

A LEGAL EXAMINATION OF PARENTAL RESPONSIBILITIES VIS-A-VIS THE VIOLATIONS OF CHILDREN'S RIGHTS IN NIGERIA

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Abstract

This paper seeks to examine the existing legal framework for parental responsibility as it relates to the rights of children in Nigeria and how the performance or non-performance of parental responsibilities can affect the rights of children in Nigeria. The various existing national legal framework in this regard such as the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Child Rights Act 2003, amongst others were examined to ascertain if they compel parents to carry out their parental duties to their children as to protect children's rights in Nigeria. The paper identified that there are about 20 Million out of school children in Nigeria and the population of street children in Nigeria is on the increase. The doctrinal research methodology was adopted and the paper finds that despite the avalanche of laws to protect children, some children in Nigeria do not enjoy these protections because those saddled with the responsibilities of carrying out those duties only do so on a moral bases and not as a requirement of law thereby leaving a slack in the protection of children's rights in Nigeria. The paper recommends amongst others the enactment of a parental responsibility law under which parents are obliged as a matter of statute to carry out, observe and enforce the rights of their children.

1.0 Introduction

This paper takes a look at the Nigerian legal system as it relates to parental responsibilities and the rights of children in Nigeria and how failure to carry out parental responsibilities can affect the rights of children generally. At present, the Constitution¹ of Nigeria is the Supreme² law of the country and the general framework within which human rights are protected is enshrined in the Constitution. The Constitution specifies some bill of rights in Chapter IV³ while Chapter II houses some fundamental objectives and directive principles of the Nigerian State⁴ which in this instance also touches on the welfare of children.

The primary place of raising children is the family and the family holds the greatest prospective for protecting children's right from all forms of violence and also empower children to protect

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) CAP C 23 Laws of the Federation (LFN) 2004.

² *Ibid* s1.

³ *Ibid* ss33-44.

⁴ *Ibid* ss13-24.

themselves. However, families can also be an unsafe place for children through violence against children by parents and other close family members through physical, sexual and psychological violence, as well as deliberate neglect⁵ and the failure to carry out other legal parental responsibilities by parents.

In order to attain this goal of child rights protection those saddled with the responsibilities of taking care of children must ensure that the rights of those children under their care are protected by carrying out those legitimate duties owed to the child. This is in view of the fact that rights and responsibilities are like Siamese twins,⁶ which cannot be fully separated from one another as the absence of one will hinder the functionality of the other. Accordingly, for one to enjoy rights another has to be responsible for the realization of those rights.

Abused, maltreated and neglected some children become stunted emotionally and physically, and lack the confidence to face life. They are therefore deprived of the opportunity to develop their full potentials.⁷ Generally, children lack the physical, emotional and mental maturity required to face life and therefore, ought to be protected at all times⁸ because without children today there will be no society of humans' tomorrow. Yet they are the most vulnerable members of the society.⁹

Consequently, they require special safeguards, care and protection, being that they depend on parents or those in *loco parentis*, to survive and succeed in life.¹⁰ On this account, parental responsibility over a child is considered as an indispensable tool to the full realization of child rights¹¹ and potentials. This is particularly because every child deserves a meaningful life which starts with adequate care by the parents.¹²

Child protection is necessitated by the significant role respect for rights plays in human development. Hence, this paper examines the Child Rights Act 2003 of Nigeria and other relevant legislations as it relates to parental responsibilities and the rights of children.

⁵ L Thakur, 'Torture and Violence on Children by Parents' <<https://indianlegalsolution.com/torture-and-violence-on-children-by-parents/>> accessed 18 October 2022.

⁶ Mayo Clinic, Conjoined Twins,< <https://www.mayoclinic.org/diseases-conditions/conjoined-twins/symptoms-causes/syc-20353910>> accessed 8 September 2022.

⁷ O Alabi, 'The Child Rights Act: The Rights, the Benefits' < <https://passnownow.com/the-child-rights-act-the-rights-the-benefits/>> accessed 8 September 2022.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ L A Oti-Onyema, 'Parental Responsibility Over Child's Health: Dispensing with Court Proceedings In Emergency Situations' [2020] (11) (1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*; 170.

¹¹ *Ibid.*

¹² H A Arikewuyo and K A Babatunde, 'Effects of Inadequate Parenting on Education of Nigerian Northern Children' [2020] (10) (4) *International Journal of Academic Research in Business and Social Sciences*; 163 – 171.

United Nations Educational, Scientific and Cultural Organisation (UNESCO) estimated that there are about 20 Million out of school children in Nigeria¹³ and a continuous rise in this number will jeopardise the Sustainable Development Goal 4 (SDG4) Agenda for Sustainable Development 2030.¹⁴ The incidents of abandoned street children by irresponsible parents who throw their kids unto the streets and disappear is on the rise¹⁵ with primary and secondary school dropouts joining the group.¹⁶ This calls for deliberate policy framework by the government and its social welfare agencies.¹⁷

It is estimated that there are over 100,000 street children in Lagos Nigeria and 1.5 million in the North East with another 3 million unable to go to school.¹⁸ Thereby encountering different forms of abuse including sexual assaults, intimidation, molestation and child labour, while others fall into the hands of ritualists.¹⁹ Children are found on the streets taking refuge or retire for the day at abandoned building,²⁰ school premises,²¹ under the bridges,²² in market places,²³ in uncompleted or unoccupied buildings,²⁴ and buildings under construction.

A greater number of these children survive by mere luck when they become ill as they lack the resources to see a doctor or buy themselves medicine.²⁵ Some of these children have become hardened and notorious criminals because they were abandoned when they should be under the guide and training of parents to become better persons.²⁶ These street children are more likely to get into trouble with the law and commit violent crimes and be victimized.²⁷

Another anomaly that confronts female children is female genital mutilation (FMG) as it is estimated that globally about 68 million girls were estimated to be at risk of FMG between

¹³ M Alabi, 'UPDATED: Nigeria now has 20 million out-of-school children – UNESCO' *Premium Times* (September 1 2022) <<https://www.premiumtimesng.com/news/headlines/551804-breaking-nigeria-now-has-20-million-out-of-school-children-unesco.html>> accessed 10 October 2022.

¹⁴ Global Campaign for Education, 'SDG 4 and Targets' <https://campaignforeducation.org/en/key-frameworks/sdg-4-andtargets?gclid=CjwKCAjwv4SaBhBPEiwA9YzZvMRmvfXFEI8MMHCJn6OADsstKqmhmcW7bhtmS1nCmrJDSwJ1_cpfBoCyToQAvD_BwE> accessed 9 September 2022.

¹⁵ L Onyekakeyah, 'Rising cases of abandoned street children' *The Guardian* (January 19 2021) <<https://guardian.ng/opinion/rising-cases-of-abandoned-street-children/>> accessed 10 October 2022.

¹⁶ T A Todo, 'Worries Over Growing Population of Street Children in Cross River' *The Guardian* (June 30 2022) <<https://guardian.ng/news/worries-over-growing-population-of-street-children-in-cross-river/>> accessed 10 October 2022.

¹⁷ Onyekakeyah, (n15).

¹⁸ GlobalGiving, 'Save Street Children in Nigeria' <<https://www.globalgiving.org/projects/save-street-children-in-nigeria/>> accessed 10 October 2022.

¹⁹ Todo (n16)

²⁰ C Gabriel, 'Sorry Tales of Nigerian Kids Living on the Streets' *Vanguard* (June 8 2013) <<https://www.vanguardngr.com/2013/06/sorry-tales-of-nigerias-kids-living-on-the-streets/>> accessed 10 October 2022.

²¹ *Ibid.*

²² *Ibid.*

²³ C U Ndulor, 'Street Children Phenomenon: Implication for Nigeria Society' [2022] (2) (1) *SIST Journal of Religion and Humanities*; 48.

²⁴ *Ibid.*, 44.

²⁵ Todo, (n16).

²⁶ Arikewuyo and Babatunde (n12) 167.

²⁷ Ndulor (n23) 45.

2015 and 2030.²⁸ Across Nigeria, disparities in the practice exist. State prevalence ranges from 62 per cent in Imo to less than 1 per cent in Adamawa and Gombe. The Federal Government of Nigeria disclosed that over 2 million Nigerian girls were at risk of FMG after the Ministry of Health rescued over 3,700 girls from passing through the practice in Imo, Ebony, Ekiti, Oyo and Osun States of Nigeria.²⁹

This aligns with the report by UNICEF in February 2022 that there is a rise in FMG among Nigerian girls between the ages of 0-14 years with about 19.9 million survivors³⁰ and that Nigeria accounts for the third highest number of women and girls who have undergone FGM worldwide.³¹ Parents play a major role in decision making for FGM. Many parents decide to circumcise their daughters because of the main purpose of sustaining culture and practicing archaic traditions.³² The Centre for Women Studies and Intervention indicated that parents are the ones responsible for this practice and, "most cases," mothers themselves ask "traditional birth attendants" to perform FGM on their daughters³³ and this should be addressed with an enhanced legislative measure amongst other solutions to deter parents from this barbaric practice.

The problems associated with custody and maintenance of children also affects the rights of children if not properly handled. In *Alabi v Alabi*³⁴ it was held that the custody of a child does not only mean the control of a child, but carries with it the concomitant implication of the preservation and adequate care of the child's well-being which includes the child's physical, mental and moral well-being. This responsibility includes his or her needs in terms of food, shelter, clothing which are all fundamental in a child's life.

Another challenge encountered by children in Nigeria is that the rate of child marriages is still high despite the age limit of 18 years stipulated in the Child's Rights Act.³⁵ States with Islamic legal systems have also failed to adopt both the federal law and 18 as the age of majority for marriage. Going by the Statistics of the Nigerian Demographic and Health Survey (NDHS) it

²⁸ UNICEF Nigeria, 'UNICEF Warns FGM on the Rise Among Young Nigerian Girls' <[²⁹ J Erunke, 'Over 2m Nigerian Girls at Risk of Genital Mutilation, Says FG', *Vanguard* \(June 22 2022\) <<https://www.vanguardngr.com/2022/06/over-2m-nigerian-girls-at-risk-of-genital-mutilation-says-fg/>> accessed 10 October 2022.](https://www.unicef.org/nigeria/press-releases/unicef-warns-fgm-rise-among-young-nigerian-girls#:~:text=Abuja%2C%20February%202022%20%E2%80%93%20UNICEF,FGM)%20remains%20widespread%20in%20Nigeria.> accessed 10 October 2022.</p></div><div data-bbox=)

³⁰ UNICEF (n28).

³¹ This Day, 'Female Genital Mutilation on the Rise in Nigeria, UNICEF Warns' <https://www.thisdaylive.com/index.php/2022/02/07/female-genital-mutilation-on-the-rise-in-nigeria-unicef-warns/> accessed 10 October 2022.

³² B Oladunjoye, 'How Parents Inflict Pains on their Daughters in the Name of FGM' *The Cable* (February 6 2019) <<https://www.thecable.ng/how-parents-inflict-pain-on-the-girl-child-in-the-name-of-fgm>> accessed 10 October 2022.

³³ Canada: Immigration and Refugee Board of Canada, 'Nigeria: Whether Parents can Refuse Female Genital Mutilation for Their Daughters; Protection Available to the Child' [21 November 2022] <https://www.refworld.org/docid/50c84b9c2.html> accessed 10 October 2022.

³⁴ [2008] All FWLR pt 418 296

³⁵ CAP C50 Laws of the Federation (LFN) 2004, s277.

was reported that 58.2 percent of Nigerian girls get married before they reach the age of 18.³⁶ The practice of child marriage infringes on the rights of these children as regards their fundamental rights to education, a safe dwelling, and freedom from violence, and they often do not have access to adequate health care.³⁷

The issue of child labour in Nigeria is also key to this study as about 14 million children aged 5–14 years are still engaged in child labour.³⁸ The Wife of the President Aisha Buhari in speech delivered in commemoration of the 2022 World Day against Child Labour acknowledged that child labour is a major threat to child development in Nigeria.³⁹ Nigeria has also been named as a source destination country when it comes to human trafficking.⁴⁰

2.0 National Legal Framework of Parental Responsibilities in Nigeria

This section will commence by examining the national legal framework for the protection of child's rights through parental responsibilities carried out by parents in Nigeria such as the Constitution, Child's Right Act, Violence Against Persons Prohibition Act and other relevant national laws.

2.1 Constitution of the Federal Republic of Nigeria (CFRN) 1999

The principal framework of human rights protection in Nigeria CFRN wherein Chapter IV guarantees the following rights: Right to life,⁴¹ this is a very important right which entails that every child has to exist.

Right to dignity of human person, prohibition of torture or inhumane and degrading treatment, prohibition of slavery or servitude and prohibition of forced or compulsory labour.⁴² Every Nigerian citizen which includes children deserves a right not to be exposed to inhuman treatment, torture and slavery. That is to say a child should not carry out forced or compulsory labour.

³⁶ S Ogunlowo, Nigeria to have 29 million child brides by 2050 — Official, *Premium Times* (May 29 2022) <<https://www.premiumtimesng.com/news/top-news/533356-nigeria-to-have-29-million-child-brides-by-2050-official.html>> accessed 10 October 2022.

³⁷ Human Rights Watch, 'Nigeria: Child Marriage Violates Girls' Rights' (January 17 2022) <<https://www.hrw.org/news/2022/01/17/nigeria-child-marriage-violates-girls-rights#:~:text=girls%20and%20women.-,Nigeria's%20rates%20of%20child%20marriage%20are%20some%20of%20the%20highest,on%20women%20throughout%20their%20lives.>>> accessed 10 October 2022.

³⁸ *Ibid.*

³⁹ UNICEF, 'Situation Analysis of Children in Nigeria: Ensuring Equitable and Sustainable Realization of Child Rights in Nigeria' <<https://www.unicef.org/nigeria/media/5861/file/Situation%20Analysis%20of%20Children%20in%20Nigeria%20.pdf>> accessed 10 October 2022.

⁴⁰ O Ezigbo, 'Nigeria Witnessing Rising Cases of Child Labour, Say Aisha Buhari, Ngige' *This Day* (September 21 2022).

⁴¹ PathFinders Justice Initiative, 'Nigeria: Human Trafficking Factsheet' < [https://pathfindersji.org/nigeria-human-trafficking-factsheet/#:~:text=See%202022%20U.S.%20State%20Department,28%2C538%20in%202020\)%20were%20identified.>](https://pathfindersji.org/nigeria-human-trafficking-factsheet/#:~:text=See%202022%20U.S.%20State%20Department,28%2C538%20in%202020)%20were%20identified.>) accessed 11 October 2022.

⁴² CFRN (n1), s33.

⁴³ *Ibid* s35.

Right to personal liberty,⁴³ is a right to individual liberty which entails that no one should be dispossessed of their right to liberty or freedom and children have right to personal liberty and must be protected.

Right to a fair hearing,⁴⁴ guarantees that a Court or Tribunal has a duty to give persons who appear before the Court fair hearing within a reasonable time and the Court has to be constituted in such a way that its independence and neutrality will be secured. This section of the Constitution guarantees children the right to fair hearing.

Right to privacy,⁴⁵ guarantees the protection of every citizen privacy, their homes, conversation and communications. Children have the right to privacy both at home and in every of there doing however this is subject to supervision to protect them from harm. Freedom of thought, conscience and religion,⁴⁶ this is the right of a citizen to worship or belief. It also gives right to people to change their religion or belief. A child has the right to worship or belief and there shall be no cause for alarm or denial. However, this is subject to parental guidance until the child comes of age because they are deemed as lacking full legal competence to act on their own.⁴⁷ However, this right must be exercised to protect the right of a child. For instance, a parent cannot withhold or refuse medical treatment for a child on religious grounds as was decided in the case of *Esabunor & Anor. v. Faweya & Ors.*⁴⁸

Freedom of expression,⁴⁹ all citizens are entitled to freedom of expression, freedom to hold opinions, to receive, divulge ideas and information devoid of intrusion. The opinion of children child should count and their voices must be heard and not be neglected.

Freedom of assembly and association with other persons⁵⁰ entails that every Nigerian has a right to assemble freely and associate with people. A child has the right to assemble with others and also associate freely. Right to freedom of movement⁵¹ provides that a Nigerian poses the right to move from place to place through Nigeria and can live anywhere. No Nigerian shall be expelled, refused or exited from Nigeria. This follows that children have the right to move from one place to another and this may be with family or guardian but not to be trafficked.

Prohibition of discrimination,⁵² the constitution prohibits citizens is to be exposed to any disability or restriction on the grounds that you are from a certain community, ethnic group,

⁴³ *Ibid*, s34.

⁴⁴ *Ibid* s36.

⁴⁵ *Ibid* s37.

⁴⁶ *Ibid* s38.

⁴⁷ D T Eyongndi, 'Protecting and Balancing Rights of a Child and Adherence to Religious Beliefs of Parents in Nigeria' [2019] *University of Botswana Law Journal*; 71.

⁴⁸ [2019] LPELR 46961.

⁴⁹ CFRN (n1) s39.

⁵⁰ *Ibid* s40.

⁵¹ *Ibid* s41.

⁵² *Ibid* s42.

sex or religion. Often times the girl child encounter some kind of discrimination on the basis of the sex, but this section protects and promotes the right of the girl child against discrimination. Even though the Constitution does not make any distinction between the rights of adults and children, as Nigerian citizens they are expected to be able to enjoy these rights.⁵³

Chapter II of the Constitution outlines the State's duties in respect of certain social economic rights: the State to direct its policies towards ensuring that: There are adequate medical and health facilities for all persons; Children and young persons are protected against any exploitation whatsoever, and against moral and material neglect; and encourages the evolution and promotion of family life. Under section 17, the State social order is to be founded on freedom, equality and justice and the State shall direct its policy towards ensuring that: all citizens without discrimination on any ground whatsoever have opportunity for securing adequate means of employment; conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life; the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused; there are adequate medical health facilities for all persons; there is equal pay for all work without discrimination on account of sex, or any other ground whatsoever; Children and young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect.⁵⁴

The constitution further requires the State to direct its policies towards ensuring that: there are equal and adequate educational opportunities at all levels; Illiteracy is eradicated; where practicable, free, compulsory and universal primary, secondary and university education is provided; and where practicable, adult literacy programmes are also provided.⁵⁵ The huge problem associated with the realisation of the provisions of Chapter two of the Constitution is that its provisions are non-justiciable.⁵⁶ However, all arms and tiers of government are to observe the fundamental objectives relating to socio-political, economic, educational and cultural matters.⁵⁷

2.2 Childs Rights Act (CRA) 2003

The CRA⁵⁸ was domesticated⁵⁹ and enacted following the ratification of the Convention on the Rights of the Child (CRC) which mandates States parties to undertake and disseminate the

⁵³ O O Olusegun and A A Idowu, 'Child Abuse In Nigeria: Dimension, Reasons For Its Persistence and Probable' [2016] (4) (1) *Child and Family Law Journal*; 9.

⁵⁴ CFRN (n1) s17 (a)-(e).

⁵⁵ *Ibid* s18.

⁵⁶ *Ibid* s6(6)(c).

⁵⁷ *Ibid* s13.

⁵⁸ CRA(n35) 2004.

⁵⁹ CFRN (n1) s12

Convention's principles and take all appropriate legislative, administrative and other measures for the implementation of the Rights recognized in by the Convention.

The CRA consolidates all laws relating to children into one single piece of legislation, incorporating all the rights and responsibilities of children and specifying the duties and obligations of government, parents and other authorities, organisations and bodies.⁶⁰ The Act provides for rights and responsibilities of the child in Nigeria and made available a system of child Justice Administration and the care and supervision of children, amongst others.⁶¹

The best interest of the child was emphasized by the Act as paramount in any decision or consideration concerning the child⁶² and provide the child with protection and care as is necessary for the well- being of the child.⁶³ The Act protects the life of the child and other Fundamental Rights⁶⁴ provisions of the Constitution as same was adopted by the Act in favour of the child. It guarantees the right of the child against illiteracy by outing the duty of parents to endure that children receive basic education.⁶⁵ It guarantees the right of a child to survival and development,⁶⁶ health and health services, while also tasking States to undertake measures to aid reduction in infant mortality.⁶⁷ The Act guarantees the child's rights to a name at birth,⁶⁸ and also compulsory Registration of birth⁶⁹ for the purposes of accessing other Rights such as Healthcare both Physical and mental, welfare, education and other social assistance.⁷⁰

The Act guarantees the Right to freedom of thought conscience and religion⁷¹ of the Child, even where such beliefs differ from that of the Parent or Legal guardian. That where issues as to the Child religion conflicts with that of the Parent, the paramount consideration is the best interest of the Child.⁷² The subjection of children to any form of discrimination⁷³ merely by reason of belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion or political opinion is prohibited. Therefore, issues such as FGM, girl child marriages and the refusal to educate the girl child on the basis of sex are an infringement on the right of the girl child. Disability or deprivation merely by reason of the circumstances of a child's birth are also prohibited.

⁶⁰ M T Ladan, 'An Overview of the Child Rights Act, 2003' [2021] Paper Presented at the All Nigeria Judges' Conference of The Superior Courts; 2

⁶¹ *Ibid.*

⁶² CRA (n53) s1.

⁶³ *Ibid* s2

⁶⁴ CFRN (n1) Chapter IV; CRA (n35) s3.

⁶⁵ CRA (n35) s15.

⁶⁶ *Ibid* s4.

⁶⁷ *Ibid* s13.

⁶⁸ *Ibid* s5 (1).

⁶⁹ *Ibid* s5 (2).

⁷⁰ E I Onuche and S O Onuche, 'Rights of the Nigerian Child: The Law, Myths and Reality' [2021] (5) (1) *African Journal of Law and Human Rights*; 65.

⁷¹ CRA (n35) s7.

⁷² Onuche and Onuche, (n70) 66.

⁷³ CRA (n35) s10.

A child has a right to parental care and protection for the promotion of education and welfare of the child.⁷⁴ This provision entails that a child has a right to all the social and basic amenities that will enhance the welfare of the child. This implies that issues such as, education, shelter, clothing, health care and the general maintenance of the child are within the child's right and should be protected, where there is a breach in these parental duties a child can enforce these rights in the Family Court.

The reality is that Nigeria being a State that operates a federal system of government, the law does not automatically become applicable in all of its 36 states because children's issues are the preserve of the constituent states. Therefore, each state legislature must make the national law applicable within its territory. And only 25 of the 36 states in Nigeria have localised the Child's Rights Act⁷⁵ making it difficult to protect children in States yet to adopt the CRA. Apart from the federal structure of Nigeria's government, there are other reasons the Child's Rights Act hasn't been adopted by all states. Chief of them is religion, coupled with ethnic and cultural diversity.⁷⁶

There is also the challenge of lack of political will to promote and protect the best interest and welfare of the already vulnerable, marginalised, disadvantaged and discriminated child.⁷⁷ Some of the contentious issues bedeviling the Act include the definition of the child as a person below 18 years.⁷⁸ As it pertains to child marriage,⁷⁹ particularly for girls, child marriage is a prevalent practice in parts of the north. Children about the age of 10 or 12 years get betrothed or married off.⁸⁰ The prohibition of child marriage comes in conflict with some traditional and religious practices hence the refusal to incorporate the CRA as state laws. Serious concerns are expressed that the definition of the child in some legislation implementing the CRA at State level sets the age at 16 years (Akwa Ibom State) or defines the child not by age but by "puberty" (Jigawa State), reportedly for the purposes of child marriages.⁸¹

The first step to achieve positive result is applying the CRA across the country⁸² and a harmonious working relationship between stakeholders in order to attain the international best practices in relation to child's right protection.

⁷⁴ *Ibid* s14.

⁷⁵ The Conversation, 'Why the Child's Rights Act Still Doesn't Apply Throughout Nigeria' <<https://theconversation.com/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria-145345>> accessed 21 September 2022.

⁷⁶ *Ibid*

⁷⁷ Ladan, (n60) 7.

⁷⁸ CRA (n35) s277.

⁷⁹ *Ibid* s21.

⁸⁰ The Conversation (n75)

⁸¹ Child right manual 73 <https://barhumanrights.org.uk/wp-content/uploads/2013/12/The-Child-Rights-Manual_Trainers-Manual_Nigeria-29.10.13.pdf> accessed 20 October 2022.

⁸² The Conversation (n75)

2.3 Violence Against Persons (Prohibition) Act 2015

Violence Against Persons (Prohibition) Act⁸³ (VAAPA) aims to prohibit all forms of violence against persons in private and public life, and provide maximum protection and effective remedies for victims and punishment of offenders.⁸⁴

The Act addresses a broad-spectrum of violence such as physical, verbal, emotional, sexual, economic, and psychological abuses, as well as discrimination against persons. These prohibited acts include; offensive conducts which could be sexual or otherwise.⁸⁵ Coercion;⁸⁶ which is an offence liable to a term of imprisonment upon conviction. Wilfully or knowingly placing a person in fear of physical injury which attracts a term of imprisonment not exceeding 2 years or to a fine not exceeding ₦200,000:00 or both.⁸⁷ Children are most times put in a place of fear in order to elicit obedience or comply with parental instructions and this may be in violation of the child's right.

The act provides protection against child abandonment⁸⁸ and rape⁸⁹ which attracts life imprisonment or 14years imprisonment for offenders who are less than 14years of age.⁹⁰ The Act also provides protections against offenses that affect the girl child disproportionately⁹¹ such as female genital mutilation (FGM) which stipulates a term of imprisonment not exceeding 4 years or fine of ₦200,000.00 or both.⁹² While also prohibiting deprivation of children's liberty⁹³ and forceful isolation or separtion from family⁹⁴ which are recipies for acts like child trafficking.

The Act has jurisdictional limitation⁹⁵ when it stated that "Only the High Court of the Federal Capital Territory, Abuja empowered by an Act of Parliament shall have the jurisdiction to hear and grant any application brought under this Act". However, States have adopted the Act into laws to bring it within State jurisdiction.

2.4 Trafficking in persons (Prohibition) Law Enforcement and Administrative Act (TIPLEA) 2010

Human trafficking is a major global challenge confronting the world today. This ugly development pervades nearly all African countries including Nigeria. In recognition of the fact

⁸³ Violence Against Persons (Prohibition) Act 2015.

⁸⁴ Cornell Law School, 'Legal Information Institute' <[https://www.law.cornell.edu/women-and-justice/resource/violence_against_persons_\(prohibition\)_act](https://www.law.cornell.edu/women-and-justice/resource/violence_against_persons_(prohibition)_act)> accessed 21 September 2022.

⁸⁵ VAAP (n83) s5

⁸⁶ *Ibid*, s3.

⁸⁷ *Ibid* s4.

⁸⁸ *Ibid* s16.

⁸⁹ *Ibid* s1.

⁹⁰ *Ibid* s2.

⁹¹ Cornell Law School (n84).

⁹² VAAP (n83) s6

⁹³ *Ibid* s10.

⁹⁴ *Ibid* s13.

⁹⁵ *Ibid* s27.

that human trafficking is not only a violation of human rights but a crime that is against all laws, efforts have been severally made by bodies at both domestic and international levels to contend with this insolent and dehumanizing practice.⁹⁶

To underscore the Nigerian government, resolve to stem the tide of trafficking in persons, the Act defines the word “trafficking” as;

All acts involved in the recruitment, transportation within or across Nigerian Borders, purchases, sale, transfer, receipt or harbouring of a person, involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether or not in voluntary servitude (domestic, sexual or reproductive) in forced or bonded labour or in slavery like conditions.

It is argued that this definition of trafficking is not broad enough to cover all the means and purposes envisaged by Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (Trafficking Protocol) to which Nigeria is a party. While the Act recognizes the fact that a person may be recruited, bought, sold, receive, laboured and transported, it failed to take into account that these actions may be achieved not only by means of deception, coercion or debt bondage, but also by means of fraud and more importantly by means of the abuse of one’s power over someone else or of a victim’s position of vulnerability commonly found among poverty stricken families, and those caught in the cross-fire of armed conflict.⁹⁷ Flowing from the above it is argued that some parents may abuse their power as parents to traffic their children without any form of suspicion by members of the public and may never be brought under the law for this offence.

The obvious lapses in the Nigerian definition of trafficking may not be unconnected with the general societal attitude towards prostitution and the cultural practices of child placement by less privileged families with perceived more economically buoyant families elsewhere.⁹⁸ It has identified that human trafficking is a serious violation of human rights of persons and there is a strong global resistance and Nigeria is not left behind in combating the menace of human trafficking. Therefore, NAPTIP and other security agencies have been set up to tackle the scourge of human trafficking in Nigeria.⁹⁹

2.5 Labour Act 1974

It is globally accepted that low wages, illiteracy, ignorance, unemployment, and social life are the main causes of child labour in the countries concerned. These causes place many children

⁹⁶ S K Kigbu and Y B Hassan, ‘Legal Framework for Combating Human Trafficking in Nigeria: The Journey So Far’ [2015] (38) *Journal of Law, Policy and Globalization*; 205.

⁹⁷ Kigbu and Hassan (n96) 206.

⁹⁸ *Ibid* 207.

⁹⁹ *Ibid* 257.

in the labour market as a necessity to raise their biological parents' income and to improve their financial status.¹⁰⁰

In Nigeria, there are laws which expressly prohibit child labour which is one of the ways through which those with parental responsibility may infringe on the right of children. There are several ways through which child labour can manifest and the Labour Act¹⁰¹ has become a crucial legislation to tackle this dilemma. It is contemplated that a child should be involved in some manner of work. It could be domestic, income generating or to acquire skill.¹⁰² The impression has always been that child labour is work that is mentally, physically, socially or morally dangerous and harmful to children and deprives them of opportunities of schooling and development.¹⁰³

The minimum age provided by the Act for apprenticeships is a person above twelve years.¹⁰⁴ It means that any person below the age of twelve is not supposed to work as an apprentice. The Act sets the minimum age for employment at 15 years¹⁰⁵ except for light agricultural, horticultural, or domestic work performed for the family. The Act prohibits young persons under the age of sixteen years to be employed to work underground, or machine work or on a public holiday neither to carry out any work which is injurious to the health, dangerous or immoral to the child.¹⁰⁶

This provision prohibits children from any deteriorative work that can harm the child's physical health and mental capacity. Yet, a huge number of Nigerian children who are under fifteen are lifting heavy loads and luggage as carriers in the market for their survival. Children are entering the job market because of financial constraints or poverty that is confronting them and employers use the opportunity to exploit children who are working for them. Some work far from their state and it is not possible for them to return home daily, so, they are dwelling in any place they think is safe for them.¹⁰⁷

Furthermore, the financial conditions and rate of poverty make this provision unimplementable and moribund. The rate and percentage of child labour in Nigeria shows proof that this provision cannot be fully implemented until the causes of child labour are completely controlled by the Nigerian government.¹⁰⁸ Under-aged working children are prevented from

¹⁰⁰ Y J Amuda, 'Working Conditions and Consequences of Child Labour in Nigeria' [2010] (1) (7) *OIDA International Journal of Sustainable Development*; 54.

¹⁰¹ CAP L1 LFN 2004

¹⁰² M A AjaNwachuku, 'A Critical Review of Child Labour in Nigeria and The Case for Child Entrepreneurship' [2016] (3) (2) *Rechtsidee*; 71.

¹⁰³ International Labour Organisation, 'What is Child Labour' <<https://www.ilo.org/ipec/facts/lang--en/index.htm>> accessed 21 September 2022.

¹⁰⁴ LA (n101) s49.

¹⁰⁵ *Ibid* s59 (2).

¹⁰⁶ *Ibid* s59 (5).

¹⁰⁷ Amuda (n100) 58.

¹⁰⁸ D Togunde and S Newman, 'Value of Children, Child Labor, and Fertility Preference Urban Nigeria [2005] (7) *West Africa Review*; 8-12.

preparing for future adult responsibilities due to the lack of sound education and formal training.

Many of them are involved in drug trading and many other illegal activities because of their relationship with adult drug gangs.¹⁰⁹ It has also been stated that child labour has manifold repercussions on the children who are working under hazardous and unhealthy conditions. Since they are working when they are supposed to be learning and also working and studying at the same time, it is onerous for children to cope with two different things in their childhood.¹¹⁰

Child labour often conflicts with the best interest of the child and one of the most alleged reasons for child labour in Nigeria is the economic poverty that is seriously confronting the majority of Nigerians to some degree. The phenomenon subjects' children to labour as a result of their biological parents' incapability. It is the rate of poverty in Nigeria which leads biological parents and guardians to allow their biological children to work in the streets as hawkers, prostitutes and traffickers. The phenomenon also permits parents to deny their children compulsory education due to their financial constraints.¹¹¹

2.6 Compulsory, Free Universal Basic Education Act, 2004

The growing population of out-of-school children globally has become a major concern to education stakeholders. This concern led to the enactment of the Compulsory, Free Universal Basic Education Act¹¹² (CFUBEA) in 2004 to mitigate this problem.¹¹³ CFUBEA is a legislation that is targeted at ensuring that the Nigerian child obtains basic education. The Act provides that every Government in Nigeria should provide free, compulsory and Universal basic education for every child in order to attend primary and junior secondary schools,¹¹⁴ and parents on their own part should ensure they attend and complete this basic education standard.¹¹⁵

The Act enjoins stake-holders in education in Local Government Areas to ensure that every parent or person who has the care and custody of a child performs duty of ensuring their children attends school as provided under the Act¹¹⁶ and parents who contravenes the Act commits an offence and is liable to be reprimanded on first conviction or on second conviction to a fine of ₦2,000:00 or imprisonment for a term of one month or to both and on subsequent conviction, to a fine of ₦5,000:00 or imprisonment for a term of two months or to both.¹¹⁷

¹⁰⁹ B Schlemmer, *The Exploited Child* (London: Zed Books 2000).

¹¹⁰ Amuda, (n100) 59.

¹¹¹ *Ibid* 53.

¹¹² Compulsory, Free Universal Basic Education Act, 2004.

¹¹³ P B Gabriel, 'The Compulsory, Free Universal Basic Education Act 2004 and the Reality of Out of School Children in Nigeria' [2021] (20) (1) *African Journal of Educational Management*; 155-166.

¹¹⁴ CFUBEA (n112) s2(1).

¹¹⁵ *Ibid* s2(2).

¹¹⁶ CFUBEA (n112) s2(3).

¹¹⁷ *Ibid* s2(4).

Despite the provisions of this legislation it is noted that years after its enactment, the issue of out-of-school children is still trending with the population growing. Therefore, a review of Nigeria law reports was made to see if there had been prosecution of violators of CFUBEA 2004 between 2008-2018, however, no case related was found. This gave an expose on the extent to which the punitive clause of CFUBEA 2004 have been enforced. The non-enforceability of the Act is manifest in the number of out of school children in Nigeria.¹¹⁸ This is because Nigeria has been identified to be housing over 20 million children that are out-of-school.¹¹⁹

There is dire need to reduce the number of out-of-school children by making a review of the functioning of the CFUBEA and to further strengthen the need for the right of children to education to be fulfilled by holding parents who have failed in performing their duties responsible through the proposed legal regime in this thesis as this will help to reinforce the CFUBEA.

African Charter on Human and People's Rights (Enforcement and Ratification) Act 1983

African Charter on Human and People's Rights was ratified and domesticated as the African Charter on Human and People's Rights (Enforcement and Ratification) Act¹²⁰ by the Nigerian Legislature into its national laws because Nigeria operates a dualist system wherein treaties are not applied domestically unless incorporated through domestic legislation.¹²¹ This follows the provision of the Nigerian Constitution which states that 'No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly'.¹²² Thus the Act became operational in Nigeria and it was stated that upon commencement the provisions of the African Charter on Human Rights Peoples' Rights which are set out in the Schedule to the Act shall, subject as there under provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

Although the Act was confronted with the challenges of implementation following the ouster clause¹²³ but the Nigerian Supreme Court confirmed in the case of *General Sani Abacha v. Chief Gani Fawehinmi*¹²⁴ that the Charter is part of Nigerian law and Courts must enforce it. Although the Act did not make any express provision for children but children being humans

⁰ Gabriel (n113)155.

¹¹⁹ Alabi, (n13).

¹²⁰ CAP A 9 LFN 2004.

¹²¹ E Egede 'Bringing Human Rights Homes: An Examination of the Domestication of Human Rights Treaties in Nigeria [2007] (51) (2) *Journal of African Law*; 249.

¹²² CFRN (n1) s12.

¹²³ Constitution (Suspension and Modification) Decree 1984 (Decree No. 1); Constitution (Suspension and Modification) Decree. No. 107 of 1993,

¹²⁴ (2000) 6 NWLR (Pt 660) 228.

are deserving of protection and such protection is derivable from the provisions of Section 2 which states that;

Every individual shall be entitled to the enjoyment of the rights and freedom recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.¹²⁵

Another phenomenon of concern is that the Nigerian society is inherently patriarchal in nature. The traditions and culture of every society determine the values and behavioural patterns of the people and society...a culture that attributes superiority to one sex over the other exposes the sex that is considered to be inferior to various forms of discrimination.¹²⁶

Discriminatory practices against children pose negative effect to their person and wellbeing. Therefore, it is important to note that because children are peculiar in their status and they should enjoy the height protection even as provided under this Act under review.

2.7 Criminal Code Act 1916

The Criminal Code Act (CCA)¹²⁷ Operates in the Southern part of Nigeria¹²⁸ and a mechanism for protecting children's rights. The CCA provides general offences such as murder, rape and theft that protect everyone, including children. There are also specific offences designed to protect children in particular. Such offences include the criminalisation of child prostitution, child slavery and child sexual abuse, for the protection of children and preservation of their dignity.

The Act also prescribes a set of duties for those responsible for children to protect the child's right to life, protection and preservation. Thus, realizing the importance of duties of parents to their children the Act provides places a responsibility on person who is the head of the family and has a child under the age of fourteen years to make provision for the necessities needed by that child. Where there is a failure in the performance of this duty which leads to the child's death or health challenges such a head of family is held liable for failing to carry out their responsibility.¹²⁹

The child's right to life guaranteed under the Constitution is further strengthened by the CCA which protects the life of children when it states 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 and make the killing of a child killing of a child unlawful.¹³⁰ It protects a child from being unlawfully

¹²⁵ ACHPRA (n120) s2.

¹²⁶ J Ngwankwe, 'Realising Women's Economic and Cultural Rights: Challenges and Strategies in Nigeria' [2002] 14 *CJWL/RFD* 143.

¹²⁷ CAP C38 LFN 2004.

¹²⁸ *Ibid* s1

¹²⁹ CCA (n127) 301

¹³⁰ *Ibid* 306; s328.

killed during delivery.¹³¹ The birth of children should also not be as concealing the birth of a child¹³² is an offence. This is to ensure that births are registered and the child is giving all the care and training needed for the child's well-being.

Under the CCA, there is protection for rape and the defilement of children. The Act prohibits indecent treatment of boys under fourteen,¹³³ defilement of girls under thirteen,¹³⁴ abduction of girls under sixteen,¹³⁵ defilement of girls under sixteen and above thirteen, and of idiots,¹³⁶ indecent treatment of girls under sixteen,¹³⁷ abduction of girl under eighteen with intent to have carnal knowledge,¹³⁸ and indecent assault on males.¹³⁹

The Act made a distinction between rape and defilement of a child. While the position is that defilement can be committed against a child below the age of 11 years, the offence of rape can only be committed against persons above 11 years. More so, the law requires that in an offence of defilement it is immaterial that the child consented as he is taken as incapable of giving consent, yet it is required that the evidence must be corroborated. The requirement for corroboration should be relaxed in certain crucial cases.¹⁴⁰

The offences related to witchcraft are prohibited under CCA in Chapter 20 tagged Ordeal, Witchcraft, Juju and Criminal Charms. The Act¹⁴¹ provides that the trial by the ordeal of sasswood, seer-bean, or other poison, boiling oil, fire, immersion in water or exposure to the attacks of crocodiles or other wild animals, or by any ordeal which is likely to result in the death of or bodily injury to any party to the proceeding is unlawful. That any person who directs or controls or presides at any trial by ordeal which is unlawful is guilty of a felony, and is liable, when the trial which such person directs, controls or presides at results in the death of any party to the proceeding, to the punishment of death, and in every other case to imprisonment for ten years.¹⁴²

A person who is present at or takes part in any trial by ordeal which is unlawful; or makes, sells or assists or takes part in making or selling, or has in his possession for sale or use any poison or thing which is intended to be used for the purpose of any trial by ordeal which is unlawful;

¹³¹ *Ibid*, 328

¹³² *Ibid*, 329

¹³³ *Ibid*, 216

¹³⁴ *Ibid*, 218

¹³⁵ *Ibid*, 362

¹³⁶ *Ibid*, 221

¹³⁷ *Ibid*, 222

¹³⁸ *Ibid*, 225

¹³⁹ *Ibid*, 353

¹⁴⁰ L Borno and N Akani, "Protection of the Rights of Children in Nigeria: A Comparative Analysis", [2019] (10) (1) *The Journal of Property Law and Contemporary Issues*; 68.

¹⁴¹ CCA (n127) s207 (1)

¹⁴² *Ibid*, s208.

is guilty of a misdemeanor, and is liable to imprisonment for one year.¹⁴³ The unlawful trial by ordeal or prohibited juju,¹⁴⁴ or even the worship of juju are acts which are likely to cause harm or result in the death of a child. Children in some parts of the Sothern region face trial by ordeal upon been accused practicing witchcraft or branded as Witches or Wizards. These acts infringe on the rights of children to their personal liberty and dignity. Often times these children pass through this hardship because their parents who are their primary care givers brand and submit them to be trailed using juju in order to ascertain their innocence or guilt of practicing witchcraft.

The CCA also contains sanctions against human trafficking to protect children from being trafficked.¹⁴⁵ Offences against liberty the liberty¹⁴⁶ of a child through kidnapping or unlawful imprisonment are prohibited by the CCA. The Act protect children from parents, guardian or any other person who has a legal duty to care and maintain a child who is under twelve years by prohibiting such a person from disserting the child without any means of support.¹⁴⁷

2.8 Penal Code Act 1960

The criminal justice system in the Northern part of Nigeria operates with the Penal Code Act (PCA)¹⁴⁸ provides that whoever being the father or having the care of a child under the age of twelve years, exposes or leaves such child, shall be punished with imprisonment for a term which may extend to seven years or with fine or both. The law also forbid cruelty to children by ill treatment.¹⁴⁹

The Law went further to provide that whoever having the charge or care of a child under the age of fifteen years or being in position of authority over the child willfully ill-treats or neglect the child in such a way as to cause unnecessary suffering shall be punished with imprisonment for a term which may extend to two years or with fine or with both and if ill treatment or neglect results in serious injury to the health of such child, the offender shall be punished with imprisonment for a term which may extend to five years or with fine or with both. Sections 278-280 of the PCA contain sanctions against human trafficking while sections 282 (1) (b) prohibits child defilement and prescribes life imprisonment as punishment for offenders. The sad reality about these provisions is that it is limited to children under the age of fourteen years.

¹⁴³ *Ibid* s209.

¹⁴⁴ *Ibid*,207.

¹⁴⁶ *Ibid* 364-369.

¹⁴⁷ *Ibid* 372.

¹⁴⁸ CAP P3 LFN 2004.

¹⁴⁹ *Ibid* s271.

2.9 Matrimonial Causes Act 1970

The matrimonial Causes Act (MCA)¹⁵⁰ is the principal law on matrimonial causes in Nigeria, it provides for relieves for marriages conducted under the Marriage Act such as the maintenance¹⁵¹ and custody¹⁵² of children however marriages entered into according to Muslim rites or other customary law¹⁵³ are precluded from seeking reliefs under it. This makes the jurisdiction of the court with respect to the custody, guardianship, maintenance, advancement and education of children is based on the main matrimonial cause.

Actions relating to the general rights of the child (including adoption, custody, guardianship, and maintenance) under the Child's Rights Act are not based on matrimonial causes. Therefore, domicile is not required and mere residence in the state that has adopted the law or in the Federal Capital Territory will suffice. Section 70 of the MCA gives the court power to make orders for maintenance of the spouse and the children of the marriage. Under section 73 of the MCA, maintenance can be ordered to be paid weekly, monthly, yearly, or as a lump sum.

The court also has the power to review maintenance orders and in ordering maintenance, the court is required to consider what is just and equitable in the circumstances of each case, having regard to the means, earning capacity and conduct of the parties to the marriage, and the age and position of the children, if any.¹⁵⁴ The MCA uses this medium to cater for the financial needs of children to cater for their basic needs in realization of their rights under the CRA and other legislation.

3.0 Conclusion

In sum, the paper identified that despite all these national legislations for the welfare of children there are still lapses in the protection of the rights of children resulting from failure of some parents in carrying out their parental responsibilities so there is need to further strengthen the legal regime for the protection of children. The need to create a new legal dispensation for parents with respect to their responsibilities to their children is to actualize the various commitments the Nigerian state has entered nationally and internationally to protect children.

4.0 Recommendations

Based on the forgoing this paper recommends as follows:

1. The enactment of a Parental Responsibility Law as this will have great impact on children because those primarily responsible for their wellbeing can be held

¹⁵⁰ CAP M7 LFN 2004.

¹⁵¹ *Ibid* s70(1); s73.

¹⁵² *Ibid* s71(1).

¹⁵³ *Ibid* s69.

¹⁵⁴ E. Etomi and E. Asia, 'Family law in Nigeria: overview' <[https://uk.practicallaw.thomsonreuters.com/6-613-4665?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#:~:text=On%20what%20basis%20is%20child,%2C%20Matrimonial%20Causes%20Act](https://uk.practicallaw.thomsonreuters.com/6-613-4665?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=On%20what%20basis%20is%20child,%2C%20Matrimonial%20Causes%20Act)> accessed 21 September 2022.

accountable under an identifiable law and the rights provided for in the Child's Rights Act 2003 and other relevant laws will be actualized.

2. In rural areas where high level of poverty is recorded Government should empower the parents so that they will be able to send their children to school and provide other basic needs for them.
3. Governments should endeavor to eradicate early marriage of the girl child by harmonizing the age discrepancies in the definition of who a child in the Child Rights Laws of the Federating States of Nigeria.
4. There should be enlightenment Campaign for parents to educate them on the rights of a child. If these recommendations are put into use parents will carry out their responsibilities of their children which will ultimately culminate into the protection of their rights.