

An Evaluation of the Effectiveness of Child Rights Protection Laws in Nigeria

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Abstract: *In 1984, the campaign against child abuse in Africa was commenced vigorously by Africa Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN). The organization held conferences, considered the dimensions of child abuse and came up with Protocols and Treaties, protecting African children from all forms of abuse Thirty-Four years after, child abuse is still prevalent in our society. The aim of this work is to examine the effectiveness of child protection legislation in Nigeria. The dimensions of child abuse in Nigeria and the provisions of some International Child protection instruments such as African Charter on the Rights and Welfare of the Child, African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act, International Convention on Civil and Political Rights, International Labour Organization Convention No 138 On The Minimum Age For Employment, Optional Protocol to the Rights of the Child on the Involvement of children in Armed Conflict (OPAC) 2000, Optional Protocol on the Sales of Children. Child Prostitution and Child Pornography. The Convention on the Consent to Marriage, and Minimum Age for Marriage and registration of Marriage, were also examined. To achieve this, the researcher adopted the doctrinal research method. The researcher used primary source materials such as the Constitution, Statutes and Treaties. Secondary source materials such as textbooks, journals, dictionaries and indexes to law reports were also used. This work is canvassing the fact that enactment of new laws is not needed to curb child abuse in Nigeria but few amendments to refine the already existing laws. This work is also canvassing for a spirited enforcement mechanism and practical implementation of existing laws especially the Child's Right Act. This work recommended the amendment of the Abortion Law (section 230 criminal Code), section 5, section 31(2), and section 17 of the Child's Right Act. It also recommended the enforcement of Chapter Two of the Nigerian 1999 Constitution, and the adoption of the Violence Against Person (Prohibition) Act 2015 in other Nigerian States other than the Federal Capital Territory, Abuja, in order to provide solace for male victims of rape while eradicating the ancient belief that a male cannot be raped.*

Keywords: evaluation, effectiveness, child rights, protection, laws, Nigeria

INTRODUCTION

There is a common saying that cuts across nations that “children are the future generation. They are the future of every family and country, to this end, it is the duty of every government and society to ensure that children are given every care, protection, training and education they may need in order to

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grow into useful citizens and member of a community and country at large. Tracing the history of child rights and child protection to the colonial period in Nigeria, it was observed that the issue of child protection was nonexistent in Nigeria for a long time and that during the colonial rule, the welfare of the Nigerian child was not particularly, a major concern to the colonial master.¹ Although it must be reckoned that during the said colonial period, there had been enacted the criminal Code act which regulates penalties for offences committed by citizens including children. Also, the Prison Ordinance of 1917 makes provision for the separation of children of below fourteen years from adult prisoners. With regards to criminal justice administration of a child, the first attempt geared towards child protection in Nigeria, was in 1943, when the Children and Young Persons' Act (CYPA) was promulgated for application in any part of the Protectorate of Nigeria on the order of the Governor-in-council.² The said children and Young Persons Act was not an elaborate and far from an all-encompassing law for the protection of child rights. Rather, it was limited in scope as it merely regulates the criminal proceedings involving a child. In other words, the Children and Young Persons Act was promulgated to make provisions for the welfare of the young and the treatment of young offenders before the established juvenile courts.³

Going forward, the United Nations Convention on the Rights of a Child which was the springboard for the Child Rights Act was adopted in 1989 and the said convention with 54 articles have today been ratified by 196 countries with only 1 country still to ratify.⁴

In ratifying the convention of Rights of the Child, it is recounted that Nigeria submitted its first report on the implementation of the Child Rights Convention to the United Nation Committee on the Rights of the Child in 1996 and One of the major recommendations made by the committee was to finally ensure the domestication of the Child Rights Convention, as it was necessary for its full implementation under Nigeria law.⁵ For want of emphasis, the Constitution of Federal Republic of Nigeria 1999⁶ (as amended) require the ratification of an international law before same will become operative in Nigeria.

The narrative further points that a first bill on children's rights had already been elaborately drafted and proposed in 1993, but could not be passed into law by the military government because of opposition from religious groups and traditionalists which led to the setting up of a special Committee charged with the duty to "harmonize the children's bill with Nigerian religious and customary beliefs"⁷ The Bill, providing for the rights and the responsibilities of children in Nigeria, as well as for a renewed system of juvenile justice administration, was rejected by the parliament in October 2002 on religious and cultural grounds.

¹ N.A. Iguh, "An Examination of the Childs Rights Protection and Corporal punishment in Nigeria" Nnamdi Azikiwe University Journal of International Law and Jurisprudence 2023, Vol. 2, 99.

² *Ibid.*

³ C.R. Nwanna & I. Ogunniran, 'Challenges of Lagos State Child's Rights Law: Social Welfare Officer's Perspective' African Journal of Criminology and Justice Studies. 2019 Vol. 12 No. 1, 38.

⁴ *Ibid.*

⁵ O.S. Akinwumi, Legal Impediments on the Practical Implementation of the Child Rights Act 2003 cited by Hon. Justice Zaynab Bashir, An Evaluation of the Impact of the Child Rights Act in Regulating the Rights of a Child in Nigeria; <<https://www.lawj.org/content.aspx?page=od=2506&club-ide=8822&sitem-id=400>> accessed 13/12/2024.

⁶ *Ibid.*

⁷ *Ibid.*

It was also gathered that main objection was targeted at a provision setting 18 years as the minimum age for marriage as same was considered incompatible with religious and cultural traditions in various parts of the country, where girls are given in marriage at a younger age.⁸ It was perhaps on the basis of the said objection that many national and international Non-Governmental Organizations, as well as other sectors of the civil society in Nigeria, criticized the rejection of the Bill and forced the legislators to reconsider its decision to oppose to the Child's Right Bill.

Eventually, the Child's Right Act was passed into law in July 2003. However, the Act being a federal law does not automatically become applicable or operative in the 36 states of the Federation and therefore, each state is required to re-enact the said Act as a state law within its territory as matters of child right is not on any of the legislative list of the Constitution.⁹

The bill for the Child Rights Act was neither ratified nor consented to by the States of the Federation before its enactment, hence the need to adopt the Child Rights Act and enact similar laws by the State' Houses of Assembly.

Currently, there are only 25 states of the Federation that have adopted the Child Rights Act and enacted same for their respective states while the 11 other states are still under the operation of outdated, archaic and inadequate laws such as the Children and Young Persons Law of such states promulgated by the British government. This is not only dysfunctional but anachronistic, making it increasingly difficult for the Nigerian child to be adequately protected.

Statement of the Problem

It has been nearly eighteen years since Nigeria passed into law the Child Rights Act of 2003 which contains lofty aspirations and stipulated beneficial provisions for the Nigerian child. The rights contained in the Child Rights Acts and the intention of care and protection for the Nigerian child by the Act is not distanced from that which is intended for children of other parts of the world. This is because the foundation for the Child Rights Act are conventions applicable to many other countries both regionally and internationally. At the international level, the United Nations Convention on the Rights of the Child (CRC) which was adopted in 1989 formed the basis upon which the United Nations attempted to make a consolidation of the international law on the basic rights of the child. It is from the said convention that the Nigerian federal legislators derived the many well-thought provisions of the Child Rights Act. At the regional level, the African Charter on the Rights and Welfare of the Child also played a vital role in the coming to life of the Child Rights Act.

In the face of the provisions of the Child Rights Act, there is no gainsaying that the Act has intended the best life for the Nigerian Child. The question that however arises is to what extent has the life of the Nigerian child been impacted by the provisions of the Act to make for a change in the narrative of an average Nigerian child whose life is not hitherto guaranteed nor assured of a daily meal nor proper shelter.

This research therefore presents an evaluation of the effectiveness of the Child Rights protection law in regulating and protecting the rights of a child in Nigeria particularly in specific areas such as, child

⁸ *Ibid.*

⁹ G.A. Arowolo, "An Appraisal of the Legal Framework for Child Justice administration in Nigeria" *Journal of Law and Criminal Justice* 2018, Vol. 6 No. 1, 89.

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labour, criminal justice administration of a child and regulation of cultural and religious practices that negatively affects the welfare and wellbeing of the Nigerian child.

Aim and Objectives of the Study

The general aim of this study is to evaluate the effectiveness of Child Rights protection laws in Nigeria.

Specific Objectives of the Study

The specific objectives of the study include:

- i. to examine the various child protection laws in Nigeria
- ii. to examine the effectiveness of the child protection laws.
- iii. to identify and analyze the dimensions of child abuse in Nigeria.
- iv. to examine the causes of child abuse in Nigeria and its effects on victims.
- v. to examine the response of the international community to the incidences of child abuse.

Scope of the Study

This research is centered on evaluating the various forms of child abuse and the effectiveness of child rights protection laws in Nigeria. Just as children are the assurance of the continuity of the human society and without children today, there will be no society of human tomorrow. It is therefore imperative to appraise various child protection instruments adopted by Nigeria. the study also outlines this global menace and the reasons for its prevalence in our society. It further highlights various steps that can be taken in order to abolish the menace having discovered that in spite of the child protection laws in Nigeria, the ugly incidence of child abuse is still on a rampage.

Research Methodology

The researcher adopted the doctrinal research method. It is doctrinal because it involves the analysis of constitutional and statutory provisions, case law and legal literatures relevant to the subject of inquiry. Consequently, references are made to both primary and secondary source materials. The primary source materials are constitution, case law, statutes, Matrimonial Causes Act. While the secondary source materials include dictionaries, periodicals, journal articles, newspaper and published works of learned authors both national and international that are relevant to this research work.

LITERATURE REVIEW

Kempe in his work referred to child abuse as willful injury inflicted by a parent or parents, guardian or any caregiver, on a child.¹⁰ The writer further coined the term. “battered child syndrome” as a synonym for child abuse. He further opined that an abused child is a battered child who had suffered physical violence from an adult leading to injury. The definition given only relates to physical abuse of a child whereas child abuse in our society today transcends physical abuse of children. This work seeks to shed light on various forms of child abuse in Nigeria today and also presents a World Health Organization generally acceptable definition of child abuse thereby viewing child abuse as all forms of physical or emotional ill-treatment, sexual abuse, neglect, negligent treatment, commercial or actual or potential harm or threat of harm including the failure to provide for a child’s basic physical, emotional, educational needs, or failure to protect a child from harm or potential harm. All these constitute the incident of child abuse.

¹⁰ C.H. Kempe at al, *The Battered Child Syndrome: Journal of the American Medical Association*: (1992).

Alice opined that humiliation, spankings and beating, slap in the face, are all forms of abuse, because they injure the integrity and dignity of a child, even if their consequences are not visible right away.¹¹ Although, not all forms of spankings, beating, slap in the face are capable of injuring the integrity and dignity of a child. Especially in Africa, a child can be beaten as a corrective measure and when this happens, it cannot be generally seen as child abuse. This work further distinguishes between mild beating as a corrective measure and excessive beating to inflict injury on a child.

Joan and Ron in their article “Physical Punishment of Children: lesson From 20 years of Research”¹² equated child abuse and punishment in the following words; “Physical abuse and physical punishment of children highlight a subtle or non-existent distinction between abuse and punishment.”¹³ Child abuse is different from punishment. How can child abuse be equated to punishment? While punishment relates to causing an offender to suffer for his offence; a child does not need to have committed any offence before he or she can be abused. In fact more often than not, the innocent children are mostly abused for no just cause. What offence can be said to have been committed by an infant who has been sexually abused? Although, an excessive punishment which inflicts injury on a child may be seen as child abuse but a child could not have deserved such a treatment because of an offence. Child physical abuse and punishment seems not really the same.

Pinherio writes in the UN Secretary General’s study on Violence against Children and identifies the following as Corporal Punishments; hitting, smacking, slapping, spanking children, with the hand or with an implement whip, stick, belt, shoe, wooden spoon excetra.¹⁴ This work views the above conduct as physical abuse of a child as long as there is an element of excessiveness. It is apposite to know that Pinherio’s view cannot survive in Africa especially in Nigeria where smacking and spanking of children is a normal corrective phenomenon. Although, excessive beating will still amount to child abuse irrespective of the reason for the beating.

Green, in his article “Child Abuse”¹⁵ opined that child abuse is a non-accidental injury inflicted on a child by a parent or guardian”. This definition failed to reckon with and specify the severity of injury required for an act that become an abuse. The researcher of this work considers this to be very important because spanking and other physical punishment are culturally approved as a means of correcting and socializing the child.

The International Labour Organization in 2012, defines child labour, as a form of child abuse. It is “... the employment of children in any work that deprives them of their childhood, interferes with their ability to attend regular schools, or is mentally, physically, socially or morally dangerous and harmful.”¹⁶

¹¹ A. Miller, *Child Abuse and Maltreatment*. <<https://www.alice-miller.com-en/>>accessed 5 March, 2015.

¹² J. Durrant, R. Ensom, *Physical Punishment of Children: lesson from 20 years of Research in Canadian Medical Association Journal* 184, September 2012 Edition.

¹³ *Ibid*.

¹⁴ P.S. Pinherio, *Violence Against Children in the Home and Family*, in *World Report on Violence Against Children*; Geneva: 2016.

¹⁵ A.G. Green, *Child Abuse in Handbook of Treatment of Mental Disorder in Children and Adolescence*, in Wolman, B.B. et al, (eds): Engle Wood Cliffs: (2018), 430 – 455.

¹⁵ A.G. Green, *Child Abuse in Handbook of Treatment of Mental Disorder in Children and Adolescence*, in Wolman, B.B. et al, (eds): Engle Wood Cliffs: (2018), 430 – 455).

¹⁶ What is Child Labour? ILO Reports 2012.

This work considers the definition of child labour as given by ILO to be problematic. The definition failed to specify whether both paid and unpaid labour should be regarded as work bearing in mind that most often than not, household chores which is unpaid can be as tedious for the child as a paid job outside the home. The gap shall be filled by this study as the researcher strongly believes that there is a line of difference between house chores and economic activities that will amount to child labour and those that will not amount to child labour. Most importantly, none of all the books and journals reviewed above discussed the efficiency and effectiveness of various laws protecting children from abuse in Nigeria. this work covers this *lacuna*.

DIMENSIONS OF CHILD ABUSE IN NIGERIA

Who is a Child

Child/Children: in general, a child could mean a human being between the stages of birth and puberty,¹⁷ or between the developmental period of infancy and puberty.¹⁸ The word child means different things to different people, different legal systems and different jurisprudences. For instance, under the Nigerian contract law, a child is a person below the age of 21 years.¹⁹ The labour law defines a child as a young person above age 12 but below age 16 years. Land Use Act²⁰ defines a child for the purposes of granting statutory right of occupancy as a person under age 21. The Matrimonial Causes Act²¹ and the Marriage Act²² both tag a child to mean a person below the age of 21 years. Perhaps, our laws need harmonization on this definition.

The child Rights Act defines a child as a person below the age of 18 years. This definition is in conformity with the United Nations Convention on the Rights of a Child and the African Charter on the Rights and Welfare of a Child, both of which Nigeria is signatory. For the purposes of this work, a child is a person below 18 years of age while the word children is used to refer to more than one child.

Conceptual Clarification and Child Abuse

Child abuse has emerged as one of the serious social problems that have engaged the attention of scholars, professional social workers, law enforcement officials, legislators, policy-makers and the public over the years. Many are concerned about child abuse because they see it as a violation of the right of children, as well as hindrance to their welfare.²³

Generally, the understanding of what constitutes an abuse of the child varies, depending on the context and geographical location. What constitutes abuse in one parlance is different from another. The focus here shall be mainly on the term abuse as it pertains to children in Nigeria. Child abuse in Nigeria simply means:

any form of cruelty to a child's physical, moral or mental well-being.

It also means physical abuse, sexual abuse and neglect, which may

¹⁷ MT. O. Toole, 'Mosby's Dictionary of Medicine, Nursing and Health Professions' St. Louis MO Elsevier, 2013, 345.

¹⁸ Spencer A. Rathus, 'Childhood and Adolescence: Voyages in Development' Cengage Learning 5th ed. 2013, 48.

¹⁹ *Labinjo v Abake* (1924) 5 NLR 33.

²⁰ Land Use Act 1978.

²¹ Matrimonial Causes Act Cap. M7 LFN 2004.

²² Marriage Act Cap. M6 LFN 2004.

²³ B.I. Ikoko, *The Pain of Child Abuse*, Benin: Progress Publishers; (2013), 26.

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result in bruises, broken bones, permanent physical or developmental
impairment, emotional trauma or death²⁴

Although, this definition covers a wide scope but as stated earlier of the definition of child abuse is all encompassing. The National child Rights implementation committee defined child abuse as any form of cruelty to a child's physical, moral or mental wellbeing.²⁵

This simply means that any deliberate act to injure or hurt the child is an abuse. Many Nigerians abuse children knowingly and unknowingly because they lack the understanding of dignity to the human person. Forms of child abuse:

Physical Abuse

Physical abuse is often the most easily spotted form of abuse. It may be any kind of hitting, shaking, burning, biting, choking, excessive beating thrashing and other actions that causes physical injury, leaves marks, or produces significant physical injury.²⁶

In Nigeria, the level of physical abuse is very high. Children are battered, bruised, starved and endangered. The following constitute physical abuse in Nigeria and around the world.

Child Labour

Child labour refers to the employment of children in any work that deprives children of their childhood, interfered with their ability to attend regular school, or is mentally, physically, socially or morally dangerous and harmful.²⁷

The definition of child labour itself is problematic. The definition failed to specify whether both paid and unpaid labour should be regarded as work not forgetting the fact that household chores which is unpaid can be as tedious for the child as a paid job outside the home.²⁸ It is a popular opinion that poverty and other social economic problems in Nigeria and other third world countries are the major causes of child labour in our society.

Well, this work does not hold the same view. Poverty or financial incapacitation should not be strong enough to subject a child to different in humane practices. It is nothing but lack of respect for dignity of human persons as enshrined in the Chapter four of the Nigerian Constitution. What level of economic hardship can justify child abuse? The economic hardship should grip the parents and compel them to do harder labour in order to meet ends meet rather than treating a child in a manner that suggests that the child is less a human being. Bearing in mind that in a typical Nigerian home, children cannot be totally left out of engaging in house chores and some jobs as a way of contributing to the advancement of the family but the question is should the Nigerian children lose their values and not enjoy their rights because of economic hardship? The answer is No. There is a line of difference between house chores and economic activities that will amount to child labour and otherwise. The United Nations Children's Education Fund (UNICEF) has provided some indices that can be used to define child labour. They include:

²⁴ *Ibid.*

²⁵ *Ibid*, 27.

²⁶ Freeman Michael, *Overcoming Child Abuse. A window on World Problem*, London: University College: Dartmouth Pub. Comp. Ltd. (2000), 6.

²⁷ *Ibid.*

²⁸ See Gabrielle Meagher. *Is it Wrong to Pay for Housework?* Wiley Hypatia Inc. (2002), 2.

- i) Starting full-time work at too early an age;
- ii) Too many hours spent on work within or outside the family leading to excessive fatigue;
- iii) Depriving children of their right to education where schools are available or interfering with their education;
- iv) Participating in work that result in excessive physical, social and psychological strains on the child;
- v) Working and living on the streets;
- vi) Too much responsibilities for a child;
- vii) Low wage;
- viii) Work that does not facilitate the psychological development of the child, for example, dull repetitive tasks which do not stimulate a child's creative abilities etc.²⁹

The indices above help to determine whether a child is being exploited in child labour or not irrespective of whether the child is being paid for the job or not.

Violence Against Children Accused of Witchcraft

in Africa, witchcraft accusations against children are very common. This is an awful practice which affects disable children, orphans, prematurely born babies, street children, twin (in some communities), albinos, *et cetera*.

These set of children are generally seen as symbols of evil and they are subjected to torture, burns, several severe punishments and death.³⁰ There are several cases of witchcraft accusations against children in Africa. Many children have been branded as being evil and have being subjected to harsh treatments, abandonment and even some have been killed by so called prophets while trying to cast out the evil spirits. Many children have been starved, beaten, cut, tied up and burnt.

In the Nigerian state of Akwa-Ibom and Cross River about fifteen thousand children were branled as witches and most of them end up abandoned and abused on the streets.³¹ In the Republic of the Gambia, about one thousand people were accused of being witches and they were locked in detention in March 2009. They were also forced to drink a liquid potion.³² Many children were rendered homeless in the republic of Congo because of the allegations of witchcraft.³³ Research has shown that the problem of child witchcraft accusation has spread from Africa to countries with African immigrants.³⁴ These reports call for an affirmative action to curb the menace

Poisoning and Drugging of the Children

There are instance where parents bring a child to the hospital for treatment of poisoning or treatment of persistent unexplainable sickness pretending that the child has been unintentionally poisoned. This is mostly perpetrated by parents who have disabled children. Children resulting from unwanted pregnancies are also vulnerable to this form of abuse. Some mothers give their babies excess dose of

²⁹ The Situation of Working Children and Street Children E/UNICEF/CRP 3.

³⁰ MBITI, J. *Introduction to African Religion*: Heinemann; (1990), 117 – 118, 165.

³¹ HARRISON, D. *Child-Witches of Nigeria Seek refuge*: <<https://www.telegraph.co.uk>> worldnew> accessed 20 June 2017.

³² K. Davey, *Accused “witches” Attacked in Gambia* <www.findingdulcinea.com> accessed 20 June 2017.

³³ Congo Relatives Accusing Kinds of Witchcraft: *The Augusta Chronicles*, (30/8/2006) All Edition.

³⁴ CNN: *Abuse of Child witches on Rise...* February. 12, 2015.

horticultural agents, pest killers, laxatives, hypnotics of table salt in order to make the child ill or in some cases to make the child sleep deeply for several hours so that there can be time and opportunity for such mothers to go to work, market, attend to some other things without any form of disturbance. Some nannies have been found guilty of this.

A case was reported of perpetrators, a mother of 10 children, one who perpetually poisoned the children with salt³⁵ in order to get them killed. Some of the child victim suffered excessive renal water loss, urea concentration, hypothalamic disorders, defective thirst, and ultimately death.³⁶ It was further reported that some of the perpetrators confessed to have had hatred for the children owing to circumstances surrounding their birth and that they had wished to kill the children.³⁷

It was reported that Zainab Olajide was a 41 day old baby when she died. She was allegedly poisoned by her father who wanted to divorce her mother by all means. This incident was reported to have happened in Ijoko-Abule, Ogun State.³⁸

On that fateful morning, Zainab's mother; Abosede Ogundare, left her baby – the victim with her father Kazeem while she went away to quickly sweep their compound. By the time she got back to where her baby was, she met her baby foaming. Abosede found her husband with a bottle of pesticide and she immediately called her neighbours. The baby was immediately rushed to a nearby hospital but she gave up the ghost.³⁹

Their landlord testified that three days ago before the incident, Zainab's father was looking for his pair of slippers and later he began to shower curses on whoever took the slippers. The landlord said that he called him by his name daughter-Zainab's name but he failed and warned him never to call him by Zainab's name again and that he now understands and had no reason to doubt the fact that he later confessed at the Oba's palace that he intentionally poisoned the girl because he doubts if he was the biological father of Zainab.

Kazeem further confessed that he was not the real father of the child and he did not love Zainab's mother hence his plans to kill the baby and divorce the mother. Report has it that Kazeem eventually hung the whole saga on the Devil. Kazeem was later arrested by the police and was transferred to the department of criminals' investigation for further investigation while the corpse of the baby was deposited in a mortuary.⁴⁰ This is nothing but cruelty.

Domestic Violence Against Children

Domestic violence against children is an age long social problem which some people consider to be a recognized culture but it is beginning to gain recognition and attention as a form of child abuse in our society today. It can be classified into two parts-

³⁵ Josh Gardner, *Texas Mother Jailed for Life for Poisoning her Adopted Son...*; <dailymail.com> accessed 5 May 2017.

³⁶ *Ibid*, 453.

³⁷ *Ibid*, 448.

³⁸ Wicked Man Poisons his 41 day old Baby in Order to Divorce his Wife <www.gistmania.com> accessed 8 June 2017.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

- i. When a child is badly traumatized by frequent witnessing of domestic violence in the home between parents either male-female marital violence or vice versa.
- ii. When a child is a victim of violence.

It is very shocking to discover that our laws today as they stand cannot rescue and protect any child who suffers as a domestic violence witness in the home. This is because this aspect of domestic violence against children has not gained governmental recognition. In other words, legal intervention to protect child witnesses from extreme incidents of domestic violence is not available.⁴¹

In Enugu State Nigeria, Mrs. Ngene was 8 months pregnant, an unemployed mother of two minor children, and wife of a man, who is a motor cycle spare parts dealer in Enugu. On January 31, 2012, she challenged her husband of his incessant infidelity and the husband did nothing else, but he gave her the beating of her life. Mrs. Ngene sustained many injuries.⁴² One of the main factors contributing to non-legal protection of children living as domestic violence witnesses is “the culture of silence”. Many children are reluctant to report incidents of domestic violence between parents to others especially to authorities because of the fear of probable legal consequences and shame that may be associated with the experience.⁴³ Mother victims have also cultivated the culture of silence thereby continuing to leave with the violence with no hope for rescue.⁴⁴

Domestic violence has had some effects on children over the years which include; Frequent illness, severe shyness, low self-esteem, withdrawal syndrome, passiveness, distress, physical and verbal aggressiveness with peers, sadness, poor academic performance, truancy, and low self-esteem.

Female Genital Mutilations

Female Genital Mutilation (FGM) is defined by World Health Organization (WHO) as “all procedures that involved partial or total removal of the external female genital organs for non-medical reasons”.⁴⁵ It is mostly carried out on young girls of between age 7 and 15 years.⁴⁶

FGM on a girl child can cause chronic pain, cysts, inability to conceive, complications during child birth, difficulty in urinating and passing menstrual flow, recurrent infections, and many more. It has been found that FGM has no health advantage.⁴⁷

In 2012, the United Nations General Assembly identified FGM as a human right violation and there was a strong appeal to countries practicing it to abandon the evil practice. FGM is otherwise known as female circumcision. The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children and the World Health Organization (WHO) began referring to it as female genital mutilation in 1990 and 1991 respectively in order to depict its danger to female gender.

⁴¹ M. James, *Domestic Violence as a Form of Child Abuse: Identification and Prevention NCPC Issues* No. 2. (June 1994), 2.

⁴² *Ibid.*

⁴³ *Queensland Domestic Violence Task Report*, 1988.

⁴⁴ O.N. Fasanmi, *Against the Culture of Silence Ola Associates*: (2002), 40.

⁴⁵ *Female Genital Mutilation* <<https://www.who.int/mediacentre/factsheets/fs241/en/>> World Health Organization, February 2013. accessed 5 March, 2015.

⁴⁶ *Ibid.*

⁴⁷ *Female Genital Mutilation, Geneva*: World Health Organization Report. February 2016.

This awful practice is done with or without anesthesia. When it is done by traditional cutters, razors, scissors, knives, glass, fingernails and sharpened rocks are mostly used.⁴⁸ It was reported in Uganda in 2007 that a cutter would normally use one knife on up to 30 girls at a time.⁴⁹ In Somalia, the clitoral glands is removed and shown to the girls senior female relatives, who decide whether enough has been amputated or not.⁵⁰ The parts that have been removed might be placed in a pouch for the girl to wear.⁵¹ To help bond the tissue, the girl's legs are then tied together from hip to ankle, for up to six weeks. The entrance to the vagina is sew leaving a little opening or hole for urine and menstrual flow in the process of cutting, the girl may struggle in which case the incisions may become uncontrolled. The girl may be pinned down so firmly that bones may fracture.⁵² A girl who undergoes the infibulations type of FGM may have an opening which is as small as 2-3mm which may cause drop-by-drop urination and a feeling of need to urinate intermittently. The tiny opening allows for the collection of urine underneath the scar, keeping the area moist perpetually. This can lead to infections. Painful periods are also common to a fibulated girl child. The vagina and uterus are filled with menstrual blood and other body fluids which can turn out to be harmful to the body.⁵³

FGM has also been researched to have been associated with increased risks to the mother's loss of excessive blood, still birth because of a long second-stage of labour.⁵⁴ The Supreme Council of Islamic Research in Cairo ruled that FGM had no basis in core Islamic law or any of its partial provisions.⁵⁵ In the same vein, there is no mention of FGM in the bible.⁵⁶ Only male circumcision is recognized in the Holy Bible.⁵⁷ In 1984, The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, campaigned against FGM in Dakar; Senegal.⁵⁸

Forced Confessions

This is a form of physical child abuse mostly perpetrated by the police when interrogating a juvenile suspect in connection to a crime. It may be in form of coercive tactics like depriving the suspect of food, sleep, water which eventually result into fatigue. It may involve inflicting of harsh punishment or threat of harsh punishments to persuade the juvenile's confession. It may also be a kind of promise of leniency if the child suspect can volunteer confessional statements. In the case of *Bram v United States*,⁵⁹ the court held that explicit promises of leniency are forbidden as a violation of due process. In the process of forceful interrogation of a juvenile there may be administration of series of electric

⁴⁸ E. Kelly, J. Paula and A. Hillard, *Female Genital Mutilation: Current Opinion in Obstetrics & Gynecology* October 2005, 490 – 494.

⁴⁹ W. Wakabi, *Africa Battles to Make Female Genital Mutilation History*. The Lancet, March 2007, 1069 – 1070.

⁵⁰ E.A. Ismail, *Female Genital Mutilation Survey in Somali Land*; Edna Adan Maternity and Teaching Hospital, 2009 Report.

⁵¹ *Ibid.*

⁵² K. Davis, C. Momoh, (ed), *Female Genital Mutilation* London: CRC Press; (2005), 7.

⁵³ J. Abdulcadira, *et al*; *Care of Women with Female Genital Mutilation/Cutting*; Swiss Medical Weekly, 6(14), January 2011.

⁵⁴ E. Banks, *et al*, *Female Genital Mutilation and Obstetric Outcome: WHO Collaborative Prospective Study in Six African Countries*. The Lancet, 3 June 2006, 1835 – 1841.

⁵⁵ *Fresh Progress Towards the Elimination of Female Mutilation and Cutting in Egypt*; UNICEF, 2 July 2007, unicef 2013, 28.

⁵⁶ S.W. 100 Kunhiyop, *African Christian Ethics* Zondervan; (2008) 297.

⁵⁷ The Holy Bible, Genesis 17:10.

⁵⁸ E. Patrick, *Senegal Leading the Fight to End FGM in Africa* <www.thisisafrica.me> accessed 12 May 2016.

⁵⁹ *Brain v United States* 168 U.S. 532, 542 (1897).

shock of up to 450 volts.⁶⁰ Teens had to confess to crimes they did not commit in this circumstance. A case was reported where a juvenile signed confession admitting to a murder and rape of a 30 year old prostitute which resulted in a thirty year sentence.⁶¹ At a point of forceful interrogation juveniles have had to doubt their memories thereby confessing to a crime falsely.⁶²

In 1993, some boys were brutally murdered.⁶³ A month after the murders, police spent more than seven hours interrogating seventeen – year old Jessie Misskelly, Jr. Misskelly confessed to the crime, while also implicating sixteen-year old Damien Echols⁶⁴ Misskelly's confession, however, contained factual inaccuracies with regards to the time of death and the method used to bind the victim. Prosecutors, however, argued that the two teenagers bound, stabbed and sexually abused the three victims as part of a satanic ritual. In 2011 after almost a decade in jail, the three suspects entered Alford Pleas⁶⁵ and were freed after new forensic evidence cast their guilt into doubt.

Treatment of Children in Pre-Trial Custody

Children below the age of 18 years generally are not supposed to be in custody. By virtue of Beijing rules, juveniles in pre-trial detention should be kept separate from adults. In fact, pre-trial detention should be the last resort for a child offender, and if the child must be detained at all, it must be for the shortest period of time.

Human rights principles and standards are meant to be upheld while treating a child offender. The reason for the foregoing is that juvenile justice must treat children fairly and with dignity. Also, the law prohibits capital punishment and life imprisonment for a child offender. Notably juvenile justice system is restorative justice. It promotes positive change of a child from bad behaviours, thereby giving a juvenile a second chance.

In summary, juvenile justice is all about rehabilitation of juvenile offenders rather than punishment. In Nigerian today, there is little or no compliance with the international standard of juvenile justice. Although our juvenile court are often reluctant to committing juvenile to detention pending their trial, if they have to commit a juvenile to detention, then such a juvenile by right is entitled to all the right and standard minimum rules for the treatment of prisoners adopted by the United Nations.⁶⁶ While in custody, juveniles should receive care, protection and all necessary individual assistance i.e. social, educational, vocational, psychological, medical and physical which they may require in view of their age, sex and personality.⁶⁷

⁶⁰ S.M. Kassim & R.J. Norwick, *Why People Wave Their Miranda Rights; the Power of Innocence*, 28 Law & Hum. Behav. (2004), 211, 218.

⁶¹ Teens Confess to Crime They Didn't Commit <<https://www.CBNnews.com/news/teens-confess-to-crime-they-didn't-commit/>> accessed 15 July 2017.

⁶² A.E. Taslitz, *Wrongly Accused: Is a Race a Factor in Convicting the Innocent?* 4 OHIO St. CRIM. L. (2006), 121, 132.

⁶³ Jim Avila et al, *Father of Victim to Convicted Killer: I'm Here for You*. <<http://abcnews.go.com/TheLaw/story?id=3803760&page=1&singlepage=true>> accessed 7 June 2017.

⁶⁴ *Ibid*.

⁶⁵ An Alford plea in which the defendant entered a guilty plea as a bargain but did not actually admit his guilt. See Black's Law Dictionary. Garner B; USA: Thompson West. (9 2009) 1269.

⁶⁶ I. Okagbue, *The Treatment of Juvenile Offenders and Rights of a Child: in the Rights of a Child in Nigeria*; I.A. Ayua, Isabella Okagbue (ed): Lagos: Nigerian Institute of Adv. Legal Studies; (1996) 258.

⁶⁷ *Ibid*, 259.

But what do we see today, police sometimes refuse to grant bail to arrested juveniles who cannot immediately be brought before a court, as a result of which they spend long periods of time in police custody while the charge is investigated. This is nothing but an abuse to a child's right to personal liberty.

Sexual Abuse

Sexual abuse is known in all the countries of the world both developing and developed. Sexual abuse is not strange at all in Nigerian society. It is common among children between the ages of 4 and 17 years⁶⁸ although the law enforcement agencies are trying their best to control the situation but the truth is that a lot is yet to be done.

Sexual abuse is common among the female children. There are instances where girls between the age of 10 and 17 are found sleeping with men in brothels and little or nothing is done to remedy the situation. In some instances, male teachers have been caught sexually harassing and molesting their pupils. Some adults who are supposed to be care givers to children have wrongly abuse them sexually. Daily Sun, on Wednesday, April 2nd 2014 reported the case of a 20 – year old man, Mallam Sadi Ahmed, who forcefully had sexual intercourse with a 6 – year old girl in Kadawa village in Ungogo local government council of Taraba State. The case of Oghenetega was also reported. This boy was born to a family of five, two boys and three girls. His father passed away in 1990 and his mother also died in the year 2000. His stepmother was kind enough to start taking care of him but she after 5 years of her kindness to Oghenetega.

After this episode, no one was willing to look after him but for an uncle who thereafter found a job for him at a local restaurant where he worked until his brother took him to one of his step mother's friends. Initially, Oghenetega attended school and he was full of hope believing that his sufferings were over. To the contrary his stepmother's friend stopped sponsoring him to school and Oghenetega made a decision to run out of home for a local restaurant where he once worked. His condition grew worse until he started living on the streets of Warri, Delta State of Nigeria.

He was introduced to smoking and supplying of marijuana, keeping of ammunitions for armed robbers and homosexuality. On a fateful day, a couple got interested in his matter having seen him being forced to rob with a gang of thieves. They took steps to contact his family members who refused to take him in the couple sponsored him through primary and secondary school and Oghenetega became a changed and promising child.

The question is: How many children have been luck to go through rehabilitation after terrific molestations? Generally, child sexual abuse is the deliberate exposure of minor children to various kinds of sexual activities. Sexual abuse is an unusual and undesired sexual behavior by one person upon another.⁶⁹ It is also any behavior by any adult an older adolescent towards a child to stimulate any of the parts involved sexually.⁷⁰ It involves the use of a child, or other individuals younger than the age of consent for sexual stimulation.⁷¹

⁶⁸ UNICEF; *Protecting and Realizing Children's Rights*; 10 February 2006.

⁶⁹ Peer Commentaries on Green (2002) and Schmidt (2002). *Archives of Sexual Behaviour*. Vol. 31 (2002).

⁷⁰ S. Michael, (ed) *Sexual Abuse in A Journal of Research and Treatment*, SAGE publications; (2016), 20.

⁷¹ *Ibid*.

Child sexual abuse includes direct sexual contact, the adult or otherwise older person engaging in indecent exposure (of the genitals, female nipples, etc) to a child with intent to gratifying their own sexual desires or to intimidate or groom the child, asking or pressuring a child to engage in sexual activities, displaying pornography to a child, or using a child to produce child pornography.⁷² Child abuse can make a child to suffer shame, depression self-injury, self-blame, sexual dysfunction, chronic pains, post-traumatic stress disorder, personality disorder, likelihood of re-victimizing other children in adulthood⁷³ and suicide in extreme cases.⁷⁴

Child sexual abuse can also be by a family member. When this happens it is called incest.⁷⁵ In such instances, the perpetrators are still usually needed by the victims being dependents, for up-keep, clothing, shelter and educational advancements. Many children who have fallen victim of incest find it extremely difficult to report such incidents. Some men who sexually abuse these children issue death threat to them. Many think that children are only abused by strangers, but often times, the person or persons who abuse children are either a friend to the parents or even a family member such as uncle, aunt or even a parent. Over the years, child sexual abuse has been experienced in our society in different forms as discussed below.

Forced Prostitution

Forced child prostitution involves a child being commercially and sexually exploited. Generally, child prostitution is illegal and it may also include sex trafficking i.e. when a child is kidnapped, forced or tricked to becoming a sex trader. Victims of forced prostitution sometimes are forced by family members to enter the industry as a result of severe poverty.⁷⁶

Prostitution of children usually occurs in environments such as brothels, bars, clubs, homes, or particular streets and areas while some are forced into it by families, friends. Some have pimps. Some are street children being either amateurs or professionals. It is noteworthy that this practice is not limited to girls alone but young boys are involved too.⁷⁷ There is no justification for forcing a child into prostitution. It is illegal under international law and Nigerian laws and must be fought against by all means.

Forced Pregnancy

This is another form of sexual child abuse. It involves when children are being forced to get pregnant while they are still below the statutory age of consent.⁷⁸ In 2013, UNFPA estimated that two million

⁷² Child Sexual Abuse Medline Plus. U.S. National Library of Medicine. 2008/04/02. J. Martin, Anderson, J. Romans S. Molten, P.O. Shea, M. *Asking About Child Sexual Abuse: Methodological Implications of a Two Stage Survey Child abuse and Neglect* 17(3): (1993), 383 – 392.

⁷³ R. Manighlio, *The Impact of Child Sexual Abuse on Health: A Systematic Reviews. Clinical Psychology Review* 29(7); (2009), 647.

⁷⁴ R. Manighlio, *The Role of Child Sexual Abuse in the Etiology of Suicide and Non-Suicidal Self-Injury. Acta Psychiatrica Scandinavica* 124(1); (2011), 30 – 40.

⁷⁵ C.A. Cortois, *Healing the Incest wound Reveals Misperceptions*’ medical news today March 1, 2005. <<https://www.wikizero.com>> accessed 28 September, 2013.

⁷⁶ *Child Sex-Trafficking Study in Bosnia Reveals Misperceptions*’ medical news today March 1, 2005. <<https://www.wikizero.com>> accessed 28 September, 2013.

⁷⁷ M. Jaffe, S. Rosen. *Forced Labour: The Prostitution of Children: Symposium Proceedings*. Diane publishing (1997) ISBN 0788146068.

⁷⁸ Statutory Age of Consent Varies from Country to Country. 18 years is the statutory age of consent in Nigeria.

births take place each year by girls under 15 years of age around the world.⁷⁹ It has been reported that most often, members of the family of the underage girl in question force her to get pregnant sequel to an agreement of involving a valuable monetary consideration from women elsewhere who are unable to conceive and who probably have suffered several miscarriages.⁸⁰ It is surprising to know that many states have ignored this serious violation of human rights. Also, police and other law enforcement agents don't always prioritize it either.⁸¹

When a girl becomes pregnant, her present and further changes radically and rarely for the better. Her education may end, her jobs prospects evaporate and her vulnerabilities to poverty, exclusion and dependency multiply. It therefore becomes very important for this menace to be curbed as it destroys a girl child completely.

Forced Teenage Marriage

Force teenage marriage is a violation of a girl's human rights and it deprives her freedom and opportunity for personal development. Amny have argued that teenagers are forced into marriage due to the following reasons amongst others; the search for economic survival, peer groups and family pressure, controlling female behavior and sexuality⁸² *et cetera*

Forced teenage marriage also violates the girl child's right to marry a person of her choice and found a family so also her right to life, right to highest attainable standard of health, the right to educational development and the right to be free from slavery. Forced teenage marriage does not in any way protect or pursue the best interest of a girl child. It harms her health as it sometimes results into early pregnancy which may result in material mortality and morbidity.

The matter of Clarisse, a 17 year – old girl was reported by UNFPA thus:

I was 14 years, mom and her sister began to prepare food, and my dad asked my brothers, sisters and me to wear our best clothes because we were about to have a party, I didn't know what was going on. I celebrated like everyone else. It was that day that I learned that it was my wedding and that I had to join my husband. I tried to escape but was caught. So I found myself with a husband 3 times older than me... this marriage was supposed to save me from immorality. School was over, just like that. Ten months later, I found myself with a baby in my arms. One day I decided to run away, but I agreed to come back to school. I returned to school and have three children and ...

In Nigeria, the rate at which girls are forced into early marriage is surprising especially in the Northern part where early marriage is said to have its root in religion. Here, children are driven into marriage at a stage when they hardly understood what marriage is all about. This practice takes them away from

⁷⁹ A. Amelia, *When Children are Forced to have Children*: 21 April, 2016.

⁸⁰ *Ibid.*

⁸¹ UN Population Fund (UNFPA) Report 2013 State of World Population 2013. Motherhood in Childhood, Facing the Challenge of adolescent Pregnancy.

⁸² J. Bayisenge,

parental care and affection. The truth is that, marriage needs an experienced and matured mind hence not for children at all. Therefore, marriage should be between man and woman and not man and child. Taking a girl under 18 years as a wife is against the law. Most children sent into early marriages do not find it easy at all. The practice mostly results into early pregnancy with the attendant risk of vascular vaginal fistula (V.V.F). this practice subjects a girl to emotional breakdown and psychological trauma as she is being forced to undergo some sexual and physical activities that are bigger than what she can bear being under aged. These practices deprive her of her childhood completely.⁸³ When the girl is given out in marriage, she is discriminated against on the basis of age and gender. Child brides do face lots of challenges being married off as a child. Most often they are isolated; their freedom is taken away from them, they totally become underpowered as their husbands out rightly dominate them. They are also totally deprived of their fundamental rights to education, health and safety. They are at a greater risk of having complications in pregnancy and child birth, victims of domestic violence, high risk of contracting HIV/AIDS and living in poverty. Above all, they are emotionally and psychologically traumatized simply because they are neither physically nor emotionally ready to become wives and mothers.⁸⁴

This practice is common in northern parts of Nigeria than in other parts of the country. Northerners believe that a child's first menstrual period should be in her husband's house. There are instances where a girl child is given out in marriage to a man old enough to give birth to her even before the child is born at all. One will wonder whether this practice is engaged in out of poverty or cultural belief. If poverty has pushed a girl's parent to give her out in marriage as a child, then it is very pathetic because most often, the child bride gets out of the said poverty into another level of poverty and lots of molestations. It is a cultural belief, then such culture is barbaric and repugnant to natural justice, equity and good conscience. There is no doubt that this practice has stolen from our girls their childhood and it is nothing but an abuse and not culture! It therefore must be abolished.

The matter of Ese Rita Oruru is a case of forced teenage marriage and abduction in Nigeria. the story is recounted thus:

On August 12 2015, Ese then 13, and a JSS 3 students of Central Epie Secondary School, Opolo, Yenagoa, Bayelsa State Capital was abducted by Yunusa Dahiru, a.k.a, Yellow, from Bayelsa and taken to Kano, where her parents said their teenage daughter had been forced to convert to Islam, and forced into child marriage without their consent. The abductor was a long standing customer of Ese's mother, Rose, who is a food vendor. Despite her parent's visits on separate trips to Kano – to the palace of the Emir to Kano, Lamido Sanusi, the Kano police station and the Shariah Commission to plead for their daughter's release, it took a massive campaign by SUNDAY PUNCH... as well as the attendant deluge of outrage from Nigerians from all walks of life to get the teenage girl, who hails from Ughelli North, in Delta State, released by her abductors. Twenty-four hours after the SUNDAY PUNCH report on February 28, 2016, the Emir of

⁸³ R.H. Mohammed, *Vesico Vaginal Fistula; A Problem of Under-Development: Foundations for Women's Health, Research and Development Evaluation Report* 2002.

⁸⁴ Child Marriage: Practice, Consequences and remedy <<http://vanguardngr.com>> June 26, 2015 accessed 15 July 2017.

Kano, Muhammadu Sanusi II, and the inspector general of police, Solomon Arase, were forced to act. Although authorities only swung into action following SUNDAY PUNCH'S report. On Tuesday, March 1st, Ese was eventually reunited with her mother in Abuja, and then with her family members in Yenagoa, Bayelsa, on Wednesday March 2nd ... Yunusa, the abductor was arraigned at the Federal High Court sitting in Yenagoa, on five count of abduction, coercion, unlawful carnal knowledge, seduction into illicit sex and sexual exploitation of a minor.⁸⁵

Section 15 of Child Rights Act provides that “every child has the right to parental protection and no child shall be separated from his parents against his or her wish”. To this effect, a child that has been driven into early marriage will really enjoy the right of parental care and protection. It is surprising to know that some parents give out their children for marriage because they are scared of their children getting pregnant outside wedlock. Some parents give out their children because of poverty. Others feel that training a girl child is a waste of resources and so they give them out for marriage without education. Some children are driven into early marriage after they must have been sexually abused and impregnated. This practice has done a lot of havoc to Nigerian girls and must be addressed and dealt with all seriousness especially by Nigerian lawmakers. In 2009, their lip service commitment to uphold the law was displayed as Senator Yerima, a law maker in Nigeria married an Egyptian 13 year old girl. The girl's parents collected the sum of One Hundred Thousand Dollars as bride price before the wedding took place in Abuja. Many Nigerians and civil societies revolted and called for the arrest and prosecution of the Senator for violating the law as enshrined in section 21 of the Child's Right Act. It is disappointing to know that nothing tangible was done to the “lawbreaker” till date as he claims that what he did does not contravene Islamic laws.

Baby Factory

This is another practice which should be discussed. It is a clear indication that there is no respect for human life. Men and women get apartments where they keep young girls and get a man to impregnate them so that they deliver and the children sold.⁸⁶ The mothers of these children are paid off after delivery. Some medical personnel go as far as stealing the baby and lying to the parents that their baby died after delivery. Some girls even go in search of these baby factories when they have unwanted pregnancies in order to escape abortion especially when their parents are not aware of their pregnancy. Many of such girls lie that they are in school while they hide in the baby factory until they deliver the baby and get paid for the baby production.

A case was reported of a blind priest and monarch who was accused of selling babies for ritual purposes and also to women who could not give birth.⁸⁷ This really calls for worry. Why should a right thinking person sell her baby to a stranger in exchange for money? Serious attention must be paid to this.

⁸⁵ Umukoro, Arukaino, *Stolen Child Brides: Nigeria's Hidden Ignored Epidemic*. Punch newspapers March 13, 2016.

⁸⁶ B.I. Ikoko, *The Pain of Child Abuse Benin*: Progress Publishers; (2013), 52.

⁸⁷ Daily Son, Wednesday, April 2, 2014.

Sexual Harassment

Sexual harassment or assault is defined as unwelcome sexual advances, requests for sexual favour and other verbal or physical conduct of a sexual nature.⁸⁸ It may be verbal or visual. It includes any act that forces a person to join in unwanted sexual contact or attention. It also includes forcing adolescents to watch pornographic pictures, drawings, films, video or exposure of perpetrator's genitals, forcing an adolescent to watch a perpetrator masturbate.

Sexual assault is not discriminatory to sex; both males and females are affected but studies have shown that female sexual assault victims (and assault perpetrated by males) is far greater than male victims.⁸⁹ Sexual harassment by law includes request for sexual favour, sexual advances, or other sexual conduct when (1) submission is either implicitly or explicitly a condition affecting academic or employment decisions; (2) the behavior is sufficiently intimidating, hostile, or repugnant environment; or (3) the behavior persists despite objection by the person to whom the conduct is directed.⁹⁰

Sexual harassment is of two categories:

- (i) *Quid pro quo*
- (ii) Hostile environment.

Quid pro quo means “this for that” and it occurs when it is stated either expressly or impliedly that a person (adolescent or adult) must submit to a sexual conduct in order to participate in some activities either academic or otherwise.

Secondly, hostile environment sexual harassment occurs when unwelcome conduct of a sexual nature creates an intimidating, threatening and abusive working or learning environment. Examples are: Unwanted physical or sexual advances such as touching, hugging kissing, fondling, touching oneself sexually for others to view, sexual assault, intercourse or other sexual activity, unwanted personal attention such as letters, telephone calls, visits, pressure for sexual favours, pressure for unnecessary personal interaction, and pressure for dates where a sexual romantic intent appears evident but remains unwanted, unwanted sexual statements such as sexual or dirty jokes, comments on physical attributes, distribution of sexually explicit drawings, pictures or written materials,⁹¹ sending sexual pictures in whatsapp, Instagram or facebook. When a child experiences any of these activities listed above, it means that such a child has been sexually harassed or assaulted and this must be seriously and carefully handled and curbed. Sexual harassment can be seen virtually in all sectors and there is need for an affirmative action to put a stop to the menace.

Emotional Abuse

Emotional and psychological abuse in children is defined as behaviours, speech and actions of parents, caregivers, or other significant figures in a child's life that have a negative mental impact on the child.⁹² It is quite certain that every type of child abuse has a negative impact on the child but some forms of abuses are completely emotional and they absolutely affect the psychic of the child. If the situation is

⁸⁸ What is Sexual Harassment? <<http://studysexualmisconductpolicy>> accessed 6 June, 2016.

⁸⁹ P.I. Isely, Gehrenbeck-Shim D. Sexual Assault of Men in the Community. J. Comm. Psych. 1997; 25(2), 159-166.

⁹⁰ What is Sexual Harassment? Sexual Assault Prevention and awareness Center <<http://sapsc.umich.edu>> accessed 5 January 2017.

⁹¹ *Ibid.*

⁹² E. Carey, *Child Emotional/Psychological Abuse*: Dec 14, 2015 <www.healthline.com> accessed 2 February 2016.

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not carefully and expeditiously managed, it can affect the child psychologically and such a being traumatized for a long time.

A child can be emotionally wounded when called all sorts of names like witch, useless, wicked, dull brain, ugly, *et cetera*. When child received such words, such a child is wounded emotionally and in effect, the child's behavior becomes abnormal. The child develops a very low self-esteem. A child can also be emotionally wounded when his father or close relatives harass her sexually. The child becomes very unhappy because even family members cannot be trusted. If such a child experiences an abuse outside the home, she will certainly not be free to discuss with anyone at home because of lack of confidence in her family members. In addition, the National Centre for Child Abuse and Neglect defines emotional abuse as; act or omissions by the parents or their care givers that have caused, or could cause serious behavioural, cognitive or mental disorders.⁹³

The American Medical Association (AMA) describes emotional abuse as; when a child is regularly threatened, yelled at, humiliated, ignored, blamed or otherwise emotionally mistreated.

The following are examples of child emotional abuse

- (i) Name calling
- (ii) Insulting
- (iii) Threatening violence (even without carrying out threats)
- (iv) Allowing children to witness the physical or emotional abuse of another.
- (v) Allowing children to take illegal drugs.⁹⁴

The following forms of abuses result in child emotional breakdown amongst others

- i. Child marriage
- ii. Violence against orphans
- iii. Maltreatment of step children
- iv. Forced prostitution
- v. Female genital mutilation
- vi. Sexual abuse
- vii. Violation of juvenile trial rights
- viii. Refusal of bail to juvenile offenders by police.

Some of the abuse listed above shall be discussed shortly. It has been observed that child abuse occurs in all types of families. However, reported abuse appears to be most common in families that:

- (i) Have financial difficulties
- (ii) Are experiencing or experienced a divorce
- (iii) Struggle with substance abuse issues
- (iv) Are dealing with single parenthood.⁹⁵

Children who-get constantly ignored by parents, teachers or any person in a position of authority, including children who get humiliated, terrorized, etc suffer a lot of hardship much more than when

⁹³ DHEN, National Centre on Child Abuse and Neglect, Department of Health, Education and Warfare, Lagos State University, 2008.

⁹⁴ E. Carey, Emotional and Psychological Abuse in Children.

⁹⁵ *Ibid.*

they are physically abused.⁹⁶ Abused children often grow up experiencing insecurities, lack of development, low self-esteem, difficulties with trusting people and social withdrawal. Baby victims usually become anxious, aggressive, nasty to other children, struggle to control strong emotions, lack social skills, increased depression, difficulties in interpersonal relationships.⁹⁷

Violence Against Orphans

According to UNICEF report 2007, there is an estimated 8.6 million orphaned children in Nigeria and 930,000 of these are orphaned by AIDS. It is a fact that children orphaned by AIDS, children living with disabilities to whether children are likely to be sexually abused because of lack of adequate care. Most often, their advancement is hampered and little or no care system is put in place by the government for their care, comfort and security from societal decadence.

The situation is worse with children orphaned by AIDS simply because the stigma and discrimination suffered by their parents while they were alive robs on them as a result of which they are deprived from enjoying good education, healthcare, psychosocial support and protection from their communities and government.⁹⁸

Violation of Juvenile Trial Rights

In the case of *Labinjo v Abake*,⁹⁹ the Court held that a person under the age of 21 is a minor and therefore lacks the capacity to contract or be bound by any contractual obligations. In Nigeria today, any one under the age of 18 years is a juvenile and does not have the required capacity for civil and criminal liability. In 2003, the Child Rights Act was enacted to regulate and protect the rights of children as provided for in the Nigeria Constitution and other subsidiary legislation. It also broadened the law relating to juvenile justice, children's rights, responsibilities and protection. Such rights include:

- i. Right to appropriate legal assistance
- ii. Right of defences
- iii. Right to fair trials
- iv. Right to speedily trials
- v. Right to alternative measures of last resort for the shortest possible time thereby eliminating the culture of imprisoning children on slightest opportunity.

A case was reported of a magistrate in Lagos State who sentenced a young girl and committed her to prison for hawking instead of ordering the collection of the goods. There are several instances where the press has paraded juveniles on the television and social media by individuals even before the juvenile is found guilty of the alleged offence. Several juveniles have been tried in open Courts even without legal representation. In some instances where the juvenile is represented by a counsel, there are instances where an application has been made to the court for the child's trial to be in camera and judges have refused to grant such application owing to the reasons best known to them with due

⁹⁶ Child Abuse >https://en.wikipedia.org/wiki/child_abuse-child-abuse-wikipedia_page6> accessed 13 May, 2017.

⁹⁷ Childhood Emotional Abuse and Neglect as Predictors of Psychological and Physical Symptoms in Women Presenting to a Primary Care Practice. Spertus, Wong Halligan, & Seremetis Vol. 27, Issue 11, Elsevier Ltd. (2003), 1247 – 1258.

⁹⁸ Excluded and Invisible Children. <<http://www.unicef.org/nigeria/children-1934.html>> accessed 8 June, 2017.

⁹⁹ (1924) 5 NLR 33.

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respect. This explains why the contemporary international standard is now “the need for preventive action for juvenile justice” and not retribution and correction.¹⁰⁰

Beijing Rules¹⁰¹ provides that trial proceedings are to be conducted in the atmosphere of understanding which will allow the juvenile to participate therein and to express himself freely. Also no press is allowed to publish anything that may lead to the identification of the child or young person appearing before the juvenile court.¹⁰² Have seen how children suffer a lot of injustice in the juvenile justice administration system in Nigeria, there is need for a call on Nigerian Government to conform with International Standards not only by enactment but by implementation.

AN EXAMINATION OF INTERNATIONAL CHILD PROTECTION INSTRUMENTS

Child abuse has become a global issue which has caught the attention of State Leaders around the world hence culminating to several conferences and conventions for the purpose of discussing the issue in order to codify them as legal instruments, which are capable of guiding States as to what steps to take domestically in order to curb the menace, punish the violators and ultimately, protect a child from all forms of abuse by affirming their rights.

Several Conventions, Charters, Protocols, Rules and Treaties have been codified over the years to protect children all over the world from all forms of abuse and exploitations. These International Instruments include, The African Charter on Human and Peoples Rights, International Labour Organization Minimum Age Convention, African Charter on the Rights and Welfare of the Child (ACRWC), Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (OPAC 2000), The Convention on the Minimum Age for Marriage and registration of Marriage 1962, International Convention on Civil and Political Rights (ICCPR), Optional Protocol on the Sales of Children Child Prostitution and Child Pornography, United Nations Convention on the Rights of a Child, Beijing Rules, and many more.

These Instruments bind State parties upon the ratification of same. It must however be noted that by virtue of Section 12 of the 1999 Constitution (as amended) mere ratification has no serious effect on the State except it is domesticated. This is nothing but a clog to the enforcement of the instrument. Generally, just a few of these treaties have been domesticated in Nigeria. Be that as it may, when Nigeria adopted and domesticated the Child’s Right Convention, most of the salient provisions of other child protection treaties were embedded in the Act. For example, OPAC 2000 was embedded in Section 34 of the Act, ILO Minimum Age Convention was embedded in Section 28 of the Act, Convention on the Minimum Age for Marriage was embedded in Section 21 of the Act, African Charter on the Rights and Welfare of the Child (ACRWC), was embedded in Section 4 of the Act.

Invariably, the adoption and domestication of the Convention on the Rights of the Child as Child’s Right Act in Nigeria will have the same effect as adopting and domesticating other International Child Protection Treaties. In essence, the provisions of section 12 of the 1999 Constitution (as amended)

¹⁰⁰ H.C. Okoro, *Juvenile Justice Administration in Nigeria and International Standards on the Rights of the Child in Issues in Justice Administration in Nigeria: essay in Hounor of Hon. Justice S.M.A. Belgore*. GCON. Yusuf A.O. (ed) VDG International Ltd. (2008), 330.

¹⁰¹ Rule 14 and Rule 7.

¹⁰² Section 6(5) and (6) of the Children and Young Persons Act 2008.

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should not particularly adversely affect the enforcement of the rights of every Nigerian child, if only the Child's Right Act is passionately enforced irrespective of the caliber or political status of whoever violates the law. Few International Child Protection Laws and Treaties shall be examined and discussed in this chapter. Some of their landmarks and *lacunae* shall also be discussed.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC 2000)

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict is an International Treaty of 12 articles. It entered into force on 12th February 2002. It was adopted and opened for signature, ratification and accession by General Assembly Resolution A/RES/54/263 of 25 May, 2000.¹⁰³ This Treaty was birthed sequel to the overwhelming support States gave to the adoption of Convention on the Rights of the Child. It therefore reaffirms that the rights of children to demand special protection and continuous improvement of their conditions and welfare, so also their educational, development, and security. This is the first International Treaty wholly focused on ending the military exploitation of children.

OPAC 2000 aims at protecting children from recruitment and use in hostilities. It is committed to ensuring that;

- i. States will not recruit children under the age of 18 to be at battle fields
- ii. States will not conscript soldiers below the age of 18
- iii. States should take all positive measures to prevent such recruitment – including legislation to prohibit and criminalize the recruitment of children under 18 and their involvement in hostilities.
- iv. States should demobilize anyone under 18 conscripted used in hostilities and will provide physical, psychological recovery services and help their social reintegration.¹⁰⁴
- v. Armed groups should be distinct from the armed force of a country and should not, under any circumstances, recruit or use in hostilities anyone under 18.¹⁰⁵

As at the time of writing this work, 166 countries, excluding Nigeria had ratified the OPAC 2000. 18 countries have neither signed nor ratified the protocol and 13 countries have signed but are yet to ratify. Gambia, Haiti, Iran, Lebanon, Liberia, Somalia, Zambia, Fiji, Central African Republic, Myanmar, Suriname, Solomon Island, and Nauru have signed but not ratified the optional protocol. Antigua and Barbuda, Cook Islands, DPR Korea, Equatorial Guinea, Marshall Islands Mauritania, Niue, Palau, Papua New Guinea, Saint Kitts and Nevis, Sao Tome and Principe, South Sudan, Tonga, Trinidad and Tobago, Tuvalu, United Arab Emirates have neither signed nor ratified the OPAC 2000.¹⁰⁶ The instrument also encourages State parties to take every reasonable step possible for the realization of the rights of the child. States parties are expected to take necessary legal administrative measures to ensure the full implementation and enforcement of the OPAC 2000.

Article 6(1) to (3) provides that each state party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present

¹⁰³ Preamble, OPAC 2000.

¹⁰⁴ Article 6(3), Article 7, OPAC 2000.

¹⁰⁵ Article 9, OPAC 2000.

¹⁰⁶ UN Ratification States of the OPAC 2000 <<http://childrenandarmedconflict.un.org>> accessed 4 May 2016.

Protocol within its jurisdiction. States Parties shall undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike. It must be noted that by virtue of section 34 of the Child's Right Act, no child shall be recruited into the armed forces of the Federal Republic of Nigeria. This provision is similar to the provisions of OPAC 2000.

However, it is clear that the enforcement of the provision is weak because of the occurrence of incessant abduction of children from schools by the insurgents, in order to train and get them equipped for hostilities. Whereas, States Parties are expected to take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accords to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration. OPAC 2000 provides that any State Party may denounce the protocol at anytime. The procedure for denunciation is as simple as just writing a notification to the Secretary General of the United Nations. The UN Secretary General then will inform other States parties to the Convention about the denunciation. The denunciation takes effect one year after the date of the receipt of the notification by the UN Secretary General.¹⁰⁷

OPAC (2000) is an International Treaty wholly focusing on ending the military exploitation of children; it however has a *lacuna* of double standards. It on one hand prohibits the voluntary recruitment of children by non-state armed groups but on the other hand, allows State Armed Forces to recruit from age 16, as long as the children recruited are not sent to war. In Nigeria, any one below age 18 cannot be recruited into Nigerian Army. However, anyone above age 22 cannot be recruited.¹⁰⁸ The United States and The United Kingdom have since insisted and enjoyed the double standard as The United States recruits from age 17 and The United Kingdom recruits from age 16. This is a *lacuna* in OPAC (2000) which has slowed down the drive towards the ban on the use of children in warfare.¹⁰⁹ Even though the campaign for the universal adoption of OPAC 2000 is vigorously on, the effect of advocating that age 18 should be the minimum age for military recruitment of any kind, has not been seriously felt because of its double standards so also its denunciation clause which allows for *free ingress and egress* by State parties. It is the humble view of the researcher that, the denunciation clause has done nothing more than to turn the Treaty to a toothless bull dog. The Treaty by this provision becomes too soft to effectively put a stop to child military exploitations and involvement of children in hostilities.

International Labour Organization (ILO) Convention No. 138 on the Minimum Age for Employment 1973

The ILO Convention No 138 was adopted on 26/06/1973 and it entered into force on 19/06/1976. It has 18 Articles.¹¹⁰ The ILO convention No. 138 was adopted with a view to achieving the total abolition of child labour by its monitoring and complaint mechanism.¹¹¹ As at the time of writing this work, 169 countries had ratified the Convention. Nigeria ratified the Convention on the 2nd of October

¹⁰⁷ Article 11, OPAC 2000.

¹⁰⁸ Six and Requirements to Join the Nigeria Army. <<https://www.expertsecuritytips.com/join>> accessed 13 June 2017.

¹⁰⁹ International Law and Child Rights: <www.wikipedia.org> accessed 13 June 2017.

¹¹⁰ Convention C138 – Minimum Age Convention, 1973 (No. 138)-ILO
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB;12_1000-ilo-CODE;C138> accessed 6 May 2017.

¹¹¹ *Ibid*.

2002 and it has been in force since then although the minimum age specified for employment by Nigerian Government is age 15.¹¹²

Other countries who have ratified the Convention include Afghanistan, Algeria, Angola, Argentina, Austria, Bahamas, Barbados, Belgium, Benin, Botswana, Brazil, Burkina Faso, Burundi, Cameroon, Canada, Chad, China, Colombia, Congo, Cuba, Costa Rica, Cyprus, Coe D'Ivoire, Denmark, Egypt, Equatorial Guinea, Ethiopia, Finland, Germany, Ghana, Greece, Haiti, Indonesia, Iraq, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Libya, Malawi, Morocco, Mozambique, Namibia, Netherlands, Niger, Norway Pakistan, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Singapore, Sudan, Sweden, Thailand, Togo, Turkey, Uganda, United Kingdom, Yemen, Zimbabwe, Zambia and few other.¹¹³

The countries that have not ratified the Convention as at January 2017 include Australia, Bangladesh, India, Iran, Liberia, New Zealand, Somalia, Palau, United States and a few other countries.¹¹⁴

This Convention protects children against child labour. It sets a minimum age for employment which is not expected to be less than the age of completion of compulsory schooling, that is, age 15 in Nigeria. Article 2 provides that each Member which ratifies this Convention shall specify, in a Declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

Article 2(2) provides that each Member which has ratified this Convention may subsequently notify the Director General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified. Article 2(3) further provides that the minimum age specified in pursuance of paragraph 1 of this article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. These provisions are in no doubt in the best interest of children protecting them from any form of child labour.

It must however be noted that the provisions of this Convention do not apply to work done by children and young persons in schools for general vocational or technical educations.¹¹⁵ It rather defines conditions under which such work can be done. Article 3 further provides that the minimum age for admission to any type of employment or work which by its 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.

The ILO Convention No. 138 on the minimum age for employment is not without a *lacuna*. It provides for denunciation by State parties who do not wish to be bound any longer. This work considers this provision to be detrimental to the purpose for which the Convention came to being. If by ratification a State party is put under a serious obligation to ensure that children are not subjected to any undue employment which will amount to child labour, why then should the same Convention allow a State party to denounce its allegiance to the Convention. By so doing, children within the jurisdiction of such State party are not more protected by the law. Any reported case of employment of an under aged person will go to no issue as such the State is no longer committed to protecting children against such

¹¹² Ratification of ILO Convention <<https://www.ilo.org/dyn/normlex/en/>> accessed 10 September 2017.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ Article 6 ILO Convention 138 on the Minimum Age for Employment.

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abuse. In other words, the denunciation clause whenever invoked draws a child back to its dark age of hopelessness and helplessness.

The Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage 1962

The Convention was adopted by the UN General Assembly in November, 7th 1962 and entered into force on 9th December 1964. It has 10 Articles. The preamble declares that the Marriage Convention recalls article 16(1) of the Universal Declaration of Human Rights which states that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family, it further establishes that state parties should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, *inter alia*, a complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a register in which all marriages will be recorded. The following are the landmark provisions of the Convention: Article 1 of the Convention provides that no marriage shall be legally entered into without the full and free consent of both parties; such consent is to be expressed by them in person. Article 2 of the Marriage Convention Requests State parties to take legislative action to specifying a minimum age for marriages. The same provisions further provide that no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons in the interest of the intending spouses. Article 2 States:

States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Article 3 provides that with an eye on implementation of the goals of the Marriage Convention, all marriages shall be registered in an appropriate official register by the competent authority. As at 25th January 2017, 16 countries excluding Nigeria had signed the Convention.¹¹⁶ The countries includes Chad, Cuba, Denmark, France, Greece, Guinea, Israel, Italy, Netherlands, New Zealand, Philippines, Poland, Romania, Sri Lanka, Sweden and the United State of America.¹¹⁷

It is the researcher's opinion that Article 7 is the *lacuna* of the regulation of Marriage Convention. Article 7 States:

Any contracting State may denounce the present convention by written notification to the secretary general of the United Nation. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

The Convention demands no reasons to be stated for denunciation. This is an oversight and it will of course affect its effectiveness and enforcement.

¹¹⁶ Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages.

<<http://en.wikipedia.org>> accessed 2 May 2017.

¹¹⁷ *Ibid*.

International Convention on Civil and Political Rights (ICCPR) 1966

The International Convention on Civil and Political Rights (ICCPR) was adopted by the General Assembly of the United Nations on 19th December 1966. The Convention recognizes the inherent dignity and inalienable rights of all members of the human family as being the foundation of freedom, justice and peace in the world. The convention recognizes that in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created through which everyone may enjoy his civil and political rights, as well as his economic; social and cultural rights. The ICCPR provides that States parties to the Convention must undertake to respect the rights of every human person notwithstanding their sex, colour, language, origin, birth or other status. It provides further that State parties have the obligation to provide legislations or other means of giving effect to the rights recognized in the Convention and anyone whose rights or freedoms is violated shall have an effective remedy for the breach even if the violation is committed by persons acting in an official capacity. The following are the landmark provisions of the Treaty:

- i. Non sentencing of persons under age 18 and pregnant women to death penalty. Article 6(5) provides¹¹⁸ that Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
- ii. Protection against torture, cruelty, inhuman or degrading treatment or punishment Article 7 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
- iii. Protection against slavery. Article 8(1) to(3) provide that no one shall be held in slavery that is, slave-trade in all their forms shall be prohibited. It further provides that no one shall be held in servitude, no one shall be required to perform forced or compulsory labour, and however, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such to such punishment by a competent Court shall not be affected. For the purpose of the foregoing, the term “forced or compulsory labour” shall not include:
 - a. Any work or service not referred to normally required of a person who is under detention in consequence of a lawful order of a Court, or of a person during conditional release from such detention;
 - b. Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law conscientious objectors;
 - c. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - d. Any work or service which forms part of normal civil obligations.
- iv. Protection against forced or compulsory labour. Article 8(3)¹¹⁹
- v. Protection of Juvenile offenders from being detained with adults. Article 10(2)(b)¹²⁰ provides that Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
- vi. Protection of Juvenile offenders from unfriendly or harsh trial. Article 14 provides that all persons shall be equal before the Courts and Tribunals. In the determination of any criminal

¹¹⁸ ICCPR.

¹¹⁹ ICCPR.

¹²⁰ Cf Article 10(3), ICCPR.

charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society; or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. Also, everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

In addition, Article 14(4) protects juvenile offenders from being punished by law for offences committed without their rehabilitation in focus i.e. juvenile punishment must not be retributive but reformative.

- vii. Protection from forced child marriage. Article 23 provides that:
 - a. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
 - b. The right of men and women of marriageable age to marry and to found a family shall be recognized.
 - c. No marriage shall be entered into without the free and full consent of the intending spouses.
 - d. States Parties to the Convent shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

By virtue of the above provisions, a child must not be forced into marriage under any condition; educational training and advancement must be the focus of every child. In Turkey, a rapist is exempted from punishment so far he marries his victim. This act is condemned by the ICCPR as it violates the victim's right to dignity.¹²¹

viii. Right to be protected by family, society and State without any form of discrimination. Article 24 provides that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Besides every child shall be registered immediately after birth and shall have a name. Also every child has the right to acquire a nationality. The *lacuna* here is that birth registration is not practicable in rural areas where there are no health facilities.

African charter on Human and Peoples' Rights

The African Charter on Human and People's Rights is also known as Banjul Charter. It is so called because the draft Charter was adopted in Banjul, Gambia. It is an International Human Rights Instrument that seeks to promote and protect human rights and basic freedoms in the African continent.

¹²¹ Agerholm, H. *MPs in Turkey Support Bill Allowing Child Rapist to Go Free if They Marry The Victims*. <www.independent.co.uk> accessed 11 March 2017.

The Head of States of the Organization of African Unity now (African Union) saw the need for a Human rights instrument similar to the existed European Convention on Human Rights and the American Convention on Human Rights.

The African Union Assembly in July 2004 decided to incorporate the African Charter into the African Court of Justice. 54 States had ratified the African Charter as at November, 2016 and this includes all AU member States.¹²² Nigeria signed the Charter on the 31st day of August, 1982 and ratified on 22nd day of June, 1983.¹²³ The Charter recognizes the following rights for all persons and children inclusive although not expressly included in the words of the Charter.

- i. Freedom from discrimination: By virtue of the provision of the Charter, no African child is expected to suffer from any form of discrimination because of his race, religion, sex. This was expressed in the Charter in Article 2 and 18(3).
- ii. Right to life, personal integrity and dignity: This right as recognized by the Charter should be the reason why every child be given the opportunity and privilege to live on earth having been formed in the womb. This should be the reason why no child should be dumped or abandoned by the road side, bush, and refuse pit as the case may be by the mother. This provision should as well be the reason why no child should be sexually, physically or emotionally abused by anyone including parents.
- iii. Freedom from slavery: Article 5 protects a child from all forms of exploitations and degrading treatments. The Charter is however not perfect. It has some *lacunae*.

The Charter does not focus much on the rights of an African child specifically as expected. This deficiency brought the African Charter on the Rights and Welfare of the Child (ACRWC) into existence. ACRWC specifically protected the rights of African children in diverse ways as discussed below:

African Charter on the Rights and Welfare of the Child (ACRWC) 1990

The ACRWC is otherwise called “Children’s Charter”. It was adopted by the then Organization of African Unity (OAU) now African Union in the year 1990. This Children’s Charter is a detailed instrument which highlights the rights of African children. It creates and establishes the African committee of Experts on the Rights and welfare of the child with the duty to promote and protect every child from all forms of abuse as spelt out in the Children’s Charter. The committee is also charged with the responsibility of interpreting the Children’s Charter. The Children’s Charter recognizes and defines a “child” as a person below the age of 18 years. (Article 2). It recognizes children’s rights of freedom of expression, peaceful assembly, association religion, conscience, and protection of life against all forms of exploitations, hazardous work affecting a child’s education, social, spiritual, moral and mental development, sexual abuse, kidnapping, trafficking and sale.

The Children’s Charter emphasizes the need to include African values, experiences and cultures when discussing rights of children in Africa. This main factor distinguishes the Children’s Charter from the Convention on the Rights of the Child. As at the time of writing this work, 47 States including Nigeria, out of 54 States of the African Union had ratified the Children’s Charter and 7 States namely Central

¹²² African Charter on Human and People’s Rights.

<<https://en.m.wiki.org>>African_Charter_on_Human_and_People’s_Right>accessed 20 April 2017.

¹²³ African Charter on Human and People’s Rights <www.achpr.org>instruments>achpr/ratification> accessed 13 June 2017.

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African Republic (CAR), Democratic Republic of the Congo (DRC), Sahrawi Arab Democratic Republic, Sao Tome and Principe, Somalia, South Sudan, and Tunisia have signed but not ratified. The following are the landmark provisions of the Charter:

i. Right of Non Discrimination of a Child.

The Children's Charter protects every child from any form of discrimination. Article 3 provides:

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

From the fore going, it presupposes that even if a child's medical status changes from HIV negative to HIV positive, the child must not be allowed to suffer any form of discrimination at home, school, religious places of worship, etc for any reason.

ii. Right to consideration of child's best interest.

The Children's Charter provides that in any judicial proceeding, the views of the child must be heard and seriously considered before the final conclusion. This right has severally been protected by the Juvenile Courts and Tribunals set up to entertain Children's matters.

Article 4 provides:

a. In all actions concerning the child undertake by any person or authority the best interests of the child shall be the primary consideration.

b. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be take into consideration by the relevant authority in accordance with the provisions of appropriate law.

iii. Right to survival

Every child has the right to survive as a living being and this right must be protected through all mechanisms by the State parties so that children will not have their life deliberately taken off by their parents, abusers, or judicial sentence.

This provision prohibits abortion, child poisoning child abandonment or neglect, death sentence etc. Article 5 provides that:

a. Every child has an inherent right to life. This right shall be protected by law.

b. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

c. Death sentence shall not be pronounced for crimes committed by children.

iv. Right to Name and Nationality

This provision requires every parent to register the birth of their children immediately after birth, further more; the child must be named and shall have a nationality. In Nigeria today, national

population officials do work hand in conjunction with hospitals in order to compulsorily register the birth of children in their hospital after which a National Population Birth Certificate is issued in compliance with the Birth, Death, etc. (Compulsory Registration) Act¹²⁴ This practice is commendable as it shows compliance with international norms but the truth is that there are many rural areas where the practice is alien to. Children births in such areas are not registered. This explains why young ladies in poverty stricken communities (most often) throw away their babies after birth even after several attempted abortion without being caught up by the law enforcement agents, this is sad to know.

Government can be guilty of violating a child's right to survival when there is little or no provision for good health care for children and also insufficient supply of medical personnel, drugs and medical infrastructures/instruments to the dilapidated health centers in rural areas. Government's unresponsiveness to children's health care or insufficient responsiveness (as the case may be) to children's health care can increase the percentage of infant mortality rate. Article 6(4) provides that State Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

v. Right to Education

Article 11 provides that every child shall have the right to an education. The education of the child shall be directed to the following;

- (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;
- (c) the preservation and strengthening of positive African morals, traditional values and cultures;
- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
- (e) the preservation of national independence and territorial integrity;
- (f) the promotion and achievements of African Unity and Solidarity;
- (g) the development of respect for the environment and natural resources;
- (h) the promotion of the child's understanding of primary health care.¹²⁵

Article 11(3) provides that states Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular provide free and compulsory basic education. This provision shows that in whatever condition, a child must be given the opportunity to go to school in order to help develop the child's personality, talents, mental and physical abilities to their fullest potential.

¹²⁴ Cap. B9 LFN 2004.

¹²⁵ Children's Charter; Article 11(2)(a-h).

vi. Right to Leisure, Recreation and Cultural Activities

Article 12 provides that States Parties recognize 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. Also, States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

The above provision explain why schools are compulsorily expected to have play grounds where children can freely exercise their rights to recreational activities on the other hand; Article 12(2) makes provision for the right of a child to be given the opportunity to participate freely in their cultural activities. This explains why schools set a day apart for cultural activities popularly called cultural day. In that event, pupils are encouraged to dress to school in their traditional attires so that their indigenous and traditional/cultural practices will not be totally strange to them especially their manner of greetings and dressing.

vii. Protection of Handicapped Children

Article 13 protects the rights of handicapped children as it provides that Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

The Charter from the foregoing requires the State Parties to ensure that every mentally or physically disabled child is specially protected and given access to training, recreation opportunities, and full social integration.¹²⁶ State Parties are also expected to progressively give them comfortable movement and access to public buildings like hospitals, schools, Court Rooms, Government Secretariats, *et cetera*.

It is then chagrin to know that even in Nigeria; a signatory to the Charter, not many public buildings are accessible to the physically challenged persons. The constructions of such buildings are expected to accommodate the free passage of wheel chairs. These are often seen in hospitals but not in most other public buildings. Factually, it is so difficult to wheel a physically challenged person on a wheelchair through a staircase. Most times the wheelchair gets damaged and they fall on the ground after so much stress. Some in order to avoid falling stay away from their wheelchair and access the public buildings crawling on the floor with their hands or buttocks. This is so inhumane. However, it is stress free rolling them down or up a smooth sloppy way. If this is considered while building, then it shows that the government and the society care about the welfare of the physically challenged persons.

viii. Right to Health and Health Care Services

Article 14 provides that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures to reduce infant and child mortality rate, ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care, ensure the provision of adequate nutrition and safe drinking water, combat disease and malnutrition within the framework of primary health care through the

¹²⁶ Article 13(2) Children's Charter.

application of appropriate technology, to ensure appropriate health care for expectant and nursing mothers, to develop preventive health care and family life education and provision of service, integrate basic health service programmes in national development plans.

Furthermore, State Parties are to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents, to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children, and also to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children. From the above, State Parties are expected to take steps and measures to provide health care to all children, expectant and nursing mothers. They are also expected to give technical and financial support in mobilizing the development of primary health care for children. These provisions are wonderful but my worry is that how many children are enjoying free health care services in Nigeria? it means there is no compliance with the provisions of the Charter to which Nigeria is a signatory.

Another problem is that even though there appear to be many primary health care centers in Nigeria running free primary health care services for children, the issue is whether they are well staffed and equipped to effectively carry out their tasks. Several time, the Primary Health officers go on strike and there are instances where the Centers are locked up for months owing to non-payment of their salaries. All these are against the provisions of the Children's Charter to which Nigeria has been a signatory since 1999.

ix. Protection from Child Labour

The Children's Charter by virtue of Article 15 protects every child from all forms of economic exploitation or their engagement in any work capable of negatively affecting the child's physical, mental, spiritual, more, and social development. The State Parties have the responsibility of ensuring that legislative and administrative steps are taken in order to enhance the full implementation of the Children's Charter.

x. Protection against Child Abuse and Torture

Child abuse is a wide spread phenomenon in our society today. Many children have been victims of domestic violence, forced confession, child trafficking, female genital mutilation, poisoning of children, forced prostitution, forced teenage marriage, sexual harassment, killing of infants, and abandonment of infants, forced confession to crimes not committed etc. Many children have suffered irreparably as victims to these forms of abuses with no hope of any visible and long lasting remedy. This in fact is appalling. The Children's Charter mandates State Parties to take specific, legislative, social, administrative steps to protect the child from all forms of abuse and torture. Article 16 provides that States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the case of the child.

xi. Protection of Child's Right in administration of Juvenile Justice

If a child contravenes the law and is found guilty, the Children's Charter still demands that the child offender be treated with dignity, respect and full exercise of his fundamental freedom by ensuring the following:

- a. That no child is deprived of liberty as a result of torture
- b. That in case of any detention, the child offender is separated from adult offenders.
- c. That the child offender is presumed innocent until proven guilty.
- d. That press is prohibited in the course of a child's trial.

Article 17 provides that every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others. The States Parties to the Charter are enjoined to ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment; that children are separated from adults in their place of detention or imprisonment; that every child accused in infringing the law shall be presumed innocent until duly recognized guilty; Shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used; shall be afforded legal and other appropriate assistance in the preparation and presentation of his defense: shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;

xii. Right to Maintenance in spite of Parents' Marital Status

The Children's Charter provides that no child shall be deprived of maintenance even if the parents are divorced by Court order or any other manner. Children of the marriage must be given necessary protection and their educational advancement must be paramount. Article 18(2) & (3) provides that:

- a. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.
- b. No child shall be deprived of maintenance by reference to the parents' marital status.

xiii. Right to Parental Care and Protection

The Children's Charter provides that every child must enjoy parental care and must not be separated from his parents against his will. The exception to this is when there is a judicial order justifying the separation as being in the best interest of the child. Whatever the reason for the separation, the child must be informed about the whereabouts of his parents and the parents as well must have reasonable access to the child regularly. Article 19 provides every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, has the right to reside with his or her parents. no child shall be separated from his parent against his will, except when a judicial authority determines in accordance with the appropriate law that such separation is in the best interest of the child. It further provides that every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.

xiv. Parental Responsibilities

The children's charter mandates the parents or persons responsible for a child to be responsible for the child upbringing and development. Lack of financial capacity is not an excuse for neglecting or depriving a child of good upbringing and development. It is better not to bring a child to the world than to bring the child to the world and subject the child to the world of sufferings ranging from malnutrition to neglect. Parental responsibilities to the child is so important¹²⁷ such that the children's charter further provides that state parties must ensure supports and material assistance to incapable parents with regards to nutrition, health, education, clothing, and housing. (article 20(2a))

xv. protection against harmful social cultural practices

Article 21 provides:

States parties to the present charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: those customs and practices prejudicial to the health or life of the child; and those customs and practices discriminatory to the child on the grounds of sex or other status.

Harmful cultural practices such as female genital mutilation, breast ironing, betrothals etc are expressly prohibited by this provision. Although, many state parties who have been signatories to this charter are still battling with the eradication of these harmful cultural practices even though such practices attract strict punishment in their local laws. In Nigeria today, betrothal is prohibited and criminalized by virtue of section 23 of the child's Rights act but unfortunately, betrothal is still common in Northern Nigeria. so also the practice of female genital mutilation. Section 23 further provides that whoever acts otherwise shall commits an offence and is liable on conviction to a fine of ₦500,000 or imprisonment for a term of five years or both such fine and imprisonment.

Till date, there has not been any reported case in Nigerian law reports of the prosecution of a perpetrator of the female genital mutilation dose that suggest that the mutilators are unknown to the society? Not so at all. The problem is that many communities that still engage in this practice have not been convinced that female genital mutilation is a violation of the rights of the child. They see it as a traditional practice which must be upheld. It is so bad that the prospective victims are dying to undergo the process in order to assume the status of a real woman in their community. Well, if one or two cases have gone bad during the mutilation process, to the victims, it is one of those evils that are inevitable in the life time of a girl child.¹²⁸

The Children's Charter covered a lot of grounds in protecting the rights of children but not without some gaps. This work considers the following as the *lacunae* of the Charter.

¹²⁷ Article 20(1).

¹²⁸ Interview by the Researcher, Conducted in Tomoba Community, a riverside community in Ogun State, Nigeria.

i. The provisions of article 19(4)

Article 19(4) provides:

Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

The above provision is very important when a child who is in conflict of the law is apprehended. The parents or guardians are expected to be notified as soon as possible. In my opinion, the phrase “as soon as possible” does not confer any decisive obligation on the law enforcement officers. There will always be an explanation to exonerate themselves from the guilt of not notifying the parents of the apprehended child immediately after the arrest. If there is a stipulated time within which the notification must be effected, then, there is a legal duty and obligation conferred on the officials to compulsorily effect the notification knowing well that failure to do same within the stipulated time amount to a violation of the child’s right. Not only that, failure to effect the notification must attract punishment or fine against the officer who arrested the arrest.

ii. The provisions of Article 20(1)(c)

Article 20(1)(c) provides that:

(1) Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:

(c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

The above provision will encourage domestic violence against children. It may also result into excessive beating by a guardian under the guise of the duty of ensuring domestic discipline. What yardstick or criterion can be used to measure discipline administered with humanity and otherwise? If a child is disciplined with stiff punishment, starvation or, forcing the child to feed on contaminated food amongst others, the effect of these types of punishment might not be early noticed in a child yet secretly killing the child without notice while performing the duty of ensuring domestic discipline. Sub section (c) stated that the discipline must be consistent with the inherent dignity of a child. Punishing a child by giving the child contaminated food will leave no mark of cruelty on the child physically yet, killing the child internally. The culture of silence is prevalent in our society and victims are not moved to report their domestic ordeals simply because the abusers are very much needed for their upkeep, shelter, food and so on. How then can such a child be free from abuse and several inhumane treatments? In my opinion, this provision is not protecting a child enough from physical, mental and emotional abuse.

Optional Protocol on the sale of Children, Child Prostitution and Child Pornography 2000

This is a protocol to the Convention on the Rights of the Child. It prohibits the sale of children, child prostitution and child pornography. The United Nations General Assembly adopted the Protocol in the year 2000 and it entered into force on 18th January, 2000. At the time of writing this work, 173 States were parties to the protocol and nine States had signed without ratification.

For clarity, the protocol defined what is meant by sale of children, child prostitution and child pornography in Article 2 as stated below;

Article 2 provides:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

The protocol recognizes any human being under the age of 18 as a child except a country law recognizes an earlier or lesser age.

The following are the landmark provisions of the Protocol:

The protocol obliges parties to pass laws within their own territories in accordance with provisions of this Protocol. This protocol also recognizes the rights 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 and that each State shall make such offences punishable by appropriate parties.

The Protocol further provides for the following amongst others

i. Protection of child victims.

By virtue of Article 8, State parties are mandated to adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited by the present protocol. This shall be done by taking the following steps;

- a. Recognizing the child victim's special needs in criminal administration.
- b. the obligation of States to inform child victims of their rights under the law so also the duration of their cases.
- c. Recognizing their views and special needs in proceedings affecting their personal interests.
- d. Provision of support services to child victims while their cases are on going
- e. Protecting child victims from being paraded in public e.g. social media where people could identify them.
- f. Ensuring the safety of victims, families and their witnesses and protecting them from intimidation and retaliation.
- g. Ensuring a speedy disposition of their cases and execution of order and decrees in their favour.
- ii. Right to unhindered initiation of criminal investigation.

The Protocol further provides that even if the actual age of the victim is uncertain, the initiation of criminal investigation should not be delayed for any reason.

iii. Right to fair trial

The protocol provides that no provision of the protocol should be interpreted to be inconsistent with the rights of the accused to a fair and impartial trial.¹²⁹

iv. Right to social reintegration and full recovery of child victims.

It is trite that all forms of abuse and violation leave with the victim either physical, emotional or psychological damage which must be attended to in order to bring the victim back. When this is neglected, it leads to a victim's total deterioration and devastation. Article 10(2) provides that States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation."

v. Compensation for child victims

Article 9(4) provides that State Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

vi. Obligation on State Parties to address the root causes of child abuse

Article 10(3) provides:

States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.¹³⁰

The following are the *lacunae* of the Protocol:

The researcher is of the opinion that Article 15 of the Protocol constitutes a *lacuna* which ought not to have arisen. The other provisions of the protocol seek to effectively protect the rights of children against all forms of sexual abuse and State parties are vigorously encouraged to take necessary steps to protect children from all forms of sexual abuse contemplated by the Protocol. This is highly commendable and one will wonder why a State party should be given the opportunity to denounce the protocol so freely. Free Denunciation of the Protocol connotes that the provisions of the Protocol are not good enough to be upheld.

By virtue of denunciation, the rights of child victims are no more guaranteed and this will draw children back to the dark ages of obscurity thereby making them to become more vulnerable to all forms of sexual abuse beyond limits and without any legal caution. Also, the Protocol failed to expressly provide in Article 9(3) whether the compensation to be paid by the perpetrator to the child victim shall be paid concurrently with the appropriate punishment prescribed by law or not.

EXAMINATION OF CHILD PROTECTION LEGISLATION IN NIGERIA AND THEIR EFFECTIVENESS

There are different child protection legislation in Nigerian. The provisions of the Child's Rights Act, Children and Young Persons Act, The Criminal Code, Penal Code and others. These laws are to ensure

¹²⁹ African Charter on Human and People 'Rights Article 8(6).

¹³⁰ Optional Protocol on the sale of Children, Child Prostitution and Child Pornography, Article 10(3).

that every Nigerian child is protected from all forms of abuse. The law also guarantees the administration of juvenile justice in Nigeria thereby ensuring compliance with contemporary principles, philosophy and standard of juvenile justice administration in the Nigeria legal system. However, the child's Right Act as a federal Act on a subject which is not within the Exclusive Legislative Competence of the federal Government, the Act¹³¹ can only become binding on state if it is approved by a simple majority of all the states. The overall objective is for the best interest of the children, and their well-being. In this chapter, the law shall be examined to determine whether the provisions therein have been effective enough to put a stop to all forms of child abuse in Nigeria or not. The landmark and the lacunae shall be examined.

Child Right Act 2003

The Child's Right Act was enacted on 31st July 2003 to protect the rights of a Nigerian child and other related matters. The provisions of the child's Right Act is a combination of the provision of different International Treaties, Instrument and laws. Nigeria is a signatory to these instruments and has taken a bold step to combine some of the international child's right protection laws. The Child's Right Act can only be effective in Nigeria State if they are ratified and passed to law by the State Houses of Assembly. As at May 2016, 24 States had ratified the provisions of the Child's Right Act 2003. Although this position is appalling because as good as the Act is in protecting the rights of Nigerian children, it has taken about 14 years after commencement before it can fully be in force in 24 States out of the 36 States in Nigeria. this probably have delayed the liberation of Nigerian children from all forms of abuse. Well, the ultimate question is whether the full operation of the Child's Right Act in Nigeria has effectively liberated Nigerian children from all forms of abuse the following are the landmark provisions of the Act.

i. Best Interest of a Child

Section 1 defines what the best interest of a child is, it means that every action relating to a child, whether undertaken by an individual, public or private body, institutions or service. Court of law, administrative or legislative authority, the best condition of the child shall be the primary consideration. This provision has been upheld by Courts in several Nigerian cases. In the case of *Olulbukun v Olulbukun*¹³² the Court held that in awarding custody to one of the parents in a divorce or separation, the best interest of the child should be paramount as custody essentially concerns control, preservation, and care of a child's person.¹³³ In *Williams v Williams*,¹³⁴ the court held that factors such as preferred parent, available facilities, religion, and educational advancement shall be seriously considered at arriving at the best interest of the child.

In the case of *Oladetohun v Oladetohun*,¹³⁵ the Court invoked this provision while ignoring the allegations that the mother of the subject was bad and practiced juju and granted custody of a 3 years old child to the mother considering and holding same to be the best interest of the child. Also in the case of *Oyelowo v Oyelowo*,¹³⁶ Court granted the custody of two male subjects to the father even though they had lived with their mother for two years. The researcher holds the view that the best

¹³¹ Child Right Act 2003, a statute domesticated in Nigeria in 2003 as a replica of Child Right convention.

¹³² (1974) 2 SC, 45.

¹³³ *Oni v Oni* 3 NWLR (pt. 140) 630.

¹³⁴ (1966) 1 All NWLR, 36.

¹³⁵ Unreported Suit No. HD/111/70 of July, 1971.

¹³⁶ (1987) 2 NWLR (pt. 56) 239, 4 SC 32.

interest of a child is that condition that best suits a child's total well-being, safety, educational advancement and physical development per time. If this is in focus while making decisions directly affecting a child, it will protect their rights a great deal.

ii. Right to Protection and Care Necessary for Well Being

Section 2 provides that 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, organizations or bodies legally responsible for the child. The above provision requires every person, institution, service, agency, organization and body responsible for the care or protection of children to compulsorily conform to appropriate standards provided in the area of safety, health and welfare.

The Courts, being one of the institutions charged with the responsibilities of protecting a child's care has relatively carried out this responsibility through the administration of juvenile justice in Nigeria. In *Okafor v Okafor*,¹³⁷ the Court protected the right to necessary care of a male child when custody was granted to the subject's father ignoring the mother simply because she had and refused to see the boy for a period of 6 years.

In *Lafun v Lafun*,¹³⁸ the Court granted custody of the subject to the father and refused to grant visitation and access to the subject's mother because she was morally bankrupt even though the Court had earlier held in *Williams v Williams*¹³⁹ that commission of adultery by one part does not disentitle him/her from custody.

In further discharge of the Court's duty to protect child's necessary care, the Court had in some cases awarded joint custody to both parents especially when the parents are both willing.¹⁴⁰ The grant of third party custody is another means through which Court protects a child's necessary care. While invoking the provisions of section 71(3) of the Matrimonial Causes Act,¹⁴¹ the Court in the case of *Nwuba v Nwuba* granted custody to the maternal grandmother of the subject.¹⁴²

iii. Application of Chapter IV of the 1999 Constitution

Section 3 of the Child's Right Act provides that the provisions of Chapter IV of the 1999 Constitution apply to the Child Right Act as if they are expressly stated. The fundamental rights are:

¹³⁷ (2000) 11 NWLR (pt. 677) 21.

¹³⁸ (1967) NMLR 401.

¹³⁹ (1966) 1 All NWLR 36.

¹⁴⁰ *Ibid.*

¹⁴¹ Cap. M7 LFN 2004.

¹⁴² Section 7(3) where both parents are unfit, disinterested or unavailable, the Court may grant custody to a third party, in the best interest of the child.

Right to life,¹⁴³ Right to dignity of human person,¹⁴⁴ Right to personal liberty,¹⁴⁵ Right to fair hearing,¹⁴⁶ Right to private and family life,¹⁴⁷ Right to freedom of thought, conscience and religion,¹⁴⁸ Right to freedom of expression section,¹⁴⁹ Right to peaceful assembly and association,¹⁵⁰ Right to freedom of movement,¹⁵¹ Right to freedom from discrimination,¹⁵² Right to acquire and own immovable property anywhere in Nigeria.¹⁵³ From the provision of section 3 of the Child's Right Act, all the rights provided for under the Chapter 4 of the 1999 Constitution are to be enjoyed by every Nigerian child.

iv. Right to Survival and Development

Section 4 provides that every child has a right to survival and development.

This right is to be protected by parents and Nigerian government. A mother after conception, which is the act of God, must give the child a right of survival. There have been several debates as to when a child or fetus sufficiently becomes human to have the right to life. Abortion supporters are of the view that a fetus is not human enough to acquire the right to life. Abortion opponents believe that the fetus is never anything other than human from conception, and therefore has a right to life from this time. I support this view. Every mother should desist from allowing the conception of a child if there are no visible resources or willingness to care for the child.

It is noteworthy that abortion is not legalized in Nigeria yet there are only few reported cases of persons convicted for aborting. Instead of a viral campaign against abortion, people are rather devising quack and horrible means of committing abortion. Even though there are circumstances that can be medically explained to have warranted an abortion, most abortions are self-inflicting without any medically justifiable reason for the act.

Millions of children have been denied their rights to survival by their mothers. After a cursory look at the Abortion Laws in Nigeria,¹⁵⁴ the researcher is of the view that the Nigerian government is willing to indeed give every Nigerian child the right of survival yet this dream is not fulfilled owing to the state of the nation. The abortion law in Nigeria expressly prohibits abortion in order to protect the child's right of survival. Be that as it may, many have been forced to keep unwanted pregnancies and developed hatred for the child right from the womb till birth. This explains why some dump their babies in the bush, some poison the babies deliberately, some sell their babies in order to escape the responsibility of nurturing the baby till maturity, some even stealthily abandon the babies in the hospital. The main reason for these evil acts is poverty. Many Nigerians are dying of hunger. Many families presently cannot feed well. The government has failed to provide food security for its citizens.

¹⁴³ Section 33, 1999 Constitution.

¹⁴⁴ Section 34, *Ibid*.

¹⁴⁵ Section 35.

¹⁴⁶ Section 36.

¹⁴⁷ Section 37.

¹⁴⁸ Section 38.

¹⁴⁹ Section 39.

¹⁵⁰ Section 40.

¹⁵¹ Section 41.

¹⁵² Section 42.

¹⁵³ Section 43.

¹⁵⁴ Criminal Code Act CAP C38 LFN 2004, Section 230 Penal Code (Northern States) Federal Provisions Act CAP P3 LFN 2004.

What then is justification for the protection of a child's right of survival when there is no access to food, water, health and shelter? Of what importance is the protection of the child's right of survival when government has failed to provide the means for survival! Furthermore, the government who is jointly charged with the responsibility of protecting a child's right to survival and development has contributed to the violation of the right. This can be seen in the condition of the health care system in Nigeria.

Due to the decadence in the sector, many doctors, pharmacists and nurses have migrated to Europe for greener pastures. The state of health care in Nigeria has been worsened by physician shortage. Those who have not been caught up by the migration devote little time to the government hospitals and more time to their private owned hospital which run concurrently with their service with the government hospitals, patients are not given sufficient attention needed for survival. Some rural areas do not have access to health care hence the high rate of infant mortality, importation and manufacture of fake drugs is still a challenge in Nigeria even though (NAFDAC) National Agency for food and Drug Administration and Control is trying its best. Many children have been victims of fake drugs leading to their disabilities and death in extreme cases. In May 1999, the government created the National Health insurance scheme; the scheme encompasses Government employees, the organized private sector and the informal sector. Legislative wise, the scheme also covers children under five; permanently disabled persons and prison inmates. In 2004, the administration of Olusegun Obasanjo further gave more legislative powers to the scheme.¹⁵⁵

The truth is that only a few benefited from this programme and the issue at hand is that the government is not doing enough to ensure that every child's right of survival and development is protected. Of what value is the right to survival when there is no food on the table? Unemployment is another factor hampering the full protection of a child's right to survival and development in Nigeria.

v. Right of name and compulsory registration of birth

Section 5(1) and (2) provide:

- (1) Every child has the right to a name and, according, shall be given a name on his birth or on such other date as is dictation 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.

From the above every child is expected to be given a name after birth according to the applicable culture. The subsection 2 further provides that every child's birth must compulsorily be registered in accordance with the birth death compulsory registration) Act 1992. The reason for his provision is to have a data of all the children born in the country. It serves as the first legal acknowledgement of a child's existence and it is also fundamental to the realization of a member of rights and practical needs of children in Nigeria.

Through the compulsory birth registration, adequate provisions can be made for the number of children registered to be alive in a particular geographical location in respect of health care, access to immunization, enrolment in schools at their proper ages. It also helps to enforcing laws relating to

¹⁵⁵ F. Monye; An Appraisal of the National Health Insurance Scheme of Nigeria; Common Health Law Bulletin, 32:3, 415, 427.

Publication of the European Centre for Research Training and Development–UK
minimum age for employment to prevent child labour, detecting the class of children affected by an
epidermis, providing for children educational plans and infrastructure,¹⁵⁶ *et cetera*.

A functioning system of child birth registration ensures that the country has an up-to-date and reliable data base for planning for children's health and social services for the community. It is a clear fact that this provision is good enough for adequate planning for social health and educational welfare of Nigerian children. Why then have we not seen that desired effect? The truth is that many births go unregistered in Nigeria. Many rural areas do not even have the idea of anything called birth registration. These unregistered children are almost always from poor, marginalized or displaced families. Unregistered children in rural areas have fallen victim of being thrown away after birth where the mother is an underage, poor, or when the child is born with any kind of deformity.

The implementation mechanism of the birth registration is not effective enough in Nigeria particularly when parents often do not see the benefits of their own citizenship; they are discouraged from complying with birth registration because they are not sure of any accruing benefits.¹⁵⁷ Although child birth registration is free but families and communities must be aware of the registration exercise not only that, the registration Centre must be accessible to all and sundry.

vi. Right to Health and Health Services

This is another striking provision of the Child's Right Act. Article 13 provides that every child is entitled to enjoy the best attainable state of physical, mental and spiritual health. Also every Government, parent, guardian, institution, service, agency, organization or body responsible for the care of a child shall endeavor to provide for the child the best attainable state of health. This provision bestows heavy duty on Nigerian Government to give to every Nigerian child the best attainable health services. The Government shall take practical steps to achieve the following:

- a. Reduce infant and child mortality rate
- b. Provide necessary medical assistance and health care services to all children with emphasis on the development of primary health care.
- c. Provide adequate nutrition, safe drinking water
- d. Provide good hygiene and environment 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
- g. Support through technical and financial means the mobilization of national and local community resources in the development of primary health care for children.

Section 13(4)(5) & (6) provide that:

(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 immunization.

¹⁵⁶ UNICEF Fact Sheet: Birth Registration <<http://www.unicef.org/newsline/2003/03f>> accessed 12 July 2017.

¹⁵⁷ *Ibid*.

(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) a 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 immunized.

All these penalties and punishments are put in place in order to ensure compliance by parents. whereas, the question is: who penalizes or punishes the government for her inadequate response to the poor primary health service delivery in the rural areas? Who penalizes the government for not effectively tracking, monitoring and controlling disease outbreak in the rural areas? In many places in Nigeria, our hospitals especially primary health centre are far away from where people live and some are with expired drugs, dilapidated structures, corrugated roofs, covered with cobwebs and in many places, the health centers have become home for pests and domestic animals.

Even in some secondary health centre, there is no water and power supply. Patients, relatives will sometimes bring water from their homes in jerry cans and also bring mini-generators to the hospitals so that their relatives on admission can be given adequate monitor, attention and care needed for their treatment. This failure on the part of the government constitutes a violation of child's right to health and health services. The government's unresponsiveness has done a lot of havoc to the lives of Nigerian children. The decadence in the system too has caused an increase in the infant mortality rate. Although, there are good private hospitals with "state of the heart" equipment's but very few persons can afford to pay for their services. Conclusively, the provisions of the Child's Right Act are good enough to deal with the health challenges of Nigerian children; the ultimate challenge is that the government is not taking adequate steps in line with the provision of the Act to save Nigerian children from health hazards. If many steps are taken in the urban areas, little steps are taken to give effect to the law in the rural areas.

vii. Right to Free Compulsory and Universal Primary Education

Section 15 of the Child's Right Act provides that, 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.

Subsection (2) provides that every parent or guardian shall ensure that his child or ward attends and completes his primary school education and junior secondary education. Parents and guardians also have the responsibility and duty to send any child who has completed his basic education to a Secondary School or to a place where he can learn a trade.¹⁵⁸

The Act further provides that if a female child becomes pregnant before completing her education, she shall be given the opportunity, after delivery, to continue with her education if she has the ability to do

¹⁵⁸ Section 15(3)(4).

so.¹⁵⁹ There is penalty for any parent who acts in conflict of the law. Any parent who fails in the duty imposed on him by the law shall be liable at first instance to be reprimanded and ordered to undertake community service. At second conviction, he shall be liable to pay a fine of two thousand (₦2,000.00) naira only or imprisonment for a term not exceeding one month. Sometimes both the fine and imprisonment may be imposed on the convict. On subsequent conviction, the convict shall be compelled to pay a fine not exceeding five thousand naira or imprisonment for a term not exceeding two months or be convicted to both imprisonment and payment of fine.¹⁶⁰

these provisions are tangible enough to secure for every Nigerian child the basic primary education. It imposes on the government the duty to compulsorily make universal basic education freely available to every Nigerian child, irrespective of their tribe, sex, religion or origin, to the exclusion of the mentally disable persons.¹⁶¹

The law also imposes of the parents or guardians the duty to ensure that their children go to schools, failure of which they can be convicted by payment of fine or imprisonment or both as the case may be. The truth is that in Nigeria today, many indigent children are not enrolled in schools. Many parents have failed to ensure that their children have primary/basic education.

Ultimately, the governments have also failed to make education free to all. Parents are violating the child's right to education and government too violates more. Although, some states claim to be giving free education but the truth is that students still buy books, uniforms, pay some levies and one keeps wondering where the free education scheme lies. Some because it over stretches the Government and one wonders why the State can hold such a view after ratifying the Child's Right Act.¹⁶² There is a general problem of inadequate funding of schools by the government owing to failure of the Government to give the educational demand utmost priority. This is one of the factors that have led to the crash of the educational standard in the country. Against this back drop, people who value education will not even venture into enrolling their children in some public schools because of their poor standards and bad conditions. Also, good government teachers are frustrated out of the system for non-payment of their salaries by the government and the standard continually falling day by day such that nothing good is left of the so called free primary education scheme in some States. Multiple strike actions owing to non-payment of teachers' salaries keep pupils away from schools for several months. Many public schools are not accessible during the raining seasons. Some classes are without furniture or with dilapidated furniture due to leaking roofs and uncontrollable erosion. Many pupils have lost interest in going to school because the schools are not looking like where anyone would like to be. All these have contributed to the violation of children's right to free, compulsory and universal primary education.

viii. Right of Unborn Child to Protection against Harm

Section 17 provides that an unborn child may bring an action or 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. Where the father of an unborn child dies intestate, the unborn child is entitled,

¹⁵⁹ Section 15(5) The Child's Right Act.

¹⁶⁰ Section 15(6) *Ibid*.

¹⁶¹ Section 15(1) and Section 15(7) *Ibid*.

¹⁶² Austin Oyibode, Free Education not the Best for Nigeria – Delta Commissioner. <www.naija.com> accessed 28 February 2017.

if he was conceived during the lifetime of his father, to be considered in the distribution of the estate of the deceased father.

The law further provides that 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. Critically, the provisions are good in giving protection to Nigerian children both born and unborn. It must however be noted that there are no reported cases yet of a child's action for damages in line with the provisions of section 17(1). This provision seems to be alien to African mentality. Although, there are foreign matters of unborn babies instituted by commissioner for social services against mothers for committing fetal harm.

There are instances where infants tested positive to cocaine and died soon after birth, hence, the mother being charged with homicide. Some women have even been prosecuted for drinking alcohol or failing to follow a doctor's order to get bed rest or refrain from sexual intercourse during pregnancy. The majority of women prosecuted have been low-income women. This aspect of law enforcement of child protection is still grey and recondite to Nigerian juvenile justice or child protection generally. Therefore, there is need for awareness so that this rights can be explored by Nigerian children though the provisions seem to be foreign ideas and not indigenous at all.

ix. Contractual Rights of Children

The Child's Right Act not give to any Nigerian child more rights than a child is generally allowed to enjoy in law. Section 18 provides that except as provided in this section, no child is capable of entering into a contract. 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. This position is good and trite in law. However, when this provision is combined with the provisions of Section 3 of the same Act, then one will discover a contradiction.

Section 3 provides for the application of Chapter IV of the 1999 Constitution to the Child's Right Act as if same were expressly stated. Critically, Section 43 in the Chapter IV of the Constitution provides for the right to acquire and own immovable property anywhere in Nigeria. On the one hand, a child's right to acquire and own immovable property anywhere in Nigeria cannot be correctly and fully exercised without executing a contract of sale of land. On the other hand, Section 18 of the Child's Right Act provides that no child shall enter into any contract except a contract for necessary. Can a contract of sale of land by a child be a contract for necessary? The answer in NO. How then can a child's right to own immovable property anywhere in Nigeria be effectively protected? Besides, the work does not consider this right as relevantly protecting a Nigerian child from any form of abuse.

x. Prohibition of Child Marriage

This is one of the most striking provisions of the Child's Right Act. Section 21¹⁶³ provides that 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.

In Nigeria today, this provision has been enforced to a reasonable extent. No marriage registry can conduct the solemnization of any statutory marriage between persons under the age of 18 years. It is

¹⁶³ The Child's Right Act 2003.

however pertinent to know that this provision has been seriously challenged in Nigeria as a whole especially in Northern Nigeria. Two kinds of marriages are recognized in Nigeria. They are the statutory marriage and the traditional or Islamic marriage. While the Statutory marriage cannot contract a valid marriage between persons below 18, the traditional or Islamic marriage condones giving out of a girl child in marriage before attaining majority. It has been reported that Nigeria has one of the highest child marriage prevalence rates in the world. Nigeria is also reported to be the third country worldwide for highest number of child brides.¹⁶⁴ Thousands of girl children are given out in marriages before attaining age 18 while only a few have the opportunity of going to school especially in the Northern Nigeria. This explains the reason why the ratification of the Child's Right Act has been delayed in the Northern Nigeria. While the prohibition of marriage of children below 18 is protected in other part of the country; not so much effectiveness has been achieved in the North.

xi. Prohibition of Child Betrothal

Section 22 prohibits child betrothal. No parent or guardian is permitted to betroth a child to any person. Such betrothal is null and void. Section 23 imposes punishment on any one in conflict of this law.

xii. Prohibition of Tattoos and Skin Marks.¹⁶⁵

The Act prohibit making of tattoos and skin marks on a child. Anyone who does commits an offence 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.

The truth is that this provision contradicts some Nigerian indigenous practices and so, it has not gained popularity and acceptance by the communities who consider tattoo and mark making to be an important traditional practices which gives a child its identity with the other members of his family and lineage. While considering the prohibition as an evil and an attempt to cut a child off from his lineage and origin, enforcement of the provision of the Act in rural areas becomes so tough. Children without their native marks are seen and treated as strangers hence; they suffer stigmatization, discrimination, humiliation and total loss of identity. Therefore, every parent and child will rather die to have the native marks at all cost and in full exercise of child's right to leisure, recreation and cultural activities¹⁶⁶ than to report same as an abuse of right. the case is different in the urban areas, while parents are in full support of the prohibition of tattoo and skin marking in order to protect children from the pains and abuse involved, urban children voluntarily go in search of fashion tattoos and skin marks in full exercise of their freedom of thought, conscience and religion.¹⁶⁷ Where and how then can there be a balance? Even though, the Act attached punishment to the criminal act, not much change has generally been positively affected. More critically, if the skin marking includes the circumcision of a boy child, will the provisions of section 24 be ever actualized in Nigeria?

xiii. Prohibition of Exploitative Labour

Section 28 provides that no child shall be subjected to any forced or exploitative labour. No child shall be 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. No child in any case, shall be required to

¹⁶⁴ *Child Marriage in Northern Nigeria* by Mohammed Ibrahim, August, 20 2016
<<https://nigerianreporter.com/2016/08/20>> accessed 7July, 2017.

¹⁶⁵ Section 24 Child's Right Act.

¹⁶⁶ Section 12 Child's Right Act.

¹⁶⁷ Section 7, *Ibid*.

carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development, also no child shall be employed as a domestic help outside his own home or family environment.

The Act further provides that such work do not include work done by children in technical schools or other approved institutions if the work is supervised by appropriate authority. Its contravention attracts the fine not exceeding fifty thousand naira or imprisonment for a term of five years or to both such fine and imprisonment. In order to allow for the effective implementation of this provision, some relevant sections in the Labour Act now apply¹⁶⁸ by virtue of the provisions of section 29, Child's Right Act. Well, the adoption of the Child's Right Act has not done any magic to child labour in Nigeria. In most poverty stricken communities, it is a must for children to hawk for their parents in order to support the family financially. Lagos State is working seriously to get children off the streets. The present economic state of the nation has not made it easy for poor parents to get their children off the various exploitative labours they are engaged in. Dele Akanmi, a Consultant Engineer said;

...the joy and expectations that greeted the passage of the Child's Right Law has begun to fizzle out as the fate of children has not notably changed since it was passed.

He said he also wondered whether the Child's Right Law was working since the protection it was supposed to provide for children was obviously lacking. Therefore, more grounds are yet to be covered¹⁶⁹ in the area of child labour.

xiv. Prohibition of Unlawful Sexual Intercourse with a Child

Section 31 expressly prohibits any form of sexual intercourse with a child. Section 33 prohibits other forms of exploitations which covers any manner of sexual abuse not expressly mentioned in the Act. That a child gave her consent or that the offender believed the child was above the age of 18 years cannot be a defense. The punishment for rape is life imprisonment.¹⁷⁰ Other forms of sexual abuse and exploitations attract a conviction to imprisonment for a term of fourteen years.¹⁷¹ Other child exploitations other than sexual abuse attract a fine of five hundred thousand naira or imprisonment to a term of five years, or to both such fine and imprisonment.¹⁷²

The above provisions have been upheld by Nigerian Courts over the years but the fear of the wrath of the law poverty has however made many parents to sexual abuse victims to agree to withdrawing sexual charges against the accused after receiving some money from the accused. Another factor that has hindered the full implementation of this provision in Nigeria is the constant readiness of judicial officers to decongest the over populated prisons and the Courts. Hence, one there is an application for withdrawal of a charge owing to monetary settlement by the accused family, the Court will confirm the position from the victim's family and gladly strike out the matter out of the cause list after cautioning the accused. Victim's poor parents need the huge money so direly such that they fail to consider the victim's trauma.

¹⁶⁸ Section 58, 59, 60, 61, and 63; Labour Act 2004.

¹⁶⁹ Isaac Taiwo *et al*; METRO NEWS Thursday, 27 October 2011.

¹⁷⁰ Section 31(2) Child's Right Act.

¹⁷¹ *Ibid*, Section 32(2).

¹⁷² *Ibid*, Section 33(2).

As a matter of fact, Court's refusal to grant charge withdrawal makes victim's parents to see the Court as a clog to their enrichment. It is therefore necessary at this point for the Government to look into the prisons services so that a criminal who does not deserve to enjoy freedom is not let out to endanger children's lives due to inadequate prison facilities, poor prisons and Court cases management.

xv. Prohibition of Recruitment of Children into the Armed Forces

By virtue of section 34 of the Child's Right Act, no child shall be recruitment into the armed forces of the Federal Republic of Nigeria. by virtue of subsection 2, no child shall be directly involved in any military operation or hostilities. These provisions invariably condemn the activities of the Boko Haram in Nigeria. this provision has not been effectively implemented in Nigeria. Although, no child is allowed to be recruited into the military, however there are thousands of children that are recruited into hostilities operations of the Boko Haram. It was recently reported in the Vanguard News that over 2000 children were recruited by the Boko Haram in Nigeria to be used as child soldiers to perpetuate all sort of insurgency in the nation¹⁷³ which has made many, especially women and children to suffer violence and abuse since its emergence in 2009.

The response of the government to the fight against the insurgency is not adequate. Although, there is the challenge of internal sabotage but it is trite that drastic steps must be taken in order to stop the menace. This is very pertinent because the recruitment of children in the perpetuation of the insurgency calls for a concern. What becomes of the future of the children? The children are out rightly denied the right to education, dignity, survival and development. In essence, government's inability to curb the menace is nothing but a violation of children's rights. There is indeed a need for a rescue!

The following are the *lacunae* of the Child's Right act.

i. The Provisions of Section 3 of the Act

Section 3 provides that the provisions of the Chapter 4 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 the Child's Right Act. It means that all the rights provided for in chapter 4 of the constitution are also to be enjoyed by every Nigerian child. It must however be noted that section 42 of the Constitution which guarantees the right to own immovable property anywhere in Nigeria cannot apply to a child.

In contradiction, section 18 of the same Child's Right Act prohibits a child from entering into contracts except contract for necessities. It is trite that there cannot be a valid purchase of immovable property (land) without a contract of sale of land. Contract of sale of land is NOT a contract for necessities. These two provisions have created a contradiction which must be resolved for the effectiveness of the Act. Section 18 should have expressly mentioned the relevant sections instead of generally providing for the application of the entire chapter 4.

ii. Imprisonment for Non-Compliance with Child Immunization

The provisions of section 13(5) and (6) of the Act imposes punishment of fine, imprisonment and an order compelling child immunization as the case may be on parents, guardians or persons having custody of a child under the age of two years who fail to ensure that the child is provided with full immunization. This work opines that committing a defaulting parent or guardian to imprisonment for

¹⁷³ UN Children's Fund (UNICEF) report. Vanguard, 21 February 2017.

a term not exceeding one month is excessive, especially where the section failed to expressly provide for the welfare of the infant while his parents or guardians are serving the jail term. Imposition of fine and a compelling order to get the child immunized will suffice.

Children and Young Person's Act

The CYPA is the most significant legislation in Nigeria governing treatment of juvenile offenders and most States have enacted their own laws on this subject with similar provisions as those contained in the Federal Act. The following are the landmark provisions of the Act.

Generally, the Children and Young Persons Act, hereinafter referred to as (CYPA) prohibits the imprisonment of a child if he can be dealt with in any other way which includes committal to a place of detention or to an approved institution. This is otherwise known as the principle of Diversion.¹⁷⁴ It promotes the removal of the juvenile from the criminal justice system and redirecting him to community support services. Its aim is to avoid the negative consequences of legal proceedings in the juvenile system like stigmatization. It promotes the use of non-custodial sentences, which are far more likely to lead to rehabilitation of the child offender. Other alternatives to imprisonment include counseling, victims' separation programs and guidance, supervision orders to foster care, probation, *et cetera*.

Adoption of the principle of diversion is working in South Africa as the juvenile justice process combines International standard with traditional methods of conflict resolution as a form of diversion. Under the CYPA, Diversion is provided for at the pretrial level so as to avoid the process of formal proceedings in court. It is provided for as a means of disposition of cases after determination of guilt and as an alternative to confinement.

The Act is not without *lacunae*. The truth is that the provisions of the CYPA still fall below International standards which promotes reformation, reintegration, and rehabilitation. The CYPA does not make provision for separate juvenile process for children who run in conflict of the law and those in need of care and protection thus exposing them to contamination by adult criminals. Under the CYPA, the juvenile courts have no jurisdiction over capital offences so that such children are tried in adult Courts. In this circumstance there is the likelihood of the child's right of special treatment at trial to be largely jeopardized.

Criminal Code and Penal Code

The Criminal Code Act is applicable in the southern States of Nigeria while the Penal Code is applicable in the Northern States of Nigeria. the following are the landmark provisions of laws:

i. Protection from Rape

Section 357 of the Criminal Code defines rape as an unlawful carnal knowledge of a woman or girl without her consent or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or in the case of a married woman, by impersonating her husband. Any person who commits the offence of rape is liable to imprisonment for life, with or without caning.¹⁷⁵ An

¹⁷⁴ H.C. Okoro, *Juvenile Justice Administration in Nigeria and International Standards on the Rights of a Child* in Issues in Justice Administration in Nigeria; VDG International Limited: (2008), 339.

¹⁷⁵ Section 358, Criminal Code.

attempt to commit an offence of rape attracts the punishment of 14 years with or without caning.¹⁷⁶ It is immaterial that the offender believes the victim was of age 16 or above. It is also immaterial that the girl victim was taken with her own consent or her suggestion.¹⁷⁷ However, by virtue of section 222,¹⁷⁸ the proof that the accused person believed on reasonable ground that the girl victim was of or above age of sixteen years is a defence for the offence of indecent treatment of girls.

ii. Protection from Desertion

The criminal Code provides that any person who being either a parent or guardian or any person who has a lawful care or charge of a child under age 12, and unable to maintain such a child willfully and without means of support, is guilty of a misdemeanor and shall be liable to one year imprisonment.¹⁷⁹

iii. Recognition and Protection of a Child upon Becoming a Human being

The criminal code provides that a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.¹⁸⁰ In other words, the law only recognizes a child to have become a human being and capable of being killed when it has completely proceeded from the body of its mother.

It must however be noted that whoever does any act or omitted to do an act before or during the birth of a child which consequently caused the death of the child is deemed to have killed the child.¹⁸¹ Such unlawful killing constitutes a felony which attracts a punishment of life imprisonment.¹⁸²

iv. Duty to Provide Necessary Care, Education, Training and Protection for a Child and other dependents

The law imposes duty on a head of a family to provide necessities of life for children under the age of 14 years being members of his house hold.

The Penal Code has a similar provision in section 238.¹⁸³ The following are the *lacunae* of the law:

i. Rape on a Male

looking through the provisions of the Criminal Code and the Penal Code, it is a well-known fact that rape cannot be committed on a male either by another male or a female. The reality today is that males too can be raped. Silence and lack of recognition of the offence by our ancient laws has made the menace unpopular in Nigeria. male victims have suffered emotionally with no hope of remedy or succor. Be that as it may, this position has however been altered by the advent of Violence Against Persons (Prohibition) Act 2015 (VAP 2015). This Act only brought hope and solace to males in Abuja and not to all males in other parts of Nigeria. Until the VAP 2015 applies in all Nigerian States, male

¹⁷⁶ *Ibid* section 359.

¹⁷⁷ *Ibid* section 363.

¹⁷⁸ Criminal Code.

¹⁷⁹ *Ibid* section 372.

¹⁸⁰ *Ibid* section 307.

¹⁸¹ *Ibid* section 309.

¹⁸² *Ibid* section 320.

¹⁸³ Section 300, 301 and 302, Criminal Code.

Publication of the European Centre for Research Training and Development–UK
rape victims will continue to be molested without any hope for redress since the offence of rape on male is alien to our ancient Criminal and Penal codes.

ii. Section 221 Makes Conviction on Rape too onerous
by virtue of section 221 of the Criminal Code, an accused cannot be convicted of rape of a girl above 13 years and under 16 years of age upon the uncorroborated evidence of one witness. This position has made the proof of rape very difficult. However, no such requirement is required to prove male related offences. The provisions of section 221 is discriminatory and no longer a good law.

CONCLUSION

Summary

Child abuse has over time been a social problem which has put Nigeria and other nations of the world on a rampage. Many children especially girls in the rural communities have suffered a lot of deprivation, mental illness, physical illness, loss of dignity, trauma and loss of life due to physical abuse, emotional abuse, sexual abuse or neglect as the case may be. Poverty, political instability, lack of failure of mother-child bonding, low socio-economic status, low self-esteem, unemployment, lack of education, aggression, cultural legitimacy, defective character structure, weak implementation of the existing laws, *et cetera* have been found to be some of the factors causing child abuse and its persistence in our society.

This work in its chapter two discussed dimensions of child abuse prevalent in Nigeria today, ranging from physical abuse, to emotional abuse, to sexual abuse:

This work further examined in its chapter three some international child protection instruments to which Nigeria is a signatory, bringing out their landmark provisions so also their *lacunae* which probably may have caused their ineffectiveness in curbing child abuse in Nigeria.

Chapter four of this work x-rayed the Child's Rights Act, the Children and Young Persons Act, The Criminal Code and The Penal Code, bringing out their landmark provisions as well as the *lacunae* causing their ineffectiveness in Nigeria.

Chapter five vehemently canvassed that new laws are not needed to be adopted or enacted to eradicate child abuse in Nigeria. Rather, the provisions of the existing laws are good enough if amended to suit modern day realities and effectively enforced by the appropriate authorities using the required mechanisms to combat child abuse in Nigeria.

Findings

Nigeria is a signatory to about 268 Treaties, Protocols and International Instruments. The provisions of the laws have over the years been combined to enact the Child's Right Act putting into consideration the relevant child protection laws both local and international in order to combat and conquer child abuse in Nigeria. Despite the combinations and the enactment of these laws, child abuse has not reduced. Rather, it increases the menace in Nigeria. After examining the various laws protecting children from abuse, the findings are:

- i. The study found that child abuse is more prevalent in the rural areas.
- ii. Low level of Government's commitment to the provision of good schools, health care services, free education for the physically challenged and other social amenities constitute an abuse of every deprived Nigeria child especially those in the rural areas.
- iii. The provisions of the Child's Right Act are adequate to curb child abuse in Nigeria if effectively implemented.
- iv. The non-enforceability of the provisions of the Chapter Two of the Nigerian Constitution is a clog to the effective enforcement of some provisions of child protection laws, regional and international instruments to which Nigeria is signatory.
- v. The non-enforceability of the provisions of Chapter Two of the Nigeria Constitution 1999 as amended amounts to an abuse and gross violation of the rights of deprived Nigeria children by the Government.

Recommendations

After a thorough look at many of the laws protecting children from all forms of abuse in Nigeria, the following under mentioned are hereby recommended towards actualizing a child abuse free society:

- i. Since child abuse is more prevalent in the rural areas, Government at all level should provide social infrastructure that will help to develop the children in the rural areas.
- ii. Amendment of section 31(2) of the Child's Right Act is inevitable. The strict life punishment under this section has made it implementable.
- iii. Compulsory implementation of free Education Policy in the rural and urban Nigeria will help to reduce the incidences of child abuse.
- iv. Enforcement of the provision of Chapter Two of the constitution will greatly reduce the cases of child abuse.
- v. Amendment of the provisions of section 17 of the Child's Right Act to reflect the true legal position suitable for present day Nigeria.

Section 17 provides that a child may bring action for damages against a person for harm done or injury caused to the child willfully, recklessly, negligently, or through neglect before, during or after the birth of that child.

Contributions to Knowledge

This study has contributed to knowledge in the following ways:

- i. The study has shown that the *lacunae* in both national and international instruments have been responsible for their ineffectiveness in implementation.
- ii. The study has further shown that lack of education on the part of child care givers accounts for child abuse.
- iii. The study has revealed that non-enforcement of the provisions of chapter two of the Nigeria constitution is an impediment to the fight against child abuse.

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