is no doubt that penal sanction could serve as a deterrent to potential offenders of child labour. However, the Convention does not provide a guideline as to what would be an appropriate sanction for child labour offence, discretion is rather given to member states.

²⁵⁵*Ibid*

²⁵⁶Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999', (201) 121-168

²⁵⁷Estacio, 'Child Labour and the International Labour Organizations Convention 182: A Critical Perspective', (n 237) 475-484

²⁵⁸Article 7(1) of the ILO Convention 182

²⁵⁹Article 72 (a-e) of the ILO Convention 182 of 1999

For instance, it is not specific or clear on how harsh a penalty should be for engaging a child in work that is hazardous.

Education is also seen as a crucial tool in eliminating child labour. For instance, compulsory education could reduce child labour as it is easier to monitor school attendance than it is to monitor children in a workplace.

Article 8 States that:

Members shall take appropriate steps to assist one another in giving effect to the provision of this Convention through enhanced international cooperation and or assistance including support for social and economic development, poverty eradication programme and universal education.²⁶⁰ This provision implies that the Convention encourages member states to assist one another in the elimination of child labour.

However, Convention 182 has been criticized for concentrating on major criminal actions, even though ILO has very little competence in criminal justice systems.²⁶¹ It was further argued that the mere fact that the ILO deals with the tripartite relationship between the employer, the government and the employees shows that its concern is mainly in the labour arena. Besides, it could be asserted that instead of ILO to consider the possibility of tolerable child work, the ILO concentrated on criminal matters, thereby encroaching on an area that it lacks experience and capacity.²⁶²

As seen above, effective and immediate implementation of Convention 182 will be difficult to achieve given the lack of skilled personnel, corruption, inadequate funding and poor facilities in Nigeria. More so, many Nigerians are living in abject poverty. Keeping children out of the workforce without poverty alleviation programmes and providing children with free and quality education may not be a very productive approach towards effective implementation of Convention 182.

²⁶⁰Article 8 of the ILO 182 (1999)

²⁶¹Smolin, 'Strategic Choices in the International Campaign Against Child Labour'

²⁶²Mavuga, 'Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999', (n 201) 121-168

4.9 Conclusion

This chapter has examined various legal and policy frameworks prohibiting child labour and protecting children from various forms of human rights violations and abuse in Nigeria. The prohibition of child labour is contained in numerous provisions at national, regional and international level including CRA 2003, African Children's Charter, UNCRC, UN and ILO conventions and declarations among others.

From the foregoing, it is submitted that states including Nigeria not, only have an obligation to refrain from exploiting children but also to protect them from violations committed by the third party. The study has shown that Nigeria has made a frantic effort towards fighting child labour through the enactment of laws and putting various administrative policies in place. However, it seems that the laws and measures are inadequate and have so far achieved very little. The evidence of this fact being that despite these various laws and administrative policies, child labour has progressively increased in Nigeria.

CHAPTER 5

ASSESSMENT OF THE EFFECTIVENESS OF THE UNCRC, THE ILO CONVENTIONS AND LAWS AND POLICIES RELATING TO CHILD RIGHTS IN NIGERIA

5.0. Introduction

Years before the United Nations Convention on the Rights of the Child (UNCRC) was implemented, earlier international efforts were made to define the rights of the children.¹ These include among others the 1924 Declaration of the Rights of the Child (Declaration of 1924)² adopted under the League of Nations and the 1959 Declaration of the rights of the child (1959 Declaration)³. Others are the Minimum Age (Industry) Convention (ILO Minimum Age Convention 1919) and International Labour Organisation (ILO)⁴.

Despite their enormous efforts, these instruments lacked a complete approach to resolving problems relating to children's rights.⁵ It was due to the conceptions of childhood that existed at the time where childhood were considered to be little human beings in need of protection and objects, rather than subjects of the law.⁶ Therefore, these instruments could not proffer solution to a wide variety of issues concerning children's needs.

The shortcomings of children's rights instruments that predated the CRC prompted the need to adopt a binding instrument. Nevertheless, the issues of concern is that as many other

¹Beuren, *The International Law on the Rights of the Child*, 1-2

²Declaration of child rights (1924 Declaration), adopted by the League of Nations in 1924, League of Nations Official Journal, Supplement No.23.

³Declaration of child rights (1959 Declaration), adopted by the United Nations in 1959, UN.Doc.A/4354 (1959).

⁴International Labour Organization (ILO) Minimum Age (Industry) Convention, adopted in 1919 and entered in force in 1921 (ILO Minimum Age Convention 1919).

⁵Beuren, *The International Law on the Rights of the Child*, (n 1) 1-3

⁶*ibid*

statutory international law instruments such as the Universal Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR) contained standards applicable to children,⁷there is possibility for duplication of effort, time and resources to have a specific instrument for protecting the rights of the child. A dominant opinion, however, came from several countries which favoured the adoption of a Convention for the protection of the rights of children. The argument is that the time preceding CRC 's adoption was treated as acts of charity rather than legal entitlements. This was further argued that the earlier instruments to the Convention lacked a comprehensive approach to the issues that affect children.⁸

Accordingly, about 20 years after the adoption of the 1959 Declaration on the Rights on the Child, Poland submitted a resolution to the United Nations in 1978 persuading it to adopt a 'Convention on the Rights of the Child'.⁹In a significant degree, the Polish proposal was greatly modelled on the 1959 Declaration of the Rights of the Child. By couching the resolution similar to the 1957 Declaration, Poland anticipated that no much argument would take place and that would guarantee that the Convention was adopted before the end of 1979, the International Year of the Child.¹⁰This means that it was intended to mark the adoption of the Convention during the celebrated International Year of the Child. Thus, a draft was presented for adoption to the General Assembly ten years later, and it was ratified as the "United Nations Convention on the Rights of the Child" on 20 June 1989. The Convention came into force on 2 September 1990, having received 192 ratifications within two years.¹¹

⁷ S Detrick, *The U.N. Convention on the Rights of the Child, A Guide to the Travaux Preparatoires* (MartinusNijhoff 1992), 4

⁸ *ibid*, 19-29

⁹ J Gareth, *Children and development: Rights globalization and poverty* (Sage Publications 2005), 338

¹⁰ Detrick, *The U.N. Convention on the Rights of the Child, A Guide to the Travaux Preparatoires*, (n 7) 20-21

¹¹ Doek Jaap 'What does the Children's Convention require' (2006) 20 Emory International Law Review 208

In the previous chapter it was seen that there are several laws the protection of the Nigerian child from child labour. However, the plethora of laws and policies, the incidence of child labour and other violations of children's rights has persistently increased. This makes it necessary to consider why this is so. Is it that the laws and policies are effective in curbing child labour and other violations of children's rights? Or is it that the legislation is not well enforced? This chapter will objectively examine the effectiveness of UNCRC, ILO and other related laws and policies on children's rights and their applications in Nigeria in order to answer these questions. In line with this, it will investigate whether the provisions of under UNCRC and ILO to combat child labour are adequate and well implemented to achieve there objective. Thus the key concern when assessing the implementation system will be what changes have arisen in law and practice in Nigeria since the commencement of the implementation procedure and to what degree the procedure and policies for minimizing or potentially eradicating the incidence of child labour in Nigeria have accomplished these objectives..

5.1 United Nations Convention on the Rights of the Child(UNCRC)

The United Nations Convention on the Rights of the Child (CRC) is a legally binding treaty intended to protect children worldwide.¹² The Convention was adopted by the United Nations General Assembly on 20 November 1989 and came into effect on the 2 of September 1990. It is the most comprehensive and widely ratified international human rights treaty, and so it can be said that it has acquired almost universal legality. By implementing the Convention States are required to ensure that children effectively enjoy their rights under the Convention.¹³ The merit requires the scope of its comprehensive provisions pertaining to children's autonomous rights worldwide. ¹⁴Importantly, the CRC encapsulates civil and political rights, and economic, social and cultural rights traditionally

¹²Blanchfield L. United Nations Convention on the Rights of the Child, CRC report for the Congress, (1 April 2013) 1.

¹³Aquinaldo CTSM, *Assessing the Implementation of the Convention on child rights in Lusophone Africa, Angola and Mozambique* (Unpublished doctoral thesis 2012) 2.

¹⁴U Kilkelly, 'The Best of Both Worlds for Children's Rights: Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Right of the Child' (2001) 2 Human Rights Quarterly 308

separated in international instruments, as well as humanitarian provisions.¹⁵ Moreover, the consequence of CRC's broad nature is that it includes standard application to all criteria aspects of a child's life. The Navigation the comprehensive structure of the provisions is supported by consolidating the provisions under the headings of Survival, Protection, Development, and Participation. However, the CRC Committee has acknowledged that these areas overlaps in accordance with the belief that the children's rights are interlinked and indivisible.¹⁶

Furthermore, there are four fundamental principles to the Convention. These principles are contained in Article 2, which provides for the rights of every child to enjoy his / her rights to the Convention without discrimination. Article 3 requires that 'the best interests of the child are a primary consideration in all actions taken concerning children; Article 6 protects the right of the child to life, survival and development; and Article 12 provides that states shall ensure that any child capable of forming an opinion should be able to exercise the right to express that view freely in all matters relating to them. The four provisions reflect the crucial obligations that States must fulfill in order to ensure that the Convention holistically is implemented.¹⁷ These key provisions will be discussed separately later in this chapter.

5.2 Framework for Implementing the Child Rights Convention(CRC)

The Reporting Process under the UNCRC Convention

The legal framework for the reporting process is covered by Articles 43-45 of the Convention and the Committee Rules of procedures that have been established under Article 43(8) of the Convention.¹⁸ State parties are required to submit reports to the Committee on the steps they have taken to give effect to the Convention, as well as on the

¹⁵D McGoldrick, 'The United Nations Convention on the Rights of the Child' (1991) 5 *International Journal of Law and the Family* 132

¹⁶Committee on the Rights of the Child General Comment, *No.3. Adolescent Health and Development in the Context of the Convention on the Right of the Child*. UN Doc. CRC/GC/2003/4.

¹⁷Kilkelly U. Using the convention on child rights in law and policy: Two ways to improve compliance. *The Human Rights of Children: From Visions to Implementation*, (2011) 179-198.

¹⁸International Labour Organization, *Evaluation: ILO's Action Programme Against Forced Labour and Trafficking in West Africa* (Geneva ILO, 2006).

advances made on the enjoying of those rights. 19 A detailed initial report must be submitted within two years from the date of entry into force of the Convention for that state, and thereafter a periodic report must be submitted every five years. It is recommended that such reports provide adequate information to provide the Committee a detailed understanding of its implementation of the Convention but do not need to replicate data in subsequent periodic reporting cycles.²⁰

The guideline for State Parties on the preparation of the 'initial report' stressed that such reports should contain sufficient information to provide the Committee with a detailed understanding of the implementation of the Convention in the country concerned and provide the needed opportunity to conduct a comprehensive review of the various measures undertaken to harmonize national legislations and policies with the Convention and monitor the progress.²¹ These guidelines and practices have equally set up nine groupings (referred to as a cluster) under which States parties are required to provide relevant information in their initial and subsequent periodic reports.²² They are as follows:

- i. General measures of implementation
- ii. Definition of the child
- iii. General principles
- iv. Civil rights and freedoms
- v. Family environment and alternative family care
- vi. Violence against children
- vii. Disability, basic health and welfare
- viii. Education, leisure and cultural activities
- ix. Special protection measures

¹⁹Truong T. D. and Angeles M.B. *Searching for Best Practices to Counter Human Trafficking in Africa: A focus on women and Children* Prepared for UNESCO (2005) 1.

²⁰African Child Information Hub available at <http://www.africanchildinfo.net> accessed 21 January 2020

²¹ Federal Government of Nigeria: Report on Violence Against Children by the Federal Ministry of Woman Affairs, Abuja, Abuja, Submitted to the UN Secretary General's Independent Expert on the Study on Violence Against Children – July-August 2004.

²²*Ibid*

The guidelines on periodic reports²³ harmonized guidance on how to make report to the international treaty bodies on human rights. State Party's reports comprise of two parts: a standard core text, and a text expressly relating to the implementation of the Convention and its Optional Protocols (known as a treaty-specific report).²⁴

It is important to note that the examination of initial reports is given priority, and the Committee will consider the criterion of submissions in the chronological order. Originally, a letter from a State group must be submitted to the committee secretariat at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva.²⁵ subsequently, the Committee will review it at the next available session and attempt to report within one year of receipt.²⁶ The Committee will then request written reports from other sources, such as the National Human Rights Institutions (NHRIs), Non-Governmental Organizations (NGOs) and Inter-Governmental Organisations. The report is then reviewed during the pre-session working group of the committee, which is a private session consisting of committee members, where the initial report of the state parties report will be carried out. Representatives of NGOs and inter-governmental organisations may be asked to join the pre-session working group.²⁷ Subsequently, the working group will prepare a 'list of issues' to be submitted to the state party, showing the area considered a priority for discussion by the committee. State parties are then called upon to answer these questions in writing before the plenary session.²⁸ The Committee then considers the country's report during the plenary session, which is usually held in public, in the presence of government representatives who are invited to respond to the questions and comments made by

²³*Ibid*

²⁴International Human Rights Instruments, The International Human Rights Treaties. Available at <http://www.ohchr.org> accessed 19 March 2020

²⁵OHCHR *Universal Human Rights Instruments* available at <http://www.ohchr.org> accessed 25 April 2020.

²⁶*Ibid*

²⁷Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) available at <http://www.gov.uk> accessed 19 February 2020

²⁸*Ibid*

committee members.²⁹The committee suggests that government representatives who are involved directly at the national level with the implementation of the Convention be present for the evaluation of the draft.³⁰

If the delegation of the State Party has genuine participation and responsibility for the strategy regarding children's rights, the discussion generated at the session would most likely have an impact on policy formation and implementation. The Committee shall prepare the concluding observations at the end of the meeting which shall summarize the main points of discussion and specific vital issues requiring further action and follow-up.

Concluding observations generally include the following: an introduction, positive aspects such as the improvement that has been achieved so far, reasons that impede implementation, and lastly recommendations to the state party about how to improve where where need be.³¹ Finally, the concluding observations are made public during the adoption of the session report on the last day of a committee session.³² Despite the well mapped reporting process, however, the committee can not enforce its recommendations and must therefore rely on the national mechanisms to ensure that the state takes its recommendations into consideration.³³

5.3 The Committee on the Rights of the Child (CRC Committee)

The Convention on the Rights of the Child set up the Committee on the Rights of the Child pursuant to Article 43 of the CRC to examine and monitor reports and progress on States

²⁹*ibid*

³⁰*ibid*

³¹*ibid*

³²United Nations. Human Rights Office of The Commissioner, National Mechanisms for Reporting and Follow-up available at <http://www.ohchr.org> accessed 21 January 2020.

³³*ibid*

Parties in meeting their obligations under the Convention.³⁴The committee consists of 18 independent experts elected a renewable term of four years.³⁵The CRC also monitors the enforcement of the two optional protocols to UNCRC, which are the Optional Protocol on Child Involvement in Armed Conflict³⁶ and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.³⁷

The initial reports are published after two years of ratification of the CRC, and progress reports are expected after five years. The Optional Protocols has similar reporting mechanism.³⁸The Optional Protocols are due two years after ratification, then later, information regarding the implementation of the Optional Protocol is to be contained in the periodic CRC reports,, except for states that have not ratified the CRC, and must report on the protocol only every five years.³⁹ supplementary reports can be submitted to the committee by civil society organizations (CSOs) and children themselves, reinforcing the information already presented by the state.⁴⁰

The committee has its reporting procedure. When the committee report is received by the CRC committee, the report will then be scheduled for examination at the committee's next available session. Having a state report examined can take up to 12 to 18 months or more. Two Committee rapporteurs are assigned to assist in the examination of a State report.⁴¹

³⁴Arabella L. UN Convention on the Rights of the Child: a Brief Guide, Briefing Paper (November, 2016) 4-12

³⁵*Ibid*

³⁶Optional Protocol to the Convention on the Right of the Child on the Involvement on Children in Armed Conflicts (2000) adopted and opened for signature, ratification and accession by GA RES/54/263 of 25 May 2000 entered into force 12 February 2002.

³⁷*Ibid*

³⁸*Ibid*

³⁹UNICEF, Reporting Process to the Committee on the Rights of the Child: a virtual resource tool (January 2011) 15-17.

⁴⁰*Ibid*

⁴¹ CRC Treaty Specific Reporting Guidelines, Harmonised according to the Common Core Document available at http://www2.ohchr.org/english/bodies/crc/docs/treaty_specific_guidelines_2010.doc accessed on 21 February 2020.

The committee will conduct a preliminary review of the state report at a pre-sessional working group meeting and will consider complementary information and supplementary reports from CSOs. CSOs are then asked to attend and may make short statements.⁴²

The meetings is also attended by the UN bodies. An important result of the pre-sessional working group meeting is a 'list of issues' which is forwarded to the state for an answer.⁴³The committee would meet at the plenary session about six months later, in the presence of a state delegate representing the government to consider the state report. Finally, the committee will prepare the concluding observations with state recommendations on how to improve the CRC's fulfilment.⁴⁴At this stage, CSOs may attend the plenary session but can not make statements.⁴⁵CSOs will also arrange informal consultations with members of the committee to control the procedure.⁴⁶ However, the Committee can not implement its recommendations and must rely on national mechanisms to ensure that the State takes its recommendations into consideration. It is important to remember that CSOs will play asignificant role in the national follow-up process.⁴⁷

5.4 General Measures of Implementation

The Committee on Child Rights identified the general measures of implementation in the first guidance for initial reporting. In 2003, the Committee on the Rights of the Child adopted an important statement which is its General Comment number 5 on General Measures of Implementation under a particular cluster of articles 4, 42 and 44 paragraph 6. This instrument sets out a list of general measures aimed at facilitating the full enjoyment

⁴²*ibid*

⁴³*ibid*

⁴⁴UNODC: *Civil Society for Development, Opportunities through the United Nations Convention against Corruption* (2019) 29

⁴⁵*ibid*

⁴⁶UNODC: *Civil Society for Development, Opportunities through the United Nations Convention against Corruption* (2019) 30

⁴⁷*ibid*

of children's rights contained in the CRC.⁴⁸General Comment No 5 is very vital as it is the key instrument which sets out general measures to give effect to the Convention as a whole against other general comments on particular provisions of the Convention. Invariably, in the general comment No.5 the committee explained the concept and its requirement from the state parties. The implication is that after ratification of CRC, States undertake international obligations to ensure its implementation and the realization of human rights for all children under their jurisdiction.⁴⁹Article 4 of the CRC requires that States Parties take all appropriate legislative, administrative and other measures for the realization of the children's rights. Ensuring that all domestic law are fully compatible with the CRC and that the principles and provisions of the CRC are effectively enforced.⁵⁰It should be noted that general comment No.5 expands on article 4 of the Convention. It comprises of six sections, the first is an introduction which states the convention's object and purposes. The second component considers the need to conduct a thorough review of reservations impairing the implementation of the CRC and other instruments that is applicable to children.⁵¹The third part calls for the ratification of the key human rights instruments to protect the rights of children,⁵² and part four concerns the adoption of legislative measures for the implementation of the CRC.⁵³The fifth part makes it imperative for the states to ensure that the rights of children are justifiable at national level,⁵⁴ and finally, part six deals with administrative and other measures required to give effect to the Convention.⁵⁵Notably, the General Measures of Implementation are related

48UNODC: *Civil Society for Development*, Opportunities through the United Nations Convention against Corruption (2019) 2

49General Measures of Implementation of the Convention on child rights (Articles 4, 42 and 44, Para 6) CRC/GC/2003/5,2003.

50Article 4 of the Convention on the Right of the Child

51UNICEF: *Assessing Compliance of National Legislation with International Human Rights Norms and Standards* (November 2008) 2

52 *Ibid* at 13

53 *Ibid* at 15-16

54 *Ibid*

55 *Ibid*

to structural improvement within state parties. Without such measures it would be difficult to effectively enforce children's rights at all stages of government. It no gainsaying the fact that good government in the area of children's rights can be measured by the degree to which such rights are recognized. A high degree of complete enforcement of children's rights within a non-transparent, disorganized, corrupt, and non-accountable government structure is hard to attain. The States must maintain a high degree of participation, equality, rule of law and efficiency. There is no better way to challenge a system of governance with respect to child rights and the Child Rights Convention(CRC) than to access the system with the General Measures of implementation.

These parts or categories of measure will be discussed in detail.

5.4.1 Legislative Measures

Under Article 4 of the CRC State Parties are required to take the appropriate legislative, administrative and other measures for the realization of children's rights. It would appear that the term 'appropriate' is so termed to reflect the nature of the legislative measures required.⁵⁶In the CRC context, the meaning of the term appropriate has not been clearly defined. However, if taken literally, it can be argued that for any action envisaging the application of the CRC to be appropriate it must be done within the context of the Convention. It leads one to conclude that appropriate legislative measures are all such measures taken within the context of the convention, that is, legislative measures in accordance with its standard.⁵⁷The consequence of this is that measures taken outside the framework of the convention or measures falling short of the CRC standard must be seen as inappropriate.

The Committee urges States to enact and implement provisions that are more conducive to the realization of child's rights protection within their jurisdiction.⁵⁸This means that

⁵⁶United Nations Convention on child rights 1989 art 4

⁵⁷Para 20 of the General Comment No. 5

⁵⁸Para 23 of the General Comment No. 5

measures that are favourable for the realization of the rights of children are paramount. It is clear therefore, that the general measures of implementation are related to structural improvement within the state parties. It should be noted that without such measures, no child's right can be fully implemented at all levels of governance including the local communities. Good child's rights governance can be measured by the level of enforcement and realization of those rights.

Again, appraisal of the extent to which predominantly legislative measures have contributed towards its successful implementation is a crucial task performed in the reporting process. The committee will encourage countries to proactively amend their national legislation or constitution in order to conform with the legal requirements set out in the CRC convention.⁵⁹

Crucially, in the process of law reforms State Parties are required to ensure compatibility of existing and new legislations and judicial practice with the CRC, in different respects. These include: thorough policy review; inclusion of children's rights; and consideration of effective remedies for children and their representatives if their rights are breached. As the Committee on the Rights of the Child emphasizes in its general comment No.5, for the rights to be meaningful, there must be effective remedies available to redress violations. The committee noted that children have vulnerable and dependent status, creating real difficulties for them in pursuing remedies for the violation of their rights.⁶⁰

5.5 Some Key Provisions of the CRC and Challenges Linked to its Implementation

The Convention on the Rights of the Child (CRC) is a legal document. The convention's primary aim was to establish a legal framework for the protection of children's rights. Although applauding the CRC's achievement is necessary, acknowledging the limitations

⁵⁹UNICEF: *Implementation Handbook for the Convention on child rights* (September 2007) 2-3

⁶⁰General Measures of Implementation of the Convention on the Right of the Child Articles 4, 42, and 44, Para(6), CRC/GC/2003/5

of this legal document is also vital. The CRC 's main provisions and issues leading to their implementation are examined below:

5.5.1 The Best Interest of the Child Principle

The United Nations Convention on the Rights of the Child (CRC) and its Optional Protocols provide the basis for setting up effective measures to resolve the numerous challenges facing states and other stakeholders in ensuring children can access and enjoy their rights.⁶¹The best interest principle encompass a procedural rule that govern the decision-making process relating to children.⁶²It is a legally binding rule that must be adopted by States.⁶³

The CRC's primary goal in this context is to advance the best interests of the child. The goal is to bring together the child protection instruments in the several existing human rights treaties and unite them under a single comprehensive document that centered on the child's best interests. The "best interest of the child" standard as one of the CRC 's guiding principles is contained in Article 3 of the CRC. The provision is frequently used as a guiding principles to interpret other articles and rights in the CRC.⁶⁴The intention of the drafters of this legislation is to establish the principle that official decisions affecting the child must be taken with primary consideration for the best interests of the child. Therefore, the paramount concern would neither be the interests of the parents nor the interests of the Government but the child.⁶⁵

⁶¹UNICEF: *Judicial Implementation of Article 3 of the Convention on child rights in Europe. The Case of Migrant Children Including Unaccompanied Children* (June 2012) 10-12

⁶²Emily, *The Child's Best Interest: a general applicable Principle*, 322-323

⁶³Jonathan T. Emerging Limitations on the Rights of the Child: the UN Convention on child rights and Its Early Case Law, 30 Colum. (1998) 159 *Human Rights Law Review*, 169

⁶⁴Alston and Tobin, *Laying the Foundation for Children's Rights*, 5

⁶⁵*Ibid*

It is suggested that the term 'all actions' seeks to cover not only state actions but actions by private parties' as well.⁶⁶ Moreover, the article refers to 'all actions concerning children,' which means that the CRC may be applied not only when the action affects the child in question, but also when the action affects children in general. The committee once again indicated that the statement should be interpreted as broadly as possible.⁶⁷ Thus, the best interest principle is established in Article 3(1) of the CRC, which provides:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be of primary consideration”.

The UN Committee on the Rights of the Child, which has the responsibility of overseeing the implementation of the CRC by the States Parties to the Convention, has identified Article 3(1) as embodying one of the four 'general principles' relevant to the implementation of the Convention as a whole. There are non-discrimination (Article 2); survival and development (Article 6); and child participation (Article 12).

The primary goal of the CRC is to advance “the best interests of the child”.⁶⁸ The Convention seeks to bring together the child protection instruments in the various existing human rights treaties and to unite them into a single comprehensive document that reflects on the child's best interests.⁶⁹ The scope of the principle is broad and extends beyond actions undertaken by the state. This also encompasses private bodies as well as a group that covers issues relating to children. This is an important argument to emphasise because there is a common belief that this principle is mainly relevant for individual cases.⁷⁰

⁶⁶Beuren, *The International Law on the Rights of the Child*, (n 1)

⁶⁷Alston and Tobin, *Laying the Foundation for Children's Rights*, (n 65) 7-10

⁶⁸Jonathan T, (n 64) at 99

⁶⁹*Ibid*

⁷⁰UNESCO: *The contribution of early childhood education to a sustainable society* (Paris, 2008) 12-13

Notably, the committee stressed the State parties' obligations to take the normal measures of implementation. As the best interest principle may be considered as a rule of procedure for decision-makers, the committee has emphasized the relevance of legislative measures and the role of the judiciary in this case. However, Legislation is not enough. State parties have other obligations, in particular in the fields of data collection, budget allocations, monitoring, dissemination and training, as provided for in Article 4 of the CRC and in General Comment No.5. The committee in this case refers to the necessity of building strategies, national action plans and the allocation of essential financial , technical and human resources. In addition to Article 3 the provision relating to the best interest is set out in other articles of the CRC. In these context the best interest principle is expressed in stronger terms as a crucial requirement or as the paramount consideration.

Article 9.1 (Child protection) states that, “unless it is appropriate for the best interests of the child, the child shall not be separated from its family”;

Article 9.3 (custody) “specifies that a child may retain contact with both parents except where the connection is contrary to the best interests of the child”;

Article 18.1 (parental decision-making) stipulates that “parents are solely responsible for raising the child, and that the child's best interests should be their core concern”;

Article 20.1 (family atmosphere deprivation) includes “cases in which a child can not be able to live in a home in his or her own best interests”;

Article 21 (Adoption) states that “the best interests of the infant shall be the primary concern” in adoption schemes”.

Whether it is in the best interests of the child not to do so, Article 37(c) (deprivation of liberty) states that “a child in custody shall be removed from adults”

Article 40(2)(b)(iii) (criminal proceeding) provides for a right to have parents present in court unless it would be considered in the child's best interests for them not to be there. The best interest principle consists of a procedural rule which governs decision-making regarding children. It is a legally binding rule that states must adhere to. The objective of the rule is not to encroach on the rights of others, but to facilitate an examination of the interests of a vulnerable group. A child's best interests should be considered in relation to all actions concerning them, that is when the action directly affects them. At this point, it is essential to note that both regional and national courts indicated its intention to apply and promote the principles contained in article 3(the best interest of the child's provision) of the CRC. Some notable cases amongst others show how article 3 of the CRC may impact on a decision in the Courts in Europe on the application of article 8 of the ECHR.

For instance, in the case of *Rodriquez da Silva, Hoogkamer v Netherland*⁷¹, the Court made a direct reference to a child's best interests when considering article 8.2 in a situation where her care was shared between her paternal family, who were resident in the Netherlands, and her mother who was facing expulsion. Specifically, in paragraph 44 of its judgment, it held that:

“Given the far-reaching consequences which an expulsion would have on the responsibilities which the first applicant has as a mother, as well as on her family life with her young daughter, and taking into account that it is clearly in Rachael's best interests for the mother to stay in the Netherlands, the Court considers that in the particular circumstances of the case the economic well-being of the country does not outweigh the applicants rights under article 8, although the first applicant was residing illegally in the Netherlands at the time of Rachael's birth”.

Subsequently, this case was referred to in the case of *Nunez v Norway*⁷² where the Court applied the same principle. *Nunez* was the case of the possible expulsion of a mother who was a national of the Dominican Republic from Norway and the fact that she would then

⁷¹*Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 43, ECHR 2006

⁷² *Nunez v. Norway*, *Application no. 55597/09* (Strasbourg, June 28, 2011) 3-10

be prohibited from returning to Norway for at least two years and possibly permanently. Meanwhile, sole parental responsibility of her two children had been awarded to their father, who had a settlement permit in Norway. The ECHR, in this case, took into account article 3 of the CRC as an integral part of its reasoning when considering proportionality for article 8.2 and held in paragraph 84 that: Having regard to all of the above consideration, notably the children's long-lasting and close bonds to their mother, the decision in the custody proceedings, the disruption and stress that the children had already experienced, and the long period that elapsed before the immigration authorities took their decision to order the applicant's expulsion with a re-entry ban, the court is not convinced in the concrete, and exceptional circumstances of the case that sufficient weight was attached to the best interest of the children for the purposes of article 8 of the Convention on the Rights of the Child, according to the best interest of the child shall be a primary consideration in all actions taken by public authorities of the respondent state acted within their margin of appreciation when seeking to strike a fair balance between its public interest in ensuring effective immigration control, on the one hand, and the applicant's need to be able to remain in Norway to maintain contact with her children in their best interest, on the other hand. Furthermore, in the case of *Mubilanzila and KanikiMitunga v Belgium*,⁷³ a 5-year-old child from the Democratic Republic of Congo arrived at Brussels National Airport with her maternal uncle, who is a national of Netherlands. He wanted to assist her to join her mother in Canada, where she had applied for asylum. The Belgian authorities refused her entry and detained her in Transit Centre No.127, where she was held with adults in a secure setting. The Court decided that this had given rise to breaches of article 3 of the ECHR. It also took into account article 3 (and articles 10,22, and 37) of the CRC and held that:

Other measures could have been taken that would have been more conducive to the higher interests of the child guaranteed by Article 3 of the Convention on the Rights of the Child. These include her placement in a specialized centre or with foster parents.

⁷³MubilanzilaMayeka and KanikiMitunga v. Belgium Judgment, *Application no. 13178/03* (Strasbourg Oct. 12, 2006).1-39

The Court equally held that ‘since the second applicant was an unaccompanied minor, the Belgian state was under an obligation to facilitate the family’s reunification.

Furthermore, domestic courts of various state parties have adopted a broad reading of the ‘in all actions concerning children’ phrase. Cases relating to the deportation of non-citizen parents of citizen children have been deemed to be ‘actions concerning children’ by some courts.⁷⁴ A criminal sentencing proceeding in which both parents of a child faced prison time has also been considered as ‘action concerning children.’⁷⁵ On the other hand, an Australian court held that the CRC does not apply to the repossession of a father's car, where the father claimed that it was in the best interests of his child to allow the father to keep the vehicle so that he could drive his child to after-school education lessons.⁷⁶

In all these three situations, children were or would have been affected by the courts' decisions, yet all the three determinations of whether the CRC applies or not seem reasonable. Courts seem to be arriving at such different decisions largely because the CRC does not guide what constitutes an ‘action concerning children’. It has been left to states to decide, and thus left at the discretion of individual judges. Though this case-by-case approach may be the best available, it has significant implications for the rights of the child.

Second, the ‘best interests of the child’ standard itself, upon which the CRC relies so heavily, warrants examination. The rule is not new.⁷⁷ Many countries rely on the standard,

⁷⁴For example in Australia, see *Minister of State for Immigration and Ethnic Affairs v. Teoh* (1995) 128 A.L.R. 353 (Austl.); *Re Anais Moala Kailomani* (1996) IRT Reference No. Q95/646. Admin. Appeals Tribunal (Austl.) For those in New Zealand, see *Schier v. Removal Review Authority* (1998) N.Z.A.R. 230 (N.Z.); *Patel v. Minister of Immigration* (1997) 1 N.Z.L.R. 257 (N.Z.); *Puli'Uvea v. Removal Review Authority* (1996) 3 N.Z.L.R. 538 (N.Z.); *Elika v Minister of Immigration* (1996) 1 N.Z.L.R. 741 (N.Z.)

⁷⁵Walsh v. Department of Social Security (1996) 1 N.Z.R. 741 (N.Z.)

⁷⁶Isaac John MacKay Shields V. Official Receiver in Bankruptcy and Official in Trustee in Bankruptcy (1995) No. 441/96, Fed. Ct. N.S.W. (Austl.) (LEXIS, Austl. Fed. Ct.)

⁷⁷The Principle of the “Best interests of the child” was developed in the 19th Century. See, e.g., *Chapsky v Wood*, 26 Kan. 650 (an application for custody by the father was denied, and custody was awarded to an aunt, who had raised her niece. The court's paramount consideration was the child's welfare, which it felt would be best ensured if the girl continued to live with her aunt)

and have been in use long before the advent of the CRC. The United States, for example, uses it in its child custody cases. One court has stated, ‘without question, the paramount concern of the courts in child custody proceedings is the welfare of the child.’⁷⁸ However, the ‘best interests of the child’ principles are not without critics.⁷⁹ The primary concerns about this principle include questions of who decides what is in the best interests of the child, and what criteria are used to determine what is in the best interests of the child. Some argue that it is not a viable standard because it relies too heavily on culture and social context.⁸⁰ It is argued that the choice is inherently value-laden; all too often there is no consensus about what values should inform this choice.⁸¹ These problems are not unique to children’s policies, but they are especially acute in this context because children themselves often cannot speak for their interests. Even if predictions as to the consequences of policy alternatives were possible, what set of values should a judge use to determine a child’s best interests. He must have some way of deciding what counts as good and what counts as bad.⁸²

Zimbabwe provides an excellent example of a setting where the ‘best interests of the child’ principle can produce different results depending on the construction used.⁸³ In Zimbabwe, statutory law holds that in custody cases, the best interests of the child ‘shall be the paramount consideration.’⁸⁴ However, the construction one uses to determine what constitutes the best interests of the child—whether cultural, material, legal, or political—will

⁷⁸*Perrenoud v. Perrenoud*, 206 Kan. 559, 480 P.2d, 762 (1971).

⁷⁹ See Martha Albertson Fineman, *the illusion of equality: the rhetoric and Reality of Divorce Reform* (1991); Wendy Anton Fitzgerald, *Maturity, Difference, and Mystery: Children's Perspectives and the law* 2215 (1991) quoted in Jonathan T (n 64)

⁸⁰Ariz. L. Rev. For a defence of the standard, see Carl Schneider, *Discretion, Rules, and Law: Child Custody and the UMDA's Best-Interest standard*, 89 Mich. L Rev. (arguing that the best interests standard provides a framework, though imperfect, for obtaining individualized justice) 11 (1994).

⁸¹Mnoonkin, in *the Interest of Children*, quoted in Alston n (n 65) at 49

⁸²*Ibid*

⁸³Armstrong A. *A child Belongs to everyone: Law, Family and the construction of the Best interests of the child in Zimbabwe* (Innocent Occasional Papers, UNICEF International Child Development Centre 1995

⁸⁴*Ibid*

shape the resulting determination.⁸⁵ Thus, if a cultural construction is used in Zimbabwe, custody of a child rests with the family, usually the paternal family and not with the individual.⁸⁶ In many instances, culture dictates that custody decisions must be handled by the families outside of the formal courts. Furthermore, culture may also prescribe that a child be taught obedience, deference to elders and authority, and to act in 'male' or 'female' ways.⁸⁷ In contrast, if one were to use a legal construction, custody would rest with an individual rather than a family.⁸⁸ Alice Armstrong writes that the very act of bringing a custody case into a formal state court means, first, that "best interests" will be decided by an institution that is not recognized by (the rules, customs, and traditions of the indigenous people of Zimbabwe) and, second, that "best interests" will broadly be interpreted according to the general law, based on foreign, "Western" values.⁸⁹

Even when culture is not an concern, a child's best interest is still a controversial topic. For example, in some instances, there may be no difference between legal construction and cultural construction in a particular state, and the parties involved may share the same cultural values and beliefs and with the relevant legal system. Yet, concerns would remain about the indeterminacy and vagueness 'of the best interests' standard.'⁹⁰

In view of the preceding analysis on the best interest concept (BIC) principle, it is obvious that the principle of the best interests of the child is one of the most important provisions of the CRC. It is also one of the most difficult to explain. Yet, in a practical sense, it is impossible to work with the CRC without having a clear idea of this principle of

⁸⁵*Ibid*

⁸⁶*Ibid*

⁸⁷*Ibid*

⁸⁸*Ibid*

⁸⁹*Ibid*

⁹⁰Stephen Parker, *The Best interests of the Child-Principles and problems*, in Alston, *Reconciling Culture and Human Rights*, 26 (arguing that despite *these concerns*, the decision to use the best interests standard in the CRC was not necessarily misguided and that we can work to minimize the indeterminacy and reach a better understanding of the real issues at stake).

interpretation or rule of procedure or to simply operate under the assumption that everyone is acting in the best interests of the child/children.

However, there is need to understand this concept better because without clarification, there is a risk that very different decisions can quickly, yet inaccurately, be justified as being in the interest of the child; depending on the person who subjectively ‘interprets’ the best interests of an individual child or group of children.

Another important aspect we must consider is the political dimension of this principle which requires that legislators ask fundamental questions concerning the potential impact on children of relevant legislation, ordinances and rules. Do such laws exist that do not have a possible effect on children? Among all the State Parties to the CRC, it is argued that it may be challenging to fulfil this particular obligation if proper care is not taken.

Judicial Intervention on the Best Interest of the Child in Nigeria

At the national level, there is a plethora of judicial decision supporting the principle of the best interest and welfare of the child. In the case of *BuwanhotvBuwanhot*⁹¹ the Nigeria Court of appeal held that the welfare of the children of the marriage, regarding their peace of mind, happiness, education and co-existence is the Prime consideration in granting custody. Similarly, *Belgore JSC* in the case of *Odogwu vOdogwu*⁹² state that:

“Welfare of the Child is not the material provisions in the house-good cloths, food, air-conditioners, television, class, it is more of the happiness of the child and his psychological development. While it is good for a child to be brought up by the complimentary care of the two parties living together. It is psychologically detrimental to his welfare and ultimate happiness and psychological development if the maternal care available is denied him”.

In the vein, in the case of *UdusotevUdusote* the Court defined interest of the children to include their welfare, education, security and overall wellbeing and development.

⁹¹(2009) 16 NWLR (Pt)

⁹²(1992) 3 NWLR (PL 252) 539

Also, regarding the paramountcy of interest of the child of the marriage, it was held in *DamulakvDamulak*⁹³ that by section 71(1) of the Matrimonial Causes Act, in proceedings concerning the custody, guardianship, welfare or education of the children of a marriage, the court shall regard the interest of those children as the paramount consideration.

Again *Okafor v Okafor*,⁹⁴ Oputa J. Stated that in all cases for custody for a child, the paramount consideration, and of course, the condition precedent is the welfare of the infant. Furthermore, in *AlabivAlabi*⁹⁵ the Court in examining the principles governing grant of custody of children in matrimonial causes stated thus:

“Award of custody of the children of a marriage that has broken down irretrievably is governed by section 71(1) of the matrimonial causes Act 1990, which enjoins the court in proceedings relating to custody, guardianship, welfare, advancement or education of children of the marriage, to take the interest of the children as paramount consideration and the court in this regard is given wide discretionary powers which it can exercise according to the peculiar circumstances of each case. The welfare of the instance is not the paramount consideration but a condition precedent”.

Importantly, in the case of *Afonjav Afonja*,⁹⁶ the trial judge has awarded legal and actual custody of the 7-year old daughter of the marriage to the father, the reason being since that the father a medical doctor with a good job could provide all the material needs of his daughter. In contrast, the mother had not shown good moral to depict her Anglican upbringing by allowing the breakup of the marriage and therefore, was deemed not fit to take care of the child. However, on appeal, the Court of Appeal held that her mother of the child was in a better position to take care of the child being a girl and that the arrangement of the father in which the case of the child would be left to his sister in another town was not in the best interest of the child.

93(2004) 8 NWLR (Pt.874) 151

94(1976) 6 CCHCJ 1927

95(2007) 9 NWLR (Pt. 1039) 305

96(1971) 1 UILR 105

Again the court held in *Williams v Williams*⁹⁷ as follows:

"That for children of tender years, a child should have its formative years in an environment that would expose him or her to her culture and customs, this not giving the said child a distorted view of life. This court believes it would be better for the children to remain in Nigeria with their father for now. It will be contrary to public policy to have a child deposited and put under the custody to another person other than a surviving parent".

Furthermore, the doctrine of "best interest" of the child was strictly applied in *Opadokun v Ogunbariwo*.⁹⁸ In this case, the child's mother travelled with him to the United States for a holiday. While they were still in the US, the mother died and left the boy in the custody of her sister. Thereafter sought to adopt the child against the wish to the child's father who was an in Nigeria. In a suit filed in Lagos High Court, the Plaintiff challenged the defendant's intention to adopt his child in the United States. The court held that:

"Sect 71(1) of Matrimonial causes Act 1970-states that where custody of a child of the marriage is concerned, the interest of the child should be the paramount consideration. The welfare of a child in considering custody is not just wealth but happiness of the child and his overall psychological development."

5.6 The Obligations of States Parties to the Convention

Article 4 of the convention is the general provision outlining the obligations and duties of states parties to the CRC Convention. It provides that:

"States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. Regarding economic, social and cultural rights, states parties shall undertake such measures to the maximum extent of their

⁹⁷(1987) 2 NWLR (Pt.34) 75

⁹⁸Unreported Suit No.ID/896M/2002

available resources and, where needed, within the framework of international cooperation".⁹⁹

This article, combined with the non-discrimination provision in Article 2, forms the basis of a state party's obligations under the CRC. Since the second part of Article 4 addresses the economic, social, and cultural rights embodied in the Convention, the first sentence must, therefore, address all other provisions-most notably those on civil and political rights and some of the provisions on special protection measures. A state's obligations for the rights and special protections covered by the first sentence of Article 4 are not subject to the availability of resources. Yet, when outlining these obligations, no direct reference is made to the judiciary or judicial remedies. Furthermore, the Travaux preparatoires do not reveal any discussion about legal remedies.¹⁰⁰ Perhaps the issue of judicial remedies is covered by the language "other measures," but it seems to be a significant oversight considering that "courts of law" are correctly identified in Article 3.

The second part of Article 4-specifically the phrase 'to the maximum extent of their available resources' – is one of the more apparent loopholes in the CRC. This phrase parallels that of Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁰¹ In many respects, the ICESCR is a relatively weak international human rights treaty, since it generally only requires states parties to 'take steps' toward ensuring rights rather than requiring that they provide those rights.¹⁰² The language of the second sentence of Article 4 of the CRC was inserted out of concern that developing countries might inform the Convention if no allowance were given for their limited resources.¹⁰³ Although this reasoning is understandable and one would argue that

⁹⁹CRC, art 4.

¹⁰⁰The Travaux Préparatoires are the legislative history of an international treaty

¹⁰¹Article 2(1) of the International Covenant on Economic, Social and Cultural Rights

¹⁰²The International Covenant on Economic, Social and Cultural Rights only requires that states parties "take steps" toward the realization of certain rights, it is difficult to assess whether a state party has fulfilled its obligations. Further, some states parties may "fulfil" their obligations by taking relatively small or insignificant steps towards ensuring the rights in the Covenant.

¹⁰³The delegations of Brazil, India, Venezuela, Libya, and Algeria led the opposition to a proposal by the United States which would have removed the language regarding "available resources". It was this opposition that led to a

the goal of fostering support of the CRC among developing nations has been realized, this phrase still leaves a loophole which should be of concern to human rights advocates for two reasons.

First, the Convention does not delineate which provisions fall under the heading of economic, social, and cultural rights.¹⁰⁴ Do special protection provisions relating to child labour (Article 32) fall under the rubric of economic, social, and cultural rights? Or, are some human rights abuses suffered under child labour a violation of civil rights? One must be concerned about which provisions might fall under this category. Philip Alston identifies two indicators which he believes help to determine which rights are economic, social, and cultural rights: (1) the presence of phrases which constitute 'resource qualifiers' in the body of such articles (e.g. 'subject to available resources' in article 23(2)); and (2) the parallel with the ICESCR.¹⁰⁵ Therefore, those provisions of the CRC that refer to rights which are also in the ICESCR would be considered economic, social, or cultural rights. Despite Alston's suggestions, grey areas remain. Some provisions of the CRC do not fit clearly in just one category, and the committee has not published any guidelines on this issue.

Second, even if the Committee or other appropriate body defines which articles fall under the economic, social and cultural rights category, a loophole remains – states parties can still claim that they do not have adequate resources to respect and ensure these rights. This loophole is narrowed somewhat by the additional phrase: '...and, where needed, within the framework of international cooperation.'¹⁰⁶ This phrase would require that States parties without the necessary resources to ensure the rights of the child within their jurisdiction

compromise position, position, in which economic, social and cultural rights were addressed separately, and allowances were made for available resources to these rights.

¹⁰⁴ Alston and Tobin, *Laying the Foundation for Children's Rights*, (n 65) 12

¹⁰⁵ *Ibid*

¹⁰⁶ CRC, art 4 Convention on the Rights of the Child, G.A. Res.44/25, U.N. GAOR, 44TH Sess. Supp.No. 49, U.N Doc. A/ Res/44/25 (1989) hereinafter CRC or Convention.

seek assistance: within the framework of international cooperation.¹⁰⁷ Even with this qualification, a sizable loophole remains.

Another limitation of the ‘all available resources’ language in Article 4 concerns the interpretation of the phrases ‘obligations of states’. The ‘obligations of states’ is a vague phrase in international law and is often interpreted as applying only to state action, particularly at the national level. Such an interpretation, however, ignores other important actors at the regional and community level.¹⁰⁸ It is essential that resource mobilization, particularly in developing countries, include all aspects of the society, the public and the private sectors at all levels.¹⁰⁹ Thus, a broad interpretation of ‘available resources’ would help to ensure that states do not hide behind claims of a lack of available resources.

Currently, no domestic court has analyzed or interpreted article 4 of the CRC, but its limitations are still significant. Though article 4 is more directly relevant to shaping legislation and public policies than to judicial decisions, domestic courts will be required to interpret and apply the new law that emerges from Article 4.

5.7 Duty to Raise Awareness about the Convention

Article 42 of the CRC provides that “states parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike”¹¹⁰. These ideas also include states parties’ reports, as Article 44(6) provides that “states parties shall make their reports widely available to the public in their own countries”.¹¹¹ Again, language such as ‘by appropriate and active means’ is too vague and permits loopholes. It is clear that state parties must raise awareness actively regarding the rights of children. Importantly, this duty should extend to raising awareness among

¹⁰⁷Alston and Tobin, *Laying the Foundation for Children’s Rights*, (n 65) 12

¹⁰⁸ James R. Himes & Dianna Saltarelli, *Implementing the Convention on the Rights of the Child: Resource Mobilization in Low-Income Countries 4* (Innocent Studies, UNICEF International Child Development Centre 1996) hereinafter Himes.

¹⁰⁹*Ibid* at 8

¹¹⁰CRC art.42

¹¹¹*Ibid* art. 44 (b).

judges, lawyers, and others working in the judicial systems of their countries, an issue which to date has received inadequate attention.

5.8 Reservations to the CRC

Other significant means by which the effects of an international human rights treaty can be diminished are reservations.¹¹² Article 51 of the CRC allows for reservations, provided they are ‘not incompatible with the object and purpose of the convention.’¹¹³ Thus, some tensions existed in the early years following the CRC's creation. While its advocates needed states to support all of its provisions, it was crucial to gain as many ratifications as quickly as possible.¹¹⁴ Thus, the CRC has achieved nearly universal ratification, but these ratifications have not been without some reservations.¹¹⁵

The reservations have not been detrimental to the overall quality of the document in the rare situation where a state has made a reservation that has severe implications, and other state parties have applied intense pressure on the reserving state to withdraw it. This occurred with Myanmar's initial reservation to Article 37, which states that ‘State Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.’¹¹⁶ Reservations to this provision can be seen as in conflict with the treaty's object and purpose. As a result, the objection to Myanmar's Article 37 reservation was strong, and Myanmar withdrew the reservation.¹¹⁷ Although the reservations have not had an overall adverse impact, they have had broad implications in a few specific areas. For instance, rights under articles 13 and 14 for freedom of thought and

¹¹²Upon ratification of a treaty, a state can issue reservations, understandings, or declarations. Reservations are the most significant, as they propose to alter a state's obligations under the treaty.

¹¹³CRC, art 51(2). See also Vienna Convention, art.19

¹¹⁴Alastair Bissett-Johnson, 'What did states really agree to? -Qualifications of Signatories to the United Nations Convention on the Rights of the Child' (1994) 2 Int'l J Children's Rts 399

¹¹⁵For the reservations of the first 187 states that ratified the CRC, see Reservations, Declarations, and Objections Relating to the Convention on the Rights of the Child Committee on the Rights of the Child, U.N. DPC. CRC/C/2/Rev.5 (1996) (thereinafter reservations, Declarations, and objections).

¹¹⁶CRC, art.37(a). Myanmar's reservation to Article 37 reads in part

¹¹⁷See Reservations, Declarations, and Objections, at 26.

expression, and the right to education under article 28, have raised concern about striking a balance between parental and children's rights.¹¹⁸ Some groups in the United States have expressed interest by objecting to U.S. ratification of the CRC because, among other things, they consider it to be anti-parent.¹¹⁹ However, it is argued that much of these criticisms are overstated. The CRC assumes that the family environment is best for the child and that parents play a significant role in the care of the child which state parties must respect.¹²⁰

Another issue is that several states parties to the CRC have submitted more general reservations, the actual scope of which is not clear. The most common general reservation has come from Islamic nations, many of which have reserved the right not to follow provisions that are incompatible with Islamic law or the Sharia.¹²¹ Several states have expressed concern that these provisions may be too broad and instead should be tailored to cover only a limited number of provisions.¹²² In addition, any general reservations may warrant further examination, to narrow their scope or have them withdrawn. Crucially, an important aspect of the implementation of the CRC is to work towards the elimination of those reservations that could impair the rights of the child

The Committee continually recommends that state parties review their reservations and possibly withdraw them. The committee's recommendations could be strengthened if it receives stronger support from state parties in the form of objections to reservations and

¹¹⁸Alastair Bissett-Johnson, 'What did states really agree to? - Qualifications of Signatories to the United Nations Convention on the Rights of the Child', (n 117) 400

¹¹⁹ Some conservative organizations objected to U.S. ratification of the CRC have painted the convention

¹²⁰CRC, art. 5 (stating that "States Parties shall respect the responsibilities, rights, and duties of parents...to provide... appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.").

¹²¹It can be argued that the reservations based on the Islamic Shariah are no different from those that do not allow conflict with a country's constitution. However, the objection is based on the idea that the general reservation applies to all provisions of the CRC, and is not tailored to address specific concerns.

¹²²Austria, Denmark, Federal Republic of Germany, Ireland, Italy, the Netherlands, Norway, Portugal, the Slovak Republic, and Sweden are states that objected to such reservations. See reservations, Declarations, and Objections, at 37-50

pressure on other states to reconsider their reservations. Notably, under international law, a state party to a convention can object to a reservation by another state party.¹²³ However, state parties are reluctant to criticize other states. Even when one state criticizes another, their objections usually do not challenge the legal effect of the reservation.

It is argued that the tension between encouraging ratifications and establishing a robust legal instrument could result in some state parties tolerating reservations by other state parties at the expense of the children in those countries.

It is important to mention that CRC does not permit state-to-state complaints or any avenue for individuals to bring complaints against a state. These shortcomings are a clear contrast to some of the other international human rights instruments which provide frameworks for both state and individual complaints.¹²⁴ Without providing for its system for treating complaints, the CRC will be compelled to rely on the courts of the various state parties to interpret and implement the provisions of the Convention. Invariably, this reliance on domestic courts will open the door to a wide range of interpretations, including narrow readings that may further inhibit the rights of the child.

5.9 The Regional Child Rights Mechanism and Enforcement

5.9.1 The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the child (ACRWC) is a distinct instrument and the only regional specific child rights instrument in the world.¹²⁵ The African Children's Charter provides a list of rights of the child, which is very similar to the

¹²³Vienna Convention, on the Law of Treaties, opened for signatory, May 23, 1969, 11 U.N.T.S. 331, 81.LM.6 79 (entered into force on January 27, 1980) hereinafter Vienna Convention) arts. 20,21

¹²⁴ For instance, ICCOR, 12, art. 41 (stipulates that a State party may declare that it recognizes the Human Rights Committee's authority to receive communications from other states parties claiming that it is not fulfilling its obligations under the Covenant). See also Optional Protocol to the ICCPR, art. 1 G.A. Res. 2200A, 21st Sess., U.N. GAOR, and Supp. No.16 at 59.

¹²⁵The charter was adopted by the OAU on 11 July 1990 and came into force on 29 November 1999. The Charter was ratified by Nigeria on 23 July 2001.

one contained in the Convention on the Rights of the Child (CRC). However, unlike the CRC, the Charter also imposes duties on the child.¹²⁶

Article 1 of the African children's charter and Article 4 of the CRC are similar. Both provisions place duties upon states to adopt measures to ensure the realization of children's rights. Article 1(1) of the charter provides that:

“Parties to the present Charter shall recognize the rights, duties and freedom enshrined in the Charter and shall undertake, following their constitutional process and with provisions to the present Charter, to adopt such legislative or other measures as may be required to give effect to the provisions of the Charter”^s

Importantly, Article 1(3) of the Charter states that any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Charter shall be discouraged.¹²⁷

The provisions indicate that the African Children's Charter places considerable weight on the need to adopt legislative and other measures to implement the rights protected in its various provisions.

Article 32 of the African Children Charter provides for the establishment of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) to promote and protect the rights and welfare of the child.¹²⁸ This Committee consists of eleven independent and impartial members.¹²⁹ These members are elected for a five-year term by the African Union Assembly of Heads of States and Government and may be re-elected.¹³⁰ The Committee is the monitoring body of the ACRWC which is empowered to monitor the implementation of the rights of children. This is done by

¹²⁶ Article 31 ACRWC

¹²⁷ Art 1(3) ACRWC.

¹²⁸ Art 32 ACRWC.

¹²⁹ Art 33 of ACRWC

¹³⁰ Art 34 and 37 ACRWC

examining the state and civil society reports on children's situation, collect information on children and make recommendations to governments. They are also to handle complaints on child rights violations. Its most important role is to monitor how states implement the Charter by examining states reports. The committee holds thematic discussions on crucial issues affecting the rights of children such as children and armed conflict. It decides the theme for the Annual Day of the African Child (16th June), celebrated all over the continent.¹³¹

The committee meets for a week twice a year usually at the African Union Headquarters in Addis Ababa, Ethiopia. Committee members serve on a voluntary, part-time basis and in an independent capacity. The committee submits an annual report to the AU Assembly.¹³²

Despite the above provisions and mandates, challenges are hindering the enforcement of the African Children's Charter. The work of the African committee is being hindered by various functional challenges such as the lack of a secretariat and nomination for the membership of the committee.¹³³

Again, the work of the committee is hindered by budgetary constraints. Besides, the confidentiality required under Article 44(2) of the African Children's Charter prohibiting the publication of the findings made against states before the Assembly of the Heads of States and Governments of the African Union approves them, constrains the committee's work by delaying the possibility of naming-and-shaming countries which have violated children's rights under the African Children's Charter.¹³⁴

¹³¹Art 32 ACRWC

¹³²*Ibid*

¹³³Oluwo D (2002) Protecting Children's Rights in Africa: A Critique of the African Charter on the Rights and Welfare of the Child

¹³⁴Aquinaldo, C. T. S. M 2012 Assessing the Implementation of the Convention on the Rights of the Child in Lu sophone Africa (Angola and Mozambique) An unpublished Doctoral Thesis, 85

Furthermore, in the Assembly of the Heads of States, there are possibilities of executive interference on the findings of the Committee, which can also prejudice the outcomes intended in the process of protection of children's rights.¹³⁵

The Committee is mandated to gather information from any group or NGOs recognized by the African Union. This provision, therefore, enables children to petition to the committee on any alleged violation of their rights including their economic, social and cultural rights.¹³⁶ Furthermore, the ACRWC states that the child's welfare is the primary consideration.¹³⁷ Thus, by this provision, the peculiarity of the region is borne in mind.¹³⁸

5.9.2 The African Children's Charter Reporting Procedure

According to Art 43, state parties must submit reports to the African Children's committee on their implementation of the Charter, the measures that they have adopted which give effect to the provisions of the African children's Charter and the progress made in the enjoyment of these rights. The first comprehensive report is due in two years and after that every three years.¹³⁹

5.9.3 The African Charter Complaints Procedure

The African Children's Committee may receive communications, also referred to as 'complaints' from any person, group or NGOs recognized either by the African Union, a member state or the United Nations relating to any matter covered by the African Children's Charter. Every communication must contain the name of the author and shall be treated in confidence (Art 44).¹⁴⁰

¹³⁵*Ibid*

¹³⁶Freeman Commentary

¹³⁷ACRWC 1990 Art 4(1)

¹³⁸Freeman Commentary

¹³⁹*Ibid*

¹⁴⁰Art 44 of the African Children's Charter

Once a Communication is received, it is then sent to all members of the committee three months before each ordinary session so that the committee may set up a working group or rapporteur who will then bring the communication to the attention of the particular state concerned and request an explanation or written statement within six months.¹⁴¹

The Committee may also request the presence of the person or group submitting the communication and the state party concerned to enable them gather more information, and observations. The African Children's Charter provides that the Committee may resort to any 'appropriate method' of investigating any matter falling within the ambit of the Charter.

The Committee is to submit reports on its activities to the ordinary session of the African Union Assembly of Heads of State and Government every two years. After being duly considered by the Assembly, this report is then made public. State parties must make these reports available to the public in their countries.¹⁴²

This procedure though well-articulated but not without criticism. It is important to note that the African Commission will only act on communications received from individuals or NGOs if requested to do so by a majority of its members.¹⁴³ Again, recommendations by the African Commission only become binding if they are adopted by the African Union Assembly of Heads of State and Government.¹⁴⁴ Furthermore, although the recommendations are binding, there is no effective enforcement mechanism apart from political pressures by the AU.¹⁴⁵ In addition and more importantly, the process is heavily

¹⁴¹Bar Human Rights Committee of England and Wales (BHRC) & The United Nations Children's Fund (UNICEF): The Child Rights Manual, Nigeria (2013) 48-51

¹⁴²*Ibid*, Art 45

¹⁴³*Ibid*

¹⁴⁴Art 45 of the African Children's Charter

¹⁴⁵ Bar Human Rights Committee (n 145)

politicized, and the outcome is highly dependent on the views of other AU member states.¹⁴⁶

5.9.4 National Implementation

Article 4 of the CRC requires state parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights of the child. It further stressed that concerning economic, social and cultural rights, implementation should be to the maximum extent of state party's available resources.¹⁴⁷ Despite the challenges faced by Nigeria such as ethnic, traditional and cultural differences, religious and civil strife, socioeconomic constraint such as poverty, unemployment and the heavy debt burden, which may have inhibited progress in fully implementing the children's rights enshrined in the UNCRC, the country is expected to put every effort and resources needed to effectively implement the rights and principles enshrined in the CRA, and ensure as a matter of priority that the CRA is adopted in all states.¹⁴⁸

The Nigerian Government has taken some commendable administrative steps in ensuring that the provisions of UNCRC and the ACRWC are implemented through policymaking and strengthening of institutions of government.¹⁴⁹

Before 1993, all issues relating to children were managed by the Social Welfare Department of the then Federal Ministry of Social Development and Culture.¹⁵⁰ After the Christian Summit of 1990, the National Commission for Women was created, which later

¹⁴⁶ Ibid

¹⁴⁷ UNCRC 1989 Art 4; Caroline Sawyer, International Developments: One Step Forward, Two Steps Back- The European Convention on the Exercise of Childrens' Rights' 11 (2) CFLQ (1 June 1999) 151 -170

¹⁴⁸ Ihua-Maduenyi F, Considering the Best Interests of a child in a Multi-Cultural Civil Society with Special Reference to Nigeria, (Unpublished Thesis (2008) University of Leicester UK) 214-215

¹⁴⁹ Bar Human Rights Committee n (145)

¹⁵⁰ Ibid

became the Ministry of Women Affairs and Youth Development. The ministry took over and pursued vigorously the issues relating to children. 151

Significantly, by 1994, the Federal Government inaugurated the National Child Rights Implementation Committee (NCRIC) and gave it the mandate to popularize the CRC and the ACRWC. This body facilitated the enactment of the CRC and the signing and ratification of the two optional protocols to the CRC. Consequently, the CRA mandates the NCRIC among others to monitor the full implementation of the CRA and CRC. 152 Other institutional bodies include the National Council of Child Rights Advocate of Nigeria (NACCRAN) as the umbrella NGO involved in Child Rights Advocacy. Again, the Children's Parliament was established to consolidate the effort of the Child Rights Information Bureau in enhancing child participation in matters affecting them. However, it would appear that the voice of the majority of Nigerian children mostly in the remote parts of the country and who constitute the majority of Nigerian children are not within the ambit of those who have access to this medium of participation. 153

It is important to note that National Education Policy (NEP) plays a role in combating child abuse and child labour. The 2003 passage of Universal Basic Education (UBE) policy, which made education free and compulsory for all children up to junior secondary level, was to be a vital government strategy in the fight against child labour. The aim was to prevent children from having to work to pay their school fees. Besides, there is no excuse for parents not to send their children to school. 154

However, other costs associated with education often prove prohibitive for low-income families, the implication being that children are still forced to work to attend school. Over

151 Okpalaobi & Ekweme, United Nations Convention on the Rights of a Child: Implication of Legal and Administrative Measures in Nigeria (2015) 6 *Nnamdi Azikiwe U.J. Int'l & Juris*, 120.

152 *Ibid*

153 Jones N, Prester-Marshall E, Cooke N & Banke A: Promoting Synergies Between Child Protection and Social Protection in Nigeria: UNICEF February (2012) Nigeria: ODI. 24-25

154A. A Aliyu, 'Child Labour in Zaria Nigeria' (2006) 5 *Journal of African Medicine* 98

time, most of them drop out eventually.¹⁵⁵ It was also revealed that in Zaria, Kaduna State as well as many other Nigerian cities, secondary schools run morning and afternoon shifts, a strategy to encourage adolescents to combine school and work theoretically.¹⁵⁶ However, this has not helped much. In fact, in one study, one-third of the working student admitted to having failed a school year.¹⁵⁷

The Federal Ministry of Women Affairs and Social Development (FMWA & SD) operates a shelter for female victims of abuse and offers them counselling, primary medical care and access to legal assistance.¹⁵⁸ Again, between 2004-2007, the government launched several campaigns to sensitize the public to children's rights and child abuse. These include the creation of public fora, like a public holiday to celebrate the children's day and Day of the African Child.¹⁵⁹ In 2005, FMWA & SD ran a sensitization campaign for the media, educating the press, which will in turn inform the public, about the abuse of women and girls. In 2008, it started working with the police, trying to shift the perception that domestic violence is a private affair. It also educates the police officers about the type of abuse female face and the legal action that should follow.¹⁶⁰ Some other of the institutions involved in efforts towards dealing with child labour will be discussed in the following subsections.

5.9.5 The National Human Rights Commission

The National Human Rights Commission (NHRC) was established by the government of Nigeria in 1995 to protect human rights in general. The commission is also very active in ensuring the promotion and protection of children in Nigeria.¹⁶¹

¹⁵⁵Ibid

¹⁵⁶Ibid

¹⁵⁷Federal Ministry of Women Affairs and Social Development (2004): Country Report on Violence Against Children submitted to the UN Secretary-General's Independent Expert on the study of violence against children Lagos.

¹⁵⁸Jones N et al (n 157) at 28

¹⁵⁹Ibid

¹⁶⁰Ettor, 'Legal Framework for the Rights of the Child in Nigeria and the Imperative Question of Enforceability. Human Rights Review', 297-298

¹⁶¹Ibid

The Commission is mandated to monitor and investigate all alleged cases of human rights violation in Nigeria and make appropriate recommendation to the government.¹⁶² It is saddled with the responsibility to assist victims of human rights violations and seek proper redress and remedy on their behalf and to report on the state of human rights protection in Nigeria.¹⁶³ To carry out its functions and responsibilities, the Commission must liaise and cooperate with local and international organizations on human rights with the aim of advancing the protection of human rights in Nigeria including the rights of the child.¹⁶⁴ NHRC liaised with UNICEF and Child Rights Brigade International (CRIB) to run a series of assessment centre in 18 Pilot states to measure the level of implementation of the Child Rights Act.

Similarly, in 2009, UNICEF collaborated with NHRC to educate States' Attorneys General on the Child Rights Act and its implementation in their respective states. Again UNICEF also collaborated with the south-south NHRC office and the Rivers State Ministry of Women Affairs and Social Development (MWA & SD) to run a training programme for law enforcement and judicial officers in Calabar and Owerri.¹⁶⁵ The programme focused much on raising awareness among participants concerning the Child Rights Acts and informing officers of the roles they are expected to play in its implementation.¹⁶⁶ To ensure adequate performance and result oriented approach to its work, the council identified fifteen (15) main thematic areas of focus on the National Human Rights Commission. These include the protection of the rights of women and other gender-related matters and children, making this its topmost priority.

¹⁶²National Action Plan for the Promotion and Protection of Human Rights in Nigeria, Federal Republic of Nigeria (2003) 4

¹⁶³*Ibid*

¹⁶⁴ Jones N et al (n157) 29

¹⁶⁵*Ibid*

¹⁶⁶Ettor, 'Legal Framework for the Rights of the Child in Nigeria and the Imperative Question of Enforceability . Human Rights Review', (n 164) 298

5.9.6 National Agency for the Prohibition of Traffic in Person (NAPTIP)

As a result of the 2003 Anti-trafficking law, the federal government of Nigeria established the National Agency for the Prohibition of Trafficking in Persons. The objective of the trafficking in Persons Act is to provide an effective and comprehensive legal and institutional framework for the protection, prohibition, detection, prosecution and punishment of human trafficking and other related offences in Nigeria including children.¹⁶⁷ The Trafficking in Persons Act established the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), empowering it with the responsibility of executing the mandate and the objectives of the trafficking in Persons Act. NAPTIP has been at the frontline of the campaign and fight against human trafficking, including children.¹⁶⁸

It prohibits any form of child labour and punishes violations. The NAPITP Act declares as follows:

“Any person who employs requires, recruits, transports, harbours, receives or hires out a child to do any work that is exploitative, injurious or hazardous to physical, social and psychological development of the child commits an offence and is liable on conviction to imprisonment for a minimum term of 2 years but not exceeding seven years without an option of fine”.

NAPTIP promotes collaboration with more experienced organizations, such as UNICEF, the UN Office On Drugs and Crime (UNODC) and ILO (save the children Italy) Furthermore, its activities include rehabilitating victims, collaborating with other national and international bodies and creating public awareness of trafficking. It is divided into the investigation unit, the legal unit, the public enlightenment unit and the counselling and rehabilitation unit.¹⁶⁹

¹⁶⁷Ibid

¹⁶⁸Ibid

¹⁶⁹ Jones N et al (n157) 19

At the state level, there are anti-child trafficking committees in most of the states of the federation in Nigeria. In addition, the Federal Ministry of Women Affairs and Social Development run an anti-child trafficking campaign in Akwa Ibom state. In Edo State, a Skill acquisition Centre has been established in the state capital, where the victims receive vocational training. It is important to note that the NAPTIP Act frowns at every form of exploitation of the child. Despite the evidence on the efforts of the government of Nigeria and NGOs to fight child trafficking, the number of trafficked children keep increasing daily.

5.9.7 The Federal Ministry of Labour and Productivity

The responsibility of enforcing child labour laws and fight against every form of exploitation of the child rest with the Ministry of Labour and Productivity at the federal, state, and local levels.¹⁷⁰ The Federal Ministry of Labour and Productivity coordinates all efforts to fight child exploitation through its Inspectorate Department, which includes a child labour unit.¹⁷¹ The law authorizes the Minister of Labour to regulate domestic child service.¹⁷² It is important to note that although the ministry conducted inspections, the inspections focused only on the formal business sectors, where the incidence of child labour is not a significant problem.¹⁷³

The Ministry of Labour has trained approximately 120 labour inspection officers on child labour laws and an additional 80 officers to perform inspections in high-risk areas such as agriculture, mining and the informal sector.¹⁷⁴ Yet, child exploitation and child labour are still on the increase as a result of an implementation problem

170Aronowitz, A.A. (2006) Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo. Vienna: UNODC.

171United States Department of Labor, 2006 Findings on the Worst Forms of Child Labor - Panama, 31 August 2007, available at: <https://www.refworld.org/docid/48d7494ab.html> accessed Jan. 27, 2020

172*Ibid*

173Makoju G, Education Sector Analysis, Interview with USDOL Consultant, March 29, 2005.

174Government of Nigeria, Nigeria Labour Act 1974, Article 59 and 65. US Department of State, Country Report-2006 Nigeria.

5.9.8 The Nigerian Police Force

The police and the prosecution service in the state saddled with the responsibility for investigating and prosecuting crime.¹⁷⁵ They have a very crucial role to play in protecting child rights by ensuring that alleged offence against children is properly investigated, and those responsible are prosecuted and punished. Effective police action should help children who have been the victims of crimes obtain redress from the courts and prevent future harm to them and others.¹⁷⁶ Some specialized police units were established to deal with cases involving children.¹⁷⁷

5.10 Establishment of the Family Court

The CRA 'provides for the establishment of family courts to hear and determine matters relating to children.¹⁷⁸

Structure and Jurisdiction

Under section 49 of the Child Rights Act, Family Court is established for each state of the federation and the FCT Abuja to hear and determine matters relating to children. Section 62 provides that the court have unlimited and exclusive jurisdiction in any criminal proceedings relating to child offenders.

Section 151(1) of the Act provides:

“Subject to the provisions of the Act and in addition to such other jurisdiction as may be conferred on it by any other law, the court, shall have unlimited jurisdiction to hear and determine”.

¹⁷⁵Refworld (2006): Findings on the Worst Form of Child Labour-Nigeria available at <http://www.refworld.org/docid/48d749483a.html> accessed 10 January 2018

¹⁷⁶ Bar Human Rights Committee of England and Wales (BHRC) & The United Nations Children’s Fund (UNICEF) 2013. The Child Rights Manual, Nigeria.

¹⁷⁷*ibid*

¹⁷⁸Section 149-162 CRA 2003.

- (a) “Any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interests, obligation or claim in respect of a child in an issue’; and
- (b) “Any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or the interest of a child”.

By section 149, 150, 153(5) the Courts operate in two levels, Magistrate Court at the Magistrate level and High Court at the High Court level.¹⁷⁹ The appeal lies from the Magistrate Court level to the High Court level. At the Magistrate level, the court is duly constituted if it comprises of a magistrate and two assessors. No person other than members of the court, parties and their solicitors, parents or guardian of the child and persons directly concerned with the case shall be allowed to attend court.¹⁸⁰

The combined effect of sections 151 and 162 of the CRA¹⁸¹ implies that the family court in Nigeria has unlimited and exclusive jurisdiction to hear and determine both civil and criminal matters relating to a child alleged to have committed an offence or a child in need of care and protection.¹⁸²

It could, therefore, be that the unlimited jurisdiction of the family court under the CRA may lead to a congestion of children's cases. This may create an unnecessary delay in child justice administration because a single magistrate will be presiding over cases involving both children and adults. As it were, the CRA has not made provision for separate courts. However, in practice, the same magistrate adjudicates on both children in conflict with the law and those in need of care and protection, but in different courts and different sitting.¹⁸³

179Sections 149, 150 and 153 CRA 2003

180F Falana, *The Legal Rights of the Child. Tropical Issues on Women's Rights in Nigeria* (University of Lagos Press and Bookshop Ltd 2018)

181Section 149-162 CRA 2003

182Section 149-162 of CRA 2003.

183Section 151 and 162 of CRA 2003

More so, these provisions negate the Act in section 215(3)¹⁸⁴ which emphasizes that the court shall handle another crucial issue which is whether the establishment of a court for each state of the Nigerian federation as a family Court¹⁸⁵ referred to in the CRA should be read as meaning all the high courts or the magistrate's courts in each state in the federation, or any High Court or any Magistrate Court of the state. The literal meaning of the provisions of the Act favours the High Court or any Magistrate's Court in the states.¹⁸⁶

It should be noted that in practice, this could result to an undesired situation, considering the doctrine of forum convenience, as the location of the state family court could make children's matter very problematic, especially those children in rural areas across the vast geographical area that each Nigerian state occupies. Kwara State, for example, has domesticated the Child Rights Act, has 16 local government areas and more than 30 magistrate courts, with only one magistrate's court in the city designated as family court. This poses a challenge to the right to a fair hearing of children in conflict with the law or in need of care and protection in local government areas that are far from the city.

Furthermore, a more serious issue is the fact that not all the states that implemented the CRA have established family courts in accordance with the ACT.¹⁸⁷ This could pose a more serious challenge as the family court forms a vital part of the CRA framework for protecting child rights within the justice system.¹⁸⁸ Importantly, the absence of a family court for the prosecution of cases involving children in some states that have domesticated the CRA is depriving the children access to justice. There are instances when such cases are taken to criminal courts, where matters are unduly delayed, and thereby denying children access to a dedicated and child-friendly judicial system.

184M.A Abdulraheem-Mustapha, 'Child Justice Administration in the Nigerian Child Rights Act: Lesson from South Africa' (2016) 65 African Human Rights Law Journal Dessy, SE and Stephane P "Child Labour and Coordination Failures 412

185Ibid

186Ibid

187Section 215(3) of the CRA

188Section 149 & 150 of the CRA

5.11 Government Intervention Programmes and NGOs Involvement Aimed at Eliminating Child Labour in Nigeria

In recognition of the impact of NGOs in issues of human rights the then United Nations Secretary-General, Kofi Annan in April 1999 addressed the NGO forum on Global Issues in the following terms:

In the United Nations a few decades ago, governments were virtually the sole players. Of course, NGOs helped found the United Nations and are mentioned in the Charter. Even before that, NGOs led the charge in the adoption of the Slavery Convention of 1926. Furthermore, NGOs have a long and proud history of fighting against tyranny and providing humanitarian assistance to the victims of conflict and national disaster.

Nevertheless, it is only since the earth summit in their mark on global society. You have played a key role at world conferences on such vital issues as human rights, population, poverty and woman rights.¹⁸⁹ The drafting of the convention on the rights of the child, a ten-year process which began in 1979, took place with sustained and tremendous input from NGOs. In 1982 an informal NGO Ad Hoc Group on the drafting of the Convention began to meet twice each year and reported, in written form, the results of these consultations. These reports reviewed previously and newly proposed articles and, in some cases, produced entirely new texts or articles regarding rights that the NGO group felt should be included in the draft convention. Consequently, Cynthia Price Cohen, who participated in the Ad Hoc Group as the representative of Human Rights Interest, concluded that ‘the imprint of the NGO Group can be found in almost every article?’

In the area of child rights implementation, NGOs have also performed and continue to perform a myriad of roles. ‘In order to foster the effective implementation of the convention and to encourage international cooperation,’ Art 45 of the CRC gives NGOs and NHRIs a role in monitoring its implementation¹⁹⁰. NGOs now commonly prepare

¹⁸⁹Kofi A. in WisebergL.(2017) The Role of Non-Governmental Organizations (NGOs) in the Protection and Enforcement of Human Rights, 347

¹⁹⁰Buck, *International Child Law*, 100

‘shadow’ or alternative reports which mostly challenge the facts or interpretations provided by governments.¹⁹¹

Additional guidelines regarding the participation of NGOs and individual experts in the pre-sessional working group of the committee make it clear that the reference to 'other competent bodies in the convention includes NGOs. To be sure, they announce that this Convention is the only international human rights treaty that expressly gives NGOs a role in monitoring its implementation.¹⁹² Requests by national, regional and international NGOs (INGOs) to participate is required to be submitted to the committee through its secretaries at least two months before the pre-sessional working group. Based on the written information received, the committee will select the NGOs that will participate in the pre-sessional working group meeting (which is closed to the public). The NGO group usually provides detailed guidance on NGOs submissions. This group was established in 1983 to influence the drafting of the convention. This NGO Group now known as Child Right Connect holds a special ECOSOC consultative status at the United Nations, and its primary mission is to facilitate the promotion, implementation and monitoring of the Convention on the Rights of the Child.¹⁹³

Furthermore, NGOs are usually able to go in and gather information in places that other United Nations Committees and other intergovernmental agents may have been barred. A good example is a case concerning the attempt of a United Nations Joint Mission, established by the Commission on Human Rights in April 1997, to investigate allegations of the slaughter of Hutu refugees in camps in Eastern Zaire. The mission was blocked by President Laurent Kabila, who kept finding new reasons for refusing access to the United Nations team. However, in October 1997, Human Rights Watch was able to publish a report entitled ‘What Kabila is hiding: Civilian killings and impunity in Congo’, documenting the attacks on the refugee camps in the former Zaire that began in late 1996

191 Wiseberg L.S, (n193) 347-372

192 Buck, *International Child Law*, 100

193 Crereporting.Childright.connect.org

and continued in the ensuing seven months as war spread across the country.¹⁹⁴ Accurate and timely information is the main currency of human rights NGOs and the basis of their legitimacy.¹⁹⁵

There is no doubt that NGOs maintain robust capacity for action and influence. It is evident so far that exceptional items have been placed on both state and international human rights agenda due to NGO influence, intensity and pressure. Various NGOs are working to implement child rights in Nigeria. These NGOs often work closely with international organizations such as International Labour Organization (ILO), United Nations Children Fund (UNICEF) and International Non-Governmental Organization (INGOs) in ensuring adequate protection of children in Nigeria.¹⁹⁶

Some of these NGOs involvements and government intervention programmes at eliminating child labour in Nigeria are briefly discussed below:

5.11.1 Nomadic Education

The establishment of the National Commission for Nomadic Education in Nigeria by Decree 41 of 1989 provided the opportunities for an estimated 9.3 million nomads living in Nigeria to acquire literacy skills. This programme was established for children who have never attended school. It was launched in recognition of the migratory nature of pastoral nomads and immigrant fishers which made it difficult for their children (who invariably work with their parents) to be enrolled for formal education.¹⁹⁷

194 Wiseberg L.S. (n193) 347-372

195 Buck, *International Child Law*, (n 193) 347-372

196 Wiseberg L S, (n 193) 347-372

197 Aderinoye, R.A, Ojokheta K.O, & Olojede A.A. Integrating Mobile Learning Into Nomadic Education, available at www.irrodi.org accessed 20 January, 2020

One of the objectives of nomadic education is to ensure that the nomadic child improves his standard of living thus eliminating the hardships and constraints in his life. It will also help him modernize his techniques of herdsmanship and animal management.¹⁹⁸

The children of nomads rather than the nomads themselves were the targets. Special schools, called 'on-site schools' were sited along migratory routes at fixed points of reference. Mobile schools were provided for children, depending on their number within a clan cluster. In 1989, the existing 121 schools had an enrolment of 16,575, a figure that doubled the enrolment figure of the past ten years of state governments' intervention in nomadic education.¹⁹⁹

5.12 Education Policy Aimed at Eradicating Child Labour

Government has introduced various programmes aimed at the promotion of educational development of children and consequently curbing child labour. An example of this programme is the Access to Universal Basic Education (UBE) aimed at providing quality nine years of education (Primary 1 to Junior Secondary 3) to the younger generation.²⁰⁰ However, it is argued that UBE programme contradicts the educational objectives of the Federal Government as provided in section 18(3) of the 1999 constitution which states that government shall strive to eradicate illiteracy and shall when practicable provide:

- a) Free, compulsory and universal education
- b) Free secondary education
- c) Free university education
- d) Free adult literacy programme.

Notably, the provision of free compulsory and qualitative education up to the university level as envisaged by the Constitution is a potent strategy for eliminating or at least reducing child labour in Nigeria. The UBE programme is far from achieving this

¹⁹⁸National Commission for Nomadic Education Nigeria available at www.ncne.gov.ng accessed 10 February 2020

¹⁹⁹ FOS/ILO/SIMPOC Report on National Modular Child Labour Survey, Nigeria (2000/2001) 124

²⁰⁰Gogo, 'Legal Responses to Child Labour in Nigeria', 8

objective.²⁰¹ However, various factors such as compatibility between schooling and work and high dropout rate may reduce the effectiveness of educational expansion in curtailing the problem of child labour. Furthermore, with the introduction of Universal Basic Education (UBE) by the Federal Government, although accurate data to ascertain the significant impact recorded are not readily available, it is believed that the measure would increase secondary school enrolment as more disadvantaged children from a low-income family would benefit.²⁰²

5.13 Collaboration Programmes of Agencies with IPEC

In the national programme for the elimination of child labour, five action programmes have been put in place by five implementing agencies of government. The action programme that is being implemented by the Child Labour Unit (CLU) of the Federal Ministry of Employment, Labour and Productivity (FMEL &P) is on capacity building of governments to tackle child labour problems. The agreement between IPEC and CLU took place only in November 2001.²⁰³

The strategies mapped out for the implementation of this programme consists of sensitization of the officials of the inspectorate department through their participation in the various workshops organized by the national programme. Furthermore, CLU has executed one of its activities in the action programme, namely the training of 50 labour inspectors in the detection and awareness of child labour issues.²⁰⁴

201Ibid

202FOS/ILO/SIMPOC Report on National Modular Child Labour Survey, Nigeria 2000/2001, pg 124

203International Programme on the Elimination of Child labour (IPEC): National modular child labour survey country report (Nigeria 2000/2001)

204Ibid

5.14 The ILO-IPEC National Programme has Four (4) Principal Areas of Intervention

5.14.1 Human Development Initiatives (HDI)

Human Development Initiatives (HDI) is a non-governmental organization which maintains partnership with IPEC on the elimination of child labour in Nigeria. This NGO, based in Lagos, was established in 1996 and commenced operation in 1997 intending to build inclusive human development by empowering vulnerable groups and address their needs and concerns.²⁰⁵ One of the focuses of its projects was the withdrawal and rehabilitation of child conductors within the Lagos mainland area of Lagos. This was implemented within 16 months as 150 child bus conductors were withdrawn from the streets. Using effective mobilization strategies, HDI successfully secured the withdrawal and registration of 84 child bus conductors from motor parks within Lagos Mainland,²⁰⁶ although without the cooperation of National Union of Road Transport Workers (NURTW). Of this number, 64 remained on the programme till the terminal date, 20 absconded and of the number that remained on the programme, ten were registered with a continuing Education Centre, while 54 were registered for vocational training.²⁰⁷ The constraint of the programme was that NURTW was uncooperative, whilst the local government had little or no capacity to enforce the union's cooperation. However, HDI achieves the activity through its approval/monitoring meetings and other separate meetings held with parents, vocational trainers and transporters (represented earlier in the programme by (NURTW)).

5.14.2 Women Consortium of Nigeria (WOCON)

Women Consortium of Nigeria (WOCON) is one of the prominent NGO's that implemented an IPEC direct action programme in Lagos. The focus was on the withdrawal and re-integration of children in prostitution and domestic work in Lagos. After the programme which lasted for 16 months, a total of 320 children comprising of 240 young

²⁰⁵Macfound, Human Development Initiative, available at <http://www.macfound.org> accessed 23 January 2020)

²⁰⁶*Ibid*

²⁰⁷*Ibid*

domestic and 80 child prostitutes, were reached. However, only 261 children, 171 females and 90 males were sustained meaningfully in the project. These comprised of 224 young domestics and 37 child prostitutes.²⁰⁸

5.14.3 Non-IPEC Direct Action Programme by NGOs

A few NGOs in Nigeria have established direct action programmes before the commencement of IPEC. Such NGOs include Development Crown Volunteers, Child Lifeline, Human Development of Nigeria (HDN), Friends of Working and Street Children in Nigeria (FOWASCIN), among others. Some of the programmes implemented are briefly discussed below:

5.14.4 Child Lifeline

Child Lifeline (CLL) is a nonprofit organization which was established in Lagos in 1994 with the objective of care and support to the vulnerable and homeless children. The CLL supports and enables vulnerable young children at risk or in need to develop into self-reliant, self-supporting, independent and responsible citizens who are empowered through formal and vocational education.²⁰⁹ The NGO, with support from UNESCO, carried out a survey of 600 street children 80 per cent male and 20 female in February 1995. It started its rehabilitative work in February 1995 when the first street child was picked up. In September 1995, six boys were added. One of the objectives of the programmes which focuses on boys from ages 9 to 19, is to as much as possible, return the children to their parents if it is in the best interest of the child. Other aims include literacy, numeracy and vocational training of the children who cannot be integrated into their families. Not less than 60 children have already benefited from the programme. Most of the programme implementers are professional educators and lawyers.²¹⁰

Companies, embassies and international bodies also funded the programme. The Lagos State Government provided accommodation for 26 boys at Oregun and has further

²⁰⁸*Ibid*

²⁰⁹Antonioli M, Child Life Line, available at www.Moniaantonioli.com accessed 23 January 2020)

²¹⁰FOS/ILO/SIMPOC Report on Modular Child Labor Survey Nigeria 2000/2001

supported the programme by providing an expanse of land in Lekki, which is being developed as a permanent site.²¹¹

5.15 The Human Development Foundation of Nigeria (HDFN)

The Human Development Foundation of Nigeria (HDFN) is an NGO established in Kaduna in 1985. It created a programme for boys and girls aged 4-13 who come from homes in which one or both parents are blind beggars and who guide their parents when they beg for alms. The aims and objectives of the programme include provision of psychological, educational and social services for disadvantaged children. Some of the activities of the foundation include the following: educational outreach for children aged 10 to 14; production of basic readers for nomadic education, housing improvement, environmental sanitation and health care for the inhabitants of the blind community.²¹²

5.16 Friends of Working and Street Children in Nigeria (FOWASCIN)

The Friends of Working and Street Children in Nigeria (FOWASCIN), which commenced work informally in 1992, was formally established in 1994. The aims and objectives of the NGO include: carrying out research on the street and working children for effective advocacy and public enlightenment; networking and sharing information among relevant institutions, agencies and organizations. This organization creates awareness of their special problems and needs, link working and street children with educational, health and welfare agencies for the provision of identified needs. Another objective of the NGO is the reduction of the number of working children through the empowerment of families and communities. FOWASCIN has successfully withdrawn head-loaders and provided scholarships to enable them to attend school on a full-time basis. It has built up resilience among working children who would otherwise have lost hope informally and formally disseminated information of working children to NGOs and CBOs. It has participated in media events in order to facilitate the exchange of views between media personnel and

²¹¹*ibid*

²¹²*ibid*

working children. The organization is funded through voluntary donations from members and relies exclusively on volunteers.²¹³

5.16.1 Network of Non-Governmental Organisations Against Child Trafficking, Labour and Abuse (NACTAL)

Network of Non-Governmental Organizations Against Child Trafficking, Labour and Abuse (NACTAL) is an alliance of Nigerian NGOs that fight child trafficking and child labour. The network is supported by UNICEF and consists of 32 civil society organizations (CSOs). One of the primary aims is to act as a referral platform for victims of trafficking to access support.

5.16.2 Women Trafficking and Child Labour Elimination Foundation (WOTCLEF)

This NGO was established in 1999 by the wife of the former Vice-President of Nigeria, Mrs. Amina Titi Atiku Abubakar. The WOTCLEF has recorded a remarkable success in its aim of reducing child labour. For instance, WOTCLEF has been able to reunite many trafficked children to their parents. It has also enrolled many children in school to continue their education. As a Humanitarian Organization, it was committed to the eradication of violent abuses of the rights of women and children and also curbed HIV/AIDS in the society. Indeed, it is committed to building an international coalition that restores human dignity through empowerment, education, enlightenment and advocacy. Again, WOTCLEF has sponsored television programmes to raise awareness and inform people of the dangers of trafficking and child labour.²¹⁴ Other NGOs working for the right of children include the Women Advocates Research and Documentation Centre (WARDC). This NGO is set up for child rights Advocacy group of Nigeria (CRAGON), Girls power initiative (GPI), African Woman Empowerment Guide (AWEG) and Galilee Foundation (GF).²¹⁵

²¹³*Ibid*

²¹⁴*Ibid*

²¹⁵*Ibid*

A significant landmark in the activities of WOTCLEF has spearheaded the campaign that led to the enactment of the trafficking in Persons (Prohibition) Law Enforcement and Administration Act in 2003 and the subsequent establishment of the National Agency for Prohibition of Traffic and other related matters (NAPTIP) by the federal government of Nigeria.

These NGOs network with each other and maintain closeness with the grassroots. They sensitize, generate data, and provide the much required expertise and the much needed technical competence to aid policy formulation and assimilation into the mainstream of governmental plans. They are known to monitor the actions of governments and pressurize them to act according to human rights principles.

5.17 Challenges to Effective Implementation of the Right of the Child in Nigeria

In compliance with Nigeria's obligation and responsibility under Article 4 of the CRC, and Article 1 of the ACRWC to implement the principles enumerated in these international instruments through legislative, administrative and other measures, the CRC and ACRWC were domesticated into the CRA. The need for domestication is essential and crucial for the full implementation of the international instrument.²¹⁶ Nevertheless, mere domestication is only an expression to its principles, but the vital and challenging aspect is the implementation. This subsection examines the challenges to the implementation in of the right of children.

5.17.1 Status of the Child's Right Act in Nigeria

Despite the pledge to implement principles enumerated in the CRC instrument and the commitment to promote the rights of the child, there are signs of legal progress but little genuine success. Since Nigeria is a federation with distinct jurisdictional competences, the committee anticipated that the respective states of the federation would pass specific enabling laws in order to bring the Act into effect.²¹⁷ However, since 2003 when the Child's Rights Act was passed into law, not all the states in Nigeria have passed it. The implication,

²¹⁶Abdulraheem-Mustapha, 'Child Justice Administration in the Nigerian Child Rights Act: Lesson from South Africa', (n 188)

²¹⁷Ibid

therefore, is that since the provisions of the CRC are not yet binding on all the states in the country, they do not have national application.²¹⁸ Moreover, states that domesticated the Act are not implementing effectively due to lack of political will, lack of fund, infrastructures, and lack of trained personnel to handle issues that concern children. Furthermore, in these states that the law has been passed, variations of the law exist that cannot be said to be in 'compliance' with the intent of the CRC. Thus, the degree of implementations of the provisions of CRC depends on which state has adopted it in Nigeria. For instance, Nigeria operates multiple systems of law. It is a federal system with different legal systems such as the English common law, statutory law, Islamic or Sharia law and customary law which are applied concurrently with varying degree of deference to local custom. These factors are very critical to the implementations and success of the CRA 2003

5.17.2 The Nigerian Legal System

The tripartite legal structure of the Nigerian legal system has remained one of the significant obstacles facing the implementation of the CRC in Nigeria. A plural system like Nigeria where there are various sources of law which contains many discrepancies and inconstancies could further hinder the entire process as the various laws are complicated to harmonize with each other on specific principles and issues. There is no doubt that this plural system has important implications on child's rights as the domestic incorporation and creation of the legislative support needed for implementation must take into account the interaction between the various systems and the challenges posed by these different perspectives on the issues at stake. Although the implementation of the CRC is compulsory upon ratification, the measures used to implement the Convention fall within each state's discretion.²¹⁹ Thus, incorporation, which gives legal effect to the treaty in domestic laws is one measure of implementing the CRC. Although research indicates that those states in

218Bar Human Rights Committee of England and Wales (BHRC) & the United Nations Children's Fund (UNICEF) 2013. The Child Rights Manual, Nigeria, available at <http://www.barhumanrights.org.uk> accessed 15 March 2020

219 Human Rights Committee, General, Comment 3, Implementation at the National Level at Para 1. See also Committee on Economic Social and Cultural Rights (1990)General Comments 3. The Nature of State parties obligations, at Para 4 (1981).

which the convention has been incorporated directly or indirectly are associated with a degree of implementation, the legal procedure cannot be isolated from the range of measures that are necessary to implement the CRC successfully.²²⁰ More so, how the CRC is given legal effect is contingent upon the constitutional and legal systems of the individual states. For instance, states achieve the incorporation of conventions into their domestic laws by using either the monist or dualist method.

Since Nigeria operates a dualists system, conventions do not automatically become applicable within the country until appropriate national legislation has been enacted to give the treaty the force of law domestically. Thus, international instruments must be expressly incorporated into the national law through legislation before becoming legally enforceable in domestic courts.²²¹ In Rio-Kohn's view, unless legislative incorporation has occurred, any conflict between the provisions of any international human rights instrument and national legislation will be resolved in favour of the latter. More so, upon incorporation, the convention is required to function in conformity with the prevailing juristic ideology of the local law.²²² It may be observed that these may affect the effectiveness of the international instrument by attaining the intent and content of the law.²²³ Furthermore, some of the contentious issues that resonate amongst the various subsisting legislation in Nigeria are those of the definition of the child (age limit) and consequently the age of marriage requirement, among others. The age limit enshrined in the different legal instruments relating to children, including customary law, are at variance with each other. As a result, the multiplicity of the minimum age limit in the country's legal framework constitutes a significant constraint in the process of interpretation.

220L Lundy, U Kilkelly and B Byrne, 'Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review' (2013) 21 *International Journal of Children's Rights* 4442

221 G. M Emilio, *A Comparative Study of the Impact of the Convention on the Rights of the Child: Law reform in selected Civil Law Countries in UNICEF, Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diverse Legal systems* (Cambridge University Press 2007), 100 at 118

222Ibid

223A Karin and T Atabongawung, 'The Right to Development in International Law: New Momentum Thirty Years Down the Line?' (2016) 63 *Netherlands International Law Review* 22

For example, the CRA adopted 18 as the age limit of a child²²⁴ while the CYPA defines a child as a person below 14 years.²²⁵ Besides, the same act also categorizes young people between the age bracket of 14 and 17 years as a child. Similarly, the Immigration Act defines a minor as any person below the age of 16,²²⁶ while for Matrimonial Causes 21 years is the age of maturity.²²⁷ Furthermore, some provisions in the Penal Code which is in force in some states in the Northern part of Nigeria place the age of a child at above 7 and under 12.²²⁸

This conflict of laws is crystal clear in the different interpretations attributed to the age of marriage requirement. The rules of the community are applicable under the customary law. For instance, in the southern part of Nigeria, the age of marriage is between 16 and 18 years.²²⁹ However, in the Northern part of the country, under the Sharia law, the age of marriage is twelve or thirteen.²³⁰ Consequently, most Muslim states vehemently opposed this law, and had either not passed the law or very reluctant to do so as it is believed to conflict with their religious tradition and norms. Other states in this category, which have passed the law, make a point or proviso that in the event of any conflict between the legislation and existing Sharia law, the Sharia law takes precedence.²³¹ There is no gainsaying that by limiting or moderating the applicability of the CRA, the provisions of the CRC are obviously restricted in their application in different parts of the country.

Another issue at stake is the fact that the Child Rights Act is applicable only to the Federal Capital Territory, Abuja and has not been adopted by all the states of the federation mainly

224*Ibid*

225*Ibid*

226*Ibid*

227*Ibid*

228*Ibid*

229“Political Sharia”? Human Rights and Islamic Law in Northern Nigeria. <http://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria> accessed 15 November 2019

230*Ibid*

231*Ibid*

on the grounds of culture and religion. This is because child rights is not on any of the legislative lists of the constitution and being a domestication of international treaties, the CRA cannot be imposed on states under section 12(3) of the 1999 constitution of the Federal Republic of Nigeria, which requires that all National Assembly must have ratified the bill for such laws before becoming law. The bill for the CRA was neither ratified nor consented to by the states of the Federation before its enactment, thus, the need to adopt the CRA and enact similar laws by the states Houses of Assembly.

Another complex issue is the fact that even adopting the Act is merely paying lip service to the provisions of the Act as they have not shown extreme political will to implement it. Even though sections 260-264 of the CRA provide for the implementation, the provisions for child justice administration under the CRA suffer implementation challenges in Nigeria.

Crucially, the Nigerian Constitution neither made any reference to the Child Rights Act nor the family Courts as well as the right of the child to participate during court proceedings. The constitution did not specify the mode of trial of child cases that come before the NIC. The implication, therefore, is that children will be tried the same way and in the same court with adults. In line with the principle of supremacy of the constitution over all other laws as enshrined in section 1 of the Constitution of Nigeria, 1999, the provisions of the Child Rights Act and other state Child rights laws for family courts and for child's participation in proceedings that affect him/her are invalid. Thus, attaining child justice in the context of the current international standard, as reflected in the CRA remains practically challenging.

Again, under the various states High Court Rules, children cannot institute or defend an action except through their guardian/parents who may not represent the children's interest. This contradicts the provision of section 158 of the CRA, which guarantees the child the right to express him/herself and participate in court proceedings. Importantly, reports have confirmed that in some states in Nigeria including the states that have adopted the CRA,

there are no buildings particularly designated as juvenile Courts/Family Courts,²³² and as such, child offenders are tried in regular court buildings in those states. It is important to note that the Act does not specify the age at which a child becomes criminally liable contrary to the requirement of Article 40(3) of the CRC that state parties should fix such ages. The implication, therefore, is that under the CRA, anyone under the age of 18 years has no criminal responsibility.

Furthermore, the combined effect of sections 151 and 162 of the CRA means that the family court in Nigeria has unlimited and exclusive jurisdiction to hear and determine both civil and criminal matters relating to a child accused of committing an offence or child in need of care and protection. It is argued that the unlimited jurisdiction of the family court under the CRA may lead to a congestion of children's cases and create an unnecessary delay in child justice administration, as it follows that a single magistrate will be presiding over cases involving both children and adults, as the CRA has not made provision for separate courts. However, in practice, the same magistrate adjudicates on both children in conflict with the law and those in need of care and protection, but in different courts and different settings. It is noteworthy that these provisions negate the Act in section 215(3) which emphasizes that the court shall handle, children's cases expeditiously and without undue delay.

Again, section 207 of the CRA provides for a specialized children's police unit with well-trained police officers for the prevention of child offences. They are also to handle interviews or interrogations of a child in their custody.

Unfortunately, such units are scarcely found in the Nigerian police force. In a study, 71 per cent of respondents strongly disagreed that there were special cells for children in police stations in Nigeria.²³³

²³²*Ibid*

²³³ARC Foundation/Garden Court Chambers, Prison Conditions in Nigeria http://www.ecoi.net/en/file/local/2020111/Nigeria_prison_conditions_Nov.pdf accessed 10 Jan 1999

The implication could be that children are being kept in the same cell as adult offenders. The purpose of the creation of a specialized children's unit in the police force is to ensure that the child's first contact is well managed in such a way as to respect their legal status. More so ,topromote the well-being of the child offenders, and to avoid harm with due regard to the circumstances of the case. Not having adequate specialized police units defeats the whole essence of that provision.

Some states blame non-implementation of the CRA provisions on lack of complaints on violations of its provisions, either due to share ignorance or lack of awareness. Many of the victims by reason of their age and vulnerabilities hardly can express their views on matters concerning their rights and welfare in the society. This is a serious challenge because the law enforcement agents and the government can do nothing when violations of children's rights are not reported. This, invariably, will be an obstacle to the implementation of the child's rights provisions.

5.17.3 Nigerian Constitution and Implementation of the Child Rights Act in Nigeria

One of the major impediments to the implementation of the child protection law in Nigeria is the provisions of the Nigerian constitution.

Section 12 of the 1999 Constitution of Nigeria borders on treaties and their implementation.

Thus, section 12 of the 1999 constitution provides that:

- (1) No treaty between the federal and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the national assembly.
- (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

The implication of section 12 of the 1999 constitution is that any human rights treaty such as CRC entered into Nigeria will not become binding under the Nigeria legal system until the same has been passed into law by the National Assembly. Thus, in *Sani Abacha v Gani*

Fawehinmi,²³⁴ the Supreme Court of Nigeria held that under section 12(1) of the 1979 constitution which is pari material with section 12(1) of the 1999 constitution, an international treaty entered into law by the Nigerian Government does not become ipso facto binding until enacted into law by the National Assembly, and before its enactment, an international treaty has no force of law as to make its provisions actionable in Nigerian law courts²³⁵. The court further unanimously held that "unincorporated treaties cannot change any aspect of Nigerian law even if Nigeria is a party of those treaties" but that they may indirectly affect the rightful expectation by the citizen that governmental acts affecting them would observe the terms of the unincorporated treaties.²³⁶

It is vital to note that the effectiveness of ratified human rights treaties depends on their being domesticated. The reason is that the provisions of the constitution are supreme. This point has been accentuated to by the Supreme Court as follows:

“The constitution is the Supreme Law of the land; it is the grundnorm. Its Supremacy has never been called to question in ordinary circumstances. Thus, any treaty enacted into law in Nigeria under section 12(1) of the 1979 constitution (now section 12(1) of 1999 constitution) is circumscribed in its operational scope and extend as may be prescribed by the legislature”.²³⁷

Another constitutional impediment is the status of socio-economic rights as provided in the Nigerian Constitution. Although socio-economic rights are provided in chapter 11 of the 1999 Nigerian Constitution, these rights are considered non-justiciable and therefore are mere principles and goals of the Nigerian government especially as judiciary has refused to uphold these rights, citing constitutional impediment as reasons for its incapacity. Thus, section 6(6) (c) of the 1999

234 Sani Abacha V GaniFawehinmi, (2000) 6 NWLR 228

235C.O Ekwueme, 'International Human Right Treaties: Right to Freedom of Religion and the Nigerian Society' (2017) 1 African Journal of Law and Human Rights 111

236 Ibid

237Sani Abacha v GaniFawehinme, (2000) 6 NWLR 228

Constitution declared the provisions of chapter 11 non-justiciable.²³⁸ This section states that the judicial powers vested in the Court: ‘shall not, exceed as otherwise provided by this constitution, extend to any issue or question or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of state party set out in chapter 11 of the constitution.’²³⁹ This Section is considered as a constitutional tragedy with respect to the implementation of the right of the child in that lack of political will by states to provide and enforce socio-economic rights is, in most cases, premised on the status of those rights. It is suggested that in order to enhance the implementation of child protection laws, the government should recognize the obligations contained in Chapter 11 of the 1999 constitution as part of the substantive rights of the child. Crucially, provisions of section 6 (6) (c) should be amended accordingly to allow the courts to have express power to adjudicate over matters contained in chapter 11 of the Nigerian constitution.

5.18 Institutional Constraints

Apart from the legal obstacles, challenges arising from institutional mechanisms, support programmes and policies targeted at protecting children in Nigeria have compounded the issue of implementation of CRA particularly concerning operational capacity to handle all child-related issues raised in the Act.²⁴⁰ Sadly, the social welfare department, law enforcement and other relevant government agencies with child-care and support mandate are dysfunctional in Nigeria.²⁴¹ This situation was clearly captured by the UNCRC concluding observation in 2005 when it stated that:

“The mechanism for protection and promotion of children remains weak, uncoordinated and not in line with Nigeria’s

²³⁸Section 6(6)(c) Constitution of the Federal Republic of Nigeria 1999 (as amended)

²³⁹*Ibid*

²⁴⁰Ojo E. A Multi-disciplinary Analysis of the Protection of Children from Harmful Practices in Nigeria. Unpublished Dissertation (2014) University of Pretoria.

²⁴¹ *Ibid*

obligation under the UNCRC and the ACRWC. The states that have domesticated the Act are not implementing it effectively due to lack of fund, infrastructures, lack of trained professionals to handle issues of children's rights and other challenges in Nigeria".²⁴²

The social welfare departments at the local, state and national government levels that used to be vibrant in the past are becoming less active for the task of childcare, and guidance for lack of adequate funding and trained staff for the new roles. The few ones available are starved with adequate funds and infrastructural support to carry out their civic responsibilities. Again, the judicial personnel, judges, magistrates and non-legal staff are yet to be well equipped for the task of protecting and promoting the rights of the children in Nigeria.

Furthermore, the institutional framework for juvenile justice to handle child rights' related issues and children in conflict with laws as provided for in the Act are in disarray. For example, the number of borstal institutions is grossly inadequate, while the few ones available are underfunded and consequently lack adequate specialized and professional staff to handle the institutions properly. For the establishment of family court, generally speaking, much legislative machinery is not in place. To further confirm this assertion, in its report on implementation in Nigeria, UNICEF states:

"Child right protection is not prioritized in Nigeria. Government agencies charged with these objectives are among the most marginalized. There are very few professional personnel, such as social workers, particularly at local levels. Enforcement is very nearly non-existent, and preventive awareness-raising campaigns are sporadic and underfunded".²⁴³

There is no doubt that administratively, coordination is low, programming is fragmented; planning potty; data availability limited, and budgets inadequate and vulnerable. Reliance on international agencies for funding and implementation is very high, with local Nigerian

242 Ibid

243 Ojo E, (n 244)

NGOs occasionally servicing as intermediaries. This situation exacerbates fragmentation and makes sustained programming difficult. This nonchalant attitude of government renders all administrative efforts abortive.

5.19 General Awareness and Sensitization Constraints

There is an assertion that the implementation of the CRA in Nigeria has also suffered some obstacles because, the level of awareness and sensitization of the general public about those basic rights of children is still very low compared to the voluminous provisions of the CRA particularly on the part of the government.²⁴⁴ The researcher, therefore, suggests that government at all levels should mount effective campaigns against child labour, stressing the negative impact which includes the risks the victims will be exposed to along the routes, the risk they face working as domestic workers and street prostitutes, the risk of HIV/AIDS and other health hazards. This campaign should include the use of billboards, mass media, lectures and seminars in educational institutions, communities, both urban and rural etc.

5.20 An Overview of the ILO Implementation Mechanisms for the Prohibition of Child Labour

The International Labour Organization (ILO) was established in 1919 and became the first specialized agency of the United Nations in 1946.²⁴⁵ The peculiarity of ILO is that it is an only 'tripartite' United Nations Agency that brings together the representative of governments, employers and workers to shape policies and programmes jointly. ILO is committed to advancing opportunities for men and women to obtain decent and productive working conditions of freedom, equity, security and human dignity in all ramifications. Importantly, its main objectives are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues.²⁴⁶

²⁴⁴*Ibid*

²⁴⁵C Jetzlsperger, 'ILO-International Labour Organization' in H Volger (ed), *A Concise Encyclopedia of the United Nations* (Kluwer Law International 2002). 299-300

²⁴⁶ILO at a Glance, International Labour Office. Available at <http://www.ilo.org> accessed Jan 22, 2020

Considering the scope and content of the framework and provisions of the International Labour Organization (ILO) treaty in prohibiting child labour, the next question is how have these provisions been implemented? This subsection will analyze the ILO implementation systems and examine its adequacy for the elimination of child labour in Nigeria.

5.20.1 The Committee of Expert on the Application of the Conventions and Recommendations (CEACR)

The CEACR consists of about twenty independent experts acting in their own capacities.²⁴⁷ It reviews and comments on the routine reports submitted by members for the application of conventions they have ratified.²⁴⁸ The Conference Committee on the Application of Standards is a tripartite body formed at each International Labour Conference with the responsibility to review the CEACR report, select a subset of problem cases identified in that report, and invite the government delegates from the countries involved to discuss them in an open session.²⁴⁹

The Committee on Freedom of Association is the committee with the responsibility to deal with complaints regarding the violations by Member State of this fundamental right. Complaints regarding freedom of association violations can be brought against any member state, whether or not it has ratified the convention. This is because it is regarded as a constitutional obligation of membership.²⁵⁰

5.21 Procedure for Supervision

The ILO mechanism for supervising the labour convention is quite extensive. Art. 22 of the ILO Constitution states that each of the members agrees routinely to make an annual

²⁴⁷ILO, Handbook of procedures relating to International Labour Conventions and Recommendations, Rev.2 (Geneva: International Labour Office, 1998), p.21.

²⁴⁸The ILO to the Rescue? Institute for International Economics. Available at <http://www.iie.com> accessed 23 march 2020

²⁴⁹*Ibid*

²⁵⁰*Ibid*

report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party.²⁵¹ Again, these reports shall be made in such form and shall contain such particulars as may be requested by the Governing Body.²⁵²

The primary ILO system of the application of international labour standards is based on reports received from governments and examined by the Committee of Experts.²⁵³ The Governing Body, in 1996, revised the original reporting system whereby governments had to submit reports annually.²⁵⁴ Periodic detailed reports are requested every two years on the priority conventions, inter alia on:

- Convention Concerning Forced and Compulsory Labour, No. 29;
- Convention Concerning the Abolition of Forced Labour, No. 105;
- Minimum Age Convention, No. 138;
- Worst Forms of Child Labour Convention, No. 182.

This new emphasis of ILO bodies on ILO human rights provisions especially regarding the promotion and supervision of provisions concerning child labour came as a result of the discussion of the introduction of a social clause into the ILO Constitution, which was rejected by the ILO.²⁵⁵

Importantly, simplified reports are requested every five years on other conventions. Detailed reports may, however, be requested when the Committee of Experts or the Conference Committee it deems fit on their initiative; to follow-up proceedings to the special procedures and when comments have been received from employers' or workers'

²⁵¹Art 22 of the ILO Constitution.

²⁵²ILO to the Rescue? Institute for International Economics. Available at <http://www.iie.com> accessed January 23, 2020

²⁵³ UN Sub-Commission on the Promotion and Protection of Human Rights, Contemporary Forms of Slavery, E/CN.4/Sub.2/2000/3, p.16.

²⁵⁴ILO, Handbook of Procedures, p.14

²⁵⁵Bartolomei de la Cruz, Von Potobosky, Swepston, The International Labour Organization, p.123

organizations due to which the Committee of Experts considers a detailed report necessary; or when no report has been supplied.²⁵⁶ The reports contain comments by the supervisory bodies, comments received from employers' and workers' organizations, as well as a general appreciation comprising of a general assessment of the government of its application of the convention including extracts from official reports, statistics of workers covered by the legislation, details of contraventions, prosecutions etc.²⁵⁷

Simplified reports equally include information on whether changes have occurred in legislation and practice that affect the application of the convention, statistical information and comments received from employers' and workers' organizations.²⁵⁸

Again, Art 19 of the ILO Constitution requires members to report periodically on why particular conventions had not been ratified and the efforts towards achieving the objectives of the convention.²⁵⁹ Also, the Governing Body may request information from members on the extent to which they have implemented the convention in question as well as give reasons for delays in the ratification process. Members thus also have reporting obligations in the case of non-ratified conventions.

At its 264th session in November 1995 the Governing Body decided that governments of all states that had not ratified the conventions regarding forced labour, freedom of association, discrimination and child labour should be asked to submit reports under Art 19 of the ILO Constitution.²⁶⁰ Importantly, from 1997 onwards, reports on the corresponding conventions have been requested from governments in a four-year cycle, commencing with the Conventions regarding forced labour. The Governing Body has now

²⁵⁶ILO, Possible Improvements, GB.280/LILS/3,P.15

²⁵⁷*Ibid*

²⁵⁸*Ibid.*, 17

²⁵⁹Art 19 of the ILO Constitution

²⁶⁰ ILO, Handbook of Procedures, 19

adopted a standard questionnaire form for these reports.²⁶¹ Those reports have to be sent to workers' and employers' organizations to make their observations on the subject in question. However, this procedure has been superseded by the Follow-up procedures introduced by the 1998 ILO Declaration on Fundamental Principles and Rights at Work.²⁶²

a) Reports of the Committee of Experts

The International Labour Office thoroughly examined the reports on conventions and prepared draft comments for the Committee of Experts.²⁶³ The Committee of Experts, in turn, submits its report to the Governing Body, consisting of a part one which discusses a general report of the Committee's work drawing the attention to matters of general interest and particular concern. Again part two discusses individual observations regarding the application of conventions, including in more serious cases a series of direct requests addressed to governments for further information, or if a government has given an adequate response, a series of acknowledgements; and in part three a general survey of national law and practice with regard to the instruments on which reports have been supplied on non-ratified conventions under Art 19 of the ILO Constitution.²⁶⁴ Significantly, for General Surveys, although not jurisprudential in its proper sense are vital sources of how the ILO supervisory bodies have interpreted the ILO conventions and their applicability procedures by governments.²⁶⁵ It should be noted that the direct requests are not published in full, but mention is made of them in the report.²⁶⁶ The Committee of Experts has developed a highly understated mildly expressive language, which has been criticized as excessively

²⁶¹*Ibid.*

²⁶²Franziska, *The Challenges of Child Labour in International Law. Cambridge Studies in International and Comparative Law*, 173

²⁶³UN Sub-Commission on the Promotion and Protection of Human Rights. Contemporary Forms of Slavery, E/CN.4/Sub.2/2000/3, .17

²⁶⁴ ILO, Handbook of Procedures, .23

²⁶⁵Bartolomei de la Cruz, von Potobosky, Swepston, *The International Labour Organization*, p.70

²⁶⁶V.A Lear, "Lessons from the experience of the International Labour Organization" in Critical Appraisal P (ed), *United Nations and Human Rights* (Clarendon Press Oxford 1992), 598

diplomatic.²⁶⁷ The objective of these observations is not to condemn, but an attempt to persuade governments to ensure fuller compliance.²⁶⁸ Although reports submitted by governments are the Primary sources for these observations, the Committee of Experts also looks at other reliable data, such as information gathered in the course of ILO direct contact missions, reports of UN bodies, and submissions from employers' and workers' organizations.²⁶⁹ This is vital for an objective evaluation of whether or not the conventions are implemented in practice.²⁷⁰

Any employers' or workers' organization, whether or not it has received copies of government reports, may at any time submit its observations on any matters arising in connection with governments' compliance under the conventions and the ILO Constitution.²⁷¹ These observations are usually sent to the government concerned for comments.²⁷² The Committee of Experts will then examine the observations submitted in light of the relevant government's comments. The Committee of Experts may also examine the observations if the government concerned has not made any comments. These observations may be regarded as a kind of 'soft' complaint, which is very useful.²⁷³ If a country fails to report, the governments are sent reminders, and the matter may be brought up with government delegates at the International Labour Conference.²⁷⁴

b) Discussions of Reports by the Conference Committee

267Ibid

268F. L. Kirgis, *International Organizations in their Legal setting* (West Publishing CO 1993), 526

269UN Sub-commission on the Promotion and Protection of Human Rights, Contemporary forms of Slavery, E/CN.4/Sub.2/2000/3, 17.

270Ibid

271ILO, Handbook of Procedures, .25

272Bartolomeideal Cruz, von Potobosky, Swepston, The National Labour Organization, 69

273Ibid.

274ILO, Handbook of procedures, 17

The next stage is a public reporting system. The Conference Committee meets every year at the International Labour Conference to deliberate on the most severe cases referred to by the Committee of Experts' report.²⁷⁵ It may also discuss issues covered by the general part of the Committee of Experts' report as well as by the general survey.²⁷⁶ Representatives of the government appear before the Conference Committee to respond to questions. The Conference Committee asks questions based on the report of the Committee of Experts and is therefore well prepared.²⁷⁷ Afterwards, the Conference Committee issues a report that is adopted in the plenary session of the Conference, which contains governments' statements and information on its deliberations regarding various states' compliance with specific obligations, which includes submission to the competent authorities; failure to comply with reporting obligations; mentions of cases of progress, in which the Committee notes changes in law and practice that overcome difficulties previously discussed by it; paragraphs drawing the Conference's attention to discussions of certain special issues; other paragraphs drawing attention to cases discussed previously by the Committee where there has been continued failure over several years to eliminate serious deficiencies in the application of ratified conventions; communications of copies of reports to employers' and workers' organizations respectively; as well as participation of governments concerned in the work of the Conference Committee.²⁷⁸

If a state party fails to report or reply to the comments of the Committee of Experts, it has to submit a detailed report.²⁷⁹ In 2006, the Committee of Experts sent specific follow-up

275 UN Sub-commission on the promotion and protection of Human Rights, Contemporary forms of slavery, E/CN.4/SUB.2/2000/3, 17

276 ILO, Handbook of procedures, 24

277 Lear, "Lessons from the experience of the International Labour Organization", 599

278 ILO, Handbook of Procedures, 24

279 ILO, Examination of Standard-related Reporting Arrangements, Government Body, 282nd Session, Geneva, November 2001, GB.282/LILS/5, para. 27

letters to governments, bringing their attention to specific failures and requesting them to identify the difficulties.²⁸⁰

The active and crucial participation of employers' and workers' organizations respectively plays a significant role in the success of the Conference Committee's deliberations.²⁸¹ They may raise any matter regarding the discharge of standards-related obligations. For example, due to the two-thirds non-governmental participation, it has been possible for the Conference Committee to cite governments in its reports, including even major countries for their failure to implement conventions.²⁸²

The work of the Conference Committee's complements the work of the Committee of Experts. Whereas the role of the Committee of Experts is strictly technical and legal, the function of the Conference Committee is one of political oversight and direct dialogue with members.²⁸³ This complementary work is believed to be one of the keys to the success of the supervisory system of the ILO.²⁸⁴

The ILO reporting system no doubt has been regarded as one of the most effective systems to protect human rights especially for decent work.²⁸⁵ Several countries have adopted improved labour laws following the ratifications of ILO conventions.

280 ILO General Report of the Committee on the Application of Conventions and Recommendations (2007), International Labour Conference, ninety-sixth session (Geneva: International Labour Office, 2007) <http://www.ilo.org/ilolex/english/ceacrrepsq.htm>

Para. 16

281 Lear, "Lessons from the experience of the International Labour Organization", 599

282Ibid

283Bartolomeideal Cruz, von Photobosky, Swepston, The International Labour Organization, 120.

284ILO, Provisional Record 28, Report of the Committee on the Application of Standards, Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations, International Labour Conference, Ninetieth session (Geneva: International Labour Office, 2002), para. 34.

285Lear, "Lessons from the experience of the International Labour Organization", 22-47

5.22 Technical Assistance of ILO

Some developing countries lack both funding and expertise to improve their labour standards. Ministries of Labour and other relevant organizations seeking to raise standards also suffer delay and bureaucratic setbacks, therefore unable to accomplish goals, such as reducing child labour or improving occupational health and safety.²⁸⁶ It is in the circumstances like this that the ILO technical assistance steps in. Thus, The ILO provides technical assistance to developing countries in the areas of its expertise and competence, particularly assistance in vocational training, labour legislation and employment promotion.²⁸⁷ ILO technical cooperation missions are sent to the countries concerned to assist them in drafting legislation and ensuring compliance with labour standards.²⁸⁸ Multidisciplinary teams often carry out these missions, which organize workshop, seminar, symposia and meetings, or provide very specialized advisory services or consultations on the meaning and application of international labour standards.²⁸⁹ Technical cooperation assistance has been described as a crucial means of realizing the strategic vision of the ILO.²⁹⁰

However, despite the achievements of the ILO implementation mechanism, the most frequent criticism of ILO is its lack of teeth because it does not provide for the imposition of trade sanctions in case of failure to comply with its obligations.²⁹¹ Given the length of time that has elapsed since the adoption of the ILO conventions on child labour and the persistent increase of child labour, it would appear that these critics could indeed be right.

²⁸⁶The ILO to the Rescue. Institute for International Economics, available at <http://www.iie.com> accessed 23 August 2019

²⁸⁷ Lear, "Lessons from the experience of the International Labour Organization", (n 281) 589

²⁸⁸ ILO, Improvements in standards-related Activities of the ILO: Technical Assistance and Promotion, Governing Body, 285th session, Geneva, 2002, GB,295/LILS/5, para 14.

²⁸⁹*Ibid*

²⁹⁰ILO, Report of the Committee on Technical Cooperation, International Labour Conference, eighty-seventh session, (Geneva: International Labour Office June 1999), <http://www.ilo.org/publicenglish/standards/reim/ilc/ilc87/com-tc.htm> (22 December 2019) para. 48

²⁹¹See, for example, Ehrenberg, 'The Labour Link', 389

In this sense, it is vital to note that, while the ILO's founding principles remain enormously relevant, its methods have become outdated.²⁹² Thus it is suggested that reforms are needed to strengthen the enforcement system to achieve effective implementation.

5.23 Appraisal of the Implementation of the Instrument of the International Labour Organizations Conventions in Nigeria

The ILO requires members that have ratified its Convention to be bound by them. Section 19(5) of the constitution of the International Labour Organization (ILO) provides as follows:

- (a) The convention will be communicated to all members for ratification;
- (b) Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practical moment and in no case later than 18 months from the closing of the session of the conference, bring the convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.
- (c) Members shall inform the Director-General of the International Labour Office of the measures taken following this article to bring the convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- (d) If the members obtain the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the convention to the Director-General. It will take such actions as may be necessary to make effective the provisions of such convention.
- (e) If the members do not obtain the consent of the authorities within whose competence the matter lies, no further obligation shall rest upon the member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the governing body, the position of its law and practice in regards to the matters dealt with in the convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions

²⁹²*Ibid.*

of the convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such convention.

The above provisions reflect the power and the discretion of the Member State to enact legislations or perform other activities to give effect to the convention of the ILO. This power and discretion reflect the sacred principle of the sovereignty of member states of the ILO as emphasized by the Vienna Convention on the Law of Treaties 1969²⁹³. It must be noted, however, that the VCLT 1969 defined treaty as an international agreement concluded between States in written form and governed by international law²⁹⁴. Its application does not, therefore, cover instruments originating from non-state actors in international law like employers and employees who participate in the legal instrument of ILO to promote decent work throughout the globe.

5.24 Legal Impediment to the Implementation of the ILO in Nigeria

The legal systems of nations fall into two broad international categories: monist and dualistic law systems. Nations whose legal system are monism are binding, without the need for local laws, ILO conventions that are a foreign reality.

On the other hand, in a dualist system like Nigeria, a treaty must first be domesticated and passed into law by the National Assembly before it can have the force of law. The effect, therefore, is that an ILO convention that has not been passed into law in Nigeria cannot be legally enforced. This position is clearly backed by section 12 of the Constitution of the Federal Republic of Nigeria, 1999, which is indeed the grundnorm.²⁹⁵ The Constitution provides that 'no treaty between the federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National

293 Vienna Convention on the Law of Treaties, 1969, art 1. (VCLT 1969)

294 Ibid art 2(1) (9)

295 S.E Mbah and C.O Ikemefuna, 'Core conventions of the International Labour Organization (ILO): Implications for Nigerian Labour Laws' (2011) 2 International Journal of Business Administration 133

Assembly.²⁹⁶ The legal implication of this was that mere ratification of a treaty does not validate it or make it applicable in Nigeria.

Again, this position was applied by the Supreme Court in *Abacha v Fawehinmi*²⁹⁷ (*Abacha's Case*). In this case, the respondent, a legal practitioner, was arrested and detained without a warrant at his residence on Tuesday, 30 January 1990. At the time of the arrest, the respondent was not informed nor charged with, any offence. As a result, he applied to the Federal High Court, Lagos, pursuant to the Fundamental Rights (Enforcement Procedure) Rules 1979 for inter alia:

A declaration that the arrest of the applicant, Chief GaniFawehinmi by officers, servant, agents, privies of the respondents and of the Federal Military Government constitutes a violation of his fundamental rights guaranteed under section 31, 32 and 38 of the 1999 Constitution and articles 4,5,6, and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of Federation of Nigeria 1990 and is therefore illegal and unconstitutional.

In this case, the Supreme Court held that treaties formed no part of domestic law except enacted by the legislature. It concluded that domestic courts had no jurisdiction to construe or apply such treaties nor could unincorporated treaties change the law of the land. Thus, such unincorporated treaties should not have a direct effect upon citizens' rights and duties in common or statute law. They may however indirectly influence the construction of statutes or give rise to a legitimate expectation by citizens that the government would observe the terms of an unincorporated treaty.²⁹⁸

There is no gainsaying that section 12 of the Constitution of the Federal Republic of Nigeria and the *Abacha's case* laid the foundation for denying the application of many international

²⁹⁶ Constitution of the Federal Republic of Nigeria, S 12(1) 1999.

²⁹⁷ 6 NWLR (Pt. 660) 228 at 2000) 288-289.

²⁹⁸ P. O Okonkwo, 'Application of Treaties in Nigeria VIS-À-VIS the Instruments of the International Labour organization' (2018) 9 NAUJIL 149

legal instruments in Nigeria on the ground of non-incorporation through enactment. The Supreme Court relied on the judgment of the Privy Council in *John Junior Higgs and David Mitchell v the Minister of National Security and others*²⁹⁹ (*Higgs case*). In *Higgs case*, the applicants/prisoners were convicted of murder had exhausted all local remedies. Consequently, they petitioned the Inter-American Commission on Human Rights and were awaiting a decision on whether there was a breach of their fundamental rights. The Privy Council held that an international treaty could only be incorporated by statute and national law could not rule for what is an issue for the international organization.

The Supreme Court of Nigeria relying on the *Higgs case*, adopted the stand of the Privy Council and held that treaties formed no part of domestic law unless enacted by the legislature. Apart from referring to S. 12(1) of the Nigerian Constitution, the Supreme Court quoted and relied on a statement in *Higgs case* to the effect that ‘in the law of England and the Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the Crown’. Ogundare JSC who read the lead judgment approved the above statement in *Higgs case* by stating that ‘in my respective view, I think the above passage represents the correct position of the law, not only in England but in Nigeria as well’. Importantly, these weighty words by a full-court of seven Supreme Court justices opened the channel for denying the application of many international legal instruments in Nigeria. In line with this, in *Medical Health Workers Union of Nigeria v Minister of Health and Productivity and Ors.*³⁰⁰ the Court of Appeal, relying on the two Supreme Court decisions held that:

There is no evidence before the court that the ILO Convention, even though signed by the Nigerian government, has been enacted into law by the National Assembly. Provided the ILO Convention has not been enacted into law by the National Assembly, it has no force of law. It can possibly apply where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which incorporated into our Municipal (i.e. domestic) law by the African Charter on Human and Peoples Rights (Ratification and

299 (1999) 1 WLR 679.

300(2005) 17 NWLR (pt 953) 120

Enforcement Act,³⁰¹ It becomes binding, and our courts must give effect to it like all other laws falling within the judicial powers of the courts.

In the same vein, in *Registered Trustees of National Association of Community Health Practitioners Nigeria v Minister of Labour and Productivity*³⁰² the Supreme Court applied the ratio in *Abacha's* case to determine the applicability of a ratified ILO Convention to Nigeria. The Supreme Court, in this case, held that provided the ILO Convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria, and it cannot apply.

It is submitted, therefore, that the provisions of S.12 (1) of the Nigerian Constitution is a legal impediments to effective implementation of ILO standards in Nigeria. These issues need to be addressed accordingly. Thus, it should be noted that Nigeria has ratified Convention No.138, the Minimum Age Convention and Convention No.182, the Worst Forms of Child Labour Convention, both in 2002.

The minimum age for employment is 12 years of age. However, the states in Nigeria that 'have adopted and enacted the Federal Child Rights Acts' have effectively raised this limit to 14 years of age.³⁰³ The Labour Act provides for an exception to the minimum age, which allows children of any age to perform light work along with a family member in agriculture or home-based activity. Children younger than 15 years are only permitted to work in home-based agricultural or domestic work, but not in commercial and industrial work, and they are equally not permitted to work for more than 8 hours a day.³⁰⁴ Again, the Labour Act sets various age thresholds for several hazardous activities, including permission for children above 15 and 16 years of age to perform underground and open sea work

301 Cap. 10, Laws of the Federation of Nigeria 1990.

302 S.C. 201/2005

303 International Trade Union Confederation (ITUC), Internationally Recognized Core Labour Standard in Nigeria. Report for the WTO General Council Review of the Trade Policies of Nigeria. (Geneva, 28 and 30 June 2011)

304 *Ibid*

respectively, which contravenes the ILO Convention 138. Another issue of concern is that the penalties provided in the Labour Act are not stringent enough to serve as effective deterrence.³⁰⁵

5.25 Conclusion

This chapter assessed the implementation of the United Nations Convention on the Rights of the Child (CRC) and the International Labour Organization (ILO) in the prohibition and elimination of child labour in Nigeria. It considered the implementation of CRC and the ILO within the context of international, regional and national debates focusing on the implementation of the child labour prohibition laws and policies and child rights instruments, especially the CRC, ILO and the CRA 2003. It highlighted the standards contained in the CRC, the ILO and the framework for the implementation of the Convention. It also argued the necessity for the parties to implement the provisions of the Convention.

In assessing the effectiveness of implementation, it became obvious that various instruments targeted at the elimination of child labour including CRA have passed through turbulent times especially in terms of the implementation as legally binding law across the country. It has been viewed differently across the various section of Nigeria depending on their ethno cultural, socio-religious persuasion or background. There is no doubt, therefore, that implementation can be hindered by vast diversity, religion, cultural and traditional practices found across the country.

Other factors found to have hindered implementation are lack of political will, financial constraint, lack of adequate and qualified personnel and facilities for implementation, lack of the rule of law and accountability, widespread poverty and corruption, as well as impunity of perpetrators.

It is suggested that states should undertake better synergy across all government structures at all levels in order to effectively and better implement the CRA. The states should identify their weaknesses and make necessary adjustments where necessary.

³⁰⁵*Ibid*



CHAPTER 6

6.0 Discussion and Presentation of Findings of The Study

This chapter will mainly discuss and analyze the findings in this work. In an attempt to answer the research questions, data from in-depth interviews with students, parents, government agencies, street children, and other stakeholders were collected and analyzed.

6.1 Research Question 1: **Are there sufficient laws protecting the rights of children under Nigerian Law?**

The various rights for the protection of children against human rights violations are set out in numerous international human rights instruments as well as regional and national provisions. Nigeria as a nation is a signatory to several scores of the international (UN) provisions on human rights, conventions, covenants, and other regional provisions; which include the Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (1989), Declaration on the Protection of Women and Children in Emergency Armed Conflict; the Optional Protocol on the Convention on the Rights of the Child on the Involvement of Children on Armed Conflict; Convention against Discrimination in Education; African Charter on Human and Peoples' Rights; African Charter on the rights and Welfare of the Child (1999), the 1999 Constitution of the Federal Republic of Nigeria, and the Child Rights Act 2003. These provisions and a host of other national enactments, regulations, and institutional frameworks abound to mitigate for the proper promotion and protection of the rights of children nationally and globally, Nigeria inclusive. Crucially, Nigeria domesticated the UNCRC by enacting the Child Right Act (CRA) 2003. The enactment of the Child Rights Act is a clear indication of Nigeria's attempt to fulfil its obligation Under the UNCRC and the African Charter on the Rights and Welfare of the child (ACRWC) to protect the rights of children. The philosophy behind these rights is well-founded in providing legislation, which incorporates all the rights and responsibilities of children and which consolidates all laws relating to children in single legislation. The Convention on the Rights of the Child provides that 'State parties shall undertake to disseminate the Convention's principles and take all appropriate legislative, administrative, and other administrative and other measures for the implementation of the Rights recognized in the present Convention'. The provisions of these rights include rights

the right to health, education, family life, play and recreation, adequate standard of living, and right to be protected from abuse, exploitation and harm. In line with above explanations, it is no gain saying the fact that there are sufficient human rights instruments at the international, regional and national levels for the protection and promotion of the rights of children in Nigeria. However, despite this plethora of child protection laws, reality of lives of many Nigerians does not reflect the child rights provisions. One of the major reasons is that there are notable gaps in the laws. For instance, as mentioned in the previous chapters of this work, the Constitution of Federal Republic of Nigeria is one of the obstacles that prevent vivid implementation of the child rights instruments. Nigeria is a dualist system,¹ therefore any international treaties or laws must be domesticated by the National Assembly before it can be enforced. Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 provides unambiguously that “no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly”. Nigeria operates a Federal system of government in which each of the thirty-six states of the federation is autonomous and equal to the others. As a federation, the 1999 Constitution of the Federal Republic of Nigeria has no reference to children specifically.² In fact, in the Nigerian Constitution, laws on matters pertaining to children are not listed in either the exclusive or the concurrent list, it is in the residual lists, which are to be legislated on by the states’ legislatures.³ The implication is that the various states can adopt or refuse to adopt any law enacted at the national level regarding children. Since the enactment of the Nigerian Child Rights Act 2003, which is over ten years now, not all the states out of the 36 states in Nigeria have adopted the Child’s Right Act into their state legislation. Giving the cultural diversity and legal pluralistic

¹Mbah and Ikemefuna, 'Core conventions of the International Labour Organization (ILO): Implications for Nigerian Labour Laws', 1-8

²Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) which contains the fundamental human rights. A child is entitled to enjoy all the rights as enshrined therein some of which include; right to life, right to fair hearing, freedom of speech, movement, association etc. See also the Nigeria Child’s Rights Act, 2003, s. 3(1).

³The 1999 Constitution of the Federal Republic of Nigeria, s. 4 and 2nd Schedule, Parts I and II.

nature in Nigeria, there are various versions of state legislation on child rights, which serves as a reflection of preference of each state.

Again, The Constitution of Nigeria, 1999 provides for socio-economic rights in its Chapter II, but these rights are considered non-justiciable, and as such regarded as mere principles and goals of the Nigerian government. Over the year, Nigerian Judiciary has refused to uphold these rights, citing constitutional impediments as reasons for its incapacity. The Civil Society groups in Nigeria have not done enough to promote the actualization of this class of rights. Contrary to the conservative and lethargic attitude of the Nigerian courts, the Judiciary in South Africa and India, faced with similar circumstances, has taken the bull by the horn through judicial activism by enforcing these rights. Thus In order to make the advocacy more effect, the government should recognise the obligations contained in chapter II of the 1999 Constitution as part of the substantive rights of the citizens. Therefore, the provision of section 6(6)(c) of the 1999 Constitution should be amended to allow the courts to have express power to adjudicate over matters contained in chapter II of the Constitution. This will enable the citizens to challenge the government to provide necessary socio-economic facilities that will alleviate poverty, enhance standards of living and consequently make the protection of children's rights attainable. Pursuant to this, efforts should be intensified to ensure that the social-economic facilities such as free education and health facilities are adequate provided. This will make the parents send more children to school thereby prolonging the period within which the children especially the girls are lure into marriage. Access to free or affordable health facilities will also encourage the parents to patronize the hospitals or clinics more thereby enhancing the health conditions of the children and significantly reducing child mortality that has bedeviled the country. Having analysed the findings concerning the sufficiency of laws or whether or not there are laws protecting children against exploitation and abuse, the next section will discuss and analyse the adequacy of child protection laws and the extent of its implementation. This will be achieved by answering the research questions below:

6.2 Research Question 2: Are the laws adequate for the protection of the child against child labour?

In order to address this research question, the secondary data collected is analysed below:

Table 6.1 Child Labour

Source: MICS 2007

		Percentage of children aged 5-14 years who are involved in child labour activities by type of work, Nigeria, 2007					Number of children aged 5-14 years
		Paid work	Working outside household Unpaid work	Household chores for 28+ hours/week	Working for family business	Total child labour *	
Sex	Male	1.7	9.1	2.0	20.9	29.3	18,617
	Female	1.1	8.9	2.4	20.2	28.6	18,504
State	Abia	1.0	3.2	0.0	24.5	27.3	463
	Adamawa	0.9	14.7	1.6	1.9	18.2	1,107
	Akwa-Ibom	1.2	24.2	3.0	40.4	49.8	1,005
	Anambra	0.1	5.0	5.1	15.0	21.0	516
	Bauchi	0.1	19.0	0.4	2.3	21.4	2,092
	Bayelsa	2.3	5.3	1.0	27.7	32.6	183
	Benue	3.4	4.7	0.4	45.9	48.7	1,471
	Borno	1.4	9.5	0.8	12.9	23.5	1,706
	Cross-River	1.0	9.7	0.6	41.9	47.3	852
	Delta	0.5	8.5	4.8	19.0	27.7	925
	Ebonyi	1.3	3.3	1.0	14.4	18.7	585
	Edo	0.4	4.1	2.3	32.6	36.6	755
	Ekiti	5.7	14.2	1.3	30.1	41.4	268
	Enugu	1.1	8.3	0.5	17.6	25.7	679
	Gombe	1.0	37.9	0.5	26.1	47.4	908
	Imo	0.8	9.2	5.7	30.0	35.5	585
	Jigawa	2.0	3.1	1.6	19.5	24.3	1,106
	Kaduna	2.3	1.2	2.5	20.1	24.8	2,533
	Kano	1.3	6.2	1.3	18.0	24.5	3,068
	Katsina	2.0	8.7	0.8	21.5	27.2	1,156
	Kebbi	2.3	11.7	1.3	17.2	27.2	799
	Kogi	0.7	1.8	6.0	41.1	46.6	615
	Kwara	0.8	9.1	1.0	22.8	29.9	547
	Lagos	0.6	0.6	5.1	10.1	15.6	2,035
	Nasarawa	5.5	12.9	2.8	37.6	43.6	614
	Niger	1.0	5.5	2.1	30.7	35.8	781
	Ogun	1.1	4.6	4.8	16.8	24.0	666
	Ondo	0.5	4.7	0.8	19.6	22.5	863
	Osun	1.2	4.3	3.3	18.9	23.2	1,332
	Oyo	0.3	11.9	4.7	20.2	30.8	1,614
	Plateau	1.6	12.5	0.7	15.8	24.4	803
	Rivers	1.5	1.9	5.5	22.6	28.1	816
	Sokoto	2.8	5.2	3.4	27.6	35.3	1,009
	Taraba	0.7	17.3	1.1	7.1	23.9	996
	Yobe	0.7	20.9	0.9	11.5	31.8	947
	Zamfara	2.6	6.8	2.1	30.7	34.3	588
	Abuja FCT	1.1	2.3	2.2	20.7	24.4	135
Area: Sector	Rural	1.6	9.7	1.8	23.8	31.9	27,081
	Urban	0.8	7.0	3.4	11.8	21.0	10,041
Geopolitical zones	North central	2.3	7.2	1.8	33.8	39.1	4,965
	North east	0.8	18.5	0.8	9.1	26.0	7,756
	North west	2.0	5.3	1.8	20.7	26.7	10,260
	South east	0.9	6.0	2.4	20.2	25.7	2,828
	South south	1.0	10.2	3.2	31.3	38.0	4,536
	South west	0.9	5.5	3.9	16.9	23.4	6,777
Age	5-11 years	1.7	11.0	1.8	25.0	33.7	27,483
	12-14 years	0.5	3.1	3.3	8.1	15.3	9,639
School participation	Yes	1.3	6.6	2.7	23.7	29.7	22,778
	No	1.4	12.8	1.5	15.7	27.7	14,343
Mother's education	None	1.6	10.7	1.8	20.2	30.0	21,493
	Primary	1.5	8.4	2.8	25.8	33.0	7,618
	Secondary +	0.7	5.1	2.8	16.7	22.3	7,333
	Non-standard curriculum	1.3	3.3	2.8	17.0	20.5	674
	Missing/DK	**	**	**	**	**	3
Wealth index quintiles	Poorest	1.8	14.1	1.3	22.5	34.3	8,270
	Second	1.8	11.4	1.8	23.4	33.5	8,192
	Middle	1.5	7.3	2.1	22.5	29.1	7,729
	Fourth	1.0	6.4	3.0	20.7	27.1	6,856
	Richest	0.4	3.9	3.3	11.4	17.2	6,075
Total		1.4	9.0	2.2	20.6	28.9	37,122

* MICS Indicator 71 ** Unweighted Observation less than 25 cases

The primary source of data on child labour globally in Nigeria is the UNICEF-supported Multiple Indicator Cluster Surveys (MICS), and the ILO supported statistical information and monitoring programme on child labour (SIMPOC) surveys.

The author has collected available statistical data on child labour based on the available report from UNICEF-supported multiple indicator cluster surveys (MICS) of 2007, 2011, and 2017 for purposes of comparison and analyses.

The report above shows that 29 percent of children in 2007 aged 5-14 years were engaged in child labour in Nigeria. This figure includes 21 percent working for the family business and 9% working outside the family unpaid. The sex of the children and school participation are respectively unimportant. However, rural-urban classification, states, and geopolitical zoning, age of the child, education of mother, and wealth status of the household, are valid sources of variation in the prevalence of child labour. The prevalence is 32 percent in the rural areas as against 21 percent in the urban area; it is highest in the North Central (39 percent) and South-South (38 percent) and lowest in the North West (27 percent) and South-East and North-East (26 percent each). Incidence of child labour is 34 percent among children aged 5-11 years as against 15 percent among those aged 12-14 years, 22 percent among children of mothers with at least secondary education as against 30 percent of children of mothers with no education or 33 percent of children of mothers with primary education; the prevalence of child labour is 34 percent in the poorer households as against 17 percent in the richest.

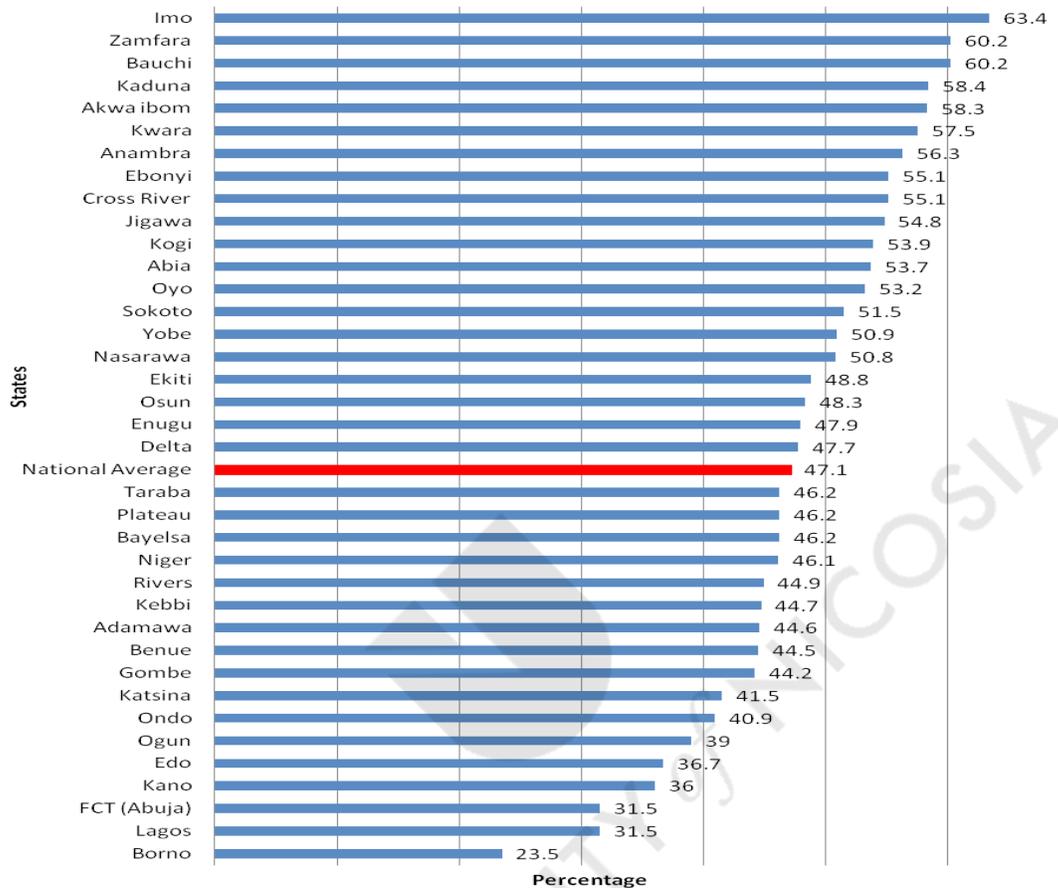


Figure 6.1 %age of Children involved in Child Labour, Nigeria

Source: MICS 2011

Figure 6.1 indicates that 47 percent of children aged 5-14 years were involved in child labour in Nigeria. Sixteen (16) states and the Federal Capital Territory had children involved in child labour below the national average. The remaining twenty (20) states had figures above the national average.

Importantly, the figure shows that Imo state (63 percent) had the highest percentage of children who were involved in child labour, Borno State (24 percent) had the least. In

comparison to the national average of about 47 percent, Imo State had about 16 percent more of children who engaged in child labour.

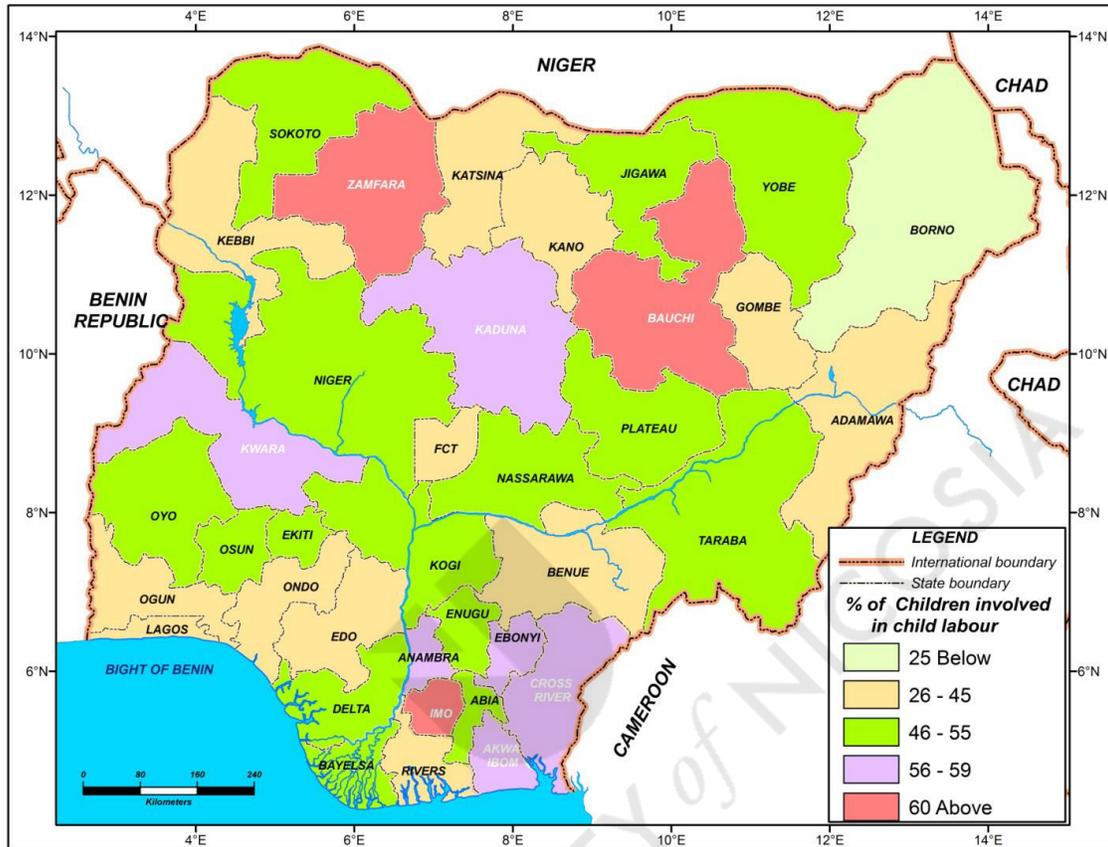


Figure 6.2 Map of %age of Children Involved in Child labour

Source: MICS 2011

Figure 6.2 indicates the percentage of children who were engaged in child labour but attending school in Nigeria. Not surprising, Lagos State, being the commercial hub of the country, holds the highest percentage of children who were economically engaged in child labour even though they were engaged in schooling. In contrast, Kebbi state had the least. In comparison to the national average of about 76 percent, the figures show that Kebbi had about 45 percent lower of these children, while Lagos had about 24 percent higher.

It is evident, therefore, that out of thirty-six (36) states, twenty-four (24) and FCT accommodated a high prevalence of children who were in school and at the same time engaged in child labour.

Table 6.2 Child labour II



	Children involved in economic activities for a total number of hours during last week:			Children involved in household chores for a total number of hours during last week:			Children Working	Total Number of children age 5-17 years
	<u>Below the age specific Threshold</u>	<u>At or above the age specific Threshold</u>	<u>or above</u>	<u>Below the age specific threshold</u>	<u>At or above Threshold</u>	<u>Under Hazardous Conditions labour1</u>		
Total	32.8	29.1	82.9	5.5	39.1	50.8	61,109	
Geopolitical zone								
North Central	35.0	31.3	83.3	6.3	49.6	56.8	10,355	
North East	33.3	26.1	80.3	7.1	34.1	47.2	13,596	
North West	33.2	33.8	81.4	4.7	41.9	55.1	22,022	
South East	33.5	24.5	86.4	5.9	36.1	46.6	3,616	
South South	34.2	25.2	88.4	3.6	37.9	48.7	5,075	
South West	25.0	21.5	86.8	4.7	25.4	38.0	6,445	
Sex								
Male	34.2	30.3	82.0	5.1	42.8	54.3	31,093	
Female	31.2	27.9	83.9	5.9	35.1	47.2	30,016	
Residence								
Urban	28.7	16.5	83.5	3.9	24.4	33.4	19,735	
Rural	34.7	35.1	82.7	6.2	46.0	59.1	41,374	
Age (years)								
5-11	12.0	43.2	79.8	4.8	33.2	49.9	37,469	
12-14	60.1	10.9	85.5	8.5	45.7	51.4	13,328	
15-17	73.2	1.6	91.0	4.0	51.6	53.3	10,312	
School attendance								
Yes	31.5	28.0	84.5	5.2	37.5	48.7	45,503	
No	36.6	32.4	78.4	6.2	43.6	56.9	15,606	

Mother's education							
None	34.0	35.0	80.2	6.9	43.5	57.5	19,771
Non-formal	33.9	35.8	84.9	5.0	45.5	58.5	13007
Primary	32.8	29.5	86.0	4.9	42.2	51.7	10,448
Secondary	26.1	22.2	81.9	5.4	27.5	39.0	11,438
Higher	20.9	13.6	81.2	2.1	16.1	24.7	3,919
Cannot be determined	39.0	30.5	85.6	4.8	45.8	57.1	15,381
Wealth index quintile							
Poorest	37.6	40.8	81.9	7.1	50.3	66.5	13,491
Second	35.2	38.3	82.3	6.5	49.2	62.9	12,663
Middle	34.7	28.7	85.2	5.0	42.4	52.7	12,399
Fourth	31.2	19.7	83.1	5.0	30.7	39.8	12,037
Richest	23.2	14.2	82.2	3.3	17.9	26.6	10,519
Ethnicity of household head							
Hausa	33.2	31.9	82.3	5.3	39.0	52.6	32,901
Igbo	29.9	22.3	86.6	5.2	32.1	41.8	5,104
Yoruba	28.7	20.1	86.0	5.2	26.6	38.5	6,092
Other ethnic group	34.2	29	81.9	6	45.6	54.6	17,012

Percentage of children age 5-17 years by involvement in economic activities or household chores during the last week, Percentage working under hazardous conditions during the last week, and percentage engaged in child labour during the last week, Nigeria, 2016-17

Source: MICS 2016/2017

Table 6.2: Child labour II (continued)



	Children involved in economic activities for a total number of hours during last week:			Children involved in household chores for a total number of hours during last week:			Children Working	Number of children age 5-17 years
	At or above	Below the age specific	Threshold	At or above	Below the age specific	Threshold		
Total	32.8	29.1	82.9	5.5	39.1	50.8	61,109	
State								
Abia	31.1	22.9	89.3	5.0	40.0	47.9	494	
Adamawa	33.9	26.9	72.0	11.6	33.4	49.1	1,558	
AkwaIbom	42.2	30.3	87.3	2.7	40.8	56.8	1,097	
Anambra	29.3	22.0	86.1	7.8	25.9	37.5	873	
Bauchi	28.2	36.2	83.8	1.6	23.3	48.5	3,102	
Bayelsa	36.9	21.6	84.0	6.4	37.9	45.9	408	
Benue	42.6	28.3	79.9	8.4	48.5	57.5	1,666	
Borno	32.8	15.7	80.0	7.2	29.6	37.4	4,186	
Cross River	29.9	37.3	95.8	0.5	56.0	64.4	1,063	
Delta	38.3	19.4	89.9	2.2	37.0	44.8	849	
Ebonyi	30.3	19.6	83.7	5.8	34.8	41.3	735	
Edo	29.1	10.8	88.0	1.1	21.1	25.2	670	
Ekiti	38.8	17.5	86.9	4.2	26.0	37.1	303	
Enugu	37.1	20.5	88.8	1.1	26.1	37.8	642	
Gombe	35.5	38.1	78.7	13.7	50.3	62.3	1,212	
Imo	39.1	35.0	85.7	8.3	52.5	65.8	871	

Jigawa	35.6	36.9	79.4	4.6	38.1	53.6	2,891
Kaduna	31.3	19.0	78.7	1.0	39.0	43.5	3,708
Kano	37.5	31.3	81.8	4.6	44.4	53.6	4,967
Katsina	29.2	41.6	83.1	7.9	36.6	59.9	3,832
Kebbi	41.2	34.8	78.8	7.9	62.9	70.8	1,974
Kogi	39.1	26.2	84.2	6.2	50.6	57.4	990
Kwara	30.4	15.0	71.9	8.8	22.9	35.2	842
Lagos	13.6	8.6	86.6	2.7	11.2	16.9	1,906
Nasarawa	33.1	34.5	86.4	8.2	55.9	62.5	1,311
Niger	32.7	44.7	88.5	6.3	58.7	64.9	2,930
Ogun	30.2	19.2	84.6	3.9	21.2	35.1	708
Ondo	26.1	29.0	88.2	4.9	26.5	45.8	946
Osun	37.9	34.3	92.8	3.8	52.6	62.2	950
Oyo	25.5	26.5	83.6	7.7	27.3	45.3	1,632
Plateau	34.4	23.1	81.8	3.4	48.4	52.7	2,147
Rivers	28.8	22.6	82.5	9.8	27.2	43.2	988
Sokoto	32.1	31.2	84.6	1.9	30.1	46.3	1,831
Taraba	33.1	28.3	81.5	10.3	47.7	57.7	979
Yobe	38.8	23.5	81.9	6.1	42.3	49.6	2,559
Zamfara	26.5	45.2	83.7	5.1	45.1	63.0	2,819
FCT-Abuja	29.7	26.1	79.1	1.8	31.8	44.7	468

Source: MICS 2017

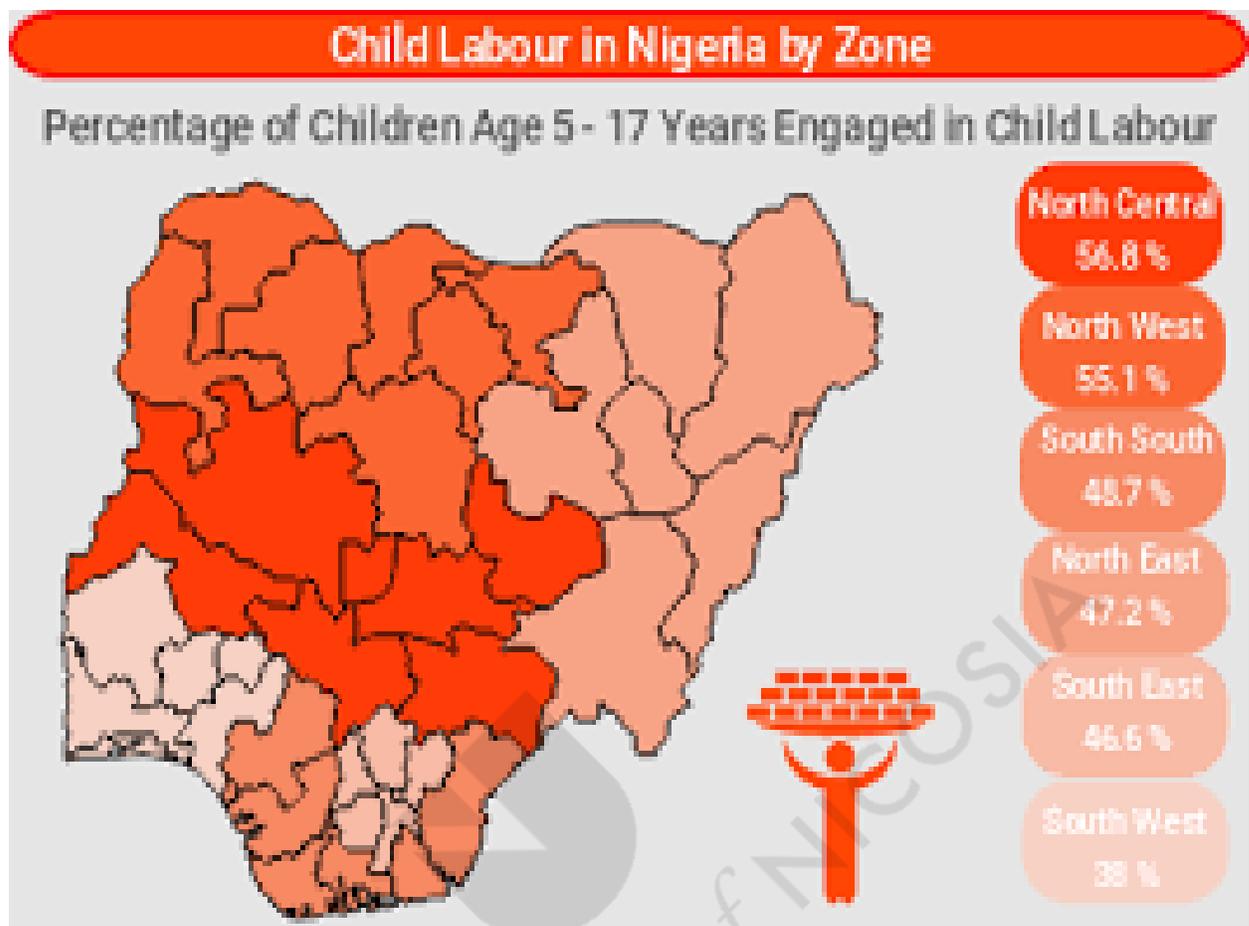


Figure 6.3 Map A – Child labour in Nigeria by Zone

Source:2016 /2017

Table 6.3 shows that an average of 50.8 percent of Nigerian children, ages between 5 and 17, are involved in child labour. The table reveals the North-Central region as having the highest figure of child labour of 56.8 percent, followed by North-West accounting for 55.1percent. South-South has 48.7, South-East 46.6 percent, and South-West 38percent, respectively.

It was evident that there were a good number of children working in hazardous conditions in the country with North-Central accounting for the highest number with 49.6 percent, North-West 41.9 percent, South-South 37.9 percent, South-East 36.1percent, North-East 34.1percent and South-West 25.4 percent respectively.

The fact that children are engaged in child labour where they do a high level of diverse and tedious jobs despite all legislations is worrisome.



Figure 6.4 Map B – Child labour in Nigeria by Wealth Index Quintile

Source: MICS 2016/2017

From the author's findings, there is no doubt that in Nigeria, there is a nexus between child labour and poverty, rapid urbanization, and a breakdown in extended family affiliations. According to statistics from MICS 2016/2017, More than half of Nigeria's 79 million children between the ages of 5-17 are engaged in work under tedious and hazardous conditions.

The researcher interviewed the children to gather information about their personal lives on the street as street vendors or their other workplaces. In total, 240 children were interviewed from the six Geopolitical zones. Forty each in a Geopolitical zone to ensure equal opportunity and representation for national spread to ensure a reliable result.

Apart from the secondary source, interviews were also conducted to determine the magnitude of child labour, its effect on the children and the parent's perception and attitude towards child labour. Moreso, to also confirm whether or not the law is adequate to combat child labour as already analysed above.

Analysis of the Reseacher's Field Interview for children and parents.

The interview took place randomly in different venues because of the nature of child labour. Most of the participants were interviewed on the spot, while some in an enclosure or any point of contact that was convenient for them. Some of the venues of the interview were market places, streets, building construction sites, restaurants, and hotels. While most of them willingly granted an interview and responded accordingly, few others declined as they were either shy or suspicious. parents were also interviewed in section in order to understand their perception and attitude towards this ugly trend. However, the focus was on the children.

For clarity and in order to understand the perception and experiences of the children, below are some of the highlights of some of the interview:

One of the children interviewed by the researcher revealed that he was compelled to drop out of school because his parents could neither feed them properly, let alone have money to pay for his fees, and buy school uniforms.

Another child that was interviewed by the researcher is a 10-year-old girl who wept bitterly while responding to the interview. She revealed that she and her family depended solely on the pure water she was hawking. Hence, a little girl of 10 suddenly became the breadwinner.

During the interview, the researcher came across some of them who were sleeping under the bridges and flyover on a major expressway.

Another 9-year-old girl recounted how she and her friends were raped under the bridge at night as they were hawking plaintain and garden egg respectively. The researcher could feel

her pain as tears dripped from her eyes while recounting her woes. As the researcher asked her why she did not quit the hawking after such a terrible experience, she replied that the plantain she was hawking was the primary source of the financial livelihood of her family. She added that she could not watch her mother, who is into petty trading suffer alone as her mother's income is not enough to take care of herself and three of her younger siblings.

Again, a 10-year-old girl who hawks oranges recalled how she was lured into an uncompleted building and raped by a man old enough to be her father. However, about two other girls and a boy that were interviewed said they had no such experiences, however, complained of the scorching sun and heavy rain that obstructs their business and even makes them ill.

Furthermore, the researcher visited some building sites. In one of the sites, the researcher closely observed and interviewed three (3) young boys who were between the ages of 5-15 years. As the researcher observed and interviewed them, it was found that these children were doing very tedious jobs but were paid peanuts at the end of each day.

Besides, the researcher also observed five (5) children between the ages of 7-14 washing and cleaning plates in a bustling restaurant. As the researcher managed to interview one of them, she revealed that they work beyond 16 hours every day; this is the height of slavery and exploitation.

After the above interview and statistical data collected, the analysis revealed that:

1. Most of the child labourers came from an impoverished background and worked tirelessly to earn a living for themselves and their families.
2. Most of these children were either rural dwellers working in farms or doing other tedious work or rural dwellers recruited and brought to the urban area to exploit them. It should be noted that while most researchers in this area concentrated mainly in the urban area, the author noticing this gap combined both the urban and the rural areas as venues for the fieldwork.

3. The result shows that it will be challenging to eliminate street vending as hawking has found a significant niche in the economic sub-region of Nigeria.
4. Most of these children, especially girls, are exposed to sexual advances, with the risk of sexual harassment and rape, which in most cases had led to unwanted pregnancies.
5. There had been frequent cases of accident, especially for those of them that are street vendors.
6. Some revealed that they ended up getting deeply involved in delinquent activities such as selling and smoking hemp and joining bad gangs.
7. Most of them were not attending school. The few that were attending school were not concentrating on their studies.
8. They work to earn a living, and some end up becoming breadwinners at a very tender age.
9. They suffer health-related problems like exhaustion, cough, cold, asthma, chest pain, and related issues.
10. Some children run away from home and start living on the street.
11. Children are equally encouraged by some poor parents to work and earn money to help their families.
12. The financial contribution of children is seen as a duty both by some parents, adults, and even the children themselves. It would appear that they are not aware that their rights have been violated.

Analyses of Parent's Responses

Based on the interview, below are the findings:

The response from parents who were interviewed revealed that most of the parents of child labourers live in a state of abject poverty. It was also indicated that poverty is the primary

reason for which children are compelled by their parents or by the circumstances they find themselves to work. Again, from the interview, most parents of child labourers living in a state of abject poverty are rural dwellers without steady income or food, good shelter, health care, education and employment. Some of them also responded that they send their children to work for reason of survival even when they know the implications as they are trapped in poverty. Consequently, there is an alarming increase of dropouts from school of children of these poor families whose children resort to child labour.

Crucially it was found that most of these parents are illiterates and ignorant of the implications of sending their children to work even in hazardous conditions. Besides, most of them claimed not to be aware of the Child Rights Acts, neither do they understand that children have rights. In fact, they do not appreciate their responsibilities as parents and consequently, these children are deprived of their right to education and development. Most of these illiterate and ignorant parents are unaware of the facilities and support available to children by the government to help them acquire free education. Thus, the highly ambitious children resort to child labour to eke out their subsistence and also be able to go to school. Another crucial finding both from the parents and community leaders is that most parents and members of the community especially among the rural dwellers believe that child labour equips the child with skills for the future. They see work done by the children as part of their socialization. In addition, from the interview it was found that there are various religious and socio-cultural practices in Nigeria that negatively influence the effective implementation of child labour laws.

6.3 Research Question 3: Are there possible obstacles/challenges in the implementation of the laws protecting the child against child labour?

Table 6.3 Challenges of implementing the Child Rights Protection Laws

S/N	Challenges	SA	A	D	SD	X	SD
1.	Corrupt practices by some law enforcement agents	34 34%	65 65%	-	1 1%	3.32	0.529
2.	Difficulty in cooperation procedure	24 24%	76 76%	-	-	3.24	0.429
3.	Overlooking of vulnerable children	39 39%	61 61%	-	-	3.39	0.49
4.	Inadequate recognition of children exposure to violence	37 37%	61 61%	-	-	3.37	0.485
5.	Scarce data on child's right and violence	36 36%	64 64%	-	-	3.36	0.482
6.	Lack of recovery of and integration services	12 12%	45 45%	31 3%	-	2.83	0.856
7.	Inadequate attention to child reporting of violence			14 14%	86 86%	1.14	0.349
8.	Poverty leads to compliances	17 17%	81 81%	2 2%		3.15	0.411
9.	Scarce research on child violence and child right protection	11 11%	75 75%	13 13%	1 1%	2.96	0.530
10.	Inadequate attention on gender issues	6 6%	6 6%	45 45%	43 43%	1.75	0.81

11.	Insufficient awareness of the provision of the child's right act especially rural dwellers	4 4%	5 5%	32 32%	59 59%	1.54	0.767
Weighted Mean = 2.73							

Source: Field Data, 2020

Table 6.3 shows the challenges in the implementation of the rights of the child against child labour. The table revealed that 34 percent of the respondents strongly agreed that corrupt practices by law enforcement agents is one of the challenges of implementing the rights of the child against child labour and the remaining 65 percent agreed to the same statement. Again, 24 percent of the respondents strongly agreed that opposing the adoption of the Child's Rights Acts by various states in Nigeria is another challenge in protecting the right of the child against child labour and the remaining 76 percent agree to the statement. The table also shows that 39 percent strongly agreed that traditional and cultural practices is also an impediment to the implementation of the Child's Rights Acts and 61 percent agreed to the same statement. Similarly, (37 percent) strongly agreed that insufficient public awareness of the Child's Rights Act especially among the rural dwellers is another challenge in the protection of the right of a child against child labour and 63 percent also agreed to the statement. Furthermore, 34 percent strongly agreed that fear of insecurity by field personnel is equally a challenge in the protection of the right of the child and 64 percent also agreed to the same statement.

In the same vein, 17 percent strongly agreed poverty and socioeconomic factor is a challenge to the protection of the rights of the child against child labour and 81 percent agreed to the same statement. Again, 11 percent strongly agreed that inadequate facilities and logistics for law enforcement agents is also a challenge to the protection of the rights of the child against child labour and 75 percent agreed to the same statement. Furthermore, 6 percent strongly agreed that religious belief and practice is not a hinderance to implementation of laws protecting the child against child labour and 6 percent also agreed to the same statement. This implies that religious belief and practice is actually an obstacle to implementation. In addition, 4 percent strongly agreed that scare data is a challenge to the protection of the rights of the child against child labour while 5% agreed to same

statement. Notably, 86 percent of the respondents strongly disagreed that vulnerable children are being overlooked by the government. Yet many of these children are toiling and hawking on the street for survival. Importantly, the findings in this study reveal that poverty is the main cause of child labour and consequently hinder implementation. The grand mean of 2.84 portrays the item on the questionnaire as a challenge hindering the effective implementation of the child protection laws as their means are above 2.50 cut-off point.

Apart from the questionnaire, interviews were further administered to law enforcement agents to investigate the challenges facing them in combating child labour.

Analysis of Responses from Interview with the Law Enforcement Agents.

The study through interview also assessed the role of law enforcement agents and the challenges they face in the implementation of the child protection laws to eliminate child labour. Based on the interview, below are the findings:

The interview shows that although there are several laws enacted to prohibit child labour, it is still persisting due to some shortcomings, weak and defective enforcement mechanism.

The interview revealed that there is lack of proper accountability by the law enforcement agents. Again, it was indicated that lack of adequate infrastructure and equipment for the law enforcement agents to work with also hinder implementation of the laws to combat child labour.

The interview further revealed that the personnels are very few. Besides, most of the inspectors are not provided with adequate training that will sensitize and enlighten them about the complex problem of child labour and how to handle such sensitive issues. They were also concerned about lack of sufficient security to work with. Furthermore, since child

labourers usually work in an unorganized and informal sectors, its enforcement is very difficult. Again, the findings reveal that there is no sufficient cooperation and co-ordination between the various law enforcement against.

Given this findings, it is therefore suggested that the Nigerian government should strengthen the police authority's capacity especially, those working with child protection agencies, institution and ministries. Again, the government should establish a stronger non-corruption police among the police officers. The government should also address the security threat faced by the law enforcement agents in the execution of their duty. Furthermore, the government should accommodate the basic needs of children especially the ones that parents are living in abject poverty. Crucially, government should accommodate the peculiar needs of the parents and children in the rural areas.

6.4 Summary and Conclusion of the Findings

The finding on the protection of the rights of the child under various laws shows that there are sufficient laws as indicated in research question 1 such as the Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (1989), Declaration on the Protection of Women and Children in Emergency in Armed Conflict; the Optional Protocol on the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; Convention against Discrimination in Education; African Charter on Human and Peoples' Rights; African Charter on the rights and Welfare of the Child (1999), the 1999 Constitution of the Federal Republic of Nigeria, the Child Rights Act 2003, among others. Crucially, Article 32 of the United Nations Convention on the Rights of the Child protects the right of children 'from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health and physical, mental, spiritual, moral or social development.' The fact remains therefore that there are sufficient laws protecting the child against child labour but not adequate to reduce or eliminate the menace. This is reflected in the secondary data (MICS) where the proportion of children involved in child labour has progressively

increased from 29 percent in the year 2007 to 47 percent in the year 2011 and 52 percent in 2017, respectively. Furthermore, the findings from the interview conducted by the researcher also revealed that the extant laws and policies relating to child labour are suffering a setback judging from the fact that a considerable number of children is seen on major roads and bridges, hawking different items and wiping windscreens of vehicles which could endanger their lives; this is indeed worrisome. Crucially, the findings of this study clearly shows that the incidence of child labour is still not abating due to numerous challenges that hinder implementation. These challenges poor law enforcement, inadequate law, lack of awareness of the child's rights law, corruption, traditional and cultural practices, religious belief and practices, parental attitude towards child labour and poverty among others. In all, it is found that poverty is the main contributor to child labour. Taking these factors into consideration, strategies to eliminate child labour must be multi-dimensional including policy intervention, improvement educational sector, social protection and poverty alleviation programmes among others. Furthermore, there is need for a more policy response on child labour and child protection built on adequate legal principals. A comprehensive recommendation will be made in the next chapter.

CHAPTER 7

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

7.0 Introduction

Child labour is a global problem. An estimated 246 million children are engaged in child labour.¹ Nearly 70 percent (171million) of these children work in hazardous condition.² It is not in contention that child labour is the violation of children's rights. This thesis explored the effectiveness of the legal and policy framework for the prohibition of child labour. The thesis has shown that to curb child labour, various international laws and policies have provided a legal foundation for the protection of children. These instruments include the Universal Declaration of Human Rights (UDHR),³ the International Covenant on Civil and Political Rights (ICESCR)⁴ and the Convention on the Rights of the Child (CRC).⁵ These instruments have collectively established the fundamental legal basis for children's rights under the general international law. More specific legislation relating to child labour is embraced in the ILO Convention No.138 on the minimum age for admission to employment, and ILO Convention No.182 on the Worst Forms of Child Labor. This thesis posed several questions:

1. Are there sufficient laws protecting the rights of children under Nigerian Law?
2. How adequate are the laws for the protection of the child against child labour?
3. What are the possible obstacles/challenges in the implementation of the laws protecting children against child labour?

The above questions are the underlying premise of this thesis. This thesis set out to consider whether there are sufficient laws protecting the rights of children under Nigerian

¹UNICEF Factsheet: Child Labour available at <http://www.unicef.org/protection> accessed on 10 February 2020.

²*Ibid*

³Universal Declaration of Human Rights (UDHR) 1948

⁴International Covenant on Economic, Social and Cultural Rights 1966

⁵United Nations Convention on the Rights of the Child 1989

Law. Secondly, it considered how adequate the policies and programmes adopted to eliminate or reduce child labour have helped to address the root causes of child labour such as poverty, access to education, employment opportunity for parents/adult's social security scheme among others. The third question is whether or not laws regarding the prohibition of child labour have been effectively implemented in Nigeria. It also considered the challenges in effective implementation. To answer these questions, the researcher drew upon existing literature, government reports, research from related fields and practices, key interviews from children, parents, and law enforcement agents and testimonies presented during the site visits to get key findings for this study which were analysed accordingly. This chapter will therefore summarize the findings of this research, draw a conclusion and make recommendations as to the best way of dealing with this problem in Nigeria. Suggestions were also made for further research.

7.1 Findings of the Study

7.1.1 Legislative Measures

The study shows that there are various laws and policies in place to curb child labour. However, it seems that the laws and policies are inadequate and therefore achieved very little. The evidence is that despite various laws and policies in place, the incidence of child labour has been on the increasing. In chapter three of this work, the researcher during the fieldwork, collated statistical data ranging from 2007, 2011 and 2017 for analysis. The study revealed that the proportion of children involved in child labour has progressively increased from 29 per cent in 2007 to 47 per cent in 2011 and 50.8 in 2017 respectively.

Again, this thesis has shown that many children work under very tedious and hazardous conditions and continue to work to the extent that some of them become breadwinners.

Another finding in line with the legislative measures is the lack of a uniform definition of child labour. The definitions contained in the various statutes in the country raise two fundamental issues. The first is the persons that can be described as children, and the second is the nature of work that can be described as child labour occurs. The crucial factors are the child's age, the hours and type of work performed and the specific conditions under which the child labour. That being said, who then is a child for this purpose? A child has been variously defined by different laws, both internationally and

nationally. The UNCRC provides a universal definition of a child as a person under the age of 18 years. However, there is a clause in the UNCRC, which ensures that the definition of a child may be adjusted to accommodate national laws under which a child attains maturity or adulthood at an earlier age.⁶ Thus, under the Nigerian socio-cultural context, the definition of a child varies widely due to the lack of uniformity in the cultural systems. In some ethnic groups, a boy remains a child until initiated into an age-grade society or until he is old enough to contribute physically and financially to community development.⁷ However, in some societies, childhood terminates at puberty. Thus section 2 of the Children and Young Person's Law still applicable in States, defines a child as a person under the age of fourteen (14) years while a young person is one who has attained the age of fourteen years but is under the age of eighteen.⁸ The Nigerian Labour Act (1974) considers a child as a person below fifteen (15) years of age⁹ while the National Child Welfare policy (1986) defines a child as anybody who is twelve (12) years of age.¹⁰ Matrimonial Causes Act 1970 puts the age of maturity at 21 years.¹¹ It must be noted that although the UNCRC intends to create flexibility by adding the clause as it sets the age of childhood in article 1, it seems that this provision creates a room for massive confusion, lack of uniformity and uncertainty. However, this uncertainty trailing the definition of a child under the Nigerian law was finally settled by section 277 of the Child Rights Act (2003) which defines a child as a person who has not attained the age of 18 years.¹² This is in line with the Convention on the Rights of the Child (CRC) and the African Charter

⁶UNCRC 1989 art 1

⁸CYPL of Lagos State 1945 s 2

⁹Nigerian Labour Act 1974

¹⁰National Child Welfare Policy

¹¹Matrimonial Causes Act Cap 220, Laws of the Federation of Nigeria (LFN) 1990. <http://www.nigeria.org/marriage%20Act.htm> accessed on 5 February 2020.

¹²CRA 2003 s 277

on the Rights and Welfare of the Child¹³ both to which Nigeria is a signatory. The Act goes further to void any other contrary definition of a child in any previous enactment.¹⁴ However, there is still doubt as to how this has helped.

For the second issue, as discussed in chapter 3, the concept of child labour is challenging to apply to many activities done by children. Notably, there is a growing consensus that not all those activities done by children are intolerable. The relevant international organizations such as the UN Children's Fund (UNICEF) and the ILO as well as most of the legal writers speak of a continuum that embraces at one end, work that is beneficial, promoting or enhancing a child's physical, mental, spiritual, moral and social development without interfering with schooling, recreation and rest. At the other end, the work is exploitative, including the most obvious examples like child prostitution and bonded child labour. Between the two poles, much of child labour falls into a grey area which also creates room for uncertainty. In order to have a more precise definition of child labour, UNICEF clarifies child labour as intolerable and exploitative in contrast to beneficial work. It must also be borne in mind that although the distinction is drawn between child work, which is seen as a necessary part of and an aspect of his growing up (which builds up his psycho-motor domain), and child labour, which is considered as excessive and detrimental. In African traditional cultures, children work beside their parents to learn the skills they need for adulthood. However, the transition to a cash economy and the raging poverty in most homes are forcing children to contribute through wage labour in order to help the family. Unfortunately, this puts the child at an increasing disadvantage. This thesis argues that there is need for a clear and certain definition of childhood and child labour. Indeed, the lack of uniformity in the definition of childhood and child labour can result in arbitrary decision and impunity. The effect, therefore, is that the idea of children's rights will be hard to achieve.

¹³African Charter on the Rights and Welfare of the Child (ACRWC) 1999 art 2

¹⁴*Ibid*

7.1.2 Socio-Economic Measures

The next limb of my research questions focuses on establishing the extent at which the policies adopted to address the root causes of child labour in Nigeria helped in curbing the scourge. This thesis has shown that most children are forced to engage in child labour because of some existing circumstances such as poverty, lack of health care services, lack of education, food, housing and generally struggle for survival. It is suggested that legislation and legal measures targeted at eliminating child labour need to be complemented with extra-legal means such as policies and programmes to alleviate poverty, provide free education and provide employment opportunities among others. It is submitted that these extra-legal measures of realizing the socio-economic needs of the people will play a big role in responding to the circumstances under which children engage in child labour. Notably, it has been established that child labour is complex and multi-dimensional and should be addressed accordingly. Furthermore, *Grootboom's case in South Africa* also established the obligation of the state to pay special attention to the needs of the poor and the vulnerable¹⁵. Thus, it is argued that addressing socio-economic needs of the people will be an effective response in solving the problem of child labour because it has the effect of responding to some of the circumstances that compel children to engage in child labour in Nigeria.

7.1.3 Enforcement/Implementation and Challenges

The third research question for this study focuses on whether the child protection laws and other measures regarding the prohibition of child labour in Nigeria are effectively implemented in Nigeria or whether there are challenges to effective implementation. Nigeria has signed and ratified international Conventions, which targeted the prohibition and elimination of child labour. These conventions are the United Nations Convention on the Right of the Child (UNCRC)¹⁶ and the ILO 138 and 182¹⁷. As a ratifying member state of this Convention, Nigeria has taken significant steps towards eliminating the

152000(11) BCLR 1169.CC

16UNCRC 1989

17ILO Convention no 138

practice of child labour within its borders¹⁸. However, Nigeria's implementation of these Conventions, respectively, has been marred by challenges within the implementation process.

International Conventions can be incorporated into national law by using either a monist or a dualist approach. For the monist method, a treaty is considered a legislative act, and automatically becomes a part of the domestic law after the state ratifies it.¹⁹ Upon ratification, therefore, the document may be invoked in a domestic Court and accorded constitutional status. In the event of a conflict or contradiction with domestic law, the international treaty will prevail. However, the dualist approach regards domestic and international law as two separate legal systems. The legal effect is that international instruments must be expressly incorporated into the national law through legislation before it can have legal effect. The international instruments must be explicitly incorporated into the federal law through legislation before becoming legally enforceable in domestic courts. Thus, unless legislative incorporation has occurred, any conflict between the provisions of an international human rights instrument and national legislation will be resolved in favour of the federal law.

Consequently, this will affect the effective implementation of laws prohibiting child labour as it is the case with Nigeria with the dualist method or approach and distinct jurisdictional competencies. This thesis argues that in adopting the strict dualist approach, the Nigerian Constitution has become one of the obstacles that affect effective implementation. Section 12 of the 1999 Constitution of the Federal Republic of Nigeria provides that the National Assembly must approve through the process of incorporation all ratified treaties for them to be legally enforceable in the country.²⁰ The legal implication is that mere ratification of a treaty does not validate it or make it applicable in Nigeria. This applies to all international

¹⁸ILO Convention no 182

¹⁹Gooneskere S, Introduction and Overview: Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems, Cambridge: New York. Cambridge University Press 2007, 6.

²⁰Constitution of the Federal Republic of Nigeria (as amended) section 12.

instruments as was discussed in chapter 5 of this thesis where the Supreme Court in the case of *Abacha v Fawehinmi*²¹ held that treaties formed no part of domestic law unless enacted by the legislature.

Regarding the Child Rights Act 2003, the thesis identified that the Act suffered rejection and serious opposition by states that are yet to adopt it. The grounds of their opposition are based on cultures and religion. The effect is that until the Child Rights Act is enacted into law in each of these legislative systems, it is not binding on the states. Thus, no court can prosecute violators of the Child Rights Act in states that have not enacted it into their corpus of laws. This can result to a conflict of laws and different legal interpretation that could lead to further violations of the rights of the child. A good example was identified in chapter 5 of this thesis which reveals that different interpretations are attributed to “age of marriage” requirements. More so, states that have passed the law insist on choosing what goes into their CRA-enabling legislation.

Another issue regarding implementation of laws prohibiting Child labour is inadequate awareness of such instruments. For some that are aware, there is a show of apathy as they argue that it is un-African, unnecessary and unrealistic.

Another critical finding is in the area of child trafficking. The National Agency for the Prohibition of Child Trafficking has equally rescued hundreds of children from harmful forms of child labour.²² However, there have been very few trafficking prosecutions. Besides, the incidence of child trafficking has not abated.

The review conducted on the literature in this study revealed that the Labour Act contains too many exceptions to the minimum age requirement, which defeats the prohibition and restriction on child labour. This issue should be addressed accordingly. Another crucial point is that the labour inspectors are empowered to prosecute offenders, and this covers problems of child and forced labour. It does not, however, include the cases relating to

21(2006) 6 NWLR. Pt 660, 228 at 288-289

22Trafficking in Person (Prohibition) Enforcement and Administration Act, No 4. 2015 (hereinafter Trafficking in Persons Act or NAPTIP).

domestic work as that is an informal sector. However, there are few labour inspectors, with inadequate facilities and training to carry out their mandate effectively.

Again, there is a high incidence of corruption among public officials who collude with perpetrators of child labour already noted in chapter four of this work. This issue needs to be addressed urgently.

7.2 Recommendations

Based on the findings of this research, the following recommendations are made:

7.2.1 Legislative Measures

Given the present prevalence of child labour in Nigeria, there can be no doubt that the number of working children will continue to increase if adequate measures of control and regeneration are not taken. Nigerian government has made frantic effort by ratifying the conventions on child labour. However, it has been identified that one of the obstacles to effective implementation is the issue of legislative incorporation. Given this, the government should consolidate its action to ensure that all the conventions relating to child labour are fully incorporated. More so, there is also an urgent need to domesticate the Child Rights Act in all the 36 states of the Federation (Nigeria) and ensure that it supersedes in practice all common law, customary law and Sharia law as it relates to the issue of child labour.

Again, government should recognize the obligations contained in chapter 11 of the 1999 constitution as part of substantive rights of the citizens including the child. In line with this it is suggested that the provisions of section 6(6) (c) of the 1999 constitution should be amended to allow the court to have express power to adjudicate over matters covered by chapter 11 of the constitution. This will enable the citizens to challenge the government to provide necessary socioeconomics facilities that will alleviate poverty and improving the standards of living and make the provision of children's rights such as adequate health facilities, free education etc.

Furthermore, this thesis also recommends that government should respond to the recommendation of the UN Committee on the Rights of the Child to update laws

prohibiting child labour, especially laying out those occupations that should be deemed off-limits to children such as mining and operating dangerous equipment, to enforce laws prohibiting child marriage, and to prosecute those who sexually abuse children to the standards (life imprisonment).

Again, gaps in the provisions of the Nigerian labour law should be addressed. Thus, the Nigerian Labour law should cover cases of domestic workers and others operating under the informal sectors not covered by the law. In the same vein, the Labour Act's exception to the minimum age requirement, which permits children of any age to perform light work, should be repealed. The Labour Act permission for children above 16 years of age to perform specific hazardous jobs and tasks should also be repealed. It is therefore recommended that the minimum age for employment is fixed at 14 or 15 years of age in line with the ILO Convention 138 and that children under 18 years of age must be prohibited from all works that are likely to harm their health, safety and morals as defined under ILO 182.

Furthermore, the penalty provided in the Labour Act should be reviewed and strengthened. More so, Labour inspectorate needs to be adequately funded, equipped and trained to carry out their mandate effectively. Again, it is suggested that Nigeria, as a Member State, should apply measures to ensure that the provisions of the labour laws should not contradict international standards to the extent that will cause confusion, inconsistency and uncertainty. However, the researcher argues that the law is very sophisticated, Eurocentric and therefore too far from the practices of the Nigerian people. For instance, local tradition and culture, as well as family solidarity, do in no small extent hinder the realization of child right protection in Africa, Nigeria inclusive, as it is difficult for them to acknowledge that these children are being exploited rather than socialization. Thus, since the international conventions lack local relevance and far removed from the lived experiences of children in the developing world like Nigeria, caution must be applied as this is one way to make adherence easy.

Furthermore, this thesis argues that there is a need to have a clear understanding of what is to be eliminated. Thus, it is vital to have a uniform legislative definition of what constitutes childhood and child labour. The present municipal definition of who a child is and what constitutes child labour would not allow a concerted effort at preventing the scourge of child labour. The reason is that violators of child labour laws may hide under this diverse definition of the age of a child to perpetuate child labour.

Besides the lack of a clear understanding of the stakeholders of what constitutes child labour is a significant hindrance to practical implementation. Given that the Ministry of Women Affairs and the Ministry of Social Welfare are saddled with multiple social welfare services, including those relating to children, capacity building and adequate funding for these ministries are very vital. However, this should not undermine the urgent need for a separate, independent and adequately funded ministry of children affairs to monitor cases of child labour closely and indeed put the elimination of child labour in the front burner of the Nigerian government.

7.2.2 Implementation and Enforcement Measures

It is no gainsaying that enacting the Act prohibiting child labour is a necessary condition towards the elimination of the menace, but it is not sufficient. Thus, it is suggested that the government must ensure that these laws are implemented and complied with. Based on this, the following recommendations are made:

To ensure children's access to justice in Nigeria, it is suggested that the government should establish and operate Functional Family Courts in line with the provisions of the CRA.

Again, the Federal Government and its foreign collaborating agencies and bodies should embark on a policy of aggressive funding to ensure that child protection, and all the enforcement agencies like the police and social welfare receive adequate and coordinated funding to expand their capacity for monitoring and supervision. This is very important because the reality on the ground at the moment based on the research findings during the fieldwork is that the Social Welfare Departments at the state and national level lack trained staff for the new roles, no adequate facilities and the fund to carry out their duty. In the

same vein, the institutional frameworks for juvenile justice established to handle children in conflict or collusion with the laws lack specialized staff for such an institution. Besides they are grossly underfunded and in many ways inadequate. The Police, Custom and Immigration, the judiciary personnel and the judges are not also left out of this unfortunate situation.

It is equally suggested that the judiciary should be very sensitive and strict in dealing with child labour cases. Any person who violates the rights of the child should be severely punished without an option of fine. Crucially, there is a high incidence of complicity among public officials who collude with perpetrators of child labour. Such corrupt officials need to be punished when identified to serve as deterrence to others.

7.2.3 Socio-Economic Measures

Findings in this study have shown that the compelling reasons children resort to child labour are poverty, lack of access to education, health and social welfare benefits, among others. Since these are the root causes of child labour, elimination of this scourge cannot be achieved unless effective policy measures are put in place to respond adequately to these causes. This study, therefore, recommends the following policy measures and programmes:

Poverty, as already mentioned earlier, is the root cause of child labour. First, there is the need to assess the existing poverty alleviation programmes and ascertain their impact on families of children engaged in child labour and subsequently make some adjustment if necessary. Also, there is also the need to formulate and implement more comprehensive poverty eradication policies. Such programmes should include the provision of credit schemes and soft loans and subsidies to support low-income families. Thus, the Trader Money scheme which was set up by the Federal Government is commendable. Trader Money is a loan scheme recently set up by the Federal Government to empower the masses, particularly petty traders. However, several irregularities have been recorded in this scheme with similar challenges that marred previous economic and social intervention programmes in Nigeria. Thus, despite these laudable efforts, Nigerians in extreme poverty are increasing by the day.

Importantly, the Nigerian government should withdraw children already engaged in many jobs from working and provide them with a stress-free and more rewarding alternative for them and their family. These jobs should preferably be made available for their parents or adult relatives. Furthermore, Universal Basic Education (UBE) Programme, which has been launched in Nigeria, should be adequately funded, implemented and enforced. One way of achieving this is to eliminate all forms of hidden costs. Regular school attendance should be encouraged. In line with this, school leaving age should be harmonized with the minimum age at work to avoid premature job after graduation from school. Crucially, since every child does not have the capacity and aptitude for secondary and tertiary education, the government should establish institutions for vocational training and apprentice schemes. These programmes should be closely supervised and monitored by competent authorities to avoid abuse. All these should be done bearing in mind the need of the rural population, nomadic population, persons in physically isolated settlements, urban slums, street children, and “Almajiri” children.

Another vital issue to address is that of high-level unemployment. It is suggested that the government should provide employment opportunities for parents and adults to alleviate the problem of unemployment in Nigeria. This will set many families on their way out of acute poverty which in turn will get children out of child labour and ensure a secured future for the Nigerian child.

Furthermore, from the findings in this study, it is clear that there is a compelling need for the government to, through the ministry of information and national orientation agency, mount an effective campaign against child labour for the public, including children, stressing the negative impact of the scourge. This campaign should cover the entire country, including rural communities. Parents and guardians should be educated on the level of risks they expose their children to when they send them out for hawking and other domestic and informal and hazardous work. To capture so many audiences, the campaign should be held in market places, schools, churches, mosque and other public places. The public should also be educated about the right of children as many people, including

children, are not aware of the existence of the Child's Right Act of 2003 and other child protection laws.

7.2.4 Encourage Stakeholders Participation

The persistent increase in child labour requires that all hands must be on deck to curb this menace. It is therefore suggested that government, in collaboration with international agencies and NGOs, should liaise with other stakeholders such as teachers, health providers, traditional and religious leaders as well as members of the community in the fight against child labour. Respect for their respective positions will enable them to make a positive and useful contribution to fight this scourge. However, the activities of the NGOs are not without challenges and criticism. Some of the NGOs in Nigeria lack efficient leadership as some lack the requisite knowledge and managerial ability to pilot their affairs. Again, corruption is very prevalent in Nigeria, including among local NGOs. There is a huge misappropriation, embezzlement of fund (gifts and dues) and other unprogressive activities. The prevalence of widespread corruption limits their scope of activities and hinders their growth. Furthermore, tribalism, ethnicity and nepotism are canker-worms that have eaten deep into the social fabric of the society. This problem harms the performance of NGOs in Nigeria. Again, the high level and widespread insecurity in the country is also an impediment to their performance. Another serious impediment to the adequate performance of NGOs in Nigeria is the issue of lack of transparency and accountability.

Teachers and health care providers by their role in the lives of the children can enlighten the children and explain to them the negative impacts of child labour and discourage them from engaging in it. The traditional and religious leaders in question should be enlightened on the harmful cultural practices concerning child work without compromising the fundamental rights of the working children. These traditional and religious leaders by their revered positions may contribute if they can positively influence traditional and customary practices.

Finally, this thesis concludes that what is needed is not new laws prohibiting child labour, but effective means and mechanism of enforcing them. What has happened so far in Nigeria

is the ineffective implementation of child protection laws with so many gaps in the existing ones. If the above policy and legal recommendations are considered and implemented accordingly, the country will go a long way to curb this scourge if not total elimination.

Suggestion For Further Research

There is need for further study to investigate smaller companies and sectors that are less organized and informal as most child labourers work under tedious and hazardous environment in such places.

Again, there is need for further research to consider the role of children to participate in their own affairs and be able to challenge where need be, certain cultural beliefs and practices that violates their human right as children.

Further research should explore the role of religious and community leaders in Nigeria and how its activities will promote the best interest of child.

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Appendix A

Faculty of Law,
Department of Law.
University of Nicosia,
Makedonitissis 46, Nicosia
2417, Cyprus.
March 15, 2018.

Dear Sir/Madam,

LETTER OF INTRODUCTION

I write to solicit for your co-operation and moral support to enable me carryout an investigation on “Legal Issues Related to Child Labour and Huma Right Violations: A Case Study of the Situation in Nigeria” as part of the requirement for the completion of my PHD thesis.

I am a native of Ekpeye in Ahoada East Local Government Area of Rivers State and Post Graduate Student of the above mentioned school.

By virtue of your office and position in the society, you have been chosen as one of those whose responses will be of immense benefit to this study. I therefore request that you kindly provide useful information to the research instru ments which are designed to elicit relevant information on the subject matter which will be treated with absolute confidentiality.

Thank for your cooperation.

Olunma Kaniye Ebeku

Faculty of Law,
Department of Law.
University of Nicosia,
Makedonitissis 46, Nicosia
2417, Cyprus.
March 15, 2018.

Dear Parents/Guardian,

LETTER OF CONSENT

I write to solicit for your approval to enable me engage your children in a brief interview section to enable me carryout a research on Child Labour as it relates to human right violations as part of the requirement for the completion of my PHD thesis.

I am a native of Ekpeye in Ahoada East Local Government Area of Rivers State and Post Graduate Student of the above mention school.

The outcome of this information may be of immense benefit to you and the Nigerian society.

Please indicate your approval/consent or disapproval with a tick in the column provided below:

I approve

I disapprove

Thanks for your anticipated cooperation.

Yours Faithfully,

Charity Olunma Kaniye Ebeku

Faculty of Law,
Department of Law.
University of Nicosia,
Makedonitissis 46, Nicosia
2417, Cyprus.
March 15, 2018.

Dear Respondents,

**CHALLENGES OF CHILD’S RIGHTS LAWS PROTECTION
QUESTIONNAIRE (CCRLPQ)**

This questionnaire is designed to gather information from Law Enforcement Agents on challenges in the protection of the rights of the child against child labour. You have been selected as one of those whose responses will be of benefit to this study. Your kind and honest responses will be highly appreciated. The information provided will be strictly used for research purposes only and will be treated with absolute confidentiality.

Thank you for your anticipated cooperation.

Section A:

Instruction: Please place a tick in the space provided for the appropriate background information.

Name (Optional):

Gender: Male () Female ()

Age: 20-29 () 30-39 () 40 and above

State: Bauchi () Kaduna () Benue () Abia ()
Lagos () Rivers ()

Geopolitical Zone: North-East () North-West ()
North Central () South-East () SouthWest () South-South ()

Nationality: _____

Section B:

Instruction: Please complete each item by either putting a tick (√) across a relevant letter that corresponds to your response or filling in the space provided.

Key: SA = Strongly Agree, A = Agree, D = Disagree, SD = Strongly Disagree

Table 2: The challenges of implementing the Child’s Rights Protection Laws

S/N	Challenges	SA	A	D	SD
1.	Corrupt practices by some law enforcement agents				
2.	Challenges in adopting the Child’s Rights Act in various states				
3.	Traditional and cultural values hinders effective implementation of the Child’s Rights Act				
4.	Insufficient public awareness of the provision of the child’s rights Act especially among the rural dwellers				
5.	Fear of insecurity by the field personnels				
6.	Inadequate police report				
7.	Overlooking vulnerable children				
8.	Poverty and socioeconomic factor				
9.	Inadequate facilities and logistics for law enforcement agents				
10.	Religious belief and practice is not a hinderance to implementation				
11.	Scarce research on child violence and child right				



Appendix B

INTERVIEW SCHEDULE TO DETERMINE THE ADEQUACY AND EFFECTIVENESS OF THE CHILD PROTECTION LAWS.

This instrument was developed by the researcher to elicit direct information from the Social Welfare Officers, Ministry of Women Affairs Personnels and Human Right Activists on the Adequacy and Effectiveness of the Child Protection Laws in Nigeria. The instrument consist of two sections A and B

Section A is comprised of the personal data of the interviewee while Section B contains 10 interview Question items.

All responses will be treated with confidentiality.

Section A. Personal Data

Instruction: Please place a tick (√) in the appropriate box below

Name (Optional):

Gender: Male () Female ()

Age: 20-29 () 30-39 () 40 and above

State: Bauchi () Kaduna () Benue () Abia ()
Lagos () Rivers ()

Geopolitical Zone: North-East () North-West ()
North Central () South-East () South West () South-South ()

Nationality: _____

SECTION B

S/No	Questions	Responses
1.	Is poor funding a limitation to the effective implementation of the child's protection Law?	
2.	Do you have enough data to work with?	
3.	Do you have adequate facilities to work with?	
4.	Do you have appropriate sources of information on the incidence of child labour?	
5.	Do you have adequate trained and competent personnel?	
6.	Do you receive adequate corporation from members of the public and other law enforcement agents?	
7.	Do you have any constraint working effectively in the rural areas?	
8.	Are community leaders especially among rural dwellers giving you maximum support?	
9.	Is poverty an impediment to effective implementation of the laws protecting children against child labour?	
10.	Do you have maximum corporation from the victims of child labour?	

INTERVIEW SCHEDULE FOR PARENTS/GUARDIANS

This instrument was designed by the researcher to ascertain the causes of child labour and the attitude of parents towards the eradication of child labour in Nigeria. It consists of two sections A and B. Section A covers the personal data of the interviewee while Section B contains seven (7) Question items to be responded to by the parents/guardians.

All responses will be treated with absolute confidentiality.

Section A Personal Data

Instruction: Please place a tick (✓) in the appropriate box below

Age: 18yrs – 29 30 – 40yrs 41 and above

Sex: Male Female

Marital Status: Single Married Divorced

Location: Urban Rural

Occupation.....

Religion

State: Bauchi () Kaduna () Benue () Abia ()

Lagos () Rivers ()

Geopolitical Zone: North-East () North-West ()

North Central () South-East () South West ()

South ()

Nationality:.....

SECTION B

INTERVIEW SCHEDULE FOR PARENTS/GUARDIANS ON CAUSES OF CHILD LABOUR AND THE ATTITUDE OF PARENTS TOWARDS THE ERADICATION OF CHILD LABOUR IN NIGERIA.

S/No	Questions	Responses
1.	What is your perception about child labour?	
2.	Why do you engage your children in child labour?	
3.	Are you aware of the child's Right Act?	
4.	Do you know that engaging your children in any form of child labour is a violation of the law?	
5.	Is child Labour beneficial to you?	
6.	Do you realize that child labour has a negative effect on your children's health?	
7.	Do you support the eradication of child labour?	

**INTERVIEW SCHEDULE FOR CHILD LABOURERS TO ASCERTAIN THE
LIKELY CAUSES AND EFFECTS OF CHILD LABOUR**

This instrument was developed by the researcher to investigate the likely causes and effects of child labour in Nigeria.

It consists of two sections, A and B.

Section A is designed to elicit personal information from the the child labourers. While section B contains 20 items which is designed to elicit information from children that are involved in child labour on the likely causes and adverse effect it has on them.

The researcher assures the interviewee that their responses will be treated with confidentiality.

Section A. Demographic Data

Age: 5yrs – 9yrs -14yrs 1 7yrs

Sex: Male Female

Location: Rural/Urban

Educational Background: Primary Sedary Out ohool

Father Occupation:.....

Mother Occupation:.....

Religion

State: Bauchi () Kaduna () Benue() Abia ()

Lagos () Rivers ()

Geopolitical Zone: North-East () North-West ()

North Central () South-East () SouthWest() South-

South ()

Nationality:.....

**INTERVIEW SCHEDULE FOR CHILD LABOURERS TO ASCERTAIN THE
LIKELY CAUSES AND EFFECTS OF CHILD LABOUR**

S/No	Questions	Responses
1.	Do you live with your parents? (If No, why are you not living with your parents?)	
2.	Do you prefer working instead of schooling at your age?	
3.	Were you forced to do this work?	
4.	Do you enjoy the work you do?	
5.	Do you think that this work you did will enhance your family? economic status?	
6.	How do you cope combine schooling with working? Is your academic performance not negatively affected?	
7.	Are you aware that the Nigerian law prohibits you from doing this job/business at your age?	
8.	Have you heard of child labour? Mention any form of child labour you know	
9.	Is there any form of campaign against child Labour in your community?	
10.	Why did your parents send you to work or doin this business	
11.	Do feel stressed out and sickly after the day's work?	

12. What is the reaction of your parents or guardians whenever you complain your negative experiences on the this job?
13. Are you under any kind of pressure or threatened by any one?
14. Do you think this work/business you engage in is stressful and detrimental to your health?
15. Have you been sexually harassed or molested by anyone especially within your work place?
16. Do you sometimes feel rejected, shy, inferior to other children of you are group that are not doing this kind of job you do?
17. Do you wish to quit working and go back to school.
18. Have you at anytime been exposed or lured into indulging in crime or immoral behaviour by anyone? If yes where?
19. As a domestic servant what are some of your negative experiences?
20. Do you wish to return to your parents? Will you stop working and focus on your academics if financial/economic status of your parents improve?

Appendix C

SPSS OUTPUT FOR RELIABILITY RESULT

	SUM3	SUM4
--	------	------

SUM3	Pearson Correlation	1	.943**
	Sig. (2-tailed)		.000
	N	30	30
SUM4	Pearson Correlation	.943**	1
	Sig. (2-tailed)	.000	
	N	30	30
**. Correlation is significant at the 0.01 level (2-tailed).			



APPENDIX D

CONVENTION ON THE RIGHTS OF THE CHILD

Preamble

The states parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children,'

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth', Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognising that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration, Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognising the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:



PART 1

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States 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 or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States 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.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, states parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 6

1. States parties recognise that every child has the inherent right to life.
2. States parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his other parents.
2. States parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, states parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a state Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the state) of one or both parents or of the child, that state Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of states parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a state Party for the purpose of family reunification shall be dealt with by states parties in a positive, humane and expeditious manner. States parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different states shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of states parties under article 9, paragraph 1, states parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.

Article 11

1. States parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, states parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a) For respect of the rights or reputations of others; or
 - b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, states parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, states parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include
3. effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.
2. States parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- b) Recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

- e) (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said states are parties.
2. For this purpose, states parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is

made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling states parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
 4. States parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for

the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the state Party and from abroad. In particular, where the person having financial responsibility for the child lives in a state different from that of the child, states parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
 3. States parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

- (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the state.

Article 30

In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, states parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, states parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without

possibility of release shall be imposed for offences committed by persons below eighteen years of age;

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, states parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, states parties shall take all feasible

measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, states parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

- (a) The law of a state party; or
- (b) International law in force for that state.



PART II

Article 42

States parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by states parties in achieving the realisation of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognised competence in the field covered by this Convention. The members of the Committee shall be elected by states parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by states parties. Each state Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to states parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating states parties which have nominated them, and shall submit it to the states parties to the present Convention.
5. The elections shall be held at meetings of states parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of

states parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of states parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the state Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the states parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the state Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A state Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from states parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialised agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the

implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialised agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialised agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

- (b) The Committee shall transmit, as it may consider appropriate, to the specialised agencies, the United Nations Children's Fund and other competent bodies, any reports from states parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any state Party concerned and reported to the General Assembly, together with comments, if any, from states parties.

PART III

Article 46

The present Convention shall be open for signature by all states.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any state.

The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each state ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such state of its instrument of ratification or accession. Article 50
3. Any state Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to states parties, with a request that they indicate whether they favour a conference of states parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the states parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of states parties present and voting at the conference shall be submitted to the General Assembly for approval.
4. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of states parties.
5. When an amendment enters into force, it shall be binding on those states parties which have accepted it, other states parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all states the text of reservations made by states at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all states. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A state Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective governments, have signed the present Convention.

Appendix D

EXCERPTS OF PART 1, 11, AND 111 OF THE CHILD'S RIGHT ACT, 2003

ARRANGEMENT OF SECTIONS

PART I

Best Interest of a Child to be of Paramount Consideration in all Actions.

SECTION 1. Best interest of a Child to be of paramount consideration in all actions.

2. A child to be given protection and care necessary for his well-being.

PART II

Rights and Responsibilities of a Child

Rights of a Child

3. Application of Chapter IV of 1999 Constitution, etc.

4. Right to survival and development.

5. Right to name.

6. Freedom of association and peaceful assembly.

7. Freedom of thought, conscience and religion.

8. Right to private and family life.

9. Right to freedom of movement.

10. Right to freedom from discrimination.

11. Right to dignity of the child.

12. Right to leisure, recreation and cultural activities.

13. Right to health and health services.
14. Right to parental care, protection and maintenance.
15. Right of a child to free, compulsory and universal primary education, etc.
16. Right of a child in need of special protection measure.
17. Right of the unborn child to protection against harm, etc.
18. Contractual rights of a child.
19. Responsibilities of a child and parent.
20. Parent, etc. to provide guidance with respect to child's responsibilities.

PART III

Protection of the Rights of a Child

21. Prohibition of child marriage.
22. Prohibition of child betrothal.
23. Punishment for child marriage and betrothal.
24. Tattoos and skin marks.
25. Exposure to use, production and trafficking of narcotic drugs, etc.

Use of Children in Other Criminal Activities

26. Use of children in other criminal activities.
27. Abduction, removal and transfer from lawful custody.

Child Labour

28. Prohibition of exploitative labour.
29. Application of Labour Act.

Buying, Selling, etc., for the Purpose of Begging and Prostitution, etc.

30. Prohibition of buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution, etc.

Unlawful Sexual Intercourse, etc.

31. Unlawful sexual intercourse with a child, etc.

Other Forms of Sexual Abuse and Exploitation

32. Forms of sexual abuse and exploitation.

Other Forms of Exploitation

33. Other forms of exploitation.

Recruitment into the Armed Forces

34. Prohibition of recruitment of children into the Armed Forces.

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35. Prohibition of importation of harmful publication.

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37. Power to issue warrant of arrest, summons, search, etc., for harmful publications.

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39. Removal of jurisdictional limitation of magistrates, etc.

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41. Child assessment orders.
42. Emergency protection orders.
43. Duration of emergency protection orders, etc.
44. Children taken into police protection in cases of emergency.
45. Duty of a State Government to investigate.
46. Disclosure of whereabouts, etc. of children who may be in need of emergency protection
47. Abduction of children in care, etc.
48. Refuge for children at risk.
49. Rules and regulations under this Part.

PART V

Children in Need of Care and Protection

50. Power of certain persons to bring children in need to care and protection before a court in certain cases.
51. Make order where parent or guardian is unable to exercise control.
52. Power of Court to order parent, etc., to contribute to maintenance.

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Care and Supervision

53. Care and supervision order, general.
54. Period within which application for order under this Part must be disposed of.
55. Effect of care order.
56. Parental contacts, etc., with children in care.

57. Duty of supervisors while supervision orders are in force.
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60. Interim orders.
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63. Power of Court to require use of scientific tests.
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70. Orders as to custody.
71. Validity of custody agreed to in separation deeds.

72. Principal on which questions relating to custody, upbringing, etc, of child is to be decided
73. Court to have regard to conduct of parent.
74. Power of Court as to production of child.
75. Power of Court to consult child's wishes.
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77. Enforcement of order for payment of money by attachment of income.
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79. Power of the Minister to make orders, etc., as to custody of children.
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82. Parental responsibility of a guardian.
83. Guardianship of a child.
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87. Power of a guardian over estate of a child.
88. Disputes between joint guardians.

89. Appointment of guardian ad litem.
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CHILD'S RIGHTS ACT 2003

An Act to provide and protect the rights of a Nigerian child; and other related matters.

[31st July, 2003]

[Commencement.]

PART I

Best Interest of a Child to be of Paramount Consideration in all Actions

1. Best interest of a Child to be of paramount consideration in all actions

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

2. A child to be given protection and care necessary for his well-being

(1) A child shall be given such protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child's parents, legal guardians, or other individuals, institutions, services, agencies, organisations or bodies legally responsible for the child.

(2)

Every person, institution, service, agency, organization and body responsible for the care or protection of children shall conform with the standards established by the

appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.

PART II

Rights and Responsibilities of a Child

Rights of a Child

3. Application of Chapter IV of 1999 Constitution, etc

(1)

The provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to Fundamental Rights, shall apply as if those provisions are expressly stated in this Act.

(2)

In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, or under any successive constitutional provisions, every child has the rights set out in this Part of the Act.

4. Right to survival and development

Every child has a right to survival and development.

5. Right to name

(1)

Every child has a right to a name and, accordingly, shall be given a name on his birth or on such other date as is dictated by the culture of his parents or guardian.

(2)

The birth of every child shall be registered in accordance with the provisions of the Birth, Death, etc. (Compulsory Registration) Act, 1992.

6. Freedom of association and peaceful assembly

Every child has a right to freedom of association and peaceful assembly in conformity with the law and in accordance with the necessary guidance and directions of his parents or guardians.

7. Freedom of thought, conscience and religion

(1) Every child has a right to freedom of thought, conscience and religion,

(2)

Parents and, where applicable, legal guardians shall provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child.

(3)

The duty of parents and, where applicable, legal guardians to provide guidance and direction in the enjoyment of the right in subsection (1) of this section by their child or ward shall be respected by all persons, bodies, institutions and authorities.

(4)

Whenever the fostering, custody, guardianship or adoption of a child is in issue, the right of the child to be brought up in and to practice his religions shall be a paramount consideration.

8. Right to private and family life

(1)

Every child is entitled to his privacy, family life, home, correspondence, telephone conversation and telegraphic communications, except as provided in subsection (3) of this section.

(2)

No child shall be subjected to any interference with his right in subsection (1) of this section, except as provided in subsection (3) of this section.

(3)

Nothing in the provision of subsections (1) and (2) of this section shall affect the rights of parents and, where applicable, legal guardians, to exercise reasonable supervision and control over the conduct of their children and wards.

9. Right to freedom of movement

(1)

Every child is entitled to freedom of movement subject to parental control which is not harmful to the child.

(2)

Nothing in subsection (1) of this section shall affect the right of a parent, and where applicable, a legal guardian or other appropriate authority to exercise control over the movement of the child in the interest of the education, safety and welfare of the child.

10. Right to freedom from discrimination

(1)

A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion or political opinion.

(2)

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

11. Right to dignity of the child

Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be-

(a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse;

- (b) subjected to torture, inhuman or degrading treatment or punishment;
- (c) subjected to attacks upon his honor or reputation; or
- (d) held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child.

12. Right to leisure, recreation and cultural activities

(1)

Every child is entitled to rest and leisure and to engage in play, sports and recreational activities appropriate to his age.

(2)

Every child is entitled to participate fully in the cultural and artistic activities of the Nigerian, African and world communities.

(3)

Every Government, person, institution, service, agency, organisation and body, responsible for the care and welfare of a child shall, at all times, ensure adequate opportunities for the child in the enjoyment of the rights provided for the child in subsections (1) and (2) of this section.

13. Right to health and health services

(1)

Every child is entitled to enjoy the best attainable state of physical, mental and spiritual health.

(2)

Every Government, parent, guardian, institution, service, agency, organization or body responsible for the care of a child shall endeavour to provide for the child the best attainable state of health.

(3) Every Government in Nigeria shall-

- (a) endeavour to reduce infant and child mortality rate;
 - (b) ensure the provision of necessary medical assistance and health care services to all children with emphasis on the development of primary health care;
 - (c) ensure the provision of adequate nutrition and safe drinking water;
 - (d) ensure the provision of good hygiene and environmental sanitation;
 - (e) combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
 - (f) ensure appropriate health care for expectant and nursing mothers; and
 - (g) support, through technical and financial means, the mobilisation of national and local community resources in the development of primary health care for children;
- (4) Every parent guardian or person having the care and custody of a child under the age of two years shall ensure that the child is provided with full immunisation.
- (5) Every parent, guardian or person having the care of a child who fails in the duty imposed on him under subsection (4) of this section commits an offence and is liable on conviction for-
- (a) a first offence, to a fine not exceeding five thousand naira; and
 - (b) second or any subsequent offence, whether in respect of that child or any other child, to imprisonment for a term not exceeding one month.
- (6) The Court may make, in substitution for or addition to any penalty stipulated under subsection (5) of this section, an order compelling the parent or guardian of a child to get the child immunised.

14. Right to parental care, protection and maintenance

- (1) Every child has a right to parental care and protection, and accordingly, no child shall be separated from his parents against the wish of the child except-

- (a) for the purpose of his education and welfare; or
- (b) in the exercise of a judicial determination in accordance with the provisions of this Act, in the best interest of the child.

(2) Every child has the right to maintenance by his parents or guardians in accordance with the extent of their means, and the child has the right, in appropriate circumstances, to enforce this right in the Family Court.

15. Right of a child to free, compulsory and universal primary education, etc.

(1) Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education.

(2) Every parent or guardian shall ensure that his child or ward attends and completes his-

- (a) primary school education; and

- (b) junior secondary education.

(3) Every parent, guardian or person who has the care and custody of a child who has completed his basic education, shall endeavour to send the child to a senior secondary school, except as provided for in subsection (4) of this section.

(4) Where a child to whom subsection (3) of this section applies is not sent to senior secondary school, the child shall be encouraged to learn an appropriate trade and the employer of the child shall provide the necessaries for learning the trade.

(5) A female child who becomes pregnant, before completing her education shall be given the opportunity, after delivery, to continue with her education, on the basis of her individual ability.

(6) Where a parent, guardian or person who has care and custody of a child, fails in the duty imposed on him under subsection (2) of this section, commits an offence and is liable-

- (a) on first conviction to be reprimanded and ordered to undertake community service;
 - (b) on second conviction to a fine of two thousand naira or imprisonment for a term not exceeding one month or to both such fine and imprisonment; and
 - (c) on any subsequent conviction to a fine not exceeding five thousand naira or imprisonment for a term not exceeding two months or to both such fine and imprisonment.
- (7) The provisions of this section shall not apply to children with mental disabilities.

16. Right of a child in need of special protection measure

- (1) Every child who is in need of special protection measures has the right to such measure of protection as is appropriate to his physical, social, economic, emotional and mental needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the affairs of the community.
- (2) Every person, authority, body or institution that has the care or the responsibility for ensuring the care of a child in need of special protection measures shall endeavour, within the available resources, to provide the child with such assistance and facilities which are necessary for his education, training, preparation for employment, rehabilitation, and recreational opportunities in a manner conducive to his achieving the fullest possible social integration and individual development and his cultural and moral development.

17. Right of the unborn child to protection against harm, etc.

- (1) A child may bring an action for damages against a person for harm or injury caused to the child willfully, recklessly, negligently or through neglect before, during or after the birth of that child.

(2)

Where the father of an unborn child dies intestate, the unborn child is entitled, if he was conceived during the lifetime of his father, to be considered in the distribution of the estate of the deceased father.

- (3) Where the mother of an unborn child dies intestate before the child is delivered, the unborn child is entitled, if he survives his mother, to be considered in the distribution of the estate of the deceased mother.

18. Contractual rights of a child

- (1) No child shall enter into a contract, except as provided in this section.

(2)

Any contract, except a contract for necessities, entered into by a child for repayment of money lent or for payment of goods supplied to the child, shall be void.

(3) Accordingly-

- (a) no action shall be brought against a child by a person after the child has attained the age of majority, to pay a debt contracted before majority or ratified on majority or any promise of contract made by the child before majority, whether or not there was new consideration for the promises or ratification after the child attained majority ;

(b)

if a child who has entered into a contract for a loan which is void agrees after majority to pay the loan, the agreement in whatever form it may be, shall be void so far as it relates to money which is payable in respect of the loan.

19. Responsibilities of a child and parent

(1)

Every child has responsibilities towards his family and society, the Federal Republic of Nigeria and other legally recognized communities, nationally and internationally.

(2)

A child shall, subject to his age and ability and such other limitations as may be contained in this Act and any other law, to -

- (a) work towards the cohesion of his family and community;

- (b) respect his parents, superiors and elders at all times and assist them in case of need;
- (c) serve the Federal Republic of Nigeria by placing his physical and intellectual abilities at his service;
- (d) contribute to the moral well-being of the society ;
- (e) preserve and strengthen social and national solidarity;
- (f) preserve and strengthen the independence and integrity of Federal Republic of Nigeria;
- (g) respect the ideals of democracy, freedom, equality, humaneness, honesty and justice for all persons ;
- (h) relate with other members of the society, with different cultural values in the spirit of tolerance, dialogue and consultation;
- (i) contribute to the best of his abilities at all times and at all levels, to the promotion and achievement of Nigerian, African and world unity; and
- (j) contribute to the best of his abilities. At all times and at all levels, to the solidarity of the African people and the human race.

20. Parent, etc. to provide guidance with respect to child's responsibilities

Every parent, guardian, institution, person and authority responsible for the care, maintenance, upbringing, education, training, socialisation, employment and rehabilitation of a c

child has the duty to provide the necessary guidance, discipline, education and training for the child in his or her care such as will equip the child to secure his assimilation, appreciation and observance of the responsibilities set out in this Part of the Act.

PART III

Protection of the Rights of a Child

21. Prohibition of child marriage

No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.

22. Prohibition of child betrothal

(1) No parent, guardian or any other person shall betroth a child to any person.

(2) A betrothal in contravention of subsection (1) of this section is null and void.

23. Punishment for child marriage and betrothal

A person-

- (a) who marries a child; or
- (b) to whom a child is betrothed; or
- (c) who promotes the marriage of a child; or
- (d) who betroths a child,

commits an offence and is liable on conviction to a fine of N500,000; or imprisonment for a term of five years or to both such fine and imprisonment.

24. Tattoos and skin marks

(1)

No person shall tattoo or make a skin mark or cause any tattoo or skin mark to be made on a child.

(2)

A person who tattoos or makes a skin mark on a child commits an offence under this Act and is liable on conviction to a fine not exceeding five thousand naira or imprisonment for a term not exceeding one month or to both such fine and imprisonment.

25. Exposure to use, production and trafficking of narcotic drugs, etc.

(1) No person shall-

(a)

expose or involve a child in the use of narcotic drugs and psychotropic substances; or

(b)

expose or involve a child in the production or trafficking of narcotic drugs or psychotropic substances; or

(2)

A person who contravenes the provisions of subsection (1) or (2) of this section commits an offence and is liable on conviction to imprisonment for life.

Use of Children in Other Criminal Activities

26. Use of children in other criminal activities

(1)

No person shall employ, use or involve a child in any activity involving or leading to the commission of any other offence not already specified in this Part of the Act.

(2)

A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to imprisonment for a term of fourteen years.

27. Abduction, removal and transfer from lawful custody

(1)

No person shall remove or take a child out of the custody or protection of his father or mother, guardian or such other person having lawful care or charge of the child against the will of the father, mother, guardian or other person.

(2)

A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction-

(a)

where the child is unlawfully removed or taken out of Federal Republic of Nigeria-

(i)

with intention to return the child to Nigeria, to imprisonment for a term of fifteen years; or

(ii)

with no intention to return the child to Nigeria, to imprisonment for a term of twenty years;

(b)

where the child is unlawfully removed or taken out of the State in which the father, mother, guardian or such other person who has lawful care of the child is ordinarily resident, to imprisonment for a term of ten years; or

(c)

in any case, to imprisonment for a term of seven years.

Child Labour

28. Prohibition of exploitative labour

(1) Subject to this Act, no child shall be-

(a) subjected to any forced or exploitative labour; or

(b)

employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character; or

(c)

required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development; or

(d) employed as a domestic help outside his own home or family environment.

(2)

No child shall be employed or work in an industrial undertaking and nothing in this subsection shall apply to work done by children in technical schools or similar approved institutions if the work is supervised by the appropriate authority.

(3)

Any person who contravenes any provision of subsection (1) or (2) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand naira or imprisonment for a term of five years or to both such fine and imprisonment.

(4)

Where an offence under this section is committed by a body corporate, any person who at the time of the commission of the offence was a proprietor, director, general manager or other similar officer, servant or agent of the body corporate

shall be deemed to have jointly and severally committed the offence and may be liable on conviction to a fine of two hundred and fifty thousand naira.

29. Application of Labour Act

The provisions relating to young persons in sections 58, 59, 60, 61, 62 and 63 of the Labour Act shall apply to children under this Act.

[L.F.N. 2004 Cap. L1.]

Buying, Selling, etc., for the Purpose of Begging And Prostitution, etc.

30.

Prohibition of buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution, etc.

(1)

No person shall buy, sell, hire, let on hire, dispose of or obtain possession of or otherwise deal in a child.

(2) A child shall not be used-

(a)

for the purpose of begging for alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful or immoral purpose ; or

(b)

as a slave or for practices similar to slavery such as sale or trafficking of the child, debt bondage or serfdom and forced or compulsory labour; .

(c) for hawking of goods or services on main city streets, brothels or highways;

(d)

for any purpose that deprives the child of the opportunity to attend and remain in school as provided for under the Compulsory, Free Universal Basic Education Act

(e)

procured or offered for prostitution or for the production of pornography or for any pornographic performance; and

(f)

procured or offered for any activity in the production or trafficking of illegal drugs and any other activity relating to illicit drugs as specified in the National Drug Law Enforcement Agency Act.

[L.F.N. 20004 Cap. N30]

(3)

A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to imprisonment for a term of ten years.

Unlawful Sexual Intercourse, etc.

31. Unlawful sexual intercourse with a child, etc.

(1) No person shall have sexual intercourse with a child.

(2)

A person who contravenes the provision of Subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.

(3)

Where a person is charged with an offence under this section, it is immaterial that-

(a) the offender believed the person to be of or above the age of eighteen years; or

(b) the sexual intercourse was with the consent of the child.

Other Forms of Sexual Abuse and Exploitation

32. Forms of sexual abuse and exploitation

(1)

A person who sexually abuses or sexually exploits a child in any manner not already mentioned under this Part of this Act commits an offence.

(2)

A person who commits an offence under subsection (1) of this section is liable on conviction to imprisonment for a term of fourteen years.

Other Forms of Exploitation

33. Other forms of exploitation

(1)

A person who exploits a child in any other form or way not already mentioned in this Part of this Act which is prejudicial to the welfare of the child commits an offence.

(2)

A person who commits an offence under subsection (1) of this section is liable on conviction to a fine of five hundred thousand naira or imprisonment to a term of five years, or to both such fine and imprisonment.

Recruitment into the Armed Forces

34. Prohibition of recruitment of children into the Armed Forces

(1)

No child shall be recruited into any of the branches of the armed forces of the Federal Republic of Nigeria.

(2)

The Government or any other relevant agency or body shall ensure that no child is directly involved in any military operation or hostilities.

Harmful Publication

35. Prohibition of importation of harmful publication

(1) No person shall import any harmful publication under this Act.

(2)

A person who imports any harmful publication commits an offence and is liable on conviction to a fine of thirty thousand naira or imprisonment for a term of three years or to both such fine and imprisonment.

36. Penalty for harmful publication

(1) A person who-

(a) prints, publishes, sells or lets on hire any harmful publication; or

(b)

has in his possession for the purpose of selling, or letting on hire any harmful publication,

commits an offence and is liable on conviction to a fine of fifty thousand naira or imprisonment for a term of five years or to both such fine and imprisonment.

(2)

Where a person is charged with an offence under this section, it is immaterial that the person had not examined the content of the publication and has no reasonable cause to suspect that the publication was one to which this Act applies.

37. Power to issue warrant of arrest, summons, search, etc., for harmful publications

(1)

Where an information is brought before a court that a person has committed or is suspected of committing an offence under section 35 or 36 of this Act with respect to any harmful publication, the Court may issue a warrant for the arrest of that person.

(2)

The Court may, if satisfied by the information substantiated, on oath, that there is reasonable ground for suspecting that a person charged with or suspected of committing an offence has in his possession or under his control-

(a) copies of any harmful publication; or

(b)

any plate prepared for the purpose of printing copies of harmful publication or any photographic film prepared for that purpose,

grant a search warrant authorising a police officer named therein to enter (if necessary by force) any premises specified in the warrant and any vehicle, or shop or stall used by the said person for the purpose of any trade or business, and to search the premises, vehicle, shop or stall.

(3)

The police officer on searching the premises, may seize any of the following items-

(a)

any copy of the harmful publication and any other copies which the police officer has reasonable cause to believe to be harmful publication; and

(b)

any plate or photographic film which the police officer has reasonable cause to believe to have been prepared for the purpose of printing copies of any harmful publication.

38. Power of Court to order forfeiture, etc.

(1)

The Court by or before which a person is convicted of an offence under section 35 or 36 of this Act may order for any copy of the harmful publication and

any place or photographic film prepared for the purpose of printing the harmful publication found in the possession of the convicted person under his control, to be forfeited.

(2)

The power to order forfeiture under subsection (1) of this section shall not extend to a case where the accused person has successfully raised a defence against the charge.

(3)

No order made under subsection (1) of this section by a Magistrate's Court, or a High Court in case of an appeal from a Magistrate's Court to the High Court, shall take effect-

(a)

until the expiration of the ordinary time within which an appeal may be lodged, whether by giving notice of appeal or applying for a case to be stated for the opinion of the High Court; or

(b)

where an appeal is duly lodged, until the appeal is finally decided or abandoned.

(5)

Before a forfeiture order is made under this section, the Court shall hear the author, copyright owner or main publisher of the harmful publication if he so wishes.

[Editorial Note: Subsection (4) omitted. Numbering as per Gazette.]

Miscellaneous

39. Removal of jurisdictional limitation of magistrates, etc.

Notwithstanding any jurisdictional limitation on the powers of a Magistrate's Court and any other court in relation to the imposition of fines or terms of imprisonment contained in any law, a Magistrate's Court or any other court before which the offences created in this Part of this Act are tried shall have the full jurisdictional powers to impose up to the maximum penalties prescribed for the offences created in this Part of this Act.

40. Application of Criminal Law provisions

Any person in any other law securing the protection of the child, whether born or unborn, shall continue to apply and is hereby adopted for the protection of the child by this Act, notwithstanding that the provision has not otherwise been specifically provided for by this Act.

